

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	:	
	:	Criminal Action
Plaintiff,	:	No. 19-CR-018
	:	
	:	JURY TRIAL - DAY 5
	:	Afternoon Session
vs.	:	
	:	Washington, D.C.
	:	November 12, 2019
ROGER JASON STONE, JR.,	:	Time: 12:40 p.m.
	:	
Defendant.	:	

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

A-P-P-E-A-R-A-N-C-E-S

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1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: All right, I've had the opportunity to
3 review the pleading, Docket 252, memorandum in support of the
4 defendant's motion for judgment of acquittal.

5 I'm going to ask the defense, give you the opportunity to
6 make any argument you want to make. I may ask you some
7 questions. I'll give the government an opportunity to respond,
8 then I'm going to break, and I will come back and rule or say
9 whatever I'm going to say with respect to the Rule 29 matters,
10 and then we'll continue with the defendant's case.

11 So I'm not going to -- so I'm going to break so that I can
12 absorb everything you tell me. I'm not just going to rule as
13 soon as you're done.

14 My plan would be to then complete the defense case this
15 afternoon, gather tomorrow morning for the jury instruction
16 conference, and have the jury come back and begin our closings
17 at one o'clock in the afternoon so that they can all be back to
18 back and not be interrupted by lunch.

19 It seems to me, I'm not going to have a time clock, but
20 given the amount of evidence, that if I give each party up to
21 an hour, that would be ample time to close in this case.

22 Does anybody think they need more than an hour to talk to
23 the jury about the evidence in this case?

24 MR. KRAVIS: Can we ask for an hour and fifteen
25 minutes? I ask because we've worked on the closing and --

1 THE COURT: All right. Mr. Buschel, how much time do
2 you want?

3 MR. ROGOW: Whatever the government takes, we would
4 like, but I'm not sure we would use it.

5 THE COURT: Okay. I believe in argument so far and
6 in examinations so far, there's been a fair amount of
7 repetition, so I would just encourage you to think about that
8 when you review your draft argument and trust people to
9 remember what you told them five minutes before.

10 Like I said, I'm not going have a time clock, so as long
11 as it stays within the boundaries of what we're talking about,
12 we'll be fine. Your total has to be divided between your
13 initial closing and your rebuttal. If it gets a longer than an
14 hour and fifteen minutes, I might call someone to the bench and
15 ask them how much more time they plan to use.

16 The reason I'm picking 1:00 p.m. would be to have the two
17 closings and to instruct the jury before they get the case. If
18 things don't go well and we instruct them the next morning,
19 then that's what we'll do, but I didn't want to have to break
20 for lunch between the closings.

21 With respect to putting on the exhibits defense wants to
22 introduce, are you planning to put them in through a witness?

23 MR. BUSCHEL: No, Judge.

24 THE COURT: So you're just going to publish them.

25 Do you have any problem that? You've seen the list of the

1 ones that they have. I haven't even looked at them yet.

2 Are they email, other emails or other texts?

3 MR. KRAVIS: As long as we're just talking about
4 things on the exhibit list that we have already discussed, we
5 don't have an objection. I do have a question about whether
6 the defense intends to, like, publish the exhibits for the jury
7 in their case or if they just want to move them in and use them
8 in their closing argument. Either way is fine, but we want to
9 know what to expect.

10 MR. BUSCHEL: The latter.

11 THE COURT: So you're just going to stand up and
12 say -- we move. All right, so certainly don't need a witness
13 for that. And you're going say, "Now we would like to play a
14 portion of the transcript of the hearing," and then you'll just
15 play the first portion, then you'll say, "We would like to play
16 another portion," then you'll do that.

17 MR. BUSCHEL: Yes.

18 THE COURT: All right. So that all should be fine,
19 and we should be able to complete all that this afternoon, but
20 I think we're all going to need to take some time to go over
21 the jury instructions in particular. I'm going to, because
22 we're getting to it sooner than we all anticipated, but I don't
23 think there's a lot to do. So right now I'm inclined to say we
24 will meet at 10:00 a.m. for the jury instruction conference,
25 and that should give us time to have the jury instructions

1 conference, have lunch, and close starting at one o'clock.

2 That's my hope.

3 So also, as I mentioned, I do want the government to
4 revise the verdict form. I think, to the extent possible, the
5 exact testimony or statement that you're alleging was false in
6 each false statement count should be set out. I don't think
7 the language pursuant to 18 U.S.C. 1001, certainly if the
8 testimony was fault, it wouldn't be pursuant to 18 U.S.C. 1001,
9 it would probably be in violation of, but I don't even know if
10 it's necessary to set out the statutory citation in the count.

11 And then as I said, if there's going to be an argument
12 that more is needed for Count 1 than just yes or no, then I
13 need a brief on that before we get together for our jury
14 instruction conference.

15 Mr. Buschel, are you arguing the motion?

16 MR. BUSCHEL: Yes, Judge.

17 THE COURT: Okay, go ahead.

18 ARGUMENT BY MR. BUSCHEL

19 MR. BUSCHEL: May it please the Court.

20 Mr. Stone moves for a judgment of acquittal. We did file
21 our motion, and we'd like to highlight a couple of areas for
22 the Court.

23 First, the government's theory in opening statement was
24 that there -- two intermediary theory, that there were two
25 intermediaries between WikiLeaks and Roger Stone, that is a

1 flow of communication between the parties. The two
2 intermediaries, as the Court has heard over and over, is
3 Mr. Corsi, perhaps the Court remembers a reference to Theodore
4 Malloch and WikiLeaks; and then the second one, of course, the
5 Court met, Randy Credico.

6 An intermediary is defined by the plain meaning; the
7 motion, memorandum. I searched the country for every time the
8 word "intermediary" was made, and it is the plain meaning that
9 it is an arbitrator or mediator; a broker employed to negotiate
10 a matter between two parties and who, for that purpose, may be
11 an agent of both.

12 Clearly neither Mr. Corsi, who did not testify,
13 Mr. Malloch, who did not testify, and Mr. Credico, who did
14 testify, the first --

15 THE COURT: Which count do you believe requires proof
16 of the existence of an intermediary as defined by your
17 definition?

18 MR. BUSCHEL: I believe a portion of Count 1, and
19 Counts 2 through 6, and I'm happy to go through it with the
20 Court.

21 I think Count 1, Stone failed to -- Count 1 is -- and I
22 think we have to look at the indictment as a whole. In
23 paragraph 8, there's a reference that Mr. Stone obstructed
24 Congress, made multiple false statements to HPSCI about his
25 interactions regarding Organization 1. There would be no

1 interactions regarding Organization 1, WikiLeaks, if there were
2 not two intermediaries or at least one.

3 THE COURT: He didn't say with Organization 1, it
4 said regarding Organization 1.

5 And I've looked at the transcript, I've looked at the
6 indictment, and it seems to me, the case began where Mr. Stone
7 made public statements where he said, "I'm in communications
8 with WikiLeaks," he initiates that public statement.

