

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

STEVEN J. ROSEN

Plaintiff

v.

AMERICAN ISRAEL PUBLIC  
AFFAIRS COMMITTEE, INC., *et. al.*

Defendants

Case No.: 2009 CA 01256

Judge Erik Christian

Next Event: Dispositive Motions Decided

Due: Jan 3, 2010

**DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S OPPOSITION MEMORANDUM  
AND FOR SANCTIONS**

Defendants, American Israel Public Affairs Committee, Inc. and Patrick Dorton, through counsel, Carr Maloney P.C., move this Court to Strike Plaintiff's Opposition Brief filed on December 14, 2010 and to sanction Plaintiff for his violations of the Protective Order entered in this case. Defendants respectfully refer this Honorable Court to their Memorandum of Points and Authorities in Support of this Motion, and request that the Court grant this Motion, strike Plaintiff's Opposition to the Motion for Summary Judgment, sanction Plaintiff for violations of the Protective Order, and order Plaintiff to pay Defendants' costs and fees of preparing and defending this Motion.

Respectfully submitted,

CARR MALONEY P.C.

By: 

Allie M. Wright, #499323  
Thomas L. McCally, #391937  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 23rd day of December, 2010, I will electronically file the foregoing with the Clerk of the Court using the CaseFile Express system, which will then send a notification of such filing to David H. Shapiro, attorney for Plaintiff.

/s/ Allie M. Wright  
Allie M. Wright

**CERTIFICATION PURSUANT TO RULE 12-I**

Pursuant to Rule 12-I, on December 17, 2010, counsel for Defendants, Allie M. Wright, communicated with counsel for Plaintiff, David Shapiro, requesting consent to this motion. Plaintiff's counsel does not consent.

/s/ Allie M. Wright  
Allie M. Wright

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

STEVEN J. ROSEN	:	
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Plaintiff	:	
	:	
v.	:	Case No.: 09-01256
	:	Judge Erik Christian
AMERICAN ISRAEL PUBLIC	:	Next Event: Dispositive Motions Decided
AFFAIRS COMMITTEE, INC., <i>et. al.</i>	:	Due: Jan 3, 2010
	:	
Defendants	:	
	:	

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**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO STRIKE  
PLAINTIFF'S OPPOSITION MEMORANDUM AND FOR SANCTIONS**

Defendants, American Israel Public Affairs Committee, Inc. and Patrick Dorton ("Defendants"), through Counsel CARR MALONEY P.C., move this Court to strike Plaintiff's Opposition Memorandum and attached exhibits filed December 14, 2010 for failure to comply with the Protective Order entered in this case. Defendants also move the Court for sanctions for Plaintiff's intentional violation of the Protective Order. In support, Defendants state as follows:

1. During discovery, Plaintiff produced various documents to Defendants, including documents Plaintiff surreptitiously and improperly took from AIPAC in violation of the employee handbook, and documents created as part of joint defense/attorney-client privilege agreement during Plaintiff's federal criminal case. Defendants requested the return of these documents but no response was received from Plaintiff's counsel.<sup>1</sup>

2. To protect proprietary AIPAC documents as well as privileged work product, Defendants sought the entry of a Protective Order to govern all confidential AIPAC documents and

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<sup>1</sup>Exhibit A, May 14 Letter to David Shapiro re: Proprietary Documents.

joint defense work product/attorney-client privileges. Plaintiff consented to a Protective Order and the Court entered the joint order on April 30, 2010.<sup>2</sup>

3. After the entry of the Protective Order, Defendants designated portions of deposition testimony, and various deposition exhibits as confidential pursuant to the protective order.<sup>3</sup> The designations were made on the record during the recorded depositions on the grounds that the documents were either proprietary and confidential documents created by or belonging to AIPAC, or more importantly, because the documents were created under a joint defense agreement between AIPAC and Steven Rosen during his criminal prosecution under the Espionage Act.

4. These documents included but were not limited to correspondence and communication between counsel and memoranda prepared at the direction of counsel or requested from counsel retained for a particular issue, many containing a clear stamp or title of “Joint Defense Material”, “Attorney-Client Privilege”, and “Work Product Material.” The testimony marked confidential was deposition testimony discussing confidential AIPAC business, or documents that had been marked confidential or had a privilege asserted or work product protection.

5. At no time during discovery, nor anytime afterward, did Plaintiff formally object to or challenge the Defendant’s designation of the documents as confidential or otherwise contest the continued assertion of attorney-client privilege or work product protection.<sup>4</sup> Accordingly, the

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<sup>2</sup> Exhibit B, April 30, 2010 Protective Order

<sup>3</sup> See Exhibit B, Paragraph 8, (“Parties (and deponents) may, within fifteen days after receiving the transcript of a deposition taken after the entry of this Order, designate pages of the transcript (and exhibits thereto) as “Confidential” if the material so designated is entitled to be designated as “Confidential” under the terms of this Protective Order. Confidential Information within the deposition transcript may be designated by underlining the transcript lines that contain Confidential Information and marking such pages with “Confidential” and serving copies of the marked pages on counsel for all other parties. If no party or deponent timely designates Confidential Information in a deposition, then none of the transcript or its exhibits will be treated as confidential; if a timely designation is made, the confidential portions and exhibits shall be filed under separate seal from the portions and exhibits not so marked.”)

<sup>4</sup> Pursuant to the Joint Privilege Agreement entered into between Mr. Rosen and AIPAC during the government investigation leading up to his criminal indictment, documents designated by the parties under the Joint Defense Agreement (“Agreement”) survived the termination of the Agreement. Defendants are prepared to submit the document to the Court for an *in camera* review in lieu of attaching the document, in order to comply with the provisions contained

documents have been properly designated under the Protective Order, and the confidential designation remains.

6. On November 5, 2010, Defendants filed their Motion for Summary Judgment. Shortly thereafter, Plaintiff gave numerous press interviews stating that he intended to file an opposition that would “put AIPAC on the hot seat”<sup>5</sup> and intimated that he intended to file various confidential documents and testimony that was designated under the Protective Order.<sup>6</sup> Plaintiff is quoted as stating, “Any embarrassment I suffered as a result of what they filed will be insignificant compared to the embarrassment they’ll suffer after we file our motion.”<sup>7</sup>

7. On or about November 12, 2010, Plaintiff’s counsel filed a request for an extension of time to file his Opposition. Defendants consented to this request with an opposition due date of December 2, 2010, and in an email reminded Plaintiff’s counsel of the provisions of the Protective Order and that “any deposition testimony, documents, or exhibits that have been marked confidential under to the protective order” should only be filed under seal and that the opposition brief itself should be redacted accordingly.<sup>8</sup> The request for Plaintiff to abide by the Protective Order was reiterated by letter dated November 15, 2010.<sup>9</sup> Plaintiff’s counsel never responded.

8. On December 14, 2010, Plaintiff’s counsel filed his Opposition Memorandum with five hundred thirty four (534) pages of exhibits, containing documents and exhibits that were marked

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therein.

<sup>5</sup> Exhibit C, Nov. 16, 2010 Forward.com Article, “AIPAC Gets Down and Dirty in Pushback Against Rosen Defamation Suit.”

<sup>6</sup> Exhibit D, Dec. 2, 2010 Forward.com Article, “Rosen Remains Determined to Prove Trafficking in Secrets is Normal at AIPAC” (“Rosen, although stressing that he has ‘no desire to see AIPAC weakened,’ has promised to present [] statements of employees, legal depositions and internal AIPAC documents demonstrating that receiving classified information was an acceptable practice.”)

<sup>7</sup> Exhibit C.

<sup>8</sup> Exhibit E, Nov. 12, 2010 Email from Allie Wright to David Shapiro; See also Exhibit A, Paragraph 10, (A party filing or tendering into evidence as part of a motion, pleading or hearing in this action or in any other court proceeding, any information, document, transcript or paper containing Attorneys’ Eyes Only or Confidential Information shall file such document, transcript or paper under seal...)

