

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLUMBIA

3 United States of America,) Criminal Action
4 Plaintiff,) No. 17-CR-201
5 vs.)
6 Paul Manafort, Jr.,) Public Transcript
7 Defendant.) Of Sealed Hearing
8) Washington, DC
9) Date: February 4, 2019
10) Time: 10:38 a.m.

9 TRANSCRIPT OF SEALED HEARING
10 HELD BEFORE
11 THE HONORABLE JUDGE AMY BERMAN JACKSON
12 UNITED STATES DISTRICT JUDGE

12 A P P E A R A N C E S

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1 THE COURTROOM DEPUTY: Good morning, Your Honor.
2 This is a sealed proceeding, and the courtroom has been locked.
3 We have Case Number 17-201-1, the United States of
4 America v. Paul J. Manafort, Jr. Mr. Manafort is present in
5 the courtroom, Your Honor.
6 Will counsel for the parties please approach the
7 lectern, identify yourself for the record.
8 MR. WEISSMANN: Good morning, Your Honor.
9 For the Government, Andrew Weissmann, Greg Andres,
10 Mike Ficht, Renee Michael, Jeannie Rhee, and Jeff Weiland.
11 THE COURT: All right. Good morning.
12 And I take it the other gentlemen in the first row
13 are part of your team?
14 MR. WEISSMANN: Yes, they are.
15 THE COURT: Okay. Thank you.
16 MR. WESTLING: Good morning, Your Honor.
17 Richard Westling, Thomas Zehnle, Kevin Downing for
18 Mr. Manafort. And Tim Wang is with us as our paralegal.
19 THE COURT: Okay. And who is the person seated in
20 the front row?
21 THE COURTROOM DEPUTY: U.S. marshal.
22 THE COURT: Okay. All right. Welcome. Just wanted
23 to make sure everybody who is here is supposed to be here.
24 Before we get started, I wanted to take up a
25 preliminary matter that I meant to take up last time and forgot

1 because we had so much else on our plate.

2 Right now, we have the sentencing memoranda scheduled
3 to be filed on February 22nd, and the sentencing on March 5th.
4 And I've looked at my calendar, and the week before those two
5 events is filled with a trial. And I'm not comfortable that
6 that's going to give me an adequate amount of time to review
7 what I expect is going to be a lengthy submission on at least
8 one side, and maybe both. And so, therefore, I would propose
9 to move the sentencing until March -- I think I was looking at
10 the 12th or 13th.

11 Does anybody have a problem with that?

12 MR. WEISSMANN: No, Your Honor.

13 THE COURT: All right. That's the Tuesday and
14 Wednesday of that week, right?

15 THE COURTROOM DEPUTY: Correct, Your Honor.

16 THE COURT: Do you have --

17 MR. WESTLING: I'm not sure we know, Your Honor.

18 THE COURT: You don't know whether you have a --

19 MR. WESTLING: Well, meaning, we would have to get
20 electronic devices out and check.

21 THE COURT: Oh.

22 MR. WESTLING: Which we're welcome to do, but --

23 THE COURT: Okay. Well, if you can, get back to
24 Mr. Haley after you get back to chambers -- or, chambers --
25 wherever you're going. Guess you're not coming to chambers. I

1 don't have room for all of you.

2 But if you could communicate if you have problems
3 with any of the dates at the -- I think the Monday, Tuesday,
4 Wednesday of that week, that would be helpful, and then I'll
5 issue an order. But I'm going to reschedule it.

6 All right. This morning I'm going to organize myself
7 by the issues the way they were numbered in the initial
8 declaration. It was great because in every pleading, you all
9 numbered the five issues into different orders. So I can't
10 really call them Issue No. 1 and Issue No. 2, but that's the
11 template I'm going to use. And what I'm going to do is, I'm
12 going to hear from both sides on each issue before I move on to
13 the next issue.

14 I think we've arranged to have people wired for
15 sound, or at least seated in front of a working microphone so
16 that you don't have to parade back and forth to the lectern.
17 And I think it will just be more efficient that way.

18 Before I get into the issues, I just want to make
19 sure that we're all agreed about certain things. I believe
20 that we're all agreed that the burden of proving any facts
21 which are going to be relied upon as part of the sentencing
22 guidelines determination, it's the Government's burden to prove
23 them by a preponderance of the evidence.

24 Is that everybody's understanding?

25 MR. WESTLING: Yes, Your Honor.

1 MR. WEISSMANN: Yes.

2 THE COURT: Okay. And I don't think that it has to
3 be an actionable false statement under § 1001, or a violation
4 of the perjury statute to fall within the broad scope of what
5 could violate the agreement.

6 But, what is your position about whether the Office
7 of Special Counsel has to prove the elements of one of those
8 offenses, albeit by a preponderance, for me to deem his
9 response on one of these issues to be an intentional lie with
10 whatever sentencing consequences that could ensue?

11 You can't do it sitting down?

12 MR. WEISSMANN: Am I permitted to sit?

13 THE COURT: You're permitted to sit and use those --

14 MR. WEISSMANN: That's fine.

15 THE COURT: -- just because we're going to be going
16 back and forth.

17 MR. WEISSMANN: That's fine. I'm just used to --

18 THE COURT: Yeah. Me, too.

19 MR. ANDRES: Next time we don't stand, we're going to
20 get in trouble.

21 THE COURT: Well, you know, it just seemed like there
22 would be a lot of popping up and down. So for this, for
23 purposes of today, I'm happy to have you seated.

24 MR. WEISSMANN: So the Government's view is that it
25 is not necessary for us to prove all of the elements of 1001 --

1 THE COURT: I don't think you're actually using the
2 microphone.

3 MR. WEISSMANN: Okay. Is that --

4 THE COURT: Much better.

5 MR. WEISSMANN: So I don't think we need to prove the
6 elements. I think we have, but I don't think it's necessary.
7 From our perspective, what's before the Court today is, really,
8 what would the Court find of use at sentencing? Whether it
9 would be relevant to the Court if the defendant made false
10 statements either to the government or to the grand jury,
11 whether it was something --

12 THE COURT: All right. We're going to have you
13 coming back and forth. The whole point of putting the body
14 mics on your table, or the other mics, was so that --

15 THE COURTROOM DEPUTY: It's got to be closer to your
16 mouth.

17 THE COURT: -- you got to use them.

18 Are you going to be arguing all of these?

19 MR. WEISSMANN: Four of the five.

20 THE COURT: All right. Well, why don't you clip that
21 right there.

22 MR. WEISSMANN: Okay.

23 THE COURT: All right.

24 THE COURTROOM DEPUTY: Near the knot. Thank you.

25 MR. WEISSMANN: Okay. How's that?

1 THE COURT: It's great.

2 MR. WEISSMANN: Okay.

3 THE COURT: If you have a trial in this courtroom,
4 you get to do that for your opening and closing. So you might
5 want to get used to it.

6 MR. WEISSMANN: Okay.

7 THE COURT: All right?

8 MR. WEISSMANN: Okay. So, as the Court heard, I
9 don't think we need to prove all the technical elements,
10 although I don't think, as a practical matter, that should be
11 an issue here. I think we have proved that, but I don't think
12 it's required.

13 I think that the Court, in terms of sentencing, could
14 find it relevant to a variety of issues, if the Court concluded
15 that the defendant, after signing an agreement, made a false
16 statement either to -- just one, to the government or to the
17 grand jury. The Court could also find that there were more
18 than one that would be relevant or not so relevant. But I
19 don't think it's necessary for us to prove perjury by a
20 preponderance, or a 1001 violation by a preponderance.

21 THE COURT: Well, does materiality matter?

22 MR. WEISSMANN: I don't think it does. Because I
23 think from the Court's perspective, you could find -- I think
24 that could be a factor that the Court could consider, but I
25 don't think it's necessary in the way it would be for a

1 criminal violation.

2 It could be relevant in this way: If you thought
3 that, at the end of the day, he made a false statement
4 intentionally, but it was about, you know, his favorite color,
5 or something that's just not that important, you may find that,
6 yes, that happened, but it's not going to really affect the
7 sentence that I think is appropriate.

8 So I think it is a factor for the Court, but I don't
9 think it's necessary in the way it would be for an element of a
10 crime.

11 THE COURT: All right. What do you think about that?

12 MR. WESTLING: Well, Your Honor, I guess, first, I
13 would start by saying that I think, you know, this issue was
14 really brought up by the special counsel at the outset,
15 claiming that crimes had been committed.

16 THE COURT: Correct.

17 MR. WESTLING: And so I'm surprised that there
18 wouldn't be a sense that they had established the elements of
19 the crimes they allegedly say were committed.

20 I think the another point, to the Court's comment
21 just a second ago, was that we obviously do think materiality
22 is pretty relevant here. I mean, given the nature of what
23 happened, the nature of cooperation sessions, sort of the ebb
24 and flow of those sessions in general, it seems to me the
25 question really has to be, was there an intent to deceive in

1 some way? Was that the goal of what was happening, or was this
2 simply a mistake?

3 And so we believe the standard should be the one that
4 comes from those statutes.

5 THE COURT: Well, I think they certainly have taken
6 on the mantle of establishing that these were intentionalized.
7 And I think if they aren't intentional, then they wouldn't bear
8 on acceptance of responsibility.

9 I think the government agrees with that.

10 MR. WEISSMANN: Absolutely.

11 THE COURT: Okay. Well, let's get into the
12 individual -- do you want to say something else about what we
13 just talked about?

14 MR. WEISSMANN: No. It was on something else.

15 I know that the Court's normal practice is to ask a
16 lot of questions and give us an opportunity at the end, if
17 there's something we wanted to say.

18 In this situation, there were two preliminary matters
19 that I thought would be useful, but I don't know if the Court
20 would vary from its normal practice.

21 THE COURT: Well, the practice is kind of a mix. For
22 some of them, I'm just going to start by asking you, and then
23 ask specific questions; then others, I only have narrow
24 questions. But, if there's something you want to say before we
25 get started, you're welcome to say it.

1 MR. WEISSMANN: Great. There were two points that I
2 wanted to make to the Court. There are a number of subparts to
3 them.

4 But, the first point has to do with sort of the
5 context in which we operated at the time that we entered into
6 the agreement. As the Court will recall, the agreement was
7 entered into just shortly before the trial was to commence
8 before this Court, and it was after three proffer sessions.
9 And then, of course, there were many debriefings after that.
10 And a couple things about that timing that are relevant.

11 One, at the end of the third proffer session, before
12 entering into the agreement, we had made clear to the defense
13 that we were willing to go forward. But, that given the
14 limited opportunity, and yet the need to make a decision
15 because of the eminent trial, we wanted to make clear to the
16 defense that, of course, we were going in with good faith.

17 But we could not say at that point that we either
18 could say the defendant was being truthful or that the
19 defendant was going to be able to meet the substantial
20 assistance prong. In other words, two parts of the agreement.

21 Of course, I think everyone was hopeful that all of
22 that would be met. But we wanted to make it clear to the
23 defense that they weren't being misled in any way as to what we
24 were thinking.

25 And the second component of that is, I think,

1 something unusual -- there were two factors that were unusual
2 in this case compared to, I think, the cases that all of us at
3 this table have had in the past.

4 One was, there's enormous interest in what I will
5 call -- for lack of a better term -- the intelligence that
6 could be gathered from having a cooperating witness in this
7 particular investigation. And that would account for the
8 Government agreeing to have Mr. Manafort cooperate, even though
9 it was after a trial. Because that's certainly an -- not --
10 not -- it's not that that never happens, but it's more
11 atypical.

12 By the same token, there was an unusual factor -- the
13 second unusual factor, which was [REDACTED]
14 [REDACTED]
15 [REDACTED] the normal motives and incentives that are built
16 into a cooperation agreement.

17 So those were -- to give the Court sort of the lay of
18 the land at the time that the -- at least from the Government's
19 perspective -- when we were entering into an agreement. The
20 decision, at the end of the day, that the Government made to --
21 that we believe that the defendant was lying to us had a number
22 of different components.

23 As the Court is aware from the Gates resolution, the
24 Government is aware that many cooperators have a rocky start,
25 and that part of our job and part of defense counsel's job --

1 many of us at this table have been defense counsel --
2 understand that this can be an ongoing process, and we worked
3 with defense counsel.

4 And, by the way, nothing that is happening here today
5 has anything to do with our understanding and belief that
6 defense counsel has operated completely in trying to make sure
7 that this would work.

8 And with Mr. Gates, we also wanted to make sure that
9 we could get information, and we thought that there was -- I
10 think there was certainly a significant issue. And we dealt
11 with it by having the defendant plead to something in addition
12 to take -- to have the ramification for it. But that is to
13 show, I think, an example of wanting the intelligence, but
14 dealing with what we considered to be, you know, unacceptable
15 behavior from the Government, particularly from somebody whose
16 information we would rely on, and potentially ask the jury to
17 rely on.

18 Here, a number of factors went into the decision to
19 file the joint status report in November, with our view that
20 the defendant has lied. I'm going to separate out demeanor
21 evidence because, obviously, that's something that it would be
22 relevant to the issue that's now moot, about whether we
23 breached in good faith. But, it's obviously very hard for the
24 Court to just take that on faith, that we reevaluated demeanor.
25 But, that obviously was a factor. But, I'm going to try and

1 focus on things that are in the record before you, in addition
2 to that.

3 One is the importance of the matters that, if you
4 look at the totality, the examples that were given to you are
5 ones where we think that the subject matter is something that
6 is -- that is not likely to have been forgotten, where somebody
7 would just misremember. Obviously, that's the issue, is, is it
8 possible for -- if the person forgot, and that their recollect
9 was refreshed?

10 Another factor is the recency of events; is it
11 something that happened long ago versus recently? So the --
12 what I'll call the second issue, which is the Mr. Kilimnik --
13 I'm not going to argue each one, I'm just giving it as an
14 example -- Mr. Kilimnik, and whether he conspired with
15 Mr. Manafort. That is something where the plea was only, I
16 think, 30 days -- 32 days before the interview.

17 So, again, we're not talking about something long in
18 the past, or, to take the defendant's position, something that
19 happened in the heat of a campaign, where there was so many
20 other things going on.

21 There's the issue that we evaluated in terms of the
22 changing stories, that things -- that the story kept on
23 evolving in a way that did not seem consistent to us with just
24 a better recollection, more details being filled in, as opposed
25 to fundamental changes. There was inconsistency with other

1 evidence. The \$125,000 payment is just one example of that.

2 There was evaluating the denial of what the defendant
3 had said to us. So one thing that the Court may have noted is
4 in, again, going back to the -- whether Mr. Kilimnik conspired
5 with Mr. Manafort, when Mr. Manafort ultimately recanted and
6 said: Yes, I did, he also said: You were just confused. I
7 never said what you said I said.

8 And to us, that was just so emblematic because, of
9 course, everyone in the room -- defense counsel taking notes,
10 and the Government taking notes -- was there. So, we knew for
11 a fact that was not the case. And I should point out, that's
12 the only evidence in the record. There's not contrary evidence
13 to that fact.

14 There was the level of detail that was given. So
15 that in recounting a story to us that we concluded was false,
16 we looked at the amount of detail that was given by
17 Mr. Manafort in recounting that story.

18 There was the fact that Mr. Manafort would at times,
19 in other situations, say when he was unsure, and say: I'm not
20 sure. I need to refresh my recollection, or, I don't recall.
21 Whereas the example that we gave to the Court were ones where
22 that didn't happen -- almost invariably, not exclusively.

23 There also is, of course, the defendant's history
24 that -- that we considered, although I don't think -- for some
25 of us, it wasn't even necessary to get to that, but it was

1 something that was also a factor.

2 THE COURT: What do you mean by that?

3 MR. WEISSMANN: In other words, that the defendant
4 coming into this had lied to the Department of Justice, had
5 lied to banks, had lied to his own defense counsel, had
6 violated court orders, had lied to his tax preparers, had lied
7 to his bookkeepers. In other words, there were so many lies.

8 Now, that doesn't -- just to make sure the Court
9 understands, that does not mean that a cooperator can't
10 understand and cooperate fully and be a successful cooperator
11 and the incentives of the cooperation agreement can still work.
12 But, it does mean that the Government should be, I think, extra
13 vigilant to make sure and to test what it is that the defendant
14 is saying.

15 Because there you could imagine having not a
16 different standard, but sort of more scrutiny in this situation
17 than you would where somebody had one aberrant-type of behavior
18 and got themselves in criminal trouble, versus somebody who had
19 an habitual problem, particularly when it comes to truth-
20 telling.

21 And then, I think, finally, and probably most
22 important, was the number of instances. The fact that, sort
23 of, what are the odds that all of this was a mistake, that it
24 just happened over and over and over again?

25 And to take -- to go back to the example of

1 Mr. Manafort's saying to us: Well, that's not what I said
2 previously. What that showed is that the incentives of the
3 agreement, where there are benefits to be had by cooperating,
4 there are disincentives; because if you're caught lying, that
5 you can have serious consequences. It told us that those
6 incentives were not working -- were not working adequately.
7 So, all of that factored into why we were making this decision.

8 At the end of the day, we also, having then talked to
9 defense counsel, and also still, to today, there is no contrary
10 evidence. In other words, having talked to defense counsel,
11 and asked: Is there something we are missing? Is there some
12 other evidence?

13 I think the Court and we are in the same position,
14 where there is argument that has been made by defense counsel.
15 And we're not in any way saying that that shouldn't be
16 considered, but there isn't evidence that's been submitted. Of
17 course, we still have the burden. I'm not saying that just
18 because there's no contrary evidence means that we met our
19 burden, but there is nothing on the other side weighing against
20 what it is that's in the record.

21 And then I just wanted to briefly -- my second --
22 this is all in the context of sort of one point. I have one
23 other point, which is I'd wanted to address something that was
24 in the defense submission about -- this is going to be my
25 phrasing, it's not the defense phrasing; they were more

1 polite -- but that we proceeded in a sort of "gotcha" mode. In
2 other words, that we didn't give the defendant the evidence to
3 look at first, and then talk about it.

4 And the idea being, is it possible that this was just
5 some information that when the defendant saw it, it refreshed
6 his recollection? And until he saw it, he just didn't
7 remember? And we're very cognizant that happens all the time.
8 It happened with Mr. Manafort. Like everyone else, there were
9 instances where he would look at things and it did refresh
10 recollection.

11 That's particularly true when it comes to time,
12 place, names, things like that. That is very, very common.
13 And it certainly happened here. But, I wanted to address that
14 that's not -- this is an unusual case. This is an unusual
15 case. Not because we did that, it's an unusual case because of
16 the volume of evidence that the defendant had.

17 As the Court knows, there was a trial in the Eastern
18 District of Virginia. And as the Court knows, there was a
19 discovery order in this case. There, the vast, vast majority
20 of information was available to the defendant. And as one of
21 the submissions having to do with bail conditions and -- or,
22 prison location, what's in the record is that the defendant, on
23 tape, in prison, says yes, he has been through all of that
24 discovery.

25 So, for one example of that, all of the Gates 302s

1 that were extant in September of last year were something that
2 had been disclosed to the defendant. So, the defendant was
3 very well aware of what Mr. Gates had said about sharing of
4 polling data, and that it was something that was not -- not
5 simply a matter of keeping somebody up to date. And it sort
6 of -- that Mr. Gates made the decision as to what was chosen,
7 that he knew that Mr. Gates had said in these 302s it was very
8 different, that he was being instructed to.

9 So what's unusual in this case is how much
10 information the defendant had. It is entirely appropriate for
11 the Government to not provide all information to the defense,
12 because one of our jobs is to make sure the defendant is
13 telling us the truth, to the best we can. We're obviously not
14 lie detectors, but it is appropriate to not share everything.

15 Here, there is a very, very small category of things
16 that as we go through the different five areas, and the
17 Judge -- the Court asks questions to us, I will try and point
18 out where those instances are, because most of it is something
19 where the defendants had it. And the issue is more the
20 defendant -- even in the instances where we didn't share
21 something, the defendant had it. He just didn't know whether
22 we had it.

23 So an example of that would be, the Ukraine polling
24 questions in 2018 is something where we got the information, of
25 course the defendant had it. And that is information that we

1 had not -- that's an instance where information had not been
2 provided to the defense. And, in fact, I'm not sure we had it
3 at the time of the Eastern District of Virginia trial.

4 I also wanted to point out that with respect to
5 information that had -- whether information had been shared or
6 not is entirely irrelevant to some of these areas. So, for
7 instance, whether Mr. Manafort conspired with Mr. Kilimnik,
8 there is no -- that was not an example, like, the defense could
9 say: Well, why weren't we given information?

