

**SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

STEVEN J. ROSEN	:	
	:	
Plaintiff	:	
	:	
v.	:	Case No.: 09-01256
	:	Judge Erik Christian
AMERICAN ISRAEL PUBLIC	:	Next Event: Dispositive Motions
AFFAIRS COMMITTEE, INC., <i>et. al.</i>	:	Due: November 5, 2010
	:	
Defendants	:	
_____	:	

**DEFENDANTS' AMERICAN ISRAEL PUBLIC AFFAIRS COMMITTEE, INC. AND
PATRICK DORTON'S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE**

1. Plaintiff Steven Rosen was the subject and target of a Federal investigation that resulted in a Federal grand jury indictment against him for alleged violations of the Espionage Act. (*See*, Complaint at ¶ 21; Ex. 1, Aug. 4, 2005 Indictment; Ex. 13, Plaintiff's Answers to AIPAC's Request for Admissions, No. 22).

2. Plaintiff is a public figure in Middle East Policy Issues. (*See*, Ex. 13, Plaintiff's Answers to AIPAC's Request for Admissions, No. 14).

3. This Court dismissed all claims based on any statement other than the March 3, 2008, New York Times Article. (*See*, October 30, 2010 Order and Opinion, (Clark, J)).

4. The factual background in the March 3, 2008 New York Times Article is accurate. (*See*, March 3, 2008, New York Times Article; Ex. 13, Plaintiff's Answers to AIPAC's Request for Admissions, No. 20).

5. Plaintiff admits the "statement" contained in the March 3, 2008, article was a repetition. (*See*, Ex. 2, Rosen Dep. 393).

6. Plaintiff was an at-will employee of AIPAC. (*See*, Ex. 2, Rosen Dep. 59-61; Ex. 4, Kohr Dep. 76).

7. The FBI surreptitiously made recordings of a call between Plaintiff's co-worker, Plaintiff, and The Washington Post reporter Mr. Kessler. (*See*, Ex. 3).

8. Prosecutors played the recording of Messrs. Rosen and Weissman's conversation with Mr. Kessler for Mr. Lewin as part of Mr. Lewin's "experience." (*See*, Ex. 2, Rosen Dep. 246-248, 425-429, 431; Ex. 7. Lewin Dep. 23-25).

9. The recording of the conversation between Messrs. Rosen, Weissman, and Kessler left a disturbing impression on Mr. Lewin. (*See*, Ex. 7. Lewin Dep. 23-25).

10. Messrs. Rosen and Weissman were trying to "sell" the story and persuade Mr. Kessler to write it, despite the fact their story was likely based on classified information. (*See*, Ex. 7. Lewin Dep. 23-25).

11. Mr. Lewin assumed the recorded conversation would become public at trial. (*See*, Ex. 7. Lewin Dep. 28).

12. Before his "experience" on or about March 15, 2005, Mr. Lewin did not know that Messrs. Rosen and Weissman "were essentially trying to sell Kessler on printing this story, with the representation that the story was one which they could be criminally punished for having disclosed to Kessler." (*See*, Ex. 7, Lewin Dep. 27).

13. AIPAC would be "substantially damage[d]" if the tape became public. (*See*, Ex. 7, Lewin Dep. 79).

14. AIPAC would not have been able to explain how AIPAC could have learned of this information and yet still retained the Plaintiff and his co-worker as AIPAC employees. (*See*, Ex. 7, Lewin Dep. 25, 28-30, 57-59).

15. Mr. Lewin made the recommendation for termination only after hearing the government's evidence. (*See*, Ex. 7, Lewin Dep. 79-80).

16. The recording played for Mr. Lewin had the effect of making Plaintiff look "very sinister" and "portray[ed] him as a secret agent rather than a lobbyist." (*See*, Ex. 6, May 11, 2010 SpyTalk Article).

17. Plaintiff made a comment about "not getting in trouble" over the information in the conversation with Mr. Kessler. (*See*, Ex. 2, Rosen Dep. 255-256).

18. The statement about "not getting in trouble" meant that Messrs. Rosen and Weissman "could get in trouble because maybe [the information] is classified." (*See*, Ex. 2, Rosen Dep. 429).

19. Plaintiff said on the recorded call, "At least we have no Official Secrets Act." (*See*, Ex. 2, Rosen Dep. 255-259; Ex. 8, July 4, 2005 New Yorker "Real Insiders" Article, at 6).

20. The Official Secrets Act is a British law under which journalists can be prosecuted if they publish classified material. (*See*, Ex. 2, Rosen Dep. 255-259; Ex. 8, July 4, 2005 New Yorker "Real Insiders" Article, at 6).

21. Plaintiff admits to the "inferential logic" that Plaintiff knew the information was classified otherwise there would be no reason to mention the Official Secrets Act. (*See*, Ex. 2, Rosen Dep. 257-258).

22. Mr. Lewin stated that they should be terminated but that Mr. Rosen's legal fees in the criminal matter should continue to be paid. (*See*, Ex. 7, Lewin Dep. 89).

23. AIPAC paid in excess of \$4.9 million for Mr. Rosen's legal fees. (*See*, Ex. 2, Rosen Dep. 287-288).

24. Mr. Dorton's "statement" said nothing different from that expressed in Mr. Lewin's letter. (*See* Ex.7, Lewin Dep. 56-58, 90).

25. The recorded conversation was evidence that the men "knew that they were engaging in conduct that the government would consider criminal." (*See*, Ex. 7, Lewin Dep. 31-33).

26. By March 2008, Plaintiff had been indicted on charges of allegedly violating the Espionage Act. (*See*, Ex. 1, Aug. 4, 2005 Indictment).

27. Plaintiff engaged in "sexual experimentation" by soliciting other married men through Craig's List. (*See*, Ex. 2, Rosen Dep. 88-90).

28. The possible disclosure of his "sexual experimentation" would have been "embarrassing" and the potential embarrassment from that discovery of his sexual conduct "was very disturbing to [him]." (*See*, Ex. 2, Rosen Dep. 85-87).

29. Plaintiff's own attorneys had concerns of his being indicted for lying to the FBI. (*See*, Ex. 2, Rosen Dep. 451-452).

30. Plaintiff used his AIPAC work computer to browse pornographic websites. (*See*, Ex. 13, Plaintiff's Answers to AIPAC's Request for Admissions, No. 29).

31. Plaintiff used his AIPAC work computer to view pornographic images. (*See*, Ex. 13, Plaintiff's Answers to AIPAC's Request for Admissions, No. 30).

32. AIPAC discovered a large amount of graphic pornography on Mr. Rosen's office computer after and FBI raid at AIPAC's headquarters. Maintaining pornography on AIPAC computers is in violation of AIPAC policies. (*See*, Ex. 2, Rosen Dep. 69-83).

33. By the time the March 3, 2008, article was published, AIPAC had learned additional information from the indictment, three (3) years of internal inquiries, sustained media

attention to the FBI investigation and criminal prosecution resulting in numerous articles, and Mr. Lewin's experience, that clarified and supported the opinion that the Plaintiff had not acted in accordance with the standards AIPAC expected of an employee. (*See*, Ex. 11, Dorton Dep. 55-57).

34. A criminal indictment is not what AIPAC expects of any employee by any objective or subjective measure. (*See*, Ex. 11, Dorton Dep. 76-77).

35. On the morning August 27, 2004, two FBI agents came to Plaintiff's house, and after an "intense exchange of words" issued a "threat [to Plaintiff] about getting a lawyer by 10:00 a.m. [that day]." (*See*, Ex. 2, Rosen Dep. 201-203).

36. After his visit from the FBI, Plaintiff called Philip Friedman, AIPAC's general counsel, to relay the fact that the FBI had just visited him and was instructed to speak with no one and to go directly to AIPAC's offices to meet with the General Counsel. (Ex. 2, Rosen Dep. 206-207)

37. *Before* going to AIPAC's offices and informing his superiors at of his visit from the FBI, Plaintiff went to Bread & Chocolate restaurant to speak with an Israeli Embassy Official, where he discovered that FBI agents had followed him there. (*See*, Ex. 2, Rosen Dep. 212,219-220; Ex. 4, Kohr Dep. 55; Ex. 1).

38. Plaintiff and his fellow indictee, Mr. Weissman, both had concerns about the FBI's reasons for visiting them at AIPAC's office to ask about Lawrence Franklin and concerns about whether they had been caught lying to the FBI, but neither he nor Mr. Rosen ever informed anyone at AIPAC about their concerns surrounding the FBI's visits. (Ex. 2, Rosen Dep. 195; Ex. 12, Jan, 1, 2008 Washingtonian Article "This is the FBI- Can we talk?").

39. Beginning in 2004 and continuing to present, there was belief by AIPAC that Plaintiff was not forthcoming to his employer about his contacts with Lawrence Franklin or the extent and nature of his relationship with Mr. Franklin. (*See*, Ex. 4, Kohr Dep. 55; Ex.11, Dorton Dep. 79-80, 83-84, 89).

40. Various media articles, the factual record stated in the indictment, and AIPAC's experience dealing with Plaintiff on this matter, provided AIPAC with reasonable evidence to believe that Mr. Rosen had not revealed the full extent of his relationship with Mr. Franklin when the matter initially arose in 2004. (*See*, Ex. 11, Dorton Dep. 85-86, 89-90; Ex. 4, Kohr Dep. 55-62).

41. Plaintiff characterized Mr. Franklin as a "kook, a nobody, an insignificant figure" who "was much less important to [Rosen] than a lot of other people..." (*See*, Ex. 2, Rosen Dep. 169-172, 222).

42. Plaintiff found Mr. Franklin credible enough to take information from him to a Washington Post reporter on at least two (2) occasions, as well as to an Embassy Official. (*See*, Ex. 2, Rosen Dep. 169-172, 222).

43. The Court has found that Plaintiff is a public figure and must meet the higher burden of proving actual malice. (*See* Opinion and Order, (Clark, J)).

44. There are no facts that establish or support a finding that the Defendants made the alleged defamatory "statement" with actual malice. (*See*, Record, *generally*).

45. There are no facts that establish or support a finding malice even by circumstantial evidence. (*See*, Record, *generally*).

46. Plaintiff has admitted that he is not making a claim for lost wages or for any alleged mental or emotional harm in this case. (*See*, Ex. 2, Rosen Dep. 328-329, 386-389).

47. Plaintiff cannot distinguish any harm to his reputation or decrease in anyone's opinion of him based on the criminal indictment or the March 3, 2008 Article. (*See*, Ex. 2, Rosen Dep. 315-316).

48. No facts establish that the March 3, 2008 statement contributed in any way to the criminal prosecution or to Plaintiff's alleged "zone of danger." (*See*, Ex. 2, Rosen Dep. 392).

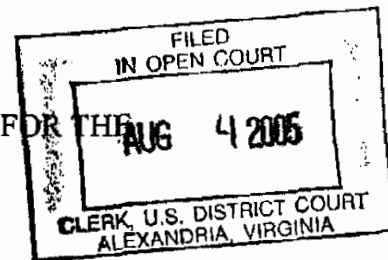
Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA



Alexandria Division

UNITED STATES OF AMERICA	)	CRIMINAL NO. 1:05CR225
)	
v.	)	<u>Count 1:</u> Conspiracy to communicate national
	)	defense information to persons not entitled to
LAWRENCE ANTHONY FRANKLIN,	)	receive it, 18 U.S.C. §§ 793(d), (e) and (g)
(Counts 1 through 5))	
	)	<u>Counts 2-4:</u> Communication of national defense
STEVEN J. ROSEN,	)	information to persons not entitled to receive it,
(Counts 1 and 3)	)	18 U.S.C. § 793(d)
)	
KEITH WEISSMAN,	)	<u>Count 5:</u> Conspiracy to communicate classified
(Count 1)	)	information to agent of foreign government,
	)	50 U.S.C. § 783, 18 U.S.C. § 371
Defendants.)	

SUPERSEDING INDICTMENT

AUGUST 2005 TERM - AT ALEXANDRIA

THE GRAND JURY CHARGES THAT:

General Allegations

At all times material to this indictment:

1. Defendant LAWRENCE ANTHONY FRANKLIN was employed by the United States government at the Department of Defense (DoD) in the Office of the Secretary of Defense (OSD), International Security Affairs (ISA), Office of Near East and South Asia, Office of Northern Gulf Affairs, Iran desk, and held a Top Secret security clearance with access to Sensitive Compartmented Information (SCI). FRANKLIN's office was located within the Pentagon, in the Eastern District of Virginia. FRANKLIN was also a Colonel in the United States Air Force Reserve (USAFR).



2. Throughout his employment with the United States government, FRANKLIN repeatedly signed written agreements acknowledging his duty to safeguard classified information:

- On or about July 31, 1979, FRANKLIN signed a Defense Intelligence Agency (DIA) Secrecy Agreement, by which he acknowledged that he would never divulge any classified information relating to the national security without prior consent of the Director of the Defense Intelligence Agency or his designated representative. FRANKLIN further acknowledged that the burden was his to ascertain whether information is classified and who is authorized to receive it. FRANKLIN acknowledged that he had read and understood the provisions of the Espionage Act, including 18 U.S.C. § 793, 794 and 798.
- On or about December 8, 1999, FRANKLIN signed a Classified Information Nondisclosure Agreement, a Standard Form 312 (SF-312). In that document FRANKLIN acknowledged that he was aware that the unauthorized disclosure of classified information by him could cause irreparable injury to the United States or could be used to advantage by a foreign nation and that he would never divulge classified information to an unauthorized person. He further acknowledged that he would never divulge classified information unless he had officially verified that the recipient was authorized by the United States to receive it. Additionally, he agreed that if he was uncertain about the classification status of information, he was required to confirm from an authorized official that the information is unclassified before he could disclose it.
- On or about June 5, 2001, FRANKLIN orally attested that he fully understood his responsibility to protect national security information and would adhere to the provisions of the SF-312. By doing so, FRANKLIN again acknowledged that he was aware that the unauthorized disclosure of classified information by him could cause irreparable injury to the United States or could be used to advantage by a foreign nation and that he would never divulge classified information to an unauthorized person. He again acknowledged that he would never divulge classified information unless he had officially verified that the recipient was authorized by the United States to receive it. Additionally, he again agreed that if he was uncertain about the classification status of information, he was required to confirm from an authorized official that the information is unclassified before he could disclose it. He again acknowledged that any unauthorized disclosure of classified

information by him may constitute a violation, or violations of criminal laws, including 18 U.S.C. § 793, 794 and 798 and 50 U.S.C. § 783.

- On or about July 17, 2001, FRANKLIN signed an SCI Nondisclosure Statement in conjunction with his employment at the DoD/OSD. FRANKLIN acknowledged that he was granted access to classified information protected as SCI and that he received a security indoctrination addressing the nature and protection of SCI information. In this document, FRANKLIN again acknowledged that he had been advised that the unauthorized disclosure of SCI by him could cause irreparable injury to the United States or be used to advantage by a foreign nation. He agreed he would never divulge anything marked as SCI or that he knew to be SCI to anyone who is not authorized to receive it without prior written authorization from the United States government. He acknowledged that he was obligated by law and regulation not to disclose any classified information in an unauthorized fashion. FRANKLIN again acknowledged that unauthorized disclosure of that information "may constitute violations of United States criminal laws, including the provisions of Sections 793, 794, 798, and 952, Title 18, United States Code."

3. At no time was FRANKLIN authorized to release classified information to co-defendants ROSEN and WEISSMAN, except with respect to Overt Acts 43 and 44 in Count One. At no time was FRANKLIN ever authorized to de-classify classified information.

4. Defendant STEVEN J. ROSEN was employed as the Director of Foreign Policy Issues for the American Israel Public Affairs Committee (AIPAC) in Washington, D.C. ROSEN was hired by AIPAC in or about July 1982. AIPAC, according to its website, is "America's Pro-Israel Lobby." AIPAC lobbies the U.S. Congress and Executive Branch agencies on various issues related to Israel and U.S. foreign policy in the Middle East. As the Director of Foreign Policy Issues, ROSEN lobbied on behalf of AIPAC, primarily with officials within the Executive Branch of the U.S. government. During the time period of this indictment, ROSEN did not have

a U.S. government security clearance and was not authorized to receive or possess U.S. government classified information.

5. From 1978-1982, ROSEN was a Social Scientist at the RAND Corporation (RAND) in Santa Monica, California. ROSEN was initially granted a U.S. government Secret security clearance on or about August 31, 1978, for his work at RAND. ROSEN was later authorized to hold a Top Secret U.S. government security clearance on or about July 18, 1979. These clearances were issued by the Defense Industrial Security Clearance Organization (DISCO), which processes security clearances for U.S. government contractors.

6. Based upon the Top Secret security clearance granted to ROSEN by DISCO on July 18, 1979, the Central Intelligence Agency (CIA) granted ROSEN a Secret Industrial security clearance on July 17, 1980 for CIA contracts on which he would work while at RAND Corporation. On August 8, 1980, ROSEN signed the requisite U.S. government secrecy agreement (Form 10-71 1060). In that document, ROSEN acknowledged that he had read and understood the provisions of the espionage laws (sections 793, 794 and 798 of Title 18, United States Code) concerning the disclosure of information relating to the national defense and that he was familiar with the penalties provided for any violation thereof. Additionally, he agreed that he would never divulge, publish or reveal either by word, conduct, or any other means, such information or intelligence unless specifically authorized to do so by an authorized representative of the U.S. government. Further, ROSEN indicated he understood that this agreement would remain binding upon him after termination of his relationship with the U.S. government. ROSEN's Secret Industrial security clearance for work on the CIA contracts was terminated on or about July 6, 1982.

7. Defendant KEITH WEISSMAN was employed as the Senior Middle East Analyst in the Foreign Policy Issues department at AIPAC. WEISSMAN was hired by AIPAC in 1993. While employed at AIPAC, WEISSMAN worked closely with STEVEN ROSEN in lobbying on behalf of AIPAC, primarily with officials within the Executive Branch of the U.S. government. WEISSMAN did not have a U.S. government security clearance and was not authorized to receive or possess U.S. government classified information.

8. Pursuant to Executive Order 12958, as amended by Executive Order 13292, national security information is classified as "Top Secret," "Secret" or "Confidential." The designation "Top Secret" applies to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security. The designation "Secret" applies to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to national security. The designation "Confidential" applies to information, the unauthorized disclosure of which reasonably could be expected to cause damage to national security. Access to classified information at any level may be further restricted through compartmentation in SCI categories. Classified information, of any designation, may only be shared with persons determined by an appropriate U.S. government official to be eligible for access to classified information, who have signed an approved non-disclosure agreement and who possess a need to know. If a person is not eligible to receive classified information, classified information may not be disclosed to that person.

COUNT ONE

Conspiracy to Communicate National Defense Information

THE GRAND JURY FURTHER CHARGES THAT:

Between in or about April 1999 and continuing until on or about August 27, 2004, in the Eastern District of Virginia and elsewhere, defendants LAWRENCE ANTHONY FRANKLIN, STEVEN J. ROSEN, and KEITH WEISSMAN did unlawfully, knowingly and willfully conspire, confederate and agree together and with others, known and unknown to the Grand Jury, to commit the following offenses against the United States:

1) having lawful possession of, access to, and control over information relating to the national defense, did willfully communicate, deliver and transmit that information directly and indirectly to a person or persons not entitled to receive it, having reason to believe that said information could be used to the injury of the United States and to the advantage of any foreign nation, a violation of Title 18, United States Code, Section 793(d); and

2) having unauthorized possession of, access to, and control over information relating to the national defense, did willfully communicate, deliver and transmit that information directly and indirectly to a person or persons not entitled to receive it, having reason to believe that said information could be used to the injury of the United States and to the advantage of any foreign nation, a violation of Title 18, United States Code, Section 793(e).

WAYS, MANNER AND MEANS OF THE CONSPIRACY

A. It was part of the conspiracy that, in an effort to influence persons within and outside the United States government, ROSEN and WEISSMAN would cultivate relationships with FRANKLIN and others and would use their contacts within the U.S. government and

elsewhere to gather sensitive U.S. government information, including classified information relating to the national defense, for subsequent unlawful communication, delivery and transmission to persons not entitled to receive it.

B. It was further part of the conspiracy that FRANKLIN would use his position as a desk officer in the Office of the Secretary of Defense to gather information relating to the national defense, for subsequent unlawful communication, delivery and transmission to ROSEN and WEISSMAN and others not entitled to receive it.

C. It was further part of the conspiracy that FRANKLIN, ROSEN and WEISSMAN would meet at locations in the Eastern District of Virginia and elsewhere, to exchange information, including classified information relating to the national defense.

D. It was further part of the conspiracy that FRANKLIN would unlawfully deliver, communicate and transmit classified national defense information in an effort to advance his own personal foreign policy agenda and influence persons within and outside the United States government.

E. It was further part of the conspiracy that ROSEN and WEISSMAN, without lawful authority, would communicate to persons not entitled to receive it, classified information relating to the national defense.

OVERT ACTS

In furtherance of the conspiracy and to effect the object thereof, defendants FRANKLIN, ROSEN, and WEISSMAN did commit overt acts in the Eastern District of Virginia and elsewhere, including but not limited to the following:

1. On or about April 13, 1999, ROSEN had a conversation with Foreign Official 1 (FO-1) and told FO-1 that he (ROSEN) had "picked up an extremely sensitive piece of intelligence" which ROSEN described as codeword protected intelligence. ROSEN then disclosed to FO-1 national defense information concerning terrorist activities in Central Asia.

2. On or about May 12, 1999, ROSEN and FO-1 met for lunch and further discussed the disclosure ROSEN made on April 13, 1999.

3. On or about June 11, 1999, WEISSMAN had a conversation with FO-1 and told FO-1 that a "Secret FBI, classified FBI report" on the Khobar Towers bombing had been prepared and that he (WEISSMAN) had gotten this information from three different sources, including United States government officials.

4. On or about June 11, 1999, WEISSMAN had another conversation with FO-1 and told FO-1 that he (WEISSMAN) had gotten a member of the media interested in the above-referenced classified FBI report on the Khobar Towers bombing.

5. On or about December 12, 2000, ROSEN and WEISSMAN met with a United States government official (USGO-1). Following the meeting, ROSEN had a conversation with a member of the media to whom he gave information about classified United States strategy options against a Middle Eastern country and the internal United States government deliberations on those options. USGO-1, with whom ROSEN and WEISSMAN met, had access to the classified information ROSEN disclosed.

6. On or about January 18, 2002, ROSEN met with another United States government official (USGO-2). After the meeting and on that same day, a memorandum

containing information ROSEN had obtained from USGO-2 was sent to fellow AIPAC employees. The memorandum contained classified information provided by USGO-2.

7. On or about January 23, 2002, ROSEN had a conversation with a foreign national and disclosed classified information provided to ROSEN by USGO-2 during their January 18, 2002 meeting.

8. On or about March 12, 2002, ROSEN and USGO-2 met and discussed classified information regarding Al-Qaeda.

9. On or about March 13, 2002, ROSEN disclosed to a fellow AIPAC employee classified information regarding Al-Qaeda that had been provided by USGO-2.

10. On or about March 14, 2002, ROSEN met with Foreign Official 2 (FO-2) and disclosed classified information regarding Al-Qaeda, previously provided by USGO-2 on March 12, 2002.

11. On or about August 5, 2002, ROSEN called a Department of Defense employee (DoD employee A) at the Pentagon and asked for the name of someone in OSD ISA with an expertise on Iran and was given the name of defendant LAWRENCE FRANKLIN.

12. On or about August 15, 2002, after FRANKLIN called ROSEN and left a message saying that he had heard that ROSEN was interested in issues concerning Iran, ROSEN called FRANKLIN and left his cell phone number and said he would like to meet.

13. On or about August 20, 2002, FRANKLIN and ROSEN spoke on the telephone and arranged to meet the next day. ROSEN advised that he was bringing his colleague, KEITH WEISSMAN.

14. On or about August 21, 2002, FRANKLIN called ROSEN, and they agreed to postpone their meeting. FRANKLIN advised ROSEN that he had seven or eight issues he wanted to discuss with him, and the issues were not limited to Iran.

15. On or about February 7, 2003, FRANKLIN and a DoD employee (DoD employee B) agreed to meet with ROSEN and WEISSMAN.

16. On or about February 12, 2003, in a telephone conversation with another individual while en route to the meeting with FRANKLIN, ROSEN stated that he was excited to meet with a "Pentagon guy" because this person was a "real insider."

17. On or about February 12, 2003, FRANKLIN, DoD employee B, ROSEN, and WEISSMAN met for breakfast at a restaurant in Arlington, Virginia, whereupon FRANKLIN disclosed to ROSEN and WEISSMAN national defense information relating to a classified draft internal United States government policy document concerning a Middle Eastern country. FRANKLIN told ROSEN and WEISSMAN that he had also prepared a separate document in connection with this policy document.

18. On or about February 12, 2003, ROSEN and WEISSMAN discussed the information FRANKLIN had given as it related to a draft article written by a journalist concerning United States foreign policy toward a country in the Middle East. ROSEN questioned the accuracy of the journalist's information.

19. On or about February 14, 2003, FRANKLIN and ROSEN discussed FRANKLIN's prospects for a position on the National Security Council (NSC) staff, and ROSEN told FRANKLIN that by working at the NSC that he would be "by the elbow of the President." FRANKLIN asked ROSEN to "put in a good word" for him, and ROSEN said, "I'll

do what I can.” ROSEN ended the conversation by telling FRANKLIN that he hoped they would keep in touch and that breakfast was a real “eye-opener.”

20. On or about March 7, 2003, ROSEN called FRANKLIN at the Pentagon and arranged to meet early one morning at Union Station, in Washington, D.C.

21. On or about March 10, 2003, FRANKLIN, ROSEN and WEISSMAN met at Union Station early in the morning. In the course of the meeting, the three men moved from one restaurant to another restaurant and then finished the meeting in an empty restaurant.

22. On or about March 12, 2003, FRANKLIN called ROSEN from his office in the Pentagon and left a message saying that he was trying to fax a document to ROSEN and WEISSMAN but was unable to do so and wanted to make sure ROSEN was present to receive it.

23. On or about March 13, 2003, FRANKLIN spoke with ROSEN and was provided with ROSEN's home fax number. FRANKLIN told ROSEN that he preferred to send the fax to ROSEN's residence.

24. On or about March 13, 2003, ROSEN met FO-2, who was assigned to a foreign embassy in Washington, D.C. ROSEN disclosed to FO-2 information related to the classified draft internal United States government policy document that he had discussed with FRANKLIN. ROSEN also told FO-2 about the internal deliberations of United States government officials concerning the policy document that FRANKLIN had disclosed to ROSEN and WEISSMAN.

25. On or about March 13, 2003, after his breakfast with FO-2, ROSEN had a conversation with FO-1, who was from the same embassy as FO-2. ROSEN asked FO-1 if he had heard, from FO-2, “the interesting report” he had given him concerning the classified draft internal policy document. ROSEN then discussed the specifics in the document with FO-1.

ROSEN and FO-1 also discussed whether a specific United States government official was aware of this information and how the deliberations would proceed.

26. On or about March 13, 2003, WEISSMAN had a separate conversation with FO-1. WEISSMAN asked FO-1, "Have you talked to Steve about Iran lately?" WEISSMAN related that "we" had heard from a "friend of ours in the Pentagon" about a national intelligence document. WEISSMAN discussed specifics about the classified draft internal policy document and the internal deliberations of United States government officials.

27. On or about March 13, 2003, ROSEN disclosed to a senior fellow at a Washington, D.C. think tank the information relating to the classified draft internal policy document concerning a Middle Eastern country and the internal deliberations of United States government officials that had been provided to ROSEN by FRANKLIN. ROSEN disclosed details from the document and encouraged the official to use his contacts to investigate further. The senior fellow advised ROSEN that he would follow up and see what he could do.

28. On or about March 17, 2003, FRANKLIN faxed, from the Pentagon to ROSEN's office fax machine, a document he had typed himself. The contents of this document appeared in the classified appendix to the classified draft internal policy document FRANKLIN had previously discussed with ROSEN and WEISSMAN on February 12, 2003.

29. On or about March 18, 2003, in a conversation with a member of the media about the classified draft internal policy document, ROSEN stated, "I'm not supposed to know this," and that it was a "considerable story." He encouraged the member of the media to pursue the story.

30. On or about May 30, 2003, in a conversation with another member of the media, ROSEN discussed the classified draft internal policy document and internal United States government deliberations about the document.

31. On or about June 3, 2003, WEISSMAN called FRANKLIN and left a message. Without naming the country, he said that he and ROSEN wanted to meet and talk about "our favorite country."

32. On or about June 24, 2003, WEISSMAN called FRANKLIN and asked FRANKLIN to obtain a document for him. While the document itself was not classified, WEISSMAN told FRANKLIN that he knew "the Agency" had a copy. FRANKLIN told WEISSMAN he would try to get WEISSMAN a copy and that he had a friend at the CIA if he could not get it anywhere else.

33. On or about June 24, 2003, ROSEN and WEISSMAN talked about arranging to have lunch with FRANKLIN.

34. On or about June 26, 2003, FRANKLIN, ROSEN and WEISSMAN met for lunch at a restaurant in Arlington, Virginia. FRANKLIN told ROSEN, "You set the agenda." ROSEN stated that he knew that "the constraints" under which FRANKLIN met with them were difficult. The three discussed the previously described classified draft internal policy document, as well as a newspaper article which described the document as classified, and the state of internal United States government deliberations.

35. On or about June 26, 2003, during the aforementioned meeting, FRANKLIN disclosed to ROSEN and WEISSMAN classified information related to potential attacks upon

United States forces in Iraq. FRANKLIN told ROSEN and WEISSMAN that the information was "highly classified" and asked them not to use it.

36. On or about June 26, 2003, ROSEN and WEISSMAN spoke about the luncheon they had earlier attended with FRANKLIN. ROSEN specifically noted the information FRANKLIN had identified as highly classified and stated that it was "quite a story." ROSEN also told WEISSMAN, "Well, look, it seems to me that this channel is one to keep wide open insofar as possible." WEISSMAN replied that he was taking FRANKLIN to a baseball game. ROSEN replied, "Smart guy. That's the thing to do."

37. On or about June 30, 2003, WEISSMAN and FRANKLIN, together, attended a major league baseball game in Baltimore, Maryland.

38. On or about October 24, 2003, FRANKLIN and Foreign Official 3 (FO-3) had a telephone conversation during which they discussed the status of the previously described classified draft internal policy document. FO-3 said he had information that work on the "policy" had stopped, and FRANKLIN confirmed that there had been "nothing on any calendar in regard to that" document.

39. On or about May 21, 2004, FRANKLIN verbally provided to reporters from a national news organization Top Secret/SCI national defense information concerning meetings involving two Middle Eastern officials. Shortly thereafter, the news organization, quoting FRANKLIN, broadcast a report that an unidentified source had specified that the U.S. government had obtained intelligence pertaining to these meetings and further provided details based on information FRANKLIN had supplied to the reporters.

40. On or about June 30, 2004, FRANKLIN, without lawful authority, possessed at his residence in Kearneysville, West Virginia, Top Secret and Secret documents containing national defense information.

41. On or about July 9, 2004, WEISSMAN agreed to meet with Lawrence Franklin, who, unbeknown to WEISSMAN, had begun cooperating with the government.

42. On or about July 9, 2004, after being informed of WEISSMAN's scheduled meeting with Franklin, ROSEN asked WEISSMAN to later advise him as to what Franklin had to say at the meeting.

43. On or about July 9, 2004, in Arlington, Virginia, WEISSMAN met with Franklin and received from him classified national defense information involving United States intelligence related to certain Middle Eastern countries.

44. On or about July 21, 2004, in Arlington, Virginia, WEISSMAN met with Franklin and obtained from Franklin classified national defense information concerning a foreign government's covert actions in Iraq. Before disclosing the information, Franklin warned WEISSMAN that the information he was about to receive was highly classified "Agency stuff" and that WEISSMAN could get into trouble by having the information.

45. On or about July 21, 2004, after meeting with Franklin, WEISSMAN immediately returned to his office, met with ROSEN, and disclosed to ROSEN the classified national defense information he had received from Franklin.

46. On or about July 21, 2004, ROSEN and WEISSMAN had a conversation with FO-3 during which they disclosed classified national information obtained from Franklin earlier that day. ROSEN told FO-3 that the information being disclosed was "Agency" information.

47. On or about July 21, 2004, ROSEN and WEISSMAN had a conversation with a member of the media during which they disclosed classified national defense information provided by Franklin earlier that day. ROSEN told the member of the media that he could not ask about the source of the information, but that the information was "Agency" information and that the source of the information was "an American intelligence source" with whom ROSEN and WEISSMAN had dealt with in the past and was "100 percent credible."

48. On or about July 21, 2004, WEISSMAN disclosed to another AIPAC employee classified national defense information provided by Franklin earlier that day. In his disclosure, WEISSMAN described the information as having come from "an American intelligence source."

49. On or about August 3, 2004, WEISSMAN contacted ROSEN and advised ROSEN that he had been contacted by the FBI. ROSEN advised WEISSMAN that he, too, had been contacted by the FBI. During their conversation, ROSEN and WEISSMAN discussed whether the FBI contact was about "something they picked up at work" and whether the FBI had discovered their contact with the member of the media, referenced above.

50. On or about August 3, 2004, following his above-referenced contact with WEISSMAN, ROSEN was interviewed by FBI agents and falsely told the agents that Franklin had never discussed classified information with him and had never provided him with classified information.

51. On or about August 3, 2004, following his interview with FBI agents, ROSEN contacted WEISSMAN and told him that the FBI talked with him about Franklin.

52. On or about August 9, 2004, WEISSMAN was interviewed by FBI agents and falsely told the agents that Franklin had never discussed classified information with him and had never provided him with classified information.

53. On or about August 20, 2004, WEISSMAN contacted another member of the media and disclosed to that person classified national defense information obtained on July 21, 2004 from Franklin. WEISSMAN further advised that he was trying to arrange a meeting between Franklin and the member of the media.

54. On or about August 27, 2004, in an interview with FBI agents, ROSEN falsely stated that Franklin had never given him classified information and that he (ROSEN) did not know of anyone to whom Franklin had given classified information.

55. On or about August 27, 2004, following his false statements to FBI agents that day, ROSEN contacted FO-2 and asked to meet with FO-2 or FO-3 about a "serious matter." ROSEN also told FO-2 that the FBI had "made some allegations which are important" and added that he did not want to "discuss it on the phone" and did not want to go to FO-2's embassy office.

56. On or about August 27, 2004, following the above-referenced conversation with FO-2, ROSEN went to a restaurant in Washington, D.C. near FO-2's embassy office. Once there, ROSEN approached FO-2 inside the restaurant. The two then proceeded outside where they engaged in conversation.

57. On or about August 27, 2004, WEISSMAN falsely told FBI agents that he did not know if Franklin had disclosed classified information to him.

(In violation of Title 18, United States Code, Section 793(g))

COUNT TWO

Communication of National Defense Information

THE GRAND JURY FURTHER CHARGES THAT:

On or about February 12, 2003, in Arlington, Virginia, within the Eastern District of Virginia, defendant LAWRENCE ANTHONY FRANKLIN, lawfully having possession of, access to, control over, and being entrusted with information relating to the national defense, which information the defendant had reason to believe could be used to the injury of the United States and to the advantage of a foreign nation, did unlawfully, knowingly and willfully communicate, deliver and transmit such information to a person or persons not entitled to receive it.

(In violation of Title 18, United States Code, Section 793(d))

COUNT THREE

Communication of National Defense Information

THE GRAND JURY FURTHER CHARGES THAT:

On or about March 17, 2003, in Arlington, Virginia, within the Eastern District of Virginia and elsewhere, defendant LAWRENCE ANTHONY FRANKLIN, lawfully having possession of, access to, control over, and being entrusted with a document, writing and note relating to the national defense, did unlawfully, knowingly and willfully communicate, deliver and transmit said document, writing and note to a person or persons not entitled to receive it, namely defendant STEVEN J. ROSEN, who did unlawfully, knowingly and willfully aid and abet FRANKLIN in the communication, delivery and transmission of said document, writing and note.

(In violation of Title 18, United States Code, Sections 793(d) and 2)

COUNT FOUR

Communication of National Defense Information

THE GRAND JURY FURTHER CHARGES THAT:

On or about June 26, 2003, in Arlington, Virginia, within the Eastern District of Virginia, defendant LAWRENCE ANTHONY FRANKLIN, lawfully having possession of, access to, control over, and being entrusted with information relating to the national defense, which information the defendant had reason to believe could be used to the injury of the United States and to the advantage of a foreign nation, did unlawfully, knowingly and willfully communicate, deliver and transmit such information to a person or persons not entitled to receive it.

(In violation of Title 18, United States Code, Section 793(d))

COUNT FIVE

Conspiracy to Communicate Classified Information

THE GRAND JURY FURTHER CHARGES THAT:

General Allegations

1. Foreign Official 3 (FO-3) is a diplomatic staff member of the embassy of Foreign Nation A located in Washington, D.C. FO-3 is not a United States citizen.

2. At no time relevant to this indictment was defendant FRANKLIN assigned or instructed to meet with FO-3 in the Washington, D.C. area as part of his OSD or USAFR employment. At no time relevant to this indictment was defendant FRANKLIN authorized to disclose classified information to FO-3.

The Offense

Between on or about August 15, 2002 and continuing until on or about June 30, 2004, in the Eastern District of Virginia and elsewhere, defendant LAWRENCE ANTHONY FRANKLIN, an employee of the United States, did unlawfully and knowingly conspire, confederate, and agree, with persons known and unknown to the Grand Jury, to commit the following offense against the United States: to communicate in a manner and by a means, to a person whom defendant FRANKLIN knew and had reason to believe was an agent and representative of a foreign government, information of a kind which had been classified by the head of a United States agency with the approval of the President, as affecting the security of the United States, said defendant having known and having had reason to know that such information had been so classified, a violation of Title 50, United States Code, Section 783(a).

WAYS, MANNER AND MEANS OF THE CONSPIRACY

A. It was part of the conspiracy that FRANKLIN would use his position as a desk officer in the Office of the Secretary of Defense to gather information, classified as affecting the security of the United States, for subsequent unlawful communication to FO-3 from Foreign Nation A.

B. It was further part of the conspiracy that FRANKLIN would communicate by telephone with FO-3 to arrange meetings, share information, set agendas for meetings and act upon requests for additional information. It was part of the conspiracy to develop a trustworthy relationship between the conspirators and foster an environment in which the defendant felt free to disclose classified information.

C. It was further part of the conspiracy that FRANKLIN and FO-3 would meet at locations in the Eastern District of Virginia and elsewhere, to exchange information, including classified information affecting the security of the United States.

D. It was further part of the conspiracy that FRANKLIN would communicate classified information to FO-3 in an effort to enhance his own standing, advance his own personal foreign policy agenda, and influence persons within and outside the United States government.

OVERT ACTS

In furtherance of the conspiracy and to effect the object thereof, defendant LAWRENCE ANTHONY FRANKLIN and FO-3 did commit overt acts in the Eastern District of Virginia and elsewhere, including but not limited to the following:

1. On or about August 15, 2002, defendant FRANKLIN met with FO-3 at a restaurant in Washington, D.C. FO-3 explained to FRANKLIN that he was the "policy" person at the embassy and he would be the appropriate person with whom the defendant should talk.

2. On or about September 13, 2002, FRANKLIN communicated with one of his contacts at Foreign Nation A's embassy. That contact directed him to FO-3. The defendant and FO-3 exchanged phone calls in September, October, and November in an effort to set up a meeting. FRANKLIN called FO-3 at his office located at the embassy, and FO-3 called the defendant at his office at the Pentagon.

3. On or about January 30, 2003, the defendant and FO-3 met near Foreign Nation A's embassy in Washington, D.C. The subject of the discussion at this meeting was a Middle Eastern country's nuclear program.

4. In or about February, March, and April of 2003, FRANKLIN and FO-3 spoke by telephone and set up appointments to meet. The defendant called FO-3 from his office in the Pentagon.

5. On or about May 2, 2003, FRANKLIN met with FO-3 at the Pentagon Officer's Athletic Club (POAC), located adjacent to the Pentagon, within the Eastern District of Virginia. At this meeting, the two discussed foreign policy issues and senior United States government officials.

6. On or about May 23, 2003, FRANKLIN again met FO-3 at the POAC. At this meeting, the two discussed issues concerning a Middle Eastern country and its nuclear program and the views held by Europe and certain United States government agencies with regard to that

issue. Following this meeting, the defendant drafted an Action Memo to his supervisors, incorporating suggestions made by FO-3 during the meeting.

7. On or about June 3, 2003, FRANKLIN met with FO-3 at the POAC, and the discussion centered on a specific person, not in the United States government, and her thoughts concerning the nuclear program of the Middle Eastern country and, separately, certain charity efforts in Foreign Nation A.

8. On or about July 11, 2003, FRANKLIN met with FO-3 at the POAC and discussed certain charity work being done in a foreign nation.

9. On or about August 8, 2003, the defendant met with FO-3.

10. On or about August 29, 2003, the defendant met with FO-3 at the POAC.

11. On or about October 9, 2003, FRANKLIN met with FO-3 at a sandwich shop near the United States Department of State headquarters. The defendant asked FO-3 to provide him with a letter for his daughter, to aid her in her travels to the Middle East and Foreign Nation A.

12. On or about January 15, 2004, FRANKLIN met FO-3 and again asked FO-3 to provide some type of letter for his daughter for her travel to the Middle East, including Foreign Nation A.

13. On or about February 13, 2004, FRANKLIN met FO-3 at the POAC. At this meeting, FO-3 suggested to the defendant that he should meet with a person previously associated with an intelligence agency of Foreign Nation A who was then running a think tank in Foreign Nation A. FO-3 also gave the defendant a gift card.

14. On or about February 20, 2004, FRANKLIN met in the cafeteria at the Pentagon with this person previously associated with an intelligence agency of Foreign Nation A and discussed a Middle Eastern country's nuclear program.

15. In or about late February 2004, the defendant and FO-3 exchanged telephone calls about certain foreign organizations.

16. On or about May 13, 2004, FO-3 faxed a letter from his embassy office to FRANKLIN's Pentagon fax relating to the defendant's daughter's travel to Foreign Nation A.

17. On or about June 8, 2004, FRANKLIN and FO-3 met at a coffee house in Washington, D.C. At this meeting, the defendant provided FO-3 with classified information he had learned from a classified United States government document related to a Middle Eastern country's activities in Iraq. The defendant was not authorized to disclose this classified information to FO-3.

18. On June 23, 2004, FRANKLIN met FO-3 and another official from Foreign Nation A at the Pentagon. The parties discussed the military situation in Iraq. The defendant provided FO-3 with an unclassified copy of a speech and list of questions that a senior United States government official was to give that day or the next before the Congressional Foreign Affairs Committee.

19. Between December 2003 and June 2004, at an unknown location, FRANKLIN disclosed to FO-3 classified United States government information relating to a weapons test conducted by a Middle Eastern country.


(In violation of Title 18, United States Code, Section 371.)

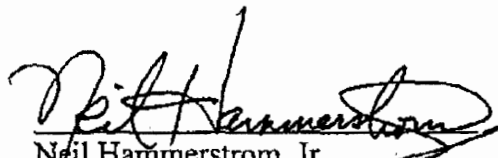
A TRUE BILL: ..

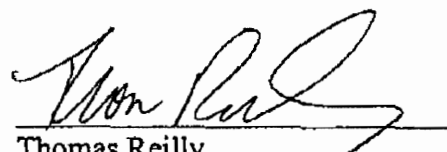
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By:


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Neil Hammerstrom, Jr.
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Supervisor, Terrorism and
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Thomas Reilly
Trial Attorney
U.S. Department of Justice

VIDEOTAPED DEPOSITION OF STEVEN J. ROSEN
CONDUCTED ON WEDNESDAY, SEPTEMBER 22, 2010

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SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

-----x
STEVEN J. ROSEN,)
Plaintiff,) Case No.
v.) 09-01256 B
AMERICAN ISRAEL PUBLIC)
AFFAIRS COMMITTEE, INC., et) Judge
al.,) Erik Christian
Defendants.)
-----x

Videotaped Deposition of STEVEN J. ROSEN

Washington, DC

Wednesday, September 22, 2010

10:37 a.m.

Job No.: 5178

Pages: 1 - 355

Reported by: Lee Bursten, RPR

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11:46:56 1 employment with AIPAC is voluntarily entered into
11:46:59 2 and you are free to resign at will, at any time,
11:47:01 3 with or without notice or cause. Similarly, AIPAC
11:47:05 4 may terminate your employment at will at any time,
11:47:08 5 with or without notice or cause."

11:47:11 6 Do you understand those words?

11:47:13 7 A I understand them now.

11:47:15 8 Q Did you understand that you were an
11:47:18 9 employee at will when you signed this book?

11:47:20 10 A No, I did not.

11:47:24 11 Q Did you ever ask anybody at HR what
11:47:28 12 employment at will meant?

11:47:29 13 A I don't even know what HR is.

11:47:31 14 Q Human resources.

11:47:32 15 A We didn't have a human resources --

11:47:34 16 Q Did you ever ask anybody above you, what
11:47:36 17 does employment at will mean?

11:47:37 18 A No. There were only two people above me,
11:47:38 19 Howard and Richard. They're very busy. I can't
11:47:39 20 imagine walking into their office and asking them
11:47:41 21 this question. I had no idea --

11:47:45 22 Q And what is your understanding --

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11:47:47 1 MR. SHAPIRO: You cut him off.

11:47:48 2 THE WITNESS: I had no idea of the

11:47:49 3 outrageous implications of these little words.

11:47:52 4 BY MR. McCALLY:

11:47:52 5 Q Okay.

