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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America,)	Criminal Action
)	No. 19-CR-018
Plaintiff,)	
)	SENTENCING
vs.)	
)	Washington, DC
Roger Jason Stone, Jr.,)	Date: February 20, 2020
)	Time: 10:00 a.m.
Defendant)	

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

A P P E A R A N C E S

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* * *

1 THE COURTROOM DEPUTY: Good morning, Your Honor.

2 This morning we have Criminal Case Number 19-18, United States
3 of America v. Roger J. Stone, Jr. The defendant is present and
4 in the courtroom, Your Honor. The probation officer present
5 for these proceedings is Ms. Lustig.

6 Will counsel for the parties please approach the
7 lectern and identify yourself for the record.

8 MR. CRABB: Good morning, Your Honor. John Crabb and
9 J.P. Cooney for the United States.

10 THE COURT: Good morning.

11 MR. SMITH: Good morning, Your Honor. Appearing for
12 Mr. Stone, who is at the table. We have with us Bruce Rogow,
13 Tara Champion, Robert Buschel, and Seth Ginsberg --

14 THE COURT: All right. Good morning.

15 MR. SMITH: -- Your Honor.

16 Thank you.

17 THE COURT: Thank you.

18 We're here this morning for Mr. Stone's sentencing.
19 This is a public proceeding, and you're all welcome to observe.
20 But this is not the only place where one can view these
21 proceedings in the courthouse. There's also an overflow
22 courtroom where there's a video and audio monitor. Anyone who
23 plans to react audibly in these proceedings is welcome to watch
24 in the overflow courtroom and to say whatever you please. But
25 out of respect for all the parties and their safety, we're

1 going to maintain decorum here.

2 The final presentence report was filed in this matter
3 on February 13th. Have both the defendant and the defense
4 counsel had an opportunity to read it?

5 MR. GINSBERG: Yes, Your Honor.

6 THE COURT: All right. And the legal objections
7 regarding the application of the various adjustments under the
8 sentencing guidelines will be addressed in a few minutes.

9 But first, I want to ascertain with respect to
10 factual objections to the presentence report. I know there
11 were objections to the language in a number of the paragraphs
12 regarding the offense that were largely transmitted to the
13 probation office by the U.S. Attorney's Office, such as the use
14 of the word "associate."

15 I think that's a perfectly vague and vanilla term
16 that could fairly include someone who transmitted the number
17 and nature of emails here. It certainly applies to
18 Mr. Credico, who called himself a long-time friend.

19 I've read all the objections carefully, and I don't
20 believe that there were any that were not already rectified,
21 that require a change. I think they're an accurate summary of
22 the evidence that was introduced at trial. To the extent you
23 have concerns that the choice of vocabulary could have some
24 bearing on the defendant's future, your objections are all
25 noted in the presentence report.

1 I'm also not sure that it has any impact on the
2 defendant about the related case designation, and I have
3 already ruled on that issue twice.

4 But are there any facts that were set out that relate
5 to the defendant or his employment history or his medical
6 history or any other information that's incorrect?

7 MR. GINSBERG: None beyond what we stated in our
8 objections.

9 Should I speak at the lectern? Or is it okay to
10 speak from here?

11 THE COURT: I think, just for this point, we can hear
12 you. Obviously, when we get to hear your allocution, I'm going
13 to want to you at the lectern.

14 MR. GINSBERG: Understood. Thank you.

15 THE COURT: All right. All right. So --

16 MR. GINSBERG: With respect to the related case
17 issues, however, we respect the Court's ruling. But as stated
18 in our objections, there can be prejudicial impact from that
19 case being maintained in the presentence report. So we would
20 ask the Court to take that out of the presentence report,
21 regardless of its ruling regarding the applicability of the
22 designation. We think that it's unduly prejudicial to have it
23 in the presentence report itself.

24 And the only other issue is, we requested that the
25 letter of Mr. Credico become part of the presentence report,

1 and probation has declined to do that. And we would ask the
2 Court to direct that it become part of the presentence report.

3 THE COURT: Well, it's part of the docket. It's part
4 of the record of this case. So, I can't take one letter and
5 isolate it and make it part of the presentence report. It's
6 certainly going to be referenced in the proceedings this
7 morning, and it is docketed.

8 With respect to the related case designation, I don't
9 know that you've actually specified any particular prejudice
10 that could flow to the defendant, but in an abundance of
11 caution, I'm happy to have that removed from the presentence
12 report before it goes to the Bureau of Prisons.

13 All right. And with respect to your other
14 objections, I'm going to overrule those. I think they're set
15 forth in the presentence report.

16 And with that, I'm going to accept the presentence
17 report, as it's been revised, as findings of fact at
18 sentencing.

19 Other than the guideline calculation and the pending
20 motion for a new trial, which we will take up after the
21 sentencing, are there any other legal disputes that need to be
22 resolved?

23 MR. GINSBERG: None that I can think of at the
24 moment, Your Honor.

25 THE COURT: Okay. All right.

1 In addition to the presentence report, which I've
2 reviewed, I've received and reviewed additional materials
3 concerning the defendant. Those include the government's
4 sentencing memorandum, Docket 279, submitted to the Court on
5 February 10th by the newly appointed U.S. Attorney for the
6 District of Columbia Timothy Shea and the four assistant United
7 States attorneys and special assistant United States attorneys
8 that tried the case.

9 I also received the government's February 11th
10 supplemental and amended sentencing memorandum, Docket 286,
11 also submitted by U.S. Attorney Shea and the assistant
12 United States attorney for the District of Columbia, who is the
13 acting chief of the criminal division. I note that the initial
14 memorandum has not been withdrawn.

15 I also received the defendant's sentencing
16 memorandum, Docket 280, with a number of letters and
17 attachments, including letters from defendant's family members:
18 His wife; his stepdaughter; his step-granddaughter, who is an
19 adult; and, his sister-in-law; a letter from Randy Credico, who
20 was a witness in the case.

21 Letters from family, friends, and colleagues, Rolando
22 Conesa, John Morgan.

23 A letter from Jan Webster, the wife of an NFL player
24 who doesn't know the defendant but was aware of his advocacy on
25 behalf of NFL players with brain injuries.

1 A friend, Rabbi Henry Sheinkopf; Christian Josi; an
2 individual named Norm Kent; Pastor Michael Grady of the St.
3 Anthony Catholic Church.

4 Another friend and spiritual brother -- as he
5 describes himself -- Dr. W. Randy Short.

6 Some attorneys who have worked with Mr. Stone are
7 Anthony Rupp, III; Carl Paladino, a former candidate for New
8 York state governor.

9 Other friends or friends of friends, Albert Owler,
10 Sharon Kaplan, Michael Caputo.

11 An attorney, Paul Jensen; colleague, Jane Bennett; a
12 friend and former executive assistant at Black, Manafort, Stone
13 and Kelly, Lynn Conforti.

14 Friends Frank Morano, John B. McGowen. An individual
15 named Itzhak Bak.

16 Brian David Hill, an individual who turned to
17 Mr. Stone for help seeking a pardon.

18 Other individuals, Gerard Houser, Kathleen M.
19 Coleman.

20 Also, I've received a number of letters from
21 individuals who describe themselves as concerned citizens in
22 the past few days. I've docketed as many of the letters as I
23 could as part of the docket.

24 I want you to know that I have read and that I
25 appreciate all of the letters and I've considered all of the

1 sentencing materials.

2 In a criminal case, there's a statute that tells me
3 how I'm supposed to go about deciding what the sentence should
4 be, it's 18 U.S. Code Section 3553. Section A of that statute
5 lists a number of important factors I'm supposed to consider,
6 and the advisory sentencing guidelines are one of the factors
7 that I'm required to consider in determining the appropriate
8 sentence for this offense.

9 I'm required to calculate what the guidelines would
10 recommend in every case. And the sentencing statute says that
11 the Court shall impose a sentence within the guideline range,
12 unless the Court finds that there exists an aggravating or
13 mitigating circumstance of a kind or to a degree not adequately
14 taken into consideration by the Commission in formulating the
15 guidelines.

16 For those of you who are new to this, or who woke up
17 last week and became persuaded that the guidelines are harsh
18 and, perhaps, sentencing shouldn't be driven by the rigid
19 application of a strict mathematical formula and that
20 individual consideration is, perhaps, required, I can assure
21 you that defense attorneys and many judges have been making
22 that point for a long time, but we don't usually succeed in
23 getting the government to agree, and maybe that will continue.

24 In any event, the Supreme Court has made it quite
25 clear, as both parties have pointed out and as this Court was

1 already well aware, that the guidelines are advisory, not
2 mandatory, and that I have the authority and the duty to craft
3 a sentence that considers all the statutory concerns.

4 Indeed, the Supreme Court has said that the statute
5 requires an individual assessment of all of the factors. So, I
6 plan to address each of them in some detail at a later point in
7 these proceedings. But I'm going to begin, as I always do,
8 with the calculation under the sentencing guidelines, and note,
9 as I always do, that that's only one part of the analysis.

10 And the guidelines begin with the offense or offenses
11 of conviction. Here, Mr. Stone was convicted after a trial by
12 a jury of seven counts.

13 Count 1: Obstruction of a legal proceeding; that is,
14 a congressional investigation, in violation of 18 U.S. Code
15 Section 1505, and that statute provides for sentence of up to
16 five years imprisonment or a fine of \$250,000.

17 If anybody in this room has sunglasses on, unless
18 there's a medical reason, they need to take them off.

19 Counts 2, 3, 4, 5, and 6 are five separate counts of
20 making a false statement to the government, in violation of
21 18 U.S. Code Section 1001. The statute provides for a sentence
22 of up to five years imprisonment on each count.

23 And Count 7, tampering with a witness, in violation
24 of 18 U.S. Code Section 1512(b)(1), which provides that
25 whoever, separate and apart from lying himself, knowingly uses

1 intimidation, threats, or corruptly persuades another person
2 with the intent to influence, delay, or prevent his testimony
3 in an official proceeding can face a penalty of up to 20 years
4 imprisonment.

5 The jury found -- and I note that the defendant did
6 not even contest this count in his motion for judgment of
7 acquittal at the close of trial, but simply submitted on the
8 evidence -- that the defendant knowingly and intentionally
9 corruptly persuaded or attempted to corruptly persuade Randy
10 Credico with the intent to influence, delay, or prevent his
11 testimony in an official proceeding.

12 There's no mandatory minimum sentence applicable to
13 any count here, and it's entirely up to the Court whether the
14 sentences for each should be consecutive or concurrent.

15 The guidelines, however, group the offenses for
16 calculation purposes. §3D1.2(b) says: If there's a common
17 scheme or plan and the same victim, you combine the counts when
18 you figure out which guideline applies. And, according to that
19 rule, you're supposed to use the guideline that would produce
20 the highest offense level. And that here is the obstruction of
21 justice guideline.

22 The guidelines provide a base level for each offense,
23 and the base offense level for the offense of obstruction of
24 justice under §2J1.2 puts you at Level 14. That's where you
25 start.

1 When you calculate the guidelines, the guidelines for
2 any particular offense also recognizes certain specific offense
3 characteristics, and the presence of those can increase or
4 decrease the offense level from there.

5 Under the obstruction of justice guideline, there is
6 a specific offense characteristic, §2J1.2(b)(1)(B), that says:
7 If the offense involved causing or threatening to cause
8 physical injury to a person or property damage in order to
9 obstruct the administration of justice, you add eight levels.

10 The applicability of this guideline to this case is
11 disputed. The defense opposed adding this enhancement in its
12 memorandum, which I've read. But if there's anything you wish
13 to say about the guideline in particular, you're welcome to do
14 so now.

15 MR. GINSBERG: Thank you, Your Honor, for the
16 opportunity to address this issue.

17 There are situations in which a person's reputation
18 is such that words, even though on their face they may not be
19 threatening, the law imputes a threat to those words. And this
20 sometimes comes up in extortion cases.

21 Here, we submit that this is the exact opposite.
22 Even though the words, on their face, could be read as
23 threatening, in the context of the dialogue between Mr. Credico
24 and Mr. Stone, it's our position that these words -- it's not
25 that they weren't a serious enough threat to trigger the

1 guidelines, as the government suggests in the cases that it has
2 cited, but, rather, that the words themselves did not
3 constitute a threat at all.

4 Mr. Stone is known for using rough, provocative,
5 hyperbolic language. Mr. Credico knew that. They have a long,
6 20-year relationship. And in the context of that private
7 conversation, Mr. Credico understood that it was just Stone
8 being Stone; he's all bark, no bite. And, therefore, it's our
9 position that those words do not trigger the guideline offense
10 level increase because there's no threat at all.

11 Now, there's been some talk about Mr. Credico being
12 concerned that these words could become a threat if they were
13 communicated to the public. But the keyword there is "if."
14 Mr. Stone did not threaten to communicate these words to the
15 public. There's no indication of that in the context of their
16 communications or otherwise in the record.

17 So, given Mr. Credico's subjective understanding,
18 based on their longstanding relationship, the words themselves,
19 though threatening on their face, in this context do not
20 trigger the guideline because they are not threatening at all.

21 THE COURT: Do you have a case that says that the
22 victim's subjective understanding is the linchpin of the
23 analysis?

24 MR. GINSBERG: I do not have a case that says that
25 the victim's subjective understanding is the linchpin.

1 However, the cases on which the government relies all involve
2 situations where the victim did understand the communication to
3 be a threat.

4 In *United States Versus Plumley* the words in that
5 situation were: I will kick your asses.

6 The case involved underlying violence. There was no
7 violence underlying this case. And the dispute there wasn't
8 that the words didn't constitute a threat. First, the
9 defendant said: I never said that. And then he said: Well,
10 but if I said it, it wasn't serious enough. It's not a serious
11 level threat.