10 They had the information about the underlying crime.
11 They had the information about what Mr. Manafort had said
12 previously. That was done just a month before. So, that's not
13 an instance where the Government could in any way be faulted
14 for what we shared and didn't share.

15 Another instance would be where -- this wasn't an
16 example of we had information and didn't share it, but, rather,
17 having heard the defendant's explanation, we then went out to
18 check it. So, the \$125,000 payment to WilmerHale is a good
19 example of that, where in light of what the defendant said, we
20 went out and checked.

21 And that information, actually, you can see in the
22 record. Because if the Court looks at the dates of the
23 interviews of Mr. [REDACTED] and Mr. [REDACTED], you will see that
24 they're happening contemporaneously. Because we are trying
25 to -- we actually had fronted to the defense the issue of that

1 this doesn't make sense, that this is what the records are
2 showing, and then we got another version. And we were, like,
3 that still doesn't make sense. And so we decided to do more
4 digging.

5 So this wasn't an example of we, somehow, had all the
6 information and we were trying to play a game of, like,
7 "gotcha," why can't you tell us what -- we know something you
8 don't, and we want to rip up the agreement. We were actually
9 trying to figure out what was going on there. And you can see
10 that by following the time period.

11 And that's it.

12 THE COURT: Okay.

13 MR. WEISSMANN: Thank you very much.

14 THE COURT: All right. Now, I think in some ways
15 that was more of the summing-up that I might have anticipated
16 hearing at the end; therefore, if I ask you at the end if you
17 have anything else to say, it will be -- "else" will be the
18 operative word in that sentence.

19 But I don't think it's fair to the defense, who may
20 or may not have been prepared to orient me at the start, to not
21 give you the opportunity now that they've had the opportunity.

22 So if there's some basic principles you would like me
23 to keep in mind while we talk about each of these individual
24 instances, I'm happy to hear them. I mean, I know he's touched
25 on what some of your themes are, and I'm familiar with what

1 some of your themes are. But, you know, if you would like to
2 give me some guideposts to keep in mind, as he just did, I'm
3 happy to hear them.

4 MR. WESTLING: Well, I think, briefly, Your Honor, a
5 couple of things. I mean -- and I don't mean to repeat what's
6 already in some of the pleadings. I may touch on some of that.

7 But, I mean, obviously, Mr. Weissmann describes, I
8 think somewhat accurately, the process leading up to the plea,
9 the pressure that everyone was under. Pressure that, frankly,
10 didn't relieve any time after the plea. That there was a lot
11 of pressure from the Government to: Let's get these
12 cooperation sessions going.

13 We understood that. But everybody was working, I
14 think, with a limited amount of time to be as prepared as we
15 all would have liked to be each day before we headed in. The
16 Government did its best to try to say: This will be the topic.
17 But, you know, for us to really be in any way useful, it often
18 required trips to the jail that night to try to get
19 Mr. Manafort oriented so we could come back the next morning.

20 I think the situation that we want to be sure the
21 Court is aware of -- we know that it is -- is just the
22 challenges of anyone who is, you know, facing some of the
23 physical and emotional challenges Mr. Manafort was; the
24 situation of his confinement, the focus, really for the last
25 months before this, really on just the trial issues on the

1 case, and then shifting, almost immediately, to: Let's open
2 the world to everything you remember over the last several
3 years, and well before that.

4 I think we just want to be clear -- I know we have in
5 our pleadings emphatically -- Mr. Manafort, you know, did his
6 best to answer the questions. He did not lie in any way.

7 We do think there's a number of areas where there is
8 still confusion between the parties about what was said, what
9 it meant. We hope we'll have an opportunity to talk about that
10 as we go through these issues today.

11 But, I think that -- you know, I'm struck, in
12 particular, by understanding we've always acknowledged the
13 Government's, you know, approach was not to play a game of
14 "gotcha," but there was a choice made in a number of cases to
15 ask about topics before documents were shared. And then, when
16 something went awry, there was a document to show why it was
17 untrue.

18 And I think there are different ways we all could
19 have done this. It's totally the prerogative of the
20 Government, and we've acknowledged, you know, what we've seen
21 as their good faith in being here.

22 But, clearly, you know, it was a challenging
23 situation for everyone. And I think the amount of the issues
24 we're left with today where there are supposed lies, compared
25 to, really, 12 days of interviews, more than 50 hours, plus 2

1 days in the grand jury, and in many cases, not core issues to
2 the things we spent most of our time talking about, simply, we
3 believe, is an important backdrop in determining whether
4 Mr. Manafort was in any way doing anything other than doing his
5 best to tell the truth.

6 And I think, you know, the last point that I would
7 make is that given that relatively small set of areas where
8 this occurred, whether even the allegations are being made, you
9 know, we note that there's not really a lot to explain.
10 There's no pattern, there's no clear motive that would suggest
11 someone who was trying to intentionally not share information.

12 And many of the more sensitive topics that we're
13 aware of from a -- all of us paying attention to what's gone in
14 the news cycle over the last many months, you know, are things
15 where these issues didn't come up, where there wasn't a
16 complaint about the information Mr. Manafort provided. And so
17 we think that's important context as we get started here today.

18 THE COURT: Do I have -- and I don't think I need
19 them for today, but I'm certain that what you just said is also
20 going to be a part of your acceptance of responsibility
21 argument and argument at sentencing.

22 Do I have the 302s from 12 days of interviews? Do I
23 have everything, or do I only have what was given to me because
24 it bore on the particular issues that I'm being asked to rule
25 on today?

1 MR. WEISSMANN: Judge, you do not have everything.
2 We are happy to give you the -- all of the 302s. We just gave
3 you -- you have, I think, the majority of them, but not all of
4 them.

5 THE COURT: Okay. And I don't know that -- if I need
6 them. But, it's hard to assess -- and I certainly don't think
7 they should be a public part of any sentencing submission.
8 But, if you want me to put this in context of more that was
9 said, it helps to have it.

10 MR. WESTLING*: And, of course, we don't have anything
11 more than what you have, Your Honor. So --

12 THE COURT: Okay. Okay. I didn't know.

13 MR. WESTLING*: I'm just letting the Court know.

14 THE COURT: All right. Is there anything anybody
15 else wants to say before we get started?

16 MR. WEISSMANN: No, Your Honor. And thank you.

17 THE COURT: All right.

18 With respect to the \$125,000 payment by [REDACTED]
19 [REDACTED], and called Firm A in the
20 pleadings, at the direction of Entity B, the [REDACTED]
21 [REDACTED] towards an unrelated debt owed by the
22 defendant to a law firm, you've already mentioned the name of
23 the law firm this morning. But, I think the name of the law
24 firm is irrelevant to the rest of the conversation.

25 So -- and as background, the Government has explained

1 to me that Mr. Manafort was involved in the establishment of
2 ██████████, getting the ██████████ to hire ██████████, and he knew both
3 principals. Initially, I found the description in the
4 declaration and the 302s to be somewhat confusing, but I think
5 I do understand it now. But, I would be happy to have you
6 briefly start by summarizing what the specific allegations of
7 the falsehood are with respect to this one.

8 MR. WEISSMANN: Okay. So, I can go through what I
9 think are key false statements.

10 One false statement is that the payment -- the
11 \$125,000 payment that was made to the law firm was
12 reimbursement of a loan from Mr. Manafort to ██████████. And
13 their -- I can --

14 THE COURT: The first version?

15 MR. WEISSMANN: That's the first version. And
16 Exhibit 9, which is a 302 on September 20th of 2018, on page 6,
17 paragraph 2 has information where Mr. Manafort is conveying
18 that.

19 And what may help the Court is that what I think
20 Mr. Manafort was doing was lying about, essentially, where --
21 what was the ██████████. Because -- and
22 then this is definitely an educated guess: But what we think
23 the actual -- what was really going on was that Mr. Manafort
24 was aware that there was a -- to put it charitably, a
25 ██████████ scheme where Mr. ██████████ was paying money back,

1 not to the [REDACTED], but to the head of the [REDACTED], and that
2 Mr. [REDACTED] was holding the money for Mr. [REDACTED].

3 Mr. [REDACTED] may -- may have, in turn, had that same
4 relationship, or similar relationship, with Mr. Manafort,
5 although that's not necessary to our argument.

6 And so in the first version, what it is, what I would
7 say is close to the truth, in the sense that there is -- there,
8 in fact -- if, in fact, Mr. [REDACTED] and Mr. Manafort had a similar
9 [REDACTED] arrangement, the -- that part was hidden from us,
10 and that was a lie, that this didn't come from that. That was
11 the reason for the payment.

12 But, it would be the case that Mr. [REDACTED] owed
13 Mr. Manafort money; it's just that it was not a loan. Meaning,
14 what was lied to about was hiding that [REDACTED] -- knowledge
15 of that [REDACTED] scheme.

16 Version two, the false statement is that this is now
17 Mr. [REDACTED] saying that he -- this is according to
18 Mr. Manafort -- paid money for past work he got for
19 Mr. Manafort, and that he was -- Mr. [REDACTED] was justifying
20 this as money that he was paying because of work that he -- had
21 been obtained for him by Mr. Manafort.

22 And their subsidiary false statements, Mr. Manafort
23 said that Mr. [REDACTED] told Mr. [REDACTED] that he had a relationship
24 with Mr. Manafort and would deal with Mr. Manafort directly.

25 In other words, the issue now was when, after the first

1 version, we went to counsel and said: This doesn't make any
2 sense. We've got payment records, and the payment records are
3 coming from Mr. [REDACTED]. So how does Mr. [REDACTED] get
4 involved?

5 And that's when we got version two. And so the issue
6 for Mr. Manafort is, how does he now justify Mr. [REDACTED] being
7 anywhere near this scheme? And then, once he switches to
8 Mr. [REDACTED], the issue is, why did he first go to Mr. [REDACTED]?
9 And so -- and we know the answer through Mr. [REDACTED]'s
10 interview, where he tells us how that happened.

11 But, this was not Mr. [REDACTED] paying money simply as
12 a way of -- as a gesture in light of work that he had obtained
13 from Mr. Manafort. Rather, this was just money that he was
14 holding for Mr. [REDACTED], and he just gave it because he was
15 directed to do it by Mr. [REDACTED], and that's why he did it. Again,
16 that was not told to us by Mr. Manafort.

17 If you look at Exhibit 3, page 1, that supports the
18 statements made by Mr. Manafort. In the grand jury, Exhibit 4,
19 at pages 254 and 255, Mr. Manafort said that [REDACTED]

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]. Our view is that all of that is
23 not true.

24 And also, if you look on pages 248 and 249 and 257,
25 all in Exhibit 4, which is the grand jury testimony --

1 THE COURT: Tell me the pages of the grand jury
2 testimony again.

3 MR. WEISSMANN: 254 and 255, 248 and 249, and 257.
4 257, Mr. Manafort is explicitly asked, and says that the [REDACTED]
5 [REDACTED].

6 And then version three is that -- is when
7 Mr. Manafort said that this was a loan that was being given
8 from Mr. [REDACTED] to Mr. Manafort, which Mr. Manafort had
9 requested from Mr. [REDACTED].

10 And if you look at Exhibit 10, at page 3,
11 Mr. Manafort says that originally they planned this to be a
12 loan. And there's -- there's no evidence of that, other than
13 Mr. Manafort's statements. It's not what Mr. [REDACTED] said.
14 It's not what Mr. [REDACTED] said. It's not what Mr. Manafort
15 said in an email to Mr. [REDACTED] about this being income, if
16 you'll note that.

17 If this was so legitimate and there was no issue, if
18 you look at the email that Mr. Manafort wrote to Mr. [REDACTED],
19 he said: This is a payment from a vendor, and it's being paid
20 directly to the law firm because I have trouble with my banks.

21 Again, that would all suggest that there's something
22 nefarious going on, because that's clearly not the case,
23 Mr. [REDACTED] is not a vendor of Mr. Manafort.

24 So those are the lies that we think were told in
25 connection with the \$125,000 scheme.

1 THE COURT: All right. The 302s, of course, reflect
2 what was said as opposed to a Q&A.

3 What's your response to what the defense has said,
4 that the initial questions had the wrong amount and they were
5 confusing and that's why his answers weren't what you were
6 expecting?

7 MR. WEISSMANN: So I think one piece of that we agree
8 with, which is that the initial amount -- if you give me one
9 second.

10 (Pause.)

11 MR. WEISSMANN: So the initial amount that we had
12 thought was paid to the law firm, we thought was higher, and
13 then we went and looked at the records and realized it was
14 lower.

15 So they're correct, that we initially had the number
16 wrong. And, by the way, that, I think, should be taken as we
17 went in to this just wanting to know what's this payment, and
18 where did it come -- I mean, this was not -- we in no way were
19 thinking this was going to be where we ended up. And you can
20 tell from the fact that we then interviewed all these people to
21 try and dig through this.

22 The issue of whether the amount that was paid to the
23 law firm was 500,000 or 125,000 has nothing to do with hiding a
24 [REDACTED] scheme, and it's nothing to do with coming up with
25 three separate versions. I just -- I think it's -- I think

1 there is -- like many very good defense arguments, you know,
2 that you make to a jury, there's a kernel that's true. But, I
3 don't think you get from that to where you need to be.

4 THE COURT: What about the defense suggestion that
5 there was confusion at the time the payment was made as to
6 whether it was going to be a loan or a gift?

7 MR. WEISSMANN: So, we have -- we have --

8 THE COURT: We have the email he wrote in real time
9 to his accountant and how he treated it at tax time.

10 MR. WEISSMANN: Yes. And so we have that, and we
11 have Mr. [REDACTED] and Mr. [REDACTED]. And it's very hard to see
12 why Mr. [REDACTED] -- again, we could rely on his credibility and
13 his demeanor. But, it is hard to see why what he said to us
14 would not be where -- one could view that as not particularly
15 being in his interest. And telling us the circumstances of the
16 payment seemed very credible to us, in that I don't see how
17 there's confusion.

18 And also, it's important to note that that's not how
19 it was presented to us. It was not presented as: Let me talk
20 to you about the 125,000. There was a [REDACTED] scheme. I
21 don't know, in terms of how it's going to be documented,
22 what -- that was not the way it was presented. It was
23 presented as: It happened this way. No. Then, it happened
24 this way. Then, it happened this way.

25 And when we said: Well, then, why did you even

1 mention Mr. [REDACTED]?

2 And it was, like: Well, Mr. [REDACTED] just introduced me
3 to Mr. [REDACTED] in terms of he could pay the money.

4 I mean, the story really does not make sense, unless
5 you really -- the way, I think, to understand it, and the way
6 we got into this was, at the very least, Mr. Manafort was aware
7 of the [REDACTED] scheme.

8 THE COURT: All right. Well, you've kind of headed
9 it right into something that I had wanted to ask, which is,
10 putting aside whether it has to be established and whether we
11 have to establish all the elements of 1001, why is this
12 important? I mean, basically, what you're saying is, you were
13 just asking about something and it turned -- it snowballed into
14 a series of false statements.

15 But, was there something about his -- if I agree with
16 you that he was lying about that, that was material to what you
17 were doing? What was the importance of asking him about the
18 payment in the first place?

19 MR. WEISSMANN: So, there were a number of things
20 that we were interested in knowing about the source of funds
21 and where money was coming from. And there was a lot of
22 tracing of assets that was being done. Actually, our forensic
23 accountant is here. That is something that was relevant to the
24 Eastern District of Virginia case, and to the case here.

25 So, we were trying to determine location of money,

1 and whether there were other -- other accounts that we were not
2 aware of, or people holding money for Mr. Manafort that we were
3 unaware of. So that was the initial impetus for why we were
4 looking at this.

5 It obviously, subsequently, is of significance, in
6 that the reason for sealing this is -- has to do with the
7 [REDACTED]. So, it -- the initial reasons are not,
8 now, the current reasons.

9 THE COURT: All right. You touched on this: It's
10 noted in the declaration that [REDACTED], when he explained the
11 deal that he had, essentially, to [REDACTED]
12 [REDACTED], that he said he
13 was unaware of whether there was a [REDACTED]
14 Manafort. And you've kind of hinted to that here today, that
15 that might be a motive for his being not straightforward, as
16 you believe he wasn't.

17 Is it something that we know the answer to? And
18 whether he did or he didn't, is it something that matters?

19 MR. WEISSMANN: So, the answer to the first question,
20 about whether we know the answer to whether Mr. Manafort was
21 receiving [REDACTED]
22 [REDACTED]

23 In terms of whether it matters, I don't think it
24 matters because it's sufficient that the -- defendant, A,
25 whether he lied and he would -- it would be sufficient if he

1 was aware of the -- of the scheme. I think you can infer that
2 from all of the circumstances here.

3 I do want to address one of the things that the Court
4 said about motive.

5 The -- from our perspective, the motive here is, if
6 you remember Mr. Manafort, at the -- when he was working for
7 the Trump campaign, was unpaid.

8 Second, as there's been a lot of evidence in the
9 Eastern District of Virginia case, that during that time period
10 Mr. Manafort had a liquidity issue; not that he didn't have
11 assets. But Mr. Yanukovich had fled in 2014 from the Ukraine,
12 and there was a dramatic drop in income that was coming in to
13 Mr. Manafort.

14 And one of the -- and so the -- one of the motives
15 for the serial bank frauds that were charged, and now admitted
16 by Mr. Manafort, was to, basically, increase his liquidity.

17 Here, this was a way of getting cash. And it's not
18 something that would be, I think, well received, that the
19 unpaid campaign manager was getting [REDACTED]

20 [REDACTED]

21 [REDACTED]. And, instead, was being used to
22 pay [REDACTED] in ways that
23 were not reported in the contract -- the written contract so
24 that there would be a motive to conceal this.

25 THE COURT: Okay. All right.

1 Mr. Westling, is there something, first, you want to
2 start with to add to what you put in your pleadings about this
3 issue?

4 MR. WESTLING: Well, I think, Your Honor, as you
5 pointed out and the Government responded to, there was this
6 initial amount confusion. It sort of came up as kind of a --
7 less than a primary area of discussion.

8 You'll note that in the first 302, there really is a
9 fairly complete accounting of the relationship of Mr. [REDACTED], and
10 the fact that [REDACTED] paid the money. And so, you know, I
11 think that as a practical matter, this issue took on a life of
12 its own through these meetings. I mean, we seem to keep going
13 back, and the Government continued to show its dissatisfaction,
14 and yet the story didn't change all that much.

15 And I think that at the end of the day, you know,
16 Mr. Weissmann has been very up front in saying that, you know,
17 he has a suspicion about what was going on here, for which
18 there is not yet proof. I don't think there is proof because I
19 don't think it occurred.

20 And one of the things the Court should be mindful of
21 is that the amount of money that was paid here, if there had
22 been such an arrangement, would have been a small fraction of
23 what he could have used to pay lawyers he owed a lot more money
24 to. So, I mean, there's something about it that just doesn't
25 really make sense in the way the Government wants to describe

1 it.

2 But, I think that's probably all I have as an
3 introduction, Your Honor. And I would be happy to answer
4 specific questions, if that's helpful.

5 THE COURT: All right. Well, it struck me, when I
6 read your pleadings, that you had a number of theories about
7 why each individual statement wasn't necessarily false. For
8 instance, you start by saying that he could have fairly thought
9 that the payment was a repayment of a loan to [REDACTED] because [REDACTED]
10 owed him money. But, the payment wasn't made by [REDACTED]. It was
11 made by [REDACTED].

12 And I'm not sure how that explains the evolving
13 succession of inconsistent explanations. I'm not at all sure I
14 agree with what you just said, that the story didn't change.

15 MR. WESTLING: Well, I think, if you look at the 302
16 from -- let me give you an exhibit number. It's Exhibit 9, and
17 it's page 6. It was the same paragraph that Mr. Weissmann
18 referred to you previously. And he talks about -- and this
19 sort of came up, with the understanding that he went to Mr. [REDACTED]
20 because Mr. [REDACTED] owed him money. And so that was -- gave him a
21 reason he could go and ask for this money, for help, which was
22 really what he was looking for.

23 And then, in essence, what happens is that he
24 recognizes, as this comes out in his first interview, that
25 Mr. [REDACTED] is the one that's paying the money, and that the

1 money, the amount is actually the 125, not the higher number
2 the Government had said, or the lower one he was thinking. And
3 as a practical matter, that's sort of where it's left at that
4 point.

5 But, what's clear from the very first is that Mr. [REDACTED]
6 is involved and Mr. [REDACTED] is involved. And then we come
7 back and revisit it. And it's very clear, from our
8 perspective, that all along what was being said was: I went to
9 [REDACTED] talked to [REDACTED], and I talked to [REDACTED], and I
10 got this money.