11:47:53 6 A To me, this document, if I may just

11:47:55 7 finish, was akin to the mortgages you sign when you

11:47:59 8 buy a house. They hand you 800 pages of finely

11:48:05 9 printed stuff, and later on they show you something

11:48:08 10 that was in page 86. I never met anybody who reads

11:48:11 11 all of this stuff. I didn't read it. I never read

11:48:14 12 this book.

11:48:14 13 Q So it wasn't true, when you signed the

11:48:17 14 acknowledgment that says, "I have read a copy of

11:48:19 15 AIPAC's employee handbook, and that" -- hang on,

11:48:24 16 Mr. Rosen, don't cut me off -- "and that I agree to

11:48:26 17 abide by the terms set forth herein"? Is that not

11:48:29 18 truthful?

11:48:30 19 A I signed it because I was told you have to

11:48:32 20 sign this, all of the employees have to sign this,

11:48:36 21 you have to do this or you don't get you paycheck.

11:48:40 22 So you sign.

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11:48:41 1 Q So you signed it?
11:48:41 2 A Yes.
11:48:42 3 Q And do you sign things on a regular basis
11:48:45 4 that you don't read?
11:48:46 5 A Mr. McCally, when I buy a house, I sign
11:48:49 6 all of the deeds, yes, I do, and all those papers
11:48:51 7 they push across the table. Do I read them? No.
11:48:55 8 And I never met anybody who read them.
11:48:56 9 Q And you expect to be bound by those terms
11:48:59 10 to pay your mortgage, don't you?
11:49:00 11 A Unfortunately, it's a consequence. And if
11:49:00 12 I did read them, I wouldn't understand them. And I
11:49:01 13 wouldn't have understood this.
11:49:01 14 Q And you know you're bound by it once you
11:49:04 15 sign it, correct?
11:49:04 16 A Well, I know that they wrote a bunch of
11:49:06 17 rules that help --
11:49:07 18 Q Yes or no, sir. Do you know that you're
11:49:09 19 bound by it when you signed your mortgage?
11:49:12 20 MR. SHAPIRO: Objection.
11:49:12 21 THE WITNESS: I thought I was bound --
11:49:12 22 MR. SHAPIRO: Hold on. Objection. He's

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11:49:14 1 not required to answer you yes or no, and you know
11:49:18 2 that, and I know that. And now he knows that.
11:49:20 3 BY MR. McCALLY:
11:49:21 4 Q Yes or no, when you signed --
11:49:21 5 MR. SHAPIRO: Hold on. Hold on. I
11:49:22 6 object. You're not required to answer --
11:49:24 7 MR. McCALLY: Make your objection,
11:49:25 8 counsel.
11:49:25 9 MR. SHAPIRO: You may answer to suit you.
11:49:27 10 MR. McCALLY: Make your objection, and do
11:49:28 11 not instruct the witness --
11:49:28 12 MR. SHAPIRO: I'm instructing the witness.
11:49:29 13 MR. McCALLY: -- or we're going to take a
11:49:30 14 break, and you can put your objections on the
11:49:32 15 record. But I'm not going to have you instruct this
11:49:34 16 witness with your objections.
11:49:36 17 MR. SHAPIRO: You have instructed
11:49:38 18 witnesses throughout depositions -- excuse me. You
11:49:41 19 have instructed witnesses not to answer throughout.
11:49:43 20 You have made instructions -- yesterday you made an
11:49:44 21 instruction to a witness about how he should treat
11:49:48 22 the questioning right on the record. So don't tell

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11:49:50 1 me what I can do.

11:49:50 2 MR. McCALLY: Counsel, it's kind of tough

11:49:52 3 to instruct a witness not to answer a question

11:49:54 4 without the witness in the room.

11:49:56 5 MR. SHAPIRO: Ah. My point is exactly

11:49:58 6 right.

11:49:59 7 MR. McCALLY: No, your point is horrible.

11:49:59 8 THE WITNESS: There are a number of points

11:50:00 9 I need to make.

11:50:01 10 BY MR. McCALLY:

11:50:01 11 Q No, Mr. Rosen. Here is my question.

11:50:01 12 A I'm going to answer --

11:50:04 13 Q When you sign a mortgage, do you

11:50:05 14 understand you're bound by the obligations of that

11:50:07 15 document?

11:50:07 16 MR. SHAPIRO: Objection. You cut him off.

11:50:09 17 BY MR. McCALLY:

11:50:09 18 Q Go ahead.

11:50:10 19 A I'm not an attorney. I take it for

11:50:13 20 granted the mortgage companies have written these

11:50:15 21 documents in a fashion that they think they can

11:50:17 22 enforce in court.

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11:50:17 1 Q And when you signed the AIPAC handbook,
11:50:20 2 did you understand that you were bound by its
11:50:25 3 policies and procedures?

11:50:25 4 A There was no AIPAC handbook when I was
11:50:25 5 hired by AIPAC.

11:50:25 6 Q Look at Exhibit 1.

11:50:29 7 A I signed no such document.

11:50:29 8 Q I'm talking about Exhibit 1.

11:50:30 9 A It was only after I was employed there
11:50:32 10 more than 20 years that they pushed this piece of
11:50:34 11 paper in front of me --

11:50:34 12 Q Good. Exhibit --

11:50:35 13 A -- and said, sign this, everybody has to
11:50:37 14 sign it.

11:50:37 15 Q Good. Exhibit 1 --

11:50:38 16 A I've already answered you, Mr. McCally. I
11:50:41 17 have nothing further.

11:50:41 18 Q Did you understand you were bound by it?

11:50:44 19 A I understood that I was bound by
11:50:45 20 understandings I had with the AIPAC board of
11:50:47 21 directors.

11:50:47 22 Q Did you understand that you were bound by

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11:50:50 1 the AIPAC policy handbook and the procedures it sets
11:50:55 2 forth there?

11:50:55 3 A Howard Kohr routinely violated the things
11:50:57 4 that are in there.

11:50:57 5 Q Yes or no, Mr. Rosen, did you understand
11:51:00 6 you were bound by the policies and procedures of the
11:51:02 7 handbook?

11:51:02 8 A I did not, no.

11:51:03 9 Q You didn't?

11:51:04 10 A No.

11:51:04 11 Q Did you ever inquire of anyone at AIPAC
11:51:06 12 about the handbook or the policies and procedures?

11:51:08 13 A It wasn't taken seriously most of the time
11:51:10 14 by anyone.

11:51:11 15 Q That's not my question. Did you
11:51:13 16 inquire --

11:51:13 17 A I never inquired. We had a lot to do, and
11:51:15 18 I did not sit around and ask about page 37 of this
11:51:18 19 endless document.

11:51:26 20 Q Turn to AIPAC 22, which reads, "To achieve
11:51:32 21 AIPAC's goals, it is important for employees to
11:51:33 22 maintain a good working relationship among

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11:51:36 1 themselves and comport themselves in an appropriate
11:51:39 2 manner at all times."

11:51:41 3 Did you understand that as a requirement?

11:51:48 4 A I didn't read this. I've already told you
11:51:52 5 I didn't read it.

11:51:57 6 Q All right. Even without a handbook, did
11:52:00 7 you understand you were required to comport yourself
11:52:02 8 appropriately at all times in a place of business?

11:52:04 9 A Yes.

11:52:17 10 Q Turn to AIPAC 26. The second full
11:52:22 11 paragraph reads, "If at any time there are questions
11:52:25 12 concerning the information contained in this
11:52:26 13 handbook, please feel free to discuss them in full
11:52:30 14 with the director of finance and administration or
11:52:32 15 the chief financial officer."

11:52:35 16 Did you ever do that?

11:52:36 17 A If I walked into Richard Fishman's office
11:52:39 18 and started asking him questions about all of stuff
11:52:41 19 in this thing, he would look at me like I was a
11:52:43 20 Martian. He's a busy guy.

11:52:46 21 Q Did you ever do that?

11:52:47 22 A Of course I didn't do it. Nor did anybody

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11:52:50 1 else.

11:52:50 2 Q Then the equal employment opportunity
11:52:52 3 policy is listed on that page as well?

11:52:54 4 A Well, I certainly knew, not because of
11:52:55 5 this handbook, that discriminating against people
11:52:58 6 for race and religion and so forth is unacceptable,
11:53:00 7 illegal and so on.

11:53:02 8 Q That's just a given?

11:53:03 9 A It's just a given. I didn't need to read
11:53:05 10 this stuff.

11:53:06 11 Q And do you know that viewing pornography
11:53:08 12 in the office is unacceptable and a violation of
11:53:12 13 AIPAC's rules and procedures?

11:53:13 14 A It was certainly not a matter that was
11:53:17 15 affecting anybody.

11:53:18 16 Q Did you know it was a violation of AIPAC's
11:53:21 17 rules and procedures?

11:53:23 18 A To tell you the truth, I really didn't
11:53:25 19 know that it was a violation of rules and
11:53:27 20 procedures.

11:53:27 21 Q All right. Let's turn to AIPAC 62. The
11:53:34 22 AIPAC communication and information system

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11:53:37 1 resources, middle of the paragraph, "No employee may
11:53:41 2 use AIPAC's communications and computer systems to
11:53:44 3 transmit, view, send, display, download, print, or
11:53:49 4 store offensive materials. Offensive materials
11:53:53 5 include e-mail, voice calls, voicemail messages,
11:53:56 6 documents, text, or images that are obscene,
11:54:00 7 defamatory, slanderous, libelous, fraudulent,
11:54:04 8 pornographic, or sexually explicit, profane, or used
11:54:08 9 to threaten or harass, sexually or otherwise.
11:54:12 10 Employees in violation of this policy will be
11:54:14 11 subject to discipline, including dismissal."
11:54:17 12 Did you understand that to be the policy
11:54:18 13 at AIPAC?
11:54:19 14 A I understand now that it is included in
11:54:22 15 this manual.
11:54:23 16 Q Without seeing it in the manual, do you
11:54:26 17 understand it would be a violation of workplace
11:54:27 18 rules to be viewing pornography on a company
11:54:30 19 computer?
11:54:30 20 A If anyone had a concern about such a
11:54:32 21 matter, I take it for granted they would have come
11:54:35 22 and told me they had a concern.

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11:54:37 1 Q Did you understand it would be a problem
11:54:39 2 to be viewing pornographic material while at work?

11:54:41 3 A I witnessed Howard Kohr viewing
11:54:45 4 pornographic material, Annette Franzen viewing
11:54:48 5 pornographic material, probably a dozen other
11:54:50 6 members of the staff. Was there any one of them
11:54:50 7 doing something that probably went over some line
11:54:55 8 somewhere? Probably. But it didn't seem an
11:54:56 9 important --

11:54:57 10 Q Did you ever report them?

11:54:57 11 A Of course not. It was also a policy that
11:54:59 12 you shouldn't use foul language at the senior staff
11:55:01 13 meeting. Howard Kohr routinely used locker room
11:55:05 14 language every single day.

11:55:06 15 Q And you viewed pornography on the company
11:55:08 16 computers, correct?

11:55:09 17 A So did many members of --

11:55:11 18 Q Correct?

11:55:11 19 A Yes, it's true.

11:55:12 20 Q What type of pornography?

11:55:14 21 A Sexual pornography.

11:55:16 22 Q What type? Man on man, man on woman?

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11:55:20 1 Women on women?

11:55:20 2 A Anything. Anything that occurred to me.

11:55:22 3 Q How often did you view it?

11:55:24 4 A That I don't recall.

11:55:25 5 Q Was it a daily occurrence?

11:55:27 6 A Sometimes.

11:55:29 7 Q Did you store pornographic material on

11:55:32 8 your computer?

11:55:32 9 A Not knowingly. Apparently it did, but not

11:55:35 10 knowingly.

11:55:36 11 Q And what do you know was stored on your

11:55:38 12 computer?

11:55:38 13 A I really don't know.

11:55:39 14 Q Well, you just said you did. What do you

11:55:42 15 know that you did --

11:55:43 16 A No, on the contrary, I said I didn't

11:55:45 17 knowingly store anything on my computer.

11:55:47 18 Q Do you know of pornographic material being

11:55:49 19 stored on your computer?

11:55:50 20 A I know that I was told long after this

11:55:54 21 civil suit began that Abbe Lowell reported that he

11:55:58 22 found traces of pornography on my computer. I was

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11:56:02 1 very surprised to hear that, because he didn't tell
11:56:05 2 me that, Howard Kohr didn't tell me that, Richard
11:56:08 3 Fishman didn't tell me that. Up until the day I was
11:56:10 4 fired, I never heard a syllable about this.

11:56:12 5 Q Stored on your computer?

11:56:14 6 A I didn't store, knowingly, pornographic
11:56:17 7 material.

11:56:18 8 Q No --

11:56:18 9 A Material on my computer, it evidently got
11:56:21 10 stored in some manner. I'm not very good at
11:56:23 11 electronics, and I -- evidently something happened.

11:56:27 12 Q And how many -- describe for me the type
11:56:30 13 of pornography you would look at.

11:56:32 14 A Sexual pornography.

11:56:33 15 Q Describe it. Was there --

11:56:35 16 A It involved sexual acts between people.

11:56:41 17 Q -- a particular type?

11:56:41 18 A No. Lots of types.

11:56:43 19 Q Was it video?

11:56:44 20 A No. Mostly just images, pictures.

11:56:46 21 Q Where would you obtain it from?

11:56:47 22 A Websites.

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11:56:48 1 Q So while you were at work, you would surf
11:56:50 2 the web for websites that had pornographic material;
11:56:53 3 is that correct?

11:56:53 4 A It was not a work environment like a nine
11:56:57 5 to five environment.

11:56:58 6 Q Is that correct?

11:56:59 7 A Often we were there odd hours.

11:57:01 8 Q Is that correct?

11:57:02 9 A It is true that at times during work
11:57:04 10 hours -- and Nielsen has just come out with a
11:57:07 11 report, that 27 percent of employees --

11:57:10 12 Q I'm not interested in Nielsen, sir.

11:57:12 13 A -- in the United States -- if I could
11:57:13 14 finish my sentence.

11:57:14 15 Q No. That's not my question.

11:57:14 16 MR. SHAPIRO: Excuse me. Excuse me. You
11:57:16 17 can't cut him off.

11:57:17 18 MR. McCALLY: We're not here for speeches,
11:57:18 19 counselor. I'm asking a specific question.

11:57:19 20 MR. SHAPIRO: He was answering your
11:57:19 21 question. Now, if you cut him off again, we're
11:57:22 22 leaving.

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11:57:22 1 MR. McCALLY: You can leave.

11:57:23 2 MR. SHAPIRO: We're going to leave if you

11:57:25 3 cut him off again.

11:57:26 4 MR. McCALLY: Don't threaten me.

11:57:27 5 MR. SHAPIRO: I'm not threatening you.

11:57:29 6 You're threatening the witness.

11:57:30 7 MR. McCALLY: Lower your voice, counsel.

11:57:32 8 You don't need to be yelling.

11:57:32 9 MR. SHAPIRO: I'm telling you right now,

11:57:34 10 don't cut him off again. Don't cut him off again.

11:57:35 11 Do we understand each other?

11:57:35 12 MR. McCALLY: Don't point your finger.

11:57:37 13 MR. SHAPIRO: I'm not pointing my -- I'm

11:57:38 14 pointing my finger at me.

11:57:38 15 MR. McCALLY: Stop yelling.

11:57:39 16 MR. SHAPIRO: Do not cut him off again.

11:57:40 17 MR. McCALLY: Control yourself.

11:57:41 18 MR. SHAPIRO: I am completely controlled.

11:57:43 19 Do not cut him off again.

11:57:44 20 MR. McCALLY: Counsel, I'm not going to

11:57:46 21 sit here and talk over you, and I'm not going to

11:57:48 22 have you try to threaten me --

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11:57:48 1 MR. SHAPIRO: You've been --
11:57:49 2 MR. McCALLY: -- or intimidate me.
11:57:49 3 MR. SHAPIRO: Listen. You've been --
11:57:49 4 MR. McCALLY: Please control yourself in
11:57:50 5 this deposition.
11:57:51 6 MR. SHAPIRO: You've been talking over me
11:57:53 7 since the beginning of this deposition. Now, I'm
11:57:54 8 telling you, do not --
11:57:55 9 MR. McCALLY: Please control yourself.
11:57:55 10 MR. SHAPIRO: Excuse me. You're talking
11:57:56 11 over me again. Do not cut him off again.
11:57:58 12 MR. McCALLY: Please control yourself,
11:58:00 13 counsel.
11:58:00 14 MR. SHAPIRO: I'm completely controlled.
11:58:02 15 You better conform your conduct to proper conduct at
11:58:05 16 a deposition.
11:58:06 17 MR. McCALLY: You may not like the
11:58:07 18 questions, counsel.
11:58:07 19 MR. SHAPIRO: I don't care about the
11:58:08 20 questions. You apparently don't like the answers.
11:58:08 21 MR. McCALLY: I love these answers.
11:58:09 22 MR. SHAPIRO: Well then, fine. Let him

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11:58:11 1 answer.

11:58:11 2 MR. McCALLY: These are great answers.

11:58:12 3 MR. SHAPIRO: Then let him answer.

11:58:18 4 BY MR. McCALLY:

11:58:18 5 Q Do you remember answering requests for
11:58:20 6 admissions, Mr. Rosen?

11:58:24 7 A Yes.

11:58:24 8 Q I'm reading request for admission 29.

11:58:26 9 MR. SHAPIRO: Can he see it?

11:58:27 10 MR. McCALLY: No, I'll read it to him.

11:58:27 11 BY MR. McCALLY:

11:58:28 12 Q "Admit that plaintiff Steve Rosen used his
11:58:32 13 AIPAC computer to browse pornographic websites.

11:58:35 14 Response: Admitted."

11:58:37 15 How often would you browse for
11:58:40 16 pornographic websites?

11:58:41 17 MR. SHAPIRO: Asked and answered.

11:58:41 18 BY MR. McCALLY:

11:58:43 19 Q Go ahead.

11:58:43 20 A I'm sorry, I'm not following you.

11:58:44 21 Q How often would you browse for
11:58:46 22 pornographic websites?

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11:58:48 1 A I thought I answered that earlier. It

11:58:50 2 varied a great deal. There were...

11:58:51 3 Q Daily?

11:58:52 4 A There were times where I viewed

11:58:53 5 pornographic images daily. There were other times

11:58:55 6 where I didn't view them at all for long blocks of

11:58:58 7 time.

11:58:58 8 Q And you know we have a copy of your hard

11:59:00 9 drive, correct?

11:59:01 10 A I assumed it. I didn't really know that.

11:59:06 11 Q And for how many years did you do this?

11:59:09 12 A That I really don't know.

11:59:13 13 Q Did you do it in 2005?

11:59:16 14 A May well have. Don't know.

11:59:18 15 Q Did you do it in 2004?

11:59:20 16 A Maybe. I don't know.

11:59:21 17 Q 2003?

11:59:24 18 A I've already answered you that I have no

11:59:26 19 recollection of the time periods.

11:59:27 20 Q When is the first time you viewed

11:59:29 21 pornographic material using the company computers at

11:59:32 22 work?

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11:59:32 1 A I don't know.
11:59:33 2 Q You have no idea?
11:59:34 3 A No. Mr. McCally, I have no idea. I
11:59:37 4 worked there 23 years. I really don't know.
11:59:44 5 Q Number 30. "Request for admission: Admit
11:59:47 6 that plaintiff Steven Rosen used his AIPAC computer
11:59:50 7 to view pornographic images. Response: Admitted."
11:59:53 8 How often did you view these pornographic
11:59:55 9 images?
11:59:56 10 A Didn't we just discuss that a moment ago?
11:59:58 11 Q No, that was browsing. You said sometimes
12:00:00 12 daily.
12:00:01 13 A I'm sorry. I don't know the difference
12:00:03 14 between browse and view. What is the difference?
12:00:05 15 Q Browsing is surfing the web to find -- you
12:00:07 16 answered the question, sir, with the help of your
12:00:09 17 attorney, I assume.
12:00:10 18 A I don't know the difference between the
12:00:12 19 word "browse" and the word "view." To me they're
12:00:14 20 the same word.
12:00:15 21 Q "Browse," you would have to go out to find
12:00:17 22 the websites that contain the pornographic

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12:00:19 1 information. Viewing pornographic images means
12:00:23 2 you've now clicked on it, obtained it into your
12:00:26 3 computer, and are looking at it. How often would
12:00:30 4 you actually look --

12:00:32 5 A Even after you explained it, I don't
12:00:35 6 understand it.

12:00:35 7 Q Do your best. You're a Ph.D.

12:00:38 8 A My best is not going to help, because if I
12:00:41 9 go to a website and I click on X, and it comes up on
12:00:46 10 the screen, and I look at it, is that browsing or
12:00:49 11 viewing?

12:00:49 12 Q Let's call that viewing. How often would
12:00:51 13 you do that?

12:00:51 14 A The exact answer I gave you for browsing.
12:00:54 15 It's identical in my mind.

12:00:56 16 Q Sometimes daily, sometimes not at all?

12:00:58 17 A The whole answer that I gave you
12:01:00 18 previously.

12:01:05 19 Q Request -- and do you understand that not
12:01:15 20 to be acceptable practice in the workplace?

12:01:19 21 A I'm not sure what the term "acceptable"
12:01:21 22 means.

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12:01:21 1 Q You don't know what the term "acceptable"
12:01:24 2 means?

12:01:24 3 A Does it mean fireable offense? Does it
12:01:27 4 mean something that people would rather you didn't
12:01:29 5 do? Does it mean -- excuse me -- does it mean
12:01:32 6 something that if you're going to do it, be prudent
12:01:34 7 about it and don't be excessive and don't get in the
12:01:38 8 FBI's way? What does it mean exactly?

12:01:40 9 I told you earlier, I witnessed Howard
12:01:43 10 Kohr view -- he's the executive director --
12:01:45 11 pornographic images on AIPAC computers. I witnessed
12:01:48 12 his secretary do it repeatedly, and call people over
12:01:51 13 to see it, including Howard Kohr. I witnessed other
12:01:54 14 members of staff do it. And the Nielsen report you
12:01:56 15 wouldn't let me speak of before said 27 percent of
12:01:59 16 American employees look at pornographic images on
12:02:02 17 office computers. And to my knowledge that's
12:02:04 18 probably a good estimate at AIPAC too.

12:02:05 19 Q Knowing what the policies on pornography
12:02:08 20 are from the AIPAC manual, do you believe viewing
12:02:12 21 pornography on the computer is not in keeping with
12:02:15 22 AIPAC's standards and policies?

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12:02:18 1 A Photocopying copyright material is not in
12:02:22 2 keeping with what's written in this book, but AIPAC
12:02:24 3 orders members of staff to go and do it.

12:02:26 4 MR. McCALLY: Read my question back to
12:02:27 5 him.

12:02:28 6 (Requested portion of record read.)

12:02:42 7 THE WITNESS: I do not think AIPAC wants
12:02:43 8 to encourage people to view pornography on AIPAC
12:02:46 9 company computers. I also think it's one of those
12:02:50 10 things that goes on all the time, like personal
12:02:52 11 telephone calls and copying copyright materials on a
12:02:59 12 Xerox machine, and many other things that's in the
12:03:01 13 category of, be careful about this, it's not really
12:03:03 14 something we want to see a lot of, but it isn't some
12:03:06 15 cosmic matter.

12:03:06 16 BY MR. McCALLY:

12:03:06 17 Q And based on the AIPAC policy regarding
12:03:09 18 viewing pornographic material that ends with,
12:03:13 19 "Employees in violation of this policy will be
12:03:15 20 subject to discipline including dismissal," do you
12:03:19 21 understand that it is an offense that could lead to
12:03:21 22 your dismissal?

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12:03:23 1 A I certainly never understood it to be an
12:03:25 2 offense that could lead to my dismissal. And
12:03:27 3 Richard Fishman confirmed that it's not an offense
12:03:29 4 that could lead to dismissal when he gave his
12:03:32 5 deposition.

12:03:32 6 Q Did you understand it is not in keeping
12:03:34 7 with the policy as set forth on AIPAC, page 62 in
12:03:40 8 Exhibit 1?

12:03:40 9 A Now that you call attention to this page,
12:03:42 10 no doubt it's inconsistent. And many of the
12:03:44 11 practices I witnessed every day I was at work were
12:03:46 12 inconsistent with things that are written in this
12:03:49 13 manual, that were performed by other people,
12:03:51 14 including Howard Kohr.

12:04:09 15 Q The type of pornography you would look at,
12:04:12 16 would it be heterosexual pornography?

12:04:14 17 A Primarily.

12:04:15 18 Q Homosexual pornography?

12:04:16 19 A Occasionally.

12:04:17 20 Q Any child pornography?

12:04:19 21 A None.

12:04:20 22 Q Any other type of pornography?

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12:04:23 1 A I don't know what those other types are.

12:04:25 2 You seem to have covered it, pretty much.

12:04:26 3 Q Well, I've covered man and woman, man and

12:04:30 4 man, woman and woman.

12:04:32 5 A How about two men and one woman, three

12:04:35 6 women and one man? Do you want a list?

12:04:37 7 Q Did you view those as well?

12:04:39 8 A Seven women and two men. 46 women and

12:04:41 9 nine men.

12:04:41 10 Q Did you view those as well?

12:04:42 11 A Did you want a list?

12:04:42 12 Q Yes.

12:04:44 13 A Do you want a mathematical --

12:04:44 14 Q I want to know what you looked at.

12:04:46 15 MR. SHAPIRO: He didn't ask you --

12:04:47 16 THE WITNESS: I don't remember.

12:04:48 17 BY MR. McCALLY:

12:04:48 18 Q Did you look at any of the list you just

12:04:51 19 gave me?

12:04:51 20 A I have a broad imaginative interest in

12:04:53 21 sex. And I am interested in all kinds of sex,

12:04:56 22 except sex with children.

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12:04:58 1 Q And what do you mean by all kinds of sex
12:05:00 2 that you're interested in?

12:05:04 3 A I just -- I thought I just gave you some
12:05:06 4 examples.

12:05:09 5 Q Those would be examples of what you're
12:05:11 6 interested in?

12:05:14 7 A I'm interested in things that are
12:05:17 8 imaginative.

12:05:20 9 Q What does that mean?

12:05:22 10 A I don't know. Got any ideas?

12:05:23 11 Q No. I'm asking you the questions. What
12:05:26 12 do you mean by things that are imaginative?

12:05:29 13 A Just -- I'm interested in the things that
12:05:32 14 I find interesting. It's impossible to enumerate
12:05:36 15 them to you. I've already said I have very broad
12:05:38 16 interests. And I have a bold sexual imagination,
12:05:44 17 and I'm interested in many things that are sexual.

12:05:46 18 Q Have you ever expressed your bold sexual
12:05:48 19 imagination to anyone at AIPAC?

12:05:50 20 A Not really, no.

12:05:51 21 Q What do you mean by "not really"?

12:05:54 22 A Well, it was not -- I made a strict

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12:05:58 1 division between things that could impinge on other
12:06:01 2 people and not. And I don't think you'll find
12:06:05 3 anybody at AIPAC who would ever tell you that I
12:06:08 4 behaved inappropriately toward them. There was
12:06:11 5 never any such accusation against me in any form.

12:06:14 6 Q I'm not limiting it to that.

12:06:15 7 A At AIPAC or anywhere else. Well, that's
12:06:17 8 an important point.

12:06:17 9 Q I'm not limiting it to that, Mr. Rosen.

12:06:17 10 Did you ever express to anyone at AIPAC, say, a
12:06:26 11 director, anything about your sexual activities?

12:06:27 12 A Directors told me about their sexual
12:06:29 13 activities. There were directors who told me about
12:06:31 14 their visits to prostitutes, for example.

12:06:31 15 Q Did you ever --

12:06:32 16 A Members of the board.

12:06:33 17 Q Did you ever express --

12:06:35 18 A I actually was offended by it, because I'm
12:06:37 19 not very big on prostitutes.

12:06:39 20 Q Did you ever express to any director at
12:06:41 21 AIPAC information about your sexual activities?

12:06:44 22 A I don't think so.

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12:06:45 1 Q What about Renee Rothstein?

12:06:48 2 A Well, Renee was a very close personal
12:06:51 3 friend. And I discussed with Renee particularly a
12:06:59 4 problem I was having during the criminal
12:07:01 5 prosecution, of a journalist who was fishing around
12:07:06 6 about my sex life, and the embarrassment that it
12:07:12 7 could cause. And I confided in Renee about it.

12:07:18 8 Q What did you express to her?

12:07:20 9 A I expressed concern.

12:07:21 10 Q I want to know the facts. What were the
12:07:24 11 facts you told her about?

12:07:25 12 A There was a certain reporter who had
12:07:26 13 gotten ahold of a sealed record from my divorce
12:07:31 14 case. And in that record was some sexual things.
12:07:34 15 And he was asking questions about the sexual things
12:07:37 16 in my divorce case, in spite of the fact that it was
12:07:42 17 supposed to be a sealed record. And I was concerned
12:07:44 18 about it. It was very disturbing to me. I didn't
12:07:48 19 want the kids dragged into this, and I was concerned
12:07:50 20 about it.

12:07:51 21 And Renee was a person I could confide in.

12:07:54 22 I told her. We didn't really discuss the sexual

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12:07:58 1 content of it exactly, but more the embarrassment
12:08:00 2 problem.
12:08:00 3 Q Did you discuss with her your involvement
12:08:02 4 in any swingers clubs or --
12:08:05 5 A I was not involved in any swingers clubs.
12:08:07 6 Q And what do you mean by "swingers"?
12:08:09 7 A You brought up swingers.
12:08:11 8 Q What do you understand it to mean?
12:08:12 9 A I assume you mean some kind of
12:08:14 10 wife-swapping and stuff like that.
12:08:15 11 Q Did you express to her anything about
12:08:17 12 engaging in homosexual sex activities with
12:08:21 13 strangers?
12:08:22 14 A I don't recall expressing that to her.
12:08:24 15 Q In parks or other places in the open?
12:08:27 16 A I never had sexual activity with strangers
12:08:30 17 in parks.
12:08:31 18 Q In the open?
12:08:33 19 A I never did it, so I don't know what
12:08:35 20 you're getting at.
12:08:36 21 Q So it's your testimony you never expressed
12:08:38 22 anything like that to Renee, Ms. Rothstein?

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12:08:43 1 A To the best of my recollection, we didn't
12:08:47 2 talk about that. But I'm not sure what you're
12:08:49 3 getting at.

12:08:49 4 Q What were the allegations of sexual
12:08:51 5 conduct that were referred to in your divorce?

12:08:57 6 A Well, I went through a period of sexual
12:09:06 7 experimentation during the time I was married to
12:09:09 8 Rebecca Lippman. And she, it turned out, was spying
12:09:15 9 on me, and I was very upset by it. And it played a
12:09:19 10 role. And then it ended up in the court papers in
12:09:23 11 that divorce. And those were later on put under
12:09:26 12 seal by Rebecca. And in spite of that, this
12:09:31 13 reporter got ahold of it.

12:09:32 14 Q And what do you mean by "experimentation"?

12:09:38 15 A Why is that germane here?

12:09:39 16 Q You filed a defamation count.

12:09:43 17 A What does it have to do with defamation?

12:09:46 18 Q I'm not here to explain what the damages
12:09:50 19 are in a defamation count. But your reputation
12:09:52 20 isn't -- you've pled it in your complaint, has been
12:09:55 21 damaged. I'm entitled to delve into other aspects
12:09:59 22 of your reputation.

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12:10:00 1 What do you mean by "sexual
12:10:02 2 experimentation"?
12:10:02 3 A This is not part of my reputation. There
12:10:06 4 aren't people walking all over Washington who know
12:10:08 5 this stuff. It is not part of my reputation.
12:10:08 6 Q I beg to differ.
12:10:12 7 A It's part of private activity.
12:10:14 8 Q What do you mean by "sexual
12:10:15 9 experimentation"?
12:10:20 10 THE WITNESS: I need some guidance on
12:10:22 11 what...
12:10:23 12 MR. SHAPIRO: We'll take a break.
12:10:25 13 THE VIDEOGRAPHER: Going off the record.
12:10:27 14 The time is now 12:10:30.
12:10:31 15 (Recess.)
12:18:02 16 THE VIDEOGRAPHER: Going back on record.
12:18:05 17 The time is now 12:18 and six seconds.
12:18:08 18 BY MR. McCALLY:
12:18:08 19 Q We're back on the record after you broke
12:18:10 20 to speak with your attorney, Mr. Rosen. What did
12:18:12 21 you mean by "sexual experimentation"?
12:18:16 22 A Sexual acts with other men.

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12:18:20 1 Q And your wife had someone follow you and
12:18:23 2 discovered this?

12:18:24 3 A No. She did have someone do an electronic
12:18:29 4 search of my e-mails and came upon things that
12:18:32 5 referred.

12:18:34 6 Q To you having sex with other men?

12:18:39 7 A Correct.

12:18:39 8 Q And how often did that happen?

12:18:40 9 A A number of times over a couple of years.

12:18:43 10 Q What's a number of times?

12:18:44 11 A I don't know the number.

12:18:46 12 Q And who were these people?

12:18:49 13 A They were people that I met through --

12:18:54 14 what is the terminology, message -- you know,

12:19:00 15 when -- what do they call those things, people who

12:19:02 16 would post that they were interested in this matter,

12:19:06 17 and we would have e-mail exchanges and then meet.

12:19:10 18 Q And so you would go online to find a board

12:19:17 19 or a website where there were posts of other people

12:19:19 20 who were interested?

12:19:20 21 A I think it was Craigslist, where people

12:19:23 22 post what they're interested in. There are these

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12:19:25 1 personal -- I guess you could call them personal
12:19:28 2 ads, they're unpaid personal ads, and people post
12:19:30 3 what they're interested in, and you can respond and
12:19:34 4 so forth.

12:19:35 5 Q Were any of these for pay?

12:19:37 6 A No.

12:19:38 7 Q You didn't pay anyone?

12:19:39 8 A No.

12:19:40 9 Q And did you look at these or do these

12:19:46 10 searches or look at these posts while at AIPAC?

12:19:48 11 A I don't think so.

12:19:51 12 Q Do you have a recollection of ever doing

12:19:54 13 such a search and responding to an ad --

12:19:58 14 A It's conceivable.

12:19:59 15 Q -- at AIPAC, while on the AIPAC computers?

12:20:02 16 A It's conceivable. I really don't remember

12:20:04 17 it that way. I remember it as a very late night

12:20:07 18 thing, where I was lost in sexual thoughts late at

12:20:12 19 night, mostly.

12:20:12 20 Q At AIPAC?

12:20:13 21 A No, at home.

12:20:16 22 Q All right. And what did your ex-wife

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12:20:23 1 search? Was it your home computer where she found
12:20:25 2 this information?

12:20:27 3 A Yes. To my knowledge, yes.

12:20:28 4 Q Do you know?

12:20:28 5 A I don't exactly know, no. I took it for
12:20:32 6 granted that it was the home computer. I don't know
12:20:35 7 how she would get into the AIPAC office.

12:20:37 8 Q And this came out in the divorce?

12:20:39 9 A Yes.

12:20:40 10 Q Were there any other sexual
12:20:42 11 experimentation, anything else that falls under what
12:20:44 12 you called sexual experimentation?

12:20:46 13 A Well, for starters, there were none with
12:20:48 14 women. No, there was nothing else.

12:21:04 15 Q If you had browsed the web for sexual
12:21:11 16 encounters with gay men while at AIPAC, would that
12:21:16 17 in your opinion be a violation of the computer usage
12:21:19 18 policy at AIPAC?

12:21:20 19 A First, a technical correction. I actually
12:21:25 20 sought married men like myself, not gay men, or I
12:21:30 21 don't know what you mean by the word "gay men," but
12:21:32 22 not men who were primarily living the life that's

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12:21:35 1 referred to as the gay community and so on.

12:21:38 2 Q All right. With your definition of what
12:21:39 3 you were looking for, if doing that -- if we have
12:21:43 4 evidence to show that you did that while at AIPAC,
12:21:47 5 on an AIPAC computer, do you understand that that
12:21:50 6 would be a violation of the computer usage policy
12:21:53 7 we've gone over?

12:21:54 8 A I believe all personal e-mails are not
12:21:56 9 supposed to be done in the office.

12:21:58 10 Q So that's yes?

12:21:59 11 A As a formal matter, I think that -- I
12:22:03 12 suppose you could say yes. But I repeat again that
12:22:06 13 it, in practice, was very different from what was
12:22:10 14 written in this manual. If you want to keep going
12:22:12 15 back to what's written in the manual, a great
12:22:15 16 percentage of the things that went on every day at
12:22:19 17 AIPAC are impermissible according to this manual.

12:22:21 18 Q So you understand searching the web while
12:22:24 19 at AIPAC, using an AIPAC computer, to have a
12:22:28 20 homosexual encounter with another man would be a
12:22:32 21 violation of AIPAC's policies regarding computer
12:22:34 22 usage; is that correct?

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12:22:36 1 A I don't think that AIPAC's policies were
12:22:39 2 particular to homosexual or heterosexual or
12:22:42 3 anything.

12:22:43 4 Q Okay, with that caveat, be it homosexual
12:22:46 5 or heterosexual.

12:22:47 6 A I think personal use of the AIPAC
12:22:50 7 computers about personal matters is something that
12:22:52 8 generally speaking is not encouraged.

12:22:54 9 Q So that's a yes, it's a violation of the
12:22:55 10 AIPAC policies and procedures; is that correct?

12:22:58 11 A It's a violation of this manual. It is
12:23:01 12 not a violation of -- well, let me correct this.
12:23:07 13 Things that are a violation of this manual are in
12:23:10 14 many cases not actually violation of normal practice
12:23:13 15 at AIPAC. So we have to make that distinction. You
12:23:16 16 keep going to this manual.

12:23:17 17 Q So it is a violation of the policies and
12:23:20 18 procedures set forth in the manual, correct?

12:23:22 19 A Now that I have had occasion to read this
12:23:26 20 manual, it along with most of the things or many of
12:23:30 21 the things I witnessed every day are violation of
12:23:31 22 things in this manual, which forbids a lot of things

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14:38:44 1 these messages were coming from higher up than him.

14:38:48 2 But we now know that wasn't the case.

14:38:50 3 Q Did you find credible what Franklin had

14:38:53 4 told you about the danger to Israeli soldiers in

14:38:56 5 Iraq?

14:38:56 6 A I did. Well, I did and I didn't. I

14:39:00 7 personally had investigated this matter, not the

14:39:03 8 danger to them -- not to soldiers, by the way, it

14:39:06 9 wasn't soldiers, it was Israelis, paramilitary

14:39:09 10 people in Iraq. Does it say here soldiers?

14:39:11 11 Q I'll use your word.

14:39:13 12 A There had been a story in the -- prior to

14:39:17 13 this incident in the New Yorker magazine by a famous

14:39:21 14 journalist called Seymour Hersh, Sy Hersh, S-Y,

14:39:26 15 H-E-R-S-H. And Hersh had published that there were

14:39:31 16 secret Israeli agents in northern Iraq, in the

14:39:32 17 Kurdish part of Iraq, Kurdistan. And we had done an

14:39:36 18 investigation at that time. I had talked to my

14:39:38 19 Israeli sources, and I said, is Hersh telling the

14:39:41 20 truth, are there any Israelis in northern Iraq? And

14:39:45 21 my sources told me, and these were very senior level

14:39:48 22 people, no, it's not true.

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14:39:49 1 So when Franklin came -- sorry, when
14:39:52 2 Weissman came running into my office and said that
14:39:54 3 there are Israelis in northern Iraq, and their lives
14:39:56 4 are in danger because they're being followed by
14:39:58 5 Iranians, half of me thought, bullshit, there are no
14:40:02 6 Israelis in northern Iraq, and half of me thought,
14:40:05 7 maybe there are, wouldn't be the first time I was
14:40:08 8 misled, and I don't want to be the one with blood on
14:40:12 9 my hands, so let's act like they're there, because
14:40:15 10 if they're not there and we sound the warning bell,
14:40:19 11 it won't be as damaging as if they are there and we
14:40:22 12 failed to sound the warning bell.

14:40:23 13 So I made the decision. To answer your
14:40:25 14 question: Did I find it credible? Not entirely.

14:40:28 15 Q Did you find it credible enough to notify
14:40:32 16 members of the Israeli Embassy?

14:40:35 17 A Well, I just told you I did, yes.

14:40:36 18 Q And the newspaper, at least one media
14:40:38 19 outlet?

14:40:38 20 A Well, I didn't notify the newspaper about
14:40:41 21 the Israel part, to repeat.

14:40:43 22 Q The second part?

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14:40:44 1 A The second part. The first part I found
14:40:47 2 completely credible. That the Iranians were getting
14:40:47 3 ready to start an insurgency in southern Iraq --
14:40:47 4 Q So this was the second --
14:40:49 5 A -- I had no reason to doubt.
14:40:50 6 Q The second time Franklin had provided
14:40:53 7 information that at least in your mind rose to the
14:40:55 8 level of being worthy -- sir, let me finish the
14:40:58 9 question -- rose to the level of being worthy to
14:41:01 10 report to either embassy officials or a member of
14:41:04 11 the media?
14:41:04 12 A You left out Howard Kohr.
14:41:06 13 Q Okay.
14:41:07 14 A In both cases, I did that first.
14:41:10 15 Q Correct?
14:41:10 16 A In both cases I rushed to Howard's office.
14:41:13 17 Q Did you hear my question?
14:41:14 18 A I heard you, and I know where you're
14:41:16 19 going.
14:41:16 20 Q Correct?
14:41:18 21 A Yes.
14:41:18 22 Q That's yes?

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14:41:19 1 A That's yes.

14:41:30 2 Q All right. Paragraph 49 states, "On
14:41:33 3 August 3, 2004, Weissman contacted Rosen and advised
14:41:38 4 Rosen he had been contacted by the FBI. Rosen
14:41:43 5 advised Weissman that he too had been contacted by
14:41:46 6 the FBI."
14:41:47 7 Is that accurate?

14:41:51 8 A I believe it is.

14:41:51 9 Q And what did the FBI say to you at that
14:41:53 10 meeting?

14:41:59 11 A They called me up and they told me that
14:42:01 12 they wanted to come and interview me about a person.

14:42:07 13 Q Did they say who?

14:42:09 14 A I don't remember whether they said they
14:42:12 15 wanted to talk -- I wouldn't be surprised if they
14:42:14 16 didn't say who. They wanted to talk to me about a
14:42:17 17 person.

14:42:20 18 Q What else?

14:42:20 19 A By the way, I should --

14:42:22 20 Q What else did they say?

14:42:23 21 A Well, it didn't seem such a colossally
14:42:26 22 important call at the time. I don't remember the

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15:12:30 1 Q I didn't make that premise. I'm asking
15:12:32 2 you a question. If an employer has concerns that
15:12:34 3 one of their employees lied to the FBI, do you agree
15:12:38 4 that that's a valid concern for the employer?

15:12:41 5 A It's a concern for me. I would not lie to
15:12:43 6 the FBI or want to lie to the FBI. I did not lie to
15:12:46 7 the FBI. And I'm sure AIPAC would not want me to
15:12:49 8 lie to the FBI.

15:12:50 9 Q So it would be a valid concern for an
15:12:53 10 employer?

15:12:53 11 A If the issue was lying to the FBI, yes.
15:12:58 12 Then it would be a valid concern for the employee as
15:13:00 13 well, because it would subject you to criminal
15:13:02 14 prosecution. But that's not what occurred.

15:13:04 15 Q Turning to paragraph 54, it reads, "On or
15:13:09 16 about August 27, '04, in an interview with FBI
15:13:13 17 agents, Rosen falsely stated Franklin had never
15:13:16 18 given him classified information, that he, Rosen,
15:13:18 19 did not know of anyone whom Franklin had given
15:13:22 20 classified information."

15:13:23 21 A I'm sorry, what number is this?

15:13:24 22 Q 54, paragraph.

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15:16:23 1 concerns regarding the potential of a criminal
15:16:23 2 matter, you didn't report it to anybody at AIPAC,
15:16:40 3 this first FBI meeting?")

15:16:40 4 THE WITNESS: I had no concerns about a
15:16:43 5 criminal matter affecting Steve Rosen or AIPAC or
15:16:48 6 Keith Weissman. I had concerns that there might be
15:16:48 7 a criminal matter affecting a man that AIPAC never
15:16:50 8 met, except for us, called Larry Franklin. And even
15:16:53 9 that was speculation. So there was no reason to
15:16:56 10 report it, because it didn't affect AIPAC to my
15:16:59 11 knowledge.

15:17:01 12 BY MR. McCALLY:

15:17:01 13 Q That turned out to be wrong, didn't it?

15:17:04 14 A It certainly turned out to be wrong. But
15:17:07 15 I had no basis to know that, because no one in
15:17:09 16 American history had ever been prosecuted for such a
15:17:11 17 thing.

15:17:11 18 Q On August 27th, 2004, as referenced in
15:17:14 19 paragraph 55 of the indictment -- and actually let's
15:17:20 20 go back to 54. How long did the second meeting with
15:17:22 21 the FBI last?

15:17:27 22 A It was very intense. I really don't have

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15:17:29 1 a clear picture of it. My guess would be 20 minutes
15:17:32 2 or so. But I don't know. It was a very intense
15:17:35 3 exchange of words.

15:17:36 4 Q What do you mean by that? Were they
15:17:38 5 accusing you?

15:17:39 6 A They were accusatory toward me. They were
15:17:41 7 accusatory toward the government of Israel. They
15:17:44 8 were accusatory toward AIPAC.

15:17:46 9 Q And tell me how they were accusatory.

15:17:50 10 A They said that they had a recording of
15:17:55 11 Franklin giving a classified document to an Israeli
15:18:00 12 government official. That was the most serious
15:18:04 13 accusation. It's true, it wasn't about me or AIPAC.
15:18:07 14 But it was the most serious accusation. They said
15:18:12 15 they had reason to think I was lying when I told
15:18:14 16 them that I did not receive classified information
15:18:16 17 from Franklin, or that I didn't know of somebody who
15:18:19 18 received -- I don't remember the word formulation.

