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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

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

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A P P E A R A N C E S

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Also Present: Michael Ficht  
Renee Michael  
Jeff Weiland

Court Reporter: Janice E. Dickman, RMR, CRR  
Official Court Reporter  
United States Courthouse, Room 6523  
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Washington, DC 20001  
202-354-3267

\* \* \*

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

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

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

10 THE COURT: Good afternoon.

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

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

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

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

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

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

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

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

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

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

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

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

11          I held a status hearing and ordered the government to  
12          provide me with information concerning the alleged breach. On  
13          December 7th, 2018, the government filed its sealed submission  
14          in support of its breach determination, docket 461. On January  
15          8th, 2019 the defendant filed his response to the special  
16          counsel's submission in support of the breach determination.  
17          That was docket 472, the public version, and 473 was the sealed  
18          version.

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

1 480 on January 23rd, 2019.

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

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

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

16 In light of the defendant's concession, and based  
17 upon my independent review of the entire record, including the  
18 pleadings I just listed and the supporting exhibits, the facts  
19 and arguments placed on the record at the hearing on February  
20 4th, 2019 and the post-hearing submissions filed by the  
21 defendant, docket 502, and the government, docket 504, I find  
22 that the Office of Special Counsel made its determination that  
23 the defendant made false statements and thereby breached the  
24 plea agreement in good faith. And, therefore, the Office of  
25 Special Counsel is no longer bound by its obligations under the

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

1 found that to be preferable.

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

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

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

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

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

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

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

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

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

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

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

25 Mr. Manafort pled guilty here on Friday, September

1 14th. At that time, fortunately, he had no health complaints,  
2 his ability to walk was not impaired. He stood at the lectern  
3 without difficulty, made no request for assistance during the  
4 plea colloquy concerning his mental state. He indicated that  
5 he was not taking any medication that could affect his ability  
6 to understand. I'm not saying he wasn't already diagnosed with  
7 gout at that time, but as of that date, September 14th, he  
8 hadn't demonstrated or, at least, expressed any concerns  
9 regarding physical or mental impairment.

10 Well, why is that important? It's important because  
11 three of the debriefings, September 11th, September 12th and  
12 September 13th, had already taken place. The next five were  
13 quite soon thereafter, beginning the following week, on the  
14 20th, the 21st, and then the 25th, 26th, and 27th, and the  
15 following week October 1st and 5th. He was debriefed again on  
16 October 11th and 16th. So every single debriefing was before  
17 his appearance in the Eastern District of Virginia, in the  
18 wheelchair, on October 19th when he complained publicly, as far  
19 as I know for the first time, that his health was being  
20 compromised by the conditions of his confinement.

21 The parties have informed me that he was still having  
22 difficulty walking and required the wheelchair for the two  
23 sessions before the grand jury, on October 26th and November  
24 2nd, so that's a matter of record. But the transcript, Exhibit  
25 4, doesn't reflect any sort of mental impairment. He was

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

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

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

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

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



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

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

12 On October 16th he's interviewed again. And Exhibit  
13 10, the FBI 302, reports that he said, for the first time,  
14 Well, I asked [REDACTED] to pay the law firm on my behalf as  
15 a loan. And he, thereafter, produced a copy of a promissory  
16 note, but it was unsigned. Page 3 of Exhibit 10 reports that  
17 he said originally they planned for the payment to be a loan.

18 Last year, they executed a note, his accountant has  
19 it. He said he dealt with the accountant through the New York  
20 lawyer, [REDACTED] and that [REDACTED], quote, reminded  
21 him that he had signed a loan agreement, and that it was just a  
22 friend helping a friend. About a week later, according to  
23 paragraph 11 of the FBI declaration, the defense produced an  
24 unsigned loan agreement. It describes the loan as at  
25 5 percent, to be repaid in three installments in 2018; March,

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

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

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

11 Finally, in the same grand jury session, he testified  
12 that ██████ went to ██████████ and asked ██████████ to do it because  
13 ██████████ owed ██████ money.

14 So those are all the different ways he's  
15 characterized this. What does the paper trail reveal? Exhibit  
16 12 is a series of texts dated June 26, 2017 from Manafort to  
17 ██████ -- not ██████████ -- in which Manafort gives ██████ all of the  
18 necessary banking information to transfer funds to the law  
19 firm.