12 But the victim understood it to be a threat.

13 THE COURT: What is your position about whether I can
14 consider the grand jury testimony that was filed from
15 Mr. Credico that's on the docket in this case in connection
16 with this issue?

17 MR. GINSBERG: Well, the Supreme Court says that Your
18 Honor can consider almost anything. But I think what we have
19 here is trial testimony where he said he didn't feel
20 threatened.

21 And we have a letter where not only does he say he
22 didn't feel threatened, he says: If I -- most notably was
23 after Mr. Stone's defense attorney asked if I had ever thought
24 Mr. Stone was going to steal or harm my dog Bianca. My answer
25 was an emphatic No. At the time, I was hoping he would follow

1 that question with another, asking if I had ever personally
2 felt threatened by Mr. Stone. The answer would have been the
3 same. I never in any way felt that Stone himself posed a
4 direct physical threat to me or my dog. I chalk this up to
5 bellicose tirades, to Stone being Stone; all bark, no bite.

6 So, that is what Mr. Credico wants the Court to
7 consider. The Court is, of course, free to consider anything
8 that it deems relevant, but I think the trial testimony and the
9 submission to the Court in the context of sentencing should be
10 the most impactful.

11 The other cases that the government cites, similarly,
12 involve threats that were understood by the victim to be
13 threatening. In *United States versus Bahkairi* there were
14 photos sent to the victim and to -- with -- depicting the
15 victim's family members, indicating that he intended to harm
16 them. The defendant -- the defendant displayed a rifle,
17 suggesting that he had the means and the willingness to carry
18 out the threats.

19 In *United States versus Smith*, a defendant said: I'm
20 going to kick her ass.

21 But what was the context there? The context was she
22 burst into someone's home uninvited, unannounced, and said:
23 Your daughter is pressing charges against my son. He's going
24 to be in jail because of what your daughter is saying. I'm
25 going to kick her ass.

1 In all of those cases, the victims felt threatened.
2 So, no, I do not have a case that says that the subjective
3 understanding of the victim is controlling. But, I also don't
4 have any other cases where the subjective understanding of the
5 victim was such that he knew it wasn't a threat. And in this
6 instance, this eight -- it's an eight-level increase, as the
7 Court is aware. That's a very blunt instrument. You know --

8 THE COURT: I have the authority to deal with that
9 when we get to variances, wouldn't you say?

10 MR. GINSBERG: Yes. And I'm hoping you will.

11 But in the first instance, I do believe that the
12 correct application of the guidelines is important, because the
13 degree of variance is going to be based, I would assume, in
14 part, on where we start. And ratcheting up the offense level
15 here eight levels based on a statement that was made in
16 private, there was no threat of publication, and the victim
17 himself said he didn't -- he never viewed it as a threat, and
18 the nature of the relationship. It's a 20-year relationship.

19 THE COURT: All right. I think I understand your
20 argument.

21 Thank you.

22 MR. GINSBERG: Thank you, Judge.

23 THE COURT: Mr. Crabb, the initial memorandum filed
24 by the government included this enhancement in its calculation.
25 The second memo doesn't actually contest the applicability of

1 the guideline. It says only that it's been disputed by
2 Mr. Credico, who asserts that he didn't perceive a genuine
3 threat. Although, it then acknowledges, quote, Mr. Credico's
4 subjective beliefs are not dispositive as to this enhancement.

5 Are you prepared to address this or any other
6 guideline provision this morning?

7 MR. CRABB: Yes, Your Honor, I am.

8 THE COURT: All right. The memo says that the total
9 offense level is, quote: Arguably, 29.

10 And the enhancements, the second ones, are, quote:
11 Perhaps technically applicable, close quote.

12 What exactly are you trying to tell me here?

13 MR. CRABB: Your Honor, our position here is that
14 this enhancement applies, and we ask the Court to apply it, the
15 eight-level enhancement for threats, pursuant to 2J1.2(b)(1).
16 As the Court's indicated through its questions, there's no
17 subjectiveness requirement for this enhancement to apply.

18 In fact, the cases that the government has previously
19 cited, and we stand by, make it clear that there's no
20 requirement of seriousness with respect to the threat. And the
21 fact is that the defendant threatened both Mr. Credico's
22 personal safety and his pet. And we believe this enhancement
23 applies, and we ask the Court to impose it in calculating the
24 appropriate guideline range here.

25 THE COURT: All right. Thank you.

1 I conclude that the adjustment does apply, and so
2 adding eight levels to where we started, at Level 14, we're now
3 up to Level 22.

4 The evidence included numerous written
5 communications, including emails and texts in which the
6 defendant repeatedly urged Mr. Credico to assert his Fifth
7 Amendment privilege against self-incrimination, to claim a
8 failure of recollection, to do a Frank Pentangeli, a shared
9 reference to *The Godfather* that Credico immediately understood
10 to mean feign a lack of knowledge, or to straight out lie, all
11 to support the false narrative advanced by Stone, that Credico
12 had been an intermediary between Stone and Julian Assange, to
13 whom Stone publicly referred in early August of 2016.

14 This effort began in the fall of 2017, when the
15 committee sought Credico's testimony, and it continued when
16 Stone and Credico became of interest to the Office of Special
17 Counsel investigation.

18 On April 9, 2018, as Credico continued to balk and he
19 continued to insist, as he had before Stone even testified,
20 that Stone knew full well that Credico didn't even know
21 Julian Assange at the time Stone made his public statements,
22 defendant Stone emailed him and threatened: I'm going to take
23 that dog away from you. Not a fucking thing you can do about
24 it either because you are a weak, broke piece of shit. I will
25 prove to the world that you are a liar, close quote.

1 Mr. Credico, who had no wife or children, was
2 extremely close to his dog of 12 years, and Roger Stone knew
3 that well. Later, on the same day, defendant Stone also wrote
4 to Mr. Credico, quote: I am so ready. Let's get it on.
5 Prepare to die, cocksucker.

6 Defendant's memorandum refers to this as banter,
7 which it hardly is. But the defendant also emphasizes that
8 Credico testified that he was not actually scared that Stone
9 would hurt his dog, and that Credico has since said that he
10 didn't think that Stone posed a physical threat to him.

11 I note, since the defense has informed me that I can
12 consider this material, that that is not consistent with his
13 grand jury testimony, which was closer in time to the actual
14 threats, at which time he said he was hiding and wearing a
15 disguise and not living at home because he was worried, if not
16 about Trump, about his -- about Stone, but about his friends.
17 So, I think his level of concern may have changed over time.

18 The law makes it clear that §2J1.2(b)(1)(B) of the
19 guidelines, quote, Does not impose an additional seriousness
20 requirement beyond the fact of a violent threat, close quote.
21 That's the *United States versus Bahkairi*, 714 F.3d 1057 at
22 1061, from the Eighth Circuit, quoting *United States versus*
23 *Plumley*, 207 F.3d 1086.

24 The subjective affect of a threat on a recipient or
25 whether the threatened injury or damage was attempted or

1 carried out is not the triggering event. Application of the
2 enhancement turns on whether the defendant made a threat, and
3 that's all. That's *United States versus Bender*, 927 F.3d 1031
4 at 1033, Eighth Circuit, at -- from 2019: The enhancement does
5 not require that Bender's acts caused some type of harm, such
6 as death, injury, or even an apprehension of retaliation. The
7 defense asserted in its pleadings that the enhancement doesn't
8 apply to lesser threats, but none of the cases it cites stands
9 for the proposition that the seriousness of a threat determines
10 the application of the enhancement.

11 In *United States versus Sanchez*, the Eighth Circuit,
12 again, 676 F.3d 627, rejected arguments that the enhancement
13 didn't apply given that the defendant didn't mean for her
14 statements to be threatening or to be communicated to the
15 witness because neither argument addresses whether the threats
16 made were, in fact, threats.

17 The guideline plainly applies. Even if one considers
18 the threat to the dog to be property damage, that's covered
19 too. Application Note 5 explains that the guideline includes
20 threats of property loss or damage, quote, Threatened as a
21 means of witness intimidation.

22 But as the second government's memorandum appears to
23 be suggesting, as the defense has argued, the vague nature of
24 the threat concerning any physical harm and its actual impact
25 on Mr. Credico can be considered when I determine whether this

1 sentence should fall within the guideline range or not, and
2 they will.

3 So we're still at Level 22 so far, and we're still
4 calculating the guidelines.

5 Returning to the guidelines for obstruction of
6 justice, the offense of conviction, we're still under the
7 offense level and trying to figure that out. There is another
8 specific offense characteristic which could apply, which is
9 §2J1.2(b)(2). If the offense resulted in substantial
10 interference with the administration of justice, you add three
11 levels.

12 The defense says, well, I've already been sentenced
13 for the obstruction of justice in Count 1. But that's not a
14 proper objection to a specific offense characteristic for
15 obstruction of justice. The way the guidelines work is they
16 say an obstruction of justice, you start at Level 14, but then
17 there's other factors that could take it up from there. One
18 was the threats. Another one is the substantial interference.

19 The government includes this enhancement in its
20 memorandum No 1. It didn't take it back in Memorandum No. 2.

21 Do you wish to address it's applicability here?

22 MR. CRABB: Yes, Your Honor.

23 We believe this enhancement, 2J1.2(b)(2), applies, as
24 we set forth in both of our memoranda. And we ask the Court to
25 consider, most specifically, the appropriate basis for this

1 application is the offense of conviction does not address
2 whether or not the obstruction was successful. This
3 enhancement specifically addresses that, the successfulness of
4 the obstruction.

5 Here, the defendant's obstructive behavior was
6 successful and we ask the Court to impose this enhancement.

7 THE COURT: All right.

8 The defense, again, I believe, provided me a
9 memorandum on this subject. But, if you would like to
10 emphasize points between the argument, I'll give you the
11 opportunity to do that.

12 MR. GINSBERG: As indicated in our memorandum, the
13 only case that we have found that addresses the applicability
14 of this guideline offense level increase in the context of
15 congressional testimony found that it does not apply in that
16 context, unless there is a showing that there was an
17 unnecessary substantial expenditure of governmental or judicial
18 resources.

19 The government has not offered any evidence that that
20 is the case. Probation has not indicated any evidence that
21 that is the case. And our view is that, therefore, because
22 this obstructive conduct of which Mr. Stone stands convicted
23 did not occur in the context of a criminal investigation or
24 judicial proceeding, the guideline does not apply based on the
25 commentary to the guideline 2J1.2, Comment 1. And that case is

1 *United States versus Weissman*, 22 F.Supp. 2nd 187, in the
2 Southern District of New York, from 1998.

3 The Court said there: Because Weissman's conduct
4 occurred within the context of a congressional inquiry rather
5 than a criminal investigation or a judicial proceeding, the
6 only circumstance specified in the application notes pertinent
7 to the case at bar is the, quote, unnecessary expenditure of
8 substantial governmental or court resources.

9 There's been no showing of that here. So our first
10 part of this is that the guideline simply doesn't apply because
11 the congressional testimony and other conduct related to the
12 congressional investigation doesn't trigger the guideline.

13 Even were the Court to find that the guideline is
14 applicable, however, the government takes a fairly myopic view
15 of the impact of Mr. Stone's conduct. The government's
16 argument is, essentially, the House Committee that investigated
17 these issues was denied access to Mr. Credico and was denied
18 access to Mr. Corsi and various documents, mostly the
19 communications between the two gentlemen and Mr. Stone.

20 In making that argument, however, the government
21 ignores the broader context, which is that there were other
22 investigations simultaneously going on in which this same
23 conduct was investigated. Specifically, the Special Counsel's
24 Office also investigated these same things.

25 THE COURT: Well, Mr. Stone tried to get Mr. Credico

1 not to testify before them also; isn't that correct?

2 MR. GINSBERG: Mr. Stone does not stand convicted of
3 interfering with Mr. Credico's testimony in any other
4 proceeding but before the House. And, in fact, the Special
5 Counsel's Office did speak to Mr. Credico.

6 They not only spoke to Mr. Credico, Mr. Credico
7 provided them his computers, backup hard drives, access to old
8 versions of all of his documents, his cell phones, his private
9 communications, both text messages, email communications,
10 communications over encrypted applications. They had an
11 unusually large amount of material from Mr. Credico. They also
12 spoke with Mr. Corsi, at length, numerous times.

13 And, effectively, the Special Counsel's Office came
14 to the same conclusion that the House came to, which is that
15 there was no evidence of any coordination, collusion, or
16 conspiracy between any member of the Trump campaign and any
17 agent of the Russian government involving the obtaining and
18 dissemination of emails from the Democratic National Committee
19 and others.

20 So --

21 THE COURT: Well, I think there were certainly some
22 indications that, perhaps, the witnesses had not been entirely
23 forthcoming, also. But, that's neither here nor there. I
24 don't think that's the decisive issue here.

25 MR. GINSBERG: Agreed. And the -- whether they were

1 entirely forthcoming before the Special Counsel's Office or
2 not, one can assume that they would have been similarly
3 forthcoming before the House Committee, had they testified
4 there.

5 The bottom line is, at the end of the day, the
6 so-called denial of Mr. Credico and Mr. Corsi and their various
7 communications to the House Committee, based on the outcome of
8 the Special Counsel's Office, indicates that, in effect,
9 Mr. Stone deprived the House of information that was,
10 ultimately, of no investigative value, of any materiality.

11 And I note that the guideline requires not just some
12 interference, but substantial interference. That's the
13 increase that we're talking about, whether the conduct had
14 substantial interference with the administration of justice.

15 So, you have a situation where we have a perfect
16 example of what would have happened if they had Corsi and
17 Credico and their communications. Ultimately, the
18 conclusion's, essentially, the same. And so I think the myopic
19 view of just looking at the House Committee report and saying:
20 Well, it made these conclusions and it didn't have these
21 people, therefore, there was an impact, that ignores the big
22 picture.

