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**AIPAC BRIEFING PAPER ON THE ALLEGATIONS
REPORTED IN THE MEDIA REGARDING AIPAC
AND TWO AIPAC EMPLOYEES**

Introduction

AIPAC is issuing this Briefing Paper to clarify the events that led up to the interviews of two AIPAC employees on August 27, 2004, and the search of an office in AIPAC's headquarters that same afternoon.

For the reasons stated in this Briefing Paper, the Justice Department's investigation of AIPAC, which appears to be continuing, is not warranted by either the facts or the law. Irrespective of AIPAC's innocence, there are troubling questions as to why AIPAC was selected and targeted for investigation.

I.

WHAT HAPPENED IN THIS CASE?

Background of AIPAC and Its Employees

The American- Israel Public Affairs Committee ("AIPAC")

The American Israel Public Affairs Committee was founded in 1954. AIPAC is registered as a domestic lobby and supported financially by private donations. The organization receives no financial assistance from Israel or any foreign group.

AIPAC is not a political action committee and it does not rate, endorse, or contribute to candidates.

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AIPAC is the only American organization whose principal mission is to lobby the United States government on issues affecting the U.S.-Israel relationship. To this end, AIPAC's over 80,000 citizen-activist members and staff work to educate members of Congress, candidates for public office, policymakers, media professionals and student leaders on college campuses about the importance of a strong U.S.-Israel friendship.

In addition to Congress, through its Foreign Policy Issues Department, AIPAC also lobbies the Executive Branch for the purpose of understanding and shaping the policies and strategies through which executive branch officials affect the U.S.-Israel relationship. The work of the Department includes promoting a political solution to the conflict between Israel and the Palestinians and also between Israel and its Arab neighbors. This requires interactions with the Executive Branch, the agencies of which (rather than Congress), deal primarily with these issues. AIPAC's policy experts -- just like dozens of leading academics, think tank analysts, diplomatic correspondents and policy experts from advocacy groups similar to AIPAC -- regularly attend policy conferences organized by the government and by private entities, receive governmental publications, and arrange one-on-one meetings with Administration officials in policy-making positions to discuss policy developments. Not only does AIPAC reach out to executive branch policymakers, but such policymakers also reach out to AIPAC and others to gain insights into how various issues might impact on the enduring bonds between the United States and Israel.

Through this very rich exchange of information, analysis and policy ideas, foreign policy is shaped.

AIPAC and its employees do not solicit government officials for classified information. In fact, AIPAC employees, when meeting government officials with whom they plan to have policy discussions, often go out of their way to remind officials that they are not seeking such classified information. AIPAC has never received documents from U.S. government officials that were marked classified or that AIPAC had any reason to believe were classified. AIPAC is more circumspect in this regard than journalists who frequently seek classified information in order to report news or publish editorial comment. AIPAC's contacts with government officials customarily involve oral discussion of matters that they have read about in the media or that have been the subject of publicly reported papers. AIPAC counts on government employees to adhere to the law regarding the classification of information and its employees assume that information given to them by a government employee is not secured against disclosure by any law or regulation.

The conduct that is the focus of the government's current investigation reflects the normal, widely practiced activity of obtaining and communicating information on issues affecting U.S. foreign policy in the Middle East. Although its employees have done nothing that is not done by employees of other lobbying groups on a broad spectrum of governmental issues, AIPAC has been targeted for an investigation that could cripple its ability to function in a democracy whose citizens

have every right to gather information in order to petition their government about critical issues affecting the nation's security and well-being.

AIPAC employees meet routinely with government employees who have access to a wide range of information. Some of this information is public, some is private, and some is classified. How government officials compartmentalize what they know from public sources, private sources, or classified sources when they talk with people is something AIPAC officials assume government officials know how to do. In their dealings with government officials, AIPAC employees also assume that those government officials know and follow the rules. In doing their job, AIPAC officials, like everyone else seeking access to information, may ask questions and probe policy issues. AIPAC officials do not ask the government personnel with whom they speak to disclose information that should be kept secure. They rely on the government officials to draw the line.

Often a government official will have and say he or she has information from an intelligence source, but that does not mean the information is classified or that it cannot be disclosed. Sometimes, as is the way in Washington, people in government will make statements that their information is sensitive in order to aggrandize their positions and the importance of the information. In no circumstances, does AIPAC condone the improper disclosure of classified information prohibited by the laws of this country.