<sup>9</sup> Exhibit F, Nov. 15, 2010 Email from Allie Wright to David Shapiro.

as confidential pursuant to the Protective Order at various depositions during discovery.<sup>10</sup> In doing so, Plaintiff knowingly and intentionally directly violated the unambiguous terms of the Court's Order, the District of Columbia Trade Secrets Act, the Joint Defense Agreement, and the terms that he agreed to when he was employed by AIPAC. Plaintiff did so with the express purpose of releasing portions of details of events, some of which transpired decades ago, which have already been taken completely out of context by the press. By his actions, Plaintiff continuously feeds and manipulates the press with inaccurate and incomplete information that have given rise to a plethora of articles about Plaintiff's indictment, yet he complains in this lawsuit about a single generic statement made by AIPAC. Plaintiff's actions undermine his very claims in this matter.

9. Plaintiffs' actions constitute a blatant disregard for the law and further demonstrate the truth and veracity of the statement that Mr. Rosen falsely contends defamed him. Mr. Rosen's conduct in this filing alone manifests a belief that he is so above reproach that policies, standards, agreements, and court orders have no application to him.

10. Indeed, this is not the first time that Mr. Rosen has decided to completely disregard Court Orders, and to violate the terms of his own agreement. The parties had agreed, and the Court entered an order requiring that Plaintiff file his Opposition to the Defendants Motion for Summary Judgment on December 2, 2010. Plaintiff completely disregarded that deadline, and waited until the date his Opposition was due to seek an additional continuance of yet another 18 days. When the late filing of the Opposition was finally made, it improperly included documents protected under the plain terms of this Court's Protective Order, further demonstrating the Plaintiff's complete disregard of this Court's authority. Such actions should not be condoned.

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<sup>10</sup> Defendants contacted Plaintiff's counsel on December 16, 2010 to state their objections to the filing. See Exhibit G, Dec. 16, 2010, Letter to David Shapiro.

11. The Court has both an inherent and a statutory power to enforce compliance with its orders and may exercise that authority through a civil contempt proceeding. *See Shillitani v. United States*, 384 U.S. 364, 370, 86 S.Ct. 1531, 16 L.Ed.2d 622 (1966); *United States v. United Mine Workers of America*, 330 U.S. 258, 330-32, 67 S.Ct. 677, 91 L.Ed. 884 (1947); *Petties v. District of Columbia*, 897 F.Supp. 626, 629 (D.D.C. 1995); *Securities and Exchange Commission v. Bankers Alliance Corp.*, 881 F.Supp. 673, 678 (D.D.C. 1995). “A party commits contempt when it violates a definite and specific court order requiring him to perform or refrain from performing a particular act or acts with knowledge of that order.” *Securities and Exchange Commission v. Bankers Alliance Corp.*, 881 F.Supp. at 678. Civil contempt is a remedial device intended to achieve full compliance with a court's order. *See Int'l Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 826, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994); *Hicks v. Feiock*, 485 U.S. 624, 631-32, 108 S.Ct. 1423, 99 L.Ed.2d 721 (1988). A contempt fine therefore is civil and remedial-not criminal-if it either “coerces the defendant into compliance with the court's order, [or] ... compensates the complainant for losses sustained.” *Int'l Union, United Mine Workers of America v. Bagwell*, 512 U.S. at 829 (citing *United States v. United Mine Workers of America*, 330 U.S. at 303-304); *See also Pigford v. Veneman* 307 F.Supp.2d 51, 55 -56 (D.D.C. 2004).

12. “Super Ct. Civ. R. 37, like its federal counterpart, enumerates the different sanctions that a court may impose for unjustified noncompliance with discovery requests or disobedience of a court's discovery orders.” *Edwards v. Climate Conditioning Corp.*, 942 A.2d 1148, 1151-1152 (D.C. 2008) (*See n.6* “Super Ct. Civ. R. 37 is patterned on Rule 37 of the Federal Rules of Civil Procedure. We construe our local rule “consistently” with the federal rule even though it differs from that rule in certain respects.” (citation omitted)). Under Fed. R. Civ. P. 37(b)(2) the district court has broad discretion to impose sanctions for discovery violations.” *Bonds v. District of Columbia*, 93 F.3d

801, 807 (D.C.Cir.1996). Rule 37 authorizes a number of sanctions for not complying with discovery orders, including issuance of an order “dismissing the action or proceeding or any part thereof.” Fed. R. Civ. P. 37(b)(2)(C); *See Albert v. Starbucks Coffee Co. Inc.* 213 Fed.Appx. 1, 1-2, 2007 WL 177830, \*1 (D.C. Cir. 2007). Additionally, the Court may also order an involuntary dismissal pursuant to Superior Court Rule 41(b), for “failure of the plaintiff [] to comply with these Rules or *any order of Court...*” (emphasis added).<sup>11</sup>

13. Defendants assert that under the Court’s inherent power, the Court should strike Plaintiff’s Opposition, grant the Motion for Summary Judgment, and dismiss this action. Plaintiff’s actions constitute a blatant disregard for this Court’s Order, and were a clear violation of the unambiguous terms of the Protective Order. Plaintiff and his counsel intentionally filed confidential documents in disregard of this Court’s Protective Order for the sole purpose of harass AIPAC and to garner media attention by casting inaccurate inferences based upon the release of incomplete information.

14. As a sanction of the improper conduct of both the Plaintiff and his counsel, dismissal is an appropriate sanction. In the dissent of *Coleman v. American Red Cross*, 23 F.3d 1091, 1099-1101 (6th Cir. 1994), Judge Ryan reasoned that the dismissal of plaintiff’s case should have been upheld based on the contumacious conduct of plaintiff’s counsel and the inherent powers of the Court because “dismissal of the plaintiff’s case was within the range of options available to the district court for dealing with counsel’s misconduct.” *Id.* Even under the reasoning of the majority, dismissal would be appropriate here because unlike *Coleman*, this is not a case of just attorney misconduct. As shown in the attached articles Plaintiff Rosen has repeatedly given press interviews

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<sup>11</sup> *See generally, District of Columbia v. Serafin*, 617 A.2d 516, 519 (D.C. 1992).



threatening to release documents that he knew were designated under the protective order. Plaintiff Rosen attended every deposition and has long known what documents were marked as confidential.

15. The exhibits marked as confidential under the Protective Order and improperly filed are attachments 3, 4, 5, 6, and 29 to Plaintiff's Statement of Genuine Issues, and exhibits A, B, H to Plaintiffs Memorandum of Points and Authorities in Opposition to Defendants' Motion for Summary Judgment. The documents are not attached to this motion as Defendants seek to maintain their continued assertion of the attorney-client and joint defense privileges and work-product protection.<sup>12</sup>

16. For these reasons, the Defendants requests that the Court grant their Motion to Strike Plaintiff's Opposition Memorandum, grant the Defendants Motion for Summary Judgment, and dismisses that Plaintiff's claims with prejudice. Defendants further request that the Court grant their Motion for Sanctions and order Plaintiff to pay the costs and attorneys' fees of preparing and defending this Motion.

Respectfully submitted,

CARR MALONEY P.C.

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<sup>12</sup> Notwithstanding the violation by Plaintiff and his counsel of this Court's Protective Order, the privileged documents relied upon by the Plaintiff are also inadmissible. *See generally, Neku v. U.S.*, 620 A.2d 259, 261 (D.C. 1993); *American Nat. Red Cross v. Vinton Roofing Co., Inc.*, 629 F. Supp. 2d. 5, 8, (D.D.C. 2009)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 23rd day of December, 2010, I will electronically file the foregoing with the Clerk of the Court using the CaseFile Express system, which will then send a notification of such filing to David H. Shapiro, attorney for Plaintiff.

*Allie M. Wright*

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Allie M. Wright

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

STEVEN J. ROSEN

Plaintiff

v.

AMERICAN ISRAEL PUBLIC  
AFFAIRS COMMITTEE, INC., *et. al.*

Defendants

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Case No.: 09-01256  
Judge Erik Christian  
Next Event: Dispositive Motions Decided  
Due: Jan 3, 2010

**ORDER**

UPON CONSIDERATION of Defendants' Motion to Strike Plaintiff's Opposition and for Sanctions, any Opposition filed, and the entire record here, it is this \_\_\_\_ day of \_\_\_\_\_, 2010, hereby

ORDERED, that the Defendants' Motion to Strike Plaintiff's Opposition be and hereby is GRANTED; and it is

FURTHER ORDERED, that Plaintiff Opposition is hereby struck from the record; and it is

FURTHER ORDERED, Defendants' Motion for Summary Judgment is GRANTED and Plaintiff's Complaint is DISMISSED WITH PREJUDICE; and it is

FURTHER ORDERED, Defendants' Motion for Sanctions is GRANTED; and it is

FURTHER ORDERED, that Plaintiff is ordered to pay within fourteen (14) days of this Order, the Defendants' costs for preparing and defending this Motion to Strike and for Sanctions. Defendants shall submit to the Court all costs and fees associated with this motions within seven (7) days of this Order.