23 And, again --

24 THE COURT: Well, didn't you and I try to talk about
25 the bigger picture and his threats to Credico to not testify

1 and not talk to the FBI and not talk to Office of Special
2 Counsel? Didn't you just tell me I'm not supposed to think
3 about that, and I'm only supposed to look at what happened with
4 the House, because that's all he's been convicted of?

5 MR. GINSBERG: I didn't say that you're not supposed
6 to think about that. I said that the impact of his conduct
7 with respect to this guideline is how did it impact the
8 administration of justice?

9 THE COURT: All right. And you're saying that the --

10 MR. GINSBERG: The government --

11 THE COURT: -- lack of impact, when they actually got
12 the information at the end of the day in the other
13 investigation, bears on the answer to that question.

14 MR. GINSBERG: I think it's dispositive. And I think
15 that the government's focus, the evidence that the government
16 points out, is that the way that you determine the impact is by
17 saying the House didn't have Corsi, Credico, or their
18 communications. But, we know when the Special Counsel's Office
19 had Corsi, Credico and their communications, they didn't reach
20 a different result.

21 So it's very hard, I think, to conclude that the
22 denial of those three things to the House Committee had a
23 substantial impact. Perhaps the report would have been
24 somewhat different, but there can't be any material or
25 substantial difference in their report as compared to the

1 Special Counsel's Office report.

2 THE COURT: All right.

3 Anything else?

4 MR. GINSBERG: Not on this point. But, if I just may
5 briefly correct one thing.

6 I apologize, but I've done my very best to become as
7 familiar with the record as I have been able in the time that
8 I've been involved with this case.

9 But, it was brought to my attention that -- I don't
10 know that this will change Your Honor's ruling in any way, but
11 it was brought to my attention that Mr. Credico's grand jury
12 testimony was not part of the record of these proceedings in
13 any way, shape, or form, and the government hasn't offered it
14 in support of the threat level --

15 THE COURT: It was an exhibit that's on the docket.
16 It was sealed, but it existed.

17 MR. GINSBERG: Okay.

18 THE COURT: I forget who gave it to me at this point,
19 but it's on the docket. I don't have the number in front of
20 me. But --

21 MR. GINSBERG: I take Your Honor's word.

22 THE COURT: Otherwise, I would have never had the
23 opportunity to see it.

24 MR. GINSBERG: Then I stand by my prior position.

25 THE COURT: All right.

1 I'm going to rule that the guideline applies. Adding
2 the additional three levels, we get to Level 25.

3 Substantial interference with the administration of
4 justice, as defined by the guideline, includes a premature or
5 improper termination of a felony investigation, an indictment,
6 verdict, or any judicial determination based on perjury, false
7 testimony, or other false evidence, or the unnecessary
8 expenditure of substantial governmental or court resources.

9 Obviously, if the offense of obstruction of justice
10 can specifically apply to a congressional investigation, then,
11 I believe, the specific offender characteristics that relate to
12 obstruction of justice can apply to a congressional
13 investigation. And I do believe that the record supports the
14 notion that governmental resources were unnecessarily expended.

15 Mr. Stone lied, and he said he had no documents, no
16 emails or texts with his claimed intermediary with
17 Julian Assange; no emails or texts with people associated with
18 the campaign concerning his contacts with WikiLeaks. So the
19 committee did not issue a subpoena for the trove of material
20 Stone had in his possession and lost that opportunity to
21 consider them and to delve further.

22 They spent considerable resources and they wasted
23 them going after Credico as the supposed intermediary. They
24 lost the benefit of his testimony when he acceded to pressure
25 from Stone not to testify, and they didn't hear from Corsi, who

1 wasn't identified by Stone at all.

2 This obstruction lead the committee to reach
3 incorrect conclusions about the lack of evidence that would
4 contradict Stone's claims.

5 The defense argument that, well, eventually, the
6 Office of Special Counsel got the information and none of it
7 proved anything is completely beside the point, and it is
8 highly speculative. He misdirected the committee by denying
9 the existence of evidence of communications, trying to pass
10 information to and from Julian Assange, and evidence reflecting
11 his reports on those communications to the campaign and it led
12 to an inaccurate, incorrect, incomplete report.

13 The defendant's arguments about his relative
14 insignificance to the matters under investigation, again, go to
15 the question of a variance and not the applicability of the
16 guideline.

17 So, we're now at Level 25 for the offense itself, but
18 the guidelines say we're not finished yet. The guidelines also
19 have adjustments that apply to the offender, and they can take
20 the calculation up or down based on the presence or absence of
21 various aggravating and mitigating factors.

22 The presentence report did not include an adjustment
23 for the defendant's role in the offense. However, the
24 government's memorandum did. And it asked me to add two points
25 under §2B1.2(b)(3)(c) for an aggravating role, because his

1 criminal activity was otherwise extensive. I think they meant
2 §2B1.1(c), which says: If the defendant was an organizer,
3 leader, manager, or supervisor in any criminal activity that
4 involved five or more participants or was otherwise extensive.

5 Does the government want to address this enhancement?

6 MR. CRABB: Yes, Your Honor.

7 THE COURT: All right.

8 MR. CRABB: And first, if I may, Your Honor, I
9 believe we did have a typographical error. We were referring
10 to 2J1.1(b)(3)(C), is, I believe, what we had intended to
11 reference with respect to the extensive of scope, planning and
12 preparation of the obstruction. I apologize if there's a
13 typographical error in our filing.

14 THE COURT: All right. Well, I wasn't -- I haven't
15 even looked at that because you said 2B1, which is role in the
16 offense, and, I think, you called it role in the offense, and
17 that's what the defense responded to. And that relates to the
18 number of participants involved in the scheme, and so I don't
19 think it applies here because there's really no indication that
20 anybody was involved in this other than Mr. Stone,
21 notwithstanding his attempt to get Mr. Credico involved.

22 So, what are you pointing me to now?

23 MR. CRABB: Again, I apologize for our mistake there,
24 but, we're asking the Court to consider 2J1.1(b)(3)(C).

25 MR. GINSBERG: Your Honor, it's actually 2B1.2.

1 MR. CRABB: Excuse me, again.

2 Your Honor, this particular adjustment to the
3 guidelines applies if the obstructive conduct was extensive in
4 scope, planning, or preparation. It's our position, based on
5 the record before the Court, that there was extensive scope in
6 the obstructive behavior here.

7 As the Court is well aware, there were a series of
8 lies made to the committee. There were false letters submitted
9 to the committee. There was the obstructive behavior with
10 respect to Mr. Credico.

11 Based on those facts, we believe this enhancement
12 applies, showing that the obstructive behavior was extensive in
13 scope.

14 THE COURT: All right. Has the defense been advised,
15 before this minute, that this is what we're talking about?

16 MR. GINSBERG: Yes, Your Honor.

17 THE COURT: All right. Someone might have mentioned
18 it to me. But, I'll give you an opportunity to address it.
19 And if somebody has a copy of the guidelines and would like to
20 hand them up and let me look at it, that would be useful also.

21 MR. GINSBERG: I have them.

22 THE COURT: So, it says: If the offense, A, involved
23 the destruction, alteration, or fabrication of a substantial
24 number of records, documents, or tangible objects; B, involved
25 the selection of any essential or especially probative record,

1 document, or tangible object to destroy or alter; or C, was
2 otherwise extensive in scope, planning, or preparation.

3 And I think C is somewhat -- is part of a series, and
4 it derives some meaning for the two that came before, increase
5 by two levels.

6 All right. Go ahead.

7 MR. GINSBERG: It's our view that this does not
8 apply. The cases that address this, in particular, the two
9 that the government cited, involve much more extensive conduct.
10 Here, essentially, all you have is five false statements in the
11 context of very lengthy testimony, and, yes, a long stream of
12 text messages. But, basically, that's what it is, is a stream
13 of text messages between two people.

14 The conduct here does not fall outside the normal
15 realm of the guideline such that it is extensive in scope. It
16 was fairly focused in its scope. It wasn't extensive in its
17 planning. I think there was very little evidence of planning
18 or preparation.

19 The case that the government relies on is
20 *United States versus Petruk*, 836 F.3d 974, from the Eighth
21 Circuit in 2016. And the Court in that case found that the
22 defendant had concocted an elaborate plan to manufacture false
23 evidence of a confession. And in doing that, the defendant,
24 who was incarcerated, enlisted someone on the outside to find a
25 third party to pretend to be someone who was involved in the

1 offense. The defendant drafted multiple versions of a script
2 that he wanted the supposed person involved in this conduct to
3 read. He sent that information to his would-be coconspirator
4 under the name of another inmate to avoid detection.

5 He used coded language in doing it so that if it were
6 intercepted, it would not be understood. And he created a
7 system where he had this person prepared to read this false
8 script in order to exculpate himself, with the idea that it
9 would be overheard on the prison telephones by the prison
10 authorities and then be brought to the attention of the Court
11 and introduced as false evidence in a trial.

12 That is certainly a lot more planning and preparation
13 than anything that went on here.

14 THE COURT: All right. The probation office did not
15 find this enhancement to be applicable and neither do I. I
16 don't think that we're looking at extensive scope or planning.
17 As is contemplated by that guideline, I don't think it applies
18 to these facts. So, I'm not going to add two more levels at
19 this point for that. So, we're still at Level 25.

20 Now, however, we do go on to other sections of the
21 guidelines that look to other aggravating and mitigating
22 factors, and both the presentence report and the government's
23 memorandum point to §3C1.1, obstructing or impeding the
24 administration of justice. And that is this prosecution now
25 we're talking about, not the House investigation, that adds two

1 levels.

2 And the guideline says: If the defendant willfully
3 obstructed or impeded or attempted to obstruct or impede the
4 administration of justice with respect to the investigation,
5 prosecution, or sentencing of the instant offense of
6 conviction, and the obstructive conduct related to his offense
7 of conviction and any relevant conduct or a closely related
8 offense, you increase by two levels.

9 And the government's memorandum, the first one, said
10 it applies. It detailed in five pages the defendant's
11 post-indictment attempts to stoke public sentiment against the
12 prosecution and the Court, and to bring media attention to the
13 case, all in violation of Court orders, and this series of
14 inaccuracies, contradictions, and omissions in his
15 representations to the Court.

16 The supplemental memorandum says: Well, this
17 enhancement overlaps, to a degree, with the offense conduct in
18 this case.

19 I'm not sure I understand that assertion. As
20 proposed, the guideline is not meant to cover any
21 pre-indictment conduct at all. And, yes, the guideline says it
22 doesn't apply if obstruction of justice is the charge of
23 conviction; but, that's not true, say the guidelines, if there
24 is further obstruction during the prosecution.

25 The government also said in its supplemental memo:

1 It's unclear to what extent the defendant's obstructive conduct
2 actually prejudiced the government at trial.

3 But that isn't the test. Obstruction is an attempt;
4 it doesn't have to be successful. And the administration of
5 justice is a little bit more than whether they got in the
6 prosecution's way.

7 So, what is the government's position today on
8 whether this applies or doesn't apply?

9 MR. CRABB: Your Honor, the government's position is
10 that the guideline's enhancement set forth in 3C1.1 applies
11 here for the reasons set forth in the original sentencing
12 memorandum.

13 THE COURT: All right. Is there anything further you
14 want to say about it?

15 MR. CRABB: Not unless the Court has questions for
16 me.

17 THE COURT: Okay. Fine.

18 The defense says: Well, these issues ceased well
19 before the trial began.

20 And that, unfortunately, does not appear to be true,
21 given the reporting by Alex Jones of Mr. Stone's reaching out
22 to him while the trial was ongoing.

23 The defense also says, quote: As was made plain
24 during the relevant proceedings, the conduct in question
25 resulted, in large measure, from the exacerbation of a

1 longstanding battle with anxiety that was heightened during the
2 pendency of this action, close quote.

3 I'm not sure that was established with evidence at
4 any point in the proceeding. I'm certainly willing to grant
5 that being a criminal defendant did increase Mr. Stone's
6 anxiety, but the conduct is exactly the sort of provocative
7 public statement, not necessarily grounded in truth, that the
8 defendant has been trading in for years, as the evidence at
9 trial established, and as I was just told with respect to the
10 first enhancement.

11 Even after he first denied and then acknowledged
12 personally selecting the crosshairs photo, he sat there telling
13 me: Yes, I'm going to follow any restrictions on talking about
14 the investigation; but, forgetting to mention that he had a
15 book on the subject wending its way to publishers as we spoke.
16 I certainly haven't seen anything that would attribute that to
17 mere anxiety.

18 The defense also says his conduct, quote: Didn't
19 cause significant further obstruction of the prosecution of the
20 case, close quote.

21 And, so, I would like the -- to hear the defense on
22 this. But, first, I would like to know where you get that test
23 from. Do I have to find significant further obstruction of the
24 prosecution of the case for this guideline to apply?

25 MR. GINSBERG: One moment, Your Honor.

1 (Pause.)

2 MR. GINSBERG: With respect to the test, Your Honor,
3 the -- such an adjustment, quote: Is not to be applied to the
4 offense level for obstruction of justice, except if a
5 significant further instruction occurred during the
6 prosecution.

7 And that's United States sentencing guideline §3C1.1,
8 Note 7.

9 THE COURT: All right. During the prosecution, yes.
10 Further obstruction of the administration of justice during the
11 prosecution.

12 MR. GINSBERG: Significant further obstruction.

13 THE COURT: Okay.

14 MR. GINSBERG: So, that's where the test comes from.

15 THE COURT: Okay. Thank you.

16 MR. GINSBERG: Beyond that, we stand on our papers
17 and leave it to the Court to decide.

18 THE COURT: All right. I think the place to look for
19 guidance about what the adjustment is supposed to cover is the
20 guideline itself. Application Note 3 says that obstructive
21 conduct can vary widely in nature, degree of planning, and
22 seriousness.