11 And I don't know, at the end of the day, that it
12 really changes. I mean, those elements are there throughout.
13 The point, you know, that's made later on about the e-mail to
14 [REDACTED] in referencing a vendor, well, that's actually an
15 accurate description of his relationship with Mr. [REDACTED],
16 who's been a vendor on all these campaigns he's used in the
17 past. So, I don't think that was designed to hide anything.
18 It's explaining who's the source of the funds.

19 And I think throughout, there was just an
20 unwillingness on the Government's part to sort of accept what
21 was being said. So their point, I guess, they did more
22 investigation, found out more details.

23 But, I don't think there's any question when we sit
24 here today, that what Mr. Manafort was saying is: I reached
25 out to [REDACTED], basically, talked to

1 [REDACTED], I talked to [REDACTED], and [REDACTED] made a
2 payment on my behalf.

3 And that sort of runs through all of these sessions.

4 THE COURT: All right. Well, one of the things you
5 say is, there was confusion at the time of the transaction
6 about whether it was a loan or a gift, and so you declared --
7 he declared it income in an abundance of caution.

8 Where is the confusion that it might have been a loan
9 at the outset?

10 MR. WESTLING: Well, there is -- give you an exhibit
11 site here.

12 Exhibit 8, which is 11/6/2018, 302 of [REDACTED],
13 on page 2, paragraph -- the fourth full paragraph, there's a
14 recounting by Mr. [REDACTED] of a dinner he had with Mr. Manafort
15 where they discuss the payment, and [REDACTED] tells Manafort
16 that he needs to issue a 1099. And Manafort sort of says: Do
17 what you need to do.

18 And so Manafort is expecting a 1099 from
19 Mr. [REDACTED], which never arrives. So, at the end of the day,
20 what happens is Mr. [REDACTED]'s accountant sends the 1099 to the
21 law firm, not to Mr. Manafort. And so he's sitting in a
22 situation where he doesn't really have control of his finances,
23 trying to help his accountant.

24 On one hand, he knows he was promised a 1099 that
25 never appeared, because the accountant doesn't have it. And

1 the question is: What do we do with this?

2 And so it's either got to be a loan or income,
3 because everybody was clear it wasn't a gift. And so, in the
4 end, Mr. Manafort declares it, although there's also some
5 effort to put together a loan document in the event that's the
6 way it's going to be treated.

7 But, you know, again, it was not clear at the time,
8 between the two people talking, what was happening, other than
9 the money had been paid and that a 1099 would be coming. So
10 that appears to be income, and that's the way Mr. Manafort
11 treated it.

12 Later, when it doesn't arrive, he doesn't know what's
13 going on and he's not able to reach out to Mr. [REDACTED] to
14 clarify it directly, which is one of the things he points out
15 in the grand jury.

16 THE COURT: All right. Well, you also said in your
17 reply that the Office of Special Counsel was claiming that
18 Manafort lied when he discussed the fact that the payment might
19 be a loan.

20 That's your words.

21 MR. WESTLING: Mm-hmm.

22 THE COURT: And then you tell me: Well, it's all,
23 you know, really of little moment because he paid taxes on it
24 anyway.

25 I'm not sure that really addresses the seriousness of

1 the allegation, because he didn't just say the payment might be
2 a loan. The Office of Special Counsel is claiming that he lied
3 when he advanced the narrative that it was a loan, and he came
4 up with a reported unsigned copy of a note to support it and
5 then passed the same false story on to his accountant years
6 later in an effort to have him revisit the original tax
7 treatment.

8 So, I feel like that not only is it possible that he
9 wasn't being truthful with the Office of Special Counsel, but
10 you were kind of really downplaying it in your description to
11 me.

12 So, what do you want to tell me about this promissory
13 note that makes its first appearance during the debriefing
14 session?

15 MR. WESTLING: Well, I mean, again, I think it's
16 important, Your Honor, going back to Exhibit 8, Mr. [REDACTED]
17 acknowledges having seen a promissory note in the past. He
18 doesn't remember signing it or anything else. So at some point
19 that was presented to him.

20 We also know that Mr. Manafort told the special
21 counsel and the grand jury that he, basically, told his
22 accountant to reach out to Mr. [REDACTED] and get this figured
23 out, because he was not in a position to do it.

24 And so I think the point is that there -- it was not
25 clear, and there's these things floating around. In the end,

1 it gets reported, because that's what you do if you don't have
2 a basis not to report it.

3 But I think, you know, because there was not a
4 discussion --

5 THE COURT: Well, why are we suddenly sending to the
6 accountant, in October of 2018 -- and, interestingly, it comes
7 from the same lawyer who tried to sell me a little bit of a
8 bill of goods in connection with the loan documents during the
9 bond hearing? Like, how is he suddenly sending this supposed
10 promissory note that existed way back when?

11 MR. WESTLING: Well, I don't know when the note was
12 sent to Mr. [REDACTED]. It's not clear from the 302. What's
13 clear is, he acknowledges seeing it and --

14 THE COURT: So you're not telling me that that's
15 evidence that it was generated in real time? I'm just trying
16 to figure out, do I have any reason to believe that this thing
17 existed at the time of the transaction, as opposed to
18 conveniently appearing in time for the debriefing session --
19 after he'd been through several debriefing sessions.

20 MR. WESTLING: But, I guess the premise that that
21 starts from is that Mr. Manafort, from the beginning,
22 acknowledged that he was expecting a 1099. So he believed it
23 to be income.

24 THE COURT: Right.

25 MR. WESTLING: And then there was this confusion that

1 came up. And so in the end, when there was no loan that was
2 confected, it was reported as income. But, I don't think there
3 was ever any indication that the loan was in any way an effort
4 to avoid paying tax, if tax was, in fact, due. It depended on
5 what the intent of the gift -- the person who provided the
6 money was as to whether it was going to be repaid or not.

7 THE COURT: No. I'm trying to figure out if the
8 promissory note was something created to support the
9 version three.

10 MR. WESTLING: No, I don't think it was, Your Honor.
11 I think version three was a response to being shown the
12 promissory note. In other words --

13 THE COURT: By whom?

14 MR. WESTLING: By the special counsel.

15 THE COURT: No. They say he showed it to them.

16 MR. WESTLING: I wasn't at that meeting. So I
17 apologize.

18 MR. DOWNING: Just to clarify, we got that document
19 from Mr. [REDACTED] and then provided the document to the Office
20 of Special Counsel. That promissory note predated any
21 interviews with the Office of Special Counsel, Your Honor.

22 THE COURT: What prompted him to suddenly send it to
23 the accountant right around the time that you were showing it
24 to the Office of Special Counsel for the first time?

25 MR. DOWNING: The reporting of the amount as income

1 had to do with the tax deadline for that year it was showing
2 up. So, Your Honor, I think, before, you were saying to clean
3 up a prior year. That's not what happened. The returns were
4 being filed, and that amount of income was being timely picked
5 up on a return that was being filed on an extension. So that
6 was the email communication with the accountant.

7 And, quite frankly, it wasn't really an issue here,
8 in court. But, there was an issue in the Eastern District of
9 Virginia about whether or not recording certain transactions as
10 loans was legitimate. And there was a big issue to just say:
11 Pick it up on the return and let's figure it out later.

12 That's what was determined to be done. And as you
13 know, at that point in time, we were not about to reach out to
14 other individuals that could potentially be witnesses. So, we
15 were kind of in a box, in terms of trying to get a resolution
16 of the matter satisfactorily during this process. We just
17 couldn't do it.

18 THE COURT: All right.

19 Mr. Weissmann, I certainly got the impression from
20 the declaration and your pleadings that you were suggesting to
21 me that this promissory note was a recent concoction.

22 What's your response to what they're saying?

23 MR. WEISSMANN: There's no evidence in the record
24 that the promissory -- the unsigned promissory note existed
25 prior to the proffers in debriefings here. But, we know what

1 is in the record, which is the contemporaneous email from
2 Mr. Manafort to his tax advisor, and the tax advisor's
3 statements to us about this being income.

4 It's the email where I told you Mr. Manafort is
5 coming up with, itself, a false statement to his tax advisor,
6 saying that this is money from a vendor. Again, no reason to
7 be lying to your tax advisor. Ironically, for somebody who's
8 charged in two cases with tax offenses, still making a false
9 statement to Mr. ██████████ about this.

10 Why I think the -- this is now being recast as a loan
11 as opposed to income is because as we started asking questions
12 about it, and it -- again, not in any way thinking this was a
13 ██████████ scheme. But, then, falling into that, is that I
14 think that Mr. Manafort did correctly decide to record this as
15 income because, although it is a -- a ██████████ scheme, it --
16 one way of avoiding at least one criminal problem is to report
17 it as income because it is income, if it is money from a
18 ██████████ scheme.

19 But, if you were hiding that from the Government, you
20 need to come up with a different way of explaining this than
21 income. Which is why I think it was then, later, determined,
22 okay. Let's call it a loan.

23 As you know, Mr. ██████████ didn't know it was a loan.
24 Mr. ██████████ didn't know it was a loan. So you have two
25 witnesses saying that, and it's uncontroverted. There is no

1 evidence in the record otherwise.

2 And I would just -- although it's in the declaration,
3 I would point out Exhibit 12 to the Court, which is -- it is
4 the text exchange between Mr. Manafort and Mr. [REDACTED].

5 If this is money that is being paid by Mr. [REDACTED]
6 as a loan, or as money for past work, Mr. Manafort is sending
7 the banking information as to where the money should go to
8 Mr. [REDACTED]. That all makes sense, if it's Mr. [REDACTED]'s money, and
9 Mr. [REDACTED] is directing where this is going to go. And that's
10 exactly what Mr. [REDACTED] said.

11 So the contemporaneous documentation is entirely
12 consistent with what Mr. [REDACTED] was telling the Government.

13 THE COURT: All right. I think I've heard everything
14 I need to hear on this issue, unless there's something you
15 think I haven't heard yet that you want to tell me.

16 MR. WESTLING: One second.

17 (Pause.)

18 MR. WEISSMANN: Judge, while they're waiting, I just
19 want to repeat that nothing that the Government is contending
20 here is in any way intended to reflect on defense counsel.

21 THE COURT: I understand that as something you've
22 made quite clear, and I appreciate that.

23 MR. WEISSMANN: Okay. Okay.

24 MR. WESTLING: Your Honor, a couple points.

25 One, if the Court would be willing, we're able, we

1 believe, to get the metadata beyond that relates to that loan
2 document. We're pretty confident it existed some time in the
3 past and was not created. But, we obviously know that you
4 would have to have proof of that to be able to rely on it. I
5 don't know if that's something that we could provide to you
6 after the hearing, but it's something we're willing to provide.

7 THE COURT: That would be fine.

8 MR. WESTLING: Okay. And I think the other thing,
9 Your Honor, just sort of going back, a great deal of --

10 THE COURT: You need to put it some format that I
11 actually understand what I'm looking at.

12 MR. WESTLING: Understood.

13 THE COURT: All right.

14 MR. WESTLING: It will have to be that way for me,
15 too.

16 THE COURT: All right.

17 MR. WESTLING: Just the other thing is that I think a
18 lot of what the Government reads into what happened here
19 relates to this theory of what's going on. I think what's
20 important to note is that they describe, for example, the
21 payments to Mr. [REDACTED] as [REDACTED], when, in fact, you know,
22 Mr. [REDACTED] acknowledges this is commonplace, based on his
23 understanding. There's nothing unusual about what's going on
24 as far as what Mr. [REDACTED] is getting.

25 And I think, you know, it's important because there's

1 a sense of coming up with reasons why it would have made sense
2 to hide what was going on, rather than accepting the fact that
3 the three players in this were there from the beginning, and
4 there was just a lot of uncertainty about what exactly happened
5 in terms of getting the money paid.

6 THE COURT: All right. I think you made that clear.
7 And I think I understand everybody's point of view about this,
8 and what the evidence is. But, there's some aspects of the
9 evidence I'm going to need to re-review.

10 All right. So let's go on to what is II, or the
11 second subject touched upon in the declaration, which is
12 Mr. Kilimnik's role in the obstruction conspiracy.

13 So, Mr. Weissmann, the concern here, laid out in
14 paragraph 15 of the declaration, is that in an interview, after
15 Mr. Manafort had pled guilty to conspiring with Kilimnik, he
16 offered up an exculpatory version of Kilimnik's state of mind.
17 And I certainly don't quarrel with your conclusion, that this
18 isn't necessarily consistent with what one would call full and
19 forthright cooperation.

20 But, given his correction after consultation with
21 counsel, why would this be something that we would characterize
22 as the crime of making an intentionally false statement to the
23 FBI, or even just a law of significance for acceptance of
24 responsibility in sentencing purposes?

25 MR. WEISSMANN: So, let me just first address the

1 acceptance of responsibility.

2 This could be relevant to acceptance of
3 responsibility, but it could also be relevant to a number of
4 other issues. In other words, there are a number of legal
5 issues that we're now very much involved in, in terms of
6 whether this should or should not form a basis for discounting
7 acceptance of responsibility.

8 Even putting that aside, if the Court were to
9 conclude that this is an intentional lie, that it would be
10 relevant to issues such as a variance, or where within the
11 guidelines the Court would sentence the defendant. So, that's
12 our position with respect to how it could be relevant.

13 In terms of --

14 THE COURT: Well, and I think I detailed, at one
15 hearing or another, all the various ways, if he made false
16 statements, it could bear on sentencing.

17 MR. WESTLING: Yep.

18 THE COURT: I'm just trying to figure out why this
19 one, corrected within the same session, albeit after his
20 counsel took him aside and whispered in his ear, makes you
21 think that I should consider this one in that group of things
22 that bear on these issues.

23 MR. WEISSMANN: So, this is why: First, in terms of
24 what happened, I would like to direct your attention to
25 Exhibit 10, page 6, which is the 302 of that session.

1 And it's not correct that the defendant said
2 something, and then defense counsel sort of said: Let me have
3 a moment, and it got fixed.

4 THE COURT: Okay. Let me stop you for one second.
5 Are the mics on the tables live?

6 THE COURTROOM DEPUTY: Yes.

7 THE COURT: Can we let him have that? For some
8 reason -- you obviously haven't done a lot of TV or theater,
9 Mr. Weissmann.

10 MR. WEISSMANN: Yeah. Exactly.

11 THE COURT: Or maybe you just got a bum microphone,
12 and it's not your fault at all.

13 MR. WEISSMANN: So --

14 THE COURT: That's much better.

15 MR. WEISSMANN: What I was saying is that it wasn't a
16 situation where this came up, defense counsel said: Can I have
17 a moment? And then it all got corrected.

18 There -- if you look at page 6, Mr. Manafort gave a
19 detailed explanation. And I'll get to that in a moment. And
20 after that detailed explanation, the Government pointed out to
21 Mr. Manafort and to defense counsel who was present the
22 inconsistency and -- with respect to the statement of offense
23 and guilty plea. There then was a substantial period of time
24 where Mr. Manafort and defense counsel were alone, and then we
25 resumed.

1 So, one of the things I would -- so, one, I think
2 that is -- bears on -- it's a factor for the Court.

3 The other is that if you look at what the defendant
4 said, this is not the defendant saying -- you know, I have to
5 just intuit what is in his head, and, you know, he got it
6 wrong. In one instance, he was, like: Okay, yes. And now I
7 remember, having gone through it with counsel, why it is that I
8 believed he knew.

9 That's not the way it was presented in either the
10 first or corrected version.

11 If you look at the 302 -- and I'd just like to quote
12 some of it to you, because some of it is factual about what the
13 facts were, not just intuiting what was in someone's head.

14 So, the part that would be what Mr. Kilimnik
15 believed -- and this, by the way, is Mr. Manafort having no
16 problem saying what it is that Mr. Kilimnik believed. So, it's
17 not a situation where he is, like: I can't really tell you
18 what was in his head because version one included what he
19 thought was in his head.

20 Mr. Kilimnik believed that the Hapsburg Group was a
21 European project. Mr. Kilimnik did not work on the Hapsburg
22 group's project in the United States.

23 Now, let me go to the corrected version after the
24 substantial break.

25 Kilimnik knew that the Hapsburg Group performed work

1 in the United States. So you have he didn't know, and he did
2 know.

3 Now, the actual facts are ones that the Court is
4 familiar with. There, obviously, is an indictment, which -- of
5 Mr. Kilimnik, as well as Mr. Manafort, which the grand jury
6 found at least probable cause. There are ample records of
7 Mr. Kilimnik being involved in setting up Hapsburg Group
8 events, and being on e-mails where the Hapsburg Group is
9 working in the United States. So it's not a case where
10 Mr. Kilimnik and Mr. Manafort didn't both know and knew that
11 the others knew.

12 And then, finally, Mr. Manafort, in the second
13 version, says Mr. Kilimnik was aware of the facts and agreed to
14 violate the law.

15 So, to us, within 32 days, we have an instance of
16 Mr. Manafort completely changing his story. And one of the
17 issues, I think, for the Court, as it was for us, is, what's
18 the motive?

19 THE COURT: Well, that's what I was going to ask you.
20 What are you thinking that was?

21 MR. WEISSMANN: Because we had the same question,
22 which is, why would somebody do this? And to us, the issue is
23 that I think Mr. Manafort went out of his way in this instance,
24 and I think in the next one, to not want to provide any
25 evidence that could be used with respect to Mr. Kilimnik.

1 And I do think there is an aspect which is something
2 he did forget, which is, I think he clearly forgot that when he
3 pled guilty, it was a conspiracy where he was necessarily
4 conspiring with Mr. Kilimnik. I mean, that's plain. But that
5 does not in any way mean that he did not lie.

6 We have him saying that Mr. Kilimnik did not work on
7 the Hapsburg project in the United States, and we know that's
8 not true. That he, in fact, knew that at the time, and he
9 admitted that just 32 days earlier; if he even needed to
10 remember it from that, as opposed to having lived the
11 experience with Mr. Kilimnik.

12 THE COURT: Okay. Mr. -- oh, my God -- Westling --

13 MR. WESTLING: Westling, Your Honor.

14 THE COURT: -- again, I think the characterization of
15 the issue in the reply is a little off. In your initial
16 response you say: Well, he didn't deny his involvement. He
17 just wouldn't agree to his intent. He couldn't speak to his
18 state of mind, of course. But the 302, I don't need it to be
19 read to me right now to notice that he volunteers affirmative
20 statements about the nature of Mr. Kilimnik's state of mind.

21 And so I take it you would agree that certainly that
22 was not consistent with his plea and his obligations under the
23 plea agreement?

24 MR. WESTLING: Well, I think that there's some
25 context, Your Honor, for what's happening here. I mean, he

1 does indicate about Mr. Kilimnik's mind. What's not clear,
2 from the way I sort of read all this, is when it's read with
3 the paragraph that follows, and even the one right before it,
4 where there's some reference to the communication he's had with
5 Mr. Kilimnik after the indictment.

6 And so, the -- for example, comments about this being
7 outrageous, I mean, I sort of view this, at least in part, as
8 what Kilimnik is saying or feeling about his role, not what
9 Mr. Manafort believed about it.

10 But, you know, it still sort of comes down to this
11 whole idea of, you know, what was in someone's mind. I think
12 when reminded about the conspiracy to the point that the
13 Government made, where there was some lack of recognition of
14 perhaps what that meant in the moment, you know, Mr. Manafort
15 returned to what he had said before you, under oath, and has
16 consistently said since.

17 I mean, I think this was just a moment where there
18 was some, you know, lack of clarity in the questioning. When
19 you look at the paragraph right before it, you know, it's sort
20 of talking about where Mr. Kilimnik is living at the time,
21 etcetera. And sort of Kilimnik told Manafort that he was
22 afraid for his family after moving back to Moscow, and that he
23 did not believe he was suborning perjury.

24 To me, that seems to be -- it's suggesting what's
25 happened after the indictment and not in the moment. And,

1 again, I'm not saying that's what it is; I'm just saying
2 there's confusion around that in the way this is written. And
3 it's -- this paragraph is sandwiched between two that clearly
4 reference an after-indictment conversation with Mr. Kilimnik.

5 And so from the point of view of Mr. Manafort, you
6 know, clearly, he wasn't --

7 THE COURT: Well, then, why would that have needed a
8 session and a review of notes and getting him to say something
9 different, if what he said at the beginning, there was nothing
10 wrong with it?

