

DISTRICT OF COLUMBIA

COURT OF APPEALS

FEB 28 2012

STEVEN J. ROSEN,)	
)	
Plaintiff-Appellant)	
v.)	
)	Appeal No. 11-cv-368
AMERICAN ISRAEL PUBLIC AFFAIRS)	
COMMITTEE, INC., et. al.,)	
)	
Defendants-Appellees)	

INTEREST OF *AMICUS CURIAE*

The Amicus Curiae is a recognized expert and public interest advocate who writes books and leads the Institute for Research: Middle Eastern Policy, a 501 (c)(3) nonprofit corporation with supporters in 47 states that researches US policy formulation. Among the Amicus Curiae's major purposes are to increase and disseminate knowledge¹ regarding the harmful activities of some major Middle East lobbying organizations, obtained through the Freedom of Information Act documentation of major unprosecuted violations of US laws, and encourage the public to demand proper legal and regulatory oversight of these lobbying organizations, particularly where they seem to have captured regulatory agencies or transcended the reach of due law enforcement.

The Amicus Curiae submits this brief to present timely, relevant, but relatively unknown information that provides a context for this Court's review of whether Steven J. Rosen's activities that resulted in his firing from the American Israel Public Affairs Committee were in any way abnormal. The Amicus Curiae has long argued that AIPAC's record of classified information gathering reveals that it has

¹ Research cited in this brief includes data derived from Freedom of Information Act and Mandatory Declassification Reviews and successful appeals to the Interagency Security Classification Appeals Panel. Such research has uncovered and documented little-known activities of AIPAC and related parties and is made available for study and public discussion on the Internet.

never abandoned its original role as an arm of the Israeli government in the United States, accessing tightly held secrets that help Israel front-run or clandestinely shape US policies, while orchestrating and signaling funding flows to an immense campaign finance ecosystem that effectively subverts warranted public debate in Congress of policies that could negatively impact Israel's "special relationship" with the U.S., but which could bring peace and justice to the region in the broader American national interest.

INTRODUCTION AND SUMMARY OF ARGUMENT

AIPAC is an organization that has long "had it both ways." It first functioned as the unincorporated lobbying division of a parent organization called the American Zionist Council or AZC. The AZC was ordered to begin registering as an Israeli foreign agent under the 1938 Foreign Agents Registration Act by Attorney General Robert F. Kennedy on November 21, 1962.² AIPAC incorporated just six weeks later on January 2, 1963 and took over the AZC's activities without ever registering as a foreign agent.³ Since that day AIPAC engaged in many of the activities that originally triggered the Justice Department's AZC registration order.

AIPAC applied for a tax exemption from the IRS on November 27, 1967 as a "Charitable, Educational, and Religious Association" incorporated under Title 29, Chapter 6 of D.C. code. The IRS granted AIPAC tax-exempt status retroactive to 1954 on November 25, 1968 when it operated as the "American Zionist Committee for Public Affairs," the lobbying division of a foreign agent.⁴ AIPAC had it both ways. It was able to continue functioning as a foreign agent while operating as a private domestic tax-exempt non-profit organization subject to minimal public disclosure and regulation with IRS tax-exempt status and domestic lobbying laws.

² J. Walter Yeagley, Department of Justice Internal Security Division, letter ordering the American Zionist Council to register as a foreign agent, November 21, 1962. <http://irmep.org/ILA/AZCDOJ/P6100127redorder/default.asp>

³ American Israel Public Affairs Committee, Articles of Incorporation, January 2, 1963. http://irmep.org/ILA/AIPAC/01021963_AIPAC_Articles_of_Incorporation.pdf

⁴ Form 1024 Exemption Application, American Israel Public Affairs Committee, November 27, 1967.

