

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HERITAGE FOUNDATION)
214 Massachusetts Ave. N.E.)
Washington, D.C. 20002)

MIKE HOWELL)
214 Massachusetts Ave. N.E.)
Washington, D.C. 20002)

Plaintiffs,)

v.)

Case No. 24-cv-645

U.S. DEPARTMENT OF JUSTICE)
950 Pennsylvania Ave. N.E.)
Washington, D.C. 20530)

Defendant.)

COMPLAINT AND PRAYER FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs THE HERITAGE FOUNDATION and MIKE HOWELL (collectively “Plaintiffs”) for their complaint against Defendant DEPARTMENT OF JUSTICE (“DOJ”) allege on knowledge as to Plaintiffs, and on information and belief as to all other matters, as follows:

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C § 552, to compel the production of certain records relied upon by Special Counsel Robert K. Hur’s *Report on the Investigation Into Unauthorized Removal, Retention, and Disclosure of Classified Documents Discovered at Locations Including the Penn Biden Center and the Delaware Private Residence of President Joseph. R. Biden, Jr.* (Feb. 2024) (“Report”) (Ex. 1). See Plaintiffs’ FOIA Request, FOIA-2024-01098 (Feb. 9, 2024) (“Request” or

“Plaintiffs’ FOIA Request”) (Ex. 2). Specifically, the Request seeks all records relied upon by Special Counsel Hur to write particular passages of the Report. The Report was, and continues to be, the subject of widespread media and high-level governmental attention. A good deal of this interest focused and focuses on the Report’s discussion of President Biden’s mental faculties and memory. There also is considerable and vigorous debate in the press, amongst Members of Congress, and between the Legislative and Executive Branches concerning the Report. Again, a good deal of this debate focused and continues to focus on issues surrounding President Biden’s mental faculties and memory. The release of the Report almost immediately generated intense Congressional interest and oversight. Indeed, on February 27, 2024, House Oversight and Accountability Committee Chairman James Comer and House Judiciary Committee Chairman Jim Jordan subpoenaed Attorney General Merrick Garland for records related to Special Counsel Hur’s investigation. *See* Letter from Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, *et al.*, to Attorney Gen. Merrick B. Garland, U.S. Dep’t of Justice (Feb. 27, 2024) (Ex. 3). This subpoena issued after the Attorney General failed to finally comply with a prior voluntary request. *See* Appendix B.

PARTIES

2. Plaintiff, The Heritage Foundation is a Washington, D.C.-based nonpartisan public policy organization with a national and international reputation whose mission is to “formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense.” Heritage Foundation, *About Heritage*, <https://www.heritage.org/about-heritage/mission> (last visited Mar. 6, 2024). Heritage is a not-for-profit section 501(c)(3) organization which engages in substantial dissemination of information to the public. Heritage operates a national

news outlet, *The Daily Signal*.

3. Plaintiff Mike Howell leads The Heritage Foundation's Oversight Project and is an author for *The Daily Signal*. The Oversight Project is an initiative aimed at obtaining information via FOIA requests and other means in order to best inform the public and Congress for the purposes of Congressional oversight. "The requests and analyses of information are informed by Heritage's deep policy expertise. By its nature, the Oversight Project is primarily engaged in disseminating information to the public." Oversight Project, *found at* <https://www.heritage.org/oversight> (last visited Mar. 6, 2024); Oversight Project (@OversightPR), X (last visited Mar. 6, 2024), <https://twitter.com/OversightPR>. Staff for the Oversight Project routinely appear on television, radio, print, and other forms of media to provide expert commentary on salient issues in the national debate.

4. Defendant DOJ is a federal agency of the United States within the meaning of 5 U.S.C. § 552(f)(1) whose mission statement is to "uphold the rule of law, to keep our country safe, and to protect civil rights." About DOJ; Our Mission, *found at* <https://www.justice.gov/about#:~:text=The%20mission%20of%20the%20Department,and%20to%20protect%20civil%20rights> (last visited Mar. 6, 2024).

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) because this action is brought in the District of Columbia and 28 U.S.C. § 1331 because the resolution of disputes under FOIA presents a federal question.

6. Venue is proper in this Court under 28 U.S.C. § 1391(b) because Defendant DHS's principal place of business is in the District of Columbia.

PLAINTIFFS' FOIA REQUEST

7. Plaintiffs submitted their FOIA request on February 9, 2024.

8. The Request sought the records relied upon by Special Counsel Hur in drafting passages in the Report relating to President Joseph R. Biden's memory and mental faculties. *Id.* at 2–7.

9. Specifically, the Request sought all records relied upon for the highlighted passages from the Report:

Passage 1:

Given the intelligence and military officials present and the topics discussed at the meetings Mr. Biden recounted for Zwonitzer, Mr. Biden should have realized that his notes did or were likely to contain classified information. But taken as a whole, the evidence will likely leave jurors with reasonable doubts about whether Mr. Biden knew he was sharing classified information with Zwonitzer and intended to do so. For these jurors, Mr. Biden's apparent lapses and failures in February and April

⁹⁴⁷ *See id.*

⁹⁴⁸ Zwonitzer 7/31/23 Tr. at 83.

2017 will likely appear consistent with the diminished faculties and faulty memory he showed in Zwonitzer's interview recordings and in our interview of him.⁹⁴⁹

Therefore, we conclude that the evidence does not establish that Mr. Biden willfully disclosed national defense information to Zwonitzer.

Passage 2:

Third, as discussed to some extent above, Mr. Biden will likely present himself to the jury, as he did during his interview with our office, as a sympathetic, well-meaning, elderly man with a poor memory. While he is and must be accountable for his actions—he is, after all, the President of the United States—based on our direct

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observations of him, Mr. Biden is someone for whom many jurors will want to search for reasonable doubt. It would be difficult to convince a jury they should convict him—by then a former president who will be at least well into his eighties—of a serious felony that requires a mental state of willfulness.

Passage 3:

In his interview with our office, Mr. Biden's memory was worse. He did not remember when he was vice president, forgetting on the first day of the interview when his term ended ("if it was 2013 – when did I stop being Vice President?"), and forgetting on the second day of the interview when his term began ("in 2009, am I still Vice President?").⁸³⁹ He did not remember, even within several years, when his son Beau died.⁸⁴⁰ And his memory appeared hazy when describing the Afghanistan debate that was once so important to him. Among other things, he mistakenly said he "had a real difference" of opinion with General Karl Eikenberry, when, in fact, Eikenberry was an ally whom Mr. Biden cited approvingly in his Thanksgiving memo to President Obama.⁸⁴¹

In a case where the government must prove that Mr. Biden knew he had possession of the classified Afghanistan documents after the vice presidency and chose to keep those documents, knowing he was violating the law, we expect that at trial, his attorneys would emphasize these limitations in his recall.

We also expect many jurors to be struck by the place where the Afghanistan documents were ultimately found in Mr. Biden's Delaware home: in a badly damaged box in the garage, near a collapsed dog crate, a dog bed, a Zappos box, an empty bucket, a broken lamp wrapped with duct tape, potting soil, and synthetic firewood.⁸⁴²

⁸³⁹ Biden 10/8/23 Tr. at 146; 10/9/23 Tr. at 45.

⁸⁴⁰ Biden 10/8/23 Tr. at 82-83.

⁸⁴¹ Biden 10/9/23 Tr. at 17; Recovered document D20.

⁸⁴² See Chapter Six.

Passage 4:

After all, the Afghanistan documents and the 2009 troop surge played no role in *Promise Me, Dad*, the book Mr. Biden wrote with Zwonitzer in early 2017.⁸³⁶ There is no reason to believe Mr. Biden intended to discuss the 2009 Afghanistan troop debate in his book, which, as explained in Chapter Five, covered his experiences in 2014 and 2015. In dozens of hours of recorded conversations with Zwonitzer in 2016 and 2017, when Mr. Biden talked about a vast array of topics, the Afghanistan documents never came up again.⁸³⁷ This may suggest that after February 16, 2017, the documents were simply not on Mr. Biden's mind.

Mr. Biden's memory also appeared to have significant limitations—both at the time he spoke to Zwonitzer in 2017, as evidenced by their recorded conversations, and today, as evidenced by his recorded interview with our office. Mr. Biden's recorded conversations with Zwonitzer from 2017 are often painfully slow, with Mr. Biden struggling to remember events and straining at times to read and relay his own notebook entries.⁸³⁸

⁸³⁶ See generally Biden, *PROMISE ME, DAD*; Chapter Five.

⁸³⁷ See generally FBI Serials 315, 335.

⁸³⁸ See generally *id.*

Passage 5:

We have also considered that, at trial, Mr. Biden would likely present himself to a jury, as he did during our interview of him, as a sympathetic, well-meaning, elderly man with a poor memory. Based on our direct interactions with and observations of him, he is someone for whom many jurors will want to identify reasonable doubt. It would be difficult to convince a jury that they should convict him—by then a former president well into his eighties—of a serious felony that requires a mental state of willfulness.

We conclude the evidence is not sufficient to convict, and we decline to recommend prosecution of Mr. Biden for his retention of the classified Afghanistan documents.

* * *

Notebooks containing classified information. FBI agents recovered from unlocked drawers in the office and basement den of Mr. Biden's Delaware home a set

Passage 6:

Several defenses are likely to create reasonable doubt as to such charges. For example, Mr. Biden could have found the classified Afghanistan documents at his Virginia home in 2017 and then forgotten about them soon after. This could convince some reasonable jurors that he did not retain them willfully. When Mr. Biden told his ghostwriter about finding “all the classified stuff downstairs,” his tone was matter-of-fact. For a person who had viewed classified documents nearly every day

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for eight years as vice president, including regularly in his home, finding classified documents at home less than a month after leaving office could have been an unremarkable and forgettable event. Notably, the classified Afghanistan documents did not come up again in Mr. Biden’s dozens of hours of recorded conversations with the ghostwriter, or in his book. And the place where the Afghanistan documents were eventually found in Mr. Biden’s Delaware garage—in a badly damaged box surrounded by household detritus—suggests the documents might have been forgotten.

In addition, Mr. Biden’s memory was significantly limited, both during his recorded interviews with the ghostwriter in 2017, and in his interview with our office in 2023. And his cooperation with our investigation, including by reporting to the government that the Afghanistan documents were in his Delaware garage, will likely convince some jurors that he made an innocent mistake, rather than acting willfully—that is, with intent to break the law—as the statute requires.

Id. at 2–7.

10. The Request sought a fee waiver based on Heritage’s status as a not-for-profit and the fact that a purpose of the Request was to allow Heritage to gather information on a matter of public interest for (among other things) use by authors of its publication, *The Daily Signal*, which is a major news outlet. *Id.* at 10.

11. The Request also sought production of records in partial responses as soon as they became available. *Id.* at 9.

THE REQUEST FOR EXPEDITED PROCESSING

12. Plaintiffs filed an Expedited Processing Application on February 22, 2024, seeking expedited processing pursuant to 28 C.F.R. § 16.5(e)(1)(iv), because the Report, and at a more granular level, its statements about President Biden’s mental faculties and memory, are “a matter of widespread and exceptional media interest in which there exists possible questions about the government’s integrity which affect public confidence.” *See* Expedited Processing Application at 1 (Ex. 4) (“EP App.” or “Application”); *see also* 28 C.F.R. § 16.5(e)(2) (“A request for expedited processing may be made at any time.”). The factual and legal basis for the Application was explained in a four-page submission.

13. The Application attached two appendices totaling 1,803 pages that included an oversight request from three House Committee Chairman and media reports discussing and debating the Report’s conclusion that President Biden has “diminished faculties and faulty memory.” Report at 248. These articles extensively covered their conclusions and their implications as to whether the President is fit to lead the country, including discussions as to whether the 25th Amendment should be invoked. The foregoing coverage was “widespread and exceptional” and surfaces “questions about the Government’s integrity that affect public confidence.” 28 C.F.R. § 16.5(e)(1)(iv).

14. The Department granted expedited processing for six other FOIA Requests filed by Plaintiffs seeking different discrete categories for records related to the Report. (Exs. 5–10).

DEFENDANT’S CONSTRUCTIVE DENIAL OF EXPEDITED PROCESSING

15. According to DOJ’s FOIA Tracking System, DOJ received the request on February 9, 2024 and assigned the Request the tracking number FOIA-2024-01098.

16. Defendant transmitted a letter to Mike Howell on February 29, 2024, from Douglas R. Hibbard addressing the Request. *See* Letter from Douglas R. Hubbard to Mike Howell (Feb. 29, 2024) (Ex. 11) (“Administrative Letter” or “Admin. Letter”).

17. The Administrative Letter began by setting forth DOJ’s administrative construction of the Request: “Upon review of the statements detailed in your request, all of which reference the interview of President Joseph Biden as conducted by Special Counsel Hur, I have interpreted your request as seeking a copy of the transcript of that interview.” Admin. Letter at 1.

18. This construction is erroneous. It defies the English language to read “[a]ll Records relied upon in making the following statements” as simply a shorthand reference for a transcript. Request at 1. This reading is profoundly atextual as it presumes the entire question—namely that an adequate search would conclude that the set of “records relied upon” was *solely* the transcript. To take one obvious possibility, passages as to President Biden’s “mental faculties” and “memory” may well be based in part on contemporaneous notes by Special Counsel Hur and his staff as to appearance and demeanor. DOJ’s atextual construction is contrary to law. A “FOIA requester is the ‘master’ of the FOIA request,” (*People for Am. Way Found. v. DOJ*, 451 F.Supp.2d 6, 12 (D.D.C. 2006)), and therefore, the agency must

“adher[e] to the full scope or the precise language of the plaintiff’s request.” *Charles v. Off. of Armed Forces Med. Exam’r*, 730 F.Supp.2d 205 (D.D.C. 2010) (internal citations omitted).

19. Proceeding from the foregoing fatally flawed premise, DOJ informed Plaintiffs that “[in] so much as your request of February 9, 2024, is partially seeking the same records as your request of February 12, 2024, I am closing the administrative tracking number (FOIA-2024-01098) associated with this request. Please reference FOIA-2024-01112 in any future correspondence on this matter.” Admin. Letter at 1. Pointedly, the Administrative Letter only administratively closed the *tracking number* FOIA-2024-01098. It did not purport to administratively close *the Request*. Nor did it purport to consolidate or otherwise aggregate the Request and the FOIA Request initially assigned the tracking number FOIA-2024-01112 as a duplicate or otherwise. *Cf.* 28 C.F.R. § 16.5(d) (“**Aggregating requests.** For the purposes of satisfying unusual circumstances under the FOIA, components may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. Components shall not aggregate multiple requests that involve unrelated matters.”); Letter from Douglas Hibbard to Mike Howell, at 1 (Feb. 13, 2024) (Ex. 12) (“Insomuch as your request for all images collected as part of the investigation of Special Counsel Hur (FOIA-2024-01121) entirely encompasses the records you have requested in FOIA-2024-01113, I have administratively closed FOIA-2024-01113 as a duplicative request. To be clear, the records you have requested in FOIA-2024-01113 will be processed in response to FOIA-2024-01121.”). Thus, the only action taken was an administrative one—closing a request tracking number and placing two requests under the same number. Any other reading would do violence to the text of the Administrative Letter itself. The instruction “[p]lease reference FOIA-

2024-01112 in any future correspondence on *this matter*” clearly has as its referent *the Request*. Admin. Letter at 1 (emphasis added).

20. The Administrative Letter was not an “adverse determination” under Department Regulations. *See* 28 C.F.R. § 16.6(d) (“Adverse determinations, or denials of requests, include decisions that: the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.”).

21. The Administrative Letter did not pass on Plaintiffs’ Application for Expedited Processing as to the Request. It also did not in any way indicate the Department’s grant of expedition in FOIA-2024-01112 would apply to the Request.

22. The Administrative Letter was not a determination under FOIA. *See, e.g., Machado Amadis v. U.S. Dept’ of State*, 971 F.3d 364, 372–73 (D.C. Cir. 2020); *Khine v. DHS*, 943 F.3d 959, 966–67 (D.C. Cir. 2019).

23. Ten calendar days from February 21, 2024 is March 03, 2024.

CLAIM FOR RELIEF
Violation of FOIA, 5 U.S.C. § 552
Wrongful Denial of Expedited
Processing

24. Plaintiffs re-allege the foregoing paragraphs as if fully set out herein.

25. FOIA requires all doubts to be resolved in favor of disclosure.

“Transparency in government operations is a priority of th[e Biden] . . . Administration.”

Attorney General, *Memorandum for Heads of Executive Departments and Agencies: Freedom*

of Information Act Guidelines, at 4 (Mar. 15, 2022).

26. Plaintiffs properly requested records within the possession, custody, or control of Defendant.

27. Plaintiffs properly asked that DOJ expedite the processing of Plaintiffs' FOIA Request, based upon Plaintiffs' showing that the Request concerns "[a] matter of widespread and exceptional media interest in which there exist possible questions that affect public confidence in the Government's integrity that affect public confidence." 28 C.F.R. § 16.5(e)(1)(iv).

28. Defendant refused to expedite Plaintiffs' FOIA Request, contrary to the factual and legal showing Plaintiffs made demonstrating their entitlement to expedition.

29. Defendant is in violation of FOIA.

30. Plaintiffs are being irreparably harmed by reason of Defendant's violation of FOIA. Plaintiffs are being denied information to which they are statutorily entitled to on an expedited basis and that is important to carrying out Plaintiffs' functions as a non-partisan research and educational institution and publisher of news. Plaintiffs will continue to be irreparably harmed unless Defendant is compelled to comply with the law.

31. Plaintiffs have no adequate remedy at law.

32. Plaintiffs have exhausted all required administrative remedies with respect to Defendant's failure to make a determination on Plaintiffs' request for expedition.

WHEREFORE as a result of the foregoing, Plaintiffs pray that this Court:

- A. Enter a preliminary and permanent injunction compelling Defendant to process Plaintiffs' FOIA Request on an expedited basis.
- B. Award Plaintiffs their costs and reasonable attorneys' fees in this action as

provided by 5 U.S.C. § 522(a)(4)(E); and

C. Grant such other and further relief as this Court may deem just and proper.

Dated: March 6, 2024

Respectfully submitted,

/s/ Samuel Everett Dewey
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Counsel for Plaintiffs

CIVIL COVER SHEET

JS-44 (Rev. 11/2020 DC)

<p>I. (a) PLAINTIFFS The Heritage Foundation & Mike Howell</p> <p>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF 11001 (EXCEPT IN U.S. PLAINTIFF CASES)</p>	<p>DEFENDANTS U.S. Department of Justice</p> <p>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT 11001 (IN U.S. PLAINTIFF CASES ONLY)</p> <p><small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small></p>																								
<p>(c) ATTORNEYS (FIRMNAME, ADDRESS, AND TELEPHONE NUMBER)</p> <p>Samuel Everett Dewey (999979) Chambers of Samuel Everett Dewey, LLC 2200 12th Court North Apt. 609 Arlington, VA 22204</p>	<p>ATTORNEYS (IF KNOWN)</p>																								
<p>II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)</p> <p><input type="radio"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="radio"/> 2 U.S. Government Defendant</p> <p><input type="radio"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY!</p> <table style="width:100%; border: none;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<p><input type="radio"/> A. Antitrust</p> <p><input type="checkbox"/> 410 Antitrust</p>	<p><input type="radio"/> B. Personal Injury/ Malpractice</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Medical Malpractice</p> <p><input type="checkbox"/> 365 Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Product Liability</p>	<p><input type="radio"/> C. Administrative Agency Review</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><u>Social Security</u></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p><u>Other Statutes</u></p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)</p>	<p><input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction</p> <p>Any nature of suit from any category may be selected for this category of case assignment.</p> <p>*(If Antitrust, then A governs)*</p>
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<p><u>Real Property</u></p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent, Lease & Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p> <p><u>Personal Property</u></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><u>Bankruptcy</u></p> <p><input type="checkbox"/> 422 Appeal 27 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><u>Prisoner Petitions</u></p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus & Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Conditions</p> <p><input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement</p> <p><u>Property Rights</u></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 835 Patent – Abbreviated New Drug Application</p> <p><input type="checkbox"/> 840 Trademark</p> <p><input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 (DTSA)</p>	<p><u>Federal Tax Suits</u></p> <p><input type="checkbox"/> 870 Taxes (US plaintiff or defendant)</p> <p><input type="checkbox"/> 871 IRS-Third Party 26 USC 7609</p> <p><u>Forfeiture/Penalty</u></p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p><u>Other Statutes</u></p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 430 Banks & Banking</p> <p><input type="checkbox"/> 450 Commerce/ICC Rates/etc</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 462 Naturalization Application</p>	<p><input type="checkbox"/> 465 Other Immigration Actions</p> <p><input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 485 Telephone Consumer Protection Act (TCPA)</p> <p><input type="checkbox"/> 490 Cable/Satellite TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p> <p><input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)</p>

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input checked="" type="radio"/> I. FOIA/Privacy Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

VII. REQUESTED IN COMPLAINT

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

JURY DEMAND: YES NO

Check YES only if demanded in complaint

VIII. RELATED CASE(S) IF ANY

(See instruction)

YES

NO

If yes, please complete related case form

DATE: March 6, 2024

SIGNATURE OF ATTORNEY OF RECORD /s/ Samuel Everett Dewey

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil coversheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)
 Plaintiff)
)
 v.) Civil Action No.
)
_____)
 Defendant)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)
 Plaintiff)
)
 v.) Civil Action No.
)
_____)
 Defendant)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Exhibit 1



U.S. Department of Justice

Special Counsel's Office

February 5, 2024

The Attorney General of the United States

Re: Report of the Special Counsel on the Investigation Into Unauthorized Removal, Retention, and Disclosure of Classified Documents Discovered at Locations Including the Penn Biden Center and the Delaware Private Residence of President Joseph R. Biden, Jr.

Dear Attorney General Garland:

Enclosed please find a “confidential report explaining the prosecution or declination decisions” I have reached, as required by 28 C.F.R. § 600.8(c).

As we previously discussed, at the request of the White House Counsel and personal counsel to President Biden (collectively, “counsel”), I agreed, with certain conditions including nondisclosure, to allow counsel to review a draft of the report for purposes of determining whether to assert any claim of privilege, and otherwise providing comments to the Special Counsel’s Office. Counsel reviewed a draft of the report on February 3 and 4, 2024.

Earlier today, counsel submitted to my office the enclosed letter. After reviewing their letter, my team and I corrected the following minor errors:

- The draft report stated that “[w]e reviewed the materials that were deemed to be classified at the Top Secret/Sensitive Compartmented Information level when the National Security Council conducted prepublication review for the Reagan Diaries.” Draft Report n.811. We have amended that sentence by adding “some of” after the word “reviewed.”
- In Chapter Twelve, the draft report cited Chapter Four in a footnote. Draft Report n.892. We have amended that footnote to read “*See id.*; NARA Archivist 1 Tr. at 56-59, 77-78, 81-82, 93-94, 122-23.”
- The draft report included a section heading that read, “**MARKED CLASSIFIED DOCUMENT IN SECOND-FLOOR OFFICE.**” Draft Report at 333. We have amended that heading to read, “**MARKED CLASSIFIED DOCUMENT IN THIRD-LEVEL DEN.**”

The Attorney General of the United States
February 5, 2024
Page 2

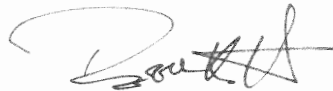
My team and I also corrected several typographical errors that we identified on our own, and we removed a watermark and headers that designated the document as a confidential draft.

After reviewing the draft report, the relevant intelligence agencies have identified no content that is classified or otherwise unfit for public disclosure. The White House Counsel has not conveyed to me the President's decisions as to assertions of executive privilege; I understand that the White House Counsel will convey such decisions to you directly.

Thank you for allowing the Special Counsel's Office to conduct our investigation independently and for supporting us with the necessary resources.

I am extraordinarily grateful for the thorough, careful, and diligent work of the Department of Justice employees who worked on this matter. I am deeply honored to have served with them.

Respectfully,

A handwritten signature in black ink, appearing to read "Robert K. Hur", written in a cursive style.

Robert K. Hur
Special Counsel

Enclosures: Report
Letter from counsel

Report on the Investigation Into
Unauthorized Removal, Retention, and Disclosure of
Classified Documents Discovered at Locations
Including the Penn Biden Center and the
Delaware Private Residence of
President Joseph R. Biden, Jr.

Special Counsel Robert K. Hur

Submitted pursuant to 28 C.F.R. § 600.8(c)

Washington, D.C.

February 2024

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EXECUTIVE SUMMARY

We conclude that no criminal charges are warranted in this matter.¹ We would reach the same conclusion even if Department of Justice policy did not foreclose criminal charges against a sitting president.²

Our investigation uncovered evidence that President Biden willfully retained and disclosed classified materials after his vice presidency when he was a private citizen. These materials included (1) marked classified documents about military and foreign policy in Afghanistan, and (2) notebooks containing Mr. Biden's handwritten entries about issues of national security and foreign policy implicating sensitive intelligence sources and methods. FBI agents recovered these materials from the garage, offices, and basement den in Mr. Biden's Wilmington, Delaware home.

However, for the reasons summarized below, we conclude that the evidence does not establish Mr. Biden's guilt beyond a reasonable doubt. Prosecution of Mr. Biden is also unwarranted based on our consideration of the aggravating and mitigating factors set forth in the Department of Justice's Principles of Federal Prosecution. For these reasons, we decline prosecution of Mr. Biden.

* * *

The classified documents and other materials recovered in this case spanned Mr. Biden's career in national public life. During that career, Mr. Biden has long seen

¹ We submit this report to the Attorney General pursuant to 28 C.F.R. § 600.8(c), which states that, “[a]t the conclusion of the Special Counsel's work, he or she shall provide the Attorney General a confidential report explaining the prosecution or declination decisions reached by the Special Counsel.”

² *A Sitting President's Amenability to Indictment and Criminal Prosecution*, 24 Op. O.L.C. 222, 260 (2000).

himself as a historic figure. Elected to the Senate at age twenty-nine, he considered running for president as early as 1980 and did so in 1988, 2008, and 2020. He believed his record during decades in the Senate made him worthy of the presidency, and he collected papers and artifacts related to significant issues and events in his career. He used these materials to write memoirs published in 2007 and 2017, to document his legacy, and to cite as evidence that he was a man of presidential timber.

In 2009, then-Vice President Biden strongly opposed the military's plans to send more troops to Afghanistan. U.S. policy in Afghanistan was deeply important to Mr. Biden, and he labored to dissuade President Obama from escalating America's involvement there and repeating what Mr. Biden believed was a mistake akin to Vietnam. Despite Mr. Biden's advice, President Obama ordered a surge of additional U.S. troops, and Mr. Biden's views endured sharp criticism from others within and outside of the administration. But he always believed history would prove him right. He retained materials documenting his opposition to the troop surge, including a classified handwritten memo he sent President Obama over the 2009 Thanksgiving holiday, and related marked classified documents. FBI agents recovered these materials from Mr. Biden's Delaware garage and home office in December 2022 and January 2023.

Also, during his eight years as vice president, Mr. Biden regularly wrote notes by hand in notebooks. Some of these notes related to classified subjects, including the President's Daily Brief and National Security Council meetings, and some of the notes are themselves classified. After the vice presidency, Mr. Biden kept these

classified notebooks in unsecured and unauthorized spaces at his Virginia and Delaware homes and used some of the notebooks as reference material for his second memoir, *Promise Me, Dad*, which was published in 2017. To our knowledge, no one has identified any classified information published in *Promise Me, Dad*, but Mr. Biden shared information, including some classified information, from those notebooks with his ghostwriter. FBI agents recovered the notebooks from the office and basement den in Mr. Biden's Delaware home in January 2023.

* * *

Marked classified documents about Afghanistan. These documents from fall 2009 have classification markings up to the Top Secret/Sensitive Compartmented Information level. They were found in a box in Mr. Biden's Delaware garage that contained other materials of great personal significance to him and that he appears to have personally used and accessed. The marked classified documents were found along with drafts of the handwritten 2009 Thanksgiving memo Mr. Biden sent President Obama in a last-ditch effort to persuade him not to send additional troops to Afghanistan. These materials were proof of the stand Mr. Biden took in what he regarded as among the most important decisions of his vice presidency.

Mr. Biden wrote his 2007 and 2017 memoirs with the help of a ghostwriter. In a recorded conversation with his ghostwriter in February 2017, about a month after he left office, Mr. Biden said, while referencing his 2009 Thanksgiving memo, that he had "just found all the classified stuff downstairs." At the time, he was renting a home in Virginia, where he met his ghostwriter to work on his second memoir. Downstairs from where they met was Mr. Biden's office, where he stored his papers. He moved

out of the Virginia home in 2019, consolidating his belongings in Delaware—where FBI agents later found marked classified documents about the Afghanistan troop surge in his garage.

Evidence supports the inference that when Mr. Biden said in 2017 that he had “just found all the classified stuff downstairs” in Virginia, he was referring to the same marked classified documents about Afghanistan that FBI agents found in 2022 in his Delaware garage.

Nevertheless, we do not believe this evidence is sufficient, as jurors would likely find reasonable doubt for one or more of several reasons. Both when he served as vice president and when the Afghanistan documents were found in Mr. Biden’s Delaware garage in 2022, his possession of them in his Delaware home was not a basis for prosecution because as vice president and president, he had authority to keep classified documents in his home. The best case for charges would rely on Mr. Biden’s possession of the Afghanistan documents in his Virginia home in February 2017, when he was a private citizen and when he told his ghostwriter he had just found classified material.

Several defenses are likely to create reasonable doubt as to such charges. For example, Mr. Biden could have found the classified Afghanistan documents at his Virginia home in 2017 and then forgotten about them soon after. This could convince some reasonable jurors that he did not retain them willfully. When Mr. Biden told his ghostwriter about finding “all the classified stuff downstairs,” his tone was matter-of-fact. For a person who had viewed classified documents nearly every day

for eight years as vice president, including regularly in his home, finding classified documents at home less than a month after leaving office could have been an unremarkable and forgettable event. Notably, the classified Afghanistan documents did not come up again in Mr. Biden's dozens of hours of recorded conversations with the ghostwriter, or in his book. And the place where the Afghanistan documents were eventually found in Mr. Biden's Delaware garage—in a badly damaged box surrounded by household detritus—suggests the documents might have been forgotten.

In addition, Mr. Biden's memory was significantly limited, both during his recorded interviews with the ghostwriter in 2017, and in his interview with our office in 2023. And his cooperation with our investigation, including by reporting to the government that the Afghanistan documents were in his Delaware garage, will likely convince some jurors that he made an innocent mistake, rather than acting willfully—that is, with intent to break the law—as the statute requires.

Another viable defense is that Mr. Biden might not have retained the classified Afghanistan documents in his Virginia home at all. They could have been stored, by mistake and without his knowledge, at his Delaware home since the time he was vice president, as were other classified documents recovered during our investigation. This would rebut charges that he willfully retained the documents in Virginia.

Given Mr. Biden's limited precision and recall during his interviews with his ghostwriter and with our office, jurors may hesitate to place too much evidentiary weight on a single eight-word utterance to his ghostwriter about finding classified

documents in Virginia, in the absence of other, more direct evidence. We searched for such additional evidence and found it wanting. In particular, no witness, photo, e-mail, text message, or any other evidence conclusively places the Afghanistan documents at the Virginia home in 2017.

In addition to this shortage of evidence, there are other innocent explanations for the documents that we cannot refute. When Mr. Biden told his ghostwriter he “just found all the classified stuff downstairs,” he could have been referring to something other than the Afghanistan documents, and our report discusses these possibilities in detail.

We have also considered that, at trial, Mr. Biden would likely present himself to a jury, as he did during our interview of him, as a sympathetic, well-meaning, elderly man with a poor memory. Based on our direct interactions with and observations of him, he is someone for whom many jurors will want to identify reasonable doubt. It would be difficult to convince a jury that they should convict him—by then a former president well into his eighties—of a serious felony that requires a mental state of willfulness.

We conclude the evidence is not sufficient to convict, and we decline to recommend prosecution of Mr. Biden for his retention of the classified Afghanistan documents.

* * *

Notebooks containing classified information. FBI agents recovered from unlocked drawers in the office and basement den of Mr. Biden’s Delaware home a set

of notebooks he used as vice president. Evidence shows that he knew the notebooks contained classified information. Mr. Biden wrote down obviously sensitive information discussed during intelligence briefings with President Obama and meetings in the White House Situation Room about matters of national security and military and foreign policy. And while reading his notebook entries aloud during meetings with his ghostwriter, Mr. Biden sometimes skipped over presumptively classified material and warned his ghostwriter the entries might be classified, but at least three times Mr. Biden read from classified entries aloud to his ghostwriter nearly verbatim.

Some evidence also suggests Mr. Biden knew he could not keep classified handwritten notes at home after leaving office. Mr. Biden, who had decades of experience with classified information, was deeply familiar with the measures taken to safeguard classified information and the need for those measures to prevent harm to national security. Asked about reports that former President Trump had kept classified documents at his own home, Mr. Biden wondered how “anyone could be that irresponsible” and voiced concern about “[w]hat data was in there that may compromise sources and methods.” While vice president, he kept his notebooks in a White House safe for a time, in contrast with his decision after leaving office to keep them at home in unlocked drawers.

When Mr. Biden left office, he also knew his staff decided to store *notecards* containing his classified notes in a Secure Compartmented Information Facility (SCIF) at the National Archives, and he knew his *notebooks* contained the same type

of classified information. As he told his ghostwriter during a recorded interview, the same staff who arranged to secure his classified notecards “didn’t even know” he had retained possession of his classified notebooks. Twice in 2017, Mr. Biden visited the National Archives SCIF to review his classified notecards while writing his book. Yet he kept his notebooks, which also contained classified information, in unlocked drawers at home. He had strong motivations to do so and to ignore the rules for properly handling the classified information in his notebooks. He consulted the notebooks liberally during hours of discussions with his ghostwriter and viewed them as highly private and valued possessions with which he was unwilling to part.

We do not, however, believe this evidence would meet the government’s burden at trial—particularly the requirement to prove that Mr. Biden intended to do something the law forbids. Consistent with statements Mr. Biden made during our interview of him and arguments made by the White House Counsel and Mr. Biden’s personal counsel, we expect Mr. Biden’s defense at trial would be that he thought his notebooks were his personal property and he was allowed to take them home, even if they contained classified information. During our interview of him, Mr. Biden was emphatic, declaring that his notebooks are “my property” and that “every president before me has done the exact same thing,” that is, kept handwritten classified materials after leaving office. He also cited the diaries that President Reagan kept in his private home after leaving office, noting that they included classified information.

Contemporaneous evidence suggests that when Mr. Biden left office in 2017, he believed he was allowed to keep the notebooks in his home. In a recorded

conversation with his ghostwriter in April 2017, Mr. Biden explained that, despite his staff's views to the contrary, he did not think he was required to turn in his notecards to the National Archives—where they were stored in a SCIF—and he had not wanted to do so. At trial, he would argue plausibly that he thought the same about his notebooks.

If this is what Mr. Biden thought, we believe he was mistaken about what the law permits, but this view finds some support in historical practice. The clearest example is President Reagan, who left the White House in 1989 with eight years' worth of handwritten diaries, which he appears to have kept at his California home even though they contained Top Secret information. During criminal litigation involving a former Reagan administration official in 1989 and 1990, the Department of Justice stated in public court filings that the "currently classified" diaries were Mr. Reagan's "personal records." Yet we know of no steps the Department or other agencies took to investigate Mr. Reagan for mishandling classified information or to retrieve or secure his diaries. Most jurors would likely find evidence of this precedent and Mr. Biden's claimed reliance on it, which we expect would be admitted at trial, to be compelling evidence that Mr. Biden did not act willfully.

As with the marked classified documents, because the evidence is not sufficient to convict Mr. Biden for willfully retaining the notebooks, we decline prosecution.

We also considered whether Mr. Biden willfully disclosed national defense information to his ghostwriter by reading aloud certain classified notebook passages to the ghostwriter nearly verbatim on at least three occasions. Mr. Biden should have

known that by reading his unfiltered notes about classified meetings in the Situation Room, he risked sharing classified information with his ghostwriter. But the evidence does not show that when Mr. Biden shared the specific passages with his ghostwriter, Mr. Biden knew the passages were classified and intended to share classified information. Mr. Biden's lapses in attention and vigilance demonstrate why former officials should not keep classified materials unsecured at home and read them aloud to others, but jurors could well conclude that Mr. Biden's actions were unintentional. We therefore decline to charge Mr. Biden for disclosure of these passages to his ghostwriter.

* * *

Principles of Federal Prosecution. We have also evaluated “all relevant considerations” in aggravation and mitigation, as outlined in the Justice Manual, and determined that on balance, these factors do not support prosecution of Mr. Biden.³

Historically, after leaving office, many former presidents and vice presidents have knowingly taken home sensitive materials related to national security from their administrations without being charged with crimes. This historical record is important context for judging whether and why to charge a former vice president—and former president, as Mr. Biden would be when susceptible to prosecution—for similar actions taken by several of his predecessors.

With one exception, there is no record of the Department of Justice prosecuting a former president or vice president for mishandling classified documents from his

³ U.S. Dep't of Just., Just. Manual §§ 9-27.001, 9-27.220, 9-27.230 (2023).

own administration. The exception is former President Trump. It is not our role to assess the criminal charges pending against Mr. Trump, but several material distinctions between Mr. Trump's case and Mr. Biden's are clear. Unlike the evidence involving Mr. Biden, the allegations set forth in the indictment of Mr. Trump, if proven, would present serious aggravating facts.

Most notably, after being given multiple chances to return classified documents and avoid prosecution, Mr. Trump allegedly did the opposite. According to the indictment, he not only refused to return the documents for many months, but he also obstructed justice by enlisting others to destroy evidence and then to lie about it. In contrast, Mr. Biden turned in classified documents to the National Archives and the Department of Justice, consented to the search of multiple locations including his homes, sat for a voluntary interview, and in other ways cooperated with the investigation.

In reaching our decision, we did not consider every circumstance in which criminal charges against a former president or vice president for mishandling classified information may be warranted. But on the facts of this case, "the fundamental interests of society" do not "require" criminal charges against Mr. Biden.⁴ For this additional reason, applying the Principles of Federal Prosecution set forth in the Justice Manual, we decline prosecution.

The practices of retaining classified material in unsecured locations and reading classified material to one's ghostwriter present serious risks to national

⁴ U.S. Dep't of Just., Just. Manual §§ 9-27.001, 9-27.220 (2023).

security, given the vulnerability of extraordinarily sensitive information to loss or compromise to America's adversaries. The Department routinely highlights such risks when pursuing classified mishandling prosecutions. But addressing those risks through criminal charges, the only means available to this office, is not the proper remedy here.

* * *

Other classified materials. For other recovered classified documents, after a thorough investigation the decision to decline criminal charges was straightforward. The FBI recovered additional marked classified documents at the Penn Biden Center, elsewhere in Mr. Biden's Delaware home, and in collections of his Senate papers at the University of Delaware, but the evidence suggests that Mr. Biden did not willfully retain these documents and that they could plausibly have been brought to these locations by mistake. We also investigated whether persons other than Mr. Biden knowingly mishandled these classified documents, and our investigation showed that they did not. In reaching these conclusions, we note the numerous previous instances in which marked classified documents have been discovered intermixed with the personal papers of former Executive Branch officials and members of Congress.

* * *

Mr. Biden's ghostwriter and destruction of evidence. After learning of the special counsel's appointment in this matter, Mr. Biden's ghostwriter deleted audio recordings he had created of his discussions with Mr. Biden during the writing of Mr. Biden's 2017 memoir. The recordings had significant evidentiary value.

After telling the Special Counsel's Office what he had done, the ghostwriter turned over his computer and external hard drive and consented to their search. Based on the FBI's analysis, it appears the FBI recovered all deleted audio files relating to the memoir, though portions of a few of the files appear to be missing, which is possible when forensic tools are used to recover deleted files. The ghostwriter kept, and did not delete or attempt to delete, his near-verbatim transcripts of the recordings and produced those transcripts to us, including for each of the incomplete recovered files.

We considered whether to charge the ghostwriter with obstruction of justice, but we believe the evidence would be insufficient to obtain a conviction and therefore declined to prosecute him.

While the ghostwriter admitted that he deleted the recordings after he learned of the special counsel's investigation, the evidence falls short of proving beyond a reasonable doubt that he intended to impede an investigation, which is the intent required by law. In his interviews, the ghostwriter offered plausible, innocent reasons for why he deleted the recordings. He also preserved his transcripts that contain some of the most incriminating information against Mr. Biden—including his statement about finding “all the classified stuff downstairs” in 2017—which is inconsistent with an intent to impede an investigation by destroying evidence. And the ghostwriter voluntarily produced to investigators his notes and the devices from which the recordings were recovered.

For these reasons, we believe that the admissible evidence would not suffice to obtain a conviction of the ghostwriter for obstruction of justice. On balance, relevant aggravating and mitigating factors also do not support his prosecution.

* * *

CHAPTER ONE

LEGAL FRAMEWORK GOVERNING CLASSIFIED INFORMATION

The Constitution vests the president with “authority to classify and control access to information bearing on national security.”⁵ By executive order, presidents since Franklin Roosevelt have prescribed a system for classifying and safeguarding national security information.⁶ In 1994, Congress directed the president to establish by executive order or regulation uniform procedures governing access to classified information across the executive branch.⁷ President Obama issued the current order when Mr. Biden was vice president.⁸ Among other things, the order sets forth rules that determine whether a person may access classified information and how that information must be handled.⁹

The 1994 statute—and, by implication, the current executive order governing classified information—do not apply to a sitting president or vice president, members of Congress, justices of the Supreme Court, and federal judges.¹⁰

There is, however, no statutory exception for a former president or vice president, and the restrictions on access to classified information in the executive

⁵ *Dep’t of the Navy v. Egan*, 484 U.S. 518, 527 (1988); see U.S. CONST. art. II, § 2.

⁶ KEVIN R. KOSAR, CONG. RSCH. SERV., R41528, CLASSIFIED INFORMATION POLICY AND EXECUTIVE ORDER 13526 3 (2010).

⁷ 50 U.S.C. § 3161.

⁸ Classified National Security Information, Executive Order 13526, 75 Fed. Reg. 707 (2009).

⁹ *Id.* § 4.1.

¹⁰ 50 U.S.C. §§ 3161(a), 3163.

order and the rules prescribed under its authority appear to apply to such former officials.¹¹

The order defines classified information to include: (a) military plans, weapons systems, or operations; (b) foreign government information; and (c) intelligence activities, including covert actions and intelligence sources, methods, or cryptology.¹² Information is classified only if “its unauthorized disclosure could reasonably be expected to cause identifiable or describable damage to the national security.”¹³ Information is classified as “Confidential” if its unauthorized disclosure reasonably could be expected to cause *damage* to the national security. It is classified as “Secret” if its unauthorized disclosure reasonably could be expected to cause *serious damage* to the national security. And it is classified as “Top Secret” if its unauthorized disclosure reasonably could be expected to cause *exceptionally grave damage* to the national security.¹⁴

The order also sets forth conditions that any person (other than the current officeholders listed above) must meet to access to classified information.¹⁵ To receive such access, a person is required to:

1. Have a favorable determination of eligibility (generally after completion of a background investigation);
2. Sign an approved nondisclosure agreement; and

¹¹ 50 U.S.C. § 3163; Executive Order 13526 §§ 4.1(a), 4.4; *Trump v. United States*, No. 22-13005, 2022 WL 4366684, at *8 (11th Cir. Sept. 21, 2022) (per curiam).

¹² Executive Order 13526 § 1.4.

¹³ *Id.* § 1.4.

¹⁴ *Id.* § 1.2.

¹⁵ *Id.* § 4.1.

3. Have a need-to-know the information.¹⁶

For former presidents and vice presidents, the order expressly allows for the need-to-know requirement (but not the others listed above) to be waived by an agency.¹⁷ A former official may obtain such a waiver only if a senior official of the agency that originated the classified information “determines in writing that access is consistent with the interest of the national security,” “takes appropriate steps to protect [the] classified information from unauthorized disclosure or compromise,” and “ensures that the information is safeguarded in a manner consistent with [the executive order].”¹⁸

In addition to establishing rules that govern access to classified information, the order also requires agency heads to establish controls over how it must be stored.¹⁹ Among other things, Top Secret and Secret information must be kept in a storage container approved by the General Services Administration or an approved and locked storage area.²⁰ Information that is even more sensitive—called Sensitive Compartmented Information and sometimes referred to as “codeword” information—must be stored in an accredited Sensitive Compartmented Information Facility, or SCIF.²¹

¹⁶ *Id.* § 4.1(a).

¹⁷ *Id.* § 4.4.

¹⁸ *Id.* § 4.4; *Trump v. United States*, No. 22-13005, 2022 WL 4366684, at *8.

¹⁹ Executive Order 13526 § 4.1(g).

²⁰ See 32 C.F.R. §§ 2001.43(b)(1) and (2), 2001.53.

²¹ Office of the Director of National Intelligence, Intelligence Community Directive 705 (2010). Sensitive Compartmented Information is a subset of classified information “concerning or derived from intelligence sources, methods or analytical processes that is required to be protected within formal access control systems established by the [Director of

The restrictions described above apply to classified information in any documentary form, whether it is printed, typed, or handwritten.²²

National Intelligence].” Office of the Director of National Intelligence, Intelligence Community Directive 703, “Protection of Classified National Intelligence, Including Sensitive Compartmented Information,” § D2 (2013).

²² See Executive Order 13526 §§ 1.1, 2.1, 6.1(i), 6.1(p), 6.1(t).

CHAPTER TWO

OVERVIEW OF THE INVESTIGATION

I. DISCOVERY OF CLASSIFIED DOCUMENTS

A. Personal counsel to Mr. Biden discovered marked classified documents at the Penn Biden Center

On November 2, 2022, Patrick Moore—one of Mr. Biden’s personal counsel—reviewed boxes of material belonging to Mr. Biden, which were stored at the Penn Biden Center for Diplomacy and Global Engagement in Washington, D.C., an office space formerly used by Mr. Biden. During this review, Moore found documents with classification markings dating to Mr. Biden’s vice presidency.

Moore notified Robert Bauer, another personal counsel to Mr. Biden, who then notified the White House Counsel. That evening, the White House Counsel’s Office informed the general counsel for the National Archives and Records Administration.²³

The next morning, November 3, 2022, the National Archives sent two archivists to retrieve the documents and the three boxes in which they were found.²⁴ Upon reviewing the documents in a SCIF, the National Archives found nine documents, totaling 44 pages, with classification markings.²⁵ The documents were

²³ NARA General Counsel 11/10/22, FBI Serial 4 at 1-2; FBI Serial 4 1A5 at 2-3. An FBI Serial refers to a numbered entry in the FBI’s case file, which may have evidentiary attachments that are often designated as “1A” files. When an FBI agent logs a new report, for example, into the case file, the report is given a serial number corresponding to the order in which the new file was logged.

²⁴ NARA Archivist 2 11/10/22, FBI Serial 3 at 1-2; NARA COS 11/16/22, FBI Serial 6 at 1-2; NARA COO 11/15/22, FBI Serial 10 at 2-3; NARA General Counsel 11/10/22, FBI Serial 4 at 2.

²⁵ NARA Archivist 2 11/10/22, FBI Serial 3 at 2; NARA COO 11/15/1022, FBI Serial 10 at 3 and 1A8 11-422 e-mail with notes on boxes.

classified up to the Top Secret level and included codes indicating some of the information was Sensitive Compartmented Information.²⁶ The marked classified documents were located in two of the three boxes.⁴ All three boxes contained records dating from Mr. Biden's time as vice president.²⁷

The day after the National Archives retrieved the classified documents, on November 4, 2022, the Archives notified officials in the National Security Division of the Department of Justice (DOJ) and the Office of the Director of National Intelligence of the discovery of "classified records related to President Biden's time as Vice President."²⁸ A few days later, on November 9, the FBI opened an initial assessment to begin investigating the matter.²⁹

The following day, November 10, the Chief of DOJ's Counterintelligence and Export Control Section sent Bauer a letter describing the steps that Bauer and others acting on the president's behalf should take.³⁰ The Chief informed Bauer that "[t]he prospect that classified material may have been stored in an unsecure location over a prolonged period may have national security implications."³¹ He also told Bauer that, pending further action by DOJ, the Penn Biden Center and Mr. Biden's post-Vice Presidential Office should (1) secure "rooms and locations that contain any

²⁶ NARA Archivist 2 11/10/22, FBI Serial 3 at 2; NARA COO 11/15/22, FBI Serial 10 at 3 and 1A8 11-422 e-mail with notes on boxes.

²⁷ NARA COO 11/15/22, FBI Serial 10 at 3.

²⁸ 11/4/22 e-mail from NARA OIG, FBI Serial 28, 1A35.

²⁹ The FBI opened an initial assessment on November 9, 2022. *See* FBI Serial 1; FBI Serial 2; FBI Serial 28. On January 13, 2023, the FBI converted the initial assessment to a full investigation after receiving approval from the Attorney General and other appropriate authorities. FBI Serial 68.

³⁰ 11/10/22 ltr. from CES Chief, FBI Serial 9, 1A7.

³¹ *Id.*

additional potential government records and materials from President Biden's time as Vice-President," (2) preserve the status quo as to the location of such materials and refrain from reviewing them, (3) preserve all video footage, visitor logs, and other access records from the Penn Biden Center, (4) provide a list of all locations where material from Mr. Biden's time as vice president have been stored, and (5) give express consent for FBI and Department of Justice personnel to review the records retrieved by the National Archives.³²

Bauer responded the next day stating that President Biden had no objection to the requested steps and would "cooperate fully with the Department and, as directed by the Department, with [the Archives]."³³ Bauer stated, "[w]e do not know of any rooms or locations that contain additional potential government records and materials from President Biden's time as Vice President, but will immediately acknowledge and act as directed in the event we learn of any, as we did here."³⁴

On November 14, 2022, the Attorney General assigned John Lausch, then the U.S. Attorney for the Northern District of Illinois, to lead the initial investigation and assess whether the Attorney General should appoint a special counsel to investigate the matter.³⁵ Among other steps, investigators interviewed witnesses, reviewed the recovered documents, obtained security video footage from the Penn Biden Center,

³² 11/10/22 ltr. from CES Chief, FBI Serial 9, 1A7.

³³ 11/11/22 e-mail from Bauer, FBI Serial 9, 1A7.

³⁴ *Id.*

³⁵ Attorney General Merrick B. Garland Delivers Remarks on the Appointment of a Special Counsel, Office of Public Affairs, U.S. Dep't of Justice (Jan. 12, 2023), <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-appointment-special-counsel-0> (last visited Feb. 2, 2024).

and conducted a consensual search of the Penn Biden Center to ensure there were no other classified materials there.³⁶

B. Personal counsel discovered marked classified documents relating to Afghanistan in Mr. Biden's Delaware garage

On December 20, 2022, nearly seven weeks after the initial discovery of classified documents at the Penn Biden Center, Bauer and Moore traveled to Mr. Biden's personal residence in Wilmington, Delaware to search the garage for classified documents or other Obama-era presidential records.³⁷ They later explained that through discussions with current and former Biden staffers, they came to believe that documents from Mr. Biden's time as vice president may have been moved into the garage.³⁸ We considered the possibility that Mr. Biden alerted his counsel that classified documents were in the garage, but our investigation revealed no evidence of such a discussion because, if it happened, it would be protected by the attorney-client privilege.

Bauer searched a closet in the garage and found documents with classification markings inside a binder.³⁹ After Bauer made this discovery, Moore found documents with classification markings in an unsealed box in another area of the garage, including documents from 2009 relating to U.S. policy in Afghanistan.⁴⁰ After finding

³⁶ *E.g.*, NARA COS 11/16/22, FBI Serial 6; NARA COO 11/15/22, FBI Serial 10; NARA Archivist 3 11/16/22, FBI Serial 7; Moore 11/18/22, FBI Serial 16; Staff Assistant 3 12/21/22, FBI Serial 36; Executive Assistant 1/4/22, FBI Serial 64; FBI Serial 19; FBI Serial 26; FBI Serial 41; FBI Serial 693; FBI Serial 14.

³⁷ *See* Moore 2/17/23, FBI Serial 96; 12/28/22 Narrative from Bauer, FBI Serial 8 1A5.

³⁸ *See* Moore 12/21/22, FBI Serial 33.

³⁹ *Id.* at 2; 12/28/22 Narrative from Bauer at 2, FBI Serial 8 1A5.

⁴⁰ Moore 12/21/22, FBI Serial 33 at 2; 12/28/22 Narrative from Bauer at 2, FBI Serial 8 1A5; FBI Serial 75 at 2.

these marked classified documents in two locations in the garage, Bauer and Moore stopped their search.⁴¹

Later that same day, Bauer notified Lausch of the discoveries in Mr. Biden's garage.⁴² On Mr. Biden's behalf, Bauer provided consent for FBI agents to search the garage and seize classified or other government records from the time of the Obama administration.⁴³

The FBI dispatched two agents to retrieve the boxes in the garage the following day.⁴⁴ The agents met Moore at the garage, expecting he would point them to all of the boxes potentially containing classified material.⁴⁵ Upon learning, however, that counsel had not searched the entire garage, the agents conducted a limited search of the garage intended to determine whether it contained other classified documents.⁴⁶ The agents seized the containers Mr. Biden's counsel had identified and several other containers, documents, and materials.⁴⁷

The two agents lacked sufficient resources to conduct a comprehensive search of the entire garage given the volume of material stored there.⁴⁸ Accordingly, Lausch e-mailed Bauer and asked that he ensure "that the garage remains secure, access to it is strictly limited, and no items are removed from that location until a further

⁴¹ Moore 12/21/22, FBI Serial 33 at 2; 12/28/22 Narrative from Bauer at 2, FBI Serial 8 1A5.

⁴² Moore 2/17/23, FBI Serial 96 at 3-4, 11; Moore 11/18/22, FBI Serial 16 at 2; 12/28/22 Narrative from Bauer, FBI Serial 8 1A5.

⁴³ 12/20/22 Consent to Search, FBI Serial 35 1A39.

⁴⁴ FBI Serials 29, 35.

⁴⁵ FBI Serial 35 at 1.

⁴⁶ *Id.* at 1-2.

⁴⁷ *Id.* at 3-5; FBI Serial 29.

⁴⁸ FBI Serial 35 at 1-2.

review of the remaining materials occurs.”⁴⁹ Lausch also wrote that they needed to “continu[e] our conversation about the Department receiving appropriate assurances that no records from President Biden’s prior term as Vice-President remain at any unauthorized location, including within the Wilmington Residence, or any other residence, storage facility, or space.”⁵⁰

C. Personal counsel discovered more marked classified documents in Mr. Biden’s basement den

After the holidays, Bauer and Jennifer Miller, another personal counsel for Mr. Biden, continued their efforts to determine whether there were any other classified records in Mr. Biden’s Delaware home.⁵¹ On the evening of January 11, 2023, counsel traveled to the house to search areas other than the garage.⁵² Bauer and Miller remained together during the search.⁵³ They first searched Mr. Biden’s primary office—sometimes called “the library”—on the main floor of the house.⁵⁴ They identified no documents with classification markings there.⁵⁵ They moved on to the den in the basement.⁵⁶ There, in a wooden two-drawer file cabinet, counsel found a document with classification markings from the Obama administration in a notebook

⁴⁹ *Id.*; 12/22/22 e-mail from Lausch to Bauer; FBI Serial 34, 1A38.

⁵⁰ 12/22/22 e-mail from Lausch to Bauer; FBI Serial 34, 1A38.

⁵¹ Miller Tr. at 9-10; FBI Serial 51.

⁵² FBI Serial 51; 1/17/23 Description of Searches from Bauer, FBI Serial 55, 1A67; Miller Tr. at 4-5.

⁵³ Miller Tr. at 10-12; FBI Serial 51.

⁵⁴ 1/17/23 Description of Searches from Bauer at 1-7, FBI Serial 55, 1A67; Miller Tr. at 6.

⁵⁵ *See* 1/17/23 Description of Searches from Bauer at 1-7, FBI Serial 55, 1A67.

⁵⁶ 1/17/23 Description of Searches from Bauer at 7; Miller Tr. at 40.

labeled “1/6/12 #2 Foreign Policy.”⁵⁷ Bauer and Miller stopped their detailed search at this point and performed a cursory visual inspection of the rest of the house after that.⁵⁸

The next day, January 12, 2023, Bauer informed Lausch of the discovery in the basement den.⁵⁹ The FBI sent agents to the house that evening to recover the classified material.⁶⁰ Bauer informed Lausch that, at that time, Bauer did not have Mr. Biden’s consent for the FBI to search and seize his notebook that contained the marked classified document. Thus, on Bauer’s instructions, Richard Sauber of the White House Counsel’s Office met agents at the house and escorted them to the marked classified material found in the notebook in the basement cabinet.⁶¹

Agents observed Sauber pick up the notebook and leaf through it. Sauber and the agents eventually found two documents with classification markings: (1) a three-page PowerPoint presentation marked as “Secret//NOFORN//Pre-decisional” dated May 22, 2013, relating to Afghanistan; and (2) a three-page memorandum labeled “TS/SCI”—shorthand for Top Secret/Sensitive Compartmented Information—dated November 1, 2013, relating to Iraq.⁶² The agents seized the documents with classification markings and secured the “1/6/12 #2 Foreign Policy” notebook in a locking classified-document courier bag.⁶³ After discussions with Lausch, Sauber

⁵⁷ 1/17/23 Description of Searches from Bauer at 7; Miller Tr. at 40-42, 44; FBI Serial 44.

⁵⁸ 1/17/23 Description of Searches from Bauer at 7-8; Miller Tr. at 46, 51, 59.

⁵⁹ 1/13/23 Conference Call with Bob Bauer and personal counsel, FBI Serial 51 at 1-2.

⁶⁰ See FBI Serial 44.

⁶¹ FBI Serials 44, 694.

⁶² FBI Serial 43; FBI Serial 44 at 1-2.

⁶³ FBI Serial 44 at 2; FBI Serial 160 at 2.

provided the “1/6/12 #2 Foreign Policy” notebook to FBI agents two days later.⁶⁴ The notebook, like other notebooks described below, contained Mr. Biden’s handwritten notes as vice president relating to foreign policy and national security.⁶⁵

D. The Attorney General appointed a special counsel to investigate

On January 12, 2023—the same day FBI agents retrieved marked classified documents from the basement cabinet—the Attorney General appointed Robert Hur as special counsel to investigate the matter.⁶⁶ The Attorney General’s Order authorized Hur to conduct the investigation initially led by Lausch, “including possible unauthorized removal and retention of classified documents or other records discovered at the Penn Biden Center for Diplomacy and Global Engagement and the Wilmington, Delaware, private residence of President Joseph R. Biden, Jr., as well as any matters that arose from the initial investigation or may arise directly from the special counsel’s investigation or that are within the scope of 28 C.F.R. § 600.4(a).”⁶⁷

E. FBI agents discovered more marked classified documents and handwritten classified notes in various parts of Mr. Biden’s home

After the discovery of the classified documents in Mr. Biden’s basement, Mr. Biden consented to a search of the entirety of the Delaware home by the FBI for

⁶⁴ FBI Serials 46, 51.

⁶⁵ Notebook 1B15; FBI Serial 199.

⁶⁶ Office of the Attorney General, Order No. 5588-2023, Appointment of Robert K. Hur as Special Counsel (January 12, 2023).

⁶⁷ *Id.* Section 600.4(a) of Title 28 of the Code of Federal Regulations provides, in relevant part, that the jurisdiction of a special counsel “shall also include the authority to investigate and prosecute federal crimes committed in the course of, and with intent to interfere with, the Special Counsel’s investigation, such as perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses.” 28 C.F.R. § 600.4(a).

relevant materials, including documents with classification markings and other potentially classified information.⁶⁸

FBI agents searched the home on January 20, 2023.⁶⁹ Agents searched all areas of the house, including the garage, which agents had partially searched on December 21, 2022.⁷⁰ The house has a lower-level basement, a first-level main floor, a second level with the primary bedroom, and a third-level top floor with additional rooms and attic storage space.⁷¹ Agents seized items that fell primarily into two categories: (1) boxes or folders containing documents with classification markings, most of which date to the 1970s and relate to foreign trips Mr. Biden took as a senator; and (2) notebooks containing his handwritten notes from his time as vice president relating to foreign policy and national security. Two of these notebooks had marked classified documents stored inside them, and several notebooks contained handwritten information that was itself classified.⁷²

In Mr. Biden's garage, agents found several documents with classification markings dating from Mr. Biden's time in the Senate in the 1970s and 1980s.⁷³ Some of those documents relate to foreign trips Mr. Biden took as a senator, some of which he chronicled in his 2007 memoir, *Promises to Keep*. Agents found those Senate-era documents in a storage closet in Mr. Biden's garage.

⁶⁸ 1/20/23 Consent to Search for the Wilmington House, FBI Serial 77.

⁶⁹ FBI Serial 77.

⁷⁰ FBI Serials 77, 35.

⁷¹ FBI Serial 77.

⁷² *Id.*; FBI Serial 676.

⁷³ FBI Serials 77, 639; Recovered documents D1-D17, D17-1 to D19.

In Mr. Biden's main-floor office, basement den, and second-floor office, agents found and seized seventeen notebooks and a stack of notecards, all of which contained Mr. Biden's handwritten notes on foreign policy and national security matters as vice president.⁷⁴ Two of the notebooks, found in the main-floor office, had documents with classification markings stored inside them.⁷⁵

Elsewhere in the house, agents found one document with classification markings in the third-level den.⁷⁶ And in an office attached to the primary bedroom on the second level agents found a binder (similar to a binder previously found in the garage), which contained most of the same marked classified documents as the binder found in the garage.⁷⁷

F. FBI agents found more marked classified documents from the Senate era at the University of Delaware

Between January and June 2023, FBI agents searched over 300 boxes containing Mr. Biden's Senate papers, which were stored in two locations at the University of Delaware. Within those boxes, agents found documents with potential classification markings, dating from 1977 to 1991, during Mr. Biden's service in the Senate.⁷⁸

II. SUMMARY OF INVESTIGATIVE ACTIVITY

The FBI and the Special Counsel's Office undertook an extensive investigation into Mr. Biden's handling of classified information and of the classified documents

⁷⁴ FBI Serial 77.

⁷⁵ *Id.*; FBI Serials 178, 682.

⁷⁶ FBI Serial 77.

⁷⁷ *Id.*; FBI Serial 701.

⁷⁸ FBI Serials 83, 91, 98, 290.

the FBI seized. We applied our best efforts to conduct the investigation thoroughly and expeditiously.

Investigators conducted 173 interviews of 147 witnesses, including Mr. Biden himself. All told, the investigation collected over seven million documents, including e-mails, text messages, photographs, videos, toll records, and other materials from both classified and unclassified sources.

We also coordinated with the government agencies that had equities in the classified and potentially classified documents the FBI seized from locations associated with Mr. Biden. The agencies conducted classification review of seized documents to recommend the appropriate classification level, compartmentation, and dissemination controls for each document. Investigators met with subject-matter experts in the intelligence community to determine whether the documents contained information that a jury could conclude was national defense information under the Espionage Act.⁷⁹

Mr. Biden's notebooks, which contained, among other things, his handwritten notes taken during classified meetings as vice president, presented a challenge. None of the pages contained classification markings but investigators assessed some of the content was potentially classified. Classification review by intelligence agencies of unmarked information is more challenging and time-consuming than for marked documents. We therefore reviewed all of Mr. Biden's handwritten notes and selected thirty-seven excerpts totaling 109 notebook pages to submit for classification review.

⁷⁹ See Chapter 9, Section I.B for a discussion of the term "national defense information."

Investigators selected entries they believed were most likely highly classified and that a jury of laypeople would find was national defense information under the Espionage Act.

For both marked classified documents and unmarked documents, the Office of the Director of National Intelligence reviewed each document and provided a list of agencies with potential equities in each document. The FBI requested classification review from each identified agency accordingly. For documents where multiple agencies had equities, the Special Counsel's Office used the highest level of classification identified by an agency as the current classification of the document. Results of the classification review are summarized in Appendix A, which provides an unclassified summary of the recovered documents submitted for classification review.

Classification review conducted in the context of a criminal investigation has limitations. Agencies with equities in the information in the seized documents have applied their best efforts to determine the current classification of the material we submitted to them. In so doing, some have indicated that classification determinations are subject to change. Real-world events and changed circumstances can affect the harm to national security that would result from unauthorized disclosure of the information. Changed circumstances and events could therefore result in future modifications to classification determinations.

Some agencies have also noted that, in the typical context of a classification review, such as pursuant to a Freedom of Information Act request, they consult with

one another before making a final classification determination. That is to ensure an agency does not, for example, release information another agency considers classified. In this investigation, however, the Special Counsel's Office and FBI have asked agencies to determine only the classification of information belonging to them, without consulting other agencies to determine the overall classification of a document. Consistent with how the Department of Justice has handled the issue in similar investigations, the Special Counsel's Office enlisted the help of the Office of the Director of National Intelligence to determine which information should be submitted to which agency. Classification determinations provided to the Special Counsel's Office, therefore, are not "final" determinations of the agencies, in the sense that each agency cannot unequivocally state the classification level of a document without having undertaken that interagency coordination themselves. Instead, agencies have provided classification determinations specific to the information they originated or own, and nothing more.

Finally, the National Security Council is an equity holder in a large volume of the classified or potentially classified information recovered in this investigation. The National Security Council, however, works in direct support of Mr. Biden in his current position as president. To avoid a conflict of interest in having Mr. Biden's own National Security Council determine the classification level of documents recovered in this investigation, the White House asked the Department of State to "stand in" for the National Security Council in conducting classification review of White House or National Security Council information. The State Department did so by applying

the National Security Council's classification guide to the documents with such information, rather than by following its internal State Department classification review process. The State Department, however, is not the National Security Council. And the classification authorities at the State Department do not have the legal authority to classify information belonging to the National Security Council. Results received from the State Department as a "stand-in" for the National Security Council, therefore, are the government's current best estimate of classification under the circumstances. The National Security Council could reach different conclusions.

CHAPTER THREE

HANDLING OF CLASSIFIED INFORMATION IN THE OFFICE OF THE VICE PRESIDENT

As vice president, Mr. Biden received and stored classified materials at the White House, his official residence at the Naval Observatory, his private home in Delaware, and—very briefly—his rental home in Virginia.⁸⁰ He relied on staff to help deliver, store, and retrieve these classified materials.

The task of tracking and retrieving these documents was challenging given the relatively small size of Mr. Biden's staff and the volume of classified material Mr. Biden received through various channels on a near-daily and often urgent basis. While many members of Mr. Biden's staff sought to ensure that classified information was handled and stored properly, the Office of Vice President as a whole was unable to account for all the classified material Mr. Biden received and retained. Mr. Biden was known to remove and keep classified material from his briefing books for future use, and his staff struggled—and sometimes failed—to retrieve these materials. And there was no procedure at all for tracking some of the classified material Mr. Biden received outside his briefing books.

Mr. Biden also kept some material on his person or in his briefcase that he carried between the West Wing and his residences.⁸¹ Staff did not go through the briefcase to retrieve or archive material from it.⁸²

⁸⁰ See Chapter Seven.

⁸¹ Staff Assistant 3 10/4/23 Tr. at 49; Executive Assistant 9/28/23 Tr. at 73-74; Personal Aide 1 4/26/23 Tr. at 58; Personal Aide 2 Tr. at 35.

⁸² See Staff Assistant 3 10/4/23 Tr. at 67-68; Military Aide 10 Tr. at 22.

These gaps in the tracking and retrieval of Mr. Biden's classified materials made it more difficult to determine when, how, and why many of the classified documents later found in Mr. Biden's home and think tank ended up where they did not belong.

I. STRUCTURE OF THE OFFICE OF THE VICE PRESIDENT

Numerous witnesses told us that Mr. Biden relied on his staff to help transport, store, or return classified materials he received as vice president, and to ensure that those materials were handled properly.⁸³ As summarized below, several groups of staff were involved with the handling of classified material.

National Security Affairs staff. The Office of the Vice President had its own National Security Affairs staff that supported the vice president, his national security advisor, and his deputy national security advisor.⁸⁴ This office was distinct from President Obama's much larger National Security Council staff, which had its own systems for tracking and logging classified material that went to the president.⁸⁵

The National Security Affairs staff consisted of (1) the national security advisor and staff, and (2) the Executive Secretary team. The national security advisor's staff included a mix of political staff and detailees from agencies such as the State Department; they provided substantive advice to the vice president on matters of foreign policy and national security.⁸⁶ While the national security advisors often

⁸³ Military Aide 4 Tr. at 7; Military Aide 9 Tr. at 7.

⁸⁴ See, e.g., Executive Secretary 3 Tr. at 14-17.

⁸⁵ NSC Records Director Tr. at 18-31; McKeon Tr. at 36-40; Executive Secretary 1 Tr. at 73; Executive Secretary 3 Tr. at 14-15; Bakotic 7/19/23 Tr. at 9.

⁸⁶ 11/1/16 Memorandum from Outgoing OVP NSA, SCOH-000143. See also OVP NSA Staffer 3 Tr. at 5.

attended meetings and briefings with Mr. Biden where classified documents were discussed, these advisors did not view themselves as responsible for retrieving any classified materials from Mr. Biden or ensuring that he stored them properly.⁸⁷

The Executive Secretary team had an administrative role: It compiled, provided, tracked, and retrieved classified material for Mr. Biden.⁸⁸ It was a small group, composed mostly of detailees from agencies, who provided administrative support and assisted in compiling classified briefing books for Mr. Biden.⁸⁹ The Executive Secretary—an experienced, career military officer—worked closely with the Director of Programs, who continued through the transition from the Bush administration and served through the entirety of the Obama administration.⁹⁰

The Executive Secretary team had little direct access to Mr. Biden and relied on others to deliver and retrieve classified briefing books.⁹¹ These others included military aides, naval enlisted aides, personal aides, and front office assistants.

⁸⁷ OVP NSA Staffer 2 Tr. at 41-42; OVP NSA Staffer 1 Tr. at 41; Blinken Tr. at 13; Sullivan Tr. at 19.

⁸⁸ *See, e.g.*, Director of Programs Tr. at 55-58, 105; Executive Secretary 1 Tr. at 14-18, 65; Executive Secretary 3 Tr. at 13; Bakotic 7/19/23 Tr. at 9-10; Executive Secretary 2 Tr. at 6, 9, 30; 11/1/16 Memorandum from Outgoing OVP NSA, SCOH-000143.

⁸⁹ Executive Secretary 1 Tr. at 14, 21-22; Bakotic 7/19/23 Tr. at 10; Director of Programs Tr. at 17-18; Executive Secretary 2 Tr. at 9; Executive Secretary Staffer 3 Tr. at 24-25; Executive Secretary Staffer 1 Tr. at 34, 41; Executive Secretary Staffer 2 7/7/23 Tr. at 8-9.

⁹⁰ Executive Secretary 1 Tr. at 7, 11-12, 17, 65; Executive Secretary 2 Tr. at 5, 8; Executive Secretary 3 Tr. at 11-13, 37-39; Bakotic 7/19/23 Tr. at 6-12; 11/1/16 Memorandum from Outgoing OVP NSA, SCOH-000143; Director of Programs Tr. at 5-6.

⁹¹ *See, e.g.*, Director of Programs Tr. at 12; Executive Secretary 3 Tr. at 46; Bakotic 7/19/23 Tr. at 52-53; 1/14/17 e-mail amongst OVP National Security Affairs staff, Military Aides, and Naval Enlisted Aides, SCOH-000447.

Military aides. Military aides were servicemembers on detail from the Department of Defense.⁹² Their primary role was to ensure continuity of operations should something happen to the president.⁹³ They also helped deliver classified material from the National Security Affairs staff to Mr. Biden when he was not at the White House, and brought classified material back when Mr. Biden was finished with it.⁹⁴ This included printing classified materials and compiling classified binders for Mr. Biden when he was traveling.⁹⁵

Military aides were not responsible for ensuring that all materials delivered to the vice president were retrieved or properly disposed of, or for otherwise tracking classified documents.⁹⁶ But they assisted with the handling of classified documents because of their high-level security clearances, proximity to the vice president, and access to proper storage containers for classified material, such as lockable bags.⁹⁷

Naval enlisted aides. Naval enlisted aides supported Mr. Biden at the Naval Observatory and at his personal home in Delaware, as well as on all foreign and domestic travel.⁹⁸ Their primary duties included cooking, cleaning, and laundry for the vice president.⁹⁹ Like military aides, they served as go-betweens for the delivery and retrieval of classified information due to their security clearances and proximity

⁹² See, e.g., Military Aide 9 Tr. at 7.

⁹³ Military Aide 4 Tr. at 7; Military Aide 9 Tr. at 7.

⁹⁴ Military Aide 4 Tr. at 13-14, 17; Military Aide 5 Tr. at 10-11, 13-14; Military Aide 8 Tr. at 24-25, 44; Military Aide 11 Tr. at 25; NEA 2 Tr. at 33-34.

⁹⁵ See, e.g., Military Aide 4 Tr. at 8-9.

⁹⁶ See, e.g., Military Aide 3 Tr. at 32-33.

⁹⁷ See, e.g., Military Aide 1 Tr. at 14-15; Military Aide 8 Tr. at 24-25; Military Aide 10 Tr. at 23-24; Military Aide 12 Tr. at 14, 16.

⁹⁸ NEA 5 Tr. at 16-18.

⁹⁹ *Id.* at 13-14.

to the vice president.¹⁰⁰ They were the only staff members who regularly accessed Mr. Biden's private spaces on the second floor of the Naval Observatory Residence and at the Delaware residence.¹⁰¹ At times they delivered classified material to him on the second floor of the Naval Observatory,¹⁰² and when Mr. Biden left classified material out and unattended in those private spaces, they retrieved and secured it.¹⁰³

Mr. Biden regularly received and reviewed classified material in the Naval Observatory and his Delaware home and left that material out where the naval enlisted aides collected it when he was finished with it. During his vice presidency, naval enlisted aides occasionally found classified material in various locations on the second floor of the Naval Observatory and in Delaware.¹⁰⁴ They either sent those materials back to the White House directly or through the military aides, who brought them to the Executive Secretary team for proper disposal.¹⁰⁵

Personal aides ("body men"). Mr. Biden's personal aide, or "body man," who was always physically present with him at the White House and when traveling except to Delaware, also delivered and retrieved classified documents for him.¹⁰⁶ Personal aides typically had Top Secret/Sensitive Compartmented Information

¹⁰⁰ NEA 5 Tr. at 7, 28; NEA 1 Tr. at 13.

¹⁰¹ See, e.g., NEA 5 Tr. at 29; Military Aide 3 Tr. at 31; Military Aide 5 Tr. at 21; Residence Manager Tr. at 13; Personal Aide 1 4/26/23 Tr. at 113-14; Personal Aide 2 Tr. at 32, 36.

¹⁰² NEA 5 Tr. at 28-30.

¹⁰³ *Id.* at 28-30, 35-36.

¹⁰⁴ NEA 2 Tr. at 30-31, 36; NEA 3 Tr. at 12, 40; NEA 4 Tr. at 11, 15, 21-22, 24, 25, 34; NEA 5 Tr. at 53-54, 59, 84-85; NEA 6 Tr. at 14-15, 24. *But see* NEA 1 Tr. at 18, 25, 31, 32, 44 (did not recall seeing classified material left out at Naval Observatory or Delaware).

¹⁰⁵ See, e.g., Military Aide 5 Tr. at 11; Military Aide 1 Tr. at 9; Military Aide 3 Tr. at 30-31; NEA 2 Tr. at 19-20; NEA 5 Tr. at 42-43, 104, 107-108; NEA 6 Tr. at 15, 18.

¹⁰⁶ Personal Aide 1 4/26/23 Tr. at 20, 22.

clearances and were read into codeword compartments (involving Sensitive Compartmented Information) as needed.¹⁰⁷ They handled the logistics of Mr. Biden's schedule and ensured he had everything he needed.¹⁰⁸ They coordinated with military aides and National Security Affairs staff to handle the flow of classified material to and from Mr. Biden, but they did not track it.¹⁰⁹

Front office assistants. At the White House, two assistants sat in the front office of Mr. Biden's West Wing office along with the personal aide and, at various times, a Counselor to the Vice President.¹¹⁰ Staffers believed the West Wing office was a SCIF or otherwise approved for the discussion of classified information and treated it as such.¹¹¹ The assistants did not intentionally keep classified material for Mr. Biden in their front office space, and recalled that the only storage area they knew of for classified material in the Vice President's West Wing space was the safe in his office closet, which they generally did not access.¹¹² Assistants retrieved unclassified material from an outbox on Mr. Biden's desk, kept it in a box in their office space, and periodically sent it to the White House Office of Records Management to be archived in compliance with the Presidential Records Act.¹¹³ When

¹⁰⁷ Personal Aide 1 4/26/23 Tr. at 18; Personal Aide 2 Tr. at 29-30; Personal Aide 3 3/28/23 Tr. at 21; 2/3/09 e-mail from OVP Counsel to Personal Aide 1, 1B001_03201938.

¹⁰⁸ Personal Aide 1 4/26/23 Tr. at 19-20.

¹⁰⁹ *Id.* at 20-22, 52, 145-146 (delivery and retrieval of classified material at the Wilmington Residence "wasn't my role").

¹¹⁰ *See, e.g.*, Staff Assistant 2 Tr. at 25; Executive Assistant 1/4/23 Tr. at 6-7, 17-19.

¹¹¹ Executive Assistant 1/4/23 Tr. at 28; Staff Assistant 2 Tr. at 33-34; Director of Programs Tr. at 25-26; Blinken Tr. at 23-24.

¹¹² Staff Assistant 2 Tr. at 31-32; Executive Assistant 1/4/23 Tr. at 32; Staff Assistant 3 10/4/23 Tr. at 18.

¹¹³ Staff Assistant 2 Tr. at 19-20; Staff Assistant 1 Tr. at 49; Staff Assistant 3 10/4/23 Tr. at 15-16; 5/22/12 Duties and Responsibilities, 1B001_02941293.

Mr. Biden left classified material in his outbox or handed it to an assistant, the assistant typically called his National Security Affairs team to retrieve it or returned it to the Situation Room.¹¹⁴

Counsel to the Vice President. The various staff members within the Office of Vice President responsible for delivering, storing, retrieving, and tracking classified documents relied on guidance from the Counsel to the Vice President.¹¹⁵ Mr. Biden had his own Counsel, separate from the White House Counsel's Office.¹¹⁶ The Counsel had a Top Secret/Sensitive Compartmented Information clearance.¹¹⁷ In the early days of the administration, Cynthia Hogan, Mr. Biden's first Counsel, developed policies and procedures for the proper handling and storage of classified materials in the Office of the Vice President.

The White House Counsel's Office and other White House components also provided guidance on the proper handling of classified material.¹¹⁸ According to schedules and other documents, Hogan met with a number of White House employees

¹¹⁴ Staff Assistant 2 Tr. at 19-21, 37-38, 45; Staff Assistant 3 10/4/23 Tr. at 17; Executive Assistant 9/28/23 Tr. at 33-35; 5/22/12 Duties and Responsibilities, 1B001_02941293; August 2016 West Wing Guide, SCOH-000427; 9/6/11 e-mail from front office assistant to Executive Secretary team, 1B001_02872534; 4/3/12 e-mail from front office assistant to Executive Secretary team, 1B001_02854428. *But see* Staff Assistant 1 Tr. at 62-63 (never returned classified material to his National Security Staff, his personal aide "did all of that").

¹¹⁵ *See, e.g.*, 8/17/10 Memo from OVP Counsel to Mr. Biden re "Handling of Classified Documents," NARAWH_00000050; 8/23/10 e-mail from Military Aide 14 to OVP military aides re "Handling of Classified Material," NARAWH_00014447.

¹¹⁶ Hogan 5/23/23 Tr. at 23-24.

¹¹⁷ 2/25/09 e-mail from OVP Counsel, NARAWH_00002839; Lambros Tr. at 20; Nourse Tr. at 48; McGrail 5/2/23 Tr. at 54.

¹¹⁸ Hogan 5/23/23 Tr. at 24-29.

to discuss the handling of classified material, including employees from the National Security Council and the White House Office of Records Management.¹¹⁹

II. THE PRESIDENTIAL RECORDS ACT AND ARCHIVING OF RECORDS

Mr. Biden's staff was also responsible for ensuring that documents were properly archived as required by the Presidential Records Act.¹²⁰ The Act gives the United States "complete ownership, possession, and control" of all presidential records and vice-presidential records, which must be retained and sent to the National Archives at the end of the administration.¹²¹ The statute defines presidential records and vice-presidential records broadly to include documentary materials created or received "in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties" of the president or vice president, including memoranda, correspondence, papers, photographs, and electronic records.¹²²

Mr. Biden's Executive Secretary team was responsible for ensuring that classified documents were properly archived according to the Act.¹²³ The White House Office of Records Management handled the archiving of unclassified documents.¹²⁴

¹¹⁹ OVP Counsel's Office Weekly Report for Feb. 12 to Feb. 19, 2009, 1B001_00040596_0001-0002; OVP Counsel's Office Weekly Report for Feb. 27 to March 5, 2009, 1B001_00040491_0018-0019; OVP Counsel's Office Weekly Report for June 4-10, 2009, 1B001_00049811_0011-0015.

¹²⁰ WH Records Director Tr. at 14-16.

¹²¹ 44 U.S.C. §§ 2201-09; 9/26/16 Memo by White House Counsel re Preservation and Retention of Records, NARAWH_00000905.

¹²² 44 U.S.C. §§ 2201(2), 2207. We discuss the Presidential Records Act again in Chapters Nine and Ten.

¹²³ WH Records Director Tr. at 14-16.

¹²⁴ *Id.* at 13-14.

During the first week of the administration, a member of the White House Counsel's Office briefed Mr. Biden on the Act's recordkeeping requirements.¹²⁵ Hogan put in place a procedure to make sure that presidential and vice presidential records were collected and properly archived. She circulated a White House Counsel memo on the Act's requirements to employees in the Office of the Vice President.¹²⁶ She also met with Mr. Biden's personal aide to discuss the Act and its recordkeeping requirements, including the need to collect and preserve Mr. Biden's briefing books.¹²⁷

III. THE HANDLING OF CLASSIFIED MATERIAL IN THE OFFICE OF THE VICE PRESIDENT

A. Classified products

Mr. Biden received classified documents in three primary forms: a classified binder prepared by his national security staff; the President's Daily Brief; and materials delivered to him as needed by his staff.

Classified briefing book. Most days, the Executive Secretary team compiled a classified briefing book for Mr. Biden.¹²⁸ It was a binder of materials drafted or selected by Mr. Biden's advisors to prepare him for the day and upcoming trips.¹²⁹

¹²⁵ 1/25/09 Memo re Briefing from White House Counsel on the Presidential Records Act and Ethics Rules, NARAWH_00000049; 1/26/09 Mr. Biden's Schedule for January 26, 2009, 1B001_03202545.

