

What Roman Mars Can Learn About Con Law Mar-a-Lago.mp3

Roman Mars [00:00:00] So we're recording on Friday, September 2nd, at just about 11 a.m.. And what are we going to talk about this time?

Elizabeth Joh [00:00:06] Well, let's start out with the story. In August of 2016, FBI agents searched the home of a cybersecurity contractor working for the National Security Agency. The contractor had a high level security clearance, and that meant he had access to some of the country's most sensitive secrets. And the FBI agents searched the contractor's house, shed and garage, and they found a lot of highly sensitive material. In fact, they found terabytes of data on computer hard drives and thousands of paper documents. They were piled up in his ordinary house in suburban Maryland. And in the end, the contractor whose name was Hal Martin, negotiated a plea deal in 2018. He agreed to plead guilty to just one criminal count. And the basis for that plea was just one top secret document. In fact, the document was so secret, it's only vaguely described in the public filing by the government as a 2014 NSA leadership briefing. Now, federal prosecutors were worried that Martin might have sold or shared that information with foreign governments or just criminals. And Martin's own lawyer said that his client was just a compulsive hoarder, couldn't help it. But it really didn't matter. Martin's motivations for holding on to the government's secrets were irrelevant. It's a felony just to possess this information without authorization. Now, here's how the prosecutor described the harm caused by Martin in court. He said that the potential exposure of the country's most sensitive defense information would be reasonably expected to cause exceptionally grave damage to the national security of the country. And once the government lost control of that information, it must often treat that material as compromised. And for agreeing to plead guilty to one count about one document, Martin was sentenced to nine years in federal prison. Now, Hal Martin pleaded guilty to the federal crime of holding on to national defense information that he wasn't authorized to possess. It's also known as 18 U.S.C. 793 subsection E. Now, 18 U.S.C. 793 E also happens to be one of the crimes federal agents said they were investigating when they searched Mar-a-Lago, the home of now ex-president Donald Trump. What kind of trouble is Trump in? And what was that search about?

Roman Mars [00:02:48] Well, let's find out. All right. This is what Roman Mars can learn about Con Law, an ongoing series of indeterminate length where we take the actions and alleged criminal activity of the former president of the United States and use them to examine our Constitution like we never had before. Our music is from Doomtree Records. Our professor and neighbor is Elizabeth Joh. And I'm your fellow student and host Roman Mars.

Elizabeth Joh [00:03:40] Now. So to understand, Roman, why federal agents searched Trump's house, you have to go back to January 2021 again, the end of Trump's presidency and dispute that started out as serious, but not alarming. Now, here's how a normal presidency is supposed to wind down. When a president leaves office, he's supposed to turn over all presidential records to the National Archives. That's the federal agency in charge of preserving government and historical records. And the reason for this comes straight out of the Nixon era. Nixon wanted to take all of his documents and those notorious Watergate recordings with him. And at the time, he could have, because presidential materials were considered the president's own property. And to make sure that this would never be an issue again, congress passed the Presidential Records Act in 1978. So let's just refer to it as the PRA. That's the Presidential Records Act.

Roman Mars [00:04:35] Okay. PRA.

Elizabeth Joh [00:04:37] So because of the PRA, all presidential records are the property of the United States. It's not the personal property of the president or any ex-president. The law is very clear on this. The law says that a president can keep some records that are totally personal. But it's also very clear that anything that a president creates or receives in the course of being the official president of the United States, belongs to the government. They actually technically belong to us, not the individual who happens to be in the White House. Now, normally, just like everything else with Trump, this isn't supposed to be a problem. You're supposed to turn everything over, like most ex-presidents do. And once a president becomes an ex-president, the law says that the responsibility for those records is assumed by the archivist of the United States. That's the head of the National Archives. There's a whole process for outgoing presidents to box up and send their records to the National Archives. So that's pretty boring. And most of the time we never pay attention to it. But this is Trump and things were not normal. Trump left the White House just hours before Biden became president. But remember, he wasn't thinking about records. Trump and his aides had spent weeks contesting the election, and then the January six attack on the Capitol happened. And then Trump was facing his second impeachment trial. So maybe it's no surprise to anyone that packing up the presidential records to the National Archives was just not a priority. And so Trump did not send all of the records he was required to turn over to the National Archives. And the Archives noticed, they thought, well, we don't seem to have everything here. And so they asked nicely for those records to be sent back. Now, skip ahead to January of 2022, Trump turns over 15 boxes to the archives, and we now know that the archives look through those records, those 15 boxes, and found out that 14 of them had classified information. Including what's called signals intelligence, that's intercepted communications about foreign leaders.