\_\_\_\_\_  
Judge Erik Christian

cc: Copies to Counsel of Record

# **EXHIBIT A**

## Carr Maloney P.C.

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Admitted in DC, MD and GA  
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May 14, 2010

### VIA EMAIL & US MAIL

Mr. David Shapiro, Esq.  
1225 Eye Street, NW  
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Washington, DC 20005  
[dhshapiro@swickandshapiro.com](mailto:dhshapiro@swickandshapiro.com)

RE: AIPAC/ROSEN  
Our File No.: 07309DC001

Dear Mr. Shapiro:

Through your client's document production it is apparent that your client, Steven Rosen, has violated AIPAC's employee handbook by being in possession of confidential, privileged, and proprietary documents that belong to AIPAC. As put on the record at the deposition of Richard Fishman, AIPAC previously requested the return of all AIPAC proprietary and confidential documents, and destruction of any copies. Please accept this letter as AIPAC's demand that Mr. Rosen return all copies of any documents he surreptitiously and improperly took from AIPAC after his termination in violation of the employee handbook.

Specifically, Mr. Rosen has violated the confidentiality and tangible property provisions of the handbook, which state in pertinent part:

#### **CONFIDENTIAL INFORMATION**

An employee shall not, either during the term of his/her employment or any time thereafter, disclose to any person, corporation or other entity any confidential information learned by the employee as a result of his or her employment by AIPAC. The term "confidential information" includes, but is not limited to: a) the names and addresses of members or contributors to AIPAC; b) non-public information relating to any activity of

AIPAC; c) non-public information relating to any officer, director, employee, or member of AIPAC or any contributor to AIPAC; d) non-public information relating to any program or contemplated program of AIPAC; or e) any documents or information which contain or are derived from confidential information concerning AIPAC, its members or its activities.

Page 40.

#### **AIPAC TANGIBLE PROPERTY**

Employees are expected to exercise care in the use of AIPAC's property and to use such property only for authorized purposes. Negligence in the care and use of AIPAC's property or unauthorized removal of AIPAC's property from the premises or its conversion to personal use will be considered cause for suspension and/or dismissal.

Upon termination of employment with AIPAC for any reason, or when the employee's department head/regional director or a designated representative otherwise requests its return, employees are required to immediately return to AIPAC all documents, property (including computers), or materials of any nature which are in the employee's possession or control which he/she obtained from AIPAC or compiled or produced for AIPAC during the employee's employment and any and all copies thereof.

Page 42.

This demand for the return of AIPAC materials and information includes but is not limited to:

1. AIPAC Benefits and Personnel Policies (1990), produced as document 12.
2. AIPAC's Bylaws, produced as document 14.
3. AIPAC Benefits and Personnel Policies (2000), produced as document 24.
4. Memorandum re: Lunch with Lisa Johnson of NSC, produced as document 26.
5. Memorandum re: Impact of the Bipartisan Campaign Reform Act of 2002 "BRCA" on Contribution Limits for Individual Contributors, produced as document 27.
6. Memorandum re: Political Activities of AIPAC Members, produced as document 28.
7. Employee Performance Review -Keith Weissman, produced as document 46.

Mr. Rosen's possession of the above-mentioned documents, as well as any others he misappropriated from AIPAC, are a blatant violation of the AIPAC policies contained in the AIPAC handbook. As an employee for over twenty-three (23) years, Mr. Rosen knew or should have known that taking these documents was inappropriate conduct. Most offensive is that Mr. Rosen has stolen the private employment evaluation of another employee and produced it in this litigation with no regard for that employee's privacy and personal information.

Please note AIPAC retains all rights as outlined in the handbook to seek redress and

David Shapiro, Esq.  
May 14, 2010  
Page 3 of 3

damages for violations of this policy. All documents, including originals and copies thereof, are to be returned to AIPAC within ten (10) business days of receipt of this letter. You may direct them to my attention at the Washington, D.C. Carr Maloney offices.

We trust you will act promptly and give proper attention to remedying this serious violation of AIPAC's trust and confidence in a former employee.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. McCally', written in a cursive style.

Thomas L. McCally

# **EXHIBIT B**



SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

STEVEN J. ROSEN

Plaintiff

v.

AMERICAN ISRAEL PUBLIC  
AFFAIRS COMMITTEE, INC., *et. al*

Defendants

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Case No.: 09 CA 001256 B  
Judge Erik P. Christian  
Next Event: Discovery Close 6/11/2010

**STIPULATED PROTECTIVE ORDER**

This Stipulated Protective Order (“Order”) shall govern the use and disclosure of all Confidential Information (as hereinafter defined) produced in this action by or on behalf of any party, or furnished by any person associated with the any party, on or after the date of this Order, including Confidential Information produced or provided in depositions, interrogatory answers, responses to requests for admissions, document productions, and other discovery proceedings.

1. Definitions.

(a) “Confidential Information” when used in this Order shall encompass information that is designated “Confidential” or “Attorneys’ Eyes Only.” “Confidential Information” includes any documents produced by a party in this action, or by a third party in response to a subpoena, which are, in good faith, determined by the Disclosing Party to contain confidential or proprietary information, or other commercially sensitive or personally sensitive information of a non-public nature. In some instances, the disclosure of certain information may be of such a highly confidential nature that it requires greater protection than that afforded to information designated “Confidential.” Any information may be designated by a Disclosing Party as “Attorneys’ Eyes Only” if, in the discretion of the Disclosing Party, it is determined in good

faith: (1) to contain non-public information of a competitively or commercially sensitive, proprietary, financial, or trade secret nature, or to involve or implicate the privacy interests of persons who are not a party to this lawsuit; and (2) that disclosure of such information to the other Party may be unduly detrimental to the Disclosing Party's or third party's interests.

Such documents may be designated as Confidential Information, and so marked, by stamping each page of the document "Confidential" or "Attorneys' Eyes Only." If the document is more than 25 pages in length, stamping the front page "Confidential" or "Attorneys' Eyes Only" shall be sufficient to cover the entire document under this Protective Order. The parties shall act in good faith and on a reasonable basis when designating any material as being "Confidential" or "Attorneys' Eyes Only", including, but not limited to the following:

- (i) Personnel files of employees, applications for employment and other employee-related information;
- (ii) References;
- (iii) Payroll information;
- (iv) Home or personal addresses and phone numbers;
- (v) Dates of birth;
- (vi) Social Security numbers;
- (vii) Medical records and healthcare information;
- (viii) Information obtained from and regarding the parties' customers, clients, or representation firms;
- (ix) Information of a competitively or commercially sensitive proprietary or trade secret nature; and
- (x) The financial information of either party to the extent it is not subject to public disclosure.

(b) “Documents,” when used in this Order shall mean all written, recorded, electronic, or graphic matter whatsoever, including, but not limited to, materials produced pursuant to Sup. Ct. Civ. P. Rule 34, by subpoena or by agreement, deposition transcripts and exhibits, interrogatory answers, responses to requests for admission, and any portion of any court papers that quote from any of the foregoing.

(c) “Parties” shall mean Plaintiff, Defendant, and any third party who agrees to be bound by this Order. “Disclosing Parties” shall mean Plaintiff, Defendant, and any third parties who give testimony or produce Documents or other information covered by this Order, including those Parties’ officers, directors, employees, and agents.

2. In designating information as Confidential or Attorneys’ Eyes Only, a Disclosing Party shall make such a designation only as to materials that the party in good faith believes constitute Confidential Information under the definition herein. Confidential Information marked and disclosed by a Disclosing Party shall be used by the receiving party (the “Recipient”) solely for conducting this litigation, and not for any other purpose whatsoever.