¹²⁶ 3/17/09 e-mail from Hogan to All OVP employees, 1B001_03199194; 3/11/09 Memo re the Presidential Records Act from White House Counsel to All EOP Staff, 1B001_03199195.

¹²⁷ 1/23/09 e-mail from Hogan to Personal Aide 1, 1B001_03061921.

¹²⁸ See, e.g., Executive Secretary 2 Tr. at 9; 7/18/12 e-mail to all OVP staff, 1B001_00213201; 7/29/15 e-mail between Personal Aide and Mr. Biden, 1B001_02072094.

¹²⁹ See, e.g., Executive Secretary 3 Tr. at 14, 16, 21-24, 29-30; Executive Secretary 1 Tr. at 20.

The Executive Secretary team assembled the book and ensured its delivery to Mr. Biden, in coordination with other staff as described above.¹³⁰ The Executive Secretary team also tracked the book's return.¹³¹ Once returned, the books were stored in a safe in the Executive Secretary team's office.¹³² Periodically, the team sent the books to the White House Office of Records Management to be archived.¹³³

President's Daily Brief. The Office of the Director of National Intelligence compiled a collection of intelligence community products known as the President's Daily Brief. Mr. Biden was assigned his own briefer, who also briefed his national security advisor, deputy national security advisor, and his last chief of staff.¹³⁴ The Director of National Intelligence required inclusion of a core group of articles, while the briefer supplemented articles tailored to Mr. Biden's interests and requests.¹³⁵

Early in his vice presidency, Mr. Biden declined to receive oral briefings from his own briefer and instead joined President Obama for his briefings in the Oval

¹³⁰ See, e.g., Executive Secretary 3 Tr. at 28, 33-34; Executive Secretary 1 Tr. at 26; Executive Secretary 2 Tr. at 13-14; 10/26/16 e-mail amongst OVP staff, SCOH-000239.

¹³¹ Executive Secretary 3 Tr. at 34-35; Director of Programs Tr. at 55-56; Executive Secretary Staffer 2 7/7/23 Tr. at 24-25.

¹³² Director of Programs Tr. at 53-54.

¹³³ *Id.* at 53, 61, 100; Executive Secretary 3 Tr. at 35; 2/4/09 e-mail from Hogan to Personal Aide 1, 1B001_03201837; 6/19/09 National Security Advisory Staff Assistant Standard Operating Procedures, NARAWH_00000712.

¹³⁴ PDB Briefer 1 Tr. at 3.

¹³⁵ *Id.* at 22-24, 36-37.

Office.¹³⁶ Throughout his tenure, Mr. Biden received a written brief, first on paper in a binder, and beginning in 2014, on a portable electronic device.¹³⁷

Mr. Biden's briefer generally retrieved the copy of the brief delivered to Mr. Biden. Mr. Biden's Executive Secretary team stored the briefs in their safe until the briefer retrieved them.¹³⁸

“As-needed” materials. Mr. Biden also received classified documents on an as-needed basis, hand-delivered to him by staff or printed to his West Wing office on a secure printer.¹³⁹ The Naval Observatory also had a classified printer the military aides used to print and deliver such materials to Mr. Biden there.¹⁴⁰ The Executive Secretary team lacked a formal system for tracking classified documents delivered to

¹³⁶ PDB Briefer 1 Tr. at 20-22; 1/28/09 e-mail to Personal Aide 1 listing Mr. Biden's schedule, 1B001_03202433; 12/15/09 e-mail between listing Mr. Biden's schedule, 1B001_03185236 (“9:45-10:15 am- Attend POTUS PDB”); 9/12/11 e-mail listing Mr. Biden's schedule, 1B001_02872037 (“9:30-10:00am POTUS PDB in Oval”).

¹³⁷ PDB Briefer 1 Tr. at 42-43. In the early years, the PDB was printed for the Vice President, received at the Naval Observatory, and brought with him to the West Wing. 2/10/10-2/11/10 e-mail between Executive Secretary 1 and staff, 1B001_03060726. When interviewed, Mr. Biden said he received the PDB in a binder. Biden 10/8/23 Tr. at 19. When Mr. Biden was traveling, he received the PDB in paper copy via secure fax. PDB Briefer 1 Tr. at 40-43. *See also* 1/13/17 e-mail amongst Secret Service describing PDB delivery, USSS-0000477389.

¹³⁸ PDB Briefer 1 Tr. at 42-44; PDB Briefer 2 Tr. at 15, 24, 33.

¹³⁹ OVP NSA Staffer 2 Tr. at 24-26; 10/15/14 e-mail from Director of Programs to Executive Assistant (“There is a high side printer under your desk that I understand does not work correctly.”), 1B001_03521121; 11/30/16 e-mail amongst OVP staff (requesting “toner for the classified printer”), SCOH-000224; 9/13/16 e-mail (discussing fixing the “classified printer”), SCOH-000269; 8/29/16 e-mail (requesting assistance with the “high side printer” in “the Vice President's West Wing Office”), SCOH-000425.

¹⁴⁰ 2/8/11 e-mail from Military Aide 15 to Personal Aide 1 and OVP National Security Affairs staff (“If they have a SECRET or higher classification, please have the WHSR send them to our VP MILAIDE (high side) printer here at the VPR.”), 1B001_03155733; 11/17/16 e-mail amongst military aides and OVP National Security Affairs staff (“There is one piece of traffic/cable that I just printed to the Naval Observatory printer. Mil Aides, can you please deliver with morning traffic?”), SCOH-000241; Military Aide 5 Tr. at 10; Military Aide 1 Tr. at 8-9. The naval enlisted aides did not have access to a classified computer. NEA 5 Tr. at 30-31.

Mr. Biden on an as-needed basis, and no one else in the Office of the Vice President appears to have tracked them either.¹⁴¹ Several of the marked classified documents recovered by the FBI in this investigation appear to have been given to Mr. Biden outside the briefing books.¹⁴²

B. Efforts to retrieve and track classified material

In the early days of Mr. Biden's vice presidency, his Counsel, Hogan, instructed Mr. Biden's personal aide that all classified material provided to Mr. Biden should be returned to the Executive Secretary team.¹⁴³ Although there was a safe in Mr. Biden's office, Hogan told Mr. Biden's personal aide that "we don't want to store any classified material in the [West Wing] office, so just look to hand this stuff off as soon as it comes to you."¹⁴⁴

The Executive Secretary team sought to retrieve Mr. Biden's classified briefing books every day but could not always do so.¹⁴⁵ At times, he kept one or more classified briefing books for his own reference or because he was not done with the material.¹⁴⁶

¹⁴¹ Executive Secretary Staffer 2 7/7/23 Tr. at 32-35; OVP NSA Staffer 2 Tr. at 40-42; OVP NSA Staffer 1 Tr. at 41; Blinken Tr. at 13.

¹⁴² For example, document A2 was a memorandum recovered at the Penn Biden Center. *See* Chapter Fourteen. E-mail correspondence indicates it was printed to the West Wing printer, after the regular classified briefing book (which also contained a copy of the document) was returned. 9/27/16 Memo amongst OVP NSA and West Wing staff, 1B001_02306967. *See also* Chapter Sixteen.

¹⁴³ 2/4/09 e-mail from Hogan to Personal Aide 1, 1B001_03061837.

¹⁴⁴ 2/16/09 e-mail from Hogan to Personal Aide 1, 1B001_03201046.

¹⁴⁵ Director of Programs Tr. at 54, 57-58, 78.

¹⁴⁶ *Id.* at 54, 57-59; Executive Secretary Staffer 2 7/7/23 Tr. at 28-29. 11/8/10 e-mails amongst Personal Aide 1, military aides, and Executive Secretary team, 1B001_03161903.

And on occasion, he removed one or more briefing memos from the classified briefing book before returning it.¹⁴⁷

In 2010, the Executive Secretary team raised concerns about the number of classified briefing books that Mr. Biden had not returned, and the fact that, even when they were returned, some of the content was missing.¹⁴⁸ These concerns were raised with Hogan as well as Mr. Biden's personal aide and military aides. E-mails indicate that the Executive Secretary team alerted Hogan to the issue at least in June 2010, when nearly thirty of the classified briefing books from the first six months of 2010 were outstanding, and in August 2010, when Mr. Biden failed to return Top Secret, Sensitive Compartmented Information (also referred to as "codeword") contents of a classified briefing book that he had received during a trip to the Hamptons, in New York.¹⁴⁹ We were unable to determine whether these materials were ever recovered, although they were likely found and disposed of by military aides or naval enlisted aides.¹⁵⁰

¹⁴⁷ Director of Programs Tr. at 54-60; Executive Secretary Staffer 2 7/7/23 Tr. at 28-29; 11/8/10 e-mails amongst Personal Aide 1, military aides, and Executive Secretary team, 1B001_03161903.

¹⁴⁸ Director of Programs Tr. at 69-76, 90-91; Executive Secretary 3 Tr. at 36-37; Executive Secretary Staffer 2 7/7/23 Tr. at 28-29 (seeing the same in 2016-18).

¹⁴⁹ 6/29/10 e-mail from Director of Programs to Personal Aide 1 and military aides, 1B001_03171078; 8/16/10 e-mail from Executive Secretary to Hogan, 1B001_03168570; 8/17/10 e-mails between Military Aide 14 and Personal Aide 1, 1B001_03168569; Military Aide 10 Tr. at 24-25.

¹⁵⁰ 8/17/10 to 8/18/10 e-mails between Hogan and the Executive Secretary team and naval enlisted aides, NARAWH_00017121; Executive Secretary Staffer 2 7/7/23 Tr. at 31-33.

The return of classified briefing books without all of their contents frustrated the Executive Secretary team.¹⁵¹ In response, Hogan implemented additional security procedures described below.¹⁵² But even after those measures were implemented, the Executive Secretary team continued to struggle to retrieve classified briefing books from Mr. Biden.

We were able to trace one of the marked classified documents recovered by the FBI to a briefing book—a 2015 memorandum recovered from the Penn Biden Center.¹⁵³ But we were not able to determine whether other recovered documents came from briefing books or were handed or sent to Mr. Biden on an as-needed basis.

C. August 2010 briefing of Mr. Biden on the handling of classified material

Days after the Top Secret, codeword book went missing in 2010, Hogan met with Mr. Biden to discuss the handling of classified material.¹⁵⁴ Before the meeting, she prepared a briefing memo for him.¹⁵⁵ The memo, which was addressed to Mr. Biden and dated August 17, 2010, outlined “our procedures for handling your

¹⁵¹ Director of Programs Tr. at 72-73; Executive Secretary 3 Tr. at 36-37; 11/8/10 e-mail from Director of Programs to military aides and others, 1B001_03161902. *See also* Executive Secretary Staffer 2 7/7/23 Tr. at 30-31 (seeing the same in 2016-2018).

¹⁵² Director of Programs Tr. at 72-75, 90-91; 8/17/10 Memo from OVP Counsel to Mr. Biden re “Handling of Classified Documents,” NARAWH_00000050.

¹⁵³ A review of the classified book or binder from the Archives showed that the binder from the date of document A8 was missing a tab and attachment which matched document A8. FBI Serial 692. Document A8 was also hole-punched, indicating it may have been the copy that was originally placed in that binder. FBI Serial 238.

¹⁵⁴ 8/17/10 e-mails between Military Aide 10, Military Aide 12, and Personal Aide 1, 1B001_03168569; 8/16/10 e-mail from Executive Secretary to Hogan, 1B001_03168570; 8/19/10 e-mail from OVP Counsel to Executive Secretary and others, 1B001_03168426.

¹⁵⁵ 8/17/10 Memo from OVP Counsel to Mr. Biden re “Handling of Classified Documents,” NARAWH_00000050.

classified briefing material” that “must be maintained at all times,” including the following:

- “Classified information of any kind may only be reviewed or discussed in secured locations, and never in a public place such as on a train.”
- “The [classified briefing] books must remain in your custody, or that of your cleared staff, at all times unless they are in your safe. Classified material must be returned to your national security staff as soon as you are finished with them.”
- “Classified materials may never be left unattended, but must be secured in an appropriate safe or transferred to an individual authorized to transport them in an appropriate locked bag whenever they are not in your personal custody.”
- “Whenever possible, classified materials should remain at the White House complex. . . . If you need to receive classified materials while at your residence at NAVOBS or in Delaware, the military aides will bring the material to you and then wait to take the material back when you are finished so that it can be stored safely.”¹⁵⁶

When interviewed, Hogan did not recall the August 2010 meeting with Mr. Biden. She did, however, identify her handwritten talking points on “best practices.”¹⁵⁷ Even though she did not remember their content, she identified her handwriting and said she likely created them in advance of her meeting with Mr. Biden.¹⁵⁸ According to her talking points, she briefed Mr. Biden on such best practices as making sure that “classified info stays in the WH complex whenever possible” and is “returned to N[atational] S[ecurity] staff at end of each day.”¹⁵⁹ She also counseled Mr. Biden that any classified material taken from the White House must be

¹⁵⁶ 8/17/10 Memo from Hogan to Mr. Biden re “Handling of Classified Documents,” NARAWH_00000050.

¹⁵⁷ Undated handwritten notes, NARAWH_00000050 at 4

¹⁵⁸ Hogan 9/19/23 Tr. at 66-69.

¹⁵⁹ Undated handwritten notes, NARAWH_00000050 at 4.

transported by military aides in locked bags and that military aides must retrieve the classified material when Mr. Biden was done with it.¹⁶⁰

After the briefing, Mr. Biden sent Hogan an e-mail through one of his front office assistants, thanking her for the “security briefing.”¹⁶¹

Despite the Hogan memo’s language that the Office of the Vice President “must” follow certain procedures for handling classified information, Hogan conceived of the memo as describing “best practices” rather than legal requirements.¹⁶² That view is consistent with the executive order governing handling and storage of classified information, which, as explained in Chapter One, does not apply to a sitting vice president. As outlined below, Mr. Biden and his staff did not follow Hogan’s guidance to the letter.

D. The handling of classified material in Mr. Biden’s personal spaces after August 2010

As part of his duties as vice president, Mr. Biden accessed and stored classified material in the Naval Observatory and at his Delaware home, outside of containers normally authorized for such information. His staff, following Hogan’s advice, tried

¹⁶⁰ Undated handwritten notes, NARAWH_00000050. *See also* 8/23/10 e-mail from Military Aide 14 to other OVP military aides re “Handling of Classified Material,” NARAWH_00014447; Hogan 5/23/23 Tr. at 53-55.

¹⁶¹ 8/17/20 e-mail from front office assistant to OVP Counsel, NARAWH_00017043.

¹⁶² Hogan 9/19/23 Tr. at 65-68, 81, 113-14; 8/17/10 Memo from Hogan to Mr. Biden re “Handling of Classified Documents,” NARAWH_00000050.

to ensure that classified material was handled securely.

1. Tracking of classified briefing books

In the wake of the August 2010 Hamptons trip and the difficulty in retrieving Top Secret, codeword documents, Executive Secretary staff implemented a more formal system for tracking Mr. Biden's classified briefing books. The team began numbering and recording the contents of each book,¹⁶³ and created a spreadsheet that logged the date, book number, how the book was delivered, and date of return.¹⁶⁴ Despite these new procedures, the Executive Secretary team continued to struggle to retrieve Mr. Biden's classified briefing books.¹⁶⁵

2. Delivery of classified material to personal spaces

Hogan orally instructed military aides that the classified briefing books must be delivered directly to Mr. Biden and "could not be left on the 'round table'" in the front hall on the main floor of the Naval Observatory residence.¹⁶⁶ During our interview, Hogan said that she "wanted to make sure that a book with classified information wasn't just sitting on the hallway table."¹⁶⁷ According to notes taken by one of Mr. Biden's military aides, Hogan instructed that "if [Mr. Biden] asks us to

¹⁶³ 8/23/10 e-mail from Director of Programs to OVP National Security Staff, NARAWH_00017126; 8/17/10 Memo from Hogan to Mr. Biden re "Handling of Classified Documents," NARAWH_00000050.

¹⁶⁴ 8/23/10 e-mail from Director of Programs to OVP National Security Staff, NARAWH_00017126; VP Classified book tracking.xlsx, NARAWH_00014902.

¹⁶⁵ Executive Secretary Staffer 2 7/7/23 Tr. at 25-28; In November 2010, Military Aide 14 e-mailed Personal Aide 1 asking him to help retrieve multiple of Mr. Biden's classified briefing books. 11/8/10 e-mail from Director of Programs to military aides and others, 1B001_03161902.

¹⁶⁶ Hogan 5/23/23 Tr. at 45-46. 8/23/10 e-mail from Military Aide 14 to OVP Military Aides re "Handling of Classified Material," NARAWH_00014447.

¹⁶⁷ Hogan 5/23/23 Tr. at 46-47.

leave it on the ‘round table’ we should place it on the table and then maintain eyes on it until he picks it up.”¹⁶⁸ But in practice, military aides regularly left his classified briefing books unattended on the round table at Mr. Biden’s request.¹⁶⁹

3. Storage of classified material in personal spaces

According to a military aide’s notes of a meeting with Hogan in August 2010, she communicated to staff that Mr. Biden “understands that classified material needs to be kept in one of two places a. Personal Custody, or b. a safe.”¹⁷⁰ His staff then installed identical safes for him to use to store classified material, installing one safe

¹⁶⁸ *Id.* 8/23/10 e-mail from Military Aide 14 to OVP Military Aides re “Handling of Classified Material,” NARAWH_00014447.

¹⁶⁹ Military Aide 1 Tr. at 10-11, 42-44; Military Aide 4 Tr. at 9, 16 (“He knew that at some point in the evening there would be a book available for him on the table.”); Military Aide 8 Tr. at 21-22 (“We would make contact with him and he would say, hey, can you leave it on the table at the bottom of the stairs in the Naval Observatory. So, he would request that and we would leave it for him to retrieve.”); Military Aide 10 Tr. at 15 (“his direction to me was to put it on a table in the foyer . . . [H]is direction to me was to set it on that table.”). *But see* Military Aide 11 Tr. at 28 (“You couldn’t . . . [I]f you couldn’t positively hand it off to somebody, you didn’t. I wasn’t going to leave, you know, secrets sitting on the kitchen counter in the Naval Observatory.”); Military Aide 13 Tr. at 15 (“All of the handoffs that I’m thinking about, I don’t think we left classified sitting around for him.”). Some military aides described ensuring the material was picked up from the table that evening. Military Aide 3 Tr. at 40 (“I wouldn’t stand there waiting for him to come down and get them, say if he was, you know, upstairs. But I would make sure they were picked up.”); Military Aide 6 Tr. at 30 (“[W]e would leave them on the table on the first floor, and I would always kind of wait, and he would walk or let the dog out, Champ, and so you’d see that he let [the] dog out, and then I would go back up to make sure that those documents were not on the table after I saw him.”). At least one military aide pushed back if the material was particularly sensitive. Military Aide 5 Tr. at 13-15, 33 (would not leave anything above Top Secret/Sensitive Compartmented Information classification on the round table and Mr. Biden would be informed it couldn’t be left on the table; would not leave the book on the table for more than 30 minutes.). On at least one occasion, Mr. Biden’s personal aide sent an e-mail to Mr. Biden himself via Mr. Biden’s personal e-mail account notifying him that the “classified book was delivered and is on the round table downstairs[.]” 7/11/11 e-mail from personal aide to Mr. Biden, 1B001_03223432.

¹⁷⁰ 8/23/10 e-mail from Military Aide 14 to OVP Military Aides, NARAWH_00014447.

each in his West Wing office closet, the second-floor personal space of the Naval Observatory, and his personal residence in Delaware.¹⁷¹

There is some evidence that after the new safes were installed at the residences, Mr. Biden used them to store classified information, at least for a time. In December 2010, for example, Mr. Biden's personal aide e-mailed members of the Executive Secretary team saying that Mr. Biden had "just put" classified material in a safe in the Naval Observatory, including classified briefing books and one of Mr. Biden's handwritten notebooks.¹⁷² And in November 2010, the personal aide sent another e-mail saying that "the system put in place by [Hogan] of using safes at his residence has been working."¹⁷³

But we also found that Mr. Biden continued frequently to leave classified documents unattended, outside of safes, at the Naval Observatory and his Delaware home. As to the Naval Observatory, only one of the eight naval enlisted aides we interviewed recalled a safe there ever being used to store classified material.¹⁷⁴ Several did not recall a second-floor safe at all.¹⁷⁵ And only one aide recalled a safe being in the library of the Delaware home, but the aide never opened it.¹⁷⁶

¹⁷¹ 8/23/10 e-mail from Military Aide 14 to OVP Military Aides, NARAWH_00014447; 12/11/10 e-mail from Personal Aide 1 to Director of Programs, 1B001_03159080 (referring to safe in Mr. Biden's "room" in his residence at the Naval Observatory).

¹⁷² 12/11/10 e-mail from Personal Aide 1 to Director of Programs and Executive Secretary, 1B001_03159095 (listing a "classified binder" with materials from "two books" on "Af/Pak"); Notebook 1B63.

¹⁷³ 11/8/10 e-mail from Personal Aide 1 to Director of Programs, *et al.*, 1B001_03161902.

¹⁷⁴ NEA 5 Tr. at 35-36, 39, 40-41.

¹⁷⁵ NEA 1 Tr. at 17; NEA 4 Tr. 16; NEA 8 at 23-24.

¹⁷⁶ 5/2/13 e-mail from Director of Programs, 1B001_03097089; 10/18/10 Memorandum, NARAWH_00014906; NEA 5 Tr. at 80-83.

Despite Hogan's admonishments never to leave classified material unattended, several aides observed classified material left out on the second floor of the Naval Observatory¹⁷⁷ or in the Delaware home.¹⁷⁸ Some thought it was fine for documents to be left out in those spaces, and only recalled moving them if asked.¹⁷⁹ When interviewed, Mr. Biden recalled that at the Naval Observatory his practice was to "leave something on the desk that I was working out of in the office . . . and they'd come and clear it out . . . when I got finished."¹⁸⁰

E. Lack of counseling on the handling of classified material after 2010

Hogan left her position as Counsel to the Vice President in June 2013.¹⁸¹ After her guidance in 2010 and 2011, it does not appear the Counsel's office provided Mr. Biden with any additional advice of significance about how to handle and store classified information until the very end of the administration, when an issue arose relating to his handwritten classified notecards. That matter is discussed in detail in Chapter Four.

¹⁷⁷ NEA 2 Tr. at 29-32; NEA 3 Tr. at 12, 40; NEA 4 Tr. at 11-13; NEA 5 Tr. at 53-55, 59; NEA 6 Tr. at 14-15; NEA 7 Tr. at 51-53.

¹⁷⁸ NEA 2 Tr. at 36; NEA 4 Tr. at 21, 24-25, 34, 35-38; NEA 5 Tr. at 53-54, 84-85; NEA 6 Tr. at 24.

¹⁷⁹ NEA 4 Tr. at 23-24, 47; NEA 5 Tr. at 84; NEA 7 Tr. at 51-53.

¹⁸⁰ Biden 10/8/23 Tr. at 30-31.

¹⁸¹ Hogan 5/23/23 Tr. at 36; Lambros Tr. at 13; 6/21/13 e-mail from Hogan, 1B001_00180811.

CHAPTER FOUR

MR. BIDEN'S CLASSIFIED NOTECARDS AND NOTEBOOKS

In addition to the marked classified documents Mr. Biden received through the President's Daily Brief, classified briefing books, and other avenues, he also regularly created classified documents in the form of his own handwritten notes. Throughout the eight years of the Obama administration, Mr. Biden took notes during classified meetings and about classified information in notebooks and on notecards. Although the substantive information in the notebooks and notecards was similar—and similarly classified—the notebooks and notecards were handled differently, both during the administration and after.

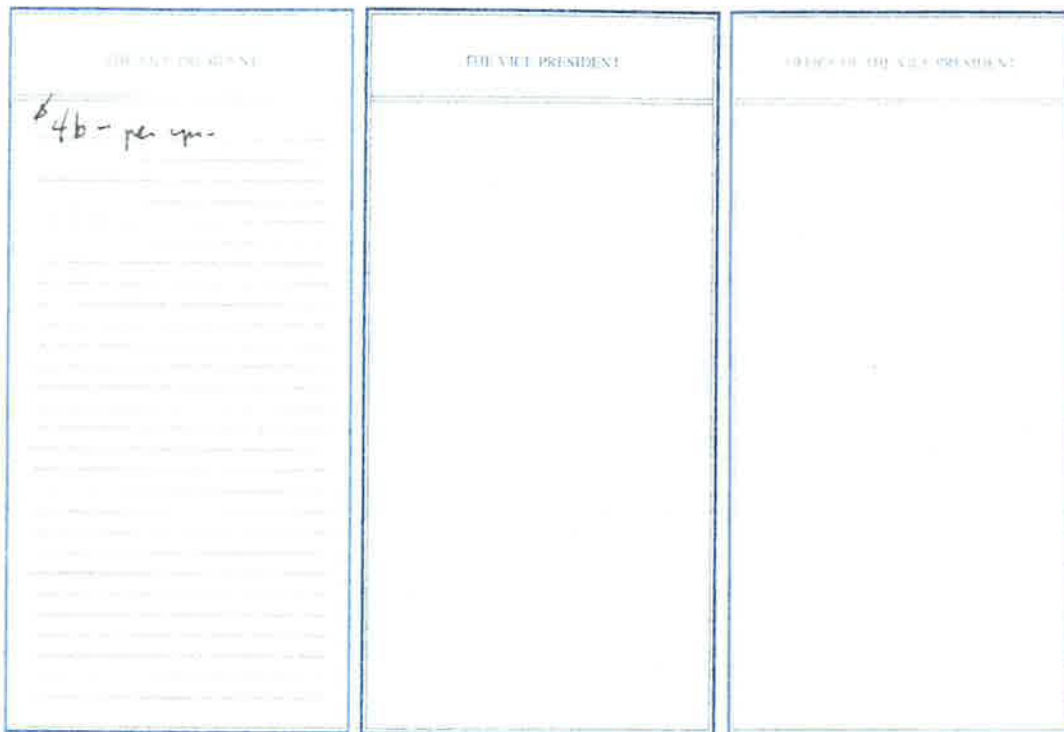
During the Obama administration, Mr. Biden's staff regularly collected and reviewed his notecards to determine if they contained classified information and so they could eventually be archived as presidential records. At the end of the administration, Mr. Biden's staff arranged for him to store most of his classified notecards, which contained notes on the President's Daily Brief and other classified information, in a SCIF at the National Archives. In contrast, Mr. Biden held his notebooks close, and his staff did not review them. After the administration, Mr. Biden brought his notebooks home with him and stored them in unsecured locations that were not authorized to store classified information—even though the notebooks, like the notecards, contained classified information.

Some information in the notebooks remains classified up to the Top Secret level and includes Sensitive Compartmented Information, including from compartments used to protect information concerning human intelligence sources.¹⁸²

I. MR. BIDEN'S NOTECARDS

A. As vice president, Mr. Biden carried and took notes on notecards every day

Mr. Biden regularly took notes on 4-inch by 7.5-inch notecards. Many of them had "The Vice President," or "Office of the Vice President" printed at the top.¹⁸³



*Examples of vice presidential notecards*¹⁸⁴

¹⁸² Office of the Director of National Intelligence, 12/31/13 Memorandum for Distribution from the Principal Deputy Director of National Intelligence (2013), <https://sgp.fas.org/othergov/intel/hcs-update.pdf>; FBI Serial 676.

¹⁸³ Staff Assistant 2 Tr. at 100; 12/20/10 e-mail from OVP staffer to Staff Assistant 2, 1B001_02888681; Staff Assistant 3 10/4/23 Tr. at 34-35.

¹⁸⁴ NARA_SCAN_00001317, NARA_SCAN_00001320, NARA_SCAN_00001305; FBI Serial 3.

Mr. Biden's staffers printed a copy of his schedule on a notecard for him to carry and refer to each day.¹⁸⁵ He also had staffers print other information on the notecards, such as the number of troops who had died during the war in Afghanistan and talking points for meetings and speeches.¹⁸⁶ Mr. Biden carried the notecards in his inner jacket pocket, and he referred to them throughout the day and jotted down notes on them.¹⁸⁷

Mr. Biden also carried blank notecards that he used to take notes. According to staffers, he used the notecards to take notes during and after meetings.¹⁸⁸



*Mr. Biden with handwritten notecards (June 30, 2010)*¹⁸⁹

¹⁸⁵ 9/1/16 West Wing Guide, SCOH-000434; Klain Tr. at 43; Personal Aide 1 4/26/23 Tr. at 26-27; Hogan 5/23/23 Tr. at 33; Executive Assistant 9/28/23 Tr. at 50-51.

¹⁸⁶ 9/1/16 West Wing Guide, SCOH-000434; Klain Tr. at 43; Personal Aide 1 4/26/23 Tr. at 29-30; McKeon Tr. at 82-83; Personal Aide 3 3/28/23 Tr. at 31-32.

¹⁸⁷ 9/1/16 West Wing Guide, SCOH-000434; Klain Tr. at 43-44; Personal Aide 1 4/26/23 Tr. at 26-27; Hogan 5/23/23 Tr. at 33; Staff Assistant 3 10/4/23 Tr. at 25-26.

¹⁸⁸ Personal Aide 1 4/26/23 Tr. at 28-29; Personal Aide 3 3/28/23 Tr. at 31-34; Staff Assistant 3 10/4/23 Tr. at 25-26.

¹⁸⁹ 1B001_00506500.

In addition to taking notes in unclassified settings, Mr. Biden used notecards to take notes on a variety of classified meetings and briefings, including the President's Daily Brief,¹⁹⁰ Situation Room meetings, and other briefings from the intelligence community.¹⁹¹

B. Mr. Biden's notecards were collected and organized by his staff

Mr. Biden's front office staff regularly collected his notecards. Generally, Mr. Biden handed them to his personal aide or staff assistants or left them in an outbox on the desk in his office, where his front office staff collected material at each day's end.¹⁹² Staff then organized the notecards by date or topic so that Mr. Biden could reference them.¹⁹³ Front office staff stored the notecards in their work area outside of Mr. Biden's West Wing office.¹⁹⁴

When notecards contained notes related to foreign policy meetings or other potentially classified information, Mr. Biden's staff turned them over to the National Security Affairs team, who stored them in a secure location.¹⁹⁵ At times, the National

¹⁹⁰ *E.g.*, NARA-Bx1_1682, 2428, 2432-39, 2444-46, 2452, 2458, 2460; Staff Assistant 3 10/4/23 Tr. at 31-32; Personal Aide 1 4/26/23 Tr. at 26-29; Personal Aide 3 3/28/23 Tr. at 31; FBI Serial 281 1A300, 1A301.

¹⁹¹ *E.g.*, NARA-Bx1_0123, 195-96, 274, 277, 422, 1074-75, 1100, 1197, 1692-93, 1702, 1737-38, 2140-41, 2159, 2218, 2372, 2403, 2442; NARA-Bx2_VP Notecards 2016_0090; Staff Assistant 3 10/4/23 Tr. at 31-32; FBI Serial 281 1A300, 1A301.

¹⁹² Staff Assistant 2 3/16/23 Tr. at 19-20, 27-28; Executive Assistant 9/28/23 Tr. at 43, 60-61; 9/1/16 West Wing Guide, SCOH-000434; Staff Assistant 3 10/4/23 Tr. at 15-17, 26-27.

¹⁹³ Staff Assistant 3 10/4/23 Tr. at 24-27; 9/1/16 West Wing Guide, SCOH-000434; Staff Assistant 2 3/16/23 Tr. at 31, 98-99; Executive Assistant 9/28/23 Tr. at 43, 45.

¹⁹⁴ Staff Assistant 2 3/16/23 Tr. at 31, 98; Staff Assistant 3 10/4/23 Tr. at 25-26, 33, 37; 9/1/16 West Wing Guide, SCOH-000434.

¹⁹⁵ Staff Assistant 4 Tr. at 37-39, 52-53, 101-102; Staff Assistant 2 3/16/23 Tr. at 20-21; Personal Aide 1 4/26/23 Tr. at 28-29, 52, 56; 2/5/11 e-mail from Deputy Counsel to WH Records Director et al. re "VP Notecards," 1B001_02886522; Staff Assistant 3 10/4/23 Tr. at 31-32; Executive Secretary Staffer 2 11/21/23 Tr. at 6-7; Bakotic 1/11/24 Tr. at 20-22.

Security Affairs team marked some of the notecards as classified.¹⁹⁶ Mr. Biden also marked some of his own notecards as classified.¹⁹⁷

C. Mr. Biden wanted to take copies of his notecards when he left office to help write his book

As explained in Chapter Five, in the final year of his vice presidency, Mr. Biden began writing a memoir about his time in office. When conceiving of and writing the book, Mr. Biden worked with a ghostwriter, Mark Zwonitzer. In 2016, Zwonitzer reached out to Mr. Biden's staff and requested help with locating Mr. Biden's journals and notes that would be helpful in writing the book.¹⁹⁸ As he approached the end of his vice presidency, Mr. Biden sought to keep copies of his notecards and other records for use in the book-writing process. According to a staffer involved in the project, Mr. Biden wanted to take copies of the notecards "so that he didn't have to go to [the National Archives] every day to help write this book."¹⁹⁹

In late September 2016, Zwonitzer e-mailed Mr. Biden's chief of staff to schedule an interview with Mr. Biden.²⁰⁰ Zwonitzer said he wanted to cover "very specific topics and time frames" and said he would "tell you exactly what ground/time period I want to cover in the session so the VP could have relevant notes/diaries etc, with him when we talk."²⁰¹

¹⁹⁶ Executive Secretary Staffer 2 11/21/23 Tr. at 6-11; Ratner Tr. at 42-43, 51.

¹⁹⁷ Staff Assistant 3 10/4/23 Tr. at 31-32; NARA-Bx1_2438, 2446; FBI Serial 281 1A300, 1A301.

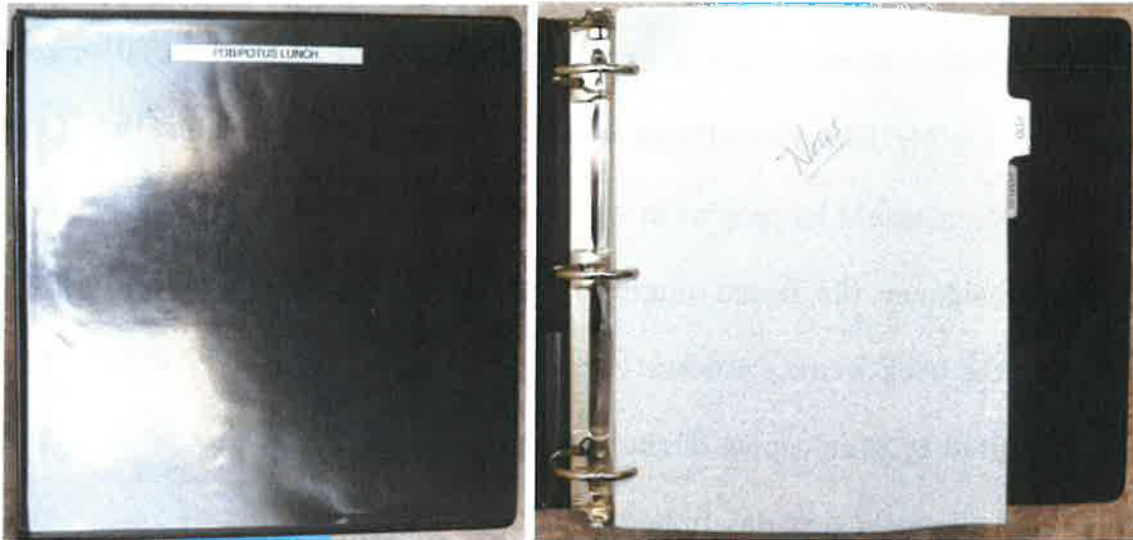
¹⁹⁸ 5/21/16 e-mail from Zwonitzer to Ricchetti, Zwonitzer-00007399.

¹⁹⁹ Associate Counsel 3/29/23 Tr. at 59.

²⁰⁰ 9/26/16 e-mail from Zwonitzer to Ricchetti, Zwonitzer-00007613.

²⁰¹ *Id.*

Around this same time, Mr. Biden's staff made copies of the notecards and organized them into binders so that he could take them after he left office.²⁰² The notes were organized by topic or date.²⁰³ For example, one binder contained copies of notes Mr. Biden took during President's Daily Briefs and his lunches with President Obama.²⁰⁴ The binder contained notes on classified meetings and information.



*Copies of notecards regarding lunches with President Obama*²⁰⁵

Other binders contained copies of Mr. Biden's notecards organized by year:²⁰⁶

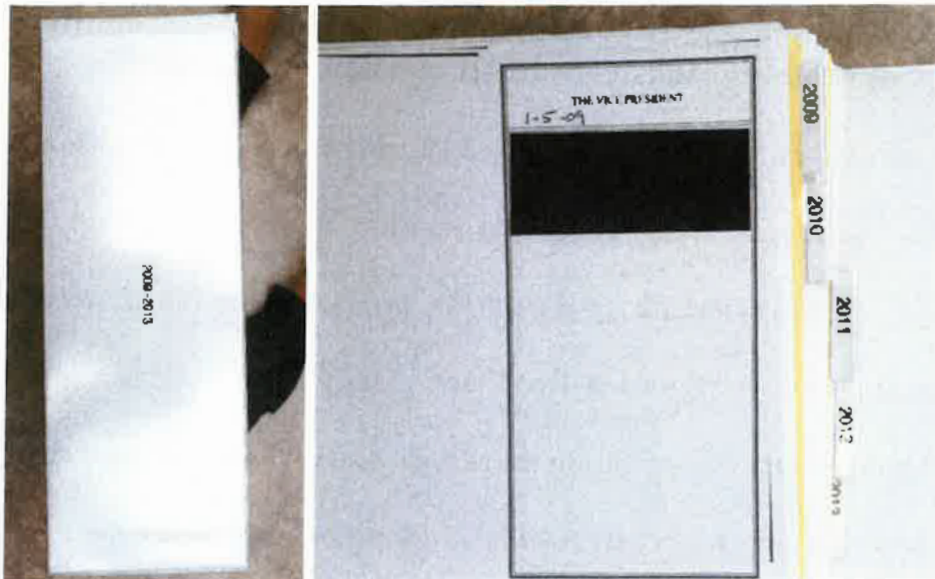
²⁰² Staff Assistant 3 10/4/23 Tr. at 25-31; Associate Counsel 3/29/23 Tr. at 54-55; Executive Secretary Staffer 2 7/7/23 Tr. at 71-74.

²⁰³ Staff Assistant 2 3/16/23 Tr. at 31, 98; Staff Assistant 3 10/4/23 Tr. at 36, 38-40; 9/1/16 West Wing Guide, SCOH-000434.

²⁰⁴ BlendedBoxes-0026, BlendedBoxes-0028; Staff Assistant 3 10/4/23 Tr. at 36, 38-40; FBI Serial 392 1A469.

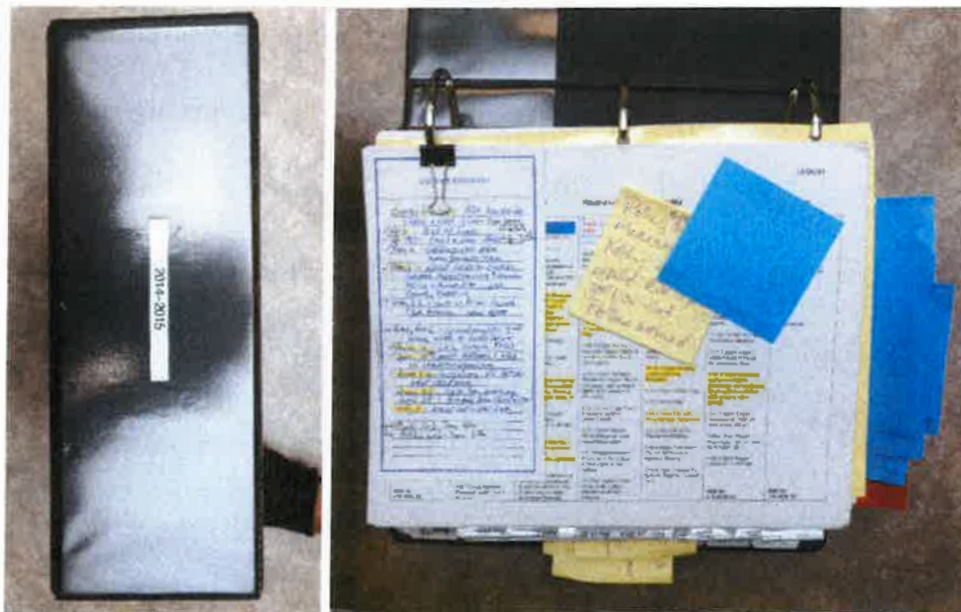
²⁰⁵ BlendedBoxes-0026, BlendedBoxes-0028; FBI Serial 392 1A469.

²⁰⁶ *E.g.*, BlendedBoxes-0040 to BlendedBoxes-0044 (binder labeled "2009-2013" with tabs corresponding to those years); FBI Serial 392 1A469.



Copies of notecards organized by year²⁰⁷

In addition to notecards, some of the binders contained copies of Mr. Biden's schedules and other material.²⁰⁸



Copies of notecards and Mr. Biden's schedules²⁰⁹

²⁰⁷ BlendedBoxes-0040, BlendedBoxes-0044.

²⁰⁸ E.g., BlendedBoxes-0037; FBI Serial 392 1A469.

²⁰⁹ BlendedBoxes-0035, BlendedBoxes-0037; FBI Serial 392 1A469.

D. Near the end of the administration, staff determined that some of the notecards contained classified information

The counsel in the Office of the Vice President were involved in reviewing the copies of the notecards that Mr. Biden wanted to take with him after his vice presidency.²¹⁰ While reviewing the notecards, an associate counsel noticed that some of them contained notes about the President’s Daily Brief.²¹¹ Although the associate counsel did not see any classification markings, she understood the President’s Daily Brief was classified and was concerned because a non-classified copier had been used to make the copies.²¹²

The associate counsel raised the issue with the Executive Secretary team, which, as explained in Chapter Three, was responsible for the delivery and handling of classified material in the Office of the Vice President.²¹³ E-mail correspondence from early October 2016 indicates the notecards were temporarily stored in the deputy national security advisor’s office “until the lawyers determine the appropriate next steps.”²¹⁴ In an interview, the deputy national security advisor recalled “reviewing materials” at the end of the administration “to understand what was classified or not.”²¹⁵

²¹⁰ Associate Counsel 3/29/23 Tr. at 54-60; 10/6/16 e-mail from Associate Counsel to Executive Assistant, et al., NARAWH_00017698 (indicating Associate Counsel would deliver the “2009-2013” binder to the Executive Assistant when she was finished reviewing it).

²¹¹ Associate Counsel 3/29/23 Tr. at 54-55.

²¹² *Id.* at 55.

²¹³ *Id.*

²¹⁴ 10/7/16 e-mail between Associate Counsel, Deputy National Security Advisor Ely Ratner, and others, NARAWH_00017743.

²¹⁵ Ratner Tr. at 40.

Soon after, a military detailee working on the Executive Secretary team raised her own concerns about the handling of Mr. Biden's notecards. After learning that Mr. Biden wanted copies of the notecards for use in writing his book "after the administration has ended," the detailee raised concerns that the notes contained classified material commingled with Mr. Biden's personal notes.²¹⁶ According to the detailee, the executive secretary, Kristen Bakotic (who was also on detail from the military), disagreed and concluded that "the notes belong to the Vice President and should be made available to him without restriction."²¹⁷ Because Bakotic outranked the detailee, the detailee sent an e-mail to herself "for the record," in which she explained her belief that the notes were "being mishandled" and documented her request not to participate "in any project or meetings that involve these records."²¹⁸

For the Record

On October 18th, 2016 in the Office of the Vice President's National Security Affairs office, there began a discussion of the use and disposition of the Vice President's notes. These notes, which are currently being stored in the EEOB room 291 contain classified information that is commingled with personal notes of the Vice President. They cover a span of several years. None of the notes have classification markings or are otherwise indicated as containing classified information. The determination of classified content was made by the Deputy National Security Advisor, after reviewing the content.

Kristen Bakotic, the Vice Presidents Executive Secretary, insist that the notes belong to the Vice President and should be made available to him without restriction. She has indicated that she is aware that these notes will be used during this book-writing process, but she is confident that he (the Vice President) understands which information is classified and which information is not.

Kristen has stated that these notes should not be subjected to the regulations of the Presidential Records Act, because they fall under the category of personal notes. She has stated that the Vice President can keep these notes, including the classified portions (without redaction), after the administration has ended.

She has repeatedly stated that his position as the Vice President of the United States excludes him from the guidance that other members of the administration are required to adhere to.

I do not agree with Kristen Bakotic. I believe these records are being mishandled; however, Kristen is my superior officer and I am not in a position to challenge her authority. I have requested to not participant in any project or meetings that involve these records.

*Detailee's e-mail "For the Record" (Oct. 18, 2016)*²¹⁹

²¹⁶ 10/18/16 e-mail from Executive Secretary Staffer 2, NARAWH_00015190.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

When interviewed by our office, the detailee said she believed providing the notes to Mr. Biden after the administration “without restriction” would be “outside of the protocols and policies that . . . had been put in place for our office for safeguarding the material.”²²⁰ The detailee did not recall the ultimate disposition of the notecards or whether the discussion percolated up to Mr. Biden.²²¹

As for Bakotic, during an interview with our office, she said that she did not recall ever taking the position that Mr. Biden could take classified notes home with him after his vice presidency.²²² According to Bakotic, she believed in the fall of 2016, when the detailee wrote her e-mail, that there was still time for Mr. Biden to review his notes and get the information he needed in a secure fashion before the administration ended.²²³ She also did not recall ever advising Mr. Biden that he could retain classified notes after his term in office, and said it was not her role to advise the vice president about classified record-handling.²²⁴ Nor did she recall anyone else in the Obama administration taking the position that Mr. Biden could take classified material home with him in an unsecure environment after the vice presidency.²²⁵ Based on her own training, she knew that classified materials were supposed to be stored in a secure facility.²²⁶ A memorandum from the National Security Council sent to all Office of the Vice President staff in December 2016 and January 2017 confirmed

²²⁰ Executive Secretary Staffer 2 11/21/23 Tr. at 19.

²²¹ *Id.* at 32, 38.

²²² Bakotic 1/11/24 Tr. at 45-47, 50-52, 56.

²²³ *Id.* at 11, 43-45.

²²⁴ *Id.* at 56-57, 59, 62.

²²⁵ *Id.* at 62-63.

²²⁶ *Id.* at 50, 53-54.

this understanding, instructing that “[m]eeting notes . . . , and classified notes of any kind, are NOT personal notes” and that only unclassified personal records could be removed from the White House at the end of the administration, though there is no evidence this guidance was ever communicated to Mr. Biden.²²⁷

E. In October 2016, Mr. Biden’s staff installed a new safe at the Naval Observatory for the storage of Mr. Biden’s notecards

Shortly after the Executive Secretary detailee raised an objection to the handling of Mr. Biden’s notecards in October 2016, Mr. Biden’s staff installed a new safe at the Naval Observatory. E-mail traffic from that time suggests the safe was meant to store Mr. Biden’s classified notecards.

On October 20, 2016—two days after the Executive Secretary detailee objected to the handling of the notecards—Mr. Biden’s deputy national security advisor reached out to Mr. Biden’s personal aide asking to “run something” by Mr. Biden.²²⁸ Later that night, the personal aide replied that he had talked to Executive Secretary Bakotic and “[s]ounds like we’re good. Let me know if there’s anything additional beyond the safe issue.”²²⁹

That same day, the deputy national security advisor sent an e-mail with the subject line “New Safe at NavObs” to Mr. Biden’s chief of staff, Counsel, national security advisor, and others.²³⁰ In the e-mail, the deputy national security advisor

²²⁷ 12/22/16 e-mail from Director of Programs to #ALL-OVP, NARAWH-CLASS_00015305; 1/3/17 e-mail from Director of Programs to #ALL-OVP, NARAWH-CLASS_00015634.

²²⁸ 10/20/16 e-mail from Ratner to Personal Aide, 1B001_02137508.

²²⁹ 10/20/16 e-mail from Personal Aide to Deputy National Security Advisor, 1B001_02137508.

²³⁰ 10/20/16 e-mail from Ratner to Ricchetti, McGrail, Kahl et al., 1B001_03798594.

said that “[t]he VP approved the placement of a new safe at NavObs and conveyed his desired location.”²³¹ He explained that the safe would be installed the following day and would be “load[ed] up with the relevant materials.”²³² Later that evening, a career employee on the Executive Secretary team e-mailed the detailee to let her know “for [her] awareness” that a safe was being installed.²³³

Although these e-mails suggest that Mr. Biden’s staffers installed the new safe at the Naval Observatory to store the notecards, the staffers told investigators that they did not remember why the safe was installed or what was stored in it.²³⁴

F. At the same time Mr. Biden’s staff was considering how to handle the notecards, he told his ghostwriter that “they didn’t even know” he had notebooks containing similar classified notes

Mr. Biden appeared to reference the notecards issue during a recorded interview with his ghostwriter Zwonitzer on October 10, 2016—the same time period during which his staff were discussing and arranging the secure storage of his classified notecards. At the time, Mr. Biden was reading aloud from his “Foreign Policy” notebook, including reading notes from meetings in the Situation Room.²³⁵ As explained below, Mr. Biden’s notebooks were separate from his notecards, though he often took similar—and similarly classified—notes in each. Referring to his “Foreign Policy” notebook, Mr. Biden added, “[t]hey didn’t even know I have this.”

²³¹ *Id.*

²³² 10/20/16 e-mail from Ratner to Ricchetti, McGrail, Kahl et al., 1B001_03798594.

²³³ 10/20/16 e-mail from Director of Programs to Executive Secretary Staffer 2, SCOH-000268.

²³⁴ *E.g.*, Executive Secretary Staffer 2 11/21/23 Tr. at 29-30; Bakotic 1/11/24 Tr. at 66-69; Ratner Tr. at 60-62.

²³⁵ Notebook entries 1B58-50-51, 56-60.

Mr. Biden: There was a lot of stuff going on at the same time in foreign policy. You said—they said, you didn't wanna go into . . . but I have extensive notes over this period of time.

Zwonitzer: Oh, you actually have those here?

Mr. Biden: Yeah, now there's a lot of other notes too. But, I mean, this is my . . . **They didn't even know I have this.** Some of this stuff I'm not, you know, going . . . I have stuff all the way up to 5-19. May 19. And then it skips in my notes to . . . 6-16 is the next entry.²³⁶

In this exchange, Mr. Biden seemed to distinguish between his notecards, which his staff were in the process of implementing protocols to safeguard, and his notebooks, which, “[t]hey didn't even know I have.” As explained below, although the notecards and notebooks both contained classified information, most of the notecards were handled differently than the notebooks after the vice presidency.

G. The investigation did not determine what, if anything, staff told Mr. Biden about the proper storage of classified information in his notecards

After staff raised concerns about the possibility that Mr. Biden's notecards may contain classified material, his staff discussed how to properly handle and store the notecards. There is some indication that Mr. Biden's staff may have advised him that his notecards contained classified information and needed to be held in a secured location. But the investigation did not determine what, if anything, Mr. Biden's staffers actually told him on this subject.

²³⁶ Zwonitzer recording Carved_000246 (emphasis added); Carved_000246 Tr. at 3-5; FBI Serials 315, 335; Notebook entries 1B58-50-51, 56-60.

As explained above, e-mails obtained during the investigation show that in October 2016, Mr. Biden's national security staff appear to have installed a new safe at the Naval Observatory in which to store Mr. Biden's notecards during the rest of his vice presidency. After an e-mail from Mr. Biden's deputy national security advisor asked Mr. Biden's personal aide to "run something" by Mr. Biden, a follow up e-mail from the personal aide referred to the "safe issue," suggesting that the personal aide had talked to Mr. Biden about the decision to install a new safe at the Naval Observatory to hold Mr. Biden's notecards.²³⁷ But when interviewed, neither the deputy national security advisor nor the personal aide recalled talking to Mr. Biden about the installation of the safe or the handling of his notecards.²³⁸

For her part, the associate counsel who initially raised concerns about potentially classified material in Mr. Biden's notecards believed the then-Counsel to the Vice President, John McGrail, was going to meet with Mr. Biden to address the issue.²³⁹ According to the associate counsel, after she flagged the issue of classified information in Mr. Biden's notes, she thought "someone had a conversation" with the Vice President "about the binders [containing copies of the notecards] and probably about making sure classified documents are put in the safe."²⁴⁰ The associate counsel believed McGrail had this conversation with Mr. Biden, but she was not part of it and did not know what, if anything, was discussed.²⁴¹ As explained below, for his part,

²³⁷ 10/20/16 e-mail from Ely Ratner to Personal Aide, 1B001_02137508; 10/20/16 e-mail from Personal Aide to Ratner, 1B001_02137508.

²³⁸ Ratner 11/21/23 Tr. at 55, 74.

²³⁹ Associate Counsel 3/29/23 Tr. at 61.

²⁴⁰ *Id.*

²⁴¹ *Id.* at 55.

McGrail did not recall any such conversation, and indeed, said he did not remember anything about the notecard project or about concerns that Mr. Biden's notecards could contain classified information.²⁴²

Mr. Biden's deputy chief of staff recalled discussions about a slightly different issue. As he described it, during the last year of the Obama administration, members of Mr. Biden's staff flagged that Mr. Biden had written personal notes by hand on the pages of classified documents.²⁴³ Mr. Biden's deputy chief of staff had discussions with McGrail and the associate counsel, as well as others, about the proper disposition of these notes.²⁴⁴ They determined that the Counsel's office would convey to Mr. Biden that he could not keep the notes after the end of the administration, because "classified documents belong with either the creator of the documents," or, "if they were native to our office," to the National Archives.²⁴⁵ The deputy chief of staff was not involved in any conversation between McGrail and Mr. Biden on this issue.²⁴⁶ Again, McGrail did not recall having any conversations with Mr. Biden about the proper disposition of classified documents, though McGrail did recall telling Mr. Biden that all his records (which McGrail understood to encompass notes) would be sent to the National Archives.²⁴⁷

E-mails obtained during the investigation suggest that McGrail and others in the Office of the Vice President conducted some research on the handling and

²⁴² McGrail 1/22/24 Tr. at 9, 15, 16-18, 42, 48, 78, 98-99, 127.

²⁴³ Amin Tr. at 29-33.

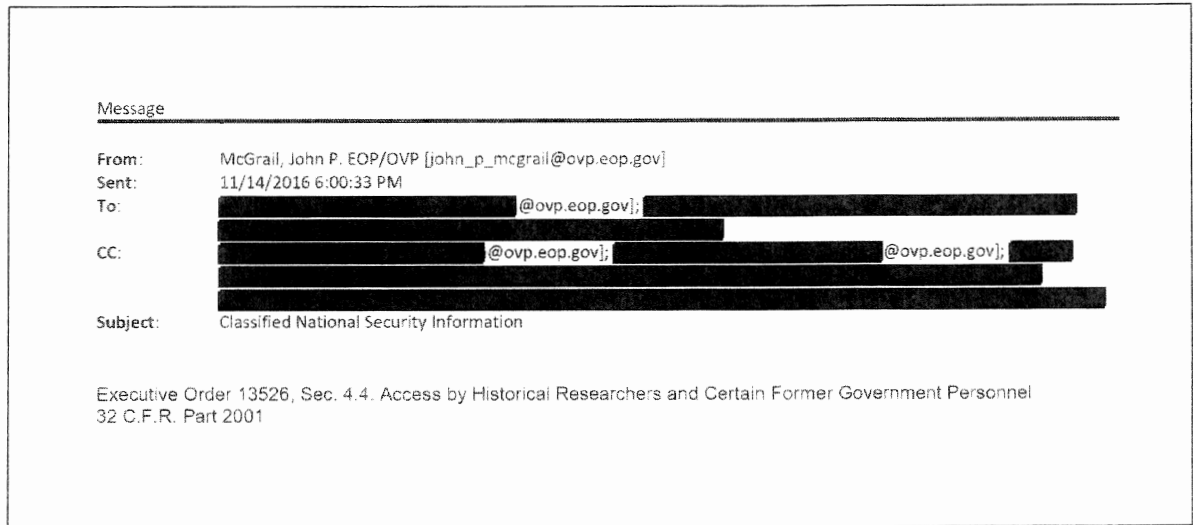
²⁴⁴ *Id.* at 35-37.

²⁴⁵ *Id.* at 29-33, 35-37.

²⁴⁶ *Id.* at 35-37.

²⁴⁷ McGrail 1/22/24 Tr. at 78-83, 86-87, 94, 98-99, 107, 113, 123-26.

accessing of classified materials after the vice presidency. In November 2016, for example, McGrail sent an e-mail containing a reference to the executive order governing classification, specifically citing the provision that would apply when a former vice president sought to gain access to classified information.²⁴⁸



*McGrail Nov. 14, 2016 e-mail about Executive Order 13,526*²⁴⁹

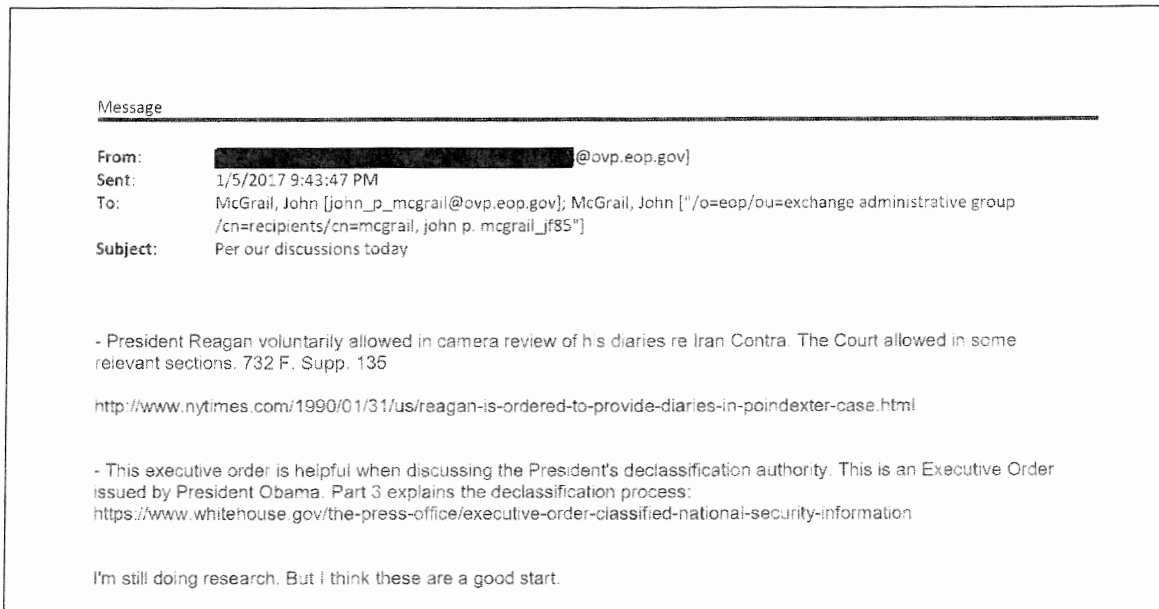
Six weeks later, in January 2017, the associate counsel sent McGrail an e-mail containing information about the same executive order and about one use of Ronald Reagan’s diaries after he was president,²⁵⁰ a topic that is discussed in more detail in Chapter Ten. The subject line of the e-mail was “per our discussions today.”²⁵¹

²⁴⁸ 11/14/16 e-mail from McGrail, SCOH-000340.

²⁴⁹ *Id.*

²⁵⁰ 1/05/17 e-mail from Associate Counsel to McGrail, SCOH-000339.

²⁵¹ *Id.*



*Associate counsel Jan. 5, 2017 e-mail referencing Mr. Reagan's diaries*²⁵²

During his interview, McGrail did not recall these e-mails or any discussions about the executive order or the Reagan diaries, except that he recalled having conversations about getting Mr. Biden's "security clearance" extended so Mr. Biden could access classified material after the vice presidency.²⁵³ According to McGrail, he could not recall having any discussions about Mr. Biden's notecards, notes, or diaries containing classified information.²⁵⁴

McGrail explained that he and an archivist at the National Archives had arranged for all of Mr. Biden's records from the vice presidency, including all his notes, to be sent to the National Archives when he left office.²⁵⁵ In this arrangement, McGrail made no distinctions between presidential vs. personal records, or classified

²⁵² *Id.*

²⁵³ McGrail 1/22/24 Tr. at 51-55, 59-62, 68-70, 73-74, 76-77, 92, 118-19.

²⁵⁴ *Id.* at 78-80, 98-99.

²⁵⁵ *Id.* at 80-83.

vs. unclassified records; they simply arranged to send all of Mr. Biden's records to the Archives.²⁵⁶ From there, McGrail said his understanding was that the Archives would undertake the time-consuming task of sorting through the records to determine what was personal and what was presidential.²⁵⁷

According to McGrail, near the end of the administration he told Mr. Biden they would send all his records to the Archives.²⁵⁸ McGrail's message was simple: "It was just, 'Your records are going to the Archives.' That was it."²⁵⁹ McGrail told Mr. Biden this more than once, and Mr. Biden understood the arrangement and accepted it.²⁶⁰ McGrail said he did not discuss with Mr. Biden the specific requirements of the Presidential Records Act or the treatment of personal vs. presidential records under the Act.²⁶¹ McGrail also said he did not discuss Mr. Biden's notecards, notebooks, or diaries with him.²⁶²

McGrail said he never spoke with Mr. Biden about withholding personal notes from the National Archives.²⁶³ Mr. Biden never told McGrail he had notes he wanted to take home instead of sending to the Archives, and McGrail saw no indication that Mr. Biden believed he could take classified notes home with him at the end of his vice presidency.²⁶⁴ If Mr. Biden had such a belief or plan, McGrail would have expected

²⁵⁶ *Id.* at 80-83, 126.

²⁵⁷ *Id.* at 83, 109.

²⁵⁸ *Id.* at 86-87, 94, 99, 107, 113, 123-26.

²⁵⁹ *Id.* at 107.

²⁶⁰ *Id.* at 86-87, 94, 99, 107, 113, 115, 123-26.

²⁶¹ *Id.* at 85-87, 94.

²⁶² *Id.* at 78-79, 83-85, 98-99, 117-19.

²⁶³ *Id.* at 83-84.

²⁶⁴ *Id.* at 83-84, 99, 117-18.

him to raise it during their conversations about sending all Mr. Biden's records to the Archives at the end of the administration.²⁶⁵ McGrail never advised Mr. Biden one way or the other about whether he could keep classified documents, including classified handwritten notes, outside a secure, authorized facility, after leaving office, and McGrail was unaware of such advice from anyone else.²⁶⁶

More generally, McGrail said he was unaware of any conversations among staff in the Office of the Vice President suggesting that Mr. Biden could take classified materials home after leaving office and keep them outside a SCIF, noting, "It was the opposite. It was how are we going to find him a SCIF in case he ever has a reason to go to a SCIF?"²⁶⁷ When asked during his interview about whether anyone told Mr. Biden that the Presidential Records Act authorizes a former vice president to keep certain materials at home, even if they are classified, McGrail said no, and added "[T]hat doesn't make logical sense to me [M]y understanding is that . . . if you copy or write down classified information on a piece of paper, it maintains its classified status."²⁶⁸

According to McGrail, Mr. Biden did not, and would not, come to him for legal advice about whether he could take classified information home after the vice presidency, because, in McGrail's words, "I think he knows."²⁶⁹ In McGrail's view, the rule that you cannot take classified information out of a secure facility is "obvious."²⁷⁰

²⁶⁵ *Id.* at 117-18.

²⁶⁶ *Id.* at 98-99, 107-08, 119, 126.

²⁶⁷ *Id.* at 126.

²⁶⁸ *Id.* at 107-08.

²⁶⁹ *Id.* at 100.

²⁷⁰ *Id.* at 102.

McGrail explained that Mr. Biden knew classified information “needs to be maintained in a secure facility. . . . [H]e was the chairman of the Foreign Relations Committee. . . . [H]e understands how it works.”²⁷¹

Finally, McGrail said it would be “very surprising” if Mr. Biden intentionally took home classified information after the vice presidency.²⁷² In McGrail’s words, Mr. Biden knew that “information is classified for a good reason, that its disclosure can harm sources and methods and the national security interests of the United States, and he has been committed to the national security interests of the United States as long as I’ve known him.”²⁷³ According to McGrail, if Mr. Biden took home classified information after the vice presidency, “[i]t would be completely inconsistent with everything that we were killing ourselves to try to accomplish” at the end of the administration by sending all of Mr. Biden’s records to the National Archives.²⁷⁴

H. After Mr. Biden left office, copies of many of his notecards were held in a SCIF at the National Archives

Ultimately, the associate counsel and McGrail arranged for Mr. Biden’s classified notecards to be held in a SCIF at the National Archives under a deposit

²⁷¹ *Id.* at 100-01.

²⁷² *Id.* at 111, 112, 117-18.

²⁷³ *Id.* at 111.

²⁷⁴ *Id.* at 112.

agreement that allowed Mr. Biden to store personal material at a National Archives facility.²⁷⁵

On January 12, 2017, Mr. Biden signed a deposit agreement allowing him to store “certain personal effects” in a “secure and protected area” at the National Archives.²⁷⁶ According to the agreement, the material consisted of “correspondence, memorabilia, personal notes, and other miscellaneous personal property.”

When the associate counsel made arrangements to bring the deposit agreement to Mr. Biden’s executive assistant for Mr. Biden’s signature, she indicated that McGrail “has spoken with him [Mr. Biden] about the issues.”²⁷⁷ But in an interview, McGrail said that he thought the deposit agreement related to personal records from Mr. Biden’s Senate tenure, and he did not recall binders of classified notecards going into Mr. Biden’s personal storage at the Archives.²⁷⁸

On January 16, 2017—four days before Mr. Biden left the vice presidency—the associate counsel asked a member of the Executive Secretary team to “pick up the Vice President’s classified materials” at the Naval Observatory.²⁷⁹ Soon after, another member of the Executive Secretary team explained that the material consisted of four

²⁷⁵ Associate Counsel 8/29/23 Tr. at 9-10, 76; 1/5/17-1/6/17 e-mails between Associate Counsel, McGrail, and NARA Archivist 1, SCOH-000326, SCOH-000330, SCOH-000332, SCOH-000334.

²⁷⁶ 1/12/17 Deposit Agreement regarding the Administration of Personal Materials of Vice President Joseph R. Biden, NARA-H-700000012.

²⁷⁷ 1/10/17 - 1/11/17 e-mails between Associate Counsel and Executive Assistant, 1B001_01915351.

²⁷⁸ McGrail 1/22/24 Tr. at 82, 120-21.

²⁷⁹ 1/16/17 e-mail from Associate Counsel to Executive Secretary Staffer 2, SCOH-000246.

to five binders and that “[o]nce you return [you] will need to place in 1-2 pra [Presidential Records Act] boxes along with the originals.”²⁸⁰

The following day was the associate counsel’s last day in the Office of the Vice President. She sent McGrail and others an outstanding to-do list.²⁸¹ Among other things, she reminded McGrail to approve the deposit agreement to allow Mr. Biden to store his personal materials at the Archives. She also wrote, “[w]e need to send his personal diaries to storage at the Archives. [A National Archives employee] has offered to come and pick them up. I think this is the best option.”²⁸² When interviewed, the associate counsel clarified that she was “referring to the binders that we copied,” meaning the binders of Mr. Biden’s notecards containing classified information, discussed above.²⁸³ The associate counsel said, “I believe we were using diaries as shorthand because they were personal notes, thoughts.”²⁸⁴ She explained that “it was the safest decision to have [the notecards] be in a SCIF since there w[ere] likely classified documents.”²⁸⁵

On January 18, 2017, a National Archives employee visited the White House, picked up the copies of the notecards in Mr. Biden’s West Wing office from McGrail, and brought them to the National Archives.²⁸⁶ McGrail said in his interview with our

²⁸⁰ 1/16/17 e-mail from Director of Programs to Executive Secretary Staffer 2, SCOH-000246.

²⁸¹ 1/17/17 e-mail from Associate Counsel to McGrail, SCOH-000141 (“I wanted to send along the list of items that still needs to be taken care of after I leave.”).

²⁸² *Id.*

²⁸³ Associate Counsel 8/29/23 Tr. at 65.

²⁸⁴ *Id.*

²⁸⁵ *Id.* at 9-10, 76.

²⁸⁶ 1/18/17 e-mail from NARA Archivist 1 to McGrail, NARA-H-700000010.

office that he had no memory of giving the Archives employee the binders of notecards, or that they contained classified information, but the Archives employee recalled McGrail telling him that the materials contained classified information.²⁸⁷

Accordingly, the Archives stored the materials inside a SCIF.²⁸⁸

I. After he left the vice presidency, Mr. Biden twice visited the National Archives to review copies of his notecards in a SCIF

Soon after he left office in 2017 and while researching his book, Mr. Biden visited the National Archives twice to consult the copies of his notecards that were being held in a SCIF.²⁸⁹

During a recorded interview on April 24, 2017, Mr. Biden told his ghostwriter, Zwonitzer, that he took separate notes regarding his private lunches with President Obama.²⁹⁰ Mr. Biden said that before each lunch, he and his chief of staff prepared and wrote an agenda on “one of those little cards of mine”—an apparent reference to the long narrow notecards that Biden carried in his jacket pocket.²⁹¹ After each lunch, Mr. Biden dictated notes about the lunch to his executive assistant.²⁹² Mr. Biden explained that he previously “had all those [notes] at the house in a safe” but that “I don’t know what they made me do with them.”²⁹³

Zwonitzer: Can we spend some time on that lunch?

²⁸⁷ McGrail 1/22/24 Tr. at 121-22; NARA Archivist 1 Tr. at 56, 62.

²⁸⁸ NARA Archivist 1 Tr. at 56, 62.

²⁸⁹ 5/11/17 and 7/11/17, National Archives Visitor Logs, NARA-H-700002505; NARA Archivist 2 6/1/23 Tr. at 14; McGrail 5/2/23 Tr. at 169-80.

²⁹⁰ Zwonitzer recording 170424_0091; 170424_0091 Tr. at 28-30; Evidence item 1B80.

²⁹¹ Zwonitzer recording 170424_0091; 170424_0091 Tr. at 28-30; Evidence item 1B80.

²⁹² Zwonitzer recording 170424_0091; 170424_0091 Tr. at 28-30; Evidence item 1B80; Executive Assistant 9/28/23 Tr. at 47.

²⁹³ Zwonitzer recording 170424_0091; 170424_0091 Tr. at 28-30; Evidence item 1B80.

Mr. Biden: I had all those presidential notes.

Zwonitzer: I know you gave me this much from the diaries.

Mr. Biden: But I actually, I wonder where those . . .

Zwonitzer: Do you have separate notebooks of the presidential [lunches]?

Mr. Biden: Yeah. What I would do is after every lunch I would dictate to, um, I would call in [the Executive Assistant] and I would dictate to her what the lunch was about. **I had all those at the house in a safe. I don't know what they made me do with them.** But what I would do is I would make up a card, one of those little cards of mine. Before I'd have lunch, I'd meet with Steve [Ricchetti] and anything anybody thought I should be bringing up [I'd put] on our agenda. And when I came back, I'd dictate notes to [the Executive Assistant] as to what actually transpired at the lunch.²⁹⁴

Two days later, in another recorded interview, Mr. Biden said he had learned that his notecards had been “turned in” to the National Archives and that Mr. Biden would have to go through his former counsel, McGrail, to get them.²⁹⁵ Mr. Biden also told Zwonitzer that he had not wanted to turn the notecards in:

Mr. Biden: I'm told by [a personal aide], I guess he checked with you, in order for me to get my, uh, get all those presidential notes I had for lunch, the luncheon meetings, I have to go to McGrail?

Assistant: Yes, McGrail has them. We were supposed to turn it in and that is the last person who had them.

²⁹⁴ Zwonitzer recording 170424_0091 (emphasis added); 170424_0091 Tr. at 28-30; Evidence item 1B80.

²⁹⁵ Zwonitzer recording Carved_000599; Carved_000599 Tr. at 3-4; FBI Serials 315, 335.

Mr. Biden: OK. Uh. See if you can get me McGrail on the line while I have you now. OK? And stay on okay?

Assistant: Got it sir. Hold on.

Zwonitzer: **This is probably something that goes to the presidential papers.**

Mr. Biden: **I don't think so. It was in between. I didn't want to turn them in.**

Zwonitzer: **Right, so, it's the gray area.**²⁹⁶

The next day, Zwonitzer sent an e-mail to the assistant and personal aide, explaining that Mr. Biden “may try to review some of his notes from lunches with the President and asked [Zwonitzer] to give him a list of the dates of the lunches that would be important.”²⁹⁷ Zwonitzer included a list of the dates of several such lunches in his e-mail. Zwonitzer forwarded the list to Mr. Biden’s personal e-mail account on May 11, 2017.²⁹⁸

On that day and again two months later, Mr. Biden visited the National Archives to review copies of his notecards, which were held in a SCIF.²⁹⁹ McGrail accompanied him.³⁰⁰ During both visits, Archives staff made clear to Mr. Biden that, by viewing the notecards in the Archives SCIF, he was accessing classified

²⁹⁶ Zwonitzer recording Carved_000599 (emphasis added); Carved_000599 Tr. at 3-4; FBI Serials 315, 335.

²⁹⁷ 4/27/17 e-mail from Zwonitzer to Executive Assistant and Personal Aide 3, Zwonitzer-00001464.

²⁹⁸ *Id.*

²⁹⁹ 5/11/17 and 7/11/17 National Archives Visitor Logs, NARA-H-700002505; NARA Archivist 2 6/1/23 Tr. at 14; McGrail 5/2/23 Tr. at 169-80.

³⁰⁰ McGrail recalled only the first visit to the Archives, but visitor logs show he accompanied Mr. Biden on both visits. 5/11/17 and 7/11/17 National Archives Visitor Logs, NARA-H-700002505; NARA Archivist 2 6/1/23 Tr. at 14; McGrail 5/2/23 Tr. at 169-80.

information.³⁰¹ Nonetheless, in his interview with our office, McGrail said he believed the material was in a SCIF at the Archives simply to keep it secure, not necessarily because it was classified.³⁰²

During the first visit on May 11, Archives staff followed a detailed checklist to ensure they properly safeguarded the classified information in the notecards.³⁰³ The staff ensured that Mr. Biden did not bring his phone or other electronic device into the SCIF.³⁰⁴ They announced that the visit involved access to classified information.³⁰⁵ They remained in the SCIF and monitored Mr. Biden while he reviewed the notecards.³⁰⁶ They also reminded him of his continuing responsibility to protect all classified information after his visit.³⁰⁷

On July 11, 2017, two months after their first visit to the Archives, Mr. Biden and McGrail returned.³⁰⁸ Before the second visit, Zwonitzer e-mailed Mr. Biden another list of lunches and events for which his notes would be helpful.³⁰⁹ During the second visit, Archives staff followed the same general procedures to safeguard classified information.³¹⁰ Mr. Biden also signed a form entitled “Notice to Users of NARA Classified Research Rooms.”³¹¹ The first sentence of the form read, “You will

³⁰¹ 5/11/17 and 7/11/17 National Archives Checklist for Classified Visits and Meetings, NARA-H-700002505.

³⁰² McGrail 1/22/24 Tr. at 69-70, 113-14, 129-30.

³⁰³ 5/11/17 National Archives Visitor Logs, NARA-H-700002505.

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ *Id.*; NARA Archivist 1 Tr. at 70-71; NARA Archivist 2 Tr. at 18-19.

³⁰⁷ 7/11/17 National Archives Visitor Logs, NARA-H-700002505.

³⁰⁸ *Id.*

³⁰⁹ 7/9/17 e-mail from Zwonitzer to Mr. Biden, Zwonitzer-00000631, Zwonitzer-00000632.

³¹⁰ 7/11/17 National Archives Visitor Logs, NARA-H-700002505.

³¹¹ *Id.*

be viewing materials containing classified national security information,” and the remainder of the form explained the various procedures and rules necessary to safeguard such classified information.³¹²

Not all of Mr. Biden’s notecards made their way to the SCIF at the Archives. When the FBI searched Mr. Biden’s Delaware home on January 20, 2023, they discovered a stack of Mr. Biden’s notecards in his office.³¹³ While many of these notecards were from after his term as vice president, some of them dated from his vice presidency and included handwritten notes about intelligence products and matters of national security.³¹⁴ One notecard included a handwritten classification marking.³¹⁵ Some of the notecards found in the Delaware home remain classified up to the Top Secret level.³¹⁶

II. MR. BIDEN’S NOTEBOOKS

A. Mr. Biden used notebooks during his vice presidency to record both official and personal events

As with his notecards, Mr. Biden also frequently took notes about classified information in notebooks. Most of the classified notecards were stored differently from the classified notebooks after the vice presidency. As explained above, most of

³¹² *Id.*

³¹³ FBI Serial 77.

³¹⁴ FBI Serials 77, 691, 530, 664; Handwritten material 1B23.

³¹⁵ FBI Serials 691, 530, 664; Handwritten material 1B23.

³¹⁶ FBI Serial 619; Handwritten material 1B23.

the classified notecards went to an Archives SCIF, but Mr. Biden took his classified notebooks home with him and stored them in unsecured and unauthorized locations.

Mr. Biden regularly took notes in notebooks throughout his vice presidency.³¹⁷ Most of these notebooks were bound with black covers.³¹⁸ Some had labels identifying the date range or general subject matter of their contents.³¹⁹ Photos of some of these notebooks are below:



*Notebooks seized from file cabinet under television in Delaware home office*³²⁰

³¹⁷ Personal Aide 3 3/28/23 Tr. at 31-32, 35; McKeon Tr. at 120-21; Personal Aide 1 4/26/23 Tr. at 30-31, 129-30; Staff Assistant 2 Tr. at 101-02; OVP NSA Staffer 2 Tr. at 80-81; Klain Tr. at 44, 129; Staff Assistant 3 10/4/23 Tr. at 47-48; Notebooks 1B15, 1B20, 1B22, 1B25, 1B30, 1B51-52, 1B57-59, 1B62-63, 1B65-67.

³¹⁸ Klain Tr. at 129; Personal Aide 1 4/26/23 Tr. at 30-31, 103; Personal Aide 3 3/28/23 Tr. at 32; Notebooks 1B15, 1B20, 1B22, 1B25, 1B30, 1B51-52, 1B57-59, 1B62-63, 1B65-67.

³¹⁹ Personal Aide 1 9/18/23 Tr. at 110-11; Staff Assistant 3 10/4/23 Tr. at 48-49; Notebooks 1B15, 1B20, 1B22, 1B25, 1B30, 1B51-52, 1B57-59, 1B62-63, 1B65-67.

³²⁰ 20230120_FBI_0156. FBI Serial 77 1A 86.



Notebooks seized from file cabinet under printers in Delaware home office³²¹



Notebooks seized from bookcase in Delaware home's second-level office³²²

³²¹ 20230120_FBI_0132. FBI Serial 77 1A86.

³²² 20230120_FBI_0218. FBI Serial 77 1A86.

The content of Mr. Biden's notebooks took several forms.³²³

- (1) Work notes. Mr. Biden wrote these notes during or soon after meetings he attended as vice president. These notes memorialize, often in bullet-point format, things such as the issues presented, comments of meeting participants, and decisions made. For example, Mr. Biden often took notes during meetings of the National Security Council and the President's Daily Brief.³²⁴ Most of the notes in Mr. Biden's collection of notebooks recovered by FBI agents from his Wilmington residence are work notes of this type.
- (2) Work reflections. These were Mr. Biden's impressions, reflections, opinions, and commentary about people and issues he encountered as vice president. For example, during the 2009 review of U.S. military strategy and foreign policy in Afghanistan, discussed in Chapter Six, Mr. Biden recorded his deep concerns that President Obama's eventual decision about Afghanistan would be a terrible mistake.³²⁵
- (3) Political notes and reflections. These were Mr. Biden's summaries of and commentary about political or electoral issues—for example, his notes about his decision whether to run for president in 2016.
- (4) Personal reflections. These were entries about purely personal subjects, such as the illness and death of his son, Beau.
- (5) To-do lists. These were reminders about issues ranging from policy deliberations, to political concerns, to personal matters.

While Mr. Biden often organized his notebooks roughly based on subject matter, many notebooks contained entries on a variety of topics. He typically added entries sequentially by date, so that a given notebook could contain, for example, real-time notes of White House meetings, purely personal entries about Mr. Biden's family, and entries about an upcoming election. Most of the notebooks contained

³²³ See generally Notebooks 1B15, 1B20, 1B22, 1B25, 1B30, 1B51-52, 1B57-59, 1B62-68.

³²⁴ Klain Tr. at 44, 51; Personal Aide 1 4/26/23 Tr. at 130-31; see generally Notebooks 1B15, 1B20, 1B22, 1B25, 1B30, 1B51-52, 1B57-59, 1B62-68.

³²⁵ Personal Aide 1 4/26/23 Tr. at 30-31, 130-32; Executive Assistant 9/28/23 Tr. at 75; Chapter Six.

predominantly “work notes”—summaries or minutes of work meetings—but a few writings were more diary-like and personal in nature.³²⁶

B. The notebooks contained classified information

Though none of the notebooks have classification markings, some of the notebooks contain information that remains classified up to the Top Secret/Sensitive Compartmented Information level.³²⁷

As with his notecards, Mr. Biden routinely took notes in his notebooks about classified subjects and during meetings where classified information was discussed.³²⁸ For example, he regularly took notes related to the President’s Daily Brief, which typically contains classified information.³²⁹ He also regularly took notes during meetings in the White House Situation Room, and numerous photographs document this practice.³³⁰

³²⁶ See generally Notebooks 1B15, 1B20, 1B22, 1B25, 1B30, 1B51-52, 1B57-59, 1B62-68.

³²⁷ FBI Serial 676.

³²⁸ Notebooks 1B15, 1B20, 1B22, 1B30, 1B51-52, 1B57-58, 1B63-64, 1B66-67.

³²⁹ *E.g.*, Notebook entries 1B30-0065, 0093-94; 1B67-0076.

³³⁰ *E.g.*, Notebook entries 1B15-0012; 1B20-0034; 1B51-0073-74, 0080-81; 1B58-0029-31; 1B63-0016, 0026-29; 1B66-0082-84; 1B67-0019-20.



*Mr. Biden using a notebook at a Principals Committee meeting
(Sept. 29, 2009)³³¹*



Mr. Biden writing in a notebook at a meeting with the Joint Chiefs of Staff (Oct. 30, 2009)³³²

³³¹ SCOH-000756.

³³² SCOH-000757.

