IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America,	)	Criminal Action
	)	No. 17-CR-201
Plaintiff,	)	
	)	**PUBLIC VERSION**
vs.	)	**Sealed Hearing**
	)	
Paul Manafort, Jr.,	)	Washington, DC
	)	Date: February 13, 2019
Defendant.	)	Time: 1:30 p.m.
	)	

TRANSCRIPT OF SEALED HEARING
HELD BEFORE
THE HONORABLE JUDGE AMY BERMAN JACKSON
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

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* * *

THE COURTROOM DEPUTY: Good afternoon Your Honor, this afternoon we have case No. 17-201-1, the United States of America v. Paul J. Manafort, Jr. Mr. Manafort is present in the courtroom, Your Honor.

Will counsel for the parties please approach the lectern, identify yourself for the record.

MR. WEISSMANN: For the government, Andrew Weissmann, Jeannie Rhee, Jeff Weiland, Renee Michael, Mike Ficht, and Greg Andres.

THE COURT: Good afternoon.

MR. WESTLING: Good afternoon, Your Honor. Richard Westling and Kevin Downing on behalf of Mr. Manafort, along with Tim Wang, who's working as our paralegal.

THE COURT: This is a sealed hearing. It's a continuation of the hearing we began on February 4th. And at this hearing I'm planning to announce my findings based on the record. This transcript, once it's complete, will be my ruling. I'm not going to issue a written opinion, particularly not after I read all of this out loud.

There will be -- I think it will be appropriate to do a public minute order shortly after the hearing that encapsulates my findings in a way that's consistent with what's already been made public in this case. And then we'll set up a procedure to do what we did last time and to release as much as possible of this transcript.

I note there's also an ongoing dispute concerning one set of redactions in the transcript of the breach hearing and I'm going to take that up at the end of this proceeding, after I've ruled on the breach allegations. I really want to commend both sides for how quickly you got through that exercise and how much was agreed. I don't think there's any -- the current disagreement is bad faith on the part of anyone. I think it's legitimate disagreement and we'll talk about it. But I thought the fact that almost all this could be accomplished through agreement of the parties was very commendable.

The plea agreement in this case, docket 422, provides in paragraph 8: Your client shall cooperate fully, truthfully, completely, and forthrightly with the government. The defendant agreed, in paragraph 8(a), to be debriefed; in paragraph 8(c) to testify at any proceedings, and in 8(f) that he, quote, must at all times give complete, truthful, and accurate information and testimony, and must not commit, or attempt to commit, any further crimes, close quote.

Paragraph 8 goes on to say that the defendant, quote, shall testify fully, completely and truthfully before any and all grand juries in D.C. or elsewhere.

Paragraph 13, the breach of agreement paragraph provides: Your client understands and agrees that, if after entering this agreement, he fails specifically to perform or to fulfil completely each and every one of his obligations under

this agreement, or engages in any criminal activity prior to sentencing or during his cooperation, he will have breached this agreement.

Should it be judged by the government, in its sole discretion, that the defendant has failed to cooperate fully, intentionally, gave false or misleading testimony -- intentionally gave false or misleading testimony, has committed or attempted to commit further crimes, or violated any other provision of this agreement, he would not be released from his guilty plea, but the government would be released from its obligation under the agreement, including its promise not to oppose the downward adjustment to the sentencing guidelines calculations for acceptance of responsibility. The paragraph goes on to say your client understands that the government shall be required to prove a breach of this agreement only by good faith.

The defendant accepted the agreement. His signed acceptance, on the last page, says, quote, I have read every page of this agreement, close quote. Also, he signed and initialed each page, signifying that to me. The acceptance also states I've discussed this with my attorneys. I fully understand the agreement and I agree to it without reservation. I do this voluntarily and of my own free will, intending to be legally bound. We then deferred the selection of a sentencing date for a period of cooperation and debriefings.

The parties informed me, in a joint status report on November 26th, 2018, docket 455, that it was the Office of Special Counsel's position the defendant had breached the plea agreement by making false statements to the FBI and the Office of Special Counsel, and that it was time to set a sentencing date.

The defendant disputed the government's characterization of the information he had provided and denied that he had breached the agreement, but had agreed that, given the dispute, it was time to proceed to sentencing.

I held a status hearing and ordered the government to provide me with information concerning the alleged breach. On December 7th, 2018, the government filed its sealed submission in support of its breach determination, docket 461. On January 8th, 2019 the defendant filed his response to the special counsel's submission in support of the breach determination. That was docket 472, the public version, and 473 was the sealed version.

The government was then ordered to identify the particular false statements and produce the evidence that supported its determination that they were false. And on January 15th, 2019 it filed the FBI declaration in support of the government's breach determination. That was docket 476, was the redacted version; 477, sealed, with a set of accompanying exhibits. And the defendant responded in docket

480 on January 23rd, 2019.

As everyone agrees, it is the government's burden to show there's been a breach, but to be relieved of its obligations under the agreement it must simply show that its determination was made in good faith.

In its January 8th response to the breach allegations, the defense said that, quote, given the highly deferential standard that applies to the government's determination, it was not challenging the assertion that the determination was made in good faith. That was in docket 472, page 2.

More important, in response to my question at the status hearing we held on January 25th of this year, the defendant conceded that the determination was in fact made in good faith.

In light of the defendant's concession, and based upon my independent review of the entire record, including the pleadings I just listed and the supporting exhibits, the facts and arguments placed on the record at the hearing on February 4th, 2019 and the post-hearing submissions filed by the defendant, docket 502, and the government, docket 504, I find that the Office of Special Counsel made its determination that the defendant made false statements and thereby breached the plea agreement in good faith. And, therefore, the Office of Special Counsel is no longer bound by its obligations under the

plea agreement, including its promise to support a reduction of the offense level in the guideline calculation for acceptance of responsibility.

But that is not the only question before me today. The second issue is whether the statements made to the FBI, the Office of Special Counsel or the grand jury that were identified by the Office of Special Counsel as the basis for its breach determination were in fact intentionally false. Whether this defendant lied to the FBI or the grand jury bears on the applicability of certain guideline adjustments, such as acceptance of responsibility. And as I noted at the last status hearing, it also bears more generally on my consideration of the statutory sentencing factors, decisions I'm going to have to make about consecutive and concurrent sentences, etcetera.

But, in case there's any confusion on this point, no matter what I decide, I cannot sentence him to more than the statutory maximum for these offenses. I want to underscore that I'm not ruling today on the applicability of the adjustment for acceptance of responsibility or any other guideline provision.

At the time of the plea, the defendant swore to me that he was in fact guilty of offenses set forth in the information, as well as those charged in the Eastern District of Virginia. And whether the defendant should get credit at

sentencing for his acceptance of responsibility for the offenses in the indictment that was pending before me, or those in the Eastern District of Virginia, which isn't my decision at all, will involve consideration of other facts, in addition to the narrow question of whether he lied about these five specific topics.

I expect that the presentence report and the parties in their sentencing memorandum will address the totality of the circumstances, including the impact of today's findings on that decision. But as both the parties agreed that it should, the decision that I'm going to announce today will advise you as to whether I find that the Office of Special Counsel has established by a preponderance of the evidence that the defendant made intentional false statements with respect to any of the matters. And we're going to leave acceptance of responsibility for another day.