15:18:22 19 They said that I better get a lawyer by
15:18:29 20 10:00 a.m. They said that they didn't -- that if I
15:18:37 21 was willing to cooperate, they were willing to
15:18:39 22 forgive me for lying to them, but that if I didn't

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15:18:42 1 cooperate, I could be prosecuted for lying to them.

15:18:48 2 Q Anything else you recall?

15:18:55 3 A At this moment, no. But I'm sure there

15:18:57 4 might have been more.

15:18:58 5 Q Did you respond to them?

15:19:00 6 A In the beginning I was responding. But as

15:19:02 7 they became more and more threatening, I said, those

15:19:05 8 are very strong words you're using, I think I better

15:19:08 9 get an attorney. And then one of the two agents

15:19:10 10 said, well, you don't need an attorney. He said,

15:19:12 11 I'm not an attorney either, you can just talk to us.

15:19:15 12 And I said -- I repeated that I think I better get

15:19:18 13 an attorney, this is out of my league, and I'm very

15:19:21 14 surprised by all of this, and I need -- my head was

15:19:25 15 spinning.

15:19:26 16 And I said, I need to -- I don't want to

15:19:28 17 talk to you anymore.

15:19:30 18 Q And that ended the conversation?

15:19:32 19 A They made this threat about getting a

15:19:35 20 lawyer by 10:00 a.m.

15:19:38 21 Q What significance did they place on 10:00

15:19:41 22 a.m.? Did they say they were going to arrest you?

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15:21:54 1 Q Mr. Rosen, we're back on the record. Who
15:21:56 2 did you call?

15:21:58 3 A I called Phil Friedman.

15:22:02 4 Q Was he first?

15:22:02 5 A I believe -- I don't know. I believe I
15:22:05 6 tried to call Howard Kohr. But I somehow didn't get
15:22:09 7 through or something. I believe I tried to call
15:22:11 8 Howard Kohr, but I have no recollection of that ever
15:22:14 9 taking place, and I don't think it did take place.

15:22:17 10 But I think I tried to call Howard Kohr. I called
15:22:22 11 Rafi Barak, the deputy chief, the number 2, like
15:22:27 12 deputy ambassador, they call it deputy chief of
15:22:30 13 mission, of the Embassy of Israel. And I called
15:22:33 14 Keith Weissman.

15:22:35 15 Q All right. Let's take them one at a time.
15:22:37 16 What did you discuss with Mr. Friedman?

15:22:41 17 A Well, I must tell you that it was a very
15:22:44 18 agitated conversation on my side, and even, to my
15:22:47 19 recollection, somewhat on his. He was taken very
15:22:50 20 much by surprise, as I was. And while I don't think
15:22:54 21 he was as emotional as I was, he wasn't completely
15:22:56 22 collected either. It was early in the morning.

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15:22:59 1 Q What do you recall of the discussion?
15:23:02 2 What did you say, what did he say?
15:23:03 3 A Most of what I know about the discussion
15:23:05 4 is what I've heard people say the discussion was
15:23:07 5 about later. The only part I remember was that we
15:23:10 6 should convene in the office. I said, you've got to
15:23:15 7 get me legal counsel, because Phil is not a criminal
15:23:17 8 defense attorney. And he said he would, and that we
15:23:21 9 would take care of this, we would find legal
15:23:24 10 counsel.
15:23:24 11 And that was a critical part that I was
15:23:28 12 focused on.
15:23:28 13 Q So you recall in your conversation with
15:23:30 14 Phil saying, we need to convene in the office, and
15:23:34 15 he agreed to find you legal counsel?
15:23:36 16 A He said we should convene in the office.
15:23:38 17 Q When?
15:23:39 18 A When what?
15:23:40 19 Q To convene in the office? Right away?
15:23:42 20 A I don't think so. I think it was a little
15:23:46 21 later. I don't know.
15:23:47 22 Q When did he say to meet in the office?

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15:27:06 1 this, this is terrible, something awful is happening
15:27:08 2 here.

15:27:08 3 Q You called Rafi Barak, deputy chief
15:27:11 4 mission for the embassy?

15:27:12 5 A Yes, the number two official of the
15:27:14 6 embassy.

15:27:14 7 Q What did you discuss with him?

15:27:15 8 A I told him I had to see him right away.

15:27:17 9 And he said, I can't, I'm going to a meeting. I

15:27:20 10 said, no, you're not. I said, this is extremely

15:27:22 11 serious, I have to see you right away. And he said,

15:27:25 12 okay, okay, I'll meet you at Bread & Chocolate,

15:27:28 13 which is a place we usually met for breakfast, often

15:27:31 14 on Fridays, which this was.

15:27:34 15 Q Well -- all right. And then you call

15:27:37 16 Keith Weissman? Did you --

15:27:39 17 A I don't remember exactly when I called

15:27:41 18 him.

15:27:41 19 Q Do you have any other recollection of your

15:27:43 20 call with Rafi Barak?

15:27:45 21 A The hard part was getting him to cancel

15:27:48 22 his meeting. By the way, I left out something about

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15:32:19 1 A I went to Bread & Chocolate. I guess I
15:32:21 2 got dressed, and I went to Bread & Chocolate and met
15:32:27 3 Rafi Barak, and talked to him there. And he got
15:32:31 4 very upset too.

15:32:32 5 Q What did you all discuss?

15:32:33 6 A I told him especially the part about this
15:32:37 7 allegation that some Israeli had received a
15:32:39 8 classified document from Larry Franklin. I told him
15:32:49 9 this looked very serious to me, and that -- I
15:32:55 10 probably made some reference to Pollard, because
15:32:57 11 that's the first thing that of course comes to mind
15:32:58 12 in such a controversy. And he was more guarded with
15:33:05 13 me. Once I told him that, you know, he was -- you
15:33:10 14 know, just wanted to go back to the office and
15:33:14 15 investigate it.

15:33:15 16 Q Do you recall anything else of your
15:33:17 17 conversation?

15:33:18 18 A No.

15:33:20 19 Q What happened when you broke up at the
15:33:23 20 restaurant and left?

15:33:25 21 A Well, according to my recollection I went
15:33:28 22 to the office.

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15:33:29 1 Q Well, was the FBI -- did they follow you
15:33:31 2 to the restaurant?

15:33:34 3 A Oh. At the restaurant. Yes. When I went
15:33:37 4 to get my car in the parking lot, the FBI agent was
15:33:42 5 there, or one of them.

15:33:44 6 Q Male or female?

15:33:46 7 A I have a recollection of it being female.
15:33:48 8 But I don't know. Because the ones who came to my
15:33:51 9 house were two males. I may have that wrong.

15:33:54 10 Q She was standing at your car?

15:33:57 11 A Or in the parking lot at the back door.
15:33:59 12 The way that restaurant works, it has a parking lot
15:34:01 13 behind it, and the back door. And I think I came
15:34:05 14 out the back door, and there she was, I think.

15:34:07 15 Q Did you speak with her?

15:34:10 16 A I don't think so. I think I just looked
15:34:11 17 at her and drove off.

15:34:13 18 Q Did you make any gestures, or did she make
15:34:15 19 any gestures towards you?

15:34:17 20 A I don't know. I don't really know.

15:34:21 21 Q Do you recall her waving at you?

15:34:25 22 A Not at this moment, no. But it may have

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15:35:55 1 when I called the Embassy of Israel, I was
15:35:57 2 absolutely certain the person I spoke to that -- on
15:36:00 3 July 21st, not --

15:36:02 4 Q You're getting ahead of me. I'm back at
15:36:04 5 when you went to AIPAC.

15:36:05 6 A The human mind is very -- the human memory
15:36:08 7 is frail. I learned that in the criminal process.

15:36:10 8 Q Do you recall being asked questions about
15:36:11 9 Mr. Franklin?

15:36:13 10 A Of course.

15:36:13 11 MR. SHAPIRO: When he got to the office?

15:36:15 12 MR. McCALLY: Yes.

15:36:15 13 THE WITNESS: Of course I recall being
15:36:18 14 asked questions about Mr. Franklin, nonstop.

15:36:20 15 BY MR. McCALLY:

15:36:20 16 Q What do you recall saying about
15:36:22 17 Mr. Franklin?

15:36:23 18 A That this is all a big surprise to me;
15:36:25 19 that this is a guy I didn't know all that well, my
15:36:29 20 contacts with him were brief and well earlier; that
15:36:34 21 he was much less important to me than a lot of other
15:36:36 22 people in my Rolodex; that this is all stunning;

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16:06:13 1 A Did you ever hear --

16:06:15 2 Q Correct?

16:06:15 3 A -- of the Dreyfus case? That's exactly

16:06:16 4 what they did in the Dreyfus case.

16:06:19 5 Q Correct?

16:06:20 6 A We have to put this man in prison on an

16:06:22 7 island, but we can't tell you why, because it's

16:06:22 8 classified.

16:06:22 9 MR. McCALLY: Read the question back to

16:06:23 10 him.

16:06:29 11 THE WITNESS: Don't bother. I understand

16:06:30 12 the question. Do I understand that this is what

16:06:32 13 Mr. Lewin said? I do understand that this is what

16:06:35 14 Mr. Lewin said. But I also know a good deal more

16:06:38 15 than this letter says.

16:06:39 16 BY MR. McCALLY:

16:06:39 17 Q And you know that to be true, that he was

16:06:42 18 legally -- he and Mr. Cullen, who the prosecutor

16:06:44 19 showed the information to, were under a security

16:06:47 20 clearance and legally prohibited from expressing to

16:06:51 21 anyone what they were exposed to?

16:06:53 22 A Yes.

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16:07:34 1 What had changed --

16:07:35 2 Q Mr. Rosen, I'll tell you right now, I
16:07:37 3 don't know what he was exposed to, because he's not
16:07:39 4 permitted to talk about it. So don't make
16:07:41 5 assertions that others may know. Unless you're
16:07:46 6 suggesting that Mr. Lewin violated his obligations
16:07:49 7 under the law.

16:07:50 8 MR. SHAPIRO: Is that legal advice to him?

16:07:52 9 MR. McCALLY: Mark that as 5. No, I'm
16:07:56 10 tired of the speculation.

16:07:58 11 THE WITNESS: It's not speculation. I
16:07:59 12 actually know what's on the tapes that Mr. Lewin
16:08:01 13 heard.

16:08:01 14 BY MR. McCALLY:

16:08:01 15 Q All right. What do you --

16:08:02 16 A What's on the tapes that Mr. Lewin heard
16:08:04 17 was already disclosed. He couldn't disclose it,
16:08:07 18 because he was played the tapes in a certain
16:08:10 19 context. But what's on the tapes was already
16:08:11 20 well-known.

16:08:11 21 Q What do you know that was on the tapes
16:08:13 22 that were exposed to Mr. Lewin and Mr. Cullen?

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16:08:16 1 A What was on the tapes that Mr. Lewin heard
16:08:18 2 was primarily the conversation with Glenn Kessler.
16:08:21 3 The most important segment was the segment of Glenn
16:08:24 4 Kessler of the Washington Post on July 21st, 2004.
16:08:28 5 And what it purported to demonstrate was that -- it
16:08:34 6 was a passage in that exchange in which I said that
16:08:39 7 we don't have an Official Secrets Act in the United
16:08:42 8 States.

16:08:42 9 This had already been published in several
16:08:45 10 places by the time he had this meeting with the --
16:08:49 11 but --

16:08:50 12 Q Did you say that to Kessler?

16:08:53 13 A Yes, I did.

16:08:54 14 Q And you have knowledge that that was
16:08:56 15 recorded by the FBI?

16:08:57 16 A Yes, I do.

16:08:58 17 Q What else? What else do you know they
16:09:01 18 were exposed to?

16:09:03 19 MR. SHAPIRO: "They" being Nat Lewin?

16:09:05 20 MR. McCALLY: Lewin and Cullen.

16:09:07 21 THE WITNESS: I suspect -- I don't know
16:09:08 22 this part, but -- I know what's the most damaging

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16:09:11 1 evidence in the case, because they played it all for
16:09:13 2 us, for Weissman and myself.

16:09:16 3 BY MR. McCALLY:

16:09:16 4 Q What is it?

16:09:16 5 A The most damaging evidence in the case was
16:09:18 6 evidence in a meeting I was not in. It was a
16:09:20 7 meeting that Weissman was in without me, a meeting
16:09:22 8 that Weissman held with Franklin on July 21st, 2004.
16:09:27 9 As we've discussed, I was not there. The FBI
16:09:29 10 doesn't allege that I was there. And in the course
16:09:31 11 of that meeting, Franklin made a number of
16:09:34 12 statements and so forth. And they --

16:09:37 13 Q About what?

16:09:40 14 A Well, as it came -- well, here I'm under a
16:09:44 15 bit of a constraint as well. But broadly --

16:09:46 16 Q No, no, no. About what? I want to know
16:09:49 17 exactly what you're referring to.

16:09:50 18 A The statements about what? Statements --

16:09:53 19 Q Franklin expressed something to Weissman.

16:09:55 20 A Franklin expressed information to Weissman
16:09:57 21 about developments in Iraq that were of two -- had
16:10:04 22 two parts. One part was about the Iranian agents

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16:19:04 1 Mr. Cullen?

16:19:06 2 A I believe that he was played this excerpt
16:19:08 3 of Franklin talking to Weissman on July 21st, 2004,
16:19:13 4 and this excerpt of Rosen and Weissman on a call
16:19:18 5 together with Glenn Kessler of the Washington Post.
16:19:23 6 I believe those were the two most important and
16:19:26 7 operative elements. And the reason I believe that
16:19:30 8 is that I have a series of notes and e-mail
16:19:34 9 exchanges from some of the attorneys discussing the
16:19:37 10 significance of what he was told, and they focus on
16:19:39 11 those things.

16:19:40 12 Q What do you recall saying to Kessler, you
16:19:44 13 and Rosen, during the call -- you and Weissman,
16:19:47 14 sorry -- during the call with Kessler?

16:19:51 15 A The broad thrust of what we were telling
16:19:53 16 Kessler was that the Iranians were preparing an
16:20:01 17 insurgency in southern Iraq, and that they were
16:20:04 18 infiltrating oil fields and oil field workers, they
16:20:08 19 were distributing weapons, they were getting control
16:20:11 20 of factions and unions, and that the Iranians were
16:20:14 21 entering the region with the intention of -- I think
16:20:18 22 Steve Rosen, I, used the phrase "full scale war"

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16:20:22 1 against the United States Army there.

16:20:23 2 Q Do you recall telling Kessler you hope you
16:20:26 3 don't get in trouble for conveying this information?

16:20:27 4 A I didn't say that.

16:20:27 5 Q Who did?

16:20:29 6 A Weissman said that.

16:20:32 7 Q Did you oppose that at all?

16:20:33 8 A I immediately said, that's crazy, we don't
16:20:35 9 have an Official Secrets Act in the United States.

16:20:37 10 But Kessler --

16:20:37 11 Q Wait. And what do you mean by that?

16:20:40 12 "That's crazy, we don't have an Official Secrets
16:20:44 13 Act"?

16:20:44 14 A If they had let me get to the end of the
16:20:47 15 sentence on the call, the rest of the sentence would
16:20:50 16 have been, in America, those who give classified
16:20:51 17 information can be prosecuted, not those who receive
16:20:54 18 it.

16:20:55 19 Q So you were drawing a distinction between
16:20:57 20 the laws of the United States and Britain?

16:20:58 21 A And Britain, where they have an Official
16:21:01 22 Secrets Act making the recipient of classified

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16:21:03 1 information culpable. In America, until the
16:21:08 2 Rosen-Weissman case, there had never been such.
16:21:10 3 Q Are those the statements you're referring
16:21:12 4 to in Exhibit 5 that made you look sinister?
16:21:16 5 A Well, I didn't say they made me look
16:21:19 6 sinister. I said they wanted to make me look
16:21:22 7 sinister.
16:21:22 8 Q Do you think they did make you look
16:21:24 9 sinister?
16:21:24 10 A I think they failed to make me look
16:21:26 11 sinister. But I think their intention was
16:21:30 12 inferential logic. Why would you care if you had an
16:21:32 13 Official Secrets Act, unless you had reason to think
16:21:35 14 the information was classified? Because if the
16:21:37 15 information is not classified, we don't care whether
16:21:41 16 we have an Official Secrets Act or not. So I think
16:21:44 17 it was kind of a syllogism they were building.
16:21:46 18 Q All right. Using that syllogism, isn't it
16:21:49 19 fair that someone could interpret that, and it could
16:21:51 20 cast AIPAC in a bad light, that comment, "Well, at
16:21:54 21 least we don't have an Official Secrets Act"?
16:21:59 22 A Cast AIPAC in a bad light? Who would cast

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16:22:00 1 AIPAC in a bad light?

16:22:02 2 Q Anyone getting that information, if it was
16:22:04 3 released to the public, just as Mr. Lewin said in
16:22:07 4 his letter.

16:22:07 5 A I must tell you that the public was
16:22:09 6 generally on my side throughout this prosecution.

16:22:11 7 And it was only AIPAC that considered I did
16:22:13 8 something wrong. I was treated in the press as
16:22:16 9 somebody who was the victim of a wrongful
16:22:18 10 prosecution. So I don't think the public was all
16:22:25 11 ready to blame AIPAC or me for asking a government
16:22:27 12 official something about U.S. policy and hearing an
16:22:29 13 answer and passing it on to a Washington Post
16:22:32 14 reporter.

16:22:32 15 I don't think most Americans consider that
16:22:34 16 some big criminal act.

16:22:35 17 Q Do you think your comment that, well, at
16:22:38 18 least we don't have an Official Secrets Act, or
16:22:41 19 words to that effect, could have cast AIPAC in a bad
16:22:44 20 light?

16:22:44 21 A I just recited the answer to the question.

16:22:48 22 Q Say it again. I don't think you answered

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16:22:49 1 my question.

16:22:50 2 A I don't think most persons or most
16:22:51 3 Congressmen or most journalists considered that when
16:22:55 4 a lobbyist asks a government official what is going
16:22:57 5 on in Iraq, and the government official answers the
16:22:59 6 question, and the person involved shares the answer
16:23:03 7 with the Washington Post, they're committing a
16:23:05 8 crime.

16:23:05 9 Q Well, you were drawing -- by using that
16:23:09 10 statement, at least we don't have an Official
16:23:12 11 Secrets Act, weren't you insinuating, if you did,
16:23:15 12 that that -- you might be in trouble then?

16:23:17 13 A If we lived in a country that had an
16:23:19 14 Official Secrets Act, then it would clearly be
16:23:21 15 unlawful for the person who receives classified
16:23:25 16 information to pass it on to a journalist. But
16:23:28 17 since we don't live in such a country, no one ever
16:23:31 18 thought it was a crime until now, and most people
16:23:33 19 applaud it in America.

16:23:34 20 For example, do you know that the
16:23:36 21 opposition to the Iraq War depended almost entirely
16:23:38 22 on leaks of classified information?

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16:47:09 1 THE WITNESS: I don't think even AIPAC's
16:47:11 2 own board members think their treatment of me was so
16:47:13 3 generous, Mr. McCally.

16:47:14 4 BY MR. McCALLY:

16:47:15 5 Q Are you aware of any legal obligation that
16:47:17 6 AIPAC had to pay you any severance?

16:47:19 7 A The way AIPAC interpreted its legal
16:47:22 8 obligations, the minimal interpretation it made, it
16:47:25 9 did not believe it had any legal obligation to pay
16:47:27 10 me a severance.

16:47:28 11 Q Thank you. And they paid all your legal
16:47:30 12 fees, correct?

16:47:31 13 A They have very reluctantly paid the legal
16:47:35 14 fees, after not paying them for two and a half
16:47:37 15 years.

16:47:40 16 Q Do you know how much they paid in legal
16:47:42 17 fees to defend you?

16:47:43 18 A The numbers, as I recall, were \$3.9
16:47:49 19 million to Abbe Lowell for the two firms that he had
16:47:54 20 represented, one was Chadbourne & Parke, and one was
16:47:57 21 McDermott, and -- for the defense of Rosen. And
16:48:02 22 that was over and above roughly 5 or \$800,000 that

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16:48:07 1 they had paid previously, before they stopped paying
16:48:09 2 fees. So you would have to say that the all-in
16:48:13 3 payment for Rosen was in excess of \$4.5 million.
16:48:16 4 The precise number I don't have.

16:48:18 5 For Keith Weissman, they paid an
16:48:21 6 additional amount of 2.5, which became 2.125 due to
16:48:25 7 a dispute --

16:48:26 8 Q I'm not interested in Mr. Weissman.

16:48:28 9 A Okay. All-in fees.

16:48:30 10 Q They paid you \$144,000 in severance,
16:48:33 11 correct?

16:48:34 12 A That's correct. Well, severance?

16:48:36 13 Q I'm sorry -- as a severance, yes.

16:48:38 14 A I think that's the term they used to
16:48:40 15 describe the payment they were making.

16:48:42 16 Q Okay. And they paid your COBRA so you
16:48:44 17 maintain health benefits, for how long?

16:48:46 18 A For six months. I'm sorry. They paid the
16:48:50 19 COBRA, and to be fair, they went a step beyond that,
16:48:54 20 they -- I had a hole, I couldn't get private health
16:48:58 21 insurance, and yet I was not yet eligible for
16:49:02 22 Medicare. And for a block of time after the

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16:57:35 1 Q You didn't have all the child support,
16:57:37 2 mortgage obligations?

16:57:38 3 A Yes. I wasn't in difficulty. I had been
16:57:40 4 given the \$20,000 in August of '04, I had retired
16:57:44 5 some things, and I was no longer in any great
16:57:46 6 difficulty.

16:57:47 7 Q Did you ask any AIPAC donors for money?

16:57:49 8 A You mean after I was fired?

16:57:51 9 Q Yes.

16:57:51 10 A Well, after I was fired, I was put in a
16:57:54 11 dire situation where I had no means of support
16:57:56 12 and --

16:57:56 13 Q Is that yes or no?

16:57:59 14 MR. SHAPIRO: He doesn't have to answer
16:58:00 15 yes or no.

16:58:01 16 MR. McCALLY: Yes, he does.

16:58:02 17 THE WITNESS: No, I -- okay, no, I did not
16:58:06 18 ask any AIPAC donors for money.

16:58:08 19 BY MR. McCALLY:

16:58:08 20 Q Did you receive money from any AIPAC
16:58:10 21 persons?

16:58:10 22 MR. SHAPIRO: AIPAC persons? Define

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16:58:12 1 "AIPAC persons," please.

16:58:13 2 MR. McCALLY: Male or female.

16:58:14 3 MR. SHAPIRO: AIPAC persons?

16:58:15 4 THE WITNESS: What's an AIPAC person?

16:58:16 5 BY MR. McCALLY:

16:58:16 6 Q Go ahead, Mr. Rosen.

16:58:18 7 A What's an AIPAC person?

16:58:20 8 Q Anyone associated with AIPAC.

16:58:21 9 A Associated with AIPAC? Meaning a member

16:58:22 10 of AIPAC?

16:58:22 11 Q Sure. Employee --

16:58:23 12 A I'm sure.

16:58:24 13 Q Who?

16:58:26 14 A I would have to inquire of each person who

16:58:28 15 helped me whether they're a member of AIPAC or not.

16:58:31 16 I don't know who's a member. I presume that a lot

16:58:32 17 of them are members of AIPAC.

16:58:33 18 Q Who did you receive money from after your

16:58:35 19 termination?

16:58:36 20 A I don't have the complete --

16:58:37 21 Q I'm not limiting it to AIPAC. I want to

16:58:40 22 know every source of monies you received after your

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16:58:42 1 termination.

16:58:43 2 A I don't have the list. An example would

16:58:45 3 be --

16:58:45 4 Q No, no. I want every source of money that

16:58:48 5 you received since your termination.

16:58:51 6 A I don't have it here, and I don't have it

16:58:53 7 at home.

16:58:53 8 Q You're making a claim for \$2.2 million in

16:58:55 9 lost wages?

16:58:56 10 A I gave you my actual --

16:58:57 11 Q We have the right to mitigate those

16:58:59 12 damages.

16:58:59 13 A First of all, I gave you my actual bank

16:59:02 14 accounts.

16:59:02 15 Q No, you didn't, sir.

16:59:04 16 A I didn't?

16:59:04 17 Q No.

16:59:05 18 A I gave you a huge stack of them.

16:59:06 19 Q No.

16:59:07 20 MR. McCALLY: And counsel, we don't have

16:59:09 21 his current income tax returns for '08 and '09.

16:59:09 22 MR. SHAPIRO: I've got that.

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16:59:09 1 MR. McCALLY: Can we have them right now?

16:59:15 2 MR. SHAPIRO: I don't have them here.

16:59:15 3 MR. McCALLY: Well, we're reserving the
16:59:16 4 right to reconvene the deposition to go over those.

16:59:18 5 BY MR. McCALLY:

16:59:18 6 Q I want to know all sources of money that
16:59:20 7 you've had since your termination.

16:59:22 8 A Well, it's going to be a problem, because
16:59:24 9 I have some records of some of the people who helped
16:59:26 10 me with some of the money, and in other cases I
16:59:29 11 don't have any record of it.

16:59:30 12 Q All right. We want those records.

16:59:32 13 A Well, you do have -- you do have the
16:59:33 14 actual deposit. The name of the person who gave me
16:59:37 15 the money from which I made the deposit, you don't
16:59:41 16 have, the name of the person. But what you do have
16:59:43 17 is my income, which is what mitigates. Why does the
16:59:46 18 name of the person matter to the mitigation?

16:59:50 19 Q Sir, answer my question.

16:59:51 20 A Go ahead.

16:59:52 21 MR. McCALLY: Read it back.

16:59:54 22 THE WITNESS: Give you the name of every

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16:59:55 1 person. I've already told you I don't have the name
16:59:57 2 of every person.

16:59:57 3 BY MR. McCALLY:

16:59:58 4 Q Give me the ones you remember.

17:00:00 5 A Okay. Daniel Abraham. Haim Saban.

17:00:13 6 Newton Becker. Larry Hochberg. Fred Schwartz.

17:00:28 7 Walter Stern. Ralph Goldman. Randall Levitt. Lynn

17:01:18 8 Schusterman. Stacy Schusterman. Oh, dear. Here's

17:01:39 9 where that memory problem kicks in, with so much

17:01:41 10 detail. I am not retrieving right now people. I

17:01:49 11 can see some of the faces, and I'm not remembering

17:01:51 12 names.

17:01:55 13 Q All right. Let's stop right there. And

17:01:57 14 if you remember more, you tell me. How much did

17:01:59 15 Daniel Abraham give you, and when?

17:02:02 16 A Oh, I don't know when. He on two separate

17:02:06 17 years gave me substantial help. In one year --

17:02:12 18 well, he gave -- this gets real complicated. He

17:02:18 19 gave me whatever was the limit that year, I think it

17:02:22 20 was \$10,000 to me, \$10,000 to Barbara, \$10,000 to

17:02:32 21 each of my three kids. And the next year he gave

17:02:32 22 \$5,000 to each of those five check writees.

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17:02:32 1 Q And what years was that?

17:02:34 2 A I don't know.

17:02:35 3 Q Approximately.

17:02:36 4 A I'm going to guess it was 2006, 2007.

17:02:40 5 We're not going to get anywhere with this, because

17:02:42 6 first of all I'm guessing. I really don't know.

17:02:44 7 And I don't know that I have any record of it

17:02:46 8 either.

17:02:46 9 Q And Mr. Abraham is who?

17:02:49 10 A He is a very prominent philanthropist, the

17:02:52 11 head of the -- the president of the Foundation for

17:02:56 12 Middle East Peace and Understanding and the former

17:02:57 13 head of Slim-Fast.

17:02:58 14 Q Is he a member of AIPAC?

17:03:01 15 A I would guess, but I don't know.

17:03:03 16 Q Did he ever indicate to you that

17:03:05 17 Mr. Dorton's comment in the various media about your

17:03:10 18 actions not comporting with AIPAC standards in any

17:03:13 19 way lessened his opinion of you?

17:03:16 20 A Unfortunately so many people talked to me

17:03:20 21 about so many opinions -- just let me finish,

17:03:23 22 Mr. McCally -- so many people talk to me about their

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17:03:26 1 opinions about so many aspects of this case that I
17:03:29 2 cannot sort out at this time for you what A thought
17:03:33 3 and what B thought and what C thought. I don't
17:03:35 4 remember.

17:03:37 5 Q Haim Saban, how much were you given?

17:03:40 6 A He gave me -- well, he did it in the same
17:03:44 7 way, by writing checks separately to each of those
17:03:46 8 five people, my three kids, Barbara and myself. He
17:03:51 9 did that twice, for a total of \$100,000, over two
17:03:53 10 years.

17:03:56 11 Q Did he ever indicate to you his opinion of
17:03:59 12 you as diminished?

17:04:00 13 A I've already told you, it's true of him
17:04:03 14 and each other person, my impression was the
17:04:06 15 majority of them were not admiring of AIPAC's policy
17:04:08 16 in the matter of Rosen.

17:04:09 17 Q Did anyone express to you that
17:04:12 18 Mr. Dorton's statement that your actions did not
17:04:14 19 comport to AIPAC standards lessened their opinion of
17:04:17 20 you?

17:04:20 21 A Maybe I can help you with this.

17:04:21 22 Q No, answer my question.

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17:04:24 1 MR. SHAPIRO: Did any --

17:04:26 2 MR. McCALLY: Read it back.

17:04:26 3 THE WITNESS: I do not remember. I don't

17:04:28 4 know how many more ways to tell you that I cannot

17:04:30 5 remember individual statements by individual people

17:04:31 6 who gave me or didn't give me checks. There are so

17:04:34 7 many people who expressed so many opinions. It was

17:04:37 8 a very terrible time in my life, and I wasn't going

17:04:39 9 around keeping records of what different people

17:04:41 10 said.

17:04:41 11 BY MR. McCALLY:

17:04:41 12 Q As you sit here today, can you identify

17:04:44 13 for me any individual or business that told you

17:04:49 14 Mr. Dorton's statements in the March 3, 2008

17:04:53 15 New York Times article in any way lessened their

17:04:56 16 opinion of you?

17:04:58 17 A The American Jewish Committee, the

17:05:01 18 Anti-Defamation League, and B'nai Brith made it

17:05:05 19 clear that they could not cooperate in our defense

17:05:11 20 because of the position that AIPAC was taking.

17:05:15 21 Q Defense of the criminal case?

17:05:18 22 A That's right.

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17:05:18 1 Q How about did anyone --

17:05:21 2 MR. McCALLY: Read my question back.

17:05:23 3 (Requested portion of record read.)

17:05:39 4 THE WITNESS: I don't think that people

17:05:39 5 who had a reduced opinion of me were very likely to

17:05:42 6 be talking to me and telling me how it was reduced.

17:05:44 7 BY MR. McCALLY:

17:05:45 8 Q So that's no, you can't give me any names?

17:05:49 9 A If you want the names of specific

17:05:51 10 individuals who were individually affected by

17:05:55 11 Mr. Dorton's words, in the form that you say, among

17:05:59 12 people who gave me financial contributions, since I

17:06:02 13 can't remember who said what in the first place, I'm

17:06:05 14 not going to be able to supply you with the names.

17:06:07 15 Q And I'm not limiting it to the people who

17:06:10 16 gave you money. Anyone.

17:06:11 17 A I've already given you a very important

17:06:13 18 example of some of the harm that AIPAC statements

17:06:15 19 did me.

17:06:16 20 Q No, sir. Sir --

17:06:18 21 A The primary harm --

17:06:19 22 Q Sir, my question is very specific.

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17:06:21 1 MR. McCALLY: Read it again to him.

17:06:23 2 MR. SHAPIRO: He answered you. He told

17:06:24 3 you three organizations that couldn't help him in

17:06:26 4 his criminal case, wouldn't get involved, because of

17:06:29 5 what AIPAC said.

17:06:31 6 THE WITNESS: And their lack of

17:06:32 7 cooperation increased the chance of conviction,

17:06:34 8 because it was material to our defense.

17:06:36 9 MR. McCALLY: Read my question again,

17:06:37 10 please.

17:06:37 11 (The following portion of the record was

12 read:

13 "QUESTION: As you sit here today, can you

14 identify for me any individual or business that told

15 you Mr. Dorton's statements in the March 3, 2008

16 New York Times article in any way lessened their

17:06:56 17 opinion of you?")

17:06:56 18 THE WITNESS: The primary harm we intend

17:06:58 19 to show --

17:06:59 20 BY MR. McCALLY:

17:06:59 21 Q Can you answer my question?

17:07:02 22 A I don't know how many more ways there are

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17:07:04 1 to express it. Let me say it all over again,
17:07:06 2 because you seem to like repetition.
17:07:08 3 Q Can you give me a name?
17:07:10 4 A I cannot remember which individual made
17:07:11 5 which statement, and therefore I cannot give you the
17:07:13 6 names of people who made these statements.
17:07:20 7 Q What statements?
17:07:21 8 A Any statements. Statements that their
17:07:24 9 opinions of me were reduced or statements they were
17:07:26 10 increased or statements of any sort. I do not
17:07:29 11 remember who said what in the blur of words that
17:07:32 12 took place during this five-year period. And I
17:07:36 13 cannot give you a collection of statements from
17:07:39 14 individuals supportive or opposing or in any way
17:07:43 15 commenting on me or my case or AIPAC.
17:07:48 16 Q All right. Newton Banks --
17:07:52 17 A Becker?
17:07:53 18 Q Becker, I'm sorry.
17:07:54 19 A What about him?
17:07:55 20 Q How much did he give you?
17:07:58 21 A I'm afraid I don't entirely remember, but
17:08:02 22 it would be in the range of about \$40,000 a year for

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17:08:05 1 each of the five years that this went on.
17:08:07 2 Q So from '05 to '10, 2010?
17:08:13 3 A 2009.
17:08:14 4 Q Through 2009?
17:08:15 5 A It all ended, I didn't receive -- after
17:08:18 6 May of 2009 I didn't receive any further gifts from
17:08:22 7 anyone.
17:08:24 8 Q Larry Hochberg, how much and when?
17:08:28 9 A Roughly \$200,000 over a five-year period
17:08:32 10 would be my estimate. But I don't have the numbers
17:08:34 11 in front of me.
17:08:35 12 Q And that would be from '05 to '09?
17:08:38 13 A From '05 through '00.
17:08:41 14 Q Fred Schwartz, how much?
17:08:42 15 A \$5,000.
17:08:44 16 Q Total?
17:08:44 17 A Total.
17:08:46 18 Q What year?
17:08:47 19 A I'm afraid I don't remember.
17:08:49 20 Q After '05?
17:08:51 21 A Well, it would have to be during or after
17:08:54 22 '05, because I was fired in '05. Chances are it was

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17:08:58 1 after, because most of the years were after, but I
17:09:00 2 don't remember.

17:09:00 3 Q Walter Stern?

17:09:01 4 A I don't remember the year, but I think it
17:09:03 5 was \$4,000.

17:09:07 6 Q Fair to say all these payments were
17:09:09 7 received after you were terminated?

17:09:11 8 A Oh, absolutely. They were all received
17:09:15 9 after I was terminated. That would be March of '05.
17:09:18 10 And before the case was dismissed, that would be May
17:09:21 11 of '09.

17:09:23 12 Q The criminal case.

17:09:24 13 A The criminal case was dismissed in '09.

17:09:28 14 Q Is it Randolph Goldman?

17:09:31 15 A Ralph Goldman.

17:09:32 16 Q Sorry.

17:09:32 17 A \$10,000.

17:09:33 18 Q Total?

17:09:33 19 A I'm giving you the numbers I recall.

17:09:36 20 Q That's the best you can do.

17:09:37 21 A There may be some inaccuracies.

17:09:38 22 Q Randall Levitt?

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17:09:39 1 A I think he gave me \$5,000 twice, for a
17:09:44 2 total of \$10,000.

17:09:49 3 Q Lynn Schusterman?

17:09:51 4 A Lynn Schusterman didn't exactly give me
17:09:54 5 anything. She paid my daughter's college debt,
17:09:57 6 \$18,000. She and Stacy Schusterman, her daughter,
17:10:01 7 divided between them, paid off my daughter's
17:10:03 8 remaining college debt which I was obligated to pay
17:10:06 9 for her.

17:10:06 10 Q When was that paid?

17:10:08 11 A I believe that would have been in '07,
17:10:12 12 maybe '08. '07 or '08.

17:10:25 13 Q Did you ever approach AIPAC for more money
17:10:28 14 post termination?

17:10:30 15 A I didn't approach AIPAC for money in any
17:10:34 16 way.

17:10:34 17 Q Did your attorneys?

17:10:36 18 A He certainly tried to talk to AIPAC
17:10:37 19 repeatedly over time about coming to some kind of
17:10:41 20 settlement with me. He used the term "severance."
17:10:50 21 We don't think of it only as severance.

17:10:56 22 Q Since your termination, you would agree

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17:33:30 1 So for me, the emotional reaction was
17:33:32 2 primarily to these statements.
17:33:36 3 MR. McCALLY: Counsel, again, I want all
17:33:37 4 the psychologist's records to review. And we
17:33:41 5 reserve the right to redepose Mr. Rosen on this. We
17:33:45 6 don't have those. We weren't made aware of them.
17:33:47 7 There's no claim for damages for that in your case.
17:33:49 8 MR. SHAPIRO: Because we're not claiming
17:33:51 9 damages for that.
17:33:51 10 MR. McCALLY: Well then -- well,
17:33:53 11 apparently he is, because I said give me your
17:33:55 12 damages.
17:33:56 13 THE WITNESS: I'm sorry, I should have --
17:33:58 14 MR. SHAPIRO: Shh, shh.
17:33:59 15 You asked him what he felt damage for.
17:34:02 16 You didn't ask him about the claims in this case.
17:34:04 17 BY MR. McCALLY:
17:34:04 18 Q Are you claiming damages for any harm to
17:34:06 19 your emotional well-being resulting from
17:34:10 20 Mr. Dorton's statements in the March 2008 New York
17:34:13 21 Times article?
17:34:14 22 A Although I suffered such damage, we've

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17:34:17 1 decided as a -- what you might call a decision to
17:34:22 2 not to make this the basis for a claim of damages.

17:34:25 3 Q So no damages for any of your emotional
17:34:27 4 well-being?

17:34:28 5 MR. SHAPIRO: Right.

17:34:29 6 THE WITNESS: Right.

17:34:30 7 BY MR. McCALLY:

17:34:30 8 Q Okay. You said reduced somewhat your
17:34:34 9 income was another damage.

17:34:36 10 A Yes.

17:34:38 11 Q Based on the numbers you gave me earlier
17:34:42 12 regarding people who gifted you money or your
17:34:46 13 family, I come up with a back-of-the-envelope number
17:34:49 14 over five years, or from '05 to '09, of \$850,000.
17:34:57 15 Add to that the 144 --

17:35:00 16 A I would have to check your math.

17:35:01 17 Q Well, let's do it. Daniel --

17:35:03 18 A Don't bother, we're not going to do it
17:35:05 19 here. We'll have to do this in an orderly manner.

17:35:09 20 All of that, I repeated maybe 25 times that I'm
17:35:11 21 trying to be cooperative, I'm naming numbers, I'm
17:35:15 22 not sure of these numbers. I need to deal with as

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17:35:17 1 best I can actual numbers.

17:35:18 2 Q Well, I understand that. But based on

17:35:20 3 what you gave me, I total approximately \$850,000

17:35:24 4 between '05 and '09, plus another \$144,000 in

17:35:29 5 severance from AIPAC, plus they're paying your COBRA

17:35:34 6 benefits for six months.

17:35:36 7 A You're leaving out the reduced income

17:35:38 8 today.

17:35:38 9 Q Well, we'll get to that. I'm talking

17:35:41 10 about 2009, based on what you told me. That equates

17:35:45 11 to more money -- and plus the payment of your

17:35:48 12 daughter's college.

17:35:49 13 A Mm-hmm.

17:35:50 14 Q None of those gifts show up on your income

17:35:53 15 tax returns, correct?

17:35:54 16 A No. They were all designed so they didn't

17:35:56 17 need to be.

17:35:57 18 Q Right.

17:35:57 19 A But they do show up in my bank deposits,

17:35:59 20 which you have been given.

17:36:00 21 Q No, I don't believe we have.

17:36:02 22 A I don't understand why you keep saying

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17:36:03 1 that. We gave you the monthly actual originals of
17:36:08 2 my monthly statements from --

17:36:10 3 Q A check coming in, we can't determine what
17:36:12 4 that may be.

17:36:13 5 A It's still income.

17:36:14 6 Q Agreed. That's what I'm getting at, sir.

17:36:18 7 How are you harmed if you received over \$1 million
17:36:21 8 either in gifts or severance or payment of benefits
17:36:27 9 between '05 and '09?

17:36:30 10 A When we --

17:36:31 11 Q Financially harmed.

17:36:32 12 A Financially. When we do the actual
17:36:35 13 computation, I believe, this is a ballpark estimate,
17:36:40 14 that it's going to show a significant reduction,
17:36:44 15 although certainly not to some dire number, of my
17:36:48 16 income. And we intend to make that part of the
17:36:52 17 claim that we intend to make for compensatory
17:36:55 18 damages, and when we get to punitive damages, to
17:36:58 19 have some relationship to that as well.

17:37:00 20 Q As you sit here today, can you state what
17:37:02 21 financial harm you've suffered between 2005 and
17:37:06 22 2009?

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17:37:07 1 A I've repeatedly told you that the answer
17:37:08 2 is no, I cannot, because we have not done the
17:37:11 3 computation.

17:37:11 4 MR. McCALLY: Counsel, I would like a
17:37:12 5 complete list of all gifts or other monies he has
17:37:15 6 received, be it characterized as income, gift,
17:37:20 7 bequeath, anything, between 2005 and 2009. I think
17:37:26 8 this goes directly to the damages that he's
17:37:29 9 claiming, the financial damages he's allegedly
17:37:31 10 claiming.

17:37:35 11 BY MR. McCALLY:

17:37:35 12 Q You would agree with me that these
17:37:38 13 individuals had no obligation to give you money, no
17:37:41 14 legal obligation?

17:37:42 15 A Certainly no legal obligation.

17:37:57 16 Q Your relationship with Mr. Shapiro, your
17:38:00 17 financial relationship, what is that?

17:38:02 18 THE WITNESS: Am I allowed to speak about
17:38:04 19 that?

17:38:05 20 MR. SHAPIRO: I don't think you are.

17:38:06 21 MR. McCALLY: Yes, you are.

17:38:07 22 MR. SHAPIRO: Thank you for that opinion.

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SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

----- -X
STEVEN J. ROSEN, :
Plaintiff, :
v. : Case No.
AMERICAN ISRAEL PUBLIC AFFAIRS : 09-01256 B
COMMITTEE, INC., et al., :
Defendants. :
----- -X

VOLUME 2

Videotaped Deposition of STEVEN J. ROSEN
Washington, DC
Friday, October 8, 2010
9:24 a.m.

Job No.: 5681

Pages: 356 - 461

Reported by: Debra A. Whitehead

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09:41:12 1 Congress, none of these -- "approaches," I would call
09:41:19 2 them, were productive. But I do not have a paper
09:41:23 3 trail. I did not apply for jobs in the conventional
09:41:27 4 sense. The -- the conversations were not explicit
09:41:30 5 conversations, Will you employ me. They were less
09:41:36 6 direct than that.

09:41:37 7 Q What do you mean by "approach"?

09:41:41 8 A Well --

09:41:43 9 Q How would they know you're seeking
09:41:46 10 employment --

09:41:47 11 A These were people --

09:41:48 12 Q -- if you didn't ask?

09:41:50 13 A -- who had already known me for a long
09:41:53 14 time. In most cases this took the form of having
09:41:55 15 lunch or being in some other relaxed setting in which
09:41:58 16 they would ask me, What's going on with you, and I
09:42:02 17 would explain. What do you want to do in the future,
09:42:07 18 and I would explain that. What -- do you have a job,
09:42:11 19 and I would explain that. I gave them all the steps
09:42:16 20 except to say, How about hiring me.

09:42:18 21 Q So for none of these institutions or
09:42:21 22 entities that you, quote, approached, not a single one

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09:42:26 1 did you ask for employment, either written or oral.

09:42:28 2 Is that correct?

09:42:34 3 A In general, it's correct. "Not a single

09:42:36 4 one" is one of those phrases you have to be careful

09:42:40 5 about. But in general, it's correct.

09:42:42 6 Q Did you employ a headhunter at any time?

09:42:45 7 A No.

09:42:45 8 Q Looking to Exhibit 8. I'd like to go

09:42:56 9 through these. It says, Notable tax gifts, Ron -- I'm

09:43:00 10 sorry, Ralph Goldman, 10,000?

09:43:02 11 A You mean Nontaxable Gifts.

09:43:03 12 Q Nontaxable Gifts, sorry.

09:43:06 13 And so I'm clear, you didn't pay income tax

09:43:08 14 on any of these. Correct?

09:43:09 15 A On the ones below the list, no.

09:43:11 16 Q Okay. And that's because they were gifts?

09:43:13 17 A They were gifts, and they were below the

09:43:15 18 gift tax limit.

09:43:16 19 Q All right. And the -- do you recall the

09:43:18 20 \$7,000 check you received from AIPAC?

09:43:21 21 A Yes.

09:43:21 22 Q I'll show you what was previously marked as

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09:43:24 1 Exhibit 7. Correct?

09:43:29 2 A I believe so, yes.

09:43:30 3 Q Did you pay income tax on that?

09:43:34 4 A Well, yes.

09:43:35 5 Q You're sure of that?

09:43:37 6 A Well, it was declared income. And -- I

09:43:43 7 mean, I don't have the details here, but yes.

09:43:45 8 Q That would be in your income tax return if

09:43:47 9 you paid income tax on that check. Correct?