Often, Mr. Biden's notes contained real-time minutes of National Security Council meetings, during which the President deliberated with his senior military, intelligence, and foreign policy advisers.³³³ These meetings regularly involved discussions of classified information.³³⁴ For this reason, they took place in the Situation Room, which is itself a SCIF, and signs conspicuously designated National Security Council meetings as "Top Secret."³³⁵

Some of the handwritten notes Mr. Biden took in his notebooks during these meetings included classified information.³³⁶ The notebooks contained such information about the following subjects:

- U.S. intelligence sources, methods, and capabilities.³³⁷
- U.S. intelligence activities.³³⁸
- The activities of foreign intelligence services.³³⁹
- U.S. military programs and capabilities.³⁴⁰
- Foreign military programs and capabilities.³⁴¹
- Plans and capabilities of foreign terrorist organizations.³⁴²

³³³ *E.g.*, Notebook entries 1B15-0012; 1B20-0034; 1B51-0073-74, 0080-81; 1B58-0029-31; 1B63-0016, 0026-29; 1B66-0082-84; 1B67-0019-20.

³³⁴ *E.g.*, Notebook entries 1B15-0012-13; 1B51-0073-74; 1B63-0016, 0026-29.

³³⁵ *See* photographs above; SCOH-000756; SCOH-000757.

³³⁶ FBI Serial 676.

³³⁷ *E.g.*, Notebook entries 1B22-0026; 1B52-0091; 1B57-0014; 1B63-0012;80-0028; 1B66-0082.

³³⁸ *E.g.*, Notebook entries 1B51-0080-81; 1B66-0082.

³³⁹ *E.g.*, Notebook entries 1B51-0074; 1B66-0082.

³⁴⁰ *E.g.*, Notebook entries 1B58-0029-30; 1B63-0028.

³⁴¹ *E.g.*, Notebook entries 1B15-0012; 1B51-0080; 1B58-0033; 1B64-0056; 1B67-0019-20.

³⁴² *E.g.*, Notebook entries 1B20-0034; 1B58-0094.

The FBI and the Special Counsel's Office selected thirty-seven excerpts totaling 109 pages from Mr. Biden's handwritten materials—including mostly notebook entries and a few notecards seized from his Delaware home—to submit to classification authorities in the intelligence community and the Department of Defense to determine the appropriate classification level for each. Investigators selected a sampling of excerpts across Mr. Biden's notebooks that both appeared to be classified and that they expected a jury could find are national defense information under 18 U.S.C. § 793.

Subject to the limitations discussed in Chapter Two, classification authorities identified each excerpt as containing presently classified information.³⁴³ Of the thirty-seven excerpts:

- Eight are Top Secret with Sensitive Compartmented Information, seven of which include information concerning human intelligence sources,
- Six are Top Secret,
- Twenty-one are Secret, and
- Two are Confidential.³⁴⁴

A more detailed description of the results of the classification review is in Appendix B.

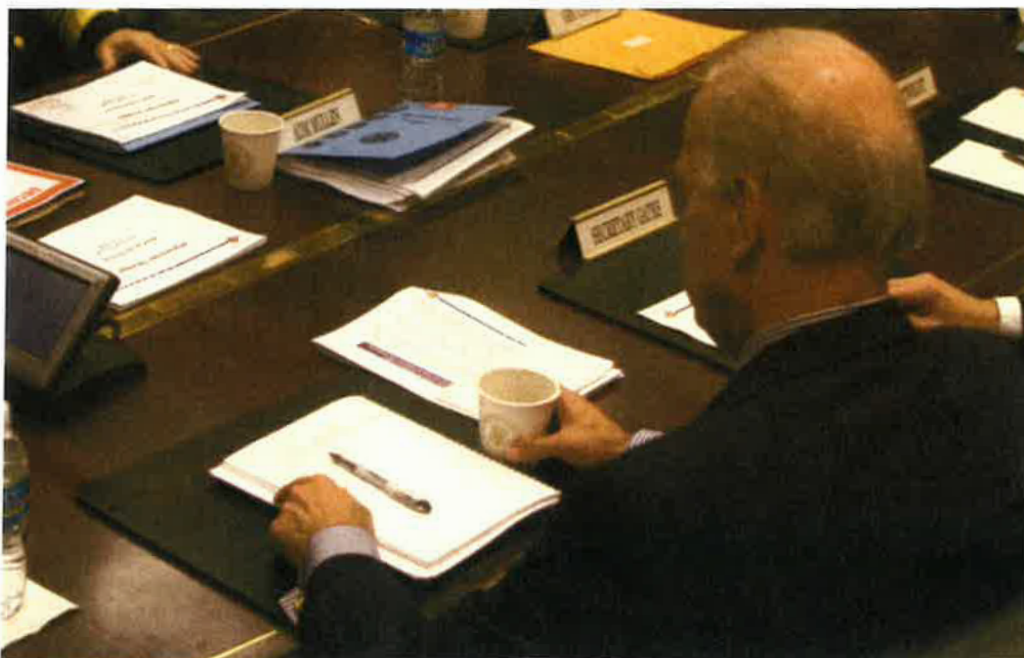
Mr. Biden also sometimes placed marked classified documents inside his notebooks.³⁴⁵ Photos in the Situation Room show documents tucked inside his

³⁴³ FBI Serial 676.

³⁴⁴ *Id.*

³⁴⁵ SCOH-000758, SCOH-000759; Recovered documents C1, C2, C3, C4, D20, D21.

notebooks, and the FBI recovered marked classified documents from inside three notebooks found in Mr. Biden's Delaware home.³⁴⁶



Notebook with inserted documents, at a meeting with the Joint Chiefs of Staff (Oct. 30, 2009)³⁴⁷



Notebook with additional inserted documents at the end of the same meeting (Oct. 30, 2009)³⁴⁸

³⁴⁶ SCOH-000758, SCOH-000759; Recovered documents C1, C2, C3, C4, D20, D21.

³⁴⁷ SCOH-000758.

³⁴⁸ SCOH-000759.

C. At times during his vice presidency, Mr. Biden stored his notebooks in a White House safe

During his vice presidency and afterward, Mr. Biden kept his notebooks close, and even his most trusted advisers did not read them.³⁴⁹ Ron Klain, Mr. Biden's Chief of Staff as both vice president and president, explained that Mr. Biden considered his notes to be "his personal reflections and [he] didn't want people looking at them."³⁵⁰ As shown below in a photograph from 2009, and as witnesses explained, Mr. Biden carried the notebooks himself in his own briefcase.³⁵¹ Unlike his notecards, which, as explained above, he often handed to staff to collect and organize, he did not give the notebooks to his staff.³⁵²



*Vice President Biden with notebook (Aug. 7, 2009)*³⁵³

³⁴⁹ Personal Aide 1 9/18/23 Tr. at 112; Klain Tr. at 51, 63.

³⁵⁰ Klain Tr. at 63.

³⁵¹ Personal Aide 3 3/28/23 Tr. at 35; Staff Assistant 3 10/4/23 Tr. at 49, 51; Executive Assistant 9/28/23 Tr. at 73-74.

³⁵² Executive Assistant 9/28/23 Tr. at 74; Staff Assistant 3 10/4/23 Tr. at 49.

³⁵³ 1B001_00674466.

Early in the Obama administration, the first Counsel to the Vice President, Cynthia Hogan, personally advised him about the proper handling of classified information and Mr. Biden agreed to follow her advice.³⁵⁴ As explained in Chapter Three, the advice was codified in a 2010 memo from Hogan, which instructed Mr. Biden that “[c]lassified materials may never be left unattended,” but must be kept in the custody of Mr. Biden or an authorized staff member, or secured in a safe.³⁵⁵ According to Hogan’s notes, among her concerns were Mr. Biden’s “notes on codeword info” which were kept in his “AFPAK – notebooks,” that is, his notebooks concerning various policy reviews relating to Afghanistan and Pakistan, which are discussed further in Chapter Six.³⁵⁶ Hogan’s notes say that Mr. Biden’s personal aide “will collect” those notebooks.³⁵⁷ But in interviews with the Special Counsel’s Office in 2023, Hogan did not remember Mr. Biden’s notebooks, or whether she ever advised Mr. Biden about how he should store notes he took during classified meetings.³⁵⁸

In 2011, Hogan provided Mr. Biden further written guidance about the proper handling of classified notes.³⁵⁹ In a memo to Mr. Biden about protocols for hiring a historian to work in the Office of the Vice President, Hogan explained that:

³⁵⁴ Hogan 5/23/23 Tr. at 27, 53.

³⁵⁵ 8/17/10 Hogan memo to VP, NARAWH_00000050; *see also* 8/23/10 e-mail from Military Aide to VP MILAIDEs, NARAWH_00014447 (“The VP understands that classified material needs to be kept in one of two places[:] a. Personal Custody, or b. a safe.”); Hogan 5/23/23 Tr. at 27, 53, 91-92; Hogan 9/19/23 Tr. at 68-69, 79-80, 83, 106.

³⁵⁶ 8/17/10 Hogan memo to VP, NARAWH_00000050; Evidence items 1B63, 1B66. In her interview with the Special Counsel’s Office over a decade later, Hogan did not remember her note on this topic, or any of her concerns or advice about Mr. Biden’s notebooks. Hogan 5/23/23 Tr. 39, 90-93; Hogan 9/19/23 Tr. at 86.

³⁵⁷ 8/17/10 Hogan memo to VP, NARAWH_00000050.

³⁵⁸ Hogan 5/23/23 Tr. at 39, 90-93; Hogan 9/19/23 Tr. at 69, 82-83, 86, 120-21.

³⁵⁹ 4/27/11 memo from Hogan et. al. to the Vice President, 1B001_02881350.

any discussions with you that cover classified topics will need to take place in accordance with Executive Order 13526 on Classified National Security Information. This means that such discussions must occur in a secure facility like your West Wing office, and that **any notes or other materials that contain classified information must be maintained in secure safes, produced on a classified computer, and stored in a secure facility[.]**³⁶⁰

For a time—at least during the early part of his vice presidency—Mr. Biden stored his notebooks relating to national security, along with other classified documents, in a safe in his West Wing office.³⁶¹ As Mr. Biden’s first personal aide explained, Mr. Biden stored these notebooks—including the Af/Pak notebook—in the safe because “[t]hat safe was for classified information. It was the purpose of the safe.”³⁶² Periodically, Mr. Biden removed certain classified items from his safe and asked his personal aide to return them to members of his national security staff, but Mr. Biden never let anyone else possess his notebooks.³⁶³

³⁶⁰ *Id.* (emphasis added).

³⁶¹ Personal Aide 1 4/26/23 Tr. at 30-31, 103-04, 125-27, 129-130, 134-35; Personal Aide 1 9/18/23 Tr. at 122; Klain Tr. 38-40.

³⁶² Personal Aide 1 4/26/23 Tr. at 104, 129. In a second interview, the personal aide said he could not say that the reason Mr. Biden stored the notebooks in a safe was because they were classified, explaining that the personal aide did not read the notebooks, was not an expert in classification, and that Mr. Biden could have stored the notebooks in the safe simply because they were private. Personal Aide 1 9/18/23 Tr. at 123. In contrast, in his first interview, the personal aide said Mr. Biden only stored materials in the safe if they were related to national security and explained, “it’s not like he ever felt like, oh my God, if I leave this on my desk, somebody’s going to come steal this thing out of my West Wing office . . . at the White House.” Personal Aide 1 4/26/23 Tr. at 129. In both interviews, the personal aide explained his belief that because Mr. Biden was taking notes about classified subjects in classified meetings, the notebooks contained classified information. Personal Aide 4/26/23 Tr. at 104, 129; Personal Aide 9/18/23 Tr. at 121. Other witnesses confirmed generally that the purpose of the safe was to store classified information and that classified information was stored in it. *See, e.g.*, Director of Programs Tr. at 26-28, 59, 79, 111-14; Staff Assistant 1 Tr. at 46-50.

³⁶³ Personal Aide 1 4/26/23 Tr. at 128, 132-33.

At some point during his vice presidency, Mr. Biden appears to have stopped storing his notebooks in the West Wing safe.³⁶⁴ Mr. Biden's first personal aide, who regularly retrieved the notebooks from the safe for Mr. Biden, left the administration in 2014.³⁶⁵ After that, there is no evidence Mr. Biden or his staff stored his notebooks in the West Wing safe.³⁶⁶

Mr. Biden also appears to have kept his notebooks and other classified information in a safe when he was at the Naval Observatory, again, at least for a time near the beginning of the administration.³⁶⁷ For example, a 2010 e-mail from Mr. Biden's personal aide to members of his staff notes that Mr. Biden had "just put" classified material into the Naval Observatory safe, including several sets of marked classified documents and Mr. Biden's notebook documenting the 2010 Afghanistan/Pakistan policy review.³⁶⁸

D. After his vice presidency, Mr. Biden stored the notebooks in unlocked and unauthorized containers in his home

After Mr. Biden left the White House in 2017, while most of his classified notecards went to a SCIF at the National Archives, his notebooks went to his private homes, where they were not secured in a safe, and were in a setting that was not authorized for the storage of classified information.³⁶⁹ The notebooks first went to Mr.

³⁶⁴ Personal Aide 3 3/28/23 Tr. at 48-49, 52-54.

³⁶⁵ Personal Aide 1 4/26/23 Tr. at 63.

³⁶⁶ Personal Aide 2 Tr. at 47; Personal Aide 3 3/28/23 Tr. at 48-49, 52-54; Executive Assistant 1/4/23 Tr. at 32; Executive Assistant 9/28/23 Tr. at 32.

³⁶⁷ 12/11/10 e-mail from Personal Aide 1 to Executive Secretary 3 and Director of Programs, 1B001_03159095; Notebook 1B63.

³⁶⁸ 12/11/10 e-mail from Personal Aide 1 to Executive Secretary 3 and Director of Programs, 1B001_03159095; Notebook 1B63.

³⁶⁹ Biden 10/9/23 Tr. at 30, 41; FBI Serial 77 1A86; 20230120_FBI_0127, 0151.

Biden's rental home in Virginia, where he kept them in a room he used for meetings.³⁷⁰ As explained in the next chapter, in the months after he left the White House, Mr. Biden gathered the notebooks and referred to several of them while writing his book, *Promise Me, Dad*. During their conversations while writing the book, Mr. Biden told his ghostwriter, Zwonitzer, that the notebooks might contain classified information.³⁷¹

When Mr. Biden moved out of the Virginia home, his notebooks were eventually moved to his home in Delaware.³⁷² In January 2023, during a search of the Delaware home, FBI agents found the notebooks in unlocked and unauthorized locations, primarily in Mr. Biden's main-floor office and basement den.

³⁷⁰ Biden 10/9/23 Tr. at 26-28, 30, 41.

³⁷¹ Zwonitzer recording 170424_0091; 170424_0091 Tr. at 13-14; Evidence item 1B80.

³⁷² FBI Serial 77 1A86; 20230120_FBI_0127, 0151.



File cabinet under television in Delaware home's main-floor office, containing the "Af/Pak I" and "DAILY/MEMO" notebooks (Jan. 20, 2023)³⁷³



File cabinet under printers in Delaware home's main-floor office, containing three seized notebooks (Jan. 20, 2023)³⁷⁴

³⁷³ 20230120_FBI_0151.

³⁷⁴ 20230120_FBI_0127.

In Mr. Biden's interview with our office, he explained that he took his notebooks with him after his vice presidency because "[t]hey are mine," and explained that "every President before me has done the same exact thing."³⁷⁵ He also specifically referenced President Reagan, who, after leaving office, kept handwritten diaries containing classified information at his private home, as discussed in Chapter Ten.³⁷⁶ In later written answers, Mr. Biden wrote that, "[l]ike presidents and vice presidents before me, I understand these notes to be my personal property."³⁷⁷ He declined to answer several questions about whether he believed his notes contained classified information; whether he believed he was authorized to possess classified information after his vice presidency; and whether he took steps to avoid writing classified information in his notebooks.³⁷⁸

³⁷⁵ Biden 10/9/23 Tr. at 42-43.

³⁷⁶ Biden 10/8/23 Tr. at 111-12.

³⁷⁷ Biden 12/1/23 written responses at 1.

³⁷⁸ *Id.* at 1-2.

CHAPTER FIVE

**MR. BIDEN'S SECOND BOOK, *PROMISE ME, DAD*, AND
THE DISCOVERY OF CLASSIFIED AFGHANISTAN DOCUMENTS**

Like many presidents, Mr. Biden has long viewed himself as a historic figure. Elected to the Senate at age twenty-nine, he considered running for president as early as 1980 and did so in 1988, 2008, and 2020. During his thirty-six years in the Senate, Mr. Biden believed he had built a record in both domestic and foreign affairs that made him worthy of the presidency.

In addition to the notebooks and notecards on which he took notes throughout his vice presidency, Mr. Biden collected papers and artifacts related to noteworthy issues and events in his public life. He used these materials to write memoirs published in 2007 and 2017, to document his legacy, and to cite as evidence that he was a man of presidential timber.

For example, as a young senator in the 1970s, Mr. Biden led several congressional delegations to Europe and the Soviet Union.³⁷⁹ As explained in Chapter Eight, he viewed these trips as historic and believed they prepared him to be president. Mr. Biden wrote about these trips in his 2007 memoir, *Promises to Keep*. In 2023, FBI agents recovered official documents, including marked classified documents, related to these trips in Mr. Biden's Delaware garage.³⁸⁰

In 2009, while serving as vice president, Mr. Biden strongly opposed the military's plan to send tens of thousands of additional troops to Afghanistan.³⁸¹ Mr.

³⁷⁹ See Chapter Eight.

³⁸⁰ Evidence items 1B17, 1B18.

³⁸¹ See Chapter Six.

Biden endured sharp criticism both during the debate and after President Obama rejected his advice and decided to send additional troops to Afghanistan. But Mr. Biden always believed he was right and that he would be vindicated by history. He kept documents related to the debated troop surge, including a classified handwritten memo he sent President Obama in 2009 opposing the surge and marked classified documents supporting his position. In December 2022 and January 2023, FBI agents recovered these materials from Mr. Biden's Delaware garage and office.³⁸²

Finally, as explained in Chapter Four, during his eight years as vice president, Mr. Biden regularly wrote notes by hand in notebooks. One such notebook entry makes clear that Mr. Biden had long contemplated writing a book about his vice presidency. In July 2010, he documented a meeting to discuss a possible book about "my V.P. years."³⁸³ In Mr. Biden's view, "there were three plausible reasons for having one written or writing one.

1. Defense – others will write and I want a record
2. Future – who knows about 2016
3. Profit – retirement[.]”³⁸⁴

One function of Mr. Biden's notebooks was to provide raw material for his eventual second memoir. After leaving office, Mr. Biden kept his notebooks at his homes in Virginia and Delaware and used them to write that book, *Promise Me, Dad*.

³⁸² Evidence items 1B04, 1B17, and 1B18.

³⁸³ Notebook entry 1B30-0012.

³⁸⁴ *Id.*

In January 2023, FBI agents recovered these notebooks, primarily in Mr. Biden's home office and den.³⁸⁵

I. MR. BIDEN'S 2017 MEMOIR: *PROMISE ME, DAD*

After his vice presidency, Mr. Biden wrote and published a memoir in 2017 titled *Promise Me, Dad*. Evidence suggests that, while researching and writing the book, Mr. Biden found marked classified documents in the basement of his rental home in Virginia and told his ghostwriter about it during an audio-recorded conversation. And while the published book is not known to contain classified information, while writing the book in unsecure locations, Mr. Biden used notebooks containing notes he took during his vice presidency about classified meetings and information.

A. *Promise Me, Dad*

Unlike Mr. Biden's earlier idea for a book that would chronicle all eight years of his vice presidency, *Promise Me, Dad* has a narrower focus.³⁸⁶ The book recounts a 14-month period of Mr. Biden's vice presidency from Thanksgiving 2014 to January 2016, during which he dealt with the illness and eventual death of his elder son, Beau, who died in May 2015.³⁸⁷ The book discusses the toll that loss took on Mr. Biden, the foreign policy issues in Ukraine, Central America, and Iraq he addressed during that time, and the role his son's death played in Mr. Biden's decision not to run for

³⁸⁵ Evidence items 1B17 and 1B18.

³⁸⁶ See generally Joe Biden, *PROMISE ME, DAD: A YEAR OF HOPE, HARDSHIP, AND PURPOSE* (Flatiron Books 2017); Notebook entry 1B30-0012.

³⁸⁷ See generally Biden, *PROMISE ME, DAD*.

president in 2016.³⁸⁸ Published in November 2017, *Promise Me, Dad* quickly became a #1 *New York Times* bestseller.³⁸⁹

1. Mark Zwonitzer

Mr. Biden worked with a ghostwriter, Mark Zwonitzer, to write *Promise Me, Dad*.³⁹⁰ Zwonitzer is an author and documentary filmmaker specializing in American history and politics.³⁹¹ He had previously ghostwritten Mr. Biden's 2007 memoir, *Promises to Keep*.³⁹²

Zwonitzer has never held a security clearance or become familiar with the restrictions on the handling of classified material.³⁹³ Mr. Biden knew this.³⁹⁴ In 2011, he proposed hiring Zwonitzer as an official historian for the Office of the Vice President.³⁹⁵ At Mr. Biden's request, Counsel to the Vice President Hogan prepared a memorandum assessing the proposal and any issues that could arise.³⁹⁶ The memorandum noted that if hired, Zwonitzer "will likely need a security clearance" and that any discussions that cover classified topics would have to "occur in a secure facility like your West Wing office."³⁹⁷ The memo explained that "any notes or other

³⁸⁸ See generally Biden, PROMISE ME, DAD.

³⁸⁹ The New York Times Best Sellers, N.Y. TIMES, <https://www.nytimes.com/books/best-sellers/2017/12/03/> (last visited January 30, 2024); *Promise Me, Dad*, Pan MacMillan, <https://www.panmacmillan.com/authors/joe-biden/promise-me-dad/9781509890088> (last visited Jan. 30, 2024).

³⁹⁰ Zwonitzer 7/31/23 Tr. at 56.

³⁹¹ *Id.* at 12.

³⁹² *Id.* at 31-32.

³⁹³ *Id.* at 98-100.

³⁹⁴ *Id.* at 102; Zwonitzer recording 170424_0091; 4/27/11 Memo, Cynthia Hogan to Mr. Biden, 1B001_02881350.

³⁹⁵ 4/27/11 Memo from Cynthia Hogan to Mr. Biden, 1B001_02881350.

³⁹⁶ *Id.*

³⁹⁷ *Id.* at 5.

material that contained classified information must be maintained in secure safes, produced on a classified computer, and stored in a secure facility.”³⁹⁸ Mr. Biden did not go through with the proposal.³⁹⁹

2. Book planning and research

In late 2015, shortly after his son’s death, Mr. Biden began planning to write a memoir that drew upon his time as vice president.⁴⁰⁰ He met with Zwonitzer and other aides to discuss book ideas and logistics.⁴⁰¹ They also solicited input from editors and publishers.⁴⁰² During these early meetings in late 2015 and early 2016, Mr. Biden and Zwonitzer decided to focus the book on a “small window in time” during which Mr. Biden balanced his responsibilities as vice president with his family responsibilities during and in the wake of his son’s illness and death.⁴⁰³

From approximately April 2016 through February 2017, Mr. Biden worked with Zwonitzer to outline the book and draft a proposal to submit to publishers.⁴⁰⁴ Zwonitzer compiled a chronology of Mr. Biden’s day-to-day activities in late 2015 and early 2016 using Mr. Biden’s daily schedules and calendars from his time as vice president.⁴⁰⁵ Mr. Biden’s staffers gathered the schedules for Zwonitzer.⁴⁰⁶

³⁹⁸ *Id.*

³⁹⁹ Zwonitzer 7/31/23 Tr. 53-54.

⁴⁰⁰ *Id.* at 56.

⁴⁰¹ *Id.* at 59; 2/10/16 e-mail from Executive Assistant re “Thursday, 2/11, mtg/dinner, 6:30 pm,” Zwonitzer-00000447; 4/6/16 e-mail from Executive Assistant re “Meeting/dinner, Monday, April 11 6:30 – 8:30 pm,” Zwonitzer-00008802.

⁴⁰² Zwonitzer 7/31/23 Tr. at 59.

⁴⁰³ 5/21/16 Document named “JRB-Book-Idea.doc” circulated on May 21, 2016, Zwonitzer-00007400; Zwonitzer 7/31/23 Tr. at 56-59; Draft Book Proposal circulated on June 22, 2016, Zwonitzer-00003463.

⁴⁰⁴ Zwonitzer 7/31/23 Tr. at 59.

⁴⁰⁵ *Id.* at 62-64.

⁴⁰⁶ *Id.* at 63-65; 9/29/16 e-mail from Zwonitzer to Ricchetti, Zwonitzer-00007613.

3. The writing process

Zwonitzer interviewed Mr. Biden more than a dozen times while researching and writing *Promise Me, Dad*.⁴⁰⁷ During the interviews, Mr. Biden recounted the events of 2015, including the challenges of dealing with profound personal tragedy while fulfilling his duties as vice president. Zwonitzer also interviewed Mr. Biden's family members and former staffers.⁴⁰⁸ Zwonitzer audio-recorded the interviews, then transcribed the recordings for use in writing *Promise Me, Dad*.⁴⁰⁹

The interviews began in the spring of 2016 and continued through the summer of 2017. Zwonitzer interviewed Mr. Biden several times at the Naval Observatory in 2016 while Mr. Biden was still serving as vice president. After Mr. Biden left office, he met with Zwonitzer at his rental home in Virginia.⁴¹⁰ During the summer of 2017, Zwonitzer and Mr. Biden worked together to finalize the manuscript at Mr. Biden's beach home in Rehoboth Beach, Delaware.⁴¹¹

B. Mr. Biden used his notebooks in writing *Promise Me, Dad*

In writing *Promise Me, Dad*, Mr. Biden relied extensively on the notebooks containing notes he took during his vice presidency. Mr. Biden referred to and read from his notebooks during his interviews with Zwonitzer.⁴¹² According to Zwonitzer,

⁴⁰⁷ FBI Serials 315, 335.

⁴⁰⁸ Zwonitzer 7/31/23 Tr. at 144-45.

⁴⁰⁹ *Id.* at 95-96.

⁴¹⁰ FBI Serial 315, 335.

⁴¹¹ Zwonitzer 7/31/23 Tr. at 130.

⁴¹² *Id.* at 96.

the notebooks “made the book possible” by providing the “emotional arc of the . . . story.”⁴¹³

One of the primary sources of material for *Promise Me, Dad* was Mr. Biden’s “Daily” notebook for “August 2014-September 2016.”⁴¹⁴ This notebook contained notes of meetings Mr. Biden attended as well as entries about his other activities during this period. Many of the meetings related to foreign policy and classified information, including the President’s Daily Brief, National Security Council meetings, and other briefings. Some of these entries remain classified up to the Secret level.⁴¹⁵

The notebook also contained notes on matters other than foreign policy, including Mr. Biden’s private lunches with President Obama and meetings with advisors to discuss whether to run for president in 2016. Some of the entries were highly personal—most notably, entries reflecting on his son’s illness and death.

While this notebook provided much of the framework for *Promise Me, Dad*, Mr. Biden also used other notebooks in writing the book. Mr. Biden used and referred to a notebook labeled “Foreign Policy 11/2013-2014.”⁴¹⁶ This notebook also contained his notes on the President’s Daily Brief, National Security Council and other Situation Room meetings, and other foreign policy briefings. As explained below, at one point

⁴¹³ *Id.* at 63, 65.

⁴¹⁴ Notebook 1B57.

⁴¹⁵ FBI Serial 676.

⁴¹⁶ Notebook 1B67.

Mr. Biden told Zwonitzer that some of the information in the notebook may be classified. Some of these entries remain classified up to the Top Secret level.⁴¹⁷

Mr. Biden also referred to a notebook labeled “Foreign Policy,” which contained similar notes on classified briefings.⁴¹⁸ Some of these entries remain classified up to the Secret level.⁴¹⁹ Finally, Mr. Biden also used a notebook labeled “Obama/Biden 7-15-13 → 10-10-16.”⁴²⁰ It contained mainly notes on meetings with political advisors and upon preliminary inspection it does not appear to contain classified information.⁴²¹

C. Mr. Biden referred to and read from his notebooks during his interviews with Zwonitzer

During many of the interviews with his ghostwriter, Mr. Biden read from his notebooks nearly verbatim, sometimes for an hour or more at a time. Zwonitzer later transcribed the recordings of the interviews. Zwonitzer described this process of listening to and transcribing Mr. Biden’s reading from his notebooks as “incredibly painstaking.”⁴²²

At times during these interviews, Mr. Biden took steps to ensure that Zwonitzer did not read or have access to the classified portions of the notebooks. With one exception of which we are aware, discussed below, Mr. Biden did not let Zwonitzer read or handle the notebooks. On multiple occasions, Zwonitzer suggested it would

⁴¹⁷ FBI Serial 676.

⁴¹⁸ Notebook 1B58.

⁴¹⁹ FBI Serial 676.

⁴²⁰ Notebook 1B68.

⁴²¹ FBI Serial 676.

⁴²² Zwonitzer 7/31/23 Tr. at 74, 121.

be easier if Mr. Biden photocopied the relevant notebook entries and allowed Zwonitzer to use the copies, but Mr. Biden declined.⁴²³ According to Zwonitzer, Mr. Biden “really never let the journals out of his hand” and did not let others access them.⁴²⁴

D. Mr. Biden disclosed classified information in his notebooks to Zwonitzer

Based on our review of the notebooks and recorded interviews, when Mr. Biden came to potentially classified material in his notebook entries, he appears to have sometimes stopped at or skipped over the potentially classified material.⁴²⁵ Zwonitzer also recalled Mr. Biden mentioning the need to be careful “because he was worried that there was a possibility that . . . some of this stuff [handwritten entries in the notebooks] could be classified.”⁴²⁶ According to Zwonitzer, “there were things he couldn’t tell me, lines he couldn’t cross.”⁴²⁷

At other times, however, Mr. Biden read his notes from classified meetings to Zwonitzer nearly word-for-word.⁴²⁸

Notes of Situation Room meeting during summer of 2015. On February 16, 2017, for example—when Mr. Biden was no longer vice president—he met with

⁴²³ *Id.* at 75, 121-22.

⁴²⁴ *Id.* at 71-72, 113.

⁴²⁵ *Id.* at 102; Evidence items 1B57, 1B58, 1B67, 1B79, 1B81.

⁴²⁶ Zwonitzer 7/31/23 Tr. at 83.

⁴²⁷ *Id.*

⁴²⁸ Zwonitzer recording Carved_000571; Notebook entry 1B57-0062-65; Zwonitzer recording 170424_0091; 170424_0091 Tr. at 4-22; Notebook entry 1B67-0063-65; Evidence items 1B79 and 1B81; FBI Serials 315, 335.

Zwonitzer at the rental house in Virginia.⁴²⁹ During this meeting, Mr. Biden read from notes he took during a meeting in the Situation Room in the summer of 2015, which was attended by senior military officials, the CIA Director, and others.⁴³⁰ Mr. Biden appeared to tell Zwonitzer this notebook entry related to “a long meeting on the Security Council on – it probably was classified.”⁴³¹ Mr. Biden’s meeting notes summarized the actions and views of U.S. military leaders and the CIA Director relating to a foreign country and a foreign terrorist organization.⁴³² Mr. Biden had skipped over this same notebook entry during a previous conversation with Zwonitzer in October 2016, when Mr. Biden was still vice president.⁴³³

But on February 16, 2017, after he was no longer vice president, Mr. Biden read portions of the same notebook entry aloud and nearly verbatim to Zwonitzer, including portions containing information that remains classified up to the Secret level.⁴³⁴ Though Mr. Biden read these portions of the notebook entry, he also skipped over other portions of the entry.

Two months later, on April 10, 2017, during another recorded conversation with Zwonitzer, Mr. Biden returned to the same notebook entry detailing the same

⁴²⁹ Recording Carved_000556; Carved_000556 Tr. at 5-6; 2/15/17 e-mail re “VP’s Schedule – Thu, Feb 16, 2017,” USSS-0000523776; FBI Serials 315, 335; Evidence items 1B79, 1B81.

⁴³⁰ Zwonitzer recording Carved_000556; Carved_000556 Tr. at 4; Notebook entry 1B57-0062-65; FBI Serials 315, 335; Evidence items 1B79, 1B81.

⁴³¹ Zwonitzer recording Carved_000556; Carved_000556 Tr. at 4; Notebook entry 1B57-0062-65; FBI Serials 315, 335; Evidence items 1B79, 1B81. Mr. Biden’s precise words are difficult to discern. This quotation is our best attempt to do so.

⁴³² Notebook entry 1B57_0062-65.

⁴³³ Zwonitzer recording Carved_000241; FBI Serials 315, 335.

⁴³⁴ Zwonitzer recording Carved_000556; Carved_000556 Tr. at 4; Notebook entry 1B57-0062-65; FBI Serials 315, 335, 676.

Situation Room meeting from the summer of 2015.⁴³⁵ Immediately before discussing the notebook entry, Mr. Biden discussed extremely personal notebook entries touching on the illness and death of his son Beau, its effect on his family, and the wrenching decision about whether to run for president in 2016.⁴³⁶ After discussing these highly emotional topics, Mr. Biden turned immediately to the notebook entry from the summer 2015 Situation Room meeting, which began on the very next page of the notebook, and read additional portions of the entry nearly verbatim, including the portions of the entry he read to Zwonitzer during the February 16, 2017 meeting.⁴³⁷ The passages Mr. Biden read to Zwonitzer on April 10, 2017 contain information that remains classified up to the Secret level.⁴³⁸

Notes of National Security Council meeting in November 2014. In a later recorded conversation with Zwonitzer on April 24, 2017, Mr. Biden read from a different notebook entry, this time from notes he took during a National Security Council meeting in the Situation Room in November 2014.⁴³⁹ Mr. Biden read aloud from notes summarizing a range of issues relating to a foreign terrorist organization, including specific activities of the U.S. military and views expressed by the

⁴³⁵ Zwonitzer recording Carved_000571; Carved_000571 Tr. at 2-6; FBI Serials 315, 335; Notebook entry 1B57-0062-65; Evidence items 1B79, 1B81.

⁴³⁶ Zwonitzer recording Carved_000571; Carved_000571 Tr. at 1-2.

⁴³⁷ Zwonitzer recording Carved_000571; Carved_000571 Tr. at 2-6; Notebook entry 1B57-0062-65; FBI Serials 315, 335; Evidence items 1B79, 1B81.

⁴³⁸ FBI Serial 676.

⁴³⁹ Zwonitzer recording 170424_0091; 170424_0091 Tr. at 4-22; Notebook entry 1B67-0063-65; Evidence items 1B79, 1B81.

intelligence community, including the Director of National Intelligence and the CIA Director.⁴⁴⁰

While reading these notes, Mr. Biden struggled to read his handwriting, and he showed part of the handwritten passage to Zwonitzer. The two then had the following exchange:

Mr. Biden: Do you have any idea what the hell I'm saying there? Less on the number of what? Isn't that awful?

Zwonitzer: Something. Number, something – quality. I can't.

Mr. Biden: **Some of this may be classified, so be careful.**

Zwonitzer: Okay.

Mr. Biden: **I'm not sure. It isn't marked classified, but.**⁴⁴¹

Mr. Biden then continued to read nearly verbatim from portions of his notes on the 2014 Situation Room meeting.⁴⁴² Some of the portions that Mr. Biden read to Zwonitzer remains classified at the Secret level.⁴⁴³

More generally, during his dozens of hours of interviews with Zwonitzer, Mr. Biden read from notebook entries related to many classified meetings, including National Security Council meetings, CIA briefings, Department of Defense briefings, and other meetings and briefings with foreign policy officials.⁴⁴⁴

⁴⁴⁰ Zwonitzer recording 170424_0091; 170424_0091 Tr. at 4-22; Notebook entry 1B67-0063-65; Evidence items 1B79, 1B81.

⁴⁴¹ Zwonitzer recording 170424_0091; 170424_0091 Tr. at 13-14; Notebook entry 1B67-0065.

⁴⁴² Zwonitzer recording 170424_0091 (emphasis added); 170424_0091 Tr. at 14-22; Notebook entry 1B67-0063-65.

⁴⁴³ FBI Serial 676.

⁴⁴⁴ *E.g.*, Notebook entries 1B57-0039, 1B57-0062-63, 1B67-0059-61, 1B67-0063-65.

E. Mr. Biden also used his notecards in writing his book

In addition to his notebooks, Mr. Biden used other notes he wrote on notecards while vice president.⁴⁴⁵ These included notes that he took during his private lunches with President Obama, several of which featured prominently in the book.⁴⁴⁶

In the book, Mr. Biden described his weekly lunches with President Obama as “the one setting where we could talk frankly, without fear of being overheard.”⁴⁴⁷ They were an opportunity to “discuss the most important issues facing the administration, the country, and the world at that moment; and we could talk through any personal issues we were having.”⁴⁴⁸ “If something one of us had done angered or disappointed the other, the weekly lunch was the time to clear the air.”⁴⁴⁹

The lunches were often personal in nature, as Mr. Biden described in the book:

The conversation at our lunches was just as often personal. We talked about our wives. We talked about the close friendship between his daughters and my granddaughter, and what was going on in their lives. We talked about golf.⁴⁵⁰

Many of Mr. Biden’s notes on his lunches with President Obama were taken on the long, narrow notecards that he used regularly as vice president.⁴⁵¹

⁴⁴⁵ See Chapter Four.

⁴⁴⁶ See, e.g., Biden, PROMISE ME, DAD 21, 57-59, 66-79, 88-89, 156-59, 203-04, 206-07, 232-33.

⁴⁴⁷ *Id.* at 67.

⁴⁴⁸ *Id.*

⁴⁴⁹ *Id.* at 66.

⁴⁵⁰ *Id.* at 68.

⁴⁵¹ See Chapter Four; Staff Assistant 2 3/16/23 Tr. at 100; 12/20/10 e-mail from OVP staffer to Staff Assistant 2, 1B001_02888681; Staff Assistant 3 10/4/23 Tr. at 34-35; FBI Serial 3; NARA_SCAN_00001317.

F. Mr. Biden's staff made copies of his notecards for use in writing *Promise Me, Dad*

As explained in Chapter Four, Mr. Biden's staff made copies of his notecards for him to take after he left the vice presidency and use in writing *Promise Me, Dad*. After his staffers raised concerns that some of the notecards contained classified information, it appears that Mr. Biden's staff arranged for his copies of the notecards to be stored in a safe at the Naval Observatory, and then to be held in personal storage in a SCIF at the National Archives.⁴⁵² Mr. Biden visited the National Archives twice after he left office in 2017 to review the notecards as part of the book-writing process.⁴⁵³ Both trips were occasioned by Zwonitzer's requests for notes related to specific events during Mr. Biden's vice presidency, including several of Mr. Biden's lunches with President Obama that were later featured in *Promise Me, Dad*.⁴⁵⁴

II. FEBRUARY 16, 2017: "I JUST FOUND ALL THE CLASSIFIED STUFF DOWNSTAIRS"

During a recorded interview on February 16, 2017, at Mr. Biden's rental home in Virginia after the end of his vice presidency, Mr. Biden told Zwonitzer he had just found classified material downstairs.⁴⁵⁵

From context, Mr. Biden appears to have been referring to classified documents relating to American military and foreign policy in Afghanistan. When he

⁴⁵² See Chapter Four; 1/12/17 Deposit Agreement regarding the Administration of Personal Materials of Vice President Joseph R. Biden, NARA-H_700000012.

⁴⁵³ See Chapter Four.

⁴⁵⁴ See Chapter Four; 5/21/16 e-mail from Zwonitzer to Ricchetti, Zwonitzer-00007399.

⁴⁵⁵ Recording Carved_000556; Carved_000556 Tr. at 5-6; 2/15/17 e-mail re "VP's Schedule – Thu, Feb 16, 2017," USSS-0000523776; FBI Serials 315, 335; Evidence items 1B79, 1B81.

made his statement to Zwonitzer, Mr. Biden was discussing a handwritten memo he had sent to President Obama opposing the deployment of more troops to Afghanistan in 2009.⁴⁵⁶

Before meeting with Mr. Biden on February 16, 2017, Zwonitzer e-mailed a Biden staffer explaining that he “wanted to concentrate on the personal diaries from June 2015 through Thanksgiving 2015” and asking if Mr. Biden “could have those on hand.”⁴⁵⁷ When they met on February 16, 2017, Mr. Biden and Zwonitzer talked for several hours. Mr. Biden’s sister, Valerie Biden Owens, was also present.⁴⁵⁸ Zwonitzer recorded the conversation and later transcribed it.⁴⁵⁹ They sat on the main floor of the Virginia house in the library/den, which is shown below:⁴⁶⁰



Main floor library/den of Virginia home (July 10, 2019)⁴⁶¹

⁴⁵⁶ Recording Carved_000556; FBI Serial 315, 335; Evidence items 1B66, 1B79, 1B81.

⁴⁵⁷ 2/14/17 e-mail from Zwonitzer to Oval Office Operations Director, Zwonitzer-00006071.

⁴⁵⁸ Zwonitzer 7/31/23 Tr. at 109; Carved_000556; Carved_000556 Tr. at 2, 4; 2/15/17 e-mail re “VP’s Schedule – Thu, Feb 16, 2017,” USSS-0000523776.

⁴⁵⁹ Zwonitzer 7/31/23 Tr. at 109-10.

⁴⁶⁰ *Id.* at 84, 97; Biden 10/9/23 Tr. at 28.

⁴⁶¹ FBI Serial 624 1A719; SCOH-000760

Mr. Biden began the interview with a long discussion about the murder of nine worshippers at the Emanuel African Methodist Church in Charleston, South Carolina, and a discussion of his son Beau.⁴⁶² During this portion of the recording, Mr. Biden did not sound like he was reading from notes.⁴⁶³

He then turned to his “Daily” notebook for “August 2014-September 2016.”⁴⁶⁴ Mr. Biden read from an entry containing notes on a July 7, 2015 National Security Council meeting about Iraq.⁴⁶⁵

While reading from his notebook, Mr. Biden listed four points he made about the Iraq situation during the July 7, 2015 meeting. Mr. Biden explained to Zwonitzer that he had made similar arguments years earlier, during the 2009 debate about the troop surge in Afghanistan.⁴⁶⁶ Mr. Biden told Zwonitzer he had sent President Obama a 40-page, handwritten memo arguing against the deployment of additional troops in Afghanistan “on the grounds that it wouldn’t matter.”⁴⁶⁷ Mid-sentence during this narrative, Mr. Biden said, in a matter-of-fact tone, that he had “just found all the classified stuff downstairs.”

So this was – I, early on, in '09—I **just found all the classified stuff downstairs**—I wrote the President a handwritten 40-page

⁴⁶² Zwonitzer recording Carved_000556; ZWONITZER-TR_0064-78; FBI Serials 315, 335; Evidence items 1B79, 1B81.

⁴⁶³ Zwonitzer recording Carved_000556; ZWONITZER-TR_0064-78; FBI Serials 315, 335; Evidence items 1B79, 1B81.

⁴⁶⁴ Zwonitzer recording Carved_000556; ZWONITZER-TR_0079; FBI Serials 315, 335; Notebook 1B57; Evidence items 1B79, 1B81.

⁴⁶⁵ Zwonitzer recording Carved_000556; Carved_000556 Tr. at 4; ZWONITZER-TR_0079; FBI Serials 315, 335; Evidence items 1B79, 1B81.

⁴⁶⁶ Zwonitzer recording Carved_000556; Carved_000556 Tr. at 5-6; ZWONITZER-TR_0079; FBI Serials 315, 335; Evidence items 1B79, 1B81.

⁴⁶⁷ Zwonitzer recording Carved_000556; Carved_000556 Tr. at 5-6; ZWONITZER-TR_0079; FBI Serials 315, 335; Evidence items 1B79, 1B81.

memorandum arguing against deploying additional troops to Iraq—I mean, to Afghanistan—on the grounds that it wouldn’t matter, that the day we left would be like the day before we arrived. And I made the same argument . . . I wrote that piece 11 or 12 years ago.⁴⁶⁸

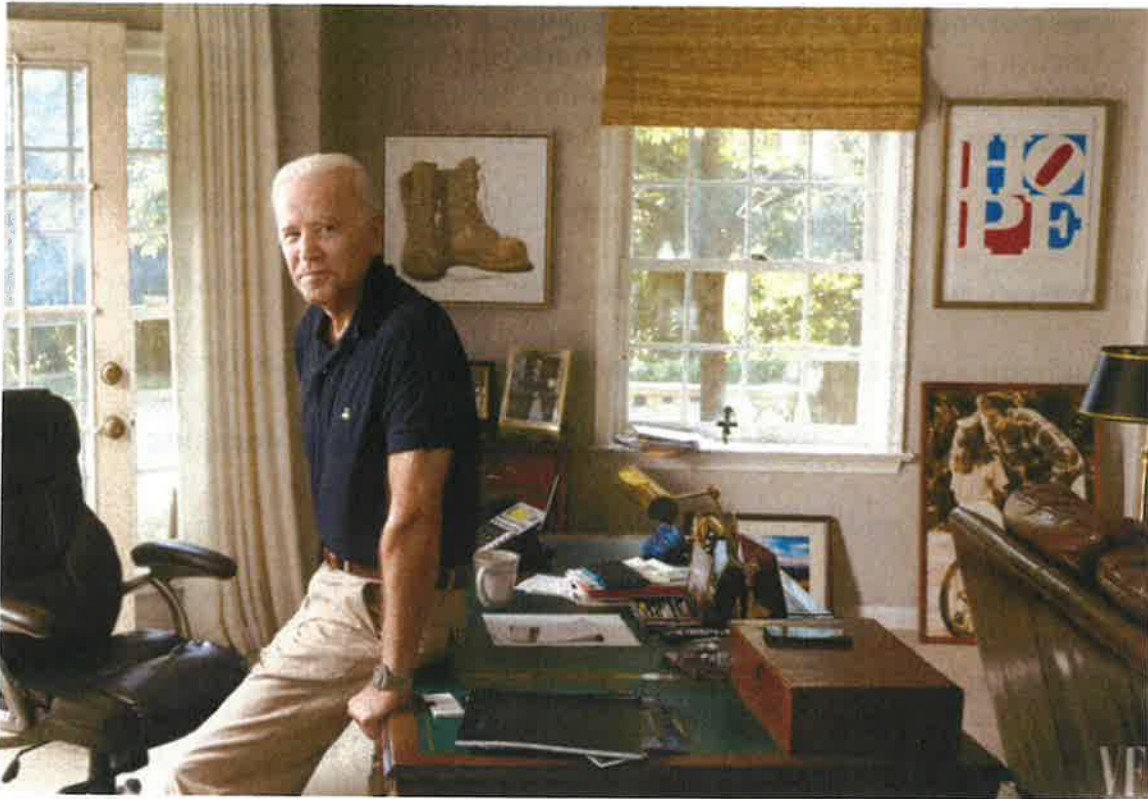
As discussed in the next chapter, Mr. Biden was referring to a long, handwritten memo he faxed to President Obama from Nantucket over the Thanksgiving weekend in 2009. In the memo—which Bob Woodward later detailed in his book, *Obama’s Wars*—Mr. Biden argued against engaging in full-scale counterinsurgency and nation-building in Afghanistan.⁴⁶⁹

As noted above, this February 2017 meeting with Zwonitzer was on the main floor of the Virginia home. “Downstairs” from where Mr. Biden and Zwonitzer sat was Mr. Biden’s basement office, where he kept his personal papers.⁴⁷⁰ The photo below shows the basement office in October 2017, several months after the February 2017 meeting with Zwonitzer:

⁴⁶⁸ Zwonitzer recording Carved_000556; Carved_000556 Tr. at 5-6; ZWONITZER-TR_0079 (emphasis added); FBI Serials 315, 335; Evidence items 1B79, 1B81.

⁴⁶⁹ Bob Woodward, *OBAMA’S WARS* 309 (Simon & Schuster 2010).

⁴⁷⁰ Biden 10/9/23 Tr. at 36-37; SCOH-000322.



Former vice president Joe Biden at his home in McLean, Virginia. PHOTOGRAPH BY ANDREW HARRIS

*Mr. Biden's basement office in the Virginia home (Oct. 2017)*⁴⁷¹

During Mr. Biden's interview with the special counsel, he said that at the time of the February 2017 meeting, which was about a month after he moved into the Virginia house, he was likely still going through boxes of materials.⁴⁷² He said his belongings were "taking up a lot of room" in the house, and he was trying to figure out "what'd they [his staff] pack up, what's here?" "where in the hell is all this stuff going?" and "what do I clear out . . . what do I get out of the way? . . ." ⁴⁷³ Among the

⁴⁷¹ David Kamp, *Why Joe Biden Didn't Run . . . And Why He's Not Ruling Out 2020*, VANITY FAIR (Oct. 25, 2017), <https://www.vanityfair.com/news/2017/10/why-joe-biden-didnt-run-for-president-and-why-hes-not-ruling-out-2020> (last visited Jan. 30, 2024).

⁴⁷² Biden 10/9/23 Tr. at 32-34.

⁴⁷³ Biden 10/9/23 Tr. at 33.

things he probably searched for in boxes were his notebooks, which he believed he gathered and kept on the main floor of the Virginia house.⁴⁷⁴

All three participants in the February 16, 2017 meeting—Mr. Biden, Zwonitzer, and Mr. Biden’s sister, Ms. Biden Owens—said they did not remember Mr. Biden’s statement that he had “just found all the classified stuff downstairs.”⁴⁷⁵ For his part, Mr. Biden said he did not remember anything at all about this incident, including whether he actually found classified documents in his basement office.⁴⁷⁶

During his interview with our office, Mr. Biden said he did not remember finding marked classified documents at any time after the end of the Obama administration and before he was elected President, but that if he had found such classified material, he would have given it to his personal aide at the time, or to another trusted staff member such as his former chief of staff.⁴⁷⁷ We have interviewed the personal aide, former chief of staff, and several other staffers with whom Mr. Biden interacted at the Virginia house in and around February 2017. Except for a separate incident involving different classified material given to the personal aide in January 2017, some weeks before the Zwonitzer conversation, no one recalled Mr. Biden turning in classified documents after the end of his vice presidency.⁴⁷⁸

⁴⁷⁴ *Id.* at 41.

⁴⁷⁵ *Id.* at 32; Zwonitzer 7/31/23 Tr. at 82-84; Biden Owens Tr. at 28-30, 71-73; 2/15/17 e-mail re “VP’s Schedule – Thu, Feb 16, 2017,” USSS-0000523776.

⁴⁷⁶ Biden 10/9/23 Tr. at 32-33.

⁴⁷⁷ *Id.* at 32, 39-40.

⁴⁷⁸ *E.g.*, Ricchetti Tr. at 187; Executive Assistant 9/28/23 Tr. at 165; Personal Aide 3/28/23 Tr. at 197-212. As explained in Chapter Seven, Mr. Biden’s personal aide recalled that during the first week after the end of the administration—several weeks before Mr. Biden told Zwonitzer he “just found all the classified stuff downstairs”—Mr. Biden returned

The Special Counsel's Office worked with the National Archives to identify whether Mr. Biden returned any classified documents after the end of the Obama administration. The National Archives has no awareness or records indicating that Mr. Biden returned classified records to the White House (to then be turned over to the Archives) in the weeks following the end of the administration.⁴⁷⁹ As is the case with every presidential transition, the National Archives continued to receive Obama administration presidential records from the White House after the end of the administration.⁴⁸⁰ There would therefore have been nothing unusual or notable for the National Archives about also receiving vice presidential records after the end of the administration.⁴⁸¹

Several years after Mr. Biden's February 2017 meeting with Zwonitzer, in December 2022, FBI agents recovered marked classified documents from a cardboard box in the garage of Mr. Biden's Delaware home.⁴⁸² These marked classified documents related to Afghanistan and the U.S. troop surge in 2009—the very same subject that Mr. Biden addressed with Zwonitzer in 2017 when he said that he had “just found all the classified stuff downstairs.” In one of the folders containing these marked classified documents, agents also found drafts of Mr. Biden's 2009

a slim binder of classified material he had found at the Virginia home, which the personal aide believed was related to foreign leader calls Mr. Biden made in the last days of the administration. Personal Aide 3 3/28/23 Tr. at 197-212.

⁴⁷⁹ 1/30/24 e-mail from NARA General Counsel to Special Counsel's Office, SCOH-000761.

⁴⁸⁰ *Id.*

⁴⁸¹ *Id.*

⁴⁸² *See* Chapter Six.

handwritten Thanksgiving memo to President Obama. Agents later found the final Thanksgiving memo in the office of Mr. Biden's Delaware home.⁴⁸³

⁴⁸³ See Chapter Six.

CHAPTER SIX

THE CLASSIFIED AFGHANISTAN DOCUMENTS

To fully appreciate Mr. Biden's references to Afghanistan in his conversation with Zwonitzer on February 16, 2017, it is helpful to understand Mr. Biden's place in the fraught debate about American policy in Afghanistan in the early days of the Obama administration.

In that debate, Mr. Biden played a conspicuous role. He strongly opposed the military's effort to send large numbers of U.S. troops to Afghanistan, and this opposition culminated in the lengthy handwritten memo Mr. Biden sent President Obama over the Thanksgiving holiday in 2009. By 2017, Mr. Biden believed his judgment as reflected in the memo had been vindicated by history. Years later, in December 2022 and January 2023, FBI agents found the handwritten Thanksgiving memo and marked classified documents containing his advice to President Obama in Mr. Biden's Delaware home.

I. MR. BIDEN'S ROLE IN THE 2009 AFGHANISTAN POLICY REVIEWS

At the beginning of 2009, one of the incoming administration's first and most significant foreign policy challenges was the war in Afghanistan, which was then in its eighth year. Early in the administration, Mr. Biden opposed President Obama's decision to deploy additional American troops to Afghanistan, and in the administration's internal debates, Mr. Biden was the lone dissenter.⁴⁸⁴ Privately, he worried the nation was drifting into another Vietnam.⁴⁸⁵

⁴⁸⁴ Barack Obama, *A PROMISED LAND* 317-19 (Crown 2020).

⁴⁸⁵ Notebook entry 1B64-0012-13.

Soon after the announcement of additional troops in March 2009, General Stanley McChrystal assumed command of forces in Afghanistan and conducted his own review of the war effort.⁴⁸⁶ McChrystal's written assessment concluded that America must send yet more troops and adopt a counterinsurgency strategy to protect the Afghan population.⁴⁸⁷ McChrystal soon followed this assessment with a request for another 40,000 U.S. troops.⁴⁸⁸

Around the time McChrystal submitted his assessment, "the Obama foreign policy team was splintering" and the divisions between two opposing sides "began to harden."⁴⁸⁹ On one side, Defense Secretary Robert Gates, Secretary of State Hillary Clinton, Chairman of the Joint Chiefs of Staff Michael Mullen, and General David Petraeus supported McChrystal's call for a counterinsurgency campaign and for significantly more American troops in Afghanistan.⁴⁹⁰ On the other side, Mr. Biden and a number of National Security Council and other White House advisers were deeply skeptical of these proposals.⁴⁹¹

⁴⁸⁶ Obama, A PROMISED LAND 323.

⁴⁸⁷ Stanley McChrystal, COMISAF's INITIAL ASSESSMENT (unclassified version) 1-1, 1-4 (Aug. 30, 2009), <https://nsarchive.gwu.edu/document/24560-headquarters-international-security-assistance-force-kabul-afghanistan-gen-stanley> (last visited Feb. 2, 2024).

⁴⁸⁸ Kevin Whitelaw, *Can Obama Say No To His Generals On Afghanistan?*, NATIONAL PUBLIC RADIO (Sept. 30, 2009), <https://www.npr.org/2009/09/30/113339833/can-obama-say-no-to-his-generals-on-afghanistan> (last visited Feb. 2, 2024).

⁴⁸⁹ Robert Gates, DUTY: MEMOIRS OF A SECRETARY AT WAR 323 (Knopf 2014); Obama, A PROMISED LAND 432-33; Klain Class. Tr. at 19-21; Klain Tr. at 25-26, 56-57.

⁴⁹⁰ Gates, DUTY 323; Obama, A PROMISED LAND 432-33; Klain Class. Tr. at 19-21, 34; Klain Tr. at 25-26, 56-57.

⁴⁹¹ Obama, A PROMISED LAND 432-33; Klain Tr. at 25-26, 56-57.

Mr. Biden left no doubt where he stood. The military's public lobbying for more troops was, he said at the time, "fucking outrageous."⁴⁹² Privately, Mr. Biden continued to fret that President Obama was poised to repeat the disastrous mistakes of Vietnam.⁴⁹³

A. Fall 2009 review

Against this backdrop, from September to November 2009, President Obama convened nine meetings of the National Security Council to debate McChrystal's troop request and the strategy in Afghanistan.⁴⁹⁴ One such meeting is shown below.



A National Security Council meeting to debate Afghanistan strategy (Oct. 9, 2009)⁴⁹⁵

⁴⁹² Obama, A PROMISED LAND 434-35; Notebook entry 1B66-0050.

⁴⁹³ Notebook entry 1B64-0012-13.

⁴⁹⁴ Obama, A PROMISED LAND 437.

⁴⁹⁵ SCOH-000762.

Photos of other meetings during the course of this policy review show Mr. Biden taking notes in his “Af/Pak” notebook and reviewing marked classified documents, including two marked classified documents that were later recovered from his Delaware garage.⁴⁹⁶



National Security Council (Nov. 11, 2009) with marked classified document later found in Delaware garage (B37)⁴⁹⁷

During the fall 2009 review, Mr. Biden’s voice was one of the strongest.⁴⁹⁸ As Mr. Biden put it during an interview with the special counsel:

The President thought that I knew a lot more about Afghanistan than he did and other members of the administration. . . . [H]e didn’t have overwhelming foreign policy experience, and how could he take on the most premier members of the foreign policy establishment in his

⁴⁹⁶ *E.g.*, SCOH-000763, SCOH-000764, SCOH-000765, SCOH-000766; Recovered documents B32, B37; Notebook entries 1B66-0092, 102.

⁴⁹⁷ SCOH-000764: Recovered document B37.

⁴⁹⁸ Obama, *A PROMISED LAND* 319; Klain Tr. at 56-57.

administration[] So he was looking for me to make the strongest case I could . . . which I was prepared to do because I knew as much about it as they did.⁴⁹⁹

Playing the role of leading in-house skeptic, Mr. Biden consistently and forcefully opposed McChrystal's call for a fully resourced counterinsurgency strategy in Afghanistan and the request for 40,000 more troops to implement this strategy.⁵⁰⁰ As an alternative, Mr. Biden advocated a narrower strategy involving a reduced U.S. military footprint.⁵⁰¹

Mr. Biden's notebook entry after the first meeting of the fall 2009 review reveals the depth of his opposition to McChrystal's proposed counterinsurgency strategy (often abbreviated "COIN").⁵⁰² Mr. Biden wrote that in his presentation during the meeting, he was "able to punch a hole in the logic of" those advocating COIN and noted that another official in attendance praised Mr. Biden's critique as "devastating."⁵⁰³ Summing up, Mr. Biden's notebook entry explained:

If I succeed in slowing down or stopping this misguided (policy) buildup it will make taking this job worthwhile.

This decision will define our Admin[istration] in history – hanging out there alone is worth it. I don't want history to associate me with the adoption of a COIN.⁵⁰⁴

⁴⁹⁹ Biden 10/9/23 Tr. at 17-18.

⁵⁰⁰ Notebook entries 1B66-0067-69, 1B66_0098-99; Blinken Class. Tr. at 40-41; Klain Tr. at 46-47; Sullivan Class. Tr. at 53-54; FBI Serials 683 1A772, 512 1A614; Recovered documents B18, B24, B25, B28, B29.

⁵⁰¹ Blinken Class. Tr. at 41; Klain Class. Tr. at 41-42; FBI Serials 683 1A772, 512 1A614; Recovered document B24.

⁵⁰² Gates, DUTY 339; FBI Serial 77 1A86; Notebook entry 1B66_0068-69.

⁵⁰³ Notebook entry 1B66-0069.

⁵⁰⁴ *Id.*

Deep into the fall 2009 review, when, in President Obama’s words, “everyone was sick of Afghanistan, sick of meetings, and sick of one another,” Secretary Gates offered a compromise.⁵⁰⁵ This modified version of McChrystal’s proposal called for an “extended surge” of approximately 30,000 troops, with a plan to begin drawing this number down within 18 to 24 months.⁵⁰⁶ The troop number was far larger than what Mr. Biden wanted but the drawdown was meant to avoid what Mr. Biden feared most: an open-ended American commitment.⁵⁰⁷ The last National Security Council meeting to discuss the president’s options was held near the end of November, with President Obama promising a final decision soon after.⁵⁰⁸

B. Mr. Biden’s Thanksgiving memo to President Obama

With the Thanksgiving holiday looming, Mr. Biden made one final push to change President Obama’s mind about the way forward.⁵⁰⁹ The day before Thanksgiving, Mr. Biden sent a typewritten memo to the president emphasizing Mr. Biden’s concerns that adding more troops was a potential “strategic blunder.”⁵¹⁰

As was his longstanding tradition, Mr. Biden spent Thanksgiving with his family in Nantucket.⁵¹¹ For much of the holiday weekend, Mr. Biden and his staff

⁵⁰⁵ Obama, A PROMISED LAND 438, 442-43; FBI Serials 683 1A772, 512 1A614; Recovered documents B26, B30, B37.

⁵⁰⁶ Obama, A PROMISED LAND 442-43; FBI Serials 683 1A772, 512 1A614; Recovered documents B26, B30, B37.

⁵⁰⁷ FBI Serials 77 1A86, 683 1A772, 512 1A614, 682; Recovered documents B18-1, B24, B25, B25-1, B28, B29; Handwritten material 1B66-0004-28; Biden 10/9/23 Tr. at 14-19; Blinken Tr. at 85-86.

⁵⁰⁸ Obama, A PROMISED LAND 442-43; Gates, DUTY 352-53; Bob Woodward, OBAMA’S WARS 289.

⁵⁰⁹ Biden 10/9/23 Tr. at 14-15.

⁵¹⁰ FBI Serials 683 1A772, 512 1A614; Recovered document B25.

⁵¹¹ Biden, PROMISE ME, DAD 5-7; Notebook entry 1B66-0099; 11/29/09 VP Schedule 1B001_00010833; 11/27/09 e-mail from Blinken to Klain, SCOH-000228; FBI Serial 77 1A86;

worked on yet another memo to the president on Afghanistan.⁵¹² That Saturday, two days after Thanksgiving, Mr. Biden sent President Obama a lengthy handwritten memo offering Mr. Biden's final thoughts—the same memo he recalled in his 2017 discussion with Zwonitzer.⁵¹³ The memo strongly criticized the premises underpinning the military's counterinsurgency strategy.⁵¹⁴ Mr. Biden also vented his frustration with senior military officials, noting that he was “tired and angry at the way they have tried to box you [in] through leaks and less than straightforward analysis of the alternative offered.”⁵¹⁵ Mr. Biden's notes from that day reflect that the memo was sent by secure fax and “placed in Pres. Hands.”⁵¹⁶ The handwritten Thanksgiving memo, later found in Mr. Biden's home office in 2023, contains information that remains classified up to the Secret level.⁵¹⁷

As Mr. Biden explained to the special counsel, he sent the handwritten Thanksgiving memo “because I was trying to change the President's mind, and I wanted to let him know I was ready to speak out . . . and to really, quite frankly, save his ass[.]”⁵¹⁸ Mr. Biden said he “spent a lot of time” writing the memo, and he “stayed up Thanksgiving writing it.”⁵¹⁹ It was, he said, the “first and only time” he ever wrote

⁵¹² Notebook entry 1B66-0096; Recovered documents B25-1, B25; 11/27/09 e-mail from Blinken to Klain and Carney, SCOH-000230; Biden 10/9/23 Tr. at 14-15.

⁵¹³ Handwritten material 1B66-0003-0022; Evidence items 1B79, 1B81; Military Aide 9 Tr. at 47-57; Chapter 5.

⁵¹⁴ Handwritten material 1B66-0003-0022; FBI Serial 682.

⁵¹⁵ Handwritten material 1B66-0006; FBI Serial 682.

⁵¹⁶ Notebook entry 1B66-0098; FBI Serial 682.

⁵¹⁷ FBI Serials 77 1A86, 676, 682; Handwritten material 1B66-0003-0022.

⁵¹⁸ Biden 10/9/23 Tr. at 14-15.

⁵¹⁹ *Id.* at 14-15.

the President a memo such as this by hand, and without distributing it to anyone else in the government.⁵²⁰

The same day Mr. Biden sent the memo, he wrote in his Af/Pak notebook that, based on his deep disagreement with what he anticipated would be President Obama's decision, he considered resigning as Vice President.

Tomorrow the President is going to make a fateful decision regarding Afghanistan – as I sat looking out the window at the sea – thinking I should resign in protest over what will bring his administration down.

...

Although I obviously wasn't there[,] I feel like this is what it must have felt like for Kennedy then Johnson in the early days of VTN [Vietnam].

...

I feel guilty and boxed in myself. Guilty for not having been more successful w/ the President – and staying.

Boxed in by knowing or at least feeling that my resignation would only harden his position and leave him with one less voice.⁵²¹

C. President Obama's final decision

The next day, Mr. Biden left his family in Nantucket to be by the President's side for the final decision.⁵²² Before a scheduled Oval Office meeting, Mr. Biden tried to schedule a last-minute conversation with the President but his request was rebuffed.⁵²³ Undaunted, Mr. Biden showed up to the White House early and waited for the President to come down from the residence.⁵²⁴ Mr. Biden used the short walk to the Oval Office to urge the President not to bend any further to the wishes of his

⁵²⁰ *Id.* at 18; *see also* Military Aide 9 Tr. at 47-49, 62-63.

⁵²¹ FBI Serial 77 1A86; Notebook entry 1B66-0098-99.

⁵²² Notebook entry 1B66-0099; 11/29/09 VP schedule, 1B001_00010833; 11/28/09 e-mail discussing meeting with POTUS on 11/29/09, SCOH-000228.

⁵²³ Klain Tr. at 59; Klain Class. Tr. at 39-40, 44-45.

⁵²⁴ *Id.*

generals.⁵²⁵ After the day's meetings ended on November 29, Mr. Biden recorded this final reflection:

I think – I hope – I did all I could have done to move us as far away from [Petraeus and McChrystal] as possible.

On the short walk over from the WH to Oval, I emphasized [President Obama's] need to be strong. He said that is why I brought them in “face to face.” I said good he was Pres[ident] and not me – I would have gone to war with them – he smiled and said – “I know – I would have enjoyed seeing that.”⁵²⁶

Two days later, in a speech at West Point, President Obama announced the Afghanistan troop surge: an additional 30,000 American troops, who would begin to draw down after 18 months.⁵²⁷

As Ron Klain—one of Mr. Biden's longest-serving and most-trusted aides—explained, although Mr. Biden publicly supported the President, privately, he “deep[ly] disagree[d]” with the decision, which he considered to be a “historic mistake.”⁵²⁸ Among other things, he feared “a second Vietnam,” with the United States “sending tens of thousands of Americans over to a pointless war.”⁵²⁹ Mr. Biden's personal aide at the time likewise explained that the 2009 Afghanistan decision was a “huge” issue for Mr. Biden that was “very, very important” to him.⁵³⁰

⁵²⁵ Notebook entry 1B66-0101-105.

⁵²⁶ Notebook entry 1B66-0105.

⁵²⁷ Remarks by the President in Address to the Nation on the Way Forward in Afghanistan and Pakistan, The White House (Dec. 1, 2009), <https://obamawhitehouse.archives.gov/the-press-office/remarks-president-address-nation-way-forward-afghanistan-and-pakistan> (last visited Feb. 1, 2024).

⁵²⁸ Klain Class. Tr. at 43.

⁵²⁹ *Id.*

⁵³⁰ Personal Aide 1 9/18/23 Tr. at 137.

In the years since the 2009 surge, including when Mr. Biden, as president, decided to withdraw all U.S. troops from Afghanistan in 2021, he has invoked his Thanksgiving memo and claimed that history has confirmed his good judgment.⁵³¹

II. IN DECEMBER 2022, THE FBI FOUND IN MR. BIDEN'S DELAWARE GARAGE MARKED CLASSIFIED DOCUMENTS FROM THE FALL 2009 AFGHANISTAN REVIEW

As explained in Chapter Two, in November 2022, marked classified documents were found in Mr. Biden's files at the Penn Biden Center in Washington, D.C. After this discovery, Mr. Biden's personal counsel then searched his Delaware home for additional classified documents.⁵³² Their first search occurred on December 20, 2022, when counsel searched his garage, found additional marked classified documents there, and alerted the Department of Justice.⁵³³ The next day, December 21, 2022, with Mr. Biden's written consent, FBI agents searched the garage.⁵³⁴

A. The garage box

The garage contained a significant volume of boxes, storage, and clutter, as shown in the photographs the agents took upon arrival:

⁵³¹ Klain Class. Tr. at 41-42.

⁵³² FBI Serials 33, 34.

⁵³³ *Id.*

⁵³⁴ FBI Serial 35.



*Mr. Biden's Delaware garage (Dec. 21, 2022)*⁵³⁵



*Mr. Biden's Delaware garage (Dec. 21, 2022)*⁵³⁶

⁵³⁵ 20221221_ERT_0013.

⁵³⁶ 20221221_ERT_0022.

Among the places Mr. Biden's lawyers found classified documents in the garage was a damaged, opened box containing numerous hanging folders, file folders, and binders.⁵³⁷ The box, which was labeled "Cabinet" and "Desk file," was in a mangled state with ripped corners and two top flaps torn off.⁵³⁸ Photos of the box, as the FBI encountered it, are below.



Garage box (Dec. 21, 2022)⁵³⁹

Because the box was damaged and not able to properly package classified material, the agents transferred its contents to a new box for transport.⁵⁴⁰ The

⁵³⁷ FBI Serials 33, 35 1A42.

⁵³⁸ FBI Serials 35 1A42, 680 1A770; 20221221_ERT_0024; 20221221_ERT_0025; 20221221_ERT_0026; 1/22/24 photograph, GarageBox-001.

⁵³⁹ 20221221_ERT_0024.

⁵⁴⁰ FBI Serial 35.

photographs below show the contents of the garage box in the original box and in the new box:



Garage box (Dec. 21, 2022)⁵⁴¹

⁵⁴¹ FBI Serial 35 1A42 20221221_ERT_0025.



Garage box in original condition (Dec. 21, 2022)⁵⁴²



Garage box after repackaging (Jan. 3, 2023)⁵⁴³

⁵⁴² 20221221_ERT_0026; FBI Serial 35 1A42.

⁵⁴³ 20230103_DSC_0003; FBI Serials 35, 195 1A212.

Inside the box, the FBI located two folders containing marked classified documents related to the fall 2009 policy review on Afghanistan.⁵⁴⁴

1. “Facts First” folder

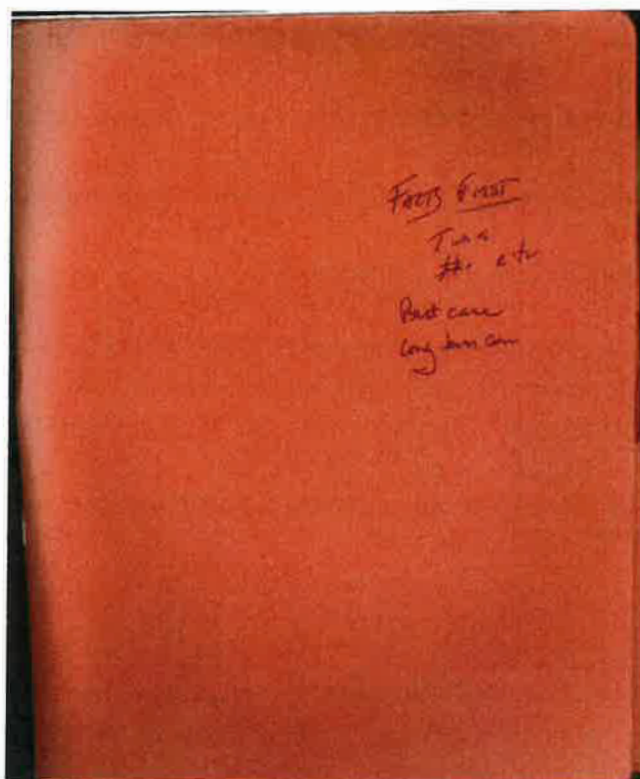
One of the folders containing marked classified documents about Afghanistan was an unlabeled red file folder with handwriting on the front, which included the phrase “Facts First.”⁵⁴⁵ In his interview with the special counsel, Mr. Biden identified the handwriting as his, but said he recalled nothing about how this folder or its contents got into his garage.⁵⁴⁶

When FBI agents repackaged the contents of the ripped garage box into a new box on December 21, 2022, it appears the order of a few of the materials changed slightly. This chapter discusses in detail below two folders that contained marked classified documents about Afghanistan: the manila “Afganastan” folder and the red “Facts First” folder. It appears the “Afganastan” folder was near the “Facts First” folder in the garage box when agents recovered the box, but the precise original location of the “Afganastan” folder at that time is unknown.

⁵⁴⁴ FBI Serial 512 1A614; Evidence items 1B04, 1B44.

⁵⁴⁵ FBI Serial 512 1A614; Evidence item 1B44.

⁵⁴⁶ Biden 10/9/23 Tr. at 43-45. In general, when our report identifies handwriting as Mr. Biden’s, it is based on the following factors, which often occur in combination: (1) Mr. Biden identified it as his handwriting or likely his handwriting; (2) others familiar with Mr. Biden’s handwriting identified it as his or likely his; (3) Mr. Biden confirmed that he wrote an entire class of documents, such as his notebooks and notecards; (4) the handwriting appears to match known instances of Mr. Biden’s handwriting; (5) the document was found at Mr. Biden’s home or office and is surrounded by materials attributable to Mr. Biden; and (6) the content and context of the handwriting suggest that it is Mr. Biden’s.



*"Facts First" folder*⁵⁴⁷



*Garage box in original condition showing "Facts First" folder*⁵⁴⁸

⁵⁴⁷ 1B004-FACTS_FIRST-000001.

⁵⁴⁸ 20221221_ERT_0026; FBI Serial 35 1A42.

The “Facts First” folder contained over 200 pages of documents related to the fall 2009 Afghanistan policy review, with a date range from approximately August through October 2009.⁵⁴⁹ Among the marked classified documents were the following, which are summarized further in Appendix A:

- McChrystal’s assessment, marked “CONFIDENTIAL REL NATO/ISAF” and dated August 30, 2009, in which McChrystal announced the urgent need for additional troops and a comprehensive counterinsurgency campaign in Afghanistan.⁵⁵⁰ Mr. Biden marked up this document with extensive handwritten notes, which were highly critical of McChrystal’s reasoning and conclusions.⁵⁵¹
- An August 31, 2009 memorandum from the National Security Adviser to President Obama marked “TOP SECRET/SCI.”⁵⁵² According to subject-matter experts in the intelligence community, this document contains national defense information in the form of highly sensitive information about the military programs of the United States and a foreign government. The unauthorized disclosure of this information, both today and in 2017 when Mr. Biden was no longer vice president, reasonably could be expected to cause exceptionally grave damage to the national security.
- A September 10, 2009 draft memorandum from Mr. Biden to President Obama.⁵⁵³ This memo, marked “TOP SECRET,” was likely sent from Mr. Biden to President Obama in advance of the first National Security Council meeting of the fall review, held on September 13, 2009.⁵⁵⁴ During the meeting, Mr. Biden made lengthy comments that closely tracked the memo.⁵⁵⁵ As explained above, after this meeting, Mr. Biden wrote in his journal that his presentation had “punch[ed] a hole” in the logic of his opponents, that the Afghanistan decision would define the administration in history, and that he did not want history to associate him with counterinsurgency strategy.⁵⁵⁶

⁵⁴⁹ Recovered documents B6-B24.

⁵⁵⁰ Recovered document B23.

⁵⁵¹ *Id.*

⁵⁵² Recovered document B20.

⁵⁵³ Recovered document B24.

⁵⁵⁴ *Id.*; 12/3/09 e-mail chain between Carney, Blinken, and Klain titled “Proposed Additions to Timeline,” SCOH-000234; Evidence item 1B44.

⁵⁵⁵ Notebook entry 1B66-0068-69; 12/3/09 e-mail chain between Carney, Blinken, and Klain titled “Proposed Additions to Timeline,” SCOH-000234; FBI Serial 525 1A632.

⁵⁵⁶ Notebook entry 1B66-0068-69.

- An undated memorandum marked “TOP SECRET//HSC⁵⁵⁷//NOFORN” entitled “Some Facts and Considerations.”⁵⁵⁸ This memo supported Mr. Biden’s views in the Afghanistan debate and offered commentary on the intelligence community’s analysis about Afghanistan.⁵⁵⁹ According to subject-matter experts in the intelligence community, the memo contains national defense information, including highly sensitive information about intelligence activities, sources, and methods. Unauthorized disclosure of this information in 2017 when Mr. Biden was no longer vice president reasonably could be expected to cause exceptionally grave damage to the national security.
- A September 29, 2009 memorandum with attachments, from the National Security Adviser to the President, marked “TOP SECRET WITH TOP SECRET/NOFORN/CODEWORD ATTACHMENTS.”⁵⁶⁰ Mr. Biden underlined and marked several passages that relate to the classified attachments to the memo.⁵⁶¹ The memo’s attachments include several intelligence products from the Office of the Director of National Intelligence.⁵⁶² One such attachment, marked “TOP SECRET//HUMINT/COMINT//ORCON/NOFORN//FISA,” appears to contain Mr. Biden’s handwriting and underlining.⁵⁶³ According to subject-matter experts in the intelligence community, portions of this document contain national defense information about sensitive intelligence sources and methods. Unauthorized disclosure of this information, in 2017 when Mr. Biden was no longer vice president, and still today, reasonably could be expected to cause serious damage to the national security.
- A draft handwritten note from Mr. Biden to President Obama, dated October 18, 2009, offering Mr. Biden’s advice about Afghanistan, including Mr. Biden’s explanation of why he believed the military’s proposed counterinsurgency strategy would fail.⁵⁶⁴ This note does not appear to have been completed.

⁵⁵⁷ This is a typographical error. The correct marking is HCS, which stands for HUMINT Control System, and signifies information human intelligence sources.

⁵⁵⁸ Recovered document B15.

⁵⁵⁹ *Id.*

⁵⁶⁰ Recovered documents B6-B13.

⁵⁶¹ Recovered document B6.

⁵⁶² Recovered documents B7, B9, B10, B11.

⁵⁶³ Recovered document B7.

⁵⁶⁴ Recovered document B18-1; Klain Class Tr. at 3-4.

2. “Afganastan” folder

The second folder in the box that contained marked classified documents relating to Afghanistan was a manila folder labeled “Afganastan 2009.”⁵⁶⁵



*“AFGANASTAN 2009” manila folder*⁵⁶⁶

In his interview with the special counsel, Mr. Biden said the handwritten label on this folder looks like his handwriting,⁵⁶⁷ and the distinctive misspelling of “Afganastan” confirms this. Mr. Biden repeatedly used this or a similar misspelling

⁵⁶⁵ Evidence item 1B04.

⁵⁶⁶ 1B004-AFGANASTAN_2009-000001; Evidence item 1B04.

⁵⁶⁷ Biden 10/9/23 Tr. at 51-52.

in handwritten notes as vice president, and before that in notes he took as a senator dating back to 1980.⁵⁶⁸

The “Afganastan” folder contained almost 100 pages of documents from October and November 2009, including numerous materials Mr. Biden used as reference material when writing the Thanksgiving memo to President Obama.⁵⁶⁹

Among the documents were the following, which are summarized further in Appendix

A:

- A November 25, 2009 typewritten memorandum from Mr. Biden to President Obama about Afghanistan, marked “TOP SECRET.”⁵⁷⁰ Mr. Biden made handwritten edits to this memo, some of which were incorporated into the handwritten Thanksgiving memo dated three days later.⁵⁷¹ Entire pages of the handwritten Thanksgiving memo are repeated nearly verbatim from the November 25 memo, making the November 25 memo the original source document.⁵⁷²
- Multiple drafts of the handwritten Thanksgiving memo.⁵⁷³ These include documents with edits, comments, and additions from Mr. Biden’s staff, which were delivered to Mr. Biden when he was in Nantucket writing the Thanksgiving memo.⁵⁷⁴ Mr. Biden repeated numerous passages from these documents nearly verbatim in the final memo.⁵⁷⁵
- A copy of Mr. Biden’s talking points for a National Security Council meeting held on November 11, 2009, and Mr. Biden’s follow-up memorandum to the National Security Advisor a few days later, on November 15, 2009, both

⁵⁶⁸ 6/11/80 Handwritten Notes from June 11, 1980 Meeting with West German Chancellor Helmut Schmidt, 1B017-BIDEN MEETING WITH CHANCELLOR SCHMIDT-000015; Notebook entries 1B67-0011, 0013; 1B68-0033; 1B65-0016; 1B22-0016.

⁵⁶⁹ Recovered documents B25-B38; Evidence item 1B04; FBI Serials 35, 512 1A614, 682, 683 1A772.

⁵⁷⁰ Evidence item 1B04; Recovered document B25.

⁵⁷¹ Recovered document B25; Handwritten materials 1B66-0003-28; Biden 10/9/23 Tr. at 52-53; Klain Class. Tr. at 8; Evidence item 1B04.

⁵⁷² Recovered document B25; Handwritten materials 1B66-0003-28; 11/27/09 e-mail from Blinken, SCOH-000230; Evidence item 1B04.

⁵⁷³ Recovered document B25-1.

⁵⁷⁴ *Id.*

⁵⁷⁵ *Id.*; Evidence item 1B04.

marked “Top Secret.”⁵⁷⁶ The talking points and memo contain numerous points that were later incorporated into the handwritten Thanksgiving memo, including Mr. Biden’s “dee[p] concer[n] that adding significantly more resources into Afghanistan is, potentially, a gigantic strategic blunder that plays into Al Qaeda’s hands.”⁵⁷⁷

In addition to the manila “Afganastan” file folder, the box also contained a blue hanging folder bearing the same misspelling on the handwritten label.⁵⁷⁸ The blue hanging “Afganastan” folder contained only a red file folder holding a one-page memo from 2012 unrelated to Afghanistan.⁵⁷⁹



Blue hanging folder labeled “AFGANASTAN”⁵⁸⁰

⁵⁷⁶ Recovered documents B28, B29; Evidence item 1B04.

⁵⁷⁷ *Id.*

⁵⁷⁸ 20230103_DSC_0136; Evidence item 1B04.

