The Honorable Judge Leonie M. Brinkema
United States District Judge
United States District Court for the Eastern
District of Virginia

Albert V. Bryan U.S. Courthouse,
401 Courthouse Square
Alexandria, VA 22314

April 23, 2015

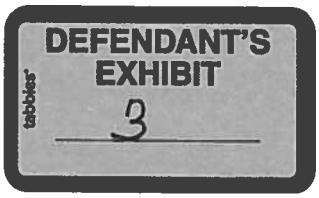
Re: United States v. Sterling

Dear Judge Brinkema:

My name is David J. Manners. I served as an Operations Officer in the U.S. Central Intelligence Agency (CIA) for nearly 20 years. My major field assignments included tours as the senior officer directing operations in Prague, Czechoslovakia and in Amman, Jordan. During one assignment in CIA headquarters, I was responsible for sensitive human intelligence and technical collection operations aimed at the Soviet nuclear weapons program, including their facilities at Arzamas 16 and Chelyabinsk. On another headquarters tour, I was Chief of the Iran Task Force and thus had responsibility for our worldwide operations against the Iranian target, including their efforts to acquire weapons of mass destruction. Lastly, I served one rotational assignment as Executive Assistant to the Deputy Director of the National Security Agency. I have B.S. degree from the U.S. Naval Academy and an M.A. from Georgetown University.

The government originally designated me as a witness in this case but did not call me as a witness at trial. I know James Risen, consider him a friend, and admire his work. I know Jeffrey Sterling from his days as a trainee working in the Iran Task Force. I was aware of the genesis of the contact between Risen and Sterling and shared this information with the government. However, I could not confirm to the government that Risen had identified Sterling as the source of the information that appeared in his book. I have read the sentencing memorandum submitted by the government, and I write to share with you some observations I have about it based solely on what is in the public record.

I was in Prague when revolution swept through Eastern Europe, and the Soviet empire quickly unraveled. With the dissolution of the Soviet Union and collapse of its economy, U.S. and Russian leaders had deep concerns that suddenly impoverished nuclear scientists could sell their skills and knowledge to other nations with nuclear ambitions. Outgoing Soviet leader Mikhail Gorbachev personally appealed to President George H. W. Bush for help in dealing with this problem. The U.S. Congress responded by passing the Soviet Nuclear Threat Reduction Act of 1991, which provided funding to assist the post-Soviet states in denuclearization, including



financial support for their scientists and weapons laboratories. This eventually led to a 1992 formal agreement between Los Alamos National Laboratories and Arzamas 16 to collaborate closely in groundbreaking new research. At the time when this collaboration began, both sides recognized that each would learn previously unknown information about their respective weapons programs, but both agreed that the risks posed by this were minimal. This is a matter of public record.

Against the above background, while I don't doubt that Merlin provided useful information to the United States, it seems unlikely that this information was as singularly vital as the government suggests in its sentencing memorandum. Similarly, despite the government's dark suggestions, Merlin and his family are not in danger from the Russians. The Russians are not going to harm an émigré scientist, one of many such scientists who relocated to the U.S., who worked at a facility that has been open to us since the 1992.

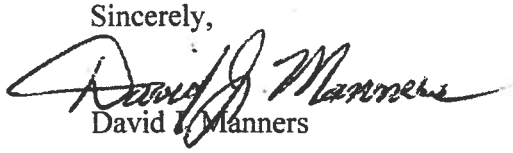
It also is not credible to suggest that the public disclosure of a human asset "severely undermines" our ability to recruit other foreign assets. While such disclosures are never helpful, they happen all the time (and sometimes the United States quietly endorses the disclosure - read some of Bob Woodward's books, or look at Agency collaboration on the film about the Bin Laden raid). I note that Merlin was "recruited" not too long after Aldrich Ames was arrested as a Soviet/Russian spy. The nightmarish revelations of what Ames did (which were trumpeted around the world) seem not to have affected Merlin's willingness to work with us. Nor did it impede us from recruiting other foreign assets.