11 MR. WESTLING: Because throughout these sessions,
12 there were moments where -- I mean, I don't need to tell the
13 Court. I know you've been there. But, you know, there's the
14 nature of defense lawyers sitting in any proffer session, any
15 cooperation session, that is all about what I've always
16 described as being the air traffic controller, making sure the
17 question that is coming is the one that's getting answered, and
18 that everybody stays on the same.

19 Clearly, things got awry here. And when that
20 happened throughout, where there was a sense that either
21 Mr. Manafort was saying something the Government doesn't
22 understand or vice versa, defense counsel intervened
23 repeatedly. I mean, this was not an unusual thing that
24 happened during the course of these many sessions.

25 And I think in this case, it was important to make

1 clear. Because the way the Government was: You're backing
2 away from your plea. And that was not what Mr. Manafort
3 intended. And so we met with him and corrected the record.

4 THE COURT: I think Mr. Zehnle wants to say
5 something.

6 MR. ZEHNLE: Good morning, Your Honor.

7 I just wanted to clarify a little bit, based on this
8 302, since I was counsel present at this time.

9 And I think what Mr. Westling said is absolutely
10 correct. Because when I was looking at the 302 and remembering
11 and looking at our notes of this meeting, the issue came up in
12 terms of: Did you discuss this with Mr. Kilimnik?

13 And there was a series of questions following -- as
14 you can see in the paragraph identified in the 302 that
15 Mr. Weissmann went over -- where my understanding and my
16 client's understanding, as he has stated, was that this is what
17 Kilimnik was saying in terms of this. But it all flowed. And
18 you can see it from the previous page, he's talking about
19 Kilimnik told Manafort.

20 So it's: Well, okay. After the indictment, did you
21 guys talk? What did you talk about?

22 Okay. Well, Kilimnik said, you know, I didn't
23 believe I'm suborning perjury, or anything like that.

24 And this discussion went on for, you know, a decent
25 amount of time, as I believe Mr. Weissmann was the one asking

1 the questions at that point in time. And Mr. Manafort was
2 answering based on the stated comments that, apparently, he had
3 with Mr. Kilimnik during this conversation.

4 When it seemed to start going awry -- and I do recall
5 this specifically. It's not evidence, but I can tell the
6 Court, as an officer of this Court, there was an issue raised:
7 Well, do you understand the difference between an explicit
8 agreement and an implicit agreement?

9 And it was at that point that we took a break to --
10 and I'm not going to go over, obviously, attorney-client
11 privileged information, Your Honor, but that's what came up in
12 terms of what was explicitly being said versus what was
13 implicit. And there was never any backing away from the fact
14 that Mr. Manafort said: I've pled guilty to this crime and
15 this is what's happened.

16 So, the way this comes out, when I read --

17 THE COURT: I don't think they're suggesting that he
18 ever tried to sugarcoat his involvement in the witness
19 tampering. I think they're saying that he started trying to
20 cut Kilimnik out of it. And the question is, was he simply
21 saying: Kilimnik says X. This is his version. I'm just
22 telling you what he's thinking.

23 That's not the way the 302 read to me when I read it.
24 I understand you want me to look at the first paragraph.
25 But -- and this is the problem with not having grand jury

1 testimony, but having to look at a 302.

2 And I'm going to ask if the agent or anybody in the
3 Office of Special Counsel wants to weigh in on this issue. But
4 I think it went on to be more of an affirmative statement of
5 not only what Kilimnik's position was, but what he did or
6 didn't think at the time. And I may not be able to resolve it
7 on the face of the 302. But I'm not -- I think that it's a
8 little bit of a strained reading that you're giving it,
9 although I will read it again.

10 Is there anything else you want to tell me about what
11 happened during it?

12 MR. DOWNING: Just -- can I have a moment?

13 THE COURT: Yes.

14 (Pause.)

15 MR. ZEHNLE: Well, Your Honor, as I said to you a
16 moment ago, I mean, this was my recollection of what occurred
17 there --

18 THE COURT: Okay. No, I appreciate it.

19 MR. ZEHNLE: -- as opposed to the 302.

20 THE COURT: Okay.

21 MR. ZEHNLE: And so the reason I raised the --

22 THE COURT: I mean, I think it was -- I mean, I think
23 what they're saying is, you acted all responsibly at every
24 point. It was troubling enough to you all to get it re -- back
25 on course; so, it had gotten off course somehow. And I have to

1 try to figure out if it's because he was intentionally trying
2 to soften the blow for Kilimnik, or he was just saying: You
3 want to know what he thinks? I'll tell you what he thinks.

4 And so I appreciate your gloss on it and your
5 recollection. And I don't doubt that you're telling me that in
6 good faith, but I want to hear what their recollection is, too.

7 MR. ZEHNLE: Okay.

8 THE COURT: Do you have anything you want to add,
9 understanding that that's where the rub seems to be right now?

10 MR. WEISSMANN: I think I have a couple things.

11 One is, I think that it's important to have a clear
12 factual record and -- so that we have no objection to the
13 defense submitting additional evidence, but the evidence in the
14 record does not support that. And it also would not support --
15 I was just checking with Mr. Andres -- that there was a
16 discussion of implicit and explicit agreements. That wasn't
17 the context that we recall, and it -- that's not in the record.

18 And, again, that's -- I'm just -- I guess I'm being a
19 lawyer, which is, there's evidence that's been submitted to
20 you. We're not against the record being amplified, but we
21 don't think that the record supports that.

22 Again, I think if you look at the text of the 302,
23 and what it is that Agent Weiland put into the record, it does
24 not support the view. And we would not be here if this was
25 simply a miscommunication. We have a -- I think, a good

1 professional working relationship with defense counsel, and in
2 instances where there was -- people were just not on the same
3 page, we worked through that issue.

4 This was not that. This was one where a significant
5 issue came up because 30 days after pleading guilty, we had a
6 defendant before us saying, in fact, he is not guilty of the
7 conspiracy. Again, the Court has it completely correct. We
8 are not in any way saying that Mr. Manafort was saying that he,
9 himself, did not engage in what I think would be one of the
10 counts that was charged, but he was saying it was not a
11 conspiracy. He was not doing it with Mr. Kilimnik. And that
12 is clear from the factual statements that diverge in the 302.

13 And I think the final piece is that Mr. Manafort,
14 afterwards, basically told us when -- after this long break and
15 he came back and said the exact opposite of what he had just
16 said, Mr. Kilimnik knew that the Hapsburg Group performed work
17 in the United States, something that he had previously said he
18 did not say. He said: You just didn't understand what I had
19 said.

20 And we all knew, and the record reflects that, in
21 fact, is another false statement. That is not what happened.
22 And the only evidence in the record is that that statement is
23 not true. And that has to be intentional, in our view. We
24 were all present for the prior version.

25 THE COURT: So, this is an example where you're

1 saying he didn't just correct or revise the information, but he
2 denied having said the thing earlier?

3 MR. WEISSMANN: Yes.

4 THE COURT: Okay.

5 MR. WEISSMANN: And that is on Paragraph 17 of
6 Agent Weiland's declaration. It's in the very end of the
7 Paragraph 17.

8 THE COURT: But it would be reflected in the 302,
9 also?

10 MR. WEISSMANN: I don't think it is. I think it's
11 only in the declaration.

12 THE COURT: Okay. All right. Is there anything more
13 that we need to discuss about that one?

14 MR. ZEHNLE: Your Honor, I mean, just to the extent
15 that we're talking about the factual record, which is really
16 the 302 that the agent prepared which, as the Court recognized
17 at the beginning of the hearing, is simply a summary of what
18 happened. It's not a question and answer, and it's certainly
19 not grand jury.

20 I mean, Mr. Weissmann's made some comments, and I
21 think -- you know, obviously, I'm not suggesting anything in
22 bad faith, but I don't view this as some kind of substantial
23 break. There's nothing in here that talks about some kind of
24 substantial break in time. It says: During a break, he spoke
25 to his attorney.

1 THE COURT: I'm not putting any emphasis, one way or
2 the other, on how long it took to confer with counsel.

3 MR. ZEHNLE: Thank you, Your Honor.

4 In terms of any of the other things, I don't believe
5 that these are necessarily inconsistent when you look at what
6 the 302 itself actually says, which is, Mr. Manafort reporting
7 after -- you know, based on his conversation, that is the
8 stated views of Mr. Kilimnik, that he believed the Hapsburg
9 Group was a European project, and that Europe was the fulcrum
10 of the project.

11 Your Honor, that position hasn't changed from the
12 defense at any time. Europe was the fulcrum of that project.
13 It was the focus. There was a component where outreach was
14 made to the U.S., and Mr. Manafort has accepted responsibility
15 for that. He's pled guilty to that before this very Court.

16 But, to sit there and say: Oh, well, saying that he
17 believed it was a European project and Europe was the fulcrum
18 is not necessarily a lie. I mean, you could sit there and
19 argue and take it in the most nefarious context and say: Oh,
20 see, that is a lie, because then he comes back and says he was
21 aware that there was work performed in the U.S., which is the
22 paragraph that follows immediately after the break.

23 I'm just saying that -- when you're sitting there and
24 you're allowing, in a cooperation or a debriefing, government
25 counsel to ask the questions that they want to ask of your

1 client, without interrupting every two minutes, and then you
2 see something going astray because it seems like they're
3 viewing it one way and he's viewing it another way, it's
4 perfectly understandable, and it happens all the time that
5 counsel take breaks.

6 And then, when you look back, he comes back -- you
7 can read the paragraph for yourself, Your Honor. I don't need
8 to read it again.

9 But my view is that this is not in any way a false
10 statement by Mr. Manafort. I was sitting there. I saw what
11 was happening. And at the end, he came back. He makes the
12 statement after we talk about -- and by the way, I do stand by
13 my earlier point of there's no evidence -- record about the
14 implicit versus explicit issue, because that question came up.

15 You understand that because you and I know, and
16 everyone else here pretty much knows, in terms of the
17 conspiracy law, there can be implicit agreements or explicit
18 agreements. And when the whole discussion is based on: Well,
19 what did you guys talk about? And he's, like: Well, based on
20 what he's talking about, here's what he said. You know, and
21 here's what I believed him to mean, based on what he was
22 saying.

23 But, then you come back and say: Well, at the end of
24 the day, he did understand that there was U.S. outreach in this
25 program, and that he stood by it.

1 And by the way, you can see immediately -- this moves
2 on to another topic.

3 THE COURT: All right. Well, I don't think I need
4 any more of your telling me what it says because I'm going to
5 read it again. So let's go on to III, the interactions with
6 Kilimnik, which I think I'm going to break up a little bit into
7 the Ukraine stuff and the sharing U.S. election polling data
8 stuff.

9 With respect to the first, sort of, subtopic here,
10 the discussions concerning the peace plan for the Ukraine, we
11 were talking about a proposal that was being floated by the

12 [REDACTED]
13 [REDACTED], that would involve [REDACTED] to
14 control what would be an autonomous region of the eastern
15 Ukraine; plainly, something favorable to the Russians.

16 The Office of Special Counsel contends that
17 Mr. Manafort lied about the number of times they discussed it,
18 that he and Mr. Kilimnik had not just discussed it once on
19 August 2nd, 2016, but also in December of 2016; in January
20 2017, in person, in Washington, D.C., when Kilimnik was here
21 for the inauguration; in February of 2017, including in person
22 on February 26th; and even in the winter of 2018.

23 In the declaration, paragraph 29, and the 302, which
24 is Exhibit 101 from 9-21-18, the defendant was pretty
25 definitive that he did not continue to discuss it with Kilimnik

1 after the initial August discussion. But, there is evidence of
2 meetings and conversations later, and he ultimately did confirm
3 them in later sessions, and in the grand jury.

4 As part of this issue, there's also testimony
5 concerning the February 2017 meeting with Mr. Kilimnik in
6 Madrid. On September 11 of 2018 Mr. Manafort said: I traveled
7 to Madrid for other business. Didn't meet with Kilimnik.

8 September 12th, he's told: Well, Kilimnik was there.
9 And he says: Well, I don't recall meeting with him. But, if
10 he was there, he would have been there to meet with me.

11 And then, either on the 13th or 14th, he did say that
12 that meeting touched on a number of issues involving the
13 Ukraine, and that Kilimnik would have raised the peace plan.

14 And then in the grand jury, he testified that he told

15

16

17 And this issue about Kilimnik and Ukrainian politics
18 also involves Manafort's own work in 2017, as a consultant for
19 a potential candidate in the Ukraine. And in particular, polls
20 he arranged for there related to what the Ukrainians thought
21 about the peace plan.

22 So I want to put aside U.S. presidential campaign
23 polling data for a minute so when we talk about polls, we all
24 know what polls we're talking about. And I want to talk about
25 whether his testimony about those efforts, including whether

1 Kilimnik knew about those efforts, was accurate.

2 So, again, starting with you, Mr. Weissmann, I want
3 to know what the particular intentional falsehoods are that you
4 want me to focus on here and why. And in particular, whether
5 there were any before the grand jury, in your view. And then
6 we'll talk about the larger question, about whether even if he
7 kept it under wraps initially, if he began to respond to it
8 truthfully later, what significance I should draw from all of
9 that.

10 But, let's start with the -- the ones in particular
11 that you want me to focus on as lies of consequence.

12 MR. WEISSMANN: So I do think that the Court outlined
13 the principal ones. There is the -- the statement from
14 Mr. Manafort that this was a topic that was raised by
15 Mr. Kilimnik on August 2nd, 2016, in person, in New York, and
16 that the topic ended.

17 There's -- there's also the substance of
18 Mr. Manafort's reaction that we would like the Court to focus
19 on, because Mr. Manafort gives an explanation for why it is
20 that it ended. Which is that, to use his phrase, it was a
21 backdoor [REDACTED]

22 [REDACTED]. And because of
23 that, he was not going to countenance it.

24 Of note for us was that has nothing to do with
25 whether Mr. [REDACTED] would lead the plan or whether someone

1 else would. The idea was that the plan itself, which was a
2 backdoor [REDACTED]
3 [REDACTED], was a nonstarter for Mr. Manafort, according to him.

4 Those came up in his view of that came up in
5 sessions, interview sessions, but it also came up in the grand
6 jury, where he gave that view inconsistently. But, there were
7 times when he talked about he was against [REDACTED] because it
8 was a [REDACTED]

9 The issue of the timing, the denial of it coming up
10 after August 2nd did not come up in the grand jury. Because by
11 that point we had been through the evidence with Mr. Manafort
12 to explain how it had come up in the past, with one exception.
13 We had not discussed with Mr. Manafort the evidence regarding
14 the 2018 work that he did with respect to polling in Ukraine.
15 That is information that we had and obtained, I think, after
16 the Eastern District of Virginia trial, that was not shared
17 with Mr. Manafort. Of course, it's something, as I noted at
18 the outside, that Mr. Manafort was aware of; he just didn't
19 know that we knew that information.

20 Second, we would like the Court to focus on the
21 Madrid meeting, and the denial of Mr. Kilimnik having met with
22 Mr. Kilimnik [sic]. This is a good example: If that was the
23 only instance where if this wasn't in the context of denying
24 the -- a series of things about the peace plan, and it was just
25 having forgotten about one meeting, that we could have taken a

1 very different view.

2 It's hard to sort of put yourself into what you would
3 have done. But this, to us, took on extra weight because of
4 the context in which it was in, and the importance of what was
5 being discussed. And even after Mr. Manafort had to concede
6 that there was this meeting, if you note what he says happened,
7 Mr. Manafort says: Well, I had things to discuss, but
8 Mr. Kilimnik was the one who wanted to discuss the peace plan;
9 I didn't.

10 So, again, diminishing, sort of, his interest in
11 this, even though he is the one you see a year later who is
12 very much focused on the peace plan.

13 The polling questions. There are a series of lies
14 about the polling questions. I think --

15 THE COURT: Can you tell me why that was -- I guess
16 where I got the most confused, what the importance is of any
17 dissembling about whether Kilimnik knew who he was working for
18 or not, and what his role was in creating the polling
19 questions, or advancing them? Why is that important?

20 MR. WEISSMANN: Okay. So, I mean, this goes to the
21 larger view of what we think is going on, and what we think the
22 motive here is.

23 This goes, I think, very much to the heart of what
24 the Special Counsel's Office is investigating. And in 2016
25 there is an in-person meeting with someone who the Government

1 has certainly proffered to this Court in the past, is
2 understood by the FBI, assessed to be -- have a relationship
3 with Russian intelligence, that there is American polling data
4 being shared. And there is an in-person meeting at an unusual
5 time for somebody who is the campaign chairman to be spending
6 time, and to be doing it in person.

7 That meeting and what happened at that meeting is of
8 significance to the special counsel. The -- in looking at the
9 issue of what Russia could be -- what interests it would have,
10 and what it could be viewing as a beneficial interest to that
11 country of having a certain candidate win, and whether there
12 was knowing or unknowing coordination by the then Trump
13 campaign manager, all are the focus of -- and are raised by the
14 issue of the August 2nd meeting.

15 THE COURT: Well, I understand the August 2nd meeting
16 and the Madrid meeting -- well, not so much the Madrid. My
17 question is more the peace plan polling effort was in 2018; is
18 that correct?

19 MR. WEISSMANN: That's correct.

20 THE COURT: So, now we're talking about -- he's not
21 in the campaign anymore, but this case is pending. And so I'm
22 trying to figure out what the importance is of his ongoing work
23 for a potential candidate in the Ukraine at that time is, and
24 the importance of any lies about that, or lies about Kilimnik's
25 knowledge about that.

1 MR. WEISSMANN: So the work for Mr. [REDACTED] itself
2 is not of importance. And if the poll had, in fact, been
3 limited to Mr. [REDACTED], it may be interesting, if they have
4 other aspects, but that is not the focus.

5 What is of interest to us is that the questions in
6 the poll are completely consistent with the ongoing effort, at
7 the very least by Mr. Kilimnik, to promote a [REDACTED]
8 [REDACTED].

9 Mr. Kilimnik submits a three-page written document in
10 connection with that polling to Mr. Manafort and others to help
11 frame those questions.

12 It is not true, as Mr. Manafort said in the grand
13 jury, that the poll -- draft poll tests [REDACTED]
14 [REDACTED], which he repeatedly says in the grand jury to help
15 explain away this. It doesn't do that. It tests one. It does
16 test other people who might be able to [REDACTED], but it
17 doesn't test a whole [REDACTED].

18 So, the continuity of Mr. Kilimnik's interest -- and
19 by the way, Mr. Kilimnik points out in that documentation that
20 [REDACTED] would be able to facilitate Mr. Manafort being
21 the -- that if he were the spokesperson, and denominated as
22 such within the United States, that he would also have access
23 to senior people in Russia to help promote this -- that's as
24 far as I can go on this record.

25 THE COURT: Okay. All right. That's helpful.

1 MR. WEISSMANN: I think in the past Your Honor has
2 made reference to potentially, there might be information that
3 would -- could be presented ex parte. We're trying to avoid
4 that.

5 THE COURT: I appreciate that. And I don't know that
6 I need it for this. I mean, if you think we do at the end of
7 the hearing, then you can consider whether you want to submit
8 it when Mr. Westling gets me his metadata.

9 MR. WEISSMANN: Okay.

10 THE COURT: I guess one question I have, certainly
11 did seem to want to keep it under wraps initially. But, when
12 you provided him with the December 16th email, he does seem to
13 agree that Kilimnik discussed it with him then. And he seemed
14 to agree pretty readily that if Mr. Kilimnik was in Madrid,
15 well, yeah, then he met with me there.

16 That's in Exhibit 206, I guess the 302 from
17 September 12th. And he seems to concede: Well, if I talked to
18 him, then we talked about the plan.

19 So, again, I want to know if we're really talking
20 about a 1001 kind of lie here or something that he corrected as
21 would be reasonable in a proffer situation.

22 MR. WEISSMANN: So, we went through the same
23 analysis. And as I mentioned, just to start with the Madrid
24 meeting, if that happened in isolation, you can imagine, even
25 though certainly, to us, there aren't that many in-person

1 meetings with Mr. Kilimnik and they're happening right after
2 the inauguration and they're on something that is of
3 substantial interest to -- well, let me just say, at the time
4 there was an enormous amount of attention to Russian contacts
5 in the United States.

6 And so the idea that this wouldn't be on your mind,
7 especially since we know Mr. Manafort took the precaution in
8 August of 2016 of leaving separately -- Mr. Gates and
9 Mr. Manafort leaving separately from Mr. Kilimnik, by
10 February of 2017 there had been substantial focus on General
11 Flynn and others in terms of their contact. So this is
12 something that one would imagine that you would remember.