09:43:50 10 A I don't know that that check would be

09:43:51 11 separately listed in my income tax return. It would

09:43:54 12 have been lumped into my total earnings from AIPAC. I

09:43:57 13 believe it would have showed up at the end of that

09:44:00 14 year in my -- what do they call it, W-4? And it would

09:44:05 15 have been lumped in by AIPAC as income, if I'm not

09:44:09 16 mistaken.

09:44:10 17 Q Do you have your W --

09:44:10 18 A I should say I'm not a tax accountant. But

09:44:13 19 I believe that that amount would have showed up in my

09:44:15 20 W-4, and my W-4 was the basis for my income tax

09:44:19 21 return.

09:44:19 22 Q Do you have --

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09:44:20 1 A But I did not separately provide this check
09:44:22 2 to the IRS.

09:44:23 3 Q Do you have your W-4 or W-2 for '05?

09:44:32 4 A You know, I apologize. I meant to
09:44:33 5 duplicate my -- I gave you my earlier income tax
09:44:36 6 returns. You asked for the most recent ones. I owe
09:44:39 7 them to you. In my haste last night I forgot to
09:44:43 8 duplicate them. But I believe they include the W-4.

09:44:48 9 MR. McCALLY: Counsel, we want the W-2 and
09:44:49 10 W-4 for '05.

09:44:50 11 BY MR. McCALLY:

09:44:50 12 Q So, Mr. Rosen, as you sit here today, do
09:44:52 13 you have a specific recollection of paying income tax
09:44:55 14 on that \$7,000 check?

09:44:58 15 A Well, I just recited to you that --

09:45:01 16 Q Do you have a specific recollection?

09:45:02 17 A I have a specific recollection of paying
09:45:04 18 income tax on all my income from AIPAC that was
09:45:10 19 reported by AIPAC in the normal manner. I did not
09:45:13 20 separately retabulate each check I received from AIPAC
09:45:17 21 and see if their total was correct and what it
09:45:20 22 included.

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09:45:20 1 I took as a given that when AIPAC gave me
09:45:23 2 an end-of-the-year statement of AIPAC's statements to
09:45:26 3 me, that it included all taxable payments to me.
09:45:29 4 Q I understand you made an assumption in your
09:45:32 5 testimony. But do you -- my question is very
09:45:34 6 specific: Do you have a specific recollection as to
09:45:36 7 whether or not that \$7,000 payment was included in
09:45:40 8 your reportable income and that you paid taxes on it?
09:45:45 9 A I want to emphasize that I did not seek not
09:45:48 10 to pay taxes on it.
09:45:49 11 Q I'm not suggesting you did. I'm asking if
09:45:52 12 you have a specific recollection.
09:45:53 13 A And I have no specific recollection whether
09:45:55 14 any check I received from AIPAC in particular was
09:45:57 15 included in the number that AIPAC gave to me and on
09:46:01 16 which I paid taxes; this one or any biweekly check.
09:46:05 17 Q All right. Let's look at Exhibit 8, Ralph
09:46:08 18 Goldman, \$10,000.
09:46:09 19 When did he pay you that?
09:46:11 20 A I don't know.
09:46:11 21 Q Was it a one-time gift or repeating?
09:46:14 22 A One-time.

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09:46:15 1 Q Gillia Ford Glazer, it says 5,000.
09:46:20 2 When was that given to you?
09:46:21 3 A I don't know.
09:46:21 4 Q Was it one time or repeating?
09:46:24 5 A One time.
09:46:25 6 Q Larry Hochenberg (phonetic)?
09:46:28 7 A Hochberg.
09:46:28 8 Q Sorry. It says 11,000 in 2005?
09:46:32 9 A In that case, it was repeating. He gave me
09:46:35 10 similar gifts each of the years that my indictment
09:46:39 11 continued.
09:46:39 12 Q So when -- you received it in '06, the
09:46:43 13 payment of 11,000?
09:46:45 14 A I -- it may not have been precisely 11,000.
09:46:47 15 The amounts varied slightly, but in general --
09:46:51 16 approximately 11,000.
09:46:52 17 Q So --
09:46:53 18 A In '06, '07, and '08.
09:46:57 19 Q Did you receive payment in '09?
09:47:01 20 A I don't know. Because '09 was a partial
09:47:04 21 year. My case was dropped in May, dismissed.
09:47:07 22 Q Well, I'd like you to check your records to

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09:47:07 1 determine --

09:47:10 2 A I don't have any records, as I repeatedly
09:47:13 3 told you.

09:47:13 4 MR. McCALLY: Counsel, I would like to
09:47:14 5 know -- I would like him to do whatever he can do.

09:47:16 6 MR. SHAPIRO: He just told you he doesn't
09:47:19 7 have any records. He's going by memory.

09:47:21 8 MR. McCALLY: We're going to take a break.

09:47:22 9 VIDEO SPECIALIST: We're going off the
09:47:23 10 record at 9:47 a.m.

09:47:28 11 (Short recess.)

09:50:45 12 VIDEO SPECIALIST: We're back on the record
09:50:55 13 at 9:50 a.m.

09:50:58 14 BY MR. McCALLY:

09:50:59 15 Q Mr. Rosen, turning back to Exhibit 8.

09:51:03 16 Mr. Hochberg, you have -- you're not sure
09:51:08 17 about '09. I would ask you to search anything you
09:51:10 18 have to determine whether or not you received a
09:51:12 19 payment in '09 or thereafter.

09:51:13 20 More importantly, in your deposition last
09:51:17 21 time, you told us that Mr. Hochberg had paid you
09:51:23 22 approximately 200,000 over five years.

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09:51:26 1 A Well, that's not -- that's not correct.

09:51:28 2 First of all, had he done so, it would have
09:51:30 3 been way over the gift limit.

09:51:34 4 Mr. Hochberg was a pass-through for checks
09:51:37 5 from other people. Mr. Hochberg was the single person
09:51:41 6 who was trying to help me the most. And in many cases
09:51:44 7 he approached people I did not know. And he got
09:51:49 8 checks from people I did not know. And they came to
09:51:53 9 me from Larry Hochberg, but the money was not
09:51:58 10 Hochberg's own funds.

09:52:01 11 The most Hochberg gave me directly was
09:52:05 12 under the gift tax limit. The gift tax limit evolved
09:52:09 13 a little bit over the multiple years of my
09:52:13 14 prosecution, so the exact number that he sent me
09:52:16 15 evolved slightly.

09:52:17 16 Q Your testimony last time that Hochberg gave
09:52:19 17 you 200,000 over five years, is that reconciled by he
09:52:24 18 funneled other checks that may have amounted to
09:52:26 19 200,000 over five years?

09:52:29 20 A I need to state and restate, Mr. McCally,
09:52:34 21 that I do not have the kind of detailed recall that
09:52:36 22 you are looking for of any of this matter.

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09:52:39 1 Q Did you send thank-you notes?

09:52:41 2 A And I am making a good faith -- I did not.

09:52:44 3 In most cases I did not.

09:52:46 4 I am making a good-faith effort to
09:52:47 5 construct this for you. But I am not going to succeed
09:52:50 6 in getting the kind of specificity that you
09:52:54 7 understandably are asking for.

09:52:55 8 Q Do you have any computer or hard-copy list
09:52:59 9 of people who gave you money?

09:53:01 10 A I do not. If I did, I would provide it. I
09:53:04 11 do not have such a thing.

09:53:05 12 What -- what I have given you is my actual
09:53:08 13 bank account records. It is through that bank account
09:53:11 14 that every one of these checks flowed. It doesn't
09:53:14 15 have the names of the people, but it does have the
09:53:16 16 amount of the -- of the money. And I should think
09:53:19 17 that's primarily what you're looking for.

09:53:21 18 Q All right. Let's go next to Steven
09:53:23 19 Greenberg. You have listed \$11,000 in 2005.

09:53:27 20 A He's an example of a person I do not know
09:53:31 21 who was approached by others.

09:53:32 22 Q Was that a repeating payment?

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09:53:34 1 A Not to my recollection.

09:53:34 2 Q Jonathan Brodie, you have \$180 in 2006?

09:53:40 3 A I don't know who Jonathan Brodie is, and I
09:53:42 4 don't know -- I doubt very much that it was repeated.

09:53:46 5 Q Lee -- so you don't know one way or the
09:53:48 6 other?

09:53:49 7 A I do not -- I doubt very much that it was
09:53:51 8 repeated.

09:53:52 9 Q Is it -- knowing -- with the caveat, as
09:53:55 10 you've indicated you've done your best to make this
09:53:57 11 list, is it possible there are other people who have
09:54:01 12 given you money that are not listed on here?

09:54:03 13 A It's likely.

09:54:04 14 Q Likely.

09:54:09 15 Does this list also include all payments
09:54:11 16 that were made to your wife and/or children? And if
09:54:16 17 not made to them, for their benefit?

09:54:19 18 A I would like to say yes, but I can't be
09:54:21 19 sure.

09:54:22 20 Q And you know by what I mean for their
09:54:26 21 benefit, you indicated last time that certain people
09:54:28 22 had paid the tuition of --

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09:54:30 1 A Mr. --

09:54:31 2 Q -- your children?

09:54:32 3 A -- McCally, may I make a general point that
09:54:36 4 perhaps would be helpful to you?

09:54:37 5 I am not going to argue that I suffered a
09:54:41 6 loss of income during this period as a result of
09:54:47 7 this -- defamatory statements by AIPAC. And all of
09:54:52 8 these details are not really germane to what we will
09:54:57 9 be -- the claims we will be making.

09:55:01 10 Q So I'm clear on what you just said, you are
09:55:03 11 not making a claim for monetary damages related to
09:55:09 12 Mr. Dorton's statement?

09:55:12 13 A Oh, I am definitely --

09:55:13 14 Q Hang on, sir. You're not -- let me
09:55:16 15 clarify. So I can understand, you are not making a
09:55:18 16 claim for lost wages of any type as a result of
09:55:21 17 Mr. Dorton's quote in the March 2008 New York Times
09:55:28 18 article? Is that correct?

09:55:32 19 A I just want to make sure I've got this
09:55:34 20 exactly right.

09:55:37 21 THE WITNESS: Can we go outside for a
09:55:40 22 second?

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09:55:40 1 VIDEO SPECIALIST: Go off the record?
09:55:41 2 MR. McCALLY: Yep.
09:55:42 3 VIDEO SPECIALIST: We're going off the
09:55:43 4 record at 9:55 a.m.
09:55:45 5 (Short recess.)
09:58:01 6 VIDEO SPECIALIST: We're back on the record
09:58:03 7 at 9:58 a.m.
09:58:05 8 BY MR. McCALLY:
09:58:05 9 Q Mr. Rosen, did you understand the question
09:58:07 10 I asked you?
09:58:09 11 A Yes, I do. But I -- it's not so much your
09:58:14 12 question that I was responding to, it was my added
09:58:16 13 statement that I wanted to clarify.
09:58:21 14 What was your question, please?
09:58:22 15 MR. McCALLY: Would you read back my
09:58:23 16 question.
09:58:44 17 (The reporter read the record as follows:
09:58:44 18 "QUESTION: So I can understand, you are
09:58:44 19 not making a claim for lost wages of any type as a
09:58:44 20 result of Mr. Dorton's quote in the March 2008 New
09:58:44 21 York Times article. Is that correct?")
09:58:48 22 A I am not making any claim that wages or --

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09:58:54 1 or gifts prior to 2008 were affected by the March 2008
09:59:00 2 statement. And -- that's -- that's my answer.

09:59:08 3 Q Are you making any claim for lost wages as
09:59:12 4 a result of Mr. Dorton's -- the quote in the March
09:59:18 5 2008 New York Times article for periods after March of
09:59:21 6 2008?

09:59:23 7 A We have not made a final determination on
09:59:25 8 that question.

09:59:28 9 Q You understand this is your deposition
09:59:30 10 that's going to be used in this case, and you
09:59:35 11 understand we've asked you interrogatories asking you
09:59:37 12 identify all your damages. Correct?

09:59:39 13 A Yes.

09:59:41 14 Q So is it possible that you will not be
09:59:43 15 making a claim for lost wages resulting -- allegedly
09:59:49 16 resulting from the March 2008 New York Times article?

09:59:57 17 A Yes.

09:59:58 18 Q When will you make that determination?

10:00:07 19 THE WITNESS: I guess we better go back
10:00:08 20 outside, David?

10:00:12 21 VIDEO SPECIALIST: We're going off the
10:00:13 22 record at 10 o'clock a.m.

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10:00:14 1 (Short recess.)

10:02:14 2 VIDEO SPECIALIST: We're back on the record

10:02:20 3 at 10:02 a.m.

10:02:22 4 BY MR. McCALLY:

10:02:24 5 Q Did you understand my question, Mr. Rosen?

10:02:25 6 A Yes, I did.

10:02:26 7 Q And what's your answer?

10:02:27 8 A We are not going to make a lost income

10:02:30 9 claim before or after the March 2008 statement.

10:02:39 10 Q The statement in the New York Times

10:02:41 11 article.

10:02:41 12 A In the New York Times article.

10:02:43 13 Q From March of 2008?

10:02:45 14 A Right. The statement that's at the center

10:02:47 15 of our --

10:02:48 16 Q So I'm clear, you're not making any claim

10:02:50 17 for any lost wages income as a result of Mr. Dorton's

10:02:58 18 statements pre March of 2008 or post March of 2008.

10:03:05 19 A That's correct.

10:03:05 20 Q What are you making -- do you have a

10:03:10 21 damages claim, a monetary damages claim?

10:03:12 22 A Yes.

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10:03:12 1 Q What is it?

10:03:18 2 A My primary claim is going to be based on
10:03:23 3 AIPAC putting me in the zone of danger through
10:03:27 4 knowingly false statements, with reckless disregard
10:03:32 5 for the truth; putting me in the zone of danger of
10:03:35 6 being convicted for a crime that I did not commit,
10:03:38 7 which would have caused me to spend decades --
10:03:41 8 potentially decades in prison, an innocent man; and
10:03:46 9 that AIPAC's reckless disregard for the truth had
10:03:50 10 materially increased the chance of -- of a wrongful
10:03:53 11 conviction.

10:03:54 12 Q What actions by AIPAC put you in this,
10:03:59 13 quote, "zone of danger" to be convicted for a crime
10:04:01 14 you did not commit?

10:04:04 15 A The statement that I -- my -- that my
10:04:06 16 actions were not part of my job, and the statement
10:04:09 17 that my actions were beneath AIPAC's standards, and
10:04:14 18 statements that -- that stated and implied that AIPAC
10:04:17 19 did not know about what I was doing, and various other
10:04:20 20 false statements that could have led a jury to
10:04:24 21 conclude that my -- that I was a rogue operator, that
10:04:28 22 this was not a legitimate lobbying activity protected

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10:06:55 1 I did not come prepared for this question. It's one
10:06:57 2 of the items we produced for you in discovery.

10:07:02 3 But in -- in an official filing, the
10:07:05 4 prosecutors themselves stated that they intended to
10:07:09 5 raise this at trial, that if the -- that if -- they
10:07:15 6 said --

10:07:16 7 Q Raise what?

10:07:17 8 A This is a -- raise --

10:07:19 9 Q Mr. Dorton's quote?

10:07:22 10 A Raise AIPAC's actions and statement.

10:07:23 11 Q I'm interested in this quote that I just
10:07:25 12 read you --

10:07:26 13 A Well, they --

10:07:27 14 Q Hang on.

10:07:29 15 -- from the March 2008 New York Times
10:07:31 16 article.

10:07:31 17 A It doesn't work that way.

10:07:32 18 Q Did they say that article and quote was
10:07:35 19 going to be used against you?

10:07:36 20 A They did not specifically enumerate that
10:07:38 21 particular article.

10:07:39 22 Q All right. What other evidence, if any, do

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10:07:42 1 you have that Mr. Dorton's quote in the March 2008 New
10:07:46 2 York Times article would have put you in a zone of
10:07:48 3 danger to be convicted for a crime you allegedly did
10:07:51 4 not commit?

10:07:53 5 A My attorney warned AIPAC's attorneys that
10:07:55 6 their actions were putting our defense in peril.

10:08:01 7 Q What -- did your attorney warn AIPAC's
10:08:04 8 attorney that Mr. Dorton's statement in the March 2008
10:08:07 9 New York Times article was putting you in peril?

10:08:11 10 A This statement was a repetition of
10:08:13 11 precisely the same statement that had occurred over a
10:08:17 12 four-year period, and it was that stream of statements
10:08:21 13 which were identical to this statement. He did not
10:08:24 14 single out this statement any less or any more than
10:08:28 15 the others.

10:08:29 16 Q So it's your testimony that Mr. Dorton's
10:08:32 17 statement in the March 2008 New York Times article is
10:08:36 18 merely a repetition of prior statements.

10:08:38 19 A It is not only a repetition of prior
10:08:41 20 statements; it's an allusion to the prior statements
10:08:44 21 and their continuing validity.

10:08:46 22 Q Do you have any other evidence to support

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10:13:20 1 12-month statutory period, I would have lost my right
10:13:24 2 to sue. And this was very important to me, also.

10:13:28 3 And so even though I was still in the zone
10:13:31 4 of danger in March 2009, and I was still in the zone
10:13:35 5 of danger in March 2009, I decided that the element of
10:13:39 6 risk -- the balance of risks, my -- I should say that
10:13:46 7 Abbe Lowell was still opposed to this, and urged me
10:13:49 8 repeatedly not to do it in March 2009, and spoke to
10:13:52 9 David Shapiro and urged him not to do it.

10:13:55 10 But I decided to proceed, nonetheless,
10:13:58 11 because by then the element of risk appeared to be --
10:14:05 12 it -- I was in the zone of danger.

10:14:07 13 Q And why in your mind had the element of
10:14:09 14 risk of a criminal prosecution decreased to the point
10:14:12 15 that it was an acceptable risk to you to file this
10:14:16 16 lawsuit?

10:14:16 17 A There were many legal events in the
10:14:18 18 criminal case. There was a court of appeals ruling,
10:14:24 19 there were many rulings by Judge Ellis in my case.
10:14:31 20 They had to do with exceptionally detailed matters,
10:14:34 21 many of which I can't talk about; about what kind of
10:14:37 22 evidence we could introduce and not introduce, and

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10:14:39 1 what experts would be permitted and not permitted.

10:14:43 2 And these things all had an effect on the attorneys'

10:14:46 3 judgment about, you know, the viability of the

10:14:48 4 government's case.

10:14:49 5 Q In your mind, as of March of 2009 when you

10:14:53 6 filed this suit, had the criminal case collapsed

10:14:57 7 sufficiently that you were not concerned about a risk

10:15:01 8 of further prosecution and/or conviction?

10:15:05 9 A I think I recited a moment ago that I was

10:15:07 10 still in the zone of danger --

10:15:08 11 Q I understand that. That's not my question.

10:15:10 12 A -- it was a judgment -- I'm sorry.

10:15:12 13 Q Had the risk decreased sufficiently for

10:15:16 14 you --

10:15:16 15 A The risk -- our perception of the risk had

10:15:19 16 decreased to the point that the balance of risks

10:15:24 17 looked more favorable to filing this suit than it --

10:15:28 18 than it did a year earlier.

10:15:29 19 Q And the risks were going to prison for

10:15:33 20 20-plus -- for 20 years for conviction under the

10:15:36 21 Espionage Act, versus bringing this case for

10:15:39 22 defamation based upon Mr. Dorton's March 2008 New York

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10:20:37 1 A Okay.

10:20:38 2 Q Turning back to Exhibit 8.

10:20:42 3 Lee Pozez --

10:20:42 4 A That's this?

10:20:44 5 Q Yes. Lee Pozez you listed as \$1800 October

10:20:50 6 of 2005. Were any other payments made?

10:20:52 7 A No.

10:20:52 8 Q Walter Stern, 5,000 in October of 2005.

10:20:56 9 Were any other payments made?

10:20:57 10 A Yes. It's listed below. 1,000 in 2007.

10:21:01 11 Q All right. Were any other payments made by

10:21:04 12 Mr. Stern --

10:21:06 13 A No.

10:21:06 14 Q -- other than that?

10:21:09 15 Gerald Charnoff, \$500, October 2005. Any

10:21:14 16 other payments?

10:21:14 17 A No.

10:21:14 18 Q Randall Levitt, 5,000 in March of 2008.

10:21:20 19 And then you have listed --

10:21:21 20 A There's two others listed below.

10:21:23 21 Q Yes. The two others say Randall Levitt,

10:21:26 22 500 in 2006; Randall Levitt, 5,000 in 2006.

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10:21:29 1 A Yeah. The 500 may not have been his own
10:21:31 2 money. I'm not exactly certain why it was given
10:21:35 3 separately.
10:21:35 4 Q All right. Any other payments from
10:21:37 5 Mr. Levitt?
10:21:38 6 A No.
10:21:39 7 Q All of my questions -- to make this go more
10:21:42 8 quickly, my questions, when I say "any other
10:21:46 9 payments" --
10:21:46 10 A Right. Okay.
10:21:46 11 Q -- include payments to your wife or family
10:21:49 12 members --
10:21:49 13 A Right.
10:21:50 14 Q -- as well. All right.
10:21:51 15 We understand each other on that?
10:21:53 16 A Yes.
10:21:53 17 Q Hart Hasten, \$18,000 between 2007 and 2008?
10:22:00 18 A That's correct.
10:22:00 19 Q Any other payments --
10:22:01 20 A No.
10:22:02 21 Q -- from him?
10:22:03 22 Robert Magid, 30,000 over three years.

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10:22:07 1 Any other payments from Mr. Magid?
10:22:09 2 A No.
10:22:09 3 Q Walter Stern, 1,000 in 2000 --
10:22:14 4 A Well, that's above also. We talked about
10:22:16 5 that.
10:22:16 6 MR. SHAPIRO: We just did Walter Stern
10:22:17 7 before.
10:22:17 8 MR. McCALLY: Okay. Sorry.
10:22:20 9 A It's Howard.
10:22:20 10 Q Howard.
10:22:21 11 A That's a typo. Howard Jonas. That's the
10:22:24 12 only one.
10:22:25 13 Q 11,000 -- 11,900 in 2007?
10:22:27 14 A Right. Herbert --
10:22:28 15 Q That -- any other payments?
10:22:30 16 A No.
10:22:31 17 Herbert Gelfand I believe did make an
10:22:32 18 additional payment, probably in 2007, of the same
10:22:35 19 amount.
10:22:37 20 Q Newt Becker, 10,750 in 2006?
10:22:45 21 A I believe that Newt Becker made the same
10:22:48 22 payment each year for all the years I was under

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10:22:52 1 indictment.

10:22:53 2 Q So '07, '08, and '09?

10:22:56 3 A The '09 is always -- yes. And probably

10:23:01 4 '05. But '09 I'm less sure of, because it was a

10:23:04 5 partial year due to the indictment being dropped. And

10:23:07 6 I really don't have a clarity about that year.

10:23:11 7 Q In the first part of your deposition, you

10:23:12 8 testified that Mr. Becker paid you approximately

10:23:15 9 200,000 over five years?

10:23:17 10 A Well, he's another one. The two guys who

10:23:19 11 were the -- I'm going to use the term "bundlers," the

10:23:24 12 two guys who were going out and soliciting other

10:23:27 13 people, some of the checks that you see described here

10:23:31 14 actually came to me via Newt Becker and Larry

10:23:35 15 Hochberg. They collected the checks and sent them to

10:23:37 16 me.

10:23:38 17 And my remark the other day was careless in

10:23:42 18 the sense that I was lumping together everything that

10:23:45 19 they raised with the funds that came out of their own

10:23:48 20 pocket. Because this was an intensely busy period

10:23:54 21 in -- in the legal matters that surrounded my criminal

10:23:56 22 case. And this funding was -- was a necessity. But I

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10:24:01 1 did not keep records. And it was a big blur.

10:24:03 2 Q You made that clear.

10:24:05 3 A Yeah.

10:24:05 4 Q Newt Becker, is it, to reconcile your prior

10:24:09 5 testimony, is it possible that --

10:24:11 6 A It's not his own money, yes.

10:24:14 7 MR. SHAPIRO: Let him finish.

10:24:16 8 BY MR. McCALLY:

10:24:16 9 Q Is it possible that he was responsible for

10:24:17 10 getting to you 200,000 over five years, whether it was

10:24:21 11 partly his contribution and with contributions of

10:24:23 12 others?

10:24:24 13 A I think it's broadly accurate. But it

10:24:26 14 would be contributions of others.

10:24:27 15 And let me point out again, had he given me

10:24:30 16 out of his own pocket such a sum, I would have had to

10:24:32 17 pay taxes on it.

10:24:33 18 Q Understood.

10:24:34 19 Sidney Retsky, 1,000 in 2006. Any other

10:24:38 20 payments?

10:24:39 21 A I don't think so. I don't know this

10:24:40 22 gentleman at all.

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10:24:41 1 Q Daniel Abraham you list in 2006, 10,000 --
10:24:46 2 A Yes.
10:24:46 3 Q -- to each --
10:24:48 4 A And I remembered this morning that Daniel
10:24:49 5 Abraham also gave me, in a different year, which might
10:24:52 6 have been 2007 or -- 5,000 to each of the same five
10:24:57 7 people. In other words, half as much, but to each of
10:25:01 8 the same five people.
10:25:02 9 Q In '07?
10:25:04 10 A I believe -- it's probably '07. I
10:25:06 11 apologize, I don't know.
10:25:07 12 Q "Steven" on that line references you?
10:25:10 13 A Yes, that's myself.
10:25:11 14 Q Jesse is your son?
10:25:12 15 A Son, daughter, and son.
10:25:13 16 Q Jamie is your daughter, Jonah is your son?
10:25:17 17 A And Barbara is my ex-wife, with whom I
10:25:20 18 live.
10:25:20 19 Q Okay. Who you currently live?
10:25:22 20 A Right.
10:25:22 21 Q David Menton, \$9,000 in 2006?
10:25:26 22 A That's right.

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10:25:26 1 Q Any other payments from --
10:25:27 2 A No.
10:25:28 3 Q -- Mr. Menton?
10:25:29 4 A No.
10:25:29 5 Q Eli Hertz, 5,000 in 2006.
10:25:32 6 Any other payments?
10:25:32 7 A No.
10:25:33 8 Q Sig Feiger, \$1,000.
10:25:36 9 Do you know when that was made?
10:25:39 10 A I do not.
10:25:39 11 Q Any other payments?
10:25:41 12 A No.
10:25:42 13 Q Haim Saban, 2007, 10,000 each to you,
10:25:48 14 Jesse, Jamie, Jonah, and Barbara?
10:25:51 15 A Yes. And I should say that Haim Saban is
10:25:54 16 another one who did this twice. And in his case he
10:25:57 17 did it at the \$10,000 level. But what the other year
10:26:00 18 was, I don't know.
10:26:00 19 Q In your prior testimony you said he also
10:26:02 20 paid you the same amounts in '06. Does that help
10:26:05 21 refresh your recollection?
10:26:06 22 A Yeah. It's probably '06. I'm afraid I

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10:26:09 1 don't know.

10:26:09 2 Q All right. As you sit here today, are
10:26:11 3 there any other people that you can recall giving you
10:26:16 4 money during that time period?

10:26:22 5 A I did my best to reconstruct this. And I'm
10:26:26 6 not thinking, sitting here, of additional names. But
10:26:30 7 I -- I've already conceded to you from the beginning
10:26:32 8 that there may be additional names. Probably are
10:26:34 9 additional names.

10:26:35 10 Q Was Mr. Saban a bundler, too, as you
10:26:38 11 described it?

10:26:39 12 A No, he wasn't. He was ...

10:26:42 13 Q Okay.

10:27:06 14 MR. SHAPIRO: This must drive you crazy.

10:27:08 15 MR. McCALLY: Oh, absolutely.

10:27:09 16 MR. SHAPIRO: This noise.

10:27:10 17 MR. McCALLY: And I apologize for the
10:27:11 18 construction noise in the background.

10:27:13 19 MR. SHAPIRO: Is it all day every day?

10:27:14 20 MR. McCALLY: It's not supposed to be, but
10:27:17 21 typically it is.

10:27:18 22 MR. SHAPIRO: Got you.

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10:35:28 1 Q And I asked you questions about
10:35:33 2 conversations you had with some Washington Post
10:35:36 3 reporters and others. One of those individuals was
10:35:45 4 Naor -- I may have mispronounced this -- Gilon?
10:35:45 5 A Naor Gilon was not a Washington Post
10:35:49 6 reporter; he was an Israeli diplomat.
10:35:51 7 Q Okay. And do you recall the questions that
10:35:55 8 I asked you about Glenn Kessler?
10:36:00 9 A We went on for very many hours --
10:36:02 10 Q Understood.
10:36:04 11 A -- Mr. McCally, and I don't remember.
10:36:06 12 Q That's fair. That's fair.
10:36:07 13 Do you recall, in any conversations with
10:36:08 14 Mr. Kessler, discussing the UK's Official Secrets Act?
10:36:14 15 A There was no reference to the UK, but that
10:36:16 16 was the tacit reference, yes.
10:36:18 17 Q All right. Tell me of that -- when was
10:36:20 18 that discussion with Mr. Kessler?
10:36:25 19 A On July 21st, 2004.
10:36:28 20 Q And tell me what that discussion entailed,
10:36:31 21 as best you recall.
10:36:35 22 A Keith Weissman and I spoke to Glenn Kessler

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10:36:38 1 of The Washington Post on speakerphone in my office,
10:36:41 2 and told him that we had a source in the Pentagon with
10:36:50 3 access to U.S. intelligence who had told us about
10:36:55 4 extensive steps that the Iranians were taking in the
10:36:59 5 southern part of Iraq.

10:37:01 6 May I interject that this was just months
10:37:03 7 after the United States armed forces entered Iraq in
10:37:06 8 March. We're speaking here in July. This is a very
10:37:10 9 short time later. And what has later on become very
10:37:13 10 familiar. The insurgency in Iraq at that time didn't
10:37:17 11 exist.

10:37:17 12 So we were warning Kessler that we had been
10:37:20 13 warned that the Iranians were stirring up what could
10:37:27 14 be called an insurgency. I referred to it colorfully
10:37:31 15 as total war against the United States. That they
10:37:36 16 were recruiting oil field workers for sabotage, that
10:37:40 17 they were putting their agents -- I'm afraid at this
10:37:44 18 moment I don't remember all of the details. But there
10:37:46 19 was a list of details about what the Iranians were
10:37:49 20 doing to get ready for active opposition to the U.S.
10:37:53 21 armed forces in Iraq. And --

10:37:56 22 Q And -- I'm sorry.

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10:37:58 1 A And I was in the course of urging him to
10:38:00 2 write a story about it.

10:38:02 3 Q Is this information you received from Larry
10:38:04 4 Franklin?

10:38:05 5 A It's information that Keith Weissman had
10:38:06 6 received from Larry Franklin and shared with Howard
10:38:10 7 Kohr and myself.

10:38:10 8 Q And what reference did you make to the
10:38:12 9 Official Secrets Act?

10:38:14 10 A Well, that came a little later in the
10:38:15 11 conversation. Keith Weissman made a jocular comment,
10:38:19 12 actually laughing on the phone, "I could get in
10:38:22 13 trouble for this." And I interjected, We don't have
10:38:27 14 an Official Secrets Act in the United States. But my
10:38:30 15 sentence was interrupted when Kessler said something.
10:38:35 16 So I didn't get to finish my sentence.

10:38:37 17 As I told you previously, had I been
10:38:39 18 allowed to finish my sentence, it was going to be, In
10:38:43 19 America someone who disclose -- a government official
10:38:47 20 who discloses classified information can be
10:38:51 21 prosecuted, but a private citizen cannot. But ...

10:38:54 22 Q What else was said about the Official

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10:38:57 1 Secrets Act?

10:38:58 2 A Nothing more, because he had already cut me

10:39:00 3 off.

10:39:01 4 Q I'm sorry. He had already?

10:39:03 5 A He had already -- Kessler had already cut

10:39:05 6 me off, and we went on to other things.

10:39:07 7 Q Was --

10:39:08 8 A This was -- I should add, this was a

10:39:10 9 humorous exchange, a three-way humorous exchange in a

10:39:12 10 busy telephone conversation.

10:39:14 11 Q So you all were --

10:39:15 12 A The prosecutors --

10:39:16 13 Q Go ahead.

10:39:17 14 A The prosecutors, lacking any direct

10:39:20 15 evidence that we had any reason to think we had

10:39:22 16 received classified information, wanted to use this

10:39:24 17 sentence, inferentially, as the heart of their case.

10:39:28 18 Because they had -- after following me for five years,

10:39:30 19 and investigating my office and my documents, they had

10:39:33 20 no real evidence of receipt and retransmission of

10:39:36 21 classified information except this -- this remote

10:39:40 22 sentence that they thought they could reconstruct.

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10:39:43 1 Q What did Mr. Weissman mean by "I could get
10:39:46 2 into trouble for this"?

10:39:49 3 A Well, you'd have to ask Mr. Weissman. It
10:39:51 4 was his remark.

10:39:52 5 Q What did you think he meant?

10:39:54 6 A Well, as you can see, I thought he meant, I
10:39:56 7 could get in trouble because maybe this is classified.
10:39:58 8 And if I'm passing it on, maybe I could get in
10:40:01 9 trouble.

10:40:01 10 Q And what did you mean by, "We don't have an
10:40:04 11 Official Secrets Act"?

10:40:06 12 A By the way, I have to add something.

10:40:08 13 Mr. Weissman had been told things on July
10:40:12 14 21st, 2004, that he did not tell to Steve Rosen. And
10:40:16 15 if you depose him, you will hear this from his lips.

10:40:20 16 He did not tell me that Franklin said you
10:40:23 17 could get in trouble. He did not tell me that the
10:40:25 18 phrase "you could get in trouble" came from the lips
10:40:27 19 of Larry Franklin.

10:40:28 20 Q Did Franklin tell him that?

10:40:30 21 A Apparently Franklin did.

10:40:31 22 Q What else do you know that Franklin told

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10:41:27 1 experience. Because it was that same section of tape
10:41:31 2 that was the most important thing, according to Nat's
10:41:34 3 e-mails, the most important thing that Nat heard.

10:41:37 4 So --

10:41:37 5 Q So to your knowledge, what Mr. Lewin heard
10:41:40 6 is what you just told me about; Weissman saying, I
10:41:42 7 could get into trouble for this, and then you
10:41:44 8 responding we don't have an Official Secrets Act --

10:41:47 9 A Yeah, but I --

10:41:47 10 Q Was everyone -- this was when everyone was
10:41:49 11 laughing? It was jocular, you said?

10:41:51 12 A Yeah.

10:41:53 13 Q Okay.

10:41:53 14 A Let me add that immediately after August
10:41:58 15 27th, 2004, Keith Weissman and Steve Rosen were
10:42:02 16 debriefed by Abbe Lowell and I believe also by Nat
10:42:06 17 Lewin. And they constructed a MEMCON, which we have
10:42:09 18 provided in discovery. And in that MEMCON you will
10:42:12 19 see it's broken into a Steve Rosen section, and what
10:42:15 20 Rosen knew, and a Keith Weissman section, which tells
10:42:19 21 you what Weissman knew. And in the Weissman section
10:42:22 22 it recites that Franklin told him, You could get in

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11:07:25 1 Franklin background check.

11:07:26 2 A You've used the word --

11:07:27 3 Q Is that correct?

11:07:27 4 A You've used the word "sufficient." I said

11:07:30 5 that my attorneys told me you could indict a ham

11:07:33 6 sandwich, especially in a national security case, that

11:07:35 7 the prosecutors have extensive discretion to do things

11:07:39 8 that may be outrageous in terms of the lack of

11:07:42 9 evidence. But they still can get away with it. So --

11:07:45 10 Q Was there a concern on your part that you

11:07:47 11 could be indicted for lying to the FBI as a result of

11:07:49 12 the interaction you had with the FBI agents about

11:07:52 13 Larry Franklin's background check?

11:07:54 14 A I wasn't concerned that I could be indicted

11:07:56 15 because I lied to the FBI, because I did not lie to

11:07:59 16 the FBI. I was concerned that I could be indicted

11:08:02 17 because they were already bringing an indictment for

11:08:04 18 something that I didn't do, and they could have

11:08:06 19 expanded it to other things that I didn't do.

11:08:08 20 Q And what did the FBI tell you at your home,

11:08:11 21 when they came to meet you, about lying to the FBI?

11:08:14 22 A Well, we've gone over this. And --

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11:08:16 1 Q Tell me one more time.

11:08:19 2 A They said, You lied to us when we

11:08:22 3 interviewed you the previous time when you said that

11:08:25 4 Larry Franklin didn't receive classified information.

11:08:28 5 But we don't care about that. And we won't make a

11:08:31 6 thing of it if you will cooperate with us. Because we

11:08:34 7 don't care about that.

11:08:38 8 MR. McCALLY: Let's take a break.

11:08:45 9 VIDEO SPECIALIST: We're going off the

11:08:46 10 record at 11:08 a.m.

11:08:48 11 (Short recess.)

11:10:45 12 VIDEO SPECIALIST: We are back on the

11:10:46 13 record at 11:10 a.m.

11:10:48 14 MR. McCALLY: Thank you, Mr. Rosen. That's

11:10:49 15 all I have.

11:10:50 16 MR. SHAPIRO: I have a question.

11:10:51 17 EXAMINATION BY COUNSEL FOR PLAINTIFF

11:10:51 18 BY MR. SHAPIRO:

11:10:51 19 Q When did you learn -- when did you learn

11:10:55 20 that Larry Franklin had told -- had disclosed or had

11:11:01 21 arguably disclosed classified information?

11:11:05 22 A I learned it in roughly August 27th, 2004,



March 3, 2008

Trial to Offer Look at World of Information Trading

By NEIL A. LEWIS

WASHINGTON — From its headquarters near the Capitol, the American Israel Public Affairs Committee, or Aipac, has for decades played an important though informal role in the formation of the United States government's Middle East policy.

Aipac, which does not work directly for Israel or its government, lobbies in Washington to advance Israel's interests. Its officials assiduously maintain contact with senior policymakers, lawmakers, diplomats and journalists. Those conversations are typical of the unseen world of information trading in Washington, where people customarily and insistently ask each other, "So, what are you hearing?"

But a trial scheduled for late April in federal court in Alexandria, Va., threatens to expose and upend that system. Moreover, the case comes with issues of enormous sensitivity and emotion, notably the nature and extent of the ways American Jewish supporters of Israel try to influence the United States government.

Two former senior analysts for Aipac, Steven J. Rosen and Keith Weissman, are charged with violating the World War I-era Espionage Act when they told colleagues, journalists and Israeli Embassy officials information about Iran and Iraq they had learned from talking to high-level United States policymakers.

Unless the government suddenly backs down, the courtroom will become the stage for an extraordinary parade of top officials being forced to testify about some of the unseen ways American foreign policy is made.

Over the strong objections of the Justice Department, the judge in the case ruled that the defense may call as witnesses Condoleezza Rice, the secretary of state; Stephen J. Hadley, the White House national security adviser; Elliot Abrams, a deputy national security adviser; Richard L. Armitage, former deputy secretary of state; Paul D. Wolfowitz, former deputy defense secretary; and a dozen other Bush administration foreign policy officials.

The defense's goal is to demonstrate that the kind of conversations in the indictment are an accepted, if not routine, way that American policy on Israel and the Middle East has been formulated for years.

Mr. Rosen's lawyer, Abbe Lowell, said the case raised "strange and troubling issues, notably the decision to target Aipac for common and proper behavior that goes on in Washington every day."

Mr. Lowell and John Nassikas III, who represents Mr. Weissman, plan to confront Ms. Rice and the other witnesses with explicit examples of exchanges in which they provided similar sensitive information to Aipac staff members as part of the regular back-channel world of diplomacy.



Although Aipac has not been charged in the case, the trial, to be heard by Judge T. S. Ellis III, will revolve around how the group, renowned for its effectiveness in presenting Israel's case, exerts its influence in Congress and, especially in recent years, on the executive branch.

For Aipac and to some extent the larger pro-Israel community in the United States, the charges against Mr. Rosen and Mr. Weissman could raise what they regard as an unfair, even toxic question about whether some American Jews hold a loyalty to Israel that matches or exceeds their loyalty to the United States.

The trial will also take place only months after the eruption of an intense public debate about the American Jewish supporters of Israel that was occasioned by the publication of an article and book, "The Israel Lobby and U.S. Foreign Policy." The authors, John J. Mearsheimer of the University of Chicago and Stephen M. Walt of Harvard University, argue that the pro-Israel lobby successfully suppresses legitimate criticism of Israel and uses its influence to distort the public debate about Middle East policy.

Their views produced a ferocious counterattack in magazines and scholarly journals in which both their facts and conclusions were challenged.

The trial will as well be shadowed by the case of Jonathan Pollard, a civilian analyst for the Navy who was sentenced to life in prison in 1985 for spying on behalf of Israel. There is no question that the charges against Mr. Rosen and Mr. Weissman are vastly different than the actions of Mr. Pollard, who knowingly acted as a spy by stealing sensitive documents and passing them covertly to Israeli agents.

The emotional resonance of his case continues, however, because it directly raised the notion of dual loyalty and because his supporters think he has been denied parole to satisfy a national security community that was deeply angered over Israel's spying on the United States.

Avi Beker, who teaches what he calls "Jewish diplomacy" at the University of Tel Aviv and Georgetown University, said that while the two cases are greatly different, "they evoke a parallel psychological effect" both among American Jews who have an enduring anxiety about the dual loyalty charge and those who are suspicious of the Israel lobby.

Mr. Rosen and Mr. Weissman each face one charge of conspiracy to communicate national defense information, and Mr. Rosen faces an additional charge of aiding and abetting the conspiracy.

Justice Department officials would not discuss the case. But at the time of the indictment in 2005, Paul J. McNulty, then the chief prosecutor in the Eastern District of Virginia, said, "Those not authorized to receive classified information must resist the temptation to acquire it, no matter what their motivation may be."

According to the indictment, the defendants received sensitive information from at least three government sources that was passed on to journalists and Israeli officials. One of the sources was Lawrence A. Franklin, a Pentagon analyst who has pleaded guilty to passing on sensitive information to a journalist and an Israeli diplomat. Mr. Franklin has been sentenced to more than 12 years in prison.

After Mr. Franklin was arrested in 2004, he became a cooperating witness for the government and, while wearing a wire, met with Mr. Weissman and told him that Iran had learned that Israeli agents were in northern Iraq. Mr. Weissman, according to the indictment, told Mr. Rosen, and they both relayed that

information to an Israeli diplomat and intelligence officer and an unnamed Washington Post reporter later identified as Glenn Kessler.

The other two sources of information received by Mr. Rosen and Mr. Weissman are identified in the indictment only as Government Official-1 and Government Official-2. Kenneth Pollack, who was the National Security Council specialist on the Persian Gulf, said in an interview that he thought he was Government Official-1 because on Dec. 12, 2000, he had had lunch with Mr. Rosen and Mr. Weissman.

Mr. Pollack, who is no longer with the government, said that he told government investigators, "I never revealed any classified information to Rosen and Weissman, and I never revealed any information that would be harmful to the security or interests of the United States."

The indictment also charges that Mr. Rosen received information in January 2002 from Government Official-2, who has been identified by people involved in the case as David M. Satterfield, who has since been promoted to the post of the State Department's senior adviser on Iraq. A spokesman for Mr. Satterfield would not comment.

Mr. Lowell, the defense lawyer, said there had been no explanation as to why neither Mr. Pollack nor Mr. Satterfield seemed to be in any legal jeopardy for imparting information to Mr. Rosen and Mr. Weissman that became part of the charges against them when they passed that information on to others.

Aipac, which spends nearly \$2 million annually in lobbying, according to public filings, has worked to distance itself from the defendants.

Aipac dismissed them in early 2004 after federal prosecutors in Virginia played part of surreptitiously recorded conversations for Nathan Lewin, a veteran Washington lawyer representing Aipac. The tapes were of conversations in which Mr. Rosen and Mr. Weissman passed on information about the Middle East they had received from government officials to Mr. Kessler at The Washington Post.

Mr. Lewin, who has had a long history as a trusted counsel for various Jewish organizations, traveled back to Aipac's headquarters near Capitol Hill from Alexandria that day and advised the group to fire the men.

The Aipac spokesman on the Rosen-Weissman matter, Patrick Dorton, said at the time that the two men were dismissed because their behavior "did not comport with standards that Aipac expects of its employees." He said recently that Aipac still held that view of their behavior.

Mr. Lewin would not discuss what he heard that day. But others familiar with the case said the defendants' boastful tone, which may have been used to suggest that their knowledge reflected their great influence within the administration, made the conversations potentially embarrassing.

This article has been revised to reflect the following correction:

Correction: March 6, 2008

An article on Monday about the impending trial of two former senior analysts for the American Israel Public Affairs Committee, or Aipac, on charges that they violated the Espionage Act, referred incorrectly to Aipac's work. The organization, a pro-Israel lobby, works in the United States to advance Israel's interests. It does not work directly for the state of Israel or its government.

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

- - - - - x
 :
 STEVEN J. ROSEN, :
 :
 Plaintiff, :
 :
 : Civil Action No.
 v. : 09-125.6
 : Calendar 12
 AMERICAN ISRAEL PUBLIC :
 AFFAIRS COMMITTEE, INC., :
 Et al., :
 :
 Defendants. :
 :
 - - - - - x

Washington, D.C.

Thursday, October 7, 2010

Deposition of

HOWARD KOHR

a witness of lawful age, taken on behalf of the
 Plaintiff in the above-mentioned action, before
 Jon G. Hundley, Notary Public in and for the District
 of Columbia, in the offices of Swick & Shapiro,
 Suite 1290, 1225 Eye Street, NW, commencing at
 10:01 a.m.

