

THE MAR-A-LAGO INDICTMENT IS A TACTICAL NUKE

I've become convinced that what I will call the Mar-a-Lago indictment – because I doubt this will be the only stolen documents one – is a tactical nuke: A massive tool, but simply a tactical one.

As I've laid out, it charges 31 counts of Espionage Act violations, each carrying a 10-year sentence and most sure to get enhancements for how sensitive the stolen documents are, as well as seven obstruction-related charges, four of which carry 20-year sentences. The obstruction-related charges would group at sentencing (meaning they'd really carry 20 year sentence total), but Espionage Act charges often don't and could draw consecutive sentences: meaning Trump could be facing a max sentence of 330 years. Walt Nauta is really facing 20 years max – though probably around three or four years.

Obviously, Trump won't serve a 330 year sentence, not least because Trump is mortal, already 76, and has eaten far too many burgers in his life.

For his part, Nauta should look on the bright side! He has not, yet, been charged with 18 USC 793(g), conspiring with Trump to hoard all those classified documents, though the overt acts in count 32, the conspiracy to obstruct count, would certainly fulfill the elements of offense of a conspiracy to hoard classified documents. If Nauta *were* to be charged under 793(g), he too would be facing a veritable life sentence, all for helping his boss steal the nation's secrets. And for Nauta, who is in his 40s and healthy enough to lug dozens of boxes around Trump's beach resort, that life sentence would last a lot longer than it would for Trump.

And that's something to help understand how this

is tactical.

I first started thinking that might be true when I saw Jack Smith's statement.

He emphasized:

- A grand jury in Florida voted out the indictment
- The gravity of the crimes
- The talent and ethics of his prosecutors
- That Trump and Walt Nauta are presumed innocent
- He will seek a Speedy Trial
- A Florida jury will hear this case
- The dedication of FBI Agents

He packed a lot in fewer than three minutes, but the thing that surprised me was his promise for a Speedy Trial. He effectively said he wants to try this case, charging 31 counts of the Espionage Act, within 70 days.

That means the trial would start around August 20, and last – per one of the filings in the docket – 21 days, through mid-September. While all the other GOP candidates were on a debate stage, Trump would be in South Florida, watching as his closest aides described how he venally refused to give boxes and boxes of the nation's secrets back.

There's not a chance in hell that will happen, certainly not for Trump. Even if Trump already had at least three cleared attorneys with experience defending Espionage Act cases, that wouldn't happen, because the CIPA process for this case, the fight over what classified evidence would be available and how it would be presented at trial, would last at least six months. And as of yesterday, he has just one lawyer on this case, Todd Blanche, who is also defending Trump in the New York State case.

In fact, even though I understand how CIPA works, I'm not convinced this case *can* be tried. Before the indictment was unsealed, I imagined that Smith would charge about six documents, classified Secret, each of which demonstrated that Trump was exploiting the nation's secrets, and just nod to the sensitivity of all the more sensitive secrets he was storing in an unlocked bathroom. Boy howdy was I wrong! Peter Strzok does the math to show that DOJ actually charged *all but 13* of the Top Secret documents obtained either with the May 11, 2022 subpoena or in the August 8, 2022 search. And these are not just Top Secret. Of those documents whose compartments themselves are not classified, the documents include satellite intelligence, human intelligence, nuclear intelligence. Brandon Van Grack, one of the few other people who has been interested in the CIPA aspect of this case, seemed to struggle to describe the documents charged in this case.

One of the only ways I can imagine taking this to trial easily would be if the government had simply burned all the collection involved (including on the two Five Eyes documents), meaning presenting the documents he stole at trial would consist of one after another spook describing collection programs the government had to shut down because of Trump. In fact, last September, DOJ suggested they had had to do just that by invoking a letter NSA Director Mike Rogers sent in sentencing Nghia Pho. That letter described how, after discovering that Pho had compromised a bunch of NSA programs, the NSA had had to abandon much of it.

Once the government loses positive control over classified material, the government must often treat the material as compromised and take remedial actions as dictated by the particular circumstances. Depending on the type and volume of compromised classified material, such reactions can be costly, time consuming and cause a shift in or abandonment of programs. In this case,

the fact that such a tremendous volume of highly classified, sophisticated collection tools was removed from secure space and left unprotected, especially in digital form on devices connected to the Internet, left the NSA with no choice but to abandon certain important initiatives, at great economic and operational cost.

For the moment, then, consider the possibility that this indictment is, as far as it involves Trump, simply a messaging document to alert Republicans who can still be reasoned with that Trump left the most sensitive secrets on a stage at Mar-a-Lago while weddings were going on and as a result, the IC simply shut down all the programs he had compromised.