3. Confidential Restrictions. In the absence of prior written permission from the Disclosing Party, or an order of the Court, information designated as Confidential Information shall be used by the Recipient solely for the purposes of litigation between the parties hereto, and may be disclosed only to the following persons:

- (a) The parties and their officers, directors, agents, employees, in-house counsel, and representatives who have need for such information or who provide clerical or other support for purposes of this litigation;
- (b) Counsel for the parties, including corporate in-house counsel, in this proceeding and other attorneys, paralegals, law clerks, or clerical staff working with those attorneys;
- (c) Independent investigators, experts and/or consultants, retained by any party, who have a need for such information to assist in this litigation;

- (d) Any witness and their counsel during deposition or trial for whom disclosure is necessary to the testimony of such witness;
- (e) The Court, jury, court personnel, court reporters and similar Court personnel;
- (f) Court reporters and videographers employed to record depositions in this action;
- (g) Insurers for Defendant, if any, who have a need to review the information in connection with this action; or
- (h) Any person identified from the four corners of the information, document or thing itself as having authored or previously received the information, document or thing; (2) any party to this action; and (3) any non-party witness at a deposition, hearing, or trial, if (A) it appears from the face of the document, or from other documents or testimony, to have been used by the witness; or (B) if the witness is employed by the producing party, and provided that said witness has executed a certification in accordance with Exhibit A below;
- (i) Any other person only with the prior written consent of the Disclosing Party.

4. Attorneys' Eyes Only Restrictions. Confidential Information designated as Attorneys' Eyes Only shall not be disclosed, except by the prior written consent of the Disclosing Party or pursuant to further order of this Court, to any person or entity other than:

- (a) The attorneys of record for any party in this action, including the employees and associates of the party's attorneys who are involved in this action.
- (b) Defendant's in-house counsel.
- (c) Officers of the Court and supporting personnel or officers of any appellate court to which an appeal may be taken or in which review is sought, including necessary stenographic and clerical personnel (e.g., deposition and court reporters).
- (d) Deposition, trial or potential witnesses in this action and their counsel, provided that the conditions of Section 5 are met.

- (e) Independent experts and consultants (and their employees and support staff) retained by the attorneys for any party for purposes of assisting in this action, provided that the conditions of Section 5 are met.
- (f) With the prior written permission of the Disclosing Party, the officers, directors, agents, or employees and representatives of the Recipient, on a document-by-document basis.
- (g) Outside litigation support vendors of the parties, including commercial photocopying vendors, scanning services vendors, coders, and keyboard operators.

Any person other than officers of the Court and attorneys of record for any party who is to be provided with Confidential Information designated Attorneys' Eyes Only or access thereto under the terms of this Order must first execute and return to counsel of record for the party from whom the person is receiving such Confidential Information or access thereto the Agreement appended hereto as Exhibit A.

5. Attorneys' Eyes Only Restrictions. For purposes of Section 4(d) and 4(e), the Recipient shall give the Disclosing Party three (3) business days' written notice prior to disclosure of Confidential Information designated Attorneys' Eyes Only by the Disclosing Party to any potential witness, expert or consultant, or the attorneys, staff, employees, representatives, or agents of the same. Written notice shall include the name, employment, and affiliations of the person or entity to which the Information is sought to be disclosed. This provision shall not apply to potential witnesses, experts, consultants or their attorneys, staff, representative or agents who are authors or recipients of the "Attorneys Eyes Only" Confidential Information or who received the material prior to or separate from the litigation.

If during the three (3) business day period the Disclosing Party objects to the disclosure, then no disclosure shall be made until the Recipient obtains from the Court an Order compelling

such disclosure. The parties shall confer in good faith to resolve any such disagreements prior to bringing any motion to compel disclosure.

6. The Recipient of any Confidential Information provided under this Order shall maintain such information in a secure and safe area and shall exercise the same standard of due and proper care with respect to the storage, custody, use, and/or dissemination of such information as is exercised by the Recipient with respect to its own confidential information. Confidential Information shall not be copied, reproduced, summarized, or abstracted, except to the extent that such copying, reproduction, summarization, or abstraction is reasonably necessary for the conduct of this lawsuit. All such copies, reproductions, summarizations, extractions, and abstractions shall be subject to the terms of the Order, and labeled in the same manner as the designated material on which they are based.

7. Deposition testimony that one of the parties reasonably believes will contain Confidential Information or Attorneys' Eyes Only shall only be taken in front of persons entitled to access to such information under paragraphs 3 and 4 of this Protective Order and may be designated as Confidential or Attorneys' Eyes Only by the Disclosing Party making an appropriate statement on the record, in which case the reporter shall stamp or write "Confidential" or "Contains Confidential Information" or "Attorneys' Eyes Only" on each and every page of the printed and electronic transcript and shall stamp or write "Contains Confidential Information" or "Attorneys' Eyes Only" on the cover of the relevant transcript.

8. Parties (and deponents) may, within fifteen days after receiving the transcript of a deposition taken after the entry of this Order, designate pages of the transcript (and exhibits thereto) as "Confidential" if the material so designated is entitled to be designated as "Confidential" under the terms of this Protective Order. Confidential Information within the

deposition transcript may be designated by underlining the transcript lines that contain Confidential Information and marking such pages with “Confidential” and serving copies of the marked pages on counsel for all other parties. If no party or deponent timely designates Confidential Information in a deposition, then none of the transcript or its exhibits will be treated as confidential; if a timely designation is made, the confidential portions and exhibits shall be filed under separate seal from the portions and exhibits not so marked.

9. If a party (or aggrieved entity permitted by the Court to intervene for such purpose) disagrees with the designation of any particular document or other material designated as either of the two classes of “Confidential Information,” the parties shall attempt in good faith to resolve the dispute by agreement. If they cannot, then the party who disagrees with the designation of either of the two (2) classes of “Confidential Information” may file a motion to have the designation modified or removed. The burden remains on the designating party to demonstrate that the material in question contains the designated class of Confidential Information, or Confidential Information of any type, as described in paragraph 1 of this Order. Until a motion is filed and resolved by the Court, all materials designated as containing “Confidential Information” of either class shall be treated as such in accordance with this Order.

If no motion challenging the designation is made, the designation shall continue in full force and effect.

10. A party filing or tendering into evidence as part of a motion, pleading or hearing in this action or in any other court proceeding, any information, document, transcript or paper containing Attorneys’ Eyes Only or Confidential Information shall file such document, transcript or paper under seal. If only a portion of any document, transcript, or paper filed with the Court

contains material designated “Confidential” or “Attorneys’ Eyes Only,” any sealing shall apply only to that portion.

If either party desires to introduce a “Confidential” or “Attorneys’ Eyes Only” document, or deposition excerpt, in open court (at trial or otherwise), the parties agree that (i) nothing in this Order shall prevent the presentation of relevant evidence to the Court or trier of fact, and (ii) the parties will cooperate to facilitate the introduction in evidence of such document(s) or portions as are relevant while preserving the confidentiality of other information contained in the document(s), by such means as redaction, an agreed statement of the facts contained therein, closing the courtroom for publication of the confidential matter, or other similar means. A party intending to introduce such evidence shall provide notice to the other parties at the pretrial conference, if possible, or if not, then sufficiently in advance of its introduction to enable the parties to confer and seek a ruling from the Court on the method of introduction.

11. Nothing in this Order shall preclude any of the parties or their attorneys (a) from showing a document designated as Confidential Information to an individual who either prepared the document prior to the filing of this action, or is identified on the face of the document as an addressee or copy addressee, or (b) from disclosing or using, in any manner or for any purpose, any information or documents from the party’s own files which the party itself has designated as Confidential Information, or (c) from disclosing or using any information or documents which were already in possession of such party prior to the commencement of this action.

12. The inadvertent or unintentional disclosure of the party producing Confidential Information or Attorneys’ Eyes Only information, regardless of whether the information was so designated at the time of disclosure, shall not be deemed to constitute in whole or in part a waiver of, or estoppel as to, the party’s right to claim in this action or thereafter that said



information is Confidential. If a claim of inadvertent production is made, pursuant to this paragraph, with respect to information then in the custody of another party, such party shall promptly return to the claiming party or person that material as to which the claim of inadvertent production has been made. The party returning such material may then move the Court for an order compelling production of the material, but said motion shall not assert as a ground for entering such an order the fact or circumstances of the inadvertent production.

