

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' SECOND RESPONSE IN
SUPPORT OF ITS MOTION FOR MODIFICATION OF SCHEDULING
ORDER AND MOTION FOR IN CAMERA REVIEW AND RELEASE**

COME NOW the Plaintiff hereby responds to Defendants Reply, improperly filed with errors¹, on January 5, 2015 in support of an Extension of Time to Respond to Complaint. We request the motion for more time be denied in favor of immediate *in camera* review. In opposition to the Defendant's further pleas for time extensions, and in support of *in camera* review, the Plaintiff submits the following:

1. The Defendant does not oppose our request for *in camera* review, but believes it to be "premature." It is not at all premature if one carefully considers the magnitude of the latest bad faith approach now proposed by the Defendant. The Defendant continues to reject the FOIA executive memorandum² mandating openness issued by its commander-in-chief in favor of interposing first a party with an overwhelming financial

¹ See email, Tiffany Reed, 1/7/2015 at 11:03 AM body: "the PDF you [Defendant] docketed contained errors."

² http://www.whitehouse.gov/the_press_office/Freedom_of_Information_Act/

interest in maintaining good commercial ties with the Defendant and more recently a party with a well-documented history of deception on these very matters. The Defendant has claimed these parties alone hold veto power over its release. First it was the Institute for Defense Analysis which yearly receives \$250 million in mostly DoD dollars. Now DoD claims it is the Israeli government (GOI), which receives the largest share of the US foreign aid budget, 9%, or \$3.1 billion per year, that holds exclusive veto power.

2. The Defendant claims that “diplomatic relations dictate that DoD seeks Israel’s review. Thus, respectfully, if the Court were to order release of the information in question before Israel completes its review, DoD would be placed in a difficult position of honoring both the authority of this Court and the sanctity of its diplomatic agreements.” DoD freely admits that “review by Israel is optional rather than mandatory.” It is therefore vital for the Court to closely review the relevant history of US-Israel nuclear diplomacy and whether GOI machinations should in this case outweigh the American public’s obvious interest in release of the unclassified report.

3. As stated in our last brief, US-Israeli nuclear diplomacy has been built on a foundation of GOI deceptions. In the 1960’s Israel built false walls and short circuited a bona fide U.S. weapons inspection team sent to Dimona by the Kennedy Administration.³

³ <http://www.amazon.com/Israel-Bomb-Avner-Cohen/dp/0231104839> Cohen, Avner “Israel and the Bomb”

4. Nixon administration-era files have were released in 2014 revealing that Administration's policy of not commenting on Israel's arsenal began as a political deal between the Nixon administration and Israel's Prime Minister Golda Meier to maintain "ambiguity" over the program in order to avoid a "Zionist campaign to try to undermine" the presidency rather than any bona fide U.S. national security issue.⁴

5. In 1968 Israeli spy Rafi Eitan, who later ran convicted spy Jonathan Pollard against the United States, was involved in the removal of, overall, 339 kilograms of weapons-grade uranium from a US Navy fuel supplier called NUMEC in Apollo, PA. NUMEC remains the site of the largest losses of such fuel in US history, according to the Department of Energy. Last year Zbigniew Brzezinski told the *Wall Street Journal*, "What are we going to say to the Israelis, 'Give it back?'"⁵ US taxpayers are currently expected to pay \$412 million⁶ to clean up the contaminated environs of a smuggling front former CIA Tel Aviv Station Chief John Hadden characterized was "an Israeli operation from the beginning."⁷

⁴ Israel's Nuclear Weapons Program, ISCAP declassification, March 18, 2014
<http://www.archives.gov/declassification/iscap/pdf/2009-076-doc1.pdf>

⁵ <http://www.wsj.com/articles/u-s-suspected-israeli-involvement-in-1960s-uranium-theft-1407352852>

⁶ <https://www.indianagazette.com/news/reg-national-world/cleanup-at-numec-dump-will-cost-additional-350-million,21271440/>

⁷ Israel's Stolen Nuclear Materials: Why It Still Matters, LobeLog Foreign Policy by Marsha B. Cohen.
<http://www.lobelog.com/israels-stolen-nuclear-materials-why-it-still-matters/>

6. In the 1970s-1980s the Arnon Milchan, Richard Kelly Smyth Benjamin Netanyahu (Israel's current prime minister) nuclear smuggling ring illegally shipped 800 nuclear triggers from a California based front company. Before Smyth went to jail he told the FBI all about "Project Pinto."⁸ Most of the nuclear triggers were never returned by Israel.