Although AIPAC claims on its website to be a "Non-Pac, self-identified as 'America's pro-Israel lobby" and not directly engaged in supporting the political campaigns of U.S. politicians seeking office, in 1988 the *Washington Post* published internal memos of AIPAC Director Elizabeth Shroyer ordering various ostensibly independent PACs to donate specific dollar amounts to AIPAC-favored candidates.⁵ Once again AIPAC had it both ways. Although AIPAC's tax-exempt status barred it from directly supporting individual political candidates, it was able to engage in activities that influenced campaign funding by reaching out to a network of PACs, some of which it had helped create.⁶

AIPAC once again appears to have it both ways in matters of classified US government information. In dismissing Steven J. Rosen's defamation suit against AIPAC, Judge Erik P. Christian stated "Allowing Rosen's claim to go to trial would task the jury with identifying the standards referred to in the March 3 Times article, determining whether AIPAC had such express or implied standards, and determining whether Rosen's conduct was in accordance with those standards. As explained above, these would be impossible tasks. At the same time, inviting a jury to scrutinize and second-guess an employer's policies and business judgment would effectively convert this garden-variety claim for defamation into one for wrongful termination or discrimination. In contrast to those employment claims, the issue in this case is not the veracity of AIPAC's motivation for firing Rosen (that is, whether its motivation was pretextual). The issue is the objective truth of AIPAC's public statement concerning Rosen's firing. It is on this limited issue that the Court concludes that the statement is not provably false, and therefore, not defamatory as a matter of law." However AIPAC has a documented record of retaining and rewarding officials who successfully solicited, obtained and circulated classified US government information. AIPAC fired and publicly castigated an employee (Steven J. Rosen) who was indicted in 2005 for espionage only after a timely warning to AIPAC from US Department of Justice officials. Absent this warning, history suggests AIPAC would have retained Rosen and avoided commentary to the

⁵ Elizabeth A. Schroyer memo directing PAC support to AIPAC favored candidates, September 30, 1986. http://irmep.org/ILA/AIPAC/PAC_Coordination/default.asp

⁶ Curtiss, Richard H. "Stealth PACs: Lobbying Congress for Control of U.S. Middle East Policy" American Educational Trust, 1991

establishment media. Rosen's claim of defamation is therefore anything but "garden-variety," coming after years of pre-trial maneuvers and intense interest-group pressures to dismiss Espionage Act indictments against Steven J. Rosen and Keith Weissman.

A careful review of the record reveals AIPAC's statement to the *New York Times* that it fired employee Steven J. Rosen because his behavior "did not comport with standards that AIPAC expects of its employees" is false. AIPAC's observable standard for employees is "solicit, obtain and leverage classified information without being criminally indicted." AIPAC is never held publicly accountable for these types of activities which harm governance and public perception of rule of law.

ARGUMENT

I. THE 1976 HAWK MISSILE INCIDENT

Among many of the documented incidences of AIPAC handling classified information, two provide unusually sharp and relevant insight into how AIPAC retains and rewards employees who successfully solicit, receive and leverage classified US government information. They also reveal how AIPAC's behavior undermines rule of law and governance.

In 1976 the Ford administration considered selling improved Hawk anti-aircraft missiles to Jordan. The administration sent a confidential notification to the Senate Foreign Relations Committee and the House Foreign Affairs Committee about the proposed sale. AIPAC's director at the time was Morris Amitay, a former US State Department official and legislative assistant on Capitol Hill. Amitay reviewed the classified Ford administration letter after being informed "secretly by aides of Senator

Clifford P. Case, Republican of New Jersey, and Representative Jonathan B. Bingham, Democrat of New York."⁷

A. AIPAC's Director Obtained and Used Classified US Government Information

According to US Department of State, FBI and US Department of Justice Criminal Division investigation files first made publicly available on January 20, 2012, the disclosure of the classified information to AIPAC was "unauthorized" and involved secret data which included the dollar amounts and quantitative configurations of the proposed US missile sales to Jordan. The State Department considered "that the unauthorized disclosure of information on the numbers and value of important defense systems acquired by a foreign government could reasonably be expected to cause damage to that government's confidence in the United States as its major weapons supplier and thus cause damage to a significant aspect of our foreign relations. The specific details of Jordan's military equipment needs are information provided us in confidence by that government. The classification of the documents in question was, in our view, substantively proper."⁸