I want to make a couple general observations at the outset. It is true that the Office of Special Counsel bears the burden of proof by a preponderance of the evidence, and I will make all of my findings applying that standard. But I do want to note that if the defense wanted me to reject inferences to be drawn from the facts put forward, I can't do it based on conclusory statements about how hard it is generally for a witness to remember. I do take the defendant's point that it can be hard to answer questions on a broad range of topics when

questioners have the documents in front of them and you don't. But I'm not sure how that bears on anything in particular.

I note generally that the allegations that Mr. Manafort lied are not based on times when he said, "I don't remember," which is something a person even under the pressure of a debriefing session could say when they don't remember. And none of the ones I'm concerned about are even based on general denials which later proved to be untrue or they corrected relatively promptly. My concern isn't with non-answers or simply denials, but times he affirmatively advanced a detailed alternative story that was inconsistent with the facts.

I also found the defendant's statements in his submission concerning his health to be particularly conclusory. In his response to the allegations, the defendant specifically asked me to consider the defendant's health issues exacerbated by the conditions of confinement, quote, in particular, solitary confinement, close quote, as a reason why I should find that the inaccuracies were not intentional. But the submission did not include any chronology, any medical or mental health information, any information about the details of his custodial situation, or any information concerning the state of his health on any of the dates in question.

In short, it gave me no basis upon which I could find that it would be a mitigating factor. So I gave the defense an

opportunity to elaborate at the hearing. And when I asked questions at it that point it all evaporated and counsel had little or nothing to say, other than, It's been shown, One sees an impact, and there really wasn't any specificity there. And it left the impression that the issue was left in the pleading for public consumption, but not mine.

This isn't the first time that the defense made a strong public declaration about his conditions of confinement. I think it may be useful to review how he got to the Alexandria city jail, where he is now.

I revoked his bond on June 15th based on a finding that there was probable cause to believe that he had attempted to obstruct justice and interfere with witnesses. The D.C. Circuit upheld that ruling. And he has specifically admitted to doing just that under oath when he pled guilty. So he was, unquestionably, lawfully detained. And I noticed in a minute order at the time that the defendant must be afforded a reasonable opportunity for private consultation with counsel.

It was the U.S. marshal and not the Court who then made the decision regarding his placement. He was awaiting trial at the Eastern District of Virginia at that time and the marshal there selected Northern Neck Regional jail. It would have been one of the options for our marshal as well, the other would have been D.C. jail; it wouldn't have been up to the defendant or to me, but I'm not sure the defendant would have

found that to be preferable.

Northern Neck, though, in my view, presented real concerns about his ability to confer with counsel for the two upcoming trials. But before anyone presented that issue to me for action, the defendant presented it to the Court in the Eastern District of Virginia in early July. He complained that given the distance from the District, restrictions on his electronic and phone communications, there was a severe impact on his ability to prepare for trial and review documents, etcetera. And that was docket 110 in 18 criminal docket 83 in the Eastern District.

He also attached a brief from July 5th in which he told the D.C. Circuit that he was in solitary confinement, locked in his cell 23 hours a day. The Court in the Eastern District of Virginia made the decision to promptly alleviate those concerns by ordering, and not just recommending, that he be housed in the Alexandria jail. The defendant then immediately turned around and said, Oh, never mind, we respectfully ask the Court to permit him to remain at Northern Neck Regional jail.

It became clear why in the government's pleading, docket 117. There he was housed by himself, it's true, but housed within a private, self-contained living unit, including his own bathroom, shower, phone, laptop, and access to a separate work room for review of trial materials. And in his

reply, docket 125, the defense conceded that the government had not misrepresented the conditions, other than there was a dispute about whether he could or couldn't send emails.

I'm not going to split hairs over whether that did or didn't technically qualify as solitary confinement, and I'm not placing any reliance on what the warden tended to call it, but the facts about what it was are not in dispute. And so that all leaves the distinct impression that some disingenuousness on the part of the defense played a role in how he got to Alexandria. Indeed, the Court in the Eastern District of Virginia did not reverse the decision it had just made and the transfer was effectuated. And that made sense to me because I was concerned about his ability to meet with counsel with the two cases coming up, and with his family's ability to visit him.

But in any event, he's been there since July 10th. In those six-plus months he has not filed a single motion seeking any sort of relief whatsoever, here or in the Eastern District of Virginia. There have been no formal complaints lodged concerning his access to or the quality of his medical care. No information has been provided to me concerning his classification or the conditions of his confinement.

Of course, those decisions fall within the purview of the warden. But to date, as far as I know, no habeas petition has been filed in the appropriate jurisdiction. So there's

nothing in the record about what's happening there now. And more important, I didn't see any evidence that indicated I should take it into account.

I don't mean to be unduly harsh, I don't mean to minimize the burden he is under. I accept the defendant's representations concerning the considerable emotional strain imposed by all of it. The combination of incarceration, the realization that he would be sentenced and there would be no trial, the stress and unpleasantness of repeated debriefings and cooperation are difficult to bear up under any circumstances.

I also do not question the defendant's representation that he's been diagnosed with gout or that he's experienced flare-ups which have worsened during his incarceration. But you didn't provide any dates or records associated with the onset of the symptoms or information about the impact of the medical condition on his cognitive or emotional condition.

So there's no evidence in the record of the connection between his confinement and the exacerbation of his symptoms. And when I asked the defense to substantiate it and gave it a chance, they just said, Well, it's likely that there's a connection. And the other problem is that the chronology that is known doesn't give me anything to work with and isn't entirely consistent with this argument.

Mr. Manafort pled guilty here on Friday, September

14th. At that time, fortunately, he had no health complaints, his ability to walk was not impaired. He stood at the lectern without difficulty, made no request for assistance during the plea colloquy concerning his mental state. He indicated that he was not taking any medication that could affect his ability to understand. I'm not saying he wasn't already diagnosed with gout at that time, but as of that date, September 14th, he hadn't demonstrated or, at least, expressed any concerns regarding physical or mental impairment.

Well, why is that important? It's important because three of the debriefings, September 11th, September 12th and September 13th, had already taken place. The next five were quite soon thereafter, beginning the following week, on the 20th, the 21st, and then the 25th, 26th, and 27th, and the following week October 1st and 5th. He was debriefed again on October 11th and 16th. So every single debriefing was before his appearance in the Eastern District of Virginia, in the wheelchair, on October 19th when he complained publicly, as far as I know for the first time, that his health was being compromised by the conditions of his confinement.

The parties have informed me that he was still having difficulty walking and required the wheelchair for the two sessions before the grand jury, on October 26th and November 2nd, so that's a matter of record. But the transcript, Exhibit 4, doesn't reflect any sort of mental impairment. He was

specifically asked if the medication for the inflammation affected his mental state or his ability to understand, and said no. The Office of Special Counsel did not develop any concerns about his cognitive ability or emotional state during the questioning and, more important, none were brought to its attention.

So I've taken all the defense arguments into consideration, but there is little in the record that would explain, excuse or justify the statements of concern, particularly given when they were made.

So now I want to turn to each of the five areas of testimony.

The first is the payment by [redacted] Firm A, towards the debt incurred by the defendant with an unrelated law firm. The defendant says it's not fair to characterize his initial responses as false, given the confusion surrounding the original transaction and confusion in the questioning. He says it's unremarkable that he wouldn't have immediate recollection of the details. But the record doesn't seem to reflect the confusion and the defendant didn't profess to be confused. He does appear, though, to be making a concerted effort to avoid saying what really took place.

Exhibit 9 is the FBI 302 of the interview on September 20th. During that interview the defendant asserted that the money paid to the law firm to which he owed a debt was

repayment by [redacted] head of Entity B, the [redacted] [redacted] of a loan Mr. Manafort had made to [redacted], and that Manafort simply had [redacted] pay on his behalf to the law firm.