20 Exhibit 2 is a bank wire transfer showing the payment  
21 made by ██████████'s company, ██████, to the law firm on June 26th,  
22 2017. Exhibit 14, ██████████ e-mails Manafort on September  
23 24th, 2017, remaining him, I paid the firm on your behalf and  
24 the tax documents are going to be forthcoming.

25 Manafort then forwards the email directly to his

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

6 Exhibit 16, in the FBI 302 of the interview with the  
7 accountant, Mr. [REDACTED], he said he treated it as income in  
8 the 2017 tax return in accordance with Manafort's instructions  
9 and he never received a 1099. [REDACTED] was interviewed as  
10 well. Exhibit 8 is the 302 of that interview. He said it was  
11 never a loan: I did it because [REDACTED] told me to do it. He said  
12 he was supposed to kick back or share a percent of what his  
13 company earned in its contract with the [REDACTED], the head  
14 of [REDACTED]. And then he simply paid it where [REDACTED] told him to  
15 pay it at his direction.

16 [REDACTED] also noted he didn't know whether [REDACTED] and  
17 Manafort had a similar arrangement and that's why [REDACTED] was  
18 sending funds Manafort's way. So there's no actual evidence on  
19 that point and I can't make any findings about why Manafort  
20 might have wanted to obscure the details of this transaction.

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

1 Well, not quite. [REDACTED] specifically told the  
2 FBI that he did it because [REDACTED] told him to. He said he had  
3 dinner with Manafort afterwards, told him then that the firm  
4 would need to have to generate a 1099. He doesn't even say he  
5 discussed it with Manafort as a loan then. What he told the  
6 FBI was that he saw a promissory agreement at some point, but  
7 he doesn't put it before the transaction was complete; he  
8 doesn't know when he saw it. Indeed, the unsigned promissory  
9 note itself is dated September 14th, 2017, three months after  
10 the payment was made.

11 Four days after the grand jury testimony in Exhibit  
12 17 Manafort's lawyer [REDACTED] sends the accountant the loan  
13 document for the first time. It's October 30th, 2018. The  
14 defense said, at the hearing, Well, that's not remarkable, the  
15 preparation of the 2017 tax return was still underway. But the  
16 accountant said no.

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

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

1 from that name. [REDACTED] then said, Well, Paul borrowed  
2 125,000 from him last year. I don't have the signed version,  
3 but attached is the draft, which I think was signed without  
4 change. And then he goes on to represent that interest  
5 payments were in fact made that year and that Manafort was  
6 current on them. But there is zero evidence in the record that  
7 Manafort repaid the amounts on the dates due or any other  
8 dates.

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

18 So I'm not basing any finding today on any  
19 determination that the defendant had the lawyer gin up a  
20 fraudulent piece of evidence a year later. But the fact  
21 remains, there's no evidence that there was ever a signed  
22 version of a promissory agreement, and even in September of  
23 2017 it was nothing but a post hoc effort to make the completed  
24 payment, described by Manafort as income in June, look like  
25 something different than it had been three months before.

1           Indeed, ██████ told the FBI that after he had  
2           already made the payment, ██████ came to him and asked him if he  
3           would treat it as a loan and he refused. We don't know why ██████  
4           made that request, but it does appear that in September of 2017  
5           Manafort was engaged in an effort to re-characterize the nature  
6           of the payment. But that never went anywhere, so the statement  
7           to the Office of Special Counsel and the FBI on October 16, and  
8           grand jury testimony to the effect that there was a loan  
9           agreement in place, especially with the added gloss that he was  
10          making payments under it, is false.

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

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

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

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

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

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

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

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

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

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



1 definition of materiality that underlies my findings.

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

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

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

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

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

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

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

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

25 To me, this is definitely an example of a situation

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

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

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

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

1 respect to that matter.