⁵⁷⁹ Evidence item 1B04. The garage box also contained a folder labeled “Foreign Policy: Second Term CLASSIFIED MARCH 2013.” This folder contained two marked classified documents—one marked “SECRET//NOFORN,” the other marked “TOP SECRET//NOFORN//Pre-decisional”—which outlined, in broad terms, foreign policy goals for the Obama administration’s second term. FBI Serials 512 1A614, 683 1A772; Evidence items 1B04, B4, B5. The folder also contained an unmarked memorandum from Mr. Biden to President Obama providing advice about managing the U.S. relationship with a foreign nation (not Afghanistan) in the second term. B4-1.

⁵⁸⁰ 20230103_DSC_0034; FBI Serials 35, 195 1A212.

B. Other materials in the garage box

In addition to the two folders with marked classified documents about Afghanistan, the garage box contained folders with unclassified material that was of great personal interest to Mr. Biden and that he appears to have personally used and accessed.⁵⁸¹

Several folders in the garage box contained materials that Mr. Biden appears to have accessed both shortly before and shortly after February 16, 2017, the day Mr. Biden told Zwonitzer he had “just” found classified documents downstairs.⁵⁸² For example, in January 2017, less than a month before he told Zwonitzer he had just found the classified documents downstairs, Mr. Biden appears to have accessed documents later found in the box. On January 23, 2017, Mr. Biden wrote a notebook entry about a call scheduled for later that day to finalize a deal with Creative Artists Agency (CAA), a talent agency that went on to represent him in negotiating his book deal for *Promise Me, Dad*.⁵⁸³ The same entry also referenced Mr. Biden’s work with his sister on his “S Corp.”⁵⁸⁴

The box found in Mr. Biden’s garage contained a corresponding file folder, labeled “Signed Contracts Penn, CAA,” which contained the signature page of a final

⁵⁸¹ FBI Serial 512 1A614.

⁵⁸² FBI Serials 315, 355 1A400, 512 1A614; Evidence item 1B80; Chapter 5.

⁵⁸³ Notebook entry 1B59-0025; ASSOCIATED PRESS, *Joe and Jill Biden get multi-book deal*, WHYY (Apr. 5, 2017), <https://whyy.org/articles/joe-and-jill-biden-get-multi-book-deal/>; FBI Serial 77 1A86; FBI Serial 682.

⁵⁸⁴ Notebook entry 1B59-0025.

agreement between Mr. Biden and Creative Artists Agency.⁵⁸⁵ Mr. Biden signed the agreement, which was dated a few days after the notebook entry, on January 26, 2017.⁵⁸⁶ The folder also contained the final agreement between Mr. Biden and the Penn Biden Center—Mr. Biden’s primary employer after his vice presidency—which Mr. Biden signed, also on January 26, 2017.⁵⁸⁷ And the folder contained a W-9 tax form for Mr. Biden’s S corporation, CelticCapri, which Mr. Biden used to receive income from book deals and speeches, among other purposes.⁵⁸⁸ The W-9 form listed Mr. Biden as the president of the S corporation and was signed by Mr. Biden and dated January 30, 2017—less than three weeks before Mr. Biden told Zwonitzer he had just found classified documents downstairs.⁵⁸⁹

The folder of signed contracts from late January 2017 was found in the box a few folders away from the “Facts First” folder that contained marked classified documents about Afghanistan, as shown in the image below.⁵⁹⁰

⁵⁸⁵ 1B004-SIGNED CONTRACTS PENN_CAA-000001 - 1B004-SIGNED CONTRACTS PENN_CAA-000008. Evidence item 1B04.

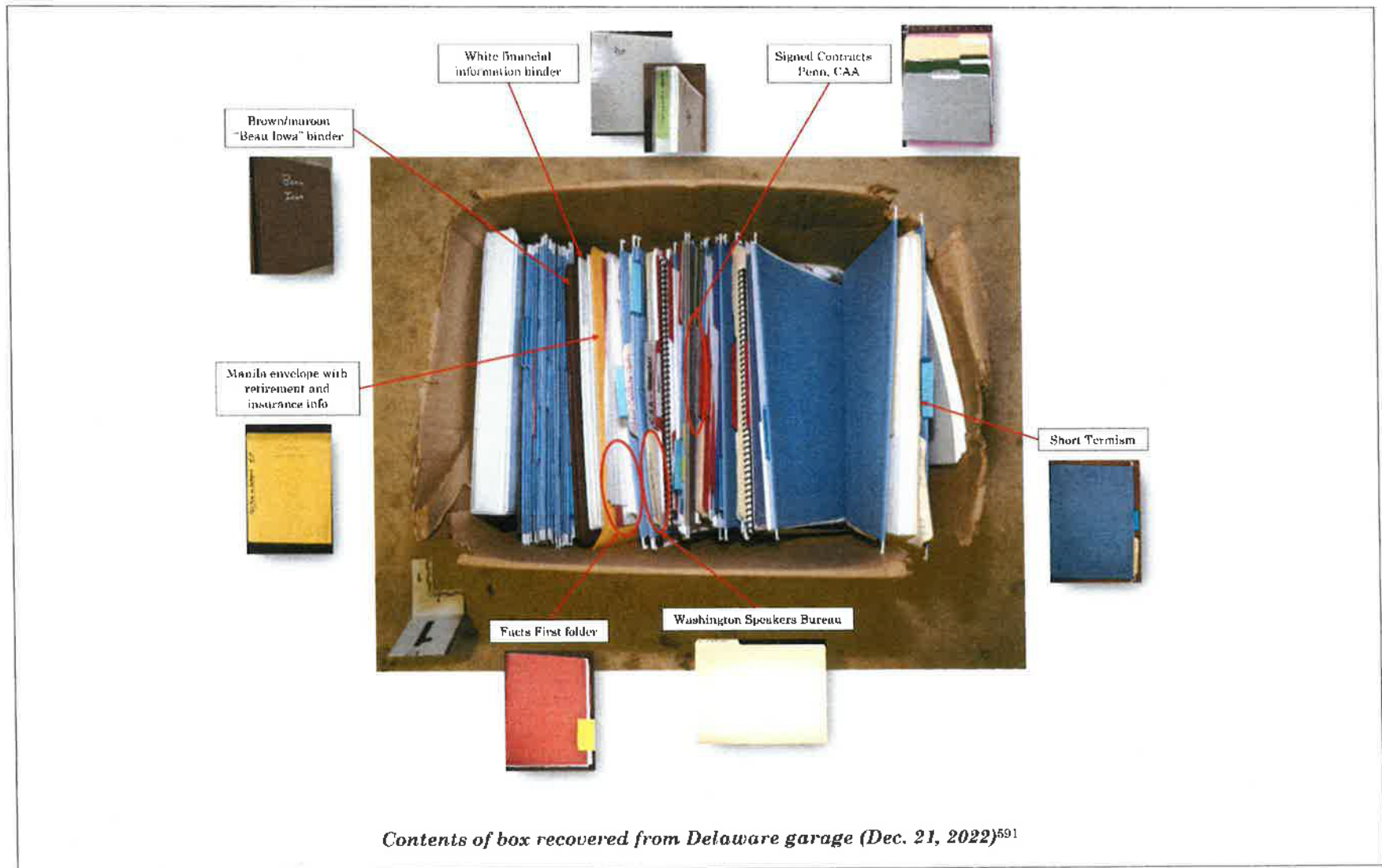
⁵⁸⁶ 1B004-SIGNED CONTRACTS PENN_CAA-000008.

⁵⁸⁷ 1B004-SIGNED CONTRACTS PENN_CAA-000004 - 1B004-SIGNED CONTRACTS PENN_CAA-000007; FBI Serial 512 1A614; Evidence item 1B04.

⁵⁸⁸ 1B004-SIGNED CONTRACTS PENN_CAA-000002; FBI Serial 512 1A614; Evidence item 1B04; Darla Mercado, *Joe Biden used this strategy to trim his tax bill. You can, too*, CNBC (Aug. 6, 2019), <https://www.cnbc.com/2019/08/06/joe-biden-used-this-strategy-to-trim-his-tax-bill-you-can-too.html>.

⁵⁸⁹ FBI Serial 512 1A614; 1B004-SIGNED CONTRACTS PENN_CAA-000002.

⁵⁹⁰ FBI Serial 512 1A614.



⁵⁹¹ Evidence item 1B04.

Mr. Biden also appears to have created a folder with the handwritten label “Short Termism” and the handwritten date February 3, 2017—less than two weeks before he told Zwonitzer he had just found classified documents downstairs.⁵⁹² This folder, later recovered by the FBI in the same box as the classified Afghanistan documents, appears to be labeled in Mr. Biden’s handwriting and contains material about a public policy issue of longstanding interest to Mr. Biden.⁵⁹³ After creating this folder in or around February 2017, Mr. Biden spoke on a panel addressing “short-termism” at the University of Delaware a few months later in May 2017.⁵⁹⁴

The box also contained a folder labeled “mark Z” and dated 2/16/17.⁵⁹⁵ “Mark Z” is a reference to Mr. Biden’s ghostwriter, Mark Zwonitzer, and the folder is dated the same day Mr. Biden met with Zwonitzer at the Virginia home and told Zwonitzer he had just found classified documents downstairs.⁵⁹⁶

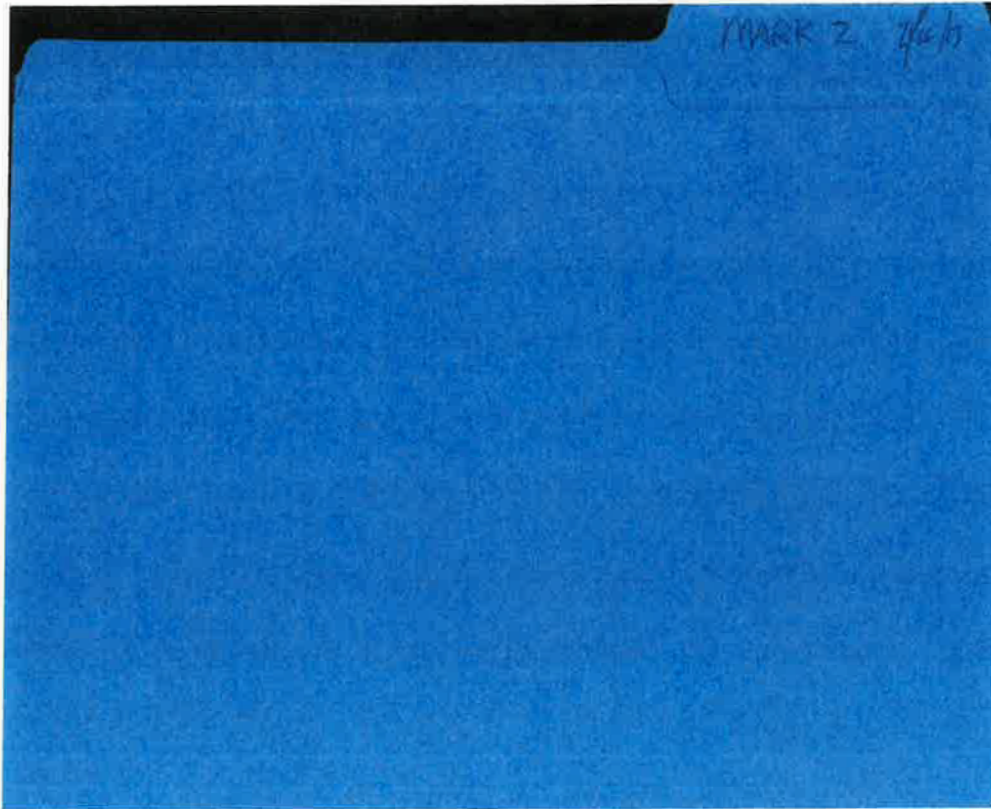
⁵⁹² Zwonitzer 7/31/23 Tr. at 82-83; FBI Serial 512 1A614. As explained below, the folder appears to be labeled in Mr. Biden’s handwriting, based on comparisons with other known instances of that handwriting.

⁵⁹³ FBI Serials 35, 512; *see also, e.g.*, Joe Biden, *How Short-Termism Saps the Economy*, WALL ST. J., Sept. 27, 2016; Notebook entries 1B20-0027, 0025, 0041.

⁵⁹⁴ Larissa Kubitz, *Biden Institute takes first step with dynamic business panel*, THE REVIEW (May 2, 2017), <https://udreview.com/biden-institute-takes-first-step-with-dynamic-business-panel/> (last visited Feb. 1, 2024).

⁵⁹⁵ 1B004-MARK Z 2-16-17-000001; FBI Serial 512, 1A614.

⁵⁹⁶ 1B004-MARK Z 2-16-17-000001; Biden 10/8/23 Tr. at 132; Zwonitzer 7/31/23 Tr. at 82-83; Evidence item 1B04.



"MARK Z 2/16/17" blue file folder⁵⁹⁷

Inside the Mark Z folder was the final book proposal for *Promise Me, Dad*.⁵⁹⁸ Mr. Biden used this proposal to shop his book to potential publishers, and this bidding process resulted in a book contract netting Mr. Biden an advance of \$8 million.⁵⁹⁹ Mr. Biden's assistant identified the handwriting on this folder as Mr. Biden's.⁶⁰⁰ The date on the folder indicates that Mr. Biden created it at or around the same time he met with Zwonitzer on February 16, 2017, and said he had just found classified documents. The folder was at some point placed in the same box as the marked classified documents about Afghanistan.

⁵⁹⁷ 1B004-MARK Z 2-16-17-000001; FBI Serial 512.

⁵⁹⁸ 1B004-MARK Z 2-16-17-000001 through 000005.

⁵⁹⁹ Zwonitzer-00001334; Zwonitzer 7/31/23 Tr. at 32-33, 59-66, 78-79, 82, 85-89.

⁶⁰⁰ Executive Assistant 9/28/23 Tr. at 84.

Mr. Biden also continued to access materials in the box after he told Zwonitzer on February 16, 2017 that he had found the classified documents. For example, on March 5, 2017, less than three weeks later, Mr. Biden wrote in one of his notebooks that he wanted to get a copy of the contract offered by Washington Speakers Bureau—a group that had made Mr. Biden a lucrative offer to arrange paid speeches—“for my records.”⁶⁰¹ The garage box contained a folder with the handwritten label “Washington Speakers Bureau,” which contained a copy of that offer.⁶⁰² The handwriting is Mr. Biden’s.⁶⁰³ The Washington Speakers Bureau folder was found a few folders away from the “Facts First” folder containing marked classified documents about Afghanistan.

The materials described above, which Mr. Biden appears to have accessed in the weeks before, during, and after he told Zwonitzer about “just” finding classified documents, were all located in folders in front of the “Facts First” folder in the box (to the right of the folder in the image of the box above).

Immediately behind (to the left of) the “Facts First” folder were three more items that contained information of significant personal interest to Mr. Biden:

- A manila envelope containing documents from February and March 2017 relating to Mr. Biden’s retirement payments and then-current health-insurance information, along with a copy of the Senate Ethics Manual bearing Mr. Biden’s handwriting. Mr. Biden also wrote on the envelope, including the date “4-17,” an apparent reference to April 2017.⁶⁰⁴ These months—February, March, and April 2017—coincide with and closely

⁶⁰¹ Notebook entry 1B59-0027; FBI Serial 77.

⁶⁰² 1B004-WASHINGTON – SPEAKERS BUREAU 000001-000007; FBI Serial 512.

⁶⁰³ Biden 10/9/23 Tr. at 57; Personal Aide 4 Tr. at 119.

⁶⁰⁴ 1B004-ENVELOPE ADDRESSED TO JOE BIDEN-000001-000028; FBI Serial 512.

follow the date when Mr. Biden told Zwonitzer he found classified documents, February 16, 2017.

- A white binder labeled “2016” containing detailed financial information about Mr. Biden’s income and expenses, including expenses relating to the Virginia home.⁶⁰⁵ Mr. Biden described this type of financial binder as the sort of material that he knowingly kept in his files.⁶⁰⁶ When interviewed, his sister, Ms. Biden Owens, identified materials in the binder as ones she printed for Mr. Biden at his request.⁶⁰⁷
- A brown/maroon binder labeled “Beau Iowa,” which appears to have been compiled in roughly 2014, and which contains, among other things, photographs of Beau Biden campaigning in Iowa.⁶⁰⁸

The box also contained other materials of personal interest to Mr. Biden, some of which go back decades, and some of which extend for years after Mr. Biden told Zwonitzer he had found classified documents.⁶⁰⁹ These included:

- The Biden Archives, which compiled ancestry information about the Biden family, and which was addressed to Mr. Biden’s parents at their home in Delaware.⁶¹⁰
- Photos and biographical information of Mr. Biden and other members of his graduating law school class, from 1967.⁶¹¹
- A folder labeled “V.P. Image – Press” containing a 2015 newspaper article from the Delaware News Journal. The article’s opening sentence reads: “While Vice President Joe Biden has assured himself a place in U.S. history books, his political legacy in tiny Delaware is epic.”⁶¹²

⁶⁰⁵ FBI Serial 512 1A614.

⁶⁰⁶ Biden 10/8/23 Tr. at 99-101; FBI Serial 554 1A662.

⁶⁰⁷ Biden Owens Tr. at 62-66.

⁶⁰⁸ FBI Serial 512 1A614.

⁶⁰⁹ FBI Serial 512 1A612.

⁶¹⁰ 1B004-ARCHIVES BIDEN_THE BIDEN ARCHIVES-000001; FBI Serial 512 1A612.

⁶¹¹ 1B004_MANILA FOLDER WITH DOCUMENTS-000002; FBI Serial 512 1A612.

⁶¹² 1B004_ARCHIVES BIDEN_VP IMAGE – PRES-000006; FBI Serial 512 1A612.

- Polling data related to the 2016 presidential election showing Mr. Biden outperforming Mr. Trump in several swing states that Hillary Clinton lost.⁶¹³
- Documents from the end of the Obama administration. For example, information about Mr. Biden's move out of the Naval Observatory, from November 2016;⁶¹⁴ a folder about the Penn Biden Center with materials from November 2016;⁶¹⁵ moving company information for Mr. Biden and Dr. Jill Biden from December 2016;⁶¹⁶ and a folder relating to the Biden Institute at the University of Delaware, dated January 3, 2017.⁶¹⁷
- Documents from the first few months after the Obama administration, when Mr. Biden was a private citizen.
- An IRS Form 1099 for tax year 2017 documenting Mr. Biden's lump-sum payment to Zwonitzer for his work ghostwriting *Promise Me, Dad*, and other tax documents dated 2018.⁶¹⁸
- A binder of briefing materials from the 2020 presidential campaign, dated from 2019 and 2020. Inside the binder are personal photos of Mr. Biden and his family, including his grandchildren.⁶¹⁹
- Notecards with presidential campaign remarks from 2020.⁶²⁰

In sum, the materials surrounding the marked classified documents about Afghanistan were of personal importance to Mr. Biden and were materials he appears to have accessed around the time he told Zwonitzer, while they were in Mr. Biden's Virginia home, that he had "just found all the classified stuff downstairs."

⁶¹³ FBI Serial 512 1A612; 1B004_POLLING HRC 2016 JRB-000002-000005.

⁶¹⁴ FBI Serial 512 1A612; 1B004_VICE PRESIDENT OF THE US_FURNITURE-000001; 1B004_VICE PRESIDENT OF THE UNITED STATES-000001.

⁶¹⁵ FBI Serial 512 1A612; 1B004_PENN DC-000001.

⁶¹⁶ FBI Serial 512 1A612; 1B004_TRANSITION-000001.

⁶¹⁷ FBI Serial 512 1A612; 1B004_UDEL 1-03-17-000001.

⁶¹⁸ FBI Serial 512 1A612; 1B004-GREEN FOLDER WITH DOCUMENTS-000003.

⁶¹⁹ FBI Serial 512 1A612; 1B004-BOOK 2-000001.

⁶²⁰ FBI Serial 512 1A612; 1B004-CARDS-REMARKS AND NOTES-000001.

III. IN JANUARY 2023, THE FBI FOUND THE CLASSIFIED 2009 THANKSGIVING MEMO IN MR. BIDEN'S DELAWARE HOME OFFICE

On January 20, 2023, about a month after FBI agents searched Mr. Biden's Delaware garage and found the box with classified Afghanistan documents, agents returned to search the living areas of Mr. Biden's Delaware home.⁶²¹ In Mr. Biden's main office, agents found the notebook he used to chronicle the fall 2009 Afghanistan policy review.⁶²² The notebook, which was labeled "Af/Pak 1," was found in a drawer along with many of Mr. Biden's other notebooks from the Obama administration.⁶²³



Mr. Biden's Delaware home office containing his notebooks (Jan. 20, 2023)⁶²⁴

⁶²¹ FBI Serials 35, 77.

⁶²² FBI Serial 77; Notebook 1B66.

⁶²³ FBI Serial 77 1A86.

⁶²⁴ FBI Serial 77 1A86 20230120_JLH_0173.



Office file cabinet under television containing eight seized notebooks (Jan. 20, 2023)⁶²⁵



Contents of office file cabinet under television containing eight seized notebooks (Jan. 20, 2023)⁶²⁶

⁶²⁵ 20230120_FBI_0151; FBI Serial 77 1A87.

⁶²⁶ 20230120_FBI_0152; FBI Serial 77 1A87.



*Notebook labeled "Af/Pak 1"*⁶²⁷

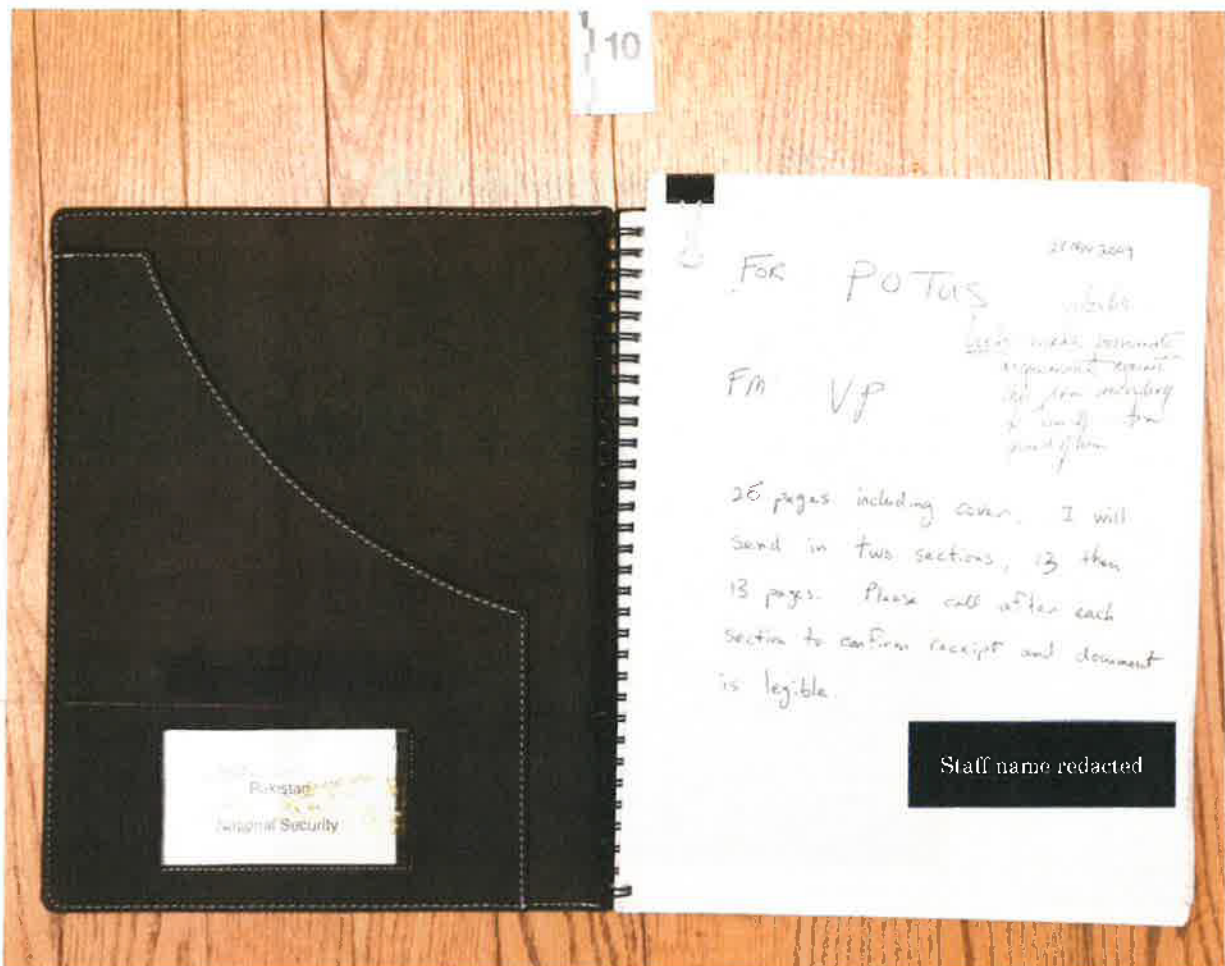
Inside the front cover of the Af/Pak notebook, held together with a binder clip, was Mr. Biden's handwritten 2009 Thanksgiving memo to President Obama, dated November 28, 2009.⁶²⁸ The handwritten memo contains information that remains classified up to the Secret level. Attached to the memo was a November 2009 State Department cable about Afghanistan that was marked classified as Confidential.⁶²⁹ The cable shows a declassification date in November 2019, though the State Department has been unable to confirm whether it has been formally declassified.⁶³⁰

⁶²⁷ 20230120_FBI_0158; FBI Serial 77 1A86.

⁶²⁸ Handwritten material 1B66_0001-28; FBI Serial 77 1A86; 682.

⁶²⁹ FBI Serial 676.

⁶³⁰ *Id.*



Interior of "Af/Pak I" notebook with cover page of Thanksgiving memo⁶³¹

In Mr. Biden's interview with the special counsel, he initially said he was not aware that he had kept the Thanksgiving memo after his vice presidency.⁶³² In response to a follow-up question, he said, "I guess I wanted to hang onto it for posterity's sake. I mean, this was my position on Afghanistan. And it later became discussed It became discussed inside the foreign policy establishment that I was recommending it" ⁶³³

⁶³¹ 20230120_FBI_0161; FBI Serial 77 1A86.

⁶³² Biden 10/9/23 Tr. at 14-21.

⁶³³ *Id.* at 21.

* * *

In December 2022 and January 2023, in Mr. Biden's Delaware garage and home office, FBI agents found classified documents relating to one of the seminal moments of his vice presidency: his opposition to the 2009 troop surge in Afghanistan. The classified documents were physically surrounded by Mr. Biden's private, personal material, including material he accessed around the same time he told his ghostwriter in February 2017, while in his Virginia home, that he "just found all the classified stuff downstairs."

CHAPTER SEVEN

TRACING THE AFGHANISTAN DOCUMENTS

We were unable to determine how the marked classified Afghanistan documents got from the White House, where Mr. Biden possessed them as vice president in 2009, to his Delaware home, where they were found in 2022. Mr. Biden had at least some of the Afghanistan documents with him in Nantucket during Thanksgiving 2009, when, as described in Chapter Six, he used some or all those documents as reference material in writing his handwritten memo to President Obama. From Nantucket, we have been unable to determine whether the documents next went to Mr. Biden's office in the White House, or to his official residence at the Naval Observatory, or to his personal home in Delaware.

In an attempt to trace the path of the Afghanistan documents and other marked classified documents found in the Delaware home, we reviewed extensive evidence of the movement of Mr. Biden's belongings from the end of the Obama administration. We interviewed numerous people who were in Mr. Biden's Delaware and Virginia homes at relevant times, and reviewed photographs and videos of the spaces as well as records from moving companies, furniture companies, and other sources. Ultimately, we could not determine precisely when the box containing the Afghanistan documents got into the garage, or who put the documents there.

As explained in Chapter Eleven, the strongest case for criminal charges against Mr. Biden relating to the Afghanistan documents would rest on his retention of the documents at the Virginia home in 2017. The February 16, 2017, recorded conversation when Mr. Biden told Zwonitzer he "just found all the classified stuff

downstairs” in the Virginia home is evidence that the Afghanistan documents were there. Other evidence provides some additional clues suggesting that these documents may have been stored in the Virginia home and then moved to the Delaware home, where they were ultimately placed in the box in the garage. As discussed further in Chapter Eleven, we find this evidence to be insufficient to meet the government’s burden in a criminal prosecution.

I. MR. BIDEN’S MOVES FROM THE NAVAL OBSERVATORY TO VIRGINIA AND THEN TO DELAWARE

As explained below, when Mr. Biden left the vice presidency in January 2017, he moved into a rental home in Virginia. From 2017 to 2019, Mr. Biden split time between the Virginia home and his permanent home in Delaware, which he owned before, during, and after the vice presidency, and still owns today.⁶³⁴ In July 2019, some of Mr. Biden’s belongings in the Virginia home were moved to his home in Delaware.⁶³⁵

A. 2017 move out of the Naval Observatory

On January 7, 2017, the Bidens moved furniture and personal belongings out of the Naval Observatory and into the Virginia home using a private moving

⁶³⁴ Biden 10/8/23 Tr. at 40-47 (describing building the Delaware home while a Senator). *See also* Sections I.A and I.B below.

⁶³⁵ *See* Section I.D below.

company.⁶³⁶ The Bidens paid for the move themselves and packed their own belongings, with the help of staff members and naval enlisted aides.⁶³⁷

Mr. Biden was personally involved in the move: He selected which pieces of government-owned furniture from the Naval Observatory he bought and moved to Virginia, directed some of the packing, and was personally present for the entirety of the move.⁶³⁸ One military aide recalled seeing him “packing by himself” and “just him moving his stuff one at a time into the . . . truck” at the Naval Observatory on moving day, and Secret Service agents saw Mr. Biden “moving boxes” at the Virginia house during the weekend of his move into that house.⁶³⁹

Mr. Biden stored papers in several places at the Naval Observatory, including desks, safes, and briefcases. As explained above in Chapter Three, Mr. Biden stored classified materials at the Naval Observatory while vice president. We were unable

⁶³⁶ 12/21/16 Invoice from private moving company, Georgetown Moving and Storage, SCOH-000279; 1/7/17 e-mails from Secret Service agents describing status of movers packing up the Naval Observatory, USSS-0000528890 and USSS-0000529043.

⁶³⁷ 12/21/16 Invoice from private moving company, Georgetown Moving and Storage, SCOH-000279 (indicating “customer to pack all,” “carrier to pack none”); Residence Manager Tr. at 37; NEA 5 Tr. at 109-114; Ricchetti Tr. at 122, 124; NEA 1 Tr. at 48, 50-51, 55-56; NEA 3 Tr. at 28-30, 34; Personal Aide 3 3/28/23 Tr. at 111-112; Personal Aide 3 10/4/23 Tr. at 14-15, 31; Dr. Biden Personal Aide Tr. at 58-61; Staff Assistant 2 Tr. at 86-87, 91-92.

⁶³⁸ 10/6/16 Memo from Residence Manager to the Vice President and Dr. Biden, 1B004-Vice President of the US_Furniture at 000002 (“Per our conversation yesterday”); handwritten notes describing phone call with Residence Manager on 12-19-16, FBI Serial 278, Notebook 1B59; entry in Notebook DAILY 2016 (1B59) describing 12/19/16 call with Residence Manager (“12-19-16, 9:55pm The Lake: Also spent time on phone w/ [Residence Manager] re: furniture + movement of furniture”); NEA 3 Tr. at 28-34; NEA 5 Tr. at 114; NEA 1 Tr. at 48, 50-51, 55-56; Military Aide 7 Tr. at 50; 1/7/17 e-mail from Secret Service agents describing Mr. Biden as present at the Naval Observatory with the movers, USSS-0000528890; 1/7/17 e-mail from Secret Service agents describing Mr. Biden going to Virginia Residence, USSS-0000524214; Personal Aide 3 10/4/23 Tr. at 3-6, 16-18, 20; Residence Manager Tr. at 60; Ricchetti Tr. at 122, 125

⁶³⁹ Military Aide 7 Tr. at 50, 53-55; 1/13/17 Secret Service e-mail, USSS-0000406162.

to determine whether any classified documents were inadvertently moved to the Virginia home when Mr. Biden moved out of the Naval Observatory.

During his vice presidency, Mr. Biden used a desk with green leather inserts in the turret of the Naval Observatory's primary bedroom.⁶⁴⁰ Private movers moved the green-top desk to the large basement room in the Virginia home that Mr. Biden used as an office.⁶⁴¹ No staffers recalled removing or packing material from the desk before movers removed it from the Naval Observatory.⁶⁴²

Antique desk with green leather inserts
Purchased by the OVP, 2011



*Green-top desk in Naval Observatory
(undated)*⁶⁴³



*Green-top desk in Virginia basement office
(Sept. 21, 2017)*⁶⁴⁴

⁶⁴⁰ 10/5/16 e-mail from Residence Manager to then-OVP Associate Director for Finance, SCOH-000225; 10/6/16 Memo from Residence Manager to the Vice President and Dr. Biden, Evidence Item 1B004-Vice President of the US_Furniture at 000002; 12/30/16 e-mail from Executive Assistant to Mr. Biden, forwarding correspondence from OVP Counsel, SCOH-000236; Personal Aide 3 10/4/23 Tr. at 9-11.

⁶⁴¹ Personal Aide 3 10/4/23 Tr. at 9.

⁶⁴² See, e.g., Residence Manager Tr. at 37; Personal Aide 3 10/4/23 Tr. at 9-11; Executive Assistant 9/28/23 Tr. at 115; NEA 1 Tr. at 56.

⁶⁴³ Evidence Item 1B004-Vice President of the US_Furniture at 000007.

⁶⁴⁴ 9/21/17 photograph taken at the Virginia Residence, SCOH-000323.

Mr. Biden and his staff kept classified documents in safes at the Naval Observatory, but staff cleared out their contents after the January 7, 2017 move.⁶⁴⁵ Mr. Biden was also known to keep documents in his briefcases, which he carried with him when traveling.⁶⁴⁶ Mr. Biden's staff did not go into his desk at the Naval Observatory, and it appears staff retrieved documents from his briefcase only rarely, if ever, so we were unable to determine if those locations contained any documents at the end of the administration.⁶⁴⁷

We were also unable to determine whether any of Mr. Biden's papers—classified or not—were in the boxes moved out of the Naval Observatory and to Virginia. No one involved recalled packing or moving papers or files belonging to Mr. Biden.⁶⁴⁸ Mr. Biden also stated that he did not “ever remember packing up written material to go anywhere.⁶⁴⁹ He explained that, “[i]t doesn't mean it didn't happen, but I just don't remember any of that.”⁶⁵⁰

During the investigation, we obtained photographs of the Virginia home from several sources in an attempt to identify photographs showing the classified

⁶⁴⁵ 1/15/17 e-mail from military aide to Executive Secretary, SCOH-000255; Military Aide 8 Tr. at 17, 33-34; 1/16/17 e-mail correspondence between OVP National Security Affairs and OVP Counsel staff, SCOH-000246; 1/16/17 e-mail correspondence between OVP National Security Affairs and OVP Counsel staff, SCOH-000218; 1/16/17 e-mail, SCOH-000259; Executive Secretary Staffer 2 7/7/23 Tr. at 57; 1/17/17 e-mail, SCOH-000256; Associate Counsel 3/29/23 Tr. at 16, 74; Bakotic 7/19/23 Tr. at 90-92.

⁶⁴⁶ Staff Assistant 3 Tr. at 49; Executive Assistant 9/28/23 Tr. at 73-74; Personal Aide 1 4/26/23 Tr. at 58; Personal Aide 2 Tr. at 35; Personal Aide 3 3/28/23 Tr. at 34-35, 56-57; Personal Aide 3 10/4/23 Tr. at 52-53.

⁶⁴⁷ Personal Aide 3 3/28/23 Tr. at 85; Personal Aide 3 10/4/23 Tr. at 10; NEA 5 Tr. at 67; Staff Assistant 3 10/4/23 Tr. at 67-68; Military Aide 10 Tr. at 22.

⁶⁴⁸ *See, e.g.*, NEA 1 Tr. at 56; NEA 3 Tr. at 30-31.

⁶⁴⁹ Biden 10/8/23 Tr. at 67.

⁶⁵⁰ *Id.* at 67.

Afghanistan documents or the box in which they were found. We found none. We did identify photographs taken in January 2017, while Mr. Biden was moving into the Virginia home from the Naval Observatory. But the photographs showed only the exterior of moving boxes, not their contents, and we were not able to identify the box in which the Afghanistan documents were found in any of the photos.

B. Security at the Virginia home

The Virginia home was not authorized to store classified information in February 2017, when Mr. Biden told Zwonitzer he had “just found all the classified stuff downstairs.”

The Virginia home was not set up for secure handling or storage of classified documents. No one we interviewed recalled any safes or other approved facilities for the storage of classified material in the home.⁶⁵¹ The Virginia home had an alarm system.⁶⁵² It was also generally locked, although a staff member entered the house through an unlocked door to facilitate the move-out in July 2019.⁶⁵³

Although the White House Situation Room delivered a classified book to Mr. Biden at the Virginia home on one occasion near the end of the Obama administration in early January 2017,⁶⁵⁴ his National Security Affairs staff later determined that he

⁶⁵¹ See, e.g., Secret Service Special Agent 2 Tr. at 80; Virginia house manager Tr. at 45.

⁶⁵² Virginia House Manager Tr. at 14-15; 1/30/17 e-mail from U.S. Secret Service agent to Dr. Biden’s personal aide, USSS-0000527876; Secret Service Special Agent 1 Tr. at 37-39. *But see* NEA 1 Tr. at 86 (“If there was [an alarm] we didn’t use it or it didn’t work.”).

⁶⁵³ NEA 1 Tr. at 87; Secret Service Special Agent 1 Tr. at 39; Dr. Biden Staffer 1 Tr. at 63-64.

⁶⁵⁴ 1/15/17 e-mail from Military Aide 8 to OVP staff and White House Situation Room, SCOH-000318; 1/14/17 Secret Service e-mail, USSS-0000524184; 1/15/17 e-mails between military aide, OVP staff, and the White House Situation Room, SCOH-000314. That evening,

should not receive classified material there.⁶⁵⁵ E-mail correspondence among his staff, military aide, and briefer reflect that Mr. Biden learned of this change in process, as he “requested the [President’s Daily Brief] for the drive into the White House”⁶⁵⁶ when he started spending the night at the Virginia home,⁶⁵⁷ as opposed to his staff’s alternative plan of delivering it to the West Wing for him to review after he arrived there.⁶⁵⁸

After the vice presidency, the Virginia home had an intermittent Secret Service presence for six months, ending in July 2017.⁶⁵⁹ During those six months, agents were present only when a protected person was there (such as Mr. Biden or Dr. Jill Biden),

the Bidens returned to the Naval Observatory. 1/15/17 Secret Service e-mail, USSS-0000524182.

⁶⁵⁵ 1/17/17 e-mail from National Security staffer to Kahl, SCOH-000304; 1/17/17 e-mail from Kahl to National Security Staff, SCOH-000301.

⁶⁵⁶ 1/18/17 e-mail from Military Aide 3 to OVP National Security Affairs staff and PDB briefer, SCOH-000271.

⁶⁵⁷ Between January 7, 2017, when he moved into the Virginia home, and January 18, 2017, when he began spending the night there, Mr. Biden traveled extensively and continued to stay overnight at the Naval Observatory on the few occasions he was in Washington, D.C. *See, e.g.*, 1/8/17 e-mails between Military Aide 7, OVP staff, and the White House Situation Room, SCOH-000248; 1/7/17 Secret Service e-mail, 1B001_01916050 (indicating Mr. Biden returned to the Naval Observatory at 23:17 on January 7, 2017); 1/8/17 e-mails between military aide and OVP staff, 1B001_01915912 (indicating that briefing books for January 9, 2017 will be delivered to the Vice President in the morning in Los Angeles); 1/10/17 e-mails between military aide, OVP staff, and the White House Situation Room, SCOH-000244, SCOH-000252, SCOH-000265; 1/11/17 e-mail from OVP National Security Affairs staff, SCOH-000261; Secret Service schedule for January 11, 2017, USSS-0000004488; Secret Service schedule for January 12, 2017, USSS-0000004494; 1/11/17 e-mails amongst OVP staff with Mr. Biden’s schedule for January 12, 2017, 1B001_01984097; 1/13/17 White House Press Release, SCOH-000222; 1/14/17 Secret Service e-mail, USSS-0000001109 (indicating Mr. Biden arrived at the “Lake House” the evening of January 13, 2017).

⁶⁵⁸ 1/18/17 e-mail from Military Aide 3 to OVP National Security Affairs staff and PDB briefer, SCOH-000271; 1/18/17 e-mail from Military Aide 3 to Executive Assistant, OVP National Security Affairs staff, SCOH-000302; 1/18/17 e-mail from OVP National Security Affairs staffer to National Security Affairs staff, SCOH-000272; 1/19/17 e-mails amongst OVP National Security Affairs staff, SCOH-000263.

⁶⁵⁹ 7/7/17 Secret Service e-mail, USSS-0000523706; Secret Service Supervisor Tr. at 32; Secret Service Special Agent 1 8/24/23 Tr. at 36.

and agents generally had a staffer or protected person give them access to the home.⁶⁶⁰ Mr. Biden split his time between the Virginia home, the Delaware home, and his recently purchased beach home in Rehoboth Beach, Delaware.⁶⁶¹ Dr. Biden stayed overnight at the Virginia home when she was teaching.⁶⁶²

The Virginia home was frequented by family members, staff, and guests, not all of whom had a security clearance. A Secret Service agent lived intermittently in a basement bedroom from about the summer of 2017 until the summer of 2018, though he was not working on Mr. Biden's security detail at the time.⁶⁶³ A former naval enlisted aide stayed there from about January 2019 until July 2019.⁶⁶⁴ Family members and guests also visited occasionally.⁶⁶⁵

C. In January 2017, after the end of his vice presidency, Mr. Biden found classified documents at his Virginia home and returned them

Soon after leaving the vice presidency, Mr. Biden apparently recognized that the Virginia home was not a secure location for the storage of classified material. When interviewed, Mr. Biden's personal aide recalled that during the first week after the end of the administration—several weeks before Mr. Biden told Zwonitzer he “just found all the classified stuff downstairs”—Mr. Biden discovered classified material at

⁶⁶⁰ 1/15/17 e-mail from Secret Service agent to personal aide, SCOH-000223; Secret Service Special Agent 2 Tr. at 79; Virginia house manager Tr. at 15-18; NEA 1 Tr. at 86-87; Dr. Biden Staffer 1 Tr. at 32.

⁶⁶¹ *See, e.g.*, NEA 1 Tr. at 92; Secret Service Special Agent 1 8/24/23 Tr. at 26, 34, 36; Zwonitzer 7/31/23 Tr. at 146-47; Ricchetti Tr. at 140; Personal Aide 3 3/28/23 Tr. at 144, 174. 6/8/17 Schedule, NARA_SCAN_00000300 (“Close on the Beach House”); FBI Serial 3.

⁶⁶² NEA 1 Tr. at 66.

⁶⁶³ Secret Service Special Agent 1 8/24/23 Tr. at 31-32.

⁶⁶⁴ NEA 1 Tr. at 65-66.

⁶⁶⁵ *Id.* at 66-68; Dr. Biden Personal Aide Tr. at 78-79; Zwonitzer 7/31/23 Tr. at 144-46.

the Virginia home and directed the aide to return it to the White House.⁶⁶⁶ According to the aide, he was standing outside the Virginia home when Mr. Biden approached him and handed him a “slim binder[]” with a classified coversheet.⁶⁶⁷ Mr. Biden said something like, “I just found this. Can you make sure it gets back to the White House?”⁶⁶⁸ The aide surmised that the binder contained materials relating to “foreign leader calls” because Mr. Biden participated in many such calls in the last days of the administration.⁶⁶⁹

The aide believed he notified the director of programs for the Office of the Vice President’s National Security Affairs team, who had stayed on into the next administration.⁶⁷⁰ The aide believed he then gave the classified binder to a Secret Service agent at the Virginia home, who brought it to the Naval Observatory, where a military aide delivered it to Vice President Pence’s national security staff at the White House.⁶⁷¹ We reviewed available phone records and interviewed several people serving at the time in the White House, the Secret Service, and the Naval

⁶⁶⁶ Personal Aide 3 3/28/23 Tr. at 197-212; Personal Aide 3 10/4/23 Tr. at 58 (describing timing of incident as “a week or roughly a week after the Inauguration.”)

⁶⁶⁷ Personal Aide 3 3/28/23 Tr. at 197-99. The aide did not believe it was one of the “typical” classified coversheets with red, orange, or yellow classification markings; rather, he believed it had the “vice presidential seal” and “some type of classified marking on it.” *Id.* at 198-99.

⁶⁶⁸ *Id.* at 199-200; *see also id.* at 197.

⁶⁶⁹ *Id.* at 204, 211-12. The aide did not believe the binder was one of the Vice President’s “traditional briefing book[s]” from his National Security Affairs team. *Id.* at 199.

⁶⁷⁰ *Id.* at 201-04. Initially, the aide stated it was possible that he notified a military aide instead. *Id.* at 201. When re-interviewed, however, the aide stated that he believed he contacted the Director of Programs for National Security Affairs, and not a military aide. Personal Aide 3 10/4/23 Tr. at 58-59.

⁶⁷¹ Personal Aide 3 3/28/23 Tr. at 203-04, 208-10.

Observatory, and none of them recalled this event.⁶⁷² Mr. Biden did not remember it either, although he stated in written responses to questions submitted by the special counsel: “If I had seen any marked classified documents in my home or office between the time when I was serving as Vice President and President, I would have immediately returned them to the U.S. government.”⁶⁷³ During his interview, he also stated that if he found classified documents, “I would have gotten rid of them. I would have gotten them back to their source. . . . I had no purpose for them, and I think it would be inappropriate for me to keep clearly classified documents.”⁶⁷⁴

D. Move out of Virginia home to Delaware in 2019

On July 18, 2019, private movers packed and moved the Bidens’ belongings from the Virginia home to the Delaware home, under a staffer’s supervision.⁶⁷⁵ Mr. Biden was not present for the packing or move, as he was traveling for his presidential campaign.⁶⁷⁶

⁶⁷² Director of Programs Tr. at 156-57, 180 (stating that the incident did “not sound familiar”); Secret Service Supervisor Tr. at 29-30 (stating he was unaware of Secret Service agents being given classified information found at the Virginia Residence); Military Aide 1 Tr. at 32-37; Military Aide 2 Tr. at 13-14; Military Aide 3 Tr. at 82-83; Military Aide 8 Tr. at 55-56.

⁶⁷³ Biden 10/9/23 Tr. at 7-8, 39-40; President Joseph R. Biden, Jr.’s Responses to Written Questions Submitted by the Special Counsel, Dec. 1, 2023, at 1. Mr. Biden caveated his response in his interview by adding that “notes in my book, they’re my notes and they’re my property, but that document is not my property.” Biden 10/9/23 Tr. at 42.

⁶⁷⁴ Biden 10/9/23 Tr. at 41.

⁶⁷⁵ Moving company invoice, SCOH-000274 (indicating a pack date of 7/16/19, a load date of 7/17/19, and move date of 7/18/19 from Virginia home to Delaware home); Dr. Biden Staffer 1 Tr. at 61-64.

⁶⁷⁶ CITY NEWS SERVICE, *Joe Biden visits Crenshaw-district soul food restaurant, hits Trump on ‘go back’ rhetoric*, LOS ANGELES DAILY NEWS (July 19, 2019), <https://www.dailynews.com/2019/07/19/joe-biden-visits-crenshaw-district-soul-food-restaurant-hits-trump-on-go-back-rhetoric/> (last visited Jan. 31, 2024) (Biden returned Thursday [Friday, July 19, 2019]) to Southern California to raise money for his Democratic

Our investigation focused on a wooden, two-drawer file cabinet that moved from the Virginia home to the Delaware home, because marked classified documents were later found inside the file cabinet in the Delaware home, and because of the possibility that the classified Afghanistan documents later found in the Delaware garage were at one time stored in the file cabinet.⁶⁷⁷

In the Virginia home, the file cabinet held files and was located near Mr. Biden's green-top desk in his basement office.⁶⁷⁸ In July 2019, the file cabinet moved from the Virginia home to the Delaware home.⁶⁷⁹ Mr. Biden said in his interview he believed he bought the cabinet for the Virginia home, but was unsure.⁶⁸⁰ We were otherwise unable to determine where the cabinet originated, although photographs and records suggest it did not come from the Naval Observatory, and it likely came from the Delaware home or was bought for the Virginia home.⁶⁸¹ Regardless, Mr.

presidential bid[.]"); Heidi Przybyla, *Biden's plan for rural America is the latest Democratic outreach to Trump country*, NBC NEWS (July 18, 2019), <https://www.nbcnews.com/politics/2020-election/biden-s-plan-rural-america-latest-democratic-outreach-trump-country-n1031441> (last visited Jan. 31, 2024); Alexandra Jaffe, *Biden plan seeks to boost rural America through investments*, AP NEWS ONLINE, (July 16, 2019), <https://apnews.com/united-states-presidential-election-54b68d199fbd46158735b87f8a1518a1> (last visited Jan. 30, 2024) ("We have to ensure we bring along everyone,' the former vice president said in Manning, an Iowa town of about 1,500 residents.").

⁶⁷⁷ FBI Serials 43, 44.

⁶⁷⁸ Biden 10/8/23 Tr. at 78-79; Personal Aide 3 10/4/23 Tr. at 43-44.

⁶⁷⁹ Personal Aide 3 10/4/23 Tr. at 43-44 ("green hanging files"). The desk did not move to Delaware. *See, e.g.*, SCOH-000274; August 2019 Photographs of Virginia home, SCOH-000741; SCOH-000742; SCOH-000743; SCOH-000744; SCOH-000745; SCOH-000746.

⁶⁸⁰ Biden 10/8/23 Tr. at 43, 72.

⁶⁸¹ We identified several other sources of furniture and deliveries of items to the Virginia home between January and April 2017. However, none of those deliveries appear to have included the file cabinet. 2/14/17 e-mail from Mr. Biden's Personal Aide to Secret Service, USSS-0000523734; 1/12/17 e-mail from Secret Service agent to Dr. Biden's personal aide, SCOH-000220; 1/13/17 e-mail between Secret Service agents, USSS-0000527855;

Biden told us the file cabinet contained his own files and no one else's, and his personal aide recalled filing papers for Mr. Biden in both that cabinet and his green-top desk when those items of furniture were in the Virginia home.⁶⁸²

The staffer present for the move out of the Virginia home recalled that furniture such as the cabinet was plastic-wrapped and moved with contents inside, rather than being emptied before moving.⁶⁸³ No one we interviewed recalled emptying the cabinet and packing its contents for the move to Delaware.⁶⁸⁴

In January 2023, FBI agents recovered two marked classified documents from a notebook found in the same file cabinet in the basement den of Mr. Biden's Delaware home.⁶⁸⁵ Both documents were dated from 2013, and one related to American troop levels in Afghanistan, while the other related to Iraq.⁶⁸⁶

February 2017 Secret Service Final Survey Report, USSS-0000523800; March 2017 Secret Service e-mails, USSS-0000313361, USSS-0000310321.

⁶⁸² Biden 10/8/23 Tr. at 79 (“[T]hey were all my files, I believe, or at least under my control [I]t wasn’t like somebody filed their papers in my file cabinet.”); Personal Aide 3 10/4/23 Tr. at 11-14, 43-44.

⁶⁸³ Dr. Biden Staffer 1 Tr. at 62, 66-67, 70-72.

⁶⁸⁴ *Id.*; 7/15/09 text messages between Dr. Biden Staffer 1 and Personal Aide 3, SCOH-000380; Personal Aide 3 10/4/23 Tr. at 54-56.

⁶⁸⁵ FBI Serials 44 1A56, 682.

⁶⁸⁶ FBI Serial 683 1A772 C1, C2, C3, C4.



File cabinet in Virginia home's basement office (Sept. 21, 2017)⁶⁸⁷



File cabinet in Virginia home's basement office (March 8, 2018)⁶⁸⁸



File cabinet in Delaware home's basement den (Jan. 12, 2023)⁶⁸⁹

⁶⁸⁷ FBI Serial 89 1A92; 9/21/17 photograph taken in Virginia home, SCOH-000321.

⁶⁸⁸ SCOH-000767; FBI Serial 696 1A786.

⁶⁸⁹ 1/12/23 photograph taken in Delaware home, FBI Serial 44 1A56 202301112_DSC_0005.

II. EVIDENCE THAT MR. BIDEN POSSESSED THE CLASSIFIED AFGHANISTAN DOCUMENTS IN THE VIRGINIA HOME

Some evidence suggests the Afghanistan documents were stored in the basement of the Virginia home from 2017 to 2019, moved in July 2019 to the Delaware home, and, at some point either before or after the move, transferred to the garage box, where they were finally found in the Delaware garage in December 2022. But we cannot rule out other explanations, including the possibility that the classified Afghanistan documents were left somewhere in Mr. Biden's Delaware home while he was vice president and forgotten there, until someone put them in the garage box after the 2019 move from the Virginia home to the Delaware home without realizing the documents contained classified information.

A. The dates of documents in the garage box suggest they were in the Virginia home

There are clues in the files themselves that suggest the contents of the garage box were moved from Virginia to Delaware. The garage box containing the Afghanistan documents also contained other documents with dates that correspond to dates when Mr. Biden's schedule shows him present at the Virginia home in and around February 2017 and afterward. The coinciding dates suggest that those documents were at the Virginia home with him during that period.⁶⁹⁰

⁶⁹⁰ FBI Serials 304 1A340, 179, FBI-00001343 (Schedules); 1B004-SHORT TERMISM 2-3-17-000001; 1B004-PLAN FOR YOUR FUTURE VANGUARD-000001; 1B004-MARK Z 2-16-17-000001. The garage box also included Biden's speeches, speaking engagement offers, and financial documents dated between March 2017 and March 2019. 1B004-2016 CAMPAIGN SPEECHES_LABOR-000017; 1B004-CAA - SPEECHES-000003; 1B004-INCOME AND EXPENSES 2016-000005-21; 1B004-GREEN FOLDER WITH DOCUMENTS-000002-28.

B. The garage box containing marked classified Afghanistan documents came from the move out of the Virginia home

Based on photographs we obtained, it is likely the garage box that was later found to contain the Afghanistan documents came to the Delaware home during the July 2019 move from Virginia to Delaware.

About a month after the move from Virginia to Delaware, in late August 2019, a photo shows what appears to be the same box as the garage box containing the Afghanistan documents, inside the Delaware home in Mr. Biden's main-floor office, immediately next to his desk.⁶⁹¹ The box is not seen in photographs of that space next to his desk from June 2019 (one month before the move).⁶⁹² Two months after the August 2019 photo of the box, in October 2019, another photo shows what appears to be the same box in the same place in Mr. Biden's office.⁶⁹³ Based on its size and markings, the box next to Mr. Biden's desk in the August and October 2019 photos appears to be of the same type as the boxes that moved from the Virginia home to the Delaware home in late July 2019.⁶⁹⁴

⁶⁹¹ 8/26/19 photograph, SCOH-000576; FBI Serial 625 1A720.

⁶⁹² 7/3/19 photos, SCOH-000774 and SCOH-000775

⁶⁹³ SCOH-000768. Our conclusion is based on close inspection of the box's distinctive markings and packing tape.

⁶⁹⁴ 7/20/2019 photo, SCOH-000769; FBI Serial 679 1A768.



*Box next to desk in Delaware home's office
(Aug. 2019)⁶⁹⁵*



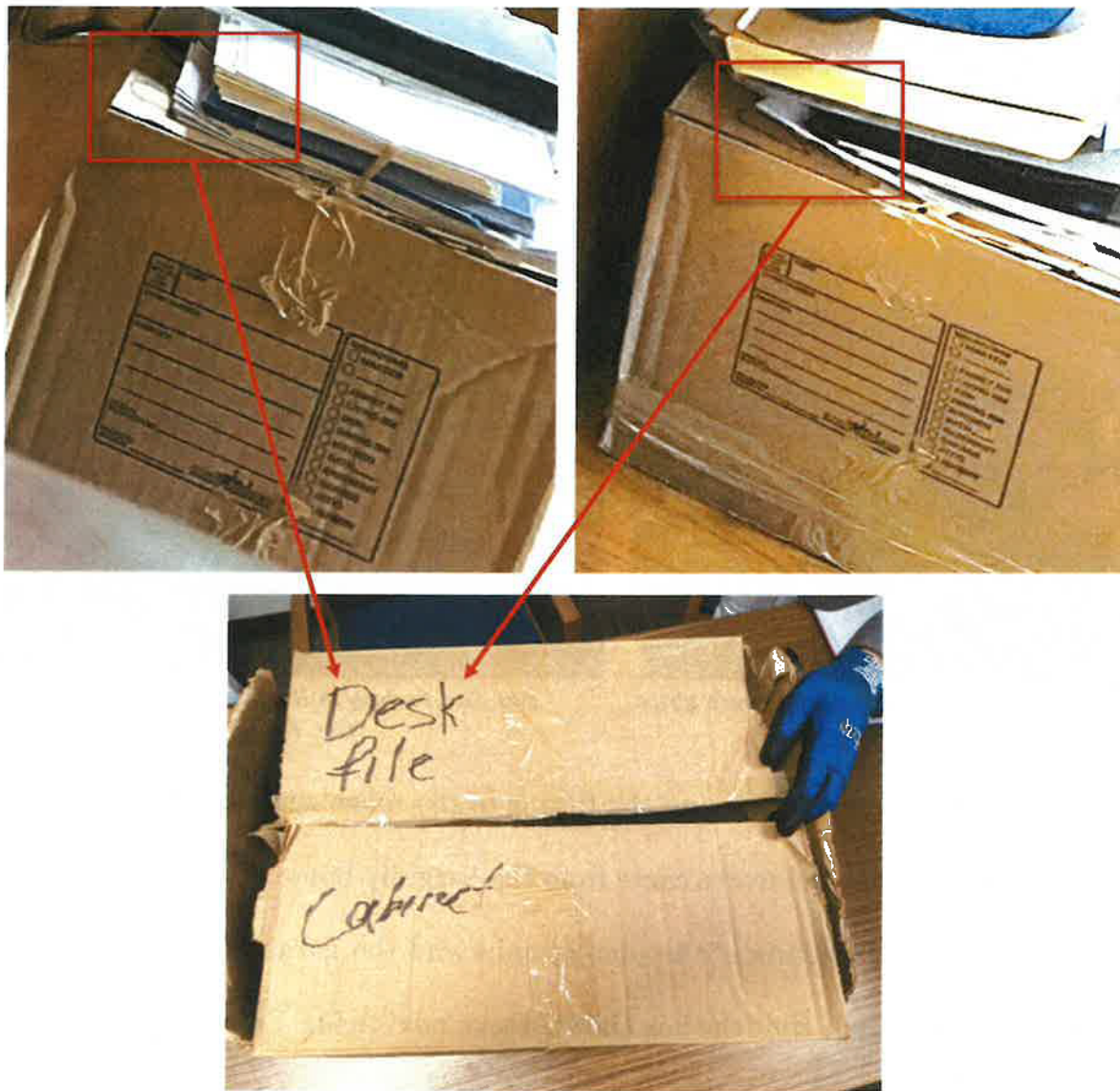
*Box next to desk in Delaware home's office
(Oct. 2019)⁶⁹⁶*

The boxes shown above and the timing of the move suggest that the box next to Mr. Biden's desk in Delaware came from the Virginia home.

Upon close inspection of the photographs and the garage box itself recovered by the FBI, we conclude that the box shown above next to Mr. Biden's Delaware office desk in 2019 is the same as the garage box containing the Afghanistan documents found in Mr. Biden's Delaware garage in 2022. The words "Cabinet" and "Desk file" are handwritten on the top flaps of the recovered garage box. A portion of the "Desk file" handwriting can be seen on the box in the above photos from 2019 in Mr. Biden's Delaware office (magnified below):

⁶⁹⁵ 8/26/19 photograph, SCOH-000576; FBI Serial 625 1A720. Based on our review of the photographs, this cabinet pictured behind Mr. Biden's desk is not the same file cabinet from the basement office of the Virginia home.

⁶⁹⁶ SCOH-000768.



Top left: zoomed-in photograph of box from August 2019⁶⁹⁷

Top right: zoomed-in photograph of box from October 2019⁶⁹⁸

Bottom: photograph of garage box containing marked Afghanistan documents (Jan. 22, 2024)⁶⁹⁹

One possibility is that the classified Afghanistan documents were stored in the Virginia home, then placed in the box and moved to the Delaware home, where the box (with the Afghanistan documents inside) sat in Mr. Biden's office for several months between August and October 2019. But we cannot rule out other possibilities.

⁶⁹⁷ 8/26/19 photograph, SCOH-000576; FBI Serial 625 1A720.

⁶⁹⁸ SCOH-000768; FBI Serial 625 1A270.

⁶⁹⁹ 1/22/24 photograph, GarageBox-001; Evidence item 1B87

The August and October 2019 photographs of Mr. Biden's Delaware office desk do not show the box's contents. When the garage box was recovered by the FBI in December 2022, it contained material dated between December 2019 and September 2020, after Mr. Biden moved out of the Virginia home and when he was living in the Delaware home.⁷⁰⁰ This means that at least some of the box's contents were added after the box was stored in Mr. Biden's Delaware home office in 2019. It is also possible that, sometime after the box was photographed in Mr. Biden's Delaware office in October 2019, someone put the classified Afghanistan documents into this box from elsewhere in the Delaware home, reusing the box for this purpose. One witness specifically recalled Mr. Biden reusing old boxes, even when they were damaged.⁷⁰¹ In any case, the box containing the Afghanistan documents was eventually moved out of Mr. Biden's Delaware home office to the Delaware garage, where it was found in 2022.

We interviewed dozens of witnesses about the box and its contents, including Mr. Biden. All denied knowing that the classified Afghanistan documents were in the box, and all denied knowing when or how the box and its contents arrived in the garage, or who put them there. In the intervening years, boxes, furniture, the Corvette, and miscellaneous items were repeatedly moved in, out, and around the

⁷⁰⁰ 1B004-BOOK 2-000001177 (binder containing memos, schedules, and speeches dated between December 2019 and March 2020); 1B004-LOOSE DOCUMENTS AND PHOTO-000001-13; 1B004-CARDS-REMARKS AND NOTES-000001-73 (campaign speeches, schedules, and an event memo for Justice Ginsburg's memorial service dated between August 2019 to September 2020); Personal Aide 4 Tr. at 86-89. Secret Service e-mails show Mr. Biden also visited his beach house. *See, e.g.*, 6/13/20 e-mail between Secret Service agents, USSS-0000007733.

⁷⁰¹ NEA 1 Tr. at 123.

garage.⁷⁰² While staffers—and even Mr. Biden—recalled being in the garage and seeing boxes at various points, no one recognized the box containing marked classified documents or recalled moving boxes within the Delaware home to the garage.⁷⁰³

C. Investigation of the file cabinet that was moved from Virginia to Delaware was inconclusive

We also examined connections between the contents of the garage box and the file cabinet that moved from Virginia to Delaware, to investigate the possibility the Afghanistan files were at one time stored in the file cabinet. No witnesses recalled removing files from the cabinet.⁷⁰⁴ Ultimately, the investigation was inconclusive.

* * *

Independent of the February 2017 Zwonitzer recording, the dates of the files in the garage box and the way the box was labeled suggest that some or all the files in the garage box, including the classified Afghanistan documents, may have been moved from the Virginia home to the Delaware home in 2019, before they were found in a box in the Delaware garage in 2022. But there are alternative explanations for how the Afghanistan documents got into the garage box that are also consistent with the evidence described above. As discussed in Chapter Eleven, we find the evidence

⁷⁰² 1/20/23 FBI photographs of garage, 20230120_JLH_0027 and 20230120_JLH_0018; 12/21/22 FBI photograph, 20221221_ERT_0013; April 2018 through December 2022 Mechanic records, SCOH-000568; Photograph of Delaware residence, SCOH-000575; FBI Serial 625 1A720; Secret Service photographs of Delaware home, USSS-0000366970, USSS-0000262676; Campaign photographs SCOH-000770, SCOH-000771, SCOH-000772, SCOH-000773.

⁷⁰³ *See, e.g.*, Personal Aide 4 Tr. at 112-113; Director of Oval Office Operations Tr. at 64-70; Dr. Biden Personal Aide Tr. at 113-118.

⁷⁰⁴ NEA 1 Tr. at 111-12; Personal Aide 4 Tr. at 147-48 (doesn't remember going through the cabinet); Director of Oval Office Operations Tr. at 115 ("I have never accessed that, no.")

as a whole insufficient to meet the government's burden of proving that Mr. Biden willfully retained the Afghanistan documents in the Virginia home in 2017.

CHAPTER EIGHT

MR. BIDEN'S FIRST BOOK, *PROMISES TO KEEP*, AND
THE CLASSIFIED SENATE DOCUMENTS IN THE DELAWARE GARAGE

The Afghanistan documents were not the only marked classified documents in Mr. Biden's garage. FBI agents also found boxes containing organized files related to several international trips Mr. Biden took as a young senator in the late 1970s.⁷⁰⁵ Like the 2009 debate over the troop surge in Afghanistan, Mr. Biden viewed these trips as seminal episodes in his public life. Indeed, in his 2007 memoir *Promises to Keep: On Life and Politics*, Mr. Biden described these trips as historic and formative experiences that prepared him for the presidency.⁷⁰⁶

As explained below, some of the documents in these files were marked classified, though, because of the passage of time, we do not know whether Mr. Biden willfully retained the classified documents or consulted them when writing the book.

I. IN 2023, THE FBI FOUND FILES RELATED TO THE TRIPS CHRONICLED IN *PROMISES TO KEEP* IN MR. BIDEN'S DELAWARE GARAGE

During the January 2023 search of Mr. Biden's Delaware garage, FBI agents recovered boxes labeled "International Travel 1973-1979" and "Foreign Travel."⁷⁰⁷ Agents found these boxes in a storage closet, in the same garage where they found the box containing the classified Afghanistan documents, as shown below.⁷⁰⁸

⁷⁰⁵ Evidence items 1B17, 1B18.

⁷⁰⁶ Joseph R. Biden, *PROMISES TO KEEP: ON LIFE AND POLITICS* (Random House Trade Paperback ed. 2008).

⁷⁰⁷ Evidence items 1B17, 1B18.

⁷⁰⁸ FBI Serials 35, 77 1A86.



Garage box and storage closet in Mr. Biden's Delaware garage (Dec. 21, 2022)⁷⁰⁹



Interior of Mr. Biden's garage storage closet containing Senate documents (Jan. 20, 2023)⁷¹⁰

⁷⁰⁹ 20221221_ERT_0013; FBI Serial 35 1A42.

⁷¹⁰ 20230120_FBI_0054; 20230120_FBI_0058; FBI Serial 35 1A42.

Like the box containing the classified Afghanistan documents, these boxes contained files and documents related to Mr. Biden's foreign policy experience and expertise—namely, organized files documenting his official foreign travel, including trips to the Soviet Union, West Germany, and Yugoslavia that he wrote about in his first book.⁷¹¹ The files contained handwritten notes, briefing materials, and travel itineraries related to the trips.⁷¹²

II. *PROMISES TO KEEP*

In 2007, Mr. Biden published a memoir titled *Promises to Keep: On Life and Politics*. As with his later book, Mr. Biden hired Zwonitzer as a ghostwriter.⁷¹³ Written in anticipation of Mr. Biden's run for president in 2008, *Promises to Keep* covered his life and political career from his childhood through his final years in the Senate.

In *Promises to Keep*, Mr. Biden discussed several international trips he took as a young senator in the late 1970s, including a congressional delegation to the Soviet Union where he met with the Soviet Premier, a trip to West Germany where he met with the Chancellor, and a trip to Yugoslavia, where he represented the United States at the state funeral of a Yugoslavian leader.⁷¹⁴

According to Zwonitzer, he and Mr. Biden included these anecdotes to show how then-Senator Biden gained experience in foreign policy “not just learning by being a staff member but by literally sitting across the table from people like [the

⁷¹¹ Biden, *PROMISES TO KEEP* 132, 143, 248; Evidence items 1B4, 1B17, 1B18.

⁷¹² Evidence items 1B17, 1B18.

⁷¹³ Biden, *PROMISES TO KEEP* 366; Zwonitzer 7/31/23 Tr. at 31-35.

⁷¹⁴ Biden, *PROMISES TO KEEP* 132, 142-43, 248-52.

Soviet Minister of Foreign Affairs].”⁷¹⁵ During a recorded interview with Zwonitzer, Mr. Biden explained that during these international trips, he learned the importance of foreign policy experience and that “[i]t matters what kind of personal relationships and rapport you can establish with foreign leaders.”⁷¹⁶ Mr. Biden said that when he later considered a presidential run, he “was never worried . . . whether I could sit across [from] [Soviet President Leonid] Brezhnev or sit across from [British Prime Minister Margaret] Thatcher . . . or [that I would] sit there and be intimidated.”⁷¹⁷

Promises to Keep put these anecdotes in a similar context. In discussing his decision to run for president in 1988, for example, Mr. Biden wrote that despite his relative youth, he felt he “measured up” to the other candidates in part due to his foreign policy experience:

I was just forty-two years old, but after a decade on the Senate Foreign Relations Committee and nearly that long on the Senate Select Committee on Intelligence, I knew the world and America’s place in it in a way few politicians did. My education in foreign affairs wasn’t just the time spent in committee hearings but in traveling the world and meeting leaders.⁷¹⁸

III. FOREIGN TRIPS CHRONICLED IN *PROMISES TO KEEP*

A. Mr. Biden’s 1979 trip to Yugoslavia

One of the trips Mr. Biden wrote about was his 1979 trip to Yugoslavia to represent the United States at the state funeral of a Yugoslavian political leader. Mr. Biden described the trip as “a strange kind of awakening for me.”⁷¹⁹ He made the trip

⁷¹⁵ Zwonitzer 7/31/23 Tr. at 46-47.

⁷¹⁶ 1978-race.doc at 18, Zwonitzer-00009492.

⁷¹⁷ 1988.doc at 10, Zwonitzer-00009499.

⁷¹⁸ Biden, *PROMISES TO KEEP* 143.

⁷¹⁹ *Id.* at 248.

with Averell Harriman, one of America's most distinguished diplomats, who "adopted" Mr. Biden and served as his "own personal tutor."⁷²⁰ During the trip, Mr. Biden and Harriman had a private meeting with longtime Yugoslavian president and World War II hero Josip Broz Tito.⁷²¹ Mr. Biden called the meeting "remarkable," an opportunity to be in the room with "the last two living men who remembered" the Yalta Conference at the end of World War II.⁷²²

B. Mr. Biden's 1979 congressional delegation to the Soviet Union

Elsewhere in the book, Mr. Biden wrote that he observed the benefits of direct engagement with foreign leaders during a congressional delegation he led to the Soviet Union in 1979. The purpose of the trip was to discuss arms control and the SALT II strategic nuclear arms limitations agreement.⁷²³ In *Promises to Keep*, Mr. Biden described how he "gained the grudging respect" of his Russian counterpart during a frank and sometimes tense face-to-face meeting with the Soviet Premier, where Mr. Biden also met President Leonid Brezhnev.⁷²⁴

Mr. Biden also sought to put the trip in the larger context of his foreign policy expertise and political ambitions. As the 1988 presidential election approached, Mr. Biden explained, "it was becoming clear that the new Soviet leader, Mikhail Gorbachev, was looking for a partner to write the end to the Cold War. And there

⁷²⁰ Biden, *PROMISES TO KEEP* 248.

⁷²¹ *Id.* at 248, 250-52.

⁷²² *Id.* at 251.

⁷²³ *Id.* at 143-45.

⁷²⁴ *Id.*

wasn't anybody lining up to run for the nomination I thought would be a better partner than me."⁷²⁵

IV. THE FILES RELATED TO THE TRIPS CHRONICLED IN *PROMISES TO KEEP* IN MR. BIDEN'S DELAWARE GARAGE CONTAINED MARKED CLASSIFIED DOCUMENTS

One of the boxes containing organized files about the trips Mr. Biden wrote about in *Promises to Keep* contained marked classified documents from the late 1970s.⁷²⁶ The box labeled "International Travel 1973-1979" contained materials from Mr. Biden's trips to Asia and Europe, including trips to Yugoslavia and the Soviet Union.⁷²⁷ The box contained roughly a dozen marked classified documents that are currently classified at the Secret level.⁷²⁸



*"International Travel" box containing marked classified documents*⁷²⁹

⁷²⁵ Biden, *PROMISES TO KEEP* 146.

⁷²⁶ Evidence item 1B18.

⁷²⁷ *Id.*

⁷²⁸ *Id.*; Recovered documents D11-19.

⁷²⁹ 20211221_ERT_0102; FBI Serial 35 1A42.

For example, the “International Travel 1973-1979” box contained files related to the congressional delegation that Mr. Biden led to the Soviet Union in 1979.⁷³⁰ Inside the files were more than a dozen folders devoted to aspects of the trip, including Mr. Biden’s travel itinerary, handwritten notes, letters, and briefing material.⁷³¹

The files also contained documents marked as classified. For example, a folder labeled “Senator Biden” stored several documents, including background information about Soviet officials.⁷³² These documents were marked “CONFIDENTIAL” and “CONFIDENTIAL NOFORN [not releasable to foreign nationals].”⁷³³ The intelligence community has determined that these documents are currently classified at the Secret level.⁷³⁴

The box also contained a file related to Mr. Biden’s 1979 trip to Yugoslavia.⁷³⁵ A note on the front page indicates that the file consists of a “reproduction of the contents of [Mr. Biden’s] Yugoslavia file.”⁷³⁶ The file contained documents marked “Classified” and “Confidential” as well as a memo marked “SECRET.”⁷³⁷ The

⁷³⁰ Evidence item 1B18.

⁷³¹ *Id.*

⁷³² *Id.*; Recovered documents D11-D19.

⁷³³ Recovered documents D11-D19.

⁷³⁴ FBI Serial 676; Recovered documents D11-D19. The reason for the change is that the relevant intelligence agency no longer uses the designation “Confidential.” Information that was previously classified as “Confidential” is now classified as “Secret.”

⁷³⁵ Recovered documents D04-D06, folder labeled “Yugoslavia.”

⁷³⁶ Evidence item 1B18.

⁷³⁷ Recovered documents D04-D06, folder labeled “Yugoslavia.”

intelligence community has determined that these documents are classified at the Secret level.⁷³⁸

* * *

We were limited in our ability to investigate these documents because of the significant passage of time since their creation. Although we cannot prove that Mr. Biden retained these classified documents willfully or used them in writing *Promises to Keep*, he did write about the foreign trips that were the subject of the documents. And like the classified Afghanistan documents, the classified files in Mr. Biden's garage relating to the trips discussed in *Promises To Keep* were part of a larger set of materials in Mr. Biden's home chronicling his experiences and achievements, particularly in foreign policy.

⁷³⁸ FBI Serial 676.

CHAPTER NINE
LEGAL STANDARDS

Our investigation focused on the “possible unauthorized removal and retention of classified documents or other records discovered at the” Penn Biden Center, the University of Delaware, and Mr. Biden’s personal residences.⁷³⁹ The criminal statutory provision that best fits the facts of our investigation is 18 U.S.C. § 793(e), a section of the Espionage Act that proscribes unauthorized retention and disclosure of national defense information. The law governing that crime is discussed below in sections I and II. We discuss other criminal prohibitions, and why they do not apply, in section III.

I. UNAUTHORIZED RETENTION OF NATIONAL DEFENSE INFORMATION

To prove unauthorized retention of national defense information under 18 U.S.C. § 793(e) the government must show: (1) the defendant had unauthorized possession of a document, writing, or note; (2) the document, writing, or note related to the national defense; and (3) the defendant willfully retained the document, writing, or note and failed to deliver it to an employee or officer entitled to receive it.⁷⁴⁰

⁷³⁹ Office of the Attorney General, Order No. 5588-2023, Appointment of Robert K. Hur as Special Counsel (January 12, 2023).

⁷⁴⁰ See *United States v. Rosen*, 445 F. Supp. 2d 602, 623-26 (E.D. Va. 2006), *amended*, Order, No. 1:05-cr-225, 2006 WL 5049154 (E.D. Va. Aug. 16, 2006); Court’s Instruction to the Jury at 19, *United States v. Brown*, No. 21-cr-348 (M.D. Fla. Dec. 12, 2022), ECF No. 304; Government’s Proposed Jury Instructions at 18, *United States v. Sterling*, No. 1:10-cr-485 (E.D. Va. Oct. 11, 2011), ECF No. 258; Final Jury Instructions at 44, *United States v. Ford*, No. 05-cr-235 (D. Md.).

A. Unauthorized possession

The Espionage Act does not define “unauthorized possession,” but courts in recent decades have construed that language and a related phrase in the same statute (“entitled to receive”) by referencing the executive order governing the handling of classified information in effect at the time of the conduct.⁷⁴¹ As explained in Chapter One, under that executive order a private citizen’s access to classified information is authorized only if he or she receives a favorable eligibility determination, signs an approved non-disclosure agreement, and has a need to know the information or obtains a formal waiver of that requirement.⁷⁴² Classified information must also be kept in approved and secure storage containers.⁷⁴³

By implication from the exception in § 4.4 of the executive order, the restrictions on access to classified information in the order appear to govern a former

⁷⁴¹ *United States v. Morison*, 844 F.2d 1057, 1075 (4th Cir. 1988) (construing governing executive order and holding, “the words ‘entitled to receive’ in [18 U.S.C. § 793(d) and (e)] can be limited and clarified by the Classification Regulations”); *Rosen*, 445 F. Supp. 2d at 622 (“the rule regulating who is ‘entitled to receive’ is the Executive Order setting forth a uniform classification system for national security information”); *see also United States v. Hung*, 629 F.2d 908, 919 n.10 (4th Cir. 1980) (“The trial judge provided adequate content for [‘unauthorized possession’] by advising the jury that a person would have authorized possession if he had an appropriate security clearance and if he gained access to the document because it was necessary to the performance of his official duties.”). Jury instructions in Espionage Act cases have generally mirrored the executive order’s requirements for access to classified information by defining unauthorized possession to mean that the possessor lacks a security clearance, lacks a need to know, or removes the information from its proper storage location. *See* Final Jury Instructions at 45, *Ford*, No. 05-cr-235; Government’s Proposed Jury Instructions at 10, *Sterling*, No. 1:10-cr-485, ECF No. 258; Transcript of Jury Instructions at 194, *United States v. Morison* (“An individual has unauthorized possession of documents and writings when he possesses those under circumstances or in a location which is contrary to law or regulation for the conditions of his employment.”).

⁷⁴² Executive Order 13526 §§ 4.1(a), 4.4.

⁷⁴³ *Id.* § 4.1(g); *see* 32 C.F.R. §§ 2001.43(b)(1) and (2), 2001.53; Office of the Director of National Intelligence, Intelligence Community Directive 705.

vice president, which Mr. Biden was between January 2017 and January 2021.⁷⁴⁴ Under the executive order's provisions, a former vice president (or former president) may receive a waiver of the need-to-know requirement, but only if a senior official of the agency that originated the classified information "determines in writing that access is consistent with the interest of national security" and "takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with this order[.]"⁷⁴⁵

For all of the classified materials recovered during this investigation, after the vice presidency, Mr. Biden did not receive a written waiver of the need-to-know requirement, and no agency official made the findings required by the executive order. Therefore, Mr. Biden's possession of those materials in unsecured spaces in his home after his vice presidency was unauthorized within the meaning of the Espionage Act.⁷⁴⁶

The White House Counsel's Office and Mr. Biden's personal attorneys have argued to us that, despite these requirements, the Presidential Records Act authorizes a former president or vice president to keep classified materials in locations that are not approved for storage of classified information at home, as long as those materials are not defined as presidential records under the Act. Counsel note

⁷⁴⁴ Executive Order 13526 § 4.4.

⁷⁴⁵ *Id.* §§ 4.1, 4.4; *Trump v. United States*, No. 22-13005, 2022 WL 4366684, at *8.

⁷⁴⁶ *See Trump v. United States*, No. 22-13005, 2022 WL 4366684, at *8; Superseding Indictment ¶¶ 18-19, *United States v. Trump, et al.*, No. 23-cr-80101 (S.D. Fla. July 27, 2023), ECF No. 85.

that the Presidential Records Act excludes personal records (which can include diaries) from government ownership and preexisting White House guidance has interpreted the Act to exclude rough meeting notes from its definition of records. Pointing to Mr. Reagan's treatment of his diaries containing Top Secret/Sensitive Compartmented Information (as discussed in Chapter Ten), counsel contend that a former president or vice president may lawfully retain written national defense information provided it is not a presidential record under the Act and that Mr. Biden's notebooks, like Mr. Reagan's diaries, are not presidential records.

The approach that the Department and courts have taken in Espionage Act cases after passage of the Presidential Records Act cuts against this view.⁷⁴⁷ Courts and the Department have determined whether possession of national defense information is authorized principally based on the terms of the executive order. The order specifically addresses and is the primary source of law governing access to such information, in contrast with the Presidential Records Act, which mentions classified material in just one irrelevant provision.⁷⁴⁸ The executive order's restrictions on access to classified information also appear to apply to former presidents and vice presidents.⁷⁴⁹ We therefore decline to adopt the argument that compliance with the

⁷⁴⁷ *E.g.*, *Trump v. United States*, No. 22-13005, 2022 WL 4366684, at *8; Superseding Indictment ¶¶ 18-19, *United States v. Trump*, No. 23-cr-80101, ECF No. 85.

⁷⁴⁸ *See* 44 U.S.C. § 2204(a)(1)(A).

⁷⁴⁹ *See* nn.744-46 above.

Presidential Records Act authorizes former presidents and vice presidents to retain national defense information in unsecured and unapproved locations.⁷⁵⁰

As explained in Chapters Ten, Twelve, and Thirteen, we do consider the historical practices of former presidents and vice presidents—including Mr. Reagan’s treatment of his diaries—when evaluating whether Mr. Biden acted willfully and when weighing the factors set forth in the Principles of Federal Prosecution.

B. Related to the national defense

The Espionage Act, including Section 793(e), is concerned with “information relating to the national defense,” which is distinct from but related to the term “classified information.”⁷⁵¹ “Classified information” is defined by the executive order as information whose “unauthorized disclosure could reasonably be expected to cause identifiable or describable damage to the national security[.]”⁷⁵² Information relating to the national defense (often referred to as “national defense information”) is not defined in the Espionage Act and so its meaning has been construed by courts. As the Supreme Court held in the seminal case *Gorin v. United States*, “national defense” is a “generic concept of broad connotations, referring to military and naval

⁷⁵⁰ Additionally, the Presidential Records Act makes no mention of the relevant criminal statutes and there is no conflict between the Act and those criminal laws. See *Carcieri v. Salazar*, 555 U.S. 379, 395 (2009) (“Absent a clearly expressed congressional intention, an implied repeal will only be found where provisions in two statutes are in irreconcilable conflict, or where the latter Act covers the whole subject of the earlier one and is clearly intended as a substitute.”) (cleaned up).