Roman Mars [00:06:47] From the very beginning, this is all very unusual because I don't even understand how the archivist knew that there was top secret information that was missing to begin asking for it in the first place.

Elizabeth Joh [00:06:57] Yeah, I mean, we can only speculate, right, as to what exactly is known. So presumably the archivist just knew maybe that there was a volume of information that typically is handed over from prior administrations that was kind of missing in Trump's case. And then they get that first set of boxes and realize, whoa, there's not just information missing that we now have, but some of it's classified and some of it's top secret. That gets turned over as a referral to the Justice Department. And this is all part of a larger picture we know about Trump. There have been longstanding concerns about what kinds of secrets Trump might share or even sell after he became ex-president. It's well known that Trump is facing some serious debt coming due in the near future. And it's also the case that Biden, when he assumed office, took the unusual step of barring Trump from receiving classified briefings. That's a courtesy that's extended to ex-presidents. They get to continue to receive classified briefings. But there was clearly something about concerns that Trump might do something with that information or how indiscreet he might be with that information that led to that unusual barring or prohibition for Trump. So all of that put together meant that there was a pretty serious inquiry, probably very quickly.

Roman Mars [00:08:19] So what is the deal with classification? Like, what constitutes a classified document and who decides and how does this all work?

Elizabeth Joh [00:08:26] So in general, the idea of classification is something that in theory flows from the President's constitutional authority, his or her Article two authority. But the reality is there's an entire bureaucratic structure for classification. So when we talk about classified information, we mean information that the government considers very sensitive and that only a limited set of people can see it. And there are three levels generally of classification. There's confidential information, meaning that if it gets out, it could damage national security. That's the lowest level of classification. And thousands of government workers and federal contractors have that kind of access. Next is secret information. And as that name implies, if it gets out, it's a little bit more serious. It would cause, quote, serious damage to our national security. And at the very top, of course, is top secret information. If this information gets out, it could cause what the government calls exceptionally grave danger to our national security. And there are even higher layers within top secret. There's another kind of top secret information called top secret or sensitive compartmented information. Now, that's information that comes from sources and intelligence, like information that might be provided from a secret government informant from another country. And it's because Trump had been holding on to classified information that a dispute about archives records that we probably would never have paid attention to became alarming and urgent. So in February of this year, the archives referred the matter to the Justice Department, and in the spring, Trump received a federal grand jury subpoena. That's an order for documents for those missing records. And the workings of a federal grand jury means that this is now a criminal investigation. And in June, federal agents visited Mar-a-Lago, you know, in a friendly way, as you do.

Roman Mars [00:10:21] Okay.

Elizabeth Joh [00:10:22] They left with more classified documents. And one of Trump's lawyers said that they had turned over everything that was classified that they weren't supposed to have. But for reasons we don't know, the investigation suddenly became much more serious in August. And on August 8th, FBI agents executed a search warrant on Mar-a-Lago. And Trump confirmed it on that day with a post on his social media site Truth Social. Remember, he got kicked off of Twitter. He said that my beautiful home had been raided by FBI agents. And he said nothing like this has ever happened to a president of the United States before. He's right about that. So we know that had happened and there was, in fact, a search warrant.

Roman Mars [00:11:07] It is true. Nothing like this has happened before. So in this case, and I guess in all cases, like how does one get a search warrant to get these documents from a country club in Florida?