13 But, again, even leaving that aside, to me, it's the
14 fact that it's coming up in a context where not knowing and
15 anticipating what our evidence was, the first time this came
16 up, Mr. Manafort's plan was to say: He raised it, never came
17 up again, and I was dead set against it. So it's in that
18 context where it keeps oncoming up.

19 I think that the -- turning to the December email
20 from Mr. Kilimnik, it is true that he then conceded it, but I
21 think he had to. That email didn't in any way say: I would
22 like you to revisit this. I know we ended where you weren't
23 interested.

24 And there's a reason it read that way, which was that
25 there's not a single piece of evidence in this record to

1 support the idea that Mr. Manafort was against this plan.
2 Every single piece of evidence in the record is that he was in
3 favor of it.

4 THE COURT: All right. Let me -- before I ask you
5 questions on the defense side of the room, we got a later start
6 than we anticipated. It's 12:30. I had originally hoped to
7 just go through this -- all the questions before we broke.
8 But, I'm not sure what the court reporter's point of view is
9 about that.

10 You're fine? Okay.

11 Why don't we -- if we're still not done by about
12 1:00, maybe we'll break. But would anybody starve to death if
13 we keep going for another 30 minutes or so?

14 All right. Then let's try to keep going. I can tell
15 you now that my initial goal -- which was to take a break, and
16 then come back and make my findings -- is not going to happen.
17 I want to review things more closely. There may be additional
18 things people give me.

19 And so I think what we will do after this is the --
20 while I'm working on my findings, is the exercise of the review
21 of the transcript, and the determination what can be released
22 or not. And then we'll probably handle the findings in the
23 same way, a sealed recitation within a public minute order, and
24 ultimately, a public revelation not long after this.

25 I had really wanted to do it all today. My schedule

1 for the rest of the week is a mess. But we'll figure out an
2 opportunity when I think how long it's going to take me to be
3 done. So let's just keep going for now.

4 So, Mr. Westling, or whoever is going to handle this
5 one, is there, you know, a pattern here of minimizing and
6 understatement and belated acknowledgment after he finds out
7 the government already has the proof when Kilimnik and Ukraine
8 are concerned?

9 MR. WESTLING: Well, Your Honor, I think that the
10 Havana Club meeting is one where the Government raises it.
11 Mr. Manafort, in our view, is forthcoming, provides the
12 information on what happened there. And then there is the
13 question about: Well, did you then talk about the peace plan
14 in the future?

15 And, you know, all indications were when the email
16 was provided, there was not a lot of resistance. It was a
17 sense of: Oh, this reminds me, rather than: Oh, I've been
18 caught. I think the reality here is that there were -- these
19 events are happening --

20 THE COURT: Well, I don't think they're saying he
21 wasn't honest when he said: Oh, yes. I met with him on
22 August 2nd.

23 MR. WESTLING: Right.

24 THE COURT: They're saying he wasn't honest when he
25 said: And that was the end of it.

1 MR. WESTLING: Well, and I think our, sort of, view
2 of what happened was there that he said he was not willing to
3 work on the plan, but that that was not the end of his
4 communication with Kilimnik or anyone else forever. And
5 clearly, there is an effort to revisit that in December, which
6 by then, I guess, is after the election and Mr. Manafort is no
7 longer with the campaign at that point. And there's an email,
8 which is again being floated.

9 But, I think Mr. Manafort was candid all along that
10 his desire to work with ██████████ at that point was
11 minimal, given a lot of bad feelings regarding the way that
12 things had gone in the Ukraine before. He continued to have a
13 relation with Mr. Kilimnik. He told the Government all along
14 he remained open to opportunities over there.

15 But, I don't think there was anything inconsistent
16 about what he said in saying: I told them I wasn't interested,
17 compared to that the timing was wrong. Because there was --
18 and we pointed this out in our pleading, there was a
19 significant amount of his resistance that related to the role
20 ██████████ would play in that plan.

21 And so it's presented in August as a ██████████
22 production -- my words -- and it sort of resurfaces that way
23 again in December, and there is no real followthrough. But,
24 clearly, that was not the only possible plan, and it's not the
25 only one that Mr. Kilimnik was involved in.

1 I think that, you know, there continued to be
2 discussions. But, all indications, for example, when you talk
3 about remembering the Madrid meeting, I mean, he is -- I mean,
4 I can still see Paul sitting there trying to remember what
5 happened. He remembers being in Madrid. He remembers he was
6 there on other business. He remembers that at the first part
7 of the meeting, [REDACTED] was with him, but he does not have a
8 present recollection at that point in the debriefing of
9 Kilimnik.

10 They show him the proof that Kilimnik traveled there,
11 and he doesn't resist. I mean, he sort of says: Well, that
12 would makes sense, if that's why we were there, but I don't
13 remember.

14 And it's only after he has time to think about it in
15 that context that he then is able to come back and provide the
16 details of what they talked about. And so I think all along
17 this was an effort to try to, you know, do his best to recall.
18 And obviously, you know, the Government suggests that there is,
19 perhaps, some way of looking at it that way, but for all this
20 other stuff.

21 You know, from our perspective, it is exactly what it
22 appears to be, which is an effort to try to recall, and to be
23 helpful on topics that simply were not, you know, as a
24 practical matter, the focus of what questions were necessarily
25 anticipated to go to at any given time. We spent a lot of time

1 talking about a lot of other things, and then this would pop
2 back up.

3 So I don't know how helpful that is. But I think for
4 those of us who lived through it, it really did look like
5 someone who was endeavoring to remember.

6 THE COURT: All right.

7 MR. DOWNING: Your Honor, one other issue. We pass
8 the mic.

9 Just some of the reference about Kilimnik that's come
10 up by Mr. Weissmann more than once in these proceedings, it
11 should be noted that the Office of Special Counsel had produced
12 interview 302 for an interview of Mr. Kilimnik -- about
13 Mr. Kilimnik from [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED].

17 There are documents that you were given regarding
18 Mr. Kilimnik's communications with former [REDACTED]
19 [REDACTED] -- about this
20 narrative of a [REDACTED] is nonsense because no
21 matter who gets elected, that the sanctions were going to
22 continue against Russia.

23 So I'd just like -- I think you need to consider this
24 rank speculation --

25 THE COURT: Wait. When you say I've been given

1 these, when have I been --

2 MR. DOWNING: They're in the exhibits. I can point
3 out --

4 THE COURT: In these exhibits?

5 MR. DOWNING: Yes, they are. They go to Mr. Kilimnik
6 making comments about the polling data.

7 THE COURT: All right.

8 MR. DOWNING: So they're in there. But I just
9 wanted -- and also, we can produce, it was part of the
10 information provided to us by the Office of Special Counsel,
11 the interview that shows this guy is [REDACTED]
12 [REDACTED]. It was produced as Brady
13 material, I believe.

14 THE COURT: All right.

15 MR. WESTLING: I didn't know if you wanted to touch
16 on the poll part of this issue before --

17 THE COURT: The U.S. polling data?

18 MR. WESTLING: No. The polling data related to [REDACTED]

19 THE COURT: Yes.

20 MR. WESTLING: So, I think the one thing that we
21 would point out, Your Honor, about the poll itself, is that
22 while Mr. Weissmann suggests this was all about the peace plan,
23 the reality is there are two questions that -- 72 and 72A,
24 which really deal with it. And they seem to deal with
25 alternatives about what a member of the Ukrainian populous

1 would find acceptable in terms of what price may have to be
2 paid for peace. So, I don't think it's fair to characterize
3 this as being about the peace plan.

4 I think the other thing that's important is this was
5 basically a benchmark survey being done for a possible
6 candidate. And so it was surveying a variety of issues to try
7 to better understand both that candidate's viability, but also
8 the issues that the electorate would care about so that
9 Mr. Manafort could make a decision about whether to take on
10 ██████████ as a client.

11 THE COURT: Okay. Anything else you want to say
12 before I ask Mr. Weissmann if there's anything he wants to say
13 in response to the *Brady* information?

14 MR. WESTLING: I don't think so right now, Your
15 Honor.

16 THE COURT: All right. Is there anything else I need
17 to know? I mean, I understand that there's -- I don't think I
18 have to make a factual finding about Mr. Kilimnik right now. I
19 don't begin to have the full range of information to do it.
20 But, I think your having made the statement about his alleged
21 connection to Russia's intelligence, they've put in the record
22 his connections to the U.S.

23 And so is there anything else you want to tell me in
24 response to what they've pointed to in this record?

25 MR. WEISSMANN: Yes. Two points. One is to answer a

1 question that you had asked previously, and I don't think I
2 really responded to. And the other is to address this issue
3 with respect to Mr. Kilimnik.

4 I do think you do have in the record what is
5 sufficient in terms of Mr. Kilimnik's December email, and his
6 own recitation, again, in 2018, of the peace plan, where he
7 lays out, again, what it is that would be needed from America
8 and Russia and his role.

9 I do think that [REDACTED] is a red herring because
10 the issue is Mr. Manafort had said he was against the plan,
11 whoever was leading it. That is inconsistent with the other
12 evidence that we have and is before you.

13 With respect to the Brady information, the defense,
14 as is their right, asked us early on in the case to produce any
15 and all communications with the American embassy in Ukraine.
16 And so we then went to the State Department to get
17 communications that were either direct or indirect by
18 Mr. Manafort with the State Department. So Mr. Kilimnik was
19 encompassed in that search.

20 There is no question that Mr. Manafort had
21 communications with people at the State Department. There's no
22 question that Mr. Kilimnik did.

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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[REDACTED]

[REDACTED] But, there are definitely communications that Mr. Kilimnik has with people in the State Department. I don't see how that is in any way relevant to this issue before the Court.

But the only reason it was produced is because defense said they were going to make some argument based on it. So we produced it. We didn't see how it was going to be relevant, but that was not -- relevance has a very minimal standard, at least for the Government, in terms of producing discovery. We'd rather just produce it and litigate the issue whether it should come in at trial, or not, later.

And then the Court had asked a question about Mr. Kilimnik and the 2018 polling and whether he understood who the client was. And I wanted to just stress for the Court, the reason that's relevant to the Government is, from our perspective, the defendant was trying to minimize his connection to the peace plan and his view of the peace plan. And he was conveying to the grand jury that this was a Klymenko poll, plain and simple.

And to the extent that they were asking questions about the so-called [REDACTED] peace plan, that was just one of many peace plans that was being asked about. And the problem with that is, one, it's -- as I mentioned, it's not true that there are many peace plans.

1 But, also, when we said: Well, if that's the case,
2 that this was really just a poll for ██████████ and it didn't
3 serve this other purpose, how is it that Mr. Kilimnik didn't
4 know that? This was -- why is he saying that Mr. ██████████
5 name should be taken out of the poll for the person who is the
6 client?

7 And Mr. Manafort, again, now that he's sort of down
8 that road of saying this was just a ██████████ poll, he has to
9 now explain away how it is that the person on the ground in the
10 Ukraine doesn't know that. And he says: Well, I didn't tell
11 them.

12 And then you have an email -- I mean, it just got
13 worse and worse, where Mr. Kilimnik is saying: I just spoke to
14 ██████████, and I'm doing X, Y, and Z with him.

15 And Mr. Manafort then comes back and volunteers,
16 right after lunch: It must be a different name that he's
17 talking about. And the initials don't even work. I mean, to
18 me, he was caught, and his lies got worse and worse.

19 And the relevance is that it was all part of this
20 effort to make this be a sort of sanitized poll just for
21 ██████████, with no other purpose in terms of trying to get
22 data that would help support the idea of the Russian plan to
23 take over the eastern part of Ukraine.

24 THE COURT: All right.

25 MR. WESTLING: Briefly.

1 Your Honor, I think that the first thing is that I
2 understand where Mr. Weissmann is coming from. I just don't
3 hear any proof behind all of the theorizing about why it was
4 happening the way it was happening. You know, this is clearly
5 an indication where a poll is being conducted for another
6 candidate. The Government has theories about what it may have
7 meant or what it might have been, but there's no evidence of
8 any of that. I mean, that is purely conjecture.

9 THE COURT: Right. But, I think what gives them
10 cause to be theorizing is the fact that it's described
11 differently on different occasions, and described
12 inconsistently with the communications between Mr. Kilimnik and
13 Mr. Manafort, and that leads them to wonder.

14 But, I think we can go on to the question of the
15 sharing the U.S. polling data. And I don't have that many
16 questions, mainly because I think it's pretty straightforward
17 what you're saying.

18 So, I would want to ask you whether it's part of your
19 contention that he lied about the reason the data was shared.
20 I know initially he didn't even agree that that internal
21 polling data was shared, and he didn't even really agree in the
22 grand jury. He said it just was public information. But, I
23 think there's some suggestion, at least in the 302, as to what
24 the point was of telling Kilimnik how the candidate was doing
25 and where that information was supposed to go.

1 And so, I'm asking you whether that's part of this,
2 if he was lying about that?

3 MR. WEISSMANN: So, I don't think the Court needs to
4 reach that issue, and I don't know that we've presented
5 evidence on the -- that issue.

6 THE COURT: You didn't. So you just don't want me to
7 think about it, that's okay.

8 MR. WEISSMANN: No. No. No. I'm going to answer
9 your question.

10 THE COURT: All right.

11 MR. WEISSMANN*: I'm just trying to, first, deal with
12 what's in the record.

13 And I think that in the grand jury, Mr. Manafort said
14 that from his perspective, [REDACTED], which he
15 admitted at that point was with -- he understood that it was
16 going to be given by Mr. Kilimnik to the [REDACTED] and
17 to Mr. [REDACTED], both. That from his perspective, it was --
18 there was no downside -- I'm paraphrasing -- it was sort of a
19 win-win. That there was nothing -- there was no negatives.

20 And I think the Government agrees with that, that
21 that was -- and, again, you're just asking for our -- if we are
22 theorizing, based on what we presented to you, that we agree
23 that that was a correct assessment.

24 But, again, for purposes of what's before you on this
25 issue, what his ultimate motive was on what he thought was

1 going to be done with the data at the time that he was
2 instructing it to be shared I don't think is before you as one
3 of the lies that we're saying that he told.

4 It's more that what he specifically said was, he
5 denied that he had told Mr. Gates to share the internal Trump
6 campaign polling data. That he would not, in fact, have shared
7 anything that was so internal. That this was all about giving
8 sort of external briefings that he would give on television
9 shows and that he left it to Mr. Gates to just update
10 Mr. Kilimnik.

11 And our view is, that is a lie. That that is really
12 under -- he knew what the Gates 302s were. It's obviously an
13 extremely sensitive issue. And the motive, I think, is plain
14 from the redaction malfunction, is we can see -- we actually
15 have -- we can see what it is that he would be worried about,
16 which is that the reaction to the idea that the campaign
17 chairman of a major campaign was authorizing -- not -- with no
18 plausible deniability, it's like why didn't they keep them
19 updated on public things? It's very, very different than send
20 them internal, sensitive polling data to a foreign country, let
21 alone a foreign country that is very much in the news, would
22 have, I think, negative consequences in terms of the other
23 motive that Mr. Manafort could have, which is to at least
24 augment his chances for a pardon.

25 And the proof with respect to that is not just

1 Mr. Gates. So that I will say there's no contrary evidence to
2 Mr. Gates, but you don't have just Mr. Gates's information.
3 You have a series of emails where we know that Mr. Kilimnik, in
4 fact, is reporting that he got information.

5 And probably the best piece of evidence is you have
6 Mr. Manafort asking Mr. Gates to print out polling data that
7 is -- it's interesting, because it's polling data from
8 mid-July. So, it's -- there's -- from three weeks ago, saying:
9 Print that out and bring it to our scheduled meeting. And it's
10 [REDACTED] data. It's not, you know, Gallup poll information.

11 THE COURT: I understand why it's false. And I'm not
12 sure I understand what you said at the beginning, that you --
13 and I understand why you've posited that he might not want to
14 be open about this, given the public scrutiny that foreign
15 contacts were under at the time. But, I'm not sure I
16 understand what you're saying where you say you agree with him
17 when he said it had no downside.

18 So, this is an important falsehood because it was
19 false? Or is there some larger reason why this is important?

20 MR. WEISSMANN: So -- so, first, in terms of the what
21 it is that the special counsel is tasked with doing, as the
22 Court knows from having that case litigated before you, is that
23 there are different aspects to what we have to look at, and one
24 is Russian efforts to interfere with the election, and the
25 other is contacts, witting or unwitting, by Americans with

1 Russia, and then whether there was -- those contacts were more
2 intentional or not. And for us, the issue of internal campaign
3 polling data being sent to [REDACTED], who the defendant
4 conceded is extremely close to the senior leader in Russia, is
5 in the core of what it is that the special counsel is supposed
6 to be investigating.

7 My answer, with respect to the Court's question about
8 what it is -- what the defendant's intent was in terms of what
9 he thought was going to be done with the data, I was just
10 trying to answer that question, even though that's not one of
11 the bases for saying there was a lie here. And so I was just
12 trying to answer that question.

13 And what I meant by his statement that there's no
14 downside, is that can you imagine multiple reasons for data
15 being sent, that included business reasons, that included
16 political reasons, and included both of those together as
17 benefits that could come. And I think the only downside --

18 THE COURT: You meant no downside to him?

19 MR. WEISSMANN: Yes.

20 THE COURT: You weren't suggesting that there was
21 nothing -- there's no scenario under which this could be a bad
22 thing?

23 MR. WEISSMANN: Oh, sorry. Yes. I meant there was
24 no downside -- Mr. Manafort had said there was no downside to
25 Mr. Manafort doing it.

1 THE COURT: That was where I got confused.

2 MR. WEISSMANN: Sorry.

3 THE COURT: All right.

4 MR. WEISSMANN: And meaning all of this is a benefit.
5 The negative, as I said, was it coming out that he did this.

6 THE COURT: Right. Okay. All right.

7 Mr. Westling, why would this not fall within the
8 category of an intentional false statement?

9 MR. WESTLING: I think the first issue, Your Honor,
10 is what actually happened. Special counsel says they believe
11 internal polling data was shared because Mr. Gates says so and
12 because it's referred to in Mr. Kilimnik's various emails.

13 THE COURT: And because Mr. Manafort told Mr. Gates
14 to do it?

15 MR. WESTLING: That's what Mr. Gates says, yes.

16 THE COURT: In an e-mail.

17 MR. WESTLING: But I think that the e-mail says,
18 Please print this. That's all it says.

19 THE COURT: Doesn't it say bring it to the meeting?

20 MR. WESTLING: I'm sorry?

21 THE COURT: Doesn't it say bring it to the meeting?

22 MR. WESTLING: It says related to a scheduling
23 meeting. Doesn't say anything about a meeting with
24 Mr. Kilimnik, it doesn't say anything about -- just on the same
25 date.

1 THE COURT: All right.

2 MR. WESTLING: And importantly, the statements that
3 we're aware of now that Mr. Gates makes that suggest that there
4 was sharing of internal information -- again, there's a lot of
5 material here, so I may be wrong about this, but we have a
6 note -- a September 27th, 2018 interview which we did not see
7 until this submission was made, where Mr. Gates makes that
8 statement.

9 Mr. Weissmann has suggested we had all of Mr. Gates's
10 302s where he said this previously. I don't think he said it
11 before that interview. And so as far as we know, that's new
12 testimony from Mr. Gates compared to what he said in prior
13 proffer sessions, where I think he said something more like it
14 was more what was publicly available.

15 So there seems, to me, to be at least a meaningful
16 factual question about what actually happened. And, you know,
17 we're struck by the fact that there's no evidence here of the
18 emails or anything else that would have sent this information
19 to Mr. Kilimnik. If it in fact happened. And so, again,
20 special counsel may have that, we just don't have it.

21 THE COURT: One of the things you seem to suggest is
22 that, really, the internal polling data wasn't particularly
23 significant anyway. And if that's true, then why was [REDACTED]
24 being paid so much to produce it and why is it covered by a
25 NDA? I don't really understand that argument.

1 MR. WESTLING: I think the argument, Your Honor, is
2 that it's only really significant if you do what it is that
3 people like Mr. Manafort and others who run political campaigns
4 do. You have to have the baseline knowledge. Knowing when a
5 certain county is thinking about a certain thing in a certain
6 way, this is how you use it to further the campaign. It's not
7 the kind of poll that I'm able to look at on, you know, Nate
8 Silver's site and be able to figure it out on my own. This is
9 very detailed polling data on a level that is very focused.