My comment about the difficulty of taking this to trial is not, however, true for Nauta. Because he *wasn't* (yet) charged with conspiring to steal these secrets, you could make it all the way to sentencing without having to expose the secrets Trump destroyed.

So let's talk about Nauta.

As the indictment describes, he was interviewed on May 26, 2022. As ¶153 through ¶162 show, that interview happened *in the middle* of the scheme to fool Evan Corcoran into submitting a false verification that Trump had returned everything (Corcoran, in turn, fooled Christina Bobb into signing it). Nauta moved boxes on the following days before and after his first interview:

- May 22: One box out of storage
- May 24: 3 boxes out of storage
- May 26: Interview
- May 30: 50 boxes out of storage
- June 1: 11 boxes out of

storage

- June 2: 30 boxes from Trump's residence to storage

As the indictment describes, Nauta moved 64 boxes out of storage and 30 back. This had the effect of ensuring that at least 34 boxes of classified documents were not reviewed by Corcoran.

There's also this paragraph, one of the most important in the indictment:

72. Earlier that same day, NAUTA and others loaded several of TRUMP's boxes along with other items on aircraft that flew TRUMP and his family north for the summer.

That paragraph makes it clear that some of those 34 boxes went to Bedminster, never to be seen again. I'll count later and figure how many it was.

So *in the middle* of this scheme to keep 34 boxes of classified documents away from Corcoran, Nauta was interviewed by the FBI and asked about the last time Trump personally asked Nauta to sort through boxes of classified documents so he could hoard some. Several things in this indictment establish that Nauta knew this involved classified documents, including this picture from when Nauta arrived in the supposedly locked storage room to find one of the boxes had been knocked over by who knows what force and spilled open.

One of the most important paragraphs to demonstrate Nauta's knowledge was that on January 15, Nauta texted the person who was helping him with these documents, saying:



One thing he asked

Was for new covers for the boxes, for Monday m.

Morning

*can we get new box covers before giving these to them on Monday? They have too much writing on them..I marked too much

When whatever force was in the storage room to knock over that box, they were labeled with their contents, because Nauta had sorted and labeled them.

With all that in mind, go back to Count 38 and read about the answers Nauta gave in an interview in the middle of a second effort to sort classified documents so some of them could be taken to Bedminster, never to be seen again. He was asked about the first time that happened. And days after he had moved boxes to Trump's residence again, he claimed he was unaware of bringing them to the suite in the first place.

Question: Does any – are you aware of any boxes being brought to his home – his suite?

Answer: No.

The alleged lies go on – but they were enormous.

With all that in mind, I'd like to return to a story that was floating in the press until a few weeks ago about the second time Nauta was interviewed. As parroted by the NYT on May 4 (and not for the first time), DOJ made a mistake last fall because, when Nauta refused to cooperate, they didn't choose to immunize him. They were simply helpless to get the information Nauta could share via any other means!

Last fall, prosecutors faced a critical decision after investigators felt Mr. Nauta had misled them. To gain Mr. Nauta's cooperation, prosecutors could have used a carrot and negotiated with his lawyers, explaining that Mr. Nauta would face no legal consequences as long as he gave a thorough version of what had gone on behind closed doors at the property.

Or the prosecutors could have used a stick and wielded the specter of criminal charges to push – or even frighten – Mr. Nauta into telling them what they wanted to know.

The prosecutors went with the stick, telling Mr. Nauta's lawyers that he was under investigation and they were considering charging him with a crime.

The move backfired, as Mr. Nauta's lawyers more or less cut off communication with the government. The decision to take an aggressive posture toward Mr. Nauta prompted internal concerns within the Justice Department. Some investigators believed that top prosecutors, including Jay Bratt, the head of the counterespionage section of the national security division at the Justice Department, had mishandled Mr. Nauta and cut off a chance to win his voluntary cooperation.

More than six months later, prosecutors

have still not charged Mr. Nauta or reached out to him to renew their conversation. Having gotten little from him as a witness, they are still seeking information from other witnesses about the movement of the boxes.

The story was *always* obvious bullshit. As I noted on May 23,

If being misled by Nauta led prosecutors to look more closely at the larger timeline of the missing surveillance video, only to find suspect ties to the Saudis, it was in no way a mistake. On the contrary, Woodward's own decisions would have directly led to intensified scrutiny of his client (as his decisions similarly are, in the effort to get Navarro to turn over Presidential Records Act documents).

The very next day, May 24, Nauta got a target letter.

Since Nauta got a target letter, the story has dramatically changed. It changed into a story in which Jay Bratt said something that Stan Woodward – the guy paid by Trump's PAC whose legal advice to Nauta has left him facing obstruction charges – said something that seemed like coercion to Woodward.