23 And it says, Application Note 4 will set forth
24 examples of the types of conduct to which it applies. And 5
25 sets forth examples of less serious forms of conduct to which

1 it's not intended to apply.

2 It also says: Although the conduct to which this
3 adjustment applies is not subject to precise definition, if you
4 compare what's in 4 and 5, that should assist the Court in
5 determining whether application of this adjustment is warranted
6 in any particular case.

7 So, if you look at what's in Note 5, the list of
8 things to which the adjustment doesn't apply, none of them are
9 analogous. They're all things like giving the police the wrong
10 name when they stop you, making false statements after you've
11 been arrested.

12 Application Note 4 contains what is supposed to be a
13 non-exhaustive list of examples of the type of conduct to which
14 this should apply. A. is threatening, intimidating, or
15 otherwise unlawfully influencing a codefendant, witness, or
16 juror directly or indirectly, or attempting to do so;

17 B. has to do with suborning perjury;

18 C., producing or attempting to produce false or
19 altered documents;

20 D., destroying or concealing evidence or getting
21 someone else to do it;

22 E., escaping or attempting to escape from custody or
23 willfully failing to appear;

24 F., providing materially false information to a judge
25 or magistrate judge;

1 G., providing a materially false statement to a law
2 enforcement officer that obstructs the investigation;

3 H., providing materially false information to a
4 probation officer in a presentence investigation;

5 I., other conduct prohibited by the obstruction of
6 justice provisions in Title 18;

7 J., failing to comply with a restraining order or
8 injunction issued;

9 K., threatening the victim of the offense in an
10 attempt to prevent the victim from reporting the conduct.

11 None of them are 100 percent on point. But,
12 certainly, A., threatening or intimidating a juror or a
13 factfinder in the case; F., providing false information to a
14 judge; and J., not complying with the restraining order. While
15 the orders here are not the ones specifically mentioned in the
16 list, it's not necessary that there's an exact fit. The list
17 is supposed to be illustrative.

18 And given the similarity of the conduct in this case
19 to what's listed in A., F., and J., I find that the guideline
20 applies. The defendant engaged in threatening and intimidating
21 conduct towards the Court, and later, participants in the
22 National Security and Office of Special Counsel investigations
23 that could and did impede the administration of justice.

24 I suppose I could say: Oh, I don't know that I
25 believe that Roger Stone was actually going to hurt me, or that

1 he intended to hurt me. It's just classic bad judgment.

2 But, the D.C. Circuit has made it clear that such
3 conduct satisfied the test. They said: To the extent our
4 precedent holds that a §3C1.1 enhancement is only appropriate
5 where the defendant acts with the intent to obstruct justice, a
6 requirement that flows logically from the definition of the
7 word "willful" requires that the defendant consciously act with
8 the purpose of obstructing justice.

9 However, where the defendant willfully engages in
10 behavior that is inherently obstructive, that is, behavior that
11 a rational person would expect to obstruct justice, this Court
12 has not required a separate finding of the specific intent to
13 obstruct justice.

14 Here, the defendant willfully engaged in behavior
15 that a rational person would find to be inherently obstructive.
16 It's important to note that he didn't just fire off a few
17 intemperate emails. He used the tools of social media to
18 achieve the broadest dissemination possible. It wasn't
19 accidental. He had a staff that helped him do it.

20 As the defendant emphasized in emails introduced into
21 evidence in this case, using the new social media is his "sweet
22 spot." It's his area of expertise. And even the letters
23 submitted on his behalf by his friends emphasized that
24 incendiary activity is precisely what he is specifically known
25 for. He knew exactly what he was doing. And by choosing

1 Instagram and Twitter as his platforms, he understood that he
2 was multiplying the number of people who would hear his
3 message.

4 By deliberately stoking public opinion against
5 prosecution and the Court in this matter, he willfully
6 increased the risk that someone else, with even poorer judgment
7 than he has, would act on his behalf. This is intolerable to
8 the administration of justice, and the Court cannot sit idly
9 by, shrug its shoulder and say: Oh, that's just Roger being
10 Roger, or it wouldn't have grounds to act the next time someone
11 tries it.

12 The behavior was designed to disrupt and divert the
13 proceedings, and the impact was compounded by the defendant's
14 disingenuousness. As the opinion in *Henry* pointed out in *U.S.*
15 *versus Maccado*, 225 F.3d 766, at 772, the D.C. Circuit even
16 upheld a §3C1.1 enhancement for failure to provide a
17 handwriting example because such failure, quote, Clearly has
18 the potential to weaken the government's case, prolong the
19 pendency of the charges, and encumber the Court's docket.

20 And the record didn't show a lack of such intent.
21 The defendant's conduct here certainly imposed an undue burden
22 on the Court's docket and court personnel, as we had to waste
23 considerable time convening hearing after hearing to get the
24 defendant to finally be straight about the facts, to get the
25 defendant to comply with court orders that were clear as day,

1 and to ensure that the public and that people who come and go
2 from this building every day were safe. Therefore, I'm going
3 to add the two levels, and we are now at a Level 27.

4 So, now what? Now, what do the guidelines do? The
5 guidelines have a sentencing table. It's a grid. The offense
6 level goes down the left side and your criminal history
7 category goes across the top and then you compare the two to
8 find out where is the recommended sentencing guideline range
9 for this case.

10 The defendant has no prior criminal history. That
11 puts him in Criminal History Category Roman numeral I. This
12 means that his lack of any prior criminal history, which both
13 the defendant and the government exhorted me to consider, is
14 actually already baked into the guidelines to some extent. The
15 advisory sentencing guideline range that applies to Level 27 is
16 70 to 87 months, or 5.8 to 7.25 years, and a fine of \$25,000 to
17 \$250,000.

18 Without it, without the last two levels, if we'd been
19 at Level 25, the guideline range would have been 57 to 71
20 months, or 4 3/4 to almost 6 years, and a fine of \$20,000 to
21 \$200,000.

22 I note that the initial government guideline
23 calculation at Level 29, or 87 to 109 months, came out to a
24 7 1/4 to a 9-year range. And the government's supplemental
25 brief points out, if I had calculated as it had asked me to

1 with respect to all the other enhancements, but he didn't
2 receive the eight-level enhancement for threats at all, even
3 that would have resulted in an advisory sentencing guideline
4 range of 37 to 46 months.

5 Once I determine what the applicable guideline range
6 is, I have to consider whether there are any motions within the
7 guidelines for a downward departure. The defense mentioned
8 several guidelines that could bear on this issue, but I just
9 want to know right now whether you are seeking a formal
10 departure, or you're simply asking me to take into
11 consideration his age and his health? And I believe you've
12 also argued his diminished capacity at the time he committed
13 the offense.

14 MR. GINSBERG: We're not seeking a departure. We
15 have 3553 arguments, but no guideline departure arguments.

16 THE COURT: Okay. All right. Thank you.

17 So, now the guideline has been calculated. But, as I
18 said at the beginning, that's just the starting point. The
19 parties have put their views in writing, but now is the time
20 that they also get to speak.

21 Would the government like an opportunity to speak
22 regarding the appropriate sentence in this case?

23 Mr. Crabb, I'm happy to hear from you. And as I
24 understand it, you're representing United States of America in
25 the case of the *United States of America versus Roger Stone*. I

1 fear that you know less about the case, saw less of the
2 testimony and the exhibits than just about every other person
3 in this courtroom, with the possible exception of the defense
4 attorney who just joined the team.

5 So, before we get to your allocution, is there
6 anything you would like to say about why you're the one
7 standing here today?

8 MR. CRABB: Your Honor, I have four points that I
9 would like to briefly address, which I think will incorporate
10 that. May I do that?

11 THE COURT: All right.

12 MR. CRABB: Thank you.

13 First, Your Honor, I want to apologize to the Court
14 for the confusion that the government has caused with respect
15 to this sentencing and the difficulties surrounding that. I
16 want to make clear to the Court that this confusion was not
17 caused by the original trial team. The original trial team had
18 authorization at the U.S. Attorney's Office to file this
19 sentencing memorandum that they submitted to the Court Monday
20 before last.

21 THE COURT: Let me just follow up on that.

22 So they -- the trial team wrote it?

23 MR. CRABB: Yes, Your Honor.

24 THE COURT: But someone higher up than them had to
25 approve it?

1 MR. CRABB: Correct, Your Honor.

2 THE COURT: Does that include you?

3 MR. CRABB: I was part of the process, Your Honor.

4 THE COURT: All right. Did it go all the way to the
5 U.S. Attorney?

6 MR. CRABB: Yes, the U.S. Attorney reviewed it, Your
7 Honor.

8 THE COURT: Did he approve it?

9 MR. CRABB: Yes, Your Honor.

10 THE COURT: And did the U.S. Attorney's Office for
11 the District of Columbia then have to get approval from Main
12 Justice before it was filed?

13 MR. CRABB: I don't know the exact requirements. I
14 know that there was consultation between the United States
15 Attorney's Office and Main Justice.

16 THE COURT: Did they receive the approval from Main
17 Justice before they filed it?

18 MR. CRABB: No, Your Honor. My understanding is
19 based on what the Attorney General has stated, is there was a
20 miscommunication between the Attorney General and the
21 United States Attorney for the District of Columbia as to the
22 authorization and the expectations that the Attorney General
23 had.

24 THE COURT: But, it was approved by everyone whose
25 name was on it, including the U.S. Attorney?

1 MR. CRABB: Yes, Your Honor.

2 THE COURT: Well, did your office have to wait for
3 Main Justice to get back to you before you could file it?

4 MR. CRABB: I'm not sure if I understand the Court's
5 question. What I understand is that there was a
6 miscommunication before it was filed between the Attorney
7 General and the United States Attorney as to what the
8 expectations were from the Attorney General and what the
9 appropriate filing would be.

10 THE COURT: Well, can you elaborate? Do you have any
11 personal knowledge about what the nature of that
12 miscommunication was?

13 MR. CRABB: No, Your Honor, I don't.

14 THE COURT: You're not suggesting now that anything
15 that was in the first filing about the nature of the offenses
16 or the calculation of the guidelines or the evidence in the
17 case was incorrect, are you?

18 MR. CRABB: I'm not, Your Honor.

19 THE COURT: All right. Continue with what you were
20 about to tell me.

21 MR. CRABB: Thank you, Your Honor.

22 The second point I would like to briefly address is I
23 want to state, and I would like to emphasize this, that the
24 original sentencing memorandum filed by the trial team was done
25 in good faith. Sentencing is not an exact science. Reasonable

1 minds can differ as to what an appropriate sentence may be.
2 But, as the Court has alluded to earlier in this proceeding, it
3 is generally the policy of the United States Department of
4 Justice to request guideline sentences. And there was nothing
5 in bad faith about what was done by the original trial team
6 here.

7 THE COURT: Well, it's not just a question of whether
8 it was good faith. It was fully consistent with current DOJ
9 policy; isn't that true?

10 MR. CRABB: Yes, Your Honor. If I may add one point
11 to that.

12 As I've said, it's consistent with the Department of
13 Justice policy to request a sentence within the guidelines.
14 But, it's also the Department of Justice policy, as set
15 together in the Justice Manual, that there should be a
16 particularized review of any case applying the law to the facts
17 and circumstances of any defendant's case before --

18 THE COURT: The current policy of this Department of
19 Justice is to charge and prosecute the most serious offense
20 available in order to get the highest level guideline; is that
21 correct?

22 MR. CRABB: That's the general policy, Your Honor.
23 If I --

24 THE COURT: And I've been told by assistants standing
25 before me that they aren't even allowed to recommend or agree

1 to a sentence below the guideline range without supervisory
2 approval in your office; is that correct?

3 MR. CRABB: That's true, Your Honor.

4 THE COURT: All right. Continue.

5 MR. CRABB: Thank you, Your Honor.

6 The third point I would like to briefly address, Your
7 Honor, is the Department of Justice and United States
8 Attorney's Office is committed to enforcing the law without
9 fear, favor, or political influence. This prosecution was and
10 this prosecution is righteous. The defendant was found guilty
11 by a jury of his peers of committing serious crimes:

12 Obstructing justice, lying to Congress, and witness tampering.

13 We believe that based on those crimes of conviction,
14 the Court should impose a substantial period of incarceration.

15 THE COURT: All right. Now, with respect to the
16 second filing, your name is on it and you're the one that
17 signed it, physically signed it. So does that mean that you
18 wrote it?

19 MR. CRABB: Your Honor, I'm not at liberty to discuss
20 the internal deliberations and how materials are prepared
21 within the United States Attorney's Office or the Department of
22 Justice. But, the Court's right, I signed that document and
23 submitted it.

24 THE COURT: Well, were you directed to write it by
25 someone else?

1 MR. CRABB: Your Honor, I apologize. I cannot engage
2 in those discussions of internal deliberations.

3 THE COURT: All right. Is there anything else you
4 want to tell me about why I should impose a substantial period
5 of incarceration in this case?

6 MR. CRABB: Nothing more than to reiterate that this
7 is a righteous prosecution and the offenses of conviction are
8 serious and has been set forth in more detail in the original
9 sentencing memorandum as to the nature and circumstances of the
10 offense, which, as the Court has pointed out to me, the Court
11 knows better than I do.

12 THE COURT: All right. Well, are you making a
13 recommendation as to what the sentences should be? Other
14 offices, I think, that's standard operating procedure, to not
15 make a recommendation and just defer to the Court. But, the
16 usual U.S. Attorney's Office of the District of Columbia's
17 practice is to stand here and advocate for a particular
18 outcome.