10 THE COURT: That's what makes the showing of it,
11 which you're saying isn't necessarily established by the
12 record --

13 MR. WESTLING: Right.

14 THE COURT: But if I determine that it is established
15 by the record and in his statement -- but that's what makes it
16 significant and unusual. It's not the sort of thing you would
17 give to someone outside the campaign, much less outside the
18 country.

19 MR. WESTLING: But it's not the kind of thing you
20 would give to an audience that would have no ability to
21 interpret it. I mean, I look at this data, and there's copies
22 of it in the exhibits, and it doesn't mean anything to me as a
23 person who has a political life in this country for a long
24 time. So I don't know how -- the story that's being passed on
25 to people who have no ability to speak English to begin with,

1 beyond Mr. Kilimnik, how it's going to be any use to anyone.
2 It would seem to me if the goal were to help Mr. Manafort's
3 fortunes, that some other kind of summary, something more
4 public, more digestible might help.

5 But the data that we're talking about here is -- it,
6 frankly, to me, is gibberish and I can't imagine it was helpful
7 to anyone else. I don't even know, looking at it, whether it
8 says Mr. Trump was winning or losing or going to win or lose.
9 It's not easily understandable, unless you are a political pro,
10 in my view. And so it doesn't -- you know, it just doesn't
11 make sense why you would do that. And more importantly, I
12 suppose, what the benefit of doing it would be, if the other
13 person can't read it.

14 THE COURT: Doesn't it reflect particular markets and
15 states and areas of focus?

16 MR. WESTLING: Yeah. I mean, it does -- it reflects
17 different markets. But again, I don't know how you would make
18 use of that. And I think it's not clear to me that, again,
19 that there's any evidence it was actually shared.

20 I think the other thing is that to the point about it
21 being printed, it was the most recent, from what we can tell,
22 the most recent polling information from mid-July for -- I
23 think it was July 17th, but I'm not sure. That would have been
24 relevant to a meeting they were having within the campaign.

25 THE COURT: I think Mr. Gates was saying it was

1 shared as evidence.

2 MR. WESTLING: But he doesn't ever say it was shared
3 at that meeting, Your Honor. He never sayings we turned over
4 polling data to Mr. Kilimnik on the 2nd of August, which, if it
5 had happened, you would think he would say it, and that would
6 make the connection of the e-mail and printing relevant. But
7 Mr. Gates doesn't say that.

8 THE COURT: Didn't he say it happened at the meeting
9 where they had to leave by different doors and all that?
10 Doesn't he connect the polling data to the meeting and the
11 Havana Club and the coming and going --

12 MR. WESTLING: I don't believe so. I stand to be
13 corrected, but I don't believe he makes that connection.

14 MR. DOWNING: Your Honor, one other point. I know
15 this Court hasn't had the opportunity to review the testimony,
16 probably, of Mr. Gates from Eastern District of Virginia, but
17 he was found so incredible by the jury that a juror said to the
18 press that they completely disregarded his entire testimony.
19 So to the extent that this Court would cite Mr. Gates as any
20 evidence, I think a review of the findings of the jurors in
21 EDVA should be undertaken because if he is not corroborated --

22 THE COURT: Don't. Don't.

23 MR. DOWNING: Your Honor, it's a fact.

24 THE COURT: I'm not going to base anything on what
25 one juror said to the press.

1 MR. DOWNING: Completely disregarded. The entire
2 jury completely disregarded his testimony, Your Honor. There's
3 a public record of the statement.

4 But to the extent you're relying on something
5 Mr. Gates said uncorroborated, we would really have grave
6 concerns about that.

7 THE COURT: Well, I find the e-mail from Mr. Manafort
8 to Mr. Gates corroborative.

9 MR. DOWNING: It does not say to send it to --

10 THE COURT: I'm going to look at it again. But I
11 think the timing of it and the substance of it is consistent
12 with what Mr. Gates said was going on. And I don't believe
13 that even you have made the argument to me that every single
14 thing in the Gates 302 should be thrown out because he is
15 completely unbelievable on every single issue. I think what
16 you said is he doesn't remember everything either so, you know,
17 if we can forgive a failure of recollection on one side, we
18 should be able to forgive a recollection on the other side.

19 MR. DOWNING: Actually, Your Honor, Mr. Westling
20 pointed out to the Court that when previously interviewed,
21 Mr. Gates never gave this kind of detail; he never said this.
22 So we find it very suspect, late in the day and sometime in the
23 middle of or after his performance in the Eastern District of
24 Virginia that cased a juror to say what I just said, that
25 they're getting this information from him all of a sudden. I

1 think the Court has to consider that, too. And the terms of
2 his agreement with the Court -- and quite frankly, I don't
3 think anyone from the Office of Special Counsel would say that
4 they felt that Mr. Gates did anything but implode on the stand
5 there.

6 So I do think it's something the Court should
7 consider. But the fact it's recently fabricated, it didn't
8 come up in prior 302s, I think is very important and I think
9 it's something we can address.

10 THE COURT: I need to ask the Office of Special
11 Counsel about something ex parte because -- and so I apologize
12 for that, but I need to do that. And it may be after I talk to
13 them, they tell me there's no problem with sharing it with you.
14 But I have received information in this case, in this binder,
15 and in other means, and I just want to make sure I understand
16 something. And so, I can't -- I need to ask --

17 MR. DOWNING: We would object. But we don't know
18 he --

19 THE COURT: I note your objection. And I will deem
20 your objection also to be a request that what we're about to
21 discuss be revealed to you. And that will be the first thing
22 I'm going to ask. And we can do it at the end, after we're
23 done, or you can just have him come to the bench for a minute.

24 MR. DOWNING: That's fine.

25 THE COURT: All right. Can you just approach the

1 bench? And so this portion of the record is even sealed from
2 the defense for the moment.

3 (Bench discussion:)

4 THE COURT: Okay. I had all those search warrants
5 that had references to this. And I think they were before the
6 time that he is saying this is a late revelation, is that
7 correct? Does he not know that because those search warrants
8 were still redacted as to this information when they were given
9 to him?

10 MR. WEISSMANN: I would have to check on the
11 redactions. I know that -- I just have to check the
12 redactions. I know that, obviously, any search warrant that
13 would be relevant to anything he would have potential standing
14 for would be turned over. I just have to check redactions.
15 But I think I should be able to answer the Court's question
16 about recent fabrication by just referring to the 302 that's in
17 the record because that has a date on it.

18 THE COURT: Okay. Because when I want to let the
19 media have the entire thing, one of the reasons certain
20 paragraphs of the warrant were not shared with the media is
21 because they had not even been shared with the defendant. This
22 one, it seems these allegations have been shared with the
23 defendant. And so given how old that material is, it's a
24 surprise to me now that he's saying that this is new. But I
25 don't know the chronology.

1 So, yes, I would appreciate it if you want to say
2 something about the 302.

3 MR. WEISSMANN: And we will check on the redactions
4 and we can --

5 THE COURT: Then we will know whether this whole
6 thing can be shared with them.

7 MR. WEISSMANN: Absolutely.

8 (Open court:)

9 THE COURT: All right. It looks like Mr. Manafort is
10 taking a brief break. All right.

11 (Pause.)

12 THE COURT: All right. Going back on the record of
13 this proceeding that's still sealed, but not ex parte.

14 Mr. Weissmann, with respect to the specific argument
15 that they just made that this was a new twist by Mr. Gates,
16 only in the 302 that they most recently received, do you have
17 anything you want to add to that, respond to that?

18 MR. WEISSMANN: Yes, I do. So, I would direct the
19 Court's attention to Exhibit 236, which is a 302 with respect
20 to Mr. Gates, and the date of that is January 30th, 2018.
21 And --

22 THE COURT: What exhibit number is it?

23 MR. WEISSMANN: 236. And on page 3 it discusses the
24 August.

25 2nd meeting. And I can tell you that Mr. Gates -- I

1 think it may have been his first proffer session -- told us
2 about the internal polling data. As you could imagine with,
3 you know, experienced defense counsel and the nature of the
4 investigation, that that would be a topic that would come up in
5 short order.

6 I can also represent that at the trial in the Eastern
7 District of Virginia there was a side bar where Mr. Andres
8 addressed this with the Court and defense counsel, the issue of
9 the sharing of the polling data. And so, this is -- this is
10 not new information, either because Mr. Gates has changed his
11 testimony in any way or that the defense wasn't apprised of it.

12 I also, in terms of referencing the August.

13 2nd meeting and the connectivity in terms of what
14 Mr. Gates has said about it and also corroborating information,
15 if you look at footnote 80, eight zero, there is a reference to
16 the series of emails that Mr. Kilimnik sends that reference
17 Trump's internal polling and what internal polling shows. It's
18 not talking about external polling or general polling. That,
19 obviously, doesn't go to the direct issue of who directed that
20 it be sent, but it is about the internal polling.

21 It does go to the issue of -- that Mr. Westling
22 raising, which was this doesn't -- it's not really capable of
23 being interpreted, it's meaningless. If it's meaningless, it's
24 unusual for it to be sent, if it wasn't going to have any
25 purpose. And I would note that Mr. Kilimnik -- also, the Court

1 can make its own finding, as well, by looking at the July
2 polling data because that is the -- that is an exhibit.

3 I would also note that Mr. Kilimnik worked with
4 Mr. Manafort for many, many years on polls, and in fact is
5 working on polls in 2018. So he would very much know how to
6 assist people in how to interpret it. But I also think it
7 would just -- it wouldn't make a lot of sense to send data that
8 is incapable of being interpreted. And, in fact, even if it
9 was difficult and it required expertise, they had it.

10 And then Mr. Gates, in -- I think I referred you to
11 236, on page 3, Mr. Gates talks about the August.

12 2nd meeting and actually has Mr. Manafort walking
13 Mr. Kilimnik through his strategy to win certain states,
14 including states that were described as battleground states.
15 And those included Michigan, Wisconsin, Pennsylvania, and
16 Minnesota, which had been explicitly described as battleground
17 states on August 2nd of 2016.

18 So, there is connectivity to what Mr. Gates has said
19 and to the various documentation.

20 In terms of the credibility of Mr. Gates --

21 THE COURT: When you just said, which had been
22 specifically described, by whom, where? You say --

23 MR. WEISSMANN: Mr. Gates had just said that at the
24 meeting, that Mr. Manafort, in describing the data and the
25 states, described those states as battleground states.

1 THE COURT: Okay.

2 MR. WEISSMANN: The -- with respect to Mr. Gates's
3 credibility, as I mentioned, there's no contrary evidence in
4 the record.

5 But, one thing I would note, even if the Court were
6 to want to make sure that there was corroboration for what
7 Mr. Gates said, you have that. Not just in the emails, but you
8 also have that because, if you want to look at the Eastern
9 District of Virginia case, Mr. Manafort has now pleaded here to
10 and admitted the crimes that he was charged with in the Eastern
11 District of Virginia. In other words, what it is that
12 Mr. Gates said he did in committing bank fraud and FBAR crimes
13 and tax fraud is something -- and as well as all of the crimes
14 before you, Your Honor, has actually been admitted now by the
15 defendant.

16 So it's hard to say that Mr. Gates is an abject liar
17 and is making this all up when the crimes he said that
18 Mr. Manafort did, Mr. Manafort has now said he did as well.

19 THE COURT: All right.

20 MR. DOWNING: I think defense counsel would like to
21 think about possible -- think about the implications of this
22 Court considering anything that came from Mr. Gates. We would
23 like to think about whether or not -- maybe there should be --
24 Mr. Gates' testimony taken and us being able to cross-examine
25 him. I think it might be very important.

1 If this Court is going to consider at face value
2 anything Mr. Gates has said -- and by the way, throughout his
3 FBI interviews, the FBI continues -- they have it as reminders,
4 when he gets it wrong, if you look for "reminded Mr. Gates," if
5 you did a search, it occurs again and again and again. And
6 even at trial he couldn't really get a handle on how many times
7 he lied to the Office of Special Counsel.

8 So we have grave concerns that this Court might
9 actually have to take testimony. And we're entitled to
10 confront Mr. Gates, if this Court is considering his statements
11 to the FBI.

12 THE COURT: Well, obviously I'm considering
13 everything in the record, as I was -- as I said I would. He
14 has made statements to the FBI, they've been proffered to me,
15 you've known about them since the minute this issue was listed
16 as one of the issues. And you said repeatedly you're willing
17 to stand on the record.

18 MR. DOWNING: And I will admit, on my end I won't
19 take it as a failure on my part because I did not think this
20 Court wouldn't take into consideration the fact how he was
21 found to have no credibility at all by the jury over there.

22 THE COURT: You cannot keep saying that.

23 MR. DOWNING: I can keep saying it, Your Honor,
24 because it's true.

25 THE COURT: First of all, you're asking me to make a

1 determination about what 12 jurors concluded because of what
2 one juror was quoted in the paper as saying, which right now I
3 don't even have in front of me. But I believe she said we
4 decided to vote on whether or not we could find him beyond a
5 reasonable doubt, putting his testimony aside, which is
6 different than saying we agreed, as 12 people, that nothing he
7 said was true.

8 MR. DOWNING: That's -- that's --

9 THE COURT: That's totally different.

10 MR. DOWNING: I disagree with you. But I could go
11 and get the press account of that.

12 THE COURT: I don't know. I don't have the press
13 account. The press account is not evidence.

14 MR. DOWNING: I have a bigger concern, though.

15 THE COURT: All right.

16 MR. DOWNING: I don't know if providing you with a
17 copy of the transcript of the testimony would help you in
18 assessing his credibility.

19 THE COURT: I am aware that he was cross-examined
20 fiercely, that his credibility was shaken enormously, that
21 there were a number of issues that you argued successfully that
22 he was not a good source, that there was evidence produced that
23 he benefited from a lot of the financial things that were
24 wrong, and that his credibility was attacked. I believe that
25 his credibility was also attacked on a number of issues that

1 are -- were potentially quite collateral to the trial in the
2 Eastern District of Virginia and enormously collateral to the
3 issues that I have to decide.

4 But, I don't believe, notwithstanding the jury's
5 verdict and the split verdict and the fact that he was
6 cross-examined the way he was and that it had the effect on the
7 jury he had, that binds me to determine that not one word he
8 said to the Office of Special Counsel was true. I don't even
9 think your position in the Eastern District was that not one
10 word that comes out of the man's mouth is true.

11 MR. DOWNING: Well, Your Honor, I'm going to agree
12 with you on that issue. But, you just said something that I
13 didn't take before as being part of your consideration, is your
14 understanding of what happened to him and what his performance
15 looked like and that his credibility was truly called into
16 question in, you know, in a very serious way. We're asking
17 that you consider that when considering anything that's been
18 proffered by the government from Mr. Gates's cooperation with
19 the FBI and the Office of Special Counsel.

20 THE COURT: Well, the more specific question is, are
21 you asking for an opportunity to cross-examine him about the
22 specific allegation, and only the allegation about whether
23 internal polling data was provided to Mr. Kilimnik, or do you
24 want to stand on the record, which is that he told the FBI that
25 it was. We have the emails that we have that say what they say

1 and don't say what they don't say, we have the circumstances
2 surrounding the meeting. And the question is: Does that
3 establish to me by a preponderance of the evidence -- not
4 beyond a reasonable doubt -- that Mr. Manafort's testimony
5 about that was not accurate?

6 MR. DOWNING: So if we could confer over the break
7 and have an answer for you afterwards, that would be --

8 THE COURT: Okay.

9 MR. DOWNING: That would work for us.

10 THE COURT: Okay. I think we only have a couple more
11 issues to discuss. But I think it may make sense to have a
12 break because I think it would be helpful to resolve the matter
13 about whether what we discussed can be discussed with the
14 defense.

15 I'm actually now, as I'm thinking about it more
16 directly, thinking that it can. But if we can determine when
17 things were said and revealed and when they weren't, that would
18 be helpful. I think we should all take a break. And after the
19 break we will discuss the answers to the questions I asked
20 during the ex parte piece of this, what your position is on
21 whether Mr. Gates needs to be in this courtroom or whether -- I
22 mean, the agent can -- I don't think you're disputing anymore
23 that Mr. Gates said it to the agent. You're disputing whether
24 what Mr. Gates said to the agent is true. Is that fair?

25 MR. WESTLING: Yes, Your Honor.

1 THE COURT: All right. So, whether we need to have a
2 hearing on that because I am, actually, particularly concerned
3 about this particular alleged false statement. But I also
4 think we need to think about what the purposes I'm being asked
5 to find whether or not this is, what the burdens are, etcetera.
6 So, you're entitled to think about it, although I don't think
7 this has come as a surprise, that this was the issue, since
8 this was the only evidence they pointed to as the fact that
9 this fact was false, was Mr. Gates's 302s and the e-mail.

10 MR. DOWNING: Your Honor, I would say didn't
11 completely allude us, but your take on how he was corroborated
12 caused great concern on our part, and that's why I'm raising
13 the issue.

14 THE COURT: The only thing I said that corroborated
15 his testimony about this matter was the e-mail within --
16 related to this data on this date. Is that correct?

17 MR. DOWNING: Yes.

18 THE COURT: And you're saying read more carefully,
19 Judge, because it doesn't say bring it to the meeting. So I
20 will do that, but --

21 MR. DOWNING: I doesn't say that, Your Honor --

22 THE COURT: -- I do believe that that is
23 corroborative.

24 I am not pointing to anything because I am not
25 relying on anything that happened in the trial in the Eastern

1 District of Virginia. I was just responding to your suggestion
2 that if I read the newspaper, I would know that the jury
3 discounted every word that came out of his mouth. And I
4 thought that was something of an overstatement, but I wasn't
5 there.

6 I haven't had an opportunity to consider the
7 evidence. I think it would be entirely inappropriate for me to
8 rely on my understanding through the media of what took place
9 in that trial. I know he was convicted of some counts and not
10 others. I know he has now sworn to me that he was guilty of
11 the others. I know that you attacked Mr. Gates's credibility
12 at the time. And I know all that.

13 But the question is: Is he lying about this? And
14 I'm not going to base whether he was lying on this about a
15 proceeding that did not take place before me, that is not part
16 of the record in this case.

17 MR. DOWNING: Understood.

18 THE COURT: All right. All right. Just to make sure
19 that I don't pass out from hunger, we are going to take a
20 break. Can we resume at 2:15?

21 MR. ANDRES: (Nods head.)

22 MR. DOWNING: (Nods head.)

23 THE COURT: All right. Thank you, everybody.

24 (Recess.)

25 THE COURTROOM DEPUTY: Your Honor, recalling criminal

1 action No. 17-201-1, the United States of America v. Paul J.
2 Manafort, Jr. The defendant is present in the courtroom.

3 THE COURT: All right. Let me start with you,
4 Mr. Weissmann. Is there anything further you can add to what
5 we talked about, that you can add publicly?

6 MR. WEISSMANN: Yes. Yes, Your Honor. So, we
7 haven't finished our review, but we believe that the material
8 that you asked about was redacted.

9 THE COURT: Okay.

10 MR. WEISSMANN: However, I would like to direct your
11 attention to two exhibits in the record. If you recall, I
12 mentioned that I recalled that Mr. Gates had, very early on in
13 his cooperation, given us information about the polling data.
14 And there are two 302s that are dated in, I believe, both in
15 January of 2018. So before he actually pled guilty, so in
16 connection with his proffers.

17 So, the first one is Exhibit 222. And if you look at
18 page 17 of that exhibit, there's a long explanation of
19 communications with Mr. Kilimnik during the Trump campaign that
20 refer to the providing of polling data at the direction of
21 Mr. Manafort. And then if you look -- and that is dated
22 January 31st, 2018. And that was, of course, provided to
23 counsel in connection with the Eastern District of Virginia
24 trial. And Exhibit 236, and I believe I referred you
25 previously to page 3, and I would also refer you to page 5.

1 Both of those refer to the polling data and also refer to the
2 discussions of the -- discussions of the polling data and of
3 the battleground states at the August.

4 2nd, 2016 meeting.

5 THE COURT: All right. I will look at all of that.
6 So for right now, I'm going to leave the little conversation
7 that we had ex parte, ex parte with your objection noted.

8 MR. WEISSMANN: Judge, we will continue to look to
9 see if there is any portion that was unredacted to confirm
10 that.

11 THE COURT: Okay. I mean, mainly I was interested in
12 the timing that you've just provided. So, I think that answers
13 the question. And we'll all look at these to see what was
14 said.

15 With respect to his credibility, I absolutely
16 recognize defendant's right to argue to me that I should take
17 anything he says with a grain of salt for whatever reasons
18 defense believes I should take it with a grain of salt.
19 However, I wanted to refresh my recollection as to what I read
20 publicly at the time. And so, I went back and read the article
21 that I believe I read at the time and, indeed, there was a
22 juror who spoke publicly. She spoke publicly because she said
23 she wanted the public to know that while she wanted
24 Mr. Manafort to be not guilty, the evidence was overwhelming.

