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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,)	Case 1:21-cr-245
)	
Plaintiff,)	
)	
v.)	Alexandria, Virginia
)	October 17, 2022
IGOR Y. DANCHENKO,)	9:00 a.m.
)	
Defendant.)	Volume 5 (AM Session)
)	Pages 1092 - 1221

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE ANTHONY J. TRENGA
UNITED STATES DISTRICT COURT JUDGE
AND A JURY

APPEARANCES:

FOR THE PLAINTIFF:

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THE DEFENDANT, IGOR Y. DANCHENKO, IN PERSON

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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1 (The jury is not present.)

2 MR. DURHAM: Good morning, Your Honor.

3 MR. SEARS: Good morning, Your Honor.

4 THE COURT: Good morning.

5 THE CLERK: Criminal Case No. 1:21-cr-245,
6 *United States v. Igor Danchenko.*

7 Counsel, will you please note your
8 appearances for the record.

9 MR. DURHAM: Good morning, Your Honor. John
10 Durham for the United States along with Michael Keilty
11 and Brittany Shaw, and at counsel table is Paralegal
12 Kori Arsenault and Supervisory Special Agent Ryan
13 James.

14 MR. SEARS: Good morning, Your Honor. Stuart
15 Sears on behalf of Mr. Danchenko, who is present.
16 Along with me is Danny Onorato, Paola Pinto, and
17 Charlie Tent.

18 THE COURT: All right. Welcome.

19 The issues I'd like to talk about are the
20 jury instructions, the verdict form, and I know you-all
21 had raised an issue as to what could be shown to the
22 jury.

23 Any other issues?

24 MR. SEARS: No, Your Honor. I would just
25 note that we do intend to in our case, I guess,

1 introduce an additional stipulation that we reached
2 with the government this weekend. It relates to
3 Defendant's Exhibit 422B, as in boy. The Court may
4 recall that those are Amtrak records related to
5 Mr. Danchenko's travel to New York in July of 2016.

6 THE COURT: All right.

7 MR. SEARS: There's an issue with the records
8 in that the travel dates and times at the time of
9 purchase are in Eastern Standard Time. But when the
10 ticket is actually scanned on the train, those numbers
11 are reflected in Pacific Time, and that information
12 came directly from a representative from Amtrak. I
13 shared that information with the government so there's
14 a stipulation just indicating that that time --

15 THE COURT: And you'll introduce that during
16 your case?

17 MR. SEARS: Yes, Your Honor. I don't intend
18 to do it through a witness.

19 THE COURT: No. What I'll do is tell the
20 jury that the government has rested. I'll call upon
21 you to present any evidence you want, and you can
22 introduce the stipulation.

23 MR. SEARS: Yes, sir.

24 THE COURT: All right. Any other issues,
25 Mr. Durham, other than those that I mentioned?

1 MR. DURHAM: Nothing other than what Your
2 Honor's mentioned.

3 THE COURT: All right. Let's take up what
4 you want to show the jury. I understand you both want
5 to show portions of the transcript. Is that right?

6 MR. DURHAM: That's correct, yes, Your Honor.

7 THE COURT: Given that both of you want to do
8 it, I'll allow it understanding the jury is not going
9 to be permitted to have the transcripts even if they
10 ask for them.

11 MR. SEARS: I was just trying to save Your
12 Honor from that question, but I think it's more
13 accurate to do it that way. They obviously are going
14 to be told that their recollections control through the
15 instructions.

16 THE COURT: Right.

17 All right. On the verdict forms, I've looked
18 at them. What I understand to be the defense's
19 proposed form really conforms with the standard
20 practice here. So I'm going to give the defense's
21 verdict form.

22 If you-all want, I can put under each count
23 that it is a false statements count, but other than
24 that, I'll just go ahead and give the defense's form.

25 MR. DURHAM: Thank you, Your Honor.

1 Just one matter. This is going to come up in
2 connection with the Court's jury instructions, but it
3 relates to Count 5. I'll just point the Court to
4 page 20 -- I'm sorry, page 31 of Your Honor's
5 instructions. I think the parties are in agreement --
6 the very bottom of page 31.

7 THE COURT: On the nature of the offense
8 charged?

9 MR. DURHAM: That's correct, yes, Your Honor.

10 THE COURT: Yes.

11 MR. DURHAM: It says at the very bottom,
12 Count 5 of the indictment charges that on or about
13 November 16. The evidence is really related to
14 November 2. So I think the parties are in agreement
15 that it makes more sense to make that November 2.

16 THE COURT: All right.

17 MR. DURHAM: And then the corresponding
18 change would then need to be made on Count 5 of the
19 verdict form.

20 THE COURT: All right. November 2?

21 MR. DURHAM: Yes, Your Honor.

22 THE COURT: All right.

23 MR. DURHAM: Thank you.

24 THE COURT: Very good.

25 All right. Any other issues as to the jury

1 instructions?

2 MR. SEARS: Yes, Your Honor, briefly. The
3 Court's Instruction No. 6 relates to Rule 404(b)
4 evidence. I think, from our perspective, we don't
5 think that instruction is necessary because we don't
6 think there was that type of evidence presented in this
7 case. So we think it might spark more confusion than
8 clarity for that reason. I don't know what the
9 government's position is on that, but that was one I
10 wanted to flag.

11 THE COURT: I will say I had some conflicting
12 thoughts about that one.

13 Mr. Durham, what's your view on it? Given
14 the Court's ruling, what's the 404(b) evidence at this
15 point on Count 1?

16 MR. DURHAM: I think it may be in a sort of
17 technical sense the testimony in evidence that came in
18 regarding the counterespionage matter. Arguably, it
19 would be 404(b), but we don't have any issue with the
20 Court removing it.

21 THE COURT: All right. I'll go ahead and
22 remove Instruction No. 6.

23 MR. SEARS: With regard to Instruction
24 No. 17, Your Honor, the fact that the defendant's
25 failure to testify, which I believe is on page 20 --

1 THE COURT: Yes.

2 MR. SEARS: -- I did notice there was a gap
3 between the first two sentences. I don't know if that
4 was intentional or not, but I'm just flagging that for
5 the Court.

6 THE COURT: When you say "a gap," you may be
7 looking at a different version. There's an additional
8 spacing between those two sentences?

9 MR. SEARS: It looks like that was fixed in
10 the version we got today.

11 THE COURT: All right. What I'm going to do
12 is renumber these given that we're taking 6 out.

13 MR. SEARS: Okay.

14 THE COURT: All right.

15 MR. SEARS: Lastly, Your Honor, I did just
16 want to preserve our argument on Instruction No. 25
17 with regard to willfully. The Court had accepted the
18 government's proposed instruction --

19 THE COURT: Yes.

20 MR. SEARS: -- on this. We had asked the
21 Court to specifically include language that read, "An
22 act is done willfully if it is done with an intention
23 to do something the law forbids, that is, with a bad
24 purpose to disobey the law." We continue to believe
25 that that's what needs to be shown when the statute

1 requires a violation to be willful.

2 I have the case, the *Bryan* case, which is a
3 Supreme Court case from 1998, which I can hand up to
4 the Court. We did cite it previously. So I know the
5 Court has reviewed it, but I did want to at least
6 preserve that argument if the Court has made up its
7 mind that it will not include that.

8 THE COURT: That was a false statement case?

9 MR. SEARS: It was not a false statement
10 case. It was not.

11 THE COURT: Okay. All right. That objection
12 is preserved.

13 Anything else?

14 MR. SEARS: No, Your Honor.

15 THE COURT: All right. Let me also just
16 review with you what I intend to tell the jury about
17 the fact that Count 1 is no longer in the case. I'm
18 happy to hear any comments about it. What I intend to
19 tell them is as follows:

20 You're no longer asked to consider
21 Mr. Danchenko's statement to Special Agent Helson on
22 June 15, 2017, that he had not talked to Mr. Dolan
23 about anything specific in the Steele dossier as
24 alleged in Count 1. You should not consider or in any
25 way be influenced by your no longer needing to consider

1 that count in connection with your deliberations on
2 Counts 2 through 5.

3 MR. DURHAM: The government has no concerns
4 about that, Your Honor.

5 MR. SEARS: No concerns, Your Honor. Thank
6 you.

7 THE COURT: All right. Good. I tried to
8 make it as neutral as possible.

9 MR. DURHAM: Your Honor, the only additional
10 issue the government wanted to raise with the Court
11 concerning the jury instructions relate to what was
12 marked as Instruction 27. I guess it would be 26 now.
13 It appears on page 30 of the copy of the instructions
14 given this morning. We would ask the Court at the very
15 bottom of that page, if the Court gives the
16 instruction, which it certainly intends to and should,
17 that if evidence in the case leaves the jury with a
18 reasonable doubt and so forth, that that be balanced
19 out with one additional sentence saying, "If, on the
20 other hand, the evidence in the case convinces the jury
21 that the defendant acted with intent," et cetera, then
22 the jury should return a guilty verdict against the
23 defendant.

24 THE COURT: This was the government's
25 proposed good faith instruction with the exception of

1 one paragraph that I took out, right?

2 MR. DURHAM: That's my error, Your Honor. I
3 did that to myself earlier.

4 THE COURT: I understand.

5 Mr. Sears.

6 MR. SEARS: Your Honor, I believe that tracks
7 the language of the standard instruction, and we would
8 ask the Court to use.

9 THE COURT: I'm not going to put that in. I
10 think that's within the scope of argument, Mr. Durham,
11 that you can make.

12 All right. Anything else?

13 MR. SEARS: Your Honor, obviously, we're not
14 putting on a case other than that exhibit. I did want
15 to preserve a Rule 29 argument. I don't intend to
16 argue it for the third time in this case.

17 THE COURT: Right.

18 MR. SEARS: So I didn't know if the Court
19 just wanted to excuse the jury for me to do that or do
20 it at the bench.

21 THE COURT: Why don't we just do it at the
22 bench.

23 MR. SEARS: Okay.

24 THE COURT: All right. Anything else?

25 MR. DURHAM: The government has nothing.

1 Thank you, Your Honor.

2 THE COURT: All right. In terms of closing
3 argument, we talked about an hour for each side, which
4 would include your rebuttal. Is that still something
5 you would like to do?

6 MR. DURHAM: It may be that the government
7 would need a little bit more time, certainly not more
8 than 90 minutes. But I would ask for a little bit of
9 leave in that regard.

10 THE COURT: Mr. Sears.

11 MR. SEARS: Your Honor, I hope to speak
12 slowly through my closing, not that slowly. I think my
13 closing will probably be in the neighborhood of
14 30 minutes to 35 minutes.

15 THE COURT: All right.

16 MR. SEARS: You know, 90 minutes seems a
17 little excessive from my perspective, but certainly,
18 you know, I think both parties should have the
19 opportunity to make their arguments. I would ask that
20 the government be constrained a little bit.

21 THE COURT: I'll give you a little bit more
22 than an hour, say an hour and 15 minutes, Mr. Durham.

23 MR. DURHAM: Thank you, Your Honor.

24 THE COURT: All right. Anything else?

25 (No response.)

1 THE COURT: All right. Great. As soon as
2 the jury is here, we'll begin.

3 The Court will stand in recess.

4 (Recess from 9:19 a.m. until 9:47 a.m.)

5 (The jury is not present.)

6 THE COURT: You've received a copy of the
7 jury note asking about redactions. I think all of the
8 redactions have been agreed to; haven't they, Counsel?

9 MR. SEARS: Well --

10 THE COURT: I mean, they've been redacted by
11 agreement.

12 MR. SEARS: I don't know that I would say
13 that, Your Honor. Some of the redactions in what we've
14 been provided from the classified discovery wasn't by
15 our agreement.

16 THE COURT: I see. Right. No, I understand.

17 MR. SEARS: We just don't know what's in
18 there ourselves. So I think to avoid saying too little
19 or too much, our position would be to just tell the
20 jury that they're not to concern themselves with why
21 matters are redacted and leave it at that. Because I
22 do think if you start to give an explanation, it might
23 give the wrong impression.

24 THE COURT: Mr. Durham, any thoughts about
25 this?

1 MR. DURHAM: The government would take the
2 same position, maybe for different reasons. I think
3 that there are instances in the evidence here where
4 there was an agreement about redactions. The Court
5 might recall, for example, that with respect to the
6 government's exhibit, which is Report 95, we thought it
7 would be more expeditious to maybe move ahead and come
8 back to redactions. So I don't think it's completely
9 accurate to say that it was by agreement.

10 THE COURT: Right. All right. Well, I
11 agree. I think I simply need to tell them that
12 redactions were made through a process that really
13 shouldn't concern them and that they shouldn't attach
14 any significance or draw any inferences from the fact
15 of the redactions. Does that sound acceptable?

16 MR. SEARS: That's acceptable, Your Honor.

17 MR. DURHAM: Yes, Your Honor.

18 THE COURT: All right. Any other issues
19 before we bring the jury out?

20 MR. SEARS: No, Your Honor.

21 MR. DURHAM: No, Your Honor.

22 THE COURT: All right. Let's bring the jury
23 out.

24 (The jury enters at 9:48 a.m.)

25 THE COURT: Good morning. Please be seated.

1 We're now ready to proceed.

2 I did receive your note about redactions. I
3 understand your curiosity about seeing portions of
4 documents blacked out, and I've reviewed it with
5 counsel. What I can tell you is that those redactions
6 were made pursuant to a process that really has no
7 bearing on the issues that you need to consider, and
8 you should attach no significance or draw any
9 inferences from the fact of those redactions.

10 All right. We're ready to proceed. The
11 government has rested.

12 Mr. Sears.

13 MR. SEARS: Thank you, Your Honor.

14 Your Honor, the defense will not be calling
15 any witnesses in our case. However, there is an
16 exhibit, which is a stipulation that was reached with
17 the government, that we would like to read into
18 evidence and admit into evidence.

19 THE COURT: All right. Ladies and gentlemen,
20 again, as I've told you on prior occasions, a
21 stipulation is simply an agreement between the parties
22 as to the matters stated in that stipulation. You may
23 accept it as sufficient proof of what's been stated.
24 However, what significance you attach to it is entirely
25 up to you.

1 Mr. Sears.

2 MR. SEARS: Your Honor, if we could publish
3 it to the jury?

4 THE COURT: All right.

5 MR. SEARS: Thank you, Ms. Arsenault.

6 This is what's been marked as Government
7 Exhibit 1812. The following -- it is hereby stipulated
8 and agreed between the undersigned parties as follows:

9 The following times referenced on the Amtrak
10 records admitted as Defendant's Exhibit 422B are
11 provided in Pacific Standard Time and, therefore, are
12 three hours earlier than the actual time of travel in
13 Eastern Standard Time.

14 Therefore, the actual time of travel on
15 July 26, 2016, was 3:57 a.m. Eastern Standard Time, and
16 the actual time of travel on July 28, 2016, was
17 10:23 p.m. Eastern Standard Time.

18 This stipulation is admissible as evidence at
19 this trial.

20 THE COURT: All right. Thank you, Mr. Sears.

21 MR. SEARS: Your Honor, with the admission of
22 that exhibit, the defense rests.

23 THE COURT: All right. Thank you.

24 Mr. Durham, any further evidence?

25 MR. DURHAM: No. Thank you, Your Honor.

1 THE COURT: All right. May I see counsel at
2 the bench, please.

3 (Conference at the bench, as follows:)

4 THE COURT: All right. Mr. Sears.

5 MR. SEARS: Thank you, Your Honor. At this
6 point, we would renew our Rule 29 motion on the same
7 grounds we raised on Friday afternoon.

8 THE COURT: All right. The Court is going to
9 overrule that as well.

10 All right. Anything further?

11 MR. DURHAM: Thank you, Your Honor.

12 (Proceedings continued in open court, as follows:)

13 THE COURT: Ladies and gentlemen, we're now
14 at the point where all the evidence has been presented
15 and what's left to be done is to instruct you as to the
16 law to be applied to the issues that will be submitted
17 for your consideration.

18 As you will see from the instructions that
19 I'm about to give you, you are no longer asked to
20 consider Mr. Danchenko's statement to Special Agent
21 Helson on June 15, 2017, that he had not talked with
22 Mr. Dolan about anything specific in the Steele dossier
23 as alleged in Count 1, and you should not consider or
24 in any way be influenced by your no longer needing to
25 consider that count in connection with your

1 deliberations on Counts 2 through 5. These
2 instructions will apply to those counts.

3 Each of you will have a copy of what I'm
4 going to read to you. So you're certainly free to take
5 notes, but know that you will actually have in written
6 form, each of you, a copy of everything that I'm going
7 to read to you.

8 You'll also see, when you do receive the
9 instructions, that they are numbered and have a title.
10 Those have no significance to your deliberations.
11 There's nothing significant about the order in which
12 I'm giving you these or the title of the instruction.
13 That's simply for your convenience.

14 Now that you've heard all of the evidence
15 that is to be received in the trial, it becomes my duty
16 to give you the final instructions of the Court as to
17 the law that is applicable to this case. You should
18 use these instructions to guide you in your decisions.