7. In the 2010 case of Telogy, a California front company that is now shut down, Textronics oscilloscopes vital for nuclear weapons design were illegally diverted to Israel. More recently California-based Mattson skirted export controls to divert dual-use pressure transducers to Israel.⁹

8. There are no mutual defense treaties between Israel and the United States. Some experts view U.S. Israeli agreements as mainly an extension of domestic Israel lobbying-driven aid packages passed by Congress in which the U.S. plays a "great benefactor" role.¹⁰

9. Given this diplomatic history, GOI is categorically not a reliable "optional" arbiter of release. As the beneficiary country of what may be unlawful US foreign assistance, which acquires U.S. nuclear material, know-how and technology illicitly, and allegedly benefits from the illicit use of U.S. tax-exempt charitable funding for nuclear weapons R&D, and in light of its overall diplomatic history of deception over the program, it can only be in bad faith or utter ignorance that DoD proposes Israel as the

⁸ <http://irmep.org/ila/krytons/> FBI investigates FBI investigates MILCO nuclear trigger smuggling to Israel

⁹ <http://original.antiwar.com/smith-grant/2014/04/13/will-the-us-also-deny-visas-to-israels-spies/>

¹⁰ http://www.amazon.com/Israel-Lobby-U-S-Foreign-Policy/dp/0374531501/ref=sr_1_1?s=books&ie=UTF8&qid=1420649702&sr=1-1&keywords=the+Israel+lobby

Mearsheimer, John and Walt, Stephen – The Israel Lobby and US Foreign Policy

veto power holder over release of this report. Even if DoD believes it is acting in good faith, it is far from clear that any Israeli response could even be interpreted by DoD or this Court.

10. Israeli Prime Minister Levi Eshkol issued a Sphinx-like non-answer when asked if Israel has nuclear weapons, saying, "Israel will not be the first nation to introduce nuclear weapons to the Middle East," Every subsequent Israeli leader has stuck to this formulaic but essentially meaningless script.¹¹

11. Because the DoD is not obligated to consult a foreign country on files of this age, and given the record of the country in question on this subject, in doing so, the Defendant is acting in favor of maintaining the status quo, which appears to be a cover-up, rather than serving the public interest and accountability required of a democracy and provided by sunlight. The postwar American concept of "national security" is the requirement to maintain the survival of the nation through the use of economic power, diplomacy, power projection and political power. However, "national security" implies there is a viable nation to protect. Rampant corruption enabled by secrecy and malfeasance has led to the downfall of other after the consent of the governed was withdrawn. In America, transparency is and has always been key to national security in that it preserves confidence of the governed.

12. The report is clearly about Israel's nuclear weapons R&D. The existence of this program is no secret. In 1986 Dimona technician Mordecai Vanunu revealed its

¹¹ The Worst-Kept Secret: Israel's Bargain with the Bomb—Cohen, Avner <http://www.amazon.com/The-Worst-Kept-Secret-Israels-Bargain/dp/0231136994>

existence through photographs printed in the *London Sunday Times*.¹² Israeli intelligence agents kidnapped Vanunu and returned him to Israel which imprisoned him for 18 years. In 1999 the United States Air Force acknowledged the arsenal as a proliferation issue.¹³ In 2008, former commander-in-chief Jimmy Carter revealed that Israel had 150 nuclear weapons.¹⁴ A September, 2014 Google Consumer Survey revealed the majority of Americans (60.7%) believed that Israel was a nuclear-weapons state.¹⁵

The DoD's proposed avenue toward "GOI review release" for which yet another extension of time is requested is the equivalent of putting a compromised paid witness, with a history of false testimony and deception, on the witness stand. For this reason this latest milestone in bad faith ploys must be rejected by the court in favor of an *in camera* review in service to American taxpayers and national security. There is pressing urgency to release this report in the current context of regional nuclear negotiations which can only have a productive outcome if Americans and other concerned parties are more fully informed of the true state of affairs.

¹² <http://www.fas.org/nuke/guide/israel/nuke/>

¹³ <http://www.au.af.mil/au/awc/awcgate/cpc-pubs/farr.htm> The Third Temple's Holy of Holies; Israel's Nuclear Weapons, by Warner D. Farr, LTC, U.S. Army

¹⁴ <http://www.foxnews.com/story/2008/05/27/report-jimmy-carter-says-israel-has-150-nuclear-weapons/>
Report: Jimmy Carter Says Israel Has 150 Nuclear Weapons

¹⁵ Google Consumer Surveys, "Do you believe Israel has nuclear weapons?"
<http://www.google.com/insights/consumersurveys/view?survey=7gfftskexqbf4&question=1&filter=&rw=1>

Respectfully submitted,

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

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Dated: January 7, 2015