AIPAC's Employees

Like the organization itself, AIPAC's employees are Americans who believe that history has shown time and again that Israel is the strongest, most dependable and most democratic ally the United States has in the Middle East. Their activities are focused entirely on trying to support American policies that are consistent with the unique relationship between the two countries. Despite the all too convenient label that opponents of American policy towards Israel attempt to create, neither AIPAC nor its employees are agents for Israel or any foreign government. Rather AIPAC, its employees and members constantly strive to improve America's interests in the Middle East by strengthening the enduring bonds between the United States and Israel.

Among AIPAC alumni are Thomas Dine, former Executive Director, who for ten years and through different administrations has served as Director of Radio Free Europe. Another former employee, Wolf Blitzer, who was the editor of AIPAC publications, now serves as a chief correspondent and anchor at CNN. Another AIPAC official, Martin Indyk, who was a deputy in the Office of Foreign Policy, then served as the United States Ambassador to Israel and as Assistant Secretary of State.

Steve Rosen started with AIPAC in 1982 as the Director of Foreign Policy Issues. Prior to that, since 1978, he worked at the Rand Corporation, where he was Deputy Director of the National Securities Studies Program and was responsible for a team of 25 researchers. Before his employment at Rand from 1972, Mr. Rosen was an

Assistant Professor of Political Science at Brandeis University. Mr. Rosen received his B.A. from the New College at Hofstra University in 1963, and was awarded a PhD. in International Relations from the Maxwell School of Diplomacy at Syracuse University in 1973. He lives in Silver Spring and has three children.

Prior to coming to work for AIPAC in 1993, Keith Weissman was Managing Editor of *Middle East Insight*, a current events magazine of Middle East issues. Prior to that for two years, Mr. Weissman worked as a writer and editor at the Center for Mideast Research in Washington, D.C. From 1984 to 1991 he was a professor of History at the Loyola University, DePaul University and the University of Chicago. He graduated from and received a B.A. from the University of Chicago in 1976. Mr. Weissman was awarded a PhD. in Middle East history from the University of Chicago in 1990. Mr. Weissman is married, has three children and lives in Bethesda, Maryland.

Facts Concerning AIPAC's Contacts With Larry Franklin

1. AIPAC Employees Meet With Larry Franklin

Steve Rosen and Keith Weissman met Larry Franklin a few years ago. They were introduced at a reception or foreign policy forum in Washington, D.C. Mr. Franklin told the AIPAC employees that he was the Iranian "desk officer" at the Department of Defense. Many issues involving Iran -- such as nuclear proliferation and support for terrorist organizations -- affect American policy towards Israel. Hence, Mr. Franklin

was a government official whom the AIPAC foreign policy experts naturally expected to meet for occasional discussions.

Messrs. Rosen and Weissman found Mr. Franklin to be somewhat eccentric. He said he lived in the hills of West Virginia and commuted to work more than 150 miles each day. He always acted a little nervous and would say that he was concerned about foreign agents doing him harm.

2. Mr. Franklin Receives Nothing Of Value From AIPAC

From the time Messrs. Rosen and Weissman first met Mr. Franklin until today, neither has provided anything of value to Mr. Franklin directly or indirectly; nor has Mr. Franklin ever given a gift or benefit to either AIPAC employee. Mr. Franklin became one of literally hundreds of government officials with whom Messrs. Rosen and Franklin would meet occasionally. From the first casual meeting a few years ago until today, Mr. Rosen saw or met with Mr. Franklin perhaps two times and Mr. Weissman met with Mr. Franklin a total of four times. Many months elapsed between contacts that the AIPAC employees had with Mr. Franklin.

3. Two Meetings Occur In June 2003

After their initial introduction to Mr. Franklin, Messrs. Rosen and Weissman did not have any real substantive meeting with Mr. Franklin until June 2003, when two meetings occurred. They sought to meet because he was one of two experts in the Department of Defense specializing in Iran, a topic of interest to AIPAC.

Mr. Weissman called to set up a routine lunch to discuss developments in the region that was to occur on June 9, 2003. At the lunch, held at a public restaurant in Virginia, Mr. Franklin surprised Messrs. Rosen and Weissman by volunteering information that there was a policy dispute concerning Iran working its way through a draft document. He stated that there was a disagreement over whether to be “tougher” on Iran or more conciliatory and that a decision on the outcome was stalled at the agency level on its way to the White House. Mr. Franklin further explained that he was concerned because the policy memorandum on which he was working had been held up for more than four months. Franklin’s comments were general, and he did not provide a more detailed description of what a tougher or more conciliatory approach to Iran would entail.

