1 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA 2 3 United States of America,) Criminal Action) No. 17-CR-201 4 Plaintiff,)) PUBLIC VERSION 5) Sealed Hearing vs.) 6 Paul Manafort, Jr.,) Washington, DC) Date: February 13, 2019 7 Defendant.) Time: 1:30 p.m.) 8 9 TRANSCRIPT OF SEALED HEARING HELD BEFORE 10 THE HONORABLE JUDGE AMY BERMAN JACKSON UNITED STATES DISTRICT JUDGE 11 12 A P P E A R A N C E S 13 For Plaintiff: ANDREW WEISSMANN GREG D. ANDRES 14 JEANNIE SCLAFANI RHEE U.S. Department of Justice 15 Special Counsel's office 950 Pennsylvania Avenue NW 16 Washington, D.C. 20530 17 18 19 For Defendant: KEVIN M. DOWNING 815 Connecticut Avenue, N.W. 20 Suite 730 Washington, D.C. 20006 21 (202) 754-1992E-mail: Kevindowning@kdowninglaw.com 22 RICHARD WILLIAM WESTLING 23 Epstein Becker & Green, P.C. 1227 25th Street, NW 24 Suite 700 Washington, DC 20037 25 (202) 861-1868 e-mail: Rwestling@ebglaw.com

1	Also Present:	Michael Ficht Renee Michael
2		Jeff Weiland
3	Court Reporter:	Janice E. Dickman, RMR, CRR Official Court Reporter
4		United States Courthouse, Room 6523 333 Constitution Avenue, NW
5		Washington, DC 20001 202-354-3267
6		* * *
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

Γ

1 THE COURTROOM DEPUTY: Good afternoon Your Honor, 2 this afternoon we have case No. 17-201-1, the United States of America v. Paul J. Manafort, Jr. Mr. Manafort is present in 3 the courtroom, Your Honor. 4 5 Will counsel for the parties please approach the lectern, identify yourself for the record. 6 7 MR. WEISSMANN: For the government, Andrew Weissmann, Jeannie Rhee, Jeff Weiland, Renee Michael, Mike Ficht, and Greg 8 9 Andres. 10 THE COURT: Good afternoon. 11 MR. WESTLING: Good afternoon, Your Honor. Richard 12 Westling and Kevin Downing on behalf of Mr. Manafort, along 13 with Tim Wang, who's working as our paralegal. 14 THE COURT: This is a sealed hearing. It's a 15 continuation of the hearing we began on February 4th. And at 16 this hearing I'm planning to announce my findings based on the 17 This transcript, once it's complete, will be my record. 18 I'm not going to issue a written opinion, particularly ruling. not after I read all of this out loud. 19 20 There will be -- I think it will be appropriate to do 21 a public minute order shortly after the hearing that 22 encapsulates my findings in a way that's consistent with what's 23 already been made public in this case. And then we'll set up a 24 procedure to do what we did last time and to release as much as 25 possible of this transcript.

1 I note there's also an ongoing dispute concerning one set of redactions in the transcript of the breach hearing and 2 3 I'm going to take that up at the end of this proceeding, after I've ruled on the breach allegations. I really want to commend 4 5 both sides for how quickly you got through that exercise and 6 how much was agreed. I don't think there's any -- the current 7 disagreement is bad faith on the part of anyone. I think it's legitimate disagreement and we'll talk about it. 8 But I thought 9 the fact that almost all this could be accomplished through 10 agreement of the parties was very commendable. 11 The plea agreement in this case, docket 422, provides

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

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

Paragraph 13, the breach of agreement paragraph provides: Your client understands and agrees that, if after entering this agreement, he fails specifically to perform or to fulfil completely each and every one of his obligations under 1 this agreement, or engages in any criminal activity prior to 2 sentencing or during his cooperation, he will have breached 3 this agreement.

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

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

1 The parties informed me, in a joint status report on November 26th, 2018, docket 455, that it was the Office of 2 3 Special Counsel's position the defendant had breached the plea 4 agreement by making false statements to the FBI and the Office 5 of Special Counsel, and that it was time to set a sentencing 6 date. 7 The defendant disputed the government's characterization of the information he had provided and denied 8 9 that he had breached the agreement, but had agreed that, given 10 the dispute, it was time to proceed to sentencing. I held a status hearing and ordered the government to 11 12 provide me with information concerning the alleged breach. On 13 December 7th, 2018, the government filed its sealed submission 14 in support of its breach determination, docket 461. On January 15 8th, 2019 the defendant filed his response to the special 16 counsel's submission in support of the breach determination. 17 That was docket 472, the public version, and 473 was the sealed 18 version. 19 The government was then ordered to identify the 20 particular false statements and produce the evidence that 21 supported its determination that they were false. And on 22 January 15th, 2019 it filed the FBI declaration in support of 23 the government's breach determination. That was docket 476, 24 was the redacted version; 477, sealed, with a set of

accompanying exhibits. And the defendant responded in docket

480 on January 23rd, 2019.

1

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

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

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

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

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

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

At the time of the plea, the defendant swore to me that he was in fact guilty of offenses set forth in the information, as well as those charged in the Eastern District of Virginia. And whether the defendant should get credit at 1 sentencing for his acceptance of responsibility for the 2 offenses in the indictment that was pending before me, or those 3 in the Eastern District of Virginia, which isn't my decision at 4 all, will involve consideration of other facts, in addition to 5 the narrow question of whether he lied about these five 6 specific topics.

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

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

1	questioners have the documents in front of them and you don't.
2	But I'm not sure how that bears on anything in particular.
3	I note generally that the allegations that
4	Mr. Manafort lied are not based on times when he said, "I don't
5	remember," which is something a person even under the pressure
6	of a debriefing session could say when they don't remember.
7	And none of the ones I'm concerned about are even based on
8	general denials which later proved to be untrue or they
9	corrected relatively promptly. My concern isn't with
10	non-answers or simply denials, but times he affirmatively
11	advanced a detailed alternative story that was inconsistent
12	with the facts.
13	I also found the defendant's statements in his
14	submission concerning his health to be particularly conclusory.
15	In his response to the allegations, the defendant specifically
16	asked me to consider the defendant's health issues exacerbated
17	by the conditions of confinement, quote, in particular,
18	solitary confinement, close quote, as a reason why I should
19	find that the inaccuracies were not intentional. But the
20	submission did not include any chronology, any medical or
21	mental health information, any information about the details of
22	his custodial situation, or any information concerning the
23	state of his health on any of the dates in question.
24	In short, it gave me no basis upon which I could find
25	that it would be a mitigating factor. So I gave the defense an

Γ

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

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

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

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

1

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

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

It became clear why in the government's pleading, docket 117. There he was housed by himself, it's true, but housed within a private, self-contained living unit, including his own bathroom, shower, phone, laptop, and access to a separate work room for review of trial materials. And in his reply, docket 125, the defense conceded that the government had not misrepresented the conditions, other than there was a dispute about whether he could or couldn't send emails.

1

2

3

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

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

Of course, those decisions fall within the purview of the warden. But to date, as far as I know, no habeas petition has been filed in the appropriate jurisdiction. So there's nothing in the record about what's happening there now. And more important, I didn't see any evidence that indicated I should take it into account.

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

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

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

25

Mr. Manafort pled guilty here on Friday, September

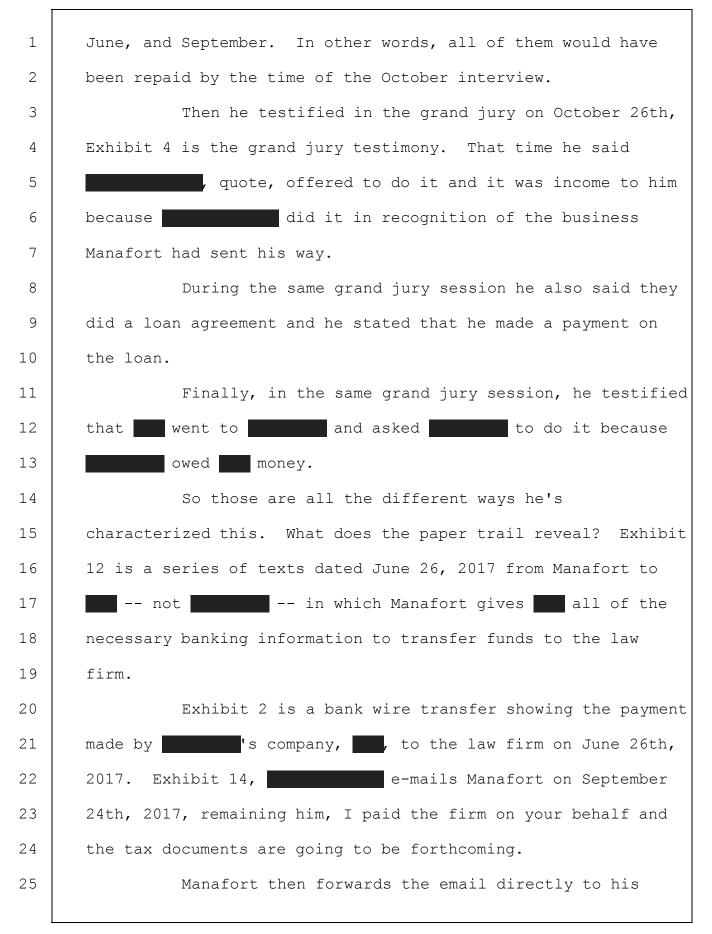
1 At that time, fortunately, he had no health complaints, 14th. 2 his ability to walk was not impaired. He stood at the lectern without difficulty, made no request for assistance during the 3 plea colloquy concerning his mental state. He indicated that 4 5 he was not taking any medication that could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

