

POLITICS

U.S. to Drop Spy Case Against Pro-Israel Lobbyists

By NEIL A. LEWIS and DAVID JOHNSTON MAY 1, 2009

WASHINGTON — A case that began four years ago with the tantalizing and volatile premise that officials of a major pro-Israel lobbying organization were illegally trafficking in sensitive national security information collapsed on Friday as prosecutors asked that all charges be withdrawn.

From the beginning, the case against the lobbyists for the American Israel Public Affairs Committee was highly unusual. The two, Steven J. Rosen and Keith Weissman, were charged under the World War I-era Espionage Act, accused of improperly providing to their colleagues, journalists and Israeli diplomats sensitive information they had acquired by speaking with American policy makers.

Some lawyers at the Justice Department had always had significant reservations about the case, some current and former officials said. They believed that Mr. Rosen and Mr. Weissman had acted imprudently, but doubted that either man should be criminally prosecuted. Nevertheless, F.B.I. agents poured substantial resources into the case, and the decision to seek a dismissal infuriated many within the law enforcement agency.

But several current and former officials said the decision to abandon the case was no surprise. With adverse judicial rulings making the prosecution increasingly risky, lawyers in the United States Attorney's Office in Alexandria, Va., and at Justice Department headquarters met on several occasions in recent weeks, agonizing over whether to go forward with the trial, which was scheduled to begin June 2.

Last week, officials from the F.B.I.'s Washington office who investigated the case made their final pleas to keep the case alive, arguing that there was enough evidence to persuade a jury to find the two men guilty. But prosecutors — including some who had worked on the case for years — disagreed.

Joseph Persichini Jr., the top official at the F.B.I.'s Washington office, praised the work of the F.B.I. agents on the case, and said he was “disappointed” in the decision to drop the charges. ~~\$15.99~~

The case had raised delicate political issues about the role played by American Jewish supporters of Israel and their close, behind-the-scenes relationships with top government officials. Advocates of civil liberties and of open government asserted that the defendants were being singled out for activities that were part of the accepted and routine way that American policy on Israel and the Middle East had been formulated for years, with people exchanging information.

The decision to drop the case comes just days before Aipac is scheduled to begin its annual policy conference in Washington, which has often served as an advertisement of its influence. Prime Minister Benjamin Netanyahu of Israel is scheduled to address the event via satellite.

Lawyers for Mr. Rosen and Mr. Weissman said in a statement that while they were pleased at the decision, the government had erred in bringing the case in the first place and had caused great damage to their clients. Aipac dismissed the men early in 2004 after prosecutors presented some of their evidence to an Aipac lawyer. The group later agreed to subsidize their legal costs.

The Justice Department said that the decision to drop the case had been made solely by career prosecutors in Alexandria, and that senior officials of the Obama administration had acted only to approve the recommendation.

Several other officials said, however, that while senior political appointees at the Justice Department did not direct subordinates to drop the case, they were heavily involved in the deliberations. These officials said David S. Kris, the newly appointed chief of the department's national security division, and Dana J. Boente, the interim United States attorney in Alexandria, had conferred regularly with prosecutors and

ultimately decided to accept the recommendation to abandon the case. Attorney General Eric H. Holder Jr. was informed and raised no objections.

The case would have been the first prosecution under the espionage law in which no documents were involved and in which the defendants were not officials who provided the information, but the private citizens who received it from them in conversations.

While Mr. Rosen and Mr. Weissman trafficked in facts, ideas and rumor, they had done so with the full awareness of officials in the United States and Israel, who found they often helped lubricate the wheels of decision-making between two close, but sometimes quarrelsome, friends.

The move by the government to end the case came in a motion filed with the Federal Court in Alexandria.

In pretrial maneuvering, the prosecution suffered several setbacks in rulings from the trial judge, T. S. Ellis III, that were upheld by a federal appeals court in Richmond, Va. Judge Ellis rejected several government efforts to conceal classified information if the case went to trial. Moreover, he ruled that the government could prevail only if it met a high standard; he said prosecutors would have to demonstrate that Mr. Rosen and Mr. Weissman knew that their distribution of the information would harm United States national security.

The investigation of Mr. Rosen and Mr. Weissman also surfaced recently in news reports that Representative Jane Harman, a California Democrat long involved in intelligence matters, was overheard on a government wiretap discussing the case. As reported by Congressional Quarterly, which covers Capitol Hill, and The New York Times, Ms. Harman was overheard agreeing with an Israeli intelligence operative to try to intercede with Bush administration officials to obtain leniency for Mr. Rosen and Mr. Weissman in exchange for help in persuading Democratic leaders to make her chairwoman of the House Intelligence Committee.

Ms. Harman has denied interceding for Mr. Rosen and Mr. Weissman, and has expressed anger that she was wiretapped. She is to be among the featured speakers at the Aipac conference next week.

Over government objections, Judge Ellis had also ruled that the defense could call as witnesses several senior Bush administration foreign policy officials to demonstrate that what occurred was part of the continuing process of information trading and did not involve anything nefarious. The defense lawyers were planning to call as witnesses former Secretary of State Condoleezza Rice; Stephen J. Hadley, the former national security adviser; and several others. Government policy makers indicated they were clearly uncomfortable with senior officials' testifying in open court over policy deliberations.

The government's motion to dismiss said the government was obliged take a final review of the case to consider "the likelihood that classified information will be revealed at trial, any damage to the national security that might result from a disclosure of classified information and the likelihood the government would prevail at trial."

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