

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT
SPECIAL PROSECUTOR DIVISION

REPORT OF THE ATTORNEY GENERAL :
PURSUANT TO 28 U.S.C. § 592(b) :
SUBJECT: DIRECTOR OF THE CENTRAL : No. _____
INTELLIGENCE AGENCY :
WILLIAM J. CASEY :

In accordance with Section 592 of Title 28, United States Code, as added by the Ethics in Government Act of 1978, Public Law 95-521, I, William French Smith, Attorney General of the United States, make the following report concerning the receipt by the Department of Justice of information regarding an alleged criminal violation by William J. Casey, Director of the Central Intelligence Agency.

1. The Allegation. On January 7, 1982, an article^{1/} appeared in The Washington Post alleging that William J. Casey had lobbied public officials in the Treasury Department and the Internal Revenue Service in the period June through September, 1976, seeking changes in agency policy on behalf of a foreign client, the Government of Indonesia,

^{1/} A copy of the article is attached as an Appendix.

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without having registered with the Attorney General as an agent of a foreign principal.

2. Statutes Involved. The Foreign Agents Registration Act ("FARA"), 22 U.S.C. § 611-621, and its implementing Regulations require that no person may represent the interests of a foreign principal before any agency or official of the United States by seeking changes in official policy without first registering with the Attorney General. Section 618 of FARA provides that wilful failure to register as required may be punished by a fine of not more than \$10,000 or by imprisonment for not more than five years, or both.

3. Investigation. Because the information in the article raised the possibility that 22 U.S.C. § 618 may have been violated by a person subject to the Special Prosecutor provisions of the Ethics in Government Act, the Department of Justice, pursuant to 28 U.S.C. § 592(a), conducted a preliminary investigation of the matter. In the course of the investigation, the following information was developed:

a) In April of 1976, the Internal Revenue Service issued a private letter ruling to Mobil Oil Company, which concluded that certain payments to be made by Mobil to the Government of Indonesia's oil development arm, Pertamina, under proposed oil production sharing contracts would not qualify as an Indonesian "income tax" and thus could not

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be credited against Mobil's United States income. It was anticipated that a Revenue Ruling of general applicability would be forthcoming. Both the affected oil companies and Indonesia were concerned about the effect the anticipated Ruling would have on their contracts and the profitability of their joint ventures to develop Indonesia's oil resources.

b) On May 19, 1976, Indonesia retained the law firm of Rogers & Wells to represent its interests before the Internal Revenue Service with regard to the tax credit issue. At preliminary meetings with Treasury Department officials, Indonesia was advised that the best course would be to amend its tax code and its contracts with the oil companies to conform the oil company payments with the IRS definition of a creditable foreign tax. Indonesia decided to pursue this course.

c) On June 30, 1976, William Casey, then counsel to the firm of Rogers & Wells, became involved in the firm's representation of Indonesia. Over the course of the following three months, he obtained appointments with high officials of the Treasury Department and the Internal Revenue Service, attended several meetings as counsel for Indonesia, and made a number of telephone calls in behalf of the client.

d) As many participants in those meetings as could be identified and located were interviewed in the

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course of this investigation, including Mr. Casey himself. Relevant documentation was obtained from the Treasury and State Departments, the Internal Revenue Service and the law firm. The evidence developed in the course of the investigation indicates that Mr. Casey's representation of Indonesia was limited to efforts to obtain, as expeditiously as possible, an agreement with the Internal Revenue Service as to the changes that would be necessary in Indonesian oil production sharing contracts and tax code to ensure that payments made under the contracts would be creditable under the United States tax law. At all times, the fact that Mr. Casey was representing Indonesia was made clear to those officials with whom he was dealing. The evidence does not support a conclusion that at any time Mr. Casey sought to persuade or influence officials to change any agency policy.

4. Analysis and Conclusions. Pursuant to the Special Prosecutor provisions of the Ethics in Government Act, I must determine whether this matter warrants further investigation or prosecution. It is my conclusion that it does not.

FARA is a disclosure statute, with its focus on protection of the integrity of the government's decision-making processes, accomplished through a requirement that agents seeking to influence United States government

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action to the benefit of foreign clients register with the Attorney General and make certain disclosures regarding their receipts, expenditures and activities. The Act and its implementing Regulations define who must register and the information that must be disclosed publicly; exempt certain types of agents from registration; and define the administrative and judicial remedies and penalties applicable to violations. Wilful failure to register as required is subject to prosecution as a felony.