19 All of the instructions of law given to you
20 by the Court, those given to you at the beginning of
21 the trial, those given to you during the trial, and
22 those final instructions must guide and govern your
23 deliberations.

24 It is your duty as jurors to follow the law
25 as stated in all of the instructions of the Court and

1 to apply these rules of law to the facts as you find
2 them to be from the evidence received during the trial.
3 Counsel may quite properly refer to some of the
4 applicable rules of law in their closing arguments to
5 you. If, however, any difference appears to you
6 between the law as stated by counsel and that as stated
7 by the Court in these instructions, you, of course, are
8 to be governed by the instructions given to you by the
9 Court.

10 You are not to single out any one instruction
11 alone as stating the law but must consider the
12 instructions as a whole in reaching your decisions.

13 Neither are you to be concerned with the
14 wisdom of any rule of law stated by the Court
15 regardless of any opinion you may have as to what the
16 law ought to be. It would be a violation of your sworn
17 duty to base any part of your verdict upon any other
18 view or opinion of the law than that given in these
19 instructions of the Court just as it would be a
20 violation of your sworn duty, as judges of the facts,
21 to base your verdict upon anything but the evidence
22 received in this case.

23 You were chosen as jurors for this trial in
24 order to evaluate all of the evidence received and
25 decide each of the factual questions presented by the

1 allegations brought by the government in the indictment
2 and the plea of not guilty by the defendant.

3 In resolving the issues presented to you for
4 decision in this trial, you must not be persuaded by
5 bias, prejudice, or sympathy for or against any of the
6 parties to this case or by any public opinion.

7 Justice, through trial by jury, depends upon
8 the willingness of each individual juror to seek the
9 truth from the same evidence presented to all the
10 jurors here in the courtroom and to arrive at a verdict
11 by applying the same rules of law as now being given to
12 each of you in these instructions of the Court.

13 There is nothing particularly different in
14 the way that a juror should consider the evidence in a
15 trial from that in which any reasonable and careful
16 person would deal with any very important question that
17 must be resolved by examining facts, opinions, and
18 evidence.

19 You're expected to use your good sense in
20 considering and evaluating the evidence in this case.
21 Use the evidence only for the purposes for which it has
22 been received and give the evidence a reasonable and
23 fair construction in light of your common knowledge of
24 the natural tendencies and inclinations of human
25 beings.

1 If the defendant is proven guilty beyond a
2 reasonable doubt, say so. If not proved guilty beyond
3 a reasonable doubt, say so.

4 Keep constantly in mind that it would be a
5 violation of your sworn duty to base a verdict upon
6 anything other than the evidence received in the case
7 and the instructions of the Court.

8 Remember as well that the law never imposes
9 upon a defendant in a criminal case the burden or duty
10 of calling any witnesses or producing any evidence
11 because the burden of proving guilt beyond a reasonable
12 doubt is always with the government.

13 The evidence in this case consists of the
14 sworn testimony of the witnesses, regardless of who may
15 have called them, all exhibits received in evidence,
16 regardless of who may have produced them, all facts
17 which may have been agreed to or stipulated, and all
18 facts and events which may have been judicially
19 noticed.

20 When the attorneys on both sides stipulate or
21 agree as to the existence of a fact, you should accept
22 the stipulation as evidence and should regard that fact
23 as proved.

24 The Court has taken judicial notice of
25 certain facts or events. When the Court declares that

1 it has taken judicial notice of some fact or event, you
2 may accept the Court's declaration as evidence and
3 regard as proved the fact or event which has been
4 judicially noticed. You are not required to do so,
5 however, since you are the sole judges of the facts.

6 Any proposed testimony or proposed exhibit to
7 which an objection was sustained by the Court and any
8 testimony or exhibit ordered stricken by the Court must
9 be entirely disregarded.

10 Anything you may have seen or heard outside
11 the courtroom is not evidence and must be entirely
12 disregarded.

13 Questions, objections, statements, and
14 arguments of counsel are not evidence in the case
15 unless made as an admission or stipulation of fact.

16 You are to base your verdict only on the
17 evidence received in the case. In your consideration
18 of the evidence received, however, you are not limited
19 to the bald statements of the witnesses or to the bald
20 assertions in the exhibits. In other words, you are
21 not limited solely to what you see and hear as the
22 witnesses testify or as the exhibits are admitted. You
23 are permitted to draw from the facts which you find
24 have been proved such reasonable inferences as you feel
25 are justified in light of your experience and common

1 sense.

2 There are two types of evidence which are
3 generally presented during trial, direct evidence and
4 circumstantial evidence. Direct evidence is the
5 testimony of a person who asserts or claims to have
6 actual knowledge of a fact, such as an eyewitness.
7 Circumstantial evidence is proof of a chain of facts
8 and circumstances indicating the existence of a fact.
9 The law makes no distinction between the weight or
10 value to be given to either direct or circumstantial
11 evidence, nor is a greater degree of certainty required
12 of circumstantial evidence than of direct evidence.
13 You should weigh all the evidence in the case.

14 Inferences are simply deductions or
15 conclusions which reason and common sense lead the jury
16 to draw from the evidence received in the case. If any
17 reference by the Court or by counsel to matters of
18 testimony or exhibits does not coincide with your own
19 recollection of that evidence, it is your recollection
20 which should control during your deliberations and not
21 the statements of the Court or counsel.

22 You are the sole judges of the evidence
23 received in this case.

24 The questions asked by a lawyer for either
25 party to this case are not evidence. If a lawyer asks

1 a question of a witness which contains an assertion of
2 fact, therefore, you may not consider the assertion by
3 the lawyer as evidence of that fact. Only the answers
4 are evidence.

5 It is the duty of the Court to admonish a
6 lawyer who out of zeal for his or her cause does
7 something which I feel is not in keeping with the rules
8 of evidence or procedure. You're to absolutely draw no
9 inference against the side to whom an admonition of the
10 Court may have been addressed during the trial of this
11 case.

12 Tape recordings of conversations have been
13 received in evidence and have been played for you.
14 Typewritten transcripts of these tape-recorded
15 conversations have been furnished to you. These
16 typewritten transcripts of the conversations are being
17 given to you solely for your convenience in assisting
18 you in following the conversation or in identifying
19 speakers. The tapes themselves are evidence in the
20 case, and the typewritten transcripts are not evidence.
21 What you hear on the tapes is the evidence. What you
22 read on the transcript is not. If you perceive any
23 variation between the two, you will be guided solely by
24 the tapes and not by the transcripts.

25 If you cannot, for example, determine from

1 the tape recording that particular words were spoken or
2 if you cannot determine from the tape recording who
3 said a particular word or words, you must disregard the
4 transcripts insofar as those words or that speaker are
5 concerned.

6 The defendant is not on trial for any act or
7 conduct not specifically charged in the indictment.

8 A separate crime is charged in each count of
9 the indictment. Each charge and the evidence
10 pertaining to it should be considered separately by the
11 jury. The fact that you may find the defendant guilty
12 or not guilty as to one of the counts should not
13 control your verdict as to any other count.

14 Your decision on the facts of this case
15 should not be determined by the number of witnesses
16 testifying for or against the party. You should
17 consider all the facts and circumstances in evidence to
18 determine which of the witnesses you choose to believe
19 or not believe. You may find that the testimony of a
20 smaller number of witnesses on one side is more
21 credible than the testimony of a greater number of
22 witnesses on the other side.

23 Testimony and exhibits can be admitted into
24 evidence during a trial only if they meet certain
25 criteria and standards. It is the sworn duty of the

1 attorney on each side of a case to object when the
2 other side offers testimony or an exhibit which that
3 attorney believes is not properly admissible under the
4 rules of law. Only by raising an objection can a
5 lawyer request and obtain a ruling from the Court on
6 the admissibility of the evidence being offered by the
7 other side. You should not be influenced against an
8 attorney or his client because the attorney has made an
9 objection.

10 Do not attempt, moreover, to interpret my
11 rulings on objections as somehow indicating how I think
12 you should decide this case. I am simply making a
13 ruling on a legal question regarding the particular
14 piece of evidence or exhibit.

15 You, as jurors, are the sole and exclusive
16 judges of the credibility of each of the witnesses
17 called to testify in this case, and only you determine
18 the importance of the weight, if any, that their
19 testimony deserves. After making your assessment
20 concerning the credibility of a witness, you may decide
21 to believe all of that witness' testimony, only a
22 portion of it, or none of it.

23 In making your assessment of that witness,
24 you should carefully scrutinize all of the testimony
25 given by that witness, the circumstances under which

1 each witness has testified, and all of the other
2 evidence which tends to show whether a witness, in your
3 opinion, is worthy of belief.

4 Consider each witness' intelligence, motive
5 to falsify, state of mind, appearance, and manner while
6 on the witness stand. Consider the witness' ability to
7 observe the matters as to which he or she has testified
8 and consider whether he or she impresses you as having
9 an accurate memory or recollection of these matters.

10 Consider also any relation a witness may bear
11 to either side of the case, the manner in which each
12 witness might be affected by your verdict, and the
13 extent to which, if at all, each witness is either
14 supported or contradicted by other evidence in the
15 case.

16 Inconsistencies or discrepancies in the
17 testimony of a witness or between the testimonies of
18 different witnesses may or may not cause you to
19 disbelieve or discredit such testimony. Two or more
20 persons witnessing an incident or a transaction may
21 simply see or hear it differently. Innocent
22 misrecollection, like failure of recollection, is not
23 an uncommon human experience. In weighing the effect
24 of a discrepancy, however, always consider whether it
25 pertains to a matter of importance or an insignificant

1 detail and consider whether the discrepancy results
2 from innocent error or intentional falsehood.

3 After making your own judgment or assessment
4 concerning the believability of a witness, you can then
5 attach such significance or weight to that testimony,
6 if any, that you feel it deserves. You will then be in
7 a position to decide whether the government has proven
8 the charges beyond a reasonable doubt.

9 The testimony of a witness may be discredited
10 or, as we sometimes say, impeached by showing that he
11 or she previously made statements which are different
12 than or inconsistent with his or her testimony here in
13 court. The earlier inconsistent or contradictory
14 statements are admissible only to discredit or impeach
15 the credibility of the witness and not to establish the
16 truth of those earlier statements made somewhere other
17 than during this trial. It is the province of the jury
18 to determine the credibility of a witness who has made
19 prior inconsistent or contradictory statements.

20 If a person is shown to have knowingly
21 testified falsely concerning any important or material
22 matter, you obviously have a right to distrust the
23 testimony of such an individual concerning other
24 matters. You may reject all of the testimony of that
25 witness or give it such weight or credibility as you

1 may think it deserves.

2 The defendant in a criminal case has an
3 absolute right under our Constitution not to testify.
4 The fact that the defendant did not testify must not be
5 discussed or considered in any way while deliberating
6 and in arriving at your verdict. No inference of any
7 kind may be drawn from the fact that a defendant
8 decided to exercise his privilege under the
9 Constitution and did not testify.

10 As stated before, the law never imposes upon
11 a defendant in a criminal case the burden or duty of
12 calling any witnesses or producing any evidence.

13 An indictment is only a formal method used by
14 the government to accuse a defendant of a crime. It is
15 not evidence of any kind against the defendant. The
16 defendant is presumed to be innocent of the crime
17 charged. And even though this indictment has been
18 returned against the defendant, the defendant begins
19 this trial with absolutely no evidence against him.

20 The defendant has pled not guilty to this
21 indictment and, therefore, denies that he is guilty of
22 the charges.

23 The indictment charges that the offenses
24 alleged in the indictment were committed on or about a
25 certain date. However, it is necessary for the

1 government to prove beyond a reasonable doubt that the
2 offenses were committed on a date reasonably near the
3 date alleged in the indictment. It is not necessary
4 for the government to prove that the offense was
5 committed precisely on the date charged.

6 I instruct you that you must presume the
7 defendant to be innocent of the crimes charged. Thus
8 the defendant, although accused of crimes in the
9 indictment, begins the trial with a clean slate with no
10 evidence against the defendant.

11 The indictment, as you already know, is not
12 evidence of any kind. The law permits nothing but
13 legal evidence presented before the jury in court to be
14 considered in support of any charge against the
15 defendant. The presumption of innocence alone,
16 therefore, is sufficient to acquit the defendant.

17 The burden is always upon the prosecution to
18 prove guilt beyond a reasonable doubt. This burden
19 never shifts to a defendant for the law never imposes
20 upon a defendant in a criminal case the burden or duty
21 of calling any witnesses or producing any evidence.
22 The defendant is not even obligated to produce any
23 evidence by cross-examining the witnesses for the
24 government.

25 It is not required that the government prove

1 guilt beyond all possible doubt. The test is one of
2 reasonable doubt.

3 Unless the government proves beyond a
4 reasonable doubt that the defendant has committed each
5 and every element of the offenses charged in the
6 indictment, you must find the defendant not guilty of
7 the offenses.

8 Section 1001(a)(2) of Title 18 of the United
9 States Code provides, in pertinent part, that:
10 Whoever, in any manner within the jurisdiction of the
11 executive, legislative, or judicial branch of the
12 government of the United States knowingly and willfully
13 makes any materially false, fictitious, or fraudulent
14 statements or representations shall be guilty of an
15 offense against the United States.

16 Now I'm going to read to you the essential
17 elements of the offenses charged in this case. In
18 order to sustain its burden of proof for the crime of
19 knowingly and willfully making a false statement to the
20 United States government, as charged in Counts 2
21 through 5 of the indictment, the government must prove
22 the following four essential elements beyond a
23 reasonable doubt:

24 One: The defendant made a false, fictitious,
25 or fraudulent statement or representation to the

1 government as detailed in the count of the indictment
2 under consideration.

3 Two: In making the false, fictitious, or
4 fraudulent statement, the defendant acted willfully
5 knowing that the statement was false.

6 Three: The statement was made in a matter
7 within the jurisdiction of the executive branch of the
8 government of the United States; and

9 Four: The statement made by the defendant
10 was material to the Federal Bureau of Investigation.

11 A false or fictitious statement or
12 representation is an assertion which is untrue when
13 made or when used or which is known by the person
14 making it to be untrue.

15 A fraudulent representation is an assertion
16 which is known to be untrue and which is made or used
17 with the intent to deceive.

18 The term "knowingly" as used in these
19 instructions to describe the alleged state of mind of a
20 defendant means that he was conscious and aware of his
21 act, realized what he was doing or what was happening
22 around him, and did not act or failed to act because of
23 ignorance, mistake, or accident.

24 The term "willfully" as used in these
25 instructions to describe the alleged state of mind of

1 the defendant in Counts 2 through 5 means that he
2 knowingly made a false statement deliberately and
3 intentionally, as contrasted with accidentally,
4 carelessly, or unintentionally.

5 A statement is material if it has a natural
6 tendency to influence or is capable of influencing
7 either a discrete decision or any other function of the
8 government agency to which it is addressed. Proof of
9 actual reliance on the statement by the government is
10 not required. Accordingly, the government is not
11 required to prove the statement actually influenced a
12 decision or other function of the FBI.

13 A false statement's capacity to influence a
14 specific decision of a governmental agency must be
15 measured at the point in time that the statement was
16 uttered.

17 A statement is not material if it relates to
18 an ancillary, nondeterminative fact.

19 The good faith of a defendant is a complete
20 defense to all of the charges in the indictment because
21 good faith on a defendant's part is simply inconsistent
22 with a finding of knowingly and willfully making false,
23 fictitious, or fraudulent statements alleged in
24 Counts 2 through 5.

25 A person who acts on a belief or an opinion

1 honestly held is not punishable under the statute
2 merely because the belief or opinion turns out to be
3 inaccurate, incorrect, or wrong. An honest mistake in
4 judgment or an error in management does not rise to the
5 level of intent to defraud.

6 The law is written to subject to criminal
7 punishment only those persons who knowingly and
8 willfully make false, fictitious, or fraudulent
9 statements.

10 While the term "good faith" has no precise
11 definition, it means, among other things, a belief or
12 opinion honestly held in absence of malice of ill will
13 and an intention to avoid taking unfair advantage of
14 another.

15 In determining whether or not the government
16 has proven that the defendant acted with an intent to
17 knowingly and willfully make false, fictitious, or
18 fraudulent statements or whether the defendant acted in
19 good faith, the jury must consider all of the evidence
20 in the case bearing on the defendant's state of mind.

21 The burden of proving good faith does not
22 rest with the defendant because the defendant does not
23 have any obligation to prove anything in this case. It
24 is the government's burden to prove to you beyond a
25 reasonable doubt that the defendant acted with the

1 intent to knowingly and willfully make false,
2 fictitious, or fraudulent statements.

3 If the evidence in the case leaves the jury
4 with a reasonable doubt that the defendant acted with
5 an intent to knowingly and willfully make false,
6 fictitious, or fraudulent statements or a belief that
7 the defendant acted in good faith, the jury must acquit
8 the defendant.