Diversified Reporting Services, Inc.
 (202) 467-9200

1 Q You never sought to get classified
2 information?

3 A That is correct.

4 Q Okay. Did you get classified information?

5 A Did I get classified --

6 Q Yes.

7 A -- information here? To my knowledge, no.

8 Q At no time?

9 A At no time.

10 Q During -- we're talking the period
11 '9- -- sorry -- '87 to '91.

12 A '87 till today.

13 Q So at no time have you received information
14 that has been classified as secret, top secret, that
15 sort of classification?

16 MR. McCALLY: Now that's a different question,
17 actually. You're saying designated United States
18 secret or top secret?

19 MR. SHAPIRO: Yes. Designated -- classified
20 by the United States Government.

21 THE WITNESS: That is correct.

22 BY MR. SHAPIRO:

1 Q Okay. And your testimony is to this day
2 you've not received that, --

3 A That is --

4 Q -- as best as you know?

5 A That is correct.

6 Q Okay. Has anybody in AIPAC received
7 classified information, to the best of your knowledge?
8 Again, U.S. Government --

9 MR. McCALLY: U.S. classified?

10 MR. SHAPIRO: U.S. Government, classified by
11 the U.S. Government.

12 THE WITNESS: To the best of my knowledge, no.

13 BY MR. SHAPIRO:

14 Q Okay. Have you heard of anybody receiving
15 classified information?

16 A Only what I've heard about Steve Rosen and
17 Keith Weissman.

18 Q That's the only time you've heard --

19 A That is correct.

20 Q -- of anybody receiving classified
21 information --

22 A That is correct.

1 Q -- in the whole time that you've been at
2 AIPAC?

3 A In the time I've been at AIPAC.

4 Q Okay.

5 MR. McCALLY: Let him ask the question and
6 then take a pause and then you can answer. Otherwise
7 the reporter has people talking over each other.

8 THE WITNESS: Okay.

9 BY MR. SHAPIRO:

10 Q And what did you hear about Steve Rosen and
11 Keith Weissman receiving classified information?

12 MR. McCALLY: To the extent you have knowledge
13 that is outside attorney-client privilege, in other
14 words, meetings with -- with your attorneys during that
15 time, don't discuss what your attorneys told you, but
16 knowledge that you have outside of that, such as
17 reading the Indictment --

18 THE WITNESS: Right. Just what I've read in
19 the Indictment or the Washingtonian Magazine.

20 BY MR. SHAPIRO:

21 Q You didn't talk to Steve Rosen and Keith
22 Weissman?

1 Q What were they?

2 A Well, it started with conduct that we learned
3 was not appropriate or to the standards of AIPAC, and
4 it was a series of things, including disregard of
5 counsel's advice to immediately come to the office
6 immediately after learning about the FBI indictment.

7 It was lack of total candor with myself and
8 others about what transpired, about Larry Franklin, his
9 importance, the nature of the relationship between the
10 two of them, inappropriate materials being found on his
11 computer.

12 Q What inappropriate materials?

13 A Pornographic materials on his computer, and on
14 advice of counsel here, as well, about the experience
15 of Abbe Lowell and Nat Lewin that they experienced with
16 the Government and their recommendations, as well,
17 based on what they experienced, their recommendation of
18 termination.

19 Q Abbe Lowell recommended termination?

20 A No, no. Nat Lewin and Richard Cullen, but Nat
21 Lewin in particular, but it was a combination of all
22 these things, not a single act in and of itself.

1 Q Were all these things presented to the Board
2 of Directors?

3 A Except --

4 MR. McCALLY: Wait, wait, wait. In terms if
5 what was presented was presented with counsel, then
6 you're not permitted to go into it. I would advise you
7 not to answer that question.

8 THE WITNESS: That was done with counsel.

9 MR. SHAPIRO: Well, I'm sorry, but a member of
10 the Board has already answered that question and in a
11 deposition. So I think if there was any -- if there
12 was any privilege, and I doubt there's any privilege to
13 this, it's been -- it's been waived.

14 MR. McCALLY: Well, we're asserting the
15 privilege.

16 BY MR. SHAPIRO:

17 Q So you're saying it's all these things
18 were -- were placed before the Board?

19 MR. McCALLY: You asked, I allowed him to
20 answer the question, the reasons as to what was given
21 to the Board with attorneys present. I would advise
22 you not to answer that question. If communications

1 were made without counsel present or involved, then
2 you're permitted to answer.

3 THE WITNESS: Communications were with
4 counsel.

5 BY MR. SHAPIRO:

6 Q So let me make sure I have the list complete.
7 It was conduct not appropriate for AIPAC employees?

8 A Of meeting the standards of AIPAC employees.

9 Q And that included disregarding counsel's
10 advice to come immediately to the office. That would
11 be on the 27th of August?

12 A Correct.

13 Q And who'd be that counsel?

14 A Phil Friedman.

15 Q I see. And lack of candor to you about what
16 happened on the 27th of August?

17 A No. Lack of candor -- well, mostly lack of
18 candor regarding the nature of his relationship with
19 Larry Franklin.

20 Q And how -- how -- what -- what did he say that
21 was not candid to you? How was he not candid to you?
22 You said to you and others. How -- how was he not

1 candid to you?

2 A Well, again, that's --

3 MR. McCALLY: That with counsel?

4 THE WITNESS: Yes.

5 BY MR. SHAPIRO:

6 Q Well, how was he not candid?

7 A Well, again, --

8 Q Talking about what my client said that was not
9 candid. What was not candid?

10 MR. McCALLY: That he learned --

11 HE WITNESS: What I learned --

12 MR. McCALLY: Go ahead. If you learned -- if
13 you have independent knowledge of --

14 HE WITNESS: No independent knowledge.

15 MR. McCALLY: Go ahead and answer.

16 HE WITNESS: I learned from counsel.

17 BY MR. SHAPIRO:

18 Q Well, when did he make these non-candid
19 disclosures to you? When did he say something that
20 wasn't candid, fully candid?

21 A Well, through the entire period of time to
22 counsel.

1 MR. McCALLY: You can -- you can say --

2 BY MR. SHAPIRO:

3 Q I'm talking about to you.

4 MR. McCALLY: You can say the time period.

5 BY MR. SHAPIRO:

6 Q You said to me and others, he said -- he was
7 not candid to me and to others. I'm asking you not
8 candid to you.

9 A The -- well, the -- the conversation regarding
10 me is that this is -- the statement, I believe, that
11 this was a kook, regarding Franklin, he said to me.

12 Q I'm sorry. I didn't -- I didn't even hear
13 what you said. What did you say?

14 A He said -- the description of Larry Franklin
15 as being a kook, a nobody, an insignificant figure.

16 Q That was not candid?

17 A I don't believe that that was candid.

18 Q When did he make that --

19 A In the -- in the early days, even with -- with
20 counsel and without counsel.

21 Q Let's talk about without counsel. Was it on
22 or before August 27th?

1 A It was on or after August 27th.

2 Q So it wasn't before August 27th?

3 A Correct.

4 Q Okay. And the non-candid statement was that
5 Larry Franklin was a kook and a nobody?

6 A Correct.

7 Q All right. And did both Keith Weissman
8 and -- and Steve Rosen make that statement to you?

9 A I don't recall if it was Keith or not.

10 Q Okay. Did Keith Weissman have porn on his
11 computer?

12 A To the best of my knowledge, no.

13 Q Did Keith Weissman disregard counsel --

14 MR. McCALLY: Objection.

15 BY MR. SHAPIRO:

16 Q -- on the 27th --

17 MR. McCALLY: Why is this -- this -- I'm
18 objecting as to relevance about Mr. Weissman.

19 MR. SHAPIRO: Your objection is noted.

20 MR. McCALLY: This has nothing to do with this
21 case.

22 MR. SHAPIRO: I don't think it has nothing to

1 do but be that as it may.

2 BY MR. SHAPIRO:

3 Q Answer the question.

4 A No. To the best of my knowledge, no.

5 Q Did Keith Weissman make statements to you that
6 lacked candor?

7 A Again, some of this gets into counsel.

8 Q I'm talking about made to you. I'm not asking
9 about counsel.

10 MR. McCALLY: If you have individual knowledge
11 about Mr. Weissman outside what the attorneys told
12 you, --

13 HE WITNESS: The answer is no. I mean, I
14 don't have individual information outside of what I
15 learned from counsel.

16 BY MR. SHAPIRO:

17 Q Did Mr. Rosen make any other statement to you
18 that lacked candor, other than that Larry Franklin was
19 a kook and a nobody?

20 MR. McCALLY: To him personally, outside the
21 presence of counsel?

22 MR. SHAPIRO: He told me that -- right.

1 MR. McCALLY: You said others. So I'm making
2 it clear that he can answer the question, that this is
3 directed at him talking to you, not what you --

4 HE WITNESS: No.

5 MR. McCALLY: -- got from counsel.

6 BY MR. SHAPIRO:

7 Q So that was the only -- that was the only --

8 A No. But -- and there was also the omission of
9 the conversation that took place with the FBI that was
10 taking place even prior. That was failed to be
11 mentioned to us, as well.

12 Q What conversation with the FBI was failed to
13 be mentioned to you?

14 A The FBI conversation looking for security
15 clearance questions about Mr. Franklin was not revealed
16 either.

17 Q And when did he fail to reveal those?

18 A When they occurred.

19 Q And when was that, as you understand it?

20 A Some time in the previous year, 2004-2003,
21 some time period.

22 Q How many times have -- has Mr. -- has Mr.

1 BY MR. SHAPIRO:

2 Q Have you now told me all of the reasons why
3 Mr. Rosen and Mr. Weissman were fired?

4 MR. McCALLY: I'm going -- again, same
5 objection as before. We were in this about a half hour
6 ago when you interrupted his list.

7 To the extent you remember anything else as
8 you sit here that you didn't cover, feel free.

9 THE WITNESS: Yeah. No. I think the list
10 that I mentioned earlier covers the basic reason. I
11 think it's also important to note for the record that
12 all employees at AIPAC are employees at will and
13 therefore they're -- any employee is subject to
14 termination, either at the discretion of the executive
15 director, without cause, and I think that's just an
16 important background piece, as well.

17 So, yes, the list I provided was -- was the
18 list, the best I remember the conversations at the
19 time.

20 BY MR. SHAPIRO:

21 Q What document was it that Mr. Rosen received
22 from Larry Franklin? You told me that he received

1 Q Sir?

2 A That's not accurate.

3 Q You didn't authorize a check to be cut for Mr.
4 Rosen for \$7,000?

5 MR. McCALLY: That's not the question you
6 asked, counsel.

7 BY MR. SHAPIRO:

8 Q Sir?

9 A Which question am I answering now?

10 Q Did you not --

11 A The first one or the second one?

12 Q Did you not authorize Mr. Edison to cut a
13 check to Mr. Rosen for \$7,000?

14 A Yes, I did but not for a bonus.

15 Q What was that check for?

16 A That was to help him out with paying his
17 mortgage and the financial difficulties that he was
18 having. He came to me with great distress that he
19 wasn't able to make payments and he was falling behind.
20 He didn't know how he was going to get out of this here
21 and even in advance of performance review, having
22 any -- nothing to do with performance here, just as a

1 decision here, as a longstanding employee to try to
2 help him out in direct financial straits, we decided to
3 go ahead and cut a check, but it had nothing to do with
4 performance. It had nothing to do with bonus.

5 Q Was it before or after he was on involuntary
6 administrative leave?

7 A I don't recall the sequence.

8 MR. SHAPIRO: This will be 6.

9 (Kohr Deposition Exhibit No. 6
10 was marked for
11 identification.)

12 MR. McCALLY: I'm going to object to the
13 exhibit. This is not an accurate copy of the check.
14 There has been extra writing on it in the bottom
15 right-hand corner. I don't know whose it is. I assume
16 it's Mr. Rosen's.

17 BY MR. SHAPIRO:

18 Q I'm showing you what has been marked as
19 Exhibit Number 6, a check for \$7,000, at least the top
20 part of it is a check for \$7,000 drawn on AIPAC's
21 account at SunTrust and dated January 31st, 2005. Do
22 you see that?

Nathan Lewin
nat@lewinlewin.com

Alyza D. Lewin
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(202) 828-1000 phone
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www.lewinlewin.com

March 21, 2005

Mr. Howard Kohr
Executive Director
American Israel Public Affairs Committee "AIPAC"
440 First Street, N.W., Suite 600
Washington, DC 20001

Re: *Department of Justice Investigation*

Dear Mr. Kohr:

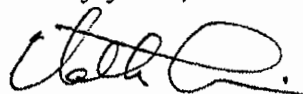
On the basis of information available to the American Israel Public Affairs Committee since August 27, 2004, I, in my capacity as outside counsel to AIPAC, have heretofore recommended to AIPAC that it retain Messrs. Rosen and Weissman as employees, that it participate in a joint defense agreement with them, and that it undertake to pay for their legal defense. Recently, as the result of representations made by the Office of the United States Attorney, I recommended that they be placed on leave. This was done with their concurrence.

We were aware that the investigation related largely, albeit not entirely, to two telephone conversations Messrs. Rosen and Weissman had on July 21, 2004, during which certain information told to Mr. Weissman earlier on that day was disclosed. Messrs. Rosen and Weissman confirmed the existence of these conversations in discussions they and their counsel had with me.

Additional information that I am, by law, not at liberty to disclose came to my attention on March 15, 2005. Because I am now satisfied from evidence regarding these conversations that, regardless of whether any criminal law was violated, Messrs. Rosen and Weissman engaged in activity that AIPAC cannot condone, I must now recommend that AIPAC terminate the employment of Messrs. Rosen and Weissman and end the joint defense agreement with their counsel.

Since I believe that, notwithstanding this new information, Messrs. Rosen and Weissman were not acting for any personal profit that conflicted with the scope of their employment, it is my opinion that it would be appropriate for AIPAC to continue to pay for their legal defense.

Sincerely yours,




Nathan Lewin



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Rosen claims AIPAC made promises in spy case

Steve Rosen is flashing a new weapon in his defamation suit against his former employer, the American Israel Public Affairs Committee, the powerful lobbying group usually referred to as [AIPAC](#).

Rosen, a central figure in the Israeli espionage scandal that shook official Washington a few years ago, made available to SpyTalk an e-mail that he said shows AIPAC, which feared a widening federal investigation into its ties to Israel, signaled it would "do right by" him down the road, even after they had fired him with public denunciations of his conduct.

AIPAC had fired Rosen, its longtime foreign affairs chief, and [Keith Weissman](#), its Iran analyst, in March 2005, after they were implicated in the [FBI's](#) investigation of alleged Israeli espionage, saying their conduct did not "reflect AIPAC standards." The two were accused of passing along classified information not only to Israel but to news outlets including The Washington Post.

The [Justice Department](#) would eventually charge the two under espionage statutes, alleging they used "their contacts within the [U.S. government](#) and elsewhere to gather sensitive U.S. government information, including [classified information](#) relating to the national defense, for subsequent unlawful communication, delivery and transmission to persons not entitled to receive it."

Reports were that the FBI was broadening its investigation into AIPAC-Israel ties, with more indictments to come. In their defense, Rosen and Weissman were preparing to subpoena top administration officials, including Secretary of State Condoleezza Rice, to make their case that the United States regularly used AIPAC to send back-channel communications to Israel. Last year, the charges were dropped.

Rosen says AIPAC fired him after the FBI played "a few minutes of highly edited excerpts" from surveillance tapes "to make me look very sinister," portraying him as a secret agent rather than a lobbyist who routinely gathers inside information from officials and tries to influence policy.

"They fired me after they heard the FBI threatening that their investigation could be broadened at AIPAC," Rosen maintained in a telephone interview.

"I was sacrificed like Jonah to save the ship and they were going to make things right" later on, he said.

In the e-mail, dated 8:08 a.m. on Dec. 15, 2007, attorney Abbe Lowell briefed Rosen, then his client, on a meeting he had had with AIPAC officials, including general counsel Philip Friedman.

"Spent most of the time bringing them up to date and explaining the case and ... how they got snookered" by the FBI, Lowell wrote to Rosen.

He continued:

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EXHIBIT

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"Phil reiterated that 'when this is all over we will do right by Steve' but said that nothing can be done now as ... we cannot have a situation where on the eve of trial after 3 years all of a sudden AIPAC is paying off Steve not to say things or to say things. He is right. Will discuss."

Lowell, citing attorney-client privilege, declined to discuss the e-mail.

AIPAC counsel Friedman referred questions to Patrick Dorton, the organization's outside public relations adviser.

"This is Steve Rosen's lawyer's account of a conversation," Dorton said. He added: "The alleged assertion is taken out of the context of a broader demand for money by Rosen and his counsel, which AIPAC was unwilling to pay."

"If our counsel made such assertions," Dorton continued, "they were offered as a personal opinion and did not reflect AIPAC's position. In fact, no payment or benefit was promised by AIPAC and no payment or benefit was ever conveyed, which is why AIPAC is now defending itself against Mr. Rosen's merit-less defamation claim."

John W. Dozier, Jr., a libel lawyer in Virginia, said the reference to "paying off Steve" was "too nebulous" to be construed as illegal or sinister. When organizations face an unlawful termination suit by a fired employee, for example, he said, they commonly contest severance packages.

"It would make total sense," he said -- emphasizing that he didn't know the facts of the matter -- whether Friedman's alleged remark, relayed by Lowell, was referring to negotiations over an employment contract or severance package.

But Rosen says he had never had an employment contract during his 22 years at AIPAC, and had received six months' severance pay, worth \$144,000, in May 2005, seven months before the "do-right-by-Steve" quote cited by Lowell.

"There were no remaining claims that had any legal enforceability against AIPAC," Rosen said.

But, he added, "There is no question I was trying to get them to pay me. I was living hand-to-mouth."

On March 2, 2009, just as the D.C. statute of limitations of defamation claims was running out, Rosen filed his defamation suit against AIPAC and its officials. Two months later, Justice Department officials would drop all charges against Rosen and Weissman, saying it was unlikely they could win.

"I thought they should settle with me," Rosen said of AIPAC. "I was abandoned after they sent me out to do something for them that was not illegal."

As part of the discovery process in the defamation suit, he says, he has provided AIPAC's attorneys with "about 180" internal documents showing that officials routinely gathered inside information from government officials about U.S. policy in the Middle East.

Moreover it was common, he and others have said, for U.S. officials to enlist AIPAC to drum up support for policies they couldn't sell themselves.

"It's not done in service of Israel," he says, "but the U.S.-Israel relationship, which we would argue serves us both."

Last October Judge Jeannette J. Clark dismissed all of Rosen's complaints against individual AIPAC directors, leaving in place his right to a jury trial on whether the organization slandered him by saying his conduct did not "reflect AIPAC standards."

A mediation attempt is scheduled for August.

By Jeff Stein | May 11, 2010; 12:21 PM ET

Categories: [Intelligence](#), [Justice/FBI](#)

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Comments

For good or bad it does, AIPAC is 1st and foremost a foreign lobby group. It is time to remove AIPAC's unique exemption from lobby laws and treat them just like any other DC firm whose firm has 1st obligation to it's foreign client. And register all it's staff as foreign lobbyists.

It is disingenuous to say they do not represent Israel but the "US-Israel" relationship, instead. The same claim could be made by the Saudi lobby, or a trade group paid in part by Chinese expats here to further the US-China relationship in manufacturing.

Posted by: [ChrisFord1](#) | May 11, 2010 1:07 PM | [Report abuse](#)

Why is the FBI not investigating those who gave a lobbying group representing the interest of a foreign government sensitive information? Why is any lobbying group except for a vetted contractor entitled to sensitive information I as citizen would not have access to? Why are the people who get thrown under the bus being investigated? Keep your eye on the ball FBI.

Posted by: [J1107](#) | May 11, 2010 1:47 PM | [Report abuse](#)

This is only 1/2 the actual story. There were 3 people involved. One was an actual AIPAC spy who is now in prison (either here or in Israel). His job was to sit on Paul Wolfowitz's knee (or just outside his office door), while Paul gathered all the bad intel on Saddam that had slipped under his door during the previous night. Paul then forwarded all the bad intel thru Rummy and onto Bush's desk. We never did find out who slipped it under Paul's door, no one seemed to want to know either.

Posted by: [wmboyd](#) | May 11, 2010 2:03 PM | [Report abuse](#)

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SUPERIOR COURT
FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

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:
STEVEN J. ROSEN, :
:
Plaintiff, :
:
v. : Civil Action No.
:
AMERICAN ISRAEL PUBLIC AFFAIRS : 09-1256
COMMITTEE, INC., et al., : Calendar 12
:
Defendants. : Judge Eric Christian
:
----- X

Washington, D.C.
Thursday, October 28, 2010

Deposition of

NATHAN LEWIN

a witness of lawful age, taken on behalf of the
plaintiff in the above-entitled action, before Jon
Hundley, Notary Public in and for the District of
Columbia, in the offices of Swick & Shapiro, P.C., 1225
Eye Street, N.W., Suite 1290, commencing at 3:10 p.m.
Diversified Reporting Services, Inc.
(202) 467-9200

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APPEARANCES:

On Behalf of the Plaintiff:

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(202) 842-0300

On Behalf of Defendant AIPAC:

ALLIE M. WRIGHT, ESQ.



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Carr Maloney, P.C.
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On behalf of the Witness:

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PHILIP FRIEDMAN, ESQ.

0003

C O N T E N T S

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EXAMINATION BY:	PAGE
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LEWIN DEPOSITION EXHIBITS:	
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0004

P R O C E E D I N G S

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Whereupon,
NATHAN LEWIN
was called as a witness and, having been first
duly sworn, was examined and testified as follows:
THE REPORTER: State your name.
THE WITNESS: My name is Nathan, N-a-t-h-a-n,

8 Lewin, L-e-w-i-n.

9

EXAMINATION

10 BY MR. SHAPIRO:

11 Q Mr. Lewin, where do you live?

12 A I live in Potomac, Maryland.

13 Q Your address?

14 A 11723 Gainsborough, G-a-i-n-s-b-o-r-o-u-g-h,
15 Road in Potomac 20854.

16 Q Mr. Lewin, you're an attorney?

17 A Correct.

18 Q And are you in the private practice of law?

19 A Yes, I am.

20 Q And what is the name of your law firm?

21 A The name of the law firm is Lewin &

22 Lewin, LLP.

0005

1 Q And how long have you been engaged at Lewin &
2 Lewin?

3 A Since 2001.

4 Q Prior to that, were you engaged in the private
5 practice of law?

6 A Yes, I was.

7 Q And in what --

8 A The name of the firm was Miller, Casidy,
9 C-a-s-i-d-y, Larroca, L-a-r-r-o-c-a, and Lewin.

10 Q And how long were you with them?

11 A I was with them since 1969.

12 Q And before that?

13 A Before that I was with the Department of
14 Justice. I was a deputy assistant attorney general in
15 the Civil Rights Division from 1968 to 1969. I was a
16 deputy administrator at the Bureau of Security and
17 Consular Affairs at the Department of State from 1967
18 to 1968.

19 I was an assistant to the Solicitor General of
20 the United States from 1963 to 1967. I was a special
21 assistant to the assistant attorney general in the
22 Criminal Division from 1962 to 1963. I was a law clerk

0006

1 to Justice John M. Harlan of the Supreme Court of the
2 United States from 1961 to 1962. And I was a law clerk
3 to Chief Judge J. Edward Lumbard, L-u-m-b-a-r-d, of the
4 U.S. Court of Appeals for the Second Circuit from 1960
5 to 1961.

6 Q You went to law school before that?

7 A Yes, I did.

8 Q Where did you go to law school?

9 A I went to the Harvard Law School, and I
10 graduated in 1960.

11 Q And college? Where did you go to school?

12 A Yeshiva College. Graduated in 1957.

13 Q Now, you represent now AIPAC? Are you still
14 representing AIPAC?

15 A Not actively, no. I mean, I'm still counsel

16 and I'm occasionally consulted on matters that have to
17 do with the particular investigation that I was
18 initially retained for.

19 Q And which investigation was that?

20 A That was the investigation that began on
21 August, I guess, of 2004 when the Department of Justice
22 initiated an investigation, which they began with a

0007

1 search warrant, and subsequently over the years I guess
2 resulted in an indictment that was subsequently
3 dismissed.

4 Q Okay. This was -- you were retained by AIPAC?

5 A I was retained by AIPAC.

6 Q And when were you retained?

7 A On the day of that search and the initial
8 inquiry that was made of Mr. Rosen. I guess it -- I
9 forget the exact date. Some time in August of 2004.

10 Q When they searched AIPAC's office?

11 A They searched Mr. Rosen's office, I
12 understood, at AIPAC on that day.

13 Q And what were you retained for?

14 A I was retained to represent AIPAC in
15 connection with that criminal investigation, and do
16 what I could as an attorney on behalf of the
17 organization.

18 Q Was AIPAC a target of the investigation?

19 A I was never informed that AIPAC was a target
20 of the investigation.

21 Q You asked?

22 A I did ask at some point what the status was,

0008

1 and I was told that AIPAC was not a target of the
2 investigation.

3 Q And when did you ask?

4 A It must have been at some point. I don't
5 recall the exact time, but early in the investigation
6 when I met with the assistant U.S. Attorney.

7 Q When was the first time you met with the
8 assistant?

9 A I really don't recall the date. It was
10 probably shortly after that initial -- I was retained,
11 and the initial search that was made.

12 Q So you asked at the first meeting with the
13 assistant U.S. Attorney?

14 A I think -- again, I can't recall the exact
15 conversation. But I'm pretty sure I would have asked
16 at that point what AIPAC status was. Correct.

17 Q And you were told that they were not a target?

18 A I was told they were not a target.

19 Q And who was the assistant U.S. Attorney you
20 met with?

21 A The name that I recall -- I don't recall all
22 the names at this point -- the name that I recall is

0009

1 Kevin DiGregory, D-i-G-r-e-g-o-r-y. I guess that was
2 the person I principally dealt with with regard to the
3 case.

4 Q There was a fellow by the name of McNulty, I
5 understand, also. Did you --

6 A He was the U.S. Attorney. At some point we
7 met with Mr. McNulty, who was the U.S. Attorney. But
8 the original meetings were with Mr. DiGregory, and I
9 think at some point he was joined by a fellow who was a
10 redhead from the Department of Justice. I don't even
11 remember his name.

12 Q And it was Mr. DiGregory, you believe, who
13 told you that AIPAC was not --

14 A Correct.

15 Q And that's -- the first time you met with him,
16 you asked, as best as you recall?

17 A As best as I recall.

18 Q And they never told you that AIPAC was? That
19 status never changed?

20 A That status, to my knowledge, never changed.

21 Q Now, I was wondering about -- so -- all right.
22 So they retained Lewin & Lewin, AIPAC did?

0010

1 A Yes. They retained Lewin & Lewin.

2 Q Lewin & Lewin. And how large is Lewin &
3 Lewin, or was it then?

4 A Lewin & Lewin has always been, from the time
5 that it was instituted, a two-person law firm, which is
6 my daughter and myself.

7 Q Lewin and Lewin.

8 A Correct.

9 Q Okay. And, now, do you know a Patrick Dorton?

10 A Yes. I know Patrick Dorton.

11 Q And who is he?

12 A He is an individual who is involved in, I
13 guess, media, communications. I don't recall the name
14 of his firm, but he is somebody whom I have known
15 largely through the AIPAC representation over the
16 years.

17 Q Okay. Is he retained by you?

18 A Yes.

19 Q When did you retain him?

20 A I don't remember the exact date, but when
21 there was some communication about or some discussion
22 about having someone who would deal with the media in

0011

1 connection with this investigation. It was recommended
2 that Mr. Dorton be that individual, and we had a
3 discussion and decided that the best course would be
4 for Mr. Dorton to be retained by our law firm.

5 Q Okay. Well, who recommended Mr. Dorton?

6 A I don't recall who, which individual,
7 recommended him.

8 Q Somebody at AIPAC recommend him?

9 A I suppose it was somebody at AIPAC, but I
10 don't -- I don't recall who recommended him.

11 Q Did you know Mr. Dorton before you retained
12 him?

13 A Did I know him before we retained him? I may
14 have known him for a short period of time before we
15 retained him, but I think I first got to know him as a
16 result of this particular matter.

17 Q Okay. So someone at AIPAC, you believe,
18 recommended that Dorton be brought on to be the media
19 spokesman?

20 MS. WRIGHT: Objection. That's not what he
21 said.

22 BY MR. SHAPIRO:

0012

1 Q Well, I'm asking.

2 A Pardon?

3 Q Somebody at AIPAC recommended that you needed
4 a spokesperson, that they needed a spokesperson?

5 A Well, I mean, to the extent you're asking me
6 about discussions that went on between myself and
7 people at AIPAC, I have to assert the attorney-client
8 privilege unless AIPAC waives it. But I can --

9 Q Well, it's not legal advice that you're after.
10 We're talking about a media consultant.

11 A Well, it is -- I'm sorry.

12 Q That's business advice. No?

13 A No, no. I don't think so. I think it was in
14 connection with a legal proceeding, and in that regard,
15 we had legal discussions about how best to handle it
16 because there was a media aspect to it.

17 And it was determined -- it was my judgment,
18 as a result of this discussion -- that the wise thing
19 to do was to have a media representative retained by
20 the law firm so that we would consult with him, and
21 whatever statements would be made to the media would be
22 made as a result of discussions with the law firm, with

0013

1 the lawyers.

2 Q And he would make the -- he would make the
3 representations to the media?

4 A He would have the relations with the media,
5 although he was in consultation with us so that it
6 would be what the lawyers said would be appropriate to
7 have said to the media.

8 Q I see. So he didn't have direct contact with
9 AIPAC; he only had contact with the lawyers?

10 A I don't think that's a fair statement. He was
11 part of the defense, the attorney team with regard to
12 the representation of AIPAC in this case. So he had
13 access to both the lawyers and to AIPAC, just as
14 anybody else who was part of our team -- I mean, my
15 daughter, our office manager, or anybody else who spoke
16 with AIPAC people as well as speaking with the lawyers.

17 Q Yes. I understand what you're saying. But
18 AIPAC was never a defendant, never a target. There was
19 no case against AIPAC. There was no defense. It
20 wasn't --

21 A AIPAC was not a target --

22 Q Right.

0014

1 A -- but certainly the investigation very much
2 affected AIPAC. In that regard, I was being asked to
3 represent AIPAC's interests with regard to the
4 investigation. Whether it was being prosecuted,
5 whether it was a target, what might happen to it in the
6 future, that was all matters that required the
7 assistance of an attorney.

8 Q Yes. I got it. I'm not asking you about your
9 assistance. I'm asking you about Mr. Dorton.

10 A Right.

11 Q He didn't represent -- he's not a member of
12 the bar. He didn't represent AIPAC in the courts, and
13 he didn't give them legal advice. He was a --

14 A As far as --

15 Q What was his role? He was a mouthpiece.

16 A No. He was --

17 Q And an advisor on media affairs.

18 A He was an advisor on media, just as, in my
19 practice over the years, I have hired experts in
20 various fields, whether they be psychologists,
21 psychiatrists, statisticians, different people who are
22 not lawyers but are hired by the attorneys. And the

0015

1 attorneys deal with them, and they have access to the
2 clients for whatever activities they are engaged in,
3 but they are hired by the lawyers.

4 Q And his job was to have relations with the
5 media and to be a spokesperson for AIPAC on this
6 investigation?

7 A Through the -- through the law firm. Correct.

8 Q So everything he said you authorized?

9 A I think pretty much everything he said I
10 authorized.

11 Q Was there anything that he said to the media
12 that you did not authorize?

13 A I can't think of anything offhand.

14 Q And how would this authorization be given? He
15 would tell you what he prepared, say, or you would tell
16 him what to say?

17 A Both ways. He would tell me orally. He would
18 tell me in writing. I would tell him orally, or I
19 would tell him in writing. Either way.

20 Q And everything he said, either by your
21 assenting to him or your instructing him, was
22 authorized by you?

0016

1 A Correct.

2 Q Now, I wanted to show you a document.
3 MR. SHAPIRO: Let's have this marked for
4 identification.

(Lewin Deposition Exhibit 1
was marked for
identification.)

8 BY MR. SHAPIRO:

9 Q Let me show you what has been marked for
10 identification as Exhibit 1 to this deposition.

11 A Uh-huh.

12 Q Just for the record, this is document 181 in
13 production, from the plaintiff to the defendant.

14 A (Examining.)

15 Q This is your signature at the bottom?

16 A Correct.

17 Q It's a letter dated March 21, 2005 on your law
18 firm's stationery, from you to Howard Kohr, the
19 executive director of AIPAC. Is that correct?

20 A That's correct.

21 Q And it regards the Department of Justice
22 investigation. Correct?

0017

1 A It concerns the Department of Justice
2 investigation, yes.

3 Q Looking at the bottom of the first paragraph,
4 the last sentence of that paragraph says, "Recently, as
5 a result of representations made by the Office of the
6 United States Attorney, I recommended that
7 they" -- meaning Steve Rosen and Keith Weissman -- "be
8 placed on leave."

9 Do you see that?

10 A I see that.

11 Q And then it says, "This was done with their
12 concurrence."

13 Is that right? I read it correctly?

14 A That's what the -- that's what the sentences
15 say.

16 Q Is that true?

17 A I have to tell you honestly, this again is
18 some time ago. I don't recall the specific
19 representations or the specific course of conduct that
20 resulted at their being placed on leave with their
21 concurrence. But I can only assume, from the fact that
22 I recited that in a letter of March 21st to Mr. Kohr,

0018

1 that that's what happened, and nobody really
2 contradicted that. I mean, that was my recollection at
3 the time, and I have no reason to believe since then
4 that this was not true.

5 Q Didn't Keith Weissman and Steve Rosen oppose
6 being placed on leave?

7 A I don't know. No. I think so. If I say this
8 was done with their concurrence, I think there were
9 discussions with them in terms of their being placed on

10 leave prior -- this is prior to March 21, 2005 -- in
11 which they said, okay. We will be -- we agree that we
12 will be placed on leave at that point.

13 Q I see.

14 A They were not terminated. They were placed on
15 leave. I was not -- again, I have to tell you, from
16 the time this investigation began, I don't think that
17 there was a more active supporter of Mr. Rosen or Mr.
18 Weissman within the consultations at AIPAC than I.

19 And if they were -- if I recommended that they
20 be placed on leave, it was only very reluctantly done
21 at that point. But apparently it was done following
22 discussions with their counsel, who was then Mr.

0019

1 Lowell, I think, and it was agreed -- they agreed that
2 they would be placed on leave.

3 Q So you have a recollection of them agreeing?

4 A I don't have an independent recollection today
5 of their agreeing. But I have every reason to believe
6 that if I said that in a letter of March 21st, that
7 that's actually what happened as of that date.

8 Q You don't recall that Mr. Rosen made a
9 presentation opposing that to the committee of the
10 board of directors, vigorously opposing being placed on
11 leave and saying that the government is going to want
12 you to fire us; they're not going to be satisfied with
13 leave. You don't recall that?

14 A I do not recall that. I do not recall that.

15 Q Okay. But you don't recall the opposite,
16 either? You don't have a recollection of --

17 A I do not have a recollection of what the
18 circumstances were under which they were placed on
19 leave, at which I understood, as of March 21, to be
20 done with their concurrence.

21 Q I see. So what you're telling me -- I just
22 want to make sure I understand what you're saying.

0020

1 Because it says in your letter this was done with their
2 concurrence, you're saying, I wouldn't have written
3 that unless it was true.

4 And so you don't have a recollection of
5 whether it was true or not, but because you said it in
6 the letter and you see it here, you're assuming that it
7 was so?

8 A That's accurate.

9 Q Okay. Now, the next -- the next paragraph in
10 this letter says that, "We were aware that the
11 investigation related largely, albeit not entirely, to
12 two phone conversations Mr. Rosen and Mr. Weissman had
13 on July 21, 2004, during which certain information told
14 to Mr. Weissman earlier on that day was disclosed. Mr.
15 Rosen and Mr. Weissman confirmed the existence of these
16 conversations in discussions they and their counsel had
17 with me." All right?

18 Who were the conversations with?
19 A My recollection is that one of those
20 conversations was with a Washington Post reporter named
21 Glenn Kessler. I do not recall the other conversation.
22 Q Well, if I told you that the other

0021

1 conversation was with somebody from the Israeli
2 Embassy, would that help you recall?
3 A I recall vaguely that there was a conversation
4 with somebody with the Israeli Embassy.
5 Q And that would have been the other
6 conversation?

7 A It's very possible. Correct.
8 Q Okay. Who had the conversations with Mr.
9 Kessler of the Washington Post and whomever from the
10 Israeli Embassy?

11 A Mr. Rosen and Mr. Weissman.

12 Q Okay. Were they authorized to have these
13 conversations?

14 A By whom? I don't understand the question.

15 Q Well, by Howard Kohr, the executive director
16 of AIPAC?

17 A Not to my knowledge.

18 Q Okay. What was said in the conversations, as
19 you understood it from --

20 A Well, let me say initially, I mean, I had not
21 reported detail of those conversations publicly,
22 really, prior to this time because --

0022

1 Q "To this time" being the letter, or "this
2 time" being sitting here?

3 A "This time" being sitting here.

4 Q Ah, okay.

5 A Because I was invited, together with Mr.
6 Cullen, who was also representing AIPAC at the
7 time -- either AIPAC and/or Mr. Kohr at the time -- to
8 come and listen to these conversations, with a stern
9 warning that I would be violating possible criminal
10 statutes if I disclosed anything that I either heard or
11 saw in the course of those conversations because they
12 were classified and because even the circumstance -- I
13 mean, I had applied for a security classification,
14 security clearance; I had not been given a security
15 clearance by that time -- but I was told I would
16 receive a limited clearance to enable me to hear these
17 conversations.

18 I came and I heard the conversations. There
19 has been since that time a substantial amount said
20 about those conversations, including, from what I saw,
21 what Mr. Rosen himself said in his deposition.

22 On the basis of the fact that so much of it

0023

1 already has been disclosed and the case is over --

2 Q You mean the criminal case?

3 A The criminal case is over, you know, in the
4 interests of this particular litigation, I'm prepared
5 to tell you that what I heard in that conversation was
6 Mr. Rosen and Mr. Weissman speaking with Mr. Kessler
7 and telling him information that apparently had been
8 disclosed to Mr. Weissman in some prior conversation in
9 which Mr. Weissman said, with Mr. Rosen on the phone,
10 that disclosure of this information to Mr. Kessler was
11 being made so that Mr. Kessler would have a story to
12 write in the Washington Post.

13 And it was being done although the risk
14 that -- and this is again in substance because I could
15 not take notes of the conversation -- but that the risk
16 that they were undertaking was of possible criminal
17 prosecution or jail.

18 Q Mr. Weissman said that?

19 A Mr. Weissman said that, and Mr. Rosen was on
20 the phone. He interjected at various times in the
21 course of this conversation.

22 Q Okay. So Weissman said something about that

0024

1 what they were telling Kessler was -- what did he say,
2 to the best of your recollection?

3 A Well, could land them in terrible trouble,
4 possibly -- I don't recall whether he said criminal
5 punishment or jail. And nonetheless, they were telling
6 this to Mr. Kessler because they were trying to
7 persuade Mr. Kessler that this was a story worth
8 reporting.

9 Q Weissman said that the information that he had
10 been given --

11 A Correct.

12 Q -- he was telling Mr. Kessler --

13 A Correct.

14 Q -- even though it could get him in trouble,
15 terrible trouble?

16 A Yes.

17 Q Did he say criminal trouble?

18 A He may have. I don't -- again, I could not
19 take notes of that meeting. But it impressed me at the
20 time, and that was the reason that ultimately I wrote
21 this letter after substantial thought being given to
22 what I had heard, that I felt that as a result of that

0025

1 conversation -- which the government was essentially
2 disclosing to me and essentially saying that if there
3 were a trial, it would become public -- my anticipation
4 was that if that were to become public, that
5 conversation, that piece of the conversation in which
6 AIPAC employees were saying to a Washington Post
7 reporter --

8 Q Well, Weissman was saying.

9 MS. WRIGHT: Don't cut him off, sir. Let him
10 finish.

11 THE WITNESS: I'm saying AIPAC employees, both
12 on the telephone, were saying to a Washington Post
13 reporter, this is a story that you should print because
14 we've gotten it and we can be in deep trouble, whether
15 it's criminal prosecution or prison, for disclosing it
16 to you, and you should print it -- that that was
17 something which, once it became public, would be so
18 damaging to AIPAC that AIPAC could not condone and
19 defend the fact that it was continuing to employ these
20 individuals once it knew that this was the conduct in
21 which they engaged.

22 BY MR. SHAPIRO:

0026

1 Q And you found that out in this disclosure that
2 you were allowed to hear taped conversations?

3 A Correct.

4 Q The government let you hear those?

5 A Correct.

6 Q FBI phone taps?

7 A Correct.

8 Q Okay. And that would have been when? When
9 did you go over to the --

10 A Well, as the letter says, it happened on March
11 15, 2005.

12 Q So the first time that you heard that they
13 disclosed to Kessler, the Washington Post
14 reporter -- or Weissman disclosed to the Washington
15 Post reporter -- this material that they said could get
16 them in trouble, serious trouble, was when you heard
17 the intercept?

18 A That was the first that I heard that specific
19 conversation. Correct.

20 Q Well, the first time you -- well, of course it
21 was the first time you heard the conversation. But it
22 was the first time you learned that Weissman, with

0027

1 Rosen on the phone, had said that to the -- to the
2 government -- to Kessler of the Washington Post?

3 A Yes. It was the first time I had heard that.

4 Q Before that, you did know that they had spoken
5 to Kessler, or to a Washington Post reporter?

6 A I may have known that they had spoken to
7 Kessler. I did not know that they were essentially
8 trying to sell Kessler on printing this story, with the
9 representation that the story was one which they could
10 be criminally punished for having disclosed to Kessler.

11 Q Well, you didn't say that they said that they
12 could be criminally -- you said that they could get in
13 trouble, serious trouble.

14 A Well, again, I don't recall the exact words
15 because I don't -- I heard the recording once.

16 Q Did you know before you heard the recording in
17 March, March 23rd, I think, 2005 --

18 A March 15th.

19 Q March 15, 2005 -- did you know that Mr.
20 Weissman believed that he was -- that he received
21 classified information, that this information that he
22 was telling Kessler was classified?

0028

1 A No. I didn't -- I did not know that he
2 received classified information and told that to
3 Kessler. But my judgment with regard to that
4 recording -- and let me repeat it -- my judgment with
5 regard to that recording was that if and when, and at
6 that point it seemed likely, that that recording would
7 become public because it would be part of a public
8 trial of Rosen and Weissman, that when that recording
9 would become public, AIPAC would not be able to explain
10 or withstand the challenge that would be made to it
11 based on the fact that after it discovered that its
12 employees were doing this, it retained those employees
13 on its payroll.

14 Q So before March 15th when you heard this
15 recording, you did not know that Weissman and Rosen
16 disclosed classified, or what they believed to be
17 classified, or information that could get them in
18 serious trouble, to Kessler?

19 A That they knowingly disclosed that? No. I
20 don't think I knew that.

21 Q You didn't know that?

22 A Correct.

0029

1 Q You found that -- that was the important fact.
2 Right?

3 A Well, and the -- frankly, the whole context of
4 that conversation. It was quite a startling
5 conversation, I have to tell you.

6 Q What else besides what you've told us was
7 startling?

8 A Well, I'm telling you, what happened in the
9 conversation was that these two AIPAC employees were
10 trying to persuade a Washington Post reporter that they
11 had information that was so hot that he should print;
12 that they could go to jail as a result of printing it,
13 but they are disclosing it to him notwithstanding that.

14 And my feeling was, that was something that,
15 as I said in the letter, AIPAC could not condone. Much
16 as I felt that they had not committed a crime -- this
17 letter says over -- says very clearly, I do not believe
18 that they committed a crime -- but nonetheless, I think
19 that from AIPAC's perspective, AIPAC could not continue
20 to employ these individuals if that conversation would
21 become public in a public trial.

22 Q So it was -- but firing them would not keep

0030

1 the conversation from becoming public. Correct?

2 A No. But AIPAC would say, once our attorney
3 learned that that happened, we couldn't keep them. We

4 could not condone that kind of conduct.

5 Q And the "that" in "that happened" is that they
6 disclosed this to a Washington Post reporter and told
7 him that they could get in trouble, maybe criminal
8 trouble, for disclosing this?

9 A That -- frankly, that they were trying to
10 persuade a Washington Post reporter to write an article
11 over information which they knew --

12 Q Or they thought.

13 A Well, they asserted it --

14 Q Well, somebody asserted.

15 A Right. They asserted. Weissman asserted --

16 Q Weissman asserted.

17 A -- with Rosen on the phone that it would get
18 them into criminal trouble. Correct.

19 Q Or serious trouble, in any case.

20 A Serious trouble, yes.

21 Q You can't recall whether they said "criminal"?

22 A I can't recall the exact words.

0031

1 Q Did they say "classified," that it was
2 classified?

3 A I don't think they said "classified," no. My
4 recollection is the word "classified" was not used.

5 Q So your recollection, your best recollection,
6 is that they said "serious trouble"?

7 A Well, no. My best recollection is he may have
8 said "jail." He may have said "criminal." I know I
9 walked out of hearing that conversation feeling, look.
10 The government says that it is -- it believes that
11 these people knew that they were committing a crime.

12 Now I know why they think that they, these
13 people, knew that they were committing what the
14 government believed to be a crime. I didn't believe it
15 to be a crime. But nonetheless, they believed it to
16 be.

17 Q The "now you know" was you heard the
18 conversation?

19 A Correct. I heard the conversation.

20 Q And whatever Weissman said on that
21 conversation, whether it was serious trouble, criminal,
22 jail, whatever, it convinced you that Weissman, at

0032

1 least, thought it was a crime or may have believed it
2 was a crime, or that the government thought it was a
3 crime based on what Weissman said?

