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

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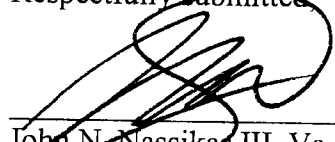
UNITED STATES OF AMERICA)
)
)
v.)
)
STEVEN J. ROSEN and)
KEITH WEISSMAN,)
Defendants)


CRIMINAL CASE NO. 1:05CR225
The Honorable T.S. Ellis, III

**DEFENDANTS' MOTION TO DISMISS THE INDICTMENT OR FOR
OTHER RELIEF DUE TO THE GOVERNMENT'S INFRINGEMENT
OF DEFENDANTS' RIGHTS UNDER THE FIFTH AND SIXTH
AMENDMENTS OF THE UNITED STATES CONSTITUTION**

Defendants Steven J. Rosen and Keith Weissman, through counsel, respectfully move the Court for an evidentiary hearing and for dismissal of the indictment based on the government's wrongful interference with the Defendants' due process rights, right to counsel, and right to defend themselves. In the alternative, the Defendants respectfully request that the Court provide ancillary relief for the government's wrongful interference.

Respectfully submitted


John N. Nassikas III, Va. Bar No. 24077
Baruch Weiss (*admitted pro hac vice*)
Laura S. Lester (*admitted pro hac vice*)


Erica E. Paulson, Va. Bar No. 66687
Abbe David Lowell (*admitted pro hac vice*)
Keith M. Rosen (*admitted pro hac vice*)

ARENT FOX PLLC
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339
T: (202) 857-6000
F: (202) 857-6395

CHADBOURNE & PARKE LLP
1200 New Hampshire Avenue, NW
Washington, D.C. 20036
T: (202) 974-5600
F: (202) 974-5602

Attorneys for Defendant Keith Weissman

Attorneys for Defendant Steven Rosen

Dated: July 18, 2006

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UNITED STATES OF AMERICA)	
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v.)	CRIMINAL CASE NO. 1:05CR225
)	The Honorable T.S. Ellis, III
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KEITH WEISSMAN,)	
Defendants)	

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS THE INDICTMENT OR FOR OTHER RELIEF DUE TO
THE GOVERNMENT'S INFRINGEMENT OF DEFENDANTS' RIGHTS UNDER THE
FIFTH AND SIXTH AMENDMENTS OF THE UNITED STATES CONSTITUTION**

Defendants Steven J. Rosen and Keith Weissman, through counsel, respectfully submit this memorandum in support of their motion seeking an evidentiary hearing and dismissal of the indictment or other relief due to the government's interference with their right to defend themselves, their right to counsel, and their right to due process of law. This motion parallels the facts and arguments recently ruled on in *United States v. Stein*, No. S1 05 Crim. 0888 (LAK), 2006 WL 1735260 (S.D.N.Y. June 26, 2006), in which the court found that the United States Department of Justice ("DOJ") policy and practice of pressuring business organizations to cut off payment of legal fees to employees was "unconstitutional" and "an abuse of power."

I. INTRODUCTION

In late 2004, the government began a systematic, and ultimately successful, effort to pressure the American Israel Public Affairs Committee ("AIPAC") into severing all financial and other ties with the Defendants. After the government's improper pressure, AIPAC fired Dr. Rosen and Mr. Weissman, terminated its joint defense agreement with them, and stopped paying their legal fees, while resisting the government's additional efforts to have AIPAC totally cut off

their health benefits and severance pay. As the government well knew at the time, taking these actions would weaken Dr. Rosen and Mr. Weissman in fighting the investigation and the subsequent charges that were filed. The Defendants have accumulated more than \$4 million in unpaid legal fees and costs during the thirteen months since AIPAC finally succumbed to government pressure to stop paying their fees.

Before the government pressure began in earnest, AIPAC paid the attorneys' fees and expenses for Dr. Rosen and Mr. Weissman, both of whom were AIPAC employees until they were fired in March 2005. Indeed, on the day the investigation became known, AIPAC stated that it would pay for and advance the Defendants' legal costs, and then did so for more than six months until the spring of 2005 when AIPAC stopped payments in response to repeated pressure applied by the government. AIPAC's advancement of these fees over a six-month period was consistent with its legal obligations to the Defendants, its bylaws, and its practice.

Starting in late 2004 and continuing into 2005, government officials, in accordance with written binding policies established by the DOJ, subtly and not so subtly pressured AIPAC to fire Dr. Rosen and Mr. Weissman, to stop paying their attorneys' fees, and to take other actions against them – months before they even were charged with any wrongdoing. In June 2005, after the government's repeated inquiries concerning AIPAC's "support" for its employees, AIPAC stopped paying the Defendants' attorneys' fees and expenses.

Although the government's interference with AIPAC's advancement of attorneys' fees accorded with official DOJ policy at the time, such interference has come under increasing scrutiny from federal courts, and, in June 2006, a federal court issued the first written opinion directly addressing this practice. *See Stein*, 2006 WL 1735260. The *Stein* court held that, where the government's policies and conduct successfully pressured the defendants' former employer

to stop advancing their attorneys' fees, the government violated the defendants' Fifth Amendment right to due process of law and Sixth Amendment right to counsel. *Id.* at *33. In a subsequent and very recent order in response to the government's motion for reconsideration, the Court reaffirmed its core ruling:

The Department of Justice policy that the [U.S. Attorney's Office] dutifully carried out . . . is more than a disappointment – it is unconstitutional.

(*Stein* Order at 2, July 6, 2006, attached as Exhibit 1.)

The relevant facts and legal considerations in *Stein* are present here. The Defendants thus request that the Court, after an evidentiary hearing, find that the government violated Defendants' rights under the Fifth and Sixth Amendments and dismiss the indictment or order other relief restoring the circumstances that would have existed without the government's improper interference.

II. FACTUAL BACKGROUND

A. AIPAC's Legal Obligation to Pay Dr. Rosen's and Mr. Weissman's Legal Fees

AIPAC is an advocacy group focusing on issues relating to Israel and American foreign policy in the Middle East. Dr. Steven Rosen started working for AIPAC in 1982, and as the Director of Foreign Policy Issues, Dr. Rosen met frequently with representatives of the United States government to exchange information and express AIPAC's views. Keith Weissman went to work for AIPAC in 1993 and held the position of Deputy Director of Foreign Policy Issues. Mr. Weissman also met with representatives of the federal government on behalf of AIPAC. In fact, as the government's own allegations indicate, all of the circumstances and alleged conduct at issue in this case occurred during and in connection with Dr. Rosen's and Mr. Weissman's employment by AIPAC and were for the benefit of AIPAC.

AIPAC is a tax-exempt, nonprofit organization incorporated under the laws of the District of Columbia. AIPAC's bylaws explicitly require indemnification of current and former employees' attorneys' fees under the following provision:

AIPAC shall, to the fullest extent permitted by applicable law, indemnify and hold harmless any person who is or was a director, officer, member of the Executive Committee or any other committee, or employee or agent of AIPAC ... against any losses, claims, damages, expenses (including attorney's fees) or liabilities, to which the director, officer, member of the Executive Committee or any other committee, or employee or agent may become subject in connection with any matter arising out of or related to AIPAC, its business or affairs, except to the extent any such loss, claim, damage, liability or expense is finally judicially determined to be primarily attributable to such director's, member's, employee's or agent's gross negligence, bad faith, fraud or willful misconduct or willful breach of such person's duties and responsibilities in any material respect....

(AIPAC Bylaws ¶ 15, March 21, 1995, attached as Exhibit 2 (emphasis added).)¹

AIPAC provided Dr. Rosen's and Mr. Weissman's attorneys with assurances that their legal fees and costs would be paid and, indeed, initially honored its obligation to pay the legal bills. Lowell Decl. ¶ 6, attached as Exhibit 3; *see also* Nassikas Decl. ¶ 5, attached as Exhibit 4. Dr. Rosen and Mr. Weissman retained counsel in August 2004 and have received bills for legal fees and expenses each month since that time. Lowell Decl. ¶¶ 4, 6, Ex. 3. AIPAC advanced

¹ This provision is enforceable as a matter of law because the District of Columbia follows the well-established rule construing the formal bylaws of an organization as a contractual agreement. *See Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 361 (D.C. 2005); *see also, e.g., Hibbert v. Hollywood Park, Inc.*, 457 A.2d 339, 344-45 (Del. 1983) (enforcing provision for indemnification of legal expenses in corporate bylaws) *cited approvingly in Johnson v. Fairfax Vill. Condominium IV Unit Owners Ass'n*, 548 A.2d 87, 91 (D.C. 1988). Because there is no dispute that (1) Defendants were employees of AIPAC, (2) the Defendants have incurred and continue to incur legal expenses in connection with matters related to AIPAC's business, (3) no final judicial determination has been made attributing these expenses to Defendants' misconduct, and (4) failure to advance legal fees would constitute a failure to indemnify "to the fullest extent permitted by applicable law," Dr. Rosen and Mr. Weissman are legally entitled to have AIPAC pay their legal expenses.

payment for all of Dr. Rosen's legal bills from September 2004 through March 2005 and for all of Mr. Weissman's bills from September 2004 through May 2005. Lowell Decl. ¶ 6, Ex. 3; *see also* Nassikas Decl. ¶ 5, Ex. 4. AIPAC has not made any payments of any kind since June 2005. Lowell Decl. ¶ 6, Ex. 3; *see also* Nassikas Decl. ¶ 5, Ex. 4. Because of the size and complexity of this case, Dr. Rosen and Mr. Weissman have accumulated a total of more than \$4 million dollars in legal fees and costs that AIPAC has not paid. *Id.* Some time after AIPAC became certain that it was not going to be charged itself, AIPAC did offer to pay a deeply discounted lump sum if the Defendants agreed to sign a number of releases, including releases absolving AIPAC of its responsibility to pay the fees in their entirety. *See* Nassikas Decl. ¶ 6, Ex. 4. While there have been other discussions regarding fees, AIPAC has *never* offered to pay the defense fees and costs in full after the government caused Dr. Rosen and Mr. Weissman to be fired and the joint defense agreement to be canceled. *Id.*²

AIPAC's initial payments of Dr. Rosen's and Mr. Weissman's legal fees comported with its by-laws, statements that it would advance these fees, and practice, as it also has advanced the fees for the representation of other employees in this very investigation.³

B. The Government's Interference with AIPAC's Payment of Legal Expenses

On January 20, 2003, United States Deputy Attorney General Larry Thompson issued a memorandum entitled *Principles of Federal Prosecution of Business Organizations* (the

² An evidentiary hearing would demonstrate that all of AIPAC's offers, like KPMG's offers in *Stein*, were tainted by government pressure.

³ The conduct of other AIPAC employees was reviewed by the government in this investigation. A number of AIPAC officials, including Executive Director Howard Kohr, Managing Director Richard Fishman, Director of Communications Renee Rothstein, and Director of Research and Information Raphael Danziger sought counsel apart from AIPAC's counsel to ensure their individual interests were protected. Upon information and belief, AIPAC has paid these individuals' legal defense fees in their entirety.

