

BAMFORD'S SILENCE ABOUT HOW MARIA BUTINA GOT THROWN BACK INTO SOLITARY

A number of people have asked me what I make of [this piece](#) from James Bamford, pitching the case against Maria Butina as a grave injustice, just after Paul Erickson (who may be the real intended beneficiary of this piece) was charged in the first of what is likely to be two indictments, and as the government [extends her cooperation](#) by two weeks.

There are parts that are worthwhile – such as his argument that because Butina didn't return a bragging email from JD Gordon, it suggests she wasn't trying to recruit him.

There are other parts I find weak.

Bamford oversells the degree to which the press sustained the serial honeypot angle – after all, some of us were [debunking that claim](#) back in September, when he appears to have been silent – without mentioning the fact that Butina first started proffering cooperation with prosecutors, presumably against Paul Erickson and George O'Neill, [on September 26](#). The word “visa” doesn't appear in the article's discussion of Butina's status as a grad student, leaving unrebutted the government's claim that Butina chose to come to the US as a student because it provided travel privileges that served her influence operation. Bamford (who hasn't covered the Mueller investigation) grossly overstates the significance of Mueller's choice not to integrate Butina's case into his own investigation. He also falsely treats all counterintelligence investigations into Russia as one ongoing investigation (see [this post](#) for my ongoing complaints about virtually everyone doing the same). He suggests that Butina will need to be traded for Paul Nicholas Whelan, when

the government has already said she'll be deported once she serves her sentence (which will likely be time served). He quotes Putin's interest in Butina's case, without noting that Russia has only shown the interest they showed in her in one other defendant, Yevgeniy Nikulin. And those are just a few of the details with which I take issue.

But these passages, in particular, strike me as problematic.

Since August 17, Butina has been housed at the Alexandria Detention Center, the same fortresslike building that holds Donald Trump's former campaign manager, Paul Manafort. On November 10, she spent her 30th birthday in solitary confinement, in cell 2F02, a seven-by-ten-foot room with a steel door, cement bed, and two narrow windows, each three inches wide. She has been allowed outside for a total of 45 minutes. On December 13, Butina [pleaded guilty](#) to conspiracy to act as an unregistered agent of the Russian Federation. She faces a possible five-year sentence in federal prison.

[snip]

On November 23, 2018, Butina went to sleep on a blue mat atop the gray cement bed in her cell, her 81st day in solitary confinement. Hours later, in the middle of the night, she was awakened and marched to a new cell, 2E05, this one with a solid steel door and no food slot, preventing even the slightest communication. No reason was given, but her case had reached a critical point.

That's true not just for the way Bamford obscures the timeline here – suggesting she was always in solitary – but because by obscuring that timeline, Bamford serves to hide that it

was Bamford's own communications with and about Butina that got her thrown back into solitary.

Butina's lawyers laid out her protective custody status in a [filing](#) on November 27.

In addition to general population prisoners, the Alexandria detention center houses federal detainees awaiting trial before this court in "administrative segregation," more commonly known as solitary confinement. This form of restrictive housing is not a disciplinary measure, but is purportedly used by corrections personnel to isolate inmates for their own protection or the safe operation of the facility.

[snip]

Between her commitment at the Correctional Treatment Facility in Washington, DC and then Alexandria detention center, Ms. Butina has been isolated in solitary confinement for approximately 67 days straight. Despite a subsequent release into general population that came at the undersigned's repeated requests, correctional staff reinstated her total isolation on November 21, 2018 although no infraction nor occurrence justified the same.

The timeline they lay out makes it clear Butina was in protective custody from July 15 to around September 21, but then placed in the general population. The timeline is absolutely consistent with Butina agreeing to cooperate in order to get placed in general population (the motion to transport her was submitted September 21, so at the same time she was placed in the general population). The fact that the government uses solitary to coerce cooperation from prisoners deserves condemnation, and that definitely seems to have been at play here.

But even at a time she had active orders to be transported for cooperation (the court [authorized a second request for transfer](#) from late October through the time she pled guilty), Butina was placed back in solitary. The timeline her defense attorneys lay out, however, suggests that Bamford was incorrect in stating she was in solitary on her birthday on November 10. She wasn't moved back to solitary until November 21.

On the afternoon of November 21, 2018, counsel received a never-before urgent phone call from a jailhouse counselor regarding Ms. Butina. The basis for that call was her return to solitary confinement. The undersigned called Chief Joseph Pankey and Captain Craig Davie in Alexandria in response. After conferring with them, however, it has become clear that the facility's use of administrative segregation is a false pretext to mask an indefinite solitary confinement that is unjust and without cause.

Staff purported to base their decision to segregate on Ms. Butina referring a fellow inmate to her lawyers (that is, she gave her lawyers' phone number to a fellow inmate), but staff did not find a disciplinary violation—major or minor. Chief Pankey and Captain Davie then resorted to the decision being “for her safety,” knowing that administrative segregation disallows an appeal internally.