4 A And, frankly, given the interchange during
5 that conversation, that Rosen was also trying to sell
6 that story to Glenn Kessler.

7 Q But the information that had been gotten that
8 they were trying to -- that they were imparting, or
9 Weissman was imparting, with Rosen on the line, to Mr.
10 Kessler, that information had come from whom?

11 A I don't really recall. I don't think he said

12 who it had come from. He said, I think, that he had
13 gotten information, or that they said they had gotten
14 information about the Iranians being in Iraq, and this
15 presenting some danger to Israelis in Iraq; but
16 nonetheless, that they had gotten this information from
17 sources that they would be in deep trouble if it was
18 known that they were disclosing it.

19 Q I see. "They" being --

20 A Rosen and Weissman.

21 Q Or the source would be in deep trouble?

22 A No, no. That they would be in trouble,

0033

1 Weissman.

2 Q I see. And so what you really recall is "deep
3 trouble"?

4 A No. I recall -- I recall walking out of there
5 thinking, look. They have essentially acknowledged on
6 that tape that they knew they were
7 committing -- Weissman knew, and Rosen by his
8 participation in the conversation and his continuing to
9 try to urge Kessler to write the story -- that they
10 knew that they were engaging in conduct that the
11 government would consider criminal with regard to that.

12 Q Although you didn't consider it criminal?

13 A I did not personally consider it criminal --

14 Q And you --

15 A -- but I believed that if it turned out, as I
16 said, that this recording became public, then AIPAC
17 would not be able to answer the question, how did you
18 keep these people as employees after you knew that this
19 is what they had done?

20 Q Okay. I have you.

21 The information had to do with Iranians being
22 in Iraq. And this would have been in the summer of

0034

1 2004. And were they -- did they disclose to Kessler
2 that the Iranians were Iraq -- what part of Iraq did
3 they say that their source said?

4 A I don't recall what part.

5 Q Wasn't it in southern Iraq, and that they were
6 there to injure -- to stir up trouble for the American
7 troops?

8 A That may be.

9 Q Not Israelis?

10 A That may be.

11 Q The Israeli thing was in the other
12 conversation with the Israeli Embassy official.

13 A That may be.

14 Q This was to -- they wanted Mr. Kessler to
15 write this story because America should know that the
16 troops were in danger?

17 A Correct. Correct.

18 Q By Iranians in southern Iraq?

19 A That may be.

20 Q Is that ringing a bell with you?
21 A Yes.
22 Q Okay. And -- good. So in other words, at

0035

1 this point, your letter urging that they be terminated,
2 or advising that they be terminated -- "they" being
3 Weissman and Rosen -- was because you felt that AIPAC
4 couldn't explain publicly -- it would be public
5 relations trouble for them, big public relations
6 trouble for them, if they were continuing to employ
7 Rosen and Weissman after March 15th when you learned
8 this?

9 A Yes. What you call public relations trouble
10 is, I think, a difficulty in terms of their
11 continued -- their continued viability and success in
12 carrying out what their objectives were. In other
13 words, I think people would say, look. You've employed
14 people who were trying to sell classified information
15 to reporters.

16 Q And we're not going to deal with you any more.
17 So it would be a business -- it would be a disaster for
18 AIPAC public relations-wise?

19 A A disaster for AIPAC. Whether I would define
20 it as only public relations-wise, no, I don't think
21 it's only public relations.

22 Q Okay. So a disaster in their ability to do

0036

1 what they do?

2 A Correct.

3 Q If they continued to -- if they were seen to
4 have continued to employ Weissman and Rosen after their
5 lawyer, you, knew that Weissman and Rosen had tried to
6 sell this story -- to sell, not for money --

7 A Right.

8 Q -- but to convince --

9 A The Washington Post reporter to write this
10 story based on classified information.

11 Q Story about Americans being in harm's way
12 because Iranians were coming into southern Iraq.

13 A Correct.

14 Q Good. Now, I'd like to mark for
15 identification and show you another document.

16 (Lewin Deposition Exhibit 2
17 was marked for
18 identification.)

19 MS. WRIGHT: I'm going to object to this
20 document. On its face it clearly says, attorney-client
21 privilege, joint defense privilege, and attorney work
22 product privilege -- or attorney work product. AIPAC

0037

1 is not waiving any attorney-client privilege or
2 privileges or defenses to their work product in this
3 matter.

4 BY MR. SHAPIRO:

5 Q Let me show you what has been marked for
6 identification as Exhibit No. 2. This is document 37
7 in production from Rosen to AIPAC. It's 000200 to
8 000211 in the Bates stamp. It is an October 4, 2004
9 AIPAC inquiry background fax, revised, from Abbe Lowell
10 to the Rosen/Weissman file, with a copy to you and to
11 P. Friedman.

12 MS. WRIGHT: Before we get into any questions
13 on this document, can we just take a break?

14 MR. SHAPIRO: Sure. I just want to ask him if
15 he's seen this before. Do you want to take a break
16 before we even answer that question?

17 MS. WRIGHT: Yes.

18 MR. SHAPIRO: Good. Okay. Then we'll take a
19 break.

20 (A brief recess was taken.)

21 BY MR. SHAPIRO:

22 Q So my last question was, have you seen this

0038

1 before?

2 MS. WRIGHT: And I'm going to object to
3 attorney-client privilege.

4 THE WITNESS: I don't recall whether I've seen
5 it.

6 BY MR. SHAPIRO:

7 Q You don't recall if you've seen this before?

8 A I mean, I probably did, but, you know, I have
9 no independent recollection.

10 Q Well, there's a CC to you on the front.

11 A Yes. I'm sure it came to me. But, you know,
12 it's now -- we're talking about October 2004, and here
13 we are in October 2010. My wife claims I don't
14 remember what I did two days ago, and she's probably
15 right. How could I remember whether I got this
16 particular memo on October 4, 2004?

17 Q Well, if you look at the document, it says,
18 "This memorandum is an attempt to set out certain
19 facts" -- I'm reading from the all caps --

20 MS. WRIGHT: And I'm going to object to any
21 testimony or putting this in the record as
22 attorney-client privilege or work product.

0039

1 MR. SHAPIRO: I don't think it's your
2 privilege. I think it's Mr. Rosen's privilege.

3 MS. WRIGHT: I'm counsel for AIPAC, and I'm
4 still --

5 MR. SHAPIRO: Yes, I know, and it's written
6 by --

7 MS. WRIGHT: Why don't you let me finish
8 putting my objection on the record, sir.

9 MR. SHAPIRO: I'll be happy to. I'll be happy
10 to. I'll be happy to.

11 MS. WRIGHT: Thanks. I'm going to object
12 because I'm representing AIPAC and it's AIPAC's

13 privilege, which they're not waiving.

14 MR. SHAPIRO: Yes. It's not AIPAC's
15 privilege. This was written by Mr. Rosen and Mr.
16 Weissman's lawyer, who was separately represented from
17 AIPAC at the time. And he sent a copy to AIPAC's
18 lawyer.

19 So I don't think AIPAC has any attorney-client
20 privilege in this at all. Mr. Lowell was representing
21 Rosen and Weissman. Mr. Lewin was representing AIPAC.
22 And it was transmitted to Mr. Lewin as a copy, and it

0040

1 was written by Mr. Lowell for his file on
2 Rosen/Weissman. And we have produced it in discovery,
3 not you.

4 MS. WRIGHT: Again, regardless of whatever
5 position you want to take, I'm going to object on
6 attorney-client privilege grounds, joint defense
7 privilege grounds, and work product communication, and
8 state that AIPAC is not waiving any privileges or work
9 product with regards to this document. And I would
10 advise that Mr. Lewin not breach any privileges or
11 grounds as such as AIPAC's attorney.

12 MR. SHAPIRO: I'm not going to ask him to
13 breach anything from AIPAC's attorney.

14 BY MR. SHAPIRO:

15 Q I wonder if you could look, if you would, sir,
16 at page 4 of this document.

17 A (Examining.)

18 Q Actually, let's look at page 3. There's a
19 paragraph that has a circle around it, and it says,
20 "The third thing SR" -- and SR is Steven Rosen -- "The
21 third thing SR did was to mention it perhaps to Glenn
22 Kessler at the Washington Post. SR had lots of good

0041

1 media contacts, and part of his job is to get
2 information and to get information (sic) -- to get
3 information and to get information. He sometimes gives
4 information. SR may often be a source for Middle East
5 stories in the Post and the New York Times.

6 "There was an article that the Post did on
7 this policy dispute after SR spoke to them on June 15,
8 2003 written by Michael Dobbs. SR does not think he
9 was the source for this Dobbs story" -- "this because
10 Dobbs' story did not have the part he can recall
11 telling Kessler, i.e., that the policy was approved at
12 the deputy's level and was stuck. He also recalled the
13 article was more specific and had other things that SR
14 did not know."

15 Did you -- did you know that Steve
16 Rosen -- did you learn that Steve Rosen had good media
17 contacts and often gave stories, gave information to
18 the -- to the press?

19 A I mean, if you're asking me questions
20 independently, it's one thing. If you're asking me

21 questions based on this memorandum, then in light of
22 AIPAC's assertion of the attorney-client privilege, I
0042

1 cannot answer your questions to the extent they relate
2 to what I did or may have said to AIPAC --

3 Q I'm not asking you what you did or may have
4 said to --

5 A -- with regard to this memorandum.

6 Q I'm not asking you what you did or said to
7 AIPAC with regard to this memorandum.

8 A Okay. So what are you asking?

9 Q None of my questions are what you did or said
10 to AIPAC with regard to this memorandum.

11 A Okay. All right. Now we have that clear,
12 what is your question?

13 Q Okay. So did you know from this memorandum
14 that Steve Rosen often spoke to the press, Washington
15 Post particularly?

16 MS. WRIGHT: Objection on attorney-client
17 privilege grounds, joint defense, work product. You
18 just asked him about something from the memorandum.

19 THE WITNESS: From the memorandum I can't
20 answer you.

21 BY MR. SHAPIRO:

22 Q Well, I'm not asking you what you said to
0043

1 AIPAC from this memorandum.

2 A Or even what AIPAC --

3 Q AIPAC didn't say anything --

4 A -- said to me in the course of a joint defense
5 with regard to this memorandum. If you're asking me
6 independently of any memorandum, you want to ask me
7 some questions, I may very well be able to answer it.
8 But I can't answer it if you're asking me either what I
9 did as a result of the memorandum or what I learned
10 from this memorandum, which was a joint defense
11 document.

12 Q You can't -- you're not going to answer any
13 questions about what this memorandum says?

14 A I'm going to -- to the extent you ask me
15 questions that are independent of the memorandum and
16 that I can answer them without violating the
17 attorney-client privilege, I will do so. But I cannot
18 answer questions that relate to this memorandum, either
19 what I learned from it as a result of a joint defense
20 communication, or what I did as a result of it in terms
21 of talking to the clients in the joint defense. It's
22 headed, "Joint Defense Privilege, Attorney-Client
0044

1 Privilege."

2 So I can't in this deposition, without AIPAC's
3 consent, testify about things in this memorandum. If
4 you ask me questions independently of the memorandum, I
5 may be able to answer them.

6 Q Who did Abbe Lowell represent on October 4,
7 2004?
8 A On October 4, 2004, he represented Steve Rosen
9 and Keith Weissman.
10 Q Yes. Not AIPAC?
11 A No. But he was in a joint defense agreement
12 with AIPAC.
13 Q Yes. But he didn't represent AIPAC. He
14 represented Weissman and Rosen. Correct?
15 A In a joint defense with AIPAC. Correct.
16 Q But he represented Weissman and Rosen, not
17 AIPAC. You represented AIPAC.
18 A I represented AIPAC. Correct.
19 MS. WRIGHT: Objection. Asked and answered.
20 BY MR. SHAPIRO:
21 Q Right. And Phil Friedman was AIPAC's lawyer?
22 A Phil Friedman was --
0045
1 Q Who's J. Campbell?
2 A I don't really recall who J. Campbell is.
3 I'll ask Mr. Friedman who J. Campbell is. I don't
4 recall who J. Campbell is.
5 Q This was Abbe Lowell's writing?
6 A Yes. Maybe somebody who's in Abbe Lowell's
7 office. That's a possibility.
8 Q This was Abbe Lowell's writing?
9 MS. WRIGHT: Objection. Asked and answered.
10 THE WITNESS: I don't know. Again, I'm not
11 going to testify for you in this deposition in response
12 to your questions relating to this, which is Deposition
13 Exhibit 2, which is a joint defense privilege,
14 attorney-client privilege, attorney work product
15 document that you have apparently disclosed to the
16 defense in this case, but which, to the extent that
17 what it reports or what it has generated, is
18 attorney-client information. I can't relate to that
19 particular statement.
20 BY MR. SHAPIRO:
21 Q Do you have -- do you have any doubt that you
22 received this on or about October 4th?
0046
1 MS. WRIGHT: Objection.
2 THE WITNESS: I have no reason to know whether
3 I did or did not. I don't recall it today. I told
4 you, when you first showed it to me, I didn't whether I
5 had seen it before or not. I mean, it's been some time
6 since --
7 BY MR. SHAPIRO:
8 Q Right. And you have no reason to know whether
9 you got it or not, even though it says CC to you?
10 A I don't have any reason to doubt that I
11 received it. I may have received it. But I don't
12 recall. I have no independent recollection of it as of
13 today.

14 Q Right. You are in the habit of reading things
15 that you're sent when you're retained by a client?

16 A Very much so.

17 Q Yes. I would expect so.

18 So you're not going to answer any of my
19 questions about this document or anything in this
20 document. Correct?

21 A No. I am going to answer your questions about
22 things that are in this document if the questions are

0047

1 independent of the document. I've told you that a
2 couple of times. If you want to ask me a question
3 that's independent of the document, just in terms of
4 what I did, and it does not impinge on the
5 attorney-client confidence, I'm here to answer
6 questions.

7 Q Did you know on or about October 4, 2004 that
8 Steve Rosen passed on the substance -- Steve Rosen and
9 Keith Weissman passed on the substance of what Weissman
10 had learned from Larry Franklin to Glenn Kessler at the
11 Washington Post without identifying their source?

12 A I did not know the details of that. I may
13 have had a very general knowledge that there was a
14 discussion with Glenn Kessler, but I did not know any
15 details about that conversation until I heard the
16 recording of that conversation on March 15, 2004.

17 Q Did you know that Keith Weissman -- on or
18 about October 4th that Keith Weissman recalled that
19 Larry Franklin said that the information he was
20 providing to Weissman was confidential, and that he
21 might even have said classified; in any case, what
22 Keith Weissman did recall was that Larry Franklin said

0048

1 he could be hurt or in trouble if he told Keith
2 Weissman?

3 MS. WRIGHT: Objection to form.

4 BY MR. SHAPIRO:

5 Q Did you know that on or about October 4th?

6 A I may have known what you have us said on or
7 about October 4th. That's not the same as the
8 telephone conversation that I heard on March 15,
9 2004 -- 2005, I'm sorry.

10 Q Well, did you know on or about October 4, 2004
11 that Weissman and Rosen had contacted Kessler and had
12 tried to get him to write an article about what they
13 had learned from -- what Keith Weissman had learned
14 from Larry Franklin?

15 A I don't recall as I sit here today exactly
16 what I knew on October 4, 2004. But what I knew on
17 October 4, 2004 or at any time prior to March 15, 2005
18 was not the substance and the impact of what I heard on
19 March 15, 2005.

20 Q As you've described in this deposition?

21 A As I've described it and as I experienced it

22 on March 15, 2005.

0049

1 MR. SHAPIRO: Let's go off the record for one
2 second.

3 (A brief recess was taken.)

4 BY MR. SHAPIRO:

5 Q Now, you met with the United States Attorney
6 on February 16, 2005, Mr. McNulty?

7 A I don't recall the date. I recall that I did
8 meet with Mr. McNulty.

9 Q Do you recall Mr. McNulty saying that the FBI
10 was fighting to expand the investigation beyond Rosen
11 and Weissman? Do you recall him telling you that?

12 A I don't recall him saying that.

13 Q Do you recall the prosecutor or the U.S.
14 Attorney telling you at any point that he didn't
15 want -- that he wanted -- he said that if AIPAC would
16 cooperate with the government, he thought -- that is
17 the prosecutor speaking -- I think we can make real
18 progress and get AIPAC out from all of this? Do you
19 recall him saying that?

20 A No.

21 Q Did he ever tell you something like that?

22 A I don't recall him saying that or that in

0050

1 substance. I don't recall that because, I mean, I was
2 told repeatedly by the assistant U.S. Attorney and the
3 U.S. Attorney that AIPAC was not a target, and I could
4 reassure AIPAC that it was not going to be prosecuted.

5 Q Do you recall him saying that the FBI wanted
6 to go further than Weissman and Rosen?

7 A I don't recall that.

8 Q Okay. Now, did the prosecutors, whether it
9 was the U.S. Attorney himself or the assistant U.S.
10 Attorney or somebody from the Department of Justice on
11 the prosecuting team in this, did they ever tell you
12 AIPAC had to fire Rosen and Weissman?

13 A No.

14 Q Did they ever suggest that AIPAC fire Rosen
15 and Weissman?

16 A No.

17 Q Did they ever tell you that they should cut
18 off -- that AIPAC should cut off Rosen and Weissman
19 from legal fees?

20 A No.

21 Q Did they ever suggest to you that they were
22 reviewing this matter regarding AIPAC in the same way

0051

1 they would review a fraud matter, a corporate fraud
2 matter?

3 A No.

4 Q Are you familiar with the Thompson memorandum?

5 A Yes.

6 Q Did they ever raise the specter of the

7 Thompson memorandum for AIPAC's consideration in this?
8 A I don't think so. I mean, I must say I think
9 it crossed my mind and -- but I don't recall ever being
10 threatened with the Thompson memorandum in
11 conversations with the government.
12 Q Now, the Thompson memorandum is a document
13 that the government uses to judge whether they're going
14 to proceed against a corporation when its employees
15 have committed crimes.
16 A Correct.
17 Q Right? And amongst the things that the
18 Thompson memorandum says the government will look at is
19 whether the company continues to employ the employees.
20 Correct?
21 A Correct.
22 Q Whether they pay for the employees' legal
0052
1 representation in the criminal matter.
2 A Correct. Now, that's been revised since, but
3 at the time --
4 Q But at the time. Right?
5 A -- the Thompson memorandum was in effect.
6 Q Right. And whether -- and another aspect is
7 whether the company or the employer, the corporation,
8 publicly distances itself from the employees, not just
9 fires them but says the employees did wrong, the
10 employees violated the rules?
11 A I don't recall that detail of the Thompson
12 memorandum, but if you say it's there, I'll accept that
13 it's there.
14 Q Sounds like something that would be in there.
15 Is that right?
16 A Sounds like something that might be in the
17 Thompson memorandum. Correct.
18 Q Did you report to the United States Attorney
19 or to the U.S. government and prosecutors that AIPAC
20 had fired Rosen and Weissman?
21 MS. WRIGHT: Objection as to "report."
22 BY MR. SHAPIRO:
0053
1 Q Tell them? Did you inform them of the firing?
2 A I think I did.
3 Q Why?
4 A Just because we were talking, and at different
5 times they had asked about the status of Rosen and
6 Weissman in the course of our discussions.
7 Q They asked about the status of Rosen and --
8 A They had asked about it. Correct. And in the
9 course of some discussion, I think I probably did
10 inform them that they had been terminated.
11 Q Didn't you inform them right away, right after
12 the termination?
13 A Right after the termination?
14 Q Well, they were terminated -- they were

15 terminated on the 21st. Correct? Of March.

16 A Well, I don't know. My letter was March 21st.
17 I do not recall the exact date they were terminated.

18 Q Didn't you inform --

19 A Probably at some point around that time, when
20 I talked with the government, with the prosecutors, I
21 may very well -- I don't have any independent
22 recollection of saying it, but I think it is quite

0054

1 probable that I may have said, look. They've been
2 terminated.

3 In the past, I had told them -- my view in
4 these cases is to be very open with the prosecutors. I
5 don't think -- and consequently, to that extent, I
6 think I had told them in the past that we were paying
7 their legal fees. I had told them in the past that we
8 were continuing them on the rolls. I had said that
9 they were not being fired or suspended or something. I
10 probably just told it to them in the course of
11 discussions with them because I thought they should
12 know that.

13 Q What would be the point of them knowing it
14 from AIPAC's point of view?

15 A Just because of my view, as I say, with regard
16 to prosecutors. Certainly, if the prosecutors have
17 told me, as they did over and over again, that AIPAC
18 was not a target and was not going to be prosecuted,
19 that I felt I should tell them that with regard to
20 Rosen and Weissman.

21 From the outset I had said to them I thought
22 this is a totally wrongheaded prosecution. I said I

0055

1 thought they committed no crime. I said at the outset,
2 the very first meeting I had with Mr. DiGregory, I said
3 to him, if you're prosecuting Rosen and Weissman or
4 thinking of prosecuting them, you should prosecute the
5 Washington Post and the New York Times. And he said to
6 me, you know, you got a valid point. We'll think about
7 that next.

8 I told them from the outset that I thought
9 this was a wrong prosecution. I continued to say that
10 to the prosecutors. And I thought, as part of that, I
11 was telling them that we were supportive of Rosen and
12 Weissman. We thought they committed no crime.

13 Q Right. And then you told them that Weissman
14 and Rosen had been suspended, didn't you?

15 A I told them at different times what their
16 status was. Correct.

17 Q But they never brought up the Thompson
18 memorandum?

19 A I don't recall them bringing up the Thompson
20 memorandum.

21 Q Didn't you tell in May of 2005 that the
22 government was inquiring if AIPAC was still paying the

0056

1 legal fees for Rosen and Weissman?

2 A They were -- as part of our conversations
3 regarding Rosen and Weissman, they asked questions and
4 I gave them information, accurate information,
5 regarding their status. They very likely asked, are
6 Rosen and Weissman continuing to be employed? Are they
7 continuing to be paid? Are their legal fees continuing
8 to be paid? And I said yes.

9 Q Right. You understood what the Thompson
10 memorandum was at the time?

11 A Yes. But I did not believe that this was a
12 threat under the Thompson memorandum.

13 Q I see. They asked if they were still
14 employed. They asked if they were still being paid
15 their legal fees.

16 A They asked those questions.

17 Q And you authorized Mr. Dorton to go out and
18 say that Rosen and Weissman were terminated because
19 they violated AIPAC's standards?

20 A I authorized him to say, as I said in the
21 letter, that AIPAC could not condone what they did,
22 which meant, to my understanding, that their conduct

0057

1 did not comport with what AIPAC would expect of its
2 employees. Correct. I authorized that.

3 Q Was there ever -- did you know what the
4 standards were? Were there published standards?

5 A I didn't. It wasn't a question of knowing
6 what the standards were. I just knew, in terms of my
7 general experience and my feeling in terms of a
8 Washington lawyer, that if it become public that
9 AIPAC's employees were trying to peddle a story based
10 on classified information, AIPAC would not be able to
11 withstand the criticism that would follow the fact that
12 those employees were retained.

13 It was a very -- a conclusion that I came to
14 reluctantly, but I nevertheless came to that
15 conclusion.

16 Q What was the standard that they violated at
17 AIPAC?

18 A That one shouldn't be trying to sell a story
19 to a reporter that is based on classified information.

20 Q Wait. Okay. So when you say "sell" -- when
21 you say "sell," you don't mean for money?

22 A I don't mean for money. I mean push.

0058

1 Q You mean to get them to publish a story?

2 A Right. Correct.

3 Q Whatever the story is?

4 A Correct.

5 Q They shouldn't do that based on --

6 A If AIPAC's -- in other words, if it were
7 believed that AIPAC's employees were pushing a reporter

8 of the Washington Post to publish a story based on the
9 fact that they had that inside classified information,
10 which could send them to jail, AIPAC would suffer a
11 grievous blow --

12 Q To its business?

13 A You use the word "business." I mean to its
14 function as --

15 Q Yes. Its function. That's what I mean.

16 A Yes.

17 Q It wouldn't suffer a blow of being prosecuted
18 because the government wasn't interested?

19 A No. The government was not going to prosecute
20 them. Correct.

21 Q You're talking about a blow to its operation.

22 A Correct.

0059

1 Q And to its reason for being.

2 A Correct.

3 Q If it was known that they did this?

4 A Yes. And my feeling as of March 2005, on the
5 basis of everything I had seen, was that this case was
6 going to go to trial. And if this case was going to
7 trial, that recording would become part of the trial
8 record.

9 Q And therefore it would become known?

10 A Correct.

11 Q But you knew beforehand that Rosen and
12 Weissman had pushed a story on Kessler?

13 A No.

14 Q That they had tried to get Kessler to publish
15 a story?

16 A No.

17 Q They told you this, didn't they?

18 A That they had pushed it on --

19 Q That they -- that they had tried to get
20 Kessler to publish a story?

21 A First of all, again, with regard to what they
22 told me, if they told me anything, that's covered by

0060

1 the attorney-client privilege. That was part of the
2 joint defense. So I'm not going to get into what they
3 told or didn't tell me.

4 You're asking me what I know before March
5 15th?

6 Q Yes.

7 A No, I did not know that before March 15th.

8 Q You did know that at all?

9 A I don't know what you mean by "at all." I did
10 not know that they pushed a story on Kessler.

11 Q When you say "pushed," what do you mean,
12 "pushed"? What do you mean, "pushed"?

13 MS. WRIGHT: Let him finish his answer, sir.

14 THE WITNESS: What I mean is they tried to get
15 Mr. Kessler to write a story.

16 BY MR. SHAPIRO:
17 Q Right. Isn't that why people talk to
18 reporters?
19 A No. I think you talk to reporters because you
20 may have some information that they reporter might be
21 interested because the reporter asks you questions.
22 This was in the context -- a conversation in which they
0061
1 were trying to get the reporter to write the story.
2 Q Isn't that part of what AIPAC does, is get
3 information out so that there's a pressure that builds
4 in favor of Israel?
5 A In favor of Israel. Correct.
6 Q Yes. In favor of the United States.
7 A In favor of the United States. Correct.
8 Q Yes. Protect American interests?
9 A I still say there's a big difference between
10 that and what I heard on that recording on March 15th.
11 Q I see. Was it against AIPAC's policy for its
12 employees to obtain classified information?
13 A I did not inquire prior to that time as to
14 AIPAC's "policy." I just assumed, on the basis of what
15 I knew regarding Washington mores and standards in
16 Washington, as to what could be acceptable on the basis
17 of what AIPAC's employees did. And on that basis, I
18 made my recommendation.
19 Q I'm not asking you that. I'm asking you, did
20 you know that -- I mean, don't -- you're a Washington
21 lawyer. You've been practicing law in Washington for a
22 long time.
0062
1 A Correct.
2 Q At a significant level. Don't you know that
3 people trade in classified information, that reporters
4 get classified information, other people get classified
5 information? That's what lobbyists do?
6 MS. WRIGHT: Objection. Assumes facts not in
7 evidence.
8 BY MR. SHAPIRO:
9 Q You don't know that?
10 A Again, outside of any AIPAC communications, I
11 know that there are stories that are published based on
12 classified information. I told that to the prosecutor
13 in my very first meeting. Yes, I know that there are
14 stories based on classified information. That doesn't
15 mean that AIPAC should have employees who are trying to
16 get stories published based on the fact that they have
17 access to classified information.
18 MR. SHAPIRO: Let's take five.
19 (A brief recess was taken.)
20 BY MR. SHAPIRO:
21 Q Mr. Lewin, did you know of AIPAC's policy
22 regarding the receipt of classified information?
0063

1 A I did not know AIPAC's policy regarding the
2 receipt of classified information.

3 Q Did you inquire as to what the policy was or
4 if there was a policy?

5 MS. WRIGHT: Objection. To the extent that
6 your answer would invoke attorney-client privilege or
7 any work product, I would advise you not to answer as
8 AIPAC is not waiving any privileges.

9 BY MR. SHAPIRO:

10 Q Did you inquire?

11 A Based on AIPAC's assertion of the
12 attorney-client privilege, I can't answer that
13 question.

14 Q I'm asking what you said. Did you inquire?

15 A Well, if I would have inquired, I would have
16 inquired it of AIPAC. And AIPAC has essentially said
17 that any communications I have made, I have had with
18 AIPAC are protected by the attorney-client privilege.

19 Q Do you recall a conversation with Steve Rosen
20 about him telling you about AIPAC having retained for
21 him Leonard -- retained Leonard Garment in the past to
22 advise him on the receipt of classified information?

0064

1 MS. WRIGHT: Again, objection. To the extent
2 that any answer would invoke attorney-client privilege,
3 AIPAC is not waiving their privilege.

4 BY MR. SHAPIRO:

5 Q I'm talking about my client telling you this.

6 MS. WRIGHT: And objection again to the
7 extent --

8 THE WITNESS: I understand. Your client. But
9 if there was a joint defense, I guess -- I guess I'm
10 precluded by the assertion of the attorney-client
11 privilege from answering that question.

12 BY MR. SHAPIRO:

13 Q Do you recall a situation involving Jesse
14 Jackson's campaign for president, and Jesse Jackson
15 receiving funds from Libya?

16 MS. WRIGHT: Objection. Can I get a time
17 frame?

18 THE WITNESS: No. I don't recall that.

19 BY MR. SHAPIRO:

20 Q You don't recall? Mr. Lewin, right after Mr.
21 Rosen and Mr. Weissman were fired, you made a
22 presentation to the -- let's see. It was cosponsored

0065

1 by the American Association of Jewish Lawyers and
2 Jurists, the National Institute for Judaic Law, and the
3 Jewish Federation of Greater Washington Lawyers
4 Affinity Network. And the series was the application
5 of Jewish civil law principles to modern cases, and you
6 made a presentation under that.

7 Do you recall doing that?

8 A I don't recall it, but if you show me a

9 document --

10 Q It was a presentation regarding throwing Jonah
11 overboard to save the ship.

12 Do you recall that presentation?

13 A I don't recall that, no. I don't -- no, I
14 don't recall it, and I don't think that that's an
15 appropriate analogy. But, you know, if you can show me
16 something in which I said something like that, it might
17 refresh a recollection.

18 Q I guess the actual topic was, "Throwing Jonah
19 Overboard: Was it Legal under Jewish Law and under
20 Common Law?"

21 A What did that have to -- and was there a
22 specific reference to Mr. Rosen in that?

0066

1 Q No. I'm asking you if you recall making that
2 presentation.

3 MS. WRIGHT: Objection. Asked and answered.
4 He said he doesn't recall.

5 THE WITNESS: Well, if -- apart totally from
6 AIPAC, if I made a presentation about throwing Jonah
7 overboard, it's an interesting Jewish law question.
8 But, you know, I don't recall making an analogy from
9 that to the Steve Rosen or AIPAC situation.

10 BY MR. SHAPIRO:

11 Q Uh-huh. Now, you said that until now, you
12 weren't going to -- you hadn't revealed what happened
13 in this -- what you learned and what you experienced
14 when the prosecutor let you listen to -- I think it was
15 two tapes, wasn't it?

16 A I don't recall two tapes, really. I recall
17 that the tape that made the impression on me was the
18 tape of the conversation which Rosen and Weissman had
19 with Mr. Kessler.

20 Q Right. But wasn't there another tape of the
21 conversation that Mr. Rosen had with somebody from the
22 Israeli Embassy, disclosing another aspect of what
0067

1 he -- what Keith Weissman had been --

2 A I don't -- I don't recall that tape.

3 Q You don't?

4 A I don't recall it.

5 Q Okay.

6 A I recall the tape of the conversation with
7 Kessler. And that was the one that led to the letter,
8 not any conversation with anybody at the Israeli
9 Embassy.

10 Q Right. But you said you hadn't -- you hadn't
11 disclosed this until today.

12 A Correct.

13 Q Is that correct? That means you hadn't
14 disclosed it even to AIPAC?

15 A That's true. I told AIPAC that I had
16 experienced something which led me to conclude that

17 Rosen and Weissman's conduct was not conduct with which
18 they could condone -- which they could condone. But I
19 did not disclose to anybody at AIPAC the details of
20 what I had heard in the taped conversation.

21 Q Nobody --

22 A They relied on me.

0068

1 Q Right. You didn't -- you didn't disclose to
2 Mr. Kohr?

3 A I did not disclose it to Mr. Kohr.

4 Q To Mr. Friedman?

5 A I did not disclose it to Mr. Friedman. Mr.
6 Cullen was there and heard it together with me.

7 Q Mr. Cullen represented Kohr and several other
8 employees --

9 A Correct.

10 Q -- but not AIPAC?

11 A No. But to the extent --

12 Q I'm correct?

13 A You're correct.

14 Q Okay. So you never told Howard Kohr and/or
15 Phil Friedman about Mr. Rosen or Mr. Weissman trying to
16 sell a story to -- as you said, "sell"; I'm putting
17 that in quotes -- sell a story to Kessler of the
18 Washington Post to get him to publish using classified
19 information, or information that they thought could get
20 them in trouble?

21 MS. WRIGHT: Objection. Asked and answered.

22 BY MR. SHAPIRO:

0069

1 Q You never disclosed that to --

2 A Again, that's covered by the attorney-client
3 privilege. But as I have told you, I have not
4 disclosed it to anybody prior, really, to today. I did
5 disclose it to my counsel prior to today, in
6 preparation for this deposition.

7 Q Your counsel sitting -- your daughter?

8 A Correct.

9 Q The other Lewin?

10 A Correct.

11 Q Do you recall telling the prosecutor back in
12 February of 2005, before you had this experience of
13 listening to the -- to the phone tap, the FBI phone
14 tap, "If one of our employees has done something wrong,
15 they will suffer the consequences. But we did not come
16 over any evidence of wrongdoing in our post-August 27,
17 2004 review." Do you recall telling the prosecutor?

18 A In substance, I probably did say that to the
19 prosecutor. And I think it was in response to the fact
20 that I kept saying that over and over again that they
21 called me and said, okay. You want to know whether
22 your employees did anything wrong. We will get a

0070

1 limited security clearance if you come over here, and

2 you can -- you can listen to what it is.
3 And it's in response -- now that you mention
4 it, it was in response to the fact that I kept
5 insisting nobody did anything wrong. I have yet to see
6 any evidence of anybody having done anything wrong.
7 Q Right. I understand. And you still -- after
8 you saw -- after you heard that tape, you still thought
9 there was nothing criminally wrong?
10 A I thought there was nothing criminally wrong.
11 Correct.
12 Q But you thought it would be trouble for
13 AIPAC --
14 A Correct.
15 Q -- if this tape became public, as it would in
16 a trial --
17 A Correct.
18 Q -- if they continued to employ Weissman and
19 Rosen after you heard the tape?
20 A Correct. Correct.
21 Q And that was the basis of your letter --
22 A Correct.

0071

1 Q -- Exhibit 1 to this deposition?
2 A Correct.
3 Q Did you ever see a written document that said
4 AIPAC has a standard that says you're not allowed to
5 obtain classification information?
6 MS. WRIGHT: Objection to form.
7 THE WITNESS: You're talking about
8 communications with AIPAC. I can't answer that
9 question. If you're talking about communications
10 outside of AIPAC, the answer to that is no.
11 BY MR. SHAPIRO:
12 Q You can't answer the question because of
13 attorney-client privilege?
14 A Correct. In other words, if you're asking me
15 whether AIPAC ever showed it to me or I ever asked
16 anybody at AIPAC --
17 Q Do you -- do you know of any such written
18 standard?
19 MS. WRIGHT: Objection. If your knowledge
20 includes attorney-client privilege, I'd ask you not to
21 waive it.
22 MR. SHAPIRO: We'll take five. We're almost

0072

1 done.
2 (A brief recess was taken.)
3 MR. SHAPIRO: So I'm wondering where -- I'll
4 just make a photocopy of this.
5 (A brief recess was taken.)
6 MR. SHAPIRO: I'd like to have that marked for
7 identification.
8 (Lewin Deposition Exhibit 3
9 was marked for

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identification.)

BY MR. SHAPIRO:

Q I'm showing you what has been marked for identification as Exhibit -- I guess it's 3 to this deposition. It is document 146 in production from plaintiff to the defendant.

A (Examining.)

Q Do you recall having a meeting with Howard Kohr and Phil Friedman after your experience with the tapes, the FBI phone tab?

MS. WRIGHT: I'm going to object to the extent that his answer would invoke attorney-client privilege or work product.

THE WITNESS: I guess I cannot answer that question.

BY MR. SHAPIRO:

Q How would Howard Kohr have learned about your experience, and that there was a Kessler disclosure, and that that's the real problem and everything? You see the -- on page 2?

MS. WRIGHT: I'd also object to this document. I don't know the date of it, whether it was created while the joint defense privilege was in effect, and there's no author of it.

BY MR. SHAPIRO:

Q When was the joint defense privilege -- when was the joint defense agreement ended?

A Ended?

Q Yes.

A It was ended at, I think, the time that this letter was written. I may terminate the employments of Rosen and Weissman and end the joint defense agreement with their counsel as of March 21, 2005, I guess.

Q You see on page 3 of this document, it says, "Howard's reaction?" Do you see that, right at the

top?

MS. WRIGHT: I still object to any questions about this document. I don't know if it's under the attorney-client privilege or work product. So I --

BY MR. SHAPIRO:

Q It talks about the Kessler conversation.

MS. WRIGHT: -- I would advise the witness not to breach any applicable privileges.

BY MR. SHAPIRO:

Q Do you see that in here?

A I see it. I can't -- I can't testify about conversations.

Q Well, where would he have learned about Kessler's conversation, the disclosure to Mr. Kessler, if not from you, sir?

A All I can say is that there appear to be speculations in the media and other things that appear

18 to have related to that. I can only tell you that I
19 did not tell Howard Kohr or anybody at AIPAC or Phil
20 Friedman what I experienced in March 15, 2005 because I
21 was warned that if I did that, I would be violating
22 security prohibitions.

0075

1 And although I thought there was no substance
2 to what -- no merit to what the government did to Rosen
3 and Weissman in terms of criminal prosecution, I could
4 not ignore the fact that the government was essentially
5 threatening me by saying to me that if I disclosed it,
6 they might go after me.

7 So I was not about to go and take that chance,
8 and I did not disclose it to anybody.

9 MR. SHAPIRO: Mark that for identification,
10 please. This will be 4? Thank you.

11 (Lewin Deposition Exhibit 4
12 was marked for
13 identification.)

14 BY MR. SHAPIRO:

15 Q I'm showing you what has been marked Exhibit
16 No. 4 to this document.

17 MS. WRIGHT: I would object to this document
18 only to the extent that on the caption it says, "Filed
19 in camera and under seal with the court security
20 officer or designee." I wouldn't want anyone at this
21 deposition to be violating a court order in that case.

22 MR. SHAPIRO: The court -- the court lifted

0076

1 the seal long ago.

2 MS. WRIGHT: Okay. We'll operate under your
3 proffer that the court has --

4 BY MR. SHAPIRO:

5 Q This is a document that was a filing in the
6 criminal case against Steve Rosen and Keith Weissman
7 brought in the Eastern District -- the United States
8 District Court for the Eastern District of Virginia,
9 the criminal case that we've talked about. Correct?

10 A Yes.

11 Q If you look on this document, it's a filing,
12 and it is actually the defendant's reply memorandum in
13 support of their motion to dismiss the indictment and
14 for other relief.

15 And in the counter statement of facts, that
16 is, the government's factual mischaracterizations,
17 which is the first part of this filing on page 3 and
18 4 -- did you ever see this document before?

19 A No. Not to my knowledge.

20 Q Okay. There are factual representations here
21 about the U.S. Attorney making statements to AIPAC's
22 counsel stating that they would like to end it with

0077

1 minimum damage to AIPAC.

2 A Where is that?

3 Q It's on page 2 of the document. "On
4 February" -- sorry, 3. "On February 16" -- it's a
5 bullet that starts, "On February 16, during a
6 conference with defendant's counsel, AIPAC's counsel
7 stated, 'The U.S. Attorney would like to end it with
8 minimal damage to AIPAC. He is fighting with the FBI
9 to limit the investigation to Steve Rosen and Keith
10 Weissman, and to avoid expanding it.'"

11 Do you see that?

12 A I see it.

13 Q Did you make that statement to Mr. Rosen and
14 Mr. Weissman's counsel?

15 A Well, I guess. It would be subject to the
16 attorney-client privilege. I don't recall making that
17 specific statement, the fact that, "The U.S. Attorney
18 would like to end it with minimal damage to AIPAC." He
19 may very well have said that. "He is fighting with the
20 FBI to limit the investigation to Steve Rosen and Keith
21 Weissman, and to avoid expanding it."

22 If he said that, and I don't recall him saying

0078

1 that, he did not, to my understanding, mean give you
2 that statement that he would expand it to include
3 AIPAC. Maybe he meant other people. I have no idea if
4 he said that. I don't recall him saying that. I may
5 have reported that to defendant's counsel, but it was
6 not a threat to indict AIPAC or to prosecute AIPAC.

7 Q What about Howard Kohr?

8 MS. WRIGHT: Objection to form.

9 BY MR. SHAPIRO:

10 Q Was it a threat to include Howard Kohr?

11 A I don't know. I don't -- again, I don't
12 recall the statement, so I can't tell you.

13 Q Look at the next bullet. "On March 15, 2005,
14 the government met with AIPAC counsel and disclosed
15 FISA evidence obtained during the investigation."

16 That would be the tapes?

17 A Correct.

18 Q The next bullet: "On March 18, 2005, the
19 United States Attorney told AIPAC counsel that AIPAC
20 needed to fire Rosen and Weissman, and that the
21 Thompson memorandum should guide AIPAC's decision
22 regarding Rosen and Weissman."

0079

1 A Not true.

2 Q Do you recall that?

3 A Not true. I mean, I do not recall them ever
4 saying that AIPAC needed to fire Rosen and Weissman,
5 certainly not after I heard that tape. My distinct
6 recollection is on the evening of March 15th, after I
7 heard the tape, I wrestled with my conscience.

8 I had a conversation with my law partner. At
9 that point, I did not disclose to her what I had heard.
10 But I recall thinking to myself, this is really very

11 troublesome. I have all along told the government that
12 I did not have any evidence, and they had never shown
13 me anybody that suggested that Rosen and Weissman did
14 anything that was illegal or could arguably be
15 considered illegal.

16 Now I have heard a tape on the basis of which
17 I think AIPAC would be substantially damaged if that
18 tape became public. That was on the night that I heard
19 the tape. I recall very distinctly having a very
20 difficult time over that.

21 And the next morning, I decided, look. This
22 is something which I think I have to tell AIPAC, that

0080

1 they can't continue with Rosen and Weissman. Much as I
2 hate doing it, I have to say that. And I informed my
3 partner at that point that that's what I was going to
4 tell AIPAC, without telling her the details of what I
5 had heard or seen, what I experienced.

6 I do not recall at any time between March 15th
7 and March 21st, when I wrote the letter, after I orally
8 reported this to Howard Kohr, to people at AIPAC, and
9 maybe to Phil Friedman, I said, look. I think I ought
10 to write a letter so that you could have my view in
11 writing on that. And on March 21st, I wrote the
12 letter.

13 I do not recall a single time between March
14 15th and March 21st that I was told by the government
15 or by anybody on behalf of the government that AIPAC
16 needed to fire Rosen and Weissman, and that the
17 Thompson memorandum should guide AIPAC's decisions
18 regarding Rosen and Weissman. I think that is untrue.
19 That is --

20 Q Who else represented AIPAC at that time?

21 A I represented AIPAC. Cullen represented
22 individuals.

0081

1 Q Who else represented AIPAC at that time? Phil
2 Friedman?

3 A Only my daughter and myself.

4 Q And Phil Friedman?

5 A Phil Friedman, yes.

6 Q No one else?

7 A No one else.

8 Q At the beginning, you told me that Mr. Cullen
9 also represented AIPAC.

10 A Well, he represented AIPAC employees. And I
11 viewed him in a lots of ways in that capacity as also
12 representing AIPAC. He was in on the conversations
13 that we had regarding AIPAC strategy, what we would be
14 doing with regard to this case. He was consulted as a
15 former U.S. Attorney in the -- in that district court
16 in Virginia. AIPAC felt that Mr. Cullen was a useful
17 addition to the defense team.

18 Q But who was he representing? Was he

19 representing --

20 A He was nominally representing Howard Kohr and
21 other AIPAC employees. AIPAC did not want, I think,
22 maybe out of consideration for me, to be saying, we're

0082

1 going to hire some other lawyer who's representing
2 AIPAC. So I guess in consultation with Mr. Friedman,
3 they decided he would represent Howard Kohr and other
4 AIPAC employees.

5 Q But just to be 100 percent accurate, what you
6 said before, after you heard the tape when you were
7 struggling and talking to your law partner and
8 deciding, you didn't believe that Rosen and Weissman
9 had done anything illegal?

10 A I believed they had not committed a criminal
11 offense.

12 Q That's illegal. Right? They had not done
13 anything --

14 A Well, they had not done anything that was a
15 criminal offense. I did not condone, and I did not
16 think that AIPAC could condone, what they had done.

17 Q Now look at the next bullet. "The next
18 business day" -- after March 18th -- "The next business
19 day, Monday, March 21st, AIPAC fired Rosen and
20 Weissman. According to AIPAC counsel, while AIPAC did
21 not believe that Rosen and Weissman had committed any
22 crime, they were fired in order to give AIPAC

0083

1 credibility with the government. Indeed, AIPAC was not
2 inclined to publicize its decision except to the
3 government prosecutors, to fire Rosen and Weissman, and
4 AIPAC hoped to keep Rosen and Weissman on AIPAC's
5 payroll."

6 Do you recall that discussion?

7 MS. WRIGHT: Objection --

8 THE WITNESS: Well, first of all, since the
9 sense is the discussion with AIPAC, it's covered by the
10 attorney-client privilege.

