

Red Sparrow or Red Herring?

February 01, 2020

Where we started: When Russian graduate student and gun rights activist Maria Butina found herself contacted by the United States Senate Select Committee on Intelligence and was later charged with conspiracy and acting as a foreign agent, she turned to McGlinchey's Government and Internal Investigations team for representation.

Our strategy – plus more: Maria's case was a blend of politics and law from the start, as it originated in the Senate Intelligence Committee's investigation into alleged Russian interference in the 2016 election. The media, FBI counterintelligence agents, and federal prosecutors at the Department of Justice settled on a narrative out of the popular spy movie "Red Sparrow." Maria was arrested, held without bond, charged with crimes carrying a 15-year prison sentence, and, without basis, accused of using sex to infiltrate certain political organizations in the United States. Allegations of espionage were widely circulated, notwithstanding that she was not and had never had been an employee of the Russian Federation, and that she was a full-time graduate student in the United States who had to raise her own money from Americans to attend school.

McGlinchey pushed back hard, both in court and in the media, to correct the false narrative. We aggressively challenged the government's factual narrative and filed a motion to dismiss the indictment on constitutional grounds — arguing that Maria's advocacy in the United States was protected by the First Amendment. In addition, lead counsel Bob Driscoll made media appearances on United States' and Russian television to challenge the false narrative and push back against inaccurate leaks from the government. In part as a result of media pushback, a federal employee at the Department of Treasury was eventually prosecuted for illegally leaking Maria's banking information.

The aggressive defense resulted in the government's withdrawal of its most salacious allegations, with the trial judge noting that it took only "minutes" to conclude that the allegations that Maria traded sex for access were unsupported by the evidence. McGlinchey then negotiated a plea agreement for Maria in which the government agreed to dismiss the count of the indictment carrying a 10-year maximum penalty, and allowed the defense team to argue for a sentence of "time served". At sentencing, the government conceded that Maria was not a Russian spy, was, in fact, a legitimate graduate student, and that, but for her failure to register under a statute she was unaware of, none of her activities in the United States were illegal. Maria was home with her family in Barnul, Russia, within 5 months of the sentencing hearing and 15 months after her arrest, avoiding trial and the risk of over a decade in prison in what was sure to be a hostile environment for a Russian national. Maria received a heroine's welcome in Russia and is currently an advocate for prison reform and a television host.

Upshot: The Maria Butina case was a high profile, high pressure, internationally significant, and at times politically charged case that not many firms have the capacity, or frankly the courage, to handle. McGlinchey's Government and Internal Investigations team achieved a good result by blending an aggressive legal and factual defense (in court and in the court of public opinion) with sound judgment and attention to risk mitigation. Not many cases will be similar, but the case showcased our team's capabilities when the circumstances warrant.