13. The parties hereto agree that an injunction shall issue to prevent violations of this Protective Order. The agreement to injunctive relief does not preclude any party from also obtaining damages that reasonably flow from a breach of this Order.

14. Any information, document or thing mistakenly produced or disclosed without a "Confidential" "Attorney's Eyes only" designation may be subsequently designated by the producing party as "Confidential" at any time pursuant to the terms of this paragraph without waiving the confidential nature of the document or information. In each such case, the designating party shall provide to the other party notice, either orally followed by written notice within five (5) business days or by written notice, of that subsequent designation and a copy of the document or thing marked in accordance with this paragraph.

15. The parties shall take all reasonable precautions to prevent the disclosure of any Confidential Information or Attorneys' Eyes Only information received by them to any persons who are prohibited under this Protective Order from receiving Confidential Information or Attorneys' Eyes Only information; provided, however, that the Recipient shall not be in violation of this Order with respect to use or disclosure of such document(s) prior to notice of the Confidential or Attorneys' Eyes Only designation.

16. Within thirty (30) days of the termination of litigation between the parties, all Confidential Information, and all copies thereof shall be returned to the party who produced it upon such party's request and at his or her cost, with certification from counsel that all copies have been so returned. Counsel for each party shall be entitled to retain all pleadings, motion papers, legal memoranda, correspondence, and work product.

17. Except as specifically provided herein, the terms, conditions, and limitations of this Order shall survive the termination of this action.

18. This Order is without prejudice to the right of any party to seek relief from the Court, upon good cause shown, from any of the provisions contained in this Order.

19. This Order shall remain in force and effect until modified, superseded, or terminated on the record by writing of the parties hereto or by order of the Court.

20. This Order shall not be construed as waiving any right to assert a claim of privilege, relevance, over breadth, burdensomeness, or other grounds for not producing material called for, and access to such material shall be only as otherwise provided by the discovery rules and other applicable law. Nothing in this agreed Order shall be construed to be an admission against a party or constitute evidence of any fact or issue in this case.

21. Subpoena by Other Court or Agencies. If another court or an administrative agency subpoenas or orders production of Confidential Information which a party or other person has obtained under the terms of this Order, such party or person shall as soon as practicable notify the party or person who designated the document or information as Confidential Information of the pendency of such subpoena or order.

22. Client Consultation. Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course thereof, relying generally on the examination of Confidential Information.

23. Modification Permitted. Nothing in this Order shall prevent any party or other person from seeking modification of this Order, contesting the designation of information or documents as Confidential, or from objecting to discovery that it believes to be otherwise improper.

24. Responsibility of Attorneys. The attorneys of record are responsible for employing reasonable measures to control, consistent with this Order, duplication of, access to, and distribution of copies of Confidential Information.



Judge

Signed on April 30, 2010

**Agreed to this 29<sup>th</sup> day of March, 2010**

By: \_\_\_\_\_/s/

Thomas L. McCally, Esq. Carr  
Maloney P.C. 1615 L Street, NW,  
Suite 500 Washington, DC 20036  
*Counsel for Defendants*

By: \_\_\_\_\_/s/

David H. Shapiro, Esq. Swick &  
Shapiro, P.C. 1225 Eye Street,  
NW, Suite 1290 Washington, DC  
20005 *Counsel for Plaintiff*

[with consent to file on counsel's behalf]

**EXHIBIT A**

**AGREEMENT OF EXPERT, CONSULTANT, NON-PARTY DEPOSITION  
OR TRIAL WITNESS, OR DESIGNATED REPRESENTATIVE TO BE  
BOUND BY PROTECTIVE ORDER**

The undersigned, \_\_\_\_\_ (print or type name),  
an expert, consultant, non-party deposition or trial witness, or designated representative of  
\_\_\_\_\_ (print or type name of party or law firm), in  
connection with Steven J. Rosen v. American Israel Public Affairs Committee, Inc., *et al.*, in the  
Superior Court for the District of Columbia, Civil Action No.: 09-01256, hereby acknowledges  
that he or she has received a copy of the Protective Order entered in this action, which is attached  
hereto as Exhibit A, and has read and agreed to be bound by all of the provisions thereof.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Signature

# **EXHIBIT C**

# Forward.com

## AIPAC Gets Down and Dirty in Pushback Against Rosen Defamation Suit

By Nathan Guttman

Published November 16, 2010.

**WASHINGTON** — The espionage case against two senior officials of the pro-Israel lobby in Washington was dropped last year. But it has not been forgotten, and is now threatening to draw the lobby into new depths of mudslinging.

Papers filed in the civil lawsuit of former lobbyist Steve Rosen against his previous employers at the American Israel Public Affairs Committee include mutual accusations of using pornographic material at the lobby headquarters, among other allegations. The papers, based on depositions taken from Rosen and from AIPAC principles, dig into the private lives of the involved parties. They also reveal in detail the close ties AIPAC officials held with Israeli diplomats based in Washington.

"After reading this stuff you feel like you need to wash your hands," said one pro-Israel activist after skimming through the 260-page document, which is laced with graphic descriptions and invasive personal details. He declined to be named, out of a desire to avoid involvement in the case.

At issue is Rosen's \$20 million defamation lawsuit against his previous employers at AIPAC, who fired him and his colleague Keith Weissman in 2005 — several months after both had been indicted under a rarely used espionage statute because they allegedly received and passed on classified information. AIPAC, in a move that could be seen as meant to embarrass Rosen, revealed in its court filings extensive parts of the depositions, many of them dealing directly with Rosen's personal life.

In an interview with the Forward after the court documents had been made public, Rosen said he was not deterred and promised that when he files his own motion next month, the information in it will put AIPAC on the hot seat. "Any embarrassment I suffered as a result of what they filed will be insignificant compared to the embarrassment they'll suffer after we file our motion," Rosen said. Rosen's civil lawsuit seeks compensation and damages from AIPAC and from its outside public relations adviser, Patrick Dorton, for defamation. Rosen said he suffered severe damage to his reputation due when Dorton issued a statement on AIPAC's behalf announcing that he and Weissman were fired because their actions did not comport with AIPAC standards. This statement was initially understood as being related to the allegations of Rosen receiving classified information and communicating it to others against AIPAC's policy. But its motion for summary judgment, filed November 5 with the Superior Court of the District of Columbia, AIPAC cites a wider array of alleged points of misconduct that the pro-Israel lobby now says led to the decision to terminate him.

AIPAC claims that Rosen, who was director of foreign policy issues at the lobby and one of its most senior and well-known employees, had engaged in viewing pornography on AIPAC computers at the lobby's Washington offices. Partial transcripts of the lengthy videotaped deposition of Rosen, which were made public as part of AIPAC's motion, show Rosen admitted to surfing pornographic websites from work. But AIPAC's lawyers insisted on more details.

"Q: What type of pornography?

A: Sexual pornography.

Q: What type? Man on man, man on woman?

A: Anything. Anything that occurred to me."

Rosen also added more details than, perhaps, the attorney for AIPAC had bargained for.

"I witnessed [AIPAC executive director] Howard Kohr viewing pornographic material, [Kohr's secretary] Annette Franzen viewing pornographic material, probably a dozen other members of the staff," Rosen said in his deposition. He added that, according to a Nielsen survey, more than a quarter of Americans regularly view pornographic websites at their workplace.

Later in his deposition, the former lobbyist also said he had heard from directors at AIPAC about their visits to prostitutes and he claimed executive director Kohr had routinely used "locker room language" at the AIPAC offices.

AIPAC did not seem deterred from getting dragged into a dirty debate. It also chose to include in its court filing an issue relating to Rosen's personal life with only a vague connection to the lobby's claim regarding Rosen's actions being below AIPAC's standards. AIPAC's lawyers questioned Rosen in detail about his attempts to find male sexual companions through Craigslist, an act Rosen referred to as "sexual experimentations." This information came up in one of Rosen's divorce cases — he has been married five times — and was supposed to remain under court seal.