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

7 The most problematic to me is described in paragraph  
8 29 in the declaration, and Exhibit 101, the FBI 302 from  
9 September 21st, on page 4, where he doesn't just say I don't  
10 remember discussing the peace plan with Mr. Kilimnik after  
11 August 2016 and proved to be wrong about it. He asserted that  
12 he put the kibosh on the idea. He called it a bad idea. He  
13 said he didn't trust [REDACTED] and he didn't want to work on  
14 it, and then he gave the FBI a series of specific reasons that  
15 he ended the discussion for good at that time.

16 This is not supported by any evidence, even his  
17 argument that he was telling the truth because what he told the  
18 FBI he said at the time was: I was opposed to any peace plan  
19 with [REDACTED], as opposed to any peace plan, is contrary to  
20 the subsequent emails trying to elicit the reaction to plans  
21 with [REDACTED] playing a key role. Creating an alternative  
22 narrative is not the same thing as simply denying or professing  
23 not to remember that something happened, and it's not  
24 consistent with the defense argument that he just didn't  
25 remember.

1           So I find that the September 21st claim that he laid  
2           the issue to rest by telling Kilimnik he was opposed and that  
3           it didn't come up again was an intentional material false  
4           statement.

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

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

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

25          Denying the meeting in Madrid was denying a contact

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

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

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

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

24 Maybe. But [REDACTED] seems to have been a recurring  
25 figure of importance in communication with Kilimnik and the

1 Ukraine; in particular, the political faction with loyalty and  
2 ties to Russia, doesn't seem to have ever been far from  
3 Manafort's mind, even when he was working on the campaign.

4 But even if I want to give that argument some weight,  
5 running a presidential campaign is, after all, a fairly  
6 all-consuming exercise. That explanation falls apart  
7 completely when the defense goes on to say, in the next  
8 sentence, quote, The same is true with regard to the  
9 government's allegation that Mr. Manafort lied about sharing  
10 polling data with Mr. Kilimnik related to the 2016 presidential  
11 campaign, period, close quote.

12 That's not the same at all. You can't say you didn't  
13 remember that because your focus at the time was on the  
14 campaign. That relates to the campaign. And he wasn't too  
15 busy to arrange and attend the meeting and to send Gates the  
16 email transmitting the data that very day. It's problematic no  
17 matter how you look at it.

18 If he was, as he told me, so single-mindedly focused  
19 on the campaign, then the meeting he took time to attend and  
20 had the data available for had a purpose related to the  
21 campaign. Or, if it was just part of his effort to use his  
22 position in the campaign to feather his own nest, reestablish  
23 and reassure his foreign business contacts for the future,  
24 well, in that case he's not being straight with me about how  
25 single-minded he was. It's not good either way.

1 Plus, his asserted inability to remember rings hollow  
2 when the event we are discussing involving sharing internal  
3 confidential polling data covered by a non-disclosure agreement  
4 not only outside the campaign, but he's sharing it with a  
5 foreign national with a specific understanding and intent that  
6 it would be passed on to other foreign nationals, in this case  
7 Russians, at a meeting in which the participants made it a  
8 point of leaving separate because of the media attention  
9 focused at that very time on Manafort' relationships with  
10 Ukraine.

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

15 He told the grand jury he only told Gates [REDACTED]

16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED] The grand jury testimony, Exhibit 4, begins, on  
19 page 152 on that matter, quote, [REDACTED]

20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 When asked, on page 154, what exactly did you [REDACTED]  
25 [REDACTED]



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[REDACTED]

All this a contrary to what Gates had to say. Exhibit 222, the FBI 302 of the January 31st, 2018 proffer session, Gates said he sent Kilimnik, quote, the polling data, close quote, at Manafort's direction. He sent it by WhatsApp and deleted it that day. Gates didn't think that Manafort sent Kilimnik anything else about the campaign, other than the polling data. Now its true that particular 302 doesn't specify internal polling data. But publicly available press polls are publicly available, so why would one need encrypted communications immediately deleted?

Exhibit 223, September 27th, 2018, the FBI 302, Mr. Gates said clearly, on that day, the polling data he was told to send was a mix of public polls and the [REDACTED] polling data.