⁷⁵¹ Compare 18 U.S.C. § 793 (concerning information “relating to the national defense”), with 18 U.S.C. § 1924 (concerning “classified information of the United States,” which is statutorily defined as “information originated, owned, or possessed by the United States Government concerning the national defense or foreign relations of the United States that has been determined pursuant to law or Executive order to require protection against unauthorized disclosure in the interests of national security.”).

⁷⁵² Executive Order 13526 §§ 1.2, 1.4, 6.1(i).

establishments and the related activities of national preparedness.”⁷⁵³ It includes “all matters directly and reasonably connected with the defense of our nation against its enemies.”⁷⁵⁴

Information relating to the national defense must be “closely held” and not lawfully “made public” or “available to the general public.”⁷⁵⁵ But “[t]he mere fact that similar but unofficial information is publicly available does not automatically remove information in closely-held documents from the realm of ‘national defense’ information.”⁷⁵⁶

In determining whether information relates to the national defense under the Espionage Act, the fact that the information is classified is neither sufficient nor necessary, but it is “highly probative” evidence.⁷⁵⁷

⁷⁵³ *Gorin v. United States*, 312 U.S. 19, 28 (1941).

⁷⁵⁴ *Id.* at 30; see *United States v. Drummond*, 354 F.2d 132, 151-52 (2d. Cir. 1965) (applying *Gorin* definition to 18 U.S.C. § 794 and finding jury instructions “more than ample” where district court instructed jury to consider documents as well as testimony about their content and significance to determine whether standard was met).

⁷⁵⁵ *Morison*, 844 F.2d at 1071-72; see also *Hung*, 629 F.2d at 918 n.9 (publicly available information not national defense information under the Espionage Act); *United States v. Dedeyan*, 548 F.2d 36, 39-40 (4th Cir. 1978) (affirming jury instruction for Section 793(f) stating information did not relate to the national defense if it was “made public [by the government and] . . . is found in sources lawfully available to the general public” or if government “made no effort to guard such information”).

⁷⁵⁶ *United States v. Squillacote*, 221 F.3d 542, 579 (4th Cir. 2000).

⁷⁵⁷ *Rosen*, 445 F. Supp. 2d at 623. Jury instructions follow this principle. *E.g.*, Jury Charge at 22-23, *United States v. Schulte*, No. 17-cr-548 (S.D.N.Y. July 8, 2022), ECF No. 879 (“In determining whether material is ‘closely held,’ you may consider whether it has been classified by appropriate authorities and whether it remained classified on the date or dates pertinent . . . I caution you that the mere fact that information is classified does not mean that the information qualifies as NDI.”); Court’s Instructions to the Jury at 20, *Brown*, No. 21-cr-348, ECF No. 304 (same); Government’s Proposed Jury Instructions at 44, *Sterling*, No. 1:10-cr-485, ECF No. 258 (“[Y]ou are to determine whether certain information in this case was national defense information. That is not the same as ‘classified information.’ However, you may consider the fact that information was classified in determining whether the

C. Willfully retains

Finally, the government must prove that a defendant willfully retained the material and failed to deliver it to an officer or employee “entitled to receive” the information. The statute does not define who is “entitled to receive” the information, so again, courts have looked to the governing rules concerning the handling of classified materials, primarily the executive order.⁷⁵⁸ Generally, those entitled to receive the information are people with the requisite security clearance and the need to know.⁷⁵⁹

Willfulness is a heightened *mens rea*, which as articulated by the Supreme Court in *Bryan v. United States*, requires proof “that the defendant acted with knowledge that his conduct was unlawful.”⁷⁶⁰ Under the Espionage Act, an act is willful when “it is done voluntarily and intentionally and with the specific intent to do something that the law forbids. That is to say, with a bad purpose either to disobey or to disregard the law.”⁷⁶¹ While willfulness requires proving an intent to disobey

information at issue was national defense information.”); Final Jury Instructions at 46, *Ford*, No. 05-cr-235 (“In determining whether material is ‘closely held,’ you may consider whether it has been classified by appropriate authorities and whether it remained classified on the date or dates pertinent . . .”).

⁷⁵⁸ *Morison*, 844 F.2d at 1075 (“the words ‘entitled to receive’ in [18 U.S.C. § 793(d) and (e)] can be limited and clarified by the Classification Regulations . . .”); *Rosen*, 445 F. Supp. 2d at 622 (“the rule regulating who is ‘entitled to receive’ is the Executive Order setting forth a uniform classification system for national security information”).

⁷⁵⁹ *Rosen*, 445 F. Supp. 2d at 622-23.

⁷⁶⁰ *Bryan v. United States*, 524 U.S. 184, 191-92 (1998); *accord Ratzlaf v. United States*, 510 U.S. 135, 136-37 (1994); *United States v. Bursey*, 416 F.3d 301, 308-09 (4th Cir. 2005).

⁷⁶¹ *Morison*, 844 F.2d at 1071; *accord* Court’s Instructions to the Jury at 22, *Brown*, No. 21-cr-348, ECF No. 304; Government’s Proposed Jury Instructions at 15, *Sterling*, No. 1:10-cr-485, ECF No. 258; Final Jury Instructions at 19, *Ford*, No. 05-cr-235.

the law, courts have applied *Bryan*'s standard of "simple willfulness" to Section 793(e) and rejected any need for the government to prove an intent to cause harm.⁷⁶²

Accordingly, to prove a violation of Section 793(e) we would need to show that Mr. Biden knowingly retained national defense information and failed to deliver it to an appropriate government official, and that he knew this conduct was unlawful. As discussed in more detail below, because of the interrelation between "national defense information" and "classified information," when evaluating a potential Section 793(e) charge, the Department considers whether the information the person possessed was classified and whether the person knew it was classified.

II. UNAUTHORIZED DISCLOSURE OF NATIONAL DEFENSE INFORMATION

Section 793(e) also prohibits the willful communication, delivery, or transmission of national defense information to a person not entitled to receive it. The first two elements, unauthorized possession and relating to the national defense, are identical to those addressed above in sections I.A. and I.B. The element of willful disclosure to a person not entitled to receive is addressed below.

⁷⁶² *United States v. Hitzelberger*, 991 F. Supp. 2d 101, 107-08 (D.D.C. Dec. 3, 2013) (applying *Bryan*'s willfulness standard to Section 793(e) and explaining "the core of 'willful' misconduct is to act with the knowledge or intent to disregard the law, not an evil intent to injure the United States"); *United States v. Drake*, 818 F. Supp. 2d 909, 918 (D. Md. 2011) (applying *Bryan*'s willfulness standard to Section 793(e) and noting the definition is consistent with Fourth Circuit precedent predating *Bryan*); *see also United States v. Kim*, 808 F. Supp. 2d 44, 54 (D.D.C. 2011) (applying *Bryan*'s willfulness standard to Section 793(d)).

A. Willfully communicates, delivers, or transmits to a person not entitled to receive

Just as with retention, disclosure under Section 793(e) requires that the defendant act willfully—that is, with the intent to do something the law forbids.⁷⁶³ A person is not entitled to receive national defense information if he or she lacks a need to know and an appropriate clearance as required by the executive order.⁷⁶⁴

For an oral disclosure of information (as opposed to the disclosure of a classified document), the government must also prove that “the possessor has reason to believe [the information] could be used to the injury of the United States or to the advantage of any foreign nation.”⁷⁶⁵ Accordingly, to establish that Mr. Biden violated Section 793(e) when he read information from his notebooks to his ghostwriter, we would need to prove that he acted with an intent to violate the law and had reason to believe the information he disclosed could be used to harm the United States or benefit a foreign nation.

⁷⁶³ *Rosen*, 445 F. Supp. 2d at 625-26 (applying willfulness standard to disclosure under Sections 793(d) and 793(e)).

⁷⁶⁴ See nn.758-59 above; Chapter One.

⁷⁶⁵ 18 U.S.C. § 793(e); *Rosen*, 445 F. Supp. 2d at 625-26 (when disclosure involves intangible information government must prove this “additional and significant scienter requirement” that is analogous to bad faith, but this requirement does not apply in instances where the disclosure is through a tangible medium such as a document); *accord Drake*, 818 F. Supp. 2d at 917 (“Section 793(e) provides for different scienter requirements depending on the character of the national defense item or data that a defendant is charged with possessing. In cases like this one, involving documents, the defendant need only have acted willfully, as a defendant will more readily recognize a document relating to the national defense based on its content, markings or design than it would intangible or oral ‘information’ that may not share such attributes.”).

III. OTHER CRIMINAL PROVISIONS

A. Other Espionage Act provisions

The other provisions of the Espionage Act do not fit the facts of this case. Subsections (a), (b), and (c) of Section 793 are facially inapplicable because at no point did we find evidence that Mr. Biden intended or had reason to believe the information would be used to injure the United States or to benefit a foreign nation, which is a requirement of those subsections.⁷⁶⁶ Subsection (d) also does not apply, because it requires a failure to deliver materials *on demand*, and when asked to return any classified materials from his vice presidency, Mr. Biden consented to searches and returned all potentially classified materials that were discovered.⁷⁶⁷

Among other reasons, Section 793(f) does not fit because that subsection requires removal of national defense information from “its proper place of custody” by a person who has lawful possession. That is a difficult requirement to apply here because presidents and vice presidents are generally permitted to retain classified information at their residences while in office. Because Section 793(f) can only be violated when Mr. Biden had lawful possession (*i.e.* when he was vice president) any removal of classified information would have occurred while Mr. Biden was still vice president, when that conduct was not proscribed by the executive order issued

⁷⁶⁶ 18 U.S.C. § 793(a) requires acting “for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation.” Subsections (b) and (c) incorporate this requirement by reference to “the purpose aforesaid.”

⁷⁶⁷ 18 U.S.C. § 793(d) criminalizes conduct where the defendant “fails to deliver [the national defense information] on demand to the officer or employee of the United States entitled to receive it.”

pursuant to the president’s authority to control national security information. It is at least arguable that as vice president, Mr. Biden could not have removed national defense information “from its proper place of custody,” as the statute requires, because his home and other locations were proper places of custody during his time in office. In any case, interpreting Section 793(f) to apply to a sitting vice president’s conduct in that context would raise significant separation of powers concerns.⁷⁶⁸ Where such concerns exist, the Supreme Court and the Department of Justice have declined to interpret statutes as applying to the president⁷⁶⁹ or vice president⁷⁷⁰ absent clear statutory text.

⁷⁶⁸ *United States v. United States District Court*, 407 U.S. 297, 310 (1972) (President “has the fundamental duty, under Art. II, § 1, of the Constitution, to ‘preserve, protect and defend the Constitution of the United States.’”); *Disclosure of Grand Jury Material to the Intelligence Community*, 21 Op. O.L.C. 159, 172 (1997) (“The Constitution vests the President with responsibility over all matters within the executive branch that bear on national defense and foreign affairs, including the collection and dissemination of national security information.”).

⁷⁶⁹ *See Franklin v. Massachusetts*, 505 U.S. 788, 800-01 (1992) (out of respect for separation of powers, “[w]e would require an express statement by Congress” before applying the Administrative Procedure Act to the president); *The Constitutional Separation of Powers Between the President and Congress*, 20 Op. O.L.C. 124, 178 (1996) (“plain statement rule” is rooted in principles of constitutional avoidance and separation of powers); *Application of Consumer Credit Reporting Reform Act of 1996 to Presidential Nomination and Appointment Process*, 21 Op. O.L.C. 214, 214 (1997) (“It is a well settled principle of law, applied frequently by both the Supreme Court and the executive branch, that statutes that do not expressly apply to the President must be construed as not applying to him if such application would involve a possible conflict with his constitutional prerogatives.”); *Application of 28 U.S.C. § 458 to Presidential Appointments of Federal Judges*, 19 Op. O.L.C. 350, 351-53 (1995) (articulating the “well-settled principle that statutes that do not expressly apply to the President must be construed as not applying to the President if such application would involve a possible conflict with the President’s constitutional prerogatives”).

⁷⁷⁰ The Executive power is vested in the president, U.S. CONST. art. II § 1, and the vice president has limited constitutionally enumerated functions, U.S. CONST. art. I § 3, amends. XII, XX, XXV (vice president’s constitutional duties include serving as president of the Senate, opening the certified votes from electors for the president and vice president, and duties related to the death, disqualification, or inability of the president). Thus, it could be argued that the separation of powers concerns giving rise to the express statement rule are

B. Unauthorized removal of classified materials

We also considered the applicability of 18 U.S.C. § 1924, which criminalizes the unauthorized removal of classified material by an officer, employee, contractor, or consultant of the United States. In addition to concerns about the statute’s five-year limitations period,⁷⁷¹ the statute’s text suggests that it should not apply to the conduct of a sitting president or vice president.

First, the statute requires removal “without authority,” and when Mr. Biden was vice president he was authorized to take and keep classified materials at his private residences. Because any act of removal must have occurred when Mr. Biden was vice president, it was arguably done with authority.

Second, the statute does not explicitly apply to a president or vice president, and given the significant separation of powers concerns that would result from the statute’s application to a sitting president or vice president, the express statement rule cautions against construing the statute to apply.⁷⁷²

less applicable to the vice president. *See* Mem. from Laurence H. Silberman, Dep. Att’y Gen., for Richard T. Burrell, Office of the President, *Re: Conflict of Interest Problems Arising out of the President’s Nomination of Nelson A. Rockefeller to be Vice President under the Twenty-Fifth Amendment to the Constitution*, at 2 (Aug. 28, 1974). Nonetheless, given that the vice president is an elected constitutional officer who is regularly delegated significant executive duties, the Department of Justice has long applied the express statement rule to vice presidents. *Whether the Office of the Vice President is an “Agency” for Purposes of the Freedom of Information Act*, 18 Op. O.L.C. 10, 11 (1994) (“Because the Vice President is also a constitutional officer, the same ‘express statement’ rule should apply” (citation omitted) in the context of determining whether the Freedom of Information Act applies to the Office of the Vice President.); *Conflict of Interest Problems*, at 5-6 (concluding that a federal conflict-of-interest statute does not apply to either the president or vice president because “[i]t would be strange for Congress to subject the President and the Vice President to possible criminal prosecution without naming them explicitly . . .”).

⁷⁷¹ 18 U.S.C. § 3282.

⁷⁷² *See* nn.768-70 above.

Finally, because Section 1924 requires that a defendant “knowingly remove[d]” classified information “without authority and with the intent to retain [it] at an unauthorized location,” a prosecution under this statute would face many of the same evidentiary hurdles discussed in Chapters Eleven and Twelve.

C. Removing, concealing, or destroying a government record

Title 18 U.S.C. § 2071 criminalizes removing, concealing, or destroying government records. While there is scant case law, most courts that have addressed the statute’s elements have required proof that the defendant deprived, or attempted to deprive, the government of its ability to use a given record.⁷⁷³ We found no evidence that the government was deprived of the use of any of the materials recovered during this investigation or that Mr. Biden acted with the intent to deprive the government of any record. In fact, no one in the government seems to have noticed that any classified materials were missing at any point from the time Mr. Biden left office on January 20, 2017, until marked classified documents were found at the Penn Biden

⁷⁷³ *United States v. Hitselberger*, 991 F. Supp 2d 108, 122-24 (D.D.C. March 5, 2014) (analyzing case law and concluding “the government will need to prove that [the defendant] obliterated information from the public record”); *United States v. Rosner*, 352 F. Supp. 915, 921 (S.D.N.Y. 1972); *United States v. North*, 708 F. Supp. 364, 369 n.3 (D.D.C. 1988); accord *United States v. Poindexter*, 725 F. Supp. 13, 20 (D.D.C. 1989) (“The obvious purpose of the statute is to prohibit the impairment of sensitive government documents”); *McInerney v. United States*, 143 F. 729, 730-31 (1st Cir. 1906) (Section 2071’s predecessor statute was “enacted for the purpose of protecting records, papers, and proceedings of courts of justice, and papers, documents, and records filed or deposited in the public offices of the federal government”); *United States v. De Groat*, 30 F. 764, 765 (E.D. Mich. 1887) (the “essential element” of Section 2071’s predecessor statute was “the specific intent to destroy them *as records* of a public office; or in other words, to obliterate or conceal them as evidence of that which constitutes their value as public records, or to destroy or impair their legal effect or usefulness as a record of our governmental affairs”); *but see United States v. Lang*, 364 F.3d 1210, 1221-22 (10th Cir. 2004) (finding that “a copy of a government record itself functions as a record for purposes of § 2071”), *cert. granted, rev’d on other grounds*, 543 U.S. 1108 (2005), and *opinion reinstated in part*, 405 F.3d 1060 (10th Cir. 2005).

Center on November 2, 2022. It is therefore unlikely we could prove deprivation. Section 2071 also requires proof of willfulness, a heightened *mens rea* discussed above in sections I.C, II.A. And so even putting aside the issue of deprivation, any Section 2071 charge would fail for the same reasons discussed in Chapters Eleven and Twelve.

CHAPTER TEN

HISTORICAL BACKGROUND

I. HISTORICALLY, FORMER PRESIDENTS AND VICE PRESIDENTS TREATED ALL RECORDS AS PERSONAL PROPERTY

For most of our nation's history, presidents and vice presidents treated all records from their respective administrations—including records relating to issues of national security—as personal property that they took with them upon leaving office.⁷⁷⁴ A congressionally commissioned study found in 1977 that, when leaving office, past presidents routinely took national security files including “briefing materials for the President, records of negotiations with foreign governments, correspondence with foreign heads of state or governments, [and] correspondence with or directives to agencies within the Executive branch on foreign affairs.”⁷⁷⁵

The practice of outgoing presidents and vice presidents retaining their records was reconsidered in the 1970s, culminating in the passage of the Presidential Records Act in 1978.⁷⁷⁶ The Act provides that all “Presidential records”—documents created

⁷⁷⁴ See *Nixon v. United States*, 978 F.2d 1269, 1270 (D.C. Cir. 1992) (remarking upon the “long and unbroken history relating to the use, control, and disposition of presidential papers” and concluding “that Mr. Nixon, like every President before him, had a compensable property interest in his presidential papers”); *Title to Presidential Papers—Subpoenas*, 43 Op. Att’y Gen. 11, 11 (1974) (former presidents’ ownership of materials from their administration was a matter of “almost unvaried understanding of all three branches of the Government since the beginning of the Republic”); FINAL REPORT OF THE NATIONAL STUDY COMMISSION ON RECORDS AND DOCUMENTS OF FEDERAL OFFICIALS at 16 (March 31, 1977) (“The papers of Vice Presidents of the United States have traditionally been disposed of in the same manner as Presidential papers; that is, Vice Presidents have removed them when they left office.”).

⁷⁷⁵ FINAL REPORT OF THE NATIONAL STUDY COMMISSION at 14-15.

⁷⁷⁶ Before the Presidential Recordings and Materials Preservation Act of 1974, which applied only to former President Nixon, “Presidents exercised complete dominion and control over their presidential papers.” *Nixon*, 978 F.2d at 1277. “In 1978, Congress prospectively

or received by the president or his staff to assist or advise him in carrying out his official duties—belong to the government.⁷⁷⁷ In contrast, “[p]ersonal records” remain the property of the former officeholder.⁷⁷⁸

The Act defines “personal records” to mean “all documentary materials, or any reasonably segregable portion thereof, of a purely private or nonpublic character which do not relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President.”⁷⁷⁹ Such personal records include “diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal which are not prepared or utilized for, or circulated or communicated in the course of, transacting Government business.”⁷⁸⁰

While the Presidential Records Act marked a turning point in the treatment of presidential materials, as discussed in Chapter Nine, the Act does not exempt former presidents and vice presidents from specific prohibitions on removing, retaining, losing, or disclosing classified and national defense information.⁷⁸¹

After the Act’s passage, at least one former president, President Reagan, left office with his presidential diaries, which contained classified information, and stored those diaries at his private home. The Department of Justice, the National Archives, and others knew that President Reagan treated his diaries (containing classified

abolished presidential ownership of White House materials with the Presidential Records Act.” *Id.* at 1277 n.19.

⁷⁷⁷ 44 U.S.C. §§ 2201-02.

⁷⁷⁸ *Id.* §§ 2201-03; *Nixon*, 978 F.2d at 1277 n.19.

⁷⁷⁹ 44 U.S.C. §§ 2201(3).

⁷⁸⁰ *Id.*

⁷⁸¹ *See* Executive Order 13526 §§ 4.1 4.4; 18 U.S.C. § 793.

information) as personal property, but no agency took action to recover the classified materials or to investigate or prosecute the former president.

II. THE REAGAN DIARIES

The first president subject to the Presidential Records Act, Mr. Reagan kept a diary in which he wrote an entry nearly each day while he served as president.⁷⁸² His diaries contained information that was classified up to Top Secret/Sensitive Compartmented Information level, and remained so until 2007 or later, years after Mr. Reagan died. Mr. Reagan took all five volumes of his diaries home with him when he left office, and at that time, it was known to the Department of Justice, the Iran-Contra Independent Counsel, and the National Archives that (1) Mr. Reagan's diaries contained Top Secret classified information, and (2) Mr. Reagan treated his diaries as personal property that was not in the National Archives' possession.⁷⁸³ The

⁷⁸² Ronald Reagan, *THE REAGAN DIARIES* ix (Douglas Brinkley ed., First Harper Perennial Ed. 2009).

⁷⁸³ Other former presidents kept diaries or journals that they took with them after they left office. For example, President George H. W. Bush regularly kept a dictated diary that was later quoted extensively in published works. Interview by George W. Bush with Jon Meacham, Author, *DESTINY AND POWER*, (Nov. 8, 2015), <https://www.c-span.org/video/?400044-2/destiny-power>; JON MEACHAM, *DESTINY AND POWER: THE AMERICAN ODYSSEY OF GEORGE HERBERT WALKER BUSH* (Kindle ed. 2015); George H. W. Bush & Brent Scowcroft, *A WORLD TRANSFORMED* (First Vintage Books ed. 1999). President Carter also kept a dictated diary that was typed up by his secretary and that he took with him upon leaving office. Jimmy Carter, *WHITE HOUSE DIARY* xii-xv (2010). Mr. Carter published excerpts from that diary—keeping the original, full version with him at his home and transferring a copy to his presidential library. *Id.* While there is some reason to think that the Bush and Carter diaries may have also contained classified information, the historical record is clear that Mr. Reagan's diaries did and that relevant government entities knew of Mr. Reagan's possession of that material.

We also examined the practices of other former Presidents predating the Presidential Records Act, but we were unable to glean much from that inquiry. Like the key statutory provision, 18 U.S.C. § 793(e), the modern classification system did not come into being until the mid-20th century. See Cong. Research Serv., *The Protection of Classified Information:*

Department of Justice also repeatedly described the diaries in public court filings as Mr. Reagan's personal records.⁷⁸⁴

Mr. Reagan's personal possession of his diaries, and the fact that portions of his diaries were classified up to the Top Secret level, was also known to the Congress⁷⁸⁵ and the federal courts.⁷⁸⁶ In the wake of the Iran-Contra affair, Mr. Reagan produced relevant excerpts from his diaries to various investigative bodies, including congressional committees and the Independent Counsel.⁷⁸⁷ During the Independent Counsel's prosecution of former National Security Adviser John

The Legal Framework 1 (updated Feb. 2, 2023). Two Presidents during this period died in office (Franklin D. Roosevelt and John F. Kennedy), and several appear to have entered agreements while in office expressly contemplating their continued access to classified information in their presidential papers after the end of their terms. See Letter for James B. Rhoads and Robben W. Fleming from Gerald R. Ford, annex B, § 5(c)(vii), (d), (g) (Dec. 13, 1976), <https://www.fordlibrarymuseum.gov/library/forddeed.asp>; Letter for Lawson B. Knott, Jr., from Lyndon B. Johnson, §§ 2(c)(ii) & (e), 5 (Aug. 13, 1965), reprinted in 111 Cong. Rec. 21661-62 (1965); Letter for Franklin Floete from Dwight D. Eisenhower, §§ 5, 7(a), 8 (Apr. 13, 1960), reprinted in *The "Public Documents Act": Hearings on H.R. 16902 and Related Legislation Before the Subcomm. on Printing of the H. Comm. on H. Admin., 93d Cong., 2d Sess.* 134 (1974). Nor were we able to find specific evidence that the Department of Justice was contemporaneously aware of any instances where these earlier Presidents kept classified materials without appropriate safeguards. For these and other reasons, what we have been able to discern about the earlier history sheds little light on the question at hand and our analysis focuses on the Reagan diaries as the most probative historical example.

⁷⁸⁴ See, e.g., Memorandum in Support of Motion to Quash Subpoena to Archivist and Statement of Interest by the Department of Justice at 5-6, *United States v. Poindexter*, Crim. No. 88-0080-01 (HHG) (D.D.C. Dec. 6, 1989) (DOJ Mot. to Quash in *Poindexter*).

⁷⁸⁵ Lawrence Walsh, FINAL REPORT OF THE INDEPENDENT COUNSEL FOR IRAN/CONTRA MATTERS: VOLUME III at 686 n.30 (1993) ("Access to the President's relevant diary entries was provided by the President to the Tower Commission, the Congressional Committees and to the Independent Counsel, who reviewed them in 1987.")

⁷⁸⁶ *United States v. Poindexter*, 732 F. Supp. 135, 137-41 (D.D.C. Jan. 30, 1990).

⁷⁸⁷ Memorandum of Points and Authorities in Support of Motion by Former President Ronald W. Reagan to Quash Subpoena at 32-33, *United States v. Poindexter*, Crim. No. 88-0080-01 (HHG) (D.D.C. Dec. 6, 1989) (Reagan Mot. to Quash in *Poindexter*); David E. Rosenbaum, *Reagan Will Allow Investigators to See Diary Items on Iran Affair*, N.Y. TIMES (Apr. 9, 1987), <https://www.nytimes.com/1987/04/09/world/reagan-will-allow-investigators-to-see-diary-items-on-iran-affair.html>.

Poindexter, Poindexter sought Mr. Reagan's diary entries for purposes of his criminal defense.⁷⁸⁸ In numerous public filings and judicial opinions in 1989 and 1990 after Mr. Reagan left office, the Department of Justice and the U.S. District Court both acknowledged that Mr. Reagan's diaries contained information that was classified, including Top Secret information about sensitive matters.⁷⁸⁹

While this litigation was ongoing, Mr. Reagan was a private citizen living in California, where he kept his diaries at his private home, apparently outside of facilities that were authorized to store Top Secret information.⁷⁹⁰ According to the editor of the published versions of Mr. Reagan's diaries, "[f]or several years after their return to California, the Reagans would often sit together in their den after dinner, reading aloud from their diaries and reminiscing about their White House years."⁷⁹¹ While it is unlikely that, after leaving office, Mr. Reagan's den was approved for the storage of Top Secret/Sensitive Compartmented Information, Mr. Reagan retained Secret Service protection at his home for the remainder of his life.⁷⁹² Mr. Reagan maintained the ability to receive and handle classified information after leaving the

⁷⁸⁸ Memorandum in Support of Motion to Quash Subpoena to Archivist and Statement of Interest by the Department of Justice at 5-6, *United States v. Poindexter*, Crim. No. 88-0080-01 (HHG) (DOJ Mot. to Quash in *Poindexter*); Lawrence Walsh, *Final Report of the Independent Counsel for Iran/Contra Matters: Volume III* at 686 n.30 (1993).

⁷⁸⁹ E.g., DOJ Mot. to Quash at 5-7, *United States v. Poindexter*, Crim. No. 88-0080-01 (HHG); *Poindexter*, 732 F. Supp. at 137-41.

⁷⁹⁰ See Ronald Reagan, *THE REAGAN DIARIES* x (Douglas Brinkley ed., First Harper Perennial ed. 2009).

⁷⁹¹ *Id.* It is not clear that the Department of Justice knew, at the time of the *Poindexter* litigation, how Mr. Reagan's diaries were stored, or who had access to them.

⁷⁹² Act of Sept. 15, 1965, Pub. L. No. 89-186, 79 Stat. 791 (1965) (codified as amended at 18 U.S.C. § 3056); Former Reagan Official Tr. at 51-52 (Mr. Reagan's private residence had Secret Service protection that involved converting portions of the home into Secret Service Space. Former Reagan Official described the home as a "very tight secured 24/7 protected facility.").

White House, as he continued to receive national security briefings at his office space located a few miles from his home, and he consulted with President George H. W. Bush about foreign affairs.⁷⁹³ Notably, Secret Service agents collected daily intelligence briefing materials after Mr. Reagan had finished with them and ensured that they were properly destroyed.⁷⁹⁴

The wider American public also knew of the existence of Mr. Reagan's diaries. Indeed, the diaries served as sources for at least three publications that Mr. Reagan or his representatives authorized: (1) *An American Life*,⁷⁹⁵ Mr. Reagan's autobiography published in 1990; (2) *Dutch*, a biography authored by Edmund Morris and published in 1999;⁷⁹⁶ and (3) *The Reagan Diaries*, a collection of the diaries themselves first published in 2007 after Mr. Reagan's death.⁷⁹⁷ Notably, *An American Life* was being written during the *Poindexter* litigation⁷⁹⁸ and includes dozens of verbatim quotations from Mr. Reagan's diaries.⁷⁹⁹ And even as early as 1989, the classified nature of Mr. Reagan's diaries was discernable to any member of the public who read filings and opinions from the *Poindexter* litigation.⁸⁰⁰

⁷⁹³ Former Reagan Official Tr. at 26-41.

⁷⁹⁴ *Id.*

⁷⁹⁵ Ronald Reagan, *AN AMERICAN LIFE* (First Threshold trade paperback ed. Jan. 2011).

⁷⁹⁶ Edmund Morris, *DUTCH* (Random House 1999).

⁷⁹⁷ Ronald Reagan, *THE REAGAN DIARIES* (Douglas Brinkley ed., First Harper Perennial ed. 2009).

⁷⁹⁸ Robert Lindsey, *GHOST SCRIBBLER: SEARCHING FOR REAGAN, BRANDO AND THE KING OF POP*, Chapter 37 (2d ed. 2014) (explaining that ghostwriter Robert Lindsey began helping Mr. Reagan write the book after a March 1989 interview).

⁷⁹⁹ *E.g.*, Reagan, *AN AMERICAN LIFE* 445-47.

⁸⁰⁰ *E.g.*, DOJ Mot. to Quash at 5-7, *United States v. Poindexter*, Crim. No. 88-0080-01 (HHG); *Poindexter*, 732 F. Supp. at 137-41.

Mr. Reagan died in 2004.⁸⁰¹ In 2005, Nancy Reagan provided his diaries to the Reagan Library,⁸⁰² which is run by the National Archives,⁸⁰³ so that the diaries could be publicly displayed as part of the collection of Mr. Reagan's personal papers.⁸⁰⁴ At that time, the Archives worked with officials at the National Security Council to identify several pages of material that were still classified up to the Top Secret/Sensitive Compartmented Information level. Archives officials removed all pages containing classified information from the diaries so they could be publicly displayed.

Meanwhile, a historian reviewed the unclassified portions of Mr. Reagan's diaries and compiled a collection of them for publication in 2007.⁸⁰⁵ *The Reagan Diaries* was a bestseller,⁸⁰⁶ and a New York Times article from May 2007 remarked that "readers can get a retroactive sense of being in on some classified information."⁸⁰⁷ Today, anyone can view online the full set of Mr. Reagan's presidential diaries,

⁸⁰¹ Press Release, The White House, *Announcing the Death of Ronald Reagan* (June 6, 2004), <https://georgewbush-whitehouse.archives.gov/news/releases/2004/06/20040606-1.html>.

⁸⁰² Anna Bakalis, *Library Gets First Look at 'Reagan Diaries'*, VC STAR (May 20, 2007), <https://archive.vcstar.com/news/library-gets-first-look-at-reagan-diaries-ep-375630016-352887941.html>.

⁸⁰³ *Ronald Reagan Presidential Library & Museum: About Us*, Ronald Reagan Presidential Library & Museum, <https://www.reaganlibrary.gov/about-us> (last visited Feb. 2, 2024).

⁸⁰⁴ Interview of Michael Duggan & Douglas Brinkley (Apr. 27, 2007), <https://www.c-span.org/video/?198343-1/the-reagan-diaries#>.

⁸⁰⁵ Anna Bakalis, *Library Gets First Look at 'Reagan Diaries'*, VC STAR (May 20, 2007), <https://archive.vcstar.com/news/library-gets-first-look-at-reagan-diaries-ep-375630016-352887941.html>.

⁸⁰⁶ *BEST SELLERS: July 29, 2007*, N.Y. TIMES (July 29, 2007), <https://archive.nytimes.com/query.nytimes.com/gst/fullpage-9C05E7DD1431F93AA15754C0A9619C8B63.html>.

⁸⁰⁷ Motoko Rich, *History Made Intimate Through Reagan's Diaries*, N.Y. TIMES (May 3, 2007), <https://www.nytimes.com/2007/05/03/books/03diar.html>.

excluding a small number of excerpts that were redacted for personal reasons or national security concerns.⁸⁰⁸

There is no indication that Mr. Reagan acted with any ill intent, attempted to secret away his diaries, or hid their existence or content from appropriate authorities. Quite the opposite, he disclosed the existence of his diaries to several investigative bodies during the Iran-Contra investigations. And during the *Poindexter* litigation, Mr. Reagan's personal attorneys and the Department of Justice repeatedly asserted that the diaries were Mr. Reagan's personal property.⁸⁰⁹ But it was apparent his diaries contained classified information. Indeed, some diary entries specifically described information recorded there as "very hush, hush" or "top secret."⁸¹⁰ Some entries were obviously classified at the time he wrote them; some continued to be classified until at least 2007; and some contain national security information that appears to be sensitive to this day.⁸¹¹

⁸⁰⁸ *E.g.*, *White House Diaries, Diary Entry 01/20/1988*, Ronald Reagan Presidential Foundation & Institute, <https://www.reaganfoundation.org/ronald-reagan/white-house-diaries/diary-entry-01201988/> (last visited Feb. 2, 2024).

⁸⁰⁹ Reagan Mot. to Quash at 1-2, *United States v. Poindexter*, Crim. No. 88-0080-01 (HHG).

⁸¹⁰ 12/1/23 National Security Council production of classified excerpts from Reagan diaries.

⁸¹¹ We reviewed some of the materials that were deemed to be classified at the Top Secret/Sensitive Compartmented Information level when the National Security Council conducted prepublication review for the *Reagan Diaries*. While we did not submit those unpublished entries for a new classification review, the subject matter appears to us to be sensitive even today. 12/1/23 National Security Council production of classified excerpts from Reagan diaries. Additionally, National Archives officials seem to have inquired about the classification status of the diaries in 2022 and were told that the diaries remained classified at the Top Secret/Sensitive Compartmented Information level. NARA Employee Tr. at 61-63.

CHAPTER ELEVEN

ANALYSIS OF THE EVIDENCE – CLASSIFIED AFGHANISTAN DOCUMENTS

I. INTRODUCTION

There is evidence that, after his vice presidency, Mr. Biden willfully retained marked classified documents about Afghanistan and unmarked classified handwritten notes in his notebooks, both of which he stored in unsecured places in his home. He had no legal authority to do so, and his retention of these materials, and disclosure of classified information from his notebooks to his ghostwriter, risked serious damage to America's national security.

But the evidence falls short of proof beyond a reasonable doubt that Mr. Biden retained and disclosed these classified materials willfully. The Department's prior treatment of former presidents and vice presidents who kept national security materials also counsels against prosecution of Mr. Biden, as do the most relevant aggravating and mitigating facts presented here.⁸¹² Therefore, under established Department principles, we decline criminal charges against Mr. Biden relating to the classified Afghanistan documents and his classified notebooks.⁸¹³ We would do so even if we were not bound by the Office of Legal Counsel's legal conclusion that a sitting president may not be charged with federal crimes.⁸¹⁴

In reaching these conclusions, we consider two questions. First, whether the evidence proves beyond a reasonable doubt that a crime occurred; and then, if so,

⁸¹² See U.S. Dep't of Just., Just. Manual § 9-27.320 (2023).

⁸¹³ See *id.* at §§ 9-27.001, 9-27.220, 9-27.230 (2023).

⁸¹⁴ *A Sitting President's Amenability to Indictment and Criminal Prosecution*, 24 Op. O.L.C. 222, 260 (2000).

whether criminal charges are warranted. Thus, the Department’s Justice Manual requires federal prosecutors to determine whether the person under investigation committed a federal offense and whether “the admissible evidence will probably be sufficient to obtain and sustain a conviction.”⁸¹⁵ Next, the Manual directs prosecutors to evaluate relevant aggravating and mitigating facts and to determine whether criminal charges are supported by a “substantial federal interest.”⁸¹⁶ A prosecutor should seek criminal charges only after considering each of these questions and making “a policy judgment that the fundamental interests of society *require* the application of federal criminal law to a particular set of circumstances[.]”⁸¹⁷

We address the first question, the sufficiency of the evidence, for the classified Afghanistan documents immediately below, then for the classified notebooks in Chapter Twelve. We discuss the second question, whether criminal charges are otherwise warranted, for both sets of classified material in Chapter Thirteen.

II. THERE IS EVIDENCE THAT MR. BIDEN WILLFULLY RETAINED THE CLASSIFIED AFGHANISTAN DOCUMENTS

In a recorded conversation on February 16, 2017, at Mr. Biden’s rental home in Virginia, Mr. Biden told Mark Zwonitzer that Mr. Biden had “just found all the

⁸¹⁵ U.S. Dep’t of Just., Just. Manual § 9-27.220 (2023).

⁸¹⁶ *See id.* at § 9-27.220 (2023). In determining whether prosecution would serve a substantial federal interest, prosecutors should weigh “all relevant considerations,” including: (1) federal law enforcement priorities; (2) the nature and seriousness of the offense; (3) the deterrent effect of prosecution; (4) the person’s culpability; (5) the person’s criminal history, or its absence; (6) the person’s willingness to cooperate in the investigation or prosecution of others; (7) the person’s personal circumstances; (8) the interests of any victims; and (9) the probable sentence or other consequences if the person is convicted; and (10) other relevant facts. *Id.* § 9-27.230.

⁸¹⁷ *Id.* § 9-27.001 (emphasis added).

classified stuff downstairs.”⁸¹⁸ According to what Mr. Biden told Zwonitzer, “all the classified stuff” related to President Obama’s 2009 decision to surge American troops to Afghanistan, and to a pivotal moment when Mr. Biden sent President Obama his handwritten Thanksgiving memo opposing the troop surge.⁸¹⁹ Photos of the Virginia home show that the lowest level “downstairs”—where Mr. Biden told Zwonitzer he had “just found all the classified stuff”—included rooms that Mr. Biden used as work and storage spaces.⁸²⁰

Six years later, during this criminal investigation, the FBI recovered marked classified documents relating to the debate over the 2009 Afghanistan troop surge in a box in Mr. Biden’s Delaware garage.⁸²¹ The classified documents were in folders that also contained drafts of Mr. Biden’s Thanksgiving memo, other source documents for that memo, and other memos establishing Mr. Biden’s strong contemporaneous opposition to the surge.⁸²² The folders of classified Afghanistan documents appear to be files of Mr. Biden’s creation, labeled in his handwriting, and containing memos and intelligence products he removed from the ordinary flow of paper he received as vice president.⁸²³ Inside Mr. Biden’s home office, agents found his “Af/Pak 1” notebook with the classified Thanksgiving memo tucked inside.⁸²⁴

⁸¹⁸ *See* Chapter Five.

⁸¹⁹ *See* Chapters Five and Six.

⁸²⁰ *See* Chapter Five.

⁸²¹ *See* Chapter Six.

⁸²² *See id.*

⁸²³ *See id.*

⁸²⁴ *See id.*

In the same box in the garage where FBI agents found the classified Afghanistan documents, agents also found other documents of great personal importance to Mr. Biden, including photos of his son Beau and documents Mr. Biden filed, accessed, and used in early 2017, during the same time he told Zwonitzer he found the classified documents about Afghanistan in his Virginia home.⁸²⁵ The evidence suggests that Mr. Biden maintained these files himself.

Mr. Biden had a strong motive to keep the classified Afghanistan documents. He believed President Obama's 2009 troop surge was a mistake on par with Vietnam.⁸²⁶ He wanted the record to show that he was right about Afghanistan; that his critics were wrong; and that he had opposed President Obama's mistaken decision forcefully when it was made—that his judgment was sound when it mattered most.⁸²⁷

This evidence provides grounds to believe that Mr. Biden willfully retained the marked classified documents about Afghanistan. If he was not referring to those documents—later found in his garage—when he told Zwonitzer he had “just found all the classified stuff downstairs,” it is not clear what else Mr. Biden could have been referring to.⁸²⁸

Nevertheless, for the reasons below, we believe this evidence is not strong enough to establish Mr. Biden's guilt beyond a reasonable doubt.

⁸²⁵ See Chapters Five and Six.

⁸²⁶ See Chapter Six.

⁸²⁷ See *id.*

⁸²⁸ See Chapters Five and Six.

III. THE EVIDENCE FALLS SHORT OF ESTABLISHING MR. BIDEN'S WILLFUL RETENTION OF THE CLASSIFIED AFGHANISTAN DOCUMENTS BEYOND A REASONABLE DOUBT

In February 2017, when Mr. Biden told Zwonitzer he had “just found all the classified stuff downstairs,” Mr. Biden was at his home in Virginia.⁸²⁹ In December 2022, the FBI recovered the marked classified documents about Afghanistan in the garage of Mr. Biden’s home in Delaware, nearly six years later and over one hundred miles away.⁸³⁰ When the FBI recovered the documents in 2022, Mr. Biden was the sitting president, and he was authorized to have classified documents in his private home. Thus, any criminal charges would most plausibly depend on Mr. Biden’s possession of the Afghanistan documents in the Virginia home in 2017, when he was not in office.

There are at least three defenses likely to create reasonable doubt as to such charges. First, Mr. Biden could have found the classified Afghanistan documents at the Virginia home in 2017 and then forgotten about them soon after. This could convince some reasonable jurors that he did not willfully retain them. Second, Mr. Biden might not have retained the classified Afghanistan documents in the Virginia home at all. They could have been stored, without his knowledge, at his Delaware home since the time he was vice president. This would rebut charges that he willfully retained the documents in Virginia. Finally, Mr. Biden could have found only some of the classified Afghanistan documents in the Virginia home in 2017—the ones in the manila “Afganastan” folder found in the garage box—and it is unclear whether

⁸²⁹ See Chapter Five.

⁸³⁰ See Chapter Six.

this folder contained national defense information. This too would rebut charges that he willfully retained national defense information, as required by the criminal statute.⁸³¹

We discuss each potential defense in turn.

A. Mr. Biden may have found the classified documents in Virginia in February 2017 and then forgotten about them

It is possible that Mr. Biden encountered the classified Afghanistan documents at the Virginia home in February 2017, told Zwonitzer about them, and then, soon after, forgot about them and did not willfully retain them. While such a swift and permanent bout of forgetfulness may seem implausible, several pieces of evidence provide some support for this possibility.

If Mr. Biden discovered classified documents at the Virginia home on February 16, 2017, when he told Zwonitzer he “just found all the classified stuff downstairs,” it may not have been something he found memorable. Mr. Biden, after all, had seen classified documents nearly every day for the previous eight years. As vice president, he regularly—and permissibly—kept classified documents in his home.⁸³² When he spoke to Zwonitzer in February 2017, Mr. Biden had left the White House less than a month earlier. After more than forty years in the highest ranks of government, he was accustomed to having staff members attend to the details of handling, storing, and retrieving classified documents.⁸³³ For a person of his position, the presence of classified documents might not have been noteworthy, and it may have seemed

⁸³¹ See 18 U.S.C. § 793(e).

⁸³² See Chapter Three.

⁸³³ See *id.*

natural that someone else would inevitably take care of it, because, for Mr. Biden, that is how it had nearly always worked.

In response to this defense, the government could note that several weeks before the February 2017 conversation with Zwonitzer, just after leaving the vice presidency, Mr. Biden returned different classified material he found in the Virginia home, giving a slim binder of material possibly relating to foreign leader calls to his personal aide to return to the White House.⁸³⁴ One explanation is that Mr. Biden returned the binder of foreign leader calls because he did not care about it, whereas he intentionally kept the classified Afghanistan documents because he cared about them a great deal.

But another inference the evidence permits is that Mr. Biden returned the binder of classified material to the personal aide because, after leaving office, Mr. Biden did not intend to retain any marked classified documents. As Mr. Biden said in his interview with our office, if he had found marked classified documents after the vice presidency, “I would have gotten rid of them. I would have gotten them back to their source. . . . I had no purpose for them, and I think it would be inappropriate for me to keep clearly classified documents.”⁸³⁵ Some reasonable jurors may credit this statement and conclude that if Mr. Biden found the classified Afghanistan documents in the Virginia home, he forgot about them rather than willfully retaining them.

Mr. Biden’s own words to Zwonitzer provide some support for this conclusion. In the recorded conversation when Mr. Biden told Zwonitzer he had “just found all

⁸³⁴ See Chapter Seven.

⁸³⁵ Biden 10/9/23 Tr. at 41.

the classified stuff downstairs,” Mr. Biden’s tone was remarkably casual. His sole reference to this discovery of classified documents was this brief aside. Mr. Biden did not sound surprised or concerned by the documents he referenced. While reasonable jurors could draw different conclusions from Mr. Biden’s seeming nonchalance, one conclusion is that if Mr. Biden discovered classified documents, it simply was not significant to him and was something he could have quickly forgotten.

After all, the Afghanistan documents and the 2009 troop surge played no role in *Promise Me, Dad*, the book Mr. Biden wrote with Zwonitzer in early 2017.⁸³⁶ There is no reason to believe Mr. Biden intended to discuss the 2009 Afghanistan troop debate in his book, which, as explained in Chapter Five, covered his experiences in 2014 and 2015. In dozens of hours of recorded conversations with Zwonitzer in 2016 and 2017, when Mr. Biden talked about a vast array of topics, the Afghanistan documents never came up again.⁸³⁷ This may suggest that after February 16, 2017, the documents were simply not on Mr. Biden’s mind.

Mr. Biden’s memory also appeared to have significant limitations—both at the time he spoke to Zwonitzer in 2017, as evidenced by their recorded conversations, and today, as evidenced by his recorded interview with our office. Mr. Biden’s recorded conversations with Zwonitzer from 2017 are often painfully slow, with Mr. Biden struggling to remember events and straining at times to read and relay his own notebook entries.⁸³⁸

⁸³⁶ See generally Biden, PROMISE ME, DAD; Chapter Five.

⁸³⁷ See generally FBI Serials 315, 335.

⁸³⁸ See generally *id.*

In his interview with our office, Mr. Biden's memory was worse. He did not remember when he was vice president, forgetting on the first day of the interview when his term ended ("if it was 2013 – when did I stop being Vice President?"), and forgetting on the second day of the interview when his term began ("in 2009, am I still Vice President?").⁸³⁹ He did not remember, even within several years, when his son Beau died.⁸⁴⁰ And his memory appeared hazy when describing the Afghanistan debate that was once so important to him. Among other things, he mistakenly said he "had a real difference" of opinion with General Karl Eikenberry, when, in fact, Eikenberry was an ally whom Mr. Biden cited approvingly in his Thanksgiving memo to President Obama.⁸⁴¹

In a case where the government must prove that Mr. Biden knew he had possession of the classified Afghanistan documents after the vice presidency and chose to keep those documents, knowing he was violating the law, we expect that at trial, his attorneys would emphasize these limitations in his recall.

We also expect many jurors to be struck by the place where the Afghanistan documents were ultimately found in Mr. Biden's Delaware home: in a badly damaged box in the garage, near a collapsed dog crate, a dog bed, a Zappos box, an empty bucket, a broken lamp wrapped with duct tape, potting soil, and synthetic firewood.⁸⁴²

⁸³⁹ Biden 10/8/23 Tr. at 146; 10/9/23 Tr. at 45.

⁸⁴⁰ Biden 10/8/23 Tr. at 82-83.

⁸⁴¹ Biden 10/9/23 Tr. at 17; Recovered document D20.

⁸⁴² See Chapter Six.



Garage box with classified Afghanistan documents as encountered by FBI (Dec. 21, 2022)⁸⁴³

A reasonable juror could conclude that this is not where a person intentionally stores what he supposedly considers to be important classified documents, critical to his legacy. Rather, it looks more like a place a person stores classified documents he has forgotten about or is unaware of. We have considered—and investigated—the possibility that the box was intentionally placed in the garage to make it appear to be there by mistake, but the evidence does not support that conclusion.

Finally, Mr. Biden's cooperation with our investigation will likely cause some jurors to conclude that the Afghanistan documents were in his Delaware home by mistake, which is consistent with him forgetting about the documents soon after he

⁸⁴³ *See id.*

discovered them in the Virginia home. Most significantly, Mr. Biden self-reported to the government that the Afghanistan documents were in his Delaware garage and consented to searches of his house to retrieve them and other classified materials. He also consented to searches of other locations, and later in the investigation, he participated in an interview with our office that lasted more than five hours and provided written answers to most of our additional written questions.

Many will conclude that a president who knew he was illegally storing classified documents in his home would not have allowed a search of his home to discover those documents and then answered the government's questions afterwards. While various parts of this argument are debatable, we expect the argument will carry real force for many reasonable jurors. These jurors will conclude that Mr. Biden—a powerful, sophisticated person with access to the best advice in the world—would not have handed the government classified documents from his own home on a silver platter if he had willfully retained those documents for years. Just as a person who destroys evidence and lies often proves his guilt, a person who produces evidence and cooperates will be seen by many to be innocent.

To prove that Mr. Biden willfully retained the Afghanistan documents, the government must establish that he acted “with a bad purpose either to disobey or to disregard the law.”⁸⁴⁴ Reasonable jurors could conclude that Mr. Biden discovered the

⁸⁴⁴ See Chapter Nine; *Morison*, 844 F.2d at 1071 (emphasis omitted); accord Court's Instructions to the Jury at 22, *Brown*, No. 21-cr-348, ECF No. 304; Government's Proposed Jury Instructions at 24, *Sterling*, No. 1:10-cr-485, ECF No. 258; Final Jury Instructions at 19, *Ford*, No. 05-cr-235.

Afghanistan documents in his Virginia home and then forgot about them almost immediately. Such jurors would likely acquit him.

B. The classified documents may never have been in the Virginia home

The second potential defense argument is that Mr. Biden may not have retained the classified Afghanistan documents in the Virginia home at all. While there is evidence that he did, most notably his recorded statement to Zwonitzer in February 2017, that evidence is not conclusive.

First, as discussed in Chapter Seven, while the evidence provides clues that the classified Afghanistan documents were stored in the Virginia home, there is no definitive evidence putting them there. Beyond the Zwonitzer recording, no witness, photo, e-mail, text message, or other evidence establishes that the documents were ever stored in Virginia. When considering charges that Mr. Biden willfully retained the classified documents in the Virginia home in February 2017, this absence of additional direct evidence that the documents were in the Virginia home in February 2017 is significant.

Second, the Zwonitzer recording itself is not conclusive. When writing *Promise Me, Dad*, Zwonitzer recorded dozens of hours of conversation with Mr. Biden, and those recordings show that Mr. Biden's statements were often imprecise and his meaning was not always clear.⁸⁴⁵ That was particularly true when Mr. Biden spoke elliptically or in asides, as he did when he briefly referenced finding "all the classified stuff downstairs." Given Mr. Biden's tendency towards loose talk with Zwonitzer—

⁸⁴⁵ See generally FBI Serials 315, 335.

and Mr. Biden's limited precision and recall during his interview with our office, discussed above—reasonable jurors may hesitate to place too much evidentiary weight on a single eight-word utterance to Zwonitzer from almost seven years ago, in the absence of other, more direct evidence.

Third, there are alternative explanations for Mr. Biden's statement to Zwonitzer that do not involve the classified Afghanistan documents later found in the Delaware garage. For example, Mr. Biden could have been referring to the collection of handwritten notebooks he kept when he was vice president. As discussed in Chapter Four, Mr. Biden retained more than a dozen such notebooks, which contained his handwritten notes from the President's Daily Brief and White House Situation Room meetings. Some of these notes were themselves classified. One of those notebooks was his Af/Pak 1 notebook, which contained his detailed notes about the 2009 Afghanistan policy review, and a copy of the handwritten Thanksgiving memo.⁸⁴⁶

Mr. Biden explained in his interview with our office that he believed he gathered his notebooks in the Virginia home after moving in, which was at around the same time he met with Zwonitzer in February 2017.⁸⁴⁷ And we know from his recorded conversations with Zwonitzer that Mr. Biden planned to, and did, refer to some of his notebooks regularly while writing his book.⁸⁴⁸

⁸⁴⁶ See Chapter Six.

⁸⁴⁷ Biden 10/9/23 Tr. at 30, 40-41.

⁸⁴⁸ See Chapter Five.

Thus, some evidence suggests that when Mr. Biden told Zwonitzer he had “just found all the classified stuff downstairs,” he could have been referring to his collection of notebooks, including his Af/Pak 1 notebook, which contained classified information. As explained in Chapter Twelve, we do not believe there are viable criminal charges against Mr. Biden for willfully retaining classified information in the notebooks.⁸⁴⁹ This would make the notebook explanation a potentially successful defense.

Another possible explanation is that Mr. Biden could have been referring to the slim binder of classified documents he found at the Virginia home shortly after leaving office and gave to his personal aide to return to the White House.⁸⁵⁰ As discussed above, this appears to have happened several weeks before Mr. Biden’s recorded statement to Zwonitzer in February 2017.

This explanation seems improbable, as Mr. Biden said he “just” found the classified material, which typically suggests more recency—a matter of hours or days, rather than several weeks. And the personal aide recalled that Mr. Biden handed him a single slim binder or folder of material, which the aide believed related to calls with foreign leaders in the last week of the administration.⁸⁵¹ It is unlikely Mr. Biden was referring to such a small amount of material when he said he just found “*all* the classified stuff,” and it would have been a non sequitur during a conversation about his decision-making on Afghanistan in 2009.⁸⁵² But our assessment that this

⁸⁴⁹ See Chapter Twelve for an analysis of the evidence pertaining to the classified notebooks.

⁸⁵⁰ See Chapter Seven.

⁸⁵¹ Personal Aide 3 3/28/23 Tr. at 197-212.

⁸⁵² See Chapter Five.

explanation seems unlikely does not make it unreasonable, and reasonable jurors could conclude that Mr. Biden's statement to Zwonitzer referred to classified information Mr. Biden had already found and returned.

Mr. Biden could also point to the possibility that the classified Afghanistan documents were never in Virginia but were stored elsewhere without his knowledge: for example, tucked away in his Delaware home since the time he was vice president. We cannot rule out that possibility. As discussed in Chapter Seven, if the documents were somewhere in the Delaware home for many years, someone must have moved them to the garage box after the move from the Virginia home to the Delaware home in July 2019, because that is likely when the garage box arrived in Delaware. But it is possible Mr. Biden or others moved the Afghanistan documents to the garage box without carefully reviewing the files or realizing they contained marked classified documents. As explained in Chapters Fourteen, Fifteen, and Sixteen, our investigation has revealed several other instances of Mr. Biden and others making similar filing mistakes.

Unlike most defendants in classified mishandling cases, Mr. Biden was allowed to have classified documents in his home for eight years as vice president. He also had layers of staff who were responsible for assembling, carrying, storing, and retrieving the types of classified briefing materials found among the Afghanistan documents.⁸⁵³ Even if Mr. Biden intended to keep the Afghanistan documents for some time while he was vice president—to help him write the 2009 Thanksgiving

⁸⁵³ See Chapter Three.

memo, for example, or as reference material for the Afghanistan policy debates to come in the later years of the Obama administration—it remains possible that Mr. Biden lost track of the documents in the nearly eight years that followed, and that he did not know he still had them after leaving office.

Mr. Biden's house was also filled with paperwork and other materials from almost five decades in government service. He kept boxes of files from nearly every political campaign he ran between 1972 and 2012; files documenting his more than thirty years in the Senate; files from his eight years as vice president; and files relating to his family, his house, his car, and his pets.⁸⁵⁴ It is possible the Afghanistan documents, which were in ordinary folders that were not packaged or marked as containing classified information, were needles in the haystack of Mr. Biden's papers.

While it is natural to assume that Mr. Biden put the Afghanistan documents in the box on purpose and that he knew they were there, there is in fact a shortage of evidence on these points. We do not know why, how, or by whom the documents were placed in the box. We do not know whether or when Mr. Biden carefully reviewed the box's contents. We do not know why only some of Mr. Biden's classified Afghanistan memos to President Obama from the fall of 2009 were found in the box, but several other memos he wrote during that time were not.⁸⁵⁵ And we do not know why Mr. Biden would have wanted to keep some of the other marked classified documents in

⁸⁵⁴ See generally FBI Serial 512, 1A614, FBI Serial 77, 1A86.

⁸⁵⁵ During the fall 2009 Afghanistan review, Mr. Biden wrote President Obama multiple additional classified memos opposing the troop surge. None of these memos were in the garage box with the other classified Afghanistan documents, and none of the memos were recovered during this investigation, though we obtained copies of the memos from the current White House. See Classified memos on file with Special Counsel's Office.

the box—in particular, a classified document relating to President Obama’s second-term foreign policy goals, which was kept in a folder right next to the Afghanistan documents, and which served no particular purpose of Mr. Biden’s of which we are aware.⁸⁵⁶

The location of the box containing Afghanistan documents in a seemingly random place in the Delaware garage, and Mr. Biden’s cooperation with our investigation—both discussed above—could provide additional reasons for jurors to conclude that the Afghanistan documents were stored in the Delaware home without Mr. Biden’s knowledge, and were not in Virginia in 2017.

C. Mr. Biden may not have found the “Facts First” folder containing national defense information

A reasonable juror could also conclude that, even if Mr. Biden found classified documents about Afghanistan in his Virginia home in February 2017, and even if he remembered he had them after that day, and even if they were the same documents found in his garage six years later and one hundred miles away in Delaware, there is a shortage of evidence that he found *both* the “Afganastan” folder and the “Facts First” folder. This is important because even though the “Afganastan” folder contained documents that were marked classified in 2009, there are serious questions about whether those particular documents remain sensitive today, or when Mr. Biden met with Zwonitzer in 2017. Thus, the “Afganastan” folder alone is not a strong basis upon which to prosecute Mr. Biden for willfully retaining national defense information. And if Mr. Biden saw only the “Afganastan” folder and not the “Facts

⁸⁵⁶ FBI Serial 512, 1A614; B4, B5.

First” folder, which did contain national defense information, he did not willfully retain such national defense information.

This “only one folder” defense is not very strong, but it does find some support in the evidence. Mr. Biden spoke of finding “all the classified stuff downstairs” in the context of telling Zwonitzer about the 2009 handwritten Thanksgiving memo.⁸⁵⁷ And the folder most closely associated with that memo is the “Afganastan” folder, which held the raw materials that we know Mr. Biden must have relied on when writing the Thanksgiving memo. The “Afganastan” folder contained previous handwritten and typewritten drafts of the Thanksgiving memo, some of which were incorporated nearly word-for-word into the final document.⁸⁵⁸ The folder also held a November 2009 memo from Mr. Biden’s communications director, and Mr. Biden incorporated portions of this memo, again nearly word-for-word, into the final Thanksgiving memo.⁸⁵⁹ Thus, the evidence establishes that Mr. Biden used the documents in the “Afganastan” folder to write the 2009 Thanksgiving memo to President Obama.

Mr. Biden probably also used the documents in the “Facts First” folder when writing the Thanksgiving memo, but the connection between that folder and the memo is not as strong. The “Facts First” folder contains numerous documents relevant to the memo, but none of them are documents Mr. Biden *must* have used. And most of the materials in the “Facts First” folder were from September 2009, two months before Mr. Biden wrote the Thanksgiving memo.⁸⁶⁰

⁸⁵⁷ See Chapter Five.

⁸⁵⁸ See Chapter Six.

⁸⁵⁹ 11/27/09 e-mail from Blinken to Klain, SCOH-000230.

⁸⁶⁰ FBI Serials 35 1A42, 512 1A614, 683 1A772; Recovered documents B6-B24.

Based on this difference between the two folders, some reasonable jurors may conclude that when Mr. Biden told Zwonitzer he “just found all the classified stuff downstairs,” he may have been referring only to the “Afganastan” folder, which reminded him of his Thanksgiving memo. The “Afganastan” folder contained roughly a dozen marked classified documents, which could correspond to Mr. Biden’s reference to “all the classified stuff” he found. And if Mr. Biden found the “Afganastan” folder, it is possible he did not continue looking through the contents of the separate “Facts First” folder, whose cover had no label or other indication that the materials inside related to Afghanistan.

None of these possibilities are particularly plausible. There is no reason to think, for example, that after identifying the contents of the “Afganastan” folder, Mr. Biden stopped looking through folders that were nearby, including the “Facts First” folder, *and* that he never returned to these materials.

But reasonable jurors who are unwilling to read too much into Mr. Biden’s brief aside to Zwonitzer—“I just found all the classified stuff downstairs”—may find a shortage of evidence to establish that Mr. Biden looked through the “Facts First” folder, which is the only folder known to contain national defense information. These jurors would acquit Mr. Biden of willfully retaining national defense information from the “Facts First” folder.

D. For other reasons, a jury will be unlikely to unanimously convict Mr. Biden

Several additional facts would make it difficult for the government to present a case that reasonable jurors would unanimously find compelling.

First, the Afghanistan documents are now almost fifteen years old. While there is evidence that some contain national defense information, in general, they concern a conflict that is now over, in a country where there are no longer any American troops, about a subject (the 2009 troop surge) that has already been widely discussed in books and media reports. At a trial, we expect the defense would strongly challenge whether the documents still contain sensitive national defense information.

Second, Mr. Biden was allowed to have the Afghanistan documents in his home for eight years as vice president. And when the documents were discovered in his home in December 2022, he was again allowed to have them there as president. To prevail, the government must convince a jury to convict him for having the documents in his home in between, in February 2017, about a month after he left the White House. Because of the possibility that, even if Mr. Biden discovered the Afghanistan documents, he might have forgotten about them soon after, any criminal charges would likely be limited to the days or perhaps weeks surrounding his conversation with Zwonitzer in February 2017. It may be difficult to convince a jury they should care about Mr. Biden's brief illicit possession of documents from 2009, particularly since he was allowed to possess the same documents both before February 2017 (as vice president) and after (as president).

Third, as discussed to some extent above, Mr. Biden will likely present himself to the jury, as he did during his interview with our office, as a sympathetic, well-meaning, elderly man with a poor memory. While he is and must be accountable for his actions—he is, after all, the President of the United States—based on our direct

observations of him, Mr. Biden is someone for whom many jurors will want to search for reasonable doubt. It would be difficult to convince a jury they should convict him—by then a former president who will be at least well into his eighties—of a serious felony that requires a mental state of willfulness.

Finally, while jurors might not find reasonable doubt in any one of the evidentiary shortcomings identified above, some jurors may find reasonable doubt because of the cumulative effect of some or all of these shortcomings.

E. There is also insufficient evidence that Mr. Biden willfully retained the handwritten Thanksgiving memo

As explained in Chapter Six, inside the office of Mr. Biden's Delaware home, agents found his Af/Pak 1 notebook, which contained his handwritten notes about the 2009 Afghanistan troop reviews. In the front of the notebook, binder-clipped together, were the pages of the handwritten 2009 Thanksgiving memo in which Mr. Biden made his final argument to President Obama opposing the Afghanistan troop surge. The Thanksgiving memo discussed a November 2009 State Department cable, and the cable itself, which is marked as Confidential, is clipped to the memo.⁸⁶¹ In Mr. Biden's interview with our office, he said he "guess[ed]" he "wanted to hang onto [the Thanksgiving memo] for posterity's sake" because "this was my position on Afghanistan."⁸⁶² The handwritten memo, though unmarked, contains information that remains classified up to the Secret level.⁸⁶³ The State Department cable shows a

⁸⁶¹ FBI Serials 77 1A86, 682, 683 1A772; Evidence item 1B66; Recovered document D20.

⁸⁶² Biden 10/9/23 Tr. at 21.

⁸⁶³ FBI Serial 676.

declassification date of November 2019, but the State Department has been unable to tell us if it has been formally declassified.⁸⁶⁴

Though the handwritten Thanksgiving memo has been determined to be currently classified, we cannot prove that Mr. Biden believed it was classified after leaving office in 2017. The memo was derived from at least one document that was marked as classified in 2009, but during his interview with our office, Mr. Biden said he did not consider the memo classified when he discussed it with his ghostwriter, Zwonitzer, in 2017.⁸⁶⁵ The memo concerned deliberations from more than seven years earlier about the Afghanistan troop surge, and in the intervening years those deliberations had been widely discussed in public, so Mr. Biden could have reasonably expected that the memo's contents became less sensitive over time. Because we cannot prove that he knew the memo was classified when he left office, we cannot prove that by retaining the memo, he willfully retained national defense information.

As for the State Department cable, it does not appear to contain national defense information today, and there is no reason to believe it did in 2017. Therefore, the cable cannot be the subject of a willful retention charge under Section 793(e). In addition, Mr. Biden told us in his interview that he does not recognize the marking "Confidential" as a classification marking. To him, the marking means the document should be held in confidence, but not necessarily that it is classified.⁸⁶⁶ Although "Confidential" is, in fact, a category of classified information enumerated in the

⁸⁶⁴ *Id.*

⁸⁶⁵ See Chapter Six; Biden 10/9/23 Tr. at 31-33, 38 (explaining that the memo "wasn't a Top Secret thing," and was "not confidential in the classification sense").

⁸⁶⁶ Biden 10/9/23 Tr. at 24-25.

governing executive order, we would likely be unable to refute Mr. Biden's claim that he did not know this.

* * *

We conclude that the evidence is insufficient to meet the government's burden. In accordance with the Justice Manual, because we do not believe the government is likely to obtain a conviction at trial, we decline prosecution.

CHAPTER TWELVE

ANALYSIS OF THE EVIDENCE – CLASSIFIED NOTEBOOKS

There is evidence that when Mr. Biden left office in 2017, he willfully retained his classified notebooks—that is, he knew he kept classified information in notebooks stored in his house and he knew he was not allowed to do so. There is also evidence that Mr. Biden willfully disclosed classified information in his notebooks to his ghostwriter by reading it aloud to him. We conclude that this evidence does not establish Mr. Biden’s guilt beyond a reasonable doubt. We therefore decline prosecution of Mr. Biden based on his retention of his notebooks and disclosure of information in them.

I. WILLFUL INTENT

A. There is evidence that Mr. Biden retained the classified notebooks, knowing he was not allowed to do so

As with the classified Afghanistan documents, there is evidence that Mr. Biden kept his notebooks after his vice presidency knowing they were classified and he was not allowed to have them.

The evidence shows convincingly that Mr. Biden knew the notebooks, as a whole, contained classified information. For eight years, he wrote in his notebooks about classified information during classified meetings in the White House Situation Room and elsewhere.⁸⁶⁷ He was familiar with the notebooks’ contents, which included obviously classified information. When reviewing the notebooks with Zwonitzer, Mr. Biden sometimes read aloud classified notes verbatim, but he also sometimes

⁸⁶⁷ See Chapter Four.

appeared to skip over classified information, and he warned Zwonitzer that the material in the notebooks could be classified.⁸⁶⁸ Mr. Biden also stored the notebooks in a classified safe in the White House for a time as vice president because the notebooks were classified.⁸⁶⁹

In Mr. Biden's written answers to questions from our office, he called into question whether he knew the information in his notebooks was classified. In those answers, Mr. Biden explained that when he described material in his notebooks to Zwonitzer as "classified" he did not actually mean "classified." According to Mr. Biden, "I may have used the word 'classified' with Mr. Zwonitzer in a generic sense, to refer not to the formal classification of national security information, but to sensitive or private topics to ensure that Mr. Zwonitzer would not write about them."⁸⁷⁰ Mr. Biden qualified this answer by explaining, "I do not recall the specific conversations you reference with Mr. Zwonitzer, which took place more than six years ago."⁸⁷¹

This explanation—that "classified" does not mean "classified"—is not credible. At the time Mr. Biden met with Zwonitzer, Mr. Biden had nearly fifty years of experience dealing with classified information, including as a member of the Senate Select Committee on Intelligence, a member and Chairman of the Senate Committee on the Judiciary, a member and Chairman of the Senate Committee on Foreign

⁸⁶⁸ Zwonitzer recordings 170424_0091, Carved_000556, Carved_000571.

⁸⁶⁹ See Chapter Four.

⁸⁷⁰ Biden 10/1/23 written responses at 1. Mr. Biden said something similar during our in-person interview of him. Biden 10/9/23 Tr. at 32-33.

⁸⁷¹ Biden 10/1/23 written responses at 1.

Relations, and Vice President of the United States.⁸⁷² It is not plausible that a person of his knowledge and experience used the term “classified” in this context as a euphemism for “private.”

Mr. Biden’s explanation is even less credible in light of his actual words to Zwonitzer. As described below, among the times Mr. Biden spoke to Zwonitzer about classified information was when Mr. Biden handed Zwonitzer a notebook entry about a National Security Council meeting in the Situation Room and asked if Zwonitzer could read Mr. Biden’s handwriting.⁸⁷³ Mr. Biden warned Zwonitzer, “Some of this may be classified, so be careful,” and added, “I’m not sure. It isn’t marked classified, but”⁸⁷⁴

This is not a reference to merely private material. In this context, when a former official of Mr. Biden’s stature and experience warns someone without a security clearance to “be careful” because some information “may be classified,” and then refers to “marked classified” material, the former official is talking about classified national security information.⁸⁷⁵ The evidence shows that Mr. Biden knew his notebooks contained such information.

There is also evidence that Mr. Biden knew he could not keep classified handwritten notes unsecured at home after his time as vice president.

⁸⁷² NARA_SCAN_00000904; Biden, Joseph Robinette (Joe), Jr., Biographical Directory of the United States Congress, <https://bioguideretro.congress.gov/Home/MemberDetails?memIndex=b000444> (last visited Jan. 30, 2024).

⁸⁷³ Zwonitzer recording 170424_0091; 170424_0091 Tr. at 13-14; Evidence item 1B80.

⁸⁷⁴ Zwonitzer recording 170424_0091; 170424_0091 Tr. at 13-14; Evidence item 1B80.

⁸⁷⁵ Zwonitzer recording 170424_0091; 170424_0091 Tr. at 13-14; Evidence item 1B80.

1. **Mr. Biden knew the purpose of classified handling rules: to prevent unauthorized disclosure of our nation's secrets**

The basic principles of the system that protects classified information should be clear to anyone who understands why it is necessary to protect such material in the first place. Information is classified only if its unauthorized disclosure “reasonably could be expected to cause . . . damage to the national security.”⁸⁷⁶ To prevent such disclosure, people who access classified information must store it in authorized, secure places.⁸⁷⁷ And if classified information is disclosed, for example to a foreign adversary, it can damage national security whether it is typewritten or handwritten.⁸⁷⁸

These principles are familiar, even obvious, to anyone with experience handling classified information. And they have long been enshrined in the legal and policy regime used to safeguard our nation's secrets. That regime requires classified information to be safeguarded properly whether it is written by hand or typed on a keyboard.⁸⁷⁹

As noted above, when Mr. Biden left office in 2017, he had nearly fifty years of experience with classified information, including eight years in the second-highest position in the Executive Branch. He was deeply familiar with the measures taken to

⁸⁷⁶ Executive Order 13526 § 1.2.

⁸⁷⁷ *Id.* § 4.1(g); 32 C.F.R. §§ 2001.43(b)(1) and (2), 2001.53 (2024); Office of the Director of National Intelligence, Intelligence Community Directive 705 (2010).

⁸⁷⁸ Under Executive Order 13526, information is classified only if “its unauthorized disclosure could reasonably be expected to cause identifiable or describable damage to the national security,” § 1.4, and “information” refers to “any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics.” § 6.1(t).

⁸⁷⁹ *See id.* §§ 2.1, 6.1(i), 6.1(o), 6.1(p), 6.1(t).

safeguard classified information and the reasons for them. As Ron Klain, one of Mr. Biden's closest aides, explained, Mr. Biden "had traveled the world. He knew the risks that men and women were taking to gather this information and . . . felt a great deal of responsibility about it."⁸⁸⁰ And John McGrail, Mr. Biden's top lawyer at the end of the Obama administration, said he would be "surprise[d]" if Mr. Biden intentionally took classified materials home because he well knew, from extensive government experience, that disclosure "can harm sources and methods and the national security interests of the United States."⁸⁸¹

2. Mr. Biden's public statements show he knew the restrictions on handling classified information after leaving office

Mr. Biden's public statements show he knew classified information must be safeguarded to protect intelligence sources and methods. As Mr. Biden has put it, "People know I take classified documents and classified information seriously."⁸⁸² In a September 2022 interview with CBS, Mr. Biden said the following in response to a question about the marked classified documents allegedly found in Mr. Trump's private home:

Reporter: When you saw the photograph of the top secret documents laid out on the floor at Mar-a-Lago, what did you think to yourself? Looking at that image.

Mr. Biden: How that could possibly happen. How one—anyone could be that irresponsible. And I thought, what data was in

⁸⁸⁰ Klain Tr. at 52-53.

⁸⁸¹ McGrail 1/22/24 Tr. at 100-01, 111.

⁸⁸² Carol E. Lee, Ken Dilanian, Kristen Welker, and Zoë Richards, *Biden says he was "surprised" to learn government docs were found at his former office*, NBC NEWS (Jan. 10, 2023), <https://www.nbcnews.com/politics/white-house/less-dozen-classified-documents-found-biden-office-sources-say-rcna65179> (last visited Feb. 2, 2024).

there that **may compromise sources and methods?** By that I mean names of people who helped or th-- et cetera. And it just-- **totally irresponsible.**⁸⁸³

Mr. Biden’s emphatic and unqualified conclusion that keeping marked classified documents unsecured in one’s home is “totally irresponsible” because it “may compromise sources and methods” applies equally to his own decision to keep his notebooks at home in unlocked and unauthorized containers. The notebooks, like the marked documents, contained classified information, the unauthorized disclosure of which could compromise intelligence sources and methods and damage national security.⁸⁸⁴ And Mr. Biden’s public statements, during his vice presidency and after, demonstrate that he understands “classified information,” not merely marked classified documents, is what must be protected.⁸⁸⁵ These statements undercut his purported belief that he could lawfully retain the classified information in his notebooks.

⁸⁸³ *President Joe Biden: The 2022 60 Minutes Interview*, CBS NEWS, at 12:09 (Sept. 12, 2022), <https://www.youtube.com/watch?v=u1UC89H4Swc> (last visited Feb. 2, 2024) (emphasis added).

⁸⁸⁴ See Chapter Four.

⁸⁸⁵ Carol E. Lee, Ken Dilanian, Kristen Welker, and Zoë Richards, *Biden says he was “surprised” to learn government docs were found at his former office*, NBC NEWS (Jan. 10, 2023), <https://www.nbcnews.com/politics/white-house/less-dozen-classified-documents-found-biden-office-sources-say-rcna65179> (last visited Jan. 30, 2024); *Transcript And Audio: Vice Presidential Debate*, NPR NEWS (Oct. 11, 2012), <https://www.npr.org/2012/10/11/162754053/transcript-biden-ryan-vice-presidential-debate> (last visited Jan. 30, 2024) (during a vice presidential debate in October 2012, Mr. Biden asserted that he had to be careful about safeguarding classified information when he said, “with regard to the ability of the United States to take action militarily, it is — it is not in my purview to talk about classified information”).

Mr. Biden has also publicly acknowledged limits on how he may properly handle classified information in his home, even as a sitting president. In August 2022, he told reporters:

Reporter: Mr. President, in simple terms, is it ever appropriate for a President to take home with them classified and top secret documents?

Mr. Biden: Depending on the circumstance. For example, I have in my home, a cabined-off space that is completely secure. I'm taking home with me today's PDB. It's locked. I have a person with me—military with me. I read it, I lock it back up, and give it to the military.

Reporter: Without a specialized area in which you can declassify documents, is it ever appropriate for a president to bring classified and top secret documents home with them?

Mr. Biden: It depends on the document, and it depends on how secure the room is.⁸⁸⁶

If Mr. Biden thought in 2022 that he was obligated to keep the PDB—the President's Daily Brief—secured in his home as a sitting president, he should have known in 2017 that as a former vice president and a private citizen he was not permitted to keep handwritten notes about the President's Daily Brief and other classified information in unlocked drawers in his home.

⁸⁸⁶ Remarks by President Biden Before Marine One Departure, The White House (Aug. 26, 2022), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/08/26/remarks-by-president-biden-before-marine-one-departure-18/> (last visited Jan. 30, 2024).

3. As vice president, Mr. Biden received advice from staff about the need to secure classified notes properly

Mr. Biden received advice from his staff about the need to secure classified information in the form of notes. In 2011, his first Counsel to the Vice President, Cynthia Hogan, advised him in writing that classified notes generated in the context of discussions with a historian “must be maintained in secure safes” and “stored in a secure facility.”⁸⁸⁷ And as vice president, Mr. Biden stored his classified notebooks in a safe, at least for a time, in contrast with his decision after leaving office to keep the notebooks at home in unlocked and unauthorized drawers.⁸⁸⁸

4. After his vice presidency, Mr. Biden stored his classified notecards in a SCIF, but kept his classified notebooks in unlocked drawers at home

When Mr. Biden left office, he knew his staff decided to keep his classified *notecards* in a SCIF at the National Archives, and he knew his *notebooks* contained the same type of classified information. As he told his ghostwriter during a recorded interview in October 2016, the same staff who eventually arranged for careful storage of his classified notecards in an Archives SCIF “didn’t even know” he also had possession of his notebooks, which he simply took home without informing his staff.⁸⁸⁹

After his vice presidency, Mr. Biden was reminded twice more that his classified notes should be secured in a SCIF: on each of the two days in 2017 when he visited the Archives SCIF to review his notecards in writing his book.⁸⁹⁰ The form he

⁸⁸⁷ 4/28/11 e-mail from Hogan to OVP staff, 1B001_02881349; 4/27/11 Briefing Memo from Hogan, 1B001_02881350.

⁸⁸⁸ See Chapter Four.

⁸⁸⁹ See *id.*

⁸⁹⁰ See *id.*

was required to sign at the Archives made clear he was accessing classified information that could not leave the SCIF, and that he had an ongoing obligation to protect this information.⁸⁹¹ And at the end of his first visit, Archives staff asked to see the notes he had taken during his review of the notecards, to ensure he was not removing and mishandling classified information.⁸⁹² It should have been clear to Mr. Biden that not only were his classified notecards required to be in a SCIF, he also could not take classified notes about those notecards home with him—and, by extension, he could not keep any classified notes at home at all.

5. Mr. Biden had strong motivations to ignore proper procedures for safeguarding his classified notebooks

Finally, Mr. Biden had strong motivations to ignore the proper procedures for safeguarding the classified information in his notebooks. He decided months before leaving office to write a book and began meeting with his ghostwriter while still vice president.⁸⁹³ After his vice presidency, the notebooks continued to be an invaluable resource that he consulted liberally.⁸⁹⁴ During hours of recorded interviews in which he read aloud from his notebooks in his private home, Mr. Biden provided raw material to his ghostwriter detailing meetings and events that would be of interest to prospective readers and buyers of his book.⁸⁹⁵ He also likely viewed the notebooks, like the marked classified documents related to Afghanistan recovered from his garage, as an irreplaceable contemporaneous record of some of the most important

⁸⁹¹ *See id.*

⁸⁹² *See id.*; NARA Archivist 1 Tr. at 56-59, 77-78, 81-82, 93-94, 122-23.

⁸⁹³ *See* Chapter Five.

⁸⁹⁴ *See* Chapter Four.

⁸⁹⁵ *See id.*

moments of his vice presidency. This record was valuable to him for many reasons, including to help defend his record and buttress his legacy as a world leader.

B. The evidence does not prove beyond a reasonable doubt that Mr. Biden willfully retained the notebooks

We do not believe this evidence would meet the government's burden at trial to prove Mr. Biden knew his handling of the notebooks broke the law. We expect Mr. Biden's defense would be that he thought his notebooks were his personal property and that he was allowed to take them home after his vice presidency, even if they contained classified information. Enough evidence supports this defense to establish reasonable doubt.

First, we expect Mr. Biden to offer direct evidence that he believed he was entitled to take the notebooks home. During his interview with the Special Counsel's Office, Mr. Biden was emphatic, declaring that his notebooks are "my property," and that "every president before me has done the exact same thing," that is, kept handwritten materials after his term in office, even if they contain classified material.⁸⁹⁶ He also specifically cited the diaries President Reagan kept while in office, noting that they included classified information.⁸⁹⁷ Mr. Biden repeated this theme in his written answers to our questions, writing that, "[l]ike presidents and vice presidents before me, I understand these notes to be my personal property."⁸⁹⁸

At trial, we expect Mr. Biden to offer similar evidence of his subjective understanding. Such evidence would be admissible as to the element of willfulness,

⁸⁹⁶ Biden 10/9/23 Tr. at 41-43; Biden 10/8/23 Tr. at 111-12.

⁸⁹⁷ Biden 10/8/23 Tr. at 111-12.

⁸⁹⁸ Biden 12/1/23 written responses at 1.

which requires proof that Mr. Biden acted with intent to do something the law forbids.⁸⁹⁹ And we expect the evidence of Mr. Biden’s state of mind to be compelling—clear, forceful testimony that he did, in fact, believe he was allowed to have the notebooks. While the government could question this testimony’s veracity as a convenient answer perhaps suggested by his attorneys after the discovery of his classified notebooks, such a suggestion lacks evidentiary support and Mr. Biden’s testimony will likely carry significant weight with many jurors.

The government could also question the veracity of Mr. Biden’s testimony by introducing evidence that he appears to have come to and acted on the belief that he could take home classified notes entirely on his own, without the advice or knowledge of any of his staff, including the Counsel to the Vice President, John McGrail.⁹⁰⁰ Based on the evidence we found, Mr. Biden appears to have consulted no one on this significant question. None of the witnesses we interviewed recalled Mr. Biden mentioning that he intended to take his classified notebooks home or that he believed he was permitted to do so, even during conversations in which McGrail told Mr. Biden that *all* of Mr. Biden’s records—including all his notes—would be sent to the National

⁸⁹⁹ A broad array of defense evidence is admissible at criminal trials for willfulness crimes that would not be admissible for crimes that require a less culpable mental state. *United States v. Lankford*, 955 F.2d 1545, 1550 (11th Cir. 1992) (when willfulness is at issue, a defendant is entitled to “wide latitude in the introduction of evidence tending to show lack of intent”) (quoting *United States v. Garber*, 607 F.2d 92, 99 (5th Cir. 1979) (en banc)); see also *Cheek v. United States*, 498 U.S. 192, 203 (1991) (reversible error to instruct the jury to disregard evidence of defendant’s belief that he was not required to pay taxes “as incredible as such misunderstandings of and beliefs about the law might be”). Indeed, the Supreme Court has admonished, in the context of a tax crime requiring proof of willfulness, “forbidding the jury to consider evidence that might negate willfulness would raise a serious question under the Sixth Amendment’s jury trial provision.” *Cheek*, 498 U.S. at 203.

