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Attorney Client Privilege, Joint Defense Privilege

TO:

Bernice Manocherian

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Richard Fishman

Lonny Kaplan

Howard Kohr

Ed Levy

Mayer Mitchell

David Steiner

Larry Weinberg

Tim Wuliger

Copies: A.D. Lowell, Phil Friedman, and attorneys

Dear Bernice, Amy, Howard, and Members of the Advisory Committee,

I am taking the exceptional step of writing to you, the members of the Advisory Committee of the Board of Directors on the subject of the DOJ/FBI investigation, because I believe that there is some confusion as to whether anything that I (and Keith who acted under my direction) did that violated the policies and interests of the organization. I am unable to address this vital subject in person because of the separation that recently has been caused to exist.

By way of preface, I continue to tell you that we have never solicited from any U.S. government official information that it would be unlawful for them to provide, nor have we knowingly violated any laws. However, I would like to provide some additional information beyond this.

In my 23 years of employment at AIPAC, I have served under and been in close contact with twelve AIPAC Presidents (Larry Weinberg, Mort Silberman, Bob Asher, Ed Levy, Mayer Mitchell, David Steiner, Steve Grossman, Melvin Dow, Lonny Kaplan, Tim Wuliger, Amy Friedkin, and Bernice Manocherian) and three Executive Directors (Tom Dine, Neal Sher, and Howard Kohr). I have attended approximately 207 monthly meetings of the AIPAC Board of Directors, including virtually all meetings of the Policy Planning Committee. I have attended more than 2,000 Senior Staff meetings and have had an estimated 5,000 private (one-on-one) meetings with the three Executive Directors under whom I have served.

In none of these contacts have I ever been given legal or policy guidelines, warnings, or

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share information that may be considered private, proprietary, or even classified by the agencies they serve. Nor have I ever been given a written product of any kind to establish such guidelines. The AIPAC employee handbook contains dozens of pages of advice on federal election law, the rules that apply to unlawful discrimination in employment, and employee rights and responsibilities, but the handbook does not contain a single syllable on the subject of meeting with government officials who may provide private, proprietary, sensitive, or even classified information.

I have heard it said, that "the employee handbook does not forbid murder either." But this is a very unfair comparison. We all know murder when we see it, but the laws that apply to classified information are vague and complex, and there are deep disagreements among experts as to what they prohibit and what they do not. No layman could be expected to know what is legal and what is not. In the current case, the prosecutors are talking about applying eighty-year old laws in a way that they have never been applied before (e.g., no documents, no solicitation, material already published elsewhere, etc). AIPAC retained a noted legal expert and scholar, Professor Viet Dinh, who also used to be a high-ranking official in the Department of Justice. The reports Professor Dinh have provided indicate this is far from a clear area and so much farther from the idea that "the handbook does not forbid murder either." If Viet Dinh, a leading expert who wrote the Patriot Act, does not think a violation occurred, how could Steve Rosen know that the prosecutors would look at it this way?

In addition to these general observations, I want to point out three instances over these many years when the subject of classified information was raised because of government inquiries, but the response of my superiors in these episodes did not call for any change in AIPAC's or my practices. In 1984, shortly after I joined AIPAC, I was approached by the FBI about sensitive information that had been disclosed to me by a government official concerning unlawful cash payments from Libyan diplomats to officials of an American Presidential campaign. I reported this FBI investigation to the (then) Executive Director and key members of the Board, and told them all the facts, and they obtained legal counsel for me. At no point in this process was I told that I had done anything wrong in receiving this information or in sharing it with a staff member of the Senate Intelligence Committee as well as two Washington Post reporters. Indeed, my superiors indicated that they understood and shared my reasons for concern and supported my efforts to do something about it.

The second example is the current case. When Keith and I went to see Howard on July 21, 2004 and reported what we heard, there was not one word expressed of concern. When Keith then wrote an e-mail and described his source as "a source familiar with U.S. intelligence," again there were no questions asked. As we believed then and now that our actions were proper, the lack of questions or concerns make sense. However, they do not make sense if there is going to be an after-the-fact change in the way AIPAC views these events.

I also would like to note that since August 27th, I have reported to AIPAC and its attorneys everything I know about the events of June 2003 and July 2004 that are the (known) focus of the government investigation. At no time since August 27 have I been told by any of my superiors that I violated any AIPAC policy in any way. The prosecutors in Virginia may want to impose this conclusion on the organization now so they can get out of a corner into which they have painted themselves or to avoid taking on AIPAC itself, but this is not what was being said along the way.

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I understand that there may have been a third example. There may have been an FBI investigation in 1983, involving a different member of the AIPAC staff who had received information or an actual document from a government official that was marked "confidential" in some fashion. (I have never received such a document). I also understand that "Confidential" used to be a one of the formal classifications, but this incident may have not been such a formal classified document. Nevertheless, this incident that occurred shortly after I came to AIPAC is instructive again because it shows what was not done. Despite having reason to make rules or provide clarification for what to do when confidential or other information was provided to AIPAC employees, no guidance was given. The AIPAC individual has been promoted several times since this event and is still employed at AIPAC. She was not admonished or punished in any way.

The practices that I have followed have been well known to all three Executive Directors under whom I have served. Indeed, the current Executive Director was my Deputy for several years before rising to his current position, and in that capacity worked intimately with me on a daily basis doing precisely the work of "executive branch lobbying" that is under intensive investigation today.

Finally, but perhaps most important of all, I have in fact been encouraged for twenty-three years to learn all I can about policy developments early in the policy process, so that we as an advocacy organization and our friends in Congress can be in a position to influence the evolution of Administration policy before it is decided and "frozen in stone." One Executive Director after another has encouraged me to "go deeper" and to continue making Executive Branch contacts. The organization has utilized the information we have gathered in our executive branch interactions to its advantage in other forums. In my twenty-two annual personnel evaluations, all of which have been positive, it is my successes in this area that have been most highly praised and most rewarded.

With all of this in mind, I say to you again that we have done nothing but to the best of our ability to serve the interests and policies of the organization. Keith and I are under attack, not because we have diverged from the organization, but precisely because we have served the organization.

The prosecutors or the circumstances may try to separate us or declare us to be rogues or "bad apples," but you all know better. We had no agendas of our own in our work. We worked for the benefit of AIPAC. No matter what the prosecutors may now produce as evidence or spin on that evidence, we were not operating with any sense that we were violating AIPAC policy or the law. Our actions were embraced and rewarded. How it is possible for everyone now to conveniently label us as "targets" and the organization we served as beyond any concern is mystifying.

Before the next chapter of this awful affair begins and before there are additional attempts by the prosecutors or those sympathetic to them to further separate us and use us as a means to an expedient resolution, I wanted to express how I felt.

Sincerely and respectfully,

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Steve Rosen

March 3, 2005

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