Because there is no dispute that Mr. Casey was an agent representing a foreign principal before officials of United States agencies, and that he was not registered with the Attorney General, the focus of this inquiry centered on whether or not his representation fell within one of the established exemptions to the registration requirement. The exemption involved in this case is the so-called "attorney exemption" codified at 22 U.S.C. § 613(g). This section exempts from the registration and disclosure provisions of FARA:

(g) Any person qualified to practice law, insofar as he engages or agrees to engage in the legal representation of a disclosed foreign principal before any court of law or any agency of the Government of the United States: Provided, That for the purpose of this subsection legal representation does not include attempts to influence or persuade agency

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personnel or officials other than in the course of established agency proceedings, whether formal or informal.

By regulation, in 28 C.F.R. § 5.306(a), "attempts to influence or persuade" is defined as efforts to alter official policy or influence its formulation. Thus, so long as an attorney's representation is limited to negotiations with agency officials within the context of established policies and procedures, and the client's identity is disclosed to the agency officials by the attorney, there is no registration requirement.

The evidence developed in this preliminary investigation indicates that Mr. Casey's activities on behalf of Indonesia clearly fell within this attorney exemption. His client was disclosed to each of those agency officials with whom he dealt, and his representation was limited to negotiations to reach agreement on changes to be made in his client's production sharing contracts and tax code, in order to conform to the IRS's policies and procedures. The evidence fails to disclose any effort to persuade the Treasury Department or the IRS to alter those policies.

Mr. Casey's representation of Indonesia was open and above-board, and his disclosure of his client's identity as required by the attorney exemption to FARA is evidence of his good-faith efforts to comply with the requirements of the Act.


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The specific allegations in the Post article to the effect that Mr. Casey "was advocating specific changes in tax policy" and "attempted to win a favorable policy change for Indonesia" are not supported by the evidence developed in the course of the preliminary investigation, and given the scope of the inquiry, it is unlikely that evidence to support the allegation would be developed through further investigation.

In conclusion, I find that these matters have been thoroughly investigated and there is insufficient evidence to support a criminal prosecution. Therefore, I hereby notify the Court that I find this matter to be so unsubstantiated that no further investigation or prosecution is warranted and that no Special Prosecutor should be appointed for this matter.

Respectfully submitted,

April 7, 1982
DATE


WILLIAM FRENCH SMITH
Attorney General of the
United States

APPENDIX

The Washington Post, Thursday, January 7, 1982, Page A-1

Casey Lobbied Without Registering

By Patrick F. Tyler
Washington Post Staff Writer

William J. Casey, as a private lawyer working for the Indonesian government, lobbied top officials of the Treasury Department in 1976 for multimillion-dollar changes in the U.S. tax law without registering as a foreign agent.

Casey, now Central Intelligence Agency director, has contended in past Senate inquiries that he performed limited legal services and attended "informational meetings" with Internal Revenue Service officials. But government documents

obtained by The Washington Post indicate that Casey was advocating specific changes in tax policy outside established channels with top political appointees of the Ford administration, including Treasury Secretary William F. Simon.

The issue of whether Casey should have registered as a foreign agent is under Justice Department review following last fall's Senate Intelligence Committee inquiry, which concluded Casey was not unfit to serve as director of the CIA. Stanley Sporkin, CIA general counsel, has maintained that Casey was not required to register as a foreign agent.

Casey's representation of Indonesia, as documented by records from the IRS and Treasury, is similar to the case of lawyers David W. Clifford and Paul Warnke, both former high government officials. They were required to register as foreign agents for Algeria in 1975 after Justice officials learned that the two had met in 1971 with U.S. government officials in an attempt to expedite Export-Import loans to Algeria.

In many instances, the Justice Department requires registration after the fact. In 1980, President Carter's brother, Billy, also was forced to register for his Libyan representation, which caused embarrassment to the administration.

A lawyer representing a client, including a foreign government, in an "established proceeding" such as an IRS tax ruling case is not required to register as a foreign agent, but is supposed to register if engaged in "political activity." The law defines that as any action intended to "persuade or in any other way influence any agency or official of the United States . . . with reference to formulating, adopting or changing the domestic or foreign policies of the United States"

Documents and interviews with former officials show that Casey met first with the treasury secretary and the assistant secretary for tax policy, a State Department official and later with IRS officials, urging the IRS to put aside its objections to the Indonesian production contracts with major American oil companies and the claims for tax credits for overseas taxation. In 1978 the IRS came around to the position favored by Indonesia.

