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* * *

1 THE COURTROOM DEPUTY: Your Honor, good morning. We
2 have criminal case number 19-18 *United States of America v.*
3 *Roger J. Stone, Jr.* The defendant is present in the courtroom,
4 Your Honor.

5 Counsel, please approach the lectern, identify
6 yourself for the record.

7 MR. KRAVIS: Good morning, Your Honor. Jonathan
8 Kravis for the United States. With me at counsel table are
9 Michael Marando, Aaron Zelinsky, Adam Jed, and Amanda Rohde
10 from the D.C. U.S. Attorney's Office, and FBI Special Agent
11 Christopher Keefe.

12 THE COURT: All right. Good morning.

13 MR. BUSCHEL: Good morning. Robert Buschel, Chandler
14 Routman, Tara Champion, Grant Smith, and Bruce Rogow on behalf
15 of Roger Stone.

16 THE COURT: All right. Good morning.

17 Before I take up the matter of the transcript, I just
18 want to say that introduced to me every morning as we come and
19 go have been the members of the team who have had the
20 unfortunate responsibility of being the ones who press the
21 button and make the right exhibit appear on the right screen at
22 the right time. And once again, I think they're always the
23 unsung heroes of the trial, and so I want to say thank you for
24 your work supporting the efforts of your team. It was seamless
25 in both presentations.

1 And I realize there's a lot of stress on your
2 shoulders when you sit there and no one ever says thank you.
3 So I wanted to thank you on behalf of everyone in the room.

4 With respect to the transcript, I did try to go
5 through it with the defense proposed edits in mind. Some of
6 them made it, some of them didn't. But I understand that you
7 wanted to raise something about it before we make it an
8 exhibit.

9 MR. BUSCHEL: Just simply that we want to preserve
10 the issue and have the Court note our objection.

11 THE COURT: All right. So, to do that, do you want
12 your red line to be marked and docketed in some way?

13 MR. BUSCHEL: Yes.

14 THE COURT: I think we have to do that.

15 MR. BUSCHEL: Yes, please.

16 THE COURT: I think my goal was to take out the
17 characterizations of, you know, "confidently," "unhappy." I
18 thought anything that reflected on the subjective state of mind
19 of a participant was a judgment call, made by the transcriber
20 and not in the transcript. But something that said this
21 happened, this person turned their head, this person looked at
22 this or that, was descriptive and so that was where I tried to
23 draw the line. But I will note your objection.

24 And I'm not sure I still have a copy of the red line,
25 so if you can give it to Mr. Haley and it will be docketed as

1 your proposed edits to Government's Exhibit --

2 MR. BUSCHEL: We may not have a paper copy, but I
3 will file it via the CM-ECF.

4 THE COURT: Right. The PDF is probably better
5 anyway. So if you just docket it as Notice of Defendant's
6 Objections to Government Redacted Exhibit whatever, then it
7 will on the record.

8 MR. BUSCHEL: Very good. Thank you.

9 THE COURT: Thank you.

10 All right. With that, are we ready to bring the jury
11 in? I should have water.

12 (Pause.)

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

14 (Jurors enter the courtroom.)

15 THE COURT: Good morning. I note that all of you,
16 except for juror number 4, who was unable to be here yesterday,
17 are here. And since she was unable to be here yesterday, she's
18 not going to be able to continue to serve.

19 Can you give out the instructions to everybody?

20 I also just want to confirm that no one has discussed
21 this trial with you and you haven't had any information come to
22 your attention since we departed yesterday afternoon.

23 All right. Everyone is nodding at me.

24 This is the point in the trial where I'm going to
25 instruct you as to the law that applies to the case. And the

1 first thing I want to say is that my function here is to
2 conduct this trial in an orderly, fair, and efficient manner,
3 to rule on questions of law and to instruct you on the law that
4 applies in this case. It's your duty to accept the law as I
5 instruct you. You should consider all of the instructions as a
6 whole and you may not ignore or refuse to follow any of them.

7 I have just provided you with a copy of the
8 instructions. You each have been given a copy and you're free
9 to read along or not, depending on your personal preference and
10 what helps you listen and retain information better. During
11 your deliberations you may, if you want, refer to these
12 instructions, while you may refer to any particular portion of
13 the instructions, you are to consider the instructions as a
14 whole, and you may not follow some and ignore others. If you
15 have any questions about the instructions, you should feel free
16 to send me a note. I will ask you to return your copies of
17 these instructions to me when the verdict is rendered.

18 Your function as the jury is to determine what the
19 facts are in this case. You are the sole judges of the facts.
20 While it's my responsibility to decide what is admitted as
21 evidence during the trial, you alone decide what weight, if
22 any, to give to that evidence. You alone decide the
23 credibility or believability of the witnesses.

24 You should determine the facts without prejudice,
25 fear, sympathy, or favoritism. You should not be improperly

1 influenced by anyone's race, ethnic origin, or gender. Decide
2 the case solely from a fair consideration of the evidence. And
3 you may not take anything I may have said or done as indicating
4 how I think you should decide this case. If you believe that I
5 have expressed or indicated any such opinion, you should ignore
6 it. The verdict in this case is your sole and exclusive
7 responsibility.

8 If any reference by me or the attorneys to the
9 evidence is different from your own memory of the evidence, it
10 is your memory that should control during your deliberations.

11 During the trial, I have permitted those jurors who
12 wanted to do so to take notes. You may take your notebooks
13 with you to the jury room and use them during your
14 deliberations if you wish. As I told you at the beginning of
15 the trial though, your notes are only to be an aid to your
16 memory. They are not evidence in the case, and they should not
17 replace your own memory of the evidence. Those jurors who have
18 not taken notes should rely on their own memory of the
19 evidence. The notes are to be intended for the notetaker's own
20 personal use only.

21 During your deliberations you may consider only the
22 evidence properly admitted in this trial. The evidence
23 consists of the sworn testimony of the witnesses, the exhibits
24 that were admitted into evidence, and the facts stipulated to
25 by the parties.

1 During the trial you were told that the parties had
2 stipulated, that is, agreed to certain facts. You should
3 consider any stipulations of fact to be undisputed evidence.
4 And when you consider the evidence, you are permitted to draw,
5 from the facts that you find have been proven, such reasonable
6 inferences as you feel are justified in the light of your
7 experience. You should give any evidence such weight as in
8 your judgment it is fairly entitled to receive.

9 The government has presented some exhibits in the
10 form of charts and summaries. The purpose of showing you
11 charts and summaries in place of all of the underlying
12 documents they represent is to save time and avoid unnecessary
13 inconvenience. You should consider these charts and summaries
14 as you would any other evidence.

15 It's important to note, though, that the statements
16 and arguments of the lawyers are not evidence. They are only
17 intended to assist you in understanding the evidence.
18 Similarly, the questions asked by the lawyers are not evidence.

19 The indictment is merely the formal way of accusing a
20 person of a crime. You must not consider the indictment as
21 evidence of any kind. You may not consider it as any evidence
22 of Mr. Stone's guilt or draw any inference of guilt from it.

23 The lawyers in this case sometimes objected when the
24 other side asked a question, made an argument, or offered
25 evidence that the objecting lawyer believed was not proper.

1 You must not hold such objections against the lawyer who made
2 them or the party he represents. It's the lawyer's
3 responsibility to object to evidence that they believe is not
4 admissible.

