

REMEMBER: DOJ MAY STILL SUSPECT TRUMP IS HOARDING CLASSIFIED DOCUMENTS

When I wrote up initial reports of Christina Bobb's first interview with investigators in the stolen documents case, I noted,

Bobb's testimony will clarify for DOJ, I guess, about how broadly they need to get Beryl Howell to scope the crime-fraud exception.

Here we are five months later, and Beryl Howell has indeed, very predictably, scoped out the crime-fraud exception for Evan Corcoran's testimony and the DC Circuit has refused Trump's request of a stay to fight that ruling.

In fact, ABC reported a list of the things that Judge Howell ruled Evan Corcoran must share with Jack Smith's prosecutors, the scope I predicted she'd draw up five months ago.

As you read it, keep in mind that DOJ likely suspects that Trump *still* is hoarding classified documents. I say keep that in mind, because these questions will help to pinpoint the extent to which Trump or Boris Epshteyn masterminded efforts last June to hide classified documents, which may help DOJ to understand whether someone has masterminded efforts to hide remaining classified documents since.

The six things Corcoran has been ordered to testify about, per ABC, are:

1. "[T]he steps [Corcoran] took to determine where documents responsive to DOJ's May subpoena may have been located"

2. Why Corcoran “believed all documents with classification markings were held in Mar-a-Lago’s storage room”
3. “[T]he people involved in choosing Bobb as the designated custodian of records for documents that Trump took with him after leaving the White House, and any communications he exchanged with Bobb in connection with her selection”
4. “[W]hether Trump or anyone else in his employ was aware of the signed certification that was drafted by Corcoran and signed by Trump attorney Christina Bobb then submitted in response to the May 11 subpoena from the DOJ seeking all remaining documents with classified markings in Trump’s possession”
5. “[W]hether Trump was aware of the statements in the certification, which claimed a “diligent search” of Mar-a-Lago had been conducted, and if Trump approved of it being provided to the government”
6. What Corcoran “discussed with Trump in a June 24

phone call on the same day that the Trump Organization received a second grand jury subpoena demanding surveillance footage from Mar-a-Lago that would show whether anyone moved boxes in and out of the storage room

Questions 1 and 2 are a test of whether Corcoran wrote the declaration that Christina Bobb signed on June 3 in good faith. Given the fact that boxes were moved out of the storage room, it's quite plausible that Corcoran *did* do a good faith search of the remaining boxes. So the answer to question 2 – why did he think all the classified documents were in that room? – will help pinpoint who has criminal liability for that obstructive act. Someone told him only to search the storage room and he took Jay Bratt to that storage room on June 3 and falsely (but likely unwittingly) told them that's where all the classified documents would have been stored. Who told him that was true?

Questions 4 and 5 go to Trump's awareness of the attempt to mislead DOJ on June 3. Did he know about the signed certification, and if so was Trump aware that Corcoran and Bobb had, between them, claimed the search of a storage room out of which boxes had been moved amounted to a diligent search? Since he reportedly ordered Walt Nauta to move boxes out of there, does that mean he knew the declaration was false?

Question 3 is more interesting though: The fact that Corcoran wouldn't sign the certification himself is testament that he had doubts about the search he did himself or, at least, that someone knew enough to protect him. Per reporting from after she spoke to investigators the first time (see this post), Boris Epshteyn contacted Bobb the night before the search to serve the role she played.

She told them that another Trump lawyer, Boris Epshteyn, contacted her the night before she signed the attestation and connected her with Mr. Corcoran. Ms. Bobb, who was living in Florida, was told that she needed to go to Mar-a-Lago the next day to deal with an unspecified legal matter for Mr. Trump.

When she showed up the next day, Bobb complained that she didn't know Corcoran, which is one of the reasons she wisely caveated the document before signing it.

"Wait a minute – I don't know you," Ms. Bobb replied to Mr. Corcoran's request, according to a person to whom she later recounted the episode. She later complained that she did not have a full grasp of what was going on around her when she signed the document, according to two people who have heard her account.