Elizabeth Joh [00:11:18] Yeah, just your ordinary country club. Well, when you get a search warrant, normally when the government wants to search your home, let's say, they have to apply for a search warrant. And federal investigators have to follow the federal rules of criminal procedure. But those requirements come fundamentally from the Fourth Amendment of the Constitution. The Fourth Amendment itself talks about warrants, and talks about the fact that warrants have to be based on probable cause. That's a standard of the Fourth Amendment. So you can think of probable cause as how certain law enforcement agents are, that there is evidence of a crime to be found in a particular place. Now, there's no precise formula for probable cause, but it's sort of like saying that there's a fair probability, the government doesn't have to be 100% certain, and you don't even have to be like 75% certain, like a fair probability that the thing that they're looking for is there.

Roman Mars [00:12:13] It's like 51, maybe.

Elizabeth Joh [00:12:15] Maybe not even. I mean, you could say like it's, you know, could be 49 and that's probably good enough. I mean, judges don't come up with those numbers, but it's not super hard to get a search warrant. So when it comes to applying for a search warrant, then the government has to convince a judge that there is probable cause, that they'll find certain kinds of evidence for specific crimes in a specific place. So in order to do this, a federal agent would have provided an affidavit. So an affidavit is a sworn statement, a statement under oath, that tells the judge where the government wants to search, for what items, and why the government thinks that they'll find evidence of a crime or crimes in that place. So the affidavit itself is also usually pretty interesting because if you could read it, it would tell you a lot about the details of an ongoing investigation. And in the Mar-a-Lago search, the application was reviewed by a federal magistrate judge named Bruce Reinhart. But the selection of Bruce Reinhart is essentially random. There's no particular reason for it to have been Judge Reinhardt, and it could have been another magistrate if it had been a different day. So there's no like politics involved. It's just essentially randomness that this particular judge reviewed this particular now notorious search warrant.

Roman Mars [00:13:33] And this is totally like his job. He reviews search warrants regularly, right?

Elizabeth Joh [00:13:39] Yeah. I mean, of course, the the subject is really strange and, you know, where an ex-president lives. But the essence of the job is looking at things like this. Magistrate judges consider a lot of motions in federal, civil, and criminal cases. And Judge Reinhart, like lots of magistrate judges, would have routinely have looked at search warrant applications in all kinds of criminal cases. So that job itself, there's nothing special about it, is something Judge Reinhardt would have done lots and lots of times before. And when the judge considered the government's search warrant for Mar-a-Lago, he had only one job - to consider whether there was probable cause to search Mar-a-Lago for those specific things that might be evidence of certain crimes. All the other stuff that's floating around here, like the historical importance of allowing the government to search Trump's home, what the political context might be, that's everything for pundits to talk about, but it's not something that the judge would have considered. They only had one question before him.

Roman Mars [00:14:41] Right. It's not his job to consider the balance of powers or, you know, the historical precedent of whether or not a president can be prosecuted after they leave office or anything like that. It really is all about probable cause and whether or not this rises to that level.

Elizabeth Joh [00:14:55] Exactly right. Just like your ordinary criminal case. Just does the government have enough legal justification to look in this person's home?

Roman Mars [00:15:03] Yeah. Okay. So what did the warrant say? Like, what was the thing that, you know, got approved?

Elizabeth Joh [00:15:07] Well, so, first of all, you know, it's sort of unusual that we saw it because usually we don't see warrants at this stage. The warrant itself, that's the official court order permitting the search, that was made public on August 12th at the request of the Justice Department. And Trump could have opposed it, but his lawyers did not. And now we have a copy of it, just like you'd expect, the warrant specifies where the government can search. So in other words, a warrant wouldn't say you can look in

Mar-a-Lago or anywhere you want to, says these are the specific places that the Justice Department can look. And so we find out they could look in Trump's office, all of the storage rooms, and rooms where boxes or documents could be stored, because that's what they were looking for.

Roman Mars [00:15:50] Yeah. And this is right out of the Fourth Amendment. Like that, part of the Fourth Amendment is describing the places to be searched and the things to be seized.