As of the date of this filing, Ms. Butina has now been in solitary confinement for 22 hours a day for 6 consecutive days with no prospective release date. According to at least one deputy, the move to solitary confinement has also not been entered into the Alexandria detention center computer system, and Ms. Butina's status is disclosed only by a piece of tape with

handwriting attached to the guard stand.

And that's important because of a detail that Bamford remains utterly silent about.

As laid out in [a hearing transcript](#), around that time, the government recorded calls from Butina to "certain journalists" suggesting the journalist consult someone who had her lawyers' first name.

DRISCOLL: The conflict raised by the government, I think the government does not think there's been any violation of order by defense counsel, but due to circumstances regarding recorded calls that the government had of Ms. Butina and to certain journalists, the government raised the concern to us; and we wanted to raise it with the Court so that there would be no question when the plea is entered that the plea is knowing and voluntary, and we wanted to kind of preemptively, if necessary, get Ms. Butina separate counsel briefly to advise her on her rights, to make sure that she got her constitutional right to conflict-free advice.

[snip]

MR. KENERSON: The basic nature of the potential conflict is that this Court, I think, issued in an order back in September regarding Local Rule 57.7. The government has some jail calls from Ms. Butina in which she is talking to a reporter numerous times on those calls. She makes some references on those calls to individuals who could be – we don't know that they're defense counsel, but shares first name with defense counsel potentially acting as go-between at a certain point. That's part one of the potential conflict. Part two is –

THE COURT: Wait. So, wait. Stop. Part one is a potential conflict. Do you see

a conflict because you believe she's acting at the behest of her attorneys or as a conduit for her attorneys to violate the Court's order?

MR. KENERSON: It's – someone viewing that in the light least favorable to defense counsel might be able to argue that this is some quantum of evidence that defense counsel possibly were engaged in assisting Ms. Butina in violating the Court's order.

THE COURT: All right. But that goes to whether counsel, with the aid of his client, violated my – and I'll use the colloquial term for it, my "gag order." How does that go to – and maybe you'll tell me; I cut you off. But how does that go to the voluntariness of her plea?

MR. KENERSON: So if there is an allegation that defense counsel assisting her somehow in violating the, again, to use the colloquial term the "gag order," that would give defense counsel a reason to want to basically plead the case to avoid that potential violation from becoming public. And curry favor with the government.

Driscoll went on to explain why his client was talking to a journalist with whom she had a friendship that "predates all of this" in spite of her being subject to a gag order.

The circumstances, just so the Court's aware, Ms. Butina has a friendship with a particular journalist that predates all of this. The journalist was working on a story about Ms. Butina prior to any of this coming up, prior to her Senate testimony, prior to her arrest, and had numerous on-the-record conversations with her prior to any of this happening. At the time the gag order was entered, I

took the step of informing the journalist that, although he could continue to talk to Ms. Butina, he could not use any of their post gag-order conversations as the basis for any reporting, and the journalist has not, in any event, made any public statement or done any public reporting on the case to date.

Bamford's own description of "a number of long lunches starting last March at a private club in downtown Washington, D.C." make it clear he is the journalist in question.

Judge Chutkan was none too impressed with Driscoll's advice.

THE COURT: Well, putting aside the questionable advisability of having your client talk to a reporter while she is pending trial and there's a gag order present – and I understand you told the reporter that they couldn't make any public statements, but as a former criminal defense attorney myself, I find that curious strategy.

Now, to be clear: Bamford never did publish anything on Butina during the period when the gag was in place (Chutkan lifted the gag on December 21). Even if Bamford had published something during that period, so long as Bamford did respect Driscoll's advice that their ongoing conversations should be off the record, there was nothing Bamford could publish that would directly reflect her own statements.

And there's very good reason to question whether the government threw Butina back into solitary because Bamford was reporting on her treatment. That is, it's not outside the realm of our criminal justice system that Butina was placed back in solitary because a reporter had been tracking her case since before the investigation became public.

Instead of laying out the case for that, however, Bamford instead hides his own role in the process.

To be honest, I think the story is better understood as one about Paul Erickson and not Maria Butina. This story won't help her at sentencing – that's going to be based on her cooperation, not what a journalist who has already antagonized the government says about her. But it may help to spin Erickson and George O'Neill's interest, as well as that of the NRA.

The public record certainly sustains the case that the government used solitary to induce Butina to cooperate – presumably to cooperate against Erickson and O'Neill. That certainly merits attention.

But then the government also used solitary to cut off Butina's communications with Bamford himself. If it's *this story* the government was retaliating against, Bamford should say that, rather than obscuring it.

This is a story about America's reprehensible use of solitary confinement. But it doesn't explain a key part of that process here. Given that the story seems to most benefit Erickson, I find that silence remarkable.