

# PENCE'S PREVIOUSLY REDACTED DOCUMENTS AND THE CORCORAN SCAPEGOATING

Time for another update on the various investigations into stolen and mishandled documents.

Start with Mike Pence, who thus far, the press has assumed, is the safest among the three men being investigated from legal exposure.

The Friday before a holiday weekend, Pence's team revealed FBI searched Pence's office. The topline result was that they didn't find any documents with classification markings, but the FBI did seize three "previously redacted documents."

Federal agents removed three "previously redacted documents" – but none with classified markings – during an hours-long search of the office of former Vice President Mike Pence's public policy organization Friday, Advancing American Freedom, according to a Pence spokesman.

That detail raises more questions than answers: It's hard to understand why, even under the Presidential Records Act, FBI would seize previously redacted documents.

Further in, the same story hinted at one possible reason: if certain no-longer classified documents reveal the import of other documents marked as classified. For example, consider the possibility of a tie between the debate prep materials from Pence's office and the package of documents seized from Pence's home.

The documents taken Friday are believed to be materials used for 2020 debate preparation, a person familiar with the matter said.

Last week, the FBI removed one classified document and six other documents during a voluntary search of Pence's Indiana home. A person familiar with the search told NBC News earlier this week that at least one other item was taken at that time because the relevant materials "were kept in a place that required the FBI to take more than just the documents."

Such a tie might be exculpatory, for example: it might suggest that documents with classification markings had already been declassified in advance of some prepared debate line. Much of the debate between Pence and Kamala Harris focused on COVID response and China. It would be unsurprising for Trump to declassify information on China's role in COVID in advance of that debate; nor would it be surprising to find such papers at Pence's home, given his role in COVID response.

Two other topics from the debate potentially implicating classified materials might be resonate with the Trump investigation, though. To defend Trump's national security record, for example, Pence raised the execution of Qasim Soleimani, claiming Trump ordered the attack, "when Qasim Soleimani was traveling to Baghdad, to harm two Americans." Given the visible dates of the highly classified documents at Trump's home, it would be unsurprising if one or several of those documents related to this decision, stolen as trophies of Trump's most self-satisfying order as President.

Also in the debate, as part of a false claim that he and Trump had been spied on by the FBI, Pence raised a CIA document unsealed and submitted to the Mike Flynn docket days earlier.

[T]he FBI actually spied on President Trump and my campaign. I mean there were documents released this week that the CIA actually made a referral to the FBI documenting that those allegations were

coming from the Hillary Clinton campaign

If these were among the previously redacted documents at Pence's home, it would suggest that Trump's obsession with stealing documents pertaining to the Russian investigation had spilled (heh) over into documents in Pence's possession.

This is all speculative. But the report that FBI took documents that would not obviously substantiate either the mishandling of classified documents or a violation of the Presidential Records Act for the first time suggests that FBI may be pursuing some more interesting explanation for the classified documents at Pence's home.

Things get more interesting when you turn to Mar-a-Lago.

Also on Friday, Rolling Stone told a tale that suggests Trump is being advised to ditch Evan Corcoran as a lawyer because he'll soon be charged. To be clear: neither Rolling Stone nor I are claiming Corcoran *will* be charged.

The story, by Asawin Suebsaeng and Adam Rawnsley, is likely legal nonsense. But the two have reported a series of insider stories on Trump world that capture – perhaps more than any other journalistic team – the batshittery going on close to the former President. This is not bad reporting. Rather, it seems to be accurate reporting that captures the batshittery and bullshit of Trump's inner circle. One story that is a close analogue of this one described how Trump wanted to expose the IDs of people involved in the Russian investigation, on that piggybacked off a NYT story that served as cover for the centrality of Russian documents in Trump's obsession with stealing documents.

Anyway, *this* story may be explained by two earlier reports.

On February 14, the NYT version of the story that DOJ was seeking a crime-fraud waiver for

Corcoran's testimony included the detail – amid reports that multiple witnesses have been asked about Boris Epshteyn's role in withholding the stolen documents – that Epshteyn once sought to establish a joint representation.

Prosecutors overseeing the documents investigation have also been asking witnesses questions about Boris Epshteyn, who has played a central role in coordinating lawyers on several of the investigations involving Mr. Trump, according to multiple people briefed on the matter. It was Mr. Epshteyn who first brought Mr. Corcoran into Mr. Trump's orbit.

At least three lawyers have sat for interviews with the Justice Department during which questions about Mr. Epshteyn were asked – among them Ms. Bobb and, more recently, Alina Habba, people with knowledge of the matter said. A third lawyer close to Mr. Trump, Jesse Binnall, has also spoken with prosecutors about Mr. Epshteyn, the people said.