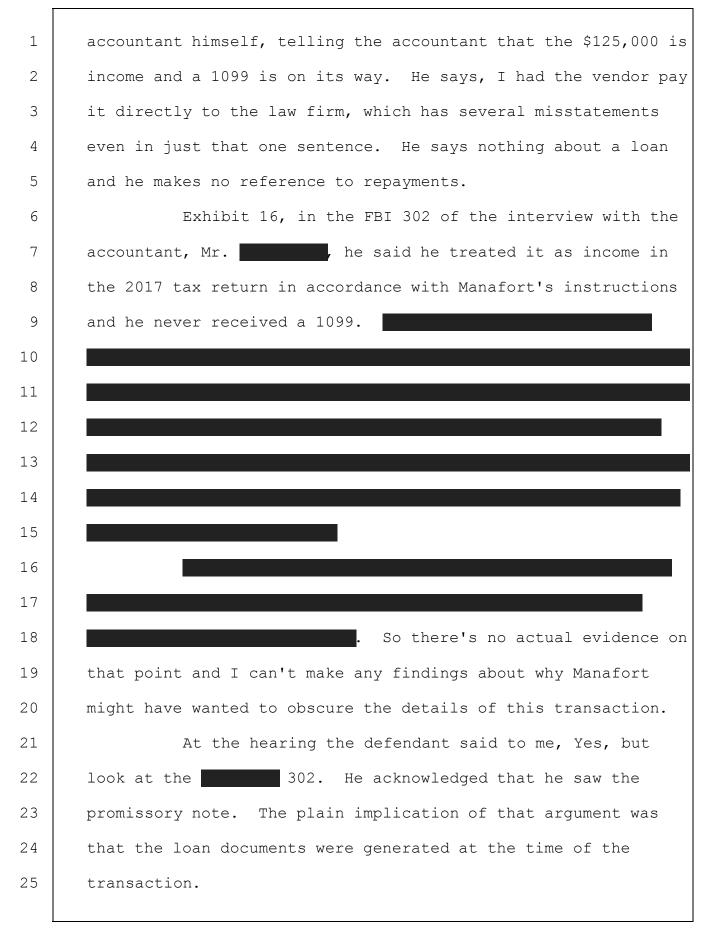
10 Well, why is that important? It's important because 11 three of the debriefings, September 11th, September 12th and 12 September 13th, had already taken place. The next five were 13 quite soon thereafter, beginning the following week, on the 14 20th, the 21st, and then the 25th, 26th, and 27th, and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

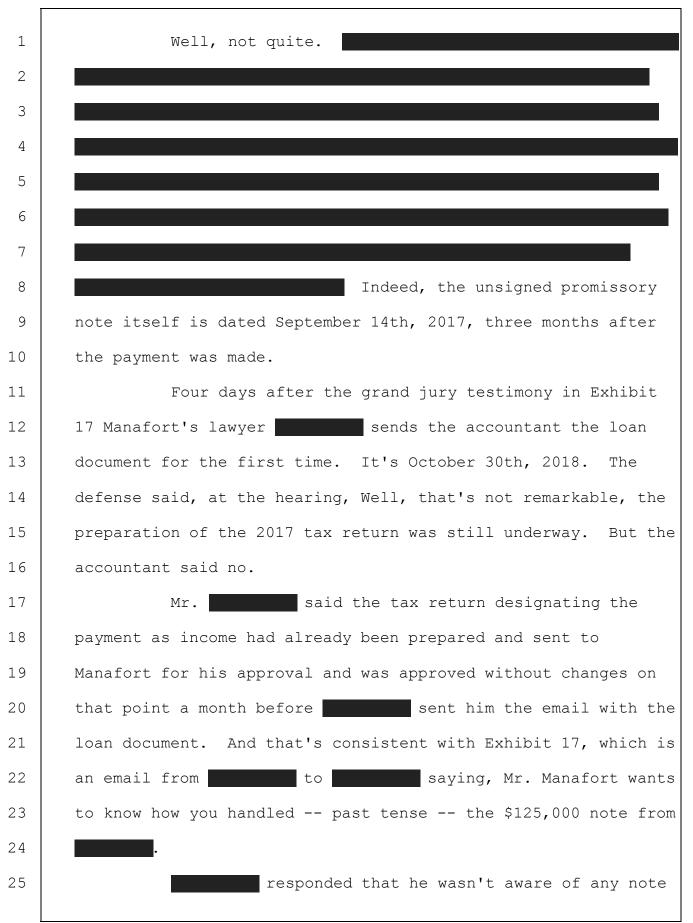
The parties have informed me that he was still having difficulty walking and required the wheelchair for the two sessions before the grand jury, on October 26th and November 24 2nd, so that's a matter of record. But the transcript, Exhibit 25 4, doesn't reflect any sort of mental impairment. He was

1 specifically asked if the medication for the inflammation 2 affected his mental state or his ability to understand, and 3 The Office of Special Counsel did not develop any said no. concerns about his cognitive ability or emotional state during 4 5 the questioning and, more important, none were brought to its 6 attention. 7 So I've taken all the defense arguments into consideration, but there is little in the record that would 8 9 explain, excuse or justify the statements of concern, 10 particularly given when they were made. So now I want to turn to each of the five areas of 11 12 testimony. 13 The first is the payment by Firm A, towards the 14 debt incurred by the defendant with an unrelated law firm. The 15 defendant says it's not fair to characterize his initial 16 responses as false, given the confusion surrounding the 17 original transaction and confusion in the questioning. He says it's unremarkable that he wouldn't have immediate recollection 18 19 of the details. But the record doesn't seem to reflect the 20 confusion and the defendant didn't profess to be confused. He 21 does appear, though, to be making a concerted effort to avoid 22 saying what really took place. 23 Exhibit 9 is the FBI 302 of the interview on 24 September 20th. During that interview the defendant asserted 25 that the money paid to the law firm to which he owed a debt was

1 repayment by head of Entity B, the 2 of a loan Mr. Manafort had made to and that Manafort simply had pay on his behalf to the law 3 firm. 4 5 So the initial answer cut and its head, out of the picture entirely. But later that same 6 7 interview he did agree, when confronted with that fact, that it that made the payment to the law firm that it 8 had been 9 had. So, on October 1st, Exhibit 3, the FBI 302 of that 10 interview reflects that Mr. Manafort said, Well, paid 11 it because he had given him a lot of work in the past. On October 16th he's interviewed again. And Exhibit 12 13 10, the FBI 302, reports that he said, for the first time, 14 Well, I asked to pay the law firm on my behalf as 15 a loan. And he, thereafter, produced a copy of a promissory 16 note, but it was unsigned. Page 3 of Exhibit 10 reports that 17 he said originally they planned for the payment to be a loan. 18 Last year, they executed a note, his accountant has 19 it. He said he dealt with the accountant through the New York 20 and that , quote, reminded lawyer, 21 him that he had signed a loan agreement, and that it was just a 22 friend helping a friend. About a week later, according to 23 paragraph 11 of the FBI declaration, the defense produced an 24 unsigned loan agreement. It describes the loan as at 25 5 percent, to be repaid in tree installments in 2018; March,







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

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

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

1 Indeed, 2 3 We don't know why made that request, but it does appear that in September of 2017 4 5 Manafort was engaged in an effort to re-characterize the nature of the payment. But that never went anywhere, so the statement 6 to the Office of Special Counsel and the FBI on October 16, and 7 grand jury testimony to the effect that there was a loan 8 9 agreement in place, especially with the added gloss that he was 10 making payments under it, is false. 11 In the end, what we have is a series of contradictory 12 and misleading answers to the same questions, that are 13 inconsistent with the contemporaneous records. In particular, 14 Exhibit 12, the transmission of the banking information to 15 and Exhibit 14, Manafort's own email to his accountant, and 16 with the accounts of other witnesses. He was asked about the 17 transaction for the first time on September 20, and then it was 18 the third time it was discussed, about a month later, on 19 October 16, when he first advanced the theory that it was a 20 loan, and then the story continued to evolve in the grand jury 21 on October 26th. 22 He had plenty of time to think, so the, I-can't-be-23 expected-to-remember-everything-off-the-top-of-my-head excuse 24 doesn't work here. And it wasn't just a denial or an omitted detail, he advanced a series of new false narratives, including 25

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

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

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

The Court went on to say: Many of our sister circuits have adopted a somewhat broader approach to determining materiality, asking not only whether a statement might influence a discrete decision, but also whether a statement might affect in any way the functioning of the 1 government agency to which it was addressed. It cites a series 2 of other circuit opinions by example. Two, in particular, are 3 United States versus Lichenstein, 610 F.2d 1272, which it 4 encapsulates the holding as, A false statement must simply have 5 the capacity to impair or pervert the functioning of a 6 government agency.