At issue is an incident that took place last year, around November, when prosecutors were trying to gain the cooperation of valet Walt Nauta, who has been under scrutiny because prosecutors suspected he helped the former president conceal classified documents that had been subpoenaed.

Nauta had already spoken to prosecutors in the investigation when they called his lawyer Stanley Woodward and summoned him to a meeting at justice department headquarters for an urgent matter that

they were reluctant to discuss over the phone, the letter said.

When Woodward arrived at the conference room, he was seated across from several prosecutors working on the investigation, including the chief of the counterintelligence section, Jay Bratt, who explained that they wanted Nauta to cooperate with the government against Trump, the letter said.

Nauta should cooperate with the government because he had given potentially conflicting testimony that could result in a false statements charge, the prosecutors said according to the letter. Woodward is said to have demurred, disputing that Nauta had made false statements.

Bratt then turned to Woodward and remarked that he did not think that Woodward was a "Trump guy" and that "he would do the right thing", before noting that he knew Woodward had submitted an application to be a judge at the superior court in Washington DC that was currently pending, the letter said.

The allegation, in essence, is that Bratt suggested Woodward's judicial application might be considered more favorably if he and his client cooperated against Trump. The letter was filed after Trump's lawyers submitted a motion on Monday seeking grand jury transcripts, because of what they viewed as potential misconduct.

Significantly, that story changed on June 5, the same day as Trump's lawyers, at least two of whom have subsequently left the team, met with Jack Smith.

When Nauta wasn't going to get charged, Jay Bratt's decision to play hardball was stupid, a mistake. A missed opportunity to get

cooperation. When he was going to get charged, Bratt's efforts to help Nauta avoid 20 or 330 year legal exposure became an ethical issue.

When Smith noted the integrity of his investigative team yesterday, he was signaling that he thinks this story is bullshit.

He may not be the only one, either. Jim Trusty made a really big deal about this new story on Thursday, when he had seen the summons but not the indictment. After he saw the indictment, he quit.

Which brings me to one other detail that I can't get out of my head, given the uncharged examples of Trump disseminating classified information at Bedminster and the two instances when classified documents went to New Jersey never to be seen again.

One other reason Jack Smith gave to unseal the indictment was so he could share it to, among other entities, "sealed entities" and the grand jury in DC.

To the United States District Court of the District of Columbia, under seal, in relation to grand jury and sealed matters in that jurisdiction.

Among those sealed entities are the complaint that Woodward belatedly filed, after learning that Nauta got a target letter. Jack Smith needs to show Chief Judge James Boasberg that when Bratt strongly encouraged Woodward to advise his client to cooperate last November, DOJ already had really damning information showing he conspired to hoard these documents.

But the sealed entities aren't the only entity that needs to see this indictment. So does a grand jury.

The investigation didn't *move*, entirely, to Florida. Part of it was presented to a grand jury in Florida. But there are other parts that remain in DC, and those parts that remain in DC had to be told this indictment was coming.

This indictment is, in very significant part, a renewed invitation to Walt Nauta to cooperate in an ongoing grand jury investigation into what happens to documents when they go to Bedminster and disappear forever.

A very persuasive invitation.

Update: Fixed Stan Woodward's last name.

Update: NYT has now done a piece covering these issues. They do not mention that just weeks ago, they were telling another story about this, fail to note that Trump routinely claims to believe things that he clearly does not, and treats the allegation itself as a set of "facts" that Trump got wrong, rather than an allegation only belatedly made months after the incident.

Around the same time, according to two people familiar with the matter, Mr. Woodward had a meeting about Mr. Nauta with prosecutors in the documents investigation, including Jay Bratt, from the Justice Department's national security division, who was running the inquiry at the time.

During the meeting, the people said, Mr. Bratt tried to persuade Mr. Woodward to get Mr. Nauta to cooperate and then brought up the fact that he knew Mr. Woodward had a pending application to be a judge in the superior court in Washington. Mr. Trump's lawyers and advisers **believe** that Mr. Bratt was effectively trying to cajole, even threaten, Mr. Woodward to counsel his client to help the government – an allegation that Mr. Trump later made himself on social media, albeit with his **facts slightly wrong**.

Trump's own press secretary couldn't have written a more favorable spin.

Update: I forgot I promised to go back and try to figure out how many boxes went to Bedminster

to disappear forever. We can't know because the universe of boxes was in flux throughout this process. But here's what we do know:

Date	Storage	Residence	Bedminster	USG	W/CLASS
6/24/21	80		?		
1/17/21	65			15	14
6/1/22	1	64			
6/2/22	30	34			
8/8/22	73				
8/9/22	47			26	12