19 So, are you not planning to do that today?

20 MR. CRABB: Your Honor, that brings me to the last
21 and final point I wanted to make for the Court.

22 May I address that now?

23 THE COURT: Yes.

24 MR. CRABB: Your Honor, the last point I would like
25 to make is that under the unique facts and circumstances

1 presented in this matter, it is particularly appropriate for
2 the government to defer to the Court with respect to what the
3 specific sentence would be in this case.

4 We understand that, as happens in all sentencings
5 that are adjudicated in this courthouse, that the Court will
6 consider the entire record in this matter, that the Court will
7 consider the guidelines and the appropriate sentencing factors,
8 and that the Court will consider the submissions of the
9 parties, which the Court has already referred to, and the
10 submission of the probation office. And, most importantly, the
11 Court will rely on its own sound judgment and experience.

12 To add to that, Your Honor, given this Court's unique
13 experience with related cases before this Court, and this
14 Court's record of thoughtful analysis and fair sentences
15 imposed in those cases, the government has the utmost
16 confidence that we defer to the Court, and we have confidence
17 that the Court will impose a just and fair sentence in this
18 matter.

19 THE COURT: All right. Thank you.

20 MR. CRABB: Thank you, Your Honor.

21 THE COURT: Would defense counsel like to speak on
22 the defendant's behalf?

23 MR. GINSBERG: Yes, Your Honor.

24 THE COURT: All right.

25 MR. GINSBERG: Having reviewed the record in this

1 case, Your Honor, it's clear that the Court, throughout these
2 proceedings, has endeavored to make rulings designed to keep
3 these proceedings focused on the evidence in this courtroom,
4 and on this case and this case alone.

5 And now, as the Court is about to sentence Mr. Stone,
6 we believe that it is critically important that the Court
7 continue to do just that, and not to focus on all of the many
8 things that are going on outside of this courtroom, for the
9 sentence that the Court is going to impose today is a sentence
10 that is going to be imposed on a real person; not a media
11 figure, not a political character, but a real person.

12 And I'm sure the Court is accustomed to defense
13 lawyers standing before it and talking about the impact that a
14 sentence has on a defendant's family. But, in this case, given
15 Mr. Stone's larger-than-life persona, I think it's particularly
16 important to remind the Court that Mr. Stone is, in fact, not
17 simply that public persona, but a human being. A person with a
18 wife, who is here today; children, who are also here with us;
19 grandchildren, others who support and care for him. And he's
20 also soon to be a great grandfather.

21 And it is with these things in mind that I ask the
22 Court to consider the full scope of the person who stands
23 before you for sentencing, and to step back and evaluate this
24 case not in the hyperbolic terms that were uttered during the
25 height of battle in the course of litigation in a trial, but

1 from a more objective perspective that places this case in the
2 broader scheme of cases of a similar nature, with defendants
3 similarly situated, generally speaking, but also considering
4 sentences imposed on defendants in cases that emanated from
5 this investigation and related investigations in order to
6 avoid, as the law requires, any unwarranted disparities.

7 And as the Court noted, we do want the Court to
8 realize that Mr. Stone, at 67 years old, stands before Your
9 Honor with no criminal record. It's true that's factored into
10 the guidelines to some extent. But, there's significant
11 evidence that people who are first-time offenders at
12 Mr. Stone's age have, effectively, no likelihood of recidivism.
13 And that is something that, I think, should weigh into the
14 Court's calculation, because it is one of the factors that
15 3553(a) states is an important goal of sentencing, the specific
16 deterrence.

17 THE COURT: Yes, there's a difference being in
18 Category I when you're 21 and being in Category I when you're
19 67.

20 MR. GINSBERG: Yes. We've all had experience with
21 that.

22 And as outlined in the letters that the Court has
23 received and detailed on the record, Mr. Stone has many
24 admirable qualities. The Court received letters from people
25 Mr. Stone knows quite well who are very close to him, and

1 people who he hardly knows or doesn't know at all.

2 He's devoted himself to worthwhile causes, and
3 critically, not just through monetary contributions, like many.
4 And not to disparage that, but there's something different when
5 a person gives of his own time and his own efforts to try to
6 help people, to try to support causes. It's different than
7 just writing a check. We're thankful for all who do that, but
8 there's something, I think, that it speaks to someone's
9 character when they go out of their way to give of themselves.

10 He's devoted himself, for example, to causes that
11 benefit veterans. He also devotes considerable time to the
12 welfare of animals. And he, in that regard, has offered his
13 services, pro bono, to a lobbying group that has successfully
14 fought to end certain cruel testing on animals.

15 He's also done a great deal of work to assist NFL
16 players who have suffered from traumatic brain injuries. In
17 fact, that work caused a person, the wife of a retired NFL
18 player who doesn't know Mr. Stone, to write to Your Honor and
19 say this man, who has, really, no particular connection to me
20 or my husband or any of these other NFL players who have
21 suffered these horrible injuries, has done such tremendous work
22 that he's had a direct personal impact on our lives.

23 That's something that, I think, takes Mr. Stone
24 outside of the norm.

25 He's also, as reflected in the letters, a spiritual

1 person, and a person who has worked with groups to help bridge
2 racial divides in this country.

3 And on a less grand scale, the Court also received a
4 letter which, I think, is particularly telling. It's a letter
5 from one of Mr. Stone's former employees, and it describes
6 Mr. Stone in very, very personal terms, as a mentor, as someone
7 who is kind, generous with his time, helpful. And, I think,
8 this letter is telling, because grand public gestures aside, as
9 worthwhile as they may be, I think you can judge a person's
10 character best by the way he treats those closest to him,
11 particularly people in a subordinate role.

12 And that letter, I think, is important in
13 understanding who Mr. Stone really is, not the larger-than-life
14 political persona that he plays on TV, but the real person, who
15 goes home every day to his wife and his family, and who works
16 day to day with people who respect him, who care for him, and
17 who have stood up to tell the Court as much.

18 Now, of course, as I noted earlier, he does have a
19 family and he is devoted to them and they will suffer
20 tremendously if he is incarcerated. And, indeed, they've
21 already suffered quite a bit, beginning with the horrific
22 circumstances under which he was arrested, horrifying
23 circumstances that, really, had quite an impactful negative
24 experience for them.

25 And so in some sense, with -- although I said we

1 should focus only on what's in the courtroom, with the intense
2 public scrutiny that this case has engendered and the
3 particular stresses of this case, both for Mr. Stone and his
4 family, the process, really, to some extent, has already been
5 the punishment.

6 Now, I recognize that the jury has found that
7 Mr. Stone violated our laws and that the Court must impose
8 sentence on him. But, as the law also states, that sentence
9 should be sufficient but not greater than necessary to achieve
10 the aims in the statute. And one of those aims is to promote
11 respect for the law.

12 And in this proceeding, as in any proceeding, there
13 is always an awareness that what is done in our courtrooms
14 sends a message to the broader public. And here, as in every
15 case, the most important message that can be sent is one of
16 fairness of the judicial system and justice for all who come
17 before it, because it is that message that will promote the
18 greatest respect for the law.

19 Now, as the government pointed out in its
20 supplemental sentencing submission, the guidelines in this case
21 disproportionately escalate Mr. Stone's sentencing exposure to
22 a level more typical of cases not of obstruction of justice,
23 but of armed robbery. In fact, the government indicated, as
24 Your Honor is aware, that a sentence far less than 87 to 108
25 months would be appropriate here. Far less.

1 And so for all of these reasons, including, most
2 importantly, Mr. Stone's age, his health, and his lack of
3 criminal history, we respectfully submit that a
4 non-incarceratory sentence is appropriate here.

5 THE COURT: All right. Thank you.

6 Mr. Stone, you have the opportunity now to say
7 anything that you would like me to consider before I impose
8 sentence. I do understand that you went to trial, you asserted
9 your innocence, and you're likely going to be filing an appeal.
10 So you and your team may have decided that you should not
11 speak, and I respect that completely and won't hold it against
12 you if you don't, but just want to let you know that this is
13 your opportunity.

14 THE DEFENDANT: Your Honor, I choose not to speak at
15 this time.

16 Thank you very much.

17 THE COURT: All right. Thank you.

18 At this point I want to take a short break, and then
19 we'll return. Once again, the clock on the wall and the watch
20 on my arm are in somewhat different time zones. So I believe
21 it's approximately 11:20, and we'll resume in about 10 or 15
22 minutes.

23 Thank you.

24 (Recess.)

25 THE COURTROOM DEPUTY: Your Honor, recalling Criminal

1 Case Number 19-18, the United States of America v. Roger Stone.
2 Mr. Stone is present in the courtroom.

3 For the government we have Mr. Crabb and Mr. Cooney.

4 For defense we have Mr. Ginsberg, Mr. Rogow,
5 Mr. Buschel, Mr. Smith, and Ms. Champion.

6 THE COURT: All right. Unsurprisingly, I have a lot
7 to say. Ordinarily, the defendant and counsel stand at the
8 lectern while I go through my remarks, so I'm going to ask you
9 to step up now.

10 All of you? All right.

11 MR. ROGOW: We're the ones --

12 THE COURT: You may want to rethink that.

13 MR. BUSCHEL: Just us, Judge.

14 THE COURT: All right.

15 The best tool I have for structuring my thinking
16 about the task that falls to me today is the statute, which I
17 always find to be thorough and a helpful listing of all the
18 relevant consideration. So what I'm going to do now is what I
19 always do, which is go through every single factor. Following
20 that process ensures that I handle every case in the same
21 manner as the ones that came before.

22 The first factor that the statute tells me I must
23 consider is the nature and circumstances of the offense, which
24 is where you have to start before you can assess what sentence
25 would be proportionate or just.

1 One letter writer wrote to me: In politics, the
2 successful person doing all the right things for all the right
3 reasons can be, and will be, vilified and maligned in a
4 high-profile way by adversaries to get political advantage.
5 That is what happened and what is happening to Roger Stone.
6 People that he confronted with his talents, rightfully placed,
7 sought to derogate him, call him names, and accuse him of
8 political advantage.

9 That is most certainly not what happened here. Those
10 are not the circumstances of this offense. He has not been
11 prosecuted by his adversary or anyone else's adversary, and he
12 was not prosecuted to enable anyone to gain political
13 advantage.

14 This case did not arise because Roger Stone was being
15 pursued by his political enemies. It arose because Roger
16 Stone, characteristically, injected himself smack into the
17 center of one of the most significant issues of the day. Let
18 me give that some context.

19 In June 2016, during the run-up to the last
20 presidential election, the head of WikiLeaks, Julian Assange,
21 publically announced that WikiLeaks had information concerning
22 the democratic candidate Hillary Clinton that was awaiting
23 publication. Shortly thereafter, the Democratic National
24 Committee announced that its server had been hacked by the
25 Russians. On, approximately July 22nd WikiLeaks began

1 releasing thousands of DNC emails.

2 Three days later, the evidence showed Mr. Stone
3 emailed a person he knew named Jerome Corsi, RE: Get to
4 Assange.

5 Stone encouraged Corsi to get to Assange in the
6 Ecuadorian embassy in London, and he suggested that the pending
7 WikiLeaks emails, allegedly, dealt with the Clinton Foundation.

8 There were other emails between the two, including
9 one on August 2nd from Corsi to Stone: Word is, our friend at
10 embassy plans two more dumps. One shortly after I'm back,
11 second in October. Impact planned to be very damaging. Time
12 to let more than Podesta be exposed as in bed with the enemy if
13 they're not ready to drop HRC. That appears to be the game
14 hackers are now about. Would not hurt to start suggesting HRC
15 old, memory bad, had stroke -- neither he nor she will. I
16 expect that to be much of the next dump focus, setting the
17 stage for foundation debacle.

18 On August 3rd, Stone reaches out to the campaign
19 manager, Paul Manafort: I have an idea -- in his words -- to
20 save Trump's ass.

21 Just a few days later, after that, Stone began making
22 a series of public statements, at least five between August 8th
23 and August 16th, announcing that he was in communication with
24 Assange, and suggesting that he knew what was coming.

25 Initially, he stated that he had communicated with Assange. He

1 then back-peddled and clarified that he had communicated, but
2 through an intermediary. He referred to the intermediary as a
3 "back channel," a "trusted mutual friend."

4 During the same time period Stone was communicating
5 with senior members of the Trump campaign, including deputy
6 campaign chair Richard Gates, and CEO Steve Bannon about
7 WikiLeaks plans.

8 On August 18 he emailed Mr. Bannon: Trump can win,
9 but time is running out. I do know how to win this, but it
10 ain't pretty. Campaign has never been good at playing the new
11 media.

12 Bannon responds with: Let's talk ASAP.

13 Later, in August, Stone learned that a friend and
14 radio personality named Randy Credico had managed to set up an
15 interview with Assange. So beginning in September 2017, Stone
16 started emailing Credico, asking him to relay a request to
17 Assange concerning which additional emails would or should be
18 released. This went on in September and October, and when
19 Credico would indicate that he had information -- although,
20 apparently, he didn't -- Stone would turn around and pass it
21 along to Bannon, etcetera.

22 From the start, though, Credico consistently reminded
23 Stone that he could not possibly have been the intermediary
24 Stone had spoken about in early August because he hadn't even
25 met Assange as of the time Stone was proudly making

1 announcements about his contact.

2 Thereafter, in January 2017, the United States House
3 of Representatives Permanent Select Committee on Intelligence
4 announced an investigation into allegations of Russian
5 interference in the 2016 presidential election.

6 As part of that investigation, the House Intelligence
7 Committee was also looking into whether Russia was involved in
8 obtaining and transmitting stolen documents that were
9 eventually released by Wiki, and whether there were any leaks
10 between any of that and the Trump campaign.