The program at issue in this case was fundamentally a "deception" operation. Such operations date back at least to the Trojan War; they surely are ongoing in many different forms and venues, and they will continue be conducted in the future. Deception operations are conducted **against** the United States all the time, and it is something that any competent intelligence service guards against. The Iranian intelligence service is competent and reasonably sophisticated. They are quite good at deception and certainly are aware that it can be used against them. I do not think that they or anyone else in the world would be surprised that the United States is capable of conducting sophisticated counter-proliferation programs. Witness Stuxnet, the disclosure of which seems to have been quietly blessed by the Administration, possibly because it appears to have been successful.

The purpose of this letter is not to condone leaks of classified information. Nor is it to suggest that the leak at issue in this case did no harm. Rather, my purpose is simply to put the issues in proper context so that the Court can base its decisions on fact, rather than overwrought hyperbole.

Thank you for your consideration.

Sincerely,



David J. Manners

appeal and that he should get some sort of credit for the intervening years he's remained free.[7]

The simple fact remains: national security cases are often complicated, and this case was no exception. Even relatively simple matters, such as discovery, are made more difficult by classification issues. In 2011, the defendant saw a strategic advantage in forcing the government to seek an interlocutory appeal rather than agreeing to a brief continuance. That was his right, but it was also a critical factor in causing the delay of which he now complains. Indeed, that is another advantage to reaching a plea agreement in these types of cases – the avoidance of lengthy, protracted litigation. The defendant certainly had a right to a jury trial, but the exercise of that right had consequences, including, in this case, lengthy pre-trial proceedings.

IV. The Seriousness of the Offense

Finally, in his sentencing memorandum, the defendant attempts to undermine the evidence introduced at trial as to the seriousness of his crimes through the submission of a letter from David Manners, a defense expert witness and former CIA employee who has not worked at the agency in approximately seventeen years. There is good reason to question Manners's credibility and the weight the defendant places on his unsworn opinion that the defendant's disclosure of classified national defense information caused little or no harm to the United States.

In his Sentencing Memorandum, the defendant notes that Mr. Manners was identified as a government witness, but not called, and Mr. Manners alludes to this as well. Mr. Manners suggests that he was not called as a witness by the government because he "could not confirm to

[7] In hindsight, the defendant's characterization of the importance of the potential *Giglio* material produced by the government proved to be "overwrought hyperbole," and the Court's suggested continuance of two weeks would certainly have resolved the disputed *Giglio* matters. Following the remand from the Fourth Circuit, this Court reviewed the information produced by the government and heard from three witnesses before ruling that the majority of the information was not admissible. Moreover, as to the few areas of inquiry that the Court did permit, the defendant ultimately elected to pursue none of them with the relevant witnesses.

the government that Risen had identified Sterling as the source of the information that appeared in his book." What Mr. Manners fails to say is that, on two occasions, he appeared before a federal grand jury and testified, under oath, that Risen did, in fact, identify the defendant as the source of the information that subsequently appeared in Chapter 9 of State of War, and that Mr. Manners recanted his grand jury testimony only after his testimony became the subject of pre-trial litigation in 2011. The government put Mr. Manners on its witness list as a precaution, just in case Risen were to testify at trial and his conversations with Mr. Manners became an issue – certainly not because we found Mr. Manners credible. The opposite is true.

By way of background, on December 14, 2007, Mr. Manners was interviewed by the FBI about his relationship with James Risen and Manners's knowledge that the defendant was Risen's source of information for the classified program at issue in this case. Manners appeared before a federal grand jury on February 7, 2008, and testified under oath about these facts. During his testimony, Manners stated that he and Risen had known each other since shortly after Manners retired from the CIA in 1998. Risen, whom Manners considered a friend, often used Manners as a sounding board, so to speak, about intelligence matters. According to Manners, he would only discuss historical matters with Risen, i.e., events that had already occurred and where, in Manners's view, no harm would come from discussing them with Risen.

