

TRUMP'S DEFENSE: HE INTENDED TO STEAL BOXES AND BOXES OF CLASSIFIED DOCUMENTS

As I have been noting for months, in all of Jack Smith's rebuttals to Trump's claims that Presidents have absolute immunity, he floated scenarios that are pretty similar to stuff that Trump is known or suspected of doing.

One of those is, "a president who sells nuclear secrets to a foreign adversary."

As I noted in response to Trump's claim that that would be treason, Trump has done a whole lot that's improper with classified information.

The closest thing on that list to treason is selling nuclear secrets to America's adversaries. Not treason.

But Trump's lawyers, including two of the lawyers representing him in the stolen documents case, lawyers who had their first good look at the documents Trump is accused of stealing last week, seem to suggest it could be.

To be clear: Trump has never been accused of selling nuclear secrets to America's adversaries.

He undoubtedly gave Israel's counterterrorism secrets to Russia – why, and whether there was a *quid pro quo* involved, we still don't know.

He is known to have Tweeted out highly sensitive satellite information to dick-wag Iran, with the result that Iran learned about the satellites targeting their country.

To spite Mark Milley, he showed a plan to attack Iran to Mark Meadows' ghost

writers.

Ongoing reporting, first from ABC and then from NYT, reveals that after Australian billionaire Anthony Pratt paid millions for access to Trump, Trump shared details of a conversation he had about a call he had with Iraq's president after bombing Iraq, described his perfect phone call with Volodymyr Zelenskyy, and provided sensitive details of America's nuclear subs.

And he is accused of leaving nuclear documents – documents that Trump's lawyers may have reviewed for the first time last week – in unsecure ways at his beach resort, possibly even in his gaudy bathroom.

So, no. Trump has not (yet) been accused of selling nuclear secrets, to adversaries or anyone else. Though he did give away what he claimed to be nuclear secrets to a businessman from an allied nation after the guy paid a lot of money for access to Trump.

But as I noted, we don't yet know what happened to some of the secret documents that Trump snuck away from Mar-a-Lago after hiding them from Evan Corcoran in June 2022, documents he took with him to host a golf tournament the Saudis paid an undisclosed sum to host at Bedminster.

Those documents have never been located.

Just so long as Trump didn't sell any of these nuclear documents, but instead gave them away, I'm sure we're all good.

That's important background to Trump's primary defense in his stolen documents case. Between his motion to dismiss because the Presidential Records Act doesn't say what he claims it says and his motion to dismiss for absolute immunity,

he is arguing that he intended to steal boxes and boxes of classified documents.

The latter argument is substantially the same garbage argument Trump has made to the DC Circuit and SCOTUS. The former is a real piece of work, even by Trump's standards. Here his argument:

- Before the Presidential Records Act was passed, Presidents treated presidential papers – which are different from government classified documents – as their personal property
- Because NARA had no authority, after Bill Clinton left office, to reclassify tapes of personal conversations Clinton made so Tom Fitton could have them, it means NARA has no authority over what counts as a presidential or personal record
- Bill Clinton's personal tapes are exactly the same as the boxes and boxes of official documents Trump sent to Mar-a-Lago
- Without providing any evidence Trump did classify all those official documents as personal documents, he will nevertheless claim he did so while still in office
- Robert Hur's report

describing seizing all of Joe Biden's diaries – which are specifically excluded from the PRA – is proof that Presidents control all official documents they stash away

- Cmon, Judge Cannon, you made the ridiculous argument I own these documents once already, only to have the 11th Circuit rip you a new asshole, but why can't you make precisely that argument again?
- Charging Trump for actions he took after leaving the White House is the same as supervising his actions day-to-day
- Because DOJ declined to second-guess Mark Meadows' spectacular failure to declassify documents Trump wanted to give to John Solomon, it means DOJ must accept Trump's vague assertion that he didn't spectacularly fail to declassify boxes and boxes of documents either
- These boxes and boxes of official documents, which are not excluded from the PRA, are just like Reagans diaries, which are specifically excluded

- Clinton's conversations about official stuff are just the same as the official documents documenting that kind of stuff
- Because NARA had never made a criminal referral before February 2022, the fact that it has since made two means it couldn't make any
- Trump didn't think he'd get busted, so it was improper for FBI to bust him
- DOJ should have dealt with me like they did with Peter Navarro when he also blew off the PRA
- Because DOJ refused to seize unclassified personal Clinton recordings so Tom Fitton could have them, it means DOJ could not seize classified official documents so NARA could have them

Ultimately, though, the two arguments together are very simple. First, from the PRA filing, Trump *intended* to take those boxes and boxes of classified documents.

The Special Counsel's Office concedes that the "genesis" of this case dates back to at least "the tail end of the Trump Administration itself." Compel Oppn. at 3.2 The Office alleges in the Superseding Indictment that President Trump "caused scores of boxes, many of which contained classified documents, to

be transported” to Mar-a-Lago. ECF No. 85 ¶ 4 (emphasis added). The Superseding Indictment makes clear that this decision and the related transportation of records occurred while President Trump was still in office. Id. ¶ 25 (alleging that President Trump caused boxes of records to be packed and shipped “[i]n January 2021, as he was preparing to leave the White House” (emphasis added)). President Trump departed the White House prior to “12:00 p.m. on January 20, 2021,” and as such he is alleged to have made these decisions concerning the documents at issue while he was the Commander-in-Chief. Id. ¶ 4.

And, from the immunity filing, because Trump stole those boxes and boxes of classified documents while he was still Commander-in-Chief, he has immunity from prosecution for doing so.

Specifically, President Trump is immune from prosecution on Counts 1 through 32 because the charges turn on his alleged decision to designate records as personal under the Presidential Records Act (“PRA”) and to cause the records to be moved from the White House to Mar-a-Lago. As alleged in the Superseding Indictment, President Trump made this decision while he was still in office. The alleged decision was an official act, and as such is subject to presidential immunity.

[snip]

Even if the Special Counsel’s Office could establish that President Trump’s designation decision under the PRA was illegal or otherwise improper—and they cannot—the President’s actions do not fall beyond the outer perimeter of official responsibility merely because they are unlawful or taken for a

forbidden purpose.” *Blassingame*, 87 F.4th at 14. The Supreme Court has so held, repeatedly. After all, every claim of immunity is raised against charges of allegedly improper motive or purpose. See, e.g., *Fitzgerald*, 457 U.S. at 756 (rejecting a rule that would permit “an inquiry into the President’s motives” as “highly intrusive”); *Pierson v. Ray*, 386 U.S. 547, 554 (1967); *Barr v. Matteo*, 360 U.S. 564, 575 (1959) (“The claim of an unworthy purpose does not destroy the privilege.” (citation omitted)); *Spalding v. Vilas*, 161 U.S. 483, 498 (1896) (holding that immunity does not turn on “any personal motive that might be alleged to have prompted his action”); *Bradley v. Fisher*, 80 U.S. 335, 354 (1871) (holding that immunity “cannot be affected by any consideration of the motives with which the acts are done”); see also, e.g., *Gregoire v. Biddle*, 177 F.2d 579, 581 (2d Cir. 1949) (Hand, J.). In short, in assessing whether immunity applies, courts must look to the “nature of the act itself.” *Stump v. Sparkman*, 435 U.S. 349, 362 (1978). The allegedly improper manner or purpose of the alleged acts is not relevant. *Fitzgerald*, 457 U.S. at 756. Therefore, President Trump is entitled to immunity for this official act and that must include immunity from criminal prosecution.

This is, quite literally, an argument that it was totally legal for Trump to choose to steal boxes and boxes of classified documents.