

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GRANT F. SMITH

Plaintiff,

v.

Civil Action No. 14-01611 (TSC)

DEPARTMENT OF DEFENSE

Defendant.

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR EXTENSION
OF TIME TO FILE**

COME NOW the Plaintiff hereby responds in opposition to Defendants Motion filed November 19 for an Extension of Time to Respond to Complaint entered by Laura Jennings via an exhibit of Mark H. Herrington's affidavit. In opposition thereto, the Plaintiff submits the following:

1. Local Rule 83.6 (LCvR83.6) governs the entry and withdrawal of appearances by attorneys in civil actions.¹ LCvR83.6 states "An attorney eligible to appear may enter an appearance in a civil action by signing any pleading described in Rule 7(a), Federal Rules of Civil Procedure, or by filing a written notice of entry of an appearance listing the attorney's correct address, telephone number and bar identification number."

2. Rule 7(a) of the Federal Rules of Civil Procedure states "Rule 7. Pleadings Allowed; Form of Motions and Other Papers, (a) Pleadings. Only these pleadings are allowed: (1) a

¹ <http://www.dcd.uscourts.gov/dcd/sites/dcd/files/LocalRules2014.pdf>

complaint; (2) an answer to a complaint;"

3. The Defendant has filed neither an "answer to a complaint" (7 a.) nor has it entered an appearance of an additional attorney to represent the Department of Defense. (CvR83.6) Rather than meet its court-ordered obligation to respond by November 19, 2014, the Defendant has instead filed an affidavit which makes a number of unfounded assertions dealt with below as a response to the "Defendant Affidavit."

4. Without having clearly established his authorization to act on behalf of the DoD on this particular case, in the Defendant Affidavit Mark H. Herrington claims "personal knowledge" upon his "review of information available to me in my official capacity. Specifically, I am the OGC counsel assigned to the case Oleskey v. U.S. Department of Defense, No. 05-10735-RGS." Oleskey v. DoD is unrelated to this case. Rather, it is litigation over a Freedom of Information Act request seeking information on the conditions of Guantanamo Bay detainees. It was filed on April 13, 2005 after the DoD refused to release "a single responsive record" to Plaintiffs. Mark H. Herrington's status as OGC counsel to Olesky v. U.S. Department of Defense, No. 05-10735-RGS, even if it were relevant, which it is not, is unverifiable to the Plaintiff. Mark H. Herrington appears on the docket as an ex parte affidavit, filed under seal on June 28, 2012, prohibiting any closer review of his claimed status via PACER (See Exhibit 1). It is, however, worthwhile to note that the plaintiff in that case filed a motion for *in camera* review of key documents even before the government's filing of a Vaughn index, which the court then granted.²

² http://www.gpo.gov/fdsys/pkg/USCOURTS-mad-1_05-cv-10735/pdf/USCOURTS-mad-1_05-cv-10735-5.pdf

5. Even taking the Defendant Affidavit as a bona fide compliant response to the court, which it is not, the Defendant Affidavit assertions are confusing, spurious and requests of the court based upon them should be denied. The Defendant Affidavit asserts in point #4 "Plaintiff requested a report from DoD, which has been identified as a 1987 report titled 'Critical Technology Assessment in Israel and NATO Nations.'" That is the first time the Plaintiff has seen the report referred to by that title. A Google search using that term yields a single reference on page 321 of the book "Politics and Strategy of Nuclear Weapons in the Middle East: Opacity, Theory, and Reality" by Shlomo Aronson. It attributes the report as a source for information that an American supplied nuclear research reactor at Soreq (provided under the "Atoms for Peace" program) in addition to foreign-purchased supercomputers, were being used in violation of the U.S. Arms Export Controls Act for nuclear weapons production. (See Exhibit 2) If the report cited by the Herrington affidavit can be confirmed as authored by Edwin Townsley and Clarence Robinson, the Plaintiff might assume it is the one sought.