Mr. Franklin did not show the memorandum about which he was talking to Messrs. Rosen or Weissman, who did not know about it or the dispute until Mr. Franklin brought it up. Messrs. Rosen and Weissman recall that Mr. Franklin suggested that they help unclog the logjam on this policy by getting this information to the right place in the White House. They do not recall Mr. Franklin ever asking them to provide information to Israel or to any foreign government. Nor did they understand that he wanted them to transmit information to Israel. In their mind, it was clear he was hoping they could communicate to high officials in our own U.S. government that this logjam was taking place.

After they returned to AIPAC, Messrs. Rosen and Weissman discussed their lunch with Mr. Franklin and the issue of the policy dispute with Executive Director Howard Kohr. A week or so later, an article appeared in *The Washington Post* on June 15, 2004 written by Michael Dobbs entitled, "Pressure Builds for President to Declare Policy on Iran." The article quoted "well-placed sources." Messrs. Rosen and Weissman then decided to arrange another meeting to discuss the dispute that Mr. Franklin had mentioned and that had now been reported in the media.

The meeting occurred on June 26, 2003, again at the same public restaurant in Virginia. The three again discussed the policy dispute in general terms. During the meeting, Mr. Franklin was focused on going over what he termed the horrible things that the government of Iran had perpetrated around the world. He had and referred to a single page (whether typewritten or hand written) that contained or described a list of the horrible acts committed by the government of Iran over the years. The list, which contained items (e.g., Iran is a major funder of terrorism; Iran is observing U.S. military installations around the world; Iran is developing nuclear, chemical and biological weapons; Iran is supporting and fomenting terrorism against Israelis in the territories; etc.) that were well-known and reported, was not marked as being classified in any way. Indeed, the list was so incomplete that Mr. Weissman suggested that he could name additional items that were not included. Neither at that meeting nor at any other time did Mr. Franklin offer to give that document or any other documents or material to Messrs. Rosen and Weissman. Nor did they ask for

any. At this meeting Mr. Franklin again stated that he hoped the information about the logjam would be communicated to the White House.

Some news reports have indicated that Mr. Franklin provided or showed Messrs. Rosen and Weissman a draft of a document called the national security presidential directive on Iran. Neither Messrs. Rosen nor Weissman was shown this document; nor does either recall any such designation on the single page that Mr. Franklin produced. No document with any classification label was shown.

Other news reports indicate that a piece or pieces of information discussed by Mr. Franklin was or were classified or that Mr. Franklin may have stated that he had classified information. If Mr. Franklin used that word -- either because he was already cooperating with the government and was asked to do so by the government in order to entrap Messrs. Rosen and Weissman or for any other reasons -- the casual and incidental use of that word in the course of a long lunch did not register with either Mr. Rosen or Mr. Weissman. Furthermore, the discussion at lunch concerned general, public policy issues that had been reported in the media. Messrs. Rosen and Franklin concluded after the lunch that Mr. Franklin exaggerated his contacts and information and might describe his information as being sensitive only to aggrandize himself.

The information discussed by Mr. Franklin with Messrs. Rosen and Weissman at the June 2003 lunch made Mr. Rosen decide that it was not worth his time to see or speak with Mr. Franklin again. He participated in no meeting and has not even talked

with Mr. Franklin since that meeting. The next meeting between Mr. Franklin and Mr. Weissman did not occur for another year.

Based on what he had read and heard in the media and what had been confirmed at the lunch, Mr. Rosen may have included a description of the fact of a policy dispute concerning Iran at high levels within government agencies in meetings he had with others at AIPAC and at the next or not too distant regularly-scheduled meeting he had with policy officials at the Israeli Embassy. He did not describe this as sensitive or classified information dispute because it was widely reported in publicly available sources.

4. Mr. Weissman Meets With Mr. Franklin A Year Later

Twelve months passed without any substantive contact between AIPAC and Mr. Franklin, hardly the schedule for someone providing otherwise unavailable information to AIPAC. In the early summer of 2004, Mr. Weissman realized that he had not spoken with Mr. Franklin for over a year. While Mr. Weissman had continued talking to many others in and out of government about Iran and other topics, he did not think it very important to regularly contact Mr. Franklin. So, after this time had passed, Mr. Weissmann called Mr. Franklin and set up a meeting for July 9, 2004 at the same public restaurant in Virginia. Mr. Weissman invited Mr. Rosen to attend, but Mr. Rosen declined. He told Mr. Weissman that he did not see Mr. Franklin as serious policy analyst, and he asked Mr. Weissman for it to be his job to stay in touch with Mr. Franklin from time to time.

At the July 9 meeting, Messrs. Weissman and Franklin had a general discussion of events in the Middle East and in Iran. Mr. Weissman did not ask for any classified information and none was provided.