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

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

8 More important to me, there's other corroboration.  
9 There's Exhibit 233, an August 2nd email to Gates directing him  
10 to bring the internal polling data to a meeting that day. Now,  
11 I was told on February 8th, for the first time, in the third  
12 pleading that was filed in response to these allegations and  
13 after the hearing was over, that when Mr. Manafort said bring  
14 it to the SCh meeting, that that's shorthand for a scheduling  
15 meeting, as opposed to possibly a scheduled meeting, and it  
16 meant a scheduling meeting with campaign staff. There's  
17 nothing provided to substantiate that, but there's also nothing  
18 in the record to indicate one way or the other that the two men  
19 had met previously that date at a scheduling meeting.

20 All Gates said to the FBI in Exhibit 236 on January  
21 30th was that he was invited to the Kilimnik meeting by a text  
22 or email. Is that text alone definitive? Am I relying on that  
23 solely? No. But is it corroborative of Gates's statement that  
24 internal polling data was shared at the meeting? Yes.

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

1 recent fabrication. He didn't say internal polling data was  
2 shared at the August meeting until September. September of  
3 2018. But it turns out the record doesn't support that.

4 Exhibit 222, as I noted, on January 31st, on page 17,  
5 he did say polling data was sent at Manafort's direction.

6 Exhibit 236, the 302 from January 2018, Gates says we  
7 discussed battleground states, polling data, and trends  
8 regarding the Trump campaign and the battleground states.  
9 Those are pretty specific words.

10 Exhibit C to docket 504, the FBI 302 from February 7,  
11 2018, which has more recently been provided by the government,  
12 on page 15 it notes that Manafort said, back in February --  
13 that Gates said, back in February, Manafort instructed Gates to  
14 send Kilimnik information from [REDACTED] polls. Gates sent  
15 Kilimnik both publicly available information and internal  
16 information from [REDACTED] poles. This conclusion is  
17 reinforced when you see the series of emails from Kilimnik to a  
18 number of people, Exhibits 225 to 232, where he says, quote,  
19 Trump's internal polling data shows, and he goes on.

20 So, the defense took another tack then and said,  
21 Well, it's not important because these pages of data are  
22 gibberish. Who knows what they mean? I reject that. It is,  
23 perhaps, true that I don't know what they mean and it's perhaps  
24 true that Mr. Westling doesn't know what they mean, but  
25 Mr. Manafort, Mr. Gates, and Mr. Kilimnik are political

1 consultants, this is their stock in trade. These are people  
2 who hire pollsters, help design the surveys, and consume the  
3 results.

4 Indeed, the 302s make mention of the fact that  
5 Manafort specifically wanted his own polling people, ██████████'s  
6 company, instead of ██████████, helping out. And the  
7 recently provided 302 from Mr. Gates emphasizes that ██████████'s  
8 data was the particular sort of traditional survey data  
9 Manafort found most helpful. And here they're at a meeting  
10 where they specifically talked about battleground states, the  
11 voters they wanted to appeal to there. And they're talking  
12 about trends and the word "trend" is all over the data. So  
13 that's not a very strong argument.

14 Also, the evidence indicates that it was understood  
15 that the data would be passed from Kilimnik to prominent  
16 Russians, including ██████████, and ██████████.  
17 Whether Kilimnik is tied to Russian intelligence or he's not, I  
18 think the specific representation by the Office of Special  
19 Counsel was that he had been, quote, assessed by the FBI,  
20 quote, to have a relationship with Russian intelligence, close  
21 quote. Whether that's true, I have not been provided with the  
22 evidence that I would need to decide, nor do I have to decide  
23 because it's outside the scope of this hearing. And whether  
24 it's true or not, one cannot quibble about the materiality of  
25 this meeting.

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

8           I don't think that's a fair characterization of what  
9           was said. The intelligence reference was just one factor in a  
10          series of factors the prosecutor listed. And the language of  
11          the appointment order, "any links," is sufficiently broad to  
12          get over the relatively low hurdle of materiality in this  
13          instance, and to make the transmission of campaign information  
14          to Kilimnik and to other Russian nationals through Kilimnik  
15          material to the FBI's inquiry, no matter what his particular  
16          relationship was on that date.

17          At the hearing the defendant pointed me to Exhibit  
18          230 as support for its claim that actually Kilimnik was [REDACTED]  
19          [REDACTED] information to the United States, [REDACTED]  
20          [REDACTED] and,  
21          therefore, I should consider the Office of Special Counsel's  
22          representation that he was connected to Russian intelligence to  
23          be rank speculation.