6. The Defendant Affidavit falsely asserts "the document must indeed be withheld, at least in part" citing "Specifically, 10 U.S. C. § 130c allows for the withholding of certain sensitive information of foreign government and international organizations." That is not necessarily so. 10 U.S. C. § 130c has many limitations on withholding information, specifically "if a request for disclosure covers any sensitive information of a foreign government (as described in subsection (b)) that came into the possession or under the control of the United States Government before October 30, 2000 and more than 25 years before the request is received by an agency...." in addition to citing other conditions that must be met to deny.

7. "Critical Technology Assessment in Israel and NATO Nations" came into possession or control of the United States Government before October of the year 2000 and 25 years before the Plaintiff FOIA request.

8. In a novel new twist, the Defendant Affidavit further states "the foreword of the requested report notes that non-disclosure agreements were signed by the researchers stating 'that the information received was for U.S. Government use only and would not be disclosed to U.S. industry or others."

9. The Department of Defense has already had nearly three years (1,050 days) since the original FOIA was submitted to conduct a bona-fide release review. It is telling that not until November 19, 2014 has any assertion of the existence of protective NDA's been made. It is the Plaintiff's observation that NDA's are the event horizon of a Freedom of Information Act black hole into which many government agencies and some contractors have decided to insert information that should be in the public domain. Top law firms are holding clinics on how to use NDA's to deny public access files revealing how government functions. Public interest watchdogs are fighting them.

10. The question of whether nondisclosure agreements (NDAs) supersede state and federal open government laws, or can be proactively deployed to cover up illegal activities is extremely dubious and even more subject to challenge. Police in the city of Tucson assert they can intercept wholesale citizen cell phone traffic data through the use of "stingray" and "dirtbox" cell tower mimicking equipment provided by the Harris Corporation without public disclosure due to the mere existence of a proprietary NDA. Members of the public who have had signals intercepted, reporters filing FOIAs and the American Civil Liberties Union suing

over FOIA denials all vehemently disagree. (See *Beau Hodai vs The City of Tucson*³)

11. The Plaintiff vehemently disagrees with the idea in this case that massive illegal activity discovered a quarter century ago can so easily be covered up by governments, individuals or corporations through purported existence of NDAs. A quarter century ago the Department of Defense clearly documented that Israel had a clandestine nuclear weapons program. Under the Symington and Glenn Amendments to the US Foreign Aid Act, at that very moment the United States was obligated by law to cut off all foreign aid to Israel. Instead, another \$82 billion in foreign aid was provided to Israel by unwitting U.S. taxpayers. The public's right to know the inside details of such massive ongoing government corruption enabled by ongoing cover-up far outweigh the protections of any NDA, even more so considering the signatories in this case.

12. The Defendant Affidavit assertion that NDA's signed by "the researchers" is of any great weight should be viewed with heavy skepticism. "The researchers" presumably refer to the study authors, Edwin Townsley and Clarence Robinson, and their employer, the Institute for Defense Analyses (IDA). The IDA is a think tank almost wholly funded by the Department of Defense. According to its 2012 IRS form 990, the "IDA conducts Research and Development activities for the Department of Defense and other federal departments and agencies. The IDA Studies and analyses Center assists the Office of the Secretary of Defense, the Joint Staff, the Combatant Commands and Defense Agencies." In other words, the IDA is a captive, taxpayer-funded think tank with even less claim to commercial intellectual property protective NDA's than an actual eavesdropping technology vendor like Harris Corp.