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

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

25

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

1 definition of materiality that underlies my findings. I also note that the D.C. Circuit said, in United 2 States versus Winestock, 231 F.2d 699, the issue to which the 3 4 false statement is material need not be the main issue, it may 5 be a collateral issue, and it need not bear directly on the 6 issue, but may merely augment or diminish the evidence upon 7 some point. All right. So those are my findings with respect to 8 9 issue No. 1. 10 Issue No. 2 was Kilimnik's role in the obstruction conspiracy. This issue has to do with Manafort's and 11 12 Kilimnik's joint attempt to get witnesses to the FARA charges 13 against Manafort to say that the advocacy he called upon them 14 to do on behalf of former Ukrainian President Yanukovych and 15 his party was not supposed to be performed in the United 16 States. 17 Exhibit 10 is the FBI 302 from October 16, 2018. Ιt 18 includes a detailed description of Mr. Kilimnik's state of mind 19 and denies that he was attempting to influence witnesses to 20 give false testimony at trial. 21 The defendant's first explanation about this in its 22 initial response to the breach allegations was: Well, he was 23 just saying he couldn't speak to Kilimnik's state of mind. 24 That actually wasn't a very fair characterization because he 25 affirmatively stated what it was. At the hearing, defendant's

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

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

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

25

To me, this is definitely an example of a situation

1	
1	in which the Office of Special Counsel legitimately concluded
2	he's lying to minimize things here, he's not being forthcoming,
3	this isn't what cooperation is supposed to be. This is a
4	problematic attempt to shield his Russian conspirator from
5	liability and it gives rise to legitimate questions about where
6	his loyalties lie.
7	So it bears upon my finding that the Office of
8	Special Counsel was fully justified in its determination and
9	acted in good faith when it found that he didn't live up to his
10	obligations under the plea agreement.
11	But even with the relatively low standard of proof by
12	a preponderance, making a finding of an intentional false
13	statement is challenging in the absence of a transcript or even
14	notes that memorialize the particular question he had asked ask
15	and what he was answering, as opposed to a 302 with the answers
16	only.
17	While I find the defense theory to be strained and
18	I'm not really sure I buy it, the language of the 302 can be
19	read to support the defendant's alternative explanation. Given
20	that, and given his correction of the record within the same
21	interview, I'm not comfortable that I can go on to find that
22	this particular example rises to the level of an intentional
23	falsehood, a lie to the FBI that would constitute the
24	commission of an independent crime while awaiting sentencing in
25	two cases. So I am not finding that he intentionally lied with

1 respect to that matter. The third matter is his interactions with 2 3 Mr. Kilimnik. The first one that came up was discussions concerning what's been referred to as As with 4 5 the prior incidents, there was much that was re-explained and 6 corrected the number of times this came up. 7 The most problematic to me is described in paragraph 29 in the declaration, and Exhibit 101, the FBI 302 from 8 9 September 21st, on page 4, where he doesn't just say I don't 10 remember discussing with Mr. Kilimnik after August 2016 and proved to be wrong about it. He asserted that 11 12 he put the kibosh on the idea. He called it a bad idea. He 13 said he didn't and he didn't want to 14 and then he gave the FBI a series of specific reasons that 15 he ended the discussion for good at that time. 16 This is not supported by any evidence, even his 17 argument that he was telling the truth because what he told the 18 FBI he said at the time was: I was opposed to 19 is contrary to 20 the subsequent emails trying to elicit the reaction to 21 . Creating an alternative 22 narrative is not the same thing as simply denying or professing 23 not to remember that something happened, and it's not 24 consistent with the defense argument that he just didn't 25 remember.

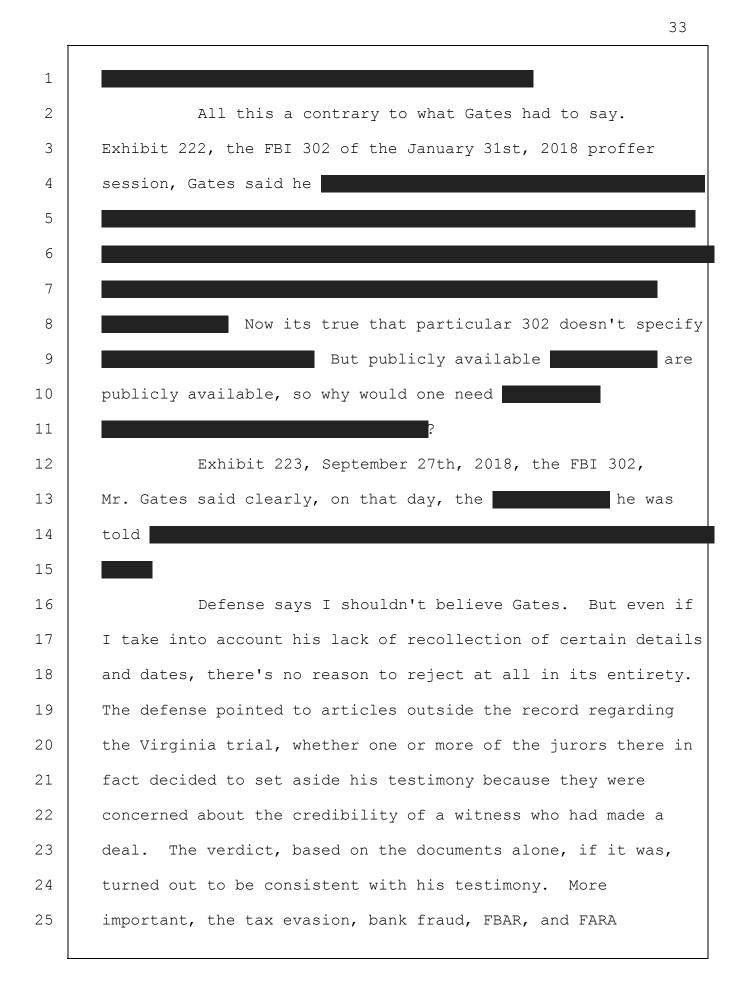
1	So I find that the September 21st claim that he laid
2	the issue to rest by telling Kilimnik
3	was an intentional material false
4	statement.
5	Moreover, there are other misleading, inaccurate
6	statements that reinforce the conclusion that he was lying
7	about his dealings with Kilimnik.
8	He was also asked about a February 2017 meeting
9	regarding and questions about his role
10	doing research in advance of Ukrainian elections and his
11	polling for a Ukrainian candidate. The defense says, in its
12	reply to the FBI declaration, basically, Gee, it was just all
13	so confusing. And it points out that at the end of the day he
14	sort of acknowledged most of this. And maybe if you took each
15	fact separately and each attempt to dissemble about Kilimnik
16	individually, they might not support a finding of criminality.
17	But there are multiple instances of this and they all
18	follow a pattern. Concessions comes in dribs and drabs, only
19	after it's clear that the Office of Special Counsel already
20	knew the answer. Again, it's part of a pattern of requiring
21	the Office of Special Counsel to pull teeth; withholding facts
22	if he can get away with it. And that's just not consistent
23	with what was contemplated by the plea, and it supports the
24	breach determination.
25	Denying the meeting was denying a contact