5. Mr. Franklin Requests Another Meeting In July

Mr. Franklin called Mr. Weissman less than two weeks after their July meeting to set up another meeting. This call was surprising because they had just met, nothing significant had been discussed, and their prior meetings had been so infrequent that they had not met for a full year. What Mr. Weissman did not know and what now appears to be true is that Mr. Franklin had either been cooperating with the prosecution and had been wearing a recording device or had been overheard at his earlier meetings. In fact, a portion of a recording of the meeting they had on July 21 was played for Mr. Weissman when the FBI visited him in the afternoon of August 27, 2004.

In setting up the meeting, Mr. Franklin told Mr. Weissman that he had something important to tell him. Mr. Weissman was about to leave on vacation and tried to put the meeting off. Mr. Franklin said it could not wait. He also said he could not have lunch because he was attending sessions in Persian language training but that he could meet Mr. Weissman later in the afternoon for coffee. They agreed to meet at a coffee bar at the shopping mall at Pentagon City, obviously another public place. This meeting, apparently set-up by the Justice Department and FBI to create the appearance of a criminal violation, was recorded. The information that Mr. Franklin

orally communicated to Mr. Weissman was designed to make Mr. Weissman believe that some action was needed to avoid potential loss of life to Americans and Israelis.

When they met, Mr. Franklin seemed agitated. Mr. Weissman recalls that Mr. Franklin told him that he had information from an intelligence source and that what he had to tell Mr. Weissman involved people being killed or that lives were at stake. At some other point in the conversation, Mr. Franklin said that some of his information was sensitive or classified. Mr. Weissman did not know whether he was referring to American sources or sources Mr. Franklin said he had among Iranian émigrés or dissidents. Still at another point, he said that Mr. Weissman could get hurt or be in trouble for what Mr. Franklin was going to tell him. Mr. Weissman replied that he said he would tell what they discussed only to Mr. Rosen. Mr. Franklin, again said, as he had done at the June 2003 meetings, that he wanted help in getting this information to the right place and, as he had done before, intimating or actually stating that he meant the White House. Mr. Weissman recalls that the name of Elliot Abrams was mentioned as the person who should be given this information. Mr. Abrams is the senior director for democracy, human rights and international operations on the U.S. National Security Council and is not an official of Israel or any foreign government. Mr. Weissman again understood that Mr. Franklin was enlisting help in getting information higher up in our own administration.

Mr. Weissman does not recall the precise sequence of all Mr. Franklin's various statements described above. He knew from past experience that Mr. Franklin tended

to exaggerate. He also knew that not all intelligence information is classified or unobtainable from public and published sources. He saw that Mr. Franklin was agitated and understood that this information involved life-threatening actions.

Shortly before their July meeting, an article had appeared in *The New Yorker* by Seymour M. Hersh on June 21, 2004 entitled, "Annals of National Security, Plan B." In that article, Mr. Hersh reported that Israel had an intelligence presence in Iraqi Kurdistan for the purposes of monitoring Iranian nuclear and other developments. Mr. Weissman had read the article and it had been a topic of discussions among him, Mr. Rosen, and others at AIPAC.

The most important information conveyed to Mr. Weissman by Mr. Franklin at the meeting was that Israelis who were in Iraqi Kurdistan had been targeted by Iranians for death, kidnapping and injury. The article by Seymour Hersh had reported on Israeli activity in Iraq. Mr. Franklin also said that Iranians had been sending Arab-speaking agents to Iraq, perhaps to get work at oil fields, with the aim of interrupting those operations. Franklin also said that a particular named individual in the Iranian Revolutionary Guard had been transferred to Baghdad to coordinate anti-U.S. operations. The information conveyed by Franklin to Mr. Weissman was, as demonstrated below, available from published non-classified sources.

At no time during the meeting did Mr. Franklin give any document or material to Mr. Weissman. At no time did Mr. Franklin show Mr. Weissman any paper or material marked classified in any way. At no time did Mr. Franklin tell Mr.

Weissman anything about U.S. operations, policies, directives, or plans. Mr. Franklin's information concerned only what Iranians were doing in Iraq, much of which already appeared in the media.