And *Bobb wasn't the custodian of records*. Someone decided to have someone unaffiliated with the Office of the Former President sign as custodian of records, thereby protecting Trump's legal entity – the one served with the subpoena – from liability for the inadequate response.

She was, however, someone who – like Boris Epshteyn – likely has significant exposure for January 6, and even (per her testimony to January 6 Committee) witnessed Trump's call to Brad Raffensperger.

But either Corcoran knew or suspected his own search was inadequate, or someone built in plausible deniability for him. DOJ may find out which it was on Friday.

As noted, this may help DOJ understand what has happened since Bobb's initial testimony. Reports of her testimony came in the same days as initial reports that DOJ had told Trump they believed he still had classified records. Both

Bloomberg and NYT described the tensions that arose among Trump's lawyers as a result, with some objecting to any further certification.

Christopher M. Kise, who suggested hiring a forensic firm to search for additional documents, according to the people briefed on the matter.

But other lawyers in Mr. Trump's circle – who have argued for taking a more adversarial posture in dealing with the Justice Department – disagreed with Mr. Kise's approach. They talked Mr. Trump out of the idea and have encouraged him to maintain an aggressive stance toward the authorities, according to a person familiar with the matter.

That was in October. In November, Merrick Garland appointed Jack Smith. In late November, Trump hired Tim Parlatore to do the search Kise had recommended over a month earlier. The search found, and returned to DOJ, two documents with classification markings found in a separate storage facility.

But even as Trump lawyers were dribbling out details of the result of that search, they were hiding at least two more details: that a Trump aide had been carting around – and had uploaded via the cloud – White House schedules that included once-classified information. And, Parlatore's searchers had discovered, there was another empty classified folder on Trump's bedside table that hadn't been discovered in the August search. Whether willful or not, both likely show that additional documents with classification markers were brought back to Mar-a-Lago after the August search.

Since the time in December DOJ tried to hold Trump in contempt for refusing to comply with the May subpoena, they have chased down the box of schedules and the computer to which they were uploaded and subpoenaed the extra empty classified folder. They have interviewed the

people who did the search, as well as the lawyers that Boris Epshteyn was giving orders. Significantly, they also interviewed Alina Habba, whose own search of Mar-a-Lago for documents responsive to Tish James' subpoena had obvious gaps, most notably the storage closet full of documents where a bunch of classified documents were being stored. And finally, after five months, they will answer the questions first made obvious after Bobb's initial interview in October: what Trump told Corcoran to get him to do an inadequate search.

Which brings me to Question 6: What Trump said to Corcoran after he received a subpoena for security footage that Trump knew – but Corcoran may not have known – showed Walt Nauta moving boxes that would thereby be excluded from the search Corcoran had done in May and June. Since this was a call, it may well be one of the things about which Corcoran took notes or even a recording that he later transcribed. Also recall that there was a discrepancy as to the date of the subpoena (as well as whether Trump greeted Jay Bratt and others when they were at MAL) when the search was originally revealed last year, a discrepancy that led me to suspect DOJ first served a subpoena on Trump's office and only then served a subpoena on Trump Organization. June 24 may have been the first date that Corcoran became aware that his representations about the search for documents was incomplete.

Here's the point, though. Trump played a shell game in advance of the search that Corcoran did last summer. Alina Habba's declaration, on its face, reflects a shell game. There's reason to believe – given the box containing additional documents marked classified and the empty classified folder – that Trump played *another* shell game when Parlatore's investigators searched in November and December. And Howell reportedly also approved a crime-fraud waiver for Jennifer Little, a lawyer representing Trump in conjunction with the Georgia investigation.

If Corcoran does testify tomorrow, it may

crystalize DOJ's understanding of that shell game, at least. Not only will that help DOJ understand if another shell game, one involving Parlatore, managed to hide still more documents in November and December. But it may help to understand any other shell games Trump engaged in in NY and GA.

It may also finally provide the basis to hold Trump in contempt for withholding further documents.