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## The trial of American Jewry

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Keith Weissman

Whether it realizes it or not American Jewry today stands before a precipice. It can force its way back onto stable ground or it can fall. The chasm before which American Jewry now finds itself relates to the basic question of whether Jews in America have found a permanent stable home in America where they are free to be Jewish or whether in the words of former AIPAC executive director Neal Sher they will begin to act "as though they are guests in their own country."

The recent conviction of former Pentagon analyst Larry Franklin on felony charges of mishandling classified US government information and the passing of classified information to two former senior AIPAC lobbyists Steven Rosen and Keith Weissman is the proximate cause of the current crisis. Rosen and Weissman are scheduled to be tried for misusing classified government information that Franklin purportedly transferred to them in April.<sup>[1]</sup>

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<sup>1</sup> [U.S. v. Franklin et al (Lawrence A. Franklin, Steven J. Rosen, Keith Weissman), 05-mj-00309-BRP, 05-cr-00225-TSE (ED VA) (Judge Thomas S. Ellis, III).]

Franklin who was sentenced two weeks ago to 12 years and seven months in prison for his actions is scheduled to begin serving his sentence only after he testifies against Rosen and Weissman. If his testimony is helpful to the prosecution in that case his sentence will likely be reduced.

THE CHARGES both in the case of Franklin and in the case of Rosen and Weissman are unprecedented. After initial charges of transferring classified government documents to unauthorized persons were dropped Franklin was convicted for keeping classified government documents at his home.

To understand the extraordinary nature of the US Justice Department's decision to prosecute Franklin it should be recalled that in the summer of 2004 at the same time that the Franklin case first became public Sandy Berger who served as National Security Adviser to former president Bill Clinton was charged with removing highly classified documents from the National Archives by hiding those documents in his suit pockets briefcase and socks. During his investigation Berger admitted to having destroyed some of those documents which related to the investigation of the September 11 attacks that was being conducted at that time by the 9/11 Commission.

In that event Berger was charged with the misdemeanor offense of unauthorized removal and retention of classified material. A court found him guilty and slapped a \$ 50 0 fine on his wrist. Former CIA Director John Deutsch was similarly charged with a misdemeanor offense for having taken classified materials home with him after he left the CIA. Deutsch was pardoned for the act by Clinton in the final hours of his presidency.

IN FRANKLIN'S case as in the cases of Weissman and Rosen Justice Department prosecutors decided to indict the men under clauses of the Espionage Act - a law which has never previously been invoked. As Harvard Law Professor Allan **Dershowitz** notes it is not even clear if the statute so long ignored actually remains law. In his words It is a well-established norm in the US that when a law is not enforced for many years it ceases to be considered law.

The decision to prosecute Franklin, Rosen and Weissman under the articles of the Espionage Act **Dershowitz** attests is the worst case of **selective prosecution** I have seen in 42 years of legal practice. He argues: "If every administration official who did what Franklin did - leak classified information to an ally for the purpose of influencing domestic American policy - were prosecuted as he has been there would be more government officials in prison than at the State Department the Defense Department or the White House."

Rosen and Weissman have been indicted for making unauthorized use of classified information. Given that the two men had no security clearances did not work for the US government and had signed no oath to protect classified government information from unauthorized use the decision to prosecute them places every journalist think tank scholar and lobbyist in Washington DC - all of whom trade daily in classified information as an accepted currency in the US capital - at risk of similar prosecution.

FROM THE background included in the three men's indictments it is clear that Franklin was an inadvertent victim in a larger FBI probe of the senior AIPAC officials. Apparently Franklin who had tried to draft the two men to assist him in convincing the Bush administration to take the threat of the Iranian nuclear weapons program more seriously walked straight into an FBI dragnet. For rea-

sons that remain unknown the FBI had been trailing Rosen AIPAC's senior policy guru for five years.

Once he was observed meeting with Rosen and Weissman Franklin was apparently compelled by the FBI to act as its agent in a sting operation its agents orchestrated in order to prosecute Rosen and Weissman. Franklin was wired and sent to meet with the two AIPAC lobbyists armed with fabricated "classified" information relating to an apparent imminent threat to the lives of Mossad agents operating in Iraqi Kurdistan. At the behest of his FBI handlers he urged the two men to inform the Israeli embassy of the situation. That is although the men were subject to an ongoing FBI probe the only reason they were caught technically breaking the law is because the FBI itself placed them in a situation where they felt that those lives were at stake.

It is unclear why the FBI decided to go after AIPAC officials. As Malcolm Hoenlein the executive vice president of the Conference of Presidents of Major Jewish Organizations stated last week that two patriotic American citizens who are working for Jewish organizations who did nothing to violate American security should have to stand trial and be subject to the public scrutiny and public humiliation frankly I find very disturbing and a matter that we all have to look at in a much more serious way.

DISTRESSINGLY rather than stand by its employees AIPAC has led the charge in publicly humiliating them. After firing them from the organization last year its spokesman announced: "AIPAC dismissed Rosen and Weissman because they engaged in conduct that was not part of their jobs and because this conduct did not comport in any way with standards that AIPAC expects of its employees... AIPAC could not condone or tolerate the conduct of the two employees under any circumstances."

Similarly contrary to earlier pledges AIPAC has ceased to pay the legal fees of the two men's defense which are already running over a million dollars. Recent reports indicate that AIPAC was negotiating with the men's lawyers regarding future payments. But those talks failed due to AIPAC's insistence that Rosen and Weissman commit themselves not to file damage suits against the organization.

Even more disturbingly as Sher noted in an open letter to AIPAC large excerpts of which were published in New York's Jewish Week in an apparent attempt to distance itself from any actions that might displease the FBI and the Bush administration AIPAC has curtailed its lobbying efforts on Israel's behalf.

Sher notes that AIPAC has refused to involve itself in lobbying for Congressional approval of the Saudi Arabia Accountability Act placed before Congress last year.

If it were to become law the act would compel the US government to force Saudi Arabia to cease its active support for terrorism. Given the Saudi government's leading role in both indoctrinating Muslims to the cause of jihad against the US and its leading role in financing Hamas there can be no doubt that supporting such a bill which the Bush administration opposes should be AIPAC's clear responsibility. From Sher's perspective AIPAC's refusal to involve itself in lobbying for the passage of the bill is evidence that "Having given in on Rosen and Weissman AIPAC has sent clear signals that it is willing to preserve 'access' at the expense of influence."

If AIPAC thought that by cutting Rosen and Weissman loose it would be able to dissociate itself from them it has already been proven wrong. The Jerusalem Post reported this week that the FBI has renewed its questioning of several Jewish leaders and former AIPAC officials in the wake of the Franklin conviction.

IT IS unclear what motivated the FBI to pursue the AIPAC officials. What is clear enough however is that effect of the prosecution has not only weakened AIPAC but has made all American Jews who lobby the US Congress and executive branch on behalf of Israel the objects of suspicion and has empowered the anti-Semitic forces in the US government who insist that all Jewish activists are somehow stained with questionable patriotism.

If the American Jewish community wishes to mitigate the damage this episode has already done to its good name and reputation it must unify behind Rosen and Weissman and insist that the charges against them be dropped. And if AIPAC wishes to continue to be viewed as the main American Jewish lobbying organization in the US capital it should be advised by its members and by its colleagues to lead the charge.

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