The court documents also shed light on Rosen's attempts to support himself and his family after being fired from AIPAC. The former lobbyist, as the depositions indicate, received cash gifts from several prominent Jewish philanthropists, among them some who are also major donors to AIPAC. The list includes Hollywood cartoon mogul Haim Saban, one of AIPAC's key funders, who gave Rosen a total of \$100,000; Daniel Abraham, founder of the Center for Middle East Peace who gave Rosen, his wife and three children gifts of \$5,000 to \$10,000; and philanthropist Lynn Schusterman, who paid off a college loan for Rosen's daughter. The list includes several other backers, including two described as "bundlers" who raised up to \$200,000 for Rosen from other donors.

The rationale for introducing this issue is AIPAC's claim that Rosen did not suffer any financial difficulty following his dismissal or due to the Dorton's claim in AIPAC's public statement regarding Rosen's supposed misconduct. Rosen believes that by supporting him these donors, many of them still active AIPAC members, demonstrated their displeasure with the manner in which the lobby treated its two former employees.

The personal and financial details that take up much of the deposition seemed to be tense at times, with flare ups between the attorneys of both sides. But the court papers also shed light on the events surrounding the FBI visit to Rosen's home on August 27, 2004 that led to the indictment in the espionage case.

The FBI has alleged that Larry Franklin, a Pentagon analyst at the time, passed on national security information to Weissman, who in turn shared it with Rosen. The two former defendants did not know then that Franklin was cooperating with the FBI and that the information he provided them was part of a sting operation.

Rosen and Weissman learned from Franklin that Iranian forces were allegedly operating in Northern Iraq and that they were plotting to kidnap Israeli operatives. They then disclosed this information to a senior Israeli diplomat, Naor Gilon, and to Washington Post reporter Glenn Kessler. The depositions reveal that after being confronted by the FBI at his home, in what he described as a "very intense exchange of words" Rosen made a phone call to AIPAC's legal counsel, who was shaken by the news and asked Rosen to come immediately to the lobby's headquarters.

Rosen then called Rafi Barak, at the time the deputy chief of mission at Israel's Washington embassy. Rosen convinced Barak to cancel other appointments and meet immediately at a coffee shop. He described to the Israeli diplomat the encounter he had just had with the FBI and the allegations they made about Israelis receiving classified information. "I probably made some reference to Pollard," Rosen recalled, and Barak, according to the deposition "got very upset too."

AIPAC raises this episode in an attempt to prove that Rosen did not follow directly the instructions of the lobby's lawyer to come immediately to the office. This could demonstrate how Rosen did not live up to AIPAC's standards. But former AIPAC staffer and now liberal columnist M.J. Rosenberg sees more to it. According to Rosenberg, if Rosen proves that his operations, including going to a foreign official to warn him about the investigation, were all part of AIPAC's standard operating procedures, "that would mean that AIPAC is not a domestic lobbying organization at all, but something very, very different."

In a statement released by AIPAC from Dorton, the lobby said, "As is demonstrated in detail in the pleadings that AIPAC has filed, this is a frivolous lawsuit with no merit. ... Rosen's claims are wildly inaccurate, are undermined by Rosen's own admissions under oath in his deposition, and constitute a blatant attempt to detract attention from the true and relevant facts."

The next round in this battle is expected with Rosen's counter filing on December 2. Both sides can decide to settle the case outside the court before that, or at any phase before it reaches a jury trial.








Contact Nathan Guttman at [guttman@forward.com](mailto:guttman@forward.com)

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esthermiriam · [10 hours ago](#)

Hard to say what AIPAC principles might be, but probably there's a list somewhere of its principals.

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bill pearlmanhower · [54 minutes ago](#)

the next time AIPAC attacks J Street, this should be brought up as background info

Report  
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-1 Vote up Vote down



Ben · [41 minutes ago](#)


Sorry to report that it doesn't appear any of the information in this story is going to lead to the destruction of AIPAC, which is why the MJ Rosenberg quote is a tease for that apocalyptic crowd. When this entire admittedly ugly legal process is over, the most likely result is that settlements are reached, Rosenberg and his Girl Friday at Al Jazeera win another Virtual Pulitzer Prize, and J Street keep trying to assure everyone that they didn't fail violently during the midterm elections.

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# **EXHIBIT D**

# Forward.com

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## Rosen Remains Determined to Prove Trafficking in Secrets is Normal at AIPAC

By Nathan Guttman

Published December 02, 2010.

**WASHINGTON** — A key court filing in the legal battle between Steve Rosen and his former employers at the American Israel Public Affairs Committee has been postponed, but tensions still run high.

The powerful pro-Israel group's supporters, as well as its detractors, are bracing for the next round in what has become an all-out fight between Rosen — AIPAC's former policy director — and the organization's chiefs. The group fired Rosen and a colleague in 2005 after the Justice Department indicted them for receiving and passing along confidential information. The charges were dropped last year, but AIPAC said the employees had violated its own standards — possibly, it came out later, not just for their interactions with FBI informants, but for viewing pornography at the office.

Rosen responded to the firing with a \$20 million defamation suit, and the depositions and documents filed on both sides in this civil action have become a food fight of unsavory allegations.

"I was not cowed by the FBI's abuse of power, and I won't be bullied by Howard's abuse either," Rosen said in a November 22 statement he provided to the Forward, referring to AIPAC's executive director, Howard Kohr, who, according to Rosen, is responsible for the latest "orgy of destruction."

The next round of this battle is expected when Rosen files his motion in response to AIPAC. The filing, expected today, is now anticipated late this month.

Watching from the sidelines are AIPAC's critics, who are hoping the brawl will provide them with ammunition in their fight against the lobby's legitimacy as an American advocacy organization. But experts and Washington insiders think that when the dust settles, the Rosen-AIPAC-pornography scandal will not have any legal or political ramifications.

"Simply receiving classified information is a nonissue," said Steven Aftergood, director of the Federation of American Scientists' Project on Government Secrecy. Aftergood said he does not think federal action against the lobby is probable, even if Rosen's document shows that the lobby was aware of the practice of receiving classified information.

Supporters of the group also claim that although the disclosure in court filings could be seen as embarrassing to the lobby, it does not have any impact on AIPAC's standing as a leading political powerhouse.

"By any measure, AIPAC is stronger than ever — membership, fundraising, political influence — and no kind of small lawsuit with a former employee is going to affect that," said Josh Block, who served as the lobby's spokesman when Rosen and his colleague, Keith Weissman, were fired after being accused by the FBI of communicating classified information.

The issue at the core of the legal dispute between Rosen and AIPAC is not the accusations of viewing pornography on company computers, which have grabbed the headlines, but the question of whether the lobby knew and approved of the practice of receiving classified information. AIPAC has maintained that by accepting

classified information from Pentagon analyst Larry Franklin, Rosen and Weissman did not live up to the standards of the organization.

In his upcoming court filing, Rosen will attempt to prove that receiving secret information was the standard at AIPAC.

"AIPAC treated me brutally when trouble came. They threw me overboard and pretended I was some kind of lone wolf, when in fact Howard knew everything I did and condoned and demanded it," Rosen wrote in an e-mail to the Forward. "Now Howard and [AIPAC's managing director] Richard [Fishman] are making really bad decisions. It is time to make things right with me and Keith, but instead they are heaving buckets of slime, with no checks and balances."

Patrick Dorton, a spokesman for AIPAC, said in response that the lobby "strongly disagrees with Steve Rosen's version of events related to this litigation." Dorton stressed that it was Rosen's decision to sue, which he called "frivolous," that led AIPAC to file a motion in response. "As our motion demonstrates, Steve Rosen's claims in this matter are wildly inaccurate and are undermined by Mr. Rosen's own admissions under oath in his deposition," Dorton said.

Rosen, although stressing that he has "no desire to see AIPAC weakened," has promised to present to the FBI statements of employees, legal depositions and internal AIPAC documents demonstrating that receiving classified information was an acceptable practice.

One such piece could be a 1983 memo sent by Rosen to an AIPAC donor and to then executive director Tom Dine, in which he openly stated that he had gotten access to a highly classified administration document.

