# STAN WOODWARD CLAIMS HE DOESN'T KNOW WHERE THE MISSING BEAUTIFUL MIND BOXES WENT

Perhaps the most amazing detail in the stolen documents transcript of last week's hearing before Judge Aileen Cannon is that until the summer, Trump still had a Q clearance.

> There is a category of documents that it — actually in unclassified discovery, we learned a week or two ago that there is a certain category of documents that require what is called a "Q clearance" and it includes one of the charged documents, and we learned that it's a Department of Energy program. We learned that President Trump continued to have an active security clearance, even after he was indicted in this case, with the Department of Energy. Now that, in our view, is the definition of *Brady*. It was — I'm not going to say it was buried, but it was provided to us in discovery as part of miscellaneous materials at some point in the third or fourth production. I mean, it is literally a memo from the Department of Energy dated June — dated late June of this year, June 28th of this year, saying that, oh, we should remove Donald J. Trump from the person who has an active security clearance. He has been charged with possessing a document in violation of federal law, when he has an active security clearance with the holder of that document.

The detail doesn't help as much as Trump's attorney, Todd Blanche, would have you think.

Whatever clearance Presidents get under the Atomic Energy Act (especially since presidents don't *get* clearance; on Bluesky, Cheryl Rofer suggests he may have gotten DOE clearance while still a candidate) obliges them to follow document handling rules that might not have been as meticulously spelled out for Trump under his access to other classified documents. That he still had access when he was found with nuclear documents in August 2022 only means he was affirmatively violating the terms of his Q clearance, not that he could legally store nuclear documents in his gaudy bathroom.

*Most* people who get charged under the Espionage Act have or had clearances; those clearances actually make it easier to prosecute them.

Though Trump finally added someone appropriate to an Espionage Act trial last month, former SDNY National Security AUSA  Emil Bove, Blanche still seems to have a woefully inadequate understanding of how 18 USC 793 elements of the offense get proven at trial.

And Jay Bratt seems to be unable to conceive that his counterparts (and, probably, Judge Cannon) fail to understand that.

Bratt's attempt to explain all this — something that makes a lot of sense to me from covering so many of these trials — was just one of two times where (in the transcript at least) Cannon abruptly cut off Bratt, as she often does when she risks embarrassment.

> BRATT: I do not — we do not believe that the motion to compel litigation needs to be complete before they can file with the Court their theory of defense with respect to the 793 charges, and it kind of strains credulity that they say they can't do that. You know, the elements of 793 are unauthorized possession of a document containing national defense information, possessing it willfully, that is with knowledge that what you are doing is unlawful, and failing to return

> it to a proper person. All that information they can flesh that out for the Court, and there is really — they may have legal — separate legal challenges to the 793 charges, but if you look at the elements, those are the defenses: Either he didn't possess it, or he was authorized to possess it, or the information doesn't contain national defense information, or he wasn't acting willfully, or he returned it before he was being asked to return it. Those are the defenses, and they may have other color they want —
>
> THE COURT: But to some extent, of course, one would have to review the relevant classified discovery in order to formulate a meaningful response, even if maybe not entirely complete, it would be difficult to just sketch out a skeleton, so to speak, of your theory without really doing so rooted in the documents themselves.
>
> MR. BRATT: So I'm not sure that you do need to be able to say, no, we know this doesn't contain NDI for the Court to rule on whether or not what we are presenting in Section 4 is relevant and helpful to the Defense, I don't think so. I understand that, you know, they have said in their pleadings that they are going to strongly contest whether or not the information was national defense information, strongly contest whether it was closely held. Our burden is to prove that it was, and we embrace that burden; but these documents, you know, I —
>
> THE COURT: That's fine. We don't need to talk about the actual contents of the documents, obviously, given this is a public hearing.

Blanche was pretty obsessed with the classification determinations, marveling over

the fact that prosecutors had to talk to the Intelligence Community before deciding what documents to charge, what documents they could charge.

> We have seen communications between NARA and the Department of Justice and the White House and the Special Counsel that started way before what has been publicly disclosed and extensive meetings, extensive communications; and so we feel very strongly and expect that we will win on that, when we file the motion that NARA is absolutely part of this prosecution team and that the intelligence communities that they worked very closely with in determining the — well, from what we can tell, the particular documents that they chose to charge, so there is purportedly a tranche of documents that have classified headings on them, and then 32 that they decided to charge. That wasn't just done in a vacuum. They didn't just, you know, pick 32 documents out of a hat and say, "We will go with these." There was a lot of coordination that we can tell from the materials we do have with the intelligence community that ultimately led them to proceed the way they did.
>
> So yes, we have an answer with them. They say very strongly that they view the prosecution team as being limited to the Special Counsel's Office and the FBI, and we very strongly believe that's wrong.

That may have been a cynical ploy to treat the IC as part of the prosecution team, which in turn may be an attempt at graymail.