B. AIPAC's Director Harmed US National Security by Circulating the Classified Information

With the classified national defense information in hand, Amitay and AIPAC mounted a massive campaign in opposition to the missile sale telling constituent public pressure groups that the weapons were capable of "providing cover for offensive operations against Israel."⁹ The US sale was delayed as Jordan considered acquiring a similar system from the Soviet Union. According to the US Department of State "The eight month impasse that resulted from these misunderstandings delayed implementation of the Hawk/Vulcan sale and prompted Jordan to explore seriously the acquisition of comparable air defense

⁷ Binder, David "The Israel Lobby is Small and Agile" The New York Times, August 7, 1975

⁸ See Amicus Curie's Ex. A Declassified FBI/US State Department/DOJ Criminal Division investigation files "Alleged Unauthorized Disclosure of Classified Information Furnished to Congress, November 4, 1976" released under FOIA 201107149 to the Amicus Curiae on January 20, 2012

⁹ See Amicus Curie's Ex. A Declassified FBI/US State Department/DOJ Criminal Division investigation files "Alleged Unauthorized Disclosure of Classified Information Furnished to Congress, November 4, 1976" released under FOIA 201107149 to the Amicus Curiae on January 20, 2012

equipment from the Soviet Union. Had Jordan actually entered into such a major arms-supply relationship with the Soviets, this would have had a significant adverse impact on U.S. national defense interests and on U.S.-Jordanian relations." ¹⁰

C. AIPAC Director Morris Amitay Was Never Sanctioned Or Publicly Rebuked By AIPAC

Amitay was never criminally prosecuted. AIPAC neither dismissed him even after it was publicly revealed he had acquired the classified national defense information, nor did AIPAC publicly castigate him in the establishment news media. Amitay continued to serve as director of AIPAC for another half decade until he resigned 1980 to establish a political action committee in Washington.¹¹

II. 1980's TRADE REPORT/CONFIDENTIAL BUSINESS INFORMATION INCIDENT

Between 1984 and 1987 AIPAC was investigated by the FBI for theft of government property and espionage. AIPAC was never formally cleared of any wrongdoing. The FBI investigation files declassified and first released to the amicus curiae in 2009¹² reveal that this criminal investigation was suspended after the Israeli Minister of Economics (who surreptitiously obtained and passed the classified US International Trade Commission report *Probable Economic Effect of Providing Duty-Free Treatment for Imports from Israel* to AIPAC claimed diplomatic immunity from prosecution) refused to reveal how he obtained it to FBI special agents as detailed below. According to a March 31, 1986 FBI report "In view of the above information and due to the fact that [censored] has claimed diplomatic immunity in the matter, active investigation into this matter will be discontinued at WFO [FBI Washington Field Office]." However, this was far from an exoneration of AIPAC's receipt and use of the classified information. This is reflected in the FBI Washington Field Office's readiness to reopen the case the moment any new leads

¹⁰ See Amicus Curie's Ex. A Declassified FBI/US State Department/DOJ Criminal Division investigation files "Alleged Unauthorized Disclosure of Classified Information Furnished to Congress, November 4, 1976" released under FOIA 201107149 to the Amicus Curiae on January 20, 2012

¹¹ Pear, Robert; Berke, Richard L. "Pro-Israel Group Exerts Quiet Might as it Rallies Supporters in Congress". The New York Times, July 7, 1987.

¹² See Amicus Curie's Ex. B David M Hardy, Section Chief, Records Management Division, FBI, response cover letter to Amicus Curiae releasing 82 pages under FOIA 1124826-000 dated July 31, 2009

were developed. The same March 31, 1986 summary report states "Washington Field will be contacted by the USTR or the ITC if pertinent information is developed regarding this or similar incidents."¹³

There was substantial evidence improprieties by AIPAC and its employees. AIPAC was advised that the classified report in its possession was stolen property and had to be returned to the US Trade Representative. According to the FBI's February 13, 1986 interview of AIPAC's head of Congressional Relations and Lobbying, an AIPAC employee made an illegal copy of the classified document before returning it to the government. "Prior to returning the document, BLANK asked to have a duplicate copy of the document made so that the staff of the AIPAC could further examine the report." ¹⁴