9 I'm now going to read to you the nature of
10 the offenses charged in each of Counts 2 through 5:

11 Count 2 of the indictment charges that on or
12 about March 16, 2017, within the Eastern District of
13 Virginia, the defendant did willfully and knowingly
14 make a materially false, fictitious, and fraudulent
15 statement or representation in a matter within the
16 jurisdiction of the executive branch of the government
17 of the United States, namely, that the defendant stated
18 to agents of the FBI that he received a late July 2016
19 telephone call from an individual who he believed was
20 probably Sergei Millian, when in truth and in fact, as
21 the defendant well knew, Sergei Millian never called
22 Danchenko. That's the allegation in Count 2.

23 Count 3 of the indictment charges that on or
24 about May 18, 2017, within the Eastern District of
25 Virginia, the defendant did willfully and knowingly

1 make a materially false, fictitious, and fraudulent
2 statement or representation in a matter within the
3 jurisdiction of the executive branch of the United
4 States, namely, that the defendant stated to agents of
5 the FBI that he was under the impression that a late
6 July 2016 call that he received was from Sergei
7 Millian, when in truth and in fact, as the defendant
8 well knew, Millian never called Danchenko.

9 Count 4 of the indictment charges that on or
10 about October 24, 2017, within the Eastern District of
11 Virginia, the defendant did willfully and knowingly
12 make a material false, fictitious, and fraudulent
13 statement or representation in a matter within the
14 jurisdiction of the executive branch of the government
15 of the United States, namely, that the defendant stated
16 to agents of the FBI that he believed he spoke to
17 Sergei Millian on the telephone on more than one
18 occasion, when in truth and in fact, and as the
19 defendant well knew, the defendant never spoke to
20 Sergei Millian.

21 Count 5 of the indictment charges that on
22 November 2, 2017, within the Eastern District of
23 Virginia, the defendant did willfully and knowingly
24 make a materially false and fictitious and fraudulent
25 statement or representation in a matter within the

1 jurisdiction of the executive branch of the government
2 of the United States, namely, that the defendant stated
3 to agents of the FBI that he believed that he had
4 spoken to Sergei Millian on the telephone, when in
5 truth and in fact, and as the defendant well knew,
6 Danchenko never spoke to Sergei Millian.

7 Upon retiring to your jury room to begin your
8 deliberations, you must elect one of your members to
9 act as your foreperson. The foreperson will preside
10 over your deliberations and will be your spokesperson
11 here in Court.

12 Your verdict must represent the collective
13 judgment of the jury. In order to return a verdict, it
14 is necessary that each juror agree to it. Your verdict
15 in other words must be unanimous.

16 It is your duty as jurors to consult with one
17 another and to deliberate with one another with a view
18 towards reaching an agreement if you can do so without
19 violence to individual judgment. Each of you must
20 decide the case for yourself but do so only after
21 impartial consideration of the evidence in the case
22 with your fellow jurors.

23 In the course of your deliberations, do not
24 hesitate to reexamine your own views and to change your
25 opinion if convinced it is erroneous. Do not surrender

1 your honest conviction, however, solely because of the
2 opinion of your fellow jurors or for the mere purpose
3 of thereby being able to return a unanimous verdict.

4 Remember at all times you are not partisans.
5 You are judges, judges of the facts in this case. Your
6 sole interest is to seek the truth from the evidence
7 received during the trial.

8 Your verdict must be based solely upon the
9 evidence received in the case, and nothing you have
10 seen or read outside of court may be considered.

11 Nothing I have said or done during the course
12 of this trial is intended in any way to somehow suggest
13 to you what I think your verdict should be. Nothing
14 said in these instructions and nothing in any form of
15 verdict, which has been prepared for your convenience,
16 is to suggest or convey to you in any way or manner any
17 intimation as to what verdict I think you should
18 return.

19 What the verdict shall be is the exclusive
20 duty and responsibility of the jury, and as I have told
21 you many times, you are the sole judges of the facts in
22 this case.

23 The punishment provided by law for the
24 offenses charged in the indictment is a matter
25 exclusively within the province of the Court and should

1 never be considered by the jury in any way in arriving
2 at an impartial verdict as to the offenses charged.

3 As I indicated, a form for the verdicts have
4 been prepared for your convenience. You will take this
5 form to the jury room and, when you have reached an
6 unanimous agreement as to your verdicts, you will have
7 your foreperson write your verdicts, date and sign the
8 form, and then return with your verdicts to the
9 courtroom.

10 If it becomes necessary during your
11 deliberation to communicate with the Court, you may
12 send a note signed by your foreperson or by any one or
13 more members of the jury through the bailiff,
14 Mr. Burns.

15 No member of the jury should ever attempt to
16 communicate with the Court by any means other than a
17 signed writing, and the Court will never communicate
18 with any member of the jury concerning the evidence,
19 your opinions, or the deliberations other than in
20 writing or orally here in court.

21 You will note from the oath about to be given
22 by the bailiffs that they too, as well as all other
23 persons, are forbidden to communicate in any way or
24 manner with any member of the jury concerning the
25 evidence, your opinions, or deliberations.

1 Bear in mind also that you are never to
2 reveal to any person, not even the Court, how the jury
3 stands numerically or otherwise on the question of
4 whether or not the government has sustained its burden
5 of proof until you have reached a unanimous verdict.

6 Mr. Burns, would you be sworn, please.

7 (The oath is administered.)

8 THE COURT: Ladies and gentlemen, before we
9 hear closing argument, we're going to take a short
10 recess. You're excused to the jury room. Do not
11 discuss this case during the recess, and I'll bring you
12 back shortly.

13 (The jury exits at 10:19 a.m.)

14 THE COURT: All right. We'll take a
15 ten-minute recess.

16 Anything?

17 MR. SEARS: Your Honor, do you intend to go
18 back to back to back?

19 THE COURT: Well, it depends on how long the
20 government's closing is. If it approaches an hour, I
21 think we'll take short break.

22 MR. SEARS: Understood. Thank you.

23 THE COURT: All right. The Court will stand
24 in recess.

25 (Recess from 10:20 a.m. until 10:36 a.m.)

1 (The jury is not present.)

2 THE COURT: Anything before we bring out the
3 jury?

4 MR. DURHAM: The government has nothing.
5 Thank you, Your Honor.

6 THE COURT: All right.

7 MR. SEARS: No, Your Honor.

8 THE COURT: Does either counsel have any
9 objection to the jury instructions as read?

10 MR. SEARS: No, Your Honor.

11 MR. DURHAM: No, Your Honor.

12 THE COURT: All right. Let's bring out the
13 jury.

14 (The jury enters at 10:36 a.m.)

15 THE COURT: Please be seated. We're now
16 ready to proceed with closing argument.

17 Mr. Keilty.

18 CLOSING ARGUMENT

19 MR. KEILTY: Thank you, Your Honor.

20 Ladies and gentlemen, when I first came
21 before you about a week ago, I asked you not to abandon
22 your common sense, and I know you haven't done that.
23 You've paid attention to the evidence, and you've paid
24 attention to what is actually in the record, what
25 actually relates to the charges in this case.

1 Now, a week ago I also told you that I would
2 have the opportunity to come before you at the end of
3 the case, and that time is now. The government has
4 proven to you beyond a reasonable doubt every fact that
5 I told you about in my opening statement because that
6 is our burden. We embrace that burden, and we have met
7 that burden over the past week.

8 Now, undoubtedly, you've heard a lot of
9 information over the course of the last week. You've
10 also heard a lot of information that has, frankly,
11 nothing to do with the charged crimes. Focus on the
12 evidence as it relates to the charged crimes. That is
13 the only question before you. What the defendant did
14 or didn't do outside of the charged crimes is not an
15 issue before you, and what some of the stuff that the
16 FBI did or didn't do is not an issue before you. The
17 only issue before you is whether the defendant made a
18 false statement and whether that false statement could
19 have affected the FBI's actions. That's it, nothing
20 more.

21 So let's go through the charges and how the
22 government has proven those charges beyond a reasonable
23 doubt, which is our burden. As Judge Trenga has
24 explained to you, there's four charges here, four
25 counts, four false statements. Judge Trenga has just

1 described for you the elements of the offense, so I'm
2 not going to go through that again. But you will have
3 the law back there with you during your deliberations.

4 Again, Counts 2 to 5 involve the defendant's
5 false statements to the FBI about Sergei Millian on
6 four different occasions: March 16, 2017; May 18,
7 2017; October 24, 2017; and November 2, 2017.

8 More law that the judge has described for
9 you.

10 Here's Count 2 which the judge has read to
11 you: That the defendant stated to the agents of the
12 FBI that he received a late July 2016 telephone call
13 from an individual who Danchenko believed was probably
14 Chamber President 1 -- and that's Sergei Millian --
15 when in truth and in fact, as the defendant well knew,
16 Chamber President 1 never called Mr. Danchenko.

17 Count 3, May 18, the defendant stated to the
18 agents of the FBI that he was, quote, under the
19 impression that a late July 2016 telephone call that he
20 received was from Chamber President 1, Sergei Millian,
21 when in truth and in fact, and as the defendant well
22 knew, Millian never called Danchenko.

23 Count 4, it's very similar. October 24,
24 2017, this defendant stated to agents of the FBI that
25 he believed he spoke to Sergei Millian on the telephone

1 on more than one occasion, when in truth and in fact,
2 as this defendant well knew, Danchenko never spoke to
3 Sergei Millian.

4 Finally, Count 5. November 2, 2017, the
5 defendant stated to agents of the FBI that he believed
6 he had spoken to Sergei Millian on the telephone, when
7 in truth and in fact, as the defendant well knew,
8 Danchenko never spoke to Chamber President 1.

9 Ladies and gentlemen, we have proven to you
10 beyond a reasonable doubt every one of those counts,
11 that the defendant never received a call from Sergei
12 Millian, and that he never received a call from an
13 anonymous caller.

14 The government's burden is to prove to you
15 beyond a reasonable doubt but not beyond all possible
16 doubt, and that's an important distinction I want you
17 to remember.

18 So let's talk about the evidence in this
19 case. We learned about the Steele dossier and how the
20 Steele dossier was an effort to link Donald Trump to
21 Russia, and we know from this defendant's very own
22 words that he was responsible for collecting 80 percent
23 of the information that ended up in those dossier
24 reports. And we know from his very own words that he
25 was responsible for 50 percent of the analysis in those

1 dossier reports.

2 That's Government Exhibit 1502, which you'll
3 have. I recommend taking a look at all of these
4 exhibits that we're going to show you today. You'll
5 have them. Look at them very carefully. Look at the
6 defendant's own words.

7 Now, you heard testimony that nothing in the
8 Steele dossier was able to be corroborated despite the
9 fact that the FBI offered Christopher Steele a million
10 dollars, a million dollars for any such corroboration.

11 We also know that critical information that
12 was contained in Dossier Report 95 ended up in multiple
13 FISA applications against a U.S. citizen for nearly a
14 year.

15 We know that the defendant identified Sergei
16 Millian as the source for this information. Take a
17 look at it. Government Exhibit 109A is Report 95, and
18 then take a look at the FISA applications. There were
19 four of them. Compare what's in Dossier Report 95 to
20 what's in the FISA applications.

21 So let's take a look at the evidence. We're
22 going to go slowly and methodically through all the
23 evidence that you have seen. We know that on July 21,
24 2016, the defendant, Igor Danchenko, sent an email to
25 Sergei Millian. This was the first time the defendant

1 ever reached out to Millian, the first contact, period,
2 and the evidence establishes that.

3 Look at the date, Igor Danchenko to Millian
4 Group, July 21, 2016. This is Exhibit 204T. Look at
5 this carefully. Read the defendant's own words
6 carefully. The defendant asked Millian to provide
7 information about Donald Trump's trips to Russia. He
8 also tells Millian that he plans on being in New York
9 next week. He plans on being in New York next week,
10 and that's important.

11 Why is that important? Because the defense
12 has made a big deal about Amtrak records and the fact
13 that he bought tickets the day before he traveled to
14 New York insinuating that the reason he bought tickets
15 was to go visit Sergei Millian. But this email debunks
16 that.

17 The defendant planned on being in New York
18 all alone. See, the evidence shows he was going on a
19 sightseeing trip with his daughter. You've seen
20 Facebook posts that show him being at the Bronx Zoo,
21 Central Park, the Domino's Sugar Factory sign. This
22 email proves this trip was planned a long time before
23 Sergei Millian.

24 And we have a second email, which we'll show
25 in a second, which also proves that. Ladies and

1 gentlemen, these are the defendant's own words,
2 powerful evidence.

3 In this email, the defendant says, "In any
4 case, it would be interesting if and when possible to
5 chat with you by phone or meet for a coffee/beer in
6 Washington or New York where I will be next week."

7 He says it's possible to chat with you by
8 phone, and what does he provide, ladies and gentlemen?
9 What is in that signature block? He provides his phone
10 number, his office phone number, his cell phone number,
11 and his email address. On July 21, 2016, show me where
12 the defendant says anything about the use of an
13 Internet app.

14 The government will return to this again
15 because it's important, but how was Sergei Millian on
16 July 21, 2016 -- how was he supposed to know what
17 Internet apps this defendant was using, somebody he had
18 never met, somebody he had never spoken to? Does it
19 make sense that Millian would just run down a list of
20 apps randomly trying to figure out if this defendant
21 had that app? Common sense, common sense.

22 Now, the evidence has shown that Sergei
23 Millian at this time was in Asia on July 21 when he
24 received the initial outreach from the defendant.
25 You've seen Millian's travel records, and you know he

1 was in Asia. And on July 26, he sends Dmitri Zlodorev
2 an email and asks who the defendant is. An email came
3 from Igor. Who is that? What sort of person? Who is
4 this guy asking me about Donald Trump? It seems like a
5 sensible question. So we know as of July 26, Sergei
6 Millian had not responded to this defendant.

7 So let's look at how Mr. Zlodorev responds
8 because this is important: "Sergei, hello, do you
9 remember I said that a friend of my colleague wanted to
10 get acquainted with you? You gave permission to give
11 your email. The way I understand it, this is who this
12 is. He and I are not personally acquainted, though, he
13 is, it seems, in my LinkedIn. And I didn't know what
14 he wanted to talk about. If I remember correctly, he
15 works at some think tank in Washington." That's
16 Government Exhibit 206T.

17 Does that sound like a ringing endorsement of
18 someone's credibility? Would you read that email and
19 feel comfortable providing that person with very
20 sensitive information that's going to blow up a
21 presidential campaign?

22 He says he's not personally acquainted with
23 him. What else does this email not say? Do you see
24 anything about whether Sergei Millian planned to give
25 the defendant a call in his initial reach-out to

1 Zlodorev? Do you see any questions about whether
2 Mr. Millian asked Mr. Zlodorev whether there was any
3 Internet apps this guy used?

4 Ladies and gentlemen, you're going to see a
5 number of slides like this, what the emails do not say
6 and what you would expect them to say, right. Does the
7 email say, Should I give this guy a call? Does the
8 email say, Do you know if this person uses any Internet
9 apps? Is there any reason I should meet with this guy?
10 The email does not say that. You do not see that.

11 And I told you there was another email that
12 proves the defendant planned on being in New York, that
13 this trip had nothing to do with Sergei Millian, and
14 here's that email. On July 18, 2016, three days before
15 he sends his initial reach-out to Millian, he tells one
16 of his bosses that he plans to be in New York. Look at
17 the email: I may have to go to New York City, NYC.
18 That's Government Exhibit 901.

19 In connection with 901 and 204T, that is
20 evidence beyond a reasonable doubt that this defendant
21 planned to be in New York three days before his initial
22 reach-out to Sergei Millian.

23 There's no evidence in this record before you
24 that the defendant reached out to Millian at any time
25 after his July 21st email to arrange a day, to arrange

1 a time, or a location for a purported meeting.

2 So let's turn to the August 18 email. This
3 was the second email three weeks after his initial
4 reach-out to Mr. Millian. Look at what the defendant
5 says. Look at his own words: I wrote you several
6 weeks ago. I wrote to you several weeks ago. If
7 there's opportunity and interest, let's meet and let's
8 chat about other projects.

9 Common sense. Does that sound like someone
10 who spoke on the phone with Sergei Millian three weeks
11 ago? Of course not.

12 The defendant also tells Millian that he uses
13 LinkedIn and they're contacts on LinkedIn. There's
14 nothing about any Internet apps again. You won't see
15 that anywhere in the defendant's own words, nothing
16 about an Internet app.

17 He says at the end: Write, call, my contact
18 information is below.

19 Does that sound like someone who received a
20 call from Sergei Millian three weeks ago? It doesn't.

21 What the email doesn't say: Hey, I received
22 a call from you last month, and I thought it might have
23 been you. Hey, I thought we were supposed to meet in
24 New York. Where the heck were you? I showed up to the
25 meeting. You didn't keep your end of the bargain.