11 In the public version of its parameters for Russia
12 investigation, dated March 1, 2017, the committee said that the
13 investigation would seek to answer four questions, including
14 what Russian cyber activities and other active measures were
15 directed against the United States and its allies, and did the
16 Russian active measures include links between Russia and
17 individuals associated with political campaigns or any other
18 U.S. persons.

19 The announcement went on, quote: Chairman Nunes said
20 the Intelligence Committee has been investigating Russia for
21 years and warning about the Putin regime's hostile
22 international actions, its aggressions in cyberspace, and its
23 influential international propaganda campaign. The committee
24 is determined to continue and expand its inquiries into these
25 areas, including Russian activities related to the 2016 U.S.

1 elections. On a bipartisan basis, we will fully investigate
2 all the evidence we collect and follow the evidence wherever it
3 leads.

4 Stone let the committee know he would volunteer to
5 testify and, unsurprisingly, the committee asked him to come to
6 talk about what he had publicly stated.

7 Stone, of course, knew that his claimed contacts with
8 Assange would be a subject of the testimony. His own opening
9 statement to the committee reveals his understanding that his
10 contacts with or transmittal of messages or requests to
11 WikiLeaks or Assange, either directly or through a middleman,
12 would be a subject of the committee's inquiry.

13 And, sure enough, the transcript of the September 26
14 hearings include multiple questions to Stone about Assange and
15 WikiLeaks, as well as statements by members of the committee of
16 both parties made to him while he was testifying, emphasizing
17 the importance of any communications with WikiLeaks to their
18 inquiries.

19 The importance of the subject matter was born out by
20 the report written by the republican majority on the committee.
21 Matters investigated by the committee, they said, include
22 allegations pertaining to involvement in or knowledge about the
23 publication of stolen emails.

24 They also wrote: Particularly in light of Candidate
25 Trump's expressed enthusiasm for WikiLeaks, the committee

1 examined the relationship between his associates and the stolen
2 emails.

3 It added: During his testimony to the committee,
4 Stone addressed three public statements suggesting he might
5 have important information about and potentially advance
6 knowledge of disclosures during the 2016 campaign, including an
7 August 2016 public speech about purported contacts with
8 Julian Assange.

9 Stone did testify before the committee on
10 September 26, 2017. He claimed he had only one intermediary.
11 Then and after, the members repeatedly exhorted him to identify
12 this supposed intermediary. He let the committee know it was
13 Randy Credico. But, he said he had no emails or texts that
14 would shed any light on the issue. It was all false.

15 And afterwards, he endeavored mightily to make sure
16 the person he had falsely named didn't tell the truth and mess
17 up the story. That is why he was indicted; not for his
18 political activities.

19 In fact, the record shows that when the Department of
20 Justice formally asked the committee for the hearing transcript
21 and other materials about the defendant, on December 20th, 2018
22 the then chair of the committee, Republican Congressman Devin
23 Nunes, transmitted the information to the department, quote:
24 Pursuant to a committee vote, close quote.

25 And, quote: With no restrictions on use by the

1 Special Counsel's Office of other components of the Department
2 of Justice, close quote.

3 The notion that this case rises and falls with
4 whether Russian interference has been proven, or whether Russia
5 was actually behind the hack of the DNC computers is also
6 false. This defendant was not charged with or convicted of
7 having any role in conspiring with the Russians. He was not
8 even charged with or convicted of lying about Russian collusion
9 or about who was behind the hack.

10 So, let's review what the case is about and what he's
11 being sentenced for.

12 In Counts 2 through 6, he was convicted of knowingly
13 and willfully making material false statements to the House
14 Committee on September 26, 2017.

15 Count 2, the evidence established that he testified
16 falsely that, quote: He did not have emails with third parties
17 about the head of WikiLeaks and that he did not have any
18 documents, emails, or text messages that refer to
19 Julian Assange.

20 That was his testimony.

21 At the hearing, the defendant was asked how he
22 communicated with the individual he had publicly described on
23 August 8th as his go-between, mutual friend, or intermediary.
24 He was asked: Did you have any?

25 And he said: Over the phone.

1 Question: Did you have any other means of
2 communicating with the intermediary?

3 Answer: No.

4 No text messages not on the list?

5 No.

6 Another question: So you have no emails to anyone
7 concerning any discussions you've had with third parties about
8 Julian Assange? You have no emails, no text, no documents
9 whatsoever, any kind of that nature?

10 Answer: That's correct, not to my knowledge.

11 So you never communicated with your intermediary in
12 writing in any way?

13 No.

14 Never emailed him or texted him?

15 He's not an email guy.

16 So all your conversations with him were in person or
17 over the phone?

18 Answer: Correct.

19 This is not mere equivocation. This is not the
20 product of confusion. The exhibits alone establish that these
21 answers were plainly false with respect to both Corsi and
22 Credico, with whom he carried on a lively, lengthy, and often
23 quite profane correspondence.

24 In Count 3, he was convicted of testifying falsely
25 that, quote: His August 2016 references to being in contact

1 with Julian Assange were references to communications with a
2 single go-between, mutual friend, and intermediary, who he
3 identified as Randy Credico.

4 During his testimony Stone made it clear that there
5 was only one source, and it was clear from his testimony that
6 he was talking about Credico. He said it was a journalist who
7 had interviewed Assange, who had been to the embassy.

8 After the testimony, Stone supplied Credico's name in
9 a letter. This was well established to be false, since the
10 text and emails showed that Credico and Stone had never talked
11 about Assange until after Stone decided to inform the public
12 that he had been talking to Assange through an intermediary.

13 This count also demonstrated how carefully the jury
14 worked to consider the evidence in light of the instructions
15 and elements of each offense. It sent back several thoughtful
16 notes asking for clarification and guidance.

17 In Count 4, Mr. Stone was convicted of testifying
18 falsely that he did not ask the person he referred to as his
19 go-between, mutual friend, or intermediary to communicate
20 anything to Assange, and did not ask the intermediary to do
21 anything on his behalf. Documents establish that this answer
22 was plainly false with respect to both Corsi and Credico.

23 Count 5, he testified falsely that he and the person
24 he referred to as his go-between, mutual friend, and
25 intermediary did not communicate via text message or email

1 about WikiLeaks. Again, this was a flat-out lie. There were
2 1500 emails and texts with Credico alone.

3 Count 6, the written record and testimony of both
4 Steve Bannon and Richard Gates established that he testified
5 falsely before the committee when he said that he never
6 discussed his conversations with the person he referred to as
7 his intermediary with anyone involved in the Trump campaign.

8 Both witnesses acknowledge getting updates from
9 Mr. Stone. They took him seriously, and they welcomed his
10 particular brand of political assistance at a time the campaign
11 needed all the help he could get.

12 Mr. Bannon was asked: When Mr. Stone wrote to you,
13 'I do know how to win this, but it ain't pretty,' what, in your
14 mind, did you understand that to mean?

15 Answer: Well, Roger is an agent provocateur. He's
16 an expert in opposition research. He's an expert in the
17 tougher side of politics. And when you're this far behind, you
18 have to use every tool in the toolbox.

19 Question: What do you mean by that?

20 Answer: Well, opposition research. Dirty tricks.
21 The types of things that campaigns use when they've got to make
22 up some ground.

23 Bannon also testified that he viewed Stone as the
24 campaign's contact point with Assange. So this was yet another
25 lie that shut off important avenues for the committee to

1 investigate.

2 This count is also important because it showed -- the
3 evidence showed that Stone was not just communicating with
4 campaign personnel, but he talked to the candidate himself.
5 Part of the evidence that supplied the basis for the conviction
6 on this count was from Rick Gates, who was in the car when then
7 Candidate Trump was talking to Mr. Stone on the phone. And
8 who, as soon as the call was over, made a statement to Gates
9 about what Assange was about to do.

10 Count 7, tampering with a witness. The evidence
11 established that the defendant knowingly and intentionally,
12 corruptly persuaded or attempted to corruptly persuade
13 Randy Credico with the intent to influence, delay, or prevent
14 his testimony in an official proceeding.

15 The evidence includes the numerous written
16 communications, including emails and texts in which the
17 defendant urged Credico, over and over again, to assert his
18 Fifth Amendment privilege against self-incrimination, to claim
19 a failure of recollection, to do a Frank Pentangeli, and/or to
20 advance a false narrative, that Credico had been the
21 intermediary between Stone and Julian Assange, to whom Stone
22 publicly referred in early August 2016.

23 This went on for months, as Stone urged Credico to
24 stonewall Congress and then the FBI and the Office of Special
25 Counsel.

1 Stone went so far as to doctor a copy of a letter his
2 lawyer sent to the committee falsely identifying Credico as the
3 intermediary, adding a number of flattering details about
4 Credico that were never provided to the committee at all, but
5 were intended to assuage Credico and have him be unconcerned
6 about the letter.

7 In a telling exchange, Stone also revealed his own
8 motivation to shield the President from evidence that could
9 reflect badly on him. On December 1st, 2017, he testified --
10 he texted to Credico: If you testify, you're a fool. Because
11 of Trump, I could never get away with asserting my Fifth
12 Amendment rights, but you can.

13 Stone knew that some would view it as incriminating
14 for both him and the campaign if he asserted his right to
15 testify and said nothing. So he lied instead. And then he
16 tried to make sure that the lie was not exposed.

17 Whether Stone was ever actually in communication with
18 Assange or not, he understood full well that it could reflect
19 badly on the President if someone learned that he'd exchanged
20 emails with Corsi and Credico about what Assange was about to
21 do or that he'd sent messages trying to get Assange to release
22 emails on a particular topic on a particular schedule, or that
23 there were emails between himself and Bannon, Gates, and
24 Manafort as he reported in on all of this to the campaign.

25 Stone also put pressure on Credico by intimating that

1 he would involve one of Credico's close friends, a widow whose
2 husband he'd been close to, in the matter if Credico tried to
3 deny that he was the intermediary. Randy Credico testified
4 that Stone said he had an email that would prove that
5 Margaret Kunstler would be involved. That he could prove it
6 through her that I was the back channel. That he would use
7 that, and he would use the text messages that I had that
8 Ms. Kunstler involved.

9 Credico was asked: Well, did it concern you that
10 Mr. Stone was talking about revealing Ms. Kunstler's name?

11 Answer: Yes. She's a very close friend of mine.
12 And, you know, she's an older woman, and I didn't want to drag
13 her through this. You know, I didn't want to drag her name
14 through this. And then all of that culminated in the threats
15 to the dog and the prepare to die."

16 I really did appreciate the sensitivity and the
17 concern that went into Randy Credico's letter about the damage
18 caused to individuals and families by incarceration, as well as
19 his trial testimony, repeated in his letter, that he didn't
20 believe Stone, a dog lover -- which is a good thing -- would
21 actually harm his dog, and his later assertion that he doesn't
22 believe that Stone would have harmed him.

23 It's nice that Mr. Credico has forgiven Stone not
24 only for that, but for his conduct that was testimony about --
25 in the case, apparently in New York, many years ago, when he

1 publicly blamed Credico for something else nefarious he'd done,
2 threatening an elderly man over the phone. And he published
3 embarrassing accusations about drug use to keep Mr. Credico
4 from defending himself and saying it was Stone and not him.

5 But, all that says more about Mr. Credico than Stone.
6 And the record does indicate that these events may well have
7 struck him differently at the time.

8 He also appeared on the stand to be a highly nervous
9 individual. And it may well be that, even today, he just
10 doesn't want to be known as the reason behind a tough sentence.

11 But, even if you acknowledge, as I have to here, that
12 the evidence of actual physical threats was not strong, and
13 that the person involved is asking for lenience, both indicate
14 that one needn't be too harsh in sentencing the defendant for
15 the threat aspect of Count 7; it doesn't do anything to negate
16 or minimize the corrupt, unlawful campaign to influence
17 Credico's testimony. And for that fact alone, he was guilty of
18 tampering with a witness.

19 Finally, there was Count 1. Given all this evidence
20 that led to the convictions on Counts 2, 3, 4, 5, 6, and 7, the
21 evidence also showed that the defendant corruptly influenced,
22 obstructed, or impeded, or tried to corruptly influence,
23 obstruct, or impede the due and proper exercise of the power of
24 inquiry under which an investigation was being undertaken by a
25 committee of the United States of the House of Representatives

1 when he testified falsely and misleadingly on September 26th,
2 when he lied about the existence of responsive records in
3 response to their requests, when he attempted to have
4 Randy Credico testify falsely, or to prevent him from
5 testifying, and when he submitted or caused to be submitted a
6 letter that falsely and misleadingly described his
7 communications with Credico.

8 This effort to obstruct the investigation was
9 deliberate, planned, not one isolated incident, and conducted
10 over a considerable period of time. And Stone lied and sought
11 to impede production of information to whom? Not to some
12 secret anti-Trump cabal, but to Congress. To the elected
13 representatives of both parties who were confronted with a
14 matter of grave national importance.

15 At that time, both the Senate and the House,
16 including the House Committee that asked him to provide
17 documents and to answer questions, were controlled by the
18 Republican Party. The chair of the House Committee that asked
19 the defendant to answer questions and provide documents was a
20 republican, Devin Nunes.

21 In the statement that he issued, along with the
22 ranking minority member of the committee, entitled Intelligence
23 Committee Chairman Ranking Member Establish Parameters for
24 Russia Investigation, that Chairman Nunes said: This committee
25 will seek access to and custody of all relevant information.

1 This investigation is a national security necessity, and
2 anything less than a full accounting of all the facts will be
3 insufficient to protect the country and meet the expectations
4 of the American people.

5 So that's what the defendant did. That's the nature
6 and circumstances of the offense.

7 But, the statute also requires me to look at the
8 history and characteristics of the defendant, who the defendant
9 is. Certain themes emerged, even from the people who submitted
10 letters on his behalf attached to his memo. There are letters
11 that tell me he cultivated a career image of a bare-knuckled
12 brawler in politics.

