

HILLARY'S REVENGE: TRUMP PROMISED VOTERS HE WOULD PROTECT CLASSIFIED INFORMATION

According to NBC news, Jack Smith prosecutor David Harbach, not Jay Bratt, was at the Miami courthouse on Thursday as a grand jury indicted the former President.

That was a surprise to me. While Harbach has post-DOJ ties to Jack Smith from the Hague, at DOJ, he was primarily a corruption prosecutor.

A seasoned trial lawyer, Harbach has tried more than 35 cases to verdict in federal and state courts. He has also conducted some of the nation's highest profile public corruption trials, including cases against former U.S. Senator John Edwards and former Virginia Governor Robert F. McDonnell.

Harbach was an Assistant U.S. Attorney in the Southern District of New York from 2005 to 2010, and for four years beginning in 2015, Harbach was an Assistant U.S. Attorney in the Eastern District of Virginia. In 2016, he was appointed Managing Assistant U.S. Attorney and Criminal Supervisor of the Richmond Division office, overseeing 21 prosecutors.

From 2014 to 2015, Harbach served on detail as Special Counsel to FBI Director James Comey. Before his work with the FBI, Harbach served as a Trial Attorney in the DOJ Criminal Division's Public Integrity Section, earning the Deputy Chief title after two years.

By all appearances, Smith had a corruption prosecutor present the Trump indictment to the jury, not DOJ's head of counterintelligence Jay Bratt.

I didn't even know Harbach was working this case! I thought he was working the January 6 case. I thought he was working on holding Trump accountable for defrauding a bunch of MAGA supporters, claiming they were paying for election integrity when instead it all went to paying staffers at his post-election office (including Walt Nauta).

Perhaps Bratt flew back to DC after attending the grand jury appearance for Taylor Budowich on Wednesday to deal with Stan Woodward's accusations of ethical abuse. Perhaps Smith figured that, until that allegation is resolved, someone else should have their name on the official documents.

But Harbach's apparent role in presenting the indictment is one of the things that made me look at two of my favorite passages differently. There's this passage, which I call "Hillary's Revenge." It collects five of the instances in 2016 where Trump distinguished himself from Hillary Clinton by boasting of his purported concern for classified information.

22. As a candidate for President of the United States, TRUMP made the following public statements, among others, about classified information:

a. On August 18, 2016, TRUMP stated, "In my administration I'm going to enforce all laws concerning the protection of classified information. No one will be above the law."

b. On September 6, 2016, TRUMP stated, "We also need to fight this battle by collecting intelligence and then protecting, protecting our classified secrets. . . . We can't have someone in the Oval Office who doesn't understand the meaning of the word confidential or

classified.”

c. On September 7, 2016, TRUMP stated, “[O]ne of the first things we must do is to enforce all classification rules and to enforce all laws relating to the handling of classified information.”

d. On September 19, 2016, TRUMP stated, “We also need the best protection of classified information.”

e. On November 3, 2016, TRUMP stated, “Service members here in North Carolina have risked their lives to acquire classified intelligence to protect our country.”

Andrew Kaczynski put together all the instances of it.

Donald Trump has repeatedly called for lengthy jail sentences for those who he claimed mishandled classified information. My report tonight on @OutFrontCNN, pic.twitter.com/D4P3EGhzj9

— andrew kaczynski (@KFILE) June 10, 2023

In an Espionage Act indictment, this paragraph serves the function of demonstrating Trump’s awareness of the importance of classified information.

Then there’s this passage, which I call “Brennan’s Revenge.” It’s a statement that Trump issued to justify stripping John Brennan of his security clearance in 2018.

23. As President of the United States, on July 26, 2018, TRUMP issued the following statement about classified information:

As the head of the executive branch and Commander in Chief, I have a unique, Constitutional

responsibility to protect the Nation's classified information, including by controlling access to it. . . . More broadly, the issue of [a former executive branch official's] security clearance raises larger questions about the practice of former officials maintaining access to our Nation's most sensitive secrets long after their time in Government has ended. Such access is particularly inappropriate when former officials have transitioned into highly partisan positions and seek to use real or perceived access to sensitive information to validate their political attacks. Any access granted to our Nation's secrets should be in furtherance of national, not personal, interests.

The circumstances around the statement are fascinating. Trump started publicly considering stripping security clearances after Rand Paul, fresh off a trip as a back channel to Putin, pitched it to Trump with two other unnamed people on July 23. Trump announced it on August 15, but then Brennan threatened to sue as obvious retaliation. The next year, NYT reported that Trump never did file the paperwork to strip the clearance.

Still, at least on first appearances, that background is not why this paragraph is in the indictment. Rather, it shows Trump's awareness that you can't take your privileged access to "our Nation's secrets" with you after you leave.