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

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

8 I'm also not sure that Exhibit 230 proves the  
9 defendant's point. It is an August 18, 2016 email sent to an  
10 individual in the State Department, I believe at the U.S.  
11 embassy in Ukraine, in which Kilimnik voices his personal  
12 opinion about comments being made publicly about any affinity  
13 between [REDACTED]  
14 [REDACTED]  
15 [REDACTED]

16 I note that [REDACTED]  
17 [REDACTED] on the part of Kilimnik, as opposed to what might  
18 jump out as [REDACTED]  
19 because [REDACTED]  
20 [REDACTED]. And the focus of the  
21 [REDACTED]. He advances  
22 the view that, as he sees it, [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED].

1           It's also notable that in [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]. And as we know, Manafort was gone the next day.

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

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

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

20           I do note that in the FBI 302 the defendant asked me  
21 to review as an attachment to docket 503, the interviewee [REDACTED]

22 [REDACTED] noted that when [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]. So they have that in common.

1           The important thing is neither Exhibit 230 or any of  
2           the other information provided changes the outcome in my  
3           finding on this matter. And I find by a preponderance of the  
4           evidence that Mr. Manafort made intentional false statements to  
5           the FBI and the grand jury with respect to the material issue  
6           of his interactions with Kilimnik, including, in particular,  
7           the sharing of internal polling data.

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

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

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



1 are allegations in connection with the [REDACTED]  
2 [REDACTED] investigation into potential [REDACTED] involving  
3 [REDACTED]  
4 [REDACTED].

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

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

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

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

6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 They had the meeting. [REDACTED], but  
10 Manafort didn't recall the name. And at the meeting [REDACTED]  
11 said to [REDACTED], in Manafort's presence, that [REDACTED]

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]. Later, [REDACTED] told Manafort  
15 [REDACTED]. When contacted by [REDACTED] regarding  
16 what Mr. [REDACTED] called a [REDACTED], Manafort said he didn't  
17 discuss it with him, didn't want him involved, and ultimately  
18 just told him it had been handled.

19 Okay. Then he pled guilty and attended a debriefing  
20 session where representatives from [REDACTED]  
21 [REDACTED] were present. October  
22 5th, 2018, Exhibit 300, FBI 302, we've not got a different  
23 version. The first go-around is totally whitewashed. He  
24 leaves out any reference to [REDACTED] or the nature  
25 of the problem. He says after the [REDACTED] he got a call

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

5 Second time Mr. Manafort says, Oh, Mr. [REDACTED] called  
6 around the same time about a [REDACTED] and [REDACTED] mentioned  
7 that [REDACTED]. And he  
8 told [REDACTED] it would be handled and that he had no knowledge  
9 of [REDACTED]  
10 [REDACTED] had come out.

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

18 The fourth time he says [REDACTED] called, said [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

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[REDACTED]

[REDACTED]

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

[REDACTED].

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

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

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

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

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

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

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

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

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

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

18 MR. WEISSMANN: Can I just consult with --

19 THE COURT: Yes.

20 (Pause).

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

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

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

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

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

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

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

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

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

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

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



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

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

13 MR. WEISSMANN: That's fine.

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

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

17 The only thing I have left to talk about is the  
18 dispute over the redactions. And I guess my first question for  
19 you, Mr. Weissmann, is I went back to see if you had redacted  
20 your description of Mr. Kilimnik as having a connection to  
21 Russian intelligence, and you didn't. That's in the public  
22 record. So I don't then understand what the circumstance would  
23 be that would require us to redact out Mr. Downing's attempt to  
24 counter it. [REDACTED]

25 [REDACTED]

1 [REDACTED]  
2 And apparently this entire dispute was already been set out in  
3 the *Washington Post* today, so there's that.

4 I don't -- there's an article in the *Washington Post*  
5 that discusses the Havana meeting and discusses the fact that  
6 the government has called Mr. Kilimnik connected to Russian  
7 intelligence, and that there's evidence that he has  
8 considerable interaction with the State Department,  
9 something -- and so that's all in the newspaper.