³ <http://sdnyblog.com/wp-content/uploads/2013/09/2013.09.12-12-Civ.-0315-Summary-Judgment-Ruling.pdf>

13. The Defendant Affidavit asserts that "DoD needs additional time to conduct a line by line review [of] the document with the assistance of the proper office to determine whether any of the 386-page report is not implicated by these non-disclosure agreements and can therefore be released. DoD also needs time to determine whether, if portions of the report can be segregated, any of those on-implicated sections of the report must be withheld for other reasons." The Defendant is clearly shopping around for novel means to keep secret an unclassified document that reveals massive U.S. government corruption. If spurious claims of NDA's do not suffice, the Defendant Affidavit asserts that it will then see what other novel tactics will keep the information bottled up, perhaps for a decade or more like the technicalities currently keeping *Olesky v. U.S. Department of Defense*, No. 05-10735-RGS in court at taxpayer expense.

14. The Defendant Affidavit requests until December 19, 2014 to make "a final determination regarding whether any of the report can be released." This never-ending incremental stalling and failure to abide by court rulings and procedure is irreparably harming the Plaintiff and the public he serves.

15. As stated previously, the Plaintiff intended to publish public interest research on the November 24, 2014 international deadline over the Iranian nuclear program about why the U.S. continually violates its own laws regarding the only existing nuclear program in the Middle East. The Plaintiff has filed this lawsuit and pursues it at considerable expense in hopes of meeting that deadline with new information of great benefit to American stakeholders.

16. The Plaintiff, in his ongoing role as a public interest researcher, is also providing assistance via information on related litigation and potential pending criminal prosecutions

over allegations of espionage by one of the subjects of the report, namely Technion (See Exhibits 3 and 4). The Plaintiff is also irreparably harmed by DoD's ongoing failure to comply with administrative FOIA rules and court regulations in this work as well.

17. Therefore, the Plaintiff once again respectfully requests that the Court obtain a copy of the unclassified report either from the DoD or directly from IDA library to conduct an *in camera* review, and release the report to the Plaintiff. This approach would apparently entail a 383-page document review by the Judge. If the Defendant feels strongly that think-tank NDA's have any merit whatsoever, these NDA's can be submitted for review along with the report in question. The Plaintiff suggests as an expediency measure that the Defendant bring a copy of the report and any NDA's to the November 21, 2014 11:00 AM courtroom meeting for immediate submission. Only this will ultimately protect the American taxpayer from the expense of further Defendant intransigence and litigation expense while providing them with valuable information they long ago paid to produce to inform pressing current public policy debates. It could also help curb espionage and other real current threats to U.S. national security which are enabled by ongoing cover-ups of past wrong-doing.

WHEREFORE, Plaintiff requests this Court:

- (1) Declare the Defendant out of compliance with LCvR83.6
- (2) Declare that the Defendant has failed to meet the November 19 response deadline;
- (3) Obtain a copy of "Current Technology Issues in Israel" for *in camera* review;
- (4) Obtain copies of any relevant NDAs for *in camera* review, if warranted;
- (5) Release "Current Technology Issues in Israel" to the Plaintiff to fulfill his pressing public interest research mandates.

Respectfully submitted,



Grant F. Smith, *Pro Se*
gsmith@IRmep.org
(202) 640-3709

Dated: November 20, 2014

Exhibit List

Exhibit 1: PACER copy of Court Docket for Olesky v. U.S. Department of Defense, No. 05-10735-RGS downloaded on November 20, 2014

Exhibit 2: Excerpt from the book "'Politics and Strategy of Nuclear Weapons in the Middle East: Opacity, Theory, and Reality" by Shlomo Aronson, page 321

Exhibit 3: Complaint filing with the US Attorney for Los Angeles regarding allegations of unprosecuted espionage at the UCLA Jet Propulsion Lab on November 21, 2014

Exhibit 4: Antiwar.Com article "Espionage Allegations Intensify Battle for Technion Nuke File: Is the Justice Department Obstructing Justice?" November 21, 2014

Exhibit 1

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:05-cv-10735-RGS**

Oleskey v. United States Department of Defense et al
Assigned to: Judge Richard G. Stearns
Cause: 05:552 Right to Privacy Act

Date Filed: 04/13/2005
Date Terminated: 01/09/2013
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