⁹⁰⁰ McGrail 1/22/24 Tr. at 84-87, 97-119.

Archives.⁹⁰¹ When interviewed, McGrail recalled that Mr. Biden “understood why his documents were going to [the National Archives.] . . . He understood it and accepted it.”⁹⁰² McGrail also told us the following:

- Mr. Biden never told McGrail that he was retaining any notes he took while vice president.⁹⁰³ McGrail said Mr. Biden understood the approach of sending all his records to the National Archives so that archivists could separate presidential records from the rest.⁹⁰⁴
- Mr. Biden never told McGrail that he was retaining any classified notes.⁹⁰⁵ McGrail said he would have expected that to be part of the conversation he had with Mr. Biden about the handling of his notes.⁹⁰⁶
- McGrail never advised Mr. Biden that he could bring home classified material of any kind.⁹⁰⁷ Indeed, McGrail said he would be surprised to learn that Mr. Biden took classified materials home—even personal notes—knowing they were classified because (1) that would have been “inconsistent with everything that we were killing ourselves trying to accomplish,”⁹⁰⁸ (2) he knows his home is not a SCIF,⁹⁰⁹ and (3) as former chairman of the Senate Foreign Relations Committee, Mr. Biden knew that classified information cannot be stored outside a secure facility because its disclosure can harm national security and compromise intelligence sources and methods.⁹¹⁰
- McGrail never spoke to Mr. Biden or anyone else about the Reagan diaries, or historical practices of presidents taking home classified diaries or other materials.⁹¹¹

⁹⁰¹ See Chapter Four.

⁹⁰² McGrail 1/22/24 Tr. at 115.

⁹⁰³ *Id.* at 84, 117.

⁹⁰⁴ *Id.* at 86-87, 115.

⁹⁰⁵ *Id.* at 98-99.

⁹⁰⁶ *Id.* at 117.

⁹⁰⁷ *Id.* at 107, 111-12.

⁹⁰⁸ *Id.* at 112.

⁹⁰⁹ *Id.* at 101.

⁹¹⁰ *Id.* at 100-01, 111.

⁹¹¹ *Id.* at 73-74, 119.

All that said, we expect Mr. Biden's defense at trial to remain fairly simple. According to McGrail, the only thing he recalls telling Mr. Biden about the disposition of his records was that all his records would go to the National Archives after the administration to separate personal from presidential records.⁹¹² McGrail says he never spoke to Mr. Biden about classified notes or how they should be stored.⁹¹³

From this, Mr. Biden will likely claim that McGrail outlined a cautious arrangement—not a legal requirement—to treat all his records as presidential records until the Archives could sort out what was personal. But, Mr. Biden will likely say, he never believed his notebooks, which he thought of as his personal diaries, fell within that arrangement. He treated the notebooks markedly differently from the rest of his notes and other presidential records throughout his vice presidency, for example, allowing staff to store and review his notecards, but not his notebooks.⁹¹⁴ This treatment, he will argue, and the extremely personal content of some of the notebooks, shows that he considered them to be his personal property. Mr. Biden's notebooks included gut-wrenching passages about his son's death and other highly personal material.⁹¹⁵ His claim that he believed he did not need to send what he considered to be his personal diary to be stored at a government facility will likely appeal to some jurors.⁹¹⁶

⁹¹² See Chapter Four.

⁹¹³ See *id.*

⁹¹⁴ See *id.*

⁹¹⁵ *E.g.*, Notebook entries 1B57-0051, 54.

⁹¹⁶ The government could respond that many of the notebooks are unlike diaries because they contain work notes, including minutes of meetings of the National Security Council and other classified briefings. See Chapter Four. These notebooks do not meet the

We expect Mr. Biden also to contend that the presence of classified information in what he viewed as his diary did not change his thinking. As a member of the exclusive club of former presidents and vice presidents, Mr. Biden will claim that he knew such officials kept diaries, and he knew or expected that those diaries—like Mr. Reagan’s—contained classified information.⁹¹⁷ He also understood that former presidents and vice presidents took their diaries home upon leaving office, without being investigated or prosecuted for it. Thus, whatever McGrail now thinks of the matter, Mr. Biden will claim that it did not occur to him to store what he thought of as his personal diaries—which he held close for eight years—at the National Archives, and he certainly did not know that by failing to do so he committed a crime.

Contemporaneous evidence from immediately after the vice presidency supports this defense. In a recorded conversation with Zwonitzer on April 26, 2017, three months after leaving office, Mr. Biden said the following:

Mr. Biden: I’m told by [a personal aide], I guess he checked with you, in order for me to get my, uh, get all those presidential notes I had for lunch, the luncheon meetings, I have to go to McGrail?

Assistant: Yes, McGrail has them. We were supposed to turn it in and that is the last person who had them.

definition of “personal records” under the Presidential Records Act because they “relate to or have an effect upon the carrying out of” the duties of the vice president, and they are not “of a purely private or nonpublic character.” 44 U.S.C. § 2201(3). But Mr. Biden will likely present a compelling case that he viewed the notebooks as his personal diaries or the rough equivalent. Indeed, in a recorded conversation with Zwonitzer, while reviewing a notebook entry about a national security meeting, Mr. Biden twice referred to the passage as a “diary entry.” Carved_000556. And, as discussed extensively in Chapter Ten, Mr. Reagan’s diaries contained several instances of classified information, the Department of Justice described them as his “personal records,” and Mr. Reagan brought them home after his presidency without repercussion.

⁹¹⁷ See Chapter Ten.

Mr. Biden: OK. Uh. See if you can get me McGrail on the line while I have you now. OK? And stay on okay?

Assistant: Got it sir. Hold on.

Zwonitzer: **This is probably something that goes to the presidential papers.**

Mr. Biden: **I don't think so. It was in between. I didn't want to turn them in.**

Zwonitzer: **Right so, it's the gray area.**⁹¹⁸

This exchange concerned Mr. Biden's handwritten notecards, which, like his notebooks, addressed both personal and official matters, and which also contained classified information.⁹¹⁹ The evidence suggests, as explained above, that McGrail decided the classified notecards should be stored at the National Archives after the administration, with Mr. Biden telling Zwonitzer he did not want to do so.⁹²⁰ But when Zwonitzer suggested that the notecards might be "presidential papers"—that is, presidential records that are required by law to be stored at the National Archives—Mr. Biden disagreed. Mr. Biden explained that he did not think he was required to turn in the notecards and that he had not wanted to do so.

One interpretation of this exchange that the evidence permits is that, while Mr. Biden followed McGrail's advice to store the classified notecards in a SCIF at the Archives, he did not believe he was required to, and he thought that, at most, the notecards fell into an "in between" or "gray area." Indeed, when interviewed, McGrail

⁹¹⁸ Zwonitzer recording Carved_000599 (emphasis added); Carved_000599 Tr. at 3-4; FBI Serials 315, 335.

⁹¹⁹ See Chapter Four.

⁹²⁰ See *id.*

recalled that he advised Mr. Biden to turn over all his records, “whether personal or not,” to the National Archives.⁹²¹ McGrail’s advice was premised on a desire to avoid taking a constrained view of the Presidential Records Act’s requirements, as McGrail believed former vice president Dick Cheney had, and the understanding that archivists would review Mr. Biden’s notes and separate presidential records from the rest.⁹²² McGrail also said he believed that the notes were to be stored in a SCIF at the Archives due to their general sensitivity, not because they were classified.⁹²³

At trial, Mr. Biden would argue that the 2017 Zwonitzer recording is the best evidence of what he believed after the vice presidency, and it shows he did not believe he was legally required to store his notecards at the Archives, and that he thought the same about his notebooks. In this way, the Zwonitzer recording dovetails with Mr. Biden’s expected defense at trial that the Presidential Records Act defined his notebooks as his personal property, and that the Act authorized him to keep these

⁹²¹ McGrail 1/22/24 Tr. at 83.

⁹²² *Id.* at 83.

⁹²³ *Id.* at 114. McGrail’s recollection on this point is inconsistent with e-mails and other documents that suggest he knew the notecards contained classified information in late 2016 and early 2017. 10/7/16 e-mails between Ratner, Associate Counsel, McGrail, and others, NARAWH-00017698, NARAWH-00017743, NARAWH-00019307; 10/18/16 e-mails between Associate Counsel, McGrail, and others, NARAWH-00017820; 10/20/16 e-mail from Ratner to Ricchetti, McGrail, Kahl et al., 1B001_03798594; 11/14/16 e-mail from McGrail, SCOH-000340; 1/05/17 e-mail from Associate Counsel to McGrail, SCOH-000339; 1/5/17 and 1/6/17 e-mails between Associate Counsel, McGrail, and NARA Archivist 1, SCOH-000326, SCOH-000330, SCOH-000332, SCOH-000334; 1/6/17 Handwritten Note re: VP diary/notecards. It is also at odds with the recollection of the NARA archivist that McGrail told him the notecards contained classified information, NARA Archivist 1 Tr. at 56, 62, and the understanding of the associate counsel who helped McGrail arrange for the notecards to be stored at the Archives. In an interview with our office, she said that “it was the safest decision to have [the notecards] be in a SCIF *since there w[ere] likely classified documents.*” Associate Counsel 8/29/23 Tr. at 9-10, 76 (emphasis added). McGrail’s memory of these events could well have faded over the course of more than six years.

notebooks in his home, even if they contained classified information. That Mr. Biden was mistaken in his legal judgment is not enough to prove he acted willfully, which requires intent to do something the law forbids.⁹²⁴

The defense will buttress these claims by contending that other credible authorities, including at least one former president and the Department of Justice, also have concluded that a former president may keep handwritten notes even if they contain classified information. As discussed in Chapter Ten, the clearest historical example is President Reagan, who left the White House in 1989 with eight years' worth of handwritten diaries, which he kept at his private home in California. The Reagan diaries contained classified information, such as entries recounting National Security Council meetings and referencing highly sensitive intelligence sources and methods, including human sources and signals intelligence.⁹²⁵ Some entries that addressed sensitive subjects included descriptions such as "top secret" and "very hush hush," and some entries remained classified Top Secret as of 2007, decades after Mr. Reagan wrote them.

As we also describe in Chapter Ten, during the *Poindexter* litigation in 1989 and 1990, after Mr. Reagan's presidency, the Department of Justice took the position in public court filings that the diaries were both "currently classified" and Mr. Reagan's "personal records" that were not in the Archives' possession.⁹²⁶ In a later

⁹²⁴ See Chapter Nine and n.899 above.

⁹²⁵ See Chapter Ten.

⁹²⁶ Memorandum in Support of Motion to Quash Subpoena to Archivist and Statement of Interest by the Department of Justice at 2-3, 6-7, 17 n.8, 20, *United States v. Poindexter*, Crim No. 88-0080-01 (HHG).

written order, the district court, after conducting an *in camera* review of diary excerpts, described the diaries as containing “classified and highly sensitive information” including an entry about “a certain top-secret and extremely sensitive activity.”⁹²⁷

After these legal declarations by the Department and the court, the classified diaries remained in Mr. Reagan’s private home for another fifteen years, until he died in 2004. And even though the Department of Justice publicly acknowledged that Mr. Reagan treated the diaries as his personal records and they were not in possession of the National Archives, to our knowledge neither the Department nor anyone else sought the diaries’ return or initiated a criminal investigation.⁹²⁸

In short, there will be evidence at trial that at least one former president did what Mr. Biden now claims it was proper for him to do too: take his diaries home after leaving the White House, even though the diaries contained classified information. As indicated by letters we have received from the White House Counsel’s Office and Mr. Biden’s personal attorneys, the defense will argue that the Department of Justice blessed this view in Mr. Reagan’s case by stating in public filings that the diaries were both classified and Mr. Reagan’s personal records and by taking no recovery or enforcement action. Most jurors would likely find this precedent

⁹²⁷ *United States v. Poindexter*, 732 F. Supp. 135, 138 n.5, 141 (D.D.C. Jan. 30, 1990).

⁹²⁸ See Chapter Ten.

and Mr. Biden's claimed reliance on it, evidence of which we expect would be admitted at trial,⁹²⁹ to be compelling evidence that Mr. Biden did not act willfully.

The government could reply that, whatever the reasons for the Department of Justice's inaction in Mr. Reagan's case—including, perhaps, that former presidents have Secret Service protection indefinitely after leaving office, or simply that officials at the Department did not realize Mr. Reagan stored his diaries at home—the relevant executive order and controlling regulations require former presidents and vice presidents to store classified information in a secured location after their time in office.⁹³⁰

While we agree with this statement of the law, and we recognize that the Reagan precedent is from a different era with a different legal landscape, we think jurors assessing Mr. Biden's guilt and intent will be persuaded less by what the government says in executive orders and agency regulations, and more by what the government actually has done (or not done) by way of enforcement among the small

⁹²⁹ Admissible evidence concerning a lack of willfulness can include legal materials upon which the defendant claims to have relied in forming the view that his conduct was not forbidden by law, so long as the defendant lays a proper foundation. *United States v. Powell*, 955 F.2d 1206, 1214 (9th Cir. 1991); *see also United States v. Harris*, 942 F.2d 1125, 1132 n.6 (7th Cir. 1991) (noting that, in the context of tax crimes requiring proof of willfulness, defendants can introduce expert testimony about case law “to the extent that the defendant claims actual reliance on that case law”); *United States v. Willie*, 941 F.2d 1384, 1392-98 (10th Cir. 1991) (to show lack of willfulness in a tax case, defendant can introduce evidence to prove his “descriptive” belief that the law *does not* apply to him, but not his “normative” belief that the law *should not* apply to him).

⁹³⁰ *See* Executive Order 13526 §§ 4.1, 4.4; Superseding Indictment ¶¶ 18-19, *United States v. Trump*, No. 23-CR-80101-AMC, ECF No. 85. It is not clear that the presence of Secret Service agents materially enhances the level of protection afforded to classified materials. Agents we interviewed said they focus on the protection of persons, not documents, and they do not monitor the movement of or access to documents. Secret Service Supervisor Tr. at 12-13; Secret Service Special Agent 1 8/24/23 Tr. at 27-29, 87-88; Secret Service Special Agent 2 Tr. at 31-33.

group of former presidents and vice presidents. Many jurors would conclude that, given the Department's treatment of Mr. Reagan, who kept his classified diaries for more than a decade before his death, it would have been plausible for Mr. Biden to believe he could properly keep his classified notebooks. Citing the relevant sources of law likely would not sway such jurors from this conclusion.

We also believe some of the same evidence that supports reasonable doubt for the classified Afghanistan documents also supports reasonable doubt for the notebooks, including Mr. Biden's cooperation with the investigation, his diminished faculties in advancing age, and his sympathetic demeanor. These factors will likely make it difficult for jurors to conclude he had criminal intent.

Finally, the two main sets of evidence summarized above, suggesting that Mr. Biden knew he was not allowed to keep classified notebooks, do not suffice to prove his willfulness beyond a reasonable doubt. The first set of evidence is that Mr. Biden, at his staff's insistence, stored his classified notecards in a SCIF at the Archives, and several months earlier in the fall of 2016 he told Zwonitzer "they didn't even know I have this [notebook]."⁹³¹ This could suggest that Mr. Biden concealed his notebooks from staff to avoid restrictions on his access to or use of them.

But the defense will argue that this treatment of the notecards and notebooks is also consistent with an innocent explanation: Mr. Biden may have simply acquiesced to his staff's decision to store his notecards in the Archives SCIF, even though, as he suggested to his ghostwriter on April 26, 2017, he (like Mr. Reagan and

⁹³¹ See Chapter Four.

the Department of Justice before him) did not think he was required to do so. If that is what happened, Mr. Biden was not required to inform his staff that their (in his view) unnecessary advice could also apply to his notebooks. His failure to flag the notebooks for what he believed to be his staff's overly cautious treatment is not compelling evidence of willfulness. In the same vein, Mr. Biden could have concluded that the forms he signed about safeguarding classified information in the Archives SCIF were boilerplate paperwork that applied in most cases, but not to the handwritten materials of a former president or vice president, which historically have been treated as the former officeholder's personal property. And he could point to McGrail's current understanding that the notecards were stored in a SCIF simply to keep them secure, not because they were classified.⁹³²

The second set of evidence concerns the guidance on "best practices" that Counsel Cynthia Hogan gave Mr. Biden in 2010 and 2011 about handling classified information, and his decision after receiving this guidance to store the notebooks in a safe in the White House.⁹³³ This evidence, too, is consistent with innocence. By the time Mr. Biden left the White House in 2017, Hogan's guidance about storage in a safe was six years old, and Mr. Biden had long since stopped following it. The evidence suggests that he did not store his notebooks in a safe for the last several years of his administration, and no one in the White House raised concerns.⁹³⁴

⁹³² McGrail 1/22/24 Tr. at 69-70, 113-14, 129-30.

⁹³³ See Chapters Three and Four.

⁹³⁴ See *id.*

While Mr. Biden *may* have recalled Hogan's advice and concluded that it meant he should not bring the notebooks home with him when he left the White House, there is no evidence he did so recall. And there would have been good reason for him not to think this way, especially since Hogan gave her 2010 advice seven years earlier during a meeting scheduled to last ten minutes, and Mr. Biden had long since stopped following her advice, which Hogan told us would have reflected best practices rather than legal requirements.⁹³⁵

For these reasons, we do not believe the government could prove beyond a reasonable doubt that Mr. Biden knew it was unlawful to retain his notebooks at his home after the vice presidency.

C. The evidence does not prove beyond a reasonable doubt that Mr. Biden willfully disclosed national defense information in the notebooks to his ghostwriter

We have also considered whether Mr. Biden willfully disclosed national defense information to Zwonitzer by reading certain passages of his notes, aloud and nearly verbatim, from national security meetings.⁹³⁶ Mr. Biden should have known that by reading his unfiltered notes about classified meetings in the Situation Room, he risked sharing classified information with his ghostwriter. But we do not believe the evidence supports charges of willful disclosure beyond a reasonable doubt.

At least three times, Mr. Biden read classified notes from national security meetings to Zwonitzer nearly verbatim. The first two incidents involved the same

⁹³⁵ *See id.*

⁹³⁶ *See* 18 U.S.C. § 793(e) (prohibiting the willful transmission of national defense information).

notebook passage.⁹³⁷ On February 16, 2017, Mr. Biden appeared to explain to Zwonitzer that a notebook entry related to “a long meeting on the Security Council on – it probably was classified.”⁹³⁸ Mr. Biden had skipped over this entry entirely during a recorded conversation with Zwonitzer several months earlier in October 2016.⁹³⁹ But during the February 16, 2017 recorded conversation, Mr. Biden read aloud to Zwonitzer portions of the notebook entry that contained classified information.⁹⁴⁰

Two months later, on April 10, 2017, during another recorded conversation with Zwonitzer, Mr. Biden turned to the same notebook entry and read additional classified portions aloud, again nearly verbatim.⁹⁴¹ He did so immediately after reviewing aloud highly emotional notebook entries about the death of his son Beau and other personal topics, which appeared on the pages right before the classified entry.⁹⁴²

This evidence shows that Mr. Biden disclosed classified information to Zwonitzer, who was not authorized to receive it. But the evidence falls short of proving that Mr. Biden did so willfully—that is, that he knew these notebook passages were classified and that he intended to share classified information with Zwonitzer. During the February 16, 2017 conversation, Mr. Biden appeared to say

⁹³⁷ See Chapter Five.

⁹³⁸ Zwonitzer recording Carved_000556; Carved_000556 Tr. at 4; Notebook entry 1B57-0062-65; FBI Serials 315, 335; Evidence item 1B79; Evidence item 1B81.

⁹³⁹ See Chapter Five.

⁹⁴⁰ See *id.*

⁹⁴¹ See *id.*

⁹⁴² See *id.*

that the meeting his notes summarized—not his notes themselves—“probably” was classified.⁹⁴³ Though it was foreseeable that Mr. Biden’s notes about a classified meeting would themselves be classified (which they were), the evidence does not prove definitively that Mr. Biden actually knew that, or that he intended to share classified information.

And during the April 10, 2017 meeting, jurors could well conclude that Mr. Biden read from the same classified entry without pausing to consider that it was classified, given his discussion of highly emotional topics with Zwonitzer just before he read the classified passage, and the lack of any pause before Mr. Biden launched into reading the classified entry.⁹⁴⁴ Though it would require jurors to find that Mr. Biden ignored or missed clear warning signs that he was sharing classified information with Zwonitzer in February and April 2017, we believe some reasonable jurors would likely reach that conclusion.

The third incident happened on April 24, 2017, when Mr. Biden read aloud to Zwonitzer portions of a different entry of classified notes from a National Security Council meeting, also nearly verbatim.⁹⁴⁵ When Mr. Biden could not read a particular word in the entry, he showed the entry to Zwonitzer but warned him, “Some of this may be classified, so be careful . . . I’m not sure. It isn’t marked classified, but...”⁹⁴⁶

⁹⁴³ *See id.*

⁹⁴⁴ *See id.*

⁹⁴⁵ *See id.*

⁹⁴⁶ *See id.*

Mr. Biden nonetheless continued to read aloud and nearly verbatim portions of the same passage of his notes, some of which remain classified at the Secret level.⁹⁴⁷

Mr. Biden's decision to read notes nearly verbatim to Zwonitzer that Mr. Biden had just identified as potentially classified cannot be justified. But the evidence does not prove beyond a reasonable doubt that he intended to share classified information. Mr. Biden told Zwonitzer he was "not sure" the notebook passage he read was classified. That is enough to create reasonable doubt about whether Mr. Biden acted willfully.

There is also evidence that Mr. Biden took some steps to avoid sharing classified information with Zwonitzer. As explained in Chapter Five, Mr. Biden sometimes skipped over notebook passages to avoid reading classified information. And if called as a witness at trial, Zwonitzer would testify that Mr. Biden mentioned the need to be careful "because he was worried that there was a possibility that . . . some of this stuff [handwritten entries in the notebooks] could be classified," and, "there were things he couldn't tell me, lines he couldn't cross."⁹⁴⁸

Given the intelligence and military officials present and the topics discussed at the meetings Mr. Biden recounted for Zwonitzer, Mr. Biden should have realized that his notes did or were likely to contain classified information. But taken as a whole, the evidence will likely leave jurors with reasonable doubts about whether Mr. Biden knew he was sharing classified information with Zwonitzer and intended to do so. For these jurors, Mr. Biden's apparent lapses and failures in February and April

⁹⁴⁷ *See id.*

⁹⁴⁸ Zwonitzer 7/31/23 Tr. at 83.

2017 will likely appear consistent with the diminished faculties and faulty memory he showed in Zwonitzer's interview recordings and in our interview of him.⁹⁴⁹ Therefore, we conclude that the evidence does not establish that Mr. Biden willfully disclosed national defense information to Zwonitzer.

⁹⁴⁹ See Chapter Eleven.

CHAPTER THIRTEEN

ANALYSIS OF PRINCIPLES OF FEDERAL PROSECUTION FACTORS

In addition to considering the sufficiency of the evidence, we have also evaluated “all relevant considerations” in aggravation and mitigation and determined that on balance, for both the marked classified Afghanistan documents and the classified notebooks, these factors do not warrant criminal charges.⁹⁵⁰

I. HISTORICAL PRACTICE

While in office, the president and vice president, like members of Congress and federal judges, are exempt from the ordinary rules governing classified information that apply to almost everyone else.⁹⁵¹ As discussed in Chapter Nine, presidents and vice presidents are constitutional officers whose handling of classified information supports their Article II functions of conducting foreign affairs and providing for the national defense.⁹⁵² After their time in office, for much of our nation’s history, it appears that many former presidents and vice presidents knowingly retained information concerning national security without being subject to criminal investigations or charges.⁹⁵³ This historical record is important context for judging

⁹⁵⁰ Memorandum for All Federal Prosecutors: General Department Policies Regarding Charging, Pleas, and Sentencing, Office of the Att’y Gen. (Dec. 16, 2022) at 1-2 (even if a prosecutor is able to obtain and sustain a conviction, “a prosecutor should not commence a prosecution if the prosecution would not serve a substantial federal interest,” and in determining whether a substantial federal interest exists, the prosecutor should “weigh all relevant considerations,” including nine enumerated factors); U.S. Dep’t of Just., Just. Manual §§ 9-27.001, 9-27.230 (2023).

⁹⁵¹ See Chapter One.

⁹⁵² See nn.768-70 above.

⁹⁵³ See Chapter Ten.

whether and why to charge a former vice president (and president) such as Mr. Biden for the same acts taken by several of his predecessors.

With one exception, there is no record of the Department of Justice prosecuting a former president or vice president for mishandling classified documents from his own administration. The exception is former President Trump. It is not our role to assess the criminal charges pending against Mr. Trump, but several material distinctions between Mr. Trump's case and Mr. Biden's are clear. Unlike the evidence involving Mr. Biden, the allegations set forth in the indictment of Mr. Trump, if proven, would clearly establish not only Mr. Trump's willfulness but also serious aggravating facts.

Most notably, after being given multiple chances to return classified documents and avoid prosecution, Mr. Trump allegedly did the opposite.⁹⁵⁴ According to the indictment, he not only refused to return the documents for months, but he also obstructed justice by enlisting others to destroy evidence and then to lie about it.⁹⁵⁵ In contrast, Mr. Biden alerted authorities, turned in classified documents to the National Archives and the Department of Justice in 2022 and 2023, consented to the search of multiple locations including his homes, permitted the seizure and review of handwritten notebooks he believed to be his personal property, and in numerous other ways cooperated with the investigation.⁹⁵⁶

⁹⁵⁴ Superseding Indictment ¶¶ 7-8, *United States v. Trump*, No. 23-CR-80101-AMC, ECF No. 85.

⁹⁵⁵ *Id.*

⁹⁵⁶ See Chapter Two; see also U.S. Dep't of Just., Just. Manual § 9-27.230 (2023) (a person's willingness to cooperate is a relevant factor in determining whether prosecution is warranted).

With respect to Mr. Biden's notebooks, the Reagan precedent provides an additional reason to forgo criminal charges. The Department of Justice previously informed a court in public filings that Mr. Reagan's diaries were both "currently classified" and Mr. Reagan's "personal records."⁹⁵⁷ This should give the Department pause before now concluding that Mr. Biden will be charged with a crime for retaining his own classified writings. Such an about-face, without previous public warning that is sharper than the relevant executive order and regulations, would be seen by many to violate basic principles of notice and fairness.⁹⁵⁸ And even though it is possible the Department lacked knowledge of all the facts about how Mr. Reagan stored his diaries, officials knew they contained classified information and that Mr. Reagan was treating them as his personal records, and it appears no one ever asked how the diaries were stored or made efforts to recover them.⁹⁵⁹

⁹⁵⁷ See Chapter Ten.

⁹⁵⁸ Other officials have been prosecuted for the retention of classified notes—most notably, David Petraeus, who served as a four-star general in the Army and later Director of the Central Intelligence Agency. See Plea Agreement at ¶ 1, *United States v. Petraeus*, 3:15-cr-00047 (W.D.N.C. Mar. 3, 2015), ECF No. 2. There are significant similarities between Petraeus's case and Mr. Biden's, but the differences are more significant. First, Petraeus's retention of notebooks violated numerous nondisclosure agreements he signed as an employee of the Department of Defense. By contrast, by virtue of his unique constitutional role as vice president, Mr. Biden signed no such nondisclosure agreements or attestations. Second, Petraeus lied when questioned by FBI agents, telling them he had not provided classified information to his biographer. See *id.* at ¶ 32. Mr. Biden's case began with a proactive self-disclosure, and he has cooperated with the Department of Justice and special counsel by consenting to multiple searches of his personal residence and offices. Third, there was stronger evidence of willfulness in Petraeus's case, in light of his lies and obfuscations, whereas Mr. Biden has asserted his rightful ownership of his notebooks based on a long history of former presidents and vice presidents retaining diaries, notes, and other writings that contained classified information. Despite these important differences, Petraeus was charged only with a misdemeanor violation of 18 U.S.C. § 1924, a statute that, as discussed in Chapter Nine, is not applicable to the facts of this case.

⁹⁵⁹ See Chapter Ten.

In the past forty years, twelve men and women have served as president and vice president. At least two—Mr. Reagan and Mr. Biden—have kept handwritten notes containing classified material at their homes after leaving office. It is quite possible that others had or presently have such handwritten notes in their personal possession to this day. We have not identified aggravating facts that compel bringing the first prosecution of such actions here.

In reaching our decision, we did not consider every circumstance in which criminal charges against a former president or vice president for mishandling classified information may be warranted. But on the facts of this case, given the historical practices we have discussed, the evidence revealed in our investigation, and the extent of Mr. Biden's cooperation, criminal charges are not warranted.⁹⁶⁰

II. OTHER FACTORS

We have also considered other factors the Department traditionally applies when considering charges for mishandling classified information. Those factors are:

- (1) The volume of classified information and the manner in which it is stored;
- (2) The sensitivity of the information, including the level of classification and whether it is dated or recent;
- (3) Reasons the person retained the information;
- (4) Whether the information was disclosed to someone else, and under what circumstances;
- (5) Whether there is a potential foreign nexus;
- (6) Whether the person made false statements related to the retention; and

⁹⁶⁰ See 28 C.F.R. § 600.7 (explaining that “[a] Special Counsel shall comply with the rules, regulations, procedures, practices and policies of the Department of Justice.”).

(7) Other relevant aggravating and mitigating factors.

While these factors cut in different directions, on balance, they favor declination of charges against Mr. Biden.

The volume of classified information is not small, and while it could support a decision to bring criminal charges, it does not require such charges. As for the sensitivity and recency of the information, the Afghanistan documents are relatively old and concern a conflict that is now over. The notebook entries contain some highly sensitive information that is more recent, dating as late as 2017. But Mr. Reagan also kept classified information at home in his diaries after his presidency.

If Mr. Biden retained the classified documents intentionally, he appears to have done so to defend his record and burnish his credentials to run for president. This factor counts against him. It is difficult to conceive of good reasons to risk the nation's security by mishandling classified information, and bolstering one's reputation is not one.

There is no evidence that Mr. Biden shared classified information with any foreign person. As discussed in Chapter Twelve, though, he did share classified information with Zwonitzer by reading from classified notebook entries to Zwonitzer nearly verbatim. These entries included entries concerning human intelligence sources, as well as entries that Mr. Biden had previously identified as classified or potentially classified.⁹⁶¹ Mr. Biden's decision to take home notebooks knowing that as a whole they contained classified information, and then read verbatim notes from

⁹⁶¹ See Chapter 5.

national security meetings to his ghostwriter—recognizing those notes were at least potentially classified—counts squarely in aggravation.

We cannot prove that Mr. Biden made any false statements related to his retention of classified information. As noted in Chapter Twelve, he provided one answer to our written questions that was not credible—that when he described his notebook entries to Zwonitzer as classified or potentially classified, he did not really mean “classified,” he merely meant “private.”⁹⁶² But, while incredible, we cannot prove this statement was false. Mr. Biden prefaced it by explaining that he did not remember the specific conversations in question, which occurred more than six years ago.⁹⁶³ And even if this written answer is a strike against Mr. Biden, the other instances of his cooperation with our investigation weigh heavily in his favor.

Other aggravating and mitigating facts addressed in the Justice Manual also counsel against prosecution. At the time of any trial or sentencing, Mr. Biden would be well into his eighties, an age when relatively few people are prosecuted.⁹⁶⁴ He has no criminal record.⁹⁶⁵ He is highly unlikely to be sentenced to prison or assessed a significant fine.⁹⁶⁶ Any deterrent effect of prosecution would likely be slight.⁹⁶⁷ We are not concerned with specific deterrence, as we see little risk he will reoffend. As for general deterrence, future presidents and vice presidents are already likely to be deterred by the multiple recent criminal investigations, and one prosecution, of

⁹⁶² Biden 12/1/23 written responses at 1.

⁹⁶³ *Id.*

⁹⁶⁴ See U.S. Dep’t of Just., Just. Manual § 9-27.230(7) (2023).

⁹⁶⁵ See *id.* § 9-27.230(5) (2023).

⁹⁶⁶ See *id.* § 9-27.230(9) (2023).

⁹⁶⁷ See *id.* § 9-27.230(3) (2023).

current and former presidents and vice presidents for mishandling classified documents.⁹⁶⁸ Mr. Biden has served the nation for nearly fifty years as President and Vice President of the United States and United States Senator.⁹⁶⁹ On balance, his record of service also supports a decision to forgo criminal charges.

* * *

The practice of retaining classified material in unsecured locations poses serious risks to national security, given the vulnerability of extraordinarily sensitive information to loss or compromise to America's adversaries. The Department routinely highlights such risks when pursuing classified mishandling prosecutions. But addressing those risks through the criminal law, the only means available to this office, is not the proper remedy here.

For the classified Afghanistan documents and the classified notebooks, we believe the evidence falls short of supporting criminal charges. And other factors that inform our decision under the Principles of Federal Prosecution lead us to conclude that "the fundamental interests of society" do not "require" such charges.⁹⁷⁰ For these reasons, we decline prosecution.

⁹⁶⁸ *See id.* § 9-27.230(3) (2023).

⁹⁶⁹ *See id.* § 9-27.230(7) (2023).

⁹⁷⁰ *See id.* §§ 9-27.001, 9-27.220 (2023).

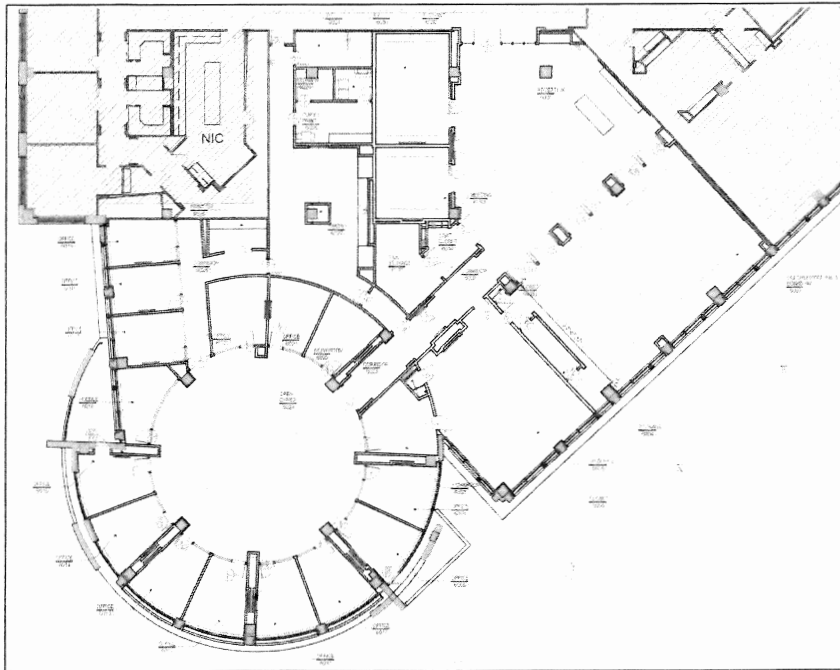
CHAPTER FOURTEEN

CLASSIFIED DOCUMENTS FOUND AT THE PENN BIDEN CENTER

I. FACTS

A. Description of the Penn Biden Center

The Penn Biden Center is housed in an office space leased by the University of Pennsylvania on the sixth floor of a commercial office building near the United States Capitol in Washington, D.C. The office space includes a reception area, conference rooms, a kitchen and pantry, a copy room, a large office for Mr. Biden designed to resemble the vice president's West Wing office, and roughly a dozen smaller offices and workrooms arrayed in a circle around a central, open office space. Mr. Biden's office adjoins one of the smaller workrooms—sometimes called the “outer office”—where Mr. Biden's personal assistant, scheduler, and trip director sat.⁹⁷¹



*Penn Biden Center floor plan*⁹⁷²

⁹⁷¹ PBC Scheduler Tr. at 63-64.

⁹⁷² SCOH-000451; FBI Serial 344 1A415.

B. Events leading up to the discovery of classified documents at the Penn Biden Center

In March 2021, Mr. Biden’s director of Oval Office operations visited the Penn Biden Center at Mr. Biden’s request.⁹⁷³ She described the purposes of the visit as: (1) to look for personal items such as family photographs and awards that Mr. Biden might want to display in the Oval Office, and (2) to “get a sense of what was there” more generally.⁹⁷⁴ The director of Oval Office operations took photographs to document her visit and compiled an inventory with the help of an assistant.⁹⁷⁵ In addition to personal items such as framed photographs, flags, awards, books, and challenge coins located in Mr. Biden’s office, she noted the presence of “40 boxes” in a “hallway closet.”⁹⁷⁶ She took photographs of the boxes.⁹⁷⁷ After the visit, she reported back to Mr. Biden what she had found. According to the director of Oval Office operations, the conversation was “very fast” and “pretty informal,” and Mr. Biden did not provide any further direction about the Penn Biden Center.⁹⁷⁸

In May 2022, White House Counsel Dana Remus undertook an effort to retrieve Mr. Biden’s files from the Penn Biden Center.⁹⁷⁹ Remus described the original purpose of that effort as gathering materials to prepare for potential congressional inquiries about the Biden family’s activities during the period from

⁹⁷³ Director of Oval Office Operations Tr. at 12-13.

⁹⁷⁴ *Id.* at 12-14, 19, 25.

⁹⁷⁵ *Id.* at 19-21; FBI Serial 348 1A419; WH-SCH-000000003 at 17.

⁹⁷⁶ FBI Serial 348 1A419; Penn Center Inventory, WH-SCH-000000003.

⁹⁷⁷ FBI Serial 348 1A419; WH-SCH-000000007 at 10-11; Director of Oval Office Operations Tr. at 19-20.

⁹⁷⁸ Director of Oval Office Operations Tr. at 27-28.

⁹⁷⁹ Remus Tr. at 64-66; Moore 11/18/22, FBI Serial 16.

2017 through 2019, when Mr. Biden was actively engaged with the Center.⁹⁸⁰ Through later conversations, Remus learned that the Penn Biden Center's offices contained a mix of Mr. Biden's materials—including personal material—that was not limited to records of his activities from 2017 through 2019.⁹⁸¹ Eventually, the goal of Mr. Biden's staff became to clear out all of his material from the Penn Biden Center.⁹⁸²

Remus decided to ship material that could be relevant to future congressional inquiries to Patrick Moore, one of Mr. Biden's personal counsel in Boston, Massachusetts, for further review by Moore and Bob Bauer.⁹⁸³ Moore's office had become a repository for some of Mr. Biden's political materials, such as awards and copies of speeches.⁹⁸⁴ Bauer and Moore planned to inform the White House Counsel's Office of what they found.⁹⁸⁵ Strictly personal items would be shipped to Mr. Biden's Delaware home.⁹⁸⁶

Remus initially coordinated with the executive assistant, who had worked for Mr. Biden both during his second term as vice president and at the Penn Biden Center.⁹⁸⁷ The executive assistant offered to pack up Mr. Biden's files at the Penn

⁹⁸⁰ Remus Tr. at 65, 75-76, 80; Moore 11/18/22, FBI Serial 16; Personal Attorney 1 12/8/22, FBI Serial 40.

⁹⁸¹ Remus Tr. at 67, 80.

⁹⁸² *Id.* at 67; Dr. Biden Staffer 2 Tr. at 36-37.

⁹⁸³ Remus Tr. at 82-83.

⁹⁸⁴ Moore 11/18/22, FBI Serial 16 at 2, 4.

⁹⁸⁵ Remus Tr. at 82.

⁹⁸⁶ *Id.* at 83.

⁹⁸⁷ *Id.* at 66, 74-75; Executive Assistant Tr. 1/4/23 at 3-4, 66, 95; FBI Serial 350 1A421; 5/24/22 e-mail from Remus, SCOH-000747.

Biden Center.⁹⁸⁸ Remus understood the executive assistant was going to segregate personal files—such as photographs and handwritten letters to Mr. Biden—from files related to his work.⁹⁸⁹ As the executive assistant later told investigators, “[a] lot of the stuff was already packed up.”⁹⁹⁰

On June 28, 2022, the executive assistant came to pack up the remaining unpacked files.⁹⁹¹ She completed the packing in about a half-hour.⁹⁹² Her packing involved simply transferring files from office drawers into Home Depot boxes she had picked up earlier.⁹⁹³ In doing so, she did not review individual files or documents.⁹⁹⁴

Most of the packing involved boxing up files the executive assistant stored for Mr. Biden in the outer office she formerly occupied along with Mr. Biden’s former scheduler and trip director at the Penn Biden Center.⁹⁹⁵ The outer office was accessible on one end from Mr. Biden’s office.⁹⁹⁶ At the other end, the outer office had a door to the Center’s larger office area.⁹⁹⁷ Mr. Biden’s office and the outer office are depicted in the photographs below.

⁹⁸⁸ Executive Assistant Tr. 1/4/23 at 97; Remus Tr. at 81-82; FBI Serial 350 1A421; 6/21/22 e-mail from Executive Assistant to Remus, SCOH-000748; 6/23/22 e-mail from Former Executive Assistant to Remus, SCOH-000753.

⁹⁸⁹ Remus Tr. at 89-90.

⁹⁹⁰ Executive Assistant 1/4/23 Tr. at 98-99; Executive Assistant 9/28/2023 Tr. at 142.

⁹⁹¹ FBI Serial 350 1A421; 6/21/22 e-mail from Former Executive Assistant, SCOH-000750; 6/23/22 e-mail from Former Executive Assistant to Remus, SCOH-000753.

⁹⁹² Executive Assistant 9/28/23 Tr. at 138-39.

⁹⁹³ Executive Assistant 1/4/23 Tr. at 98-99.

⁹⁹⁴ *Id.* at 99.

⁹⁹⁵ *Id.* at 100-01; PBC Scheduler Tr. at 64.

⁹⁹⁶ Moore 11/18/22, FBI Serial 16 at 2-3, 6; Personal Attorney 1 12/8/22, FBI Serial 40 at 2.

⁹⁹⁷ Penn Biden Center Layout, SCOH-000452; FBI Serial 344 1A415.



Mr. Biden's office at the Penn Biden Center (Nov. 28, 2022)⁹⁹⁸



Mr. Biden's office at the Penn Biden Center (Nov. 28, 2022)⁹⁹⁹

⁹⁹⁸ 20221128_ERT_0068; FBI Serial 14 1A14.

⁹⁹⁹ 20221128_ERT_0060; FBI Serial 14 1A14.



The outer office at the Penn Biden Center (Nov. 28, 2022)¹⁰⁰⁰



The outer office at the Penn Biden Center (Nov. 28, 2022)¹⁰⁰¹

¹⁰⁰⁰ 20221128_ERT_0074; FBI Serial 14 1A14.

¹⁰⁰¹ 20221128_ERT_0075; FBI Serial 14 1A14.

The executive assistant also looked for files in Mr. Biden's office and other staff offices but found none.¹⁰⁰² She e-mailed Remus that evening: "13 boxes. There are clearly marked boxes with correspondence throughout 4 years."¹⁰⁰³ As the executive assistant later told investigators, many of the 13 boxes she referred to were boxes of correspondence files that had already been packed up and stored in a storage closet at the Penn Biden Center.¹⁰⁰⁴ The others were the boxes she packed with files from the outer office.¹⁰⁰⁵

Remus visited the Penn Biden Center two days later, on June 30, 2022, with a member of her staff and a top advisor to the First Lady.¹⁰⁰⁶ They expected to retrieve the 13 boxes mentioned by the executive assistant.¹⁰⁰⁷ Remus planned to ship some of the boxes to Moore.¹⁰⁰⁸ The member of her staff and the advisor to the First Lady would drive the rest to the Delaware residence.¹⁰⁰⁹ Upon arriving at the Penn Biden Center, though, Remus discovered that there was much more than 13 boxes of material belonging to Mr. Biden, and some of it was not even packed.¹⁰¹⁰ The project of going through the volume of material and figuring out where things should go "was a much bigger task" than Remus had expected.¹⁰¹¹ Remus and her colleagues left the

¹⁰⁰² Executive Assistant 1/4/23 Tr. at 100-01.

¹⁰⁰³ FBI Serial 350 1A421; 6/28/23 e-mail to Remus, SCOH-000755.

¹⁰⁰⁴ Executive Assistant 9/28/23 Tr. at 140-44.

¹⁰⁰⁵ *Id.* at 144.

¹⁰⁰⁶ FBI Serial 364 1A429; Remus Tr. at 90, 93-94, 143-46; WHC Special Assistant Tr. at 19.

¹⁰⁰⁷ Remus Tr. at 138-39.

¹⁰⁰⁸ *Id.* at 90-91.

¹⁰⁰⁹ Remus Tr. at 90; WHC Special Assistant Tr. at 16-17.

¹⁰¹⁰ Remus Tr. at 68, 138-39.

¹⁰¹¹ *Id.* at 68; *see also* Dr. Biden Personal Aide Tr. at 142.

Penn Biden Center that day without removing anything.¹⁰¹² The photographs taken by the director of Oval Office operations in March 2021 corroborated Remus's statements about the quantity and variety of Mr. Biden's items stored at the Penn Biden Center:¹⁰¹³



*Photos of a storage closet at the Penn Biden Center (March 2021)*¹⁰¹⁴

Remus later contacted Moore and asked him to review and properly dispose of the material stored at the Penn Biden Center.¹⁰¹⁵ Moore visited the Center months later, on October 12, 2022, along with one of Mr. Biden's Oval Office aides.¹⁰¹⁶ Moore's

¹⁰¹² Remus Tr. at 68; WHC Special Assistant Tr. at 21.

¹⁰¹³ FBI Serial 348 1A419; Director of Oval Office Operations Tr. at 19-26; Penn Office Inventory, WH-SCH-000000003; *see also* 3/17/21 e-mails between Oval Office Aides, WH-SCH-000000002.

¹⁰¹⁴ Penn Office Inventory, WH-SCH-000000003 at 10; WH-SCH-000001234; FBI Serial 348 1A419.

¹⁰¹⁵ Moore 01/12/23, FBI Serial 96 at 7; Moore 11/18/22, FBI Serial 16 at 4; Remus Tr. at 68-69, 148.

¹⁰¹⁶ Moore 11/18/22, FBI Serial 16 at 5; Dr. Biden Staffer 2 Tr. at 40.

goal was to take stock of what was stored there, determine how much needed to be reviewed, and create a plan for moving everything out.¹⁰¹⁷ According to Moore, conducting the review was not a high priority because nobody expected to find classified documents or presidential records there.¹⁰¹⁸

The Oval Office aide accompanied Moore to facilitate his access to the Penn Biden Center and his initial review of material.¹⁰¹⁹ While at the Penn Biden Center, the aide also searched for and found items that could be used at the White House, such as gifts for visitors and Mr. Biden's personal stationery and personal items.¹⁰²⁰

Moore first inspected material in a back storage closet—pictured above—located off the mail room/kitchenette.¹⁰²¹ He found a variety of items including gifts, memorabilia, books, and condolence correspondence related to the 2015 death of Mr. Biden's son, Beau Biden.¹⁰²²

Moore then inspected Mr. Biden's office space.¹⁰²³ That space included Mr. Biden's office, a small closet in that office, and the outer office.¹⁰²⁴

Moore identified six or seven boxes containing documents to review.¹⁰²⁵ He recalled finding at least some of those boxes in the small closet in Mr. Biden's office

¹⁰¹⁷ Moore 11/18/22, FBI Serial 16 at 5.

¹⁰¹⁸ *Id.* at 4.

¹⁰¹⁹ Dr. Biden Staffer 2 Tr. at 36, 45; 80; FBI Serial 8 1A5, 11/16/22 Narrative from Bauer at 2.

¹⁰²⁰ Dr. Biden Staffer 2 Tr. at 71, 75-77; FBI Serial 8 1A5, 11/16/22 Narrative from Bauer at 2.

¹⁰²¹ Moore 11/18/22, FBI Serial 16 at 5; Moore 1/12/23, FBI Serial 96 at 8; FBI Serial 348 1A419; Penn Office Inventory, WH-SCH-000000003, at 10; WH-SCH-000001216.

¹⁰²² Moore 11/18/22, FBI Serial 16 at 5-6; Moore 1/12/23, FBI Serial 96 at 8.

¹⁰²³ Moore 11/18/22, FBI Serial 16 at 6.

¹⁰²⁴ *Id.*

¹⁰²⁵ *Id.*; Moore 1/12/23, FBI Serial 96 at 9.

and moving them to the outer office for review.¹⁰²⁶ When interviewed by FBI agents, Moore believed the small closet was initially locked and that a Penn Biden Center staff member provided a key to unlock it, but his memory was fuzzy on that point.¹⁰²⁷ He found the other boxes in the outer office, where he conducted his first cursory review of the material in the boxes.¹⁰²⁸ During that initial, quick review, Moore saw copies of speeches, political documents, and campaign materials.¹⁰²⁹ He also noticed documents dating from Mr. Biden's time as vice president; the format of these documents led him to believe they were from the White House.¹⁰³⁰ Moore knew such documents were potentially presidential records under the Presidential Records Act, which must be stored at the National Archives.¹⁰³¹ He did not see any documents with classification markings at the time.¹⁰³² Moore left that day intending to return later and, among other things, conduct a more detailed review of the material and determine whether any of it included presidential records.¹⁰³³

Moore returned to the Penn Biden Center several weeks later on November 2, 2022, with an associate from his law firm.¹⁰³⁴ They planned to review the materials

¹⁰²⁶ See Moore 1/12/23, FBI Serial 96 at 9-10; Moore 11/18/22, FBI Serial 16 at 6.

¹⁰²⁷ Moore 11/18/22, FBI Serial 16 at 6. The executive assistant stated that the Home Depot boxes she packed up during her June 2022 visit were left in the Outer Office. Executive Assistant 1/4/23 Tr. at 98-99, 106-08; Executive Assistant 9/28/23 Tr. at 147. She did not move these boxes into the closet in Mr. Biden's office. Executive Assistant 1/4/23 Tr. at 107-08; Executive Assistant 9/28/23 Tr. at 148-49.

¹⁰²⁸ FBI Serial 96 at 9-10; FBI Serial 16 at 6.

¹⁰²⁹ FBI Serial 16 at 6.

¹⁰³⁰ Moore 11/18/22, FBI Serial 16 at 6; Moore 1/12/23, FBI Serial 96 at 8.

¹⁰³¹ See Moore 11/18/22, FBI Serial 16 at 6.

¹⁰³² Moore 11/18/22, FBI Serial 16 at 6; FBI Serial 8 1A5, 11/16/22 Narrative from Bauer at 2.

¹⁰³³ Moore 11/18/22, FBI Serial 16 at 6; Moore 1/12/23, FBI Serial 96 at 8-9.

¹⁰³⁴ Moore 11/18/22, FBI Serial 16 at 7; FBI Serial 8 1A5, 11/16/22 Narrative from Bauer at 2.

and send records that were not presidential records to their firm office in Boston.¹⁰³⁵ Moore brought FedEx boxes, and the two packed up and eventually shipped some materials they determined were clearly not presidential records, such as material dated after Mr. Biden's vice presidency.¹⁰³⁶ They set aside for further review four Home Depot boxes containing folders labeled with dates from 2009 to 2017, years during which Mr. Biden served as vice president.¹⁰³⁷

Moore began reviewing the material in one of the Home Depot boxes.¹⁰³⁸ About a third of the way through the box, he found a manila envelope marked "EYES ONLY" for the Vice President.¹⁰³⁹ "IRAN" was handwritten on the envelope.¹⁰⁴⁰ Inside the envelope, Moore found documents with classification markings.¹⁰⁴¹ He took the box into the adjoining room and contacted Bauer, who in turn contacted the White House Counsel.¹⁰⁴² Members of the White House Counsel's Office then notified the National Archives' general counsel.¹⁰⁴³ Moore added Post-It notes to designate where he found

¹⁰³⁵ Moore 11/18/22, FBI Serial 16 at 7; FBI Serial 8 1A5, 11/16/22 Narrative from Bauer at 2.

¹⁰³⁶ Moore 11/18/22, FBI Serial 16 at 7-9; FBI Serial 8 1A5, 11/16/22 Narrative from Bauer at 2.

¹⁰³⁷ Moore 11/18/22, FBI Serial 16 at 7, 9.

¹⁰³⁸ *Id.* at 7-9.

¹⁰³⁹ *Id.* at 7-9.

¹⁰⁴⁰ *Id.* at 8.

¹⁰⁴¹ *Id.*

¹⁰⁴² Moore 11/18/22, FBI Serial 96 at 8; FBI Serial 8 1A5, 11/16/22 Narrative from Bauer at 3.

¹⁰⁴³ FBI Serial 8 1A5, 11/16/22 Narrative from Bauer at 3; Moore 11/18/22, FBI Serial 16 at 8.

documents with classification markings.¹⁰⁴⁴ He photographed the files in the box, which an archivist from the National Archives later labeled “Box 3.”¹⁰⁴⁵



*Photo of Box 3 taken by Moore on or about Nov. 2, 2022*¹⁰⁴⁶

Moore’s associate also discovered material with classification markings in another box of files, which he had been reviewing page by page.¹⁰⁴⁷ That box also

¹⁰⁴⁴ Moore 1/12/23, FBI Serial 96 at 11.

¹⁰⁴⁵ Moore 11/18/22, FBI Serial 16 at 10-11; FBI Serials 17 1A19, 173 1A182; NARA Archivist 2 12/2/22, FBI Serial 26 at 1-2.

¹⁰⁴⁶ Bates-000016; FBI Serial 17 1A19.

¹⁰⁴⁷ Moore 11/18/22, FBI Serial 96 at 8; Personal Attorney 1 12/8/22, FBI Serial 40 at 3-4.

contained other records that Moore thought could qualify as presidential records.¹⁰⁴⁸ The associate used Post-It notes to flag documents he wanted Moore to look at and to keep track of documents he removed to review.¹⁰⁴⁹ Moore photographed the files in the box, which his associate labeled “Box 1.”¹⁰⁵⁰



*Photo of Box 1 taken by Moore on or about Nov. 2, 2022*¹⁰⁵¹

¹⁰⁴⁸ Moore 11/18/22, FBI Serial 16 at 7-9.

¹⁰⁴⁹ Personal Attorney 1 12/8/22, FBI Serial 40 at 4-5.

¹⁰⁵⁰ Moore 11/18/22, FBI Serial 16 at 10-11; FBI Serial 17 1A19; Personal Attorney 1 12/8/22, FBI Serial 40 at 5; NARA Archivist 2 12/1/22, FBI Serial 26 at 1.

¹⁰⁵¹ Bates-000028; Moore 11/18/22, FBI Serial 16 at 10; FBI Serial 17 1A19.

Moore and his associate identified one other of the four boxes that potentially contained presidential records but found no documents with classification markings in that box.¹⁰⁵² The National Archives later labeled the box as “Box 2.”¹⁰⁵³



*Photo of Box 2 taken by Moore on or about Nov. 2, 2022*¹⁰⁵⁴

¹⁰⁵² Moore 11/18/22, FBI Serial 16 at 9.

¹⁰⁵³ *Id.*; NARA Archivist 2 12/1/22, FBI Serial 26 at 1; FBI Serial 26 1A31; 20221201_WFO_13.

¹⁰⁵⁴ Bates-000030; Moore 11/18/22, FBI Serial 16 at 10; FBI Serial 17 1A19.

The fourth box did not appear to contain any presidential records but was in the same style Home Depot box as the other three.¹⁰⁵⁵ Moore and the associate repackaged the material in the fourth box into a new FedEx box because the Home Depot box was in relatively poor condition.¹⁰⁵⁶ Pursuant to instructions from the White House Counsel's Office, Moore locked the three boxes containing documents with classification markings or potential presidential records in the small closet off of Mr. Biden's office.¹⁰⁵⁷ He photographed the interior of the closet:



*Photo of the interior of the small closet off of Mr. Biden's office taken by Moore (Nov. 3, 2022)*¹⁰⁵⁸

¹⁰⁵⁵ Moore 11/18/22, FBI Serial 16 at 9.

¹⁰⁵⁶ *Id.*

¹⁰⁵⁷ See Moore 1/12/23, FBI Serial 96 at 10; Moore 11/18/22, FBI Serial 16 at 9; FBI Serial 8 1A5, 11/16/22 Narrative from Bauer at 3.

¹⁰⁵⁸ Bates-000035; Moore 11/18/22, FBI Serial 16 at 10; 17 1A19.

The next day, November 3, 2022, two archivists from the National Archives met Moore and an Associate White House Counsel at the Penn Biden Center.¹⁰⁵⁹ Moore took the three Home Depot boxes out of the locked closet and put them in the outer office.¹⁰⁶⁰ He offered for the archivists to take the fourth (FedEx) box, but they said the National Archives had instructed them to take only the three.¹⁰⁶¹ The archivists returned a few days later on November 8, 2022, however, and took the fourth box along with 28 Federal Records Center boxes from the Penn Biden Center.¹⁰⁶² Moore told the archivists that the 28 boxes contained letters expressing condolences related to the death of Beau Biden.¹⁰⁶³

Upon reviewing the contents of the three boxes in a SCIF at the National Archives, an archivist determined that they included nine documents with classification markings totaling 44 pages.¹⁰⁶⁴ Those documents were in Box 1 and Box 3.¹⁰⁶⁵ She estimated that about 90 percent of the documents in Boxes 1, 2, and 3 were personal in nature and related to financial matters, correspondence, and pictures.¹⁰⁶⁶ No other documents with classification markings were found in any of the material the National Archives took from the Penn Biden Center.¹⁰⁶⁷ Box 4 contained an

¹⁰⁵⁹ Moore 11/18/22, FBI Serial 16 at 10; NARA Archivist 2 11/10/22, FBI Serial 3 at 2; NARA COS 11/21/22, FBI Serial 6 at 1-2.

¹⁰⁶⁰ Moore 11/18/22, FBI Serial 16 at 10.

¹⁰⁶¹ Moore 11/18/22, FBI Serial 16 at 9-10.

¹⁰⁶² *Id.* at 11; NARA Archivist 2 11/10/2022, FBI Serial 3 at 3.

¹⁰⁶³ NARA Archivist 2 11/10/22, FBI Serial 3 at 3.

¹⁰⁶⁴ *Id.* at 2.

¹⁰⁶⁵ NARA Archivist 2 12/1/22, FBI Serial 26 at 2.

¹⁰⁶⁶ NARA Archivist 2 11/10/22, FBI Serial 3 at 2.

¹⁰⁶⁷ NARA Archivist 2 12/1/22, FBI Serial 26 at 2.

otherwise blank page with a classification marking.¹⁰⁶⁸ The page appeared to be the last page of bound briefing material that had likely been removed from a classified briefing book.¹⁰⁶⁹

FBI agents visited a SCIF at the National Archives on December 1 and 2, 2022, to review and photograph the four boxes and their contents.¹⁰⁷⁰



*The PBC boxes in a SCIF at the National Archives for FBI review (Dec. 1, 2022)*¹⁰⁷¹

The National Archives later transferred custody of the marked classified documents in Boxes 1 and 3 to the FBI.¹⁰⁷²

¹⁰⁶⁸ NARA Archivist 2 11/10/22, FBI Serial 3 at 3.

¹⁰⁶⁹ *Id.*

¹⁰⁷⁰ FBI Serial 26.

¹⁰⁷¹ 20221201_WFO_0012; FBI Serial 26 1A31.

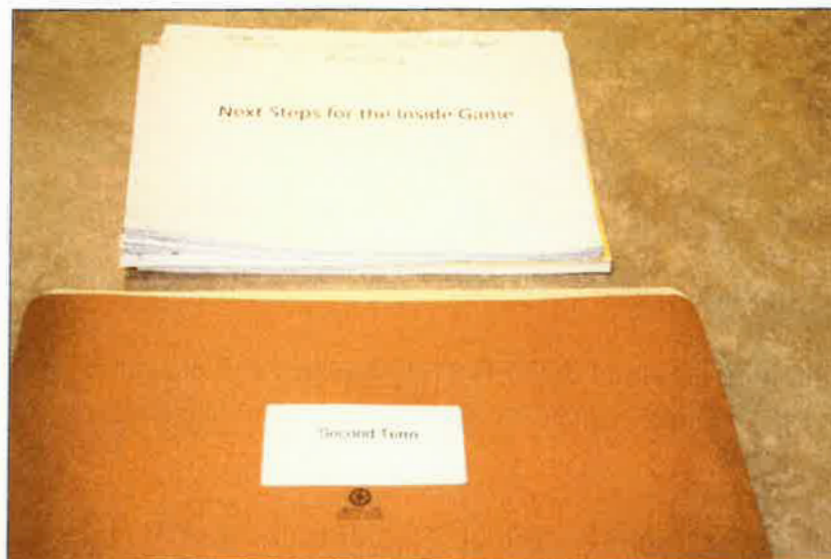
¹⁰⁷² FBI Serial 173.

C. Description of the documents recovered from the Penn Biden Center

The FBI identified ten documents recovered from the Penn Biden Center as classified or potentially classified and designated those documents as A1 through A10.¹⁰⁷³ In addition to the nine documents with classification markings that the National Archives had identified, FBI designated a set of handwritten notes as potentially classified.¹⁰⁷⁴ The handwritten notes were found in an envelope with marked classified documents and related to the same topic as those documents.¹⁰⁷⁵

1. Marked classified documents found in Box 1

The FBI located the marked classified document designated A1 among unclassified documents in a folder labeled “Second Term,” pictured below.¹⁰⁷⁶



“Second Term” folder and contents from Box 1¹⁰⁷⁷

¹⁰⁷³ FBI Serials 26, 238, 683 1A772.

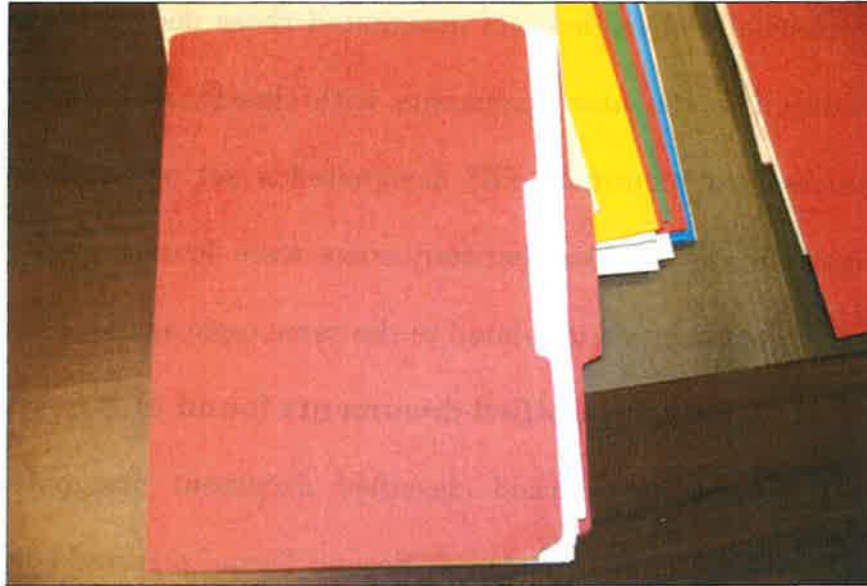
¹⁰⁷⁴ See Evidence item 1B48; FBI Serials 173, 177, 683 1A772.

¹⁰⁷⁵ Evidence item 1B48; FBI Serials 26, 173, 177, 683.

¹⁰⁷⁶ Evidence item 1B49.

¹⁰⁷⁷ FBI Serial 26 1A31, 20221201_WFO_0026.

The FBI located the marked classified document designated A2 among unclassified documents in a red file folder with a handwritten label “Filing 10-10-16.”¹⁰⁷⁸



“Filing 10-10-16” folder from PBC Box 1¹⁰⁷⁹

Appendix A includes unclassified descriptions of documents A1 and A2.

2. Unclassified contents of Box 1

Box 1 includes a variety of unclassified files of personal and professional significance to Mr. Biden. These include:

- A file folder labeled “POTUS 21st Century Policing 2015” with a copy of the May 2015 final report of the President’s Task Force on 21st Century Policing.¹⁰⁸⁰
- A file folder labeled “Biden Foundation” that included a 2017 Annual Report for the Biden Foundation.¹⁰⁸¹

¹⁰⁷⁸ Evidence item 1B49.

¹⁰⁷⁹ FBI Serial 26 1A31, 20221201_WFO_0066.

¹⁰⁸⁰ NARA_SCAN_00000067-68; NARA Archivist 2 11/10/22, FBI Serial 3.

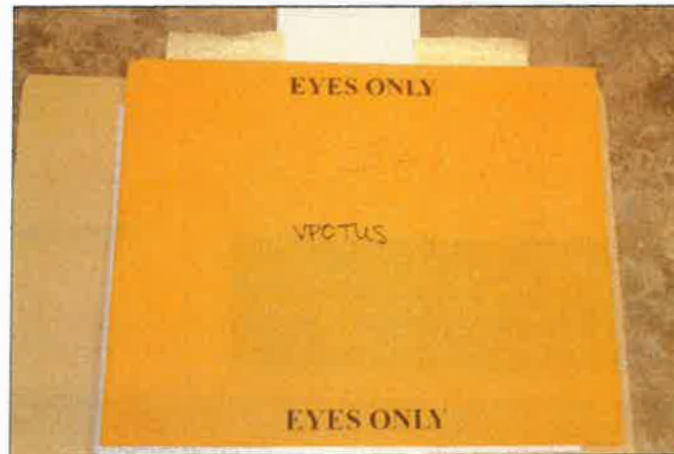
¹⁰⁸¹ NARA_SCAN_00000059, at 61; NARA Archivist 2 11/10/22, FBI Serial 3.

- A file folder labeled “VP Headshots” with photographs of Mr. Biden and President Obama.¹⁰⁸²
- A file folder labeled “American Possibilities” with event memoranda for Mr. Biden dated February 1, 2018.¹⁰⁸³
- A file labeled “Colorado Ski” with information from 2011 related to a ski trip.¹⁰⁸⁴

3. Classified documents found in Box 3

a. “EYES ONLY VPOTUS” manila envelope

The FBI located the marked classified documents designated A3 through A6 and a set of potentially classified handwritten notes designated A7 in a manila envelope stamped “EYES ONLY” on the top and bottom with “VPOTUS” handwritten in the middle.¹⁰⁸⁵ The envelope was also labeled with Mr. Biden's handwriting: “IRAN 1/30/15.”¹⁰⁸⁶



The VP Eyes Only envelope from PBC Box 3¹⁰⁸⁷

¹⁰⁸² FBI Serial 26 1A31, 20221201_WFO_0024, 20221201_WFO_0146.

¹⁰⁸³ NARA_SCAN_00000063-65; NARA Archivist 2 11/10/22, FBI Serial 3.

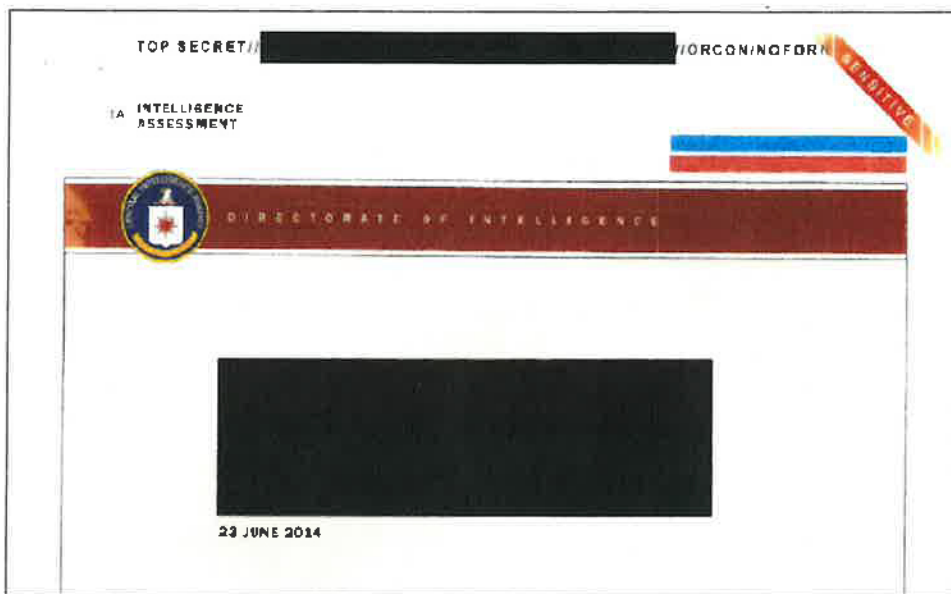
¹⁰⁸⁴ NARA_SCAN_00000426-35; NARA Archivist 2 11/10/22, FBI Serial 3.

¹⁰⁸⁵ Evidence item 1B48.

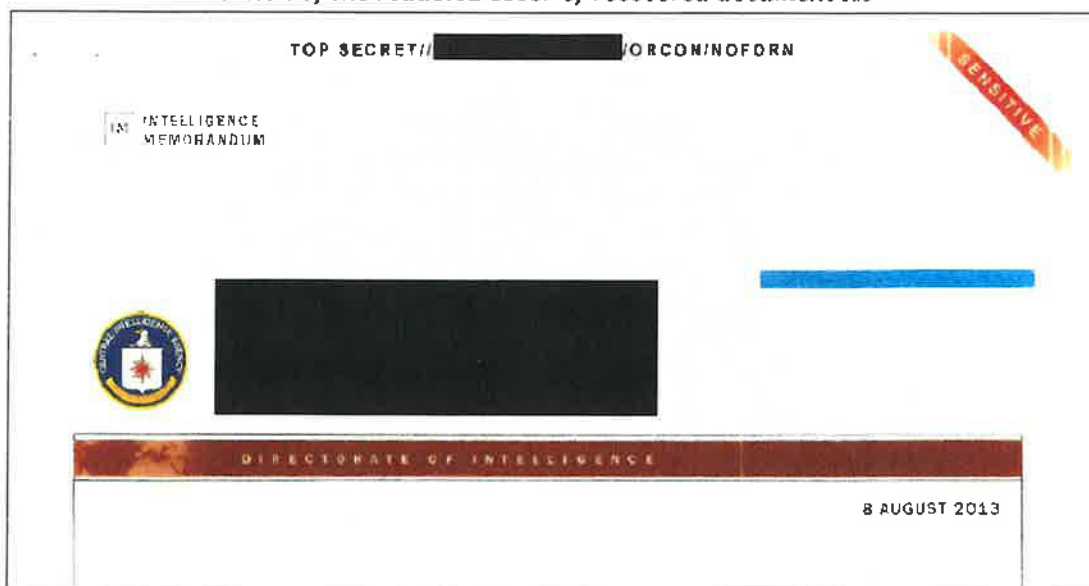
¹⁰⁸⁶ Evidence item 1B48; Executive Assistant 1/4/23 Tr. at 156-57; FBI Serial 64 1A74; Staff Assistant 3 10/4/23 Tr. at 80.

¹⁰⁸⁷ FBI Serial 26 1A31, 20221201_WFO_0006.

Appendix A includes unclassified descriptions of documents A3 through A7. Portions of redacted cover pages of some of the documents in the “EYES ONLY” envelope are below:



Portion of the redacted cover of recovered document A5¹⁰⁸⁸



Portion of redacted cover of recovered document A6¹⁰⁸⁹

¹⁰⁸⁸ Recovered document A5.

¹⁰⁸⁹ Recovered document A6.

Notably, document A7 is ten pages of Mr. Biden's unmarked, handwritten notes, three of which are dated January 28, 2015.¹⁰⁹⁰ All but one page of the notes relate to the Obama administration's efforts to negotiate the Joint Comprehensive Plan of Action, otherwise known as the Iran nuclear deal. For example, five pages of the handwritten notes reference the four pathways to an Iranian nuclear weapon the Obama administration believed the nuclear deal would block:



*Graphic from Obama White House information page on the Iran nuclear deal*¹⁰⁹¹

¹⁰⁹⁰ Evidence item 1B48, A7 at 3, 5, 9; Executive Assistant Tr. 9/28/23 at 128-30 (handwriting identification), FBI Serial 515 1A618.

¹⁰⁹¹ The Historic Deal that Will Prevent Iran from Acquiring a Nuclear Weapon, The White House, <https://obamawhitehouse.archives.gov/issues/foreign-policy/iran-deal> (last visited Jan. 31, 2024).

Four pathways

1. It's a bad deal -
 "Thousands of centrifuges?!?!"

- 1. Fordow / Qom
- 2. Arak / Heavy Water
- 3. Natanz
- 4. Covert

Portion of Page 2 of recovered document A7¹⁰⁹²

1/28/15

- 1. Fordow + Qom →
 inspectors in no deal unless
 would know
- 2. Arak - no deal unless Covert
- 3. Natanz - [REDACTED]
- 4. Covert - deep work open - of inspectors ?

Portion of page 3 of recovered document A7¹⁰⁹³

IRAN

1/28/15

It's a bad deal -
 too centrifuge

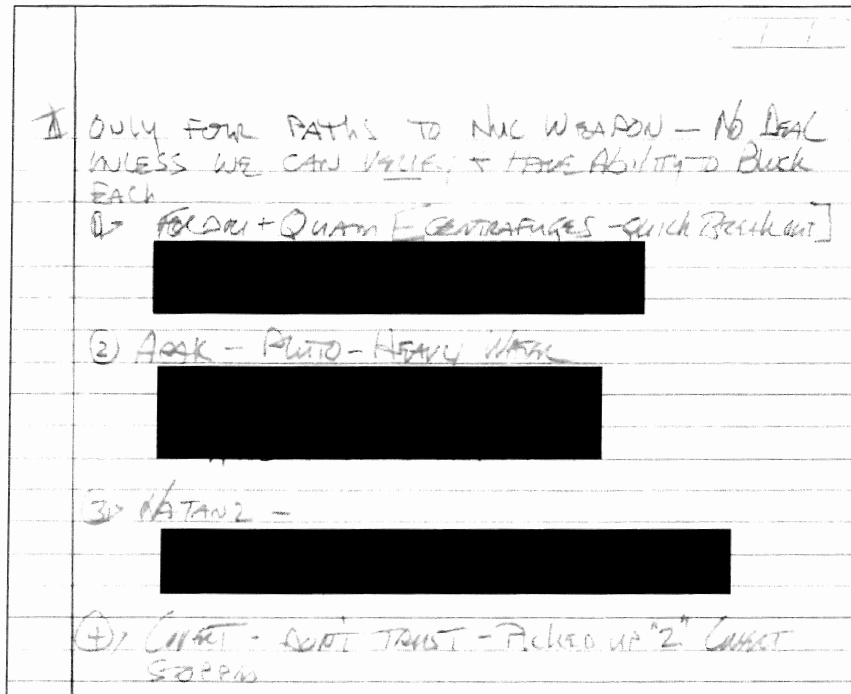
- 1. Fordow / Qom
- 2. Arak - heavy water
- 3. Natanz
- 4. Covert

Portion of page 5 of recovered document A7¹⁰⁹⁴

¹⁰⁹² Recovered document A7.

¹⁰⁹³ *Id.*

¹⁰⁹⁴ *Id.*



Portion of page 7 of recovered document A7¹⁰⁹⁵

The handwritten references to blocking “Arak” and “heavy water” correspond to the Obama White House’s reference to blocking weapons-grade plutonium.¹⁰⁹⁶

b. “Ukraine 02/09/15” and “VP Personal” file folders

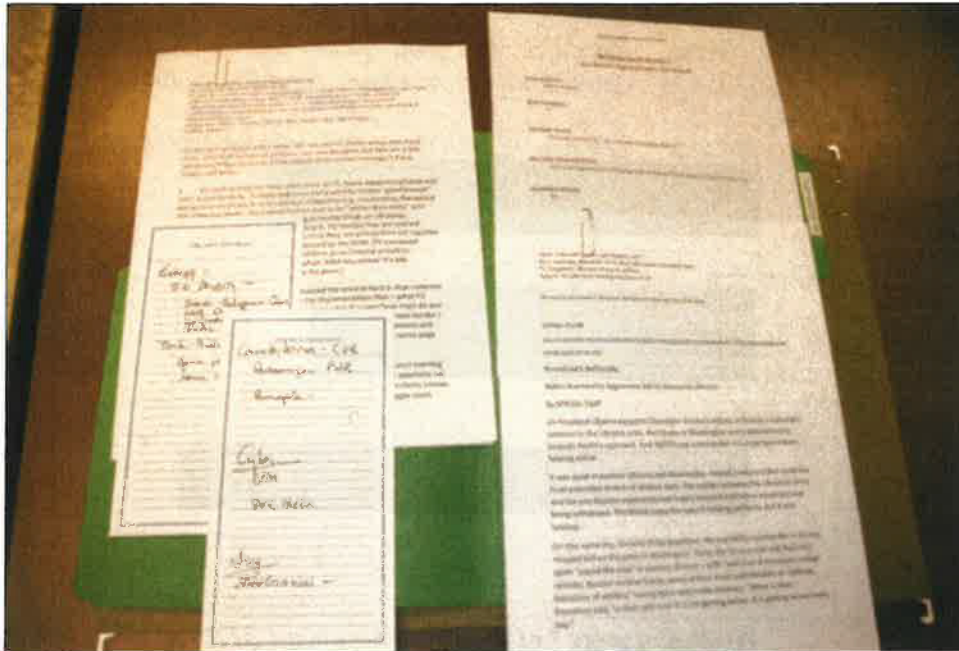
The FBI located the marked classified document designated A8 among unclassified documents in a green file folder labeled “Ukraine 02/09/15” within an unlabeled green hanging folder.¹⁰⁹⁷ Agents located documents designated A9 and A10 among unclassified documents in a red file folder labeled “VP Personal” within an

¹⁰⁹⁵ *Id.*

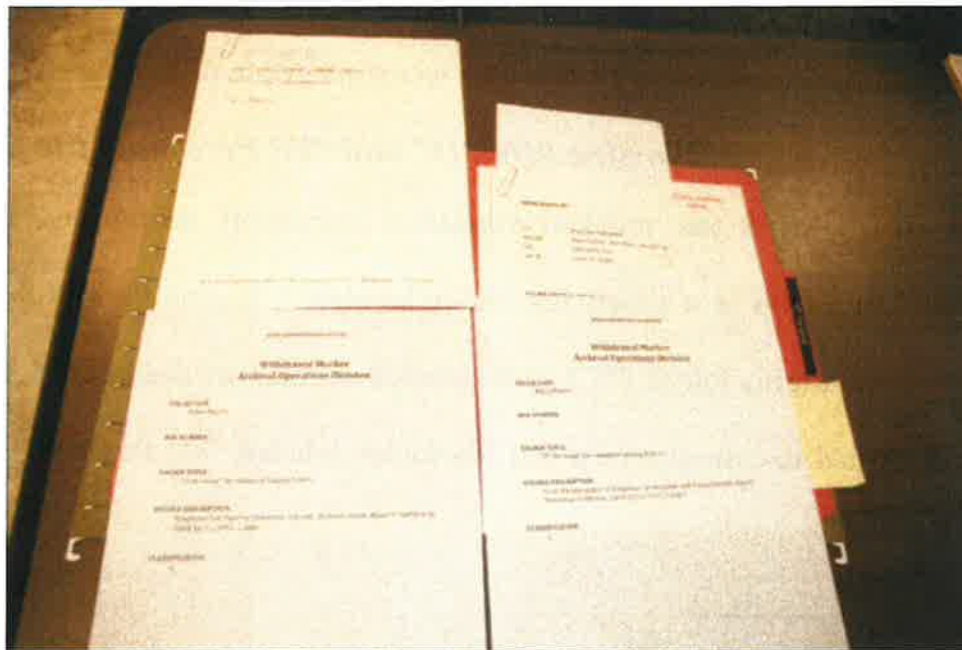
¹⁰⁹⁶ The Historic Deal that Will Prevent Iran from Acquiring a Nuclear Weapon, The White House, <https://obamawhitehouse.archives.gov/issues/foreign-policy/iran-deal> (last visited Jan. 31, 2023); The White House, <https://obamawhitehouse.archives.gov/issues/foreign-policy/iran-deal> (last visited Jan. 31, 2023) (“The third way Iran could build a nuclear weapon is by using weapons-grade plutonium. The only site where Iran could accomplish this is the Arak reactor, a heavy-water nuclear reactor.”).

¹⁰⁹⁷ Recovered document A8; Evidence item 1B49.

unlabeled green hanging folder.¹⁰⁹⁸



“Ukraine 02/09/15” folder and unclassified contents¹⁰⁹⁹



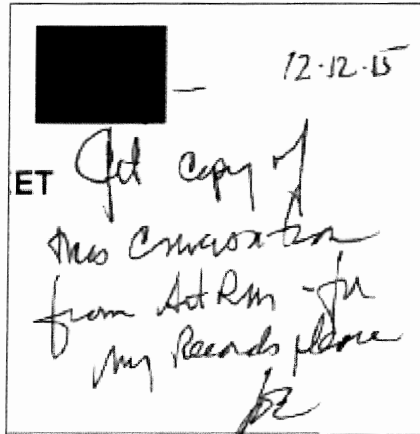
“VP Personal” folder and unclassified contents¹¹⁰⁰

¹⁰⁹⁸ Recovered documents A9 and A10; Evidence item 1B49.

¹⁰⁹⁹ 20221201_WFO_0113. The document titled “Withdrawal Marker” is a placeholder for the classified document A8. See FBI Serials 683 1A772, 26 1A31.

¹¹⁰⁰ FBI Serial 26 1A31, 20221201_WFO_0117. The documents titled “Withdrawal Marker” are placeholders for the classified documents A9 and A10. See FBI Serial 683 1A772.

Appendix A includes unclassified descriptions of documents A8 through A10. Document A9 is a telephone call sheet setting forth the purpose and talking points for a call between Mr. Biden and the Ukrainian Prime Minister. Mr. Biden wrote a note to his executive assistant on the sheet: “Get [a] copy of this conversation from Sit Rm for my Records please” and signed it “Joe.”



Handwritten note from Mr. Biden on recovered document A9¹¹⁰¹

c. Unclassified contents of Penn Biden Center Box 3

Like Box 1, Box 3 included a wide variety of unclassified files of personal and professional significance to Mr. Biden. To name a few:

- A file folder labeled “Genealogy” with information about the ancestors of Mr. Biden and Biden family history.¹¹⁰²
- Various file folders with documents related to Mr. Biden’s “Cancer Moonshot” initiative.¹¹⁰³
- A file folder labeled “Economy” with documents from 2015 related to economic policy and meetings with officials such as the Secretary of the Treasury.¹¹⁰⁴

¹¹⁰¹ Recovered document A9.