5 If, during the course of the trial, I sustained an
6 objection to a lawyer's question, or there was a discussion at
7 the bench and the question was never answered, you should
8 ignore the question, and you must not speculate as to what the
9 answer would have been. If, after witness answered a question,
10 I ruled that the answer should be stricken, you should ignore
11 both the question and the answer and they should play no part
12 in your deliberations.

13 During the course of this trial a number of exhibits
14 were admitted in evidence. Sometimes only those parts of an
15 exhibit that are relevant to your deliberations were admitted.
16 Where this has occurred, I have required the irrelevant parts
17 of the statement to be blacked out or deleted. Thus, if you
18 examine the exhibits and you see what appears to be an
19 omission, you should consider only the portions that were
20 admitted. You should not guess as to what has been taken out.

21 There are two types of evidence from which you may
22 determine what the facts are in this case; direct evidence and
23 circumstantial evidence. When a witness, such as an
24 eyewitness, asserts actual knowledge of a fact, that witness's
25 testimony is direct examination. On the other hand, evidence

1 of facts and circumstances from which reasonable inferences may
2 be drawn is circumstantial evidence. Let me give you an
3 example. It's not the world's best example, but it's the one
4 I've got.

5 Assuming a person looked out the window and saw that
6 the snow was falling. If he later testified in court about
7 what he has seen, his testimony would be direct evidence that
8 snow was falling at the time he saw it happen. Assume,
9 however, that he looked out a window and saw no snow on the
10 ground and then went to sleep and saw snow on the ground after
11 he woke up. His testimony about what he had seen would be
12 circumstantial evidence that it had snowed while he was asleep.

13 The law says that both direct and circumstantial
14 evidence are acceptable as means of proving a fact. The law
15 does not favor one form of evidence over another. It's for you
16 to decide how much weight to give to any particular evidence,
17 whether it's direct or circumstantial. You are permitted to
18 give equal weight to both. Circumstantial evidence does not
19 require a greater degree of certainty than direct evidence. In
20 reaching a verdict in this case, you should consider all of the
21 evidence presented, both direct and circumstantial.

22 The exhibits in this case include letters, emails,
23 and texts, and portions of reports prepared by the House
24 committee after the hearing in question. Some of those
25 exhibits contain statements by the authors that something

1 happened or that something was in fact the case. You are
2 instructed that those records have been introduced simply for
3 the fact that they were written and that they said what they
4 said. The fact that the statements were made may be important
5 because how the recipient reacted to the statements is
6 important, or because they show the state of mind of the person
7 who wrote them.

8 For example, there are letters that say something to
9 the effect of, Mr. Stone told the truth during his testimony,
10 or texts that say he did not tell the truth. But those
11 statements alone do not prove whether he did or did not; that
12 decision is up to you based on your consideration of all of the
13 evidence.

14 Also, the findings set out in the House majority and
15 minority reports do not establish that their findings were in
16 fact corrupt; the reports -- correct -- I'm sorry -- do not
17 establish that their findings were in fact correct; the reports
18 have been introduced as evidence to show what issues were under
19 investigation and were or were not important to the committee
20 at the time.

21 In determining whether the government has proved the
22 charges against the defendant beyond a reasonable doubt, you
23 must consider the testimony of all the witnesses who have
24 testified.

25 You are the sole judges of the credibility of the

1 witnesses, you alone determine whether to believe any witness
2 and the extent to which a witness should be believed. Judging
3 a witness's credibility means evaluating whether the witness
4 has testified truthfully, and also whether the witness
5 accurately observed, recalled, and described the matters about
6 which the witness testified.

7 You may consider anything that in your judgment
8 affects the credibility of any witness. For example, you may
9 consider the demeanor and behavior of the witness on the
10 witness stand; the witness's manner of testifying; whether the
11 witness impresses you as a truthful person; whether the witness
12 impresses you as having an accurate memory and recollection;
13 whether the witness has any motive for not telling the truth;
14 whether the witness had a full opportunity to observe the
15 matters about which he or she testified; whether the witness
16 has any interest in the outcome of the case or friendship or
17 hostility towards other people concerned with the case.

18 In evaluating the accuracy of a witness's memory you
19 may consider the circumstances surrounding the event, including
20 any circumstances that would impair or improve the witness's
21 ability to remember the event, the time that elapsed between
22 the event and any later recollections of the event, and the
23 circumstances under which the witness was asked to recall
24 details of the event.

25 Inconsistencies or discrepancies in the testimony of

1 a witness or between the testimony of different witnesses may
2 or may not cause you to discredit such testimony. Two or more
3 persons witnessing an incident or transaction may see or hear
4 it differently. An innocent misrecollection, like a failure of
5 recollection, is not an uncommon experience. In weighing the
6 effect of the inconsistency or discrepancy, always consider
7 whether it pertains to a matter of important or unimportant
8 detail, and whether the inconsistency or discrepancy results
9 from innocent error or intentional falsehood.

10 You may consider the reasonableness or
11 unreasonableness, the probability or improbability of the
12 testimony of a witness in determining whether to accept it as
13 true and accurate. You may consider whether the witness has
14 been contradicted or supported by other evidence that you
15 credit.

16 If you believe that any witness has shown himself to
17 be biased or prejudiced, for or against either side in this
18 trial, you may consider and determine whether such bias or
19 prejudice has colored the testimony of the witness so as to
20 affect the desire and capability of that witness to tell the
21 truth. You should give the testimony of each witness such
22 weight as in your judgment it is fairly entitled to receive.

23 The law treats prior inconsistent statements made by
24 a witness differently depending on the nature of the statements
25 and the circumstances in which they were made. I'm now going

1 to explain to you how you should evaluate those statements.

2 You may have heard some evidence that a witness made
3 a statement on an earlier occasion and that this statement may
4 be inconsistent with his testimony here at trial. It's for you
5 to decide whether the witness made such a statement and whether
6 in fact it was inconsistent with the witness's testimony here.
7 If you find such an inconsistency, you may consider the earlier
8 statement in judging the credibility of the witness, but you
9 may not consider it as evidence that what he said in the
10 earlier statement was true.

11 You also have heard evidence that Steven Bannon made
12 an earlier statement under oath, subject to the penalty of
13 perjury before the grand jury and that this statement may be
14 inconsistent with his testimony here at trial. If you find
15 that the earlier statement is inconsistent with the witness's
16 testimony here in court, you may consider this inconsistency in
17 judging the credibility of the witness. You may also consider
18 the earlier statement as evidence that what was said in the
19 earlier statement was true.

20 A law enforcement officer's testimony should be
21 evaluate by you just as any other evidence in the case. In
22 evaluating the officer's credibility, you should use the same
23 guidelines that you apply to the testimony of any witness. In
24 no event should you give greater or lesser weight to the
25 testimony of any witness merely because she is a law

1 enforcement officer.

2 You have heard that Richard Gates entered into a plea
3 agreement with the government pursuant to which Mr. Gates
4 agreed to testify truthfully in this case and the government
5 agreed to dismiss some charges against him and bring
6 Mr. Gates's cooperation to the attention of his sentencing
7 judge and consider filing papers with his judge so that the
8 judge considers imposing a more lenient sentence than that
9 judge might otherwise impose.