9 And then he clarifies it, I think that's his word, by
10 saying, "It wasn't me. We had a go-between, a mutual friend,
11 an intermediary, and that's what I meant by communications."

12 So then he appears before the House, and he is asked in
13 August: When you said were you having communications through
14 this intermediary, who is the person to whom you were referring
15 when you used the word "intermediary"?

16 And he identified -- he didn't name him at that time, but
17 he said things that made it clear that he was talking about
18 Mr. Credico, then he later said it was Mr. Credico.

19 The government's allegation is that when he identified the
20 person to whom he referred in August as Mr. Credico, that that
21 had to have been false because he was not in communication with
22 Mr. Credico at that time about WikiLeaks, that happened later.

23 Whether he had an actual intermediary earlier, who it was,
24 whether it was Mr. Corsi, Mr. Malloch or just a false public
25 statement, why does the government have to prove that, if he --

1 if it can prove that he was being deliberately evasive when he
2 said, "The person I called my intermediary in August was
3 Mr. Credico."

4 That's what he's charged with. I don't believe he was
5 asked once, "Who was your actual intermediary." They keep
6 calling him "the intermediary," picking up on his own language.

7 MR. BUSCHEL: Right, and I think the burden is on the
8 questioner, and that's important. The burden is on the
9 questioner regardless. Because the case law that I've cited
10 says -- and this is the most -- the best way, the best one I've
11 seen is, simply put, one cannot lie by telling the truth
12 despite having intent to lie, but where the consummation of
13 that intent was impeded by either incompetence or ignorance.

14 So Mr. Stone gets the benefit of being wrong whether he
15 intended to lie or not, as a matter of law, and so he is not
16 charged with telling Congress he had an intermediary when he
17 didn't, he's charged with lying about that intermediary, and
18 the Court must --

19 THE COURT: Lying about who he meant when he said
20 "intermediary," and it's not -- you can look at the question
21 and the answer, but you have to look at it in the context of
22 all of the emails before and after --

23 MR. BUSCHEL: I think the Court needs look at it in
24 the context of the indictment. And let's say specifically,
25 Count 3 is probably a good example.

1 Stone testified falsely that his August 2016 references to
2 being in contact with the head of Organization 1 were
3 references to communications with a single go-between mutual
4 friend and intermediary who Stone identified as Person 2. And
5 this is, this is, it's not a single go-between. It's a no-go
6 between.

7 THE COURT: Well, they don't allege, even that exact,
8 those exact words that you just read don't say Stone lied about
9 the identity of his actual go-between. They said he lied about
10 the identity of essentially the claimed go-between, and that it
11 could not have possibly been the one he identified which they
12 would assert they established through that witness's testimony
13 and the documentary evidence.

14 MR. BUSCHEL: I have --

15 THE COURT: So I just don't understand where there's
16 any count that actually turns on proof beyond a reasonable
17 doubt of the existence of an actual intermediary. I think when
18 you read the transcript, he's being asked over and over again;
19 for example, on page 44 and the pages thereafter -- or when
20 Congressman Gowdy, from the majority at the time, questions him
21 closely. "You said you had these communications. We need to
22 follow through on what you were saying."

23 They aren't saying, "We need to know who it was,"
24 basically, "We need to know who you were talking about." And
25 then they say, "Did you communicate with that person that you

1 said you were talking about?"

2 So let's say it was -- he was accurate. Let's say he
3 didn't lie when he said, "The person I was talking about in
4 August was Mr. Credico."

5 Then they ask him, "Well, the person that you say you were
6 talking to, did you communicate with him in writing?"

7 You certainly don't need him to have been an actual
8 intermediary to prove beyond a reasonable doubt that whether he
9 communicated with him in writing or not, whether he was
10 truthful about that. Why does he have to have been the
11 intermediary?

12 MR. BUSCHEL: Because if he weren't an intermediary,
13 then he's just e-mailing a person, Randy Credico.

14 THE COURT: But every time they use the word
15 intermediary, they're talking about the person you have just
16 identified as your intermediary. So he says it's this
17 journalist, can't tell you his name. It's a journalist. Later
18 they tell you the name.

19 So when he says, "I didn't communicate with that
20 journalist person that I've just told you was my intermediary
21 in writing," why does he have to have been the intermediary for
22 the answer to the question to be true or false?

23 MR. BUSCHEL: And either the Court is going to accept
24 this or not. What I'm saying is the indictment embraces that
25 there were two intermediaries. He lied about having two

1 intermediaries. The transcript in it is, is the burden is on
2 the questioners.

3 " So did you ask him to do anything on your own behalf?"
4 which is page 44 of the transcript.

5 "I did not.

6 Did he suggest that he was going to do anything else
7 after you have described?

8 No, he did not."

9 All of these are truthful answers.

10 THE COURT: You can only use the he -- you have to go
11 all the way back to the first couple times they talked about
12 the he. It goes all the way back to saying: "The person to
13 whom you were referring". Whether he was or wasn't an
14 intermediary; the person that you're now claiming was your
15 intermediary -- you, not they, are claiming was your
16 intermediary, your go-between, your mutual friend, who was a
17 journalist that you have a privilege with; did you communicate
18 with him in writing?"

19 Why does he have to, in fact, beyond a reasonable doubt
20 have been the intermediary for that answer to have been either
21 true or false?

22 MR. BUSCHEL: Because the best example, Count 3,
23 says -- embraces that it was a single intermediary. The
24 government in opening statement interprets its own indictment,
25 tells the jury it's two intermediaries. And, in fact, the

1 Court will either -- the Court is saying that "he" and the
2 pronouns are variables. And I understand what the Court is
3 saying, but Mr. --

4 THE COURT: But I think it was always tied to not
5 some independent person that the Congress had in mind, but it
6 was always tied to: The person you just told us about. Did you
7 communicate with the person you just told us about.

8 MR. BUSCHEL: The one question Congress didn't ask
9 him; for example, let's say Mr. Gates was -- all of these
10 people are making assumptions. Well, he must have been talking
11 to Julian Assange. He must have been talking to someone at
12 WikiLeaks. These are all assumptions.

13 No one ever asked, "Do you have any reason to believe that
14 your intermediary was, in fact, an intermediary?" and that
15 would change --

16 THE COURT: I think they asked him a number of times,
17 "Did you directly talk to Assange and WikiLeaks," and he had
18 the opportunity to say, "No, I never did that."

19 But they said, "Well when you told the public you were
20 communicating through a middleman, who was the middleman?"

21 I don't want to tell you, but I can tell you that as of
22 August whatever, the middleman I was referring to was this
23 journalist;" who he later wrote Congress and said was Credico.

24 Then they asked him, "Well, did you communicate with X,
25 the person you just told us about in writing?"

1 So I don't -- I'm not sure I understand how you can read
2 this indictment to require proof of an actual intermediary.

3 MR. BUSCHEL: The congressional testimony was one
4 question shy of that, of that assumption because they didn't
5 ask; do you indeed or establish -- tell us why you believe the
6 intermediary was, in fact, an intermediary?

