

TRUMP AND NAUTA'S RELEASE CONDITIONS

Going into yesterday's arraignment, I believed the release conditions would be the only thing of note.

I was wrong. Alleged Trump co-conspirator Walt Nauta wasn't even arraigned! It seems he may be having difficulty finding local counsel to add to his Trump-funded lawyer, Stan Woodward.

Still, the release conditions were newsworthy, but it took until Anna Bower wrote up her 27-hour wait for the 30-minute hearing before what happened became fully clear: on the summons, the government asked for no release conditions besides the order that neither man commit any more crimes (!!!), something Trump attorney Todd Blanche optimistically assured his client could do.

But then magistrate judge Jonathan Goodman imposed an additional one: a limited restriction on talking to witnesses.

Goodman *had* attempted to impose a no-contact rule, as well as prohibiting Trump from speaking to Nauta about the case. But Trump attorney Todd Blanche objected, noting that some of the witnesses are members of Trump's personal detail.

[Prosecutor David] Harbach continues, the prosecution is not seeking a restriction requiring Trump to avoid contact with his co-defendant, witnesses, or victims.

Now Goodman is ready to make a ruling. As to Trump's release, he agrees with the government's recommendation: "I'm going to authorize a personal surety bond with no financial component," he announces.

But Goodman isn't willing to be as lenient as the government is with

respect to the special conditions of that release. "Despite the parties recommendations," he says, "I'm going to impose special conditions."

Specifically, Goodman wants Trump to avoid contact with witnesses and victims in the case except through counsel. He asks the government to submit a list of witnesses and victims so that Trump would know whom to avoid by way of abiding by the restriction.

Continuing to enumerate the special conditions of Trump's release, Goodman further says that Trump should avoid talking to Nauta about the case. He emphasizes that he customarily would require no contact whatsoever between co-defendants. But here he recognizes that Nauta works for Trump, and it would thus be "impossible" for the usual condition to apply in this case. For that reason, Goodman says the restriction will only apply to Trump and Nauta's communications about the case itself.

Blanche successfully attempted to narrow the contact order still further, allowing contact but not discussion about the case.

Here Blanche interjects: "Your honor," he asks, "may I be heard on the special conditions?"

After receiving permission to continue, Blanche says that the "problem" with the conditions enumerated by the judge is that many of the likely witnesses in the case are part of Trump's protective detail or long-time employees. "For him not to be allowed to have contact with them would in our view be inappropriate," he stresses. To emphasize this point, he notes that the same challenges that exist in restricting Trump's communications with

Nauta similarly apply to Trump's communications with his security detail and employees. "As one example," he continues, a "key witness" is the President's lawyer. For those reasons, Blanche urges the court to reconsider its restriction on communications with witnesses.

Then Harbach, rising at the judge's request for a response, offers the government's view. Noting that the government is "cognizant" of the issues raised by Blanche, Harbach suggests that the prosecution come up with a non-exhaustive, narrowed list of witnesses that could "accommodate" Blanche's concerns. After producing the list, he advises, the government could confer with Trump's legal team to work through any practical difficulties. Further, he says, the government would suggest that—as with Nauta—the restriction could be limited to communications with these witnesses about the case.

Responding to these representations, Judge Goodman momentarily toys with the idea of requiring the government to make up a two-category list of witnesses: a category of witnesses with whom there should be no contact at all, and a category of witnesses with whom there should be no contact about the case. For example, he says, members of Trump's protective detail would fall within the second category.

Blanche, however, remains unsatisfied with this proposed arrangement. He suggests that it would be "unfair" to people who rely on Trump for their livelihoods if the government were to place them on the "no contact" list. Moreover, he says, these restrictions on communications with witnesses are not necessary because "all of these

witnesses" have their own counsel, which Blanche seems to consider sufficient to guard against any improper communications with Trump.

Harbach, whom I suspect is keen to let the court impose this restriction now that it has been proffered by someone other than him, jumps in. He wants to "reiterate," he says, that the magistrate's special conditions are "workable."

Judge Goodman agrees. Discarding the idea of the two-tiered list of no-contact witnesses that he had considered moments ago, he decides on a simpler course of action: The government should produce of list of witnesses, but the "no contact" restriction will be limited to no communications "about the facts of the case other than through counsel."

"So that will be a special condition," he declares with an air of finality.

This decision is what it is – and I have every expectation that Trump will violate the restriction on talking about the case. But this is a testament that Trump was charged *based on the testimony of his closest aides*. These people practically live with Trump. And their testimony could put him in prison.

A lot of people are upset that Trump and his alleged co-conspirator didn't receive stronger conditions.

With respect to Nauta, of course, he's got no record and he's just charged with obstruction, so a personal recognizance bond is not that surprising.

With respect to Trump, most Espionage Act defendants *are* jailed pre-trial.

But there are recent examples where Espionage Act suspects remained out on pretrial release after their compromises were discovered. Both

Robert Birchum and Kendra Kingsbury, for example, who like Trump collected hundreds of documents over years and took them home, remained at large (and according to the government sentencing memo filed just this week in Kingsbury's case, she was less than helpful during the investigation). If the government hopes to find a way to get Trump to plead out of this charge, the comparison is not inapt.

More importantly, Trump has a full-time security detail, so he will be in immediate reach of Federal law enforcement at all times. Plus, there's a strong preference for pre-trial defendants to be permitted to continue to work. His job is lying to rubes and running for President.

More generally, though, everything the government has done thus far – both by filing the case in Florida, and by doing nothing to impede Trump's campaign (to say nothing of giving him an ankle bracelet to show off) – undercuts Trump's claims that this is a political prosecution.

That won't – and hasn't – stopped him from claiming it is one.

But already, there are a number of Republicans who, once they've read the indictment, have started coming around to the gravity of Trump's crime. There are a number of Republicans who agree that the decision to prosecute Trump was not political.

And that's as important a part of this prosecution as anything else: to get a majority of the country to understand that the charges are merited.