10 The government is permitted to enter into this kind
11 of plea agreement. You, in turn, may accept the testimony of
12 such a witness and consider it, along with all the other
13 evidence, in determining whether the government has proved the
14 defendant's guilt beyond a reasonable doubt. You may consider
15 all the factor I just listed that would apply when considering
16 the credibility of any witness. A witness who's entered into a
17 plea agreement is under the same obligation to tell the truth
18 under penalty of perjury as any other witness.

19 However, you may consider whether a witness who has
20 entered into such agreement has an interest different from
21 other types of witnesses. You may consider whether the plea
22 agreement the witness entered into with the government has
23 motivated him to testify falsely against the defendant. The
24 testimony of a witness who's entered into a plea agreement
25 should be considered with caution. You should, therefore, give

1 the testimony as much weight as in your judgment it deserves.

2 Every defendant in a criminal case is presumed to be
3 innocent. This presumption of innocence remains with the
4 defendant throughout the trial unless and until the government
5 has proven he is guilty beyond a reasonable doubt. This burden
6 never shifts throughout the trial. The law does not require
7 Mr. Stone to prove his innocence or to produce any evidence at
8 all. If you find that the government has proven beyond a
9 reasonable doubt every element of a particular offense with
10 which Mr. Stone is charged, its your duty to find him guilty of
11 that offense.

12 On the other hand, if you find the government has
13 failed to provide -- prove any element of any particular
14 offense beyond a reasonable doubt, it is your duty to find
15 Mr. Stone not guilty of that offense.

16 Every defendant in a criminal case has an absolute
17 right not to testify. Mr. Stone has chosen -- Mr. Stone has
18 chosen to exercise this right. You must not hold this decision
19 against him, and it would be improper for you to speculate as
20 to the reason or reasons for his decision. You must not draw
21 any conclusions about the defendant's guilt from the fact that
22 he chose not to testify. It's the government's burden to prove
23 his guilt beyond a reasonable doubt.

24 As I just said, the government has the burden of
25 proving Mr. Stone guilty beyond a reasonable doubt. In civil

1 cases it's only necessary to prove that a fact is more likely
2 true than not, or, in some cases, that it's truth is highly
3 probable. In criminal cases like this one, the government's
4 proof must be more powerful than that. It must be beyond a
5 reasonable doubt.

6 Reasonable doubt, as the name implies, is a doubt
7 based on reason; a doubt for which you have a reason based on
8 the evidence or lack of evidence in the case. If, after
9 careful, honest and impartial consideration of the evidence,
10 you cannot say that you are firmly convinced of the defendant's
11 guilt, then you have a reasonable doubt.

12 Reasonable doubt is the kind of doubt that would
13 cause a reasonable person, after careful and thoughtful
14 reflection, to hesitate to act in the graver or more important
15 matters in life. However, it's not an imaginary doubt, nor a
16 doubt based on speculation or guesswork; it's a doubt based on
17 reason. The government is not required to prove guilt beyond
18 all doubt, or to a mathematical or scientific certainty. Its
19 burden is to prove guilt beyond a reasonable doubt.

20 Now I'm going to go into the elements of the offenses
21 in the case. The indictment charges that the offenses were
22 committed on or about certain dates. The proof need not
23 establish with certainty the exact date of the alleged offense.
24 It's sufficient if the evidence in the case establishes beyond
25 a reasonable doubt that the offense was committed on a date

1 reasonably near the date alleged.

2 Count 1 of the indictment charges that from in or
3 around May 2017 through at least December 2017, within the
4 District of Columbia and elsewhere, the defendant corruptly
5 influenced, obstructed, impeded, and endeavored to influence,
6 obstruct, and impede the due and proper exercise of the power
7 of inquiry under which an inquiry or investigation was being
8 undertaken by the United States House of Representatives or any
9 committee of the House of Representatives.

10 In order to establish that the defendant is guilty of
11 the charge in Count 1 in the indictment, the government must
12 prove each of the following elements beyond a reasonable doubt:

13 First, that from in or about May 2017 through at
14 least December 2017, there was an a inquiry or investigation
15 pending before the House -- before the United States House of
16 Representatives Permanent Select Committee on Intelligence
17 which people have been calling HPSCI in this trial.

18 Second, that the defendant knew that the inquiry or
19 investigation was being undertaken by the U.S. House of
20 Representatives or any committee of the House.

21 Third, that the defendant did corruptly endeavor to
22 influence, obstruct, or impede the due and proper exercise of
23 the power of inquiry under which the investigation or inquiry
24 was being undertaken by HPSCI.

25 So with respect to the first element, the first

1 element the government must prove beyond a reasonable doubt is
2 that on or about the date set forth in the indictment, an
3 inquiry or investigation was pending before HPSCI. In this
4 regard, you are instructed that the House Permanent Select
5 Committee on Intelligence is a committee of the U.S. House of
6 Representatives. The question for you with respect to this
7 element is to whether that inquiry was pending on or about
8 September 26, 2017.

9 The second element the government must prove beyond a
10 reasonable doubt is that the defendant knew that the inquiry or
11 investigation was in progress. In order to satisfy this
12 element, you need to only determine that the defendant knew at
13 or about the date charged that the committee was conducting an
14 investigation or inquiry.

15 In this regard, you may take into account all the
16 facts and circumstances surrounding the conduct with which the
17 defendant is charged in order to determine whether he knew or
18 had a reasonable basis for belief that a proceeding was
19 pending.

20 The final element the government must prove beyond a
21 reasonable doubt is that the defendant did corruptly endeavor
22 to influence, obstruct, or impede the due and proper exercise
23 of the power of inquiry under which the investigation or
24 inquiry was being undertaken by HPSCI.

25 The word "corruptly" means acting with an improper

1 purpose, personally or by influencing another, including making
2 a false or misleading statement. A statement is false if it
3 was untrue when it was made and the defendant knew it was
4 untrue at that time. A misleading statement is one that
5 intentionally omits information, thereby concealing a material
6 fact and creating a false impression.

7 The word "endeavor" means any effort or act, however
8 contrived, to try to obstruct or interfere with the proceeding.
9 The term "endeavor" is designed to reach all conduct that is
10 aimed at influencing, intimidating and impeding the
11 proceedings. It is the effort that is the alleged crime. The
12 government is not required to prove that the endeavor was
13 successful. Thus, it is sufficient to satisfy this element if
14 you find that the defendant made any effort or did any act for
15 the purpose of obstructing or impeding the proceeding.

16 The phrase "due and proper exercise of the power of
17 inquiry" means an inquiry within the investigative power of
18 HPSCI.

19 With respect to this count, Count 1, Roger Stone has
20 been charged with one count of obstructing a proceeding of
21 HPSCI. And you've heard evidence of more than one alleged
22 means of committing this offense: That Mr. Stone, one,
23 testified falsely and misleadingly at a HPSCI hearing in or
24 around September 2017; two, lied about the existence of
25 responsive records to HPSCI's request about documents; three,

1 submitted and caused to be submitted a letter to HPSCI falsely
2 and misleadingly describing communications with Randy Credico;
3 and four, attempted to have Randy Credico testify falsely
4 before HPSCI or to prevent him from testifying.