6. Mr. Weissman Reports On His Franklin Meeting

The meeting lasted less than an hour. Mr. Weissman returned to the AIPAC offices and told Mr. Rosen that Mr. Franklin was concerned that people were going to be killed and harmed. He enumerated the subjects that Mr. Weissman and Mr. Franklin had discussed at the meeting. Mr. Weissman told Mr. Rosen that Mr. Franklin had said that some of the information had come from intelligence sources, but did not tell Mr. Rosen that Mr. Franklin had said that any information was "classified." The urgency that Mr. Franklin (and the Justice Department) attached to this information, that lives were at risk, created the result that had been intended -- Mr. Weissman could not just sit on the information knowing that even if there was a small chance that what Mr. Franklin said was true, he had a moral obligation to do something. Mr. Rosen and Mr. Weissman decided to pass the warning about Israelis being killed or injured in Iraq to the Israeli Embassy, and they placed a few minute telephone calls to the Embassy. [need to confirm with Israelis] Mr. Weissman also sent an e-mail message to AIPAC's Executive Director Howard Kohr reporting on the meeting and Mr. Franklin's apparent request that Mr. Weissman assist Mr. Franklin in getting this information to higher levels in our own White House. [need to talk with Abrams to see what he recalls]

That was the end of contacts between Messrs. Rosen, Weissman and Mr. Franklin. That is the sum total of what was ever discussed or exchanged -- general information about a policy dispute on Iran in 2003 and information about people in danger in Iraq by Iranians in 2004. Moreover, the second conversation appears to have been a set-up meeting that was not requested by Mr. Weissman.

7. The FBI Arranges Spurious Interviews With Messrs. Rosen and Weissman

Three days after Mr. Weissman's last conversation with Mr. Franklin on July 21, Mr. Weissman went on vacation with his family to the Boston area. On July 30, while on vacation, he received a telephone call from FBI agents on his cell phone. An FBI agent said that the FBI was conducting an updated security clearance for Larry Franklin and wanted to talk with Mr. Weissman as part of the clearance process. Mr. Weissman told the agent that he was on vacation but would be home the following week. The agent agreed that they would meet when Mr. Weissman returned.

On August 9, FBI agents came to meet with Mr. Weissman at the AIPAC offices in Washington. The agents said nothing and that they were doing a periodic security clearance of Mr. Franklin. They asked Mr. Weissman what appeared to be the usual security questions such as whether Mr. Franklin had financial problems, used drugs or drank excessive alcohol. They also asked whether Mr. Franklin was a security threat and whether Mr. Franklin was someone who disclosed classified information. In the context of these routine security clearance questions, Mr. Weissman said no. The

Justice Department now contends that Mr. Weissman's reply to a spurious background investigation question was a deliberate lie.

In early August 2004, Mr. Rosen also received a telephone call from an FBI agent. The FBI agent said he was conducting a periodic security clearance for Mr. Franklin and asked to meet with Mr. Rosen. The FBI met with Mr. Rosen in his office that same day. It is now clear that this visit also was for the purpose of the FBI being able to describe the AIPAC offices for a search warrant. During the meeting, the agent asked Mr. Rosen the same kind of questions about Mr. Franklin that had been asked of Mr. Weissman. Mr. Rosen was also asked whether Mr. Franklin was someone who would disclose classified information. Mr. Rosen said no. Despite Mr. Rosen's having had only one substantive contact with Mr. Franklin, the Justice Department contends that Mr. Rosen's answer was a deliberate lie.

On the morning of August 25, Mr. Weissman called Mr. Franklin to inquire about the security clearance check that had occurred. Mr. Franklin said he was fine and was taking his daughter to college that week. They agreed that they would meet for coffee on Friday, August 27 after Mr. Franklin dropped his daughter off.

8. The FBI Visits Messrs. Rosen and Weissman At Home On August 27

At 7:00 A.M. on Friday, August 27, the FBI agents who had conducted the spurious security clearance interview appeared at Mr. Rosen's front door. They said they wanted to talk with him again. They said it still concerned Mr. Franklin but that things had taken a more serious turn. They did not tell Mr. Rosen that he or Mr.

Weissman were under investigation. They said that Mr. Franklin had been known to disclose classified information and that they wanted to know what classified information Mr. Franklin had passed on to Mr. Rosen or to Mr. Weissman. The FBI agent said that Mr. Rosen had lied to them at their earlier meeting when he said that Mr. Franklin would not disclose classified information. Mr. Rosen then stated that he was not comfortable with the way they were asking questions and that he wanted to consult with others. They said he should really consider cooperating with their operation and he again said he wanted to talk with others, including an attorney. They persisted and said that whatever he did, he had better do so by 10:00 a.m. that morning. They gave Mr. Rosen business cards and repeated that he should call them before 10:00 a.m.

That same Friday but in the early afternoon, Mr. Weissman was visited by FBI agents. The agents told him he was under investigation and played a very small portion of a recording for him. The agents did not play for Mr. Weissman the entire recording of his conversation with Mr. Franklin or the portions when Mr. Franklin expressed his concern that people would be killed. The agents then asked Mr. Weissman why he had lied to them at the meeting earlier when he said Mr. Franklin would not disclose classified information. The agents said that they knew that Mr. Weissman was a decent man who would want to protect his family, and they asked if he would come with them to cooperate in their operations. Mr. Weissman said he needed to consult with others.