So the initial answer cut [redacted] and its head, [redacted] [redacted] out of the picture entirely. But later that same interview he did agree, when confronted with that fact, that it had been [redacted] that made the payment to the law firm that it had. So, on October 1st, Exhibit 3, the FBI 302 of that interview reflects that Mr. Manafort said, Well, [redacted] paid it because he had given him a lot of work in the past.

On October 16th he's interviewed again. And Exhibit 10, the FBI 302, reports that he said, for the first time, Well, I asked [redacted] to pay the law firm on my behalf as a loan. And he, thereafter, produced a copy of a promissory note, but it was unsigned. Page 3 of Exhibit 10 reports that he said originally they planned for the payment to be a loan.

Last year, they executed a note, his accountant has it. He said he dealt with the accountant through the New York lawyer, [redacted] and that [redacted], quote, reminded him that he had signed a loan agreement, and that it was just a friend helping a friend. About a week later, according to paragraph 11 of the FBI declaration, the defense produced an unsigned loan agreement. It describes the loan as at 5 percent, to be repaid in tree installments in 2018; March,

June, and September. In other words, all of them would have been repaid by the time of the October interview.

Then he testified in the grand jury on October 26th, Exhibit 4 is the grand jury testimony. That time he said [redacted], quote, offered to do it and it was income to him because [redacted] did it in recognition of the business Manafort had sent his way.

During the same grand jury session he also said they did a loan agreement and he stated that he made a payment on the loan.

Finally, in the same grand jury session, he testified that [redacted] went to [redacted] and asked [redacted] to do it because [redacted] owed [redacted] money.

So those are all the different ways he's characterized this. What does the paper trail reveal? Exhibit 12 is a series of texts dated June 26, 2017 from Manafort to [redacted] -- not [redacted] -- in which Manafort gives [redacted] all of the necessary banking information to transfer funds to the law firm.

Exhibit 2 is a bank wire transfer showing the payment made by [redacted]'s company, [redacted], to the law firm on June 26th, 2017. Exhibit 14, [redacted] e-mails Manafort on September 24th, 2017, remaining him, I paid the firm on your behalf and the tax documents are going to be forthcoming.

Manafort then forwards the email directly to his

accountant himself, telling the accountant that the $125,000 is income and a 1099 is on its way. He says, I had the vendor pay it directly to the law firm, which has several misstatements even in just that one sentence. He says nothing about a loan and he makes no reference to repayments.

Exhibit 16, in the FBI 302 of the interview with the accountant, Mr. [redacted], he said he treated it as income in the 2017 tax return in accordance with Manafort's instructions and he never received a 1099. [redacted]. So there's no actual evidence on that point and I can't make any findings about why Manafort might have wanted to obscure the details of this transaction.

At the hearing the defendant said to me, Yes, but look at the [redacted] 302. He acknowledged that he saw the promissory note. The plain implication of that argument was that the loan documents were generated at the time of the transaction.

Well, not quite. [redacted] Indeed, the unsigned promissory note itself is dated September 14th, 2017, three months after the payment was made.

Four days after the grand jury testimony in Exhibit 17 Manafort's lawyer [redacted] sends the accountant the loan document for the first time. It's October 30th, 2018. The defense said, at the hearing, Well, that's not remarkable, the preparation of the 2017 tax return was still underway. But the accountant said no.

Mr. [redacted] said the tax return designating the payment as income had already been prepared and sent to Manafort for his approval and was approved without changes on that point a month before [redacted] sent him the email with the loan document. And that's consistent with Exhibit 17, which is an email from [redacted] to [redacted] saying, Mr. Manafort wants to know how you handled -- past tense -- the $125,000 note from [redacted].

[redacted] responded that he wasn't aware of any note

from that name. [redacted] then said, Well, Paul borrowed 125,000 from him last year. I don't have the signed version, but attached is the draft, which I think was signed without change. And then he goes on to represent that interest payments were in fact made that year and that Manafort was current on them. But there is zero evidence in the record that Manafort repaid the amounts on the dates due or any other dates.

Now, I was concerned before the hearing that the loan document was a complete concoction to support the latest version of the evolving story. However, the metadata provided by the defendant in docket 502-1, Exhibit A to defendant's post-hearing submission, reflects that [redacted] created an emailed draft of the promissory note to Mr. Manafort on September 14th, 2017. And that's consistent with the date on the unsigned document that was sent to the accountant in 2018. And that's not disputed by the Office of Special Counsel.

So I'm not basing any finding today on any determination that the defendant had the lawyer gin up a fraudulent piece of evidence a year later. But the fact remains, there's no evidence that there was ever a signed version of a promissory agreement, and even in September of 2017 it was nothing but a post hoc effort to make the completed payment, described by Manafort as income in June, look like something different than it had been three months before.

Indeed, [redacted] We don't know why [redacted] made that request, but it does appear that in September of 2017 Manafort was engaged in an effort to re-characterize the nature of the payment. But that never went anywhere, so the statement to the Office of Special Counsel and the FBI on October 16, and grand jury testimony to the effect that there was a loan agreement in place, especially with the added gloss that he was making payments under it, is false.

In the end, what we have is a series of contradictory and misleading answers to the same questions, that are inconsistent with the contemporaneous records. In particular, Exhibit 12, the transmission of the banking information to [redacted], and Exhibit 14, Manafort's own email to his accountant, and with the accounts of other witnesses. He was asked about the transaction for the first time on September 20, and then it was the third time it was discussed, about a month later, on October 16, when he first advanced the theory that it was a loan, and then the story continued to evolve in the grand jury on October 26th.

He had plenty of time to think, so the, I-can't-be-expected-to-remember-everything-off-the-top-of-my-head excuse doesn't work here. And it wasn't just a denial or an omitted detail, he advanced a series of new false narratives, including

trying to get the accountant involved, and that can't be explained by the suggestion that he was confused or misremembering.

So I find this was a matter about which he provided intentionally false information to the Office of Special Counsel, the FBI, and the grand jury. I also note, without deciding whether I have to make this finding or not, that the record supports a finding that the Office of Special Counsel's interest in tracings the flow of funds to Manafort, particularly from [redacted] and vendors associated with the campaign, was material to its investigation.

With regard to that issue, I'm applying the law of this circuit as set forth in *United States versus Moore*, 612 F.3d 698, on page 701, in the D.C. Circuit from 2010. In that case the Court said Section 1001 does not define "materially false." The Supreme Court has said a statement is materially false if it has, quote, a natural tendency to influence, or is capable of influencing, the decision of the decisionmaking body to which it is addressed, close quote. *Moore* there was quoting *United States versus Gaudin*, G-A-U-D-I-N, 515 U.S. 506.

The Court went on to say: Many of our sister circuits have adopted a somewhat broader approach to determining materiality, asking not only whether a statement might influence a discrete decision, but also whether a statement might affect in any way the functioning of the

government agency to which it was addressed. It cites a series of other circuit opinions by example. Two, in particular, are *United States versus Lichenstein*, 610 F.2d 1272, which it encapsulates the holding as, A false statement must simply have the capacity to impair or pervert the functioning of a government agency.

The Court also cites *United States versus White*, 270 F.3d 356, out of the Sixth Circuit. And in that parenthetical the D.C. Circuit said: Materiality is a fairly low bar. The government must present at least some evidence showing how the false statement in question was capable of influencing federal functioning, close quote. So that is how the Circuit quoted the Sixth Circuit.