5 You may find Mr. Stone guilty on this count, Count 1,
6 if the government has proved beyond a reasonable doubt that
7 Mr. Stone utilized any of these alleged means. However, in
8 order to return a guilty verdict on this count, you must all
9 agree on at least one, and it must be the same one, even if you
10 are of different views on the others.

11 That's Count 1. Now I'm going to turn to Counts 2
12 through 6.

13 Counts 2 through 6 of the indictment all charge that
14 on or about September 26, 2017, within the District of Columbia
15 and elsewhere, in a matter within the jurisdiction of the
16 legislative branch of the government of the United States, the
17 defendant, knowingly and willfully, made or caused to be made
18 false, fictitious, and fraudulent statements and
19 representations.

20 Count 2 charges that the defendant testified falsely
21 that he did not have emails with third parties about the head
22 of WikiLeaks, and that he did not have any documents, emails,
23 or text messages that refer to the head of WikiLeaks.

24 Count 3 charges that the defendant testified falsely
25 that his August 2016 references to being in contact with the

1 head of WikiLeaks were references to communications with a
2 single go-between, mutual friend, and intermediary who the
3 defendant identified as Randy Credico.

4 Count 4 charges that the defendant testified falsely
5 that he did not ask the person he referred to as his
6 go-between, mutual friend, and intermediary to communicate
7 anything to the head of WikiLeaks and did not ask the
8 intermediary to do anything on the defendant's behalf.

9 Count 5 charges that the defendant testified falsely
10 that he and the person referred to as his go-between, mutual
11 friend, and intermediary did not communicate via text message
12 or email about WikiLeaks.

13 Count 6 charges that the defendant testified falsely
14 that he had never discussed his conversations with the person
15 he referred to as his go between, mutual friend, and
16 intermediary with anyone involved in the Trump campaign.

17 In order to prove the defendant guilty of the crime
18 charged in each of those counts, the government must prove
19 beyond a reasonable doubt: First, on or about September 26,
20 2017, the defendant made a statement or representation.

21 Second, that the statement or representation was
22 material.

23 Third, that the statement or representation was
24 false, fictitious or fraudulent.

25 Fourth, the false, fictitious or fraudulent statement

1 was made knowingly and willfully.

2 And fifth, the statement or representation was made
3 in a matter within the jurisdiction of the legislative branch
4 of the government of the United States.

5 The first element that the government must prove
6 beyond a reasonable doubt is that the defendant made a
7 statement or representation. In this regard, the government
8 need not prove that the defendant physically made or otherwise
9 personally prepared the statement in question. It's sufficient
10 if the defendant caused the statement charged in the indictment
11 to have been made. Under this statute, there's no distinction
12 between written and oral statements.

13 The second element the government must prove beyond a
14 reasonable doubt is that the defendant's statement or
15 representation was material. A fact is material if it had a
16 natural tendency to influence, or was capable of influencing,
17 either a decision or another function of HPSCI. In other
18 words, a statement is material if it was capable of influencing
19 the HPSCI investigation. However, proof of actual reliance on
20 the statement by the government is not required. Accordingly,
21 the government is not required to prove that the statement
22 actually influenced a decision or other function of HPSCI.

23 The third element that the government must prove in
24 these counts beyond a reasonable doubt is that the statement or
25 representation was false, fictitious, or fraudulent. A

1 statement or representation is false or fictitious if it was
2 untrue when made, and known at the time to be untrue by the
3 person making it or causing it to be made. A statement or
4 representation is fraudulent if it was untrue when made and was
5 made or caused to be made with the intent to deceive the
6 congressional committee to which it was made. It is not
7 necessary for the government to prove that the committee was in
8 fact misled.

9 The fourth element that the government must prove
10 beyond a reasonable doubt with respect to each of these Counts
11 2 through 6 is that the defendant acted knowingly and
12 willfully. An act is done knowingly if it's done purposely and
13 voluntarily, as opposed to mistakenly or accidentally. An act
14 is done willfully if it is done with an intention to do
15 something the law forbids, that is, with a bad purpose to
16 disobey the law.

17 As I've told you, the fifth element with respect to
18 each of these counts, 2 through 6, is that the statement or
19 representation be made with regard to a matter within the
20 jurisdiction of the legislative branch of the government of the
21 United States. I charge you that the United States House of
22 Representatives is part of the legislative branch of the
23 United States. To be within the jurisdiction of the
24 legislative branch of the government of the United States means
25 that the statement must concern an authorized function of that

1 branch.

2 Now I'm going to turn to Count 7. Tampering with a
3 witness. Count 7 in the indictment charges that between in or
4 around September 2017 and in or around January 2019, within the
5 District of Columbia and elsewhere, the defendant knowingly and
6 intentionally corruptly persuaded and attempted to corruptly
7 persuade another person, namely, Randy Credico, with the intent
8 to influence, delay, and prevent Mr. Credico's testimony in an
9 official proceeding.

10 In order to prove the defendant guilty of tampering
11 with a witness by intimidation or corrupt persuasion, the
12 government must prove each of the following elements beyond a
13 reasonable doubt:

14 First, that between in or around September 2017 and
15 in or around January 2019, the defendant corruptly persuaded
16 Randy Credico, or attempted to do so. And second, that the
17 defendant acted knowingly and with the intent to influence the
18 testimony of Randy Credico in an official proceeding.

19 The first element the government must prove beyond a
20 reasonable doubt is that the defendant knowingly corruptly
21 persuaded Randy Credico, or attempted to do so. To corruptly
22 persuade means to act knowingly, with a wrongful or evil
23 purpose to convince or induce another person to engage in
24 certain conduct.

25 The second element the government must prove beyond a

1 reasonable doubt is that the defendant acted knowingly and with
2 the intent to influence or prevent the testimony of Randy
3 Credico in an official federal proceeding.

4 To act with the intent to influence the testimony of
5 a witness means to act for the purpose of getting that witness
6 to change or color or shade his or her testimony in some way.
7 It is not necessary for the government to prove that the
8 witness's testimony was in fact changed in any way. An
9 official proceeding means a proceeding before Congress. You
10 are instructed that the hearing on September 26, 2017 before
11 the House Permanent Select Committee on Intelligence
12 investigating Russian interference in the 2016 U.S.
13 presidential election is an official proceeding.

14 The government must prove beyond a reasonable doubt
15 that the defendant acted intentionally to persuade Randy
16 Credico with intent to influence, delay, and prevent
17 Mr. Credico's testimony in an official proceeding. Before you
18 can find that the defendant acted intentionally, you must be
19 satisfied beyond a reasonable doubt that the defendant acted
20 deliberately and purposefully, rather than the product of a
21 mistake or accident.

22 In a number of instances in these counts, I have
23 talked about the defendant's knowledge or intent. Someone's
24 intent or knowledge ordinarily cannot be proved directly
25 because there's no way of knowing what a person is actually

1 thinking, but you may infer someone's intent or knowledge from
2 the surrounding circumstances. You may consider any statement
3 made or acts done or committed by Mr. Stone, and all other
4 facts and circumstances received in evidence, which indicate
5 his intent or knowledge.

6 You may infer, but aren't required to infer, that a
7 person intends the natural and probable consequences of acts he
8 intentionally did or intentionally did not do. It is entirely
9 up to you, however, to decide what facts to find from the
10 evidence received during this trial. You should consider all
11 the circumstances in evidence that you think are relevant in
12 determining whether government as proved beyond a reasonable
13 doubt that Mr. Stone acted with the necessary state of mind.