One person briefed on the interviews said that investigators were interested in discussions between Mr. Epshteyn and others about establishing a possible common-interest privilege in the documents case. A common-interest privilege creates a kind of umbrella privilege allowing groups of lawyers and clients to communicate with each other confidentially.

Such common-interest agreements are frequently used in cases with multiple lawyers and multiple witnesses. But prosecutors are asking questions indicating they're interested in whether Mr. Epshteyn was trying to improperly influence witness testimony, the person briefed on the interviews said.

The NYT story bears the same markers of MAL bullshit that some others on this story do, notably, claiming that Beryl Howell has always ruled against Trump when (among other things) she has deferred certain decisions, like holding Trump in contempt, forcing DOJ to do more work. There's good reason to believe the claim is just the regurgitated bullshit claims made by Trump's lawyers.

On February 17, Reuters reported (and thus far, they appear to be alone with this scoop) that Corcoran's firm hired an attorney to represent him.

A lawyer for former President Donald Trump retained an attorney to represent himself as prosecutors step up their inquiry into the handling of sensitive documents at Trump's Florida residence, two people familiar with the matter told Reuters on Thursday.

Evan Corcoran, who has represented Trump in interactions with the government over presidential records taken to his Mar-a-Lago resort, has turned to Michael Levy, a prominent white-collar lawyer in Washington, according to people familiar with the matter.

Levy was hired by Corcoran's law firm, Silverman Thompson Slutkin & White, to represent Corcoran in the probe, according to one of the people.

This is not surprising. It's grown up lawyering. But it provides important context of Epshteyn's call to adopt a joint defense, in part because it explains with whom Epshteyn might want to form a mutual defense, in addition to the lawyer representing Christina Bobb and Alina Habba.

With that background in mind, take a look at the Rolling Stone piece. It describes not *that* Corcoran will be charged, but that Trump is being advised he will be.

In at least three meetings this year, according to two sources familiar with the matter, legal and political counselors to Trump have urged him to dump Evan Corcoran, one of the ex-president's top attorneys in the federal probe into Trump's handling of classified documents.

Some of the former president's lawyers have explicitly told Trump that, based on information they have privately reviewed, they believe the Department of Justice has a strong case against Corcoran, arguing charges – including potentially for obstruction of justice – are “very likely,” the sources said. These advisers have argued that if the Justice Department indeed does come for Corcoran, it's imperative for Trump to distance himself to avoid being dragged into possible further legal jeopardy by his own attorney.

Trump, the sources say, sounded “receptive” to their perspective. However, as of mid-February, it appears he wasn't as receptive as they had hoped: Corcoran is still on Trump's legal team.

As RS describes it, this is explicitly an attempt to pin the blame for what happened last summer on Corcoran.

Several of Trump's close advisers who've recently spoken to him about this have argued to the ex-president that any potential wrongdoing on this matter could, somehow, be pinned entirely on Corcoran, and not Trump himself.

Even better, it includes this claim – that excludes Epshteyn from the list of lawyers whom DOJ might be targeting.

“These types of motions [requesting that

a judge nullify attorney-client privilege based on the crime-fraud exception] would only be served upon the attorneys who've appeared in the case: Jim Trusty, John Rowley, Evan Corcoran, Tim Parlatore, and Lindsey Halligan; the five of them would be the only people who have access to these documents," says a person familiar with the internal proceedings of Trump's legal team. "Any source other than that would not be speaking from a position of access and would likely be speaking based on their own personal agenda, rather than actual facts. [Furthermore], when DOJ targets lawyers, it is often being done from a position of weakness in their underlying case, as a method of undermining the integrity of the defense legal team. Removal of Evan Corcoran ... would serve the purpose of giving DOJ exactly what it wanted." [bracket original]

Epshteyn has been at the center of these discussions from the start – he's the guy who brought in Corcoran, he's the guy who called up Christina Bobb and had her show up to be a fallgal for a misleading declaration on June 3. To exclude him from this comment – either because he's the one you're talking to or because someone is trying to obscure his centrality in all of it – is telling.

Trump's lawyers believe that they can wait out the end of Beryl Howell's term and they'll be the ones who decide whether DOJ can get a crime-fraud exception for Corcoran's testimony. That may not even be the case if Corcoran plays along. But if he doesn't – if his own lawyer advises him that fighting a crime-fraud determination puts him in legal risk he's not currently in – then it may explain why people at MAL are trying to preemptively claim Corcoran was behind a lot of epically shitty legal advice last summer and not Epshteyn.