Stephen H. Oleskey

*on behalf of Guantanamo Internees
Lakhdar Boumediene, Mohamed Nechla,
Mustafa Ait Idir, Saber Lahmar, Hadj
Boudella, and Belkacem Bensay Ah*

represented by **Robert C. Kirsch**

Wilmer Hale LLP
60 State Street
Boston, MA 02109
617-526-6000
Fax: 617-526-5000
Email: robert.kirsch@wilmerhale.com
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Christopher L. Morgan

Wilmer Cutler Pickering Hale and Dorr
LLP (Bos)
60 State Street
Boston, MA 02109
617-526-6785
Fax: 617-526-5000
Email:
christopher.morgan@wilmerhale.com
ATTORNEY TO BE NOTICED

Daniel Hartnett Norland

Wilmer Cutler Pickering Hale & Dorr
LLP
60 State St
Boston, MA 02109
617-526-6000
Email: dan.norland@wilmerhale.com
TERMINATED: 09/13/2010

Lauren G. Brunswick

Wilmer Hale LLP
60 State Street
Boston, MA 02109

617-526-6000
Fax: 617-526-5000
Email:
Lauren.Brunswick@wilmerhale.com
TERMINATED: 04/22/2010

Lynne C. Soutter
Wilmer Cutler Pickering Hale and Dorr
LLP
60 State St.
Boston, MA 02109
617-526-6000
Fax: 617-526-5000
Email: Lynne.Soutter@wilmerhale.com
TERMINATED: 05/05/2010

Melissa A. Hoffer
Attorney General's Office
18th Floor
One Ashburton Place
Boston, MA 02108
617-963-2322
Email: melissa.hoffer@state.ma.us
TERMINATED: 10/07/2009

Zaid A. Zaid
Wilmer Cutler Pickering Hale and Dorr
LLP
1875 Pennsylvania Ave., N.W.
Washington, DC 20006
202-663-6674
Email: zaid.zaid@wilmerhale.com
TERMINATED: 01/10/2014
PRO HAC VICE

V.

Defendant

United States Department of Defense

represented by **Mark T. Quinlivan**
United States Attorney's Office MA
Suite 9200
1 Courthouse Way
Boston, MA 02210
617-748-3606
Fax: 617-748-3969
Email: mark.quinlivan@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