1 Wouldn't you have expected to see that?

2 But there's more. Again, we have the best
3 proof available, this defendant's own words. Because
4 on August 24, 2016, the defendant emailed Dimitri
5 Zlodorev and explicitly stated that Sergei Millian had
6 not responded to him. Quote, For some reason, Sergei
7 doesn't respond. For some reason, Sergei doesn't
8 respond. What is your relationship with him like?
9 Would you be able to ask him to reply to me? I could
10 call or write on LinkedIn, but until he responds, I
11 don't want to pester him. Until he responds, I would
12 not like to pester him.

13 That's Government's Exhibit 115T.

14 What the August 24, 2016, email does not say:
15 Hey, I received a call from someone. I thought it
16 might be Millian. Do you know anything about this?
17 Maybe, more importantly, we were supposed to meet in
18 New York, but he never showed up. Do you know anything
19 about that?

20 Common sense. Ladies and gentlemen, I know I
21 say it over and over again, common sense, but you
22 didn't check your common sense at the courthouse door.
23 You need to use it.

24 In his own words, this defendant makes it
25 clear that Sergei Millian had not responded by phone,

1 had not responded by email, apps, social media,
2 nothing. He didn't respond on July 21, and he didn't
3 respond on August 18.

4 Let's take a look at what the August 24 email
5 does say: For some reason, Sergei doesn't respond.
6 It's the plain admission of the defendant's guilt in
7 his own words.

8 So let's now talk about what the defendant
9 told the FBI about his call with Sergei Millian or an
10 anonymous caller. You heard Agent Helson testify that
11 the FBI will often have a source repeat a version of a
12 story because if the person is lying, it gets harder
13 and harder to keep those lies straight. Kevin Helson's
14 own words: It's hard to keep that lie straight through
15 the course of a repeating story.

16 That's what happened here, a shifting story.
17 You heard testimony from Supervisory Intelligence
18 Analyst Brian Auten, who was asked: Now, you told the
19 juror that Mr. Danchenko had told you he sent one
20 email, correct?

21 Answer: Correct.

22 Question: And then the first day, only after
23 the second email that he received this purported call,
24 correct?

25 Answer: Correct.

1 The second day he said it was after the first
2 email?

3 Answer: Correct.

4 That's in the January 2017 interviews. It
5 was not a consistent story, a shifting story.

6 Then we go to the interviews of the defendant
7 when he's now a CHS, a confidential human source.
8 Again, you heard from Special Agent Helson that the
9 defendant's story materially changed on October 24,
10 2017. Now the FBI -- the defendant told the FBI that
11 he had a, quote, a couple of calls with the person he
12 believed to be Sergei Millian.

13 He goes from one call consistently in January
14 to October. He now has had a couple of calls with
15 Sergei Millian. That's significant, and it's
16 consistent with what Agent Helson said about lying.
17 It's hard to keep track of lies through a repeating
18 story.

19 Agent Helson told you that was a significant
20 material change to what the defendant had previously
21 told him, and he told you he put the phrase "a couple
22 of calls" in quotes because that's what he did when he
23 wanted to emphasize that that's what an individual was
24 saying verbatim. It was "a couple of calls."

25 So let's turn to the phone records that

1 you've seen in evidence and that you will have back
2 there with you in the jury room. Supervisory Special
3 Agent Ryan James methodically walked you through each
4 and every call the defendant received from July 20
5 through the end of August, not just late July. The
6 government wanted to make sure he covered the whole
7 time period.

8 There is not one call, not one with any
9 number associated with Sergei Millian. Almost every
10 single call has been identified by the government and
11 the vast majority of those calls come from this
12 defendant's very own email contacts.

13 The couple of calls that we have not
14 identified are one minute or less, so they don't match
15 up to the defendant's description of a 10- to 15-minute
16 call with Millian. So there was no call with Millian,
17 and there was no call with any anonymous individual.
18 These phone records prove that. Take a look at them
19 when you begin your deliberations.

20 Now, you've heard a lot of testimony about,
21 you know, could this have been an Internet app, right?
22 There's no evidence of that. There's no evidence in
23 this record that this call was on an Internet app. The
24 government's burden is beyond a reasonable doubt, not
25 beyond all possible doubt.

1 Take a look at the July 21 email that the
2 defendant sent to Millian. Where does it say anything
3 about an Internet app?

4 So here's what you'd have to believe to
5 accept as true what the defendant told the FBI:

6 First, an unidentified individual, who the
7 defendant purportedly believed to be Sergei Millian,
8 knew that the defendant communicated through Internet
9 apps.

10 Evidence in the record: None.

11 Second, that an unidentified individual, who
12 the defendant purportedly believed to be Sergei
13 Millian, randomly selected an Internet app and
14 correctly guessed that the defendant had that Internet
15 app.

16 Evidence in this record: None.

17 The evidence does show, however, that when
18 the FBI explicitly asked this defendant for phone
19 records of any type, the defendant produced nothing, no
20 phone records, no app records, no screenshots, nothing.

21 You heard Brian Auten's testimony about that,
22 and you heard Kevin Helson's testimony about that. And
23 the evidence shows that the defendant previously
24 provided screenshots of app calls, but not in this
25 case.

1 This is really important: When the defendant
2 wanted to communicate on an Internet app, he was
3 explicit, and that makes sense. How else would the
4 person know which app to use? You see his Facebook
5 messaging with Olga Galkina: Call me possibly -- so I
6 can get through directly -- possibly through Viber or
7 WhatsApp.

8 That's Government Exhibit 610T, 611: I'm in
9 Britain next week. Perhaps we can discuss a couple of
10 things here or on Signal or obviously by phone.

11 And then a follow-up towards the end of
12 April, 612T: It's a very delicate topic. Maybe you
13 have Signal or mail. It's better not to write here at
14 all.

15 So when the defendant wanted to communicate
16 on an Internet app, he was very explicit. Again, that
17 makes sense. But you heard Agent James say that
18 there's dozens of these Internet apps.

19 So what you'd have to believe to accept as
20 true what the defendant told the FBI:

21 First, that the defendant received a call
22 from Sergei Millian. There's no evidence of that.

23 Second, that the defendant received an
24 anonymous call. There's no evidence of that.

25 Third -- and this is important, I submit --

1 Sergei Millian, a known Donald Trump supporter and a
2 vocal Donald Trump supporter, a person that the
3 defendant had never spoken to, tells Sergei Millian, a
4 person the defendant has never spoken to, provides him
5 with damaging information about the Kremlin and Donald
6 Trump.

7 Why would Sergei Millian, a vocal supporter
8 of then-candidate Trump, provide this information to
9 somebody he's never met before, he's never spoken to
10 before? It doesn't make sense.

11 You'd also have to accept that this defendant
12 traveled to a city of 8 million people and planned to
13 meet with an unidentified individual at an unidentified
14 bar with his young daughter at night. How was he going
15 to meet this person? Unidentified individual at an
16 unidentified bar in a city of 8 million people with his
17 young daughter at night. How are they going to
18 recognize each other?

19 Fifth, that the defendant was sightseeing all
20 day on July 28, 2016. You saw the Facebook records of
21 that. He had a fever, but then he went to a purported
22 meeting, again, with an unidentified individual at an
23 unidentified bar in New York.

24 So let's recap -- common sense -- there was
25 no call. He was not meeting an unidentified individual

1 at an unidentified bar. If anyone can explain that
2 away -- I certainly can't. It's a not-to-be-believed
3 story, ladies and gentlemen. Think about what you'd
4 have to accept to believe the defendant's story to the
5 FBI. Look at the inconsistencies the defendant has
6 going from one email to two emails and then going from
7 one call to two calls. Those are important.

8 So let's now talk about why the defendant's
9 lies matter. The defendant's lies about Sergei Millian
10 mattered because the information he allegedly received
11 from Millian ended up in a FISA warrant against a U.S.
12 citizen, one of the most intrusive tools the FBI has at
13 its disposal. The FBI gets to listen to your calls and
14 read your emails. It's a really significant thing.

15 You heard Brian Auten testify that that
16 Millian information -- alleged Millian information was
17 contained in every single FISA application on four
18 different occasions. The FBI surveilled a U.S. citizen
19 for nearly a year based on those lies. You heard Brian
20 Auten testify that it was a significant part of the
21 FISA application. And you know it allegedly came from
22 Mr. Millian because that's what the defendant told the
23 FBI.

24 Now, you also heard testimony from Agent
25 Helson that the FBI would've had an affirmative duty to

1 correct that information with the FISA court if it had
2 known it was a lie. They would've gone back to the
3 court, and they would've had to correct that
4 information. That didn't happen, and the defendant
5 lied to the FBI.

6 So here's an important question: Why would
7 the defendant lie? What was his motivation in lying?
8 Well, let's take a look at it. We all know the
9 dossier -- what was the point of the dossier? It was
10 to tie Donald Trump to Russia, and the bedrock
11 allegation of that dossier was a, quote, conspiracy of
12 cooperation between Trump and the Russian government.

13 Now, you also heard evidence that Christopher
14 Steele -- that the defendant told Christopher Steele
15 that he had met with and he had received evidence about
16 this information directly from Sergei Millian. So this
17 defendant tells Christopher Steele that he had met with
18 Sergei Millian not on one occasion but on two occasions
19 in person.

20 Now, the defendant had to provide the FBI
21 with a story as to how he received that information if,
22 in fact, he did meet with Sergei Millian. That's why
23 he lied. He had to have some rationale how he received
24 this information. He's telling Steele that he's
25 meeting with him in New York and in South Carolina, and

1 then he's telling the FBI: Yeah, but I never met with
2 him.

3 So how did you get the information? He's got
4 to have some way of providing that story.

5 I'm almost done. Thank you for your
6 attention. Again, these are just some of the points
7 that we've hit, what you'd have to believe to accept
8 and to acquit this defendant.

9 Again, for some unknown reason, a vocal Trump
10 supporter is providing damaging information to somebody
11 he's never met. The defendant, a trained analyst,
12 remembered no details about the origins of the call,
13 whether it was an Internet app, whether it was a phone
14 call, and recorded no information about the caller,
15 provided no records of any call, no screenshots, no
16 toll records, no phone bills. The defendant actually
17 believed this person to be Sergei Millian and that the
18 defendant planned on meeting with an unidentified
19 individual at an unidentified bar in a city of 8
20 million people with his young daughter at night. I
21 keep repeating that because it is just an unbelievable
22 story.

23 You heard defendant's own words: Millian
24 never responded to him.

25 So that's the evidence in this case. Make no

1 mistake. This is an important case. Before I sit
2 down, ladies and gentlemen, I want to thank you, each
3 and every one of you, for your service, and I really
4 mean that. Thank you for paying close attention to the
5 evidence in this case.

6 You've heard some evidence that this wasn't
7 the FBI's finest hour, and you heard some evidence
8 about the defendant's role as a confidential human
9 source. But neither of those issues are actually
10 before you. All you must do is to decide whether this
11 defendant made a material false statement to the FBI.
12 In other words, whether that false statement could have
13 affected the actions of the FBI.

14 Winston Churchill famously said that a lie
15 gets halfway around the world before the truth gets a
16 chance to put its pants on. Well, ladies and
17 gentlemen, in this case, the truth never got dressed,
18 and this defendant's lie caused intrusive surveillance
19 on a U.S. citizen. You now must hold him accountable.

20 The government has proven its case. I'm
21 going to ask you to do your job. Listen carefully to
22 the instructions that Judge Trenga has provided you and
23 which you will have back in the jury room. Examine all
24 the evidence, please. If you do that, I'm confident
25 you will come to the only verdict that is both

1 supported by the law and by the facts, and that is the
2 defendant is guilty.

3 Thank you very much.

4 CLOSING ARGUMENT

5 MR. SEARS: Good morning. Thank you, ladies
6 and gentlemen, for your attention throughout this case
7 and for serving as jurors this past week.

8 Just as Mr. Onorato told you in his opening,
9 the government's own evidence in this case proves that
10 Mr. Danchenko is not guilty. As you heard throughout
11 the trial, on January 10, 2017, BuzzFeed published what
12 later would be termed the Steele dossier or the Steele
13 company reports.

14 On that day, Mr. Danchenko, like everybody
15 else, found out for the first time that that
16 information had been shared with the FBI during the
17 course of a 2016 presidential election. Mr. Danchenko
18 also learned that day that the work he had been asked
19 to do was not only used to create portions of the
20 dossier but had also been sent to the FBI.

21 Mr. Danchenko through no fault of his own and
22 not by his choice was about to take center stage in one
23 of the most high-profile, widespread, and politically
24 charged investigations in the history of our country.

25 Within days of the release of the dossier,

1 the FBI came knocking on his door because they wanted
2 to speak with him. They wanted to know if he would
3 meet with them, if he would talk to them about his
4 sources, if he would talk about what corroboration he
5 had for the information that was in the reports. He
6 was under no obligation to speak with the FBI. He
7 didn't have to. He could've said no, and there's
8 nothing they could have done about it. But he agreed
9 to do it anyways.

10 In the last week of January 2017, just two
11 weeks from when he read the dossier for the first time
12 himself, he agreed to be interviewed by the FBI over
13 three days. He told them then -- and you heard this
14 from the agent testimony and consistently ever since --
15 that the information he provided to Steele that had
16 made its way into the report was an uncorroborated mix
17 of rumor and speculation, that came second and third
18 hand from people he had spoken to in his social
19 network. And he told the FBI, when he first met with
20 them in January 2017, that he didn't know that anything
21 in the dossier could be proven.

22 As Agent Helson testified last week,
23 Mr. Danchenko was shocked and upset with the way Steele
24 had represented the information he had provided as fact
25 when it was rumor and speculation. While the special

1 counsel may complain that that explanation comes from
2 Mr. Danchenko himself, they have offered no evidence to
3 contradict what he said.

4 Importantly -- and this is crucial to your
5 analysis of this case, especially the charged counts
6 regarding Mr. Millian -- Mr. Danchenko told the FBI at
7 that very first meeting in January that he had deleted
8 most of his communications from the relevant time
9 period that they were going to be looking into. Agent
10 Helson even told you that he instructed -- or told
11 Mr. Danchenko to scrub his phone, to delete information
12 on his phone when he was going to become a human
13 source.

14 Without any documents really, any emails, any
15 messages, Mr. Danchenko sat down with the FBI for three
16 days and went only off his memory in explaining what
17 had happened, not just with Mr. Millian but with
18 everything that had happened in connection with his
19 collecting information for the dossier.

20 And while the agents testified that he
21 provided a lot of information on a lot of different
22 people, this case is concerned only with what he said
23 about one person, an anonymous caller who he never said
24 was Sergei Millian. The government's whole closing is
25 Sergei Millian, Sergei Millian, Sergei Millian. He

1 said Sergei Millian did this. He never said that, not
2 once. Go read the transcripts, see the testimony. He
3 never said that. He only said he thought it could be
4 Sergei Millian; yet, the whole closing by the
5 government is about it was Sergei Millian.

6 Both Agent Auten and Agent Helson were
7 consistent in their testimony about that. He never
8 said that he was certain who it was. He was
9 speculating. He was trying to help the FBI. And even
10 without any records, any emails to help refresh his
11 recollection like every witness in this trial had to
12 use to refresh their recollection, he provided them a
13 lot of details about the lead-up to that anonymous call
14 and the communications he believed he had at that time.

15 First, he told them he had reached out to a
16 Russian journalist, Dmitri Zlodorev, who referred him
17 to Millian and who provided him with Millian's contact
18 information. He also told them from memory that he had
19 emailed Millian in late July to see if he could make
20 contact with him but that he never received a response.
21 He told them from memory that after he sent that July
22 email to Sergei Millian, he received an anonymous call
23 on a messaging app. He said a phone call or a
24 messaging app -- and we'll show you the transcript in a
25 minute so there's no confusion about that -- but that

1 the person on the call did not identify themselves.
2 The person told him on the call of a connection between
3 Russia and the Trump campaign but that it wasn't really
4 a bad thing. Mr. Danchenko and the anonymous caller
5 agreed to meet in New York later that week.

6 That's what he told the FBI. The FBI never
7 asked him where they were going to meet. They never
8 asked him any information about the details of the
9 meeting place ever. If they had, he would've told
10 them.

11 So the government makes a huge deal about
12 some unidentified person, some unidentified person.
13 They never asked him who he was going to meet. No one
14 ever inquired of that information. He could've told
15 them had they asked.

16 When Mr. Danchenko went to New York -- and
17 it's not in dispute that he was in New York -- the
18 anonymous caller never showed up to the meeting place.
19 He told the FBI that he didn't know who was on the call
20 because he never met the anonymous caller, but that
21 based on the circumstances surrounding the call, which
22 we're going to go through today, and the sound of the
23 voice, he believed it was probably Millian.

24 Importantly, he also told them that he
25 emailed Millian after the anonymous call in the midst

1 of the July meeting in New York.

2 He also not only told them, he also not only
3 showed them, but he also gave them emails he had with
4 Dimitri Zlodorev after the anonymous call and after the
5 missed meeting in New York. The same emails that the
6 government just put up to say that proves his guilt,
7 the smoking gun, Mr. Danchenko gave them those emails
8 in January 2017 when he was describing the situation.