Elizabeth Joh [00:15:57] Right. So they have to be particular and specific. So just like with a search warrant for in an ordinary person's home, you can't say we just want to look around your house for stuff, for evidence of crime. The government has to be very, very specific. So that's right. So the warrant also tells us what the government's looking for - documents with classification markings, presidential records, as well as any evidence of knowing alteration, destruction, or concealment of government records. So that was another clue about what the government was looking for. And we also saw released on that day an inventory, a list of everything the government took away or seized. And because we're talking about top secret information, or at least some of that information is top secret, the list, as you can guess, is pretty vague. So we don't know exactly what the government took away. But you can see that some of what FBI agents seized included both top secret documents, that's like the highest level, as well as some top secret or secure compartmented information documents. So this was some pretty serious stuff. It wasn't just, you know, memoranda from special dinners from the Trump's presidency. It's just, you know, this is really a serious information. So we don't know exactly how the Justice Department knew there would be more information that wasn't just classified, but it was considered top secret at the president's home. But the judge would have seen those reasons. The government would have had to have told the judge why they thought so. In other words, what were their sources. What kind of investigation they'd built up already. But search warrant affidavits are something that we wouldn't normally see. There are normally secret during investigations, and they might become revealed to the defendant if there is a set of formal charges. But even then, very often the public doesn't see the affidavit in any way. So, even though affidavits at this stage for ordinary cases aren't made public, the judge who approved the search warrant later ordered that the affidavit be made public, at least the parts that were not considered top secret or sensitive. So we found out some of what was going on in the affidavit when it was released on August 26. But we also found out that a lot of it is redacted or blacked out. The Justice Department said that they needed those redactions to protect their sources. But even in doing so, we found out something - they said they needed to protect a significant number of civilian witnesses. So they're not named, presumably they're named in there in the blacked out portions, but there's a lot of them, apparently.

Roman Mars [00:18:32] And these are people who testified to the existence of these documents or they've given some kind of clue as to what would be there and why they're searching for them.

Elizabeth Joh [00:18:41] Yeah. Presumably these are people who, we don't know who they are, or whether they're employees of Mar-A-Lago or other sources. They've been speaking to federal investigators. And, you know, a lot suggest that it's more than one or two sources providing this information.

Roman Mars [00:18:56] So is there anything else that the affidavit tells us?

Elizabeth Joh [00:18:59] So, again, there's not a lot. A lot of it's blacked out. But first of all, I think the government made it clear that they thought they had probable cause, that Mar-A-Lago had not just presidential records that Trump wasn't supposed to have, but some of the government's biggest secrets. So if you look at the affidavit, it contains a lot of abbreviations for certain types of documents. But you can decipher most of them to see that the Justice Department thought that they would find at Mar-a-Lago classified documents on human intelligence, our nation's spies. So we don't really know, again, like what exactly they're talking about, whether it's identifying those spies, the human intelligence, or whether it's information that's produced from them. But just the fact that they're looking for that information is a pretty big deal, because information about this sort of thing is worth, you know, potentially a lot of money to the right sources or the right people. It can literally put people's lives in danger. It can get people killed. And if that was sitting around in some, you know, insecure storage space in the ex-president's golf club and resort, you can see why the Justice Department applied for the search warrant.

Roman Mars [00:20:10] Yeah, for sure. Absolutely.

Elizabeth Joh [00:20:12] But I think the most significant thing that we found out from the affidavit is which crimes exactly the Justice Department is currently interested in. And they are serious. So why don't we talk about that?

Roman Mars [00:20:23] Yeah, let's do it.

Elizabeth Joh [00:20:27] So there are three crimes listed. The first is 18 U.S.C. 2071. This criminalizes the willful theft, removal or destruction of government documents. It's kind of a catchall offense that punishes the wrongful destruction of government records. And it carries with it a maximum term of three years in prison. There's an intriguing part of this destruction of government records crime that says if you're convicted of it, if you're convicted of 2071, you're barred from holding public office. So could a 2071 conviction barred Trump from being president again? Is a question I'm sorry that no one really has an answer to.

Roman Mars [00:21:09] But it says it there.