But, presented by a public integrity prosecutor rather than a counterintelligence one, that last bit may prove to be the most important. Read that way, this paragraph is a declaration by the Commander in Chief that one cannot use classified information in furtherance of personal interests. That kind of declaration by the Commander in Chief has a certain kind of

force.

And presented by a public integrity prosecutor rather than a counterintelligence one, the Hillary's Revenge paragraph reads like someone engaged in fraud, getting elected on a promise he will use the office to protect classified information, only to use it, instead, to steal classified information.

Let me suggest the Mar-a-Lago indictment might actually be a public corruption indictment wrapped up inside an Espionage Act indictment.

To be sure: there's little discussion in this indictment of why Trump stole these documents. Significantly, what is in there happened as uncharged conduct in Bedminster. There's the meeting at which Trump used a stolen Iran document to badmouth Mark Milley.

34. Upon greeting the writer, publisher, and his two staff members, TRUMP stated, "Look what I found, this was [the Senior Military Official's] plan of attack, read it and just show . . . it's interesting." Later in the interview, TRUMP engaged in the following exchange:

TRUMP: Well, with [the Senior Military Official]—uh, let me see that, I'll show you an example. He said that I wanted to attack [Country A]. Isn't it amazing? I have a big pile of papers, this thing just came up. Look. This was him. They presented me this—this is off the record, but—they presented me this. This was him. This was the Defense Department and him.

WRITER: Wow.

TRUMP: We looked at some. This was him. This wasn't done by me, this was him. All sorts of stuff—pages long, look.

STAFFER: Mm.

TRUMP: Wait a minute, let's see here.

STAFFER: [Laughter] Yeah.

TRUMP: I just found, isn't that amazing? This totally wins my case, you know.

STAFFER: Mm-hm.

TRUMP: Except it is like, highly confidential.

STAFFER: Yeah. [Laughter]

TRUMP: Secret. This is secret information. Look, look at this. You attack, and—

Robert Costa had a really fascinating thread on the background to this, a description of an ongoing obsession with Milley.

This is precisely the kind of conduct of which Trump accused Brennan, the use of secrets he learned while he had access to secrets to suggest (falsely in this case) to have dirt on one of his political adversaries.

Then there's the instance where Trump showed one of his PAC representatives a classified map and claimed that some ongoing conflict was not going very well, presumably to suggest that Joe Biden wasn't doing as well as Trump had.

In August or September 2021, when he was no longer president, TRUMP met in his office at The Bedminster Club with a representative of his political action committee (the "PAC Representative"). During the meeting, TRUMP commented that an ongoing military operation in Country B was not going well. TRUMP showed the PAC Representative a classified map of Country B and told the PAC Representative that he should not be showing the map to the PAC Representative and to not get too close.

The PAC Representative did not have a security clearance or any need-to-know classified information about the military operation.

Still, all the conduct describing Trump putting classified information to personal use happened in Bedminster, where two sets of classified documents went, never to be seen again.

Indeed, that's one part of the existing indictment that surprised me: I had expected Smith would charge the document showing that Trump compiled one confidential and one secret document into a larger one including messages from a pollster, a faith leader, and a book author. The FBI found that document in a drawer in Trump's desk at Mar-a-Lago.

I similarly expected Smith might charge the Presidential schedules that Chamberlain Harris loaded onto her laptop. Again, another instance of documents that were comparatively less sensitive, which Trump put to use for his PAC.

But maybe all this will show up in some other place. After all, one of the last things that Jay Bratt did before indicting was that Budowich interview, in which the head of Trump's current PAC described the foreknowledge that he and others had early last year that Trump wasn't turning over all the documents.

I proposed that this indictment might be understood as a public integrity indictment wrapped up inside an Espionage Act indictment.

But I don't rule out we'll see an Espionage Act indictment wrapped up inside a public integrity indictment.

Update: Over on Twitter, Yale HillBillionaire JD Vance points out why it is so important for a political candidate to be honest about whether they intend to uphold classification or intend to steal documents in bulk. I'm really grateful that Vance has laid out why Trump engaged in fraud here.



J.D. Vance @JDVance1

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The question of whether Trump should have kept those documents is fundamentally a political question. Criticize it, attack it, vote against it. But prosecuting a president over his own government's documents is turning a political issue into a legal one.

💬 2k ↻ 632 ❤️ 3k ⋮



J.D. Vance @JDVance1

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It's insane to me that the people who shout from the rooftops about "OUR DEMOCRACY" have taken this position: unelected bureaucrats can throw the elected president in prison for "mishandling" documents. Does Article 2 mean anything? If so Trump did nothing wrong.

💬 223 ↻ 85 ❤️ 568 ⋮



J.D. Vance

@JDVance1

Maybe you disagree. Maybe you think he should have kept the documents in a safe. Fine. Then go vote against him. I try to understand the left's perspective, but on this question—throwing Trump in prison over a political issue—they've passed the Rubicon. There is no going back.