9 Why would he hand over emails that he
10 believed show he was guilty? They don't, and we're
11 going to go through that. And actually, Agent Helson
12 through his testimony confirmed that.

13 As you heard throughout this trial,
14 Mr. Danchenko was a Russian national. He is not an
15 American citizen. He sat and met with the FBI to
16 answer questions related to the dossier. He did it for
17 three days in January and for many months after that.
18 But he also volunteered to become a confidential human
19 source for the Federal Bureau of Investigation and to
20 provide information on Russian activity that impacted
21 our national security. From 2017 to 2020, nearly four
22 years, he did just that.

23 And at no point -- and his testimony couldn't
24 have been clearer. At no point did his handling agent,
25 Special Agent Helson -- who knows him better than

1 anyone in this courtroom and spent more time with him
2 than anyone else. At no point did Agent Helson feel
3 that Mr. Danchenko was ever not truthful with him for
4 four years.

5 Agent Helson also told you that
6 Mr. Danchenko's information was vital to national
7 security and led to the opening of more than two dozen
8 active influence cases. He became a trusted source of
9 information for our government that even led to the
10 creation of a new team at the FBI as a result of the
11 information he provided, the guy they are saying is a
12 liar.

13 But as you've also heard at trial, the
14 political winds in this country changed once
15 then-President Trump appointed a new attorney general,
16 William Barr. Barr not only essentially revealed
17 Mr. Danchenko's identity by releasing a redacted
18 version of his January 2017 interview to the Senate
19 Judiciary Committee, but that committee released that
20 report within an hour of receiving it to the public.

21 Attorney General Barr also ordered an
22 investigation into the investigation of the Trump
23 campaign and its connections to Russia. So a new
24 special counsel was appointed, this special counsel, to
25 lead that investigation.

1 I submit to you that if this trial has proven
2 anything, it's that the special counsel's investigation
3 was focused on proving crimes at any cost as opposed to
4 investigating whether any occurred.

5 I submit to you that a fair and reasonable
6 look at the evidence in this case shows that the
7 special counsel -- they started out with the
8 presumption of guilt, that Mr. Danchenko had lied, and
9 they read guilt into every piece of evidence they came
10 across and at every detail they saw. They ignored --
11 and we're going to show you. They ignored how their
12 own evidence showed he was not guilty, that he was
13 innocent.

14 So when the special counsel set out to prove
15 him a liar, they knew he didn't have a lot of records.
16 He could not locate the number for the anonymous
17 caller. It happened seven months before he was ever
18 even interviewed by the FBI, and that's exactly what he
19 told the FBI.

20 It didn't stop them, of course, from arguing
21 throughout the trial and then again today that he
22 should have provided this, he should have provided
23 that. They're shifting the burden onto him. He
24 doesn't have to prove anything. You can read the
25 instructions. They have the burden of proof in this

1 case. They have to show that they've proven all the
2 elements of the offense.

3 As you heard from Special Agent James on
4 Friday, the FBI has a lot of tools at its disposal.
5 The special counsel has a lot of tools at its disposal.
6 They do interviews and search warrants and subpoenas to
7 third parties -- because Mr. Danchenko didn't have any
8 material anymore. They thought they were going to
9 gather evidence to prove the case they set out to
10 prove, which is that Mr. Danchenko had lied to the FBI.

11 And Mr. Danchenko had provided them a lot of
12 detail, as I mentioned, about that anonymous call.
13 There were a lot of places he could have messed up if
14 that was a lie. All the government had to prove was
15 one or more of the following to show Mr. Danchenko was
16 a liar:

17 First, that Mr. Danchenko never reached out
18 to Dimitri Zlodorev, like he said he did, from
19 Millian's contact information.

20 Second, that Mr. Danchenko never even reached
21 out to Sergei Millian.

22 Third, that Mr. Danchenko never went to New
23 York.

24 Fourth, that if he did go to New York, he
25 wasn't there for work.

1 Fifth, that if he was not in New York -- that
2 Mr. Millian was not even in New York at the same time
3 as Mr. Danchenko.

4 Sixth, that Mr. Millian never contacted
5 Mr. Danchenko via a messaging app.

6 Seventh, if all else failed and they couldn't
7 prove it with those six items, they could always bring
8 the FBI agents in here to tell you that he lied to
9 them.

10 Well, let's go through their investigation
11 and what it actually showed.

12 First, with regard to the Zlodorev email --
13 remember, Mr. Danchenko didn't have emails. He was
14 going off memory about his conversation and when he had
15 these conversations over email regarding this phone
16 call.

17 So the government went and got Sergei
18 Millian's emails, and guess what they found in Sergei
19 Millian's emails: A May 26 email from Dmitri Zlodorev
20 to Sergei Millian writing: In addition, my colleagues
21 have an acquaintance, Igor Danchenko, who works here in
22 consulting. Through them, he requested if I find out
23 if it's okay to get in touch with you? If I understand
24 correctly, it's about Trump and Russia. Can I give him
25 your contact information, email, phone, or just email?

1 That is exactly what Mr. Danchenko told them
2 how this whole chain of events started when he was
3 being interviewed in January 2017, seven months after
4 this happened. The special counsel's investigation and
5 the seizure of Sergei Millian's emails proved
6 Mr. Danchenko told the truth about that.

7 Second, whether Mr. Danchenko ever even
8 reached out to Sergei Millian. Again, the government
9 had Sergei Millian's emails. And what do you know?
10 Just like Mr. Danchenko told them in January 2017,
11 about an email in July of 2016 to Mr. Millian, there it
12 is, Mr. Danchenko reaching out: In any case, it would
13 be interesting, if and when possible, to chat with you
14 by phone or meet.

15 Mr. Keilty read that evidence as showing
16 guilt; yet, this piece of evidence Mr. Danchenko did
17 not have in his possession in January of 2017 or later
18 when he spoke to the government or the FBI. It was
19 uncovered by the government in their investigation to
20 prove him a liar, and it proved him true. It proved he
21 was telling the truth.

22 So, third, whether Mr. Danchenko ever even
23 went to New York like the story he told about going to
24 New York. Special counsel sought to prove that
25 Mr. Danchenko didn't go to New York when he said he

1 did. So they subpoenaed his Amtrak records to see what
2 they would show, see if they would prove the lie to
3 what he had said, and those records show that he
4 purchased his tickets on Monday, July 25 -- these were
5 not in Mr. Danchenko's possession because they
6 recovered these directly from Amtrak -- and that he
7 left for New York at 3:57 a.m. on the morning of
8 Tuesday, July 26, and returned on a train that left at
9 10:05 on Thursday, July 28.

10 Those records also confirm that
11 Mr. Danchenko's tickets were scanned on the train to
12 New York at 3:57 a.m. These times are provided in
13 Pacific Standard Time. That was the stipulation we had
14 read before we rested. They were scanned on a return
15 trip to D.C. at 10:23 p.m. They also show that he
16 traveled with his daughter, just like he told the FBI
17 in January 2017.

18 So far from proving Mr. Danchenko had lied
19 about anything to the FBI, again, his travel records
20 confirmed, their investigation confirmed he told the
21 FBI the truth and his story was adding up.

22 So then the government set out to prove --
23 and they made this argument today -- that if he did go
24 to New York, he wasn't there to do work. But the
25 government obtained Mr. Danchenko's Facebook messages

1 from that time period through a search warrant or a
2 subpoena. And what did they show? They show that
3 Mr. Danchenko sent a message to his wife on July 28 at
4 4:23 p.m. That not only showed he was in New York, but
5 it even included a reference to having another meeting
6 that night, July 28.

7 They uncovered another message saying at
8 6:40 p.m. that night, he indicated his work was done.

9 These are real-time communications in July
10 2016 that corroborate everything he's telling the FBI
11 in January 2017 and afterwards about his recollection
12 of what happened. He had no reason to believe July of
13 2016 that he was going to be the subject of this
14 massive investigation into a dossier. He had no reason
15 to believe that.

16 They went back to seize records to prove him
17 a liar, and the records are getting back. If they're
18 looking at them neutrally, they're proving that he told
19 them the truth.

20 Lastly -- and this is one of my favorite
21 parts of this investigation -- is that the government
22 sought to prove that Mr. Millian couldn't even have
23 been in New York when Mr. Danchenko claims to have been
24 there. They're not having luck, as you just saw, in
25 their mission to prove him a liar. So they decided to

1 take a look at Millian. What are his whereabouts when
2 Mr. Danchenko was in New York? And you heard the
3 testimony. They elicited it. He travels overseas a
4 lot. He's always out of the country.

5 I'm sure they believed -- I'm sure they
6 believed they were going to be able to show he was out
7 of the country, but guess what happened. Millian's
8 travel records actually prove that he just happened to
9 be in New York on the day Mr. Danchenko referenced
10 having another meeting. That's devastating for the
11 government's case, devastating.

12 He had no way of knowing where Sergei Millian
13 was that week. He didn't have his travel records. He
14 didn't know. It just so happens he arrived on July 27
15 in the evening, and Mr. Danchenko's reference to a
16 meeting is on July 28.

17 Either he's the luckiest man on the face of
18 the earth, or he was telling the truth. Investigation,
19 more evidence supporting what he told them, supporting
20 what he believed, and they just blow right past it like
21 it's not even there because it doesn't fit their
22 narrative that he's a liar.

23 By the way, we now know from the evidence
24 that the government uncovered in this investigation why
25 it was that Mr. Millian may not have shown up to that

1 meeting if it was him on that call. It looks like
2 Mr. Zlodorev may have been the person who scared
3 Millian off from the in-person meeting from the July 26
4 email that the government referenced. I couldn't agree
5 more with Mr. Keilty. This is the opposite of a
6 glowing endorsement. This is basically a message that
7 would probably scare Sergei Millian away from having
8 that meeting on the 28th. I couldn't agree more with
9 the government on this: I am not personally acquainted
10 with it. I don't know what he wants to talk about. He
11 works at some think tank in Washington.

12 To the extent that an anonymous caller wanted
13 to meet with him and if it was Millian and he got that
14 email, it makes perfect sense why he didn't show up.

15 But, again, with Mr. Millian's travel
16 records, information like this corroborated
17 Mr. Danchenko's version of events. The government then
18 has to go look somewhere else to try and find something
19 to show he's guilty. So that brings us to the
20 anonymous phone call or the anonymous message.

21 The government set out to prove -- Mr. Keilty
22 told you in his opening statement he was going to prove
23 Mr. Danchenko never received an anonymous call. Now,
24 this is where -- if you recall during the trial,
25 special counsel got a little tricky here. Remember,

1 they asked Agent Auten to refresh his recollection by
2 reviewing a document, a report he had written, that
3 Mr. Danchenko claimed to have received a cellular call
4 from an anonymous caller. That was all they had him
5 review. Just read that part, and what does it say? A
6 cellular call, a cellular phone.

7 Then Mr. Onorato got up on cross-examination
8 and literally said: Review the same report but read
9 the rest of the sentence onto the next page.

10 And the full sentence that Agent Auten
11 actually read out loud read: The call was either a
12 cellular phone, or it was a communication through a
13 phone app.

14 It was a good try, but it didn't work. And
15 it was a try because they know they have no evidence at
16 all from which you could conclude there was not a call
17 through a messaging app. They don't have it. It's
18 their burden. They don't have it. He doesn't have to
19 prove he received a call on a messaging app. They have
20 to prove he didn't. Where is that evidence?

21 And the transcript of Mr. Danchenko's own
22 interview with the FBI establishes without a doubt that
23 he believed it was through a phone call or messaging
24 app. He even goes so far -- this liar, he even goes so
25 far to say, "Hey, it wouldn't have been that app. I

1 didn't use that at that time."

2 Why wouldn't he give them dozens and dozens
3 of apps and let them chase around and see what they can
4 find? He's actually excluding apps for them so they
5 don't -- aren't looking for things that wouldn't be
6 there. He's trying to help them like he was ever since
7 he first met them in January 2017 until they exposed
8 him as a source. He helped them, helped the FBI.

9 There's a stipulation in this case,
10 Stipulation 1810, which is an agreement between the
11 parties that reads: Calls made via Internet-based
12 applications, for example, WhatsApp, Viber, Wickr, or
13 Skype would not appear in records of a cellular
14 telephone provider. They wouldn't show up in phone
15 records that Special Agent James reviewed. They
16 wouldn't show up.

17 They told you they would prove he never
18 received a call in his opening statement. They may
19 have proved he didn't receive a cellular call. They
20 haven't proven -- they haven't even given you evidence
21 to rely on to find that he didn't receive a
22 message-based call, an app-based call. They've given
23 you no evidence for you even to make that conclusion
24 regardless if it's beyond a reasonable doubt.

25 So when they realized they couldn't prove it

1 through that evidence, they only had one other place to
2 go. Call the FBI agents so that they would come in
3 here and tell you that Mr. Danchenko lied to them.

4 Well, that didn't turn out their way either; did it?

5 The first witness in this case, the analyst
6 who led Mr. Danchenko's three-day marathon interview in
7 January 2017, told you that he gave sworn testimony
8 under penalty of perjury in 2020 where he said he had
9 no reason to doubt the information Mr. Danchenko
10 provided him about who he received information from,
11 which was the analyst's primary focus. No reason to
12 doubt under oath, penalty of perjury, 2020.

13 He was asked whether that statement was true
14 when he made it in 2020. He said, "Correct."

15 Mr. Onorato asked him, "And it's true today?"

16 "Correct."

17 He said that last week under penalty of
18 perjury to you.

19 The government's third witness, Special Agent
20 Helson, who was Mr. Danchenko's handler for almost four
21 years, was asked, "And at no point during your entire
22 time meeting with Mr. Danchenko" -- remember, he
23 interviewed him for a lot of these counts. But when
24 Agent Helson was interviewing -- they are all after the
25 -- At no point during your entire time of meeting with

1 Mr. Danchenko over those three years did you ever walk
2 away thinking that he was lying to you about anything?
3 Is that fair?

4 Agent Helson: Fair.

5 And I asked him: For years after your
6 conversations with Mr. Keilty about his anonymous phone
7 call -- let's get right to the heart of this case. I
8 want to ask him exactly about this allegation: For
9 years after your conversation with Mr. Danchenko about
10 his anonymous phone call with the person he believed to
11 be Mr. Millian, you would submit reports indicating he
12 was a reliable source?

13 Correct.

14 And some of those reports would even mention
15 the Millian discrepancy, the issue you're being asked
16 to decide. They would even mention the Millian
17 discrepancy, and you would write that you believed that
18 Mr. Danchenko had accurately reported the information
19 as best you can recall?

20 Yes.

21 That's under oath testimony from that seat
22 right there at this trial.

23 It was devastating testimony for the special
24 counsel's case. Keep in mind these agents who got on
25 the stand and talked to you about their interactions

1 with Mr. Danchenko, they're in the room with him when
2 they interviewed him. They could observe his
3 mannerisms, his voice, his body language, and they
4 never thought at any point that he was lying about
5 anything.

6 If anything, Mr. Auten thought -- with regard
7 to Millian, he thought maybe he talked to Millian more
8 than what he was saying, not that he didn't talk to him
9 at all.

10 Remember, Agent Helson testified that he
11 trusted Mr. Danchenko and never got the impression he
12 ever lied to him. This is a trained
13 counterintelligence agent at the FBI who manages
14 confidential human sources, two decades of experience.
15 He told you that Mr. Danchenko was, quote, gold as a
16 cooperator because he couldn't handle uncomfortable
17 situations or topics. So they would be able to tell if
18 he lied to them. And other than that one time, if you
19 recall, when Mr. Danchenko acted oddly because he was
20 under pressure to ask for money, he never saw him act
21 like that at any other point.

22 Now, keep in mind these agents who testified
23 at this trial, they knew what the special counsel was
24 trying to prove at this trial. They know what this
25 trial is about. Every witness that testified, with the

1 exception of the summary agent, was represented by
2 counsel, lawyers, FBI agents represented by lawyers to
3 testify in this case in connection with their
4 investigation.

5 Every one of them knew the special counsel
6 had been investigating them as well. Even under that
7 pressure, which I can't imagine -- even under that
8 pressure, they came in here, and they told you the
9 truth. They told you the truth. And when they did,
10 what happened? Special counsel attacked them,
11 mercilessly attacked them, attacked their competence,
12 their judgment, their truthfulness. They attacked the
13 credibility of the very witnesses they called in here
14 to prove their case to you because they didn't say what
15 they wanted them to say. That speaks volumes about the
16 special counsel's case.

17 Despite the lack of evidence in this case to
18 support a claim that Mr. Danchenko lied about anything,
19 they just continued undeterred by suggesting or arguing
20 that the anonymous call could not have happened for
21 various unconvincing reasons without evidence to
22 support it.

23 One of my favorite ones is they've proved
24 that -- proved beyond a reasonable doubt that
25 Mr. Danchenko couldn't have received a call on an app

1 because he didn't write in his email to Mr. Millian
2 that he wanted to be contacted via app, and he didn't
3 provide the specific app to be contacted.