Г

1 that was a part of what the Office of Special Counsel was 2 investigating. With respect to the questions regarding his efforts 3 to conduct polling in the Ukraine in connection with its 4 5 upcoming elections and to have the polls test the reaction to that Kilimnik were still 6 7 trying to advance, and questions concerning Kilimnik's knowledge and involvement, we again have a series of revised 8 9 explanations, grudging revelations and admissions. 10 The defense tries to argue, well, it's only a few questions in the poll and those were collateral to the main 11 12 thrust of the poll, which is the presidential election. But I 13 don't think that can really be minimized in that way. These 14 were the questions that were provided by Manafort and they were 15 important to him and to Kilimnik. 16 On page 6 of docket 470, the defendant's response to 17 the breach determination, the defense explains and tries to minimize Manafort's initial inaccurate statements about meeting 18 19 by saying, Well, it's reasonable he wouldn't Kilimnik 20 recall events from that time period because his primary focus 21 was the U.S. presidential campaign, and he's not likely to 22 recall other, less pressing events like conversations about 23 in some other country. 24 Maybe. But seems to have been a recurring 25

1	; in particular, the
2	doesn't seem to have ever been far from
3	Manafort's mind, even when he was working on the campaign.
4	But even if I want to give that argument some weight,
5	running a presidential campaign is, after all, a fairly
6	all-consuming exercise. That explanation falls apart
7	completely when the defense goes on to say, in the next
8	sentence, quote, The same is true with regard to the
9	government's allegation that Mr. Manafort lied about
10	Mr. Kilimnik related to the
11	, period, close quote.
12	That's not the same at all. You can't say you didn't
13	remember that because your focus at the time was on the
14	campaign. That relates to the campaign. And he wasn't too
15	busy to arrange and attend the meeting and to send Gates
16	that very day. It's problematic no
17	matter how you look at it.
18	If he was, as he told me, so single-mindedly focused
19	on the campaign, then the meeting he took time to attend and
20	had a purpose
21	. Or, if it was just part of his effort to
22	
23	
24	well, in that case he's not being straight with me about how
25	single-minded he was. It's not good either way.

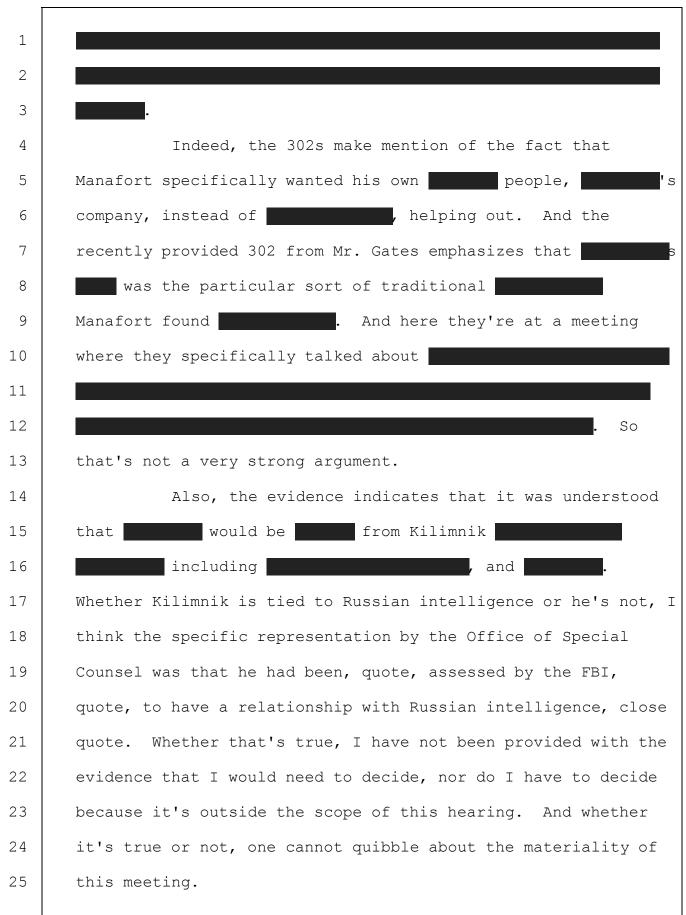
1	Plus, his asserted inability to remember rings hollow
2	when the event we are discussing involving
3	
4	not only but he's
5	with a specific understanding and intent that
6	
7	at a meeting in which the participants made it a
8	point of leaving separate because of the media attention
9	focused at that very time on Manafort' relationships with
10	Ukraine.
11	This is another example of the distinction between a
12	simple denial or failure of recollection and an assertion of
13	fact. And the concern here is greater because this false
14	statement occurred before the grand jury.
15	He told the grand jury he only told Gates
16	
17	
18	The grand jury testimony, Exhibit 4, begins, on
19	page 152 on that matter, quote,
20	
21	
22	
23	
24	When asked, on page 154, what exactly did you
25	



1	allegations supported by Gates's testimony have all been
2	admitted to under oath by Manafort himself. And not everything
3	Gates said was inculpatory. There were some questions he
4	couldn't answer, and there was a lot of what he said that
5	supports Mr. Manafort's theory. For instance, as the defense
6	points out, he minimizes the significance of
7	in the first place.
8	More important to me, there's other corroboration.
9	There's Exhibit 233, an
10	Now,
11	I was told on February 8th, for the first time, in the third
12	pleading that was filed in response to these allegations and
13	after the hearing was over, that when Mr. Manafort said
14	
15	
16	There's
17	nothing provided to substantiate that, but there's also nothing
18	in the record to indicate one way or the other that the two men
19	had met previously
20	All Gates said to the FBI in Exhibit 236 on January
21	30th was that
22	Is that text alone definitive? Am I relying on that
23	solely? No. But is it corroborative of Gates's statement that
24	Yes.
25	So the defense said at the hearing, Well, it's a

Г

1	recent fabrication. He didn't say
2	until September. September of
3	2018. But it turns out the record doesn't support that.
4	Exhibit 222, as I noted, on January 31st, on page 17,
5	he did say Manafort's direction.
6	Exhibit 236, the 302 from January 2018, Gates says we
7	discussed
8	
9	Those are pretty specific words.
10	Exhibit C to docket 504, the FBI 302 from February 7,
11	2018, which has more recently been provided by the government,
12	on page 15 it notes that Manafort said, back in February
13	that Gates said, back in February, Manafort
14	
15	
16	This conclusion is
16 17	This conclusion is reinforced when you see the series of emails from Kilimnik to
17	
17 18	reinforced when you see the series of emails from Kilimnik to
17 18 19	reinforced when you see the series of emails from Kilimnik to
17 18 19 20	reinforced when you see the series of emails from Kilimnik to and he goes on. So, the defense took another tack then and said,
17 18 19 20 21	reinforced when you see the series of emails from Kilimnik to and he goes on. So, the defense took another tack then and said, Well, it's not important because these
17 18 19 20 21 22	reinforced when you see the series of emails from Kilimnik to and he goes on. So, the defense took another tack then and said, Well, it's not important because these are gibberish. Who knows what they mean? I reject that. It is,
17 18 19 20 21 22 23	reinforced when you see the series of emails from Kilimnik to and he goes on. So, the defense took another tack then and said, Well, it's not important because these are gibberish. Who knows what they mean? I reject that. It is, perhaps, true that I don't know and it's perhaps



1 In other words, I disagree with the defendant's statement in docket 503, filed in connection with the dispute 2 over the redactions, that, quote, the Office of Special 3 Counsel's explanation as to why Mr. Manafort's alleged false 4 5 statements are important and material turns on the claim that he is understood by the FBI to have a relationship with Russian 6 7 intelligence. I don't think that's a fair characterization of what 8 9 was said. The intelligence reference was just one factor in a 10 series of factors the prosecutor listed. And the language of the appointment order, "any links," is sufficiently broad to 11 get over the relatively low hurdle of materiality in this 12 13 instance, and to make the 14 Kilimnik and 15 material to the FBI's inquiry, no matter what his particular 16 relationship was on that date. At the hearing the defendant pointed me to Exhibit 17 18 230 as support for its claim that actually Kilimnik was 19 20 and, 21 therefore, I should consider the Office of Special Counsel's 22 representation that he was connected to Russian intelligence to 23 be rank speculation. 24 First of all, I don't think these two things are 25 mutually exclusive. An individual could

1	
2	But as I've said, I'm not making a
3	finding either way and I don't think it's necessary to the
4	decision I have to make. The fact that Kilimnik's status,
5	loyalties, or activities could be
6	doesn't make the meeting immaterial or
7	Manafort's testimony about it truthful.
8	I'm also not sure that Exhibit 230 proves the
9	defendant's point. It is an August 18, 2016 email sent to an
10	individual in
11	in which Kilimnik voices his personal
12	opinion about comments being made publicly about any affinity
13	between
14	
15	
16	I note that
17	on the part of Kilimnik, as opposed to what might
18	jump out as second and s
19	because
20	. And the focus of the
21	. He advances
22	the view that, as he sees it,
23	
24	
25	a de la construcción de la constru La construcción de la construcción d

1 It's also notable that in 2 3 And as we know, Manafort was gone the next day. 4 5 So the email doesn't really answer the question 6 defense counsel raised one way or the other. 7 In a submission related to the dispute over redactions to the hearing transcript, the defendant provided 8 9 more information, that was docket 503, documents that have been 10 provided in response to his discovery request that do confirm 11 that Kilimnik regularly spoke with officials in the embassy, 12 and the Office of Special Counsel confirmed that at the 13 hearing. 14 Again, and without more guidance on the technical 15 meaning the word has in this context, I don't have the record 16 to decide, don't need to decide, and probably shouldn't decide 17 if the defendant's characterization of Kilimnik accurate or not, and I'm not making any finding one way or the 18 19 other on that issue. 20 I do note that in the FBI 302 the defendant asked me 21 to review as an attachment to docket 503, the interviewee 22 noted that when 23 24 25 So they have that in common.