“Thompson Memorandum,” available at http://www.usdoj.gov/dag/cftf/corporate_guidelines.htm (last visited July 17, 2006)). The Thompson Memorandum sets forth the factors that federal prosecutors must consider when deciding whether to prosecute a corporation. The factors figuring adversely to a corporation include:

a corporation’s promise of support to *culpable* employees and agents, either *through the advancing of attorneys fees*, through retaining the employees without sanction for their misconduct, or through providing information to the employees about the government’s investigation pursuant to a joint defense agreement....

Id. (emphasis added.)⁴ The Thompson Memorandum is binding on all United States Attorneys. *Stein*, 2006 WL 1735260 at *3.⁵ At a minimum, this policy encourages prosecutors to pressure companies to sanction and/or fire employees whom they deem “culpable,” to discontinue joint defense agreements with them, and to cut off their attorneys’ fees.

The government did just that in this case. From late 2004 through early 2005, prosecutors used the Thompson Memorandum as the guide to its efforts to make AIPAC “cooperate.” The prosecutors wanted AIPAC to terminate Dr. Rosen and Mr. Weissman, terminate the joint defense agreement, and terminate payment of their legal fees. In the spring of 2005, after repeated discussions with the government, AIPAC took each of those steps.

⁴ The Thompson Memorandum thus requires prosecutors to identify “culpable” employees. “Culpable” means “guilty.” *Black’s Law Dictionary* 385 (7th ed. 1999). The effects of this DOJ policy therefore derive from the government’s unilateral pretrial determinations of guilt.

⁵ Because its provisions are well known, the Thompson Memorandum announces a threat that corporate attorneys would be foolish to ignore. *Id.* at *20 (“Few if any competent defense lawyers would advise a corporate client at risk of indictment that it should feel free to advance legal fees to individuals in the face of the Thompson Memorandum itself.”). The government’s policy thus coerces corporations under investigation to cut off advancement of legal fees to employees and former employees. *Id.* at *21. Federal prosecutors compound this problem by acting in accordance with the policy. *See id.*

Into early 2005, AIPAC itself was a subject of the federal investigation. When the government decided to seek AIPAC's cooperation in the investigation, it insisted that AIPAC comply with all aspects of the Thompson Memorandum. The government's ultimate success in pressuring AIPAC to cut off attorneys fees began as a government effort to encourage AIPAC's termination of Dr. Rosen's and Mr. Weissman's employment and termination of the joint defense agreement. To that end, on March 18, 2005, the United States Attorney told counsel for AIPAC's Executive Director, and an Assistant U.S. Attorney later confirmed to Dr. Rosen's counsel, that AIPAC needed to fire Dr. Rosen and Mr. Weissman. Lowell Decl. ¶ 8, Ex. 3. In the same conversation, the U.S. Attorney also indicated that the Thompson Memorandum should guide AIPAC's decisions regarding Dr. Rosen and Mr. Weissman. Lester Decl. ¶ 5, attached as Exhibit 5.

Just one business day later, on March 21, 2005, AIPAC fired Dr. Rosen and Mr. Weissman. Lowell Decl. ¶ 7, Ex. 3; Nassikas Decl. ¶ 7, Ex. 4. AIPAC hoped this move would give them credibility with the government. Lester Decl. ¶ 6, Ex. 5. AIPAC initially decided to keep Dr. Rosen and Mr. Weissman on the AIPAC payroll and to maintain their health benefits for a limited time. Moreover, AIPAC intended to keep the terminations secret from everyone but the government and the Defendants.⁶ Lester Decl. ¶ 7, Ex. 5. Thus, it appears that AIPAC chose its course of action vis-à-vis the Defendants based on the expectations of the government. Indeed, immediately after firing Dr. Rosen and Mr. Weissman, AIPAC counsel contacted the government on March 22, 2005, to inform the government that the Defendants had been terminated and that the joint defense agreement was terminated as well. Lowell Decl. ¶ 9, Ex. 3

⁶ In fact, the information only became public against AIPAC's wishes in April of 2005.

The government, however, was not satisfied. Now that Dr. Rosen and Mr. Weissman had been fired and the joint defense agreement had been terminated, the government asked, in the same conversation, whether AIPAC was still paying the legal fees. Lowell Decl. ¶ 9, Ex. 3. AIPAC counsel then requested a meeting with the government. Lester Decl. ¶ 8, Ex. 5.

On April 29, 2005, attorneys for AIPAC attended a meeting with government prosecutors. Nassikas Decl. ¶ 8, Ex. 4. During the meeting, a DOJ attorney – in an outrageous act of overreaching – raised questions about whether AIPAC was continuing to provide health benefits and severance pay to Dr. Rosen and Mr. Weissman. *See id.* Health benefits are particularly crucial to Dr. Rosen. He suffers from a heart condition that required two heart surgeries in 2002. As a result of his termination and severance package, his COBRA health coverage will end in a few months. He will not yet be old enough to qualify for Medicare, and it is unclear whether he will be able to obtain private insurance as a result of his pre-existing heart condition.

At the same meeting where the DOJ attorney raised the issue of health benefits and severance pay, an Assistant U.S. Attorney also asked AIPAC to explain why it was paying the legal defense fees. *Id.* AIPAC's counsel indicated that those individuals could not afford counsel otherwise. *Id.* Notwithstanding that explanation, the government continued to raise the issue of payment of the Defendants' legal fees.

AIPAC heard clearly the government's message, and Dr. Rosen's and Mr. Weissman's legal fees were soon cut off. Indeed, on Tuesday, May 3, 2005, one of AIPAC's attorneys told Mr. Weissman's counsel that AIPAC's payment of their legal fees was an issue for the government. Nassikas Decl. ¶ 9, Ex. 4. Another of AIPAC's attorneys was more blunt, telling defense counsel that an Assistant U.S. Attorney had indicated that Dr. Rosen and Mr. Weissman

should not receive attorneys' fees and that a DOJ attorney had gone beyond the Thompson Memorandum by indicating that AIPAC should cut off Dr. Rosen's and Mr. Weissman's health benefits and severance pay. *Id.* During this same period, an Assistant U.S. Attorney also stated that the government was prepared to conclude that AIPAC had not done anything wrong, but that an innocent company would not employ *or* pay attorney fees for employees who the government concluded had committed wrongdoing. Lowell Decl. ¶ 10, Ex. 3. The government also seemed to use the issue of attorneys' fees to push for some plea resolution of the investigation. AIPAC's counsel also informed counsel for Dr. Rosen and Mr. Weissman (neither of whom still had yet been charged) that, in the event the government offered reasonable plea bargains to Dr. Rosen and Mr. Weissman and they refused to plead guilty, AIPAC would stop paying their attorneys' fees. Lowell Decl. ¶ 11, Ex. 3; *see also* Nassikas Decl. ¶ 10, Ex. 4.

On May 4, 2005, during a telephone conversation with Mr. Weissman's counsel in which he complained about the U.S. Attorney's Office's actions, prosecutors confirmed that they raised the issue of payment of Defendants' legal fees, health benefits, and severance with AIPAC's counsel. Nassikas Decl. ¶ 11, Ex. 4. Under continuing pressure from the government, AIPAC stopped paying Mr. Weissman's legal fees in June 2005. Nassikas Decl. ¶ 5, Ex. 4.

Although successful in its attempt to stop AIPAC from paying Defendants' legal fees, the government's efforts did not end there. At various times in the investigation – both before the indictment in August 2005 and after – FBI agents have made contact with people and asked them whether and why they were helping to support Dr. Rosen, who was then without a job and without fees to pay his defense. In some cases, the people contacted had no substantive contact with Dr. Rosen on any issue germane to the charges in the case. Lowell Decl. ¶ 12, Ex. 3; *see*

also Josh Gerstein, *FBI Questions Jewish Leaders in AIPAC Case*, New York Sun, May 24, 2006, attached as Exhibit 6.

III. DISCUSSION

Two bedrock principles of the American justice system are that criminal suspects are presumed innocent until proven guilty, *see, e.g., Coffin v. United States*, 156 U.S. 432, 452 (1895), and that effective criminal defense lawyers serve, rather than thwart, the search for justice, *see, e.g., Penson v. Ohio*, 488 U.S. 75, 84 (1988). The DOJ's policy and conduct in this case relating to legal fee payments turn these principles on their heads. In accordance with mandatory DOJ policy, the government made unilateral pretrial determinations of "culpability" and then undermined the Defendants' ability to contest those determinations in a court of law.

It is little wonder, then, that the first federal court to rule on this issue found that such government policy and conduct are unconstitutional. *Stein*, 2006 WL 1735260 at *32-33.⁷ In *Stein*, the prosecutors followed the dictates of the Thompson Memorandum at a meeting with KPMG's corporate counsel during the government's investigation of that company. *Id.* at *6-7. At the meeting, prosecutors inquired into KPMG's duties and intentions regarding advancement of legal fees to employees under investigation. *Id.* Although the prosecutors never explicitly asked KPMG to stop paying the fees, the government's inquiry into the legal fee arrangement communicated that message. *Id.* Within a few weeks after the meeting, KPMG began limiting the terms and extent of its legal fee advancement, before eventually stopping altogether. *Id.* at

⁷ In February 2006, another federal court ordered an evidentiary hearing to address the same issue. *See United States v. Gagalis*, No. 04-CR-126 (D.N.H.), attached as Exhibit 7. However, before the hearing ended, the parties reached an agreement under which the employer corporation committed to pay the defendants' outstanding legal bills and to advance their fees through the end of trial. The same outcome occurred last month in *United States v. Benyo, et al.*, No. 1:05CR12 (E.D.Va). *See* Exhibit 8. There, shortly before a hearing to argue the defendants' motion to dismiss, America Online agreed to resume payment of the defendants' legal fees.

*7-9. The court found that the pressure exerted by the government – through policy and conduct– contributed to KPMG’s stopping the advancement of legal fees. *Id.* at *9.

The facts here are like those in *Stein*. In both cases, a corporation and/or its officers was under federal investigation and faced the possibility of indictment. In both cases, the corporation wanted to protect itself from investigation and prosecution. In both cases, the government made clear that a non-wrongdoing, cooperative company would isolate the employees the government identified as "culpable." In both cases, the company got the message and did as the government suggested by, *inter alia*, discontinuing the payment of defendants’ legal fees. In both cases, the corporation escaped indictment, while the defendants found themselves attempting to fight massive government investigations with dwindling resources of their own. The *Stein* court found such government pressure to be unconstitutional, and Defendants ask this Court to reach the same conclusion.

A. The Fifth Amendment Right to Due Process of Law

Defendants first urge the Court to adopt the legal conclusion reached in *Stein* that government interference with the lawful payment of legal defense fees violates the Due Process Clause. *Id.* at *16-21.