4 There's dozens of apps. We heard it in the
5 closing today. So how could you even know which app to
6 use had he wanted to? Agent Helson, a witness,
7 testimony, evidence -- not argument, evidence told you
8 all you need to contact someone on a messaging app is
9 their phone number. Some of you may have common
10 experience with that.

11 While there may be many apps, there are only
12 a few that people widely use, and there was only a few
13 that he specifically mentioned. He told them which
14 ones it could have been. They failed to produce any
15 evidence regarding those applications.

16 It's not a persuasive argument to begin with,
17 but it certainly doesn't prove anything beyond a
18 reasonable doubt because we all know from common sense
19 that a person can contact someone else however they
20 choose. The anonymous caller can just look through one
21 or two apps to see if Mr. Danchenko's number showed up.

22 If you're going to be anonymous -- it makes
23 all the more sense if you want to be anonymous that you
24 would reach out through an app as opposed to using your
25 own cellular number. That would defeat the whole

1 purpose of being anonymous.

2 Then there's what the special counsel
3 believes is a smoking gun, and we spent some time on it
4 in the government's closing. Now, when Mr. Danchenko
5 emailed Mr. Millian after the anonymous call, he never
6 referenced the anonymous call or that they had had a
7 missed meeting in New York. They believe that that
8 shows that Mr. Danchenko knew that call had never
9 happened and the trip to New York had never happened.
10 Sure, look, that's one way of reading it.

11 But the more logical explanation given the
12 surrounding circumstances is that the caller had wanted
13 to remain anonymous. So why would Mr. Danchenko write
14 an email exposing the identity of the anonymous caller
15 to potentially the anonymous caller when that's exactly
16 what the caller didn't want to happen? Why alienate a
17 potential source of information by blowing them up in
18 an email after a call if you thought it was them?

19 And you don't have to take my word for it.
20 Agent Helson, who has two decades doing
21 counterintelligence work for the FBI, agreed with me.
22 I asked: So if you didn't want to acknowledge that you
23 had a phone call with someone who is trying to be
24 anonymous, it's not unreasonable to write the email the
25 way he did?

1 Correct.

2 It only corroborates this email, which he
3 told them about in January 2017 but he didn't have. It
4 only corroborates that that call was anonymous.

5 Now, the government also argues that a
6 similar email that Mr. Danchenko sent to Mr. Zlodorev
7 around the same time also proves that the call didn't
8 happen. For the same reason, why would Mr. Danchenko
9 out that he had spoken to the person he believed was
10 Millian, when it was clear that he didn't want to be
11 identified, to the person who provided him Millian's
12 information?

13 And if you look on the left at Government's
14 Exhibit 0115, that image, that's a screenshot from
15 Mr. Danchenko's phone, the one he provided to the FBI
16 in January 2017, the very piece of evidence that the
17 government claims he gave to them in January when he
18 explained this whole situation. Do you know how many
19 times he was asked about that email over the next four
20 years? Not once. Not once.

21 I just want to -- the government's theory
22 just doesn't make sense. It didn't really occur to me
23 until I was sitting here right now. But if their
24 theory is that Mr. Danchenko made up Sergei Millian as
25 a source for the dossier sometime in July -- because

1 that information ends up in Report 95 sometime in late
2 July -- why on earth would he be reaching back out to
3 him in August? He's already made up his mind that he's
4 going to lie that Millian is the source of the
5 information. What's the point? Why would you reach
6 out to Mr. Zlodorev or Mr. Millian to start a
7 conversation if it doesn't matter whether you talked to
8 them or not? You're making them up as a source. It
9 actually makes zero sense.

10 The fact that he's reaching out afterwards
11 shows that he's not sure whether he spoke to him or
12 not, and he's trying to get more information from the
13 anonymous caller that he believes is Millian. If he's
14 a liar and he made it all up, these emails make no
15 sense. They make no sense.

16 The government also argues that because
17 Mr. Danchenko was already planning to go to New York,
18 then that means the trip wasn't to meet Millian. Guess
19 what? We agree. Obviously, this was not strictly a
20 work trip. We've never argued that or suggested that.

21 Mr. Danchenko had his daughter with him on
22 that trip. They are clearly doing things other than
23 work, like visiting the zoo. As you will see in the
24 exhibits, he releases a lot of photos of the things
25 they've been doing that week when he gets back from New

1 York.

2 But it's equally clear from those Facebook
3 messages that he had another meeting on the evening of
4 the 28th and that later at night he sends a message
5 stating that the work is done. There's no reason to
6 believe that Mr. Danchenko lied that he had a meeting
7 that night. It was to his wife. He had no idea this
8 was going to be a massive investigation and people were
9 going to be pouring through his personal records years
10 and years later.

11 The government is just stretching the facts
12 to make something out of nothing because they don't
13 have evidence on the most important things in this case
14 that they have to prove. They're distracting you with
15 conjecture and speculation but no evidence.

16 The timing of those Facebook posts are
17 perfectly consistent with his version of events and
18 that the meeting did not take place. He was done and
19 was ready to return home.

20 Remember, what are the odds that Sergei
21 Millian just happened to arrive in New York the night
22 before that meeting date?

23 Now, special counsel also makes a big deal
24 out of the fact that in an October 2017 interview with
25 Special Agent Helson, Mr. Danchenko states that he

1 talked to the anonymous caller a couple of times. And
2 that was different than what he had said in some of the
3 earlier conversations, and that proves he's lying
4 because it was different than what he said in his prior
5 conversations.

6 But keep in mind the circumstances
7 surrounding that interview and that conversation. It's
8 15 months after the anonymous call in July 2016. It's
9 more than five months after the last time they had
10 discussed the anonymous call with Mr. Danchenko, and
11 Agent Helson told you that. He was aggressively asking
12 him questions, peppering him with accusatory questions:
13 How many times did you meet with him? Where? Did you
14 meet with him in New York? Did you meet with him in
15 South Carolina?

16 Agent Helson testified, and I asked him about
17 that interview. He said that Mr. Danchenko was
18 perplexed by the questions. And a couple of times
19 there's an expression people use. It's more likely to
20 resolve to being flustered and caught off guard than
21 because he made the whole thing up, especially when
22 you've seen all the evidence that they've uncovered.

23 People can slip up or not be careful about
24 their words when they're nervous or don't have time to
25 think through an answer. It's happened during this

1 trial a number of times where witnesses had to be shown
2 what they had previously said that contradicted their
3 testimony.

4 Special Agent Anderson got completely
5 impeached claiming that she didn't have information
6 that she could have used for Mr. Danchenko that he
7 actually provided her in June. Mr. Onorato
8 cross-examined her and showed her that after she just
9 testified under oath that he had not.

10 But the most important part -- and I think
11 the most important takeaway for you as you consider
12 that interview and all the others -- is that Agent
13 Helson was the agent who was interviewing him. He was
14 in the room face-to-face with Mr. Danchenko. He's the
15 one who figured out he could tell when Mr. Danchenko
16 was lying, and he told you that he did not get the
17 impression that Mr. Danchenko was lying to him about
18 that or anything else.

19 The government has also suggested that
20 because Mr. Danchenko did not correct Mr. Steele's
21 belief that Mr. Danchenko had met with Millian multiple
22 occasions, that somehow shows he's guilty.

23 I want to segue for a second here because I
24 want to address the FISA warrant that the government
25 has made a big deal out of. The FISA warrant was

1 predicated on information that Christopher Steele had
2 provided to the FBI unbeknownst to Mr. Danchenko.

3 The first two FISA warrants were issued
4 before the FBI ever interviewed Mr. Danchenko. When
5 the FBI interviewed Mr. Danchenko in January 2017, the
6 information he provided them is what called into
7 question what was in the FISA warrants. Because the
8 FISA warrants were based on Steele's representation
9 that Mr. Danchenko told him that he had met with
10 Millian on several occasions. When they interviewed
11 him in January 2017, he said: No, no, no. I never met
12 him in person. I'm not even sure I ever met him or
13 spoke to him.

14 He is the one who called into question the
15 information that was in that warrant. He's the reason
16 that warrant should have been withdrawn or corrected,
17 because he provided truthful information. So for them
18 to throw the FISA warrant at Mr. Danchenko is
19 outrageous. He gave them the information they needed
20 to correct the warrant and go back to the court. The
21 fact that they didn't do it is not his fault.

22 But, again, back to this argument that
23 Mr. Danchenko never corrected Mr. Steele's perception,
24 you need to remember the context of that conversation
25 as well. It was a context that, again, was not brought

1 out on special counsel's direct examination. They
2 provided no context. They just said: Oh, Steele said
3 they met in person, and Danchenko never corrected.

4 But we brought it out on cross-examination.
5 That was in the context of a meeting Mr. Danchenko had
6 with Steele in October 2017, long after Mr. Danchenko
7 had become a source. Mr. Danchenko was already a
8 source for the FBI at that time. He was working for
9 the FBI.

10 He came back, and he reported the whole
11 conversation and even told the FBI that after what
12 Steele had done to him, he didn't feel the need to
13 correct him. And that was because, as Agent Helson
14 told you, he had seen what Steele had done with
15 information he had provided him. He read the dossier.
16 He saw how Steele had misrepresented their
17 conversations.

18 And as Agent Helson also told you, the FBI
19 had intentionally driven a wedge between Mr. Danchenko
20 and Steele because they wanted Mr. Danchenko on their
21 side. They wanted Mr. Danchenko reporting back to the
22 FBI on what Steele was doing, what he was up to. Was
23 there going to be a second dossier?

24 There's no point in even correcting
25 Mr. Steele at this point. That issue is long over.

1 The election is over. The FBI has already
2 investigated. It doesn't prove anything. Again, it's
3 just argument. It's nonsense just to distract you from
4 the lack of evidence in this case that he's a liar.

5 Which brings us to another one, that it would
6 make no sense for Sergei Millian to provide info that
7 would hurt Trump since he was a Trump supporter.

8 Again, I don't know if I can say this enough:

9 Mr. Danchenko never said that he knew the person on
10 that phone call was Sergei Millian, not once. Yet,
11 that's all you hear: He said Millian to this. He said
12 Millian to that.

13 He didn't. He never did. He said: I don't
14 know. It's anonymous.

15 But the FBI is trying to run an
16 investigation. Who could it be? Who could it be? I
17 don't know. Probably this guy because I just sent him
18 an email because the voice sounded familiar. He was
19 trying to help.

20 He's speculating. He's trying to assist the
21 FBI, and now they're indicting him for it. They're
22 prosecuting him for it.

23 It's entirely possible it wasn't Sergei
24 Millian, but even if it was, the caller only said there
25 was coordination between the campaign and Russia and

1 that there was nothing bad about it. Agent Helson told
2 you that. That's not anti-Trump, and we do know from
3 the government's own evidence that Millian was at least
4 telling people he was going to meet with Trump campaign
5 people the week before the phone call, the anonymous
6 phone call.

7 July 15, 2016, that's an email that the
8 government recovered that Mr. Danchenko would've had no
9 reason to know about even existing until this trial.
10 Sergei Millian reaching out saying, I'm meeting with
11 Trump and his people.

12 Here's another one the same day. This is to
13 Dmitri Zlodorev. Remember the journalist who put
14 Mr. Danchenko in touch with Mr. Millian. I'm meeting
15 with Trump and his people again a week before the phone
16 call, the anonymous phone call. I'm meeting with Trump
17 and his people. I can assume we will discuss Russia.

18 Are you convinced that Sergei Millian
19 couldn't have been on that call? Most of the evidence
20 seems to point towards him.

21 We also know, as if that was not enough, that
22 Sergei Millian was communicating with Trump's foreign
23 policy advisor at the time, George Papadopoulos.

24 July 15, again, a week before, another connection to
25 the Trump campaign.

1 We also know through the testimony of this
2 case that whether it was true or not, it was George
3 Papadopoulos' comments to a friendly foreign government
4 that started this whole investigation, the whole
5 Crossfire Hurricane investigation, his alleged comments
6 between the campaign in Russia and the Trump campaign.

7 Moreover, regardless of whether the caller
8 was Millian or not, they wouldn't have known that the
9 information they were reporting to Mr. Danchenko in an
10 anonymous phone call was going to the FBI. It would've
11 later come to surface. The argument makes little
12 sense, and again, it just reflects the weakness of this
13 case against Mr. Danchenko. They're just filling in
14 the holes where there should be evidence with argument
15 and speculation.

16 Now, you were instructed that in addition to
17 showing the statement was not true, the special counsel
18 must prove the statement was material. I don't think
19 you ever even get to that point, frankly, because they
20 had not and they cannot prove that he lied.

21 But regardless, you heard testimony during
22 this trial that Sergei Millian was under investigation
23 before they ever met Igor Danchenko. They also knew
24 that Steele had told them that Millian had been the
25 source of some of the information in the dossier. By

1 the time they interviewed him, it wouldn't even have
2 mattered what he said. They were going to continue to
3 investigate Millian regardless. You've seen the
4 context.

5 So his statements, true or not, were not
6 capable of influencing any decision. Even if he had
7 said, "No, I never had an anonymous call; I never spoke
8 to Sergei Millian ever in my life," they weren't going
9 to just take his word for it with all of these other
10 red flags and what Steele had said. They were going to
11 continue to investigate given what they already knew or
12 believed.

13 Which brings me to another point, which is it
14 doesn't make any sense to me and maybe to you that if
15 Mr. Danchenko was going to lie and he was going to lie
16 about Sergei Millian, why would he tell this lie? That
17 he had an anonymous call from a person who may have
18 been -- if you're going to lie, you're either going to
19 say you definitely spoke with him or met with him even
20 if you didn't, especially if that's what Steele was
21 saying. That lie might make sense.

22 Or you lie and say you never spoke to him
23 because you're trying to protect him or not implicate
24 him. That lie might make sense too.

25 Or you just say, you know, that information

1 came from an anonymous caller. I don't know who it
2 was. It was just a random phone call. Then that's it.
3 Don't give out the name of a person if it's not true.

4 Saying it was anonymous and then suggesting
5 that it could have been Millian doesn't make any sense
6 unless it's actually true.

7 And if you're lying, you don't then tell them
8 about an email you sent where you don't reference the
9 anonymous call, and you certainly don't start handing
10 over numbers and email addresses so that the FBI can
11 contact that person directly.

12 He gave the FBI the contact information he
13 had for Sergei Millian, cell phone number, email
14 addresses. Why would you be handing that information
15 over to the FBI for a person who could say you were a
16 liar? Again, it just doesn't make any sense.

17 Finally, any claim that Mr. Danchenko lied
18 about receiving an anonymous call or anything else is
19 completely inconsistent with every other aspect of his
20 relationship with the FBI. You heard the testimony
21 from Agent Helson. It was compelling, compelling. You
22 saw the reports he filed for the years that
23 Mr. Danchenko was his source. They're in evidence.
24 You saw the amount of money his information was worth
25 to our country. You saw Agent Helson's request for a

1 \$300,000 lump sum payment for Mr. Danchenko and his
2 family when he could no longer be used as a source.

3 You heard testimony about Mr. Danchenko being
4 overseas on regular business, not even FBI work,
5 collecting information that would help on his own, not
6 being asked.

7 You heard the government argue during the
8 trial from witnesses that -- trying to prove or
9 disprove the dossier was so difficult because so many
10 people were located overseas. They weren't people in
11 the United States.

12 This liar who lied about the dossier actually
13 is the one who brokered a meeting between the FBI and a
14 foreign source of information in the dossier. He's the
15 reason it happened. He set it up. He convinced that
16 person to meet with FBI overseas. Think about that.
17 He was going above and beyond anything that could have
18 ever been expected of him to help the FBI, to help our
19 country. Agent Helson told you point blank that losing
20 him as a source damaged our national security.

21 All the evidence in this case that we just
22 walked through, it points to innocence, but the
23 government started with the presumption of guilt. I
24 don't know how you can look at this evidence and see
25 guilt as opposed to innocence when it all lines up with

1 everything he ever told them. And it colored the way
2 they looked at every piece of evidence and every
3 detail. They've been viewing this case one way since
4 the outset, and they can't unsee it. They can't unsee
5 it, which is why you're here.

6 That's why we have juries decide guilt in
7 this country. It's the most important part of our
8 justice system. Twelve citizens who never met each
9 other before, don't know the parties, listen to the
10 evidence and argument and decided whether the
11 government has met its burden to prove his guilt beyond
12 a reasonable doubt.

13 They have to go through you first. You get
14 to decide whether he's guilty or not, and you start
15 with fresh eyes. You've been instructed. You start
16 with the presumption of innocence, not guilt. You
17 start with the presumption that Mr. Danchenko is
18 innocent, and he remains innocent unless and until
19 you're convinced they proved his guilt beyond a
20 reasonable doubt.

21 And if they have not convinced you beyond a
22 reasonable doubt that he did not receive an anonymous
23 call through a phone app, that's the end of the case.
24 They had to prove that.