05/30/2012	110	Judge Richard G. Stearns: SEALED EX PARTE ORDER entered. re 109 SEALED MOTION filed by United States Department of Defense hand delivered to AUSA Quinlivan 5/30/12(Flaherty, Elaine) (Entered: 05/30/2012)
06/28/2012	111	SEALED EX PARTE Department of Defense's Response to Court's Sealing Order of 5/8/12, and Statement Regarding Sealing, FILED UNDER SEAL. (Flaherty, Elaine) (Entered: 06/29/2012)
06/28/2012	112	SEALED EX PARTE Affidavit of Mark H. Herrington, FILED UNDER SEAL. (Flaherty, Elaine) (Entered: 06/29/2012)
07/03/2012		ELECTRONIC NOTICE Setting Ex parte Hearing with Department of Defense on its ex parte response to court. Ex parte hearing set for 7/6/2012 - 4:00 PM in Courtroom 21 before Judge Richard G. Stearns to seek clarification regarding classification of certain documents submitted for in camera review. While uncomfortable with the use of ex parte proceedings, as it may appear to be contrary to the fundamental nature of the adversary process, however, this court believes, as did the court in <i>Arieff v. U.S. Dep't of the Navy</i> , 712 F.2d 1462, 1469 (D.C. Cir. 1983) and <i>Patterson by Patterson v. F.B.I.</i> , 893 F.2d 595 (3d Cir. 1990), that an ex parte proceeding is necessary "to determine whether the documents were privileged without destroying the very privilege that the Court was charged with protecting, if applicable." <i>Pack v. Beyer</i> , 157 F.R.D. 226, 230 (D.N.J. 1994). The court will ensure that a full record is kept of the proceeding as "an essential safeguard to protect Plaintiffs' interests." See <i>United States v. Southard</i> , 700 F.2d 1 (1st Cir. 1983). (Zierk, Marsha) (Entered: 07/03/2012)
07/05/2012	113	Objection by Stephen H. Oleskey to <i>Conduct of Ex Parte Proceedings and Request for Leave to Participate in Hearing</i> . (Morgan, Christopher) (Entered: 07/05/2012)
07/06/2012		Judge Richard G. Stearns: ELECTRONIC ORDER entered. Plaintiff's objection is noted, but the request is DENIED. The purpose of the hearing is to seek clarification on a procedural issue only involving the extent to which the government is agreeing to the unsealing of certain matters. There will be no discussion of the contents of any documents. Therefore the court has no need of counsel's assistance.(Zierk, Marsha) (Entered: 07/06/2012)
07/06/2012	114	Judge Richard G. Stearns: ORDER entered lifting seal on certain court Orders and documents. (Zierk, Marsha) (Entered: 07/06/2012)
07/06/2012	115	Judge Richard G. Stearns: Lobby Conference transcript entered. (Zierk, Marsha) (Entered: 07/06/2012)
07/06/2012		ELECTRONIC Clerk's Notes for proceedings held before Judge Richard G. Stearns: Status Conference held on 7/6/2012. See docket entry 115 . (Court Reporter: James Gibbons at jmsgibbons@yahoo.com .) (Attorneys present: AUSA Quinlivan) (Seelye, Terri) (Entered: 07/09/2012)
07/16/2012	116	Consent MOTION for Leave to File <i>Response to the Court's May 8, 2012 Sealed Order and Department of Defense's June 28, 2012 Response</i> by Stephen H. Oleskey.(Morgan, Christopher) (Entered: 07/16/2012)
07/17/2012		Judge Richard G. Stearns: ELECTRONIC ORDER entered granting 116 Motion for Leave to File Document: Plaintiff's response to the May 8 Order, and the

Exhibit 2

Times, September 16, 1989; *IISS Annual Report*, October 6, 1989; and the CIA-originated NBC stories on Israeli-South African missile cooperation, broadcast late in October 1989. For more updated versions, see Leonard S. Spector, *Nuclear Ambitions: The Spread of Nuclear Weapons 1989-1990* (Boulder, Colo.: Westview Press, 1990), p. 20, and pp. 161-64, and Seth Carus, *Ballistic Missiles in the Third World* (Washington, D.C.: Georgetown University Center for Strategic Studies, 1990), pp. 20, 32, 46.

13. See Pean, *Les Deux Bombes*, p. 143.

14. The memoranda, dated March 13 and 14, 1964, was titled "Tanks for Israel." Archival source: LBJ Library, NSC File, McGeorge Bundy, container 1, item 33c.

15. Regarding earlier estimates of Israel's nuclear and missile capabilities, see Peter Pry's *Israel's Nuclear Arsenal* (Boulder, Colo., and London: Westview and Croom Helm, 1984); Pry not only minimized both Israel's nuclear and missile capabilities, compared to other foreign analysts, but he also accused the Israeli government of having misused a fully safeguarded, small American research reactor at Nahal Soreq for bomb production. Similar accusations were repeated in April 1987 in a document entitled "Critical Technology Assessment in Israel and NATO Nations," prepared by the Institute of Defense Analyses in Alexandria, Virginia, which was publicly quoted in late October 1989 in connection with the South African story, a controversy related to selling supercomputers to Israel.

16. Simcha Flapan, "Nuclear Disarmament in the Middle East—the Only Solution," in *Humanity under the Shadow of the Bomb*, edited by Avner Cohen, pp. 194-204.