In its latest filing to the Superior Court of the District of Columbia, where Rosen's civil case is to be heard, AIPAC argued that it became aware that Rosen and Weissman had received classified information only after being presented with evidence by the FBI. If Rosen succeeds in proving that AIPAC directors approved of his actions, the entire lobby could be seen as allegedly being engaged in trafficking secret information.

"New information revealed by both sides in the *Rosen v. AIPAC* lawsuit underscores how AIPAC really operates," said Grant Smith, director of the Institute for Research: Middle Eastern Policy, a small not-for-profit organization that seeks to call the attention of the authorities to AIPAC's activity and demands scrutiny of the group's legal status.

But an outcome in which AIPAC finds itself in legal jeopardy because of the case is highly unlikely. The government has already dealt with the legal aspects of the leak and eventually decided to drop the case against Rosen and Weissman. Going after their bosses at the time would be inconsistent with the government's approach to the issue.

AIPAC can also choose at any time to settle the case with Rosen before more information is presented. Rosen has sued for \$20 million, but both sides in these kinds of civil suits often accept compromise settlements.

The pro-Israel lobby has been successful throughout the years in fighting off legal challenges both inside and outside the courtroom. AIPAC emerged untouched from the Rosen-Weissman espionage case, and has managed in the past to fend off repeated attempts by critics to get the Justice Department to categorize AIPAC as a foreign agent.

Last September, another challenge to AIPAC's legal status was put to rest when a federal judge ended a 20-year-old suit demanding that AIPAC register as a public action committee that endorses political candidates. The judge ruled that the lobby's work does not cross the boundaries set for advocacy on issues.

And November 22, the Institute for Research: Middle Eastern Policy filed a complaint with the IRS, asking to revoke the lobby's tax-exempt status.

AIPAC's political standing also appears to be sound despite the Rosen affair.

"Of course we talked about it and we joked about it. But that was it," said a congressional staffer who is frequently in touch with AIPAC lobbyists. The staff member, who spoke on condition of anonymity, said he did not see how the revelation that pornographic material is viewed at the AIPAC headquarters would impact the lobby's standing as a leading voice on issues relating to Israel. A former staff member added, "In any case, the tendency on Capitol Hill is to trend toward the AIPAC talking points, and that will not change." According to AIPAC's former executive director Morris Amitay, "People on the Hill look at it as a case of a disgruntled employee who is trying to make some money." Amitay, who now heads a pro-Israel PAC in Washington, said the affair will in no way "damage the respect AIPAC has on Capitol Hill or in the administration."

The lobby can also look to the recent case of the Republican National Committee, in which employees of the RNC got reimbursed for visiting a strip club. Though the story received wide media coverage for several days, politically it did not have any impact.

Contact Nathan Guttman at [guttman@forward.com](mailto:guttman@forward.com)

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# **EXHIBIT E**



**Wright, Allie M.**

---

**From:** Wright, Allie M.  
**Sent:** Friday, November 12, 2010 12:49  
**To:** 'dhshapiro@swickandshapiro.com'  
**Cc:** Ward, Denise A.; McCally, Thomas L.; Wright, Allie M.  
**Subject:** Re: Consent motion

David,

This looks fine, having viewed it on my blackberry. Please go ahead and file.

Regarding your opposition, I remind you of the protective order entered in this case. I expect that you and your client will abide by the order when filing your opposition and supporting documents. Any deposition testimony, documents, or exhibits that have been marked confidential under to the protective order that you plan to attach to your motion should be filed under seal with the court, and your opposition should be redacted accordingly and/or filed under seal.

I appreciate your cooperation and compliance with the protective Order. I will send you a written letter reiterating this.

Regards,  
-Allie

---

Allie Wright  
Carr Maloney P.C.  
2000 L Street, NW  
Suite 450  
Washington, D.C. 20036  
(202) 310-5525  
(202) 310-5555 (fax)

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**From:** David Shapiro <dhshapiro@swickandshapiro.com>  
**To:** Wright, Allie M.  
**Sent:** Fri Nov 12 12:33:33 2010  
**Subject:** Consent motion

Allie:

Here is the corrected version of the consent motion we just discussed by phone. It is a pdf file. As agreed, I will wait 15 minutes after sending it to you before I file it.

Thank you for your cooperation.

Very truly yours,

David H. Shapiro  
SWICK & SHAPIRO, P.C.  
1225 Eye Street, N.W.  
Suite 1290  
Washington, DC 20005  
Tel. 202-842-0300  
Fax 202-842-1418

# **EXHIBIT F**

## Wright, Allie M.

---

**From:** Wright, Allie M.  
**Sent:** Monday, November 15, 2010 18:55  
**To:** David Shapiro  
**Cc:** Wright, Allie M.; McCally, Thomas L.; Ward, Denise A.  
**Subject:** AIPAC/ROSEN

David,  
Per my email to you on Friday, Nov, 11, here is follow up correspondence.  
Regards,  
-Allie



11-15-10 Ltr to  
Shapiro re pro...

---

Allie M. Wright  
Carr Maloney P.C.  
2000 L Street, N.W.  
Suite 450  
Washington, DC 20036  
202-310-5500  
202-310-5555 (Fax)  
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(301) 424-7024

**Allie M. Wright**  
**(202) 310-5525**

Admitted in DC & MD  
E-mail: [AMW@carrmaloney.com](mailto:AMW@carrmaloney.com)

November 15, 2010

### VIA EMAIL & FACSIMILE

Mr. David Shapiro, Esq.  
1225 Eye Street, NW  
Suite 1290  
Washington, DC 20005  
[dhshapiro@swickandshapiro.com](mailto:dhshapiro@swickandshapiro.com)

RE: AIPAC/ROSEN  
Our File No.: 07309DC001

Dear Mr. Shapiro:

This letter reaffirms my communication to you on Friday November 12, 2010. Again, I remind you of your obligations under the protective order when filing your opposition and supporting documents. Any deposition testimony, documents, or exhibits that have been marked or designated confidential pursuant to the protective order filed as an exhibit or attachment to your motion, should be filed under seal and your opposition brief redacted accordingly.

We reserve the right to seek sanctions and/or damages for any breach of the protective order, including but not limited to, not properly filing confidential, privileged, or proprietary documents under seal, and/or leaking documents designated under the protective order to the press.

We appreciate your anticipated cooperation and compliance with the protective order.

Sincerely,



Allie M. Wright

# EXHIBIT G

## Carr Maloney P.C.

2000 L Street, NW  
Suite 450  
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FAX (202) 310-5555  
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**Thomas L. McCally**  
**(202) 310-5506**

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**Allie M. Wright**  
**(202) 310-5525**

Admitted in DC & MD  
E-mail: [AMW@carrmaloney.com](mailto:AMW@carrmaloney.com)

December 16, 2010

### **VIA EMAIL & FAX (202-842-1418)**

Mr. David Shapiro, Esq.  
1225 Eye Street, NW, Suite 1290  
Washington, DC 20005  
[dhshapiro@swickandshapiro.com](mailto:dhshapiro@swickandshapiro.com)

RE: AIPAC/ROSEN  
Our File No.: 07309DC001

Dear Mr. Shapiro:

Various documents and exhibits filed with your Memorandum of Points and Authorities in Opposition to Defendants' Motion for Summary Judgment are in violation of the Protective Order entered on April 30, 2010.

Your Client Steven Rosen violated the AIPAC employee handbook by improperly taking confidential, privileged, and proprietary documents belonging to AIPAC. The return of those documents was requested verbally at numerous depositions and by letter dated May 14, 2010.<sup>1</sup> To date neither you nor your Client have returned any of the AIPAC documents.

The parties entered into a protective order to govern the disclosure and handling of confidential, privileged, and proprietary information disclosed in this litigation and your latest pleading is in violation of that Protective Order. Throughout discovery and at depositions, Defendants designated various documents attached to your Opposition memorandum as

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<sup>1</sup> See May 14, 2010 Letter to David Shapiro.

David Shapiro, Esq.  
December 16, 2010  
Page 2 of 2

Confidential pursuant to the Protective Order, and Plaintiff never challenged the designations. This means the designation is in effect.