Elizabeth Joh [00:21:11] It does say that. But there are likely some pretty big constitutional questions. And the second crime that the government is interested in is 18 U.S.C. 793, subsection E. And that's Hal Martin's crime. Our cybersecurity order. Right. Congress made it a felony to possess unauthorized national security information that could harm the country's interests. Now, the maximum penalty for this crime is ten years in prison. And Section 793 is part of what's called the Espionage Act of 1917. So when people decipher this by Googling it, they got really excited thinking, Oh, this is about spies. It's kind of a misleading title because some parts of the Espionage Act does punish what we would think of as spying. But the act covers a lot of what's not, you know, clearly spying. It's really about things that harm the government's interests. So this section 793 E, you know, the thing that got Hal Martin in trouble, it makes it clear that there are some kinds of government secrets that if they're not handled correctly, they're so sensitive that we have to punish people even for unauthorized possession because them having it in a way that they shouldn't, it would harm our country's interests. Right. Remember Hal Martin got nine years in prison, not because the government alleged that Martin was selling the secrets or leaking the secrets or just putting them up in Internet, just because they were in his house. And his house is not a secure place to have them, and he had no right to have them. Here's what prosecutors would have to prove in a Section 793 E case - that the

defendant had unauthorized possession of the information, that the information related to the national defense, which the defendant had reason to believe could be used to the injury of the United States, and that the defendant willfully retained that information. So let's think about Trump as a hypothetical defendant. Hypothetical, of course, because there are no charges yet against anyone. I want to be clear about that. Okay. So what would have to be proven? So is he a person holding on to national defense information without authorization?

Roman Mars [00:23:18] Yes.

Elizabeth Joh [00:23:18] Yeah, I think so. Right. Because remember, as of the end of his term, Trump had to turn over everything that was part of his sort of presidential legacy, all of his presidential records, which we now know also included classified information. Top secret information. He has held on to apparently hundreds of classified documents. The National Archives tried to retrieve that information. So from January 20th, 2021 until August 8th, 2022, the ex-president had hundreds of documents he wasn't supposed to have, including things that might harm the national defense. So did he keep the information willfully? Did he know that the information was national defense information and acted with a wrongful purpose to disobey the law?

Roman Mars [00:24:07] I would say yes, because they contacted him about it and it went on for a year and a half.

Elizabeth Joh [00:24:11] Yeah, that's right. I mean, first the archives asked nicely, then the Justice Department, they went a little stronger. They went with a subpoena, and then finally they had to go with a search warrant to figure out what else was really there at Mar-a-Lago. And apparently there are multiple witnesses who say that Trump told people that he thought it was his information to keep. So this wasn't an issue of "Whoops, I mistakenly had one file folder. Here it is. I give it back right away." This is a pattern of someone who clearly kind of knew what was going on but failed to return what was not properly his to possess in the first place.

Roman Mars [00:24:48] And does that the degree of secret versus confidential versus top secret matter when it comes to this crime?

Elizabeth Joh [00:24:56] Actually, it doesn't even matter that they're classified, but a crime of 18 U.S.C. 793 E doesn't turn on the classification status of the documents. Right. And that's true for all three crimes that are listed in the affidavit. That's not part of the definition of these crimes. So for the Espionage Act, that's 793 E. What matters is that the records possessed by the person count as national defense information and that they could be used to injure the country's interests. When the law was passed initially, we didn't have the system of classification, which is why there's no reference to classification documents.

Roman Mars [00:25:33] Oh, that's really that's really interesting. So the sort of defense I've heard bandied about that, well, I declassified them by virtue of my will before taking them out, doesn't really matter because classification doesn't really matter in terms of the crime.

Elizabeth Joh [00:25:48] Yeah, that's right. So in one sense that as I said, the short answer is, it doesn't really matter about the classification status in order for you to be prosecuted under this law. But it does matter in a different sense. The more sensitive the documents you might say, it's more urgent in other kinds of cases at least, for prosecutors