¹¹⁰² NARA_SCAN_00001390-98; NARA Archivist 2 11/10/2022, FBI Serial 3.

¹¹⁰³ *E.g.*, NARA_SCAN_00001505-16, NARA_SCAN_00001641-51; NARA Archivist 2 11/10/2022, FBI Serial 3.

¹¹⁰⁴ NARA_SCAN_00001581-91; NARA Archivist 2 11/10/2022, FBI Serial 3.

- A file folder labeled “Notable Stories on the Life of Beau Biden” with compiled news clippings about Mr. Biden’s son.¹¹⁰⁵

D. Security and access controls at the Penn Biden Center

To access the Penn Biden Center, employees used a key fob, which they had to scan at the building’s front door, the elevator, and the Center suite’s front door.¹¹⁰⁶ The Center did not allow visitors inside unless someone with a key fob escorted them.¹¹⁰⁷ The Center required the logging of visitors through a third-party security-management system, and visitors had to check in with building security upon arrival in the building lobby.¹¹⁰⁸

Despite those controls, we cannot account for all visitors to the Center. In practice, employees with key fobs could and sometimes did bring guests with them to the Center without logging them with security.¹¹⁰⁹ The Center’s office manager did not maintain a visitor log.¹¹¹⁰ The third-party vendor retained its visitor logs for only one year, so logs for the years 2017 through 2021, when Mr. Biden was a private citizen, were not available to investigators.¹¹¹¹

The Center hosted visitors from its inception until the recovery of marked classified documents in November 2022. In keeping with its stated purpose to

¹¹⁰⁵ NARA_SCAN_00001716-17; NARA Archivist 2 11/10/2022, FBI Serial 3.

¹¹⁰⁶ Executive Assistant 1/4/23 Tr. at 103-104; PBC Director of Programs Tr. at 48-49; PBC Scheduler Tr. at 63; Speechwriter Tr. at 92-93; OVP Intern Tr. at 41-42; Prescott Tr. at 85-86.

¹¹⁰⁷ PBC Employee 2 Tr. at 24; Prescott Tr. at 86.

¹¹⁰⁸ Legislative Affairs Staff 1 Tr. at 26; PBC Employee 2 1/16/23 Tr. at 16-18; Personal Aide 3 3/28/23 Tr. at 147; PBC Employee 1 1/16/23 Tr. at 71; PBC Scheduler Tr. at 9, 100.

¹¹⁰⁹ PBC Director of Programs Tr. at 60; PBC Scheduler Tr. at 100; PBC Employee 2 1/16/23 Tr. at 46.

¹¹¹⁰ PBC Employee 2 1/16/23 Tr. at 16.

¹¹¹¹ FBI Serial 345 1A416, SCOH-000448.

“convene world leaders,”¹¹¹² the Center hosted foreign dignitaries for roundtable events or to meet with Mr. Biden in his personal office. Center staff recalled events and meetings with the former President of Mexico, the President of Costa Rica, the former Secretary General of NATO, the Prime Minister of Estonia, members of the Ukrainian Orthodox Church, and Israeli officials.¹¹¹³ The Center also hosted more than a dozen classes for University of Pennsylvania faculty, students, and interns over a period of years. For instance, a course on “Business Strategies for Engaging with Government” in March 2022 featured guest speakers from the U.S. Department of Commerce, General Electric, and Google.¹¹¹⁴ In addition, a cleaning crew came through the Center every night to clean the offices.¹¹¹⁵

As a general matter, the administrative staff at the Center tried to keep the offices locked or closed off during classes or events.¹¹¹⁶ However, Mr. Biden’s office did not lock, and the adjoining outer office where Mr. Biden’s executive assistant

¹¹¹² Penn Biden Center, *Our Mission Statement*, Penn Biden Center, <https://global.upenn.edu/penn-biden-center/our-mission-statement> (last visited Feb. 2, 2024).

¹¹¹³ Speechwriter Tr. at 101-02; PBC Employee 1 1/16/23 Tr. at 68; OVP NSA Staffer 2 Tr. at 109; Legislative Affairs Staff 1 Tr. at 30; Prescott Tr. at 82-83; Personal Aide 3 3/28/23 Tr. at 145; OVP Intern Tr. at 47-48. Mr. Biden also met with the former Prime Minister of Ukraine in May 2017 when the Penn Biden Center was housed in a temporary office space located at 701 Pennsylvania Avenue Northwest in Washington, DC. 5/14/17 e-mail from Penn Biden Center Business Manager, SCOH-000453.

¹¹¹⁴ FBI Serial 346 1A417; 2/9/23 Penn Biden Center List of Classes and Seminars, SCOH-000734.

¹¹¹⁵ PBC Employee 1 1/16/23 Tr. at 30.

¹¹¹⁶ *Id.* at 30-34; PBC Scheduler Tr. at 71-72.

maintained his files was always accessible through Mr. Biden's office.¹¹¹⁷ Other employees' habits varied as to whether they kept their offices locked.¹¹¹⁸

The Center relaxed security measures after Mr. Biden stopped working there in April 2019.¹¹¹⁹ It still required visitors to check in with security in the building lobby, but they did not need a key fob or an escort in order to access the sixth floor of the building.¹¹²⁰ The Center also permitted University of Pennsylvania students who took classes at the Center to work in the office space during the day.¹¹²¹ The Center was locked down for about two years due to the COVID-19 pandemic.¹¹²²

E. Investigation of the classified documents recovered from the Penn Biden Center

As described further below, Mr. Biden's now-former executive assistant maintained the files in the four relevant boxes recovered by FBI agents from the Penn Biden Center, two of which included marked classified documents. The executive assistant originally maintained those files in her office space outside Mr. Biden's West Wing office and moved them—through two temporary spaces—to the Penn Biden Center, where she continued to add to the files.

¹¹¹⁷ Executive Assistant 1/4/23 Tr. at 103-04; PBC Employee 1 1/16/23 Tr. at 29-32, 76-77; PBC Employee 2 1/16/23 Tr. at 22-23, 60-61. For security reasons, the Vice President's office could only be locked from the inside using a panic button. PBC Employee 2 1/16/23 Tr. at 22-23; PBC Employee 1 1/16/23 Tr. at 76-77.

¹¹¹⁸ PBC Director of Programs Tr. at 49; OVP Intern Tr. at 42-43.

¹¹¹⁹ Legislative Affairs Staff 1 Tr. at 42-43.

¹¹²⁰ *Id.*

¹¹²¹ *Id.*

¹¹²² PBC Employee 1 1/16/23 Tr. at 11-13; PBC Director of Programs Tr. at 111; PBC Employee 2 1/16/23 Tr. at 42; Ricchetti Tr. at 151.

We set forth in particular detail what we learned about these documents and their path to the Penn Biden Center because they are the most highly classified, sensitive, and compartmented materials recovered during our investigation.

1. Document handling and filing in Mr. Biden's vice presidential office in the West Wing

Mr. Biden's office suite in the West Wing of the White House during his vice presidency consisted primarily of his office and a connected front office.¹¹²³ During his vice presidency, Mr. Biden's first executive assistant and staff assistant worked in his front office from the start of the Obama administration through mid-2012.¹¹²⁴ The assistants who staffed the front office at the end of the administration—the executive assistant and Staff Assistant 3—started in mid-2012 and mid-2014, respectively.¹¹²⁵

The front office staff collected and organized Mr. Biden's records.¹¹²⁶ Classified records were retrieved by members of Mr. Biden's National Security Affairs team or sent to the White House Situation Room.¹¹²⁷ The majority of unclassified records were regularly sent to the National Archives as presidential records.¹¹²⁸ Given the volume of paper that passed through his office every day, if staff did not constantly collect,

¹¹²³ 12/21/22 Staff Assistant 3 Interview, FBI Serial 36 at 2; Executive Assistant 1/4/23 Tr. at 17-19.

¹¹²⁴ Staff Assistant 1 Tr. at 4-5, 33-34; Executive Assistant 1/4/23 Tr. at 3-4, 10.

¹¹²⁵ FBI Serial 36 at 1; Executive Assistant Tr. 1/4/23 at 3-4.

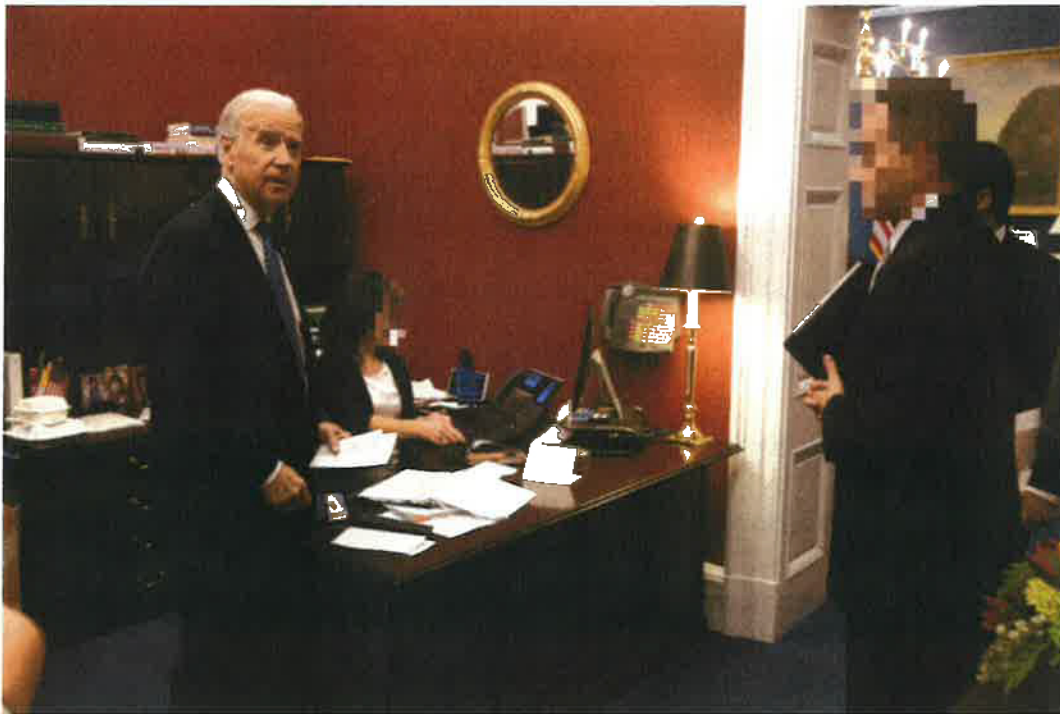
¹¹²⁶ Executive Assistant 1/4/23 Tr. at 22-24, 30-31, 178-80; Staff Assistant 3 10/4/23 Tr. at 15-17; Staff Assistant 2 Tr. at 19; August 2015 West Wing Guide, SCOH-000427 at 3, 6.

¹¹²⁷ FBI Serial 36 at 3-4; Staff Assistant 3 10/4/23 Tr. at 16-17; Executive Assistant 1/4/23 Tr. at 23-24; Staff Assistant 2 Tr. at 20-21.

¹¹²⁸ FBI Serial 36 at 2-3; Executive Assistant 1/4/23 Tr. at 22-23; Staff Assistant 2 Tr. at 19-20.

organize, and archive his records, paper would have piled up quickly and become unmanageable.¹¹²⁹

In addition to records that were regularly archived, Mr. Biden's front office staff kept a relatively small number of files for him in their desk drawers and a credenza located behind the executive assistant.¹¹³⁰ Those files were generally materials, including briefing materials, policy papers, and other official documents, that he wanted to keep outside of the normal archiving process, at least temporarily.¹¹³¹



View of the front office and the executive assistant's desk and the rear file cabinet (Dec. 2016)¹¹³²

¹¹²⁹ See Executive Assistant 1/4/23 Tr. at 31-32, 179-80.

¹¹³⁰ 1/4/2023 Staff Assistant 3 Interview, FBI Serial 36 at 2-3; Executive Assistant 1/4/2023 Tr. at 40-41; Staff Assistant 3 10/4/23 Tr. at 6-7.

¹¹³¹ Executive Assistant 1/4/23 Tr. at 77-80, 148-49; Executive Assistant 9/28/23 at 20; August 2016 West Wing Guide, SCOH-000427 at 6; Staff Assistant 3 10/4/23 Tr. at 77-80; FBI Serial 36 at 2-3.

¹¹³² 1B001_00754774.



*View of the front office toward the staff assistant's desk (Dec. 2016)*¹¹³³

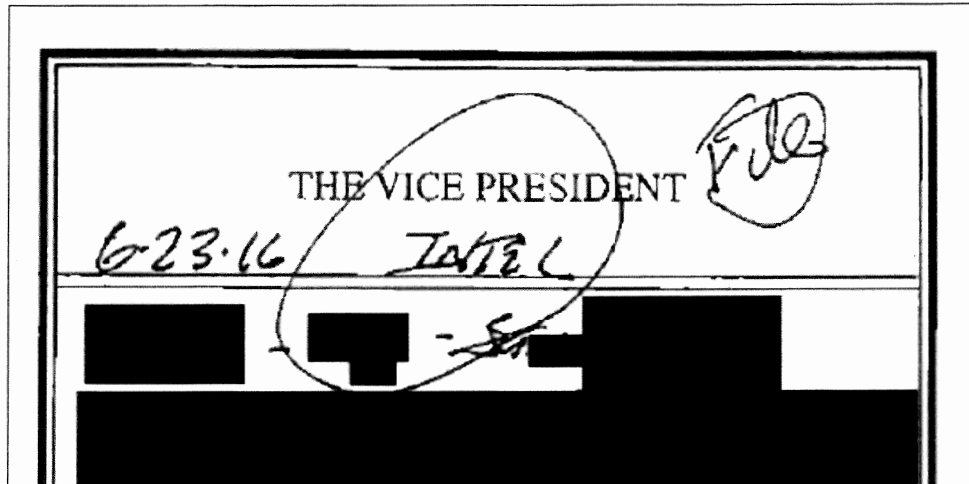
Mr. Biden sometimes wrote a note on material he wanted to save.¹¹³⁴ For example, he might write “save,” “save in office, or “file.”¹¹³⁵ In at least one instance, Mr. Biden wrote a note on a classified call-sheet instructing his executive assistant to retrieve the transcript of a call with a foreign leader for “my [r]ecords.”¹¹³⁶

¹¹³³ 1B001_00766834.

¹¹³⁴ See, e.g., August 2016 West Wing Guide, SCOH-000427 at 6; Executive Assistant 1/4/23 Tr. at 141, 200.

¹¹³⁵ August 2016 West Wing Guide, SCOH-000427 at 6; Executive Assistant 1/4/23 Tr. at 141, 200.

¹¹³⁶ Evidence item 1B49; Recovered Document A9.



Portion of a redacted vice presidential notecard with “File” written on top¹¹³⁷

The files kept in the front office also included some of Mr. Biden’s personal documents.¹¹³⁸ For example, Mr. Biden sometimes asked his front office assistants to save poems he liked or retrieve Biden-family genealogy information stored in the files.¹¹³⁹

The front office assistants occasionally reviewed their files, selected material they determined Mr. Biden no longer needed or wanted, and sent it to be archived.¹¹⁴⁰ Based on the documents recovered from the Penn Biden Center, however, the occasional review of files stored in the front office was imperfect or not exhaustive. Many of the files stored in the front office—both personal and official—were old.¹¹⁴¹

¹¹³⁷ NARA-Bx2_VP Notecards_2016-0090; FBI Serial 281.

¹¹³⁸ 12/21/22 Staff Assistant 3 Interview, FBI Serial 36 at 2; Executive Assistant 1/4/23 Tr. at 76-77; August 2016 West Wing Guide, SCOH-000427 at 6.

¹¹³⁹ Executive Assistant 1/4/23 Tr. at 79-80; Executive Assistant 9/28/23 Tr. at 25.

¹¹⁴⁰ 12/21/22 Staff Assistant 3 Interview, FBI Serial 36 at 2-3.

¹¹⁴¹ Executive Assistant 1/4/23 Tr. at 41, 193; Executive Assistant 9/28/23 Tr. at 20, 69-70.

Some dated back to Mr. Biden's first term as vice president or even his Senate days.¹¹⁴²

2. Mr. Biden's move out of the vice president's West Wing office

At the end of the Obama administration, Mr. Biden's staff prepared to pack up and move out of his West Wing office and into a transition office in Washington, D.C.¹¹⁴³ Mr. Biden's front office staff, led by his executive assistant, packed up his West Wing office.¹¹⁴⁴ Packing the office was a challenge: Staff had to pack up and move out by Inauguration Day while continuing operations until the very end of the administration.¹¹⁴⁵ The executive assistant recalled packing everything up in "maybe a couple of days" in January 2017.¹¹⁴⁶

The front office staff packed up both Mr. Biden's office and the front office.¹¹⁴⁷ The front office contained the bulk of the files to be packed. The executive assistant recalled packing hanging file folders from the front office into boxes provided by the General Services Administration.¹¹⁴⁸ The staff assistant packed up the contents of Mr. Biden's desk in his West Wing Office.¹¹⁴⁹ The desk contained some files, most of

¹¹⁴² Executive Assistant 1/4/23 Tr. at 41, 193; Executive Assistant 9/28/23 Tr. at 20, 69-70.

¹¹⁴³ 11/17/16 Memorandum for the Vice President and Dr. Biden from Staff, SCOH-000305-SCOH-000306; FBI Serial 81 1A91 FBI_00000477.

¹¹⁴⁴ Executive Assistant 1/4/23 Tr. at 36-39.

¹¹⁴⁵ *Id.* at 36-39; Staff Assistant 3 12/21/22 Interview, FBI Serial 36 at 7.

¹¹⁴⁶ Executive Assistant 1/4/23 Tr. at 38-39. Most of the files in the front office had not been packed up as of January 11 or 12, 2017. Staff Assistant 4 Tr. at 114-15, 120-21.

¹¹⁴⁷ Executive Assistant 1/4/23 Tr. at 37-39.

¹¹⁴⁸ Executive Assistant 1/4/23 Tr. at 37.

¹¹⁴⁹ Staff Assistant 3 12/21/22 Interview, FBI Serial 36 at 5; Staff Assistant 3 10/4/23 Tr. at 92-93.

which were personal—for instance, quotes and speeches that Mr. Biden referred to often and notes from family members.¹¹⁵⁰

Mr. Biden’s staff did not recall him packing any of his own boxes in the West Wing Office.¹¹⁵¹ Nor did they recall him directing them to bring specific files as they were moving out of the White House.¹¹⁵² However, there were a number of types of files that the executive assistant believed Mr. Biden would want to keep with him, such as mementos relating to Beau Biden’s death, the genealogy of the Bidens, news articles, policy papers, and copies of his schedules and speeches.¹¹⁵³ She described the packing process as somewhat “random.”¹¹⁵⁴ She explained that “we knew that he was going to write a book” and “do some speaking engagements,” but “none of us knew what we were going to need.”¹¹⁵⁵

The executive assistant did not believe the files they packed contained classified documents.¹¹⁵⁶ The front office staff’s practice was to return classified documents to their originating office or to the White House Situation Room, either daily or whenever Mr. Biden was finished with them.¹¹⁵⁷ Staff lacked the time when

¹¹⁵⁰ Staff Assistant 3 12/21/22 Interview, FBI Serial 36 at 5; Staff Assistant 3 10/4/23 Tr. at 92-93.

¹¹⁵¹ Executive Assistant 1/4/23 Tr. at 38; Executive Assistant 9/28/23 Tr. at 113-14.

¹¹⁵² Executive Assistant 1/4/23 Tr. at 82; Executive Assistant 9/28/23 Tr. at 113-14; Staff Assistant 3 Tr. at 93.

¹¹⁵³ Executive Assistant 1/4/23 Tr. at 83-87.

¹¹⁵⁴ *Id.* at 87.

¹¹⁵⁵ *Id.*

¹¹⁵⁶ *See* Executive Assistant 1/4/23 Tr. at 173-75, 177-79; Executive Assistant 9/28/2023 Tr. at 81.

¹¹⁵⁷ Executive Assistant 1/4/23 Tr. at 23-27; Executive Assistant 9/28/23 Tr. at 81; Staff Assistant 3 12/21/22 Interview, FBI Serial 36 at 4-5; Staff Assistant 3 10/4/23 Tr. at 16-18; 9/1/16 West Wing Guide, SCOH-000434 at 7. Occasionally Staff Assistant 3 would store classified material in the safe in the Vice President’s Office on a temporary basis until she

packing to review files methodically to ensure everything was disposed of correctly.¹¹⁵⁸

A total of roughly fifteen boxes were moved from the West Wing Office to the transition office in the administration's final days.¹¹⁵⁹ Once at the transition office, Mr. Biden's staff did not unpack many of the boxes of files from the West Wing Office.¹¹⁶⁰ Mr. Biden was not there daily but did come by occasionally for meetings.¹¹⁶¹

In late June 2017, Mr. Biden and a core group of staff moved from the transition office to the Penn Biden Center's temporary office in Washington, D.C.¹¹⁶² They stayed in this office for several months while the Penn Biden Center's permanent office was under construction.¹¹⁶³ Because Mr. Biden's staff knew they would not be at the temporary office for long, they did not fully unpack, and material remained in boxes there.¹¹⁶⁴

could return it to the appropriate National Security personnel. Staff Assistant 3 10/4/23 Tr. at 18-20.

¹¹⁵⁸ See Executive Assistant 1/4/23 Tr. at 39; Staff Assistant 3 12/21/23 Interview, FBI Serial 36 at 7.

¹¹⁵⁹ 1/17/17 e-mail from Executive Assistant to Associate Director of Admin., et al., SCOH-000238; 1/17/17 e-mail from Associate Director of Admin. to GSA Employee 1, et al., SCOH-000216; 1/19/17 e-mail from Executive Assistant to OVP Purchase Manager, et al., SCOH-000217; 1/9/17 e-mail from Staff Assistant 4 to Associate Director of Admin. et al., SCOH-000574; 1/5/17 e-mail from OVP Operations Staffer to Staff Assistant 3 et al., SCOH-000445; Staff Assistant 4 Tr. at 119-20.

¹¹⁶⁰ Executive Assistant 1/4/23 Tr. at 51; Personal Aide 3 3/28/23 Tr. at 102-03.

¹¹⁶¹ Executive Assistant 1/4/23 Tr. at 48-49; Personal Aide 3 3/28/23 Tr. at 107.

¹¹⁶² FBI Serial 72 1A78; 6/12/17 e-mail from OVP Purchase Manager to PBC Scheduler, SCOH-000716; 6/19/17 e-mail from OVP Purchase Manager to PBC Employee 2, SCOH-000716; GSA Employee 2 Tr. at 53.

¹¹⁶³ 12/8/22 PBC Employee 2 Interview, FBI Serial 20 at 1; PBC Scheduler Tr. at 33; Executive Assistant 1/4/23 Tr. at 55-56.

¹¹⁶⁴ Executive Assistant 1/4/23 Tr. at 54; PBC Scheduler Tr. at 57-58.

In October 2017, Mr. Biden and his staff moved into the Penn Biden Center's permanent office.¹¹⁶⁵ Once there, the executive assistant recalled unpacking some boxes but not all of them "because there was just no need."¹¹⁶⁶ She unpacked some of Mr. Biden's files into file drawers in the outer office adjoining Mr. Biden's office.¹¹⁶⁷ In particular, she stored some files in a three-drawer filing cabinet adjacent to the door to Mr. Biden's office.¹¹⁶⁸ The executive assistant could not recall how they determined what to unpack versus what to leave in boxes.¹¹⁶⁹

When shown copies of the files in Boxes 1 through 3 recovered from the Penn Biden Center, the executive assistant recognized many of them as files she maintained for Mr. Biden in the West Wing.¹¹⁷⁰ For instance, with respect to a manila envelope at the front of Box 3 labeled "Layout of Beau's House," she explained that this file "was very important" to Mr. Biden and "he wanted to have access to it."¹¹⁷¹ She stated that the file "came from the White House," where she had stored it in her desk in the front office or in the credenza behind her; she then brought it to the Penn Biden Center, where she stored it in the outer office.¹¹⁷² The executive assistant also identified her handwriting on many file folders in Boxes 1 and 3.¹¹⁷³ She noted that

¹¹⁶⁵ 12/8/22 PBC Employee 2 Interview, FBI Serial 20 at 1; PBC Employee 2 Tr. at 14; FBI Serial 344 1A415; 10/27/17 e-mail from PBC Employee 2 to Scott Hoffman, et al., SCOH-000777.

¹¹⁶⁶ Executive Assistant 1/4/23 Tr. at 65.

¹¹⁶⁷ *Id.* at 72.

¹¹⁶⁸ *Id.* at 72, 76.

¹¹⁶⁹ *Id.* at 65-66.

¹¹⁷⁰ *Id.* at 128-33, 147-48; *see generally* Executive Assistant 1/4/23 Tr. at 128-203.

¹¹⁷¹ Executive Assistant 1/4/23 Tr. at 153-54; FBI Serial 17 1A19, Bates-000016.

¹¹⁷² Executive Assistant 1/4/23 Tr. at 153-54.

¹¹⁷³ *See, e.g.,* Executive Assistant 1/4/23 Tr. at 133, 151, 155; FBI Serial 26 1A31, 20221201_WFO_0052; FBI Serial 17 1A19, Bates-000019.

some of the files in Boxes 1 through 3 predated her time in the White House and she likely inherited many of them from her predecessor.¹¹⁷⁴

The executive assistant did not specifically recall any of the folders containing classified documents, although she acknowledged that they could have been files she maintained for Mr. Biden in the West Wing. She identified other files that postdated the Obama administration as ones she likely maintained for Mr. Biden at the transition office or the Penn Biden Center.¹¹⁷⁵

Numerous unclassified files in Boxes 1 through 4 contained handwritten notes from Mr. Biden directing that the contents be “saved” or “filed.” The executive assistant explained that these notes meant Mr. Biden wanted the files saved and kept in the office rather than archived in case he wanted them later. During the administration she did not have an expectation of where the files would go after Mr. Biden’s term as vice president.¹¹⁷⁶ But when she packed the files to move out, she expected the files from the West Wing Office would travel with Mr. Biden to his new office.¹¹⁷⁷

3. Origin of marked classified documents in the “EYES ONLY” envelope

In January 2015—around the date handwritten on the “EYES ONLY” envelope recovered from the Penn Biden Center—the Obama administration was negotiating

¹¹⁷⁴ Executive Assistant 1/4/23 Tr. at 128-29, 146-47, 193.

¹¹⁷⁵ *Id.* at 206-12; FBI Serial 26 1A32, 20221202_WFO_0292-94; 20221202_WFO_0336; 20221202_WFO_0415-18.

¹¹⁷⁶ Executive Assistant 9/28/23 Tr. at 27-28.

¹¹⁷⁷ *Id.* at 27-29.

the Iran nuclear deal.¹¹⁷⁸ The administration sought to obtain concessions from the Iranian government that would limit its ability to develop nuclear weapons.¹¹⁷⁹ In exchange, the United States and other countries would ease economic and trade sanctions on Iran.¹¹⁸⁰

During those negotiations, the administration worked both to gain congressional support for the Iran nuclear deal and to ensure Congress did not take action that would interfere with negotiations, in particular, by imposing additional sanctions on Iran.¹¹⁸¹ Additional sanctions, in the administration's view, would cause Iran to walk away from a deal and toward further development of nuclear weapons.¹¹⁸² The administration also opposed legislation that would purport to give the Senate an up-or-down vote on the final Iran nuclear deal.¹¹⁸³

¹¹⁷⁸ Evidence item 1B48; Colin Kahl, Iran Timeline, SCOH-000287 at 10-11.

¹¹⁷⁹ See, e.g., Key Points on the Joint Comprehensive Plan of Action with Iran, 1B001_00009530; The White House, The Iran Nuclear Deal: What You Need to Know about the JCPOA, SCOH-000456 at 4-5.

¹¹⁸⁰ See Legislative Affairs Staff 2 Tr. at 8-9; The White House, The Iran Nuclear Deal: What You Need to Know about the JCPOA, SCOH-000456 at 8; Top Lines Points – Sanctions, 1B001_01913030; Sanctions Relief – Countering Iran's Regional Activities, 1B001_01913035; Sanctions FAQ's, 1B001_02226166.

¹¹⁸¹ See 7/20/14 Memorandum for the President, Legislative Report for the Week of July 21, 2014, 1B001_02436788 at 1-2; Legislative Affairs Staff 2 Tr. at 8-9; 2/8/15 Memorandum for the President, Legislative Report for the Week of February 9, 2015, 1B001_01903477.

¹¹⁸² 1/28/15 Briefing Memo from OVP-NSA, Background and Points for Breakfast with Senators on Iran Legislation, 1B001_02256623 at 5.

¹¹⁸³ See 1/20/15 Memo re Telephone Call with Senator from White House Legislative Affairs Staff, NARA_SCAN_00001464; FBI Serial 3; Memorandum for the Vice President, Corker Iran Legislation: Policy and Precedent Issues, NARAWH_00016231.

The administration sought to engage members of Congress to advance these goals. Given his lengthy service in the Senate and longstanding relationships with members of Congress, Mr. Biden assisted in that effort as vice president.¹¹⁸⁴

As part of that effort, Mr. Biden scheduled a breakfast with six senators on January 29, 2015.¹¹⁸⁵ Colin Kahl, Mr. Biden's National Security Advisor, e-mailed staff on January 24, 2015, stating that the "VP wants to do a breakfast next week" with the aforementioned senators "to discuss Iran sanctions."¹¹⁸⁶ Kahl noted, "this is the group that travelled together to Israel and other spots in the Middle East – and many came back in support of the Corker-Graham Iran legislation we oppose."¹¹⁸⁷

The day before the breakfast, Mr. Biden's national security staff gave him a briefing memo stating that the six invited Senators "returned from their recent trip to Israel more skeptical of imposing new sanctions on Iran (along the lines of the Kirk-Menendez legislation) but more sympathetic to Corker-Graham legislation that would give Congress [an] up-or-down vote on a final nuclear deal."¹¹⁸⁸ The memo also stated that "[a]dditional classified paper will be provided separately."¹¹⁸⁹ Soon after

¹¹⁸⁴ Legislative Affairs Staff 2 Tr. at 7-11; Legislative Affairs Staff 1 Tr. at 12-13; OVP NSA Staffer 1 Tr. at 44-45.

¹¹⁸⁵ 1/29/15 Schedule for Vice President Joe Biden, NARAWH_00000571.

¹¹⁸⁶ 1/24/15 e-mail from Kahl, 1B001_02612074. Senator McCain was on the initial list of Senators proposed by Mr. Biden, but not the final list of Senators invited to the breakfast because he had a conflict on his schedule. *See* 1/27/15 e-mail from Mr. Biden's Director of Legislative Affairs, 1B001_02611625.

¹¹⁸⁷ 1/24/15 e-mail from Kahl, 1B001_02255821.

¹¹⁸⁸ 1/28/15 Briefing Memo from OVP-NSA, Background and Points for Breakfast with Senators on Iran Legislation, 1B001_02256623.

¹¹⁸⁹ *Id.*

e-mailing the memo, a staff member sent another message stating, “[t]here’ll be more classified material later.”¹¹⁹⁰

The evening before the breakfast with Senators, the White House and intelligence community staff prepared a set of classified intelligence products for Mr. Biden—documents designated A3 through A6 by the FBI—which was delivered to him the next morning in an envelope marked for his eyes only. That night, Mr. Biden’s deputy national security advisor Jeff Prescott e-mailed Mr. Biden’s staff:

There are IC products that are being generated per high side traffic for the VP in advance of his breakfast tomorrow. VP has indicated that he would like them delivered to him as soon as possible anytime after 6:30am tomorrow morning so that he can absorb before the breakfast meeting.¹¹⁹¹

An NSC staff member responded in the e-mail’s reply thread: “Just to clarify, these are compartmented materials that can only be delivered in hardcopy.”¹¹⁹² The NSC staffer said she had “connected our CIA briefing team” with the person who delivered Mr. Biden’s copy of the President’s Daily Brief every morning—his briefer—“so hopefully she can facilitate the physical transfer to the appropriate folks.” Mr. Biden’s briefer replied, “I will drop everything at NavObs by 0630.”¹¹⁹³ Mr. Biden’s briefer stated it was possible she packaged the documents in an envelope marked “EYES

¹¹⁹⁰ 1/28/15 e-mail from OVP NSA Staffer 1, 1B001_02122583; 1/28/15 e-mail from OVP NSA Staffer 1, 1B001_02256622; 1/28/15 Briefing Memo from OVP-NSA, Background and Points for Breakfast with Senators on Iran Legislation, 1B001_02256623.

¹¹⁹¹ 1/28/15 e-mail from Prescott, 1B001_02973019.

¹¹⁹² *Id.*

¹¹⁹³ 1/28/15 e-mail from PDB Briefer 2, 1B001_02973019.

ONLY” because such envelopes might have been the only ones available in her office at the time.¹¹⁹⁴

Prescott responded, asking Mr. Biden’s briefer, “can you please specifically indicate the products that are responsive to this request and highlight them separately for Milaide to deliver to VP?”¹¹⁹⁵ The briefer responded she would do so.¹¹⁹⁶ Prescott replied telling her to “[p]lease bring one for VP and a separate copy for [Kahl] both to NavObs.”¹¹⁹⁷ Mr. Biden’s on-duty military aide responded on the thread, “I will be in the kitchen at 0630 to take delivery. I will hold [Kahl]’s with me and send the VP’s up with the morning traffic.”¹¹⁹⁸

At 6:28 a.m. the next morning, the military aide notified the recipients of the e-mail thread that he had the sensitive materials:

I have the PDBs and the other document for the VP and [Kahl] that [the briefer] dropped off. The VP’s will be delivered with his morning traffic unless he contacts me or any of you and wants them earlier. I will hold [Kahl]’s until he arrives.¹¹⁹⁹

Mr. Biden’s executive assistant asked, “can you pls put note on the docs he was asking about to highlight it.”¹²⁰⁰ The military aide replied, “they just went up and the document said for VP eyes only.”¹²⁰¹ A National Security Council staffer replied in the e-mail chain that afternoon: “Hope the VP was satisfied with the materials/found

¹¹⁹⁴ PDB Briefer 2 Tr. at 72.

¹¹⁹⁵ 1/28/15 e-mail from Prescott, 1B001_02973019.

¹¹⁹⁶ 1/28/15 e-mail from PDB Briefer 2, 1B001_02973019.

¹¹⁹⁷ 1/28/15 e-mail from Prescott, 1B001_02973019.

¹¹⁹⁸ 1/28/15 e-mail from Military Aide 6, 1B001_02973019.

¹¹⁹⁹ *Id.*

¹²⁰⁰ 1/29/15 e-mail from Executive Assistant, 1B001_02973019.

¹²⁰¹ 1/29/15 e-mail from Military Aide 6, 1B001_02973019.

them helpful prior to the breakfast – it was a solid compilation.”¹²⁰² Classified e-mails within the intelligence community confirmed that the documents provided to Mr. Biden were those recovered from the Penn Biden Center and designated by the FBI as documents A3 through A6.¹²⁰³

Mr. Biden hosted the breakfast with senators the morning of January 29, 2015, as shown in the photograph below:



*Mr. Biden's breakfast with senators (Jan. 29, 2015)*¹²⁰⁴

As shown in the photographs below, Mr. Biden had a manila envelope with him at the breakfast.

¹²⁰² 1/29/15 e-mail from National Security Council Staffer, 1B001_03963559.

¹²⁰³ An Intelligence Community agency provided responsive documents pursuant to a prudential search request from the Special Counsel's Office. Investigators reviewed documents responsive to that request on July 24, 2023 at the agency.

¹²⁰⁴ 1B001_01223086.



*Mr. Biden with a manila envelope at the breakfast with senators
(Jan. 29, 2015)¹²⁰⁵*

4. Origin of the handwritten notes in the EYES ONLY envelope

The handwritten notes in the EYES ONLY envelope recovered from the Penn Biden Center appear to be Mr. Biden's own handwritten notes that he created in preparation for his breakfast with senators. Many of the notes are repetitive and appear to be from the same day: January 28, 2015, the day before the breakfast. The notes all appear to be written in the same hand and a former executive assistant to Mr. Biden identified the handwriting throughout as Mr. Biden's.¹²⁰⁶ And the photograph below shows Mr. Biden at the January 29 breakfast with one of the pages of handwritten notes later found in the EYES ONLY envelope in front of him, in one of his notebooks. The title of the page is, "Basic Premise JRB Operating From."

¹²⁰⁵ 1B001_01223072; 1B001_01223164.

¹²⁰⁶ Executive Assistant 9/28/23 Tr. at 129-30.



Mr. Biden at the January 29, 2015 breakfast with a page of the handwritten notes (A7) found in the EYES ONLY envelope¹²⁰⁷

A former executive assistant to Mr. Biden confirmed that at times Mr. Biden committed talking points to memory by writing them down, sometimes multiple times.¹²⁰⁸

We considered but ultimately rejected the possibility that Mr. Biden or his staff collected the handwritten notes designated A7 from different people after a meeting involving discussions and notetaking about the highly compartmented information also found in the EYES ONLY envelope. The handwritten notes did not address the same information as the other documents. No witness recalled an instance or practice

¹²⁰⁷ SCOH-000776.

¹²⁰⁸ Executive Assistant 9/28/23 Tr. at 130-32.

of collecting participants' notes after a sensitive meeting in the White House.¹²⁰⁹ And that theory is inconsistent with the evidence that the relevant handwriting in A7 appears to be a single person's: Mr. Biden's.

The special counsel asked Mr. Biden about the January 29, 2015 breakfast with Senators and the handwritten notes in the EYES ONLY envelope during Mr. Biden's interview.¹²¹⁰ Mr. Biden had no recollection of the breakfast or the handwritten notes.¹²¹¹

5. Mr. Biden's continuing interest in the Iran deal after receiving the EYES ONLY envelope

Mr. Biden's efforts to persuade members of Congress continued after the breakfast with Senators. Other examples included:

- a telephone call with a senator on February 4, 2015,¹²¹²
- a telephone call with a representative on April 11, 2015,¹²¹³
- a telephone call with a representative on April 14, 2015,¹²¹⁴
- a meeting with Senate Foreign Relations Committee Democrats on July 16, 2015,¹²¹⁵
- a telephone call with a senator on July 29, 2015,¹²¹⁶

¹²⁰⁹ See, e.g., Kahl Class. Tr. at 27-28; Executive Secretary Staffer 4 Tr. at 30; Legislative Affairs Staff 2 Tr. at 22-23.

¹²¹⁰ Biden 10/9/23 Tr. at 85-86.

¹²¹¹ Biden 10/9/23 Tr. at 85-86.

¹²¹² 2/3/15-2/4/15 -e-mail thread re Call Request, 1B001_02039129

¹²¹³ 4/11/15-4/12/15 e-mail thread among staff re Readout of VP Calls, 1B001_03791348.

¹²¹⁴ 4/14/16 e-mail among staff re call with Congress rep., 1B001_03464705.

¹²¹⁵ 7/16/15 Event Memo from Staff, Meeting with Senate Foreign Relations Committee Democrats to Discuss Joint Comprehensive Plan of Action (JCPOA), 1B001_00009537.

¹²¹⁶ 7/29/15 Telephone Call Sheet, Telephone Call with Senator Regarding Iran Nuclear Deal, 1B001_02227386.

- breakfast with members of the House Democratic members on July 30, 2015,¹²¹⁷ and
- a meeting with House Democrats on July 15, 2015.¹²¹⁸

Mr. Biden’s interest in the Iran deal potentially extended beyond his official duties and his time serving as vice president. In May 2016, Zwonitzer, the ghostwriter for *Promise Me, Dad*—then in the planning phase—e-mailed Mr. Biden and his staff a “one-page description of the book we have been talking about.”¹²¹⁹ The description proposed a “recounting of a small window of time . . . in the spring and summer of 2015,” which “may be the most momentous epoch of the eight-year administration.”¹²²⁰ The description listed a number of administration activities during that time, starting with the “negotiation of the framework of the Iran nuclear deal and the effort to convince Congress to sign off on the pact.”¹²²¹ Ultimately, however, *Promise Me, Dad* did not recount the negotiation of the Iran deal or Mr. Biden’s role in it. The book’s sole mention of the Iran deal is in a brief description of a call with a senator in early 2015, whom Mr. Biden called “to touch base with him on the Iran deal and on the Northern Triangle, and to bring him up to date on the effort to get money set aside for the Army Corps of Engineers to deepen the Delaware River channel.”¹²²²

¹²¹⁷ 7/29/15 Event Memo, Breakfast with House Democratic Members on Iran Nuclear Deal, 1B001_00009428.

¹²¹⁸ 7/15/15 Event Memo, Meeting with House Democrats to Discuss the Joint Comprehensive Plan of Action (JCPOA), 1B001_00009547; 7/15/2015 Schedule for Vice President Joe Biden, 1B001_00014068.

¹²¹⁹ 5/21/16 e-mail from Zwonitzer, Zwonitzer-00007399; 5/23/16 e-mail from Personal Aide, 1B001_02171054.

¹²²⁰ JRB-Book-Idea.doc, 1B001_02171055.

¹²²¹ *Id.*

¹²²² Biden, PROMISE ME, DAD 86.

Mr. Biden and his advisors—several of whom were affiliated with the Penn Biden Center and were former senior officials in the Obama administration¹²²³—had a continuing interest in the Iran deal as a matter of foreign policy after his time as vice president. In October 2017, for example, his Penn Biden Center team provided him seven notecards’ worth of updates on the “Iran Nuclear Deal” and the Trump administration’s stance on it.¹²²⁴ His staff also prepared remarks for him to give at the Brzezinski Annual Prize Lecture at the Center for Strategic and International Studies;¹²²⁵ roughly a full page of the remarks defended the Iran deal and criticized the Trump administration’s threats to pull out of it.¹²²⁶ His staff later drafted a “Decision Memo” with the subject “Statement Should President Trump Announce that He is Decertifying Iran’s Compliance with the [Iran deal].”¹²²⁷ The decision memo set forth a proposed statement for staff to post to Mr. Biden’s Facebook account shortly after then-President Trump’s expected announcement that he would not recertify the Iran deal.¹²²⁸

In February 2018, Kahl sent Mr. Biden an Event Memo for a “Meeting with Israeli Leaders.”¹²²⁹ Kahl described actions taken by the Trump administration on

¹²²³ See, e.g., Penn Biden Center-Affiliated University Employees – Preliminary List, SCOH-000779; 3/19/17 e-mail from PBC Employee 2, SCOH-000780.

¹²²⁴ 10/6/17 e-mail to Staff re 10-06 Foreign Policy Cards, SCOH-000351, Key Facts, Iran Nuclear Deal – 10/5/17, SCOH-000352 (attachment 3 of 3).

¹²²⁵ 10/1/17 Draft, Remarks for Vice President Joe Biden, Brzezinski Annual Prize Lecture at CSIS, SCOH-000341.

¹²²⁶ *Id.* at 6.

¹²²⁷ 10/12/17 Decision Memo, Statement Should President Trump Announce that He is Decertifying Iran’s Compliance with the JCPOA, SCOH-000359.

¹²²⁸ *Id.*

¹²²⁹ 2/28/18 Event Memo, Meeting with Israeli Leaders, SCOH-000361.

the Iran deal and set forth talking points for Mr. Biden to advocate for the deal with Israeli leaders, including Prime Minister Netanyahu.¹²³⁰ And a Penn Biden Center staffer proposed “Iran deal post UNGA and fight with allies” as one of several topics for members of his team—including Kahl and Blinken—to brief Mr. Biden on in October 2018.¹²³¹

II. ANALYSIS

A. Insufficient evidence exists to prove Mr. Biden willfully retained the classified information in the EYES ONLY envelope

There is insufficient evidence to prove beyond a reasonable doubt that Mr. Biden intentionally retained the classified documents in the EYES ONLY envelope after his term as vice president or caused his staff to do so. Instead, the evidence supports an innocent explanation for the unauthorized retention of those documents. Mr. Biden may have expected to need the material for further discussions with members of Congress about the Iran deal, which he continued to have after his breakfast with Senators on January 29, 2015. Given his practice of having his front office staff store files he wanted to keep close at hand, Mr. Biden likely gave the EYES ONLY envelope to his executive assistant to keep within reach for future engagement with members of Congress. He and his staff appear to have eventually forgotten about it—along with other older files in the front-office collection—and staff members unwittingly moved it out of the West Wing at the end of the administration.

¹²³⁰ *Id.* at 1, 10-13.

¹²³¹ 10/1/18 e-mail from PBC Staffer, SCOH-000001; FBI Serial 344 1A415.

Mr. Biden's front office staff kept files in the front office that he wanted to keep close at hand for reference.¹²³² The files recovered from the Penn Biden Center—including those in the EYES ONLY envelope—were files his executive assistant kept in the front office and eventually moved to the Penn Biden Center.¹²³³ One member of the front office staff periodically went through her files to identify material Mr. Biden no longer needed,¹²³⁴ but the executive assistant does not appear to have done the same.¹²³⁵ The age of many of the files recovered from the Penn Biden Center—some of which dated back to Mr. Biden's first term as vice president—is consistent with the possibility that the executive assistant and Mr. Biden simply forgot about them, having never purged or archived them. Some files remained in the front office in January 2017 that Mr. Biden likely no longer needed, wanted, or remembered.

Moreover, the EYES ONLY materials were stored in an envelope that was not marked classified; Mr. Biden's executive assistant said the "EYES ONLY" designation did not necessarily signify classified contents.¹²³⁶ She typically identified classified material by the cover sheets, which she said were "usually always" included.¹²³⁷ She also said she would have respected the instruction that it was for Mr. Biden's eyes only and would not have looked inside.¹²³⁸ When interviewed, the executive assistant did not recall seeing the EYES ONLY envelope while packing up

¹²³² Executive Assistant 1/4/23 Tr. at 78-81, 85-86; Staff Assistant 3 12/21/22, FBI Serial 36 at 2-3; Executive Assistant 9/28/2023 Tr. at 133-34.

¹²³³ Executive Assistant 9/28/23 Tr. at 7-10.

¹²³⁴ FBI Serial 36 at 2-3.

¹²³⁵ Executive Assistant 1/4/23 Tr. at 39, 187-188.

¹²³⁶ Executive Assistant 1/4/23 Tr. at 147-48, 156-64.

¹²³⁷ Executive Assistant 1/4/23 Tr. at 35.

¹²³⁸ Executive Assistant 1/4/23 Tr. at 168-69.

the West Wing Office or unpacking at the Penn Biden Center.¹²³⁹ Even if she had seen the envelope, it is reasonable to believe she did not know the contents were classified and would not have looked inside to check because of the EYES ONLY stamp.

Some evidence suggests Mr. Biden had a motive to retain the documents in the EYES ONLY envelope after he left office, but that evidence is weak. He did have a continuing interest in the Iran deal, both as a matter of foreign policy and as a potential topic Zwonitzer considered for Mr. Biden's book. But there is no evidence that he ever accessed or requested the EYES ONLY envelope after leaving office, or that he knew his staff had moved it to the Penn Biden Center. None of his advisors at the Penn Biden Center remembered the documents. The materials they prepared for Mr. Biden on the Iran deal do not reference the type of classified information in the EYES ONLY envelope. The executive assistant stated she had no knowledge of the envelope's contents and no memory of him ever asking about it. And Mr. Biden did not appear to recognize the documents during his interview with the special counsel. He barely mentioned his role with the Iran deal in *Promise Me, Dad* and does not appear to have thought it an important part of his legacy. Some former advisors stated Mr. Biden was pessimistic about negotiating with Iran but supported the negotiations anyway in support of the president.¹²⁴⁰

¹²³⁹ Executive Assistant 1/4/23 Tr. at 159, 173-74; Executive Assistant 9/28/23 Tr. at 120, 135-36.

¹²⁴⁰ Kahl Class. Tr. at 3-6; Donilon Tr. at 30.

Finally, several of the files in the box where the EYES ONLY envelope was found appear to have been forgotten files of little value to Mr. Biden, such as the file about a 2011 ski trip. The files, therefore, do not appear to be a set that Mr. Biden personally curated. Nor do they appear to be the type of files people keep close as a matter of course in their everyday lives.

In summary, the innocent explanation for the retention of the classified documents in the EYES ONLY envelope at the Penn Biden Center is not only plausible, it is a better explanation than one of willful retention. There is thus insufficient evidence to support charging Mr. Biden or anyone else with willful retention of the documents in the EYES ONLY envelope at the Penn Biden Center.

B. There is insufficient evidence to support charging Mr. Biden for the retention of the other marked classified documents recovered from the Penn Biden Center

1. There is insufficient evidence to charge Mr. Biden with willful retention of marked classified documents A1 and A2

The evidence does not suggest that Mr. Biden willfully retained documents A1 or A2, which related to engagement with China in President Obama's second term and a summary of meetings with foreign leaders during a United Nations General Assembly Week. The FBI found these documents among unclassified documents in folders that Mr. Biden's executive assistant maintained for him. Mr. Biden occasionally asked his executive assistant to retrieve material for him from the files she maintained, but she did not remember Mr. Biden ever going through the files himself to retrieve documents. And Mr. Biden did not move the files himself at the end of the Obama administration.

The more plausible explanation for the unauthorized retention of documents A1 and A2 is that the executive assistant stored and moved documents A1 and A2 to the Penn Biden Center unwittingly. In her interview with the Special Counsel's Office, she credibly stated that she did not know the files she maintained included marked classified documents. Documents A1 and A2 did not have classified cover sheets intended to draw attention to the classified nature of the contents, nor were the folders containing the documents marked to designate classified contents.

The evidence also suggests the executive assistant was not familiar with the contents of the folders because she likely did not create them. The handwritten label on the "Filing 10-10-16" folder (containing document A2) does not appear to be the executive assistant's handwriting.¹²⁴¹ And the printed label on the "Second Term" folder (containing document A1) is large and on the cover of the folder, unlike most of the other printed labels, which appear on the file-folder tabs.

It is also unlikely a jury would find that, after the end of the Obama administration, documents A1 and A2 contained national defense information. Document A1 is a memorandum to Mr. Biden from his then-deputy national security advisor, Jeff Prescott, discussing general, high-level suggestions for the administration's engagement with China in the second term. Document A2 is a memo from Mr. Biden to President Obama describing meetings he had with foreign leaders during General Assembly Week at the United Nations. Unauthorized disclosure of

¹²⁴¹ Compare 1B004-MARK Z 2-16-17-000002 (handwriting sample); Executive Assistant 9/28/23 Tr. at 84 (identifying handwriting) with NARA_SCAN_00000097, FBI Serial 3 ("Filing 10-10-16" folder).

such material could have revealed private, sensitive diplomatic considerations and discussions within the Obama administration. But any prosecution involving those documents would have to meet the defense that the Obama administration's foreign-policy and diplomatic considerations, while historically important, had become far less sensitive by the time the documents were moved to the Penn Biden Center.

There are reasons why Obama-era diplomatic and foreign policy information, such as that in documents A1 and A2, should retain its classification status after the administration ends. But those reasons are nuanced compared to the large-scale and well-known changes to policy, governance, and leadership style that occurred in the White House from the Obama administration to the Trump administration. It is unlikely a jury would conclude that, upon the onset of the Trump administration, the foreign-policy views of the Obama-era vice president and his advisors expressed in documents A1 and A2 remained information relating to the national defense that would warrant a felony criminal charge.

2. There is insufficient evidence to charge Mr. Biden with retention of marked classified document A8

There is insufficient evidence to show Mr. Biden willfully retained document A8 for many of the same reasons as documents A1 and A2. Document A8 is a background memo for a meeting with a foreign leader. The FBI found document A8 among unclassified documents in a folder that Mr. Biden's executive assistant maintained for him and that he did not go through or move himself.

For many of the same reasons as stated for documents A1 and A2, the more plausible explanation for the unauthorized retention of document A8 is that the

executive assistant stored and moved it to the Penn Biden Center unwittingly. The executive assistant did not intend to store classified documents in the files she maintained. And the document and folder did not contain the cover sheets she relied on to flag the presence of classified information.

3. There is insufficient evidence to charge Mr. Biden with retention of marked classified documents A9 and A10

Recovered document A9 is a telephone call sheet setting forth the purpose of a call between the Ukrainian Prime Minister and Mr. Biden and talking points for the call, which occurred on December 11, 2015. It is marked “SECRET.” A handwritten note dated December 12, 2015, from Mr. Biden in the upper-right corner of the sheet asks his executive assistant to “[g]et copy of this conversation from Sit Rm for my Records please.” Document A10 documents the substance of that call in the format of a non-verbatim transcript. It is labeled “CONFIDENTIAL” and “EYES ONLY DO NOT COPY.”

Given Mr. Biden’s handwritten note, documents A9 and A10 have additional indicia of willful retention by Mr. Biden as compared to the other marked classified documents recovered from the Penn Biden Center. On a document bearing “SECRET” classification markings with talking points for a call, Mr. Biden asked his executive assistant to get a copy of the transcript of the actual call from the Situation Room for “my [r]ecords.” The executive assistant stored both the call sheet and the transcript in a folder labeled “VP Personal.” And a witness familiar with foreign-leader calls stated that the content of such calls is typically classified by default.¹²⁴²

¹²⁴² McKeon Tr. at 98-99.

Nonetheless, there is reasonable doubt that Mr. Biden willfully retained documents A9 and A10. Mr. Biden's handwritten note does not request that his executive assistant save the classified call sheet containing talking points for the call (A9) in his records; rather, he only requested the transcript of the phone call itself. And no jury could reasonably find that the substance of the call between Mr. Biden and the Ukrainian Prime Minister was national defense information. The two exchanged pleasantries and the Prime Minister heaped praise upon Mr. Biden for his December 9, 2015 speech to Ukraine's parliament. They did not engage in a substantive policy discussion. There may be technical or nuanced reasons to maintain the classification of the call, but no reasonable jury could conclude the call or its contents were national defense information after the end of the Obama administration, or that by asking for a transcript of the call Mr. Biden intended to retain national defense information.

The evidence suggests that the marked classified documents found at the Penn Biden Center were sent and kept there by mistake. Therefore, we decline any criminal charges related to those documents.

CHAPTER FIFTEEN

CLASSIFIED DOCUMENTS FOUND AT THE UNIVERSITY OF DELAWARE

In January, February, and June 2023, FBI agents identified and recovered just over a dozen marked classified documents in Mr. Biden's Senate-era papers housed at the University of Delaware. Almost all of these documents predate the Senate's establishment of rules for the tracking and handling of classified information. The evidence does not suggest that Mr. Biden willfully retained these documents. Rather, they appear to have been included in his large collection of Senate papers by mistake.

I. FACTS

A. Mr. Biden donated hundreds of boxes of senatorial records to the University of Delaware library

As a senator, Mr. Biden accumulated hundreds of bankers boxes of records. During his time as vice president, his staff shipped these records on a rolling basis to the National Archives storage facility in Maryland, where they were stored for Mr. Biden as a courtesy. The Senate records consisted of his personal senatorial files, those of his staffers, and campaign materials.¹²⁴³ While the records were not supposed to include committee records, which belong to the Senate, senators' staff commonly intermingled committee documents with their senators' personal papers.¹²⁴⁴ By the time Mr. Biden became vice president, the National Archives had over 2,000 boxes and 415 gigabytes of electronic data in courtesy storage for him.¹²⁴⁵

¹²⁴³ 3/10/10 Memo from OVP Counsel, 1B001_00038717.

¹²⁴⁴ *Id.* at 4; Senate Staffer 1 Tr. at 25-26, 43.

¹²⁴⁵ 3/10/10 Memo from OVP Counsel, 1B001_00038717.

Within the first year of his vice presidency, Mr. Biden's staff began preparations to donate his senatorial papers to the University of Delaware.¹²⁴⁶ In spring 2011, Mr. Biden asked two of his former longtime Senate staffers to review his boxes in courtesy storage.¹²⁴⁷ These former staffers reviewed and catalogued the boxes and recommended to him which papers to donate.¹²⁴⁸ During the review, neither staffer expected to or did find any marked classified documents.¹²⁴⁹

In fall 2011, Mr. Biden formally agreed to donate his Senate papers and other records to the University of Delaware.¹²⁵⁰ Between 2012 and 2015, the University's Morris Library received over 2,000 boxes of Mr. Biden's senatorial papers shipped from the National Archives, the Russell Senate Office Building, and Mr. Biden's Delaware home.¹²⁵¹ Upon their arrival at the University of Delaware, the boxes were

¹²⁴⁶ FBI Serial 349 1A420; *See, e.g.*, July 2009 e-mails between University of Delaware general counsel and Mr. Biden's Chief of Staff, SCOH-000712.

¹²⁴⁷ Senate Staffer 1 Tr. at 30-31. Senate Staffer 2 3/14/23 Tr. at 25. The staffers were paid by the University of Delaware to perform the pre-gift review. Senate Staffer 2 3/14/23 Tr. at 65.

¹²⁴⁸ Senate Staffer 1 Tr. at 35. Senate Staffer 2 3/14/23 Tr. at 25-26.

¹²⁴⁹ Senate Staffer 1 Tr. at 43; Senate Staffer 2 11/3/23 Tr. at 13, 26.

¹²⁵⁰ FBI Serials 282 1A302, 349 1A420; *See* 2/12/14 Letter from Mr. Biden to the National Archives, SCOH-000011. The "Ceremonial Agreement to Gift" was signed in a ceremony at the University of Delaware on September 16, 2011, while the actual deed of gift was not fully executed until July 2016. *See, e.g.*, July 2011 and September 2011 e-mails amongst University of Delaware staff, OVP Counsel, and personal counsel to the Vice President, SCOH-000783, SCOH-000706; 7/15/16 Deed of gift, SCOH-000578.

¹²⁵¹ FBI Serials 79 1A89, 282 1A301, 349 1A420; 5/30/12-6/5/12 e-mails between former Senate staffer, current Senate staffer, and the University of Delaware, SCOH-000005, SCOH-000007, SCOH-000008, SCOH-000010; 10/23/11 e-mail from former Senate staffer to Mr. Biden, 1B001_02683701 ("However, I have not forgotten about the boxes and files at your house. I am looking to start on those just after Thanksgiving. However, I know that you want to get them out of there sooner rather than later."); 1/31/13 e-mail from Archivist to UDel Morris Librarian and UDel library employee, SCOH-000714 (former Senate staffer was "looking though about 20-25 boxes in the garage From that group, he has about 2 boxes of Senate material so far.") When interviewed, the former Senate staffer did not recall

placed in a secure storage area, and the materials were reviewed over time by archivists and other university staff.¹²⁵²

B. Marked classified documents discovered at the Morris Library

In fall 2014, the Morris Library hired an intern to organize the Biden Senate papers, separate out documents belonging to the Foreign Relations Committee, and re-file the remainder.¹²⁵³ In late 2015 or early 2016, the intern discovered, among committee records, one document that was marked classified.¹²⁵⁴ She placed a sticky note on the document indicating the number of the box in which she found it and the fact it was marked “Secret.”¹²⁵⁵

In February 2023, an archivist reviewed the box the intern had flagged, discovered the marked classified document within the box, secured the document in a vault, and reported it to the FBI.¹²⁵⁶ Agents retrieved the document that same day.¹²⁵⁷ The classified document is a two-page State Department cable from 1987, marked Secret concerning the NATO alliance.¹²⁵⁸ A classification review by the State Department determined that the document was declassified in 2012.¹²⁵⁹

reviewing Senate-era boxes at Mr. Biden’s Delaware residence and transporting them to the University of Delaware. Senate Staffer 2 11/3/23 Tr. at 9-10, 18-20.

¹²⁵² Archivist Tr. 2/27/23 at 32.

¹²⁵³ Intern Tr. at 6-9.

¹²⁵⁴ *Id.* at 10, 12-13.

¹²⁵⁵ *Id.* at 21-22. The intern expressed confidence that she advised her supervisor of this discovery. *Id.* at 16-18. We were unable to determine why this issue went unaddressed at that time.

¹²⁵⁶ Archivist Tr. at 84; Report of Archivist interview, FBI Serial 79.

¹²⁵⁷ FBI Serials 79, 71.

¹²⁵⁸ Recovered document F1.

¹²⁵⁹ FBI Serial 676.

After this discovery, and with Mr. Biden's consent, in June 2023, the FBI searched the contents of approximately 105 boxes at the Morris Library, the subset of boxes that contained Senate Foreign Relations Committee materials.¹²⁶⁰ Two of those boxes contained the following five marked classified documents:

1. Two-page letter to Richard G. Lugar, Committee on Foreign Relations, regarding Conventional Armed Forces in Europe Treaty, dated November 20, 1991 (signature block missing), marked Secret.¹²⁶¹ According to a classification review, this document is currently classified as Secret.¹²⁶²
2. Three-page document titled "Summary of March 11, 1977 Executive Meeting of Full Committee," dated Mar. 11, 1977, marked Secret and "CLASSIFIED COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE."¹²⁶³ A classification review of this document is pending.¹²⁶⁴
3. Five-page document titled "Mutual Balanced Force Reductions (MBFR)," dated July 1977, and marked Confidential.¹²⁶⁵ According to a classification review, this document is currently classified as Confidential.¹²⁶⁶
4. Six-page Staff Memorandum titled, "National Security Interests in a Law of the Sea Treaty, March 6, 1979 Hearings," dated March 2, 1979, marked Confidential and "For Committee Use Only."¹²⁶⁷ According to a classification review, this document is currently classified as Confidential.¹²⁶⁸
5. Three-page Action Memorandum from Senate Staffer 3 to nine senators, including Mr. Biden, with subject, "Proposed 1980 Committee Budget – For Discussion During Meeting of Democrats in S-201 at 2:00 p.m., Wednesday, January 23," dated January 23, 1980,

¹²⁶⁰ FBI Serials 290, 292.

¹²⁶¹ Recovered document G5.

¹²⁶² FBI Serial 676.

¹²⁶³ Recovered document G1.

¹²⁶⁴ FBI Serial 676.

¹²⁶⁵ Recovered document G2.

¹²⁶⁶ FBI Serial 676.

¹²⁶⁷ Recovered document G3.

¹²⁶⁸ FBI Serial 676.

marked Confidential.¹²⁶⁹ The State Department did not provide a classification determination for this document.¹²⁷⁰

C. Marked classified documents at the Biden Institute

1. Storage of Mr. Biden's records at the Biden Institute

In addition to the thousands of boxes of Senate papers Mr. Biden donated to the University of Delaware, there was a smaller collection of mostly Senate-era material that remained stored at the Russell Senate Office Building and the National Archives. During the vice presidency, Mr. Biden's former Senate staffers reviewed the material to help him decide what, if any, he might donate to the University of Delaware. Mr. Biden wanted to identify and keep materials that may be "politically sensitive," speeches (from both the Senate era and vice presidency), photographs, contact information, and personal (and campaign) materials.¹²⁷¹ The staffers found no marked classified documents during this review.

Several months after the vice presidency, in July 2017, these materials, which filled about 263 boxes, were shipped to the Biden Institute at the University of Delaware, a domestic policy think tank established in 2017.¹²⁷² The Biden Institute

¹²⁶⁹ Recovered document G4. This document is a duplicate of Recovered document E1, a document recovered from the Biden Institute, discussed later in this section.

¹²⁷⁰ FBI Serial 676. *See also* Section C.3 below.

¹²⁷¹ May 2017 e-mails between transition staffer and Executive Director, SCOH-000697, SCOH-000014; 12/15/16 meeting notes belonging to Senate Staffer 1, SCOH-000012; May 2017 e-mails between transition staffer and Senate Staffer 1, SCOH-000027, SCOH-000015.

¹²⁷² 7/7/17 e-mail between transition staffer and Executive Director, SCOH-000701; *see also* 7/7/17-7/14/17 e-mails between transition staffer and Executive Director, SCOH-000703.

was a space that Mr. Biden could use for free, where someone could continue to sort through the materials.¹²⁷³

2. Biden Institute reviews the boxes

In late 2018 or early 2019, the Biden Institute hired the daughter of one of Mr. Biden's personal attorneys as a part-time employee to review Mr. Biden's boxes.¹²⁷⁴ Over several months, she conducted what she described as a cursory review of the boxes and inventoried their contents.¹²⁷⁵ She did not alert anyone to the presence of classified information.¹²⁷⁶ When interviewed, she stated that she never saw any documents with classification markings.¹²⁷⁷

Several others also reviewed these materials. Former Senator and Mr. Biden's Senate Chief of Staff Ted Kaufman reviewed several boxes in 2019 to determine whether they contained any of his own papers.¹²⁷⁸ Mr. Biden's sister, Valerie Biden Owens, also reviewed some of these boxes and recalled seeing speeches and

¹²⁷³ 5/10/17 e-mail from transition staffer to Biden Owens and Senate Staffer 1, SCOH-000014; 5/17/17 e-mail from transition staffer to Senate Staffer 1 SCOH-000015.

¹²⁷⁴ June 2017 and January 2019 e-mails between Executive Director and employee, SCOH-000693, SCOH-000696.

¹²⁷⁵ Inventory attachment, SCOH-000677; FBI Serial 110.

¹²⁷⁶ FBI Serials 89, 110.

¹²⁷⁷ *Id.*

¹²⁷⁸ 7/19/19 e-mail from Executive Director to Kaufman, SCOH-000715; Executive Director Serial 74 at 3-4; Biden Owens Tr. at 58. In January 2009, Mr. Kaufman was appointed to serve the remainder of Mr. Biden's term as Senator when Mr. Biden resigned from the Senate to become vice president. Edward E. (Ted) Kaufman: United States Senator from Delaware and Chief of Staff to Senator Joe Biden, 1973-2010, Oral History Interviews, August 17 to September 27, 2012, Senate Historical Office, Washington, D.C., <https://www.senate.gov/about/oral-history/kaufman-edward-e-oral-history.htm> (last visited Jan. 31, 2024).

schedules.¹²⁷⁹ One Institute staff member recalled looking in some of these boxes and seeing framed photographs and gifts.¹²⁸⁰

3. Discovery of marked classified documents at the Biden Institute

After the discovery of classified information at the Penn Biden Center in November 2022, the Biden Institute's Executive Director notified Mr. Biden's personal counsel, Bob Bauer, that the institute had done its own inventory of the boxes in its possession and believed that four contained "VP Speeches & Transcripts."¹²⁸¹

In January and February 2023, FBI agents searched all 263 boxes stored at the institute and determined that one contained seven marked classified documents dated between November 1979 and June 1980.¹²⁸² Mr. Biden's former Senate staffers had reviewed this box before it was sent to the Biden Institute and omitted it from the gift to the University of Delaware because the box contained campaign materials from 1978.¹²⁸³

¹²⁷⁹ Executive Director FBI Serial 74 at 4; Biden Owens Tr. at 59-60.

¹²⁸⁰ OVP Intern Tr. at 33-34.

¹²⁸¹ 1/19/23 e-mail from Executive Director to Bauer with attached inventory, SCOH-000661, SCOH-000662. *See also* 5/18/17 e-mail from OVP Purchase Manager to Senate Staffer 1 regarding Senate Records, SCOH-000027.

¹²⁸² FBI Serials 66, 67; Recovered documents E1-E7.

¹²⁸³ Senate Staffer 1 spreadsheet, SCOH-000056; June 2017, SCOH-000041 (listing boxes to send to the Biden Institute from the National Archives). The four documents were found in a box with the requisition number 329-94-341, #58. The Biden Institute employee had performed a review of the box and added her own number, 252, to the box. The employee inventorying the box had described it as containing "misc. news clips – some correspondence" from "c. mid-1970s." Inventory attachment, SCOH-000677.

Two documents were marked Secret and five documents were marked Confidential. The two Secret documents and one Confidential document were found in a folder labeled “Foreign Relations Committee.” The other four Confidential documents were in a folder labeled “Europe.”

Below is a description of the documents recovered from the Biden Institute:

1. Three-page Action Memorandum from Senate Staffer 3 to nine senators, including Mr. Biden, with subject, “Proposed 1980 Committee Budget – For Discussion During Meeting of Democrats in S-201 at 2:00 p.m., Wednesday, January 23,” dated January 23, 1980, marked Confidential.¹²⁸⁴
2. Two-page letter to Edmund S. Muskie, Secretary of State, from Ted Kaufman/Senator Biden, dated June 4, 1980, marked Confidential.¹²⁸⁵
3. One page Action Memorandum, addressed to Senators Church, Pell, and Biden, with subject “Letter to Secretary Muskie on Consultations with the Allies on SALT and TNF,” dated May 29, 1980, marked Confidential.¹²⁸⁶
4. One page Action Memorandum, addressed to Senator Biden, with subject “Re: Letter to Secretary Muskie on Consultations with the Allies on SALT and TNF,” dated May 29, 1980, marked Confidential.¹²⁸⁷
5. Three page letter from Edmund S. Muskie, Secretary of State, to Senators Church, Pell, and Biden, dated May 30, 1980, marked Confidential.¹²⁸⁸
6. One page Action Memorandum, addressed to Senator Biden (“The attached memo from Senate Staffer 4 on TNF Modernization is both

¹²⁸⁴ Recovered document E1. This document is a duplicate of Document #5 (G4) discussed above in Section 1B.

¹²⁸⁵ Recovered document E2.

¹²⁸⁶ Recovered document E3.

¹²⁸⁷ Recovered document E4.

¹²⁸⁸ Recovered document E5.

interesting and disturbing”) from Senate Staffer 3 through Ted Kaufman, dated November 28, 1979, marked Secret.¹²⁸⁹

7. Two page Information Memorandum, addressed to Senate Staffer 3 from Senate Staffer 4, titled “TNF Modernization and Arms Control,” dated November 26, 1979, marked Secret.¹²⁹⁰

For Documents 1 through 5, the State Department could not provide a classification level in response to our request, though it noted that “[t]he details contained in some of these documents appear to have been highly sensitive at the time that these documents were created and included information that appeared to originate at executive branch federal agencies.”¹²⁹¹ According to the State Department, these documents may or may not still be sensitive today.¹²⁹² The State Department was unable to render an opinion as to Document 6.¹²⁹³ The State Department could not provide a classification level for Document 7 but advised that certain pages of this document may be classified if they had been included in an executive branch document, as the legislative branch does not have the authority to classify documents.¹²⁹⁴

4. U.S. Senate rules on handling of classified information during the timeframe of the recovered documents

The documents recovered at the University of Delaware all appear to have

¹²⁸⁹ Recovered document E6.

¹²⁹⁰ Recovered document E7.

¹²⁹¹ U.S. Department of State, Classification Review Results for State Department Equities, at 2 (Dec. 1, 2023); FBI Serial 676.

¹²⁹² U.S. Department of State, Classification Review Results for State Department Equities, at 2 (Dec. 1, 2023); FBI Serial 676.

¹²⁹³ U.S. Department of State, Classification Review Results for State Department Equities, at 2 (Dec. 1, 2023); FBI Serial 676.

¹²⁹⁴ U.S. Department of State, Classification Review Results for State Department Equities, at 2 (Dec. 1, 2023); FBI Serial 676.

originated from Mr. Biden's service on the Senate Foreign Relations Committee. Mr. Biden served on the Committee from 1975 to 2009.¹²⁹⁵ He became Ranking Minority Member in 1997 and chaired the Committee in January 2001, from June 2001 to 2003, and again from 2007 to 2009.¹²⁹⁶ As a Committee member, Mr. Biden had access to classified information relating to diplomatic nominees, treaties, and oversight responsibilities for the Department of State.

In the mid- to late-1980s, several factors led to growing concern within the Senate about the handling of classified information.¹²⁹⁷ Among other things, each Senate office handled classified information differently.¹²⁹⁸ Also, there was no central recordkeeping system to track which Senate employees held a security clearance.¹²⁹⁹ As a result, then-Minority Leader Robert Dole described the Senate's handling of classified information as "a disaster, waiting to happen."¹³⁰⁰

In response, in 1987, the Senate established the Office of Senate Security and charged it with protecting classified information in Senate offices and committees.¹³⁰¹ The Office's Senate Security Manual established rules for the handling of classified

¹²⁹⁵ COMMITTEE ON FOREIGN RELATIONS, UNITED STATES SENATE, MILLENIUM EDITION 1816-2000, S Rep. No. 105-28, at 101, www.foreign.senate.gov/imo/media/doc/CDOC-105sdoc281.pdf (senate.gov) (last visited Jan. 23, 2024).

¹²⁹⁶ Garrison Nelson and Charles Stewart III, COMMITTEES IN THE U.S. CONGRESS 1993-2010 585 (CQ Press 2010).

¹²⁹⁷ 133 CONG. REC. 9371 (Apr. 23, 1987) (statement of Sen. Dole).

¹²⁹⁸ *Id.*

¹²⁹⁹ *Id.*

¹³⁰⁰ *Id.*

¹³⁰¹ S. RES. 243 (100th Congress, 1st Session, July 1, 1987) (on file with Office of Special Counsel); *see also* Offices of the Secretary, United States Senate, <https://www.senate.gov/about/officers-staff/secretary-of-the-senate/offices-of-the-secretary.htm#:~:text=The%20Office%20of%20Senate%20Security,in%20Senate%20offices%20and%20committees> (last visited Jan. 18, 2024).

information.¹³⁰² Senators could not store Top Secret or Special Access material in their personal offices.¹³⁰³ Information at lower classification levels could be stored in a senator's personal office, but only in an appropriate storage facility that the Office of Senate Security had certified.¹³⁰⁴ And senators could not remove classified information from approved spaces or take it home with them.¹³⁰⁵

In 1997—after all of the documents recovered at the University of Delaware were created—the Office of Senate Security began tracking classified information using a computerized system.¹³⁰⁶ Under this system, which exists to this day, each copy of a classified document coming into the Office is logged and given a unique, physical barcode.¹³⁰⁷ The system catalogues each document with an unclassified title, subject, page count, document origin, document destination, and any codewords.¹³⁰⁸ This way, if a classified document was found in an unauthorized location, the Office of Senate Security could identify the person who is responsible for that document.

¹³⁰² *Id.* 3(a).

¹³⁰³ Security Manual, Office of Senate Security, Section II.A.7(a) note (Apr. 2007). The manual's discussion of "Special Access" appears to be a shorthand reference to Special Access Programs, a term defined in its glossary as "[a]ny program imposing need-to-know access controls beyond those normally prescribed for access to Confidential[,] Secret, or Top Secret information." *Id.* Special access programs are a subset of Sensitive Compartmented Information. *See* Executive Order 13526 § 4.3.

¹³⁰⁴ Security Manual, Office of Senate Security, Section II.A.7 (Apr. 2007).

¹³⁰⁵ *Id.*, Section II.A.12.

¹³⁰⁶ *See* Senate Employee 1 Tr. at 29.

¹³⁰⁷ Senate Employee 2 Tr. at 29. While these records are stored electronically, records of a senator's physical access to classified document at the Office, as well as most other types of records maintained by the Office, were kept manually using handwritten logs. Senate Employee 1 Tr. at 35.

¹³⁰⁸ Senate Employee 1 Tr. at 33-34.

II. ANALYSIS

The evidence does not establish that Mr. Biden or anyone else knowingly removed or retained the classified documents found at the University of Delaware. These documents appear to have been included in his Senate papers by mistake.

First, Mr. Biden depended on staffers to maintain his Senate files, organize and pack them, transport them to the proper place of storage, and review them before they were sent to the University of Delaware. No evidence suggests he knew these classified documents were within his massive collection of Senate papers. Further, given the age of the documents, we found no evidence that Mr. Biden personally viewed any of them while he was a member of the Senate. Mr. Biden sat on the committee that generated these documents, but it is entirely plausible they were handled by a staff member and that Mr. Biden never handled the documents himself before they were filed among his papers.¹³⁰⁹ There is also no record of Mr. Biden's review of the documents before or after he donated them to the University. As a matter of historical context, there have been numerous previous incidents in which marked classified documents have been discovered intermixed with the personal papers of former executive branch officials and members of Congress.¹³¹⁰

¹³⁰⁹ The 1991 letter addressed to Senator Lugar (then a Foreign Relations Committee member) found within Mr. Biden's papers does not contain a signature block. Therefore, we could not determine who sent the letter, or whether Mr. Biden ever viewed (or ever received) the letter.

¹³¹⁰ Joseph Weber, *When state secrets land in the hands of university librarians*, WASH. POST (Feb. 10, 2023, updated Feb. 19, 2023), <https://www.washingtonpost.com/education/2023/02/10/classified-documents-university-library-trump-biden-pence/> (last visited Jan. 31, 2024); Ronald G. Schafer, *Presidential papers have long been turning up in unexpected places*, WASH. POST (Feb. 4, 2023), <https://www.washingtonpost.com/history/2023/02/04/presidential>

Second, before the Senate papers arrived at the University, Mr. Biden asked two experienced staffers to review them. The staffers knew to segregate documents that were appropriate for the Morris Library gift. They did not identify any classified documents within these materials.

The staffers' failure to do so is likely due, in part, to the small number of classified documents found within a large collection of the Senate papers. Another possible reason is that several of the documents use markings that do not clearly convey their classified nature. Some of the documents are marked "CONFIDENTIAL." While that is a valid marking for classified information, the term "CONFIDENTIAL" is also used in other contexts not involving classified information. Senate staffers could have understood these to be internal committee documents or simply sensitive documents created by authors who wanted to limit the number of people who viewed them.

Third, the classified documents were found in collections of papers Mr. Biden had either already donated or planned to donate after his staff removed personal and political materials. This suggests neither he nor his staff knew about or wanted to keep the small number of classified documents later found there.

l-papers-documents-misplaced/; Zeke Miller et al., *Classified records pose conundrum stretching back to Carter*, ASSOCIATED PRESS NEWS (Jan. 24, 2023), <https://apnews.com/article/biden-trump-classified-documents-president-33df0355c72e9ae8fa4cb6ead13f6521>; U.S. GEN. ACCOUNTING OFF., GAO/GDD-91-117, REPORT TO CONGRESSIONAL REQUESTORS: DOCUMENT REMOVAL BY AGENCY HEADS NEEDS INDEPENDENT OVERSIGHT 17-23 (Aug. 1991), <https://www.gao.gov/assets/ggd-91-117.pdf> (last visited Jan. 31, 2024).

Finally, none of these decades-old documents contains information so obviously sensitive that a jury would find it compelling enough to convict a former president and vice president of mishandling classified information.

For these reasons, it is likely that the few classified documents found in Mr. Biden's Senate papers were there by mistake. The documents found at the University of Delaware are not a basis for criminal charges.

CHAPTER SIXTEEN

OTHER CLASSIFIED DOCUMENTS FOUND IN MR. BIDEN'S DELAWARE HOME

I. MARKED CLASSIFIED DOCUMENTS IN NOTEBOOKS

As discussed in Chapters Two and Four, three notebooks found in Mr. Biden's Delaware home had marked classified documents placed inside them. One of these notebooks, labeled "Af/Pak 1," is discussed in Chapter Six. For the other two, the evidence does not suggest either that Mr. Biden retained the classified documents inside them willfully, or that the documents contain national defense information. Thus, these documents do not warrant criminal charges.

A. Documents found within notebook labeled "1/6/12 #2 Foreign Policy"

The notebook labeled "1/6/12 #2 Foreign Policy" recovered from Mr. Biden's basement den contained two marked classified documents.¹³¹¹ One was three pages of what appear to be PowerPoint slides, each of which was marked Secret/NOFORN/Pre-Decisional.¹³¹² The slides are dated May 22, 2013, and discuss various options for U.S. troop levels in Afghanistan after 2014.¹³¹³

The notebook contains a corresponding handwritten entry dated May 24, 2013, when Mr. Biden took notes during a National Security Council meeting that he attended through a secure video teleconference from his Delaware home.¹³¹⁴ While we do not know exactly where inside the notebook the classified PowerPoint slides

¹³¹¹ Notebook 1B15.

¹³¹² Recovered documents C1, C2, C3.

¹³¹³ *Id.*

¹³¹⁴ Notebook entry 1B15-0039; 5/24/13 Final Schedule for Vice President Joe Biden, NARAWH_00000422.

were located (because the slides were found by a member of the White House Counsel's Office rather than the FBI),¹³¹⁵ it is likely that Mr. Biden had the slides at his home during the National Security Council meeting, then placed the slides in the notebook after the meeting, where they remained until discovered in 2023.

The second marked classified document in the notebook was a briefing memorandum for Mr. Biden from his National Security Affairs team dated November 1, 2013, and marked Top Secret/Sensitive Compartmented Information.¹³¹⁶ The memorandum briefed Mr. Biden in advance of a meeting with the Prime Minister of Iraq.¹³¹⁷ The document corresponds to an entry in the notebook where Mr. Biden made handwritten entries about the Prime Minister's visit, indicating that Mr. Biden placed the memorandum in his notebook during or soon after that event.¹³¹⁸

For both marked classified documents found in this notebook, we investigated whether Mr. Biden had reason to keep the documents, including by interviewing Mr. Biden and relevant staff members, reviewing Mr. Biden's notebook entries, and examining the public record. The evidence does not suggest that he intended to keep these documents, and it is possible he put them in his notebook after meetings and forgot about them. While one of the documents concerned troop levels in Afghanistan

¹³¹⁵ FBI Serial 44.

¹³¹⁶ Recovered document C4. The document was classified by OVP National Security Affairs as Top Secret//SCI. The intelligence community has indicated that was an invalid marking and should be marked TS//HCS-O/SI//ORCON/NOFORN; FBI Serial 676; Notebook 1B15.

¹³¹⁷ Recovered document C4.

¹³¹⁸ FBI Serial 44.

as of 2013,¹³¹⁹ an issue that remained of great interest to Mr. Biden,¹³²⁰ because it was a single document from years after the Afghanistan 2009 policy review, it is plausible that Mr. Biden left it in the notebook by mistake rather than storing it there intentionally.

We investigated whether Mr. Biden encountered these classified documents in his notebook after the vice presidency, but we did not find evidence that he did. There is no evidence he used this notebook when writing *Promise Me, Dad*, and the classified documents were not relevant to the book, and were not referenced in Mr. Biden's recorded conversations with Zwonitzer. While it is natural to assume Mr. Biden may have reviewed this notebook at some point after leaving office and found the classified documents inside, we did not find evidence to establish this.

B. Notebook labeled "DAILY/MEMO"

Mr. Biden's notebook labeled "DAILY/MEMO," which agents found in his office/library on the main floor of his Delaware home, contained one page of a PowerPoint slide marked Secret/NOFORN about national security priorities for the second term of the Obama administration.¹³²¹ The slide's subject matter suggests it may have been distributed at, or in preparation for, a National Security Council meeting. While the intelligence community has informed us that this document is properly marked, it does not appear to us to contain national defense information.¹³²² The investigation also did not reveal evidence that Mr. Biden intentionally kept the

¹³¹⁹ Recovered documents C1, C2, C3.

¹³²⁰ See Chapter Six.

¹³²¹ Notebook 1B25; Recovered document D21.

¹³²² Serial 676.

document after the Obama administration, or that he knew the document was in his home.