B. AIPAC Obtained Both Classified US Government Information And Confidential Business Information

The matter, like the Jordanian missile sale information, clearly involved classified information. The FBI investigation was opened on the basis of the US Trade Representative's criminal complaint that AIPAC had in its possession the stolen government classified document *Probable Economic Effect of Providing Duty Free Treatment for U.S. Imports from Israel, Investigation No. 332-180*. ¹⁵ This document was a product of an advice and consent process informing the US government whether or not to grant valuable permanent trade preferences to Israel in the mid-1980s. This process involved soliciting

¹³ See Amicus Curie's Ex. C Declassified FBI investigation file - March 31, 1986 "Theft of classified documents from the Office of the United States Trade Representatives" released under FOIA 1124826-000 to the Amicus Curiae on July 31, 2009

¹⁴ See Amicus Curie's Ex. D Declassified FBI investigation file - February 13, 1986 "Theft of classified documents from the Office of the United States Trade Representatives" released under FOIA 1124826-000 to the Amicus Curiae on July 31, 2009

¹⁵ See Amicus Curie's Ex. E Declassified FBI investigation file - June 20, 1984 "Theft of classified documents from the Office of the United States Trade Representatives" released under FOIA 1124826-000 to the Amicus Curiae on July 31, 2009

and compiling confidential business data from over seventy concerned US industry participants that opposed extending special trade privileges.¹⁶

In the year 2011 the amicus curiae won partial declassification and release of *Probable Economic Effect of Providing Duty Free Treatment for U.S. Imports from Israel* after a lengthy appeals process to the Interagency Security Classification Appeals Panel. But there is no question that the document was classified when AIPAC obtained it and remains partially classified. A December 22, 2011 letter from the Office of the US Trade Representative affirms that only "some portions" of the report have been declassified and released. Other portions of the report remain classified "because the data discloses confidential business information which the ITC obtained from private sources."¹⁷

On November 15, 1985, just as news of the Jonathan Pollard Israeli espionage incident was breaking, the FBI Director ordered the FBI Washington Field Office to "expeditiously conduct investigation in accordance with the provisions of Section 52, manual of Investigative Operations and Guidelines" into AIPAC's possession of *Probable Economic Effect of Providing Duty Free Treatment for U.S. Imports from Israel, Investigation No. 332-180*.¹⁸ On December 17, 1985 FBI Special Agent John Hosinki reported on a meeting with AIPAC officials during which he demanded information about "1. Who at AIPAC had knowledge of this report being in the possession of AIPAC, 2. Who received or handled this report at AIPAC, 3. Who furnished this report to AIPAC," and the current residence for an AIPAC employee with knowledge of the matter.¹⁹

¹⁶ International Trade Commission public file documents Probable Economic Effect of Providing Duty Free Treatment for U.S. Imports from Israel, Investigation No. 332-180, <http://irmep.org/ILA/FTA/default.asp>

¹⁷ See Amicus Curie's Ex. F Jonathan R. Weinberger, Associate General Counsel, Executive Office of the President, Office of the United States Trade Representative, decision to declassify and release some portions of the report "Probable Economic Effect of Providing Duty-Free Treatment for Imports from Israel" sent to the Amicus Curiae on December 22, 2011.

¹⁸ See Amicus Curie's Ex. G Declassified FBI investigation file – November 15, 1985 "Theft of classified documents from the Office of the United States Trade Representatives" released under FOIA 1124826-000 to the Amicus Curiae on July 31, 2009

¹⁹ See Amicus Curie's Ex. H Declassified FBI investigation file – December 17, 1985 "Theft of classified documents from the Office of the United States Trade Representatives" released under FOIA 1124826-000 to the Amicus Curiae on July 31, 2009

FBI agents interviewed an AIPAC employee on December 19, 1985 who admitted that she had received the classified report. She stated to the FBI that “it was her responsibility to study any reports or documents pertaining to American Israeli trade and considered the receipt of this report a very ordinary event.”²⁰ On December 19, 1985 FBI agents interviewed another AIPAC employee who confirmed that “this document was marked ‘confidential’” and that she received the document “from an Israeli Embassy official” whom she then identified by name.²¹ On February 13, 1986 the FBI interviewed a third AIPAC employee who confirmed that after being ordered to return the classified document by the USTR “asked to have a duplicate copy of the document made so that the staff of the AIPAC could further examine the report.” The AIPAC employee also confirmed that an Israeli Embassy official “had initially provided the report to a representative of AIPAC.”²²