Exhibit 3

IRmep
Calvert Station
P.O. Box 32041
Washington, DC 20007

<http://www.irmep.org>
info@irmep.org
Phone: 202-342-7325



Sent 11/19/2014 - Fax and USPS

Robert Dugdale, Assistant U.S. Attorney
The United States Attorney's Office
Central District of CA - Criminal Div.
312 North Spring ST
Los Angeles, CA 90012

FAX: (213) 894-0141

RE: Swift extradition and criminal prosecution of Amir Gat for documented violations of 22 U.S.C. 2778
Arms Export Control Act

Dear Robert Dugdale,

On behalf of the IRmep community and stakeholders across the United States, I urge you to uphold your oath of office and prosecute Israeli scientist Amir Gat for violations of the above-referenced statute. According to information made public in a civil suit filed on November 13, 2014 in the Superior Court of the State of California for the County of Los Angeles:¹

1. Dr. Amir Gat, an Israeli national executed a Technology Control Plan (TCP) under the International Traffic in Arms Regulations (ITAR) registration in order to participate in the U.S. taxpayer-funded JPL Electro Spray Project at UCLA. The TCP obligates signers not to disclose ITAR restricted technical data to foreign persons or countries without prior approval from the U.S. State Department. Failure to comply triggers criminal fines and penalties.
2. Gat "stored project-related files and technical information on his personal laptop, rather than on his safeguarded office computer, in violation of the TCP and ITAR."
3. On May 25, 2010, a virus attacked project leader Dr. Sandra Troian's computer network at Caltech, causing hundreds of project files to be uploaded in rapid succession to an unknown IP address outside of Caltech
4. Dr. Troian traced the virus that caused the network problems to Dr. Gat's computer, and notified Caltech officials of this fact.
5. On May 28, 2010, Dr. Gat admitted to Dr. Troian that he had been sharing details of the Electro Spray Project with Dr. Daniel Weihs, his Ph.D. advisor at Technion - Israel Institute of Technology in Israel without proper U.S. government approval.
6. On June 3, 2010, Dr. Troian found Dr. Gat wandering alone, unauthorized, in one of her access-restricted experimental laboratories. Dr. Gat explained that Dr. Weihs had recommended that he "look around" to see what other aerospace projects were ongoing at Caltech in collaboration with JPL.
7. On June 28, 2012 Special Agents Kelly M. Sullivan and David Tsang of the FBI Counterintelligence Division told Dr. Troian there had been "several security breaches at JPL" and that "Dr. Gat was a focus of a larger investigation involving ITA violations and possibly espionage." Troian provided the FBI with information about Gats activities at Caltech.

¹ Lawsuit: Sandra Troian v CALTEC 11/14/2014 http://IRmep.org/CFP/20141114_Troian_v_Caltech_Complaint.pdf

According to researchers, U.S. intelligence officials and congressional sources, Israel has been caught carrying out aggressive espionage operations against American targets for decades. *Newsweek* reported on May 7, 2014 that "American counter-intelligence officials told members of the House Judiciary and Foreign Affairs committees at the end of January [2014] that Israel's current espionage activities in America are 'unrivaled and unseemly,' going far beyond the activities of other close allies, such as Germany, France, the U.K. and Japan."²

Reports from an unclassified 1987 study conducted for the U.S. Department of Defense titled "Current Technology Issues in Israel" revealed that Technion University scientists develop nuclear missile re-entry vehicles and work at the Dimona nuclear weapons production facility, spurring regional nuclear proliferation and undermining the Nuclear Non-Proliferation Treaty.³

Israeli espionage costs the U.S. economy billions of dollars annually. According to the book *Spy Trade*, such espionage not only undermines U.S. national security as Israel sells or otherwise transfers stolen proprietary U.S. technology to American rivals and otherwise engages in zero sum manipulations.⁴ It also adds unnecessary burdens to U.S. taxpayers who fund projects such as Electrospray. However, due to a stunning lack of bona fide espionage prosecutions, there is a new outbreak of such cases as the Gal violations across California, including trafficking of American nuclear-weapons related technology. (See the case of Telogy⁵ and Mattson⁶)