13 One friend and letter writer wrote: He's a
14 provocateur who enjoyed, even relished, the spotlight.

15 They called him a dirty trickster, a political hit
16 man. These are the people who wrote on his behalf.

17 But those friends, along with his family, have also
18 painted a portrait of the personal side of Mr. Stone; loving,
19 caring, funny. Quote: A good man, close quote.

20 Several letters report that when he got married, he
21 treated his stepdaughter and her daughter as his own.

22 Supported them through times of crisis and transition, and
23 through good times as well. The granddaughter, who's now
24 grown, wrote a beautiful letter of her own, attesting to the
25 bond that they share.

1 I've learned about the lengths he went to to support
2 his in-laws when they were struggling with the devastating
3 effects of Alzheimer's disease.

4 He has not just been caring and generous within his
5 family. He provided housing and support for an elderly friend
6 who was no longer able to live alone on his boat. He assisted
7 another disabled woman when she was homeless. He's rescued
8 countless dogs and listened and came to the aid of many
9 friends.

10 It's consistent with the letters from others who
11 aren't related, who shared friendships even across the
12 political divide, and who have come together with Mr. Stone on
13 issues such as medical marijuana and the strict drug laws that
14 used to apply in New York City.

15 He added his voice, his political acumen to important
16 causes such as animal rights, ending inhumane treatment and
17 medical experimentations, same-sex marriage, criminal justice
18 reform, product safety standards, compensation for retired
19 football players with brain injuries, and encouraging the
20 Republican Party to take a hard look at issues facing people of
21 color in America. The letters are compelling and they are
22 sincere and it's all part of the picture before me.

23 It's important to note today, though, to the people
24 who emphasized this side of the defendant, that I am not
25 passing judgment on Roger Stone as a man. That falls to a

1 higher authority. If, as his friend John Morgan said, There is
2 good in his life, and good yet to give, he will have ample
3 opportunity to continue to do just that.

4 It falls to me to sentence him just for the conduct
5 for which he was found guilty by a jury based on sworn
6 testimony in this courtroom, and based, most of all, on his own
7 voluminous Tweets and emails in this case.

8 The defense, in its allocution, talked about not
9 paying too much attention to his persona, but the defendant
10 chose it and cultivated it. And I was told that the publicity
11 and attention swirling around this case has already caused
12 considerable stress for the defense and his family, but he was
13 at the heart of a great deal of it. Through his press
14 conferences and social media posts, he made the choice to stoke
15 it.

16 I've been asked to consider the impact of a sentence
17 on his family. And it's worth noting that sentencing can have
18 a devastating impact on family members, and courts in this
19 country are called upon to put that aside every day when they
20 have to incarcerate or deport people who have children who
21 depend on them, elderly parents who depend on them. So, it's
22 something that we always have to think about.

23 But, it's also important to note that the
24 responsibility for that hardship does not lie with the
25 prosecutors, and it doesn't lie with the Court. It flows from

1 the defendant's conduct.

2 I think there's probably a lot of truth to
3 Mr. Credico's characterization when he said: Stone enjoys
4 playing adolescent mind games and pulling off juvenile stunts,
5 gags, pranks. He shamelessly invents and promotes outlandish
6 and invidious conspiracy tails. But the bottom line is, Mr.
7 Stone, at his core, is an insecure person who craves and
8 recklessly pursues attention.

9 The problem is that nothing about this case was a
10 joke; it wasn't funny, it wasn't a stunt, and it wasn't a
11 prank. Stone's conduct displayed flagrant disrespect for the
12 institution of government established by the Constitution,
13 including Congress and this Court. And I'll venture to say
14 that even many adolescents know the difference.

15 The sentencing statute also provides that I am
16 required to impose a sentence that is sufficient but not
17 greater than necessary to accomplish the purposes that are set
18 out in the statute. Therefore, another factor I must consider
19 is the need for the sentence imposed, number one, to reflect
20 the seriousness of the offense, to promote respect for the law,
21 and to provide just punishment for the offense.

22 Two, to afford adequate deterrence to criminal
23 conduct, to protect the public from further crimes of the
24 defendant, to provide the defendant with needed educational or
25 vocational training or medical care or correctional treatment

1 in the most effective manner. And I'm supposed to think about
2 the kinds of sentences available.

3 The guidelines are supposed to be the starting point
4 of that analysis. And I agree totally with Mr. Ginsberg that
5 they're a blunt instrument. The guidelines, though, and the
6 sentencing commission and the appellate courts require district
7 courts to explain why, if they're going to vary from the
8 guidelines. And the Department of Justice's own manual calls
9 for advocacy for guideline sentences in most situations.

10 The government's initial memorandum was thorough,
11 well researched, and supported. It was true to the record. It
12 was in accordance with the law and with DOJ policy, and it was
13 submitted with the same level of evenhanded judgment and
14 professionalism that they exhibited throughout the trial. Any
15 suggestion that the prosecutors in this case did anything
16 untoward, unethical, or improper is incorrect.

17 But I am concerned that seven to nine years, or even
18 the 70 to 87 months, as I calculated the guideline range, would
19 be greater than necessary. I sincerely doubt that I would have
20 sentenced him within that range, even if the sentencing had
21 simply proceeded in its typical fashion, without any of the
22 extraneous commentary or the unprecedented actions of the
23 Department of Justice within the past week.

24 I agree with the defense and with the government's
25 second memorandum, that the eight-level enhancement for

1 threats, while applicable, tends to inflate the guideline level
2 beyond where it fairly reflects the actual conduct involved.
3 However, the defendant's request for probation -- although the
4 memo is also a professional product of appropriately zealous
5 advocacy and based on the record -- is simply not sufficient.

6 The defendant has pointed me to certain provisions
7 within the guidelines that would permit the Court to depart or
8 vary. One is his age. And guidelines there in §5H1.1 say:
9 Age may be a reason to depart downward in a case in which the
10 defendant is elderly and infirm, or where this characteristic
11 is present to an unusual degree, and distinguishes the case
12 from the typical cases covered by the guideline.

13 So, clearly, this is not a situation where a
14 departure is warranted, and the defense did not ask for one,
15 but it is a factor that I need to take into consideration when
16 I sentence the defendant.

17 They also pointed to §5H1.4, his health. The
18 guidelines say there: Physical condition or appearance,
19 including physique, may be relevant in determining whether a
20 departure is warranted, if the condition or appearance,
21 individually or in combination with other characteristics,
22 again, is present to an unusual degree, and distinguished the
23 case from typical cases covered by the guideline. An
24 extraordinary physical impairment may be a reason to depart
25 downward in the case of a seriously infirm defendant.

1 Defendant has not pointed to any evidence that would
2 show that he has a condition that's not managed with
3 medication, or the kind of issue that would warrant a
4 departure, and he keeps himself physically fit.

5 Paragraphs 103 and 106 through 108 detail any medical
6 information, and I've taken them into consideration.

7 But, it's important to note that in the year since
8 the case has been before me, in addition to traveling here for
9 court appearances, he's filed nine motions to travel elsewhere,
10 with most trips including multiple stops. He's not only been
11 all over Florida, but he's been to the Western District of
12 Tennessee, the Northern District of Illinois, Michigan,
13 Buffalo, Los Angeles, and several other cities in California,
14 as well as Rochester, New York.

15 And all that is on top of the fact that his
16 conditions of release permitted him to travel to the Southern
17 District of Florida, the Southern District of New York, the
18 Eastern District of New York, D.C., and the Eastern District of
19 Virginia without any court order at all. So, I have no idea
20 how many trips he's taken during that period to conduct the
21 business that he said he needed to conduct.

22 The purpose of the trips described to me were to earn
23 a living. Public appearances or private gatherings have not
24 appeared to be compromised by his health.

25 Also, this record of travel belies the narrative

1 being disseminated that I silenced him or took away his ability
2 to speak or to earn a living. When the case began, there were
3 no restrictions on Mr. Stone at all. After he posted an
4 incendiary, threatening post regarding the Court, I took the
5 suggestion of the defendant's own First Amendment lawyer and
6 barred him from making comments about this case, but that was
7 all.

8 Couldn't obey that either. When he was still on
9 bond, he continued to post about others involved in the
10 investigation, and that led to the requirement that he not
11 Tweet or post or use Instagram. He withdrew his own appeal of
12 that condition, and he didn't even ask to be relieved of it
13 pending sentence. But there has never been a prohibition on
14 his writing, giving a speech and getting paid for it, or any
15 other means of earning a living.

16 The defense, in its memorandum, also points to the
17 guideline for diminished capacity, §5K2.13. And there the
18 commission says: A departure may be warranted if the defendant
19 committed the offense while suffering from a significantly
20 reduced mental capacity, and the significantly reduced mental
21 capacity contributed substantially to the commission of the
22 offense.

23 Well, granted, there are some medical issues;
24 granted, there is some anxiety. But there has been no evidence
25 that any of it substantially reduced his mental capacity, or

1 even reduced it at all. He's still writing and speaking. And
2 there's no evidence that any physical or psychiatric condition
3 made a substantial contribution to his conduct. There's been
4 no evidence of any contribution, and no evidence presented
5 related to the relevant time period. And it's totally
6 inconsistent with every public statement made by the defendant
7 at the time and since.

8 So I don't believe that that section even is a factor
9 that would support a variance. Although, I will take his age
10 and his health into account.

11 It falls to me, then, given the disparity between the
12 two recommendations I have in front of me and the inflated
13 nature of the guidelines, to assess what sentence is
14 appropriate with the benefit of all the submissions, but, also,
15 my own judgment, and the benefit of the judgment of my
16 colleagues which have been expressed in the range of cases that
17 have come before this court in the past. It is not an exact
18 science.

19 What sentence is sufficient to recognize the
20 seriousness of this offense and to punish someone who feels
21 justified and proud to act with impunity and outside the law?
22 So when do you cross the line into greater than necessary for a
23 defendant who's 67 years old and never spent a day in jail
24 before? And is the answer the same if you're trying, as
25 Congress says you must, to promote respect for the law more

1 broadly, and to convey a message and deter others?

2 The only people who think this is easy are the ones
3 who don't have to make the decision. Many people weighed in,
4 formally through letters, informally by calling chambers,
5 pontificating on cable TV, and in blogs, op-eds, and Tweets.

6 One letter writer, in a letter submitted by the
7 defense, said: I've taken note that you're about to sentence
8 Roger Stone with respect to his plea to a criminal charge
9 having to do with political activity.

10 There's no reason for concern for that. The charge
11 had nothing to do with political activity. And if you watched
12 the trial, you know there was very little evidence about his
13 political activity that was part of the record in the case.
14 He's not being sentenced for what Credico described as his
15 shameless promotion of conspiracy theories.

16 I received a letter submitted by the defense from
17 Mr. Stone's federal election law attorney in Florida. He said:
18 There is no gain saying that Mr. Stone has made a career taking
19 full advantage of the First Amendment in pursuing his client's
20 electoral aims. In so doing, Mr. Stone has engendered many
21 enemies. These efforts are despised because they are
22 effective. Therefore, I submit that you should not hold
23 against Mr. Stone the fact that his career has pushed the
24 bounds of political license, because however distasteful some
25 have found Mr. Stone's work to be, it is fully protected by our

1 Constitution.

2 I have received letters urging me not to silence an
3 important voice in the public arena, but that will not be an
4 element of this sentence in any way. I expect he will keep
5 talking. And as you've just heard when I went through the
6 elements of the offense, he was not convicted and is not being
7 sentenced for exercising his First Amendment rights, his
8 support of the President's campaign or his policies. He was
9 not prosecuted, as some have complained, for standing up for
10 the President. He was prosecuted for covering up for the
11 President.

12 One of the defendant's friends wrote to me and said:
13 I believe, sincerely, I've never seen or heard any credible
14 first account -- firsthand account of Roger doing anything
15 illegal -- I'm sorry. The friend wrote, and I believe he wrote
16 sincerely, to say, quote: I've never seen or heard any
17 credible firsthand evidence of Roger doing anything illegal,
18 close quote.

19 To that I have to say, I've just gone through all the
20 evidence. All of this underscores the fact that it is for good
21 reason that the criminal justice system assigns the
22 responsibility for sentencing to someone who is actually aware
23 of what the charges are and what the evidence was that was
24 introduced in the courtroom.

25 This case also exemplifies why it is that this

1 system, for good reason, demands that the responsibility falls
2 to someone neutral. Someone whose job may involve issuing
3 opinions in favor of and against the same administration in the
4 same week, and not someone who has a longstanding friendship
5 with the defendant. Not someone whose political career was
6 aided by the defendant. And surely not someone who has
7 personal involvement in the events underlying the case.

8 The Court cannot be influenced by those comments.
9 They were entirely inappropriate, but I will not hold them
10 against the defendant either. It would be equally improper to
11 be buffeted by the winds blowing from the left, the
12 enthusiastic callers who object to what the defendant stands
13 for. I cannot and will not sentence him for the behavior of
14 those he supports. Sentencing is personal, and it's based on
15 the evidence.

16 Roger Stone will not be sentenced for who his friends
17 are or for who his enemies are. He's not going to be sentenced
18 for his reputation or his personality or his work. The record
19 doesn't begin to enable me to figure out which supposed dirty
20 tricks he actually committed and which he just took credit for,
21 and it doesn't matter.

22 The touchstone in this case is the offense. And even
23 the government's supplemental memorandum, which helpfully
24 acknowledges the harshness of a strict guideline outcome, says,
25 quote: It remains the position of the United States that a

1 sentence of incarceration is warranted here, close quote.