The FBI Washington Field Office on March 7, 1986 interviewed this Israeli diplomat who had provided the classified report to AIPAC. The diplomat “advised that he furnished the report to an employee at the American Israel Public Affairs Committee (AIPAC) during the Spring or Summer of 1984.” The diplomat further advised that “it would be impossible within the professional ethics of a diplomat to identify individuals who provide certain information to a diplomat.”²³

The following parties have now been identified through cross-referencing public information and declassified law-enforcement documents. Dan Halpern was the former Israeli Minister of Economics who obtained and gave the classified report to AIPAC. Douglas Bloomfield was the lobbying official who ordered that illegal copies be made of the classified report after AIPAC was ordered to return it to

²⁰ See Amicus Curie's Ex. I Declassified FBI investigation file – December 19, 1985 #1 "Theft of classified documents from the Office of the United States Trade Representatives" released under FOIA 1124826-000 to the Amicus Curiae on July 31, 2009

²¹ See Amicus Curie's Ex. J Declassified FBI investigation file – December 19, 1985 #2 "Theft of classified documents from the Office of the United States Trade Representatives" released under FOIA 1124826-000 to the Amicus Curiae on July 31, 2009

²² See Amicus Curie's Ex. D Declassified FBI investigation file – February 13, 1986 "Theft of classified documents from the Office of the United States Trade Representatives" released under FOIA 1124826-000 to the Amicus Curiae on July 31, 2009

²³ See Amicus Curie's Ex. K Declassified FBI investigation file – March 7, 1986 "Theft of classified documents from the Office of the United States Trade Representatives" released under FOIA 1124826-000 to the Amicus Curiae on July 31, 2009

the US Trade Representative. Ester Kurz was the AIPAC employee who received the report at a meeting with Halpern and later claimed to have destroyed the illicit duplicate by "throwing it down her garbage chute" according to her FBI interview.

D. No AIPAC Employee Was Fired Or Publicly Rebuked Over Handling Classified Trade And Confidential Business Information In The 1980s

None of the AIPAC involved employees faced dismissal and public castigation over handling classified information. Douglas Bloomfield left AIPAC of his own will, resigning in December of 1988.²⁴ According to public reports in 2011, Ester Kurz was still a top lobbyist for AIPAC.²⁵

III. AIPAC'S CIRCULATION OF CLASSIFIED GOVERNMENT DOCUMENTS HARMED US INDUSTRIES AND WORKERS AND UNDERMINED THEIR CONFIDENCE IN GOVERNANCE AND DUE PROCESS

The Defendant-Appellee has repeatedly described in Superior and Appeals Court AIPAC's possession of *Probable Economic Effect of Providing Duty Free Treatment for U.S. Imports from Israel, Investigation No. 332-180* and the FBI investigation as "ancient" and "irrelevant to this action." Nothing could be further from the truth. The negative consequences of AIPAC's possession of this particular classified document are ongoing and may even be measured on a yearly basis. This is because *Probable Economic Effect of Providing Duty Free Treatment for U.S. Imports from Israel, Investigation No. 332-180* was no ordinary government document. Rather, it was a compilation of confidential US business information broadly solicited by the International Trade Commission, on behalf of the US Trade Representative, as originally announced through a February 15, 1984 *Federal Register* notice.²⁶ In that notice, the US government specifically promised to protect confidential business information submitted

²⁴ Sinai, Ruth "PLO link adds to woes of U.S. Israeli Lobby" Associated Press, December 21, 1988

²⁵ Guttman, Nathan "Women Largely Absent from AIPAC's Stage" The Jewish Daily Forward, May 25, 2011