14 The question of possible punishment of the defendant
15 is of no concern to the jury and should not, in any sense,
16 enter into or influence your deliberations. The duty of
17 imposing sentence rests exclusively upon the Court. Your
18 function is to weigh the evidence in the case and to determine
19 whether or not the defendant is guilty beyond a reasonable
20 doubt, solely on the basis of such evidence. Under your oath
21 as jurors, you cannot allow a consideration of the punishment
22 that may be imposed upon the defendant, if he is convicted, to
23 influence your verdict, in any way, or, in any sense, enter
24 into your deliberations.

25 A verdict must represent the considered judgment of

1 each juror, and in order to return a verdict, each juror must
2 agree on the verdict. In other words, your verdicts must be
3 unanimous.

4 Each count of the indictment charges a separate
5 offense. You should consider each offense, and the evidence
6 which applies to it, separately, and you should return separate
7 verdicts as to each count. The fact that you may find the
8 defendant guilty or not guilty on any one count of the
9 indictment should not influence your verdict with respect to
10 any other count of the indictment.

11 You will be provided with a verdict form for use when
12 you've concluded your deliberations. The form is not evidence
13 in the case, and nothing in it should be taken to suggest or
14 convey any opinion by me as to what the verdict should be.
15 Nothing in the form replaces the instructions of law I've
16 already given you, and nothing in it replaces or modifies the
17 instructions about the elements which the government must prove
18 beyond a reasonable doubt. The form is meant only to assist
19 you in recording your verdict.

20 I will be sending into the jury room with you the
21 exhibits that have been admitted into evidence. You may
22 examine any or all of them as you consider your verdicts.
23 Please keep in mind that exhibits that were only marked for
24 identification but were not admitted into evidence will not be
25 given to you to examine or consider in reaching your verdict.

1 When you return to the jury room, you should first
2 select a foreperson to preside over your deliberations and be
3 your spokesperson here in court. There are no specific rules
4 about how you should go about selecting a foreperson; that's up
5 to you. However, as you go about the task, be mindful of your
6 mission, to reach a fair and just verdict based on the
7 evidence. Consider selecting a foreperson who will be able to
8 facilitate your discussions, who can help you organize the
9 evidence, who will encourage civility and mutual respect among
10 all of you, and who will invite each juror to speak up
11 regarding his or her views about the evidence, and who will
12 promote a full and fair consideration of that evidence.

13 I would like to remind you that, in some cases, there
14 may be reports in the newspaper or on the radio, internet, or
15 television concerning this case. As I've instructed you
16 before, if there should be such media coverage in this case you
17 may be tempted to read, listen to, or watch it. You must not
18 read, listen to, or watch such reports because you must decide
19 this case solely on the evidence presented in this courtroom.
20 If any publicity about the trial inadvertently comes to your
21 attention from this point forward, please do not discuss it
22 with any other jurors or with anyone else. Just let me or
23 Mr. Haley know as soon after it happens as you can, and I will
24 briefly discuss it with you then.

25 Also, as you retire to the jury room to deliberate, I

1 want to remind you of an instruction that I gave you at the
2 beginning of the trial and every single day during the trial.
3 During the deliberations you may not communicate with anyone
4 not on the jury about this case. This includes any electronic
5 communication such as an email or text or any blogging about
6 the case. In addition, you may not conduct any independent
7 investigation during deliberations. This means you may not
8 conduct any research in person or electronically via the
9 internet or in any other way.

10 If it becomes necessary during your deliberations to
11 communicate with me, you may send a note by the clerk or by the
12 marshal who will be outside the jury room, signed by your
13 foreperson or by one or more members of the jury. No member of
14 the jury should try to communicate with me except by such a
15 signed note, and I will never communicate with any member of
16 the jury on any matter concerning the merits of this case,
17 except in writing or orally here in open court.

18 Bear in mind also that you are never, under any
19 circumstances, to reveal to any person -- not the clerk, the
20 marshal or me -- how jurors are voting until after you've
21 reached a unanimous verdict. This means that you should never
22 tell me, in writing or in open court, how the jury is divided
23 on any matter; for example, we are six to six or seven to five
24 or eleven to one, or in any other fashion, whether the vote is
25 for conviction or acquittal or on any other issue in the case.

1 The last thing I must do before you begin your
2 deliberations is to excuse the alternate jurors. As I told you
3 before, the selection of the alternates was an entirely random
4 process; it's nothing personal. We selected two seats to be
5 the alternate seats before any of you entered the courtroom,
6 and we have already lost one juror who is not well. Since the
7 rest of you have remained healthy and attentive, I can now
8 excuse the juror who is seated in seat number 14.

9 Before you leave, I'm going to ask you to tear out a
10 page from your notebook and write down your name and your
11 daytime phone number and hand it to Mr. Haley. I do this
12 because it's possible, although unlikely, that we might have to
13 summon you back to rejoin the jury in case something happens to
14 a regular juror during the deliberations.

15 Since that possibility exists, I'm also going to
16 instruct you to continue not to discuss the case with anyone
17 until we call you. My earlier instruction on use of the
18 internet still applies; please don't research this case or
19 communicate with anyone about it on the internet. In all
20 likelihood we'll be calling you to tell you there's been a
21 verdict and you're now free to discuss the case. However,
22 there is still the small chance that we will need to bring you
23 back to participate with the jury.

24 I want to thank you very much for your service,
25 though, and for your close attention you've paid throughout the

1 trial, and ask you -- I believe you need to report back to the
2 jury office to turn in your badge when you leave the building,
3 after you've given Mr. Haley your information.

4 So, Mr. Haley, you can escort the juror out and then
5 we'll let the jurors retire to the jury room.

6 Can I have counsel at the bench.

7 (Bench discussion.)

8 THE COURT: Any objections to the instructions as
9 they were read?

10 MR. KRAVIS: No objection.

11 MR. BUSCHEL: (Shakes head.)

12 THE COURT: All right. I'm going to excuse the jury.
13 You all need to give Mr. Haley the information about where he
14 can reach you. You don't have to sit in the courtroom, but you
15 need to be, you know, 20 minutes away, something like that.
16 They will just receive lunch at 12:30. I don't intend to bring
17 them back in the courtroom to do that. And so then one
18 question is if I excuse them at the end of the day, if they
19 haven't reached a verdict, do you want me to just let Mr. Haley
20 excuse them? Or do you want me to bring them back in the
21 courtroom, you know, with everyone present and instruct them,
22 give them the instructions?

23 MR. KRAVIS: We can excuse them at the end of the
24 day. And if we're not coming back at the end of the day, we
25 can have a discussion with Mr. Haley, just that the jury has

1 been excused.

2 THE COURT: What I would do, if I don't hear anything
3 from them, would be to excuse them at five. So, the question
4 is, do you all want to be here at five to do that?

5 MR. BUSCHEL: No.

6 THE COURT: Okay. All right. So, if there's no
7 communications from us, then we will let you know that that has
8 in fact been done, so that you can all -- then you'll actually
9 know they're gone. But otherwise, that's what we'll do. Okay.
10 Thank you.

11 (Open court.)