10 But, putting aside whether it's there for a good  
11 reason or a bad reason, I'm not suggesting it, I don't  
12 understand what the harm would be for the limited additional  
13 disclosures that they want to make, given what you said on the  
14 record.

15 MR. WEISSMANN: Ms. Rhee is going to handle this.

16 THE COURT: All right.

17 MS. RHEE: So, Your Honor, the government does  
18 acknowledge that Mr. Weissmann, in the sealed proceeding, made  
19 an aside about what had already been previously put into the  
20 record in numerous public filings that predate the sealed  
21 hearing. And just to give you one example, from December 2018,  
22 on docketed document No. 73, there is the same singular  
23 reference to an FBI assessment that Mr. Kilimnik has a  
24 relationship with Russian intelligence. So that's already part  
25 of the public record and had not heretofore been responded to

1 or objected to from the defense.

2 So that is the reason why that remains part of the  
3 transcript in the sealed proceeding. The government's  
4 objections and the very particularized dispute here begin on  
5 page 76 of the transcript. And it isn't a request on the part  
6 of the government to redact the entirety of Mr. Downing's  
7 counter to the relevance and/or the significance of  
8 Mr. Kilimnik, but, rather, to the particular lines that  
9 characterize what at that point in time had not even been  
10 entered into the record, [REDACTED]

11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

22 So just to begin with, Your Honor, now that the  
23 underlying 302s are a part of the record, as attached by the  
24 defense on Friday's filing, you can see that [REDACTED]

25 [REDACTED]

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[REDACTED]

And so just as a first order matter, for purposes of making the document public, there is really no basis to support that characterization.

[REDACTED]

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I would also note, just furthermore, what was not redacted and may well be reflected now in a news article, is the record being replete with an acknowledgment on the part of the government that Mr. Kilimnik did have communications with the State Department and that they may have been rather

1 extensive.

2 THE COURT: Well, and I guess that's -- it seems like  
3 there may be a little bit more of what was blocked out that  
4 could come in, where what they're saying is he had  
5 communications with the State Department and that's not denied.

6 MS. RHEE: But those, I think, Your Honor, are  
7 already part of the now unredacted transcript.

8 My understanding of the dispute, and you can see it,  
9 I think, in what had been Attachment D to the original proposed  
10 redaction filing by the parties, the lines in dispute are on  
11 page 76, lines 13 through 16. [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

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[REDACTED]

THE COURT: [REDACTED] we have in the record the assertion that he has connections to Russian intelligence. I think there is a desire on the part of defense, that I understand, to have in the record the defense assertion, to say he was providing information to the United States government.

Let's put aside the characterization, just the fact of those ongoing communications which the government is not seeking to redact out.

MS. RHEE: Correct.

1 THE COURT: But, I'm just thinking that there may be  
2 some other words on the first page that would be consistent  
3 with what you're saying, because otherwise the discussion  
4 that -- what Mr. Weissmann says is not responding to anything,  
5 and it's not clear what it is Mr. Downing was saying.

6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21 So I'm wondering if you would object to: There are  
22 documents that you were given regarding Mr. Kilimnik's  
23 communications with former high-level State Department  
24 officials?

25 MS. RHEE: Government has no objection to that, Your

1 Honor.

2 THE COURT: All right. Let me talk to Mr. Downing  
3 for a minute about this. Or whoever is going to deal with  
4 this.

5 All right. He's using words, terms of art. I don't  
6 know how specific he meant to be when he used them. But that  
7 is what the government is objecting to, in a not-unreasonable  
8 manner. [REDACTED]

9 [REDACTED]  
10 [REDACTED]

11 [REDACTED] And then you have Mr. Weissmann's  
12 acknowledgment on the record. There were definitely  
13 communications that Mr. Kilimnik has with the people in the  
14 State Department. I don't think it's relevant, but he's not  
15 denying it. And so if that's something that you want to say  
16 publicly, it's said. Is that enough? [REDACTED]

17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23 [REDACTED] We're simply  
24 having the record establish, the best we can, that there are  
25 these communications going on that we've learned of through





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[REDACTED]

[REDACTED]

[REDACTED]

what you have is a document that demonstrates, yes,  
Mr. Kilimnik provided information to the United States embassy  
in the Ukraine, which Mr. Weissmann acknowledges on the record.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

THE COURT: I don't think the 302 really  
characterized it. It reflected that he talked to them a lot

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] there's no question that they spoke to him.

