

THE GOVERNMENT AND MANAFORT CONTINUE TO ARGUE ABOUT THE AGENCY OF BEING AN AGENT

In this post, I briefly described that Paul Manafort, in a challenge to the way the government charged his sleazy influence peddling, tried to distinguish his influence peddling from that of spies, both with respect to whether hiding the proceeds of sleazy influence peddling might merit forfeiture and whether lying about sleazy influence peddling was a separate crime from lying in his FARA filing. Manafort lost on the former point, Amy Berman Jackson punted the latter point until after trial. But in ruling on the former, she emphasized that the FARA crime was about *acting* as an undisclosed sleazy influence peddler, not just hiding it.

But the reference to section 951 does not support defendant's position, since defendant acknowledges that section 951 plainly governs acting as an agent of a foreign government, and the language of the two provisions is quite similar. See Def.'s Mot. at 4–5; compare 18 U.S.C. § 951(a) ("Whoever . . . acts in the United States as an agent of a foreign government without prior notification to the Attorney General . . . shall be fined under this title or imprisoned") with 22 U.S.C. § 612(a) ("No person shall act as an agent of a foreign principal unless he has filed with the Attorney General a true and complete registration statement") and id. § 618(a) (imposing criminal penalties on any person who "willfully violates any provision of this subchapter or any regulation thereunder")

or “willfully makes a false statement of a material fact or willfully omits any material fact” in a FARA statement). These laws are not just about paperwork; their object is to ensure that no person acts to advance the interests of a foreign government or principal within the United States unless the public has been properly notified of his or her allegiance. So both statutes expressly prohibit “acting” as a representative of a foreign entity without submitting the required notification to the Attorney General. For these reasons, the alleged international banking transactions could “promote,” and Manafort could realize “proceeds” from, a FARA violation.

With that ruling, ABJ judged that FARA is like spying, just not quite as serious.

Manafort is still fighting the issue, however (probably, in part, in preparation for an appeal, but maybe also to save the industry of sleazy influence peddling for all his fellow sleazy influence peddlers).

In both the joint pretrial statement and his proposed jury instructions, Every time the government emphasized that the crime is about acting as an unregistered sleazy influence peddler, Manafort objected and rewrote the government’s language to focus on registration. Here’s one example:

Defendant also objects to the following language under the section entitled Elements of the Conspiracy’s Objects:

In Count One, the government has alleged that one object of the conspiracy was to act as an unregistered agent of a foreign principal. For Count One, the government does not have to prove that the defendant

committed this crime; only that this was an object of the conspiracy. In considering whether this was an object of the conspiracy, the following legal principles and definitions apply. A person willfully violates the FARA requirements if:

(1) The defendant acted in the United States as an agent of a foreign principal;

(2) The defendant acted without registering with the Attorney General; and

(3) The defendant acted willfully.

Defendant proposes the following replacement:

In Count One, the government has alleged that one object of the conspiracy was to fail to register as an agent of a foreign principal in violation of FARA. For Count One, the government does not have to prove that the defendant committed this crime; only that this was an object of the conspiracy. In considering whether this was an object of the conspiracy, the following legal principles and definitions apply. A person willfully violates the FARA requirements if:

(1) The defendant was required by law to register as an agent of a foreign principal;

(2) The defendant failed to register with the Attorney

General; and

(3) In failing to register, the defendant acted willfully.

Manafort may be doing this just to try to avoid forfeiture.

But, in part because this is a rare case going to trial that will serve as precedent for other people, the debate is an interesting one, one Manafort may appeal no matter what happens (because the decision is worth millions to him).

Mueller is arguing that being a sleazy influence peddler without being honest about who you're working for is like being a spy. Given how much damage sleazy influence peddlers have done to our country, that's probably right. But (I think to save his ill-gotten gains), Manafort thinks selling out his country's politics to the highest bidder is just a matter of paperwork.

As I disclosed July, I provided information to the FBI on issues related to the Mueller investigation, so I'm going to include disclosure statements on Mueller investigation posts from here on out. I will include the disclosure whether or not the stuff I shared with the FBI pertains to the subject of the post.