Starting on Friday, August 27 and continuing until very recently, FBI agents kept Messrs. Rosen and Weissman under 24-hour surveillance and followed Messrs. Rosen and Weissman and members of their families wherever they went. On one occasion, FBI agents even confronted Mr. Weissman's wife in the lobby of her office building in Baltimore.

9. News Of The Investigation Is Immediately Leaked

Within an hour or two of the visits to Messrs. Rosen and Weissman, CBS News called AIPAC's office. The caller advised that the evening news would be carrying a story of an "espionage" investigation in which AIPAC was a subject. AIPAC was asked for a comment.

AIPAC and its officials sought to determine the nature of the investigation and what had occurred. No documents or information at AIPAC were disturbed in any way. From the time of the visits until the mid-afternoon, no one from law enforcement called AIPAC or asked for anything. Instead, at approximately 2:30 in the afternoon, 7 FBI agents came to AIPAC's offices to serve and execute a search warrant to obtain materials from Mr. Rosen's office. AIPAC officials and attorneys for AIPAC (Nathan Lewin and Philip Friedman) and the individuals (Abbe Lowell) asked the agents for information about the nature of their investigation and AIPAC's involvement, including the affidavit supporting the warrant. The agents refused to provide a copy of any affidavit or any information.

While the FBI agents were in AIPAC's offices, Mr. Lowell contacted the Assistant U.S. Attorney whose name was on the search warrant. He asked if the attorneys could see a copy of the search warrant affidavit and the list of items that the agents were looking for. The AUSA refused. Mr. Lowell then asked what the investigation was about and why the Justice Department had not requested information or served a normal subpoena rather than engaging in a very dramatic and totally unnecessary search of the offices of a fifty-year-old respected institution. Neither the agents nor the AUSA would explain.

In the interest of cooperating with the FBI's investigation, Mr. Lewin agreed with a request from one of the FBI agents to interview AIPAC Executive Director Howard Kohr in his office. The requested interview was to take not more than ten minutes because Mr. Kohr was fully engaged in arranging conference calls to advise AIPAC officers and personnel about the news that would be breaking on CBS and because Mr. Lewin had to leave. The interview was conducted, and it lasted more than 20 minutes.

10. The Leaks From Law Enforcement Become A Flood

From the moment of the visit by FBI agents to the homes of Messrs. Rosen and Weissman, law enforcement officials began leaking bits and pieces about the investigation to the media. In just the first few days after the visits, there were more than 100 articles written or broadcast about the inquiry. These articles accused AIPAC of everything from "spying" for Israel to being a conduit of classified

information. Needless to say, the rumors and speculation were damaging and prejudicial to AIPAC's legal, constitutionally protected activities.

11. The Justice Department Refuses To Provide Information To The Attorneys

Counsel for Messrs. Rosen and Weissman asked to meet with the Justice Department to discuss the investigation, as is common in federal investigations of non-violent offenses. He also suggested that the interviews of Messrs. Rosen and Weissman be continued. On September 2, at his request, Mr. Lowell met with Assistant U.S. Attorneys from the Eastern District of Virginia, and an attorney from the Justice Department. He asked the government officials for information about who was under investigation, what was under investigation, how long the investigation had been ongoing and other questions. The government officials responded that they could not tell the attorneys anything because none of AIPAC's counsel had security clearances. Even as to questions that did not require security clearances (e.g., what other AIPAC employees, if any, were implicated), the Justice Department officials stated they would not answer. Mr. Lowell nonetheless provided the Justice Department with a complete and detailed proffer of all of Messrs. Rosen and Weissman's dealings with Mr. Franklin. Following this explanation, the meeting ended because the Justice Department officials refused to provide any information in return.

12. News Leaks Continue While The Justice Department Refuses To Provide Information

Security clearance applications were provided to counsel and they have been or are being submitted. In the meantime, while the Justice Department attorneys and FBI agents refused to provide any information to AIPAC's attorneys officially, members of the law enforcement community continued to leak information unofficially to the media. News stories have cited "law enforcement sources" repeatedly. Mr. Lowell wrote to the AUSAs in Virginia to complain about the leaks and lack of information coming from the office. When the Virginia office did not respond, counsel wrote to the Deputy Attorney General. These letters were followed by telephone calls, none of which have been returned.