7 THE COURT: Well, before they even got to that they
8 were just trying to say, "Who were referring to? Who were you
9 referring to so that we can talk to them, so we can run this to
10 ground?"

11 And then he wouldn't tell them, so there wasn't that much
12 more to ask him.

13 Then later so they said, "Well, can we just see what you
14 communicated in writing with them? And he said, well, I only
15 talked to that person by phone; that person, the journalist
16 whose name I'm not telling you, I only talked to him by phone."

17 And then later they told him the name.

18 So if they had charged him with making a false statement
19 in saying X was, in fact, an intermediary as opposed to the
20 intermediary that I'm talking about, then there might be made
21 for some proof that he was or he wasn't.

22 But I take your point. Are there any of the other false
23 statements that you want -- you've made the argument with
24 respect to all of them in your papers.

25 MR. BUSCHEL: Yes.

1 THE COURT: Are there any other aspects besides the
2 lack of proof of the intermediary that -- where the evidence
3 falls short with respect to the obstruction count?

4 MR. BUSCHEL: We rely on our motion, but also the
5 second is that a lot of these are not talking about Russian
6 interference, any of these emails or even talking with
7 Mr. Credico about whether or how did the Russians accomplish
8 this, how did the Russian State hack, how did any of this in
9 comparison to what we have labeled the four pillars of the
10 HPSCI investigation.

11 THE COURT: Well, what is the basis for the
12 assumption that I've heard over and over again from the
13 defense, that interference is limited to the hack as opposed to
14 the dissemination?

15 Because if you're going to interfere with the campaign and
16 you steal a bunch of information, but you never publish it. It
17 doesn't really interfere with the campaign. It might interfere
18 with somebody's ability to operate their computer.

19 But doesn't interference embrace, and don't Congressman
20 Gowdy's questions and other congressmen's questions embrace the
21 notion that how they ended up in the public domain is part and
22 parcel of the whole investigation.

23 MR. BUSCHEL: Well, the Court repeatedly said we are
24 not allowed to get into that. So the assumption and no
25 evidence that WikiLeaks indeed received this DNC data from a

1 Russian State is not before this jury or before this Court
2 during this trial.

3 THE COURT: That's not the question.

4 You're saying that WikiLeaks was -- questions about
5 WikiLeaks and the publication of the emails was just outside
6 the scope of the investigation, because the investigation was
7 just about Russian hacking, and I don't understand that.

8 If you read the report, if you read the testimony, if you
9 read Mr. Stone's own introductory statement, he talks about how
10 it was that WikiLeaks published the information. It's part of
11 the story. I agree that we weren't going to try the question
12 of whether the Russians hacked or not, which was the issue that
13 you wanted to try, or who gave it to WikiLeaks, whether it was
14 the Russians or someone else, the identity of Guccifer. We
15 haven't talked about that because that isn't a fact they have
16 to prove.

17 But the question is, were these questions to Mr. Stone,
18 "Who were you talking to when you claimed to know publicly what
19 WikiLeaks was going to do?" Why didn't that fall squarely
20 within the four corners of, we're interested in the Russian
21 active measures?

22 MR. BUSCHEL: Because Mr. Stone said, "I don't accept
23 those premises of your questions." He said it repeatedly.

24 And then the burden shifts to the questioner to say; well,
25 even if you don't believe it, you need to assume the following

1 for these questions.

2 THE COURT: Why does how it got to WikiLeaks matter
3 if the -- why isn't it part of their investigation if -- let's
4 say they had it, but they weren't publishing it. Whether a
5 Russian or a Ukrainian or someone from China or someone from
6 Alabama took what had been taken from the DNC and handed it to
7 WikiLeaks. If no one was talking to WikiLeaks about releasing
8 it or someone was talking to WikiLeaks about releasing it, why
9 isn't -- whether someone with a connection to the campaign was
10 completing the circle -- when is this coming out? Is it coming
11 out? What's going to come out? Make sure this comes out.
12 Whether it happened or not, why isn't it a fair part of what
13 they're looking into?

14 MR. BUSCHEL: Because it's not Russian, it's not a
15 Russian conspiracy. It would be an Alabama conspiracy, and
16 that is not the scope.

17 THE COURT: But they didn't say they were only -- the
18 Russian active measures included how it got public.

19 MR. BUSCHEL: Russian active measures --

20 THE COURT: They want to know the answer to the
21 question. If at the end of the day it turned out it wasn't the
22 Russians, why isn't that as important to their investigation as
23 whether it was?

24 You keep saying, at the end of the day they couldn't prove
25 Russia, but that's not the point. The point is, "Were you

1 talking to WikiLeaks? Was anybody talks to WikiLeaks?"

2 How could that not be material to their investigation?

3 MR. BUSCHEL: Because it assumes Russia -- and I
4 understand the Court's point -- it assumes a Russian transfer
5 of DNC data and other data to WikiLeaks. And it assumes that
6 Roger Stone actually had a communication connection with
7 WikiLeaks. Otherwise, there was nobody talking to WikiLeaks
8 about any of these matters and he gets the benefit of the
9 answers to those questions because, in truth, they are
10 accurate.

11 The translation of what Congress was doing and translated
12 by what the DOJ put in its indictment is what is key and before
13 the Court; that the indictment assumes it. Mr. Zelinsky in
14 opening statement embraced it and told this Court that there
15 are two, there are zero and that is why the questions cannot be
16 false.

17 THE COURT: So we're back to the intermediary point?

18 MR. BUSCHEL: Right.

19 THE COURT: Okay.

20 With respect to false statements, is there any other
21 element besides proving the intermediary that you want to tell
22 me they haven't introduced evidence to support or are you just
23 going to rest on the record?

24 MR. BUSCHEL: No, I have stated everything.

25 THE COURT: Okay. There's nothing in your motion

1 about the witness tampering count. Are you just submitting on
2 the evidence or do you have any particular element that you
3 want to argue was not established?

4 MR. BUSCHEL: Just submitting on the evidence.

5 THE COURT: All right. Is there any other element of
6 any offense that you want me to specifically focus on when I
7 consider whether this case should proceed from this point?

8 MR. BUSCHEL: No.

9 THE COURT: Okay, thank you.

10 MR. BUSCHEL: Thank you.

11 THE COURT: Mr. Kravis, would you like to respond?

12 MR. KRAVIS: Yes, briefly, thank you, Your Honor.

13 ARGUMENT BY MR. KRAVIS

14 MR. KRAVIS: I heard the defense make two arguments
15 here. First, that the government had to prove that there
16 actually was an intermediary between the defendant and
17 WikiLeaks. And second, that the questions that Mr. Stone is
18 charged with answering falsely were not about Russia and I
19 would like to address each of them in turn.