²⁶ See Amicus Curie's Ex. L Federal Register / Vol. 49, No 32 / Probable Economic Effect of Providing Duty-Free Treatment for Imports from Israel" February 15, 1984

by industry organizations concerned about giving trade preferences to Israel. The US Bromine Alliance complained bitterly to ITC Chairwoman Paula Stern on November 1, 1984 that "The US Bromine Alliance provided very sensitive cost information to the Commission in response to the Commission's requests for confidential business data in connection with its report on a free trade agreement with Israel. The Alliance presumes that these data were quoted in the Commission's confidential report to the USTR, a copy of which was obtained by representatives of the American-Israel Public Affairs Committee..."²⁷ ITC Chairwoman Paula Stern confirmed in a November 29, 1984 letter that the US Bromine Alliance had indeed lost a great deal of confidential business information when the report was circulated by the Israeli Government and given to AIPAC. "You requested us to describe, characterize, or specify what business confidential information submitted by the U.S. Bromine Alliance in your letter of April 27, 1984 was included in the U.S. International Trade Commission's confidential report to the U.S. Trade Representative on investigation No. 332-180, Probable Effect of Providing Duty-Free Treatment for Imports from Israel...Specific business confidential numbers extracted from the Alliance's letter and shown in the report included: (1) the production cost for bromine, (2) production cost, raw material cost, depreciation or manufacturing cost, by-product cost, and shipping cost for the compound TBBPA and (3) the length of time that sales of domestic TBBPA could be supplied from inventory."²⁸

But the US Bromine Alliance, representing thousands of American jobs and vast sunk investments for domestic production and opposed to facing a foreign government-owned and subsidized competitor, was far from the only US industry interest group negatively impacted by the circulation of the classified report. Many others were concerned that information delivered in strict confidence to the government could be so easily lost and turned against them. This undermined their faith in the US government and belief in due process. Footwear Industry Association Executive Vice President Fawn

²⁷ See Amicus Curie's Ex. M US Bromine Alliance Letter to the International Trade Commission over Data loss" ITC Public file November 1, 1984

²⁸ See Amicus Curie's Ex. N International Trade Commission Chairwoman Paula Stern letter to the Bromine Alliance on confidential business data loss, November 29, 1984

Evenson characterized AIPAC's action as "heavy handed".²⁹ An analysis of all industry participants that participated in hearings or the preparation of *Probable Effect of Providing Duty-Free Treatment for Imports from Israel* reveals that 76 organizations such as Monsanto, the AFL-CIO, and Dow Chemical lobbied against trade preferences by providing critical public and private input, 4 were neutral, and only 23 relatively minor entities and AIPAC providing information in favor of it.³⁰ By violating the due process of these negotiations, AIPAC was able to leverage the sensitive information from the classified document, unavailable from any legitimate market research or public domain source, and win zero-sum economic advantages that have been quantitatively revealed over time. With the report in hand, AIPAC and the Israeli Ministry of Economics were also able to launch a broad public relations campaign aimed at belittling and minimizing informed industry group input about impact of the trade preferences and while publicizing inflated estimates of mutual benefits in order to win its ratification by Congress.³¹ In reality the actual trade benefits have been almost entirely one-sided, an anomaly among all current US bilateral trade agreements.

Quantitatively the US-Israel bilateral agreement is America's single worst performing bilateral trade agreement as measured by its large contribution to the US trade deficit. Every other bilateral agreement³² either delivers a trade surplus to the US, or generates imports and exports roughly at par over time while increasing mutually beneficial overall trade volumes. Measured by the bilateral trade deficit, the 1985 US-Israel bilateral agreement turned a generally balanced trading relationship in place through the mid-1980s into a chronic US deficit with Israel that steadily grew from zero to \$9.2 billion by 2009, reaching \$9.6 billion in 2010. Under unfavorable conditions such as floating tariffs and "at risk" (no patent) launch of products such as generic pharmaceuticals or outright copycat drugs, the US share of Israel's total goods import market dropped from over 25% in 1985 to less than 15% in 2007 while the US

²⁹ Hosenball, Mark "Footwear Industry News" October 1, 1984

³⁰ See Amicus Curie's Ex. O Filing to the USTR Section 301 Committee seeking \$6.64 billion in compensation for US Industry Organizations May 24, 2010 (does not include appendix of FBI documents).