The Due Process Clause of the Fifth Amendment states that “[n]o person shall be ... deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. The Due Process Clause provides heightened protection against government interference when certain fundamental rights and liberty interests are at stake. *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). Criminal defendants have such a fundamental interest in planning their defense free from undue government interference. *See Powell v. Alabama*, 287 U.S. 45, 53 (1932); *United States v. Kikumura*, 947 F.2d 72, 78 (3d Cir. 1991) (“Due process demands that a

defendant be afforded an opportunity to obtain the assistance of counsel of his choice to prepare and carry out his defense.”). Due process thus requires fundamental fairness in criminal proceedings and prohibits the government from unjustly interfering with the manner in which defendants wish to present a defense. *Stein*, 2006 WL 1735260 at *16 (citing *Martinez v. Court of Appeal of Cal.*, 528 U.S. 152, 165 (2000) (Scalia, J., concurring)); *see also United States v. Gonzalez-Lopez*, 126 S.Ct. 2557, 2562 (2006) (“The Constitution guarantees a fair trial through the Due Process Clauses”) (quoting *Strickland v. Washington*, 466 U.S. 668, 692 (1984)).

In *Stein*, taking guidance from various Supreme Court criminal due process cases, the court recognized the defendants’ fundamental liberty interest and applied strict scrutiny to the government’s interference with their legal fee advancements. 2006 WL 1735260 at *18-19. To survive strict scrutiny, the government must show that its action is narrowly tailored to serve a compelling state interest. *Id.* The Thompson Memorandum and the government’s conduct in accordance with it both fail this test. *Id.* The Thompson Memorandum makes it government policy to punish those whom prosecutors – not a court or jury – deem culpable, often early in the government’s investigation. *See id.* at *19. As the *Stein* court observed, however, “[t]he imposition of economic punishment by prosecutors, before anyone has been found guilty of anything, is not a legitimate governmental interest – it is an abuse of power.” *Id.* The court also rejected the government’s arguments that its legal fee advancement policy was necessary to gauge corporate cooperation and to prevent obstruction. *Id.* at *20. To the contrary, the court noted that a corporation could cooperate fully with the government while advancing legal fees to employees, and that the Thompson Memorandum extends far beyond the limited situations where a corporation is part of an obstruction scheme. *Id.* The court concluded that the legal fee

advancement provision of the Thompson Memorandum violates the Due Process Clause. *Id.* at *21.

Like the *Stein* defendants, Dr. Rosen and Mr. Weissman could not have a more fundamental liberty interest at stake; the government seeks to take away their freedom for years to come. As in *Stein*, the employer corporation here cooperated fully with the government and did not obstruct the investigation in any way. AIPAC agreed to interviews, provided documents and information, and its counsel met often with the prosecutors. The government abused that cooperation by using its substantial leverage to interfere in the private legal relationship through which AIPAC paid Defendants' legal fees. As it did in *Stein*, the government misinterpreted corporate "cooperation" to mean "consequences" for the corporation's employees. That interference led AIPAC, after nine months of continuous payments, to stop honoring its obligation to pay the fees. As a result, the playing field has been tipped unfairly in the government's favor.

The *Stein* court never reached the defendants' alternative due process argument that they had a constitutionally protected *property* interest in the legal fee advancements. The court nonetheless acknowledged that the legal fees at issue "were, in every material sense, [the defendants'] property, not that of a third party." *Id.* at *23. Here, as described above, Dr. Rosen and Mr. Weissman have explicit and implicit contractual entitlement to have AIPAC pay their legal fees. *See supra* p. 4, n.1. Indeed, AIPAC advanced their fees for nine months before the government interfered. Thus, while their liberty interest is obviously most significant, Defendants also have a property interest warranting due process protection.

Although the *Stein* court applied strict scrutiny to the government's interference with advancement of the defendants' legal fees, it is doubtful that such government conduct could

survive even a lesser standard of scrutiny. Under the less stringent due process test, the government's conduct is constitutional only if it bears a reasonable relationship to a legitimate government interest. *See Washington*, 521 U.S. at 719-20. The government obviously has a legitimate interest in investigating and fairly prosecuting crimes. *See Stein*, 2006 WL 1735260 at *19. The government cannot show, however, that such an interest is reasonably related to cutting off a defendant's access to a livelihood, to health benefits, and to legal defense funding. Indeed, the government's proper interest is not to obtain convictions at any cost. *Id.* at *33. In criminal prosecutions, the government's interest is that "justice shall be done." *Id.* (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)). The policy and conduct mandated by the Thompson Memorandum subvert this constitutional principle and reflect disdain for the constitutionally protected right of defendants to put government accusations to a fair test in a court of law. The Thompson Memorandum thus cuts at the very heart of the principles embodied in the Due Process Clause, mandates conduct that the *Stein* court succinctly and correctly called "an abuse of power," and is unconstitutional under any level of scrutiny.

B. The Sixth Amendment Right to Counsel

Defendants likewise urge the Court to adopt the legal conclusion reached in *Stein* that government interference with the lawful payment of legal defense fees violates a defendant's right to counsel. *Id.* at *22-24.

The Sixth Amendment provides that "the accused shall enjoy the right ... to have the Assistance of Counsel for his defence." U.S. Const. amend. VI. A criminal defendant thus has "the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire..." *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 624 (1989). As this Court has explained, "a defendant [has] a constitutional right to use nonforfeitable property to

pay a lawyer and the costs of defense.” *United States v. Wingerter*, 369 F.Supp.2d 799, 808 (E.D. Va. 2005) (internal emphasis omitted).

In *Stein*, the government attempted to escape application of this basic principle of constitutional law by arguing that the KPMG defendants did not possess the funds in question and had no right to spend “other people’s money.” 2006 WL 1735260 at *23. The *Stein* court summarily rejected the government’s argument.⁸ *Id.* Recognizing that the law protects against unjustified interference with the expected benefits flowing from the defendants’ employment, the court found that legal fees at issue “were, in every material sense, [the defendants’] property, not that of a third party.” *Id.*

Where the government interferes with a defendant’s use of his property to fund his defense, the crucial Sixth Amendment inquiry is whether government interference with the advancement of fees is justified. *Id.* This inquiry is informed by the tort law of interference with prospective economic advantage in which courts weigh the relative importance of the parties’ interests. *Id.*; see also *Int’l Union, UMWA v. Eastover Mining Co.*, 623 F.Supp. 1141, 1148 (W.D. Va. 1985) *rej’d on unrelated grounds*, *Int’l Union, UMWA v. Covenant Coal Corp.*, 977 F.2d 895 (4th Cir. 1992). While a defendant’s interest in funding and presenting a defense without government interference is obvious and fundamental, the government’s interest in

⁸ The court likewise rejected the government’s argument that Sixth Amendment rights had not attached at the time of its interference with the advancement of the defendants’ legal fees. *Id.* at *22. The court found that, because the government’s conduct was “set in motion prior to indictment with the object of having, or with knowledge that [it was] likely to have, an unconstitutional effect upon indictment,” the defendants’ Sixth Amendment right to counsel was violated. *Id.*; see also, e.g., *Matteo v. Superintendent, SCI Albion*, 171 F.3d 877, 892-93 (3d Cir. 1999) (“the defendant is guaranteed the protection of counsel from the moment he finds himself faced with the prosecutorial forces of organized society, and immersed in the intricacies of substantive and procedural criminal law”) (internal quotations and citations omitted). To find otherwise would allow the government to circumvent the Sixth Amendment.

interfering with defense funding is less apparent. Here, as in *Stein*, the legal fee arrangement was not part of any alleged obstruction scheme and did not reflect any lack of cooperation by AIPAC. To the contrary, AIPAC has been at the government's beck and call throughout the investigation. In such a situation, the government cannot justify pressuring a corporation to stop advancing payment of a defendant's attorney fees. *See Stein*, 2006 WL 1735260 at *24. As the *Stein* court held:

the fact that advancement of legal fees occasionally might be part of an obstruction scheme or indicate a lack of full cooperation by a prospective defendant is insufficient to justify the government's interference with the right of individual criminal defendants to obtain resources lawfully available to them in order to defend themselves, regardless of the legal standard of scrutiny applied.

Id. at *24. Indeed, the government's policy and conduct violate two bedrock principles of our justice system—suspects are presumed innocent until proven guilty in a court of law, and partisan advocacy promotes the ultimate goal of justice. *See id.* The government's *proper* interest is in accordance with these principles, but its interference with legal defense funding unjustifiably thwarts them.

The *Stein* court completed its Sixth Amendment analysis by considering whether the defendants needed to show prejudice. *Id.* For two reasons, the court presumed that the government's interference prejudiced the defendants. *Id.* at *25-27. First, the government's interference fundamentally altered the structure of the adversary process, engendering a fundamentally unfair proceeding. *Id.* at *27 (citing *United States v. Cronin*, 466 U.S. 648, 657 (1984)); *see also Gonzalez-Lopez*, 126 S.Ct. at 2564 (“We have little trouble concluding that erroneous deprivation of the right to counsel of choice, with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as structural error” and therefore does

not require a prejudice inquiry) (citation and internal quotations omitted). Second, the trial court was in a position to detect and remedy the problem before trial. *Stein*, 2006 WL 1735260 at *25 (citing *Strickland*, 466 U.S. at 692). The *Stein* court thus concluded that “[w]ere the Court to refrain from seeking to remedy the problem now, it would abdicate its responsibility to safeguard defendants’ constitutional rights.” 2006 WL 1735260 at *27. This Court sits in the same position, and we respectfully ask the Court to remedy the government’s interference with payment of Dr. Rosen’s and Mr. Weissman’s legal fees.

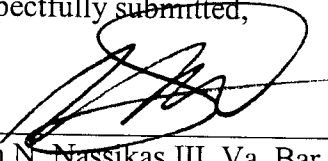
C. Remedy

Similar to the remedies requested and received by the defendants in the *Stein* proceedings, Defendants respectfully request Rule 17 subpoenas, an evidentiary hearing before the Court, and a finding that the government’s interference with payment of their legal fees was unconstitutional. *See id.* at *13 (describing limited discovery and evidentiary hearing ordered by the court); *see also United States v. Gagalis*, No. 04-CR-126 (D.N.H.) (holding evidentiary hearing on the same issue), Ex. 7. Once the Court is satisfied that the government’s interference occurred and was unconstitutional, Dr. Rosen and Mr. Weissman ask the Court to dismiss their indictments or provide such other remedies as will restore the circumstances that would have existed without the government’s interference.

IV. CONCLUSION

For the same reasons that the *Stein* court found the Thompson Memorandum and related government conduct unconstitutional, this Court should grant appropriate relief to remedy the government's wrongful interference with payment of Dr. Rosen's and Mr. Weissman's legal fees.