11 BY MR. SHAPIRO:

12 Q No. With defense -- with --

13 A But to the extent that this is -- this is a
14 statement with Rosen and -- but to the extent that this
15 is a statement regarding a fact outside of
16 attorney-client confidences, the first sentence appears
17 to be accurate.

18 The second sentence, the first part of it,
19 "According to AIPAC counsel, while AIPAC" -- I guess
20 it's AIPAC's counsel -- "did not believe that Rosen and
21 Weissman had committed any crime, they were fired in
22 order to give AIPAC credibility with the government."

0084

1 That's not -- that's not true. That was not
2 at least my reason. My reason stated in my letter was
3 that AIPAC could not condone what they had done, not

4 to -- not to give AIPAC "credibility" with the
5 government. So that statement is not true.

6 "Indeed, AIPAC was not inclined to publicize
7 its decision" -- I think it's accurate that AIPAC was
8 not -- decided that it was not going to broadcast that
9 it had fired Rosen and Weissman -- "and AIPAC hoped to
10 keep Rosen and Weissman on AIPAC's payroll."

11 Now, I said that they should be terminated but
12 that their legal fees should continue to be paid.
13 There was, I think, some discussion about the financial
14 terms of the termination.

15 I don't recall -- I don't think it meant
16 keeping Rosen and Weissman on AIPAC's payroll forever.
17 I mean, there may have been some discussion of how
18 long -- if they're terminated, how long can they be
19 kept on the payroll?

20 Q But if they were not inclined to publicize the
21 decision, how did you come to authorize Mr. Dorton to
22 say that they were fired for violating AIPAC's

0085

1 standards?

2 A Because I assumed that people would ask, that
3 it would not be a secret that they were terminated. So
4 therefore, there would be inquiries regarding why did
5 AIPAC terminate Rosen and Weissman.

6 Q Was it --

7 A And I authorized him to say that the conduct
8 did not comport with AIPAC's standards because that was
9 the meaning of my letter when I said that AIPAC could
10 not condone their conduct.

11 Q But you didn't see any published standards.

12 A Pardon?

13 Q You never saw any written standards.

14 A I never saw any written standards. I assumed
15 that that's what AIPAC would require of its employees.

16 Q I see. You assumed?

17 A I assumed. Correct.

18 Q I see. And you authorized Dorton to say it
19 that way?

20 A Yes, I did.

21 Q Not that you assumed it, but that they
22 violated AIPAC's standards?

0086

1 A That that was the reason that they were fired.

2 Q Isn't it true that you authorized Dorton to
3 say this because the government was pressuring AIPAC to
4 publicly split with Rosen and Weissman, just like
5 they -- isn't that right?

6 A No.

7 Q And that they publicly -- they pressured AIPAC
8 to fire Rosen and Weissman.

9 A No.

10 Q And stop paying their legal fees.

11 A No.

12 Q All because of the Thompson memo. Isn't that
13 right?

14 A No.

15 Q Look at the next bullet. "The very next day,
16 March 21st. On Tuesday, March 22" -- sorry -- "2005,
17 AIPAC reported to the U.S. Attorney that it had fired
18 Rosen and Weissman. Counsel then reported to one of
19 the assistant U.S. Attorneys that Rosen and Weissman
20 had been fired, and that the joint defense agreement
21 was being terminated. The prosecutor asked about
22 AIPAC's payment of defendants' legal fees. AIPAC

0087

1 counsel confirmed that the fees still were being paid."
2 And then you requested a meeting with the government.

3 Do you recall that?

4 A Whether those communications were made by me
5 or by Mr. Cullen I don't recall. As I said, I viewed
6 Mr. Cullen as being a member of the AIPAC defense team.

7 Q But you knew about those representations to
8 the government. Whether you made them or Cullen made
9 them, you knew about them.

10 A I knew that the U.S. Attorney had been told
11 that they had been terminated, and that the joint
12 defense agreement was terminated, and that they were
13 told that legal fees continued to be paid.

14 Q On April 29th -- the next bullet -- "April 29,
15 2005, AIPAC's counsel and executive director attended a
16 meeting with the government prosecutors. The
17 prosecutors asked AIPAC to explain why it was paying
18 the legal fees. The prosecutors also questioned
19 whether AIPAC was providing the defendants with health
20 benefits and severance pay."

21 Do you recall that?

22 A I don't personally recall that. And frankly,

0088

1 when it says, "AIPAC's counsel and executive director
2 attended a meeting with the government prosecutors," I
3 don't recall whether that was a meeting that I attended
4 or Cullen attended --

5 Q But you knew --

6 A -- and whether the prosecutors asked AIPAC to
7 explain why it was paying the legal defense fees. I
8 don't recall any specific question as to why we were
9 paying legal defense fees. I do recall that there was
10 a question of whether we were continuing to pay them,
11 and we said yes.

12 Q And health benefits?

13 A They didn't ask why. I don't recall them
14 saying why.

15 Q And health benefits and severance pay? They
16 asked about all that, didn't they?

17 A I don't know. I don't recall that. They may
18 have, but I don't recall it.

19 Q "On May 3, 2005, AIPAC counsel told defense

20 counsel that the government was still asking AIPAC if
21 it had yet terminated payment of defendant's legal
22 fees, health benefits, and severance pay."

0089

1 Do you see that?

2 A (Examining.) I don't know whether that's true
3 or not. I don't recall specifically being asked, you
4 know, having -- that I told -- it says again, "AIPAC
5 counsel told defense counsel that the government was
6 still asking." I don't recall whether that reference
7 to AIPAC counsel is a reference to me or to Mr. Cullen
8 having told that to Mr. Lowell. I have no idea.

9 Q Look on the next page, the last bullet in this
10 set. "On May 4, 2005, prosecutors acknowledged to
11 defense counsel that they had raised the issue of
12 AIPAC's payment of legal fees, health benefits" -- "and
13 health benefits in discussions with AIPAC."

14 A I have no idea whether they did or not. It
15 doesn't say I was present or Mr. Cullen was present.

16 And let me go back for a moment to the
17 question you asked about the public statement made by
18 Mr. Dorton. It may very well be that Mr. Dorton only
19 made a public statement after Messrs. Rosen and
20 Weissman said that they were fired for doing their job.
21 And he then said, consistent with my letter, that they
22 had not comported with AIPAC's standards.

0090

1 Q But you don't remember that, either, do you?

2 A I don't remember the sequence. I remember
3 that I approved his saying that they did not comport
4 with AIPAC's standards. But when he said it, whether
5 he said it immediately upon their termination or
6 whether he said it after they first told the public
7 that they were fired for doing their job, that I don't
8 recall.

9 Q Would you be surprised to learn that each of
10 those bullets is supported by an affidavit from a
11 member of the bar?

12 A I don't know whether I'd be surprised to
13 learn. I assume that if counsel made those statements
14 to the court, they had some reason for believing it was
15 true.

16 But to the extent that that bullet says that
17 on March 18, 2005, the U.S. Attorney told AIPAC counsel
18 that AIPAC needed to fire Rosen and Weissman, it was
19 not -- if it was made on an affidavit, it was not made
20 on an affidavit that said that they had heard it from
21 the U.S. Attorney.

22 They maybe inferred it from something else, or

0091

1 they may have hypothesized it or surmised it. But I am
2 telling you today that, to the best of my recollection,
3 that statement is untrue, that I was not told by the
4 U.S. Attorney -- if AIPAC counsel means me -- I was not

5 told by the U.S. Attorney that AIPAC needed to fire
6 Rosen and Weissman, and that the Thompson memorandum
7 should guide AIPAC's decisions regarding Rosen and
8 Weissman. I was never told that by the U.S. Attorney.

9 Q Were you told it by anybody else? By the
10 other lawyers who represented AIPAC?

11 A Who represented AIPAC?

12 Q Yes.

13 MS. WRIGHT: Objection. Attorney-client
14 privilege.

15 THE WITNESS: You mean by Mr. Cullen? That's
16 subject to the attorney-client privilege. I don't --

17 BY MR. SHAPIRO:

18 Q I see. So they didn't tell it to you, and
19 you're not going to -- the prosecutors didn't tell it
20 to you, and you're not going to tell me if anybody else
21 told it to you?

22 A Told it to me? I don't recall being told

0092

1 anything like that. I can tell you that.

2 MR. SHAPIRO: Thank you very much. I don't
3 have any further questions.

4 MS. WRIGHT: I've got something to put on the
5 record. I want to make sure that document that you had
6 marked as Exhibit 2, which clearly states
7 attorney-client privilege, joint defense privilege,
8 attorney work product, as well as the document marked
9 3, are going to be subject to the protective order.

10 MR. SHAPIRO: Which is 3?

11

12

13

14

15

16 (Concluded on following page.)

17

18

19

20

21

22

0093

1 MS. WRIGHT: Three is your Rosen 146 --

2 MR. SHAPIRO: My client's notes.

3 MS. WRIGHT: -- that we haven't been able to
4 authenticate in this deposition as to when they were
5 authored. So out of an abundance of caution, I'd like
6 to designate these under the protective order.

7 So if you plan on attaching this to a motion
8 or anything like that, it should be filed under the
9 precautions of the protective order.

10 MR. SHAPIRO: So you say. Thank you very
11 much. Very nice seeing you again.

12 (Whereupon, at 5:03 p.m., the deposition was

13 concluded.)

14

* * * * *

15

I have read the foregoing pages, which are a
16 correct transcript of the answers given by me to the
17 questions therein recorded.

18

19

20

Deponent _____

21

22

Date _____

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LETTER FROM WASHINGTON

REAL INSIDERS

A pro-Israel lobby and an F.B.I. sting.

by Jeffrey Goldberg

JULY 4, 2005

EXHIBIT

8



Several years ago, I had dinner at Galileo, a Washington restaurant, with Steven Rosen, who was then the director of foreign-policy issues at the American Israel Public Affairs Committee. The group, which is better known by its acronym, aipac, lobbies for Israel's financial and physical security. Like many lobbyists, Rosen cultivated reporters, hoping to influence their writing while keeping his name out of print. He is a voluble man, and liked to demonstrate his erudition and dispense aphorisms. One that he often repeated could serve as the credo of K Street, the Rodeo Drive of Washington's influence industry: "A lobby is like a night flower: it thrives in the dark and dies in the sun."

Lobbyists tend to believe that legislators are susceptible to persuasion in ways that executive-branch bureaucrats are not, and before Rosen came to aipac, in 1982 (he had been at the rand Corporation, the defense-oriented think tank), the group focussed mainly on Congress. But Rosen arrived brandishing a new idea: that the organization could influence the outcome of policy disputes within the executive branch—in particular, the Pentagon, the State Department, and the National Security Council.

Rosen began to court officials. He traded in gossip and speculation, and his reports to aipac's leaders helped them track currents in Middle East policymaking before those currents coalesced into executive orders. Rosen also used his contacts to

carry aipac's agenda to the White House. An early success came in 1983, when he helped lobby for a strategic cooperation agreement between Israel and the United States, which was signed over the objections of Caspar Weinberger, the Secretary of Defense, and which led to a new level of intelligence sharing and military sales.

aipac is a leviathan among lobbies, as influential in its sphere as the National Rifle Association and the American Association of Retired Persons are in theirs, although it is, by comparison, much smaller. (aipac has about a hundred thousand members, the N.R.A. more than four million.) President Bush, speaking at the annual aipac conference in May of 2004, said, "You've always understood and warned against the evil ambition of terrorism and their networks. In a dangerous new century, your work is more vital than ever." aipac is unique in the top tier of lobbies because its concerns are the economic health and security of a foreign nation, and because its members are drawn almost entirely from a single ethnic group.

aipac's professional staff—it employs about a hundred people at its headquarters, two blocks from the Capitol—analyzes congressional voting records and shares the results with its members, who can then contribute money to candidates directly or to a network of pro-Israel political-action committees. The Center for Responsive Politics, a public-policy group, estimates that between 1990 and 2004 these pacs gave candidates and parties more than twenty million dollars.

Robert H. Asher, a former aipac president, told me that the pacs are usually given euphemistic names. "I started a pac called Citizens Concerned for the National Interest," he said. Asher, who is from Chicago, is a retired manufacturer of lamps and shades, and a member of the so-called Gang of Four—former presidents of aipac, who steered the group's policies for more than two decades. (The three others are Larry Weinberg, a California real-estate developer and a former owner of the Portland Trail Blazers; Edward Levy, a construction-materials executive from Detroit; and Mayer "Bubba" Mitchell, a retired builder based in Mobile, Alabama.)



"He does it to you because you're hateful."

aipac, Asher explained, is loyal to its friends and merciless to its enemies. In 1982, Asher led a campaign to defeat Paul Findley, a Republican congressman from Springfield, Illinois, who once referred to himself as "Yasir Arafat's best friend in Congress," and who later compared Arafat to Gandhi and Martin Luther King, Jr.

"There was a real desire to help Findley out of Congress," Asher said. He identified an obscure Democratic lawyer in Springfield, Richard Durbin, as someone who could defeat Findley. "We met at my apartment in Chicago, and I recruited him to run for Congress," he recalled. "I probed his views and I explained things that I had learned mostly from aipac. I wanted to make sure we were supporting someone who was not only against Paul Findley but also a friend of Israel."

Asher went on, "He beat Findley with a lot of help from Jews, in-state and out-of-state. Now, how did the Jewish money find him? I travelled around the country talking about how we had the opportunity to defeat someone unfriendly to Israel. And the gates opened." Durbin, who went on to win a Senate seat, is now the Democratic whip. He is a fierce critic of Bush's Iraq policy but, like aipac, generally supports the

Administration's approach to the Israeli-Palestinian conflict. Durbin says that he considers Asher to be his "most loyal friend in the Jewish community."

Mayer Mitchell led a similar campaign, three years ago, to defeat Earl Hilliard, an Alabama congressman who was a critic of Israel. Mitchell helped direct support to a young Harvard Law School graduate named Artur Davis, who challenged Hilliard in the Democratic primary, and he solicited donations from aipac supporters across America. Davis won the primary, and the seat. "I asked Bubba how he felt after Davis won," Asher said, "and he said, 'Just like you did when Durbin got elected.'" Mitchell declined to comment.

aipac's leaders can be immoderately frank about the group's influence. At dinner that night with Steven Rosen, I mentioned a controversy that had enveloped aipac in 1992. David Steiner, a New Jersey real-estate developer who was then serving as aipac's president, was caught on tape boasting that he had "cut a deal" with the Administration of George H. W. Bush to provide more aid to Israel. Steiner also said that he was "negotiating" with the incoming Clinton Administration over the appointment of a pro-Israel Secretary of State. "We have a dozen people in his"—Clinton's—"headquarters . . . and they are all going to get big jobs," Steiner said. Soon after the tape's existence was disclosed, Steiner resigned his post. I asked Rosen if aipac suffered a loss of influence after the Steiner affair. A half smile appeared on his face, and he pushed a napkin across the table. "You see this napkin?" he said. "In twenty-four hours, we could have the signatures of seventy senators on this napkin."

Rosen was influential from the start. He was originally recruited for the job by Larry Weinberg, one of the Gang of Four, and he helped choose the group's leaders, including the current executive director, Howard Kohr, a Republican who began his aipac career as Rosen's deputy. Rosen, who can be argumentative and impolitic, was never a candidate for the top post. "He's a bit of a *kochlefft*"—the Yiddish term for a pot-stirrer, or meddler—Martin Indyk, who also served as Rosen's deputy, and who went on to become President Clinton's Ambassador to Israel, says. Rosen has had an unusually eventful private life, marrying and divorcing six times (he is living again with his first wife), and he has a well-developed sense of paranoia. When we met, he would sometimes lower his voice, even when he was preparing to deliver an anodyne pronouncement. "Hostile ears are always listening," he was fond of saying.

Nevertheless, he is a keen analyst of Middle East politics, and a savvy bureaucratic infighter. His views on the Israeli-Palestinian conflict are not notably hawkish; he once called himself "too right for the left, and too left for the right." He is a hard-liner on only one subject—Iran—and this preoccupation helped shape aipac's position: that Iran poses a greater threat to Israel than any other nation. In this way, aipac is in agreement with a long line of Israeli leaders, including Prime Minister Ariel Sharon, who fears Iran's nuclear intentions more than he ever feared Saddam Hussein's. (aipac lobbied Congress in favor of the Iraq war, but Iraq has not been one of its chief concerns.) Rosen's main role at aipac, he once told me, was to collect evidence of "Iranian perfidy" and share it with the United States.

Unlike American neoconservatives, who have openly supported the Likud Party over the more liberal Labor Party, aipac does not generally take sides in Israeli politics. But on Iran aipac's views resemble those of the neoconservatives. In 1996, Rosen and other aipac staff members helped write, and engineer the passage of, the Iran and Libya Sanctions Act, which imposed sanctions on foreign oil companies doing business with those two countries; aipac is determined, above all, to deny Iran the ability to manufacture nuclear weapons. Iran was a main focus of this year's aipac policy conference, which was held in May at the Washington Convention Center. Ariel Sharon and Secretary of State Condoleezza Rice, among others, addressed five thousand aipac members. One hall of the convention center was taken up by a Disney-style walk-through display of an Iranian nuclear facility. It was kitsch, but not ineffective, and Rosen undoubtedly would have appreciated it. Rosen, however, was not there. He was fired earlier this year by Howard Kohr, nine months after he became implicated in an F.B.I. espionage investigation. Rosen's lawyer, Abbe Lowell, expects him to be indicted on charges of passing secret information about Iranian intelligence activities in Iraq to an official of the Israeli Embassy and to a Washington *Post* reporter. A junior colleague, Keith Weissman, who served as an Iran analyst for aipac until he, too, was fired, may face similar charges.

The person who, in essence, ended Rosen's career is a fifty-eight-year-old Pentagon analyst named Lawrence Anthony Franklin, who is even more preoccupied with Iran than Steven Rosen. Franklin, until recently the Pentagon's Iran desk officer, was indicted last month on espionage charges. The Justice Department has accused him of giving "national-defense information" to Rosen and Weissman, and classified information to an Israeli official. Franklin has pleaded not guilty; a tentative trial date is set for September. If convicted, he will face at least ten years in prison.

I first met Franklin in November of 2002. Paul Wolfowitz, then the Deputy Secretary of Defense, was receiving the Henry M. (Scoop) Jackson award from the Jewish Institute for National Security Affairs, a conservative-leaning group that tries to build close relations between the American and Israeli militaries. In the ballroom of the Ritz-Carlton Hotel at Pentagon City, a shopping mall, were a number of American generals and the Israeli Ambassador to the United States, Danny Ayalon.

Franklin, a trim man with blond hair and a military bearing, is a colonel in the Air Force Reserve who spent several years as an analyst at the Defense Intelligence Agency. He has a doctorate in Asian studies and describes himself as a capable speaker of Farsi. In addition, he was a Catholic in a largely Jewish network of Pentagon Iran hawks.

Franklin was particularly close to the neoconservative Harold Rhode, an official in the Office of Net Assessment, the Pentagon's in-house think tank. Franklin was also close to Michael Ledeen, who, twenty years ago, played an important role in the Iran-Contra scandal by helping arrange meetings between the American government and the Iranian arms dealer Manucher Ghorbanifar. Ledeen, now a resident scholar at the American Enterprise Institute, is one of the most outspoken advocates in Washington of confrontation with the Tehran regime.

The conversation at the banquet, and just about everywhere else in official Washington at that time, centered on the coming war in Iraq. "We may well hope that with the demise of a truly evil and despotic regime in Iraq, we will see the liberation of one of the most talented peoples in the Arab world," Wolfowitz said in his speech. Franklin did not seem especially concerned with the topic at hand. As we stood outside the banquet hall, he said that Iran, not Iraq, would turn out to be the most difficult challenge in the war on terror.

Then, as now, the Administration was divided on the question of Iran. Many of the political appointees at the Defense Department hoped that America would support dissidents in an attempt to overthrow Iran's ruling clerics, while the State

Department argued for containment. Even within the Defense Department, many officials believed that it would be imprudent to make regime change in Tehran a top priority. “There are neocons who thought Iran should come sooner and neocons who thought it should come later,” Reuel Marc Gerecht, of the American Enterprise Institute, told me. As for Franklin, Gerecht, a former Iran specialist in the C.I.A.’s Directorate of Operations, said, “It’s fair to say that Larry was impatient with Bush Administration policy on Iran.” In the Pentagon’s policy office, I learned later, it was sometimes said that Franklin inhabited a place called Planet Franklin. Gerecht referred to him as “sweet, bumbling Larry.”

A year later, on a reporting assignment in Israel, I ran into Franklin at the Herzliya Conference, which is the Davos of the Israeli security establishment. He said that he was there on Defense Department business. We talked briefly about Iraq—it was eight months after the invasion—and, as we spoke, General Moshe Ya’alon, then the Israeli Army chief of staff, swept into the room surrounded by bodyguards and uniformed aides. “Wow,” Franklin said.

We stepped outside, and he talked only about Iran’s threat to America. “Our intelligence is blind,” he said. “It’s the most dangerous country in the world to the U.S., and we have nothing on the ground. We don’t understand anything that goes on. I mean, the C.I.A. doesn’t have anything. This goes way deeper than Tenet”—George Tenet, who was the director of central intelligence at the time. He continued, “Do you know how dangerous Iran is to our forces in the Gulf? We have great force-concentration issues now”—the presence of American troops in Iraq—“and the Iranians are very interested in making life difficult for American forces. They have the capability. You watch what they’re doing in Iraq. Their infiltration is everywhere.”

Franklin seemed more frustrated with American policy in Iran than he had the year before. “We don’t understand that it’s doable—regime change is doable,” he said. “The people are so desperate to become free, and the mullahs are so unpopular. They’re so pro-American, the people.” Referring to the Bush Administration, he said, “That’s what they don’t understand,” and he added, “And they also don’t understand how anti-American the mullahs are.” Franklin was convinced that the Iranians would commit acts of terrorism against Americans, on American soil. “These guys are a threat to us in Iraq and even at home,” he said.

Franklin was not a high-ranking Pentagon official; he was five steps removed in the hierarchy from Douglas Feith, the Under-Secretary for Policy. For two years, though, he had been trying to change American policy. His efforts took many forms, including calls to reporters, meetings with Rosen and Weissman and with the political counsellor at the Israeli Embassy, Naor Gilon. According to Tracy O’Grady-Walsh, a Pentagon spokeswoman, he was not acting on behalf of his superiors: “If Larry Franklin was formally or informally lobbying, he was doing it on his own.”

Franklin also sought information from Iranian dissidents who might aid his cause. In December of 2001, he and Rhode met in Rome with Michael Ledeen and a group of Iranians, including Manucher Ghorbanifar. Ledeen, who helped arrange the meeting, told me that the dissidents gave Franklin and Rhode information about Iranian threats against American soldiers in Afghanistan. (Rhode did not return calls seeking comment.) Franklin was initially skeptical about the meeting, Ledeen said, but emerged believing that America could do business with these dissidents.

Franklin’s meetings with Gilon and with the two aipac men make up the heart of the indictment against him. The indictment alleges that Rosen—“CC-1,” or “Co-Conspirator 1”—called the Pentagon in early August of 2002, looking for the name of an Iran specialist. He made contact with Franklin a short time later, but, according to the indictment, they did not meet until February of 2003. In their meetings, according to several people with knowledge of the conversations, Franklin told the lobbyists that Secretary of State Colin Powell was resisting attempts by the Pentagon to formulate a tougher Iran policy. He apparently hoped to use aipac to lobby the Administration.

The Franklin indictment suggests that the F.B.I. had been watching Rosen as well; for instance, it alleges that, in February of 2003, Rosen, on his way to a meeting with Franklin, told someone on the phone that he “was excited to meet with a ‘Pentagon guy’ because this person was a ‘real insider.’ ” Franklin, Rosen, and Weissman met openly four times in 2003. At one point, the indictment reads, somewhat mysteriously, “On or about March 10, 2003, Franklin, CC-1 and CC-2”—Rosen and Weissman—“met at Union Station early in the morning. In the course of the meeting, the three men moved from one restaurant to another restaurant and then finished the meeting in an empty restaurant.”

On June 26, 2003, at a lunch at the Tivoli Restaurant, near the Pentagon, Franklin reportedly told Rosen and Weissman about a draft of a National Security Presidential Directive that outlined a series of tougher steps that the U.S. could take against the Iranian leadership. The draft was written by a young Pentagon aide named Michael Rubin (who is now affiliated with the American Enterprise Institute). Franklin did not hand over a copy of the draft, but he described its contents, and, according to the indictment, talked about the “state of internal United States government deliberations.” The indictment also alleges that Franklin gave the two men “highly classified” information about potential attacks on American forces in Iraq.

In mid-August of 2002, according to the indictment, Franklin met with Gilon—identified simply as “FO,” or “foreign official”—at a restaurant, and Gilon explained to Franklin that he was the “policy” person at the Embassy. The two met regularly, the indictment alleges, often at the Pentagon Officers’ Athletic Club, to discuss “foreign policy issues,” particularly

regarding a “Middle Eastern country”—Iran, by all accounts—and “its nuclear program.” The indictment suggests that Franklin was receiving information and policy advice from Gilon; after one meeting, Franklin drafted an “Action Memo” to his supervisors incorporating Gilon’s suggestions. Gilon is an expert on weapons proliferation, according to Danny Ayalon, the Israeli Ambassador, and has briefed reporters about Israel’s position on Iran. According to Lawrence Di Rita, a Pentagon spokesman, it is part of the “job description” of Defense Department desk officers to meet with their foreign counterparts. “Desk officers meet with foreign officials all the time, not with ministers, but interactions with people at their level,” he said. The indictment contends, however, that on two occasions Franklin gave Gilon classified information.

The issue of Israel’s activities in Washington is unusually sensitive. Twenty years ago, a civilian Naval Intelligence analyst named Jonathan Pollard was caught stealing American secrets on behalf of an Israeli intelligence cell—a “rogue” cell, the Israelis later claimed. Pollard said that he was driven to treason because, as a Jew, he could not abide what he saw as America’s unwillingness to share crucial intelligence with Israel. Pollard’s actions were an embarrassment for American Jews, who fear the accusation of “dual loyalty”—the idea that they split their allegiance between the United States and Israel. For Israel, the case was a moral and political disaster. And there are some in the American intelligence community who suspect that Israel has never stopped spying on the United States.

Earlier this month, Ayalon told me that Israel does not “collect any intelligence on the United States, period, full stop. We won’t do anything to risk this most important relationship.” In any case, he said, there was no need to spy, “because coöperation is so intimate and effective between Israel and the U.S.” Ayalon also said that Gilon, who is returning to Jerusalem later this summer, remains an important member of his staff; in recent months, Gilon has attended meetings at the State Department, the Pentagon, and the White House.

In June of 2004, F.B.I. agents searched Franklin’s Pentagon office and his home in West Virginia, and allegedly found eighty-three classified documents. Some had to do with the Iran debate, but some pertained to Al Qaeda and Iraq. (A separate federal indictment, citing the documents, has been handed down in West Virginia.) According to a person with knowledge of Franklin’s case, the agents told Franklin that Rosen and Weissman were working against America’s interests. Franklin faced ruin—the documents found in his house could cost him his job, the agents said. Franklin, who did not have a lawyer, agreed to coöperate in the investigation of Rosen and Weissman, although apparently he was not given in return a specific promise of leniency. Soon, he was wired, and was asked to contact the two aipac employees. On July 21st, Franklin called Weissman and said that he had to speak to him immediately—that it was a matter of life and death. They arranged to meet outside the Nordstrom’s department store at Pentagon City.

A month before that meeting, *The New Yorker* had published an article by Seymour Hersh about the activities of Israeli intelligence agents in northern Iraq. Franklin, who held a top-secret security clearance, allegedly told Weissman that he had new, classified information indicating that Iranian agents were planning to kidnap and kill the Israelis referred to by Hersh. American intelligence knew about the threat, Franklin said, but Israel might not. He also said that the Iranians had infiltrated southern Iraq, and were planning attacks on American soldiers. Rosen and Weissman, Franklin hoped, could insure that senior Administration officials received this news. It is unclear whether what Franklin relayed was true or whether it had been manufactured by the F.B.I. The Bureau has refused to comment on the case.

Weissman hurried back to aipac’s headquarters and briefed Rosen and Howard Kohr, aipac’s executive director. According to aipac sources, Rosen and Weissman asked Kohr to give the information to Elliott Abrams, the senior Middle East official on the National Security Council. Kohr didn’t get in touch with Abrams, but Rosen and Weissman made two calls. They called Gilon and told him about the threat to Israeli agents in Iraq, and then they called Glenn Kessler, a diplomatic correspondent at the *Washington Post*, and told him about the threat to Americans.

A month later, on the morning of August 27, 2004, F.B.I. agents visited Rosen at his home, in Silver Spring, Maryland, seeking to question him. Rosen quickly called aipac’s lawyers. That night, CBS News reported that an unnamed Israeli “mole” had been discovered in the Pentagon, and that the mole had been passing documents to two officials of aipac, who were passing the documents on to Israeli officials.

Within days, the names of Franklin, Rosen, and Weissman were made public. The F.B.I. informed Franklin that he was going to be charged with illegal possession of classified documents. Franklin was said by friends to be frightened, and surprised. He said that he could not afford to hire a lawyer. The F.B.I. arranged for a court-appointed attorney to represent him. The lawyer, a former federal prosecutor, advised him to plead guilty to espionage charges, and receive a prison sentence of six to eight years.

At about this time, Franklin received a call from Michael Ledeen, his ally in matters of Iran policy. “I called him and said, ‘Larry, what’s going on?’ ” Ledeen recalled. “He said, ‘Don’t worry. Sharansky’ ”—Natan Sharansky, the former Soviet dissident—“ ‘survived years in the Gulag, and I’ll survive prison, too.’ I said, ‘What are you talking about?’ He told me what

was going on. I asked him if he had a good lawyer.” Ledeen called the criminal-defense attorney Plato Cacheris. “I knew him from when he served as Fawn’s attorney,” Ledeen said, referring to Fawn Hall, who was Colonel Oliver North’s secretary at the time of the Iran-Contra affair. Cacheris has also represented Monica Lewinsky and the F.B.I. agent Robert Hanssen, who spied for Moscow. Cacheris offered to represent Franklin pro bono, and Franklin accepted the offer.

aipac launched a special appeal for donations—for the organization, not for Rosen and Weissman. “Your generosity at this time will help ensure that false allegations do not hamper our ability or yours to work for a strong U.S.-Israel relationship and a safe and secure Israel,” aipac’s leaders wrote in the letter accompanying the appeal.

But in December four aipac officials, including Kohr, were subpoenaed to testify before a grand jury in Alexandria, Virginia. In March, aipac’s principal lawyer, Nathan Lewin, met with the U.S. Attorney for the Eastern District of Virginia, Paul McNulty, who agreed to let Lewin see some of the evidence of the Pentagon City sting. According to an aipac source, an eleven-second portion of the telephone conversation between Rosen, Weissman, and the *Post’s* Glenn Kessler, which the F.B.I. had recorded, was played for Lewin. In that conversation, Rosen is alleged to have told Kessler about Iranian agents in southern Iraq—information that Weissman had received from Franklin. In the part of the conversation that Lewin heard, Rosen jokes about “not getting in trouble” over the information. He also notes, “At least we have no Official Secrets Act”—the British law that makes journalists liable to prosecution if they publish classified material.

Prosecutors argued to Lewin that this statement proved that Rosen and Weissman were aware that the information Franklin had given them was classified, and that Rosen must therefore have known that he was passing classified information to Gilon, a foreign official. Lewin, who declined to comment on the case, recommended that aipac fire Rosen and Weissman. He also told the board that McNulty had promised that aipac itself would not be a target of the espionage investigation. An aipac spokesman, Patrick Dorton, said of the firing, “Rosen and Weissman were dismissed because they engaged in conduct that was not part of their jobs, and because this conduct did not comport with the standards that aipac expects and requires of its employees.”

When I asked Abbe Lowell, Rosen’s lawyer, about the firings, he said, “Steve Rosen’s dealings with Larry Franklin were akin to his dealings with executive-branch officials for more than two decades and were well known, encouraged, and appreciated by aipac.”

Last month, I met with Lowell and Rosen in Lowell’s office, which these days is a center of Washington scandal management. (He also represents the fallen lobbyist Jack Abramoff.) Lowell had instructed Rosen not to discuss specifics of the case, but Rosen expressed disbelief that his career had been ended by an F.B.I. investigation. “I’m being looked at for things I’ve done for twenty-three years, which other foreign-policy groups, hundreds of foreign-policy groups, are doing,” Rosen said, and went on, “Our job at aipac was to understand what the government is doing, in order to help form better policies, in the interests of the U.S. I’ve never done anything illegal or harmful to the U.S. I never even dreamed of doing anything harmful to the U.S.” Later, he said, “We did not knowingly receive classified information from Larry Franklin.” Lowell added, “When the facts are known, this will be a case not about Rosen and Weissman’s actions but about the government’s actions.” Lowell said that he would not rehearse his arguments against any charges until there is an indictment.

Rosen said that he was particularly upset by the allegation that, because he had informed Gilon that Israeli lives might be in danger, he was a spy for Israel. “If I had been given information that British or Australian soldiers were going to be kidnapped or killed in Iraq, I think I would have done the same thing,” he said. “I’d have tried to warn them by calling friends at those embassies.” He wants to believe that he could return to aipac if he is exonerated, but this does not seem likely. aipac leaders are downplaying Rosen’s importance to the organization. “aipac is focussed primarily on legislative lobbying,” Dorton told me. Rosen’s severance pay will end in September, although aipac, in accordance with its bylaws, will continue to pay legal fees for Rosen and Weissman.

Rosen’s defenders are critical of aipac for its handling of the controversy. Martin Indyk, who is now the director of the Saban Center for Middle East Policy, a think tank within the Brookings Institution, thinks that aipac made a tactical mistake by cutting off the two men. “It appears they’ve abandoned their own on the battlefield,” he says. “Because they cut Steve off, they leave him no choice.” Indyk wouldn’t elaborate, but the implication was clear: Rosen and Weissman will defend themselves by arguing that they were working in concert with the highest officials of the organization, including Kohr.

Until there is an indictment, the government’s full case against Rosen and Weissman cannot be known; no one in the Justice Department will comment. The laws concerning the dissemination of government secrets are sometimes ambiguous and often unenforced, and prosecutors in such cases face complex choices. According to Lee Strickland, a former chief privacy officer of the C.I.A., prosecutors pressing espionage charges against Rosen and Weissman would have to prove that the information the two men gave to Gilon not merely was classified but rose to the level of “national-defense information,” meaning that it could cause dire harm to the United States. Yet a reporter who called the Embassy to discuss the same information in the course of

preparing a story—thus violating the same statute—would almost certainly not be prosecuted. Strickland continued, “Twice in the Clinton Administration we had proposals to broaden the statutes to include the recipients, not just the leakers, of classified information. The *New York Times* and the *Washington Post* went bat-shit about this legislation. They saw it as an attempt to shut down leaks.” If American law did punish those who receive, and then pass on, or publish, privileged information, much of the Washington press corps would be in jail, according to Lee Levine, a First Amendment lawyer. So would a great many government officials, elected and appointed, for whom classified information is the currency of conversation with reporters and lobbyists.

Strickland, who said that he had spent much of his career at the C.I.A. “shutting down” leaks, called the aipac affair “uncharted territory.” It is uncommon, he said, for an espionage case to be built on the oral transmission of national-defense information. He also said, “Intent is always an element. If I were a defense attorney, I would argue that this was a form of entrapment. The F.B.I. agents deliberately set my client up, put him in a moral quandary.” He added, however, that although a jury might recognize the quandary, the law does not. “Just because you have information that would help a foreign country doesn’t make it your job to pass that information.”

Even some of aipac’s most vigorous critics do not see the Rosen affair as a traditional espionage case. James Bamford, who is the author of well-received books about the National Security Agency, and an often vocal critic of Israel and the pro-Israel lobby, sees the case as a cautionary tale about one lobbying group’s disproportionate influence: “What Pollard did was espionage. This is a much different and more unique animal—this is the selling of ideology, trying to sell a viewpoint.” He continued, “Larry Franklin is not going to knock on George Bush’s door, but he can get aipac, which is a pressure group, and the Israeli government, which is an enormous pressure group, to try to get the American government to change its policy to a more aggressive policy.” Bamford, who believes that Weissman and Rosen may indeed be guilty of soliciting information and passing it to a foreign government, sees the case as a kind of brushback pitch, a way of limiting aipac’s long—and, in Bamford’s view, dangerous—reach.

Other aipac critics see the lobby’s behavior as business as usual in Washington. “The No. 1 game in Washington is making people talking to you feel like you’re an insider, that you’ve got information no one else has,” Sam Gejdenson, a former Democratic congressman from Connecticut, says. When Gejdenson opposed a proposal to increase Israel’s foreign-aid allocation at the expense of more economically needy countries, aipac, he said, responded by “sitting on its hands” during his reelection campaigns, despite the fact that he is Jewish. “It’s like any other lobbying group,” he said. “Its job isn’t to come up with the best ideas for mankind, or the U.S. It’s narrowly focussed.”

aipac officials insist that the case has not affected the organization’s effectiveness. But its operations have certainly been hindered by the controversy of the past year, and the F.B.I. sting may force lobbyists of all sorts to be more careful about trying to penetrate the executive branch—and about leaking to reporters. And aipac now seems acutely sensitive to the appearance of dual loyalty. The theme of this year’s aipac conference was “Israel, an American Value,” and, for the first time, “Hatikvah,” the Israeli national anthem, was not sung. The only anthem heard was “The Star-Spangled Banner.” ♦

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CONFIDENTIAL SESSION

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

----- X
 STEVEN J. ROSEN, :
 :
 Plaintiff, :
 :
 v. : Civil Action
 : No. 09-1256
 AMERICAN ISRAEL PUBLIC AFFAIRS :
 COMMITTEE, INC., et al., :
 :
 Defendants. :
 :
 ----- X

CONFIDENTIAL SESSION

Washington, D.C.

Tuesday, April 13, 2010

Deposition of

RICHARD LEE FISHMAN

a witness of lawful age, taken on behalf of the
 Plaintiff, in the above-entitled action, before Jon
 Hundley, Notary Public in and for the District of
 Columbia, in the offices of Swick & Shapiro, P.C., 1225
 Eye Street, Suite 1290, N.W., commencing at 10:05 a.m.
 Diversified Reporting Services, Inc.
 (202) 467-9200

1 Government people to know what was classified and what
2 was not classified?

3 MR. McCALLY: Up to what time?

4 BY MR. SHAPIRO:

5 Q Up to there was an official policy, and if a
6 Government person told you something, you took it to
7 not be classified?

8 MR. McCALLY: Objection; asked and answered
9 previously about what the policy was.

10 THE WITNESS: We do assume -- we still assume
11 the Government officials know what they can share and
12 know what they can't share. That doesn't mean that
13 anyone is absolved of their responsibility of
14 understanding whether or not they are being given
15 information they shouldn't have or not have.

16 The only difference between then and now is
17 that we treated that as a common sense understanding,
18 how someone should operate, and now we've made that
19 policy explicit.

20 BY MR. SHAPIRO:

21 Q "Now" being within the last two years?

22 A Right. I mean Steve understood that to some

1 extent because he used to open his meetings with a
2 brief speech about how he didn't want to get
3 information that he wasn't supposed to have.

4 Q Over which meetings?

5 A With Government officials.

6 Q You were there for those meetings?

7 A He told me about it.

8 Q He told you about it?

9 A Yeah.

10 Q When did he tell you that?

11 A He told me about it -- I don't know exactly
12 when he told me about it, but he told me about it in
13 the course of our conversations over the years.

14 Q After August 27, 2004?

15 A Yes.

16 Q Before August 27, 2004?

17 A Maybe. I'm not certain of that.

18 Q What did Steve say, that he opened his
19 conversations with?

20 A He opened his conversations -- I never heard
21 it myself, others have, but he would say I'm here to
22 learn as much as I can, but I'm not here to learn

1 information that I'm not supposed to have and I'm not
2 seeking classified information for you to share with
3 me.

4 That would indicate to me that Steve well
5 understood the standards that are expected in terms of
6 interaction with Government officials.

7 Q I see. He wasn't present, as you understand
8 it, for the two meetings where Larry Franklin said
9 "classified?"

10 MR. McCALLY: Objection; asked and answered.

11 BY MR. SHAPIRO:

12 Q Correct?

13 A I don't know --

14 Q That's what you told me, you didn't think --

15 A You said "those two meetings." I don't know
16 what other meetings he might have been part of.

17 Q I understand. For those two meetings, you
18 don't think he was present, you thought it was only
19 Keith Weissman?

20 A I think so.

21 Q That's your understanding?

22 A My understanding.

1 Q In October of 2004, was it AIPAC's view that
2 merely passively listening to Government employees
3 volunteering information was not unlawful?

4 MR. McCALLY: Objection as to the form, calls
5 for speculation. Answer it if you can.

6 THE WITNESS: Yeah -- ask it one more time. I
7 want to be careful.

8 BY MR. SHAPIRO:

9 Q Was it your view that AIPAC's position in
10 October of 2004 was that merely passively listening and
11 taking in information from Government officials was not
12 unlawful?

13 A Did the person know the information that was
14 being shared was U.S. classified information?

15 Q How would they know that?

16 A If it was told to them. How would they know?
17 Yes, if it was identified to them as being classified,
18 the answer to that question is no, that would be
19 unlawful.

20 Q That would be unlawful?

21 A If they were simply listening to information
22 from a Government official and it wasn't identified as

1 classified, no, we would not see that as unlawful.

2 Q Even in October 2004?

3 A That's my view.

4 Q Even in October 2004?

5 A Yes, passively listening to information; yeah,
6 exactly.

7 Q You would have to flee the room?

8 A "Flee the room?" Leave the room.

9 Q Stop listening?

10 A To say this is an inappropriate conversation
11 for me to have and we should stop it.

12 Q And if the person continued? It was unlawful
13 to hear it.

14 A It would be our view that would be
15 inappropriate. I don't know about lawful or unlawful.
16 I'm not a lawyer. It would be inappropriate for an
17 AIPAC staff person to participate in such a
18 conversation; that's correct.

19 Q The same words that I just read to you appear
20 in earlier drafts of the same speech, do they not?

21 MR. McCALLY: Objection. Do not answer any
22 questions about this document. I'm advising you not to

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

CIVIL DIVISION

----- -X
STEVEN J. ROSEN, :
 :
 Plaintiff, :
 :
 v. : Civil Action No.
 : 09-1256
 AMERICAN ISRAEL PUBLIC :
 AFFAIRS COMMITTEE, INC., et al.:
 :
 Defendant. :
----- -X

Washington, D.C.

Tuesday, September 21, 2010

Deposition of

RENEE ROTHSTEIN

a witness of lawful age, taken on behalf of the Plaintiff, in
the above-entitled action, before SUSAN JELEN, Notary Public
in and for the District of Columbia, in the offices of Swick
and Shapiro, 1225 Eye Street, N.W., Washington, D.C. 20005,
commencing at 10:35 a.m.

Diversified Reporting Services, Inc.
(202) 467-9200

1 A I don't remember if he gave names. I do remember
2 that he had -- I insisted that he go have a discussion with
3 some of those people, and I know it was with more than one
4 person, and there's only one name that I remember.

5 Q Well, who was that?

6 A David Gillette.

7 Q And who is Mr. Gillette?

8 A He's one of our lobbyists.

9 Q Do you think it's true that Howard Kohr never
10 received classified information?

11 A Yes.

12 Q So you believe that that's true?

13 A I do.

14 Q And you believe it's true that Mr. Feuer never
15 received classified information?

16 A Yes, I do.

17 Q I see. So in your belief you don't believe that
18 anybody at APEC ever received classified information?

19 A No, I don't. I've never heard the word until this
20 case in my entire tenure at APEC and in sitting in any senior
21 staff meeting for more than a decade.

22 Q Did you ever see in writing that Keith Weisman was

IN THE UNITED STATES SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA

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 :
 STEVEN J. ROSEN, :
 :
 Plaintiff, :
 :
 : Civil Action No.
 v. : 09-1256
 :
 AMERICAN ISRAEL PUBLIC :
 AFFAIRS COMMITTEE, INC., :
 Et al., :
 :
 Defendants. :
 :
 ----- x

Washington, D.C.

Friday, April 9, 2010

Deposition of

PATRICK DORTON

a witness of lawful age, taken on behalf of the
 Defendant in the above-mentioned action, before
 Jon G. Hundley, Notary Public in and for the District
 of Columbia, in the offices of Swick and Shapiro,
 1225 Eye Street, N.W., commencing at 10:06 a.m.

EXHIBIT
11

Diversified Reporting Services, Inc.
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1 BY MR. SHAPIRO:

2 Q Who told you that Steve Rosen's conduct did
3 not comport with the standards that AIPAC expects and
4 requires of its employees?

5 MR. McCALLY: Same objection and same
6 instruction. Do you understand?

7 THE WITNESS: Yes.

8 MR. McCALLY: All right.

9 MR. SHAPIRO: Yes.

10 THE WITNESS: It was clear to me in the
11 discussions of that legal group that I have talked
12 about that -- that -- that there -- that the -- the
13 overall group in a number of instances felt that Steve
14 Roseman -- Rosen had not lived up to the standards
15 of -- that AIPAC expects and requires of its employees.

16 It was -- the basis for that statement was
17 formulated in the -- in the context of -- of not just
18 a -- of not just the discussions of that legal group at
19 the -- at the time -- in the Spring of 2005 but in the
20 ongoing and ongoing information discussed by the legal
21 group for, you know, months.

22 BY MR. SHAPIRO:

1 **Q What were the standards that AIPAC expected**
2 **and requires of its employees that Mr. Rosen did not**
3 **live up to, as you understood it?**

4 MR. McCALLY: Again, I raise my same objection
5 and without saying what certain people said or
6 discussed, you can state the factual basis for that
7 statement, as you understand it.