25 They told you they would, but did they? Are

1 you convinced beyond a reasonable doubt, as you sit
2 here today, that Millian or perhaps someone else didn't
3 reach out to him anonymously over a messaging app in
4 July 2016? What evidence do you have to make that
5 conclusion? What evidence do you have to make that
6 conclusion beyond a reasonable doubt? There's none.
7 It's a giant hole in the case, and they can't fill it
8 with conjecture, speculation, and argument. Where is
9 the evidence?

10 So a verdict of not guilty in this case, it
11 doesn't mean you 100 percent approve of the way the FBI
12 handled the Crossfire Hurricane investigation, whether
13 it should have been opened or not, or that they
14 shouldn't have obtained a FISA warrant on anybody, or
15 that they didn't make their own mistakes at some point.
16 I'm sure if you look backwards at anything five years
17 later you'll find mistakes.

18 A verdict of not guilty simply means in this
19 case that the government has failed to prove beyond a
20 reasonable doubt that Mr. Danchenko lied to the FBI
21 about that anonymous call, and it's the only reasonable
22 verdict in this case.

23 So now is the part where I have to sit down
24 in a minute, and it's the hardest part of the case for
25 a defense attorney because they get the last word. And

1 so we just have to sit there and listen and think about
2 the things we meant to say when we were up here and
3 forgot or the things that we think they're getting
4 wrong and that we feel like we can correct, like I was
5 just able to do now, and we can't.

6 And it's particularly concerning in this case
7 and difficult in this case because the burden shifting
8 I heard in the government's closing about where is the
9 evidence that Mr. Danchenko did this or did that. He
10 didn't have any burden. You're not going to see an
11 instruction back there that says he has a burden to do
12 anything. It's the government's burden to prove their
13 case. It's not his burden to disprove it.

14 The special counsel at times through its
15 questions and arguments, they've not given you the full
16 picture. They haven't told you the whole story. Just
17 like when they were showing the agents and had the
18 agents testifying, well, if you knew this or if you
19 knew that, what would you think? Oh, yeah, that would
20 affect my views of that, or I would think that was
21 important. They only showed them the stuff that they
22 think helped their case.

23 We showed them on cross-examination: What if
24 you knew that Sergei Millian arrived in New York on
25 July 27, the day before? Would that tend to

1 corroborate what Mr. Danchenko told you? Yeah, it
2 would.

3 What if he found out they pulled his travel
4 records, and he was actually in New York that week?
5 Would that tend to corroborate? Yeah. Yeah.

6 So I'm worried more so than usual when I go
7 back to sit down about what you're going to hear now
8 and what I can't respond to. And while I can't do
9 that, you can. You can pay attention to what's said
10 now, and you can discover those inaccuracies or
11 misstatements, if there are any, when you go back to
12 deliberate and consider the actual evidence in this
13 case.

14 But they get the last word because it's their
15 burden to prove the case, and they failed to do so. I
16 expect you are going to have a lot of doubts about the
17 case, and you should. But be sure you have them now.
18 Don't have them a week from now or a month from now.
19 That's too late for Mr. Danchenko. Those doubts you
20 have when you go back in that room to deliberate, those
21 are his rights to an acquittal, a not guilty verdict,
22 and they're not to be traded away or bartered. They
23 mean he's not guilty.

24 And for many of us in this courtroom, this
25 trial is part of our job. For you, it's kind of a

1 brief opportunity to serve your country as a juror and
2 then return back to your normal life. But for
3 Mr. Danchenko, what happens in this courtroom will
4 impact the rest of his life.

5 I'd submit to you that Mr. Danchenko would
6 not risk his life and essentially provide information
7 against his own country to help support our national
8 security team and at the same time lie to the people
9 who were both supporting him and were in charge of
10 protecting him.

11 Agent Helson told you both he and
12 Mr. Danchenko were worried for his safety and what
13 Russia might do to him if they found out what he was
14 doing or if he was exposed. Little did they know they
15 had to fear what our own politicians were going to do
16 to him. He deserved more than to be exposed because a
17 bunch of politicians believed that politics were more
18 important than national security.

19 Fortunately for Mr. Danchenko, this case is
20 not about politics. It's about facts, and it's about
21 evidence. And I couldn't be more thankful for that.
22 Because I want you to decide this case on the evidence
23 you heard in this courtroom because that evidence is
24 exactly what proves he is not guilty. And I ask you to
25 find him not guilty on all counts.

1 Thank you.

2 THE COURT: All right. Let me see counsel at
3 the bench, please.

4 (Conference at the bench, as follows:)

5 THE COURT: I thought the government's
6 closing was going to be a lot longer than it was. How
7 long were you intending for rebuttal?

8 MR. DURHAM: I would say half an hour, 40
9 minutes.

10 THE COURT: Well, I'll give you half an hour.
11 All right.

12 MR. DURHAM: Yes, Your Honor.

13 THE COURT: All right. We'll take a short
14 recess.

15 MR. SEARS: Yes, sir.

16 THE COURT: All right.

17 (Proceedings continued in open court, as follows:)

18 THE COURT: Ladies and gentlemen, we're going
19 to take a short recess, and then I'll bring you back
20 shortly for the government's rebuttal. Please do not
21 discuss this case among yourselves during the recess.
22 You're excused to the jury room.

23 (The jury exits at 12:16 p.m.)

24 THE COURT: All right. We'll take a
25 15-minute recess. The Court will stand in recess.

1 (Recess from 12:16 p.m. until 12:33 p.m.)

2 (The jury is not present.)

3 THE COURT: Ready to proceed?

4 MR. DURHAM: Yes, Your Honor.

5 (The jury enters at 12:34 p.m.)

6 THE COURT: Please be seated.

7 REBUTTAL ARGUMENT

8 MR. DURHAM: Like the other counsel, I want
9 to thank you for your attention. I'm going to try to
10 March through some of the things that you just heard
11 from Mr. Sears, and I'll have some more general
12 comments concerning what was stated during Mr. Sears'
13 summation.

14 Let me start out basically where Mr. Sears
15 started out. He made reference to the fact that
16 Mr. Danchenko didn't know what was being written by
17 Mr. Steele until the BuzzFeed articles came out. Now,
18 the BuzzFeed articles, you might remember from the
19 testimony of the evidence, came out in January of 2017,
20 at a point in time prior to when the FBI approached
21 Mr. Danchenko.

22 Now, counsel says that he, Mr. Danchenko,
23 didn't know what was in there, and he was upset about
24 it. And he told the FBI it's just rumor and
25 speculation.

1 Well, let's find the context for that.
2 Mr. Danchenko had been working hand in glove with
3 Mr. Steele over a period of time to put together these
4 reports, the reports which were designed to tie
5 then-candidate Trump to the Russians. That was the
6 basic object of that particular exercise.

7 Now, when BuzzFeed comes out and the
8 information is now all over the public airwaves, then
9 things begin to happen. People start to talk about it.

10 Now, counsel says that he, Mr. Danchenko,
11 didn't know what Steele had been writing and it was
12 just rumor and speculation. Did you hear any testimony
13 in this case that with respect to the FBI's dealing
14 with Steele, that Steele was told by Mr. Danchenko or
15 anybody else that this was all rumor and speculation?
16 I think the answer is no.

17 But more particularly, what do you know from
18 the defendant's own words about whether or not it was
19 simply rumor and speculation? You'll recall it was a
20 particular exhibit that was introduced in this case.
21 It's Government's Exhibit 1502. Maybe it's not one
22 that immediately jumps to mind, but with respect to
23 what the defendant said when he wasn't talking to the
24 FBI and, as I'll get into in a moment, when he had to
25 cover his own interests -- what does he say on his own

1 when he's communicating by way of LinkedIn? Does he
2 say, "This is all speculation and rumor. I didn't know
3 what Steele was writing?" No.

4 When Mr. Danchenko is communicating and
5 doesn't think that he might be held accountable for it,
6 he tells the truth, and the truth is that he collected
7 80 percent of the raw intelligence and half the
8 analysis for the Steele dossier. That's what he says.

9 Do you see any language in the defendant's
10 own words, as expressed or shown in Government's
11 Exhibit 1502, and, oh, by the way, what Steele wrote
12 was all rumor and speculation; I never told him those
13 things? The answer is, no, he doesn't say that because
14 aside from Mr. Danchenko telling the FBI that, there's
15 no evidence of it.

16 The only evidence that you really have in
17 front of you, based on what was presented in this
18 courtroom under oath before you, is Government's
19 Exhibit 1502. He collected 80 percent of the
20 intelligence, half the analysis was his, and he never
21 backed off from what was in the dossier. That's what
22 the evidence is in the case.

23 We move to, I think, what was Mr. Sears' next
24 point, that he, Mr. Danchenko, had deleted everything
25 that he had. All right. He was with -- the BuzzFeed

1 article came out, and he went ahead and deleted things.
2 And Mr. Helson had testified regarding deleting things,
3 scrubbing his phone, right. Well, piece that together.
4 What did Helson testify to? It was when
5 Mr. Danchenko's name became public that he, Mr. Helson,
6 had a conversation with him telling him: You should
7 probably clean up your phone.

8 But what do you also know about that? And
9 don't forget what the evidence is. Mr. Sears wants to
10 put this on Bill Barr. He wants to put it on
11 politicians or whatever. You heard testimony from
12 Mr. Helson that Mr. Danchenko himself, when he was
13 interviewed by the press -- all right. I think it was
14 couched in the terms of your recollection controls, of
15 course, but I think it's couched in terms of, well, he
16 had to do what he had to do to protect himself. He
17 went and talked to the press.

18 Mr. Sears kind of glosses over what the
19 actual sequence of events was here concerning what it
20 is that Mr. Danchenko told the FBI, but you have in
21 evidence before you what the sequence was concerning
22 this purported anonymous call. All right. You know
23 the first day of the interview that was done on
24 January 24 of 2017. Mr. Danchenko had said he sent two
25 emails in July, and then he got a call in late July

1 from this anonymous source.

2 Even Mr. Auten went back to that the next day
3 and wanted to revisit it. What did he say
4 Mr. Danchenko said the next day? The next day he said
5 there was one email. And then I got this anonymous
6 call, and then I sent another email in September.

7 Now, what do you know that the FBI agents
8 asked him to do at the time? They asked him at the
9 time: Well, do you have any records on this? And he,
10 Mr. Danchenko, was not able to produce any records
11 relating to that.

12 But at some point in short order he did
13 produce what was marked in this case as Government's
14 Exhibit 115T. You might recall that's the screenshot
15 or document that was dated August 24.

16 All right. So Mr. Sears doesn't answer the
17 fundamental question here; does he? He says to you on
18 more than one occasion that he, Mr. Danchenko, didn't
19 have records. Well, he produced this document,
20 Government's Exhibit 118T. He had that document to
21 produce to the FBI, but he didn't produce what you had
22 previously seen in the case. He didn't produce
23 Government's Exhibit 204T, right, which was the initial
24 July 21, 2016, email. He didn't produce the August 18
25 email where he is saying -- you know, he didn't

1 respond. He didn't provide those.

2 So be careful listening to counsel's argument
3 about he didn't have something to produce. If he had
4 Government's Exhibit 115 -- that is the exchange that
5 occurred on August 24 -- it is certainly reasonable to
6 believe that similarly, he had the July 21 and the
7 August 18 emails that were not helpful to him and chose
8 not to provide those to the FBI.

9 And why would that be the case?

10 Respectfully, the reason that that is the case is
11 because if you look at Government's Exhibit 204T, 207T,
12 and 115T together, it points out the lie that the
13 defendant was telling; that is, that is the defendant
14 had not heard from Mr. Millian, and he knew he had not
15 heard from Mr. Millian.

16 Let me address another issue that Mr. Sears
17 raised in his opening statement, which he suggests --
18 what was it -- a lucky guess that Mr. Danchenko would
19 know to go to New York on July 26 and Millian was
20 coming in on the night of July 27. Is that a good
21 guess?

22 Well, take a step back. What do you know
23 from the evidence in this case? Number one, there is
24 no evidence at all that the defendant had any knowledge
25 that Millian was flying back to the United States on

1 the 27th, right. That question presumes facts not in
2 evidence. Counsel puts that in Mr. Danchenko's head
3 when there's no evidence of that. What the evidence is
4 is that Millian lived in New York, right, not that
5 Mr. Danchenko knew Millian was coming back to New York
6 on July 27. That's how it happened. But there's no
7 suggestion or evidence that Mr. Danchenko knew that.

8 What's in evidence is that that's a
9 preplanned meeting that Mr. Danchenko had that is --
10 right? If you look at the exhibits -- and that's why
11 we tried to go through them. But if you look at the
12 exhibits and what the actual sequence of events is, on
13 July 18, there's the exchange between Mr. Sidar and
14 Mr. Danchenko, and the meeting that they were supposed
15 to have is going to get pushed off for a week, right.

16 Mr. Danchenko says: Yeah, I figured that was
17 going to happen, and I have to be in New York next week
18 anyway.

19 So before he even sends an email to Millian,
20 he already thinks he has to be in New York the
21 following week. If you then look at the August 24
22 email, right, the August 24 email is the one that
23 Mr. Danchenko had sent to Mr. Zlodorev. He's talking
24 about, you know, I'm in Washington, D.C. I'm
25 occasionally in Manhattan.

1 The point being that Mr. Danchenko travels to
2 New York on occasion for business. And so his travel
3 in July, specifically on July 26, was part of what he
4 occasionally does. He travels to New York. In this
5 instance, he was going to do some sightseeing and the
6 like. But that's the sequence of events.

7 It isn't the case that he, Mr. Danchenko,
8 somehow knew that Millian was flying back to the United
9 States on the 27th. There's no evidence that he
10 would've known that, that he did know that. That's a
11 creation of counsel.

12 Now, let's turn to what I believe -- and it's
13 your recollection, having listened to defense counsel,
14 that controls, but I believe that Mr. Sears concedes
15 here that, based on the email exchange between
16 Danchenko and -- I'm sorry, between Mr. Millian and
17 Mr. Zlodorev on July 26 -- and I think that's
18 Government's 205T, which we can pull up and you might
19 want to take a look at. But I believe counsel concedes
20 that, yeah, in view of that email exchange -- and I
21 don't want to put words in Mr. Sears' mouth, but it
22 probably was the case that there would be a
23 disincentive, a disincentive for Millian to have
24 reached out to Mr. Danchenko.

25 And a fair reading of that email and the

1 contents would say, yeah, there's no way -- or there's
2 no reason that Mr. Millian would be reaching out to
3 Mr. Danchenko in late July of 2017.

4 There's another piece that I wanted to
5 address quickly. Again, you -- as the judge has told
6 you, it is your recollection of events that occur. But
7 Mr. Sears made reference to a portion of testimony
8 concerning the phone call and then whether it was a
9 cell phone call or it was an app or the like.

10 Your recollection of the evidence is
11 obviously what controls here, but try and remember
12 whether or not -- what that question had to do with was
13 Mr. Auten was asked a question about what kind of phone
14 it was, the phone call. Was it a call to a cell phone?
15 Was it a call to a hard line? And then Mr. Auten said
16 he didn't remember. He just thought it was, you know,
17 a phone or whatever. He checked his report to see what
18 it was, and that's what that exchange was about, what
19 kind of phone was used. The call came in on a cell
20 phone or a hard line phone?

21 Counsel suggests that somehow in asking
22 Mr. Auten to refresh his recollection that we are
23 trying to hide something. Well, we'll rely on your
24 recollection as to what the context of that questioning
25 was with Mr. Auten.

1 Counsel then turns to some other subject
2 matters which I want to address. He makes reference --
3 he, Mr. Sears, makes reference to the sworn testimony
4 of Brian Auten from 2020 and whether or not Auten in
5 2020 believed that Mr. Danchenko had misled him or lied
6 to him in any way. Okay. Well, when Auten testified
7 in 2020, Mr. Auten had not seen the emails that you
8 have seen. Mr. Auten had not seen that the defendant
9 had said he had not heard from Mr. Millian or
10 Mr. Millian had not responded to his emails.

11 But, again, when you look at Government's
12 Exhibits 204, 207, and 115 in order, that's the
13 information that shows and establishes that Mr. Millian
14 had not reached out to the defendant, and the defendant
15 clearly knew that.

16 I'll address another issue that was raised by
17 counsel. With respect to any hesitation that the
18 defendant had in answering questions, he, Mr. Auten,
19 had testified that with regard to answering questions
20 or hesitation -- I think it was Mr. Auten. It could
21 have been Special Agent Helson. But he had only on one
22 occasion showed some kind of hesitation or whatnot.
23 See if that comports with your recollection. Remember,
24 there was testimony relating to when he, Mr. Helson,
25 first raised Mr. Dolan's name. All right. And he was

1 hesitant. You listened to the recording, and he paused
2 and whatnot. There's hesitation over that as well.

3 Counsel then turns to a discussion about,
4 well, the caller would want to remain anonymous.
5 Whether it was Mr. Millian or somebody else, the caller
6 would want to remain anonymous. And just think through
7 that for a minute. If Mr. Danchenko is telling the
8 truth when he said that there was this purported
9 meeting that was set up in New York, how does that
10 work?