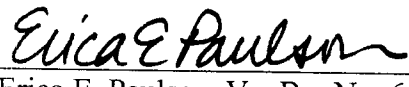
Respectfully submitted,



John N. Nassikas III, Va. Bar No. 24077
Baruch Weiss (*admitted pro hac vice*)
Laura S. Lester (*admitted pro hac vice*)

ARENT FOX PLLC
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339
T: (202) 857-6000
F: (202) 857-6395

Attorneys for Defendant Keith Weissman



Erica E. Paulson, Va. Bar No. 66687
Abbe David Lowell (*admitted pro hac vice*)
Keith M. Rosen (*admitted pro hac vice*)

CHADBOURNE & PARKE LLP
1200 New Hampshire Avenue, NW
Washington, D.C. 20036
T: (202) 974-5600
F: (202) 974-5602

Attorneys for Defendant Steven Rosen

Dated: July 18, 2006

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2006, the Motion to Dismiss the Indictment or for Other Relief Due to the Government's Infringement of the Defendants' Rights under the Fifth and Sixth Amendments of the United States Constitution was served by hand delivery, on the following:

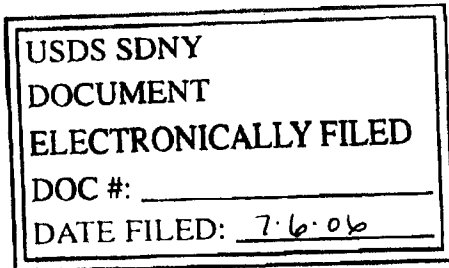
Kevin Di Gregory, Esq.
Neil Hammerstrom, Esq.
Assistant United States Attorneys
United States Attorney's Office
Eastern District of Virginia
2100 Jamieson Avenue
Alexandria, VA 22314



Kavitha J. Babu

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



----- x
UNITED STATES OF AMERICA,

-against-

S1 05 Crim. 0888 (LAK)

JEFFREY STEIN, et al.,

Defendants.
----- x

ORDER

LEWIS A. KAPLAN, *District Judge.*

The Court is in receipt of a letter, dated June 30, 2006, from the United States Attorney, who asks that the Court withdraw certain statements concerning his office made on page 81 and in footnote 51 of the Court's opinion, dated June 26, 2006, and in any case that it delete the names of individual prosecutors throughout the opinion.

The letter correctly notes that Mr. Weddle's declaration, referred to on page 81, stated that he had raised the attorneys' fee issue in the first meeting with Skadden Arps. A paragraph on page 81 of the opinion is being modified to reflect this fact as well as to revise somewhat the Court's conclusion, in light of the letter, on another point. This does not in any way affect the result, the thrust of the Court's comments overall, or any other findings.

The Court has considered the other points with care. Although it would not be useful to engage in a point-by-point debate, an example will illustrate one reason why the Court does not find the letter sufficient to warrant any other change.

In some part, the request for changes rests on evidence that the government did not offer. For example, the letter asserts that the Court should not have faulted the government's failure, during the briefing of the motion, to disclose that Mr. Weddle, at the February 25, 2004 meeting with Skadden Arps, said that the government would look at any payment of legal fees by KPMG, beyond any it was legally obligated to pay, "under a microscope" because "nobody on the Government team had any recollection of the remark." Letter, at 4. In fact, however, the government's evidence at the hearing fell considerably short of proving that. Among other things, it did not call six of the nine government representatives who were at the February 25 meeting,¹ including Mr. Weddle who

¹ See U113 (listing those present at meeting).

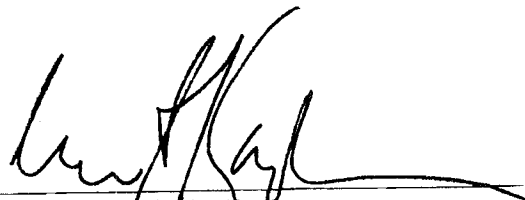
allegedly made the statement, as witnesses. The Court had ample reason to conclude that the government was aware that the remark had been made but failed to disclose it.

Accordingly, except in the respect noted, the Court declines to make any substantive changes in the opinion. It nonetheless reiterates the high regard in which it long has held the United States Attorney's office for this district. It views the actions of the U.S. Attorney's office that evoked criticism more as a disappointment borne of the ordinarily exceptional performance of the office that this Court has come to expect than as anything else. The Department of Justice policy that the office dutifully carried out, on the other hand, is more than a disappointment – it is unconstitutional.

The Court treats the United States Attorney's letter as a motion for reconsideration. The motion is granted. On reconsideration, the Court adheres to its original decision in all respects save that referred to above.

SO ORDERED.

Dated: July 6, 2006

A handwritten signature in black ink, appearing to read "Lewis A. Kaplan", written over a horizontal line.

Lewis A. Kaplan
United States District Judge

EXHIBIT 2

3-21-95

BYLAWS OF THE AMERICAN ISRAEL
PUBLIC AFFAIRS COMMITTEE

STATEMENT OF PURPOSE: This organization shall be known as the American Israel Public Affairs Committee (AIPAC) and shall undertake appropriate activities to nurture and to advance the relationship between the United States and Israel, and to strengthen and to promote the mutual ideals and interests of both nations in accordance with the views of its members. In carrying out these tasks, AIPAC shall represent only the views of American citizens and shall receive neither funding nor direction from the State of Israel nor from any other foreign government. AIPAC is not a political action committee ("PAC"). It does not solicit funds for or contribute funds to political candidates or to political parties.

1. **MEMBERS.**

a. **MEMBERSHIP REQUIREMENTS.** The following are AIPAC members:

- 1) Individuals for whom membership applications have been completed and approved, who pay annual dues as set from time to time by the Board of Directors. In setting dues, the Board of Directors may create different categories of membership depending upon the amount of dues paid; and,
- 2) The chief lay officer of each organization that is a member of the Conference of Presidents of Major American Jewish Organizations may become a member without payment of dues during his or her term of office.

- 3) Any member who is not in financial arrears to AIPAC (as judged by the Board of Directors) is an AIPAC member in good standing.
- 4) All members of the Board of Directors (as described in Section 2.b.), the Executive Committee (as described in Section 4), and all other committees (as described in Section 5), as well as all officers (as described in Section 3), all State Chairpersons (as described in Section 7), and all Regional Chairpersons (as described in Section 8), shall be AIPAC members in good standing.

b. **RENEWAL.** Membership must be renewed on a yearly basis through payment of dues except for members described at Section 1.a.2).

c. **RIGHTS OF MEMBERS.**

- 1) Notice of the annual Policy Conference shall be sent to all members not less than 20 nor more than 50 days before the date of the meeting. Each member may attend the annual Policy Conference for a fee determined by the Board of Directors.
- 2) All members shall be entitled to receive information regarding the voting records of Members of Congress as pertain to AIPAC issues.
- 3) Members in good standing as of 120 days prior to the annual Policy Conference who attend the annual Policy Conference will constitute the National Assembly which body shall elect certain members to the Board of Directors (as described in Section 2.c.2)) and to the Executive Committee (as described in Section 4.b.5)).

2. **THE BOARD OF DIRECTORS.** Powers, number, election, term of office

- a. **POWERS.** The Board of Directors shall have the responsibility and authority for the setting of policy and the overall management of the business affairs, activities and property of AIPAC, including the selection of the Executive Director.
- b. **NUMBER.** The Board of Directors shall consist of such number not fewer than 25 nor more than 40 Directors, as determined by the Board from time to time, including those officers of AIPAC described in Section 3.a., who shall be members of the Board of Directors by virtue of their positions as officers of AIPAC, and Past Presidents of AIPAC described in Section 3.e. who shall be members of the Board of Directors by virtue of their position as Past President. In addition to these Directors, the Chairperson of the Conference of Presidents of Major Jewish Organizations and the Executive Director of AIPAC will be ex officio members of the Board.
- c. **SELECTION AND TERM OF OFFICE.** Those Members of the Board of Directors nominated by the Nominating Committee (described in Section 5.c.) shall serve for a term of two years after approval by vote of a majority of those members of the Board of Directors present and voting, who shall take into account political activity, support of AIPAC, community leadership, state geographical distribution, gender equity, and such other factors as the Board of Directors deems appropriate. Each such election shall take place at a Board of Directors meeting held in February or at such other date as determined by the Board of Directors, with the term of each Director then elected to commence immediately following the said election. No elected member of the Board of Directors may serve for longer than three consecutive terms. Any member who has served three consecutive

terms may be re-elected after a one-year absence from the Board of Directors. In computing the consecutive terms discussed in this provision, there shall not be included any term served on the Board of Directors by reason of the individual being the Chairperson of the Conference of Presidents of Major Jewish Organizations.

Notwithstanding the foregoing:

- 1) Each region shall nominate and elect a member of the Board of Directors whose nomination shall be reviewed by the Nominating Committee (as described in Section 8.c.) and ratified by the Board of Directors.
- 2) The National Assembly shall elect one member of the Board of Directors nominated by the Nominating Committee.
- 3) The Executive Committee shall elect two members of the Board of Directors nominated by the Executive Committee Nominating Committee, which committee shall be appointed by the Chairperson of the Executive Committee who shall also chair the Executive Committee Nominating Committee. The said election shall be held at the Executive Committee meeting which immediately precedes the annual Policy Conference. The term of office of the Executive Committee members of the Board of Directors shall commence coincident with the term of office of the National Assembly member of the Board of Directors.
- 4) Each Regional, Executive Committee member, and National Assembly member of the Board of Directors shall have the full privileges and responsibilities accorded to other members of the Board of Directors.

5) Directors may be re-elected as directors only after a one year absence as a director except that:

a) Any director who is serving as an officer of AIPAC (as defined in Sections 3.a. and 3.h.) at the end of his or her third consecutive two-year term may continue to serve as a director for up to a maximum of three additional consecutive two-year terms so long as he or she remains an officer and,

b) Nothing herein contained shall preclude a person from serving more than two terms as President so long as his or her consecutive service as President is limited to no more than two two-year terms, or as Chairperson of the Board from serving more than two terms as Chairperson of the Board so long as his or her consecutive service in that capacity is limited to no more than two two-year terms.

d. MEETINGS.

1) Regular Meetings. The Board of Directors shall meet at least six times a year. The presence of at least forty percent (40%) of the Directors in office shall constitute a quorum for the conduct of the business of the organization. At any meeting at which a quorum is present, the vote of a majority of those present and entitled to vote shall decide any matter unless the Articles of Incorporation, these Bylaws, or any applicable law requires a different vote.

2) Special Meetings. Special meetings of the Board of Directors may be called at any time only by the Chairperson of the Board or the President.

3. OFFICERS. Definition, selection, terms of office and powers.

- a. **DEFINITION.** The officers of AIPAC shall consist of a president, president-elect, past presidents, chairperson of the board, vice presidents, secretary/treasurer, and such additional officers as determined by the Board of Directors from time to time.
- b. **SELECTION.** The Board of Directors, at its annual meeting in February or at any such date as set by the Board of Directors and acting upon recommendations of the Nominating Committee, shall elect the President, the President-Elect, the Chairperson of the Board, and the Secretary/Treasurer of AIPAC, whose terms shall commence immediately following the said election.
- c. **TERMS OF OFFICE.** Officers shall serve for a term of two years, renewable for no more than two succeeding two-year terms. Notwithstanding the foregoing:

- 1) The President and Chairperson of the Board shall serve in their respective office for no more than two consecutive full two year terms; however, the President may also serve a partial term of less than one year to complete the balance of a predecessor's term.
- 2) No officer shall be precluded from serving as President by virtue of the fact that he or she will have served as an officer for three consecutive terms at the time of his or her election as President.