25 She indicated that the only reason he was not

1 convicted on all counts was because of a lone holdout in the
2 jury. She did not attribute that to Mr. Gates's credibility.
3 And reportedly, she did say, as I thought I recalled, some of
4 us had a problem accepting his testimony because he took the
5 plea. So we agreed to throw out his testimony and look at the
6 paperwork. And then she added, I think he would have done
7 anything to preserve himself, that's just obvious in the fact
8 that he flipped on Manafort.

9 So, I don't believe -- there's certainly not anything
10 in this record for these proceedings, or the public record, for
11 that matter, that supports your argument that I should consider
12 the fact that the jury unanimously concluded he was a liar, as
13 was reported in the press by a juror, and threw out his
14 testimony. I don't believe that that is what the newspaper
15 articles reported. Not that I would have relied on the
16 newspaper article or what happened in the Eastern District of
17 Virginia anyway, but I believe your argument was a little
18 hyperbolic.

19 As I said, you are free to argue that his credibility
20 is suspect for whatever reasons you wish to advance, but I
21 don't believe the jury verdict is emblematic of that, and
22 certainly there's nothing in the press that's emblematic of
23 that. You will have to argue acceptance of responsibility and
24 credibility issues with the judge who had the opportunity to
25 view Mr. Gates's demeanor. And should Mr. Gates's credibility

1 be important to that, then that can be argued to that judge.

2 But with respect to me, I think you have to point to
3 some facts in the record that should lead me to discount what
4 he said, and the newspaper account of what a juror said is not
5 one of them. If you believe it will be helpful and you want me
6 to read your cross-examination of Mr. Gates, you're welcome to
7 give it to me. But that's where that stands.

8 So, have you had further consideration about whether
9 you want to have a hearing on this particular issue that
10 involves an evidentiary presentation?

11 MR. DOWNING: We have, Your Honor. And I must tell
12 you that sitting and talking to the Court is very strange.

13 THE COURT: Next -- I won't do this anymore. I did
14 it for your convenience, because sometimes --

15 MR. DOWNING: No, I'm afraid the next time I go to
16 court, if I don't stand up...

17 THE COURT: I do it usually for pretrial conferences
18 where there's just so much back and forth and so much in front
19 of you, to keep everybody -- to spend an extra hour walking
20 back and forth.

21 MR. DOWNING: Sure.

22 THE COURT: I certainly didn't mean to discombobulate
23 everyone. And I appreciate the fact that you all like to stand
24 up.

25 MR. DOWNING: We did have a conversation over the

1 lunch break, and what we would like is just an opportunity,
2 with the record that's in front of the Court, to file some
3 supplemental briefing on what happened in Court today. And
4 some of the references back and forth, even for us to follow
5 from earlier 302s to later ones, it would just be nice if we
6 had an opportunity to go back through that.

7 I understand we can get an expedited transcript
8 tomorrow morning. And we would be willing to file anything
9 with the Court on Friday, if that would be possible.

10 THE COURT: I can tell you that I would not be able
11 to be here and rule before Friday anyway. So, we can do that,
12 you can also attach anything else you want me to consider. It
13 all needs to be filed -- can we say by noon on Friday?

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

15 THE COURT: And anything the government decides it
16 wants to supplement with. I really do think I understand your
17 arguments very clearly. And so, I will read all the things
18 everyone has asked me to read with all that in mind. I don't
19 think I needed to have it all written out for me. I'm going to
20 see if the 302s back up your characterization or your
21 characterization, and I don't need it all written out again.
22 So, if you want to, in a very abbreviated fashion, point my
23 attention to something, feel free.

24 But, please, I think you all know me well enough to
25 know by now that I have heard what you said, I understand your

1 arguments and I'm going to look at everything in light of
2 everything that both of you have told me. But I'm not going to
3 stop you from giving me what you think I need to see in
4 addition. But only in addition.

5 MR. DOWNING: Understood.

6 THE COURT: All right. So is that a long-winded way
7 of telling me that we are not insisting that Mr. Gates testify
8 in this courtroom and be cross-examined again?

9 MR. DOWNING: I didn't think I was.

10 THE COURT: I'm sorry?

11 MR. WESTLING: Yes, it is, Your Honor.

12 MR. DOWNING: Yes.

13 THE COURT: All right. I mean, when I asked you, do
14 you want to hear from him, you said you wanted to file
15 something. I just want to make sure you're saying we're done;
16 when this record is concluded, we're done with the record.

17 MR. DOWNING: Correct.

18 THE COURT: All right. Unless you want to send me
19 the metadata or whatever other exhibits you want to send.

20 Okay. I think we can go on to category IV, the other
21 DOJ investigation. This involved the special -- the [REDACTED]

22 [REDACTED] that was looking into [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]. The allegation is that the defendant

1 offered a version of events that downplayed [REDACTED]
2 role and/or his knowledge. Specifically, his knowledge of any
3 prior involvement of the [REDACTED] that was
4 inconsistent with and less incriminating of [REDACTED] than what
5 he had already said during the proffer stage and now consistent
6 with what Mr. [REDACTED] himself was telling the FBI. And that in
7 the session where he watered down what he said before the plea,
8 he had to be redirected by his lawyer more than once. That
9 ultimately, I believe, he did then repeat what he had said
10 originally, although I can't recall that at the moment. So
11 I'll give you a chance each to just argue briefly what you want
12 me to make of that.

13 MR. WEISSMANN: So, Your Honor, this, like the
14 instance where we were talking about Mr. Kilimnik and his
15 liability for Count 2 of the superseding information, this is
16 one where I think it's important to focus on the details of the
17 story that Mr. Manafort tells, because it's quite dramatically
18 different. This is not I forgot something or I need to augment
19 some details of a basic core set of facts.

20 The story that was told to us before he entered into
21 his plea agreement was of particular note to the government
22 because it suggested sort of a path that we thought was
23 potentially optimistic in terms of providing information.

24 And there was a detailed account of -- from
25 Mr. Manafort of Mr. [REDACTED] providing information about a [REDACTED]

1 who was [REDACTED]
2 [REDACTED]
3 [REDACTED] And there also was a discussion of whether Mr. [REDACTED]
4 believed [REDACTED], and he had said he did. And then
5 there was a discussion with the [REDACTED] who linked that
6 to needing to get [REDACTED] to
7 resolve that issue.

8 That -- so this is one where there are real details
9 being given. And the next version that happens, what we, of
10 course, then, as we noted, brought [REDACTED]
11 [REDACTED] was relevant to that investigation, and had them
12 come here. And the story omitted everything, basically, about
13 Mr. [REDACTED] saying that and, instead, there was a very watered-
14 down version related to Mr. [REDACTED] and -- who specifically,
15 Mr. Manafort had previously said, I did not want to be involved
16 in this at all.

17 So this was directly contrary to the statement
18 earlier that Mr. -- when Mr. [REDACTED], he had said had previously
19 called, he said, essentially, I'm on it, don't get involved.
20 This was a very, very different story that was being told and
21 then basically had to be sort of walked back, having seen notes
22 that were described as being the notes that had been taken by
23 defense counsel of that prior session.

24 There's one other point I was going to make which
25 just now has alluded me. If I can have one moment.

1 (Pause.)

2 MR. WEISSMANN: Ms. Rhee has reminded me of it. So
3 one thing that we do think is note is the way in which this
4 initially came up. And it's in Special Agent Weiland's
5 declaration, which is the way this initially came up is that we
6 were asking questions about an e-mail that Mr. [REDACTED] had
7 written about a potential way of saving the candidate. That's
8 sort of paraphrasing it. And this was a way of explaining, or
9 explaining away that e-mail.

10 And if you want to ask what do we think is going on,
11 we think that the defendant realized that he thought better of
12 this, this -- what he said was actually not going to help and
13 having the [REDACTED] there and making it really obvious
14 this is now relevant to what is a [REDACTED]
15 [REDACTED]
16 [REDACTED] walked back this allegation so there was -- there was no
17 information that could be helpful with respect to either
18 Mr. [REDACTED] or the [REDACTED] in furthering that
19 investigation.

20 It is also useful to know that detailed account was
21 offered by Mr. Manafort without prompting. That was his --
22 when he was asked about that [REDACTED] e-mail, he proceeds to
23 provide all of those details.

24 That's it, unless there are other questions.

25 THE COURT: Well, I guess I have a question that I

1 started with at the beginning, which is we've all agreed that I
2 don't actually have to find whether you decided in good faith
3 that he violated the terms of the plea agreement by not being
4 totally forthcoming and candid and all the things that he
5 agreed, that they're not contesting that. And it may not be
6 necessary, but I don't think there is any quibbling about
7 whether I could find that he did in fact violate the plea
8 agreement.

9 I think where the dispute is, whether he
10 intentionally lied, which you equated, at least in your initial
11 pleadings, with committed a crime while in a cooperation state,
12 and that that's highly relevant to sentencing in a number of
13 ways, including but not limited to acceptance of
14 responsibility.

15 And so, we have a couple of instances where even if I
16 agree with you, when he thought about what he would like to
17 say, that what he decided to say was not true, that it was
18 corrected within the same session, perhaps the prompting of
19 counsel, but, indeed, the record was corrected. And so, I find
20 it -- I'm not sure that is something that a prosecutor would
21 prosecute as a criminal false statement necessarily, although I
22 think it is something that a prosecutor could definitely say
23 I'm done trying to cooperate with this fellow who we have to
24 pull his teeth every time.

25 And so, I guess the question is does it matter, for

1 my purposes -- and I know we started there, but this is a good
2 example of it -- if he fixed it or if he never fixed it,
3 especially if it got fixed in the same session?

4 MR. WEISSMANN: So, I think that the issue of whether
5 it was the same session or not is a factor that I would submit
6 is a weak factor. I can't say it's totally irrelevant. You
7 can imagine situations where somebody remembers something, they
8 see something and it refreshes their recollection, or just in
9 thinking about something remembers more details.

10 So it's not that it's irrelevant, but it shouldn't be
11 the case that whether the government brings something up at
12 that session or waits to talk to defense counsel afterward, at
13 the end of the day, and then says here's some additional
14 information, this isn't making sense, and then the next day
15 there's a different version, that that -- that the fact that
16 it's during one session is -- should be not just dispositive
17 but, frankly, all that relevant. I think that the --

18 THE COURT: Well, even if it's the next day, and it
19 shouldn't depend on vagaries of when you look at the lawyer and
20 raise your eyebrows, what does the fact that he changes it -- I
21 mean, I understand the ones where he changes it multiple times
22 different ways and throws in some new details. But if he
23 says -- this is a close example, where he said X and then he
24 said Y and then he went back to X --

25 MR. WEISSMANN: So, I would like to address, first,

1 this issue of, like, that the government wouldn't normally
2 prosecute it. I don't think that's the standard in the sense
3 that we've already told you we have no -- we're not intending
4 to do that. We are there. And so that this is not one where
5 we're saying in this, or, frankly, in our view more egregious
6 ones, or that's something that that's our current intent.

7 And -- but I don't think that -- and, of course, we do agree
8 with you that it's relevant to the issue of, you know, should
9 the person still be a cooperator?

10 But it doesn't change the fact that the person is
11 saying something that's not true, that it's intentionally
12 lying. And there are instances where someone says something is
13 not true, they're confronted, and they realize it doesn't work
14 and they go backwards. There are others where they go deeper
15 and deeper. Maybe one is less egregious, but it doesn't change
16 the initial announcement of what they're saying and whether
17 it's intentional or not.

18 Obviously, if it was something so minor in detail
19 that the Court thinks it wasn't intentional at the outset, game
20 is over. But I don't think that's the issue of whether they go
21 back to the initial version about being confronted and what
22 their decision is or whether they dig deeper should change the
23 initial issue.

24 I do think that all becomes, if you were to find that
25 the initial pronouncement was intentional, I think it's all

1 then a sentencing factor for the Court as to how to consider
2 it. The fact that it may not be individually prosecuted may be
3 something that the Court considers in terms of how it affects
4 the sentence. But I don't think that it would change --
5 certainly not the breach issue, but I don't think that it
6 changes the fact that it is pertinent.

7 And then just finally, I do think if the Court was
8 trying to address also the issue of whether it hits all the
9 elements of a false statement in terms of is it material to an
10 investigation, I mean, what we've tried to do with each of
11 these is put in enough context to show the materiality here,
12 the whole --

13 THE COURT: I understand the materiality in this
14 circumstance.

15 MR. WEISSMANN: Okay.

16 THE COURT: All right. Mr. Westling, this does seem
17 to be a stark departure and then return. So, what do you think
18 I should make of it?

19 MR. WESTLING: Your Honor, first, I think to special
20 counsel's point, there was this first discussion during the
21 proffer leading up to the plea where a lot of detail was
22 provided and then clearly what is going on here is that, it
23 seems to me, he's going over the story, it's just at a very
24 high level. He's not going to the details and then there's,
25 you know, some point where it's, like, no, that's really not

1 where we are, we have to reset, and there is a discussion
2 off the record with counsel and sharing of notes to refresh
3 recollection.

4 I mean, again, keeping in mind this is how ever many
5 number of sessions along the way, and the fact that topics
6 continue to change. And I think there was just, in this case,
7 when Mr. Manafort was reoriented, he had no trouble repeating
8 what he had said previously. And I just think, from my
9 experience, this is the kind of thing that happens in these
10 meetings. I don't think it necessarily in any way supports the
11 idea that there's some intentional effort to mislead.
12 Obviously, you know, whether anybody remembered it at the
13 moment or not, you know, the prior testimony was of record.
14 And he had given it voluntarily.

15 So, you know, there are times when just -- the day
16 gets off to a start that doesn't work very well. And we found
17 that a lot in these sessions, where the difficulty of being
18 transported, of, you know, his physical and other
19 circumstances, meant it often took a little while to get back
20 into the groove each day that we got together. And I think
21 this really fits squarely into that. It's not that once he was
22 reoriented he fought the issue or suggested that he hadn't been
23 truthful the first time, or to the extent there was any
24 discrepancy, he wasn't trying to correct it.

25 This is the sort of thing you want someone to do if

1 they get it wrong at some point. And the reason they get it
2 wrong isn't always because they're trying to mislead. And I
3 think, motive-wise, there's really zero reason here. These are
4 the same prosecutors that heard the story before. And so to
5 the extent you go back over it and say, wait a minute,
6 remember, he gave them the story. And I think, you know, it
7 is, of course, natural to have whatever suspicions people have.

8 But I think there is nothing in this record to
9 suggest that there was some intentional effort to sort of
10 provide, you know, an incomplete or inaccurate version of what
11 happened.

12 THE COURT: I do think, to quibble with maybe the
13 first thing you said, where you said he started at the level of
14 generality and didn't add the same amount of detail he added
15 the first time, but then he was happy to add the details,
16 that's very different than telling a different detail than the
17 detail you provided the first time. I don't think that's quite
18 a -- it was a very generous characterization.

19 MR. WESTLING: Again, I'm sort of reading the
20 documents like everyone else. I think if you compare what's
21 being said, there is a discussion of a conversation with
22 Mr. [REDACTED] over an issue, there is an elaboration of what the
23 issue is and it takes prompting to get into the details. But
24 it doesn't seem to me that it is a completely different version
25 of anything.

1 THE COURT: All right. Is there anything else you
2 want to tell me about this one?

3 MR. WESTLING: I think, to the point that the Court
4 has made in its questioning, you know, there is a situation
5 that occurs where someone comes into a session, you know, you
6 move through it and corrections get made. They were made
7 contemporaneously, you know, within really just a few minutes,
8 an hour of break or whatever it was over lunch. But, I mean,
9 it just isn't a situation where the government, you know, had
10 any adverse impact from this.

11 I mean, you know, it was a misstep. And it happens,
12 but I don't think this fits in that category of, gee, let's
13 come in today and deceive the government. I don't think those
14 are the facts and I don't think the factual record supports
15 that.

16 THE COURT: All right. Is there anything you feel
17 you need to add?

18 MR. WEISSMANN: Just two things, briefly.

19 One, I don't think adversely impact is the standard,
20 but when -- assuming that the Court were to find there is a
21 lie, that is the adverse impact in terms of the utility that
22 can be made of the cooperating witness.

23 Second, I would just ask the Court -- I know the
24 Court is incredibly detailed -- to look at the initial story
25 and the details of it and then look at the next version and

1 then the next version. Because there is another version even
2 after he reads the defense lawyer's notes and then only later
3 comes to saying what is initially said.

4 And I do think this is one where this is not the
5 situation where -- and the way we look at this, where simply a
6 mistake -- the stories are so dramatically different about
7 [REDACTED] significance where there was enormous attention
8 to this issue, that we're not talking about -- again, there
9 were many instances which we are not bringing to the Court's
10 attention because our view is they easily could be mistakes
11 about minor details of dates and times and names. All of that
12 can happen, where there's no concern about is it intentional.

13 This rises to such a level and it goes really to the
14 heart of what was being looked at in that District that -- to
15 have such a different version, we just don't think that's the
16 kind of thing that somebody just makes a mistake and, you know,
17 has a bad day.

18 THE COURT: All right. Well, that leads me into No.
19 5, the contacts with the administration. And of all of them,
20 this is the one where I have the most difficulty figuring out
21 where the real contradiction is of moment to the investigation.

22 You say that what he said was false because he did in
23 fact agree to have messages sent to the administration on his
24 behalf. And you point to evidence in which he offered to have
25 other people contact the [REDACTED] on behalf of Mr. [REDACTED].

1 for example, or to press buttons. But that outreach appears to
2 have been two people outside the administration who themselves
3 would have contacts within. There is some evidence that
4 Mr. Gates said that Mr. Manafort said he still had connections,
5 and that another individual asked Mr. Manafort if he, that
6 individual, could tell [REDACTED] he was still close to
7 Manafort.

8 And you have his involvement in lobbying with respect
9 to ERISA, and Exhibit 404 is this memo summarizing the group's
10 plan that say, somewhat ambiguously, P.G.M. will find out if
11 [REDACTED] did her bit and get her to call [REDACTED] And it's not even
12 crystal clear that he was supposed do that by calling her.

13 So, again, I want you to point to the specific
14 statement in a 302 or a grand jury statement that is the
15 precise question and answer you think I should denote as false.
16 And, you know, it does seem to be that there are indications
17 that he may have bragged that he still had sway or offered to
18 assist people or to lobby. But do we have direct evidence of
19 contacts that contradict a denial of a contact?

20 MR. ANDRES: Your Honor, I'm going to handle that
21 one.

22 THE COURT: All right.

23 MR. ANDRES: Given that you have issues with it, I
24 drew the short straw.

25 So, the specific false statement that Mr. Manafort

1 made was during his October 16th interview, it's at Exhibit No.
2 4. And the specific is that Mr. Manafort denies having direct
3 or indirect communications with the administration, and it's
4 the indirect part of that that we believe is a false statement.
5 So specifically what Mr. Manafort -- what's recorded in the
6 302, it says Manafort had no communication with anyone in the
7 administration while they were in the administration. We don't
8 contest that.

9 Manafort then says, Manafort never asked anyone to
10 try to communicate a message to anyone in the administration.
11 Then it goes on to say Manafort spoke with [REDACTED] after he
12 left the administration. And notably, the last sentence,
13 Manafort communicated with [REDACTED] before [REDACTED] joined
14 the administration.

15 I think that last sentence is particularly
16 significant because the instance in which Mr. Manafort
17 indirectly communicates with the administration is about [REDACTED]
18 [REDACTED], when he specifically reaches out to Mr. [REDACTED], asks if
19 Mr. [REDACTED] would like Mr. Manafort to reach out to the
20 administration and basically put a good word in for Mr. [REDACTED]
21 who's later [REDACTED]
22 [REDACTED]. And then in the grand jury, specifically, on page 214,
23 Mr. Manafort is asked about that and he's asked about -- I'm
24 sorry, on 215 it says: How about once the President -- that
25 President Trump took office, were you in touch with anyone in

1 the administration that -- after that period. And Mr. Manafort
2 says: Not directly. Which, in effect, in the ensuing
3 testimony, you learn that he has indirectly reached out to the
4 administration specifically about Mr. [REDACTED]. And Mr. Manafort
5 testifies, on page 224, that he reached out to [REDACTED]
6 who's a friend of both Mr. Manafort and [REDACTED], [REDACTED]
7 [REDACTED], and that through those individuals he
8 sent a message with respect to Mr. [REDACTED]. Tellingly,
9 Mr. Manafort then answers a question that as of this time,
10 March of 2018, he still had the ability to send messages to [REDACTED]
11 [REDACTED].