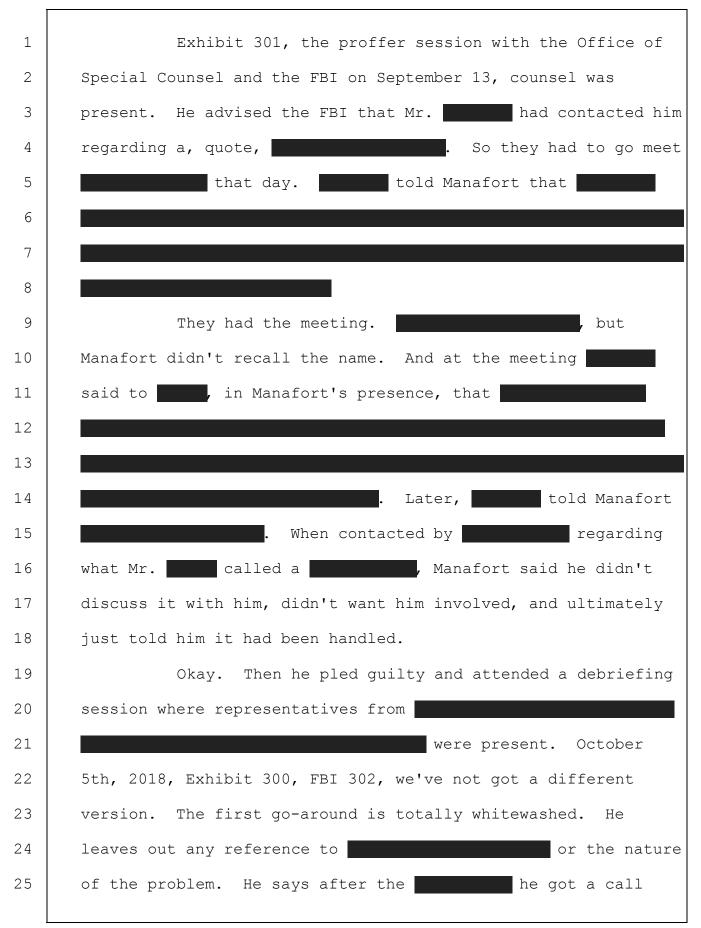
1 The important thing is neither Exhibit 230 or any of the other information provided changes the outcome in my 2 finding on this matter. And I find by a preponderance of the 3 evidence that Mr. Manafort made intentional false statements to 4 5 the FBI and the grand jury with respect to the material issue of his interactions with Kilimnik, including, in particular, 6 7 the 8 On that note, I also want to say we've now spent 9 considerable time talking about multiple clusters of false or 10 misleading or incomplete or needed-to-be-prodded-by-counsel 11 statements, all of which center around the defendant's 12 relationship or communications with Mr. Kilimnik. This is a 13 topic at the undisputed core of the Office of Special Counsel's 14 investigation into, as paragraph (b) of the appointment order 15 put it, Any links and/or coordination between the Russian 16 government and individuals associated with the campaign. 17 Mr. Kilimnik doesn't have to be in the government or 18 even be an active spy to be a link. The fact that all of this 19 is the case, that we have now been over Kilimnik, Kilimnik, and 20 Kilimnik makes the defense argument that I should find the 21 inaccurate statements to be unintentional because they're all 22 so random and disconnected, which was an argument that was made 23 in the hearing, is very unpersuasive. 24 But we now get to go on to another topic, which is 25 IV, about another Department of Justice investigation. There

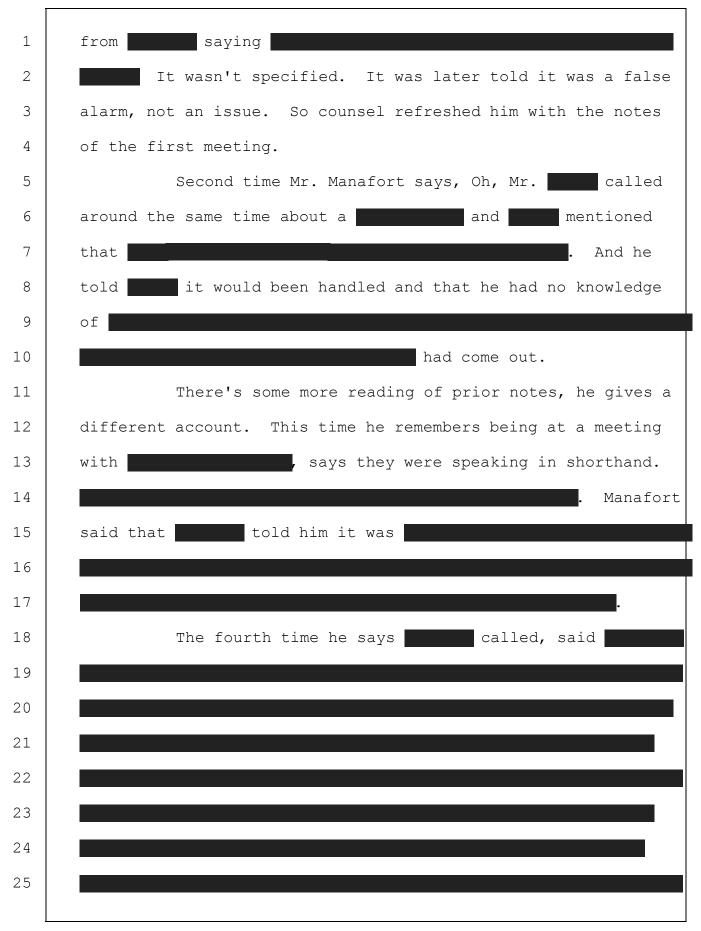
1	are allegations in connection with the
2	investigation into potential involving
3	
4	· · · · · · · · · · · · · · · · · · ·
5	The allegation is that Mr. Manafort offered a version
6	of events that downplayed
7	knowledge, specifically including his knowledge of any
8	involvement of
9	and less incriminating of second than what he had already said
10	during a plea proffer, and was inconsistent with what
11	Mr. himself was consistent with what Mr.
12	himself was telling the FBI, and that in this session where he
13	watered down when he'd said before the plea, he had to be
14	redirected by his lawyer multiple times.
15	Defendant suggested it's not really that important
16	because it wasn't about his own wrongdoing and all the
17	statements were corrected in the same interview. I'm not sure
18	I buy that because the point of seeking cooperation from a
19	person at the highest level of the campaign was to obtain
20	accurate information about the acts of others, in particular,
21	what transpired contractions . So it's very troubling to
22	me.
23	Also, you don't have a situation where he reverted to
24	the original version after consultation with counsel, but he
25	cycled through a series of different inaccurate versions.

Г

41

Т





1 2 I note that at no point has the defense told me in 3 any pleading that the first version was mistaken. I can't find 4 5 that these variations can be explained by a failure of recollection. The versions were not at all consistent with 6 what had been said by the defendant himself only a month 7 The evidence suggests that he decided to obscure what 8 before. 9 had taken place to shield possibly Mr. 10 11 This withholding of facts, this begrudging behavior, 12 advancing a new version that's less inculpatory of 13 was significant enough to 14 set off alarm bells with his own lawyers, not consistent with 15 the plea offer, and fairly considered by the Office of Special 16 Counsel to be a breach. And given the stark difference between 17 what he said and what he reported less than a month before and 18 the effort it took to get him even close to what he said the 19 first time, I find if to be intentionally false. 20 Finally, the fifth category of information was 21 contacts with the administration. Here, I'm not persuaded that 22 the Office of Special Counsel has presented evidence of an 23 intentional misrepresentation, or really a breach of any moment 24 with respect to this issue, although it's already been conceded 25 that they acted in good faith in making the allegation.