On July 8, 1976, Casey met with Simon and his assistant secretary for tax policy, Charles M. Walker, to enlist their aid. Walker followed the meeting by writing a July 9, 1976, memorandum to then IRS Commissioner Donald C. Alexander urging him to expedite new tax rulings.

In an interview this week, Alexander said that Simon and Walker became involved in the foreign tax credit question. "I just thought the IRS ought to have called them the way we saw them without regard to political considerations."

Both Simon and Walker said recently that they do not recall the meeting, but they do not dispute what the government documents show.

Attorney General William French Smith, in the most recent policy statement on foreign agent registra-

tion, said in a report last fall that his department would require "complete public disclosure by persons acting for or in the interests of foreign principals where such activities are political in nature or border on the political."

Casey's argument that he was not required to register as a foreign agent centers on the exemption for attorneys performing legal services in what the law calls an "established agency proceeding."

IRS regulations specifically state that only U.S. taxpayers may apply for IRS rulings in an established agency proceeding, which requires a formal application and specific submissions. Casey made no such application and instead attempted to win a favorable policy change for Indonesia by going through top Treasury officials.

Justice spokesman John Russell said yesterday that private lawyers have an obligation to register as agents of foreign clients "when they attempt to influence or persuade government officials, except in established agency proceedings."

"In other words," Russell said, "arguments must be made in a proceeding rather than informally up on the Hill or over the breakfast table or in private meetings in the executive branch. It has to be some sort of forum, such as a court or a hearing."

Another knowledgeable Justice Department official who asked not to be named said that the circumstances described in this story would normally require registration as a foreign agent.

The Indonesian tax matter began in May, 1976, when major oil companies operating in Indonesia, including Texaco, Atlantic Richfield and Mobil, were put on notice that the IRS would no longer treat their "production sharing" arrangements with the Indonesian government as a foreign tax that could be deducted from U.S. taxes.

On June 1, 1976, one of Casey's partners at Rogers & Wells, Peter R. Fisher, wrote a letter to Treasury International Tax Counsel Robert J. Patrick Jr. to set up a meeting. "Rogers & Wells was retained by the government of Indonesia ... to advise it on ways to overcome the Internal Revenue Service's objections to the procedure for collecting Indo-

On July 8, 1976, Casey met with Simon and Walker and delivered to them a seven-page memorandum. The memo stated that Casey and Rogers & Wells "have been instructed by the Indonesian government to use our best efforts ... to develop a procedure for the prompt official publication of a statement to the effect that Indonesian income taxes ... will be eligible for the foreign tax credit, either in the form of a public [IRS] revenue ruling or otherwise."

The next day, Walker wrote a memorandum to then IRS commissioner Alexander telling him that the Indonesian case could have "significant influence" on the foreign operations of the American oil industry. He expressed his opinion that the Indonesian government "with the advice of New York legal counsel" had adequately modified its oil contracts to get in line with IRS requirements and would be seeking reconsideration in the near future.

"I assume that," Walker concluded, "in view of the tremendous importance of this matter, the forthcoming ruling request will be expedited by your office."

On July 14, 1976, Casey and the other Rogers & Wells attorney, Fisher, met with Assistant IRS Commissioner John L. Withers and four other IRS officials for a 40-minute conference on the Indonesian case, according to a conference report in the IRS files. Withers informed Casey that the IRS "could not express any opinion as to whether or not a tax credit would be given ... a U.S. taxpayer requested a ruling from the service."

"Since neither Pertamina [the Indonesian state oil company] nor some other entity such as a U.S. company would have to approach the service before we could give a definitive answer on the tax credit."

The conference report, written by IRS technical branch attorney Steven Haines, also noted that "A memo which Casey had delivered earlier to Assistant Secretary Walker was distributed to IRS participants."

On July 29, Casey sent Withers seven pages of additional information about proposed changes in the Indonesian tax structure.

Former IRS officials said this week that none of these actions were part of an "established agency proceeding" since Casey's foreign client had no standing to request an IRS revenue ruling.

"That's not an established agency proceeding when he's going to the [Treasury] secretary," said former IRS commissioner Sheldon S. Cohen.