12 So, the government's contention is that when
13 Mr. Manafort said that he did not have any indirect
14 communications with the White House or with the administration,
15 that in fact he did. So that's --

16 THE COURT: Going back to Exhibit 4, you summarized
17 it to me and you said he denied direct or indirect
18 communications, but then I didn't hear you read me a sentence
19 where he said that. So what page?

20 MR. ANDRES: Sorry.

21 THE COURT: What page are you in Exhibit 4?

22 MR. ANDRES: It's Government's Exhibit 10, which is
23 the 302. When I said 4, I should have said 10.

24 THE COURT: Okay. And what page of the 302 has the
25 statement that is contradicted by the grand jury testimony?

1 MR. ANDRES: So page 2 of 8 in the one, two, three,
2 four, fifth paragraph that starts: Manafort had no
3 communications.

4 The first sentence says he had no communications with
5 anyone in the administration while they were in the
6 administration. That's not the sentence we're contesting.
7 That would be the direct communications. What we're contesting
8 is the next sentence where he says: Manafort never asked
9 anyone to try to communicate a message in the administration,
10 a/k/a, the indirect communication.

11 With respect to the other issues, with respect to the
12 ERISA lobbying, Mr. Manafort is also asked about that in the
13 grand jury. And the question is whether he should reached out.
14 He doesn't have a memory of reaching out to anyone in the
15 administration, but he says the question is whether he should
16 have or Mr. ██████████ should have. The indication that one of
17 the two of them were supposed to reach out to the
18 administration.

19 The last one with respect to Mr. ██████████, I think
20 it's Exhibit 405, Mr. ██████████ writing in a text: I may see
21 ██████████, should I tell him that you say hi, or should I
22 acknowledge our relationship? That's not one that we're
23 relying on solely, obviously, but I think it provides important
24 context to the Court with respect to Mr. Manafort's state of
25 mind at the time. That is, he's looking for the opportunity to

1 reach out to [REDACTED]. Even if he didn't prompt
2 Mr. [REDACTED] to say that, he's at saying, look, if you see the
3 [REDACTED], tell him I said hi, or you should acknowledge our
4 relationship, whether or not he asks or not.

5 So, again, that's not an exhibit that we're relying
6 on solely. I think the strongest evidence relates to
7 Mr. [REDACTED] and Mr. Manafort's grand jury testimony which
8 affirmatively acknowledges that he was reaching out indirectly
9 to [REDACTED] when he said something contrary to that, to
10 the government during the October interview.

11 THE COURT: All right. So you're not saying that he
12 lied to the grand jury, you're saying that his grand jury
13 testimony is inconsistent with what he told -- stated during
14 the interviews on October 16 and that's how you know that what
15 he said was false.

16 MR. ANDRES: Correct.

17 THE COURT: All right. And if materiality were
18 important, why is this of moment that I should be concerned
19 about it?

20 MR. ANDRES: Sure. Judge, throughout the interviews
21 with Mr. Manafort and some of the issues we've discussed today,
22 you see that he constantly either minimizes the information he
23 has about the administration or any contact with the
24 administration. So there's an issue whether or not during his
25 cooperation he's communicating with [REDACTED] or

1 providing information about the questions or other things that
2 are happening in the special counsel investigation, whether
3 he's sharing that with other people. And this is another
4 example of Mr. Manafort --

5 THE COURT: That hasn't been given to me as we're
6 troubled by this or he wasn't truthful about that, so I don't
7 see how to put this in the context of that because I don't know
8 about that.

9 MR. ANDRES: Well, so for example, in the No. 4, the
10 one that Mr. Manafort -- that Mr. Weissmann just talked about
11 with respect to the [REDACTED], you see Mr. Manafort
12 changing his story so as not to implicate either [REDACTED]
13 or someone in [REDACTED]. I think, with respect to
14 this issue, again, Mr. Manafort is trying to distance himself
15 from the administration and saying he's not having contact with
16 the administration at a time when he's under at least one
17 indictment.

18 THE COURT: But you're not suggesting right now that
19 there's more information in here about other efforts to
20 distance himself from the administration or to deny a
21 relationship or to deny reporting back to them?

22 MR. ANDRES: We're not relying on any other evidence
23 of that issue.

24 THE COURT: All right. Mr. Westling?

25 MR. WESTLING: Well, I think, Your Honor, you know,

1 these are all situations where Mr. Manafort, at best, had
2 contact with someone who was contemplating contact with the
3 administration. I don't think there's any evidence here that
4 he had direct or indirect contacts. I think that, you know,
5 that even in the case of Mr. ██████, that the government cites,
6 and he's saying I'll reach out to people and see if I can get
7 them to support you, that could be with any number of players.

8 I think the problem here is that Mr. Manafort
9 volunteers Mr. ██████'s name earlier on in the 302. There's no
10 reason to think that he sees any problem with what he was doing
11 there. And in fact, wouldn't have a reason to raise
12 Mr. ██████'s name in the first place, if he did.

13 I think this is a situation where he honestly did not
14 believe that these were the kinds of contacts that the
15 government asked him about. They were not direct, clearly. I
16 think we're all in agreement about that. And there really
17 isn't evidence of him seeking to have indirect contact, you
18 know, in any of this. It's the issue of Mr. ██████ wanting
19 to use his name or some reference to being talking about
20 somebody who's working on a lobbying project. Or in
21 Mr. ██████'s case, the conversation with Mr. ██████ where he
22 says: Can I help you in some way? The way that anyone might
23 if someone were interested in seeking a job.

24 But clearly, he hewed to the line of not having, you
25 know, those contacts. And I think to say it's something more

1 than that, and perhaps more importantly, that there was some
2 effort to conceal or to disguise or lie about it, seems to me
3 just not substantiated by the record that's before the Court.

4 MR. ANDRES: Your Honor, page 225 -- 224 and 225 is
5 the evidence of the grand --

6 THE COURT: Of?

7 MR. ANDRES: -- of the grand jury, of Exhibit 4. It
8 is the specific evidence of the indirect contact. And starting
9 on line 6, this is recounting the text with Mr. [REDACTED], it
10 says:

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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THE COURT: Well, if he's calling these people, [REDACTED] when they pick up the phone, they call the [REDACTED] are they supposed to say I want [REDACTED]? Or are they supposed to say Paul wants [REDACTED]?

MR. ANDRES: Your Honor, I don't know the answer to that, but I would argue that that's not relevant. The relevance is that Mr. Manafort --

THE COURT: Well, one is conveying a message and the other is getting people, other people to help this guy who he's not going to help directly. So he's indirectly helping the guy, but that's different than sending a message, isn't it?

MR. ANDRES: Well, if the message is [REDACTED] is a good guy, then it's sending that message, whether it comes

1 from Mr. Manafort or it comes -- the government is not alleging
2 that the message is Paul Manafort says X, the message is we
3 support or there is support for [REDACTED]. And that's the
4 message that is indirectly sent from Mr. Manafort through a
5 third party to the [REDACTED]

6 THE COURT: All right. Mr. Westling, anything?

7 MR. WESTLING: I guess, two things, Your Honor. One
8 is that, obviously, when these questions -- Your Honor, I
9 think -- the first is that none of us, in terms of working with
10 Mr. Manafort through this process, would have thought that that
11 would have amounted to a direct or indirect contact. I mean,
12 so in terms of giving advice and working through this matter, I
13 don't think we thought about it as how many layers do you have
14 to get down before you might run afoul of the I didn't have
15 direct or indirect contact.

16 I think the other point with Mr. [REDACTED] that's
17 particularly well made is that obviously, given when this is
18 happening, the idea that Mr. Manafort was going to be helpful
19 to someone was only going to be because he asked others to
20 potentially support them. And, you know, he was already under
21 indictment at this point and, you know, the idea that he was
22 going to pass a message and it would have some value, frankly,
23 no offense to Mr. Manafort, but I can't see that. I think
24 that's why we went to other business leaders and said you
25 should consider this and it was up to them to decide what to do

1 or whether to do. And there's not even really any direct
2 evidence here that they ever contacted anyone in the
3 administration. So I think the idea it's an indirect contact,
4 there's just no basis to make that finding.

5 THE COURT: All right. That covers all the subject
6 matter areas. The defendant, though, in his pleading asks me
7 to consider his health issues exacerbated by the conditions of
8 confinement, and particularly his solitary confinement as one
9 reason why I should conclude that any inaccuracies are
10 unintentional. And I want to know, do you want to elaborate on
11 those statements? What about his confinement bears on his
12 intent?

13 MR. WESTLING: Well, I think, Your Honor, that the
14 situation, obviously, has been physically and mentally
15 difficult, as it always is. I'm not suggesting what
16 Mr. Manafort is going through is not shared by anyone who goes
17 through a similar kind of confinement. I will note that he's
18 probably doing it at an age that most people don't, and it's
19 been over a meaningful period of time. And with that, I think
20 there is a natural degree to which one sees an impact on health
21 and mental abilities, that people tend to be sharper when
22 they're not under those conditions.

23 And I think the reality here is it's been shown that
24 those kinds of conditions have an affect on memory. So I
25 think -- I'm not saying that that explains the situation, I

1 think it's just highly relevant in understanding why there were
2 miscues at various points that might not have happened,
3 particularly given a greater opportunity to sit and prepare and
4 to spend time with counsel, to be ready for sessions. That
5 just wasn't really possible under the circumstances.

6 We've had tremendous access to Mr. Manafort, I'm not
7 suggesting otherwise. But it just becomes challenging with his
8 scheduling and everything else, to finish a long day of
9 interviews and then to rush over to the jail at night to be
10 ready for the next day, even if you know what the subject
11 matter is, and often we had only, kind of, headlines.

12 So I guess what we want the Court to understand --

13 THE COURT: Were you able to -- did you have access
14 to him, or were there times when he was not accessible to you?

15 MR. WESTLING: Generally we had access to him twice a
16 day; in the afternoon, which of course is when we were together
17 with the government, and then in the evening. And we generally
18 have had good access, but there are times when there are
19 unscheduled lock downs and all kinds of other things that get
20 in the way of that access. But it is just one of those
21 situations that makes what is always a difficult and stressful
22 undertaking for your client, in terms of those cooperation
23 sessions, that much more difficult.

24 And I think we've noticed -- without, again, looking
25 to hurt Mr. Manafort's feelings in any way -- the cost of him

1 being incarcerated has been one that has made, you know, him
2 less acute in his ability to sort of see and perceive. And
3 while he spent a lot of time and he's put in a lot of effort,
4 and we've appreciated his help, it still is just a factor that
5 we think is relevant as the Court looks at the whole construct
6 of what's going on here.

7 THE COURT: Well, I take your point with respect to
8 the emotional toll this would take on anyone and the physically
9 difference aspect of his existence from what it had been
10 before. But I got the impression you were asking me to
11 consider his physical health in some particular way, and you
12 were arguing that his physical health was exacerbated by his
13 conditions of confinement. And certainly I'm aware of the
14 court appearance when he appeared in a wheelchair. But, did
15 that happen -- was he taken to any of these debriefs in a
16 wheelchair?

17 MR. WESTLING: He was taken to the grand jury in a
18 wheelchair.

19 THE COURT: Okay. On the 26th and the 2nd?

20 MR. WESTLING: I know on the 26th. The 2nd as well,
21 Your Honor. And there's actually a reference in the transcript
22 to talking about had he not been in a wheelchair, he would be
23 sitting somewhere different. So --

24 THE COURT: What is it about his conditions of
25 confinement that you want me to understand has something to do

1 with that?

2 MR. WESTLING: Well, he basically has never in his
3 life before had a problem with the swelling in his leg and foot
4 that he has now related to gout. The general indications are
5 that has to do with diet and a lack of exercise. And it's
6 something that has only been onset since he's been
7 incarcerated. Obviously, it's also been, to the point we made,
8 emotionally. And we've shared this in the pleadings. You
9 know, there's been some depression and other things that you
10 would expect that have been treated, as is the physical
11 situation. But it's obviously not ideal and it has had some --
12 created some challenges to him as he tries to stay focused and,
13 you know, live up to his obligations under the plea agreement.

14 THE COURT: And this isn't to suggest that the
15 situation he finds himself in wouldn't make someone be
16 depressed, but is there any prior history of depression before
17 this case arose?

18 MR. WESTLING: Let me confer with Mr. --

19 THE COURT: All right.

20 (Pause.)

21 MR. WESTLING: Your Honor, I think there has not been
22 significant depression in the past. I do want to correct one
23 thing I said: My fellow counsel and client have been helpful.
24 And that is there has been some history with the gout, but it's
25 been very minor, whereas now it's become a significant issue.

1 I didn't want to not clarify that.

2 THE COURT: All right. Did anyone from the office of
3 special counsel have concerns during any meetings that his
4 health or his ability to focus or his emotional state were
5 affecting his ability to be responsive or that they were
6 brought to your attention by the defense?

7 MR. WEISSMANN: They were -- we had no such concerns
8 and they were not brought to our attention. To the contrary, I
9 would call the Court's attention to Exhibit 4, the grand jury
10 transcript. And that is, on October 26, 2018, the normal types
11 of questions you would expect were asked about whether the
12 defendant had any medical concern or issue that would affect
13 his ability to answer the questions and understand what was
14 going on, and he denied that. In fact, after lunch, when we
15 went over that again, he kind of joked about it, and you'll see
16 that in the transcript.

17 The other thing that's referenced there that may be
18 of note to the Court is that with respect to his medical
19 condition, it's noted in the transcript that that arose and the
20 condition was only in the last of the proffer sessions. So, in
21 other words, the transcript of the grand jury is on October
22 26th and the last of the proffer sessions, debriefings was
23 October 16th. So the -- obviously, the prison conditions
24 stayed the same, but in terms of the condition with respect to
25 the inflammation in his leg didn't appear until October 16th.

1 THE COURT: Okay. All right. Is there anything else
2 that I need to cover right now?

3 MR. WEISSMANN: Judge, the only issue, I think I have
4 mentioned before, and so you should cut me off if you feel like
5 this point has been -- or, at least our position has been made
6 clear, is that in terms of the way that the government looks at
7 this, the issue of the -- whether the defendant breached or
8 didn't breach the agreement, from our perspective, there's a
9 legal standard, which is it's a good faith determination and
10 that that is beyond us because that is one it was conceded.

11 And so that the issue that we see here is not whether
12 he in fact breached, that's something that there is no platonic
13 ideal of that, it's something that's in fact happened because
14 the determination has been made and there's been no challenge
15 to that. The issue now is one of a sentencing issue, of
16 whether there have been misstatements, intentional
17 misstatements that would be relevant to the Court at
18 sentencing. And we bear the burden of proving that.

19 THE COURT: And I think we all agreed last time that
20 trying to differentiate that question from whether he in fact
21 breached was a distinction, you know, too impossible to even
22 draw, that they were essentially the same inquiry. But I
23 understand that that's not what I'm being asked to find.

24 All right. Anything further from the defense?

25 MR. WESTLING: No, Your Honor.

1 THE COURT: All right. We now have a little bit of a
2 two-step process in terms of producing the transcript, that is
3 going to be longer than I initially anticipated. And so I
4 guess first question would be from when the court reporter
5 expects that it could be done, so that we can set a schedule
6 for when you could agree to how much of it we can make public.

7 I think a large portion of what we discussed could be
8 public. I think there are certain issues where you probably
9 only need to redact out names and turn them back into entities.
10 And then there are may be one or two issues where we're really
11 talking about something that was completely redacted at every
12 point prior to this and will continue to be. And, hopefully,
13 you'll both be on the same page about that with respect to what
14 of the investigation is not yet public. I think the Office of
15 Special Counsel has the stronger point of view about that.

16 But I'm going to ask you to see if you can agree on
17 what a redacted version would look like before I docket
18 anything, with the understanding that ordinarily this room
19 would be completely full of people reporting on what happened.
20 And they know that we're meeting and they know that we promised
21 them a transcript, so when --

22 All right. I will order that tomorrow morning when
23 the sealed transcript is ready, that the parties may have it.
24 And then assuming you get it at some point tomorrow morning,
25 how long do you think it would take to confer and let me know

1 if you have an agreed version?

2 (Off-the-record discussion between counsel.)

3 MR. WEISSMANN: So I think end of the day on
4 Wednesday.

5 THE COURT: Okay. If you're in agreement, then I
6 think you can file a notice and attach it with the proposed
7 redactions, but maybe do it in a way where it's highlighted so
8 I can see what's redacted or bracketed and then I can order
9 that it be made public with those redactions. If you are not
10 in agreement, then you need to bracket it or highlight it in
11 such a way that I know who's proposing one and what's in
12 dispute.

13 I think we've had to -- the court reporter has the
14 authority to send counsel for both sides a PDF to accelerate
15 this exercise, though -- I mean, we've done this before, I
16 guess not with transcripts. So either way, you would make one
17 if you didn't get hers, is that correct? We have enough
18 information now that we can figure out how to do this.

19 MR. DOWNING: The Office of Special Counsel can.
20 We'll rely on them.

21 THE COURT: Okay. That's fine I'll ask the Office of
22 Special Counsel to transmit to me -- and it's still under seal
23 at this point -- what you think the redacted version should
24 look like. And then I will order it to be placed on the public
25 record. And that process can continue even before we have a

1 hearing for me to rule, at which point we'll do the same thing.
2 I think I would rather rule from the bench than do a lengthy
3 written opinion, which will take much longer. And then we can
4 do the same thing about issuing an unsealed transcript as soon
5 as possible.

6 So, we should probably put on the record -- determine
7 right now when a hearing for me to rule on this would be. And
8 I know I've given the parties some extra time to get
9 information to me. And I appreciate everybody's patience with
10 what we've had to go through today.

11 I believe it was very helpful, very useful and very
12 important for you to have been here, Mr. Manafort. I know that
13 we've had hearings where counsel sought to minimize the burden
14 on you and not have you be here, but this is about you, it's
15 not about them. And I think it's very important that they have
16 you available to ask questions to.

17 All right. What about on the 12th or 13th? Can we
18 say 9:30 a.m. on the 13th for --

19 MR. ANDRES: Tuesday?

20 THE COURT: 13th is the Wednesday. If not, then I
21 think I can do it Tuesday. I don't want to go as far as the
22 14th and 15th, if I don't have to.

23 MR. WEISSMANN: Any of those days we will make work.

24 THE COURT: All right. Does the defense have a
25 preference?

1 THE COURTROOM DEPUTY: 11 o'clock on the 13th?

2 THE COURT: I don't think it will take more than an
3 hour and a half, certainly; hopefully less.

4 MR. WESTLING: So the 13th works.

5 THE COURT: 13th at 9:30 a.m. then we will reconvene
6 in a sealed proceeding to make my findings. And I think we can
7 do a public minute order that says they can file supplemental
8 submissions by -- that has all these dates; the date that they
9 are supposed to get back to me with the proposed redactions,
10 the supplemental submissions, and let's just say an additional
11 hearing on that date that will also be under seal, so that
12 people at least know that we're working on it. Okay.

13 THE COURTROOM DEPUTY: Do you want to have them
14 check? You're moving the sentencing to March.

15 THE COURT: We did, I believe, didn't we?

16 THE COURTROOM DEPUTY: They couldn't see their
17 calendars.

18 THE COURT: Oh, that's right. Did you get to do
19 that?

20 MR. WESTLING: I wanted to ask which dates we're
21 talking about. We've looked, so I'm prepared to answer. So I
22 want to make sure I'm oriented.

23 THE COURT: How about the 12th or 13th of March?

24 MR. WESTLING: If we could do the 13th of March, that
25 would be good.

1 THE COURT: March 13th sentencing. Let's make that
2 also 9:30 in the morning. All right. The date of the
3 submission remains the same. The point of this exercise was to
4 have time between the receipt of the submission and the
5 hearing. All right.

6 MR. WESTLING: Your Honor, that's the 22nd?

7 THE COURT: Yes. Okay. I don't think there's
8 anything else we need to do right now. And that's good that
9 the door will not be locked when our 4 o'clock matter takes
10 place.

11 Anything further from anybody else?

12 All right. You all can stand up. And we'll see you
13 next time. Thank you.

14 * * *

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17 * Speaker identification corrections have been made on page 25,
18 lines 10 and 13, as well as page 83, line 11.

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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 5th day of February 2019.

/s/ _____

Janice E. Dickman, CRR, RMR
Official Court Reporter
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