As U.S. prosecutor you now have all the evidence necessary not only to extradite, arrest and prosecute Gal, but also look into credible allegations that Caltech officials aided and abetted his activities by refusing to secure sensitive information, mounting retaliation against whistle blowers who tried to mitigate the risk presented by Gal, reassigning Gal to other projects and generally engaged in improper reactions to a serious espionage threat to the detriment of national security and ITAR.

Sincerely,



Grant F. Smith
Director of Research

cc: Attorney General Eric Holder, FBI Director James Comey, SAC of Los Angeles Counterintelligence & Cyber Divisions Keith B. Bolcar

² Israel's Aggressive Spying in the U.S Mostly Hushed Up, *Newsweek* 5/8/2014 <http://www.newsweek.com/israels-aggressive-spying-us-mostly-hushed-250278>

³ Lawsuit spotlights U.S. charities that fund Israel's secret nuclear weapons program. IRmep, 10/28/2014 <http://www.pnnewswire.com/news-releases/lawsuit-spotlights-us-charities-that-fund-israels-secret-nuclear-weapons-program-280645892.html>

⁴ *Spy Trade*, IRmep <http://www.amazon.com/Spy-Trade-Israels-Undermines-Americas/dp/0976443716>

⁵ Case Study - U.S. Company Faces Penalties for Alleged Nuclear Export Attempts to India, Israel, ISIS, 7/14/2010 <http://isis-online.org/isis-reports/detail/u.s.-company-faces-penalties-for-alleged-nuclear-export-attempts-to-india-i/35>

⁶ Case Study - U.S. Company Charged with Pressure Transducer Sales: Who Were the End Users? ISIS 5/14/2012 <http://isis-online.org/isis-reports/detail/case-study-u.s.-company-charged-with-pressure-transducer-sales-who-were-the/>

● *Research* ● *Awareness* ● *Accountability*

Exhibit 4

Espionage Allegations Intensify Battle for Technion Nuke File

Is the Justice Department Obstructing Justice?

Israel's oldest university—Technion—is under an intensifying legal spotlight over [stunning new allegations](#) of espionage and a transparency-law fight to reveal its clandestine role in nuclear weapons development. According to information made public in [a civil harassment suit filed on November 13, 2014](#) in the Superior Court of the State of California for the County of Los Angeles an Israeli scientist transferred information to Technion - Israel Institute of Technology in violation of the Arms Export Control Act from the Jet Propulsion Lab at the University of California Los Angeles.

According to court filings, Dr. Amir Gat—an Israeli national—executed a Technology Control Plan (TCP) under the International Traffic in Arms Regulations (ITAR) registration in order to participate in the U.S. taxpayer-funded JPL "Electrospray" space propulsion project at UCLA. The TCP obligates signers not to disclose ITAR—restricted technical data to foreign persons or countries without prior approval from the U.S. State Department. Failure to comply is supposed to trigger criminal fines and penalties.

Gat allegedly "stored project-related files and technical information on his personal laptop, rather than on his safeguarded office computer, in violation of the TCP and ITAR." On May 25, 2010, a virus attacked project leader Dr. Sandra Troian's computer network at Caltech, causing hundreds of project files to be uploaded in rapid succession to an unknown IP address outside of Caltech. Dr. Troian traced the virus that caused the network problems to Dr. Gat's computer, and notified Caltech officials of this fact. On May 28, 2010, Dr. Gat admitted to Dr. Troian that he had been sharing details of the Electrospray Project with Dr. Daniel Weihs, his Ph.D. advisor at Technion without proper U.S. government approval.