One IRS branch chief, John L. Crawford, said in an Aug. 17, 1976, internal note, "The memorandum submitted by Rogers & Wells on behalf of Pertamina ... does not afford any basis for a conference with Pertamina's representatives." He added, "I think further conferences would be counterproductive."

In a subsequent meeting requested by Casey on Aug. 30, another conference report shows that Withers repeated his point several times. "Mr. Withers began the conference by observing that a request for a ruling [by a U.S. taxpayer] ... has not been received."

But the discussion continued, according to the conference report. "Mr. Casey indicated that in considering the oil companies' position it was important to Indonesia to determine what the service will require in the way of a creditable tax."

"Mr. Withers responded that the service must tell the taxpayer directly concerned whether the tax is creditable rather than going indirectly through Indonesia."

The report adds, "Mr. Casey suggested Indonesia should be afforded some status to negotiate with the service, citing the example of tax treaties which are negotiated by the foreign government although the provisions affect U.S. taxpayers."

But the IRS official reiterated to Casey that a revenue ruling involving a U.S. taxpayer was not similar to a treaty between two governments. Casey relented by saying that his law firm would "work with the oil companies to expedite submission of a ruling request."

By the end of August, the IRS had noted in its files that it had refused Rogers & Wells' request and continued to wait for a U.S. taxpayer to make a formal application to initiate an established agency proceeding.

The issue was carried over into the Carter administration where there were high-level discussions on whether top Treasury officials should get involved with the IRS decision-making process.

After considering whether to take action, Assistant Treasury Secretary C. Fred Bergsten told Secretary W. Michael Blumenthal in a Sept. 23, 1977, memo that, "There are strong arguments" against intervening in the IRS deliberations.

"It would put the U.S. government in the questionable position of politically intervening in the tax ruling process for the benefit of a foreign government," according to the memorandum.

Casey's work for Indonesia followed by six months his departure from the top post at the Export-Import Bank, which during his tenure had supported a multimillion-dollar lending program for technical development in Indonesia.

In 1977, a year after the firm began work for Indonesia, Rogers & Wells registered as a foreign agent because "the firm foresaw a possible need to move to an advocacy position with respect to the IRS," according to a letter supplied to the Senate committee. The firm's registration statement said the only partner working on the case was Peter Fisher.

Fisher described his activities as "Legal representation before governmental departments or agencies of the United States in connection with obtaining United States foreign tax credit for Indonesian income taxes paid by United States oil companies."

On his registration form, Fisher was asked what political activities he might undertake as an agent for Indonesia. Fisher replied, "I may be called upon to present facts and arguments before appropriate government agencies or officials with respect to changes in Indonesian tax laws and practices and acceptance thereof by such agencies or officials."

In 1978, the IRS reinstated foreign tax credits in Indonesia.

Staff writer Charles R. Babbitt contributed to this article.

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IN RE REPORT OF THE :
ATTORNEY GENERAL PURSUANT : No.
TO 28 U.S.C. § 592(b), No. :

MOTION OF THE ATTORNEY GENERAL
PURSUANT TO 28 U.S.C. § 592(d)(2)
FOR LEAVE TO DISCLOSE REPORT

Pursuant to 28 U.S.C. § 592(d)(2), I hereby seek leave of the Division to disclose the contents of the "Report of the Attorney General Pursuant to 28 U.S.C. § 592(b), No. , " filed with this Court on

. This report concerns the preliminary investigation into allegations that William J. Casey attempted to influence policy decisions by the Internal Revenue Service and the Treasury Department on behalf of a foreign client, without registering as an agent of a foreign principal. The substance of the allegation underlying this report was reported widely by the news media. In these circumstances, I believe that it is in the public interest for the Court to grant leave pursuant to 28 U.S.C. § 592(d)(2) to permit me to

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disclose publicly the report submitted to this Court regarding these allegations.

Respectfully submitted,



WILLIAM FRENCH SMITH
Attorney General of the
United States

Dated

April 7, 1982

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Mr. Casey has made the following statement after reviewing the Senate Select Committee's report:

I am pleased that the Senate Intelligence Committee, after an exhaustive investigation, has reported nothing which reflects on the integrity, the business practices and the ethical standards in which I have always taken pride. I look forward to continuing to work together with the Committee to improve the nation's intelligence capabilities.