Pursuant to paragraph 10 of the Protective Order, any party filing confidential information as part of a motion shall file the document or paper *under seal*. You and your Client have violated this provision by intentionally filing documents and information marked confidential without placing them under seal, and by leaking documents designated under the protective order to the press. You and your Client have violated the Protective Order despite repeated communications from our Firm requesting your compliance, reiterating the expectation that you and your Client would abide by court rules and the Protective Order when filing your opposition and supporting documents.<sup>2</sup> You chose, however, to disregard Ms. Wright's communications and not respond.

It is clear from the inclusion of the materials covered by the Protective Order that your Client's intention is solely to try this case in the press and not in a court of law. Your willful and deliberate violation of the Protective Order, and unwillingness to abide by court rules, demonstrates your lack of respect for basic legal principles, court authority, and the doctrine of attorney-client privilege.

Accordingly, Defendants will be filing a motion seeking sanctions.

Sincerely,



Thomas L. McCally



Allie M. Wright

Enclosures

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<sup>2</sup> See November 12, 2010, and November 15, 2010 emails from Ms. Allie Wright to David Shapiro.

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**Thomas L. McCally**  
**(202) 310-5506**  
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May 14, 2010

### VIA EMAIL & US MAIL

Mr. David Shapiro, Esq.  
1225 Eye Street, NW  
Suite 1290  
Washington, DC 20005  
[dhshapiro@swickandshapiro.com](mailto:dhshapiro@swickandshapiro.com)

RE: AIPAC/ROSEN  
Our File No.: 07309DC001

Dear Mr. Shapiro:

Through your client's document production it is apparent that your client, Steven Rosen, has violated AIPAC's employee handbook by being in possession of confidential, privileged, and proprietary documents that belong to AIPAC. As put on the record at the deposition of Richard Fishman, AIPAC previously requested the return of all AIPAC proprietary and confidential documents, and destruction of any copies. Please accept this letter as AIPAC's demand that Mr. Rosen return all copies of any documents he surreptitiously and improperly took from AIPAC after his termination in violation of the employee handbook.

Specifically, Mr. Rosen has violated the confidentiality and tangible property provisions of the handbook, which state in pertinent part:

#### **CONFIDENTIAL INFORMATION**

An employee shall not, either during the term of his/her employment or any time thereafter, disclose to any person, corporation or other entity any confidential information learned by the employee as a result of his or her employment by AIPAC. The term "confidential information" includes, but is not limited to: a) the names and addresses of members or contributors to AIPAC; b) non-public information relating to any activity of



AIPAC; c) non-public information relating to any officer, director, employee, or member of AIPAC or any contributor to AIPAC; d) non-public information relating to any program or contemplated program of AIPAC; or e) any documents or information which contain or are derived from confidential information concerning AIPAC, its members or its activities.

Page 40.

#### **AIPAC TANGIBLE PROPERTY**

Employees are expected to exercise care in the use of AIPAC's property and to use such property only for authorized purposes. Negligence in the care and use of AIPAC's property or unauthorized removal of AIPAC's property from the premises or its conversion to personal use will be considered cause for suspension and/or dismissal.

Upon termination of employment with AIPAC for any reason, or when the employee's department head/regional director or a designated representative otherwise requests its return, employees are required to immediately return to AIPAC all documents, property (including computers), or materials of any nature which are in the employee's possession or control which he/she obtained from AIPAC or compiled or produced for AIPAC during the employee's employment and any and all copies thereof.

Page 42.

This demand for the return of AIPAC materials and information includes but is not limited to:

1. AIPAC Benefits and Personnel Policies (1990), produced as document 12.
2. AIPAC's Bylaws, produced as document 14.
3. AIPAC Benefits and Personnel Policies (2000), produced as document 24.
4. Memorandum re: Lunch with Lisa Johnson of NSC, produced as document 26.
5. Memorandum re: Impact of the Bipartisan Campaign Reform Act of 2002 "BRCA" on Contribution Limits for Individual Contributors, produced as document 27.
6. Memorandum re: Political Activities of AIPAC Members, produced as document 28.
7. Employee Performance Review -Keith Weissman, produced as document 46.

Mr. Rosen's possession of the above-mentioned documents, as well as any others he misappropriated from AIPAC, are a blatant violation of the AIPAC policies contained in the AIPAC handbook. As an employee for over twenty-three (23) years, Mr. Rosen knew or should have known that taking these documents was inappropriate conduct. Most offensive is that Mr. Rosen has stolen the private employment evaluation of another employee and produced it in this litigation with no regard for that employee's privacy and personal information.

Please note AIPAC retains all rights as outlined in the handbook to seek redress and

David Shapiro, Esq.  
May 14, 2010  
Page 3 of 3

damages for violations of this policy. All documents, including originals and copies thereof, are to be returned to AIPAC within ten (10) business days of receipt of this letter. You may direct them to my attention at the Washington, D.C. Carr Maloney offices.

We trust you will act promptly and give proper attention to remedying this serious violation of AIPAC's trust and confidence in a former employee.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. McCally', written in a cursive style.

Thomas L. McCally

**Wright, Allie M.**

---

**From:** Wright, Allie M.  
**Sent:** Friday, November 12, 2010 12:49  
**To:** 'dhshapiro@swickandshapiro.com'  
**Cc:** Ward, Denise A.; McCally, Thomas L.; Wright, Allie M.  
**Subject:** Re: Consent motion

David,

This looks fine, having viewed it on my blackberry. Please go ahead and file.

Regarding your opposition, I remind you of the protective order entered in this case. I expect that you and your client will abide by the order when filing your opposition and supporting documents. Any deposition testimony, documents, or exhibits that have been marked confidential under to the protective order that you plan to attach to your motion should be filed under seal with the court, and your opposition should be redacted accordingly and/or filed under seal.

I appreciate your cooperation and compliance with the protective Order. I will send you a written letter reiterating this.  
Regards,  
-Allie

---

Allie Wright  
Carr Maloney P.C.  
2000 L Street, NW  
Suite 450  
Washington, D.C. 20036  
(202) 310-5525  
(202) 310-5555 (fax)

This message is intended for the individual(s) or entity(ies) named in the header that appears either at the beginning or at the conclusion of all material in this message (depending on your email software). This message may contain material that is privileged or confidential. If you are not the intended recipient, please do not read, copy, use or disclose this communication to others; also please notify the sender by replying to this message, and then delete it from your system. Thank you.

---

**From:** David Shapiro <dhshapiro@swickandshapiro.com>  
**To:** Wright, Allie M.  
**Sent:** Fri Nov 12 12:33:33 2010  
**Subject:** Consent motion

Allie:

Here is the corrected version of the consent motion we just discussed by phone. It is a pdf file. As agreed, I will wait 15 minutes after sending it to you before I file it.

Thank you for your cooperation.

Very truly yours,

David H. Shapiro  
SWICK & SHAPIRO, P.C.  
1225 Eye Street, N.W.  
Suite 1290  
Washington, DC 20005  
Tel. 202-842-0300  
Fax 202-842-1418

## Wright, Allie M.

---

**From:** Wright, Allie M.  
**Sent:** Monday, November 15, 2010 18:55  
**To:** David Shapiro  
**Cc:** Wright, Allie M.; McCally, Thomas L.; Ward, Denise A.  
**Subject:** AIPAC/ROSEN

David,  
Per my email to you on Friday, Nov, 11, here is follow up correspondence.  
Regards,  
-Allie



11-15-10 Ltr to  
Shapiro re pro...

---

Allie M. Wright  
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**Offices in Washington, DC | Maryland | Virginia**

**Please note our new Washington, DC address above, effective November 8, 2010. The phone and fax numbers remain the same.**

This message is intended for the individual(s) or entity(ies) named in the header that appears either at the beginning or at the conclusion of all material in this message (depending on your e-mail software). This message may contain material that is privileged or confidential. If you are not the intended recipient, please do not read, copy, use or disclose this communication to others; also please notify the sender by replying to this message, and then delete it from your system. Thank you

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November 15, 2010

### VIA EMAIL & FACSIMILE

Mr. David Shapiro, Esq.  
1225 Eye Street, NW  
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[dhshapiro@swickandshapiro.com](mailto:dhshapiro@swickandshapiro.com)

RE: AIPAC/ROSEN  
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We appreciate your anticipated cooperation and compliance with the protective order.

Sincerely,



Allie M. Wright