Blanche also claimed that the defense had not yet received all the classification reviews for these documents, and had yet to receive Jencks production for people he imagines will sit on

the stand and attest to the classification of each document, in a trial where the standard is National Defense Authorization, not classification.

> THE COURT: What about classification reviews, have you received all of those?
>
> MR. BLANCHE: No, Your Honor, we have not received all of them. That is one of the things that we are continuing to ask about. We have received them for — I believe for the charge documents; but as what should be obvious from the volume compared to the 32 counts, there is a tremendous number of documents that are extraordinarily important to our defense that are purportedly classified that we don't have any information about at this time.
>
> [snip]
>
> A little bit about the classified Jencks material, as was discussed. The issue of whether a particular document is classified or not is something for the jury. And what we are looking for in discovery and what we don't have is that has to be from a witness. There has to be a witness that is testifying about why a particular document is classified; and as part of that, like any witness, we are entitled to 3500 and Jencks material and we don't have that. We don't have that for all the witnesses, and our concern is that there is this class or category of Giglio and Jencks material that we are going to get at some later date which we are then going to — it's another Section 4 litigation, at that point, because we are going to then ask the Court what we can use to impeach the witness, what information we are allowed to cross-examine him or her on.

Bratt did correct Blanche to say that Trump had already gotten all the classification determinations for all the classified documents retrieved from Mar-a-Lago.

> THE COURT: Now, I went through some of these categories with Mr. Blanche, but classification reviews, are those included in the 5,500 and/or the disks?
>
> MR. BRATT: Yes. And just to respond to something Mr. Blanche said, and it may have been oversight, it is not just for the 32 documents. It is for all 340-some documents that were at Mar-A-Lago.

But I just think that Blanche doesn't get how easy it'll be to convince jurors that you can't put nuclear documents in a beach resort shower (and that's all before the smoke and mirrors that the government uses in all Espionage Act trials, which will be epically contentious here).

I don't think he understands any of this.

This all brings me to something I've been wondering: what the government has been withholding anticipating its CIPA 4 filing, which has been delayed by various Trump games about CIPA. CIPA 4 covers stuff they'll share with Judge Cannon to have her rule whether the material needs to be turned over to the defense (the standard is whether the material is relevant and helpful to the defense), and if so, whether DOJ can use substitutions for some of the information.

This is my updated track of the universe of classified discovery.

| Production | Date | Bates | Description |
|---|---|---|---|
| 1 | 9/13/23 | 0001-2594 | Classified documents that had been stored at Mar-a-Lago as well as other classified material generated or obtained in the Government's investigation, including documents related to witness interviews such as reports and transcripts |
| 2 | 9/28/23 | 2595- 2968 | The remaining classified witness interview transcripts, and all classified witness interview transcripts |
| 3 | 10/6/23 | 2969-5366 | Audio recordings of classified interviews, photographs of documents that were at Mar-a-Lago, search warrant photographs, material extracted from electronic devices, and certain Jencks material, including: 1,400 Jencks documents, a disk with the White House schedules on an aide's laptop, consisting of 13,569 unclassified pages and 15 classified pages (DOJ tried to turn over the unclassified pages in June), 45 pictures of classified documents from the Mar-a-Lago search, pictures of each of the classified documents Evan Corcoran turned over on June 3, 2022 (the actual documents were already turned over on September 13) |
| 4 | 10/16/23 | 5367-5386 | (1) An item requested in Trump's October 9 unclassified discovery letter, see ECF No. 187 at 3-4, and (2) five missing pages from a document previously produced to the defense |
|  | 10/18/23 | 5387-5431 | Special Measures Documents, |
| 5 | 10/31/23 |  | (1) classified memorialization associated with a witness interview conducted on October 6, 2023, including the transcript and audio recording of the interview; (2) 3-page document produced in response to Defendant Trump's October 19, 2023 classified discovery letter. |

Pretty much everything that should obviously be there is there:

- The stolen documents themselves
- All the witness testimony about the documents
- The discussions about classification reviews of the documents (which Brian Greer has suggested were likely somewhat limited in anticipation of trial)

But there's one thing not mentioned — at least not obviously — that always proves contentious in 793 cases: The damage assessment.

One way defendants always attempt to prove that things aren't National Defense Information is by pointing to a report — if they get one — that nothing blew up after they released a document or left it in their beach resort shower.

Often defendants don't get them.

I'm particularly interested in what kind of damage assessment the Intelligence Community did here because of a footnote included in the 11th Circuit appeal last year, which I wrote about here:

> A footnote modifying a discussion about the damage assessment the Intelligence Community is currently doing

> referenced a letter then-NSA Director Mike Rogers wrote in support of Nghia Pho's sentencing in 2018. [This letter remains sealed in the docket but Josh Gerstein liberated it at the time.]
>
>> [I]n order to assess the full scope of potential harms to national security resulting from the improper retention of the classified records, the government must assess the likelihood that improperly stored classified information may have been accessed by others and compromised. 4
>>
>> 4 Departments and agencies in the IC would then consider this information to determine whether they need to treat certain sources and methods as compromised. See, e.g., Exhibit A to Sentencing Memorandum, United States v. Pho, No. 1:17-cr-631 (D. Md. Sept. 18, 2018), D.E. 20-1 (letter from Adm. Michael S. Rogers, Director, National Security Agency) ("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.").
>
> Even on its face, the comment suggests the possibility that the Intelligence Community is *shutting down collection programs* because Trump took documents home.