11 Somebody calls, and the explanation provided
12 by counsel is, well, he wanted to be anonymous and
13 whatnot. He didn't want people to know who he was.
14 Well, how does that work if you then set up a meeting?
15 You are going to have a meeting in a bar someplace in
16 New York City. How does anonymity play into that? It
17 obviously doesn't play into it. If the person wanted
18 to remain anonymous, he's not going to set up a meeting
19 to then meet in a bar in New York because there goes
20 one's anonymity. So that makes no sense at all based
21 on the evidence that was presented in this case.

22 Counsel then turned to a reference to the
23 October 24, 2017, exchange between Mr. Danchenko and
24 Mr. Helson and explains away -- or attempts to explain
25 away the fact that the statement that Danchenko had

1 given had changed yet again. Recall that on January 24
2 there were two emails and then the call. On
3 January 25, there was one email and then the call and
4 then a much later email in September. The issue had
5 been reviewed several more times because, as Helson
6 said, if there's an important question that you are
7 concerned about, you keep going back to it to see if
8 the person's story, explanation remains consistent.

9 Well, on August 24, 2017, Mr. Danchenko for
10 the first time tells the FBI that he spoke a couple of
11 times with Mr. Millian. That's the first time he said
12 it. He spoke with him a couple of times, which is a
13 significant and obvious change.

14 It was inconsistent with what he had
15 previously told the FBI and speaks volumes about
16 whether the story in the first instance is true or not.

17 Let me turn quickly before I get into more
18 substantive matters. Mr. Sears referenced the FISA
19 warrants, and he makes reference to the fact that the
20 first two FISA warrants that the FBI obtained on Carter
21 Page preceded or predated January 24. That's true, and
22 then there were two more that occurred after that.

23 And in each of those additional instances,
24 the information that was in government's exhibit
25 reflecting Dossier Report 95 remains in those

1 affidavits, right. These are material matters because
2 if you heard the testimony here, if Mr. Danchenko had
3 said, hey, 95, that information, I don't know where
4 that came from, that's not true or whatever, the FBI
5 would have had an obligation not only to go back to the
6 FISA court and tell the FISA court information
7 contained in the first two applications had false
8 information in it, but they wouldn't be able to go
9 forward with the next two on Carter.

10 So the information that is central to this
11 case clearly is material, and it would have affected
12 not just -- not just had the possibility to affect. It
13 would have had an effect on what the FBI did and did
14 not do regarding that information.

15 Let me turn next to several different
16 matters. One is what is the purpose of this whole
17 statute? Why is there a statute known as 18 U.S.C.,
18 Section 1001? What's it there for? It's there to
19 safeguard and protect the functioning of our
20 governmental institutions. It's intended to protect
21 the agencies from both real and potential effects of
22 material false statements and to protect the citizens
23 of the United States from the consequence of false
24 statements being provided to government agencies.

25 And it's aimed to protect government agencies

1 broadly because it doesn't just cover false statements
2 that affect a specific or discrete decision that might
3 be made by a government agency. It covers false
4 statements that affect any function of the government.
5 Most importantly, it even covers material false
6 statements whether or not they actually affect or
7 influence a decision or step taken by the government.

8 So as you consider the evidence in this case,
9 please keep in mind what this law protects, not
10 government agents from their own failures or omissions
11 but government institutions, and not particular special
12 agents from Crossfire Hurricane or those assigned to
13 other investigations by our federal governmental
14 institutions who are responsible for protecting the
15 rights and interest of the American people. That's
16 what this case is about, if you lie to the FBI.

17 Whether those FBI agents are competent, not
18 so competent, or they fall someplace in between, can
19 you do it with impunity?

20 Let me turn to the next issue because this
21 one is really one that is of importance to this case.
22 It should be of importance to everybody in this
23 courtroom. Mr. Sears spent some time talking about
24 Mr. Danchenko's values as a confidential human source.
25 It's not a simple matter. The defense has suggested

1 that his statements were true to the FBI because the
2 FBI believed they were true and because the defendant
3 was a highly valuable paid and trusted confidential
4 informant.

5 But even if that were true up until his CHS
6 status was subjected to a detailed review -- and I'll go
7 into that in a moment -- none of that makes the
8 defendant's false statements here any truer. And if
9 they were false when he gave them, even if he did good
10 things thereafter, they are still false statements.
11 The defendant's value as a source on other matters is
12 not an issue that's properly before you. You don't
13 have to consider and shouldn't consider whether he was
14 truthful or valuable in other matters.

15 On the other hand, it may be something, based
16 on the defense's arguments in this case and
17 cross-examination of witnesses, that as recommended by
18 the bureau's own people, those people charged with
19 assessing human sources reliability, that certain
20 things did not occur here that the experts said are
21 recommended should happen.

22 Mr. Helson decided that he wasn't going to
23 polygraph Mr. Danchenko to determine if he ever was
24 tasked by a foreign individual entity or government to
25 collect information or perform actions adverse to the

1 U.S.'s interests. That was not done.

2 The FBI's behavioral assessment group needed
3 to conduct an examination to determine what the
4 defendant's actual motives, allegiances, and
5 vulnerabilities were. That wasn't done.

6 The Washington Field Office was to conduct an
7 assessment of the financial nature of the defendant's
8 employment. That was not done.

9 So when counsel does talk to you about
10 certain monies weren't paid or certain monies were paid
11 or whatnot, this all occurred in a particular context
12 that you're not charged with trying to sort out. What
13 you do know is that Mr. Helson didn't do things that
14 were recommended by the experts within the bureau who
15 deal with human sources needed to be done.
16 Mr. Danchenko was not polygraphed. The behavioral
17 group did not assess where his allegiances were and the
18 like. What you do know is he was an informant for the
19 FBI.

20 Second, even if the agents who described him
21 as a valuable CHS said it was highly important to
22 them -- I'm sorry. The very agents who described him
23 as a valuable source said it was highly important to
24 them whether the defendant, in fact, spoke with
25 Millian. Then they described their own course of

1 conduct going back repeatedly to Mr. Danchenko to get
2 to the bottom of this claim.

3 Mr. Helson told you how the defendant's story
4 had shifted, how he wasn't consistent about whether he
5 received one or two phone calls, and exactly when that
6 call supposedly occurred.

7 Supervisory Intelligence Analyst Auten
8 testified that it didn't make sense why an anonymous
9 caller would provide this information to Danchenko
10 without identifying himself in some fashion.

11 Those agents expressed some concern or
12 skepticism about that. That should cause you to pause
13 and give credence to all of the other evidence in this
14 case, which clearly shows that the defendant made false
15 statements and lied to the FBI.

16 Let's turn to maybe the elephant in the room,
17 the FBI. Was the FBI simply incompetent? Are they
18 some kind of -- you know, people working in
19 coordination, whatever? From the evidence presented in
20 this case, you could easily conclude that the FBI
21 mishandled the investigation at issue, but it's not
22 itself in any sense -- that is the bureau. Bureau
23 agents are not in any sense victims of the defendant's
24 false statements.

25 The evidence is material because it changed

1 and had the ability to change what the FBI has been
2 doing, but don't feel bad for the FBI agents. Whether
3 the FBI performed here well or poorly, it is not a
4 relevant issue for you to consider, and it would not in
5 any way excuse or erase the defendant's false
6 statements.

7 That said, you have no doubt seen during the
8 course of the trial that the government is not here to
9 defend the FBI's handling of these matters. There are
10 things that they didn't do that they quite clearly
11 should have done. The evidence in this case quite
12 clearly shows -- that is, respectfully suggested --
13 that there was a certain mind-set that for whatever
14 reason, agents didn't do what they should have done in
15 trying to collect evidence relating to this purported
16 call from an anonymous source.

17 The evidence shows that the FBI failed here
18 on a number of occasions, but I expect you may ask
19 yourself how the agents possibly could have done it.
20 How did they fail to uncover these lies sooner and
21 investigate them more fully?

22 Now, I think that counsel's suggestion is,
23 oh, it's Bill Barr. Bill Barr did this for political
24 reasons. But reflect on how this came about. The
25 Mueller report had come out, and there's no collusion

1 that was established. It's not an illogical question
2 to ask, well, then how did this all get started? Now,
3 you can call that political. You can suggest, I guess,
4 inferentially that somehow people who have spent a
5 considerable period of time away from their families
6 and whatnot did this for political reasons or what have
7 you. If that's your mind-set, I suppose that's your
8 mind-set.

9 But to look into the question of how did this
10 all happen -- Director Mueller, a patriotic American,
11 the former director of the FBI, concludes there's no
12 evidence of collusion here or conspiracy. Is it the
13 wrong question to ask, well, then how did this get
14 started? Respectfully, that's not the case.

15 THE COURT: You should finish up, Mr. Durham.

16 MR. DURHAM: Yes, Your Honor.

17 It's not the agent's on duty, though, who are
18 the two victims of the lies that were perpetrated by
19 Mr. Danchenko. It's the FBI's as an institution and
20 ultimately the American taxpayers, the American people.

21 Let me touch on one additional matter given
22 the shortage of time, and then I'll conclude.

23 You know that the defendant didn't receive an
24 anonymous call here on an app from Millian or anyone
25 else for at least three reasons:

1 First, there's absolutely no evidence in the
2 record of such a call, none.

3 Second, the statements the defendant made to
4 the FBI are not in any way consistent with how someone
5 would describe an anonymous call. They're consistent
6 with how somebody would describe a call that they made
7 up.

8 Even though Danchenko was a trained business
9 intelligence analyst whose entire task from orders from
10 Christopher Steele was to find evidence of collusion
11 between Trump and the Russians -- if he had received an
12 anonymous call, whether he thought it was Millian or it
13 was somebody else, that would be the very evidence of
14 collusion that he was looking for so eagerly. As a
15 trained researcher, he clearly would have noted every
16 detail possible: What's the incoming call number?
17 What's the area code number? What other details are
18 there? What do you know about the person's speech
19 pattern? None of that information is recorded or
20 provided. It's simply an anonymous caller.

21 He would have known to remember the cell
22 phone application if it was a cell phone application
23 that was involved. Look, that's what a good research
24 analyst does, looks into the details, records those
25 details, and reports on those details. Mr. Danchenko

1 did none of that. He didn't provide any of that
2 information to Steele, and he didn't provide any of
3 that information to the FBI.

4 Third, the most conclusive evidence that such
5 a call never occurred, if you look at Government's
6 Exhibit 207T, the defendant's August 18 email to
7 Mr. Millian where the defendant states in his own
8 words -- I mean, he can't get away from his own words.
9 His words state that he wrote to Millian several weeks
10 earlier and that they were contacts on LinkedIn but
11 says nothing about the call that he told the FBI he
12 thought was probably Millian. What possible reason
13 could explain why the defendant wouldn't at least ask
14 Millian if he had called?

15 I want you to look at Government's
16 Exhibit 115T, the August 24 email --

17 Can I have five more minutes, Your Honor?

18 THE COURT: One minute.

19 MR. DURHAM: One minute.

20 Use your common sense to evaluate this. When
21 you use your common sense and apply this to the
22 dossier, why did this happen? Why did Mr. Danchenko
23 have to tell this lie? Because he told Christopher
24 Steele that he had been meeting with Millian and
25 Millian had given this information. Then when he went

1 to the FBI, he's stuck. If he tells the FBI, hey, this
2 didn't happen, I was just telling Steele that, the
3 whole house of cards in the dossier crumbles. He's out
4 of Orbis. He's out of the FBI. He's out of his
5 financial monies. He's done. The whole house of cards
6 collapses if he tells them that.

7 That's why he has to make up the anonymous
8 call. That's why he has to try to thread this needle
9 in the way that he did with an anonymous call thinking
10 that you'd never get behind it. But Special Agent Ryan
11 James and his colleagues get the records. They walk
12 through those records, and they establish and prove to
13 you beyond a reasonable doubt, a reasonable doubt, when
14 the defendant told the FBI that he had gotten this
15 anonymous call, it was a false statement.

16 So let me conclude here. Mr. Keilty told you
17 at the beginning of the trial in his opening statement
18 that we would have this chance, which both the
19 government and the defense have now had. But you were
20 asked to do three things:

21 First, to pay close attention to the facts as
22 the evidence came in, something that I think the
23 observation is that you've all been conscientious
24 jurors.

25 Second, to listen carefully to Judge Trenga's

1 instructions on the law, which we know you have done
2 during the trial and you will continue to do throughout
3 your deliberations.

4 And, third, you were asked to use your common
5 sense, the same common sense you use every day of your
6 lives. Again, we ask you to do that.

7 We suggested if you do these three things,
8 the defendant would get a fair trial, and you'd be able
9 to reach the only conclusion consistent with the law
10 and the facts in this case. And that is that the
11 defendant is guilty as charged.

12 That time for you has now arrived, ladies and
13 gentlemen, and we urge you to return the only verdicts
14 that are consistent with the law and the evidence in
15 this case, and that is that the defendant is guilty as
16 charged on all four counts.

17 I want to thank you for your time. I want to
18 thank you for your attention. Thank you for your
19 service, and thank you for your good judgment.

20 Thank you very much, Your Honor.

21 THE COURT: Thank you.

22 Ladies and gentlemen, we're now at the point
23 where you need to begin your deliberations.

24 It's also at the point in time when it's
25 always my unwelcome duty to excuse the three alternates

1 that have been seated. I want you to know that your
2 contribution to this trial has been as valuable as
3 anyone else. I know you all have been very diligent in
4 paying attention. Again, I thank you for your service.

5 There is also the possibility that you could
6 be called back to participate in deliberations if any
7 of the jurors can't complete their service. So I would
8 ask that you continue to shield yourself from any
9 publicity until the trial is over.

10 You may retire to the jury room with the rest
11 of the jurors, but you'll have to excuse yourself
12 before they begin their deliberations. So, again,
13 thank you on behalf of the Court for your service.

14 For those of you that will deliberate, when
15 you go back to the jury room -- it may be sort of past
16 the normal lunch hour -- you may want to break for
17 lunch before you begin your deliberations. Just
18 coordinate with Mr. Burns. It will take some time for
19 the exhibits to get back to you.

20 But when you begin your deliberations, the
21 first thing you should do is select one of yourselves
22 as the foreperson. That person will simply have the
23 obligation to ensure that everybody has a fair
24 opportunity to discuss the case and preside over the
25 proceedings.

1 You can conduct your deliberations in any
2 fashion that you deem appropriate, but it is imperative
3 that you conduct all of your deliberations as a group.
4 Don't break up into smaller groups even within the jury
5 room and certainly not when you recess for lunch or
6 whatever breaks you may want. Don't break up in
7 smaller groups and talk about the case. It's important
8 that everybody has the benefit of everybody's thinking
9 as you consider this case. But other than that, you
10 may proceed in any fashion that you want.

11 There are no deadlines. You have no time
12 limits. You should take as much time as you need to
13 consider the evidence and reach a verdict.

14 So with those instructions, you're excused to
15 the jury room to begin your deliberations.

16 (The jury exits at 1:11 p.m.)

17 THE COURT: All right. We'll stand in recess
18 until we hear from the jury. If they need to
19 deliberate past 5:30 or 6:00 at the latest, I'll call
20 them out and have them recess until tomorrow.

21 All right. The Court will stand in recess
22 pending hearing from the jury.

23 (Recess from 1:12 p.m. until 5:47 p.m.)

24 (The jury is not present.)

25 THE COURT: I'm going to release the jury at

1 this time until tomorrow morning at 9:30.

2 My practice is once they're all assembled,
3 Mr. Burns will tell them to begin their deliberations
4 without calling you back in here.

5 So let's bring the jury out.

6 (The jury enters at 5:48 p.m.)

7 THE COURT: Please be seated.

8 Ladies and gentlemen, I'm going to release
9 you at this time until tomorrow morning at 9:30. It's
10 been a long day for you, and I think it will be good if
11 you just start in the morning fresh.

12 Please make arrangements to be here in the
13 jury room by 9:30. Once all of you are assembled,
14 Mr. Burns will tell you to go ahead and begin your
15 deliberations. Do not begin your deliberations until
16 all of you are present.

17 Also, let me emphasize what I've told you
18 before and, that is, do not discuss this case outside
19 of the courtroom. It's particularly important at this
20 point that you not talk about this case outside of the
21 courtroom and also that you shield yourself from any
22 publicity that you may find yourself in front of, on
23 radio or television or any other source.

24 So with that, you're released until tomorrow
25 morning at 9:30.

1 (The jury exits at 5:49 p.m.)

2 THE COURT: All right. We'll have the jury
3 begin deliberations, and then we'll reconvene when we
4 hear from the jury.

5 Yes.

6 MR. SEARS: Your Honor, if I understand you
7 correctly, we need to be within the vicinity by 9:30
8 tomorrow morning but not in the courthouse?

9 THE COURT: Correct.

10 Very good. The Court will stand in recess.

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Time: 5:51 p.m.

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I certify that the foregoing is a true and
accurate transcription of my stenographic notes.

/s/
Rhonda F. Montgomery, CCR, RPR