- d. **PRESIDENT.** The President shall be nominated by the Nominating Committee and elected by the Board of Directors. The President shall be the Chief Executive Officer of AIPAC and shall preside at meetings of the Board of Directors and shall perform all functions

powers and duties prescribed from time to time by the Board of Directors. The President shall designate the Chairperson of the Executive Committee from among the members of the Board of Directors, and the Vice Chairperson of the Executive Committee from the membership of the Executive Committee. The President shall also appoint the chairpersons of the standing committees subject to the approval of the Board of Directors (as described in Section 5.d.).

- e. **PAST PRESIDENTS.** Each President of AIPAC, upon completion of his or her service, shall become a Past President of AIPAC. Past Presidents shall be officers of AIPAC for life with full voting privileges and shall not be subject to any limitation on their term of office so long as they affirm in writing their interest in being a Past President.
- f. **CHAIRPERSON OF THE BOARD.** The Chairperson of the Board shall be nominated by the Nominating Committee and elected by the Board of Directors from among the Past Presidents. The Chairperson of the Board shall perform any functions as may be assigned by the President. In addition, if the office of President-Elect is vacant (as described in Section 3.g.), then the Chairperson of the Board shall act as President in the absence of the President.
- g. **PRESIDENT-ELECT.** The President-Elect shall be nominated by the Nominating Committee and elected by the Board of Directors during the last year of the last term of the then current President. The current President shall make known to the Nominating Committee if he/she does not wish to run for a second term at least one year prior to the conclusion of his/her first

AIPAC policy initiatives that have been taken or that are contemplated. The chairpersons of the Standing Committees of the Board of Directors shall report to the Executive Committee at least annually.

- 5) The Executive Committee may properly address those strategic issues relevant to the enhancement of the American Israel relationship. The Board of Directors shall give special consideration to those opinions enunciated.
 - 6) After approval of amendments to these Bylaws by the Board of Directors in accordance with Section 10, said amendments must be submitted to the Executive Committee for approval by a majority of those present and voting, a quorum being present (Section 4.d.1)), provided written notice of such meeting and the purpose of each such proposed amendment shall have been mailed to each member of the Executive Committee in accordance with Section 11.
- b. **NUMBER.** The Executive Committee shall consist of the following.
- 1) The chief lay officer of each organization that is a member of the Conference of Presidents of Major Jewish Organizations shall be invited to serve as a member of the Executive Committee. The chief lay officer of each such organization shall be permitted to designate (by giving written notice to AIPAC) a specifically named leader of the organization to attend an Executive Committee meeting in his or her absence with full participatory rights.
 - 2) All members of the Board of Directors shall be members of the Executive Committee.
 - 3) All State Chairpersons (as defined in Section 7) shall be members of the Executive Committee.

- 4) Up to four student members with full participatory rights may be appointed to the Executive Committee by the President.
 - 5) Up to 200 additional Executive Committee members may be selected, half of whom shall be apportioned proportionately by regional memberships (regional nominees), and the other half of whom shall be elected by the Board of Directors (national nominees).
 - a) At least two Executive Committee members per region from the Young Leadership Group (as defined by each region) shall be included from each region's apportioned nominees.
 - b) All 200 additional members shall be first approved by the Nominating Committee.
- c. **SELECTION AND TERM OF OFFICE.** All members of the Executive Committee referenced in Section 4.b.5) shall be nominated or approved by the Nominating Committee and shall be elected for a term of one year.
- 1) The National Assembly shall elect by a majority vote the slate of Executive Committee members identified as regional nominees with the terms to commence immediately following the said election (Section 4.b.5)).
 - 2) The Board of Directors shall elect by a majority of those directors present and voting, those Executive Committee members identified as national nominees (Section 4.b.5)). Such election shall take place at a Board of Directors meeting held at least 30 days prior to the annual National Assembly meeting with the term of the Executive Committee

members thus elected to commence coincident with the term of regional nominees.

- 3) No member of the Executive Committee may serve for longer than five consecutive terms. Any member who has served five consecutive terms may be re-elected after one year's absence from the Executive Committee. In computing the five consecutive terms discussed in this provision, there shall not be included any term served on the Executive Committee by reason of the individual being either the chief lay officer of an organization that is a member of the Conference of Presidents of Major Jewish Organizations or a Director of AIPAC.
- 4) Executive Committee members who are selected on a regional basis (regional nominees) shall be nominated by that region's nominating committee. Regional nominees are subject to the approval of the national Nominating Committee at least 30 days in advance of the National Assembly meeting.

d. MEETINGS.

- 1) Regular Meetings. The Executive Committee shall meet at least three times a year. At each such meeting, the presence of at least 10% of the members shall constitute a quorum. At any meeting at which a quorum is present, the vote of a majority of those present and entitled to vote shall be adequate to decide any matter.
- 2) Special Meetings. Special meetings of the Executive Committee may be called at any time only by the Chairperson of the Board or the President.

5. COMMITTEES.

- a. The President shall appoint all committee Chairpersons subject to the approval of the Board of Directors, and shall establish such ad hoc committees as may be necessary to carry out specific functions of AIPAC.
- b. **STEERING COMMITTEE.** There shall be a standing committee called the Steering Committee, chaired by the President, which shall consist of the officers of AIPAC, the Chairperson of the Executive Committee, and the AIPAC Executive Director. At the call of the Chairperson of the Board or the President, the Steering Committee shall, in the event of exigent circumstances, meet in special session to take appropriate action until the Board of Directors can be convened for a duly authorized meeting.
- c. **NOMINATING COMMITTEE.** There shall be a standing committee called the Nominating Committee which shall consist of seven members. The President shall appoint the Chairperson, three members from the Board of Directors, two members from the Executive Committee who are not on the Board of Directors and one member from the National Assembly who is not on the Board of Directors or the Executive Committee. All such appointments shall be subject to the approval of the Board of Directors by a majority vote.
 - 1) The Chairperson of the Nominating Committee shall forward to the Board of Directors all nominations it submits and reviews no less than 30 days prior to the Board of Directors meeting at which elections are held or at which nominations are approved.

2) Members of the Board of Directors may submit additional nominations so long as such submission contains the signatures of no fewer than 20% of the current members of the Board of Directors. Each such submission must be received by the Executive Director no less than 10 days prior to the Board of Directors' meeting at which the relevant election is to be held. Nominations from the floor may not be submitted.

d. **STANDING COMMITTEES.** For the purposes of the Bylaws, the Board of Directors shall establish any additional Standing Committees it deems appropriate for this organization.

6. **EXECUTIVE DIRECTOR.** The Executive Director shall be the Chief Operating Officer of AIPAC and shall be responsible for the ongoing management and administration of the affairs of AIPAC and its staff, shall implement AIPAC's programs, and shall closely coordinate and work with the President and the Board of Directors in the performance of his or her duties. The Executive Director or his or her designee shall be an ex officio member of all standing and/or ad hoc committees. The Executive Director shall serve at the discretion of the Board of Directors. Any vacancy in the position of Executive Director shall be filled as soon as possible upon recommendation of the Steering Committee and upon approval of the Board of Directors.

7. **STATE CHAIRPERSONS.** The President may appoint an individual in each and every state to be designated as the State Chairperson of that state. More than one State Chairperson may be appointed in states when the President deems it advisable. The State Chairperson shall be responsible for carrying out the functions designated by the President within the respective state. Each State Chairperson

shall be a member of the Executive Committee and a member of the appropriate Regional Council. State Chairperson terms shall be annual and shall commence coincident with the terms of the members of the Executive Committee.

8. REGIONAL CHAIRPERSONS. The United States shall be divided administratively into regions as determined by the Executive Director with the approval of the Board of Directors.

a. Each region shall have a Regional Council and a Regional Chairperson who is elected by a majority of the members of the Regional Council.

b. The Regional Council shall include but shall not be limited to the State Chairpersons of that region.

c. Regional Councils shall meet at least annually and shall implement AIPAC policy and programs within its respective area. No Regional Council shall have the authority to establish AIPAC policy or to otherwise legally bind AIPAC.

d. Each region shall select a member of the Board of Directors. The individual so nominated shall be subject to the review of the Nominating Committee and ratification by the Board of Directors (as described in Sections 2.c.1) and 5.c.).

e. Each region shall nominate members to the Executive Committee in accordance with the provisions of Section 4.c.

9. VACANCIES AND SPECIAL ELECTIONS.

a. Vacancies on the Board of Directors, Executive Committee, or of officers shall be filled by a majority vote of those in office as soon as practical at any regular or special meeting of the Board of Directors upon submission of nominations by the Nominating Committee. Any person selected to fill a vacancy

- b. The President may call a special election to fill any office in accordance with the notice provisions of Section 11. The Nominating Committee shall present to the Board of Directors at any such special election, nominees for offices to be filled, at such election.
- c. In the event of the occurrence of a vacancy in the office of the President, however occasioned, the President-Elect shall immediately become acting President. If the office of President-Elect is vacant, then the Chairperson of the Board shall immediately become acting President until a President is designated as described in this section. In the event that the office of the Chairperson of the Board is vacant when a vacancy occurs in the office of the President, then in such event, the Past President who shall most recently have acceded to that office shall immediately become the acting President. In any of such events, the acting President succeeding to that office pursuant to the provisions of the preceding sentences (i.e., either the President-Elect, Chairperson of the Board or a Past President, as the case may be) shall serve as acting President until a regular or special meeting of the Board of Directors, at which a successor President shall be chosen for the balance of the unexpired term in accordance with the provisions of this section.
10. AMENDMENTS. These bylaws may be amended only after the approval of the Board of Directors and the Executive Committee as described below.
- a. At any meeting, the Board of Directors may initiate passage of an amendment by a two-thirds (%) majority of those present and

voting, a quorum being present, provided notice of such meeting and the purpose of each such proposed amendment shall have been provided to each member of the Board of Directors in accordance with Section 11. The presence of at least three-fourths (¾) members of the Board of Directors in office shall constitute a quorum for purposes of amending the Bylaws.

b. Amendments so passed by the Board of Directors shall be offered to the Executive Committee for their approval at the next regular meeting of the Executive Committee in accordance with Section 4.a.6).

11. NOTICE. The Secretary/Treasurer shall give written notice of all regular meetings of the Board of Directors and the Executive Committee, which notice shall have been mailed to each member at the address furnished by the member for receipt of mail not less than 20 or more than 50 days in advance of the meeting. If the President deems time to be of the essence and a special meeting is called, in that case, such notice as is reasonable under the circumstances shall be given.
12. WAIVER OF NOTICE. Whenever any notice is required to be given under the provisions of any law, the Articles of Incorporation, or these Bylaws to any Director or member of the Executive Committee, a written waiver of notice, whether before or after the time stated therein, shall be deemed proper notice. Neither the business nor the purpose of any meeting need be specified in such a waiver. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.
13. REMOVAL. Any officer, director or Executive Committee member may be

and voting, a quorum being present, provided written notice of such meeting shall have been mailed to each member of the Board of Directors in accordance with Section 11. The presence of at least three-fourths (¾) of the members of the Board of Directors shall constitute a quorum for purposes of removal.