And the Court then went on to say: In determining whether a false statement is material, this Court -- the D.C. Circuit -- has consistently asked whether the statement has a tendency to influence a discrete decision of the body to which it was addressed. Then there's several cites. It said: We have, however, suggested a lie distorting an investigation already in progress also would run afoul of Section 1001. We now join the other circuits in holding a statement is material if it has a natural tendency to influence, or is capable of influencing, either a discrete decision or any other function of the agency to which it is addressed.

So it is this precedent from *Moore* that provides the

definition of materiality that underlies my findings.

I also note that the D.C. Circuit said, in *United States versus Winestock*, 231 F.2d 699, the issue to which the false statement is material need not be the main issue, it may be a collateral issue, and it need not bear directly on the issue, but may merely augment or diminish the evidence upon some point.

All right. So those are my findings with respect to issue No. 1.

Issue No. 2 was Kilimnik's role in the obstruction conspiracy. This issue has to do with Manafort's and Kilimnik's joint attempt to get witnesses to the FARA charges against Manafort to say that the advocacy he called upon them to do on behalf of former Ukrainian President Yanukovych and his party was not supposed to be performed in the United States.

Exhibit 10 is the FBI 302 from October 16, 2018. It includes a detailed description of Mr. Kilimnik's state of mind and denies that he was attempting to influence witnesses to give false testimony at trial.

The defendant's first explanation about this in its initial response to the breach allegations was: Well, he was just saying he couldn't speak to Kilimnik's state of mind. That actually wasn't a very fair characterization because he affirmatively stated what it was. At the hearing, defendant's

second explanation was that I should look at this in the context of the previous paragraph in the 302, where Mr. Manafort had just said that he had talked to Kilimnik after the superseding indictment came down and he reports what Kilimnik thought and felt at that time. And the defense said that as in that paragraph and the next paragraph, he was just transmitting what Kilimnik had said to him.

I think it's also fair to say that advancing that version was not just relaying what Kilimnik had said, it appears to be an attempt to exonerate him. And it's odd and problematic that after he huddled with counsel and returned, to agree that, yes, Kilimnik had conspired with him, as had been admitted in the plea agreement. He denied that he had ever said anything else in the same debriefing session. That's in the declaration in paragraph 17.

It's also a bit of a stretch because Mr. Manafort doesn't just say to the agents, Kilimnik doesn't believe he was pressuring the witness, or Kilimnik didn't think he was suborning perjury, he didn't intend to violate U.S. law, he makes the affirmative assertion that Kilimnik believed the project was a European project, when Manafort plainly knew that Kilimnik knew it wasn't and the documents plainly reflect that it wasn't, and that was the basis for the conspiracy count to which he pled guilty in the first place.

To me, this is definitely an example of a situation

in which the Office of Special Counsel legitimately concluded he's lying to minimize things here, he's not being forthcoming, this isn't what cooperation is supposed to be. This is a problematic attempt to shield his Russian conspirator from liability and it gives rise to legitimate questions about where his loyalties lie.

So it bears upon my finding that the Office of Special Counsel was fully justified in its determination and acted in good faith when it found that he didn't live up to his obligations under the plea agreement.

But even with the relatively low standard of proof by a preponderance, making a finding of an intentional false statement is challenging in the absence of a transcript or even notes that memorialize the particular question he had asked ask and what he was answering, as opposed to a 302 with the answers only.

While I find the defense theory to be strained and I'm not really sure I buy it, the language of the 302 can be read to support the defendant's alternative explanation. Given that, and given his correction of the record within the same interview, I'm not comfortable that I can go on to find that this particular example rises to the level of an intentional falsehood, a lie to the FBI that would constitute the commission of an independent crime while awaiting sentencing in two cases. So I am not finding that he intentionally lied with

respect to that matter.

The third matter is his interactions with Mr. Kilimnik. The first one that came up was discussions concerning what's been referred to as [redacted] As with the prior incidents, there was much that was re-explained and corrected the number of times this came up.

The most problematic to me is described in paragraph 29 in the declaration, and Exhibit 101, the FBI 302 from September 21st, on page 4, where he doesn't just say I don't remember discussing [redacted] with Mr. Kilimnik after August 2016 and proved to be wrong about it. He asserted that he put the kibosh on the idea. He called it a bad idea. He said he didn't [redacted] and he didn't want to [redacted] and then he gave the FBI a series of specific reasons that he ended the discussion for good at that time.

This is not supported by any evidence, even his argument that he was telling the truth because what he told the FBI he said at the time was: I was opposed to [redacted], is contrary to the subsequent emails trying to elicit the reaction to [redacted]. Creating an alternative narrative is not the same thing as simply denying or professing not to remember that something happened, and it's not consistent with the defense argument that he just didn't remember.

So I find that the September 21st claim that he laid the issue to rest by telling Kilimnik [redacted] was an intentional material false statement.

Moreover, there are other misleading, inaccurate statements that reinforce the conclusion that he was lying about his dealings with Kilimnik.

He was also asked about a February 2017 meeting [redacted] regarding [redacted] and questions about his role doing research in advance of Ukrainian elections and his polling for a Ukrainian candidate. The defense says, in its reply to the FBI declaration, basically, Gee, it was just all so confusing. And it points out that at the end of the day he sort of acknowledged most of this. And maybe if you took each fact separately and each attempt to dissemble about Kilimnik individually, they might not support a finding of criminality.

But there are multiple instances of this and they all follow a pattern. Concessions comes in dribs and drabs, only after it's clear that the Office of Special Counsel already knew the answer. Again, it's part of a pattern of requiring the Office of Special Counsel to pull teeth; withholding facts if he can get away with it. And that's just not consistent with what was contemplated by the plea, and it supports the breach determination.

Denying the meeting [redacted] was denying a contact

that was a part of what the Office of Special Counsel was investigating.

With respect to the questions regarding his efforts to conduct polling in the Ukraine in connection with its upcoming elections and to have the polls test the reaction to [redacted] that Kilimnik [redacted] were still trying to advance, and questions concerning Kilimnik's knowledge and involvement, we again have a series of revised explanations, grudging revelations and admissions.

The defense tries to argue, well, it's only a few questions in the poll and those were collateral to the main thrust of the poll, which is the presidential election. But I don't think that can really be minimized in that way. These were the questions that were provided by Manafort and they were important to him and to Kilimnik.

On page 6 of docket 470, the defendant's response to the breach determination, the defense explains and tries to minimize Manafort's initial inaccurate statements about meeting Kilimnik [redacted] by saying, Well, it's reasonable he wouldn't recall events from that time period because his primary focus was the U.S. presidential campaign, and he's not likely to recall other, less pressing events like conversations about [redacted] in some other country.

Maybe. But [redacted] seems to have been a recurring [redacted]

[redacted]; in particular, the [redacted], doesn't seem to have ever been far from Manafort's mind, even when he was working on the campaign.

But even if I want to give that argument some weight, running a presidential campaign is, after all, a fairly all-consuming exercise. That explanation falls apart completely when the defense goes on to say, in the next sentence, quote, The same is true with regard to the government's allegation that Mr. Manafort lied about [redacted] Mr. Kilimnik related to the [redacted], period, close quote.

That's not the same at all. You can't say you didn't remember that because your focus at the time was on the campaign. That relates to the campaign. And he wasn't too busy to arrange and attend the meeting and to send Gates [redacted] that very day. It's problematic no matter how you look at it.