13. Another Meeting Is Held With the Justice Department

After Mr. Lowell received an interim clearance, he was told he could have a meeting with the AUSAs in Virginia. The meeting was held on September 23rd. At this meeting, the Justice Department officials said that both Messrs. Rosen and Weissman were deemed to be targets of the investigation. They said they hoped that both would now come in and cooperate by telling Justice Department officials all the people in government with whom they speak or meet and all the topics on which they are involved. They said they wanted the cooperation to include all the conversations that Messrs. Rosen and Weissman had with others at AIPAC on the policy issues subject to the investigation. They also said they wanted Messrs. Rosen and Weissman to discuss all the people in, or working for, the government of Israel with whom they have ever had contact.

Mr. Lowell replied that targeting the two AIPAC employees on the basis of the contacts with Mr. Franklin was unsupported in fact or law and that the "cooperation" they were suggesting was overbroad and threatened the first amendment rights of AIPAC and its members. Counsel then asked for more information so that AIPAC and its employees could make a decision on how to proceed. He asked who might be involved, who at AIPAC was of interest to the government, what topics were involved other than Mr. Franklin, whether the government had any evidence that any classified material was ever disclosed or provided, what tapes existed, and what information had been revealed. The Justice Department, as it had done before, said it would not answer the questions.

Mr. Lowell asked what was being done about the leaks and whether any investigation of them was occurring or would occur. The attorneys responded only that the leaks appeared to have abated and said no further action was contemplated.

14. The Government Attorneys Demand Separate Representation For AIPAC Employees

The government's attorney threw up another procedural obstacle to talking with counsel for AIPAC and AIPAC's employees. The Justice Department officials indicated that they wanted each AIPAC employee to be separately represented. Without establishing any basis for asserting that there was any conflict of interest between Messrs. Rosen and Weissman, the government attorneys simply insisted that

they would no longer talk to counsel unless each AIPAC employee went along with the Justice Department's demand and was represented by separate counsel.

15. The Government Attorneys Will Not Explain The Start Or Motive Of Any Focus On AIPAC

It now appears that Mr. Franklin or others were under surveillance or cooperating with authorities for some time, at least as early as June 2003. What prompted the inquiry concerning Mr. Franklin and how AIPAC became involved is not known. What is known is that the AIPAC employees involved had exchanges with Mr. Franklin similar to dozens and dozens of exchanges that occur between lobbyists, policy analysts, journalists, and government officials every week in Washington. What is not known is why, given the frequency of these kinds of conversations and the lack of any exchange of material and the nature of what Mr. Franklin actually did discuss with AIPAC employees, that AIPAC has been singled out for investigation.

Just before the September 23 meeting between counsel for the AIPAC employees and the government, articles in newspapers reported that the current investigation had been initiated or supervised by David Szady, assistant director counter-intelligence division of the FBI. The articles detailed the basis for deep suspicions in the American Jewish community about Mr. Szady growing out of his earlier investigation of a former CIA agent who was Jewish and who the articles indicated had been targeted for investigation because he was Jewish. The articles also reported on offensive, stereotypic and anti-Semitic language that Mr. Szady had

allegedly used in that former investigation. Before leaving the meeting, counsel inquired as to whether and to what degree Mr. Szady was involved with the investigation. The Justice Department officials responded that they did not see how such information was pertinent. Counsel explained that published reports raised serious questions about Mr. Szady's possible bias and lack of impartiality. The Justice Department officials declined to answer, other than to state that the Eastern District of Virginia was now responsible for the investigation. The meeting concluded.

AIPAC's employees have consulted with independent counsel and also with an ethics expert who have concluded that both have the right in these circumstances to retain a single informed and knowledgeable attorney. Mr. Lowell has informed the Justice Department of the position of his clients with respect to representation by one attorney.

16. Messrs. Rosen And Weissman Continue To Offer Cooperation

Notwithstanding the Justice Department's position that the Department would no longer talk to him if Messrs. Rosen and Weissman insisted on having the counsel of their choice, Messrs. Rosen and Weissman have offered to meet with the Justice Department and FBI and answer their questions. They have offered to do so without immunity, in either Virginia or in Washington and whenever the Justice Department wanted to have a meeting. They have offered to explain all of their contacts with Mr. Franklin. They have offered to explain that they do not solicit classified information. They have offered to

explain that they have never been given any classified documents or materials. They have offered to explain how policy lobbying actually works in Washington. They have even offered to appear before a grand jury. The Justice Department has never responded to these offers.