14. PARTICIPATION IN MEETINGS BY CONFERENCE TELEPHONE. Members of the Board of Directors may participate in a meeting of the Board by means of conference telephone or similar communications equipment that enables all persons participating in the meeting to speak to and to hear each other. Such participation shall constitute presence in person at such meetings.
15. INDEMNIFICATION. AIPAC shall, to the fullest extent permitted by applicable law, indemnify and hold harmless any person who is or was a director, officer, member of the Executive Committee or any other committee, or employee or agent of AIPAC or is or was serving at the request of AIPAC as a director, officer, employee or agent of another corporation, partnership, association or other enterprise against any losses, claims, damages, expenses (including attorney's fees) or liabilities, to which the director, officer, member of the Executive Committee or any other committee, or employee or agent may become subject in connection with any matter arising out of or related to AIPAC, its business or affairs, except to the extent any such loss, claim, damage, liability or expense is finally judicially determined to be primarily attributable to such director's, member's, employee's or agent's gross negligence, bad faith, fraud or willful misconduct or willful breach of such person's duties and responsibilities in any material respect. No director, member of the Executive Committee, member of any other committee, employee or

agent shall be liable to AIPAC for any losses, claims, damages, liabilities or expenses arising from any act performed or omitted by any such person related to the business and affairs of AIPAC, except to the extent any such losses, claims, damages, liabilities or expenses are primarily attributable to such person's gross negligence, bad faith, fraud or willful misconduct or willful breach of such person's duties and responsibilities in any material respect.

16. ROBERT'S RULES OF ORDER. All meetings of the Board of Directors and the Executive Committee shall be governed by Robert's Rules of Order, unless provided otherwise herein.

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA)	
)	
)	
v.)	CRIMINAL CASE NO. 1:05CR225
)	The Honorable T.S. Ellis, III
STEVEN J. ROSEN and)	
KEITH WEISSMAN,)	
Defendants)	

DECLARATION OF ABBE DAVID LOWELL

I, ABBE DAVID LOWELL, hereby declare:

1. I am an attorney at Chadbourne & Parke LLP, 1200 New Hampshire Avenue, NW, Washington, D.C. 20036. I am older than eighteen years of age.

2. I offer this Declaration in support of Defendants Steven J. Rosen and Keith Weissman's motion to dismiss the indictment for constitutional violations arising from the government's interference with the American Israel Public Affairs Committee's ("AIPAC") payment of legal fees for their defense.

3. This declaration is based upon my recollection of the relevant events and my review of contemporaneous records, including my attorney notes, memoranda and emails, and the notes of Julie Campbell, an attorney who no longer works at Chadbourne & Parke. This declaration is not based on materials or communications subject to the joint defense agreement with AIPAC.

4. I was retained by AIPAC to represent Dr. Rosen and Mr. Weissman in late August of 2004. At the time that I was retained, AIPAC, Dr. Rosen, Mr. Weissman, and I agreed

that AIPAC would pay the attorney's fees for Dr. Rosen and Mr. Weissman. The parties signed an engagement letter on September 1, 2004. That letter included the parties' agreement that AIPAC would remit the payment for Dr. Rosen's and Mr. Weissman's attorney's fees and disbursements. Also on September 1, counsel for AIPAC, Philip Friedman, and I signed an additional letter setting out the fact that despite AIPAC's agreement to pay attorneys fees, AIPAC understood that the individuals were the clients.

5. On March 1, 2005, Mr. Weissman retained Arent Fox PLLC as his counsel, and I continued to represent Dr. Rosen. I continue to be Dr. Rosen's lead attorney, and I am the firm member responsible for billing matters in his case.

6. Per its agreement, AIPAC initially paid Dr. Rosen's fees and costs in the investigation. Indeed, AIPAC remitted payment for my services rendered from September 2004 through March 2005. In March 2005, Dr. Rosen and Mr. Weissman were fired by AIPAC. I continued to bill AIPAC from March 2005 through the present and have repeatedly requested both orally and in writing that AIPAC satisfy its financial obligations. I have not received payment from AIPAC since March 2005.

7. On March 21, 2005, AIPAC fired Dr. Rosen and Mr. Weissman and withdrew from the joint defense agreement as of the same date.

8. During the week of March 21, 2005, an Assistant U.S. Attorney confirmed to me in a telephone call that AIPAC's termination of the employment of Dr. Rosen and Mr. Weissman had been a subject of March 18, 2005 conversation between the U.S. Attorney and counsel for AIPAC's Executive Director.

9. Immediately after firing Dr. Rosen and Mr. Weissman, AIPAC's counsel and AIPAC's Executive Director's Counsel contacted the U.S. Attorney and Assistant U.S. Attorney regarding the action taken by AIPAC. AIPAC's counsel informed the government that the defendants had been terminated and that the joint defense agreement had been terminated as well. During this conversation, the Assistant U.S. Attorney also inquired whether counsel fees would continue to be paid.

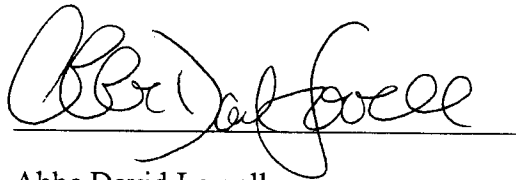
10. Subsequent to the termination of the joint defense agreement, AIPAC's counsel reported to me that a lawyer from the U.S. Attorney's Office told AIPAC's counsel that the Office was prepared to conclude that AIPAC did not commit any wrongdoing, but that a company that had not done anything wrong would not continue to pay the fees of its wrongdoing employees.

11. Also subsequent to the termination of the joint defense agreement, AIPAC counsel informed me that in the event the government offered reasonable plea bargains to Dr. Rosen and Mr. Weissman, and the defendants refused to plead guilty, that AIPAC would have to seriously consider ceasing to pay their attorneys' fees.

12. At various times throughout the investigation of Dr. Rosen and Mr. Weissman – both before the indictment and after – FBI agents have made contact with friends and acquaintances of Dr. Rosen and asked these individuals whether and why they were helping to support Dr. Rosen financially. Some of the individuals who have been contacted have had no substantive contact with Dr. Rosen on any issue germane to the charges in the case.

13. Because of the size and complexity of this case, Dr. Rosen has accumulated approximately \$2.413 million dollars in unpaid legal bills during the thirteen months that AIPAC has not paid the fees and costs.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Abbe David Lowell", is written over a horizontal line.

Abbe David Lowell

Executed in Alexandria, Virginia on July 18, 2006.

EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA)	
)	
)	
v.)	CRIMINAL CASE NO. 1:05CR225
)	The Honorable T.S. Ellis, III
STEVEN J. ROSEN and)	
KEITH WEISSMAN,)	
Defendants)	

DECLARATION OF JOHN N. NASSIKAS III

I, JOHN N. NASSIKAS III, hereby declare:

1. I am a member at Arent Fox PLLC, 1050 Connecticut Ave NW, Washington, D.C., 20036. I am older than eighteen years of age.

2. I offer this Declaration in support of Defendants Steven J. Rosen and Keith Weissman's motion to dismiss the indictment for constitutional violations arising from the government's interference with the American Israel Public Affairs Committee's ("AIPAC") payment of legal fees for their defense.

3. This declaration is based on my recollection of events and my review of contemporaneous records, including my attorney notes and emails. This declaration is not based on materials or communications subject to the joint defense agreement with AIPAC.

4. Mr. Weissman retained Arent Fox on March 1, 2005. I am Mr. Weissman's lead attorney, and I am the firm member responsible for billing matters in his case.

5. In early 2005, AIPAC assured me that it would pay Arent Fox's legal fees and costs, and initially it did so. AIPAC paid Arent Fox for Mr. Weissman's legal bills for March, April, and May of 2005. AIPAC has not made any payments since June 2005. Mr. Weissman has accumulated more than \$1.8 million dollars in unpaid legal bills from Arent Fox since then.

6. AIPAC did offer to pay a deeply discounted lump sum if Mr. Weissman agreed to sign releases, including a release absolving AIPAC of its responsibility to pay his fees in their

entirety. I have engaged in various discussions with AIPAC regarding payment of the legal fees, but AIPAC never offered to pay the fees in full after it stopped making payments in June 2005.

7. On March 21, 2005, AIPAC fired Dr. Rosen and Mr. Weissman and withdrew from the joint defense agreement as of the same date.

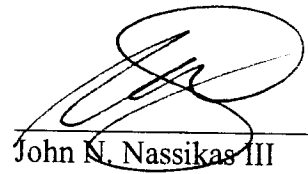
8. On April 29, 2005, attorneys for AIPAC attended a meeting with government prosecutors. My understanding based on communications with AIPAC counsel is that during the meeting, a DOJ attorney raised questions about whether AIPAC was continuing to provide health benefits and severance pay to Dr. Rosen and Mr. Weissman. At the same meeting, an Assistant U.S. Attorney asked AIPAC to explain why it was paying their fees. AIPAC's counsel indicated that those individuals could not afford counsel otherwise.

9. On May 3, 2005, one of AIPAC's attorneys told me that AIPAC's payment of legal fees was an issue for the government. Another AIPAC attorney said that an Assistant U.S. Attorney had indicated that Dr. Rosen and Mr. Weissman should not receive attorneys' fees and that a DOJ attorney had indicated that AIPAC should cut off Dr. Rosen's and Mr. Weissman's health benefits and severance pay.

10. AIPAC's counsel also informed me that, in the event the government offered a reasonable plea bargain to Mr. Weissman and he refused to plead guilty, AIPAC would stop paying the attorneys' fees and costs.

11. On May 4, 2005, during a telephone conversation with prosecutors, I complained about the U.S. Attorney's Office's actions. During this conversation, prosecutors confirmed that they had raised the issue of payment of Defendants' legal fees, health benefits, and severance with AIPAC's counsel.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.



John N. Nassikas III

Executed in Washington, D.C. on July 13, 2006.

EXHIBIT 5

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA)	
)	
)	
v.)	CRIMINAL CASE NO. 1:05CR225
)	The Honorable T.S. Ellis, III
STEVEN J. ROSEN and)	
KEITH WEISSMAN,)	
Defendants)	

DECLARATION OF LAURA S. LESTER

I, LAURA S. LESTER, hereby declare:

1. I am an attorney at Arent Fox PLLC, 1050 Connecticut Avenue NW, Washington, D.C. 20036. I am older than eighteen years of age.
2. I offer this Declaration in support of Defendants Steven J. Rosen and Keith Weissman's Motion to Dismiss the Indictment or for Other Relief Due to the Government's Infringement of the Defendants' Rights under the Fifth and Sixth Amendments of the United States Constitution in connection with the government's interference with the American Israel Public Affairs Committee's ("AIPAC") payment of legal fees for their defense.
3. This declaration is based upon my recollection of the relevant events and my review of contemporaneous records, including my attorney notes, memoranda and emails, and the notes of Lisa Vollendorf Martin, an attorney who no longer works at Arent Fox. This declaration is not based on materials or communications subject to the joint defense agreement with AIPAC.

4. Mr. Weissman retained Arent Fox PLLC on March 1, 2005. I began working on the matter on March 7, 2005.

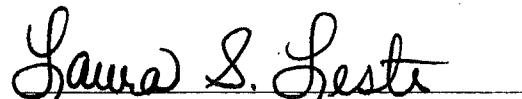
5. On March 21, 2005, Lisa Vollendorf Martin and I had a telephone conversation with counsel for several AIPAC employees, including its Executive Director. In this conversation, counsel explained why AIPAC had decided to terminate Dr. Rosen and Mr. Weissman. He informed us that the U.S. Attorney indicated to him that the Thompson Memorandum should be the basis upon which AIPAC made its decisions regarding Dr. Rosen and Mr. Weissman.