On June 3, 2010, Dr. Troian found Dr. Gat wandering alone, unauthorized, in one of her access-restricted experimental laboratories. Dr. Gat explained that Dr. Weihs had recommended from Technion that he "look around" to see what other aerospace projects were ongoing at Caltech in collaboration with JPL.

So where is the Justice Department? On June 28, 2012 Special Agents Kelly M. Sullivan and David Tsang of the FBI Counterintelligence Division told Dr. Troian there had been "several security breaches at JPL" and that "Dr. Gat was a focus of a larger investigation involving ITA violations and possibly espionage." Troian provided the FBI with information about Gat's activities at Caltech. But Gat was never indicted and left the United States to work at Technion. If Troian's civil complaint ultimately proves Caltech was negligent in its handling of Gat, it will not result in any accountability for the originator of the misbehavior—Technion.

According to researchers, U.S. intelligence officials and congressional sources, Israel has been caught carrying out aggressive espionage operations against American targets for decades. [Newsweek](#) reported on May 7, 2014 that "American counter-intelligence officials told members of the House Judiciary and Foreign Affairs committees at the end of January [2014] that Israel's current espionage activities in America are 'unrivaled and unseemly,' going far beyond the activities of other close allies, such as Germany, France, the U.K. and Japan."

Israeli espionage—[depending on what one includes](#)—costs the U.S. economy billions of dollars annually, not only by undermining U.S. national security as Israel sells or otherwise transfers stolen proprietary U.S. technology to American rivals. It also adds unnecessary burdens to U.S. taxpayers who are funding aid flows that should have been cut off long ago over Israel's violations of various U.S. laws and IRS regulations. However, due to a stunning lack of bona fide espionage prosecutions, there is a new outbreak of violations across California, including trafficking of American nuclear-weapons related technology. In the [2010 case of Telogy](#), Textronics oscilloscopes vital for nuclear weapons design were diverted to Israel. More recently California-based [Mattson](#) skirted export controls to divert dual-use pressure transducers to Israel.

Leaks from an unclassified 1987 study conducted for the U.S. Department of Defense titled "Current Technology Issues in Israel" indicates that Technion University scientists develop nuclear missile re-entry vehicles and work at the Dimona nuclear weapons production facility, spurring regional nuclear proliferation and undermining the Nuclear Non-Proliferation Treaty.

Adding insult to the "failure to prosecute" injury, the Justice Department is also vigorously fighting a [Freedom of Information Act lawsuit filed in September](#) in the District of Columbia Federal Court aimed at publicly releasing that "Current Technology Issues in Israel" report on Technion and other Israeli nuclear proliferators. Since 2003, Technion has received tax-exempt funding from U.S. donors averaging \$87 million annually, despite the fact that overseas nuclear weapons programs and espionage against U.S. facilities do not fit any IRS definition of a "social welfare" charity. Under the [Symington and Glenn Amendments to the US Foreign Aid Act](#), Israel should have been ineligible to receive any of the \$82 billion in U.S. taxpayer-funded foreign aid delivered since 1987 when it was found to be operating a clandestine weapons program outside the Nuclear Non-Proliferation Treaty.

On November 19 Justice Department lawyer Laura Jennings revealed defendants will use all [available tactics to delay](#) (PDF) and possibly thwart public disclosure including claiming "perpetual non-disclosure agreements" were signed during development of the 1987 report. The legal tactic has been recently employed to [prohibit open government law attempts](#) to obtain public release of information about law enforcement agency use of so-called "stingrays" and "dirt boxes" to mass intercept cell phone transmissions.

Recent Justice Department attempts to shield [an anti-Iran group](#) that has allegedly improperly used classified information to target legal humanitarian aid relief to Iran raise deep questions about the agency's conduct. If the U.S. Department of Justice were the functioning government agency it claims to be, Gal would have been arrested and prosecuted in 2012. The Department would devote more resources to Israeli counter-espionage and fewer to fighting public release of taxpayer-funded studies that could vastly improve the function of government.