8 THE WITNESS: Well, issues, factual issues
9 about Mr. Rosen's conduct that had been discussed
10 included lying to the Federal Bureau of Investigation,
11 possession of pornography on a work computer, lack of
12 what looked to be deliberate decisions not to be
13 forthcoming to AIPAC attorneys and AIPAC leadership,
14 and, in addition to that, a -- a strong -- a -- a
15 recommendation from the -- the group that -- you know
16 what? I need a break here.

17 MR. McCALLY: Okay.

18 (A brief recess was taken.)

19 MR. SHAPIRO: You've just consulted with
20 counsel.

21 THE WITNESS: Yes.

22 MR. SHAPIRO: On the record, on the record.

1 BY MR. SHAPIRO:

2 Q You've just consulted with counsel --

3 A Yes.

4 Q -- at your request. Would you continue your
5 answer?

6 A Sure. In addition, a recommendation by Nat
7 Lewin who had made a recommendation in writing and also
8 made a recommendation in writing that Steve Rosen and
9 Keith Weisman had not lived up to the standards that
10 AIPAC could accept or -- or needed to accept or
11 required of its employees after listening to -- we -- I
12 don't actually know -- after experiencing something at
13 the U.S. Attorney's Office.

14 Q What were the standards that
15 he -- that -- that they hadn't lived up to?

16 MR. McCALLY: Objection. Asked and answered.

17 MR. SHAPIRO: No.

18 BY MR. SHAPIRO:

19 Q With regard to what Mr. Lewin wrote this
20 recommendation. What were the standards, as you
21 understood them?

22 MR. McCALLY: He just testified to them,

1 were causes for concern.

2 Q Well, your personal opinion is what I'm -- I'm
3 trying to find out what other standards that he
4 violated that you've talked -- you talked about him
5 violating standards that AIPAC expected and requires of
6 its employees and you've told me four. Are there
7 others?

8 A Right.

9 Q And if there are, what are they?

10 MR. McCALLY: Well, objection. Asked and
11 answered. He's already identified the information in
12 the indictment.

13 MR. SHAPIRO: What standards did he violate?
14 The indictment -- saying the indictment doesn't tell me
15 what the standards, AIPAC standards that Mr. Rosen
16 violated.

17 MR. McCALLY: A federal indictment for
18 espionage doesn't tell you what the standard is that
19 they might have been upset about?

20 BY MR. SHAPIRO:

21 Q What was the standard, sir?

22 A It would be concerning to me if any employee

1 at AIPAC or any organization was indicted, just to
2 start with, was indicted. The second piece, clearly
3 there was parts of their interaction -- I don't have
4 the indictment in front of me, but I'm happy to walk
5 through it with you, if you want to bring it to me.
6 There were obviously factual issues in the indictment
7 that would be of concern to any organization.

8 **Q Yes, but I'm talking about the standards.**
9 **Your statement was that he violated the standards that**
10 **AIPAC expected and required of employees.**

11 A That's correct.

12 **Q What were the standards he violated?**

13 MR. McCALLY: Asked and answered.

14 BY MR. SHAPIRO:

15 **Q That there was an indictment and the things**
16 **said in the indictment. Is that what your answer is?**

17 A I -- I've already outlined four areas
18 earlier --

19 **Q Yes.**

20 A -- in the discussion. So I'm not going to --

21 **Q In addition to those four areas?**

22 A I -- I think there was certainly additional

1 statements."

2 You now opened it up. As he sits here today,
3 he's already identified the indictment. He's
4 identified other news articles that contained
5 information.

6 BY MR. SHAPIRO:

7 **Q What? What -- what information was of**
8 **concern?**

9 MR. McCALLY: Objection. Asked and answered.
10 If you want to give him the indictment, he'll walk
11 through it.

12 MR. SHAPIRO: I'm happy to do that eventually,
13 but he said, in addition to the indictment, there were
14 other things.

15 BY MR. SHAPIRO:

16 **Q What other things?**

17 A Well, I -- I would just say that it has become
18 clear to me since that -- that the lack of candor has
19 become -- I have now in my view further evidence as to
20 the lack of candor.

21 **Q What is that evidence?**

22 A Well, it should be concerning to any

1 organization when a -- when a person does not disclose
2 what the indictment alleges and again if you want to
3 give me the indictment, I will read it to you, that
4 that information is not disclosed to -- to the leaders
5 of an organization.

6 Q Okay.

7 A Okay.

8 Q Now let's talk about this --

9 MR. McCALLY: Wait, wait. Are you done? Keep
10 going.

11 MR. SHAPIRO: I thought he was done.

12 MR. McCALLY: No, he's not done.

13 THE WITNESS: It is of concern, it is of
14 concern that the -- well, I'm just going to leave it
15 there for now.

16 MR. SHAPIRO: Okay.

17 BY MR. SHAPIRO:

18 Q Diluting -- the -- the -- the -- the
19 decision -- sorry. The decision and apparently
20 deliberate decision on Mr. Rosen's part not to be
21 forthcoming with AIPAC's attorneys and/or leadership.
22 You said that was one of the four things.

1 MR. SHAPIRO: Well, we're talking about the
2 Fall of '04 right now, yes.

3 THE WITNESS: In the Fall of '04, there
4 was -- there was a consideration in the legal group
5 that he had not been forthcoming. My -- I had a -- my
6 personal experience to -- that I personally -- that
7 I -- that I personally used was I had not -- I had not
8 felt that I was -- you know what? Can we take a break
9 for a second?

10 MR. McCALLY: Yep.

11 (A brief recess was taken.)

12 BY MR. SHAPIRO:

13 Q You've consulted. Can you answer the
14 question?

15 A I was concerned about my inability to -- to
16 get a full picture of the relationship between Steve
17 Rosen and Keith Weisman and Larry Franklin in the Fall
18 of 2004. It was a -- separately, there was a
19 growing -- there was a sense almost from -- there was a
20 sense from the beginning, from my first -- from some of
21 my first days that we did not have an accurate factual
22 picture of what happened.

1 **Q What happened? What happened?**

2 A Of what happened between Mr. Rosen, Mr.
3 Weisman, and Mr. Franklin.

4 **Q And that continued through the Fall of 2004?**

5 A That continued through the Fall of 2004.

6 **Q And continued even thereafter?**

7 A And continued even thereafter.

8 **Q Right up till today?**

9 MR. McCALLY: Objection to the form.

10 BY MR. SHAPIRO:

11 **Q Sir?**

12 MR. McCALLY: Do you mean his concern that he
13 didn't have an accurate picture back in '04?

14 BY MR. SHAPIRO:

15 **Q I take it it's not just your concern? You**
16 **said it was the concern, not just your concern, but the**
17 **concern, the concern of this group, right?**

18 A It was a concern. That was one of the
19 considerations.

20 **Q And that -- and that continued right up until**
21 **today, yes? I don't want to leave my question**
22 **unanswered.**

1 MR. McCALLY: Well, that's the point. You're
2 saying today as he sits here today?

3 MR. SHAPIRO: Yes.

4 MR. McCALLY: So he can consider if he got the
5 full story, he would then pull in all the other
6 information he received to -- to this point today.

7 THE WITNESS: I am concerned that we did not
8 get a full and accurate picture in the Fall of 2004
9 about what happened even today. That is concerning to
10 me about an employee's behavior, yes.

11 BY MR. SHAPIRO:

12 **Q And when -- when did you get -- have a full**
13 **picture?**

14 A Well, I think we have more of a full picture
15 today. That is, --

16 **Q When did you get that more of a full picture?**

17 MR. McCALLY: Let him answer the question.

18 THE WITNESS: I -- I think we got certainly
19 more of a full picture in the indictment that did not
20 eliminate my concern about forthcomingness and probably
21 exacerbated my concern about forthcomingness.

22 Did I learn more about what happened in the

1 indictment and probably, you know, subsequently? Yes.
2 But I have -- still have the same concerns about
3 forthcomingness and -- and actually the more factual
4 detail I learn, the more I'm concerned that there
5 wasn't a forthcoming approach.

6 BY MR. SHAPIRO:

7 Q So through the Fall of 2004 and into 2005,
8 that concern was paramount, am I correct?

9 MR. McCALLY: Objection.

10 THE WITNESS: I don't know what paramount
11 means.

12 BY MR. SHAPIRO:

13 Q Well, --

14 MR. McCALLY: Wait, wait, wait.

15 MR. SHAPIRO: I'm going to tell him --

16 MR. McCALLY: Objection.

17 MR. SHAPIRO: Okay. Sorry. Go ahead.

18 MR. McCALLY: Objection as to the use of the
19 word "paramount" and what it means. Go ahead.

20 THE WITNESS: That was a concern.

21 BY MR. SHAPIRO:

22 Q But I'm going to -- and it continued to be

1 leadership, but I just want to make sure I have -- I've
2 captured that whole crew, --

3 A Correct.

4 Q -- and I have, haven't I?

5 A Correct.

6 Q Okay.

7 MR. SHAPIRO: Give us a couple minutes. I do
8 have to go, but give us a couple minutes and we'll let
9 you go.

10 (A brief recess was taken.)

11 MR. SHAPIRO: Go ahead. Back on the record.

12 BY MR. SHAPIRO:

13 Q Before the indictment, before you learned
14 whatever you learned from the indictment and reading
15 the indictment, can you recall any specifics that you
16 believed that Rosen had -- was not forthcoming about?

17 A I personally was very concerned that -- that I
18 could -- in the Fall of 2004, that I was not able to
19 get the details of additional meetings that Rosen and
20 Weisman had with Mr. Franklin.

21 Q Well, did -- you say the Fall of 2004. Did
22 that continue before the indictment -- before the

1 indictment came down?

2 MR. McCALLY: That concern?

3 BY MR. SHAPIRO:

4 Q That -- that -- even after the indictment came
5 down, did you still have that concern?

6 MR. McCALLY: Objection. Asked and answered.

7 BY MR. SHAPIRO:

8 Q That specific concern that you just told us
9 about?

10 A I -- I -- after the indictment came down, I
11 was further concerned that -- or I was -- you know, I
12 was still concerned that Mr. Rosen and Mr. Weisman had
13 not been forthcoming.

14 Q About the extent of the meetings?

15 A Yes.

16 Q Anything else, besides the extent of the
17 meetings?

18 A Again, I -- I am more than happy to walk
19 through the indictment and outline my concerns.

20 Q Yes, but I'm talking about before you saw the
21 indictment, what were the concerns about Mr. Rosen
22 intentionally not being -- deciding not to be

“This Is the FBI—Can We Talk?”

By Mark Matthews

Keith Weissman and Steven Rosen Are PhDs and Middle East Experts Who Did Some Lobbying. They Thought They Were Doing What Washington Insiders Always Do.

Thomas O'Donnell didn't reveal his job when he phoned Keith Weissman in 2004 and got the policy analyst's wife. He says he didn't want to scare her. When Weissman returned the call and found out O'Donnell was an FBI agent, his first reaction was to attempt a joke: “What did I do?” “I'm sure you didn't do anything,” O'Donnell told him. He wanted to meet that day, for five or ten minutes, and get Weissman's help on something “that I can't talk about on the telephone.”

Weissman was calling from his cell phone, standing outside a New Balance shoe store near Boston. He turned down the invitation to meet with O'Donnell: “That's a little too cryptic for me. I'm on vacation with my family.”

O'Donnell was in Boston, and he offered an explanation for why he was there. He said he had been sent for the Democratic National Convention “and some other matters.” The political convention, where the FBI kept watch for violent demonstrators, had wrapped up a few days earlier at Boston's Fleet Center.

Weissman agreed to meet O'Donnell in Washington six days later and “have a cup of coffee and [find] a quiet place and we can talk.”

When Weissman pressed O'Donnell, seeking to find out what the FBI was after, he was told, according to an FBI transcript, that the bureau wanted to tap “your expertise with some different countries . . . that you've studied and written on and done some research. It's that kind of stuff.”

That was plausible. Weissman, then 52, was a senior analyst for the American Israel Public Affairs Committee (AIPAC), Washington's most influential pro-Israel lobbying group, where he had worked since 1993. His job combined research and efforts to influence US government policy. He had a good grasp of the political and cultural currents of the Middle East, having studied in Iran and Egypt and earned a PhD in Middle East history at the University of Chicago.

Weissman's wife, Deborah, a lawyer and former investigator with the Securities and Exchange Commission, became anxious when told of the FBI meeting. She urged her husband to take someone with him to the appointment, such as AIPAC general counsel Philip Friedman. Her instincts were sound. O'Donnell's assurance to Weissman that “I'm sure you didn't do anything” was a feint.

O'Donnell worked at the FBI's Washington Field Office at Fourth and F streets, Northwest. The city-block-size WFO, as it's known, serves as the nerve center of the government's low-key but expansive efforts to track leaks of secrets to foreign countries. Its targets aren't just America's enemies; allies and friends hunger after each other's closely held information.

Russian espionage continues unabated after the collapse of the Soviet Union. An American agent in Paris was caught trying to steal French trade secrets. Despite its disclaimers, Israel is reported to be on the lookout for any information that will help preserve a military edge over regional enemies and expand its exports of weaponry and technology. The United States, in turn, is alert for signs that Israel is selling military hardware to China.

“There has been, for some time, serious concern about Israeli espionage in the US,” says Vincent Cannistraro, a former CIA veteran who also held intelligence posts at the White House and Pentagon. The FBI, he adds, “puts Israel up alongside China as espionage threats.”

In 2000, CBS’s *60 Minutes* broadcast the disguised voice of an unnamed CIA official saying, “We believe that there have been numerous documented instances in which the Israelis have successfully recruited US persons to spy for them.”

O’Donnell’s call prompted Weissman to try to reach his boss, Steven Rosen, AIPAC’s director of foreign-policy issues. Rosen, then 62, was a former academic. A political scientist with a PhD from Syracuse, he had taught at Brandeis, the University of Pittsburgh, and Australian National University and cowrote a textbook, *The Logic of International Relations*. He joined AIPAC in 1982 after four years with the Rand Corporation, where he held a top-secret security clearance to work on projects for the CIA. While at Rand, he became acquainted with a promising young graduate student, Condoleezza Rice, who was working there temporarily.

Weissman didn’t want to call Steven Rosen’s cell phone; he thought his boss should be sitting down when he heard about the FBI call. As it turned out, Rosen also had gotten a message from an FBI agent who wanted to talk to him about a “field investigation.”

When the two AIPAC officials speculated over the phone about what the FBI was after, they turned up one possibility: The investigators’ interest had been piqued by information the lobbyists had supplied to the Washington Post two weeks earlier. Still, Rosen was reluctant to act defensive, which would suggest that their organization was involved in “nefarious things.”

Rosen returned the FBI’s call and spoke with agent Catherine Hanna. “Is this a criminal matter?” he asked.

“No,” she replied.

That afternoon, Hanna and partner Robert Porath went to Rosen’s AIPAC office on First Street near Union Station. The agents told Rosen that the FBI was updating the security clearance of Pentagon analyst Lawrence Franklin and was interviewing his contacts as part of a background investigation. Franklin was the Pentagon desk officer for Iran, a subject of deep interest to Rosen. The FBI had turned up some possible security issues, the agents said, including the fact that Franklin may have stored classified documents at his house.

According to the agents’ notes, Rosen said he had met with Franklin about three times, but the two had never discussed classified information, nor had Franklin shared any with him. Asking for classified information, Rosen told the agents, was “a quick way to ruin relationships.”

Weissman kept his appointment the next week with O’Donnell and another agent, William McDermott, at the Sun Spot Cafe, adjacent to the lobby of AIPAC’s office building. Over a beverage and cigarette, Weissman described having met with Franklin four or five times over the previous two years to talk about non-Arab Middle East countries, primarily Iran, according to a court document. The agents asked him if Franklin had ever disclosed classified information to him or anyone else he

knew, and they noted his answer: “No.”

The two AIPAC officials’ hunch that a phone call to the *Post* had found its way onto the FBI’s radar was correct. They had shared what law-enforcement officials considered “national-defense information” with *Post* reporter Glenn Kessler about stepped-up Iranian activity in Iraq. The government would later charge that Rosen described it to Kessler as “agency information” from an “American intelligence source.”

But that call to the *Post* was a small piece of the story. And contrary to what agent Hanna told Rosen, this was “a criminal matter.” By the time the agents approached Rosen and Weissman, they were nearing the final stages of an investigation into leaks of classified information that would wreck the two men’s careers and throw one of Washington’s most powerful lobby groups on the defensive.

The FBI probe included hours of wiretaps approved by the secret Foreign Intelligence Surveillance Court in Washington and surveillance of meetings at Washington-area restaurants. It also included a search of AIPAC’s offices in 2002 that appears to have been surreptitiously conducted, because the offices’ entrance is monitored 24 hours a day and no one appeared with a search warrant around that time.

Federal prosecutors theorized that Rosen and Weissman had engaged in a five-year conspiracy to cultivate government sources with the aim of obtaining sensitive “national-defense information,” which they would pass on to colleagues at AIPAC, Israeli officials, and journalists. By August 2005, prosecutors persuaded a federal grand jury in Alexandria that the two AIPAC officials were not only assiduous in collecting classified information but almost flamboyant in sharing it with others.

“When it comes to classified information, there is a clear line in the law,” then-US attorney Paul McNulty said when the indictments were announced in August 2005. “Today’s charges are about crossing that line.”

Rosen, Weissman, and Franklin were accused under a rarely used section of the World War I-era Espionage Act.

A conviction could land Weissman, a father of three, in prison for up to ten years and Rosen, also a father of three who faces an additional charge, for up to 20. But the potential impact extends beyond these two men and AIPAC. It could also send a chill through the ranks of Washington lobbyists and consultants for foreign governments.

To influence the US government or even react knowledgeably to US actions, many countries think an embassy staffed with diplomats isn’t enough. They’re willing to pay large fees to hire Americans with contacts at high levels and an understanding of how policymakers think. Often these are ex-government officials. While barred from lobbying former colleagues immediately upon leaving office, they nonetheless bring valuable experience and eventually get inside for meetings and to open doors for foreign visitors.

For instance, when India was negotiating its 2006 civilian nuclear agreement with the Bush administration—fraught with strategic implications for both countries—it enlisted the lobbying firm Barbour Griffith & Rogers for advice. The firm had previously signed on the former US ambassador to New Delhi, Robert Blackwill. Although Blackwill wasn’t involved in getting the firm’s India contract, he has since been a prominent advocate for a new US/India partnership.

Robert Litt, a defense lawyer who has represented people caught up in leak investigations, sees the indictment of Rosen and Weissman as part of a broad crackdown on leaks by the Bush administration:

“People formerly in the intelligence community are looking at [the AIPAC case] and the leak investigations with great trepidation.”

But a conviction is by no means a sure thing, due in part to an aggressive three-year fight by the defense team, led by Abbe Lowell for Rosen and by John Nassikas III for Weissman. The lawyers’ no-stone-unturned litigation fills a foot-thick file of motions and rebuttals in US District Court in Alexandria. A series of rulings by the resolutely evenhanded presiding judge, T.S. Ellis III, has knocked some of the stuffing out of the government’s case and required the Bush administration to put some of its top officials on the witness stand.

In fact, what the US attorney called the “clear line in the law” isn’t clear at all, particularly where the question of intent comes into play. When the case comes to trial in late April, assistant US attorneys Kevin DiGregory and William N. Hammerstrom Jr. will have to meet a big burden of proof. Showing that Rosen and Weissman obtained, talked about, and relayed sensitive national-defense information won’t be enough. Prosecutors will have to prove that the two men did so knowing that if the information were revealed, it would damage US national security and also knowing that disclosing it was illegal.

Convincing a jury that Rosen and Weissman possessed this criminal state of mind won’t be easy. To counter the charge, defense lawyers intend to lay bare the largely hidden world of back-channel Washington diplomacy. They will try to show that senior officials regularly gave AIPAC officials sensitive information with the full expectation that it would be passed along to Israelis and others. In that way, they will contend that AIPAC played a role in developing US foreign policy.

Over prosecutors’ objections, defendants won court approval to subpoena 15 current and former top administration officials. Their names read like the lineup for a crisis meeting in the White House Situation Room during President Bush’s first term: national-security adviser Condoleezza Rice (now secretary of State); current national-security adviser Stephen Hadley; Richard Armitage, former deputy secretary of State; William Burns, US ambassador to Russia; Marc Grossman, former undersecretary of State for political affairs; David Satterfield, now the State Department’s coordinator for Iraq; Elliott Abrams, deputy national-security adviser; Paul Wolfowitz, former deputy secretary of Defense; and Douglas Feith, former undersecretary of Defense.

Judge Ellis didn’t okay these subpoenas lightly. He did so after being persuaded that each of these officials would be able to testify about specific meetings or conversations—either with the two defendants or with others at AIPAC—that dealt with information comparable in sensitivity to the kind Rosen and Weissman allegedly obtained and passed on.

Ellis also knew that the subpoenas might derail the case. If the administration balks at allowing sworn testimony by senior officials about sensitive conversations, the case against Rosen and Weissman could be dismissed.

The line between information that can and can’t get passed is blurred by the amount of officially sanctioned daily intelligence sharing between the United States and its allies. Such exchanges are particularly intense between the United States and Israel, which regularly trade information and assessments on terrorism and other perceived threats.

“It’s absurd for anyone to think that the Israelis have to enlist people to spy,” says Sandra Charles, a former Pentagon and National Security Council official who consults in Washington for Persian Gulf Arab governments. “They can go to the highest levels of the administration if they want to find out what the thinking is on US policy.”

To James Zogby, president of the Arab American Institute, the case casts a shadow not only over AIPAC but also over other groups, such as his, that engage in what he calls “ethnic lobbying.” But he says he doesn’t have any sympathy for Rosen and Weissman. Like AIPAC lobbyists, Zogby has met with senior American policymakers and been asked to convey signals to and from foreign officials—in his case, Arab leaders. “[US officials] would say to me, ‘You’re going to the Gulf—ask this,’ or ‘If we say this to [Yasser] Arafat, what will he say?’ ”

“Everybody in this business knows the difference” between that kind of discreet communication and what Rosen and Weissman are charged with, Zogby claims. “Their choice was to pass on information they knew was sensitive to Israel.”

Just how sensitive will be disputed at the trial. Rosen and Weissman were accused of transferring not classified documents, only information they had been given orally. The trial itself will include a mass of classified material that the government has reluctantly decided to divulge. Ellis ordered that it be stripped of markings such as “top secret” or “no for” (no foreign nationals), which could give the jury an impression that the information was closely held when in fact it might not have been.

If civilian lobbyists such as Rosen and Weissman can be punished for obtaining and discussing classified information, what about journalists and researchers who uncover data the government prefers to keep hidden? McNulty contended in 2005 that “those not authorized to receive classified information must resist the temptation to acquire it.”

Press-freedom advocates view the case as a potential blow to newsgathering, coming on top of court and prosecutorial pressure on reporters to divulge confidential sources. Think tanks and interest groups that specialize in collecting and analyzing information on national security are worried as well.

John Pike, who directs GlobalSecurity.org, an organization skilled at unearthing national-security data from open sources, says the indictment raises this question: “How many degrees of separation can remove you from the obligation to protect information that was originally classified?”

Just when the FBI opened its AIPAC probe isn’t clear.

“It started a long time before I got there,” says David Szady, a veteran counterespionage officer and leak investigator who in 2001 was named to the new FBI post of national counterintelligence executive. He declines to comment further.

Why the probe began remains a mystery. A Justice Department spokesman declined to comment on the case. Speculation centers on 1990s suspicion of an Israeli “mole” in the national-security apparatus, ongoing surveillance of Israelis that turned up contacts with AIPAC, or a general law-enforcement search for leakers. The question of why AIPAC lobbyists were singled out prompted darker theories, summed up in a headline on a *Wall Street Journal* opinion piece by Dorothy Rabinowitz: first they came for the jews.

Justice Department lawyers knew that a probe of AIPAC would be controversial. A senior participant at the time says: “It was obvious to me and to many others that an investigation of this nature was going to receive a lot of attention because of the significance of the organization involved.”

Regularly ranked as one of the most effective lobbying organizations in Washington, AIPAC strives to forge closer political, strategic, and military ties between the United States and Israel. The group combines grassroots organizing, fundraisers capable of pulling in tens of millions of dollars a year, and a skilled Washington staff that finds willing legislative sponsors among friends in both parties. When preparing a major arms sale to Arab allies, the Pentagon will often brief AIPAC specialists before the

deal is put before Congress.

“For anyone who deals with the Middle East,” consultant Sandra Charles says, “AIPAC is one of those realities you learn to work with.”

Each year, AIPAC draws thousands from across the country to its Washington convention to hear speeches by the President, Cabinet secretaries, top congressional leaders, and Israeli politicians. Then AIPAC members move on to Capitol Hill to lobby members of Congress. AIPAC has consistently lined up a large congressional majority in support of military and economic aid for Israel and cooperation between the two countries in a variety of spheres from missile defense to homeland security. The aid package for Israel tends to be the engine that gets the whole US foreign-aid budget through Congress.

While nonpartisan and not directly involved in political campaigns, AIPAC keeps its membership of more than 100,000 apprised of congressional votes important to Israel. This kind of scrutiny can have an intimidating effect on lawmakers because it has the potential to influence where AIPAC members send their campaign contributions. Critics have contended that AIPAC should be required to register as a political-action committee. But neither the courts nor the Federal Election Commission has forced the issue.

Other detractors contend that because it lobbies for aid and policies that benefit Israel, AIPAC ought to register with the Justice Department as a foreign agent. But unlike organizations and firms that represent foreign interests and governments, AIPAC doesn't get money from and is not contractually linked to Israel.

Crucial to AIPAC's influence on US policy is its ability to keep Congress and executive-branch policymakers informed of actual or potential threats to Israel and alerted to dangerous political trends in surrounding Middle East countries. This is where Rosen and Weissman came in.

Rosen played a big role in expanding the organization's influence beyond Congress into the executive branch, meeting behind the scenes with well-placed officials and the journalists who cover them. Generally hawkish but nonideological, Rosen specialized in hard-nosed, sometimes prescient analysis of the major actors in the Middle East and Washington. A father of two sons, ages 25 and 8, and a 22-year-old daughter, Rosen has been married and divorced six times. Five years ago, he reunited with his first wife after 39 years apart.

The indictment shows that investigators recorded conversations among Rosen, Weissman, and Israeli officials starting in April 1999, when Rosen allegedly disclosed to an Israeli diplomat that he had “picked up an extremely sensitive piece of intelligence.” He described the information as code-word protected, meaning that access to it was highly restricted. Two months later, Weissman allegedly told the same diplomat that he knew of a “secret classified FBI report” on the 1996 Khobar Towers bombing in Saudi Arabia.

In December 2000, both men met over lunch with Kenneth Pollack, then a Persian Gulf specialist on the National Security Council staff under President Bill Clinton. Afterward, Rosen allegedly talked to a reporter about then-classified US strategy options against Iraq. In January 2002, Rosen met with David Satterfield, a senior State Department Middle East official, about the sharing of intelligence between the United States and Israel following the Karine A episode, in which the Israelis seized a large Palestinian arms shipment. The episode damaged the US relationship with Yasser Arafat. The government alleges that, in a memo to other AIPAC staffers, Rosen included classified information he had picked up.

The lobbyists' contacts with Lawrence Franklin developed in 2002 when the defense analyst joined the Pentagon's newly formed Office of Special Plans under Douglas Feith.

Rosen had been watching with growing alarm the signs that Tehran's cleric-dominated regime was seeking to develop a nuclear weapon, compounding the danger posed by Iran's support for terrorist and guerrilla movements in Lebanon, the West Bank, and the Gaza Strip and its export of an extremist ideology. He shared some of the frustration of Israeli leaders, who, from former prime minister Yitzhak Rabin onward, saw Iran as a threat to the Jewish state's existence and pressed for greater attention from Washington. As confrontation loomed between the United States and Iraq, Rosen worried that the United States would be pulled into a quagmire, unable to respond to what he considered a graver threat from Iran.

From his midlevel perch at the Pentagon, Franklin chafed at what he saw as a failure by the Bush administration to come to grips with the Iranian danger. He reached out to Rosen and Weissman, hoping they would bring their influence to bear on the NSC and, if possible, help him secure a job at the White House. This would put him, in Rosen's words, "by the elbow of the President." Rosen, according to the indictment, promised to "do what I can."

At the time that the AIPAC men and Franklin were first in touch with each other, getting tough on Iran was not a White House priority. Administration policy was fixated on ousting Saddam Hussein from power in Iraq. As Bush worked to build domestic and international support for regime change in Iraq, the administration expected to enlist help from Iraqi Shiites, coreligionists of the Iranian regime.

Five days after Rosen called the Pentagon seeking to make contact with an Iran expert and got Franklin's name, the Bush administration hosted a get-together of Iraqi exiles in Washington. It included a representative of the Tehran-based Supreme Council of the Islamic Revolution. Ahmad Chalabi, who led the Iraqi National Congress and was the Pentagon's chief ally among Iraqi exiles, would later take up residence in the Iranian capital in the weeks before the US-led invasion of Iraq.

According to letters in the case file, in September 2002, the month after Rosen and Franklin first spoke, the FBI conducted a search at AIPAC headquarters. What it produced, if anything, remains under seal. An AIPAC spokesman says the organization wasn't aware of any search at that time. To cultivate Franklin, Weissman at one point took him to an Orioles game in Baltimore. Franklin, who was also an Air Force Reserve officer, held not only a top-secret security clearance but also one entitling him to SCI, "sensitive compartmented information," the kind kept at a secure site and granted on a need-to-know basis to a limited number of individuals.

During a series of meetings in 2003, Franklin spilled several pieces of allegedly classified information, from policy options against Iran to specific intelligence about attacks on US forces in Iraq. On a couple of occasions, Rosen or Weissman allegedly passed along what he'd learned to Israeli diplomats or journalists.

Franklin, likewise, relayed sensitive information to an Israeli diplomat and to the media. On May 21, 2004, he disclosed what prosecutors described as "top secret/SCI" information to journalists from CBS about what prosecutors would later cryptically claim concerned "meetings involving two Middle East officials."

That evening, CBS correspondent Lesley Stahl reported on evidence that onetime Pentagon favorite Ahmad Chalabi "personally gave Iranian intelligence officers information so sensitive that if revealed it could, quote, 'get Americans killed.'" Later in the broadcast, she reported that the information Chalabi had allegedly passed was so sensitive that US officials "at the highest levels" had prevailed on CBS not to broadcast it.

Five weeks later, the FBI closed in on Franklin. Armed with a warrant, agents searched his workspace and turned up a June 25, 2003, classified document. Franklin admitted he had given information derived from the document to Rosen and Weissman. Agents then searched his house in Kearneysville, West Virginia, and found more than 80 classified documents he had brought home illegally over three decades.

Franklin was vulnerable. He had a record of security breaches for taking documents home. Lacking substantial assets and with a wife afflicted with crippling rheumatoid arthritis, Franklin did not hire a lawyer; instead, he agreed to cooperate with the FBI.

Authorities enlisted Franklin in a sting: In July 2004, he attempted to arrange meetings with Rosen and Weissman, armed with the kind of information that clearly would be of interest to Israel. At one point, he requested an urgent meeting with Weissman, telling him lives were in danger. When the two met, Franklin, who was wired, warned him that Iran had discovered the presence of Israeli agents in northern Iraq. The information was highly classified “agency stuff,” and Weissman could get in trouble for having it, Franklin told him.

Weissman in turn told that to Rosen, and the two contacted Naor Gilon, a political officer at the Israeli Embassy. Rosen and Weissman also called Glenn Kessler at the Post to report an increased threat to US soldiers in Iraq from Iranian-backed militias.

Franklin also helped the FBI with a counterintelligence probe of Chalabi, who has denied divulging any US secrets. Among those he called was Francis Brooke, a Chalabi aide in Washington. According to Brooke, Franklin also called active members of the Iraqi National Congress, Chalabi’s political party.

“He was asking questions about Ahmad Chalabi and my dealings with Iranian officials,” Brooke says. He recalls that Franklin said, “There’s a lot of stuff going on. You should tell me the straight story. I’m in contact with journalists, and I could spin it for you.”

Says Brooke: “I thought he was off his rocker.”

The Chalabi probe foundered, but the AIPAC investigation gained momentum. The calls to Naor Gilon and Kessler provided what prosecutors considered new evidence that Rosen and Weissman had violated a section of the 1917 Espionage Act, barring the possession and transfer of “national-defense information” by anyone not authorized to have it.

Three weeks after their meeting with Weissman at the Sun Spot Cafe, FBI agents knocked on Rosen’s door in Silver Spring shortly before 8 am. They told Rosen they knew Franklin had provided classified information to an Israeli official. What would Rosen say, they asked him, if the Israeli official told Franklin that the information had already been supplied to him by Rosen? According to the agents’ report, “Rosen said he had done nothing wrong.”

Later, agents confronted Weissman outside his home in Bethesda. They played him a recording of the July conversation between Weissman and Franklin. “Look,” Weissman told them, “I was told by people at the office not to talk to you.”

That afternoon, the FBI searched Rosen’s office at AIPAC headquarters, this time presenting a search warrant. CNN cameras filmed the agents entering the building. Apparently tipped off before the raid, CBS called AIPAC with questions.

Initially, AIPAC circled the wagons around its two officials, defending them in public statements,

assigning them legal counsel, and paying the legal fees. Rosen and Weissman both received bonuses at the end of 2004. But the investigation continued. Although AIPAC was assured in December that it was not a target, four senior AIPAC staffers were called to testify before a federal grand jury in Alexandria.

According to defense documents, in February 2005, US attorney Paul McNulty—who later became deputy attorney general—met with AIPAC’s executive director and AIPAC lawyers and urged them to cooperate. AIPAC’s counsel called lawyers for Rosen and Weissman the next day, telling them that McNulty “would like to end it with minimal damage to AIPAC. He is fighting with the FBI to limit the investigation to Steve Rosen and Keith Weissman and to avoid expanding it.” Prosecutors disclosed to AIPAC lawyers some evidence they had obtained under a secret warrant.

Rosen and Weissman were fired. AIPAC also halted payment of their legal fees. At the time, the Justice Department viewed an organization’s payment of legal fees for employees under investigation as a sign of a lack of cooperation with the probe. An AIPAC spokesman, Patrick Dorton, denied that the organization had acted under government pressure: “Any suggestion that AIPAC acted at the government’s behest is completely false. Our decisions on dismissal and legal fees were made independently, based on the facts and our commitment to doing the right thing in a very difficult situation.”

One source close to AIPAC noted that Weissman and Rosen had refused to waive their rights to sue the organization. Recently, Dorton repeated a statement he had made at the time of the indictment: “Rosen and Weissman were dismissed because they engaged in conduct that was not part of their jobs and because this conduct did not comport with the standards that AIPAC expects and requires of its employees.”

Franklin, despite helping with the sting, was indicted along with the two AIPAC lobbyists. He pleaded guilty to two conspiracy counts in October 2005 and drew a 12-year prison sentence. Judge Ellis held the sentence in abeyance until the AIPAC case is over. The attorney Franklin acquired late in the probe, Plato Cacheris, expects his client to be called as a witness. He hopes, as a result of Franklin’s cooperation with the prosecution, that his sentence will be reduced to a “minimal” term.

The FBI’s investigation didn’t end with the conspiracy indictments of Rosen and Weissman in August 2005, a year after Weissman got that initial phone call in Boston. One reason may have been a gap in the government’s case. The two men were charged with oral receipt and transmission of national-defense information. There is no evidence that classified documents ever exchanged hands.

The next year, the FBI and one of the prosecutors approached the family of the late muckraking columnist Jack Anderson, seeking access to his archive. Anderson’s son Kevin told a congressional panel that he was told they “wanted access to Dad’s documents to see if either Rosen’s or Weissman’s fingerprints were on any government documents.” Anderson’s widow initially consented to the request, but the family collectively decided to refuse.

When the trial gets under way, parts of it will be closed to the public. Judge Ellis has allowed the introduction of some classified evidence that only the jurors will see or hear in full. He also has allowed the defense to probe potential jurors for indications of anti-Jewish bias.

AIPAC has regained its place as one of Washington’s premier lobbying groups and is building a new headquarters. Within the last few months, AIPAC agreed to pay Rosen’s and Weissman’s legal fees, which have climbed into the millions of dollars. No explanation was given, although the decision came after Ellis ruled that any government pressure on AIPAC was “inappropriate and fraught with the risk of constitutional harm.”

Franklin, Rosen, and Weissman have all failed to find permanent employment while the case is pending. Franklin works at odd jobs, his lawyer says. Rosen received financial help from friends and has done part-time consulting. Weissman spends a good deal of time with his children—his daughter is studying Arabic at college; one son is a high-school senior, and another is in middle school—walking his two golden retrievers and pondering book projects, including one on rock 'n' roll.

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

Civil Division

_____)	
STEVEN J. ROSEN,)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 09-1256
	)	Calendar 12
AMERICAN ISRAEL PUBLIC AFFAIRS	)	Judge Jeanette J. Clark
COMMITTEE, INC., <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

**PLAINTIFF'S RESPONSES TO DEFENDANT AIPAC'S
REQUEST FOR ADMISSIONS**

Plaintiff Steven J. Rosen, through his below-signed attorney of record, and pursuant to Rule 36 of the Superior Court Rules of Civil Procedure, hereby responds to Defendants' Request for Admissions. Paragraph numbers correspond to the paragraph numbers in Defendants' Request for Admissions.

1. Admit that Plaintiff Steven Rosen has been described as one of the most influential figures in the pro-Israel movement by journalists and reporters.

Response: Admitted.

2. Admit that Plaintiff Steven Rosen authored reports titled The Strategic Value of Israel and Israel and the United States Air Force.

Response: Admitted.

3. Admit that Plaintiff Steven Rosen has been described as contributing arguments to a treatise entitled The Importance of the West Bank and Gaza to the Security of Israel.



Response: Admitted.

4. Admit that the Defendant American Israel Public Affairs Committee, Inc. (hereinafter referred to as "Defendant AIPAC") is a not-for-profit corporation.

Response: Admitted

5. Admit that Plaintiff Steven Rosen has an entry on himself in Wikipedia, the online encyclopedia.

Response: Denied.

6. Admit that Plaintiff Steven Rosen is listed with the Harry Walker Agency.

Response: Admitted.

7. Admit that Plaintiff Steven Rosen's Harry Walker Agency profile describes him as "The Brains Behind AIPAC" and "Architect of its Increasing Clout" by the *Washington Post*.

Response: Admitted.

8. Admit that Plaintiff Steven Rosen's Harry Walker Agency profile describes him as "widely regarded by journalists and think tank experts as one of the best-informed experts on U.S. policy in the region."

Response: Admitted.

9. Admit that the Middle East Forum published a press release dated March 2, 2009, announcing Plaintiff has joined its staff as a visiting fellow with special responsibility for U.S. foreign policy.

Response: Admitted.

10. Admit that the Middle East Forum press release dated March 2, 2009, describes Plaintiff Rosen as "'a larger-than-life figure' who 'helped shape AIPAC into one of the most powerful lobby groups in the country.'"

Response: Admitted.

11. Admit that the Middle East Forum press release dated March 2, 2009, describes Plaintiff Steven Rosen as having wide-ranging contacts within the Executive Branch while employed with Defendant AIPAC.

Response: Admitted.

12. Admit that the Middle East Forum press release dated March 2, 2009, describes Plaintiff Steven Rosen has been described as helping pioneer the 'executive-branch lobbying' style of advocacy that was not widespread prior to the mid-1980s.

Response: Admitted.

13. Admit that the Middle East Forum press release dated March 2, 2009, describes that a report written by Plaintiff Steven Rosen while employed as Defendant AIPAC's Director of Research and Information has been credited with helping to launch the U.S. - Israeli dialogue that resulted in the Strategic Cooperation Agreement.

Response: Admitted.

14. Admit that Plaintiff Steven Rosen is a public figure in Mid-East policy issues.

Response: Admitted.

15. Admit that Defendants Dow, Manocherian, Friedman, Weinberg, Asher, Levy, Jr., Kaplan, Wuliger, and Friedkin receive no salary or monetary compensation as Board Members for Defendant AIPAC.

Response: Admitted.

16. Admit that Plaintiff Rosen discussed a call he received from the FBI with the other former AIPAC official that was also indicted, Keith Weissman, prior to notifying Defendant AIPAC or their corporate counsel of the FBI phone call.

Response: Assuming this Request refers to a call regarding a routine field investigation, admitted.

17. Admit that the document attached as RFA Exhibit A is a genuine copy of the Federal Indictment charges filed against Plaintiff Rosen in the Eastern District of Virginia on August 4, 2005.

Response: Admitted.

18. Admit that the indictment against the Plaintiff in the Eastern District of Virginia became public knowledge.

Response: Admitted.

19. Admit that articles published in newspapers about Plaintiff's criminal case in the Eastern District of Virginia outlined the factual background of the prosecutor's case against Plaintiff.

Response: Admitted.

20. Admit that the factual background and outline of the prosecutor's case against Plaintiff in the March 2008, New York Times article was accurate.

Response: Admitted.

21. Admit that Defendant Patrick Dorton stated an opinion when commenting on Defendant AIPAC's view of Plaintiff Steven Rosen's conduct in the March 2008, New York Times article.

Response: Denied.

22. Admit that Plaintiff Steven Rosen was the target and/or subject of a Department of Justice investigation.

Response: Admitted.

23. Admit that Lawrence Franklin pleaded guilty to providing Plaintiff Rosen and another individual classified defense information.

Response: Denied.

24. Admit that on January 20, 2006, Judge T.S. Ellis, III sentenced Franklin to 151 months in prison and fined him \$10,000.00.

Response: Admitted.

25. Admit that Plaintiff Rosen was never acquitted of the criminal charges against him.

Response: Admitted.

26. Admit that Abbe Lowell browsed the contents of Plaintiff Steven Rosen's AIPAC computer hard drive.

Response: After reasonable inquiry, the information known or readily obtainable by plaintiff is insufficient to enable plaintiff to admit or deny.

27. Admit that pornographic images were found on Plaintiff Steven Rosen's AIPAC computer.

Response: After reasonable inquiry, the information known or readily obtainable by plaintiff is insufficient to enable plaintiff to admit or deny.

28. Admit that the existence of pornographic images on Plaintiff Steven Rosen's AIPAC computer was disclosed to Defendant AIPAC prior to Plaintiff Rosen's termination.

Response: After reasonable inquiry, the information known or readily obtainable by plaintiff is insufficient to enable plaintiff to admit or deny.

29. Admit that Plaintiff Steven Rosen used his AIPAC computer to browse pornographic websites.

Response: Admitted.

30. Admit that Plaintiff Steven Rosen used his AIPAC computer to view pornographic images.

Response: Admitted.

31. Admit that use of an AIPAC computer by one of its employees to view pornography is not appropriate behavior for the employee.

Response: Denied.

32. Admit that Plaintiff Steven Rosen requested and received more than one loan from Defendant AIPAC.

Response: Denied.

33. Admit that Plaintiff Steven Rosen requested money from Defendant AIPAC prior to his termination in 2005 because of his financial difficulties.

Response: Admitted, but that was in 2002.

34. Admit that Plaintiff Steven Rosen told Richard Fishman he could not afford to take on more debt and requested a gift from Defendant AIPAC.

Response: Denied.

35. Admit that the Seven Thousand Dollars (\$7,000.00) check issued to Plaintiff Steven Rosen in January 2005, as referenced in Complaint paragraph 21, was not a merit based bonus.

Response: Denied.

36. Admit that Defendants Dow, Manocherian, Friedman, Weinberg, Asher, Levy, Jr., Kaplan, Wuliger, and Friedkin have a duty of care to Defendant AIPAC as volunteer Board Members.

Response: Admitted.

37. Admit that Defendants Dow, Manocherian, Friedman, Weinberg, Asher, Levy, Jr., Kaplan, Wuliger, and Friedkin have duty of loyalty to Defendant AIPAC as volunteer Board Members.

Response: Admitted.

38. Admit that Defendants Dow, Manocherian, Friedman, Weinberg, Asher, Levy, Jr., Kaplan, Wuliger, and Friedkin did not violate any duties to Defendant AIPAC by cooperating with the Department of Justice.

Response: Denied.

39. Admit that Defendants Dow, Manocherian, Friedman, Weinberg, Asher, Levy, Jr., Kaplan, Wuliger, and Friedkin did not violate any duties to Defendant AIPAC by cooperating with the FBI.

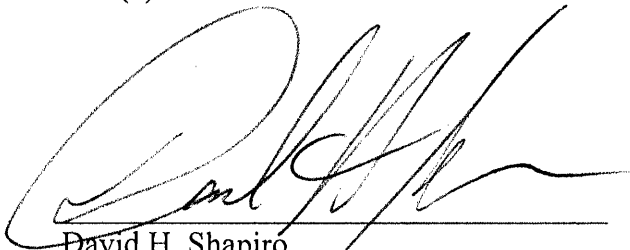
Response: Denied.

40. Admit that Plaintiff Rosen has been married six (6) times.

Response: Admitted.

41. Admit that Plaintiff Rosen has been divorced six (6) times.

Response: Admitted.

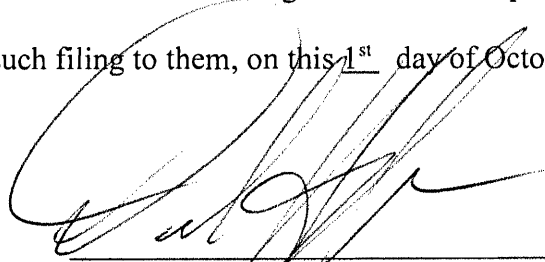


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing responses to AIPAC's requests for admissions will be served upon defendants through their counsel of record, Thomas L. McCally and Allie M. Wright, by electronically filing it with the Clerk of the Court using the CaseFile Express system, which will then send a notification of such filing to them, on this 1st day of October 2009.



David H. Shapiro
SWICK & SHAPIRO, P.C.