6. On the same day, Ms. Martin and I participated in a telephone conference regarding Dr. Rosen and Mr. Weissman's termination with Dr. Rosen's counsel, AIPAC counsel, and the Executive Director's counsel. AIPAC's counsel indicated that AIPAC viewed the terminations as making AIPAC credible with the government.

7. On March 25, 2005, Ms. Martin had a telephone conversation with one of AIPAC's counsel. In that conversation, counsel indicated that AIPAC intended to inform only upper level employees at AIPAC and the government about Dr. Rosen's and Mr. Weissman's terminations but was preparing a press release in the event that the terminations prematurely were disclosed.

8. During the same telephone conversation, AIPAC counsel indicated that AIPAC had informed the government of its decision to terminate Dr. Rosen and Mr. Weissman on March 22 and had requested a meeting with the government.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.


Laura S. Lester

Executed in Washington, D.C. on July 16, 2006.

EXHIBIT 6



May 24, 2006 Edition > Section: National > Printer-Friendly Version

FBI Questioned Jewish Leaders In Aipac Case

BY JOSH GERSTEIN - Staff Reporter of the Sun

May 24, 2006

URL: <http://www.nysun.com/article/33269>

FBI agents have questioned prominent Jewish leaders about alleged efforts to provide financial help to two former pro-Israel lobbyists under indictment for conspiring to divulge classified information, according to a court filing and sources familiar with the interviews.

Defense attorneys for the two former employees of the American Israel Public Affairs Committee, Steven Rosen and Keith Weissman, disclosed the queries about the pair's finances in a legal motion filed last month under seal and released recently by the federal judge overseeing the case, Thomas Ellis III.

"The topics do not appear to seek information about the charges and are instead focused on trying to find out how the defendants are making a living now and if they have any funds for their defense," the defense team wrote in a request for copies of the FBI agents' reports on the interviews.

In recent months, the defense lawyers said, FBI agents questioned "friends, former colleagues, and acquaintances" of Messrs. Rosen and Weissman, who were indicted last summer on charges they passed classified information to reporters and an Israeli diplomat.

A Defense Department analyst also charged in the case, Lawrence Franklin, has pleaded guilty, but the two former lobbyists are fighting the charges and are scheduled to go on trial in Alexandria, Va., in August.

Among those interviewed by the FBI, according to the legal filing, are three former executive directors of Aipac, Thomas Dine, Neal Sher, and Morris Amitay, as well as the national president of the Zionist Organization of America, Morton Klein, and a philanthropist and former accountant friendly with Mr. Rosen, Newton Becker.

Three sources familiar with the interviews told The New York Sun yesterday that the agents asked about claims that some wealthy individuals approached Mr. Klein and suggested they would provide financial support if he hired Mr. Rosen. The attempt to aid Mr. Rosen was first reported last September by a New York newspaper, the Jewish Week.

Mr. Sher confirmed yesterday that he was questioned in February by the FBI and that one issue raised by investigators was how Messrs. Rosen and Weissman have supported themselves since they were fired by Aipac in March 2005. "They did ask about whether these people had other sources of income," he said.

Mr. Klein confirmed that the FBI sought to question him about the case, but he said he declined. "I told them I respectfully did not want to be interviewed," he said.

Mr. Klein told the Sun yesterday that two people he declined to identify asked him to hire Mr. Rosen. The Jewish leader said he rejected the suggestion out of hand. "Of course, I said I wouldn't hire him," Mr. Klein said. "I'm not going to hire someone who's about to be indicted."

Mr. Becker declined to be interviewed, Mr. Dine did not return calls seeking comment for this article, and Mr. Amitay said agents questioned him about Aipac, but not the alleged financial help for the defendants.

"The FBI's interviews after the indictment often do not appear to have anything to do with the actual charges brought," an attorney for Mr. Rosen, Abbe Lowell, said yesterday. "At best, it reflects that the government understands its case is weak, and, at worst, the government is misusing their resources to try to now come up with a case."

Asked about Mr. Rosen's legal bills, Mr. Lowell said, "Nobody is paying for his defense." Aipac and the two former staffers have been locked in a dispute over the organization's obligation to pay for the defense.

Mr. Lowell said Mr. Rosen, a former foreign policy director at Aipac, is out of work and has been living off of his savings and with help from family members.

A lawyer for Mr. Weissman, John Nassikas III, did not respond to a request for comment for this article. However, in March, Mr. Weissman's lawyers launched a legal defense fund that accepts donations from the public.

A spokesman for the prosecution did not return a call seeking comment. In their written response to the defense motion, prosecutors did not address whether or why FBI agents were investigating the sources of funding for the ex-lobbyists' defense. The government legal team said the defense was not entitled to copies of reports on the interviews because the persons allegedly interviewed by the FBI shared inadmissible generalizations and opinions about the legalities of handling classified information.

May 24, 2006 Edition > Section: National > Printer-Friendly Version

EXHIBIT 7

ECF, MAJOR, TRLSET

**U.S. District Court
District of New Hampshire (Concord)
CRIMINAL DOCKET FOR CASE #: 1:04-cr-00126-PB-ALL**

Case title: USA v. Gagalis et al

Date Filed: 05/19/2004

Assigned to: Judge Paul Barbadoro

Defendant

Robert J. Gagalis (1)

represented by **Cathy J. Green**

Green & Utter
764 Chestnut St
Manchester, NH 03104
603 669-8446
Email: cathy@green-utter.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

James C. Rehnquist
Goodwin Procter LLP (MA)
Exchange Place
53 State St
Boston, MA 02109-2881
617 570-1000
Email: jrehnquist@goodwinprocter.com

LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Pending Counts

18:USC 371 Conspiracy to commit wire and securities fraud
(1)

18:371 Conspiracy to commit wire and securities fraud
(1s)

15:USC 78j(b), 78ff, 17 CFR 240.10b-5, 18:2 Issuing false press release and aiding and abetting
(2)

15:78j(b), 78ff, 17 CFR 240.10b-5, 18:2

Disposition

		Chong Boey re <u>133</u> MOTION to Sever <i>Trial and Other Appropriate Relief</i> . (Attachments: # <u>1</u> Memorandum of Law in support of co-defendant Robert Barber's response, # <u>2</u> Attachment to Exhibit Attachment A)(Ramsdell, Michael) (Entered: 02/15/2006)
02/15/2006		RESCHEDULING NOTICE OF HEARING as to Robert J. Gagalis, Bruce D. Kay, Gayle Spence, Jerry A. Shanahan, Robert G. Barber, Hor Chong Boey: Final Pretrial Conference set for 2/16/2006 02:30 PM before Judge Paul Barbadoro. (mm,) (Entered: 02/15/2006)
02/16/2006	<u>149</u>	MOTION to Dismiss <i>Count Five of Indictment</i> by Hor Chong Boey. Follow up on Objection on 3/8/2006 (Cintolo, William) (Entered: 02/16/2006)
02/16/2006		Minute Entry for proceedings held before Judge Paul Barbadoro :FINAL PRETRIAL CONFERENCE as to Robert J. Gagalis, Bruce D. Kay, Gayle Spence, Jerry A. Shanahan, Robert G. Barber, Hor Chong Boey held on 2/16/2006. (Govt Atty: William Morse, Michael Koenig) (Defts Atty: Bruce Singal, William Cintolo, Michael Ramsdell, Richard McCarthy, James Rehnquist, Cathy Green, Philip Cormier, Andrew Good)(Total Hearing Time: 1.40) (mm,) (Entered: 02/19/2006)
02/16/2006		ORAL ORDER granting with court revisions <u>141</u> MOTION for supplemental juror questionnaire as to Robert J. Gagalis (1), Bruce D. Kay (2), Jerry A. Shanahan (4), Robert G. Barber (5), Hor Chong Boey (6). So Ordered by Judge Paul Barbadoro. (mm,) (Entered: 03/08/2006)
02/21/2006	<u>150</u>	MOTION to Sever by Robert G. Barber as to Robert J. Gagalis, Bruce D. Kay, Gayle Spence, Jerry A. Shanahan, Robert G. Barber, Hor Chong Boey Follow up on Objection on 3/13/2006 (Attachments: # <u>1</u> Memorandum of Law in Support of Motion for Severed Trial)(Ramsdell, Michael) (Entered: 02/21/2006)
02/21/2006	<u>151</u>	MOTION for Leave to File to File Memorandum of Law in Excess of 15 Pages by Jerry A. Shanahan as to Robert J. Gagalis, Bruce D. Kay, Gayle Spence, Jerry A. Shanahan, Robert G. Barber, Hor Chong Boey Follow up on Objection on 3/13/2006 (Good, Andrew) (Entered: 02/21/2006)
02/21/2006	<u>152</u>	MOTION Sanctions and Other Relief re <u>151</u> MOTION for Leave to File <i>Memorandum of Law in Excess of 15 Pages</i> by Jerry A. Shanahan as to Robert J. Gagalis, Bruce D. Kay, Gayle Spence, Jerry A. Shanahan, Robert G. Barber, Hor Chong Boey Follow up on Objection on 3/13/2006 (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Memorandum of Law, # <u>3</u> Exhibit (Affidavit), # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Exhibit, # <u>11</u> Exhibit, # <u>12</u> Exhibit, # <u>13</u> Exhibit, # <u>14</u> Exhibit, # <u>15</u> Exhibit)(Good, Andrew) (Entered: 02/21/2006)
02/22/2006		NOTICE OF HEARING ON MOTION as to Robert J. Gagalis, et al re: <u>152</u> MOTION Sanctions and Other Relief re <u>151</u> MOTION for Leave to File <i>Memorandum of Law in Excess of 15 Pages</i> . Motion Hearing set for 2/24/2006 11:00 AM before Judge Paul Barbadoro. (mm,) (Entered: 02/22/2006)