If he was, as he told me, so single-mindedly focused on the campaign, then the meeting he took time to attend and had [redacted] had a purpose [redacted]. Or, if it was just part of his effort to [redacted], well, in that case he's not being straight with me about how single-minded he was. It's not good either way.

Plus, his asserted inability to remember rings hollow when the event we are discussing involving [redacted] not only [redacted] but he's [redacted] with a specific understanding and intent that [redacted] at a meeting in which the participants made it a point of leaving separate because of the media attention focused at that very time on Manafort' relationships with Ukraine.

This is another example of the distinction between a simple denial or failure of recollection and an assertion of fact. And the concern here is greater because this false statement occurred before the grand jury.

He told the grand jury he only told Gates [redacted] The grand jury testimony, Exhibit 4, begins, on page 152 on that matter, quote, [redacted]

When asked, on page 154, what exactly did you [redacted]

[redacted]

All this a contrary to what Gates had to say. Exhibit 222, the FBI 302 of the January 31st, 2018 proffer session, Gates said he [redacted] Now its true that particular 302 doesn't specify [redacted] But publicly available [redacted] are publicly available, so why would one need [redacted]?

Exhibit 223, September 27th, 2018, the FBI 302, Mr. Gates said clearly, on that day, the [redacted] he was told [redacted]

Defense says I shouldn't believe Gates. But even if I take into account his lack of recollection of certain details and dates, there's no reason to reject at all in its entirety. The defense pointed to articles outside the record regarding the Virginia trial, whether one or more of the jurors there in fact decided to set aside his testimony because they were concerned about the credibility of a witness who had made a deal. The verdict, based on the documents alone, if it was, turned out to be consistent with his testimony. More important, the tax evasion, bank fraud, FBAR, and FARA

allegations supported by Gates's testimony have all been admitted to under oath by Manafort himself. And not everything Gates said was inculpatory. There were some questions he couldn't answer, and there was a lot of what he said that supports Mr. Manafort's theory. For instance, as the defense points out, he minimizes the significance of [redacted] in the first place.

More important to me, there's other corroboration. There's Exhibit 233, an [redacted] Now, I was told on February 8th, for the first time, in the third pleading that was filed in response to these allegations and after the hearing was over, that when Mr. Manafort said [redacted] There's nothing provided to substantiate that, but there's also nothing in the record to indicate one way or the other that the two men had met previously [redacted]

All Gates said to the FBI in Exhibit 236 on January 30th was that [redacted]. Is that text alone definitive? Am I relying on that solely? No. But is it corroborative of Gates's statement that [redacted] Yes.

So the defense said at the hearing, Well, it's a

recent fabrication. He didn't say [redacted] until September. September of 2018. But it turns out the record doesn't support that.

Exhibit 222, as I noted, on January 31st, on page 17, he did say [redacted] Manafort's direction.

Exhibit 236, the 302 from January 2018, Gates says we discussed [redacted]. Those are pretty specific words.

Exhibit C to docket 504, the FBI 302 from February 7, 2018, which has more recently been provided by the government, on page 15 it notes that Manafort said, back in February -- that Gates said, back in February, Manafort [redacted] This conclusion is reinforced when you see the series of emails from Kilimnik to [redacted] and he goes on.

So, the defense took another tack then and said, Well, it's not important because these [redacted] are gibberish. Who knows what they mean? I reject that. It is, perhaps, true that I don't know [redacted] and it's perhaps true that Mr. [redacted], but Mr. Manafort, Mr. Gates, and Mr. Kilimnik are [redacted]

[redacted].

Indeed, the 302s make mention of the fact that Manafort specifically wanted his own [redacted] people, [redacted]'s company, instead of [redacted], helping out. And the recently provided 302 from Mr. Gates emphasizes that [redacted]s [redacted] was the particular sort of traditional [redacted] Manafort found [redacted]. And here they're at a meeting where they specifically talked about [redacted]. So that's not a very strong argument.

Also, the evidence indicates that it was understood that [redacted] would be [redacted] from Kilimnik [redacted] including [redacted], and [redacted]. Whether Kilimnik is tied to Russian intelligence or he's not, I think the specific representation by the Office of Special Counsel was that he had been, quote, assessed by the FBI, quote, to have a relationship with Russian intelligence, close quote. Whether that's true, I have not been provided with the evidence that I would need to decide, nor do I have to decide because it's outside the scope of this hearing. And whether it's true or not, one cannot quibble about the materiality of this meeting.

In other words, I disagree with the defendant's statement in docket 503, filed in connection with the dispute over the redactions, that, quote, the Office of Special Counsel's explanation as to why Mr. Manafort's alleged false statements are important and material turns on the claim that he is understood by the FBI to have a relationship with Russian intelligence.

I don't think that's a fair characterization of what was said. The intelligence reference was just one factor in a series of factors the prosecutor listed. And the language of the appointment order, "any links," is sufficiently broad to get over the relatively low hurdle of materiality in this instance, and to make the [redacted] Kilimnik and [redacted] material to the FBI's inquiry, no matter what his particular relationship was on that date.

At the hearing the defendant pointed me to Exhibit 230 as support for its claim that actually Kilimnik was [redacted] and, therefore, I should consider the Office of Special Counsel's representation that he was connected to Russian intelligence to be rank speculation.

First of all, I don't think these two things are mutually exclusive. An individual could [redacted]

[redacted]. But as I've said, I'm not making a finding either way and I don't think it's necessary to the decision I have to make. The fact that Kilimnik's status, loyalties, or activities could be [redacted], doesn't make the meeting immaterial or Manafort's testimony about it truthful.

I'm also not sure that Exhibit 230 proves the defendant's point. It is an August 18, 2016 email sent to an individual in [redacted] in which Kilimnik voices his personal opinion about comments being made publicly about any affinity between [redacted]

I note that [redacted] on the part of Kilimnik, as opposed to what might jump out as [redacted], because [redacted]. And the focus of the [redacted]. He advances the view that, as he sees it, [redacted].

It's also notable that in [redacted]. And as we know, Manafort was gone the next day.

So the email doesn't really answer the question defense counsel raised one way or the other.

In a submission related to the dispute over redactions to the hearing transcript, the defendant provided more information, that was docket 503, documents that have been provided in response to his discovery request that do confirm that Kilimnik regularly spoke with officials in the embassy, and the Office of Special Counsel confirmed that at the hearing.

Again, and without more guidance on the technical meaning the word has in this context, I don't have the record to decide, don't need to decide, and probably shouldn't decide if the defendant's characterization of Kilimnik [redacted] accurate or not, and I'm not making any finding one way or the other on that issue.

I do note that in the FBI 302 the defendant asked me to review as an attachment to docket 503, the interviewee [redacted] noted that when [redacted]. So they have that in common.

The important thing is neither Exhibit 230 or any of the other information provided changes the outcome in my finding on this matter. And I find by a preponderance of the evidence that Mr. Manafort made intentional false statements to the FBI and the grand jury with respect to the material issue of his interactions with Kilimnik, including, in particular, the [redacted].

On that note, I also want to say we've now spent considerable time talking about multiple clusters of false or misleading or incomplete or needed-to-be-prodded-by-counsel statements, all of which center around the defendant's relationship or communications with Mr. Kilimnik. This is a topic at the undisputed core of the Office of Special Counsel's investigation into, as paragraph (b) of the appointment order put it, Any links and/or coordination between the Russian government and individuals associated with the campaign.