20 THE COURT: All right.

21 MR. KRAVIS: On the first point, I think the problem
22 with this argument is that the relevant -- when we're talking
23 about the use of the term "intermediary" in the transcript. As
24 the Court noted in its questions to my colleague, the relevant
25 question here is not a dictionary definition or common-law

1 definition of the term "intermediary". It's how the term was
2 used in the hearing.

3 On page 39 of the transcript, Representative Quigley
4 begins by asking: "Here's an August 8 speech in Broward
5 County". Then on page 40 he says: "Here's an August 12th
6 interview on InfoWars. Who were you talking about?"

7 And it's Mr. Stone who uses the term "intermediary." His
8 response is: "I have sometimes referred to this journalist as
9 a go-between, as an intermediary, as a mutual friend." And all
10 of the subsequent questions that are charged in the
11 indictment --

12 THE COURT: What page did you just read from?

13 MR. KRAVIS: That's on page 40 of the transcript --

14 THE COURT: Okay.

15 MR. KRAVIS: -- 40 Exhibit 1.

16 And all of the subsequent questions that Mr. Stone is
17 alleged to have answered falsely are keyed off of that initial
18 exchange. So when the members -- and this is viewing, of
19 course, the transcript like all other evidence in the light
20 most favorable to the government at this stage of the
21 proceedings.

22 When the members are asking questions later in the
23 transcript and are using the term "intermediary." The best
24 understanding of those questions is not based on a dictionary
25 definition or the common-law term. It's how Mr. Stone

1 introduced the term into the hearing.

2 It would be a little bit like if Mr. Quigley had asked,
3 "Who were you referring to on August 8?" and Mr. Stone had
4 said; well, that's somebody that I think of as my plumber." And
5 then they'd asked well do you have any written communications
6 with your plumber and Mr. Stone says no. Then it turns out
7 that he has a whole bunch of written communications with the
8 guy from August 8th, but he says ha, ha, jokes on you. That
9 guy is not actually my plumber.

10 Whether the person meets the term that Mr. Stone is using
11 is not the issue here. The issue here is that Mr. Stone is
12 using that term "intermediary" to refer to the guy from August
13 8th; the guy from August 12th, and all of the committee's
14 questions referring back to that -- using that term have to be
15 understood in that light in the context of the transcript.

16 But the second point I would make about this is, so for
17 all of those reasons, the government is not -- was not required
18 to prove that Mr. Stone actually did have an intermediary or a
19 back channel or a source to WikiLeaks in order to establish his
20 guilt on any of these charges. But even if they were right
21 about that, the evidence viewed in the light most favorable to
22 the government still shows that.

23 The August 2nd, 2016 email from Mr. Corsi says: "Word is
24 friend in embassy plans two more dumps." Then it provides a
25 whole bunch of information about the impact; how it's going to

1 be damaging; what the materials are going to be about. It
2 references candidate Clintons's health. It references the
3 foundation.

4 We just heard testimony from Mr. Gates today, and
5 Mr. Bannon last week that Mr. Stone was repeatedly telling them
6 that he was getting information about where -- about what
7 WikiLeaks was planning to do before WikiLeaks actually did it,
8 and they both testified that they understood that to be
9 nonpublic information because Mr. Stone was telling them things
10 that were not in the public domain, and Mr. Credico testified:
11 That wasn't me.

12 All of that evidence taken in the light most favorable to
13 the government, I think actually would establish the falsity of
14 the statements even if you accepted the defense premise, which
15 we do not, that the government was required to prove that there
16 was an intermediary in order to establish that the statements
17 were false.

18 Unless the Court has any other further questions about
19 that, I would move on to the second point the defense makes.

20 THE COURT: Okay, you can move on to the second
21 point.

22 MR. KRAVIS: The second point the defense makes that
23 runs throughout their motion is: Well, look, none of this
24 stuff was actually about Russia.

25 And as I understand it, they could be kind of making one

1 of two arguments here. One argument, as I understand it, is:
2 Well, Mr. Stone's responses to the questions assumed that like
3 at the end of every question he was asked was, as it pertains
4 to Russian election interference.

5 So when he said, "I had no communications with my
6 intermediary." What he really meant was, I had no written
7 communications with my intermediary about Russian election
8 interference.

9 If that's the argument, then I think the government easily
10 survives the motion for judgment of acquittal because there's
11 no actual evidence in the record beyond the transcript itself
12 about what was in Mr. Stone's head when he responded to the
13 questions. And the transcript itself shows that that's not how
14 the questions were asked. Those are not the words that the
15 members of Congress used. They did not couch their questions
16 in terms of specific allegations about Russia.

17 So if Mr. Stone --

18 THE COURT: The questions were about WikiLeaks.

19 MR. KRAVIS: Yes, yes.

20 THE COURT: So he knew he was answering questions
21 about WikiLeaks.

22 MR. KRAVIS: He knew he was answering questions about
23 WikiLeaks. Indeed, as Mr. Stone himself at the very beginning
24 of the hearing in his opening statement explained to the
25 committee that he knew exactly why they were about to ask him

1 about WikiLeaks.

2 He says: "These hearings are based on the largely
3 unproven allegation" -- this is page 8 of Government's Exhibit
4 1 -- "the largely unproven allegation that that the Russian
5 State is responsible for the hacking of the DNC and John
6 Podesta, and the transfer of that information to WikiLeaks."
7 That's the bottom of page 8 of Exhibit 1.

8 Now, Mr. Stone may not accept that allegation, but for
9 purposes of these charges and these proceedings, the relevant
10 point here is that he full-well understood why WikiLeaks would
11 be relevant to the investigation.

12 THE COURT: On page 10 of his opening statement he
13 talked about the charge: "That I knew in advance about and
14 predicted the hacking of Podesta's email" -- which doesn't
15 really relate to the testimony here --

16 MR. KRAVIS: Right.

17 THE COURT: -- "that I had advanced knowledge of the
18 source or content of the WikiLeaks disclosures."

19 So he seemed to express through his own opening statement
20 that the subject matters were in the scope of what the
21 committee was considering and what he wanted to address.

22 MR. KRAVIS: Absolutely. And moreover, as the
23 excerpts that we introduced this morning show, Mr. Stone was
24 asked by the members of the committee: "You understand that
25 our intelligence community has said that Guccifer 2.0, the

1 entity that claimed credit for the hack, is a Russian cutout or
2 is actually the Russian intelligence service."

3 And Mr. Stone said: "Yes, I'm aware of that allegation.
4 I don't agree with it, but I'm aware of it."

5 So Mr. Stone knew full well why an investigation, a
6 congressional investigation that concerned allegations of
7 Russian election interference would naturally tend to touch on
8 the documents that were ultimately published by WikiLeaks in
9 July and October of 2016.

10 THE COURT: Putting aside Guccifer, which I don't
11 think was the focus of all of the testimony, and the exhibits
12 that you brought out until this morning. Just the question of
13 the timing and the content of the WikiLeaks disclosures, which
14 Mr. Buschel says he couldn't have thought was material to the
15 investigation and so he wouldn't have thought he had to answer
16 fully and truthfully because that just wasn't on his brain
17 because only Russia was on his brain. And let's put Guccifer
18 in that bucket of the Russian piece.