to think we have to bring criminal charges. Right. If you have an unauthorized person who's in possession of government documents that they're not supposed to have, but they're not classified, I think maybe you have a prosecutor who says, you know, this person is not worth prosecuting. Maybe we strip them of their security clearance. We do other things. We don't try to send them to prison. But the more sensitive the documents are, I think that makes a more compelling case for criminal prosecution. And I say that in a general way, because ordinary people do get prosecuted for situations like this and they serve some pretty long prison terms. So let's get back to your, you know, you mentioned this thing about declassification, right? Yeah. There's this idea that Trump and his allies have pointed out, like, well, maybe he just declassified everything, so it's okay. Everything's all right. Well, that just doesn't make a lot of sense for a variety of reasons, right? So it's intentionally muddying a lot of different issues. It's absolutely true that the whole idea of classification comes from the president's constitutional authority. And it's also true that a sitting president can declassify information directly. So Trump, of course, is an ex president, doesn't have that classification authority right now. And in general, we have this entire bureaucratic administrative process for declassifying documents like presidents are supposed to just snap their fingers and make it up. And, you know, specific people and different agencies have to agree that something can be classified or declassified. There's even a standing executive order that means from the executive branch that tells us about this entire complicated process. Nobody, not even President Trump when he was president, has ever said that he was getting rid of this process or that he was revoking this process. Right. So that doesn't make a lot of sense.

Roman Mars [00:27:59] Yeah. But in a way, it kind of doesn't matter because classification status doesn't matter in terms of this particular crime.

Elizabeth Joh [00:28:06] That's right. But I think there's even a more basic absurdity to the claim. So if you say that Trump's holding on to information about our nation's spies, information that's not even supposed to be shared with other countries. And according to The Washington Post, information about our nuclear weapons. Let's think about this argument for a second. Trump and his allies are saying, look, he just declassified everything. Okay. Is that a coherent position? Because if Trump declassified our nuclear secrets, the identities of our spies, the intercepted emails of foreign leaders, that means that anybody, including you and me, we should be able to take a look at it. Right. We should be able to file our public records request today and get that information. So should we take him seriously? Is that what people are really thinking? Well, why can't we see it then?

Roman Mars [00:28:56] I see. Okay.

Elizabeth Joh [00:28:58] It does not make sense.

Roman Mars [00:28:59] It does not make sense.

Elizabeth Joh [00:29:00] So then there's the third crime. Okay. The third crime that comes up is 18 U.S.C. 1519, which is one of the many federal criminal laws that punish obstruction of justice. Of course, obstruction has been a theme with Trump. It was a theme in the Mueller investigation. It was part of the first impeachment of Trump. And now it's here again. And 1519 specifically makes it a crime to destroy or conceal records with the, quote, "intent to impede, obstruct or influence the investigation or proper administration of any matter." So a prosecutor charging this would have to prove that a person knowingly concealed or destroyed documents and did so with the intent to impede that official

investigation. So when it comes to like how this would apply, it's not totally clear. It's not clear whether the investigation being impeded or allegedly impeded is only the one that started with the archives dispute or whether there's something else as well. We don't know yet. But it is clear that the Justice Department is looking not just for evidence of past destruction, they're also concerned about continuing obstruction. In fact, one of the reasons they didn't want the details in the affidavit released is because they said steps may be taken to frustrate or otherwise interfere with this investigation if the facts were prematurely disclosed. So they are concerned about continuing obstruction as well. Now obstruction is actually more serious in that, you know, the maximum penalty for one count is 20 years in prison. So it's a more serious crime in that sense.

Roman Mars [00:30:42] Interesting.

Elizabeth Joh [00:30:43] And so even though the Espionage Act, because, you know, espionage sounds like really exciting, initially received the most attention, it looks like obstruction is actually the one that's really posing a serious problem for Trump, at least from what we know so far. And we know about this because of a more recent dispute. Trump's lawyers asked for a special master to review the documents seized by the government.

Roman Mars [00:31:05] So what is the special master? Because, I mean, that's a great name, but I don't know what it means.