You can't very well do nothing after you learn some of the most sensitive government documents were parked on a stage in a room hosting

weddings attended by all manner of foreigner and grifter. You can't do nothing after learning that Trump freely blabbed about the content of his stolen documents to anyone who bought access to him. You can't do nothing after a Five Eyes document gets dumped out of a box in a storage closet that musicians and other resort personnel have accessed. You've got to go to your Five Eyes allies and explain that America's former President is a dumbass and so the allies should take measures assuming that some drunken guest got a look at that document.

You might not even be able to charge documents as sensitive as these if the underlying programs hadn't had to be rolled up. The spooks are going to prefer to protect the programs over vengeance against the dumbass former President.

Which brings me to the most intriguing claim made at the hearing.

Stan Woodward — Walt Nauta's attorney — claims that neither he nor the government have figured out where all the missing boxes have gone.

> [T]he Special Counsel has directed us to certain portions of the CCTV footage that they view as the most relevant, but there is — from what we know and from our defense, there is a tremendous amount of CCTV footage that we believe has been produced that is not what they have identified that is extremely relevant to us. For example, to the extent that boxes were moved on occasions other than what is delineated in the indictment, that is certainly something that matters to us.
>
> [snip]
>
> We have, of course, the benefit of consultation with our clients and are able to talk about what video we should be looking at and what video we should not be looking at. And the entire nature of the allegations, of the charges in this case are about missing boxes,

> right? The indictment is charging Mr. Nauta — and I'll just stick with my client, with Mr. Nauta — with having moved boxes. Some number of boxes come out of a storage room, a lesser number of boxes go into the storage room, and Mr. Nauta is charged with hiding those boxes from whether it is Trump's then counsel or whether it is the Government. And obviously, **we are interested in knowing where those boxes are if they are, in fact, missing**. The CCTV footage is what is going to help us understand that riddle.
>
> Now, the Government does not know where those boxes went. As far as I can tell, to this day, the Government does not know where the boxes they allege were hidden ended up.
>
> [snip]
>
> I have a whole separate computer that I'm using just to do these extractions so that I can go in and start watching this days of video so that we can make an assessment of what this case is all about and whether it is about missing boxes or about boxes that just weren't found when the FBI conducted its search of the property.

Now, Woodward has a habit of saying things that I find … shall I say, unpersuasive?

This certainly feels like one of those instances, coming as it did amid a schtick whereby Woodward repeatedly referred to the government, then corrected himself to say Special Counsel, something that seems to mirror Judge Cannon's own preferences for calling Jack Smith's office the OSC (John Durham used this abbreviation but no one else does).

Woodward is attempting to claim that he needs to delay the trial past the election because he needs to review all of ten years worth of

surveillance video to defend his client. I've seen him make similar claims in January 6 trials.

More importantly, this is not a remotely fair representation of the charges against Nauta, which have to do with Nauta claiming to know nothing about moving boxes within days of being caught on surveillance video moving boxes, then allegedly attempting to destroy the video that captured him moving those boxes. Importantly, *even if someone else* moved a bunch of boxes that aren't otherwise included in the indictment, it doesn't exonerate Nauta. It could even inculpate him: if boxes were at Mar-a-Lago for someone else to move because Nauta had taken steps to withhold them from the government, it means his alleged obstruction would have made those other movements possible.

Plus, one big reason why the government charged Nauta, I believe, is because they believe *he* knows what happened to the missing boxes, including the ones he packed up to go to Bedminster where they disappeared forever.

I don't doubt that the government hasn't accounted for all the missing boxes; certainly Bratt did not correct Woodward on this point.

But one reason the government would have had to get ten years of video is to attempt to see who else entered that closet, to see who was in the closet when a Five Eyes document tumbled out, to see whether any of the foreign visitors to Mar-a-Lago seemed to know to look in the closet.

That's not something that would show up in the indictment, not without proof that Trump willfully told visitors where the documents were.

But if Woodward is telling the truth about needing to see who else was moving boxes around, rather than just using the volume of video to stall, it might suggest he's trying to find out what you might otherwise learn from a damage assessment. It might suggest that either Nauta hasn't been entirely forthcoming with Woodward

or Trump isn’t being forthcoming with his lawyers or his trusted valet.

Learning what the government saw in the surveillance video about moving boxes is not remotely necessary for defending Nauta against the charges against him. It might have a lot to do with understanding how ugly the story prosecutors will tell at trial will be.