19 MR. KRAVIS: Right.

20 THE COURT: He walks in and says, "This is the
21 subject matter of my testimony today," and talks about
22 WikiLeaks.

23 MR. KRAVIS: Yes.

24 THE COURT: So that seems to bear on his
25 understanding of what the committee was investigating.

1 MR. KRAVIS: Yes, I agree.

2 If the defense is making the alternative argument that
3 regardless of what was in Mr. Stone's head, as a matter of
4 fact, this was not actually a subject of the committee's
5 investigation and; therefore, the answers could not have been
6 material. The government has introduced an additional piece of
7 evidence which is the excerpts of the House report itself.

8 Now, I recognize that the House report was issued after
9 Mr. Stone testified. So it may not be relevant to what was in
10 his head when he walked into the hearing room. And those
11 excerpts were not offered for their truth; that is, were the
12 committee's conclusions about WikiLeaks correct or incorrect.

13 But those excerpts do show that, as a matter of fact, one
14 of the topics of the committee's investigation into Russian
15 election interference was the conduct of WikiLeaks in the
16 summer of 2016. And so that shows as an objective matter why
17 Mr. Stone's false statements on the subject of WikiLeaks would
18 have been material to the committee's investigation.

19 THE COURT: I think it bears on materiality, and I
20 don't think they've -- I think they've at least implicitly
21 argued that materiality hasn't been established.

22 One of the false statements though, I understand your
23 point of view with respect to Counts 2, 3, 4 and 5. Count 6
24 alleges that Stone testified falsely that he had never
25 discussed his conversations with the person he referred to as

1 his -- he referred to as his go-between mutual friend and
2 intermediary with anyone involved in the Trump campaign. And I
3 think that's a little bit of a closer question.

4 There's been testimony that he testified about what
5 WikiLeaks had or what it was about to do -- not that he
6 testified, that he communicated with at least Mr. Bannon and
7 Mr. Gates about those topics.

8 But what would be the evidence looked at in the light most
9 favorable to the government from which a juror could conclude
10 that he discussed his conversations with the person he referred
11 to as his go-between mutual friend and intermediary with anyone
12 involved in the Trump campaign?

13 MR. KRAVIS: I would point the Court to two pieces of
14 evidence. First, the email exchange between Mr. Stone and
15 Mr. Bannon on October 4th of 2016. Mr. Bannon testified that
16 on that morning, WikiLeaks was supposed to make an announcement
17 about further releases of materials, and when that didn't
18 materialize, Mr. Bannon e-mailed Mr. Stone: "What was that
19 this morning?"

20 Mr. Bannon testified that the reason he e-mailed
21 Mr. Stone, of all people, that morning was because Mr. Stone
22 was the one who had been telling Mr. Bannon that he had
23 information about what WikiLeaks was planning to do.

24 And Mr. Stone responds: Fear, serious security concern.
25 He thinks the police are going to kill him and -- he thinks

1 they are going to kill him and the police are standing done --
2 I think he says instead of down -- however; a load every week
3 going forward.

4 Given the other information that the jury has heard about
5 Mr. Stone's claims of having nonpublic contact in his email
6 exchange with Mr. Corsi, I think a rational trier of fact
7 viewing that evidence in the light most favorable to the
8 government could conclude that that is an exchange where
9 Mr. Stone is providing Mr. Bannon with nonpublic information
10 that he obtained from his -- from an intermediary or a
11 nonpublic source about WikiLeaks' future plans.

12 The second piece of evidence I would reference is the
13 October 3rd, 2016 email from Mr. Stone to Mr. Prince, where
14 Mr. Stone writes again from around this same time. Quote,
15 "Spoke to my friend in London last night -- something is still
16 on."

17 "Spoke to my friend in London last night," and then
18 there's a sentence that communicates that they're going
19 forward, that WikiLeaks will go forward with the release.

20 Now, the government presented evidence that while
21 Mr. Prince did not have a salary or a title with the campaign,
22 Mr. Bannon testified that Mr. Prince was a supporter of the
23 campaign, that Mr. Prince would come to the campaign's offices,
24 that Mr. Prince would provide policy advice to the campaign on
25 subjects like foreign policy.

1 That email exchange, I think, is another example from
2 which a rational trier of fact could conclude that Mr. Stone is
3 discussing his communications with an intermediary with someone
4 involved in the Trump campaign.

5 There are also --

6 THE COURT: Well, that one seems to refer more
7 directly to communications with the professed go-between.

8 The other one seemed to refer to nonpublic information,
9 but this doesn't allege that he testified falsely, that he
10 never shared information with anyone in the campaign. It says
11 he testified falsely when he said he never discussed
12 conversations with the person he's referring to as the
13 intermediary.

14 So I just want to make sure I know all of the evidence
15 you're relying on to support that.

16 MR. KRAVIS: I think we would argue that that count
17 is fairly read as alleging that Mr. Stone testified falsely
18 about his conversation -- about the content, about whether he
19 had discussed the content of his conversations with the
20 intermediary with anyone involved in the Trump campaign; that
21 is, he discussed his conversations with the intermediary. He
22 may not have expressly referenced to the intermediary, but he
23 was discussing the content of his communications with that
24 intermediary with people who were involved in the Trump
25 campaign.

1 THE COURT: I think before we get together to discuss
2 the jury instructions and when you think about your closing
3 argument, and certainly with respect to the verdict form. The
4 jury has to know exactly what it is that you are alleging
5 you've established was knowingly false beyond a reasonable
6 doubt. And so, you know, the general paraphrasing I don't
7 think is going to do it. I think you have to be able to say in
8 this letter or on this -- in this transcript, this question,
9 this answer, because that's where they have to decide. Is it
10 literally true or is not literally true? Did he intend it to
11 be false, did he misspeak? And so it has to be clear.

12 Is there anything further you want to say with respect to
13 the Rule 29 motion?

14 MR. KRAVIS: No, thank you, Your Honor.

15 THE COURT: Okay, all right.

16 What I'm going to do is, you all haven't had lunch yet, is
17 that correct, or did you manage to scramble and accomplish it
18 in the short period of time that I was gone?

19 MR. KRAVIS: We scrambled.

20 THE COURT: All right. Then I will resume at -- if
21 we start at 2:00, will that be enough time for you to play
22 your -- certainly you can say, I move the following exhibits in
23 evidence and play an hour's worth of transcripts; is that
24 correct?

25 MR. BUSCHEL: I can handle that Judge, yes.

1 THE COURT: All right, that's what we'll do. We'll
2 start at 2:00. Thank you, everyone.

3 (Recess at 1:23 p.m.)

4 (Proceedings resumed at 2:11 p.m.)

