

IS DOJ TRYING TO HIDE VALERIE PLAME AT THE STERLING TRIAL?

While I was away in South Carolina, the government released the redacted copy of Leonie Brinkema's order on several issues relating to the Jeffrey Sterling case (the government immediately appealed aspects of this ruling).

There are several interesting aspects of the ruling. First, Brinkema refused to let the government admit the talking points Condi Rice used to convince the NYT not to publish the Merlin story back in 2003 without Rice testifying herself. Although the ruling will probably have a negligible affect in this case, I nevertheless find it ironic, given that the government gave up prosecuting two former AIPAC employees when their defense attorney Abbe Lowell threatened to call Rice to testify about her AI cutout habits.

Also, Brinkema is allowing the government to introduce a redacted copy of Sterling's 2000 performance evaluation, presumably so they can argue that Sterling leaked the details about Merlin out of anger that his Equal Opportunity complaint went nowhere. I find this troubling. When that suit was litigated, the government declared state secrets over something, presumably the real performance review. Given the possibility the review referred to Merlin, it seems unfair to allow the government to use the performance review against Sterling without releasing the whole thing (if that is, in fact, what the government invoked state secrets over).

But I'm most interested in what Brinkema's order suggests about the government's effort to deal with CIA witnesses. The government, it appears, wants to keep the names of 10 former and current CIA employees who will testify secret from both the defense and the jury.

[T]he Court will hold in abeyance pending further briefing the Government's request not to disclose, even under seal, to the defendant or jury the true names of these witnesses as they testify.

Brinkema's planned approach—in addition to using screens to hide the witnesses, she plans to delay the time when potential jurors would get a list of potential witnesses—suggests these names might be publicly recognizable.

Specifically, asking potential jurors if they recognize the names of any witnesses will be delayed until a qualified pool of jurors is established and jurors stricken for cause have been excused from the courtroom. Then, as groups of jurors are considered for peremptory challenge, they will be shown an alphabetical list containing the full names of all witnesses, with no other identifying information. Any jurors recognizing a witness's name will be stricken for cause. Because the witness list will contain the full names of many CIA employees whose identities the Government wants to protect, it will remain classified; however, a redacted list will become part of the public record.

Of course, this trial will take place in Northern Virginia; it's quite possible that these CIA witnesses are neighbors or friends of potential jurors. And the government has a clear interest in preventing these potential jurors from learning that their neighbors are actually spooks.

But as the video above makes clear, at least one of the former CIA employees who might be called to testify, Valerie Plame, would be recognizable to a far larger group of people—those who even remotely followed the CIA Leak Case (I think

Valerie would have been on maternity leave during the actual events described in Risen's book). And this filing (see PDF 5-6)—an argument laying out Pat Lang's proposed testimony refuting the government's claim that the information Sterling allegedly leaked hurt the country—shows Lang read the FBI interview reports of 22 witnesses; the last name of two of those witnesses, one classified, one apparently not, starts with a "W."

Mind you, I'm not suggesting the government doesn't already have very good reason to want to hide the CIA affiliation of these 10 proposed witnesses—they do, which is part of the reason their case may be in trouble, since these witnesses will be used, in part, to prove Sterling's alleged leaks were serious. Sterling has a clear right to confront his accusers, but the government wants to ensure he doesn't even know their real names (this may be one of the things the government is appealing).

But I wanted to raise the possibility that they want to hide at least one of these identities not because the identity remains classified—Dick Cheney ruined that—but instead out of a desire to avoid confirming that Plame played a role in the Merlin operation.