MS. RHEE: Right. And that's very clearly reflected  
on the record, that that is something that Mr. Weissmann and  
the United States government is able to acknowledge.

[REDACTED]

[REDACTED]

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[REDACTED]

THE COURT:

[REDACTED]

[REDACTED]

I mean, I think it's fair that even in the current public version, it says there is no question that Mr. Manafort had -- I don't think he meant Manafort, I think he meant Kilimnik, but he said Manafort had communications with people at the State Department. There's no question that Mr. Kilimnik did. So to the extent you want the public record to reflect the fact that he talked to the State Department, it's in there and I think it needs to be expanded a little bit.

[REDACTED]

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[REDACTED]

THE COURT: I want to get as full a discussion of this as possible. I think they're raising real concerns. I understand your point. I do think that, as I said more than once in my ruling, that this is just not relevant to what I have to do. It may be relevant to something, but it wasn't relevant to what I had to decide.

MR. DOWNING: Well, then it seems to be relevant to the Office of Special Counsel, otherwise they never had to say it, they never had to put it in one file. So if it obviously

1 is relevant to the Office of Special Counsel, it's relevant to  
2 Mr. Manafort.

3 THE COURT: You're still acting like these two  
4 things -- that one disproves the other, and I don't find that.

5 MR. DOWNING: I know you don't, that's clear. But it  
6 is important that there's no reason for this to be redacted.

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]

12 [REDACTED]  
13 we think it's very important that that allegation from  
14 Mr. Weissmann, on more than one occasion, about his being  
15 known, right, known to have connections to Russian  
16 intelligence, it needs to be countered on the public record.  
17 It's very important. It's very important to Mr. Manafort and  
18 that's why we raised the issue again. It's for nothing else  
19 but to balance that unsubstantiated allegation, which, quite  
20 frankly, why wasn't that sensitive enough not to mention in  
21 open court, or to put as a footnote in a filing that wasn't  
22 sealed? All of a sudden what we have to say to counter that or  
23 what can be said, it doesn't make any sense that all of a  
24 sudden it's now sensitive.

25 [REDACTED]

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[REDACTED]

So we do think it's very important for that allegation of his known ties to Russian intelligence be countered, and be countered in a balanced manner. [REDACTED]

[REDACTED]

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[REDACTED]

MS. RHEE: [REDACTED]

[REDACTED]

[REDACTED] I think, again, on  
the transcript phase and, you know, here you have, again, on

1 page 79, a full acknowledgment by Mr. Weissmann on the record  
2 that there were communications with the American embassy  
3 Ukraine, that there had been a search of State Department  
4 records of either direct or indirect communications and that  
5 there is no question that there were communications with the  
6 United States embassy by Mr. Kilimnik over that period of time.  
7 We think that that is sufficient to get out what is actually  
8 supported by the record.

9 THE COURT: All right. Mr. Westling, anything  
10 further you want to say?

11 MR. WESTLING: [REDACTED]

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED] I understand there's a need to be deft in what the  
17 Court is trying to do here and we appreciate your patience in  
18 working through it. But I can't, sort of, overstate the  
19 importance of trying to balance the record, [REDACTED]

20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED] So I would just ask the Court to continue to  
23 try to find a balance.

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



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

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

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

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

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

5 All right. I just have one question for my public  
6 minute order. The U.S. polling data, the fact that polling  
7 data was transferred or alleged to have been transferred at the  
8 August 2nd meeting, putting aside what was erroneously made  
9 public, is still sealed. So I should not use that in my minute  
10 order, is that correct?

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

12 THE COURT: Okay.

13 MR. WESTLING: We agree, Your Honor.

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

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

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

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

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MR. ANDRES: Thank you.

MR. WEISSMANN: Thank you.

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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 14th day of February 2019.

/s/ \_\_\_\_\_

Janice E. Dickman, CRR, RMR, CRC  
Official Court Reporter  
Room 6523  
333 Constitution Avenue NW  
Washington, D.C. 20001