1 The Office of Special Counsel says its concern is his denial of even indirect communication. They don't challenge or 2 3 claim that he lied about not having direct communication. They point to Exhibit 10, page 2, the FBI 302 from October 16th 4 5 which reports Manafort never asked anyone to try to communicate a message to anyone in the administration. 6 7 Again, I don't have the specificity I need about what 8 question was asked to prompt that. Was he asked was it direct 9 or indirect? What was he asked? And so I can't deem the grand 10 jury testimony and the documents with which I've been provided to be evidence that what he said in that interview when he said 11 that was false. 12 13 While there is evidence he agreed to talk to other 14 people outside of the administration on behalf 15 with the understanding that they might contact the 16 administration about , and he agreed that another 17 of the administration could report that he had 18 Manafort's support, I'm not sure that's inconsistent with he, 19 quote, never asked anyone no try to communicate a message to 20 anyone in the administration. 21 I've seen the record regarding the _____ matter, and 22 while it does seem as if part of the plan was that somebody was 23 going to contact , I can't find that the government has 24 proved by a preponderance that he intentionally lied during the 25 debriefing with respect to this matter. If there were other

1 contacts of concern to the Office of Special Counsel, as 2 counsel seem to allude to at the hearing, they haven't been brought to my attention in this proceeding and they don't bear 3 and can't bear on my decision. 4 5 With that, I believe I've ruled on every issue that's been put to me in connection with the breach proceeding. I do 6 think it's important to issue a public order and I will try to 7 do one that is consistent with all our previous redactions and 8 9 doesn't have any sealed material in it. 10 As I said at the outset, I'm going to determine the 11 applicability of any particular guideline provision at the time of sentencing and not today. What I think we need to do is, as 12 13 we did before, establish a schedule for the receipt and review 14 of the transcript. 15 Assuming you get the transcript tomorrow by noon, how 16 long would you like to review it to propose redactions before 17 this makes it to the public record? 18 MR. WEISSMANN: Can I just consult with --19 THE COURT: Yes. 20 (Pause). 21 MR. WEISSMANN: Your Honor, the parties think if we 22 get it by noon tomorrow, we'll make every effort to get 23 something to you by the end of the day, literally, tomorrow. But if for some reason we can't, first thing Friday morning. 24 25 THE COURT: Tomorrow is Thursday. Okay. Yes. All

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

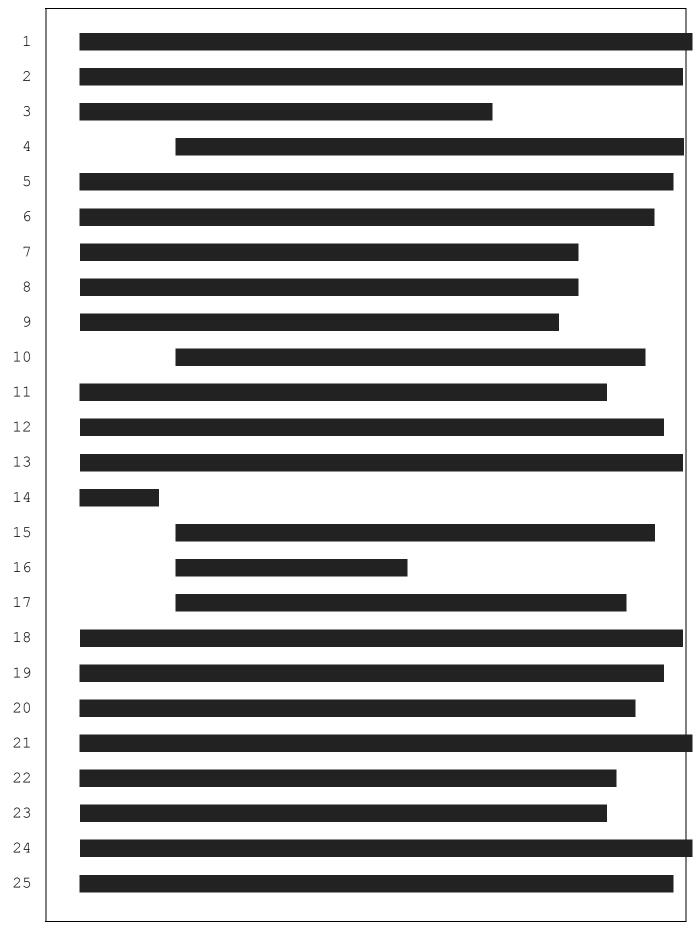
7 I think there was an understanding back at the beginning that the probation office would need to be informed 8 9 of my findings so that it could factor them into its 10 recommendation about the various guideline determinations. So 11 does anybody have a point of view about whether it needs to be 12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

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

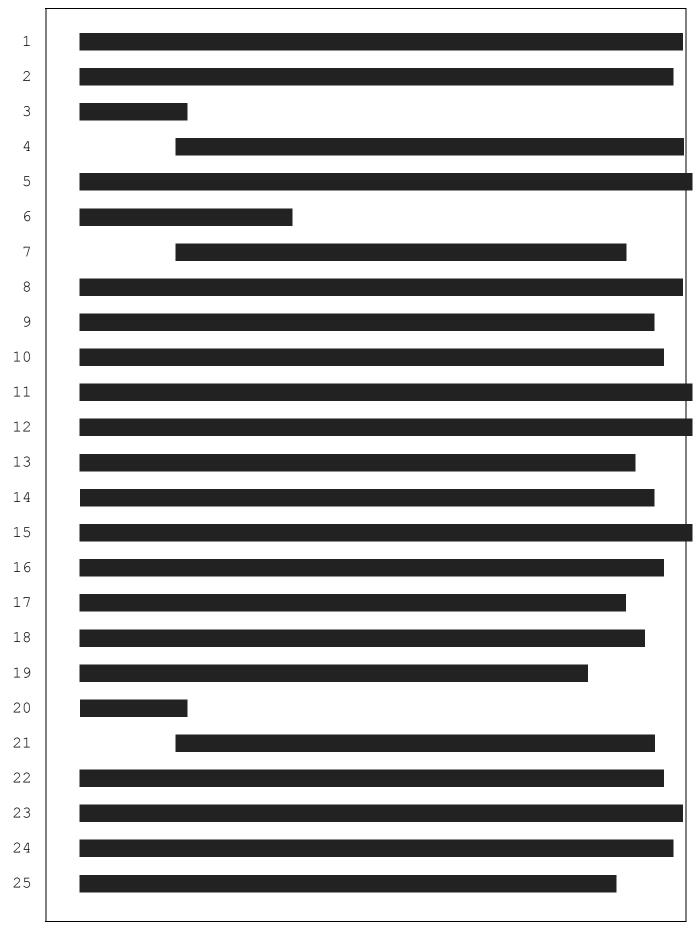
21 MR. WEISSMANN: So, taking those in turn. First, 22 with respect to probation, we have no objection to probation 23 getting the unredacted transcript. And we understand that if 24 it's incorporated in some aspect of the presentence report, 25 that's private in any event, since that doesn't become part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

1 the public record. And to the extent there's some dispute about the presentence report, I don't think the names would be 2 that relevant and we could sort of deal with that issue if 3 there's something in the presentence report that is sensitive. 4 5 With respect to Eastern District of Virginia, we were planning, after today's appearance, of writing some sort of 6 7 status report to alert the Eastern District of Virginia to the, sort of, two issues that might be of relevance to it. Which 8 9 is, one, the concession with respect to the breach, and then 10 the Court's determination. We were planning on submitting the 11 redacted version of the transcript, and then if the Court for 12 some reason wants to see the unredacted one, we, of course, 13 would not have an objection to that, but that wasn't initially 14 how we were going to proceed. 15 THE COURT: Well, I think that makes sense because 16 that's what's public. 17 And do you have any difficulty with their proceeding 18 in that manner? 19 MR. WESTLING: I can only say that I am a little 20 concerned about sending a judge a redacted version, rather than 21 the whole transcript. I mean, I think Judge Ellis would have a 22 right to see everything that's there, without having to ask for 23 it. I mean, I just think that's from a point of view with 24 respect to his position. I feel uncomfortable that we would be 25 somehow keeping him out of the loop.