12 THE COURT: We're just waiting for Mr. Haley and then
13 this time when you leave the courtroom, you may take your
14 notebooks with you, you may take the instructions I just gave
15 you with you. He will be the one who brings you the exhibits
16 and they'll be on a -- you'll be able to watch them on a
17 screen.

18 All right. Can you take the jury out.

19 THE COURTROOM DEPUTY: Just leave the notebooks and
20 jury instructions and everything on your chair, I will bring
21 them --

22 THE COURT: I just told them they could take them.
23 He's in charge, do what he said.

24 THE COURT: I will bring them to you.

25 (Jurors leave the courtroom.)

1 THE COURT: All right. The parties are excused and
2 we'll be adjourned unless and until we hear something from the
3 jury.

4 (Recess.)

5 THE COURTROOM DEPUTY: Your Honor, recalling criminal
6 case number 19-18, the *United States of America v. Roger Stone*.
7 The defendant is present and in the courtroom.

8 THE COURT: All right. We've received a note from
9 the jury dated 2:07 p.m. today. Has -- have the parties had an
10 opportunity to see it?

11 MR. ZELINSKY: We have, Your Honor.

12 MR. BUSCHEL: Yes.

13 THE COURT: Okay. For the record, the note asks the
14 question: Is the October 13 letter, Exhibit 13, considered to
15 be "testimony"? It's sign by the foreperson.

16 I've spent some time looking at the jury instructions
17 and the verdict form and I think I understand what this
18 question pertains to. And I have some thoughts about what we
19 should do about it that I'll put out on the table and then I
20 want to hear from both of you.

21 The indictment, in Count 1, as we explained in the
22 jury instructions, alleges several means of affecting the
23 inquiry, including, one, testifying falsely, as we said in our
24 unanimity instruction related to Count 1. Second, lying about
25 the existence of responsive records. Three, causing to be

1 submitted a letter. And then, fourth, the attempts with
2 respect to Mr. Credico. And we have also instructed the jury
3 that a statement of the defendant includes statements that he
4 caused to have made.

5 Counts 2 through 6, though, allege false statements
6 on or about September 26, 2017, that he knowingly and willfully
7 made, or caused to be made, false or fictitious statements on
8 that day. And then with respect to each of them, we said
9 testified falsely, testified falsely, testified falsely, and
10 that language is repeated in the verdict form.

11 So, I think for purposes of what was meant by the
12 indictment, the letter is a statement or representation by the
13 defendant. But it is not alleged to be one of the false
14 statements made on or about September 26th, is my
15 understanding. And I think we could tell them that.

16 Where the confusion, I think, possibly comes in, is
17 in the verdict form, Count 3, false statements says, As to
18 Count 3 of the indictment, making a false statement, in
19 violation of 18 U.S. Code § 1001(a)(2) and (2), that is, that
20 Stone -- they use the word "testified falsely," that his August
21 2016 references to being in contact with Julian Assange were
22 references to communication with a single go-between, mutual
23 friend, and intermediary, comma, who Stone identified as Randy
24 Credico, comma, we find. And there probably should have been
25 the word "later" inserted before "identified" because he didn't

1 testify that it was Randy Credico. He said it in the letter
2 that his lawyer submitted.

3 And, so, I think they're confused about whether that
4 letter, given the reference to Credico in the verdict form, but
5 not the indictment or the instructions, whether they're
6 supposed to consider that or not, or whether it's the
7 identification of him that is the alleged false statement or
8 not.

9 So, I think they need to know, no, it's not an
10 instance that is alleged that he, quote, testified falsely on
11 September 26th. It is a statement or representation of the
12 defendant that can be considered in connection with Count 1.
13 But then the question is, do we say anything further about the
14 way the count is described in the verdict form?

15 So, let me start with the government.

16 MR. KRAVIS: Can I have --

17 THE COURT: Do you want to talk among yourselves,
18 first.

19 (Pause.)

20 THE COURT: Mr. Kravis, let me just start, before you
21 tell me what you think, by asking you if I'm correct, that the
22 indictment is Counts 2 through 6 are things he said, said under
23 oath at the hearing on or about September 26, that that's what
24 you're allege, correct?

25 MR. KRAVIS: Correct.

1 THE COURT: The letter is not one of the counts in 2
2 through 6.

3 MR. KRAVIS: Correct. Correct. However, the Count 3
4 of the indictment alleges that Mr. Stone made a false statement
5 when he -- and this is the language that also appears in the
6 verdict form -- testified falsely that his August 2016
7 references to being in contact with Julian Assange were
8 references to communications with a single go-between, mutual
9 friend and intermediary who Stone identified as Person 2.

10 I think what this language in the indictment alleges
11 that at the -- and I think the evidence presented to the jury
12 was sufficient for the jury to conclude, that at the September
13 26, 2017 hearing, Mr. Stone is telling the committee -- is
14 telling the committee, in effect, that this person is --
15 falsely telling them that this intermediary is Randy Credico,
16 even though he does not use the name Randy Credico at the
17 hearing because he refers to a journalist, someone I've known
18 for a long time, someone who has interviewed Assange.

19 THE COURT: Somebody whose name I'll find out if I
20 can give you later --

21 MR. KRAVIS: Exactly. So I agree with the Court's
22 formulation of the first two points that the Court proposed to
23 respond to the jury. But I'm not sure that the language that
24 the Court proposed in the third part there is necessary,
25 because I believe that there is sufficient evidence for the

1 jury to conclude that the defendant made the false statement
2 that is described in the indictment and identically on the
3 verdict form, even setting aside the letter.

4 THE COURT: All right. So you're suggesting that we
5 should tell them that if he caused it to be made, it's a
6 statement or representation of the defendant, but it's not
7 testimony for purposes of Counts 2 through 6?

8 MR. KRAVIS: It is a statement for purposes of Count
9 1, it is not testimony for purposes of Counts 2 through 6.

10 THE COURT: And just stop.

11 MR. KRAVIS: And leave it, leave it there.

12 THE COURT: All right. What is the defendant's point
13 of view?

14 MR. BUSCHEL: Good afternoon. The answer to the
15 question is no. And that is all. I think this explanation,
16 what the government is saying and, respectfully, what the Court
17 is saying, we are -- they are -- we're reading too much into
18 the question; what do they need? What do they mean? How does
19 it apply to different counts? This is not an appropriate
20 analysis of the question.

21 The question is: Is it considered testimony? The
22 answer is no. See if they have another question. But the
23 answer is no. And that is all. And to do more and offer more
24 is -- would be error.

25 THE COURT: All right. Mr. Kravis, I think that has

1 some force. That is the answer. I am trying to solve their
2 problem. They haven't told me what their problem is. So what
3 do you think?

4 MR. KRAVIS: I think that the -- the guidance from
5 the Court of Appeals on this general exercise is that the Court
6 should be as responsive to the jury's question as possible.
7 And I think that the Court's original formulation -- first of
8 all, I don't hear the defense saying that the Court's proposed
9 instruction is wrong, that it is either, sort of, factually
10 incorrect or that it incorrectly describes the allegations in
11 the indictment or the jury instructions or the verdict form.

12 And I think that given that the defense doesn't
13 appear to have a substantive objection -- for lack of a better
14 way to put this -- to the instruction that the Court proposed,
15 I think the Court's proposed response is more responsive to the
16 jury and gives the jury more information about this issue. And
17 I think that's the better course.