5 THE DEPUTY CLERK: Your Honor, recalling criminal
6 case Number 19-18, United States of America v. Roger Stone.

7 THE COURT: All right, pursuant to Federal Rule of
8 Criminal Procedure 29(b), I'm going to reserve my decision on
9 the defendant's motion.

10 Prior to the break before the argument, I referred to some
11 portions of the majority report, and they were not moved in
12 evidence by the government, so they didn't play a role in my
13 consideration of the defendant's motion, but I do note that the
14 aspects that I was referring to are included in what the
15 defense is about to move in evidence. But pursuant to the
16 rule, when I take up the motion again, it still has to be based
17 on what the record was at the time the motion was made, and I
18 understand that.

19 I received a trial exhibit list that is the list of the
20 exhibits you're planning to introduce, but some of them were
21 excluded. Are you planning to put them all in, or is this just
22 your list?

23 Can you tell me which exhibits you are planning to move in
24 evidence before I bring in the jury?

25 MR. BUSCHEL: Yes. Government's Exhibit 8.

1 THE DEPUTY CLERK: Last page.

2 THE COURT: Yes.

3 MR. BUSCHEL: Government's Exhibit 11.

4 THE COURT: Yes.

5 MR. BUSCHEL: Government's Exhibit 12.

6 THE COURT: Yes.

7 MR. BUSCHEL: Now to defense exhibits.

8 Defense Exhibit 45.

9 THE COURT: Okay.

10 MR. BUSCHEL: 47.

11 THE COURT: Yes.

12 MR. BUSCHEL: 50.

13 THE COURT: Yes.

14 MR. BUSCHEL: 51.

15 THE COURT: Yes.

16 MR. BUSCHEL: 53.

17 THE COURT: Yes.

18 MR. BUSCHEL: 54.

19 THE COURT: Yes.

20 MR. BUSCHEL: 55.

21 THE COURT: Yes.

22 MR. BUSCHEL: 56.

23 THE COURT: Yes.

24 MR. BUSCHEL: 58.

25 THE COURT: Okay.

1 MR. BUSCHEL: 59.

2 THE COURT: Yes.

3 MR. BUSCHEL: 60.

4 THE COURT: Yes.

5 MR. BUSCHEL: 61.

6 THE COURT: Yes.

7 MR. BUSCHEL: 62.

8 THE COURT: Yes.

9 MR. BUSCHEL: 65.

10 THE COURT: I excluded it on November 4th. Docket
11 Number 248.

12 Okay. Go on.

13 MR. BUSCHEL: 66.

14 THE COURT: Yes.

15 MR. BUSCHEL: 68.

16 THE COURT: Yes.

17 MR. BUSCHEL: 69.

18 THE COURT: Yes.

19 MR. BUSCHEL: And I was going to say 71, but I see an
20 objection.

21 THE COURT: It was excluded.

22 MR. BUSCHEL: Excluded? So not 71. 72.

23 THE COURT: Yes.

24 MR. BUSCHEL: 73.

25 THE COURT: Yes.

1 MR. BUSCHEL: 74.

2 THE COURT: Yes.

3 MR. BUSCHEL: 75.

4 THE COURT: Yes. 76 was supposed to be redacted.

5 Has it been redacted?

6 MR. BUSCHEL: Yes.

7 THE COURT: Has the government seen the redacted

8 version?

9 MR. KRAVIS: No.

10 THE COURT: Okay. We probably should show it to them
11 to find out if that revolves the concern.

12 MR. BUSCHEL: Okay, we will do that.

13 And 79, same --

14 THE COURT: That was admitted.

15 MR. BUSCHEL: Okay.

16 THE COURT: 77 requires some redactions, but I don't
17 see that you're putting that one in, but 79 was admitted.

18 MR. BUSCHEL: 80.

19 THE COURT: Yes.

20 MR. BUSCHEL: 82.

21 THE COURT: Yes.

22 MR. BUSCHEL: 88.

23 THE COURT: Yes.

24 MR. BUSCHEL: 90.

25 THE COURT: Yes.

1 MR. BUSCHEL: 91.

2 THE COURT: Yes.

3 MR. BUSCHEL: 92.

4 THE COURT: Yes.

5 MR. BUSCHEL: 93.

6 THE COURT: Yes.

7 MR. BUSCHEL: 94.

8 THE COURT: Yes.

9 MR. BUSCHEL: 95.

10 THE COURT: Yes.

11 MR. BUSCHEL: 97.

12 THE COURT: Yes.

13 MR. BUSCHEL: 106.

14 THE COURT: Yes.

15 MR. BUSCHEL: 107.

16 THE COURT: Yes.

17 MR. BUSCHEL: 108.

18 THE COURT: Yes.

19 MR. BUSCHEL: 109.

20 THE COURT: Yes.

21 MR. BUSCHEL: 110.

22 THE COURT: Yes.

23 MR. BUSCHEL: 113.

24 THE COURT: Yes.

25 MR. BUSCHEL: 119.

1 THE COURT: Okay.

2 MR. BUSCHEL: 122.

3 THE COURT: Yes.

4 MR. BUSCHEL: 123.

5 THE COURT: Yes.

6 MR. BUSCHEL: 124.

7 THE COURT: Yes.

8 MR. BUSCHEL: 126.

9 THE COURT: Yes.

10 MR. BUSCHEL: 128.

11 THE COURT: Yes.

12 MR. BUSCHEL: 131.

13 THE COURT: Yes.

14 MR. BUSCHEL: 133.

15 THE COURT: Yes.

16 MR. BUSCHEL: 134.

17 THE COURT: Yes.

18 MR. BUSCHEL: 136.

19 THE COURT: Yes.

20 MR. BUSCHEL: 137.

21 THE COURT: Yes.

22 MR. BUSCHEL: 139.

23 THE COURT: Yes.

24 MR. BUSCHEL: 140.

25 THE COURT: Yes.

1 MR. BUSCHEL: 141.

2 THE COURT: Yes.

3 MR. BUSCHEL: 143.

4 THE COURT: Yes.

5 MR. BUSCHEL: 145.

6 THE COURT: Yes.

7 MR. BUSCHEL: 151.

8 THE COURT: Yes.

9 MR. BUSCHEL: 157.

10 THE COURT: Yes.

11 MR. BUSCHEL: 158.

12 THE COURT: Yes.

13 MR. BUSCHEL: 159.

14 THE COURT: Can you explain to me why that comes in,
15 what the relevance is of the letter written to Mr. Bannon prior
16 to his interview with --

17 MR. BUSCHEL: It's a proffer letter. Obviously he
18 was granted immunity in exchange for his testimony, and that
19 was the agreement.

20 THE COURT: He's not. The letter just says: This is
21 not a cooperation agreement, we're not granting you immunity.

22 I don't understand what the letter has to do with -- it's
23 a little typical preinterview letter. It doesn't promise him
24 anything, and it says statements could be used against him if
25 he's -- couldn't be used against him if he's prosecuted for

1 something that he says, but he could be prosecuted for making
2 false statements.