Mr. Kilimnik doesn't have to be in the government or even be an active spy to be a link. The fact that all of this is the case, that we have now been over Kilimnik, Kilimnik, and Kilimnik makes the defense argument that I should find the inaccurate statements to be unintentional because they're all so random and disconnected, which was an argument that was made in the hearing, is very unpersuasive.

But we now get to go on to another topic, which is IV, about another Department of Justice investigation. There

are allegations in connection with the [redacted] investigation into potential [redacted] involving [redacted].

The allegation is that Mr. Manafort offered a version of events that downplayed [redacted] role and/or knowledge, specifically including his knowledge of any involvement of [redacted] that was inconsistent with and less incriminating of [redacted] than what he had already said during a plea proffer, and was inconsistent with what Mr. [redacted] himself -- was consistent with what Mr. [redacted] himself was telling the FBI, and that in this session where he watered down when he'd said before the plea, he had to be redirected by his lawyer multiple times.

Defendant suggested it's not really that important because it wasn't about his own wrongdoing and all the statements were corrected in the same interview. I'm not sure I buy that because the point of seeking cooperation from a person at the highest level of the campaign was to obtain accurate information about the acts of others, in particular, what transpired [redacted]. So it's very troubling to me.

Also, you don't have a situation where he reverted to the original version after consultation with counsel, but he cycled through a series of different inaccurate versions.

Exhibit 301, the proffer session with the Office of Special Counsel and the FBI on September 13, counsel was present. He advised the FBI that Mr. [redacted] had contacted him regarding a, quote, [redacted]. So they had to go meet [redacted] that day. [redacted] told Manafort that [redacted]

They had the meeting. [redacted], but Manafort didn't recall the name. And at the meeting [redacted] said to [redacted], in Manafort's presence, that [redacted]. Later, [redacted] told Manafort [redacted]. When contacted by [redacted] regarding what Mr. [redacted] called a [redacted], Manafort said he didn't discuss it with him, didn't want him involved, and ultimately just told him it had been handled.

Okay. Then he pled guilty and attended a debriefing session where representatives from [redacted] were present. October 5th, 2018, Exhibit 300, FBI 302, we've not got a different version. The first go-around is totally whitewashed. He leaves out any reference to [redacted] or the nature of the problem. He says after the [redacted] he got a call

from [redacted] saying [redacted] It wasn't specified. It was later told it was a false alarm, not an issue. So counsel refreshed him with the notes of the first meeting.

Second time Mr. Manafort says, Oh, Mr. [redacted] called around the same time about a [redacted] and [redacted] mentioned that [redacted]. And he told [redacted] it would been handled and that he had no knowledge of [redacted] had come out.

There's some more reading of prior notes, he gives a different account. This time he remembers being at a meeting with [redacted], says they were speaking in shorthand. [redacted]. Manafort said that [redacted] told him it was [redacted].

The fourth time he says [redacted] called, said [redacted]

[redacted]

I note that at no point has the defense told me in any pleading that the first version was mistaken. I can't find that these variations can be explained by a failure of recollection. The versions were not at all consistent with what had been said by the defendant himself only a month before. The evidence suggests that he decided to obscure what had taken place to shield possibly Mr. [redacted].

This withholding of facts, this begrudging behavior, advancing a new version that's less inculpatory of [redacted] was significant enough to set off alarm bells with his own lawyers, not consistent with the plea offer, and fairly considered by the Office of Special Counsel to be a breach. And given the stark difference between what he said and what he reported less than a month before and the effort it took to get him even close to what he said the first time, I find if to be intentionally false.

Finally, the fifth category of information was contacts with the administration. Here, I'm not persuaded that the Office of Special Counsel has presented evidence of an intentional misrepresentation, or really a breach of any moment with respect to this issue, although it's already been conceded that they acted in good faith in making the allegation.

The Office of Special Counsel says its concern is his denial of even indirect communication. They don't challenge or claim that he lied about not having direct communication. They point to Exhibit 10, page 2, the FBI 302 from October 16th which reports Manafort never asked anyone to try to communicate a message to anyone in the administration.

Again, I don't have the specificity I need about what question was asked to prompt that. Was he asked was it direct or indirect? What was he asked? And so I can't deem the grand jury testimony and the documents with which I've been provided to be evidence that what he said in that interview when he said that was false.

While there is evidence he agreed to talk to other people outside of the administration on [redacted] behalf with the understanding that they might contact the administration about [redacted], and he agreed that another [redacted] of the administration could report that he had Manafort's support, I'm not sure that's inconsistent with he, quote, never asked anyone no try to communicate a message to anyone in the administration.

I've seen the record regarding the [redacted] matter, and while it does seem as if part of the plan was that somebody was going to contact [redacted], I can't find that the government has proved by a preponderance that he intentionally lied during the debriefing with respect to this matter. If there were other

contacts of concern to the Office of Special Counsel, as counsel seem to allude to at the hearing, they haven't been brought to my attention in this proceeding and they don't bear and can't bear on my decision.

With that, I believe I've ruled on every issue that's been put to me in connection with the breach proceeding. I do think it's important to issue a public order and I will try to do one that is consistent with all our previous redactions and doesn't have any sealed material in it.

As I said at the outset, I'm going to determine the applicability of any particular guideline provision at the time of sentencing and not today. What I think we need to do is, as we did before, establish a schedule for the receipt and review of the transcript.

Assuming you get the transcript tomorrow by noon, how long would you like to review it to propose redactions before this makes it to the public record?

MR. WEISSMANN: Can I just consult with --

THE COURT: Yes.

(Pause).

MR. WEISSMANN: Your Honor, the parties think if we get it by noon tomorrow, we'll make every effort to get something to you by the end of the day, literally, tomorrow. But if for some reason we can't, first thing Friday morning.

THE COURT: Tomorrow is Thursday. Okay. Yes. All

right. Well, as soon as I get it, I'll review it. Hopefully, I think particularly after we have our next conversation, hopefully there won't be any disputes about what needs to be redacted and what doesn't. If there are, I'll resolve them promptly and we'll try to get this on the public record as soon as possible.

I think there was an understanding back at the beginning that the probation office would need to be informed of my findings so that it could factor them into its recommendation about the various guideline determinations. So does anybody have a point of view about whether it needs to be informed of the rulings in their entirety, or whether once we post the redacted transcript and we have the minute order, that that is going to be sufficient?

And I guess I have the same question because it appears that the Court in the Eastern District of Virginia was waiting to know how I ruled on these issues. So whether just continuing to complete this docket with the redacted transcript and a minute order is going to be enough for both of those consumers, do you have a thought about that?

MR. WEISSMANN: So, taking those in turn. First, with respect to probation, we have no objection to probation getting the unredacted transcript. And we understand that if it's incorporated in some aspect of the presentence report, that's private in any event, since that doesn't become part of

the public record. And to the extent there's some dispute about the presentence report, I don't think the names would be that relevant and we could sort of deal with that issue if there's something in the presentence report that is sensitive.

With respect to Eastern District of Virginia, we were planning, after today's appearance, of writing some sort of status report to alert the Eastern District of Virginia to the, sort of, two issues that might be of relevance to it. Which is, one, the concession with respect to the breach, and then the Court's determination. We were planning on submitting the redacted version of the transcript, and then if the Court for some reason wants to see the unredacted one, we, of course, would not have an objection to that, but that wasn't initially how we were going to proceed.

THE COURT: Well, I think that makes sense because that's what's public.

And do you have any difficulty with their proceeding in that manner?