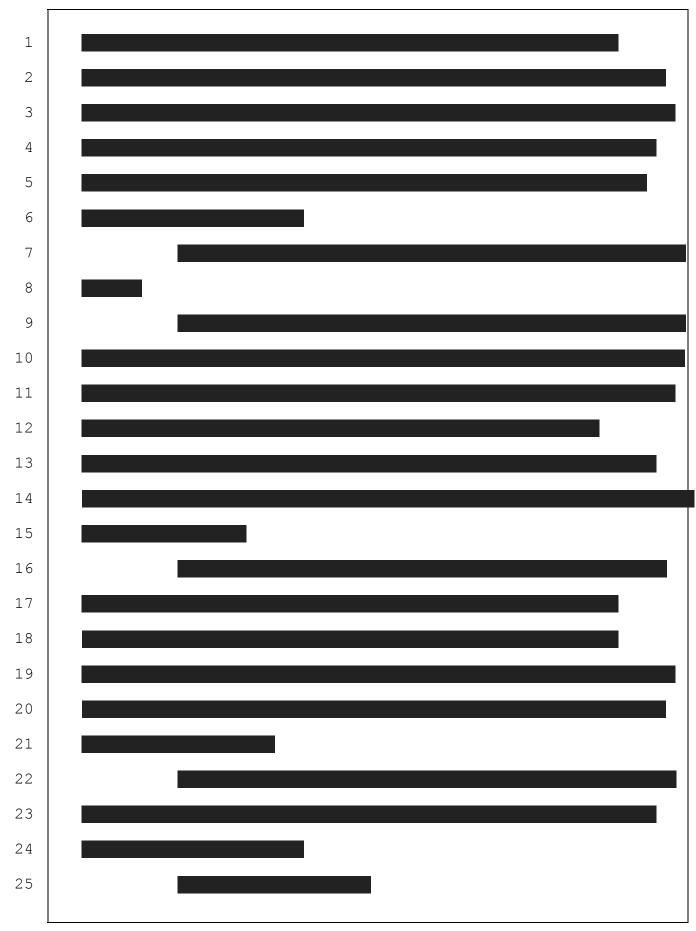
1 MR. WEISSMANN: Well, I guess my view is I'm not 2 asking -- I wouldn't ask this Court to make a ruling with respect to a different judge, but we could always alert the 3 4 Court that if it wanted that material, of course it would be 5 provided. The reason I think it's okay to proceed in that way, 6 and I might just be reading between the lines --7 THE COURT: I think if you're going to docket there a notice that I have ruled and then you docket there here's what 8 9 happened, I don't have any problem with your putting into the 10 notice that there's the sealed, unredacted transcript, the parties agree that -- and I would agree that he could have it, 11 12 if he asked for it. 13 MR. WEISSMANN: That's fine. 14 MR. WESTLING: I think that's the point, Your Honor. 15 THE COURT: All right. So I think we know how we're 16 going to proceed. The only thing I have left to talk about is the 17 18 dispute over the redactions. 19 20 21 22 23 24 25