3 But it's not an immunity letter. It's a very different
4 letter. And it doesn't cover his testimony here. It just
5 covers what happened during the interview.

6 MR. BUSCHEL: It's a queen-for-a-day letter, yes? I
7 mean for his --

8 THE COURT: Well, without labeling it, I just want to
9 know what it has to do with this proceeding because it didn't
10 cover today.

11 MR. BUSCHEL: It didn't cover the day he testified in
12 this courtroom, but it covered the day that he was interviewed.

13 THE COURT: Right, but we don't even know what he was
14 interviewed about that day. I just want to know --

15 MR. BUSCHEL: I just think it's relevant.

16 THE COURT: -- what it's relevant to.

17 MR. BUSCHEL: I think that when a witness has an
18 agreement with the government that statements that he makes in
19 an interview will -- that won't be used against him, it's
20 something that the jury can consider.

21 THE COURT: Well, I think you have to characterize it
22 correctly.

23 MR. BUSCHEL: Bias.

24 THE COURT: I understand that you're talking about
25 bias, but if you're going to argue some inference rises out of

1 that letter, you need to characterize it correctly. Because
2 it's very limited what it offers and what it doesn't offer. It
3 doesn't offer much. It says in all caps, "This is not a
4 cooperation agreement," so it's not like what Mr. Gates has.

5 What's the government's position?

6 MR. KRAVIS: So I think that at this point we would
7 object. I mean, when this appeared on the original defense
8 list, I thought maybe they would question Mr. Bannon about it,
9 or maybe they would want the proffer letter in case Mr. Bannon
10 was asked about something that occurred during the interview,
11 but the contents of this interview --

12 THE COURT: -- are not in evidence.

13 MR. KRAVIS: For good reason, they're prior
14 statements. So if the contents of the interview were never
15 discussed in testimony before the jury, then I don't know what
16 the relevance of a letter that sort of set the ground rules for
17 that conversation that we never heard about would have in the
18 trial at this point.

19 THE COURT: Right. We don't know if what he
20 discussed that day has to do with he discussed here. His
21 attention wasn't directed to that day. I'm not sure how it
22 bears on these proceedings.

23 MR. BUSCHEL: He was given one for every, every
24 interview he had, right?

25 MR. KRAVIS: He wasn't asked about any of them.

1 MR. BUSCHEL: That's true, he wasn't asked, but he
2 was given one every single day, if it's a matter of, well, what
3 day are we talking about?

4 So the day he was interviewed about Mr. Stone, he had a
5 proffer agreement.

6 THE COURT: It doesn't offer immunity. It says: If
7 we prosecute you, what you say during this meeting could be
8 used against you and in our case in chief except," and then it
9 goes through with all the exceptions.

10 You didn't cross-examine him about this. You didn't
11 elicit that -- what it means, how it bears on anything.
12 There's certainly no evidence that he was sitting here today
13 telling the jury something with some promise. I don't
14 understand how it bears on the credibility of his testimony
15 before the Court.

16 MR. BUSCHEL: That before he would agree to -- or he
17 was asked: Were you subpoenaed?

18 Yes, I'm not here voluntarily.

19 He made a point of that.

20 Then: Well, the only time I would ever speak to the
21 government unless I would have some type of protection, and
22 this is the protection that I was given.

23 THE COURT: You didn't ask him that question.

24 MR. BUSCHEL: I didn't, but this letter speaks for
25 itself.

1 THE COURT: I don't think it does. I think it's --
2 you know, it's from a lawyer to a lawyer. It's related to an
3 upcoming meeting on January 18, and grand jury testimony on
4 January 18. It doesn't promise him anything, and you certainly
5 didn't ask him about it.

6 Is the grand jury testimony on January 18, the grand jury
7 testimony that the government is moving in evidence?

8 MR. KRAVIS: Yes, Your Honor.

9 THE COURT: All right. Well, it seems to bear on
10 that, but I think -- I just don't think you can say things
11 like: Well, he got one of these every time he testified, he
12 wouldn't testify without one.

13 You can't really draw too many inferences from it because
14 you didn't ask him anything about it. I mean, I think if they
15 have put his grand jury testimony in evidence, then what he
16 said on January 18, this may bear on that, that he knew that
17 when he testified before the grand jury nothing he said could
18 be used against him that day, although they could prosecute him
19 for false statements or obstruction of justice, and they -- but
20 they did not agree not to prosecute him.

21 So I just think you have to be very, very careful how you
22 refer to this, because there's nothing in evidence except it,
23 and it doesn't say what you have described it as, the first
24 couple of go-rounds.

25 MR. BUSCHEL: Okay, we'll be careful.

1 THE COURT: All right.

2 And then --

3 MR. BUSCHEL: 160.

4 THE COURT: 160 was not excluded.

5 MR. BUSCHEL: 162.

6 THE COURT: No, you can introduce that.

7 MR. BUSCHEL: 163.

8 THE COURT: Okay.

9 MR. BUSCHEL: 167.

10 THE COURT: Okay.

11 MR. BUSCHEL: 168.

12 THE COURT: Okay.

13 MR. BUSCHEL: 169.

14 THE COURT: Okay.

15 MR. BUSCHEL: 170.

16 THE COURT: That was excluded.

17 MR. BUSCHEL: Okay.

18 171.

19 THE COURT: Okay. The other three don't matter. She
20 didn't testify or he didn't testify.

21 MR. BUSCHEL: She did not.

22 175.

23 THE COURT: Okay.

24 176 has been excluded.

25 MR. BUSCHEL: Agreed.

1 177.

2 THE COURT: Is only pages 1 through 139, not the two
3 appendices.

4 MR. BUSCHEL: And 178.

5 THE COURT: My order was very specific about, I'll
6 let some of it in but not other portions, and so it needs to be
7 redacted in accordance with the order.

8 MR. BUSCHEL: Okay.

9 THE COURT: So prior to these documents going back to
10 the jury room, the parties are going need to sit down and make
11 sure that what Mr. Haley has that he's going to upload into
12 jurors is consistent with what we just said.

13 MR. BUSCHEL: Very good.

14 And then I will move to publish Clip Number 1, which is
15 Exhibit Number 179.

16 THE COURT: Okay.

17 MR. BUSCHEL: When that finishes, I will move to
18 publish Exhibit 180, Clip 2.

19 THE COURT: Okay. All right.

20 All right. Let's bring in the jury.

21 THE DEPUTY CLERK: 175, page 8?

22 THE COURT: 175 is okay.

23 THE DEPUTY CLERK: Thank you.

24 MR. BUSCHEL: Should I remain here?

25 THE COURT: Yes.

1 MR. BUSCHEL: Once I start, I'm going to sit down.
2 Is that okay? Do I have to stand when I'm playing the portions
3 of the --

4 THE COURT: No.

5 MR. BUSCHEL: Okay.

6 THE COURT: As long as no one else has to stand.

7 MR. BUSCHEL: Just checking the Court's rules.

8 THE COURT: I don't think I've ever made anybody
9 stand for an hour that they didn't want to stand for an hour.

10 MR. BUSCHEL: Okay, very well.

11 (Pause.)