		02/22/2006)
02/22/2006	<u>153</u>	Corrective Entry to <u>152</u> MOTION. Entry corrected by updating, correcting, and properly filing the Motion (<i>Corrected Emergency Motion for Relief and Sanctions for Government's Interference with Defendants' Fifth and Sixth Amendment Rights</i>) by Robert J. Gagalis, Bruce D. Kay, Jerry A. Shanahan, Robert G. Barber, Hor Chong Boey. (Attachments:, # <u>1</u> Memorandum of Law (Corrected) In Support of Defendants' Emergency Motion, # <u>2</u> Declaration of Andrew Good In Support of Defendants' Emergency Motion, # <u>3</u> Exhibit 1 to Good Declaration - Revised Certificate of Incorporation, # <u>4</u> Exhibit 2 to Good Declaration - Letter to Enterasys, # <u>5</u> Exhibit 3 to Good Declaration - Enterasys Summary Judgment Memorandum, # <u>6</u> Exhibit 4 to Good Declaration - Haines Partial Immunity Agreement, # <u>7</u> Exhibit 5 to Good Declaration - Workman Cooperation Agreement, # <u>8</u> Exhibit 6 - Hurley Cooperation Agreement, # <u>9</u> Exhibit 7 to Good Declaration - Spence Cooperation Agreement, # <u>10</u> Exhibit 8 to Good Declaration - Fiallo Cooperation Agreement, # <u>11</u> Exhibit 9 to Good Declaration - Workman Plea Agreement, # <u>12</u> Exhibit 10 to Good Declaration - Hurley Plea Agreement, # <u>13</u> Exhibit 11 to Good Declaration - Spence Plea Agreement, # <u>14</u> Exhibit 12 to Good Declaration - Fiallo Plea Agreement, # <u>15</u> Declaration of James C. Rehnquist, # <u>16</u> Exhibit A to Rehnquist Declaration - Gagalis v. Enterasys, # <u>17</u> Exhibit B to Rehnquist Declaration - Thompson Memorandum, # <u>18</u> Exhibit C to Rehnquist Declaration - Enterasys SEC Order, # <u>19</u> Exhibit D to Rehnquist Declaration - 2/20/06 Singal Letter, # <u>20</u> Exhibit E to Rehnquist Declaration - 2/22/06 Koenig Letter, # <u>21</u> Exhibit F to Rehnquist Declaration - Wolkoff Deposition Excerpts, # <u>22</u> Declaration of Abigail K. Hemani, # <u>23</u> Exhibit A to Hemani Declaration - E-mail Correspondence)(Green, Cathy) (Entered: 02/22/2006)
02/22/2006	<u>154</u>	MOTION to Exceed Page Limit by Robert J. Gagalis, Bruce D. Kay, Jerry A. Shanahan, Robert G. Barber, Hor Chong Boey. Follow up on Objection on 3/14/2006 (Green, Cathy) (Entered: 02/22/2006)
02/23/2006	<u>155</u>	MOTION to Produce Agents' Interview Notes <i>Underlying James Boyer's Interviews</i> by Bruce D. Kay as to Robert J. Gagalis, Bruce D. Kay, Jerry A. Shanahan, Robert G. Barber, Hor Chong Boey Follow up on Objection on 3/15/2006 (Peirce, Michelle) (Entered: 02/23/2006)
02/23/2006	<u>156</u>	MEMORANDUM re <u>155</u> MOTION to Produce <i>Agents' Interview Notes Underlying James Boyer's Interviews</i> (Attachments:, # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Peirce, Michelle) (Entered: 02/23/2006)
02/23/2006		THIRD NOTICE of ECF Filing Error re: <u>156</u> Memorandum Document should have been filed as an attachment to the main document 155 (AP 2.5(a)). NO ACTION REQUIRED - FOR INFORMATIONAL PURPOSES ONLY. (mm,) (Entered: 02/23/2006)
02/23/2006	<u>157</u>	RESPONSE to Motion by USA as to Robert J. Gagalis, Bruce D. Kay, Gayle Spence, Jerry A. Shanahan, Robert G. Barber, Hor Chong Boey re <u>152</u> MOTION. (Attachments:, # <u>1</u> Exhibit Declaration of Michael

		Kay, Jerry A. Shanahan, Robert G. Barber, Hor Chong Boey. (mm,) (Entered: 03/08/2006)
03/07/2006		Minute Entry for proceedings held before Judge Paul Barbadoro :EVIDENTIARY HEARING as to Robert J. Gagalis, Bruce D. Kay, Jerry A. Shanahan, Robert G. Barber, Hor Chong Boey held on 3/7/2006. Witnesses Appearing: William Morse. (Court Reporter: C. Quimby(am), S. Bailey(pm)) (Govt Atty: Donald Feith, Michael Koenig, William Morse) (Defts Atty: Andrew Good, Philip Cormier, Michael Ramsdell, Richard McCarthy, William Cintolo, Bruce Singal, Michelle Peirce, James Rehnquist, Cathy Green)(Total Hearing Time: 5.20) (mm,) (Entered: 03/08/2006)
03/07/2006		ORAL ORDER as to Robert J. Gagalis, Bruce D. Kay, Jerry A. Shanahan, Robert G. Barber, Hor Chong Boey granting in part, denying in part <u>153</u> Corrective Entry re: <u>152</u> Motion for Sanctions and Other Relief So Ordered by Judge Paul Barbadoro. (mm,) Modified on 5/1/2006 indicate order was an oral order (mm,). (Entered: 03/08/2006)
03/08/2006		TRIAL NOTICE: Jury Selection/Trial set for two week period beginning 6/5/2006 09:30 AM before Judge Paul Barbadoro. (mm,) (Entered: 03/08/2006)
03/09/2006	<u>171</u>	NOTICE of Change of Address by David A. Vicinanza as to Gayle Spence to 900 Elm Street, Manchester, NH 03101-2031. (Vicinanzo, David) (Entered: 03/09/2006)
03/09/2006	<u>172</u>	Notice of Intent to Reply to Objection to [147] MOTION to Exclude <i>Expert Testimony</i> . (Green, Cathy) (Entered: 03/09/2006)
03/09/2006	<u>173</u>	Notice of Intent to Reply to Objection to <u>139</u> MOTION to Exclude <i>Testimony Of Joseph Franco</i> . (Green, Cathy) (Entered: 03/09/2006)
03/09/2006	<u>174</u>	MOTION for Leave to File Reply Memorandum by Robert J. Gagalis, Bruce D. Kay, Jerry A. Shanahan, Robert G. Barber, Hor Chong Boey. Follow up on Objection on 3/29/2006 (Attachments: # <u>1</u> Memorandum of Law In Support of Defendants' Motion to Exclude Testimony of Joseph Franco, # <u>2</u> Declaration of James C. Rehnquist, # <u>3</u> Exhibit A - 1/26/06 Letter from Morse to Defense Counsel, # <u>4</u> Exhibit B - 1/26/06 Letter from Rehnquist to Morse, # <u>5</u> Exhibit C - 2/27/06 Letter from Morse to Defense Counsel, # <u>6</u> Exhibit D - 3/6/06 Letter from Morse to Defense Counsel, # <u>7</u> Exhibit E - 3/7/06 Letter from Morse to Defense Counsel, # <u>8</u> Exhibit F - 1/25/06 Letter from Green to Morse, # <u>9</u> Exhibit G - 2/10/06 Letter from Rehnquist to Morse)(Rehnquist, James) (Entered: 03/09/2006)
03/09/2006	<u>175</u>	OBJECTION by USA as to Robert J. Gagalis, Bruce D. Kay, Gayle Spence, Jerry A. Shanahan, Robert G. Barber, Hor Chong Boey re <u>155</u> MOTION to Produce Agents' Interview Notes <i>Underlying James Boyer's Interviews</i> . (Morse, William) (Entered: 03/09/2006)
03/13/2006	<u>176</u>	MOTION for Leave to File Reply Memorandum by Robert J. Gagalis,

EXHIBIT 8

APPEAL

**U.S. District Court
Eastern District of Virginia (Alexandria)
CRIMINAL DOCKET FOR CASE #: 1:05-cr-00012-WDK-ALL**

Case title: USA v. Benyo, et al

Date Filed: 01/10/2005

Assigned to: District Judge Walter D.
Kelley, Jr

Defendant

Christopher J. Benyo (1)

represented by **Terrance Gilroy Reed**
Lankford Coffield & Reed PLLC
120 N Saint Asaph St
Alexandria, VA 22314
(703) 299-5000
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Vernon Thomas Lankford, Jr.
Lankford Coffield & Reed PLLC
120 N Saint Asaph St
Alexandria, VA 22314
(703) 299-5000
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

William Francis Coffield, IV
Lankford Coffield & Reed PLLC
120 N Saint Asaph St
Alexandria, VA 22314
(703) 299-5000
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Pending Counts

[18:371.F] 18:371 Conspiracy
(December 2003) FORFEITURE
(1)

[15:78J.F] 15:78j(b) & 78ff; 17 CFR
240.10b-5; 18:2 Securities Fraud:
Issuing False Press Release (4.26.01)
(2)

[18:1343.F] 18:1343, 1346 & 2 Wire

Disposition

		(Entered: 06/13/2006)
06/07/2006	387	TRANSCRIPT of Proceedings as to Christopher J. Benyo, Charles E. Johnson, Jr, Joseph Michael Kennedy, John P. Tuli, Kent D. Wakeford held on May 25, 2006 before Judge Kelley. Court Reporter: P. Wile. (jwhe,) (Entered: 06/07/2006)
06/08/2006	388	SUPPLEMENTAL MOTION to Dismiss Count One by Christopher J. Benyo. (jwhe,) (Entered: 06/09/2006)
06/08/2006	389	MOTION to Preclude the Prosecution from Amending the Indictment by Christopher J. Benyo. (jwhe,) (Entered: 06/09/2006)
06/12/2006	392	NOTICE of Ex Parte Filing by Charles E. Johnson, Jr. (agil) (Entered: 06/13/2006)
06/12/2006	393	Ex Parte MOTION for Issuance of Subpoena by Charles E. Johnson, Jr. (agil) (Entered: 06/13/2006)
06/12/2006	394	MOTION for a Jury Waived Trial by Charles E. Johnson, Jr. and Kent Wakeford (agil) Modified on 7/3/2006 to correct filers (agil). (Entered: 06/13/2006)
06/13/2006	395	MOTION to Adopt Dft Kent Wakeford's Motion to Dismiss the Indictment Due to the Government's Infringement of his Right Under the Fifth and Sixth Amendments of the United States Constitution by John P. Tuli. (agil) (Entered: 06/14/2006)
06/13/2006	396	MOTION to Dismiss the Indictment Due to the Government's Infringement of his Rights Under the Fifth and Six Amendments of the United States Constitution by Kent D. Wakeford. (agil) (Entered: 06/14/2006)
06/13/2006	397	Memorandum of Law in Support of MOTION [396] to Dismiss the Indictment Due to the Government's Infringement of his Rights Under the Fifth and Six Amendments of the United States Constitution by Kent D. Wakeford. (agil) (Entered: 06/14/2006)
06/13/2006	398	DECLARATION of Paul Hugel in Support of Dft Kent D. Wakeford's MOTION [396] to Dismiss the Indictment Due to the Government's Infringement of his Rights Under the Fifth and Six Amendments of the United States Constitution (Entered: 06/14/2006)
06/15/2006	399	ORDER of USCA (copy) as to Christopher J. Benyo, Charles E. Johnson, Jr Appellees have filed a motion to dismiss, and appellant has filed a response. The court grants the motion. (nmck,) (Entered: 06/19/2006)
06/19/2006	400	MOTION filed UNDER SEAL by AOL, Inc. (agil) (Entered: 06/20/2006)
06/21/2006	401	ORDER that the Restraining [62] Order is hereby quashed, withdrawn and vacated as to Joseph Michael Kennedy. Signed by Judge Walter D. Kelley Jr. on 6/21/06. See Order for details. (agil) (Entered: 06/21/2006)
06/21/2006	402	RESPONSE to Motion [389] to Preclude the Prosecution from Amending