Manners testified that Risen had called him in 2004 or 2005 about the defendant, identifying him by name. Risen told Manners that he had met the defendant, and the defendant told Risen that he had worked briefly with Manners when the defendant was assigned to the CIA's Iran Task Force. According to Manners's testimony, Risen told him about the defendant's difficult experience with the agency. Critically, Risen further told Manners that the defendant had worked on a very important operation while in New York involving the Iranian nuclear

weapons program and played a key role in the recruitment of a source crucial to that operation. During this conversation, which was by telephone, Risen asked Manners a number of questions about the operation the defendant had previously discussed with Risen and tried to elicit from Manners his opinion as to whether the CIA would conduct an operation as described. Manners testified that it was clear to him at that time that the defendant was the source of Risen's information about the Iranian operation Risen described generically to Manners and that the defendant wanted to get his story out through Risen because the defendant wanted to get back at the CIA.

In December 2010, just prior to indictment, Manners was again interviewed by the FBI and put before a federal grand jury. Manners testified that his prior interview in 2007 and grand jury testimony in 2008 were "fully accurate."[8] He also acknowledged that Risen most likely used Manners as an unidentified source of information in Chapter 9 of State of War.[9]

The Court is familiar with Manners's grand jury testimony, having referred to that testimony in its November 30, 2010 Memorandum Opinion regarding the Risen grand jury subpoena, DE 118 at 9 and 20, and in its subsequent July 29, 2011 Memorandum Opinion regarding the Risen trial subpoena, DE 148 at 24-27.[10] The government moved for reconsideration of that opinion, and in that motion discussed Manners's grand jury testimony.

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[8] Copies of Manners's grand jury transcripts and interview reports were provided to the defendant prior to trial.

[9] On page 211 of *State of War*, Risen states that "[s]everal former CIA officials" opined on the theory behind MERLIN, and Manners stated that he believed that Risen most likely was referring to him in that paragraph.

[10] Manners's grand jury testimony was relevant for two different reasons. The government initially advocated during the grand jury process that Risen had waived any confidential source privilege by telling Manners that Sterling was his source. The Court, however, subsequently considered Manners's grand jury testimony in its application of the *LaRouche* balancing test to the government's request for a trial subpoena.

DE 162 at 13. The Court addressed the Manners issue very briefly during the October 12, 2011 hearing on that and other motions. DE 269 at 4.

Just prior to trial, on August 25, 2011, the government met again with Mr. Manners. This time he told a different story. In contrast to his prior sworn and unsworn statements, Manners stated for the first time that the telephone conversation he had with Risen about the defendant was not one, but two conversations. The first conversation was about the defendant and his troubles with the agency in New York. The second conversation was about the operation discussed in Chapter 9. During the second conversation, however, there was no discussion of the defendant or his role in that operation. Manners's last-minute recantation severely undermined his credibility as a witness.

In light of Manners's credibility issues, the Court should view the merits of his opinions – and the propriety of submitting unsworn testimony in the form of a letter supporting the defendant – with healthy skepticism. The time for this type of "evidence" was trial. The government established at trial through several witnesses, who were placed under oath and subjected to cross-examination, that the United States suffered both actual and potential damage as a result of the defendant's conduct. We summarized that testimony in detail in our sentencing memorandum. DE 464 at 11-14. It is the only evidence before the Court on harm, potential or otherwise. For his part, the defendant had provided notice that he would call two experts to rebut the government's evidence on the potential harm occasioned by these disclosures, including

Manners. DE 244.[11] He called neither, and that was his choice. But he cannot subvert the trial record through the last-ditch submission of a letter from someone who has not worked at the CIA in nearly two decades, who did not testify at trial, who is friends with the person to whom the defendant communicated national defense information, and whose eve-of-trial recantation calls into question his veracity. The Court should disregard his letter for sentencing purposes.

[11] Manners's letter, DE 466-3, opines on matters that go well beyond the scope of his expert notice, DE 244 at 26-27, specifically the discussion of Arzamas 16, the value of the information provided by Merlin regarding Russian nuclear weapons capabilities, and the possibility that Russia would retaliate against Merlin and his family as a result of Merlin's work for the CIA.