Elizabeth Joh [00:31:10] Yeah, it is awesome, right? It sounds like you've got like a special weapon or something. Totally like a Dungeons and Dragons rule, but it's just not it's just like a very ordinary thing that basically you can think of it as a neutral lawyer that a court appoints who reviews seized documents, to separate documents that are clearly within the scope of the warrant versus things that might be privilege and ought to be set aside. For example, if there were some some things protected by attorney client privilege. So a special master is not like scary or weird. It's just like a pretty ordinary part of this kind of litigation. Now, the interesting part is that the Justice Department used their own response to Trump's request to reveal more details about their investigation. They've said in this filing that the evidence shows that records were likely concealed and removed to obstruct their investigation at Mar-a-Lago. They said that Trump's lawyers explicitly prohibited FBI agents from looking at a storage room during their June visit. That was that friendly drop in at Mar-a-Lago. You know, basically, like, you can look here and here, but definitely not here. So that same room is where FBI agents later when they were conducting the search warrant, they found more classified documents. We've now learned that during the execution of the search warrant, classified documents were found not just in storage rooms and in Trump's office, but inside the desk drawers of his office. I mean, that's important because Trump's lawyers, number one, said, look, everything that was supposed to be turned over, we've turned over. Then they said everything was in a storage room. It really wasn't. And that gets to this idea of, well, is it just the lawyers? Is it just the lawyers that were representing this? But this seems to be part of Trump's personal papers mixed in his desk drawers. I suppose you could say, you know, he's a busy executive. What does he know in his desk drawers? But, you know, it's harder to make that case. And so it's in this filing from August 30th that the Justice Department said that they found more than 100 unique documents with classification markings during the Mar-a-Lago search. They even attached a picture showing records found at Mar-a-Lago with classification markings, including some that referred to some top secret things like confidential human sources. And the picture shows these documents spread out all over the carpet. So if you've ever looked at other kinds of drug investigations, it's pretty common for the police to

post pictures of, like, these neatly piled bags of cocaine and like these guns. It's a similar sort of thing. But this took an especially weird turn because of what Trump said about the picture. He posted on Truth Social, his social media site, he said, Look, they took them out of cartons and spread them around on the carpet. So that's just weird, because Trump had suggested before that maybe the FBI had planted the evidence. But with this post, which he, I suppose, thinks is focused on the messiness of the FBI, he seems to be admitting that he knew that the documents were in his cartons and that the biggest deal is that the sloppy way the FBI put them on the floor. That is not the biggest deal here. He seems to be admitting he knows a lot about them.

Roman Mars [00:34:25] Right. That that does indicate that. Yeah.

Elizabeth Joh [00:34:27] So the news from the Mar-a-Lago search warrant seems to be getting worse as time goes on. And I think the Justice Department took a very serious step by deciding it was time for a search warrant. And the question we're all wondering now is what they're going to do next.

Roman Mars [00:34:43] Yeah. Yeah. So if there is a prosecution, if there are charges filed, like when do we think this would happen?

Elizabeth Joh [00:34:51] Well, I don't anytime soon, in part because, you know, you and I have talked about this before. There is election sensitivity on the part of the Justice Department. The midterms are coming. And so, you know, the best guess would be they're going to wait until after the midterms if anyone, anyone is going to be charged in connection to what they found at Mar-a-Lago. But that doesn't bar Trump from trying to get ahead of this by announcing very early, maybe really early that he is running for a second term.

Roman Mars [00:35:22] Mm hmm. And then prosecuting him at that point would be another sort of like violation of the standards of the DOJ that it set for itself. They can change their mind if they want to. But they do not interfere when it comes to elections. Or at least that's the notion.

Elizabeth Joh [00:35:38] That's exactly right. So we're likely to see some tension or some battle unfold over, you know, timing of who, about whom and by whom.

Roman Mars [00:35:48] Yeah, well, this is amazing stuff. And I'm glad I know at least three subsections of 18 USC now that I didn't know before. So thank you so much.

Elizabeth Joh [00:35:58] Thanks Roman.

Roman Mars [00:36:11] The show is produced by Elizabeth Joh, Jaya Maldonado Medina and me, Roman Mars. You can find us online at learnconla.com. All the music in What Roman Mars Can Learn About Con Law is provided by Doomtree Records, the Midwest Hip Hop Collective. You can find out more about Doomtree records, get merch and learn about their monthly membership exclusives at Doomtree.net. We are part of the Stitcher and Sirius XM Podcast Family.