2 And I believe Mr. Crabb said substantial period of
3 incarceration in his allocution.

4 Why is that? It's because the defendant lied about a
5 matter of great national and international significance. This
6 is not campaign high jinks. This is not Roger just being
7 Roger. He lied to Congress. He lied to our elected
8 representatives.

9 The sentence is not just about punishing him, but
10 also deterring others and upholding the law. It has to send
11 the message that witnesses do not get to decide for themselves
12 whether Congress is entitled to the facts based on what they
13 think about the topic being investigated, or who they fear
14 could be embarrassed by the topic being investigated. There
15 was nothing unfair, phony, or disgraceful about the
16 investigation or the prosecution.

17 The House Committee, which, at the time, Stone
18 testified was under the control of the Republican Majority, the
19 Senate Intelligence Committee, which remains under the control
20 of the Republican Majority, the Special Counsel, who was
21 appointed by and serving under the supervision of the acting
22 attorney general of this administration, and the current
23 inspector general of the current Department of Justice all
24 investigated the circumstances surrounding the election.

25 And all have concluded, like the multiple agencies

1 charged with protecting the United States' national security,
2 that the fact that there was a Russian attempt to interfere in
3 the election was beyond debate. It's a matter of enormous
4 public concern. And, therefore, the House Committee had
5 legitimate grounds, indeed, a duty to inquire how materials
6 belonging to the DNC ended up in the hands of WikiLeaks, and
7 whether Russia played any role in that.

8 The committee had legitimate grounds, indeed, a duty
9 to inquire whether there was any involvement, encouragement,
10 collaboration on the part of the campaign. The legitimacy of
11 the inquiry is an entirely separate question from whether
12 anyone found enough evidence to draw a conclusion at the end of
13 the day.

14 Roger Stone took it upon himself to lie, to impede,
15 to obstruct before the investigation was complete. And he
16 endeavored to influence the result. How could the committee do
17 its job and reach the correct conclusion under those
18 circumstances?

19 And what is the response of the defense to it? How
20 does it view the evidence?

21 At trial, the defense appropriately questioned
22 Randy Credico's credibility and Rick Gates's credibility, but
23 it was largely Stone's own emails and his own texts that proved
24 the allegations beyond a reasonable doubt.

25 So what did the defense say to the jury on his

1 behalf?

2 So what. So what?

3 Of all the circumstances in this case, that may be
4 the most pernicious. The truth still exists. The truth still
5 matters. Roger Stone's insistence that it doesn't, his
6 belligerence, his pride in his own lies are a threat to our
7 most fundamental institutions, to the very foundation of our
8 democracy.

9 And if it goes unpunished, it will not be a victory
10 for one party or another. Everyone loses because everyone
11 depends on the representatives they elect to make the right
12 decisions on a myriad of issues -- many of which are
13 politically charged but many of which aren't -- based on the
14 facts.

15 Everyone depends on our elected representatives to
16 protect our elections from foreign interference based on the
17 facts. No one knows where the threat is going to come from
18 next time or whose side they're going to be on, and for that
19 reason the dismay and disgust at the defendant's belligerence
20 should transcend party.

21 The dismay and the disgust at the attempts by others
22 to defend his actions as just business as usual in our
23 polarized climate should transcend party. The dismay and the
24 disgust with any attempts to interfere with the efforts of
25 prosecutors and members of the judiciary to fulfil their duty

1 should transcend party.

2 Sure, the defense is free to say: So what? Who
3 cares?

4 But, I'll say this: Congress cared. The
5 United States Department of Justice and the United States
6 Attorney's Office for the District of Columbia that prosecuted
7 the case and is still prosecuting the case cared. The jurors
8 who served with integrity under difficult circumstances cared.
9 The American people cared. And I care.

10 Finally, the sentencing statute says that I must
11 consider the need to avoid unwarranted sentencing disparities
12 among defendants with similar records who have been found
13 guilty of similar conduct. The guidelines are supposed to
14 fulfil that purpose, and I concluded that the guideline Level
15 27 points to 80 to 87 months.

16 For comparison purposes, the government's
17 supplemental brief points out that if I calculated, as it asks
18 me to with respect to all the other enhancements, but he didn't
19 get the eight-level of enhancements for threats at all, that
20 would have been Level 21, or a range of 37 to 46 months. But,
21 I disagreed with their two-level enhancement for role in the
22 offense. So, if I didn't take the threat into account at all,
23 I would have been at Level 19, which is 30 to 37 months.

24 These considerations suggest that even the guideline
25 I calculated is greater than necessary. But I can't ignore the

1 circumstances involving Mr. Credico entirely. They have to
2 factor into the analysis. A sentencing range that would give
3 no consideration to his threatening conduct wouldn't fairly
4 address the seriousness of the offense.

5 And even if you put the offense aside -- the threat
6 aside, on top of his own lying, we have a pressure campaign to
7 get someone else to lie, and we have the utter disrespect that
8 he exhibited towards these proceedings.

9 At the end of the day, once you leave the math and
10 you get back to the business of judging, the statute requires
11 that the sentence must be proportionate, and that also weighs
12 heavily on my thinking. This may be one of the strongest
13 factors that points to a downward variance.

14 There were very few comparable cases. Generally,
15 they involve some period of incarceration, but, also,
16 generally, lower than the guideline range. The government
17 pointed to Rita Lavelle, who got a six months sentence;
18 Congressman Hansen, 12 months. But those cases involve more
19 personal matters. There were no threats involved. Still,
20 there was some jail time to be served.

21 The government points to the *Solofa* case. Defendant
22 got 37 months for tampering with a witness and obstruction of
23 justice. It was an OIG, FBI, grand jury investigation into
24 bribes and kickbacks into the sale of school bus parts to the
25 Department of Education in American Samoa. And this defendant

1 instructed an undercover officer how to lie and hide documents,
2 although there were no violent threats involved.

3 The most analogous case is probably the prosecution
4 of Scooter Libby, who received 30 months for his false
5 testimony before the grand jury, which also related to national
6 security issues. And the falsehoods were the basis for an
7 obstruction of justice count alone. There was no witness
8 tampering component, much less a threat component.

9 The defendant points to some of the false statement
10 cases and other Office of Special Counsel cases as comparators,
11 but, largely, they're not analogous. Cases involving a single
12 lie to the FBI or investigators, particularly those involving
13 people who then pled or cooperated are not at all analogous.

14 Mr. Manafort was sentenced for 13 months for the
15 witness tampering and obstruction of justice offense alone.
16 That simply involved getting one's story together, and no
17 threat to do bodily harm. And even if you leave the threat
18 out, the defendant's persistence in getting Credico to tell the
19 story he wanted him to tell was worse than what was involved
20 with Manafort. But, that's still a benchmark for a witness
21 tampering offense that wasn't included in the sentence that
22 Scooter Libby got.

23 Therefore, in an exercise of my discretion, after
24 consideration of all the statutory factors, the sentence that I
25 find to be imposed that is sufficient but not greater than

1 necessary is as follows:

2 It's the judgement of the Court that you,
3 Roger J. Stone, Jr., are hereby committed to the custody of the
4 Bureau of Prisons for a term of 40 months on Count 1.

5 On Counts 2 through 6 you will be sentenced to 12
6 months on each count, to run concurrently with the sentence on
7 Count 1.

8 Count 7, you'll be sentenced to a term of 18 months,
9 to run concurrently with Count 1.

10 This would have been my sentence with or without the
11 three-point adjustment under §2J1.2(b) (2) for substantial
12 interference.

13 Under Section 18 U.S. Code Section 3143(a) (2), I find
14 by clear and convincing evidence you're not likely to flee or
15 pose a danger to any other person or the community, and you
16 will be permitted to voluntarily surrender on a date no earlier
17 than two weeks after the Court has ruled on your pending motion
18 for a new trial.

19 I recommend that you be designated to serve your
20 sentence at a facility as close as possible to your family in
21 Fort Lauderdale, Florida.

22 You're further sentenced to pay a \$20,000 fine. The
23 Court will waive the imposition of interest or penalties that
24 may accrue on the balance.

25 You are also required by law to pay a \$100 special

1 assessment on each count, for a total of \$700. The special
2 assessment is immediately payable to the Clerk of the Court for
3 the U.S. District Court for the District of Columbia.

4 If you change your address, within 30 days of any
5 change you have to notify the Clerk of the Court of any change
6 until such time as this obligation is paid in full. While
7 you're incarcerated you can make payments on the special
8 assessment through your participation in the Bureau of Prisons
9 Inmate Financial Responsibility Program.

10 You are further sentenced to serve a 24-month term of
11 supervised release on each count, to run concurrently.

12 Within 72 hours of your release from custody you
13 shall report in person to the probation office in the district
14 to which you are released.

15 While on supervision you shall not possess a firearm
16 or other dangerous weapon, you shall not use or possess an
17 illegal controlled substance, and you shall not commit another
18 federal, state, or local crime. You must also abide by the
19 general conditions of supervision adopted by the U.S.
20 Probation Office, as well as the following special conditions:

21 First of all, according to 42 U.S. Code Section
22 14135a, as for all felony offenses, you must submit to the
23 collection and use of DNA information while you're incarcerated
24 at the Bureau of Prisons, or at the direction of the U.S.
25 Probation Office.

1 You must submit to substance abuse testing within 15
2 days of placement on supervision, and periodically thereafter,
3 including random testing, without notice to you, at the
4 direction of the probation office. And if substance abuse
5 treatment is indicated, you shall participate in any program
6 approved and directed by the probation office.

7 You must complete 250 hours of hands-on community
8 service. This obligation may not be satisfied with mere
9 fundraising or advocacy, as laudable as they are, or with
10 attendance at religious service, although the service may be in
11 connection with your place of worship.

12 The probation office will supervise your completion
13 of this condition by approving the program. You must provide
14 written verification of completed hours to the probation
15 office.

16 You must begin to make payments on the financial
17 penalty within 60 days after you're released from imprisonment
18 in the amount of at least \$1,000 per month. You must provide
19 the probation office with access to any requested financial
20 information, and authorize the release of any requested
21 financial information, which the probation office may share
22 with the U. S. Attorney's Office.

23 You shall provide the probation office with your
24 income tax returns, authorization for release of credit
25 information, and information about any business or finances in

1 which you have a control or interest until all -- until the
2 penalty has been satisfied.

3 I'm going to transfer supervision of your supervised
4 release to the Southern District of Florida, but not
5 jurisdiction.

6 The U.S. Probation Office in that district must
7 submit a progress report to the Court within 60 days of the
8 commencement of supervision. Upon receipt of the progress
9 report I'll determine if your appearance is required at a
10 reentry progress hearing.

11 The probation office is directed to release the
12 presentence report to all appropriate agencies in order to
13 execute the sentence of the Court. Any treatment agencies must
14 return it to the probation office upon the defendant's
15 completion or termination from treatment.

16 Mr. Stone, you have a right to appeal your conviction
17 and the sentence imposed by the Court. The rules require that
18 if you choose to appeal, you must file any appeal within 14
19 days after the Court enters judgment. But, I will extend that
20 time and order that you must file any appeal within 14 days
21 after the Court has ruled on the pending motion for new trial.

22 If you're unable to afford the cost of appeal, you
23 may request permission from the Court to file an appeal without
24 cost to you.

25 Is there anything further I need to take up right now

1 on behalf of the United States?

2 MR. CRABB: No, Your Honor.

3 THE COURT: Anything further on behalf of the
4 defendant?

5 MR. GINSBERG: Your Honor, if I understood -- is the
6 Court going to hold the judgment in abeyance, or is the Court
7 intending to file the judgment?

8 THE COURT: Well, the judgment -- I can simply not
9 sign the judgment. But, the judgment specifies that he cannot
10 be designated until two weeks after I have ruled on the motion.
11 So, I believe that there's no impediment to my entering the
12 judgment and having it be a matter of public record.

13 MR. GINSBERG: In an abundance of caution, it would
14 be our preference if the Court didn't enter the judgment until
15 after the new trial motion is decided, both for appellate
16 reasons -- but, I think Your Honor is correct, you've covered
17 us on that. But --

18 THE COURT: Well, if I don't enter the judgment, then
19 I'm going to withdraw the language about when he can be
20 designated because at that point the judgment is not going to
21 be entered until after the order has been issued.

22 MR. GINSBERG: Well, that gets to my second concern,
23 which is, as I understood what the Court said, he does not have
24 to surrender until two weeks following the --

25 THE COURT: No earlier than two weeks following.

1 MR. GINSBERG: So the Court would be amenable to
2 extending the date of surrender until he's actually designated?

3 THE COURT: Well, that's what voluntary surrender is.

4 MR. GINSBERG: Right. But sometimes the defendant's
5 surrender date shows up -- appears before the designation
6 occurs, and then there are issues.

7 THE COURT: All right. What I am going to order is
8 that he can voluntarily surrender. That's my order. Now, if I
9 don't sign this, then all that's going to be in the order is
10 that he's entitled to voluntarily surrender, and they'll let
11 him know where to go, and he has to go.

12 If we keep -- if I enter it today, then it has the
13 language in there that he would not have to surrender until two
14 weeks after, at the earliest, my order.

15 MR. GINSBERG: Right. I think Your Honor's
16 suggestion is probably the better way to go.

17 May I confer with my counsel for one moment?

18 THE COURT: Yes.

19 (Off-the-record discussion between defense counsel.)

20 MR. GINSBERG: We'll go with the Court's approach.

21 THE COURT: All right.

22 MR. GINSBERG: Thank you, Your Honor.

23 THE COURT: All right. Thank you very much.

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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 stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability.

Dated this 20th day of February, 2019

Janice E. Dickman, CRR, CMR, CCR
Official Court Reporter
Room 6523
333 Constitution Avenue, N.W.
Washington, D.C. 20001