MR. WESTLING: I can only say that I am a little concerned about sending a judge a redacted version, rather than the whole transcript. I mean, I think Judge Ellis would have a right to see everything that's there, without having to ask for it. I mean, I just think that's from a point of view with respect to his position. I feel uncomfortable that we would be somehow keeping him out of the loop.

MR. WEISSMANN: Well, I guess my view is I'm not asking -- I wouldn't ask this Court to make a ruling with respect to a different judge, but we could always alert the Court that if it wanted that material, of course it would be provided. The reason I think it's okay to proceed in that way, and I might just be reading between the lines --

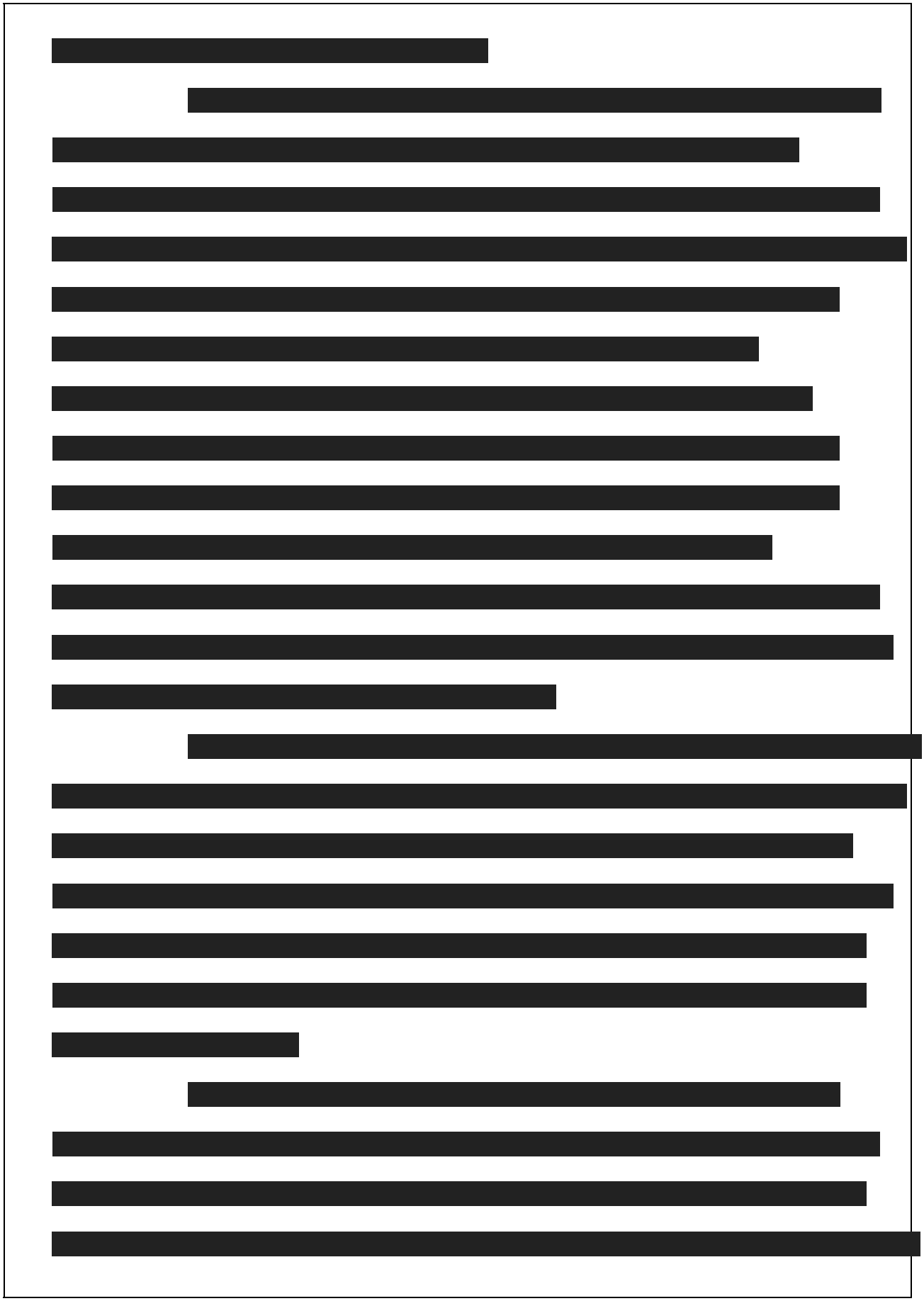
THE COURT: I think if you're going to docket there a notice that I have ruled and then you docket there here's what happened, I don't have any problem with your putting into the notice that there's the sealed, unredacted transcript, the parties agree that -- and I would agree that he could have it, if he asked for it.

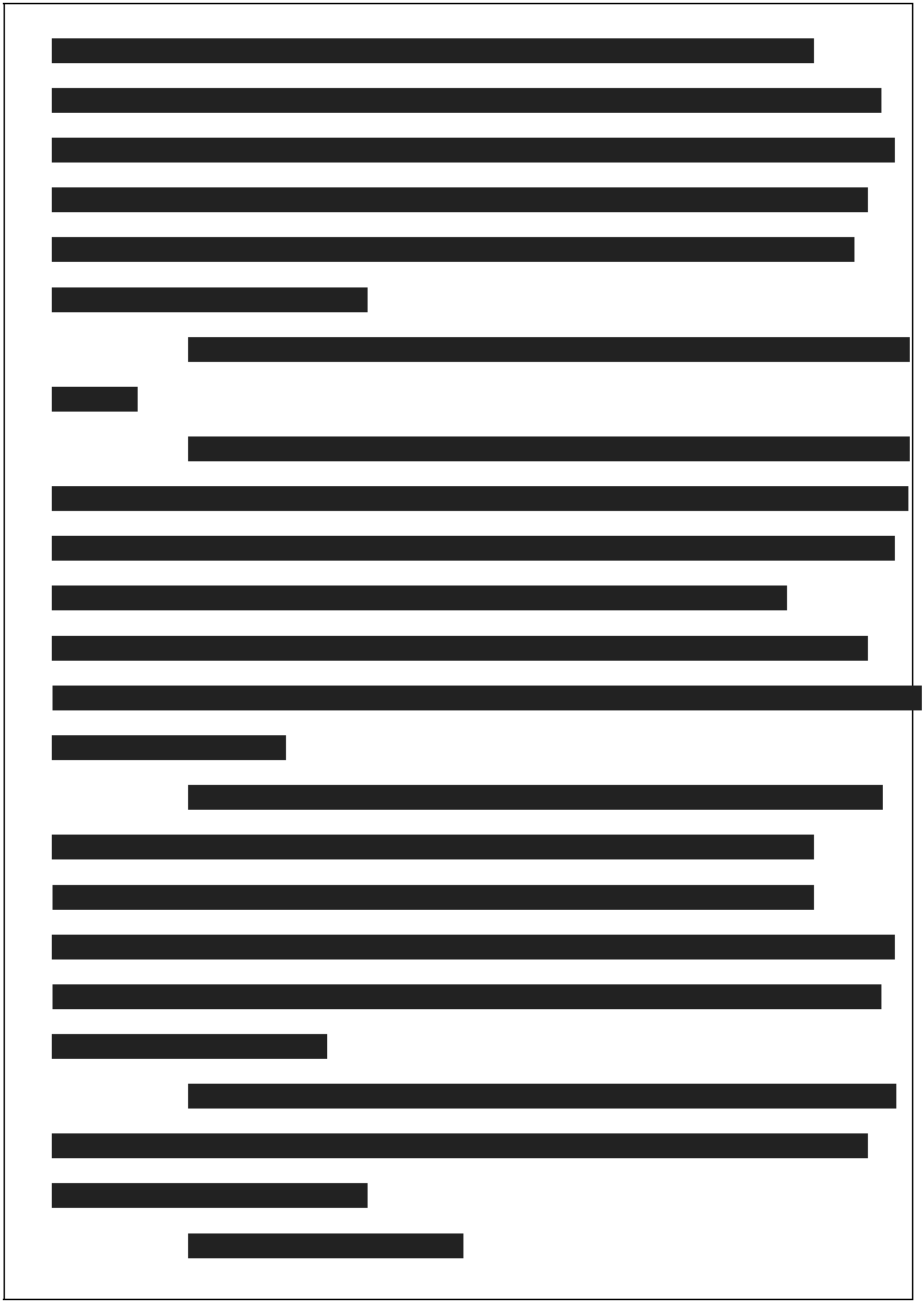
MR. WEISSMANN: That's fine.