12 (Jury present.)

13 THE COURT: All right, our jurors have all returned.

14 I take it no one has been discussing the case with you and
15 you haven't been discussing it. It's now the defendant's
16 opportunity to introduce any evidence that he chooses to
17 introduce.

18 Go ahead.

19 MR. BUSCHEL: May it please the Court.

20 Good afternoon, ladies and gentlemen.

21 Mr. Stone admits the following evidence:

22 Government's Exhibits 8, 11, and 12; Defendant's Exhibit 45;
23 47; 50; 51; 53; 54; 55; 56; 58; 59; 60; 61; 62; 66; 68; 69; 72;
24 73; 74; 75; 76, as redacted; 79; 80; 82; 88; 90; 91; 92; 93;
25 94; 95; 97; 106; 107; 108; 109; 110; 113; 119; 122; 123; 124;

1 126; 128; 131; 133; 134; 136; 137; 139; 140; 141; 143; 145;
2 151; 157; 158; 159; 160; 162; 163; 167; 168; 169; 171; 175;
3 177, pages 1 through 139; Exhibit 178, redacted as required.

4 And now we will move into evidence Exhibit 179 and ask
5 that it be published to the jury.

6 THE COURT: All right. Before we get to 179, are you
7 asking to publish the other exhibits to the jury at this time?

8 MR. BUSCHEL: No objection.

9 THE COURT: Members of the jury, these exhibits that
10 have been numbered for you will be admitted in evidence, and
11 you will be able to consider them in connection with reaching
12 your verdict. You will have copies of all of the exhibits at
13 the time you retire to deliberate.

14 So now are there exhibits that you do wish to publish?

15 MR. BUSCHEL: Yes, Judge.

16 THE COURT: Okay.

17 MR. BUSCHEL: 179.

18 THE COURT: Can you just say what 179 is.

19 MR. BUSCHEL: Yes. It is a portion of the House
20 Permanent Subcommittee on Intelligence where Mr. Stone
21 testifies in a question-and-answer format in Congress, and
22 we're playing a portion of that exhibit.

23 THE COURT: All right. You can proceed.

24 (Audio played 2:25 - 2:32 p.m.)

25 MR. BUSCHEL: Mr. Stone would move Exhibit 180 into

1 evidence and ask the Court allow us to publish it to the jury.

2 THE COURT: All right.

3 (Audio played 2:35 - 3:23)

4 MR. BUSCHEL: Mr. Stone rests.

5 THE COURT: All right. Does the government intend to
6 introduce any rebuttal evidence?

7 MR. KRAVIS: We do not, thank you, Your Honor.

8 THE COURT: All right. So you rest as well.

9 MR. KRAVIS: Yes, Your Honor.

10 THE COURT: Okay. You've now heard all of the
11 evidence that's going to be introduced in the case, but the
12 case has yet to be submitted to you. There's still a few more
13 steps that need to take place.

14 The parties will have an opportunity to argue to you
15 whether the government has proved the allegations beyond a
16 reasonable doubt. What the lawyers say is not evidence. It's
17 just intended to help you understand the evidence, but they
18 have the opportunity to give you their arguments, and they're
19 going to do that tomorrow.

20 You're also going to hear from me what the legal rules are
21 that you have to apply to your consideration of the evidence,
22 and you're going to hear that information tomorrow.

23 In order to ensure that we, as a group, have done
24 everything we need to do to make sure those instructions are
25 the instructions that you should in fact hear, we need to

1 gather outside of your presence to complete that process. And
2 so, therefore, we are going to begin closing arguments tomorrow
3 at 1:00 p.m.

4 Mr. Haley will coordinate with you after you're released
5 about what time you need to be here so that you can have lunch
6 before the arguments start, but hopefully, unless we're delayed
7 in the morning, we'll be back in this courtroom for closing
8 arguments at 1:00 p.m. tomorrow, and I'm going to excuse you
9 early this afternoon for the rest of the day.

10 Please continue to abide by the admonitions you've been
11 abiding by since the beginning of this trial. Do not discuss
12 the testimony among yourselves or with anyone else, do not go
13 online and read about it, do not hear newspaper or radio or
14 internet accounts of it, and just keep your knowledge of this
15 case to what you've learned in the courtroom.

16 Have a pleasant evening. Mr. Haley will escort you out.

17 (Jury excused at 3:25 p.m.)

18 THE COURT: We will convene tomorrow morning at
19 10:00 a.m. to talk about jury instructions, and plan to stick
20 with the schedule that I've given the jury. As I said, if
21 there's further legal information that you want me to consider
22 with respect to whether more is needed with Count 1, special
23 interrogatories or a special unanimity instruction, I want to
24 hear from the parties. It will be helpful if you file it
25 sometime this evening so I can read it tomorrow morning, but

1 certainly no later than nine tomorrow morning or I won't have a
2 chance before we take the bench at ten.

3 Yes, Mr. Kravis.

4 MR. KRAVIS: I just wanted to ask if Your Honor was
5 planning to colloquy the defendant today or tomorrow?

6 THE COURT: With respect to his taking the stand?

7 MR. KRAVIS: Yes, Your Honor.

8 THE COURT: I am reluctant to inquire into
9 communications between the defendant and his lawyer, so without
10 telling me, Mr. Stone, what your lawyers have said to you, do
11 you understand that you have a constitutional right to testify
12 or not to testify in this trial?

13 THE DEFENDANT: Yes, Your Honor, I do.

14 THE COURT: And do you understand that if you don't
15 testify, that cannot be used against you in any way?

16 THE DEFENDANT: Yes, Your Honor, I do.

17 THE COURT: But you also have the right to testify.
18 You would have to be cross-examined, but you have the right to
19 testify and introduce your own testimony in your case if you
20 choose to do so.

21 Have you -- is it your decision that you're not going to
22 testify in this case?

23 THE DEFENDANT: Yes, Your Honor, it is.

24 THE COURT: Okay. And without telling me what you
25 were advised, have you discussed this matter fully with your

1 attorneys?

2 THE DEFENDANT: Yes, Your Honor, I have.

3 THE COURT: And so you are making a voluntary
4 decision to do this; is that correct?

5 THE DEFENDANT: Yes, Your Honor. I have.

6 THE COURT: All right. Is there anything else that
7 you think needs to be established for the record?

8 MR. KRAVIS: No, thank you, Your Honor.

9 THE COURT: All right. Everybody have a good
10 evening, and I'll see you tomorrow morning.

11 (Proceedings adjourned at 3:28 p.m.)

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CERTIFICATE

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the stenographic notes provided to me by the United States District Court, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

/s/ Crystal M. Pilgrim, RPR, FCRR

Date: November 13, 2019

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