³¹ See the book "Spy Trade" by Grant F. Smith, Institute for Research, 2009

³² Australia, Bahrain, Chile, Jordan, Morocco, Singapore.

is now the destination for up to 40% of Israel's exports.³³ There has been little redress for subsequent intellectual property violations. Since the year 2000 Israel appeared on the USTR's official "watch list" no less than five times as an intellectual property violator. This problem was foreseen in 1984 by Monsanto's concerns over Israeli patent protection.³⁴ But Monsanto's right to petition government effectively was subverted along the due process rights of the other petitioner organizations when AIPAC obtained their closely held trade and market secrets and used them against their owners. This can now be observed by analyzing and comparing the performance of the trade agreement with other negotiated agreements that did not undermine the due process rights of participants.

IV. AIPAC'S PAST CIRCULATION OF CLASSIFIED GOVERNMENT DOCUMENTS IS STILL SUBJECT TO FUTURE REDRESS AND DISGORGEMENT

In a December 23, 2010 Superior Court motion about the 1984 trade documents, the Defendant-Appellee claimed that "many of the documents are almost 30 years old when AIPAC was a different organization, with different board members and a different executive director." While AIPAC has undergone employee turnover, its corporate culture has not changed. This is likely due to the fact that AIPAC never faces penalties for such acts, even though they are now well-documented in the public domain. When AIPAC was incorporated in the District of Columbia in 1963 it was granted perpetuity and responsibility for its actions. Moreover when AIPAC applied for in 1967, and received in 1968, IRS tax-exempt status as a social welfare organization, it became subject to even higher standards of conduct to maintain the many considerable benefits granted to charities by the IRS. While the Defendant-Appellee may wish to be exempt from the long term consequences of what it deems "ancient" incidents, a corporation cannot escape the legal, moral and reputational consequences of its past actions through wishful thinking or court documents that attempt to rewrite and trivialize history.

³³ US Census Bureau International Trade Statistics Division TradeStat Express Database

³⁴ See Amicus Curie's Ex. P Monsanto Letter to Kenneth Mason of the International Trade Commission over patent concerns" ITC public file, May 2, 1984

If the 1984 “incident” dismissed by AIPAC had occurred just a decade later, it likely could have more easily been criminally prosecuted. The Economic Espionage Act 1996 Act protects US industries from economic intelligence gathering, including theft of trade secrets, in order to prevent international rivals from unfairly gaining long-term economic advantages. Because of the ongoing nature of trade and trade regulations, AIPAC will still have to face consequences for its actions in 1984. This is because now that *Probable Effect of Providing Duty-Free Treatment for Imports from Israel* is finally partially declassified, organizations that suffered misappropriation of their data in 1984 can in the year 2012 finally begin to seek compensation from AIPAC and the Israeli Ministry of Economics over ongoing damages.

V. CONCLUSION

The Defendant-Appellee clearly wishes to minimize its past record of rewarding AIPAC officials soliciting and circulating classified information and the context of the full FBI investigation file uncovered and first made public by the *amicus curiae*, introduced into public interest complaints and partially introduced as evidence by the Plaintiff-Appellant. Newly emerging documents such as the 1976 Hawk missile sale incident paint an accurate picture of how AIPAC actually treats incidences of classified information handling. While the Defendant-Appellee is entitled to its own opinions about the relevance of this evidence, the Defendant-Appellee is not entitled to manufacture its own facts and seek dismissal through misrepresentations and selective citations. From an interested outside perspective, the Defendant-Appellee's ongoing and purposeful solicitation, acquisition and misuse of US classified government information which contain business confidential information is evidence that it is not the charitable organization it claims to be. Accountability processes now underway must not be undercut by accepting the Appellee's assertions that its record is clean. The *amicus curiae* would invite the Appeals Court to issue the appropriate orders so that the Appellant is able to continue his action enabling the court to reach a resolution that will be just and based on a full and accurate airing of all relevant past AIPAC activities.

Respectfully submitted
Grant F. Smith, *pro se*

A handwritten signature in black ink, appearing to read "Grant F. Smith", with a long horizontal stroke extending to the right.

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