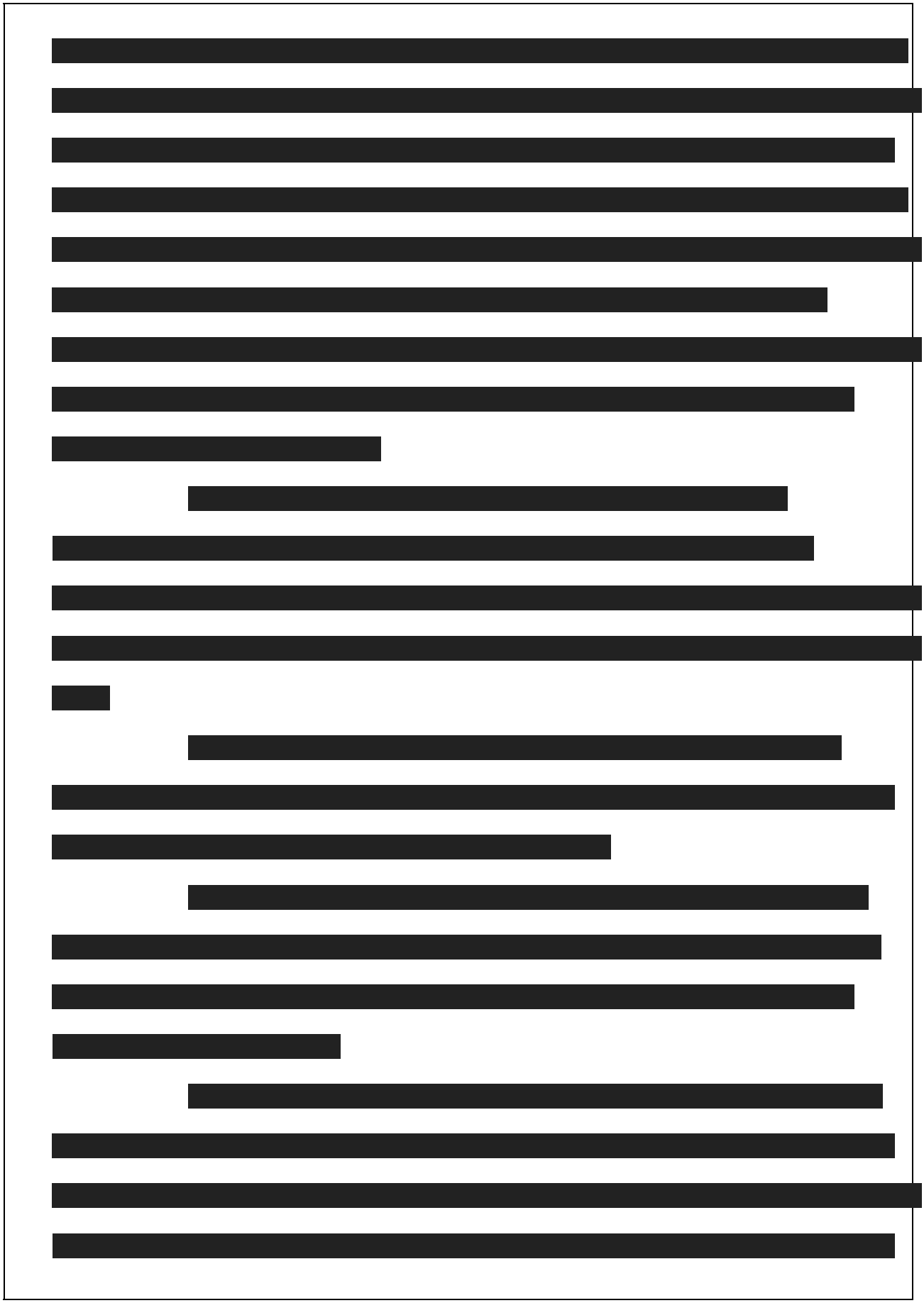
MR. WESTLING: I think that's the point, Your Honor.

THE COURT: All right. So I think we know how we're going to proceed.

The only thing I have left to talk about is the dispute over the redactions. [redacted]







[redacted]

THE COURT: I'm going to try to do something to improve the situation from the defendant's point of view. I

don't think it's going to go as far as unredacting everything that you originally asked me to unredact. And I would like to look again at the 302s before I decide.

MR. DOWNING: Your Honor, just one other general question: How are we going to handle the process of unredacted down the road? I mean, there's been a lot of redactions in this case, and the law enforcement basis for it or ongoing grand jury investigations. What is going to be the process to -- is the Office of Special Counsel going to notify the Court that the reason stated for a particular redaction no longer exists, or still survives? Is it going to be some sort of process that we can put in place?

THE COURT: Well, in one case, I know with all the search warrants, it was an evolving process. There were things that were withheld from you and then you got them but they were still withheld from the press and then the press got them. But usually things have to be triggered by a motion or request by someone. There may be reasons related to the defense for everything to stay the way it is.

I, right now, without knowing with any particularity what it is that you're concerned about, or if -- and not having the press having filed anything today, asking for anything, I don't know how to answer that question. But I think that is something that comes up in many cases, cases that were sealed get unsealed later. And if there's something that you think

should be a part of the public record that was sealed and there's no longer any utility for it, obviously you could first find out if it's a joint motion and, if not, then you file a motion.

All right. I just have one question for my public minute order. The [redacted], the fact that [redacted] is still sealed. So I should not use that in my minute order, is that correct?

MR. WEISSMANN: I believe that's correct, Your Honor.

THE COURT: Okay.

MR. WESTLING: We agree, Your Honor.

THE COURT: Okay. So, I think then the Roman numerals are a payment from Firm A, interactions with Kilimnik about the obstruction of justice, interactions with Kilimnik, another DOJ investigation, and contacts with the administration. So I will use that shorthand to refer to them. Is that the best way to proceed?

MR. WEISSMANN: That's fine, Your Honor.

MR. WESTLING: That's fine, Your Honor.

THE COURT: All right. Appreciate everybody's patience as we move through all this. And I guess the next time I see everybody is at the sentencing. I think that's correct. All right. Thank you.

MR. ANDRES: Thank you.

MR. WEISSMANN: Thank you.

* * *

CERTIFICATE OF OFFICIAL COURT REPORTER

I, JANICE DICKMAN, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenograph notes and is a full, true and complete transcript of the proceedings to the best of my ability.

Dated this 14th day of February 2019.

/s/_____

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