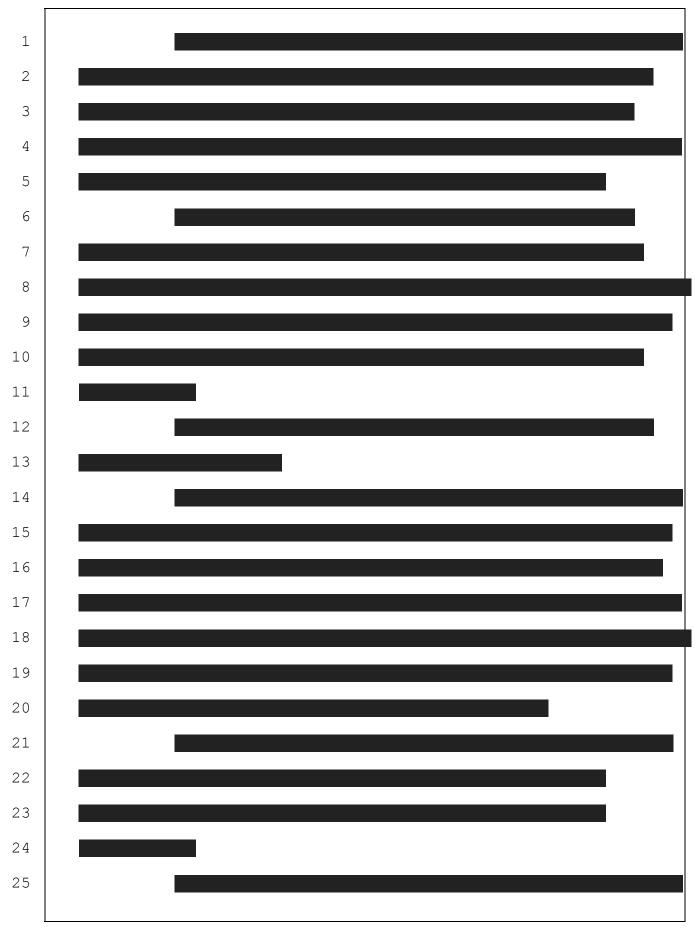


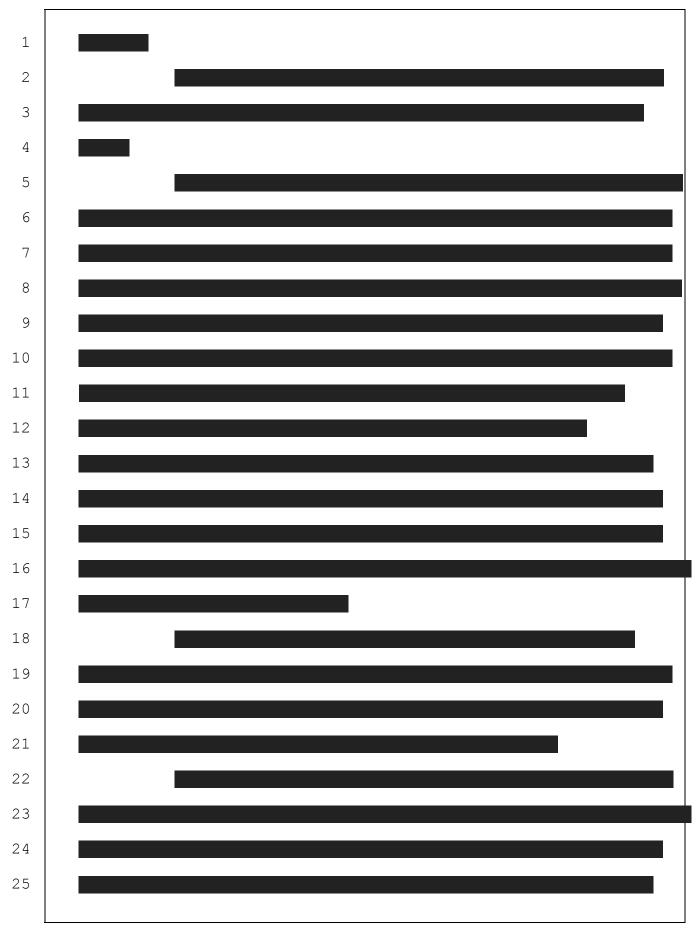


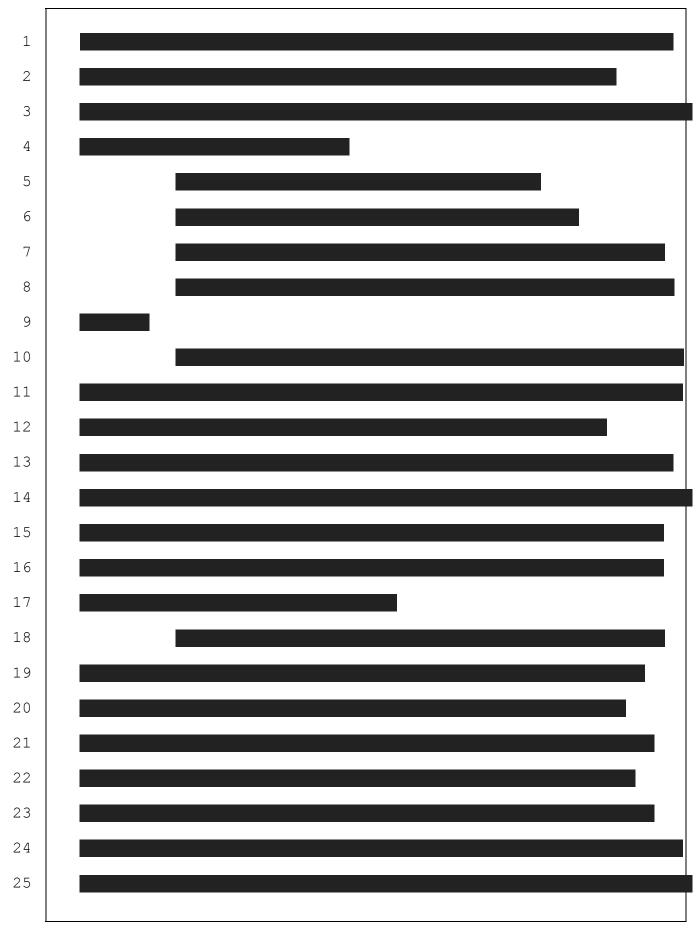




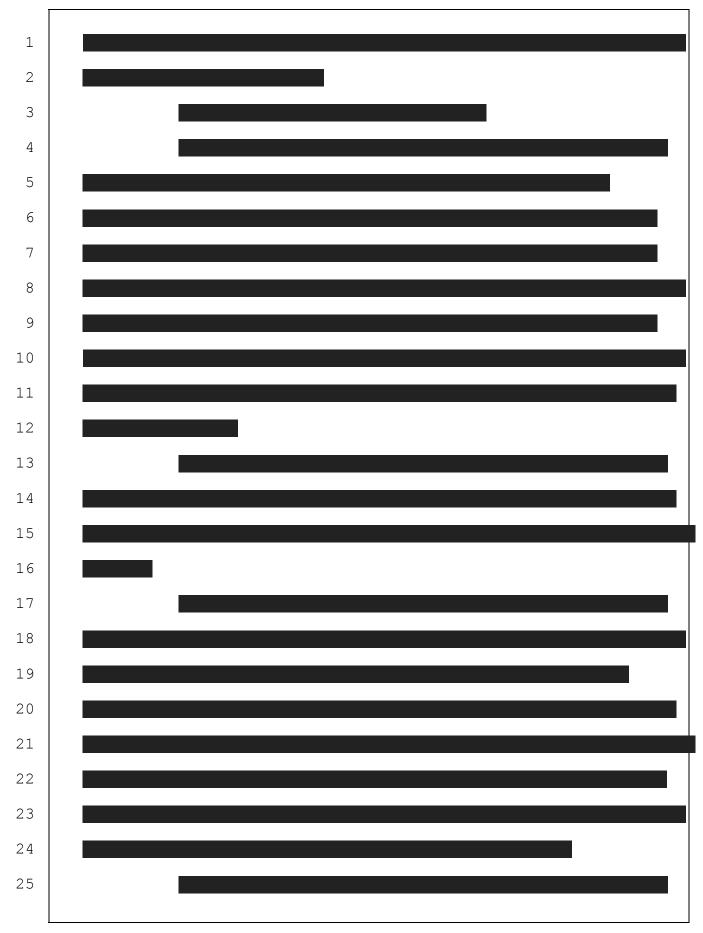






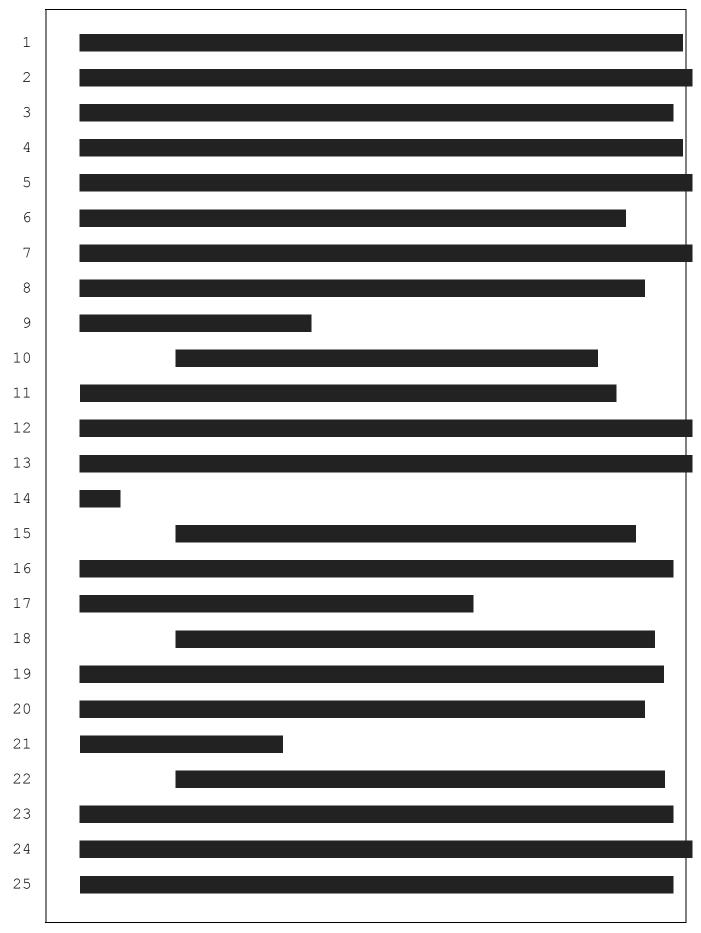


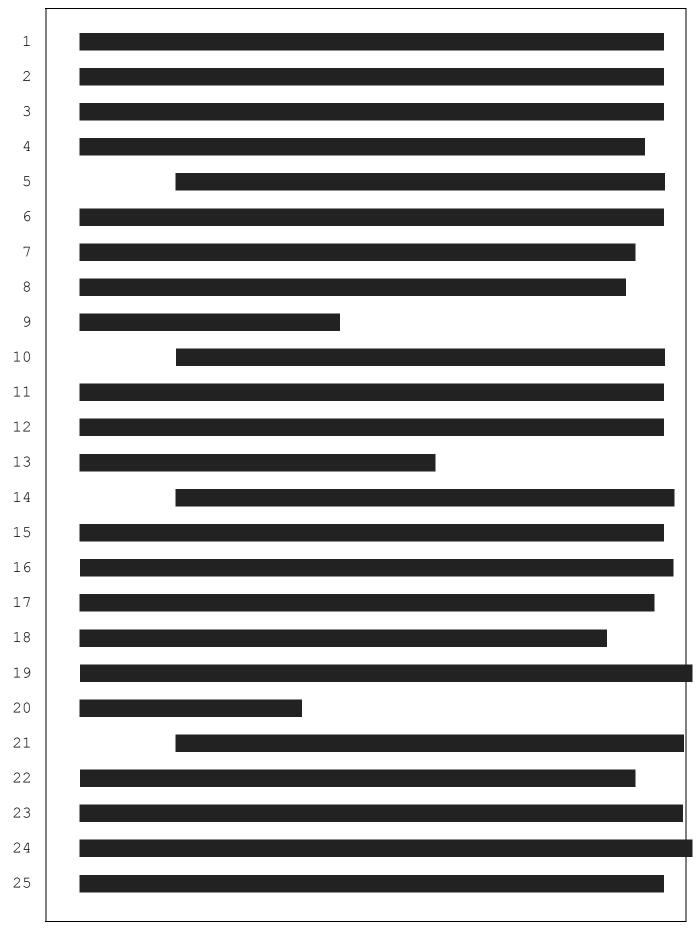














1 don't think it's going to go as far as unredacting everything 2 that you originally asked me to unredact. And I would like to 3 look again at the 302s before I decide.

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

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

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

1 should be a part of the public record that was sealed and there's no longer any utility for it, obviously you could first 2 find out if it's a joint motion and, if not, then you file a 3 motion. 4 5 All right. I just have one question for my public minute order. The , the fact that 6 7 8 9 is still sealed. So I should not use that in my minute 10 order, is that correct? 11 MR. WEISSMANN: I believe that's correct, Your Honor. 12 THE COURT: Okay. 13 MR. WESTLING: We agree, Your Honor. 14 THE COURT: Okay. So, I think then the Roman 15 numerals are a payment from Firm A, interactions with Kilimnik 16 about the obstruction of justice, interactions with Kilimnik, 17 another DOJ investigation, and contacts with the 18 administration. So I will use that shorthand to refer to them. 19 Is that the best way to proceed? 20 MR. WEISSMANN: That's fine, Your Honor. 21 MR. WESTLING: That's fine, Your Honor. 22 THE COURT: All right. Appreciate everybody's 23 patience as we move through all this. And I quess the next 24 time I see everybody is at the sentencing. I think that's 25 correct. All right. Thank you.

1	MR.	ANDRES:	Tha	ink j	you	•		
2	MR.	WEISSMAN	N:	Tha	nk	you.		
3				*	*	*		
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								
21								
22								
23								
24								
25								

Г

1								
2	CERTIFICATE OF OFFICIAL COURT REPORTER							
3								
4								
5	I, JANICE DICKMAN, do hereby certify that the above							
6	and foregoing constitutes a true and accurate transcript of my							
7	stenograph notes and is a full, true and complete transcript of							
8	the proceedings to the best of my ability.							
9	Dated this 14th day of February 2019.							
10								
11								
12	/s/							
13	Janice E. Dickman, CRR, RMR, CRC Official Court Reporter							
14	Room 6523 333 Constitution Avenue NW							
15	Washington, D.C. 20001							
16								
17								
18								
19								
20								
21								
22								
23								
24								
25								