18 THE COURT: Well, I think saying that it is a
19 statement or representation by the defendant does direct their
20 attention to its possible use as evidence in Count 1, which
21 isn't up to me and, indeed, is done very clearly in the
22 instruction about Count 1 and the four means.

23 So, if they agree that it was false, they've been
24 told that that could be a means for Count 1. I'm concerned
25 they're considering, if they believe it's false, whether it

1 could be evidence against him in connection with all the counts
2 that use the word "testify." And so I think by just saying no,
3 that might solve the problem, or it might not give them enough
4 information.

5 So, I was trying to be fair to both sides by saying
6 what it wasn't. Although, I don't think what the defense is
7 proposing is objectionable.

8 So do you -- you still don't think I should talk --
9 say it's not in Counts 2 through 6?

10 MR. BUSCHEL: Correct, if we're answering the
11 question. And certainly, we're not saying that's your last
12 question. I think this analysis of -- is speculating what the
13 jury might need, and that's not appropriate. The answer is no.

14 THE COURT: Mr. Kravis, do you want to say anything
15 further?

16 MR. KRAVIS: I just want to add as final point -- or,
17 not as a final point, next point -- that the Court's proposed
18 response to the jury does not provide, I don't think, any
19 additional information beyond what has already been provided in
20 the jury instructions and in the verdict form itself. So, it's
21 not like the Court is now, you know, creating a bunch of new
22 information to provide to the jury. The Court is just
23 directing the jury to information that it has already been
24 provided about the possible use of this particular piece of
25 evidence. And given that this particular piece of evidence is

1 specifically referenced in the note, I think that is a helpful
2 and appropriate response to the jury, just directing them to
3 information that they have already received about this
4 document.

5 THE COURT: I agree that there is nothing untoward in
6 what I was going to say and it is entirely consistent with what
7 I've said before. But given the fact that they have, in
8 writing, everything I said before, with respect to every count,
9 and they are hung up on the meaning of one word, which only
10 appears in certain counts, and they have asked me this
11 question, I -- I'm going to adopt the defendant's suggestion
12 and answer the question. And if they need more clarification,
13 they know where to find me.

14 And I think everyone is making their arguments in
15 good faith, and they're good arguments and they're sound
16 arguments. But I think the safer course, particularly given
17 the fact that they can sit there right now and look and find
18 the answer to, Well, is testimony an element of Count 1? Or is
19 it just an element of Count 2? Everything is clear, which is
20 why I zeroed in on where this must coming from.

21 But I don't think I do need to speculate where it
22 must be coming from, so I'm going to -- they may find this
23 frustrating, they may find it all they ask for. But I'm not
24 going to bring them back in here to say that, I'm just going to
25 write, "The answer is yes," and sign it.

1 MR. BUSCHEL: No. No.

2 MS. CAMPION: No.

3 THE COURT: "The answer is no," I'm sorry. All
4 right. It's a long day, long week. Is it considered to be
5 testimony? "The answer is no." Or I could just say it is not
6 testimony and use the same formulation they have with the
7 quotes. Whatever -- all right. No.

8 MR. BUSCHEL: No.

9 THE COURT: Okay. The answer, "The answer is no."
10 That's what I'm going to say. I'll sign it, I'll put the time
11 and we'll see what happens next.

12 I'll let both sides see the written note before I
13 send it back to the jury room.

14 (Pause.)

15 THE COURT: Both sides have seen it?

16 THE COURTROOM DEPUTY: Both sides.

17 THE COURT: Let's just give it to them.

18 I think you all gathered pretty quickly after we got
19 the note, so wherever you are keeping yourselves seems to be an
20 appropriate place to be.

21 (Pause.)

22 THE COURTROOM DEPUTY: They have it.

23 (Recess.)

24 THE COURTROOM DEPUTY: Your Honor, recalling criminal
25 case number 19-18, *United States of America v. Roger Stone*.

1 Mr. Stone is present.

2 THE COURT: All right. Have both the parties had an
3 opportunity to look at the note?

4 MR. KRAVIS: Yes, Your Honor.

5 MR. BUSCHEL: Yes.

6 THE COURT: Okay. For the record, I received a note
7 signed by the foreperson, with today's date, time, 3:23 p.m.,
8 that says: For Count 3, is the question of false testimony
9 about there being a quote, single, close quote, point of
10 contact, or that Roger Stone identified the go-between as Randy
11 Credico?

12 So, I think the good news about this is that we
13 correctly identified the precise source of their confusion in
14 our last conversation, and Mr. Buschel correctly predicted that
15 if my answer was insufficient to solve their problem, they
16 would provide me with a more pointed question.

17 So, now the question is, how do we answer this
18 question? And my instincts tell me that I can't answer the
19 question by doing anything other than reading the exact
20 language of the indictment of Count 3.

21 But I'm happy to hear what the parties have to say
22 about it.

23 MR. KRAVIS: Yeah, we agree with that. The language
24 that appears in Count 3 of the indictment also appears in the
25 jury instruction as setting forth the terms. I think the Court

1 should direct the jury to that language in -- they don't have
2 the indictment, so in the instruction, and then instruct them
3 that it is for them to decide whether the statement is false.

4 THE COURT: I mean, there was a point where I had
5 kind of pressed the government to specify, chapter and verse in
6 the transcript, of what you wanted them to find was false. And
7 I think that might have been helpful in this circumstance. I
8 think you may not have done it because the indictment was
9 referring to more than one statement with respect to each false
10 set -- piece of -- category of information, I believe, is what
11 you called it.

12 There's no question that in your closing and that in
13 your PowerPoint you directed them to the questions and answers
14 that you specifically believed were false. But, it's not in
15 the jury instructions, it's not in the verdict form, and I
16 don't think I can do that or should do that. So, I think
17 that's all I can do.

18 What's the defendant's point of view?

19 MR. BUSCHEL: The Court should write back to the jury
20 that you must use the jury instructions to answer their own
21 question on this matter. And that is all.

22 THE COURT: I don't think that's enough. I think
23 they've asked me a specific question to which that is not
24 responsive. I think they'll find, reading them, Count 3, to be
25 sufficiently frustrating that if we want to succeed in

1 frustrating them, we will. But that, to me, is not the same as
2 your prior suggestion, because I don't think that's responsive
3 to the question.

4 I think jurors are allowed to ask questions about
5 specific instructions and you're allowed to say more than,
6 We'll just read them all again. So, I don't think I can use
7 any words, I agree with you, that are not in the instructions
8 or in the indictment, but I don't think saying go back and read
9 it yourself is a good answer.

10 MR. BUSCHEL: I don't think the Court can refer to
11 the indictment. The indictment is not for them. I think the
12 Court can refer to page 23 and say -- and reference Count 3,
13 the elements of Count 3. I think that is -- that is what the
14 Court can do.

15 THE COURT: All right. Well, what we did -- and,
16 unfortunately, my page numbers are different than yours because
17 I blew it up, so it's not your fault.