II. WAS THERE A VIOLATION OF LAW?

Neither AIPAC employee violated any federal statute in receiving and/or transmitting the information that Franklin orally conveyed to Messrs. Rosen and Weissman in June 2003 or to Mr. Weissman in July 2004. The prosecution's assertion to the contrary is wrong for a number of reasons:

First, the federal statutes that prohibit the communication of classified information are very pointedly drafted to prevent over-zealous prosecution of *recipients* of classified information. The law that explicitly covers "disclosure of classified information" (18 U.S.C. § 798) is limited "to only one class of classified information, classified information concerning cryptography and communications." *United States v. Truong*, 629 F.2d 908, 926 (4th Cir. 1980). The Court of Appeals said in the *Truong* decision that "in the area of national security information, Congress has consciously refrained from making it a crime merely to disclose classified information without authority." 629 F.2d at 928.

Two other federal laws governing espionage – 18 U.S.C. § 793 and 18 U.S.C. § 794 – cover "Gathering, transmitting, or losing defense information" and "Gathering or

delivering defense information to aid foreign government.” It is apparent from the language of both of these statutes that they are principally designed to protect documents or other tangible items such as photographs, maps or blueprints that contain national-defense information. **There is no reported case – and we know of no other instance – in which a recipient of purely oral information has ever been prosecuted under these laws.** Both of these laws are also limited to “information relating to the national defense” and would not cover either general observations concerning US policy towards Iran or information about Iranian assassination squads targeting Israeli personnel in Iraq. Finally, these laws are not violated unless the accused transmits such information “to the injury of the United States or to the advantage of any foreign nation.” Advising Israeli officials that Israelis in northern Iraq may be assassinated by Iranian personnel does not meet this statutory prerequisite.

Finally, the Subversive Activities Control Act, 50 U.S.C. § 783, covers transmission of classified information that affects “the security of the United States” by a government employee to “any agent or representative of a foreign government.” We know of no case in which a United States citizen who was a recipient of such information was ever prosecuted.

Second, the information that Franklin communicated orally to Messrs. Rosen and Weissman in June 2003 and to Mr. Weissman in July 2004 was available from published sources. Neither AIPAC employee had reason to believe that it was information that he could not lawfully pass along. *See* Section III, *infra*.

Third, Mr. Franklin's principal request was that the oral information he was transmitting should be conveyed to officials of the United States at the highest level of the Executive Branch, such as Elliott Abrams at the White House. No request was made by him to "advantage . . . any foreign nation" or to convey information to Israel.

Fourth, the entire alleged "offense" was created and fabricated by the Department of Justice. When Mr. Franklin called Mr. Weissman on July 21 and arranged a meeting that he recorded, he was apparently intending to convey to Mr. Weissman information that Mr. Weissman would feel compelled to transmit to Israeli personnel. Franklin then described as "classified" the warning that Israelis were to be assassinated by Iranian personnel in northern Iraq. The Supreme Court has said that the government engages in prohibited "entrapment" if it originates a criminal plan, implants in an otherwise innocent person's mind the disposition to commit a criminal offense, and induces that person to commit the offense. *Jacobson v. United States*, 503 U.S. 540, 548 (1992). The facts of this case fit squarely within that definition. If Franklin had not arranged the meeting and conveyed the information, there would have been no alleged "offense." And there was no basis for believing that Mr. Weissman had any "predisposition" to convey "classified" information. *Matthews v. United States*, 485 U.S. 58, 62-63 (1988).

III.

HOW COULD THERE BE AN INVESTIGATION OVER ORAL DISCUSSIONS OF POLICY ISSUES THAT WERE PUBLICLY AVAILABLE?

It is not through mere oversight that no general law exists that criminalizes the leaking or receipt of all types of classified information. Though Congress has considered such bills on numerous occasions, the reality of the implications of such a law, for example its implications to the first amendment, has always prevented the bills from being adopted.

Even when such a generalized bill is proposed, the debate around whether to enact it is centered on *leakers* of classified and virtually neglects the issue involved in the investigation of AIPAC employees, i.e., whether they were *recipients of* leaked classified information. Commentators note how difficult it would be to place the onus on a passive listener to prevent someone else from talking to him/her prior to knowing what will be said and without the knowledge of whether something is classified or not.

It is not a coincidence that the existing statutes have only very rarely been used against the recipient of classified information and even then only where actual classified documents were received. In fact, only one case has been found. *See United States v. Zettl*, 835 F.2d 1059 (4th Cir. 1987) (recipient had actual classified documents). *No case* has been reported where the prosecution was based on the receipt of oral information in which some classified part was included.

In addition, cases are not brought where the allegedly classified information was available in publicly attainable documents, media reports, or the internet. Here, the general information disclosed by Mr. Franklin was reported publicly.