18 MR. BUSCHEL: It's entitled Counts 2 through 6, false
19 statements.

20 THE COURT: False statements.

21 MR. BUSCHEL: Third paragraph down.

22 THE COURT: Um-hum. So, I guess the question is,
23 whether I call them in and say, I can only answer this question
24 by taking you back to the jury instruction and reading the
25 first paragraph on page 30 -- not 30 -- the first paragraph

1 under Counts 2 through 6: Counts 2 through 6 charge, and then
2 Count 3 charges, and just stop, and say that. Or, to
3 specifically direct them to that page and that instruction.
4 They clearly have it in front of them. But I don't -- I think
5 reading the actual indictment, it's the same thing. So, it
6 doesn't change anything. Count 3 of the indictment charges, if
7 I read it, I'm reading the same thing.

8 The ambiguity is in the language. I don't think the
9 government thinks I can say anything else. So the question is,
10 do I just read it to them or have them read it to themselves
11 again? You were saying I should just have them read it to
12 themselves again. I don't know that there's any harm in
13 reading it to them, although I think they're likely to find
14 both unsatisfactory.

15 Mr. Kravis?

16 MR. KRAVIS: Right. So I agree. I think the Court
17 should direct the jury to this particular passage in the jury
18 instructions, the sentence that begins, "Count 3 charges that"
19 and then read the sentence. And then I think the Court can
20 tell the jury: It is up to you, or it is your job, or it is
21 for you to decide whether that statement is false.

22 THE COURT: Well, this isn't a statement. It's --
23 his testimony was false.

24 MR. KRAVIS: Right. Testimony. Because it -- right.
25 Yes.

1 THE COURT: His testimony is in evidence and it's up
2 to them to determine whether he testified falsely. I mean, I
3 feel like they deserve the courtesy, almost, of being called
4 back in here, now that they've sent me two questions. And I
5 would say, You've asked me this question, and then say you are
6 instructed that Count 2 of the indictment charges that on or
7 about September 26, 2017, within the District of Columbia and
8 elsewhere, in a matter within the jurisdiction of the
9 legislative branch of the government of the United States, the
10 defendant knowingly and willfully made, or caused to be made,
11 false, fictitious, and fraudulent statements and
12 representations.

13 In particular, it charges that the defendant
14 testified falsely, that his 2016 references to being in contact
15 with the head of WikiLeaks were references to communications
16 with a single go-between, mutual friend and intermediary, where
17 the defendant identified as Randy Credico. And it's up to you
18 to determine whether he testified falsely regarding that
19 matter.

20 MR. KRAVIS: Right.

21 THE COURT: I don't know what else to say. Does that
22 suit you?

23 MR. BUSCHEL: Other than the preference -- if the
24 Court is going to bring them in, then that's fine. Our
25 preference is that you write them back a note.

1 MR. KRAVIS: Mr. Zelinsky points out that the Court
2 may have just said "Count 2" says this.

3 THE COURT: 3.

4 MR. KRAVIS: Yes. Right. Okay. Thank you.

5 THE COURT: All right. Mr. Haley, why don't you
6 bring the jury back.

7 (Pause.)

8 MR. BUSCHEL: Judge, may we see precisely what you're
9 going to say before you read it to the jury? Because I think
10 there was an added sentence that you were saying.

11 THE COURT: All right. Can you let Mr. Haley know
12 not to bring them back in?

13 I will read to you, because I'm scribbling on my
14 current jury instruction -- my jury instructions.

15 (Pause.)

16 THE COURT: You sent me a note asking me a question.
17 In response to your question, I can say the following: Count 3
18 of the indictment charges that on or about September 26, 2017,
19 within the District of Columbia and elsewhere, in a matter
20 within the jurisdiction of the legislative branch of the
21 government of the United States, the defendant, knowingly and
22 willfully made, or caused to be made, false, fictitious, and
23 fraudulent statements and representations.

24 Count 3 charges that the defendant testified falsely,
25 that his August 2016 references to being in contact with the

1 head of WikiLeaks were references to communications with a
2 single go-between, mutual friend, an intermediary who the
3 defendant identified as Randy Credico.

4 You have the defendant's testimony and all the other
5 evidence. It is up to you to decide whether the government has
6 proved beyond a reasonable doubt whether the defendant
7 testified falsely regarding that matter.

8 MR. BUSCHEL: It is the end that we have an objection
9 to. We think you should stop at "who the defendant identified
10 as Randy Credico." Saying that you -- after that point the
11 Court is, we believe, is entering deliberations.

12 THE COURT: Well, they're asking me a question; it's
13 basically, What's the point of Count 3? I'm not going to
14 answer that question. I'm going to say, Count 3 is Count 3,
15 but you have to decide it. I think they need to know that I'm
16 not giving them anything more than that.

17 MR. BUSCHEL: I think the only answer the Court can
18 give is, and then give -- and then read the two paragraphs the
19 Court read from the jury instructions, and that is all.
20 Suggesting more or telling them they have certain evidence
21 available to them already is too much.

22 THE COURT: All right. Mr. Kravis?

23 MR. KRAVIS: So, I think that the last sentence that
24 the Court proposed is warranted here. I think sometimes when
25 responding to jury notes it is helpful to point to the jury or

1 to instruct the jury, when they are asking a question, that it
2 is for them to decide, and that is why the Court is not
3 providing them additional information. Whether the Court --
4 so, I think that that is -- "it is for you to decide" portion
5 is warranted in the instruction. I think it's helpful to the
6 jury, it explains to them why this is all the information that
7 they're getting. Whether the Court wants to reference the
8 testimony and other exhibits in evidence --

9 THE COURT: I think that's the part they're finding
10 most objectionable. So why don't I read Count 3, the language
11 from the jury instruction, and then just finish with: It is up
12 to you to decide whether the government has proved beyond a
13 reasonable doubt whether he testified falsely regarding that
14 matter, and stop.

15 MR. KRAVIS: That's fine for the government.

16 MR. BUSCHEL: That's acceptable.

17 THE COURT: All right. All right. We'll bring them
18 in.

19 (Jurors enter the courtroom.)

20 THE COURT: Members of the jury, you have sent me a
21 note regarding Count 3. What I can tell you is the following:

22 Count 3 of the indictment charges that on or about
23 September 26, 2017, within the District of Columbia and
24 elsewhere, in a matter within the jurisdiction of the
25 legislative branch of the government of the United States, the

1 defendant, knowingly and willfully made, or caused to be made,
2 false, fictitious and fraudulent statements and
3 representations.

4 Count 3 charges that the defendant testified falsely,
5 that his August 2016 references to being in contact with the
6 head of WikiLeaks were references to communications with a
7 single go-between, mutual friend and intermediary, who the
8 defendant identified as Randy Credico. It is up to you to
9 decide whether the government has proved beyond a reasonable
10 doubt whether he testified falsely regarding that matter.

11 I'm going to excuse you to resume your deliberations.

12 (Jurors leave the courtroom.)

13 THE COURT: I think we can adjourn until further
14 communications from the jury, if any.

15 The facial expressions seem to indicate to me that
16 some of them were as frustrated by the answer as we
17 anticipated. But I think we're all in agreement that I
18 couldn't say anything else.

19 So, thank you. You can remain seated or you can --
20 I'll see you when we get summoned back here today.

21 (Recess.)

22 (No further proceedings.)

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CERTIFICATE OF OFFICIAL COURT REPORTER

I, JANICE DICKMAN, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability.

Dated this 14th day of November 2019

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