For each of the marked classified documents found in Mr. Biden's notebooks, we cannot prove that Mr. Biden knew about or intended to keep the document after he was vice president, or we cannot prove the document contains national defense information, or both. These documents do not support criminal charges against Mr. Biden.

II. "WEEKEND WITH CHARLIE ROSE" BINDERS

During their search of Mr. Biden's Delaware home in December 2022 and January 2023, FBI agents found two nearly identical binders containing marked classified documents: one in a box in the garage, and the other in a paper bag in the office next to Mr. Biden's primary bedroom.¹³²³ The evidence does not show that Mr. Biden knew the classified documents were in his home, and it is plausible that they were stored there by mistake.

Mr. Biden's staff assembled the binders to prepare him for an event in September 2014, entitled "Weekend With Charlie Rose" in Aspen, Colorado.¹³²⁴ He flew to Aspen on Friday, September 19, 2014, and back to Delaware the next day.¹³²⁵ The guest list included leaders in government and business.¹³²⁶

¹³²³ Evidence items 1B5, 1B31, 1B77.

¹³²⁴ 9/17/14 e-mails amongst OVP National Security Affairs staff, NARAWH_00011307 ("Poroshenko paper, including background (classified)").

¹³²⁵ 9/17/14 e-mail from Director of Programs, NARAWH_00010985 (attaching Mr. Biden's schedule from September 19, 2014); 9/18/14 e-mail from Director of Programs, NARAWH_00010943 (attaching Mr. Biden's schedule from September 20, 2014).

¹³²⁶ 9/18/14 Event Memo, Weekend with Charlie Rose Dinner, NARA_SCAN_00001636.

The binders included materials on foreign policy topics to prepare Mr. Biden for an interview with Charlie Rose on September 20, 2014.¹³²⁷ A staff member who compiled the binder e-mailed his colleagues proposing its contents, stating that one document would be classified and another might be.¹³²⁸ The recovered binders' contents generally track this e-mail.¹³²⁹ The marked classified documents in the binders include the following:

- An Event Memo, marked Secret, from a National Security Affairs advisor preparing Mr. Biden for a lunch on September 17, 2014 at the Naval Observatory with a foreign leader.¹³³⁰ This memo was in both the binder in the garage (as a two-page document) and the binder in the upstairs office (as a three-page document).
- A ten-page document labeled in part, "Background," marked Secret/NOFORN, which appears to be an attachment to the Event Memo referenced immediately above.¹³³¹ This document also was in both recovered binders.¹³³²
- A five-page document titled in part, "Scenesetter for National Security Advisor Susan Rice." It lacks classified headers or footers but does have portion markings indicating it contains Secret information.¹³³³ This document was in both binders and corresponds to the staffer's e-mail describing one paper as potentially classified.¹³³⁴

¹³²⁷ Communications Director Tr. at 16; 9/9/14 Interview Memo, 1B001_00034947 (memo preparing Mr. Biden with an "off-the-record interview with Charlie Rose" on September 20).

¹³²⁸ 9/17/14 e-mails amongst OVP National Security Affairs staff, NARAWH_00011307.

¹³²⁹ Compare 9/17/14 e-mails amongst OVP National Security Affairs staff, NARAWH_00011307, with 1B005-CHARLIE ROSE BACKGROUND MATERIAL.

¹³³⁰ Classified documents B1, D23; 9/18/14 White House Press Release, 1B001_02563406 (describing lunch with Mr. Biden and foreign leader at the Naval Observatory).

¹³³¹ Classified documents B2, D24.

¹³³² 9/17/14 e-mails amongst OVP National Security Affairs staff, NARAWH_00011307 ("Poroshenko paper, including background (classified)").

¹³³³ Classified documents B3, D25.

¹³³⁴ 9/17/14 e-mails amongst OVP National Security Affairs staff, NARAWH_00011307 ("Poroshenko paper, including background (classified)").

Mr. Biden's staff appear to have mislabeled one of the binders as unclassified despite its classified contents. The binder found in the garage had a cover page with the words "UNCLASSIFIED DOCUMENT" in all capital letters, while the binder from the second-floor bedroom office had no cover page:¹³³⁵



The Charlie Rose binder found in Garage Box 2¹³³⁶



The second version of the Charlie Rose binder¹³³⁷

¹³³⁵ Evidence items 1B5, 1B31.

¹³³⁶ FBI Serial 195 1A212, 20230103_DSC_0035. The FBI added the yellow Post-It note to track items that contain documents with classification markings.

¹³³⁷ FBI Serial 77 1A 86, 20230120_FBI_0243.

In one of the boxes recovered by the National Archives from the Penn Biden Center was a copy of one unclassified document that was in both of these binders—the dinner seating chart—in a folder labeled “Aspen, CO.”¹³³⁸ This folder at the Penn Biden Center contained no marked classified documents.¹³³⁹

In searching the contents of the box in the garage where they found one of the “Weekend With Charlie Rose” binders, agents found binders from other trips Mr. Biden took as vice president in the same box.¹³⁴⁰ A naval enlisted aide recalled that Mr. Biden kept such binders after returning from his trips.¹³⁴¹

Within the paper bag in the upstairs office adjoining Mr. Biden’s primary bedroom, where agents found the other “Weekend With Charlie Rose” binder, they also found personal documents that predate January 2017, when Mr. Biden left the vice presidency.¹³⁴² We could not determine when or how the bag—and the binder within it containing marked classified documents—arrived at the location where agents found it in January 2023.

These facts do not support a conclusion that Mr. Biden willfully retained the marked classified documents in these binders. The cover of one binder was marked unclassified, the other had no classification marking, and we cannot show that Mr.

¹³³⁸ FBI Serial 3; “Aspen CO” folder, NARA_SCAN_00001634, Seating Chart, NARA_SCAN_00001635, 9/18/14 Event Memo, Weekend with Charlie Rose Dinner, NARA_SCAN_00001636.

¹³³⁹ FBI Serial 3.

¹³⁴⁰ FBI Serial 701.

¹³⁴¹ NEA 1 Tr. at 126-27.

¹³⁴² FBI Serial 518.

Biden reviewed the binders after his vice presidency or knew the classified documents were inside. It is plausible that he retained these documents by mistake.

III. MARKED CLASSIFIED DOCUMENT IN THIRD-LEVEL DEN

FBI agents found one document with classification markings in the third-level den area. Agents found the document inside a blue file folder with the handwritten label “AMPUTATIONS Feb ’11,” which was in a pile of miscellaneous materials on the bottom shelf of a bookcase.¹³⁴³ The document was marked Secret/NOFORN and related to events in Egypt.¹³⁴⁴ This document’s subject matter does not relate to the label on the folder or the documents surrounding it. We cannot show that Mr. Biden knew this document was in his home, and the location of this document with unrelated materials makes it plausible that it was filed in error and that Mr. Biden kept this document by mistake.

¹³⁴³ Recovered document D22; FBI Serial 77.

¹³⁴⁴ *Id.*

CHAPTER SEVENTEEN

DELETION OF AUDIO RECORDINGS BY MARK ZWONITZER,
MR. BIDEN'S GHOSTWRITER

At some point after learning of Special Counsel Hur's appointment, Mr. Biden's ghostwriter, Mark Zwonitzer, deleted digital audio recordings of his conversations with Mr. Biden during the writing of the book, *Promise Me, Dad*.¹³⁴⁵ The recordings had significant evidentiary value. But Zwonitzer turned over his laptop computer and external hard drive and gave consent for investigators to search the devices. As a result, FBI technicians were able to recover deleted recordings relating to *Promise Me, Dad*. Zwonitzer kept, and did not delete or attempt to delete, near-verbatim transcripts he made of some of the recordings.¹³⁴⁶ He also produced those detailed notes to investigators.

After reviewing available facts, analyzing governing law, and considering the Principles of Federal Prosecution, we decline to bring charges against Zwonitzer related to his deletion of the audio recordings. Charges against Zwonitzer are not appropriate both because the available evidence is insufficient to obtain and sustain a conviction, and because, even if the evidence were sufficient, the Principles of Federal Prosecution do not support any charge in these circumstances.

¹³⁴⁵ “[T]o ensure a full and thorough investigation,” the Attorney General’s appointment order authorized us to investigate and prosecute “federal crimes committed in the course of, and with the intent to interfere with, the Special Counsel’s investigation, such as perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses.” 28 C.F.R. § 600.4(a).

¹³⁴⁶ Most of these files were essentially transcripts of the conversations, and Zwonitzer intended and viewed them as such. Zwonitzer 7/31/23 Tr. 74, 96. But in some instances, the files included portions that were more akin to Zwonitzer’s notes of conversations rather than near-verbatim transcripts. For simplicity’s sake, we refer to these files as transcripts.

I. FACTUAL BACKGROUND

FBI agents contacted Zwonitzer to request an interview and to seek records related to his work ghostwriting two of Mr. Biden's memoirs, *Promise Me, Dad* and *Promises to Keep*. Zwonitzer provided investigators records that included near-verbatim transcripts and some audio recordings. When reviewing these materials, investigators noticed that there were some transcripts for which there was no corresponding audio recording. They then learned from Zwonitzer's attorneys that, before the FBI contacted Zwonitzer, he deleted the recordings of his conversations with Mr. Biden. Zwonitzer then provided all electronic devices that contained or were used to create the recordings and transcripts related to *Promise Me, Dad*.

Zwonitzer stated that at some point he deleted the audio files subfolder from his laptop and external hard drive.¹³⁴⁷ No relevant deleted files were recovered from the laptop. Deleted audio files were recovered from a subfolder on the external hard drive labeled "Audio." Based on the available evidence from the forensic review, we assess that all deleted audio files were recovered from that subfolder.¹³⁴⁸ For three of the recovered files, portions of the audio appeared to be missing, and a fourth file appeared to have portions overwritten with a separate recording.¹³⁴⁹ These results are possible when forensic tools are used to recover deleted files.¹³⁵⁰ For each of these

¹³⁴⁷ Zwonitzer 7/31/23 Tr. 14-15.

¹³⁴⁸ FBI Operational Technology Division Report, FBI Serial 700.

¹³⁴⁹ FBI Serial 684.

¹³⁵⁰ File carving is a digital forensic process of extracting data from a storage device by scanning the entire storage device at the byte level, including areas not assigned to the file system. Carving can retrieve files that are no longer known to the file system, such as those a user has deleted.

four incomplete or overwritten files, Zwonitzer produced his corresponding transcripts to investigators.¹³⁵¹ These notes summarized the content of the conversations, two of which were with Mr. Biden and two of which were with Beau Biden's doctor.¹³⁵²

After producing the materials to investigators, Zwonitzer gave two consensual interviews during which he provided relevant information without seeking immunity or any protections or assurances (such as a proffer agreement). Zwonitzer was forthright that he had deleted recordings.¹³⁵³ In his words, "I simply took the audio files subfolder from both the G drive and my laptop and slid them into the trash. I saved all the transcripts . . ." ¹³⁵⁴ Zwonitzer believed he did this at some point during the period between the end of January 2023 and the end of February 2023.¹³⁵⁵ He took this action before the FBI contacted him about the investigation and requested that he produce evidence.¹³⁵⁶ Zwonitzer explained that at the time he did so, he was "aware" of the Department of Justice investigation of Mr. Biden's potential mishandling of classified materials.¹³⁵⁷ As for why he deleted the audio recordings, Zwonitzer gave the following reasons:

- As a practice, while he saved transcripts of recorded conversations indefinitely, he deleted audio recordings after completing a written work to

¹³⁵¹ FBI Serials 315, 336; JRB-07; JRB_02_16_2017; Doctor-02-16-2017; Doctor-03-16-2017.

¹³⁵² FBI Serials 315, 336; JRB-07; JRB_02_16_2017; Doctor-02-16-2017; Doctor-03-16-2017.

¹³⁵³ Zwonitzer 7/31/23 Tr. at 14-15.

¹³⁵⁴ *Id.*

¹³⁵⁵ *Id.* at 15.

¹³⁵⁶ *Id.* at 15-16.

¹³⁵⁷ *Id.* at 16.

protect his interviewee’s privacy.¹³⁵⁸ Zwonitzer explained that he did not have an established practice as to when he deleted audio recordings; rather, he would do so at convenient points in time, such as when he moved to a new residence or when he happened to notice that he still had audio recordings from past interviews.¹³⁵⁹

- Zwonitzer had received vague but threatening e-mails from groups hostile to Mr. Biden, and private conversations that included Zwonitzer had been published on the Internet.¹³⁶⁰ Accordingly, Zwonitzer was concerned that his computer could be hacked and the audio recordings of his conversations with Mr. Biden published online.¹³⁶¹ Those recordings contained personal information, including Mr. Biden’s reflections on the death of his son Beau.¹³⁶²
- In January 2023, Zwonitzer had finished working on a book about the capabilities of a cyber-surveillance system called Pegasus.¹³⁶³ Zwonitzer stated that he had a “heightened sense of awareness” of the capabilities of Pegasus, which he described as “the most . . . frightful cybersurveillance tool . . . on the market out there right now.”¹³⁶⁴ The book discussed how Pegasus was used to spy on people around the world—including heads of state, diplomats, and journalists.¹³⁶⁵ The Pegasus tool could be used to “capture all videos, photos, emails, texts, and passwords – encrypted or not.”¹³⁶⁶

Investigators asked Zwonitzer if he had deleted the recordings because of the special counsel’s investigation. Zwonitzer replied that he “was aware that there was an investigation” when he deleted the recordings and continued, “I’m not going to say

¹³⁵⁸ *Id.* at 15.

¹³⁵⁹ Zwonitzer 7/31/23 Tr. at 22.

¹³⁶⁰ *Id.* at 14.

¹³⁶¹ *Id.*

¹³⁶² *Id.*

¹³⁶³ Zwonitzer 1/4/24 Tr. at 77; Laurent Richard & Sandrine Rigaud, PEGASUS: THE STORY OF THE WORLD’S MOST DANGEROUS SPYWARE (2023) (e-book), <https://us.macmillan.com/books/9781250858696/pegasus> (last visited Jan. 31, 2024).

¹³⁶⁴ Zwonitzer 1/4/24 Tr. at 77.

¹³⁶⁵ Laurent Richard & Sandrine Rigaud, PEGASUS: THE STORY OF THE WORLD’S MOST DANGEROUS SPYWARE (2023) (e-book), <https://us.macmillan.com/books/9781250858696/pegasus> (last visited Jan. 31, 2024).

¹³⁶⁶ *Id.*

how much of the percentage it was of my motivation.”¹³⁶⁷ When asked whether he deleted the recordings to try and prevent investigators from obtaining them, Zwonitzer said that he did not and further explained, “when I got the subpoena and when I realized that I still had audio that I did not know I had on the laptop, I made sure to preserve that for this investigation.”¹³⁶⁸ Zwonitzer also explained that at the time he deleted the recordings, he did not expect the investigation to involve him¹³⁶⁹ and that he did not think the audio recordings contained information relevant to classified information.¹³⁷⁰

According to Zwonitzer, he decided to delete the recordings on his own; no one told him to do so.¹³⁷¹ Nor had he been in contact with anyone from Mr. Biden’s circle of staff, friends, and confidants about his participation in an interview with the Special Counsel’s Office.¹³⁷² Our investigation—which included witness interviews and review of phone and e-mail records—did not uncover any evidence that Zwonitzer had been in contact with anyone about his decision to delete the recordings.

II. THE EVIDENCE IS INSUFFICIENT TO OBTAIN A CONVICTION FOR OBSTRUCTION OF JUSTICE

A. Legal Standard

The two relevant statutory provisions that criminalize the destruction of evidence are 18 U.S.C. § 1512(c)(1) and 18 U.S.C. § 1519. While in practice the proof

¹³⁶⁷ Zwonitzer 7/31/23 Tr. at 17.

¹³⁶⁸ Zwonitzer 1/4/24 Tr. at 68.

¹³⁶⁹ Zwonitzer 7/31/23 Tr. at 16.

¹³⁷⁰ Zwonitzer 1/4/24 Tr. at 66.

¹³⁷¹ Zwonitzer 7/31/23 Tr. at 17-22.

¹³⁷² *Id.*

needed to sustain a conviction under either statute is often very similar, the two provisions differ in their elements.¹³⁷³

Section 1512(c)(1), like most federal obstruction statutes, requires proof of a “nexus” or “link” to a specified pending or foreseeable official proceeding.¹³⁷⁴ What constitutes an “official proceeding” is enumerated in a statutory list and includes proceedings before (1) a federal judge or federal court, (2) a federal grand jury, or (3) the United States Congress.¹³⁷⁵ Section 1512(c)(1) also requires proof that the defendant acted “corruptly.” And while courts have given slightly different definitions to that term, it generally requires proof that the defendant acted with the purpose of wrongfully impeding the due administration of justice.¹³⁷⁶ Under any formulation, “corruptly” is a heightened *mens rea*.¹³⁷⁷

¹³⁷³ Compare 18 U.S.C. § 1512(c)(1); with 18 U.S.C. § 1519.

¹³⁷⁴ *United States v. White Horse*, 35 F.4th 1119, 1121-23 (8th Cir. 2022) (“§ 1512(c)(1) requires proof of a nexus between the defendant’s action and an official proceeding”); *United States v. Matthews*, 505 F.3d 698, 707-08 (7th Cir. 2007) (applying the nexus requirement to § 1512(c)(1)).

¹³⁷⁵ 18 U.S.C. § 1515(a)(1); see, e.g., *United States v. Young*, 916 F.3d 368, 384-85 (4th Cir. 2019) (applying § 1512(c)(1) to federal grand jury proceeding).

¹³⁷⁶ See *United States v. Akiti*, 701 F.3d 883, 887-88 (8th Cir. 2012); *Matthews*, 505 F.3d at 704-06; Leonard B. Sand & John S. Siffert, MODERN FEDERAL JURY INSTRUCTIONS - CRIMINAL ¶ 46.10 (Matthew Bender & Company, Inc., Release No. 83B 2023).

¹³⁷⁷ The Supreme Court has held that the word is “normally associated with wrongful, immoral, depraved, or evil.” *Arthur Andersen LLP v. United States*, 544 U.S. 696, 705 (2005). The various formulations of corruptly amount to the same general requirement of proving a bad purpose. See, e.g., *United States v. Robertson*, 86 F.4th 355, 359-63 (D.C. Cir. 2023) (affirming jury instruction for § 1512(c)(2) charge that defined corruptly as requiring “unlawful means, or act[ing] with an unlawful purpose, or both” and “consciousness of wrongdoing”); *Matthews*, 505 F.3d at 704-06 (purposefully and wrongfully impeding the due administration of justice); *United States v. Delgado*, 984 F.3d 435, 452 (5th Cir. 2021) (“knowingly and dishonestly, with specific intent to subvert or undermine the due administration of justice”); *United States v. Gordon*, 710 F.3d 1124, 1151 (10th Cir. 2013) (“with an improper purpose and to engage in conduct knowingly and dishonestly with the specific intent to subvert, impede or obstruct”).

By contrast, Section 1519 permits prosecutions in broader circumstances. For a Section 1519 prosecution, the government need not show a link to a specified proceeding, it need only show the commission of an obstructive act with the intent to impede, obstruct, or influence an investigation that is within the federal government's jurisdiction.¹³⁷⁸ Additionally, Section 1519 does not require proof of corrupt intent, and instead requires proving that the defendant acted “knowingly . . . with the intent to impede, obstruct, or influence.” While a defendant must commit the obstructive act knowingly, the defendant does not need to know whether the investigation he intends to obstruct falls under the jurisdiction of the federal government.¹³⁷⁹

Thus, Section 1519 criminalizes (1) knowingly; (2) altering, falsifying, destroying, mutilating, concealing, covering up, or making a false entry in any record, document, or tangible object; (3) with the intent to impede, obstruct, or influence the investigation or the proper administration of any matter within the jurisdiction of a department or agency of the United States.¹³⁸⁰

¹³⁷⁸ *United States v. Moyer*, 674 F.3d 192, 209-10 (3d Cir. 2012) (government only required to prove an intent to impede an investigation into “any matter” that is “ultimately proven to be within the federal government’s jurisdiction”); *United States v. Gray*, 692 F.3d 514, 519 (6th Cir. 2012) (“[T]he plain language of the statute only requires the Government to prove that [the defendant] intended to obstruct the investigation of *any* matter that happens to be within the federal government’s jurisdiction.” (alteration in original)); *United States v. Gray*, 642 F.3d 371, 376-377 (2d Cir. 2011) (“[I]n enacting § 1519, Congress rejected any requirement that the government prove a link between a defendant’s conduct and an imminent or pending official proceeding.”).

¹³⁷⁹ *United States v. Hassler*, 992 F.3d 243, 246-47 (4th Cir. 2021) (so holding and collecting cases).

¹³⁸⁰ See *Hassler*, 992 F.3d at 246-47; *United States v. Hunt*, 526 F.3d 739, 743 (11th Cir. 2008); *United States v. Kernell*, 667 F.3d 746, 756-57 (6th Cir. 2012); Sand & Siffert, above, at ¶ 46.13.

Given that Section 1519 is less burdensome because it does not require proving a nexus requirement or a corrupt intent, we evaluated Zwonitzer's conduct under that provision. A prosecution under Section 1512(c)(1) would fail for the same reasons.

B. The evidence does not support a charge under Section 1519

Zwonitzer admitted, in a consensual, recorded interview, "I simply took the audio files subfolder from both the [external hard] drive and my laptop and slid them into the trash."¹³⁸¹ Therefore, Zwonitzer knowingly deleted audio files,¹³⁸² but the available evidence cannot establish beyond a reasonable doubt that Zwonitzer did so with the intent to impede, obstruct, or influence this federal investigation.

In his interviews, Zwonitzer offered plausible, innocent reasons for why he deleted the recordings. First, out of concern for privacy, he had a practice of deleting all audio recordings of interviewees in his possession and had done so previously. Second, Zwonitzer was concerned that the materials could be hacked and published online. This concern was increased by his recent work on a book discussing a powerful cyber-surveillance system known to target journalists, among other groups. While Zwonitzer admitted to being aware of the special counsel investigation, he did not say that his goal was to keep evidence from being uncovered by that investigation. Instead, Zwonitzer explained that "when I got the subpoena and when I realized that

¹³⁸¹ Zwonitzer 7/31/23 Tr. at 14-15.

¹³⁸² See *Kernell*, 667 F.3d at 756-57 (affirming sufficiency of evidence in Section 1519 conviction where defendant deleted files from his computer and ran a defragmentation program); *United States v. Wortman*, 488 F.3d 752, 753-55 (7th Cir. 2007) (affirming sufficiency of evidence in Section 1519 conviction where woman destroyed a CD containing child pornography that belonged to her boyfriend).

I still had audio that I did not know I had on the laptop, I made sure to preserve that for this investigation.”¹³⁸³

Zwonitzer’s later actions—including the production to the special counsel of transcripts that mention classified information—suggest that his decision to delete the recordings was not aimed at concealing those materials from investigators. Significantly, Zwonitzer voluntarily consented to two interviews and could have, but did not, invoke the Fifth Amendment to decline to produce the transcripts, his laptop, and the external hard drive. And when FBI agents contacted Zwonitzer, they were unaware that audio recordings existed or where Zwonitzer’s electronic devices were located.

Therefore, agents did not have probable cause for a warrant to search those devices and recover the recordings. Investigators only learned of the evidence because Zwonitzer was forthright, explained his actions, produced the relevant electronic devices, and consented to the search of those devices. Zwonitzer’s own consensual statement is the only evidence of when he deleted the recordings; without it, investigators would not have learned whether he did so before or after learning of the special counsel’s appointment and federal criminal investigation. And while Zwonitzer admitted to being aware of the investigation at the time he deleted the files, the context in which this statement was made—during a consensual and voluntary interview—supports the conclusion that Zwonitzer acted with good faith and did not intend to impede, obstruct, or influence this investigation.

¹³⁸³ Zwonitzer 1/4/24 Tr. at 68.

Perhaps most significantly, Zwonitzer preserved near-verbatim transcripts that contain incriminating information about Mr. Biden, including transcripts of the February 16, 2017 conversation where Mr. Biden said he “just found all the classified stuff downstairs.” Preserving these transcripts was inconsistent with a motive aimed at impeding the investigation. While there is unique evidentiary value in a subject’s own voice as captured on an audio recording, we would expect a person intending to obstruct justice to also conceal or delete the notes that memorialized the same probative information. Zwonitzer could have just as easily “slid” the files containing the notes into the trash as he had done with the audio recordings. Instead, he preserved the transcripts and produced them to investigators. And he later produced the devices on which the recordings had been stored and consented to a search of those devices. None of this is consistent with intent to obstruct justice or the investigation.

For these reasons, we believe that the admissible evidence would not suffice to obtain and sustain a conviction of Mark Zwonitzer for obstruction of justice.

III. DECLINATION IS ALSO APPROPRIATE BECAUSE ON BALANCE, RELEVANT AGGRAVATING AND MITIGATING FACTORS DO NOT SUPPORT ZWONITZER’S PROSECUTION

Even if the evidence available were sufficient to obtain and sustain Zwonitzer’s conviction for obstruction of justice, we would decline prosecution because on balance, relevant aggravating and mitigating factors do not support his prosecution.¹³⁸⁴ Zwonitzer willingly provided significant cooperation to the investigation without

¹³⁸⁴ U.S. Dep’t of Just., Just. Manual § 9-27.230 (2023).

seeking or receiving any protections or assurances. He was forthright in describing his conduct and working with investigators to obtain all relevant evidence in his possession. And his cooperation was uniquely valuable as the evidence that he provided was highly probative and not otherwise obtainable. Finally, prosecuting Zwonitzer under these circumstances would deter others from cooperating as he did.

CONCLUSION

For the foregoing reasons, we conclude that no criminal charges are warranted in this matter.

Appendix A: Recovered Documents¹

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
A1	"Second Term" file folder	3/8/13	4	A Memorandum for the Vice President from Jeff Prescott with the subject "China Engagement in the Second Term."	SECRET	Declassification date has passed, declassification review required before public release.
A2	"Filing 10-10-16" file folder	9/26/16	7	A Memorandum for the President from the Vice President with the subject "Leader Meetings and Events During UN General Assembly (UNGA) Week."	TOP SECRET/SCI	TOP SECRET//SCI**
A3	VPOTUS EYES ONLY envelope	1/16/15	2	A Memorandum for the National Security Advisor to the Vice President.	TOP SECRET//SPECIAL HANDLING REQUIRED	TOP SECRET// [3 SCI Control System Markings]// ORCON/NOFORN
A4	VPOTUS EYES ONLY envelope	January 2015 (est.)	2	Classified information in the form of a table.	TOP SECRET// [5 SCI Control System Markings]// [1 SCI Control System Marking]// ORCON/NOFORN	TOP SECRET// [5 SCI Control System Markings]/ [1 SCI Control System Marking]// ORCON/NOFORN
A5	VPOTUS EYES ONLY envelope	6/23/14	11	An Intelligence Assessment from the CIA's Directorate of Intelligence.	TOP SECRET// [8 SCI Control System Markings]/ [2 SCI Control System Markings]// ORCON/NOFORN and a SENSITIVE stripe across the top right-hand corner of each page	TOP SECRET// [8 SCI Control System Markings]/ [2 SCI Control System Marking]// ORCON/NOFORN
A6	VPOTUS EYES ONLY envelope	8/8/12	5	An Intelligence Memorandum from the CIA's Directorate of Intelligence.	TOP SECRET// [4 SCI Control System Markings]// ORCON/NOFORN and a SENSITIVE stripe across the top right-hand corner of each page	TOP SECRET// [4 SCI Control System Markings]// ORCON/NOFORN

¹ FBI Serial 676.

* Agency with highest recommended classification would need to consult with other U.S. government agencies before settling on a final classification.

** Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

Appendix A: Recovered Documents

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
A7	VPOTUS EYES ONLY envelope	1/28/15	10	Handwritten notes, all but one page of which relate to the Obama Administration's efforts to negotiate the Joint Comprehensive Plan of Action ("JCPOA").	None	SECRET//ORCON/NOFORN
A8	"Ukraine 02/09/15" file folder	3/9/15	7	A memorandum titled "Background for Meeting with President Tusk." There is no indication of an author, but the classification-authority block states that Jeff Prescott classified the document.	SECRET and TOP SECRET	TOP SECRET
A9	"VP Personal" file folder	12/12/15 (est.)	1	A Telephone Call Sheet setting forth the purpose of and talking points for a call with Ukrainian Prime Minister Yatsenyuk. There is a handwritten note addressed to Mr. Biden's executive assistant: "Get copy of this conversation from Sit Rm for my Records please" that is signed "Joe." Document A10 is attached to the document.	SECRET	SECRET**
A10	"VP Personal" file folder	12/11/15	5	A document in the format of a transcript documenting the substance of a December 11, 2015 call between Mr. Biden and Ukrainian Prime Minister Yatsenyuk. The document is attached to document A9.	CONFIDENTIAL and EYES ONLY DO NOT COPY	CONFIDENTIAL**
B1	"Weekend With Charlie Rose" binder (in garage); behind "Russia" tab	9/17/14	2	An Event Memo from an OVP national security staffer titled "Lunch with Ukrainian President Poroshenko" for a lunch at the Naval Observatory on September 18, 2014. The memo describes the purpose of the lunch, the participants, the press plan, and the sequence of events.	SECRET	SECRET**

* Agency with highest recommended classification would need to consult with other U.S. government agencies before settling on a final classification.

** Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

Appendix A: Recovered Documents

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
B2	“Weekend With Charlie Rose” binder (in garage); behind “Russia” tab	Undated	10	A paper attachment to B1 titled “Tab B – BACKGROUND” discussing issues related to Russian aggression toward Ukraine. There is no indication of an author.	SECRET/NOFORN	TOP SECRET//NOFORN
B2-1	“Weekend With Charlie Rose” binder (in garage); behind “Russia” tab	9/17/14	5	A Memorandum for the Vice President from staff members, with subject “U.S. Energy Assistance to Ukraine.”	None	CONFIDENTIAL*
B3	“Weekend With Charlie Rose” binder (in garage); behind “Russia” tab	8/29/14	5	A paper with subject “Scenesetter for National Security Advisor Susan Rice’s Visit to China.” There is no indication of an author.	No classification header or footer; portion markings indicate an overall classification of SECRET.	SECRET**
B4	“Foreign Policy: 2nd Term” file folder	Undated	1	A paper titled “Second Term National Security Narrative” describing goals the Obama Administration could seek to achieve in its second term. There is no indication of an author.	SECRET/NOFORN	SECRET//NOFORN**
B4-1	“Foreign Policy: 2nd Term” file folder	Undated	1	A Memorandum for the President from The Vice President with the subject “Engagement with China in the Second Term.” The paper suggests activities Vice President Biden could do in his second term to “build on my work last year by engaging with China’s leaders in the second term.”	No Classification Marking	CONFIDENTIAL**
B4-2	“Foreign Policy: 2nd Term” file folder	Undated	1	A document containing three lists: “Foreign Policy Must Do,” “Foreign Policy – Want to Do,” and “Management Administrative.” There is no indication of an author.	No Classification Marking	CONFIDENTIAL**

* Agency with highest recommended classification would need to consult with other U.S. government agencies before settling on a final classification.

** Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

Appendix A: Recovered Documents

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
B5	"Foreign Policy: 2nd Term" file folder	Undated	9	A PowerPoint presentation with "National Security Council Meeting: Defining a Second Term Agenda" and "Prepared by National Security Staff," on the title slide.	TOP SECRET//NOFORN//Pre-decisional (first and second slides only)	CONFIDENTIAL**
B6	"FACTS FIRST" file folder	9/29/09	5	A Memorandum for the President from the National Security Advisor with the subject "Meeting on Afghanistan and Pakistan." The memo states its purpose as to prepare President Obama for "a meeting with [his] senior national security team on September 30, 2009."	TOP SECRET WITH TOP SECRET//NOFORN//CODEWORD ATTACHMENTS	TOP SECRET//NOFORN*
B7	"FACTS FIRST" file folder	9/27/09	4	A report from the Office of the Director of National Intelligence addressing topics related to the U.S. war in Afghanistan. The report is an attachment to B6.	TOP SECRET//HUMINT//COMINT//ORCON//NOFORN//FISA	TOP SECRET//HCS-P//SI//ORCON//NOFORN//FISA*
B8	"FACTS FIRST" file folder	Undated	1	A photocopy of an infographic related to Afghanistan and Al-Qa'ida that is partially cut off on the top, bottom, and right-hand side. The original and complete infographic—obtained from the National Archives—is labeled as a product of the National Counterterrorism Center. The original infographic was an attachment to B6.	No marking in the header or footer of the photocopy, but the original document—obtained from the National Archives—was marked TOP SECRET//HCS/SI//FGI//ORCON//NOFORN	SECRET//NOFORN
B9	"FACTS FIRST" file folder	9/27/09	2	A report from the Office of the Director of National Intelligence addressing topics related to the U.S. war in Afghanistan. The report is an attachment to B6.	TOP SECRET//HCS/SI//ORCON//NOFORN	TOP SECRET//HCS-P//SI//ORCON//NOFORN
B10	"FACTS FIRST" file folder	9/27/09	4	A report from the Office of the Director of National Intelligence addressing topics related to the U.S. war in Afghanistan. The report is an attachment to B6.	SECRET//NOFORN	SECRET//NOFORN

* Agency with highest recommended classification would need to consult with other U.S. government agencies before settling on a final classification.

** Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

Appendix A: Recovered Documents

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
B11	"FACTS FIRST" file folder	9/27/09	2	A report from the Office of the Director of National Intelligence addressing topics related to the U.S. war in Afghanistan. The report is an attachment to B6.	SECRET//NOFORN	SECRET//NOFORN
B12	"FACTS FIRST" file folder	9/23/09	3	A State Department cable from Ambassador Anne Patterson at the U.S. Embassy in Islamabad, Pakistan, with the subject "Reviewing Our Afghanistan – Pakistan Strategy." The cable is an attachment to B6.	SECRET//NOFORN	SECRET**
B13	"FACTS FIRST" file folder	Undated	4	A paper titled "Afghanistan/Pakistan Minimal Conditions Necessary to Achieve Our Core Goal." The State Department authored the document. The paper is an attachment to B6.	SECRET//REL TO USA, GBR	SECRET**
B13-1	"FACTS FIRST" file folder	9/22/09	2	A letter from the president of a foreign country to President Obama that addresses "the ongoing situation in Afghanistan" and sets forth the foreign country's views on the war. The document does not include classification markings, but states in the header that it is "Confidential . . . For President Obama." Document B15 references the letter as an attachment.	None	CONFIDENTIAL**
B13-2	"FACTS FIRST" file folder	9/29/09	1	A quarter-page of typewritten text titled "Notes from Meeting on September 29, 2009: 1:30-3:30 "Small Group Meeting: Afghanistan/Pakistan." The text quotes a question asked by then-Director of the Central Intelligence Agency Leon Panetta of then-Secretary of Defense Robert Gates and provides the yes-or-no answer to that question given by "Intelligence, State and Defense."	None	SECRET//NOFORN**

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** Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

Appendix A: Recovered Documents

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
B14	"FACTS FIRST" file folder	9/25/09	3	An e-mail copying the text of a September 25, 2009, State Department cable from the U.S. Embassy in Kabul, Afghanistan, authored by Ambassador Karl Eikenberry with the subject "KARZAI: MY OBSERVATIONS." The subject of the e-mail and text of the cable include a designation and each paragraph is portion-marked "(S)," which stands for Secret.	SECRET	SECRET
B14-1	"FACTS FIRST" file folder	Undated	4	A paper titled "Counterinsurgency (COIN) vs. Counterterrorism (CT) Strategies" that has no indications of author.	None	TOP SECRET//NOFORN*
B15	"FACTS FIRST" file folder	Undated	2	A paper titled "Some Facts and Considerations" that addresses topics related to al-Qa'ida, the Taliban, and Intelligence Community resources. The document appears to have been authored within the White House because it is critical of Intelligence Community assessments. The document references Document B13-1 as an attachment.	TOP SECRET//HSC//NOFORN	TOP SECRET//HCS-O// [4 SCI CONTROL SYSTEM MARKINGS]// ORCON/NOFORN*
B16	"FACTS FIRST" file folder	Undated	1	A PowerPoint slide titled "Pathway to COMISAF Initial Assessment" that does not indicate an author.	SECRET/NOFORN	SECRET//NOFORN
B17	"FACTS FIRST" file folder	10/13/09	1	A Power Point slide with the partial title "CJCS Update."	SECRET	SECRET
B18	"FACTS FIRST" file folder	Undated ²	1	A large-format infographic in the form of a table. The table addresses the capabilities of the Afghan government.	SECRET//NOFORN	SECRET//NOFORN

² Investigators located the document on the conference table in the Situation Room in White House photographs dated October 14, 2009.

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Appendix A: Recovered Documents

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
B18-1	"FACTS FIRST" file folder	10/18/09	3	An unsigned, handwritten letter with the salutation "Mr. President." The letter appears to be in draft format and discusses COIN strategy in Afghanistan.	None	SECRET//NOFORN
B19	"FACTS FIRST" file folder	9/13/09	7	A PowerPoint presentation regarding Afghanistan titled "Sunday Small Group."	SECRET//NOFORN	SECRET//NOFORN
B20	"FACTS FIRST" file folder	8/31/09	3	A Memorandum for the President from the National Security Advisor with the subject "Weekly Update on Afghanistan and Pakistan." The memo included two attachments, labeled "Tab 1" and "Tab 2," that are documents B21 and B22, respectively.	TOP SECRET//SCI	TOP SECRET//HCS-O-P//ORCON/NOFORN*
B21	"FACTS FIRST" file folder	8/26/09	8	A one-page Memorandum for the President from then-Secretary of State Hillary Rodham Clinton dated August 26, 2009, attaching a seven-page Memorandum to the President from Special Representative Holbrooke dated August 28, 2009, with subject "Afghanistan/Pakistan Weekly Report – August 22-August 28, 2009."	<u>Cover memo:</u> SECRET//NOFORN//NODIS (UNCLASSIFIED when separate from attachment) <u>Holbrooke Memo:</u> SECRET//NOFORN//NODIS	SECRET//NOFORN//NODIS

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Appendix A: Recovered Documents

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
B22	"FACTS FIRST" file folder	8/24/09	18 ³	A one-page, unclassified Memorandum for Assistant to the President and National Security Advisor from then-Defense Secretary Robert Gates attaching a five-page Central Command ("CENTCOM") weekly update for August 17-23, 2009, from General David Petraeus. The Gates memo also attaches a six-page Multi-National Force – Iraq ("MNF-I") weekly update for the same week from General Raymond Odierno. There are two copies of the cover memo from Gates and the CENTCOM update. The CENTCOM update includes an update on Afghanistan.	<u>CENTCOM Update:</u> SECRET//NOFORN <u>MNF-I Update:</u> SECRET // NOFORN // 2001190221	SECRET//NOFORN

³ B22 also includes a copy of the last eight pages of the first copy of General McChrystal's assessment, otherwise designated as part of Document B23. Those pages are not counted in this entry.

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Appendix A: Recovered Documents

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
B23	"FACTS FIRST" file folder	8/30/09	126 ⁴	<p>A one-page, unclassified letter from General Stanley McChrystal, Commander, United States Forces – Afghanistan / International Security Assistance Force, Afghanistan, attaching a document titled "Commander's Initial Assessment" dated August 30, 2009, and authored by General McChrystal (only the first 58 pages included in B23).</p> <p>B23 then includes another copy of the letter from McChrystal, with the full 66-page assessment attached. The second copy of the assessment contains handwritten markings and notes.</p>	CONFIDENTIAL REL NATO/ISAF	CONFIDENTIAL//REL TO USA, ISAF, NATO
B24	"FACTS FIRST" file folder	9/10/09	9	<p>A one-page Memorandum for the President from the Vice President with the subject "Afghanistan" with "DRAFT" handwritten at the top. The memo attaches a nine-page paper titled "Afghanistan Discussion Paper: A 'Counter Terrorism Plus' Strategy." The paper does not specify an author, but the classification-authority block indicates it was classified by Antony Blinken.</p> <p>The last two pages of B23 are a printout of an article in <i>Newsweek</i> titled "The Geopolitics of Golf," by Richard N. Haass published on September 3, 2009.</p>	TOP SECRET	TOP SECRET//NOFORN*

⁴ The last three pages of B23 are a printout of an opinion piece from the *New York Times* dated August 20, 2009, titled "In Afghanistan, the Choice is Ours" by Richard N. Haass. Those pages are not counted in this entry.

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Appendix A: Recovered Documents

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
B25	"AFGANASTAN 2009" file folder	11/25/09	3	A Memorandum for the President from the Vice President that includes handwritten notes, edits, and markings. It also includes partially cut-off fax-machine markings for November 25, 2009, at around 2:43 pm. The memo begins, "[h]ere are some final thoughts on Afghanistan and Pakistan, which may help shape the argument you make to the American people." The memo supports Mr. Biden's belief "that we should not increase our forces" in Afghanistan. Mr. Biden sought to "relay the highlights of a conversation with Karl Eikenberry and recommend that you call him." A handwritten note next to that sentence states, "[h]e is a stand up guy will take risks."	TOP SECRET	SECRET**
B25-1	"AFGANASTAN 2009" file folder	11/27/09	27	Handwritten Letter to President Obama and Drafts. See full description in text of report.	None	TOP SECRET//NOFORN*
B26	"AFGANASTAN 2009" file folder	11/12/08	5	A Memorandum for Principals from the National Security Advisor with subject "Afghanistan-Pakistan: Following up on November 11 Meeting." The memo begins: "Based on our meeting with the President on November 11, we have developed revised implementation guidance to achieve our national core goal in Afghanistan and frame a variant of 'Force Option 2A.'" There are handwritten notes and markings on the first and last page of the memo. The memo includes a list of six questions on pages 3 through 4.	SECRET//NOFORN	Declassification date passed on 11/9/2019; handle as marked until official declassification review.**

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Appendix A: Recovered Documents

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
B27	"AFGANASTAN 2009" file folder	11/13/09	5	A memorandum that is nearly identical to the memo designated as B26, except that this memo is dated November 13, 2009, includes a red "TOP SECRET" stamp at the top and bottom of each page (in addition to the "SECRET/NOFORN" marking), and has a list of seven questions.	TOP SECRET and SECRET/NOFORN	Declassification date passed on 11/9/2019; handle as marked until official declassification review.**
B28	"AFGANASTAN 2009" file folder	11/15/09	4	A Memorandum for the National Security Advisor from the Vice President. The memo begins: "Jim – You requested comments on a proposed paper to the President, following up on our November 11 meeting on Afghanistan-Pakistan, with a focus on the Afghanistan strategy. Here are mine:"	TOP SECRET	Declassification date passed on 11/15/2019; handle as marked until official declassification review.**
B29	"AFGANASTAN 2009" file folder	11/11/09	3	A document titled "Talking Points" with the handwritten date "11/11/09" in the upper-right corner of the first page. The talking points appear to be for Mr. Biden to deliver to President Obama on the topic of the Afghanistan Strategic Review.	TOP SECRET	Declassification date passed on 11/11/2019; handle as marked until official declassification review.**
B30	"AFGANASTAN 2009" file folder	10/29/09	3	A paper titled "Alternative Mission for Afghanistan" with no author indicated and the handwritten date "Oct 29" in the upper-right corner. It "describes an alternative mission to properly resourced counterinsurgency in Afghanistan."	SECRET	SECRET
B31	"AFGANASTAN 2009" file folder	Undated	1	A document titled "Talking Points for call to Secretary Gates" addressing the strategic review in Afghanistan..	CONFIDENTIAL and SECRET	SECRET
B31-1	"AFGANASTAN 2009" file folder	Undated	1	A typewritten portion of the draft memo included as part of documents B25 and B25-1.	None	TOP SECRET//NOFORN*

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Appendix A: Recovered Documents

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
B32	"AFGANASTAN 2009" file folder	11/11/09	12	A PowerPoint Presentation titled "CJCS Brief to the President." Among other topics, the slides describe and assess three different force options for Afghanistan.	SECRET//REL USA, ISAF, NATO	SECRET//NOFORN
B33	"AFGANASTAN 2009" file folder	11/11/09 (est.)	3	PowerPoint slides numbered 13-15 that are likely part of the same presentation as B32. The first slide is titled "Progression of Full-Spectrum COIN." The second slide is titled "Importance of Full-Spectrum COIN." The third slide includes a chart and is titled "Force Level Decision Points."	<u>Slides labeled 13, 14:</u> CONFIDENTIAL REL/NATO/ISAF <u>Slide labeled 15:</u> SECRET//REL USA, ISAF, NATO	CONFIDENTIAL//REL TO USA, ISAF, NATO
B34	"AFGANASTAN 2009" file folder	11/11/09 (est.)	5	Five PowerPoint slides numbered 16-20 that are likely part of the same presentation as B32 and B33. The first slide is a chart titled "Alternative Mission in Afghanistan." The last slide is titled "Projected ANSF Growth Decision Points."	<u>Slides labeled 16:</u> SECRET <u>Slides labeled 17-19:</u> SECRET//REL USA, ISAF, NATO <u>Slide labeled 20:</u> None	SECRET
B35	"AFGANASTAN 2009" file folder	Undated	1	A PowerPoint slide titled "Securing Additional Allied/Partner Contributions."	SECRET//NOFORN	Agency could not determine classification.
B36	"AFGANASTAN 2009" file folder	10/30/09	1	A Memorandum for the President from then-Defense Secretary Robert Gates, responding to a request from the National Security Council. The memo attaches the document designated as B37.	SECRET//NOFORN	SECRET//NOFORN
B37	"AFGANASTAN 2009" file folder	Undated	11	A Memorandum for Principals from the National Security Advisor with the handwritten date "11-8" in the upper right corner regarding the strategy for Afghanistan. The attachments are listed as: (1) Tab A: Secretary Gates's Memorandum and "Alternative Mission for Afghanistan" Paper and (2) Tab B Ambassador Eikenberry's Cable, "COIN Strategy: Civilian Concerns."	SECRET WITH SECRET/NOFORN ATTACHMENT	SECRET//NOFORN*

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Appendix A: Recovered Documents

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
B38	"AFGANASTAN 2009" file folder	11/6/09	4	A State Department cable from the U.S. Embassy in Kabul, Afghanistan authored by Ambassador Karl Eikenberry with subject "COIN STRATEGY: CIVILIAN CONCERNS."	SECRET with a NODIS banner	SECRET**
C1	"1/6/12 #2 Foreign Policy" Notebook	5/22/13	1	A PowerPoint slide describing an "Option C" for the distribution and composition of U.S. forces in Afghanistan after 2014. There is no indication of an author.	SECRET//NOFORN//PRE-DECISIONAL	SECRET//NOFORN
C2	"1/6/12 #2 Foreign Policy" Notebook	5/22/13	1	A PowerPoint slide describing an "Option D" for the distribution and composition of U.S. forces in Afghanistan after 2014. There is no indication of an author.	SECRET//NOFORN//PRE-DECISIONAL	SECRET//NOFORN
C3	"1/6/12 #2 Foreign Policy" Notebook	5/22/13	1	A PowerPoint slide describing an "Option C+" for the distribution and composition of U.S. forces in Afghanistan after 2014. There is no indication of an author.	SECRET//NOFORN//PRE-DECISIONAL	SECRET//NOFORN
C4	"1/6/12 #2 Foreign Policy" Notebook	11/1/13	3	A Memorandum for the Vice President from the Office of the Vice President National Security Affairs regarding a meeting with Iraqi Prime Minister Maliki. The memo sets forth "[a] few things to note in advance of your Maliki meeting" and provides "a concise distillation of the issues with Iraq that may be helpful."	TOP SECRET//SCI	TOP SECRET//HCS-O//SI//ORCON/NOFORN*
D1	"[INT'L] TERRORISM" file folder	6/30/76	5	A Staff Memorandum to Members of the Committee on Foreign Relations on "Terrorism: Protection and Policy" that "discusses the security of American embassies and diplomats abroad in the wake of the killing of Ambassador Meloy and Mr. Waring in Beirut."	CONFIDENTIAL with red tag stapled to the cover memo CLASSIFIED COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE	Undetermined: Legislative Branch document without indications of information derived from classified Executive Branch information. Marking is not a necessarily a national-security classification because this is a Legislative Branch document.**

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Appendix A: Recovered Documents

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
D2	"Biden Meeting w/Chancellor Schmidt 6/10/80-6/12/80" file folder	6/13/80	6	A Memorandum for the Record from a Senate staffer with subject "Senator Biden's Meeting with Helmut Schmidt" that recounts the discussion at a meeting between Mr. Biden and German Chancellor Helmut Schmidt on June 11, 1980.	CONFIDENTIAL with tag stapled to the cover memo CLASSIFIED COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE	Undetermined: Legislative Branch document without indications of information derived from classified Executive Branch information. Marking is not a necessarily a national-security classification because this is a Legislative Branch document.**
D3	"GREECE" file folder	3/1/80	Total: 9 Marked: 2	Three separate memoranda: • a 2-page memo titled "US-GREEK RELATIONS" marked "LIMITED OFFICIAL USE" • a 2-page memo titled "STATUS OF NEGOTIATIONS ON CYPRUS" marked "CONFIDENTIAL" on the first page • a 5-page memo titled "REINTEGRATION OF GREEK FORCES INTO MATO MILITARY COMMAND STRUCTURE" marked "CONFIDENTIAL" on the second page	CONFIDENTIAL	Undetermined: Legislative Branch document without indications of information derived from classified Executive Branch information. Marking is not a necessarily a national-security classification because this is a Legislative Branch document.**
D4	"YUGOSLAVIA" file folder	7/13/78	Total: 6 Marked: 1	A 5-page State Department memo with subject "Visit to the United States by Dragoslav MARKOVIC, President of the Assembly of the Socialist Federal Republic of Yugoslavia, and delegation." The memo attaches "[b]iographic information on Markovic and other members of the delegation." Page 6 is a one-page biography of Markovic marked "CONFIDENTIAL." There are two copies of the memo and attachment, which FBI separately designated D4 and D5.	CONFIDENTIAL	SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.

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Appendix A: Recovered Documents

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D5	"YUGOSLAVIA" file folder	7/13/78	Total: 6 Marked: 1	<p>A 5-page State Department memo with subject "Visit to the United States by Dragoslav MARKOVIC, President of the Assembly of the Socialist Federal Republic of Yugoslavia, and delegation." The memo attaches "[b]iographic information on Markovic and other members of the delegation." Page 6 is a one-page biography of Markovic marked "CONFIDENTIAL."</p> <p>There are two copies of the memo and attachment, which FBI separately designated D4 and D5.</p>	CONFIDENTIAL	SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.
D6	"YUGOSLAVIA" file folder	Undated	5	A memorandum titled "EDVARD KARDELJ: A PRIMER ON HIS THINKING."	SECRET	SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.
D7	"SALT III" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	Undated	3	A memorandum titled "SALT III" that discusses predictions regarding negotiations for a Strategic Arms Limitations Talk III.	CONFIDENTIAL	Likely UNCLASSIFIED, subject to formal declassification review.**
D8	"Other Arms Control" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	Undated	Total: 6 Marked: 4	<p>A 6-page memorandum titled "MBFR" that discusses the "Mutual and Balanced Force Reduction negotiations" that "began in November 1973 in Vienna."</p> <p>The last two pages are not marked Confidential and set out "Anticipated Soviet Points" and "Suggested US Points."</p>	CONFIDENTIAL	CONFIDENTIAL//FORMERLY RESTRICTED DATA

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Appendix A: Recovered Documents

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
D9	"Other Arms Control" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	Undated	2	A memorandum titled "Comprehensive Test Ban" that discusses issues expected to arise upon the resumption of the "trilateral CTB talks in Geneva" that "recessed in late July and are expected to resume again in September."	CONFIDENTIAL	Likely UNCLASSIFIED, subject to formal declassification review.**
D10	"Senator Biden" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	Undated	2	A memorandum titled "CODEL BIDEN" that sets forth "a tentative draft outline of the manner in which the delegation might want to make its first presentation on SALT at the Plenary session with the Supreme Soviet."	CONFIDENTIAL	Likely UNCLASSIFIED, subject to formal declassification review.**
D11	"Senator Biden" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	5/25/79	1	A biography of a member of a foreign delegation.	CONFIDENTIAL	SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.
D12	"Senator Biden" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	8/16/79	2	A biography of a member of a foreign delegation.	NOFORN at the top (confidential marking appears cut off) and CONFIDENTIAL at the bottom	SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.
D13	"Senator Biden" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	8/10/79	2	A biography of a member of a foreign delegation.	CONFIDENTIAL NOFORN	SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.

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Appendix A: Recovered Documents

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
D14	"Senator Biden" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	8/10/79	2	A biography of a member of a foreign delegation.	CONFIDENTIAL	SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.
D15	"Senator Biden" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	5/29/79	1	A biography of a member of a foreign delegation.	CONFIDENTIAL	SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.
D16	"Senator Biden" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	Undated	1	A biography of a member of a foreign delegation.	CONFIDENTIAL	SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.
D17	"Senator Biden" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	3/22/79	1	A biography of a member of a foreign delegation.	CONFIDENTIAL	SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.
D17-1	"Senator Biden" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	7/23/79	1	A biography of a member of a foreign delegation.	None	SECRET//NOFORN

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Appendix A: Recovered Documents

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
D18	"Senator Biden" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	5/29/79	1	A biography of a member of a foreign delegation.	CONFIDENTIAL	SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.
D19	"Senator Biden" file folder in a Redweld folder labeled "CODEL BIDEN August 1979"	8/13/79	1	A biography of a member of a foreign delegation.	CONFIDENTIAL NOFORN	SECRET//NOFORN Classification upgraded in accordance with current classification guidelines.
D20	"Af/Pak 1" Notebook	11/21/09	5	A State Department cable from the U.S. Embassy in Kabul with subject "HELMAND VIEWS ON U.S. TROOP LEVELS IN AFGHANISTAN." The cable "was drafted by the State Representative to the 2d Marine Expeditionary Brigade, and its Commanding General, Brigadier General Lawrence Nicholson . . . reviewed [the] cable."	CONFIDENTIAL	Declassification date passed on 11/11/2019; handle as marked until official declassification review.**
D21	"DAILY/MEMO" Notebook	Undated	2	Two PowerPoint slides. The first slide is titled "Scoping Key Priorities for the Second Term" and sets out "Key Products to Prepare for the January NSC meeting on Priorities." The slide is marked "SECRET//NOFORN." The second slide is unmarked and depicts a flow chart for a National Security Council process.	SECRET//NOFORN (first slide only)	SECRET//NOFORN** State Department noted that the document may be overclassified.
D22	"APUTATIONS Feb '11" file folder	2/11/11 (est.)	1	A document titled "CJCS 12-Hour Egypt Update for 11 Feb 0600" that provides an update on events related to the 2011 revolution in Egypt and the resignation of Hosni Mubarak from the presidency in Egypt.	SECRET//NOFORN	SECRET//NOFORN

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Appendix A: Recovered Documents

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
D23	"Weekend With Charlie Rose" binder (in bedroom office); behind "Russia" tab	9/17/14	3	An Event Memo from an OVP national security staffer titled "Lunch with Ukrainian President Poroshenko" for a lunch at the Naval Observatory on September 18, 2014. The memo describes the purpose of the lunch, the participants, the press plan, and the sequence of events.	SECRET	SECRET**
D24	"Weekend With Charlie Rose" binder (in bedroom office); behind "Russia" tab	9/17/15 (est.)	10	A paper attachment to D23 titled "Tab B – BACKGROUND" discussing issues related to Russian aggression toward Ukraine. There is no indication of an author.	SECRET//NOFORN	TOP SECRET//NOFORN*
D25	"Weekend With Charlie Rose" binder (in bedroom office); behind "Russia" tab	8/29/14	5	A Paper titled "Scenesetter for National Security Advisor Susan Rice's Visit to China" with no indication of an author.	No classification header or footer; portion markings indicate an overall classification of SECRET.	SECRET**
E1	"FOREIGN RELATIONS COMMITTEE" file folder	1/23/80	3	An Action Memorandum from a Senate staffer to nine Senators, including Mr. Biden, with subject "Proposed 1980 Committee Budget -- For Discussion During Meeting of Democrats in S-201 at 2:00 p.m., Wednesday, January 23." The document is identical to G4.	CONFIDENTIAL	Department of State did not identify any potentially sensitive Executive Branch information. The "CONFIDENTIAL" marking, therefore, does not appear to be a national security classification marking.**
E2	"EUROPE" file folder	6/4/80	2	A letter from three Senators on the Committee on Foreign Relations, including Mr. Biden, to Secretary of State Edmund S. Muskie intended to express concerns about delays in SALT and TNF arms negotiations. There are stapled unclassified notes and correspondence attached to the letter.	CONFIDENTIAL	Department of State did not identify any potentially sensitive Executive Branch information. The "CONFIDENTIAL" marking, therefore, does not appear to be a national security classification marking.**

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Appendix A: Recovered Documents

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
E3	"EUROPE" file folder	5/29/80	2	An Action Memorandum addressed to Senators three Senators including Mr. Biden regarding the letter to Secretary of State Edmund S. Muskie recommending "[t]hat you each sign the attached letter.	CONFIDENTIAL	Department of State did not identify any potentially sensitive Executive Branch information. The "CONFIDENTIAL" marking, therefore, does not appear to be a national security classification marking.**
E4	"EUROPE" file folder	5/29/80	2	Another copy of the Action Memorandum designated E3 with an unclassified note from Senate Staffer 3 to Mr. Biden attached to the front of memo recommending Mr. Biden sign the letter.	CONFIDENTIAL	Department of State did not identify any potentially sensitive Executive Branch information. The "CONFIDENTIAL" marking, therefore, does not appear to be a national security classification marking.**
E5	"EUROPE" file folder	5/30/80	2	An earlier version of the letter from three Senators on the Committee on Foreign Relations, including Mr. Biden, to Secretary of State Edmund S. Muskie intended to express concerns about delays in SALT and TNF arms negotiations. There are stapled unclassified notes and correspondence attached to the letter.	CONFIDENTIAL	Department of State did not identify any potentially sensitive Executive Branch information. The "CONFIDENTIAL" marking, therefore, does not appear to be a national security classification marking.**
E6	"FOREIGN RELATIONS COMMITTEE" file folder	11/28/79	2	Two copies of a one-page Action Memorandum from a Senate staffer, thru Ted Kaufman, to Mr. Biden attaching a memo from another Senate staffer (designated by FBI as E7) on TNF modernization.	SECRET	UNCLASSIFIED**

* Agency with highest recommended classification would need to consult with other U.S. government agencies before settling on a final classification.

** Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

Appendix A: Recovered Documents

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
E7	"FOREIGN RELATIONS COMMITTEE" file folder	11/26/79	2	An Information Memorandum from a Senate Staffer to another Senate staffer regarding "TNF Modernization and Arms Control."	SECRET	Undetermined: Legislative Branch document that may contain sensitive Executive Branch information, which may have been declassified given age of the document. Marking is not a necessarily a national-security classification because this is a Legislative Branch document.**
F1	"With the Compliments of the American Embassy, Bonn" and "Senator Joseph R. Biden, Jr." file folder	12/17/87	2	A State Department cable from Ambassador Burt at the American Embassy in Bonn with subject "Proposal for a NATO Wise Men's Study."	SECRET with a brown strip around the document labeled "Restricted."	Cable automatically declassified on December 31, 2012**
G1	"GREECE" file folder	3/11/77	3	A Senate Committee on Foreign Relations "SUMMARY OF MARCH 11, 1977 EXECUTIVE MEETING OF FULL COMMITTEE (Closed S-116, 10:30 - 12:15pm) regarding the testimony of Ambassador Clark M. Clifford.	SECRET with a cover sheet labeled CLASSIFIED COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE	Undetermined: Legislative Branch document that may contain sensitive Executive Branch information. Marking is not a necessarily a national-security classification because this is a Legislative Branch document.** Includes Foreign Government Information
G2	"MUTUAL BALANCED FORCE REDUCTION MBFR" file folder	July 1977	5	A paper titled "Mutual and Balanced Force Reduction (MBFR)."	CONFIDENTIAL	CONFIDENTIAL//FORMERLY RESTRICTED DATA

* Agency with highest recommended classification would need to consult with other U.S. government agencies before settling on a final classification.

** Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

Appendix A: Recovered Documents

Doc. ID	Contained In	Date	Page Count	Summary	Classification Markings	Results of Classification Review
G3	"FOREIGN RELATIONS COMMITTEE" file folder	3/2/79	8	A Senate Committee on Foreign Relations Staff Memorandum titled "National Security Interests in a Law of the Sea Treaty March 6, 1979 Hearings."	CONFIDENTIAL	Undetermined: Legislative Branch document that may contain sensitive Executive Branch information. Marking is not a necessarily a national-security classification because this is a Legislative Branch document.**
G4	"FOREIGN RELATIONS COMMITTEE" file folder	1/23/80	3	An Action Memorandum to nine Senators, including Mr. Biden, with subject "Proposed 1980 Committee Budget -- For Discussion During Meeting of Democrats in S-201 at 2:00p.m., Wednesday, January 23." The document is identical to E1.	CONFIDENTIAL	Department of State did not identify any potentially sensitive Executive Branch information. The "CONFIDENTIAL" marking, therefore, does not appear to be a national security classification marking.**
G5	"CFE briefing book material" file folder	11/20/91	2	A letter to Richard G. Lugar, Chairman of the Committee on Foreign Relations, from an unspecified sender regarding foreign compliance with the CFE Treaty.	SECRET NOFORN	Undetermined

* Agency with highest recommended classification would need to consult with other U.S. government agencies before settling on a final classification.

** Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

Appendix B: Classification Review Results for Select Notebook Entries and Other Handwritten Material ¹

Handwritten Item Description	Entry Date	Entry Page Count	Entry Topic	Results of Classification Review
Unlabeled notebook (entries from 11/27/2008 - 7/15/2009)	5/29/09 (entry has typo indicating 2008)	1 page ²	A foreign adversary	TOP SECRET**
Unlabeled notebook (entries from 11/27/2008 - 7/15/2009)	Undated (likely 6/17/09 or 6/18/09)	1 page ³	Pakistan	CONFIDENTIAL**
"Af/Pak 1" notebook	11/28/09	20 loose pages inserted in notebook ⁴	Handwritten memorandum to POTUS regarding the Afghanistan strategy review	SECRET**
"Af/Pak 1" notebook	11/7/09	5 pages ⁵	Afghanistan / Pakistan	TOP SECRET//HCS-O// [4 SCI Control System Markings]// ORCON/NOFORN
"FOREIGN POLICY 10/13/09 - 1/13/12" notebook	4/16/10	2 pages ⁶	Afghanistan / Pakistan	TOP SECRET//SI//NOFORN**
"FOREIGN POLICY 10/13/09 - 1/13/12" notebook	Undated	2 pages ⁷	Pakistan	SECRET**
"FOREIGN POLICY 10/13/09 - 1/13/12" notebook	4/29/10	2 pages ⁸	Foreign adversary	TOP SECRET//HCS-O// [3 SCI Control System Markings]// [2 SCI Control System Markings]// ORCON/NOFORN

¹ FBI Serial 676.

² 1B64-0056.

³ 1B64-0065.

⁴ 1B66-0003-22.

⁵ 1B66-0082-84.

⁶ 1B51-0073.

⁷ 1B51-0074.

⁸ 1B51-0080-81.

** Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

Appendix B: Classification Review Results for Select Notebook Entries and Other Handwritten Material

Handwritten Item Description	Entry Date	Entry Page Count	Entry Topic	Results of Classification Review
"FOREIGN POLICY 10/13/09 - 1/13/12" notebook	11/29/11	2 loose pages inserted in notebook ⁹	Foreign adversary	SECRET**
Unlabeled notebook (entries from 4/20/2009 - 12/4/2009)	Undated (likely 1/10/11)	1 page ¹⁰	Briefing on sensitive topics	TOP SECRET//HCS-O//ORCON/NOFORN**
Unlabeled notebook (entries from 4/20/2009 - 12/4/2009)	1/27/11	1 page ¹¹	Situation Room meeting with POTUS regarding Afghanistan and Pakistan	SECRET//HCS-O//ORCON/NOFORN
Unlabeled notebook (entries from 4/20/2009 - 12/4/2009)	4/25/11	6 pages ¹²	National Security Council meeting regarding Afghanistan and Pakistan	TOP SECRET//NOFORN**
"1-7-10 → 8-3-14" notebook	5/28/11	7 pages ¹³	Recollection of raid on Osama Bin Laden	TOP SECRET//HCS-O// [4 SCI Control System Markings]// ACCM [Program Name]// ORCON/NOFORN
"1-7-10 → 8-3-14" notebook	10/9/13	1 page ¹⁴	Notes from the President's Daily Brief	SECRET//NOFORN
"1-7-10 → 8-3-14" notebook	Undated	2 pages ¹⁵	Notes from the President's Daily Brief	SECRET**
"Miscellaneous 1/9/10 - 1/17/12" notebook	6/19/13	1 page ¹⁶	Brief from the National Security Agency	SECRET//REL

⁹ 1B51-0121-0122.

¹⁰ 1B63-0012.

¹¹ 1B63-0016.

¹² 1B63-0026-29.

¹³ 1B30-0030-33.

¹⁴ 1B30-0065.

¹⁵ 1B30-0093-94.

¹⁶ 1B52-0091.

** Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

Appendix B: Classification Review Results for Select Notebook Entries and Other Handwritten Material

Handwritten Item Description	Entry Date	Entry Page Count	Entry Topic	Results of Classification Review
"1/6/12 #2 Foreign Policy" notebook	2/22/12	2 pages ¹⁷	Situation Room meeting with POTUS	TOP SECRET**
"Foreign Policy 11/2013 - 2014" notebook	1/1/14	1 page ¹⁸	Accumulated questions from President's Daily Briefs	SECRET**
"Foreign Policy 11/2013 - 2014" notebook	1/7/14	2 pages ¹⁹	Meeting in the Oval Office with national security advisors	SECRET**
"Foreign Policy 11/2013 - 2014" notebook	1/10/14	3 pages ²⁰	Meeting in the Situation Room with POTUS regarding a foreign adversary	SECRET**
"Foreign Policy 11/2013 - 2014" notebook	5/19/14	2 pages ²¹	Notes regarding Unmanned Aerial Systems with POTUS	SECRET**
"Foreign Policy 11/2013 - 2014" notebook	11/26/14	4 pages ²²	National Security Council meeting in the Situation Room	SECRET**
"Foreign Policy 11/2013 - 2014" notebook	3/11/15	1 page ²³	A meeting with John Kerry regarding a foreign adversary	SECRET//NOFORN
"Foreign Policy 11/2013 - 2014" notebook	4/1/15	1 page ²⁴	Notes from the President's Daily Brief	TOP SECRET**
Notecards Seized from Hearth Railing	9/17/13	1 notecard (front only) ²⁵	Notes from the President's Daily Brief	TOP SECRET**

¹⁷ 1B15-0012-13.

¹⁸ 1B67-0012.

¹⁹ 1B67-0013.

²⁰ 1B67-0019-20.

²¹ 1B67-0038.

²² 1B67-0063-65.

²³ 1B67-0075.

²⁴ 1B67-0076.

²⁵ 1B23-0012.

** Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

Appendix B: Classification Review Results for Select Notebook Entries and Other Handwritten Material

Handwritten Item Description	Entry Date	Entry Page Count	Entry Topic	Results of Classification Review
Notecards Seized from Hearth Railing	10/15/13	1 notecard (front only) ²⁶	Notes from the President's Daily Brief	TOP SECRET**
Notecards Seized from Hearth Railing	8/19/14	1 notecard (front and back) ²⁷	Notes from the President's Daily Brief	SECRET**
"Foreign Policy" notebook	10/28/14	5 pages ²⁸	Situation Room Meeting with POTUS and the Joint Chiefs regarding military readiness	SECRET
"Foreign Policy" notebook	11/4/14	2 pages ²⁹	Meeting with POTUS, the Secretary of Defense, the Chairman of the Joint Chiefs, and other advisors	SECRET**
"Foreign Policy" notebook	12/14/15	7 pages ³⁰	Meeting with "POTUS+Brass+NSC" regarding Counter ISIL Strategy Review	SECRET//NOFORN
"Foreign Policy" notebook	11/24/16	1 page ³¹	Secure Video Teleconference regarding homeland threats	SECRET//NOFORN
"Daily AUGUST 2014 - SEPTEMBER 2016" notebook	Undated	2 pages ³²	Foreign policy meeting notes	SECRET//NOFORN
"Daily AUGUST 2014 - SEPTEMBER 2016" notebook	Undated (likely 6/18/15)	7 pages ³³	Meeting with POTUS and national security leaders	SECRET//HCS-O//ORCON/NOFORN

²⁶ 1B23-0015.²⁷ 1B23-0006-7.²⁸ 1B58-0029-31.²⁹ 1B58-0033.³⁰ 1B58-0079-82.³¹ 1B58-0094.³² 1B57-0014.³³ 1B57-0061-65.

** Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

Appendix B: Classification Review Results for Select Notebook Entries and Other Handwritten Material

Handwritten Item Description	Entry Date	Entry Page Count	Entry Topic	Results of Classification Review
"FOREIGN POLICY 6/10/15" notebook	9/3/15 (first two pages undated)	5 pages ³⁴	Foreign adversaries	CONFIDENTIAL**
"FOREIGN POLICY 6/10/15" notebook	5/14/16	2 pages ³⁵	Counterterrorism discussions, including on "Acela North Bound"	SECRET**
"FOREIGN POLICY 6/10/15" notebook	6/3/16	2 pages ³⁶	Situation Room meeting with POTUS regarding Afghanistan	SECRET//NOFORN
"FOREIGN POLICY 6/10/15" notebook	1/5/17	2 pages ³⁷	Sensitive Topic	TOP SECRET//HCS-O//ORCON/NOFORN
"DAILY 12/15/15 2026-2017-2018 " notebook	6/13/16	1 page ³⁸	National security meeting	SECRET//NOFORN

³⁴ 1B22-0013-15.

³⁵ 1B22-0023.

³⁶ 1B22-0024.

³⁷ 1B22-0026

³⁸ 1B20-0034.

** Highest level of classification handling recommended by the State Department acting as a proxy for the National Security Council (including an assessment of State Department equities).

Appendix C: Evidence Items

Evidence Item #	Date Seized	Location Seized or Producing Party	Description	Recovered documents contained within Evidence item	Notes
1B01 ¹	11/28/22	PBC	Hard drive found in box labeled: VP Records		
1B04 ²	12/21/22	Wilmington Residence	Box containing miscellaneous documents with classifications up to TOP SECRET. Collected from the garage.	B4-5, B25-38	Due to the content's higher classifications and sensitivities, the folder, "Facts First," was removed from 1B4 and entered as separate evidence, designated as 1B44.
1B44 ³	12/21/22	Wilmington Residence	Red Folder with handwritten "Facts First" containing documents with classifications up to TOP SECRET//HCS//NOFORN.	B6-B24	Originally contained within 1B4.
1B05 ⁴	12/21/22	Wilmington Residence	Box containing binders with classified documents up to SECRET//NOFORN. Collected from the garage.	B1-B3	
1B13 ⁵	1/12/23	Wilmington Residence	Three (3) pages with classification markings SECRET//NOFORN//Pre-decisional.	C1-C3	Documents were originally contained within notebook (1B15).
1B14 ⁶	1/12/23	Wilmington Residence	Three (3) pages with classification markings TS/SCI	C4	Documents were originally contained within notebook (1B15).
1B15 ⁷	1/14/23	Wilmington Residence	Black spiral notebook labeled: "1/6/12 #2 Foreign Policy"		

¹ FBI Serials 12, 14, 23.

² FBI Serials 29, 35, 134, 181, 195, 284, 322, 443, 512.

³ FBI Serials 29, 35, 195, 440, 443, 510, 512.

⁴ FBI Serials 29, 35, 195, 270, 284, 701.

⁵ FBI Serials 43, 44, 160, 682.

⁶ FBI Serials 43, 44, 160, 682.

⁷ FBI Serials 44, 46, 47, 134, 322, 682.

Appendix C: Evidence Items

Evidence Item #	Date Seized	Location Seized or Producing Party	Description	Recovered documents contained within Evidence item	Notes
1B17 ⁸	1/20/23	Wilmington Residence	Box labeled: Save the Attic; Foreign Travel. Contained miscellaneous documents with classification markings up to CONFIDENTIAL.	D1-D3	
1B18 ⁹	1/20/23	Wilmington Residence	Box labeled: International Travel 1973-1979. Contained miscellaneous documents with classification markings up to SECRET	D4-D19	
1B20 ¹⁰	1/20/23	Wilmington Residence	Black spiral notebook labeled: "DAILY 12/15/15 and 2026-2017-2018."		
1B22 ¹¹	1/20/23	Wilmington Residence	Black spiral notebook labeled: "FOREIGN POLICY 6/10/15"		At the time of the search, three notebooks were found in the same location, seized and entered into evidence, collectively designated as 1B22. For evidence handling and review purposes, each notebook was given its own FBI evidentiary number: 1B22, 1B67 and 1B68.
1B67 ¹²	1/20/23	Wilmington Residence	Black spiral notebook labeled: "Foreign Policy 11/2013-2014"		Initially collected with 1B22.
1B68 ¹³	1/20/23	Wilmington Residence	Black spiral notebook labeled: "Obama/Biden 7-15-13 → 10-10-16"		Initially collected with 1B22.
1B23 ¹⁴	1/20/23	Wilmington Residence	Loose, miscellaneous papers with handwritten notes (notecards).		

⁸ FBI Serials 49, 77, 270, 284, 639.

⁹ FBI Serials 49, 77, 270, 284, 639.

¹⁰ FBI Serials 49, 77, 248, 322.

¹¹ FBI Serials 49, 77, 322.

¹² FBI Serials 49, 77, 322.

¹³ FBI Serials 49, 77, 322.

¹⁴ FBI Serials 49, 77, 322, 664.

Appendix C: Evidence Items

Evidence Item #	Date Seized	Location Seized or Producing Party	Description	Recovered documents contained within Evidence item	Notes
1B25 ¹⁵	1/20/23	Wilmington Residence	Black spiral notebook labeled: "Daily/Memo"	D21	At the time of the search, eight notebooks were found in the same location, seized and entered into evidence, collectively, designated as 1B25. For evidence handling and review purposes, each notebook was given its own FBI evidentiary number: 1B25, 1B51, 1B52, 1B62, 1B63, 1B64, 1B65, and 1B66.
1B51 ¹⁶	1/20/23	Wilmington Residence	Black spiral notebook labeled: "FOREIGN POLICY 10/13/09 - 1/17/12"		Initially collected with 1B25.
1B52 ¹⁷	1/20/23	Wilmington Residence	Black spiral notebook labeled: "Miscellaneous from 1/9/10 - 1/17/12"		Initially collected with 1B25.
1B62 ¹⁸	1/20/23	Wilmington Residence	Black spiral unlabeled notebook with first interior page stating: "12-2-09, 11-15-10"		Initially collected with 1B25.
1B63 ¹⁹	1/20/23	Wilmington Residence	Black spiral unlabeled notebook with first interior page stating: "Afghanistan - Pakistan Review December 2010 Review"		Initially collected with 1B25.
1B64 ²⁰	1/20/23	Wilmington Residence	Black spiral unlabeled notebook with entry dates 11/27/08 to 7/15/09		Initially collected with 1B25.
1B65 ²¹	1/20/23	Wilmington Residence	Black spiral notebook labeled: "POST ELECTION"		Initially collected with 1B25.

¹⁵ FBI Serials 49, 77, 134, 322, 682.

¹⁶ FBI Serials 49, 77, 322, 682.

¹⁷ FBI Serials 49, 77, 322.

¹⁸ FBI Serials 49, 77, 322.

¹⁹ FBI Serials 49, 77, 322.

²⁰ FBI Serials 49, 77, 322.

²¹ FBI Serials 49, 77, 322.

Appendix C: Evidence Items

Evidence Item #	Date Seized	Location Seized or Producing Party	Description	Recovered documents contained within Evidence item	Notes
1B66 ²²	1/20/23	Wilmington Residence	Black spiral notebook labeled: "Af/Pak 1"	D20	Initially collected with 1B25.
1B27 ²³	1/20/23	Wilmington Residence	Various documents in blue file folder labeled Amputations Feb '11. Contained document with classification markings up to SECRET//NOFORN.	D22	
1B30 ²⁴	1/20/23	Wilmington Residence	Black notebook labeled: "1/7/10 → 8/3/14"		At the time of the search, four notebooks were found in the same location, seized and entered into evidence, collectively designated as 1B30. For evidence handling and review purposes, each notebook was given its own FBI evidentiary number: 1B30, 1B57, 1B58, and 1B59.
1B57 ²⁵	1/20/23	Wilmington Residence	Black notebook labeled: "Daily AUGUST 2014 - SEPTEMBER 2016"		Initially collected with 1B30.
1B58 ²⁶	1/20/23	Wilmington Residence	Black notebook labeled: "Foreign Policy"		Initially collected with 1B30.
1B59 ²⁷	1/20/23	Wilmington Residence	Black notebook labeled: "DAILY 2016"		Initially collected with 1B30.
1B31 ²⁸	1/20/23	Wilmington Residence	Blue unlabeled binder contained documents with classification markings up to SECRET//NOFORN.	D23-D25	

²² FBI Serials 49, 77, 322, 682.

²³ FBI Serials 49, 77, 270, 284.

²⁴ FBI Serials 49, 77, 248, 322.

²⁵ FBI Serials 49, 77, 322.

²⁶ FBI Serials 49, 77, 322.

²⁷ FBI Serials 49, 77, 322.

²⁸ FBI Serials 49, 77, 270, 284, 701.

Appendix C: Evidence Items

Evidence Item #	Date Seized	Location Seized or Producing Party	Description	Recovered documents contained within Evidence item	Notes
1B35 ²⁹	1/27/23	University of Delaware	Unmarked Box - 329-94-341 containing documents with classification markings up to SECRET.	E1-E7	
1B37 ³⁰	2/3/23	University of Delaware	Manila folder labeled: With the Compliments of the American Embassy, Bonn, Senator Joseph R. Biden, Jr. Contained documents with classification marking up to SECRET.	F1	
1B43 ³¹	3/3/23	PBC Scheduler	One laptop, with charging cable.		
1B48 ³²	4/13/23	NARA	Manila envelope labeled: Iran 1/30/15, Eyes Only VPOTUS. From Box 3 stored at NARA. The envelope contained documents with classification markings up to TS/SCI and handwritten notes.	A3-A7	
1B49 ³³	4/13/23	NARA	Documents from Box 1 stored at NARA with classification markings up to TS/SCI. Documents from Box 3 stored at NARA with classification markings up to TOP SECRET	A1-A2 (Box 1); A8-A10 (Box 3)	
1B77 ³⁴	5/23/23	Wilmington Residence	Brown paper bag labeled: Balducci's, containing various items.		1B31 was originally located inside this Balducci bag.
1B69 ³⁵	6/6/23	University of Delaware	Legal sized brown folder labeled: CFE Briefing Book Material, containing documents with classification marking up to SECRET//NOFORN.	G5	

²⁹ FBI Serials 67, 270, 284, 466.

³⁰ FBI Serials 71, 270, 284.

³¹ FBI Serial 108.

³² FBI Serial 173.

³³ FBI Serial 173.

³⁴ FBI Serials 287, 294, 591.

³⁵ FBI Serials 292, 441.

Appendix C: Evidence Items

Evidence Item #	Date Seized	Location Seized or Producing Party	Description	Recovered documents contained within Evidence item	Notes
1B70 ³⁶	6/7/23	University of Delaware	Legal sized brown folder labeled: Foreign Relations Committee, containing documents with classification markings up to CONFIDENTIAL.	G3-G4	
1B71 ³⁷	6/7/23	University of Delaware	Legal sized brown folder labeled: Mutual Balanced Force Reduction MBFR, containing documents with classification marking up to CONFIDENTIAL.	G2	
1B72 ³⁸	6/7/23	University of Delaware	Legal sized brown folder labeled: Greece, containing documents with classification markings up to SECRET.	G1	
1B78 ³⁹	6/29/23	Zwonitzer	Silver Laptop (with power charging cord included)		
1B79 ⁴⁰	6/29/23	Zwonitzer	Silver G Drive (with USB connection cord and device case included)		
1B80 ⁴¹	7/5/23	Zwonitzer	Derivative Evidence – Digital copy that contains audio files and documents from 1B78 and 1B79		Derived from 1B78 and 1B79.
1B81 ⁴²	7/6/23	Zwonitzer	One (1) DVD containing digital copies of full length carved audio files from 1B79.		Derived from 1B79.

³⁶ FBI Serials 292, 441.

³⁷ FBI Serials 292, 441.

³⁸ FBI Serials 292, 441.

³⁹ FBI Serial 315.

⁴⁰ FBI Serial 315.

⁴¹ FBI Serial 320.

⁴² FBI Serial 320.

Appendix C: Evidence Items

Evidence Item #	Date Seized	Location Seized or Producing Party	Description	Recovered documents contained within Evidence item	Notes
1B87 ⁴³	1/22/24	Wilmington Residence	Empty, ripped cardboard box. One top flap labeled "Desk File" and the opposite flap labeled "Cabinet".		Original container of all 1B04 items which were repackaged as described in Chapter 7 Section II.

⁴³ FBI Serials 680, 681.



THE WHITE HOUSE
WASHINGTON

February 5, 2024

Special Counsel Robert K. Hur
Deputy Special Counsel Marc Krickbaum
Department of Justice
145 N Street Northeast
Washington, D.C. 20503

Dear Special Counsel Hur and Deputy Special Counsel Krickbaum:

We are pleased to see that, after more than a year of investigating, you have determined that no criminal charges are warranted in this matter. Though we wholeheartedly agree with your conclusion, we are taking this opportunity, pursuant to our agreement, to address specific issues that we have identified in the report. We do so in the interest—which we believe that the Office of Special Counsel shares—of a final report that is both accurate and consistent with Department of Justice policy and practice.

We have been selective in the choice of issues for your consideration. We believe that each one presented below merits your careful review before finalizing your report.

1. We do not believe that the report's treatment of President Biden's memory is accurate or appropriate. The report uses highly prejudicial language to describe a commonplace occurrence among witnesses: a lack of recall of years-old events. Such comments have no place in a Department of Justice report, particularly one that in the first paragraph announces that no criminal charges are "warranted" and that "the *evidence* does not establish Mr. Biden's guilt." If the evidence does not establish guilt, then discussing the jury impact of President Biden's hypothetical testimony at a trial that will never occur is entirely superfluous.

In fact, there is ample evidence from your interview that the President did well in answering your questions about years-old events over the course of five hours. This is especially true under the circumstances, which you do not mention in your report, that his interview began the day after the October 7 attacks on Israel. In the lead up to the interview, the President was conducting calls with heads of state, Cabinet members, members of Congress, and meeting repeatedly with his national security team.

The Special Counsel recognized the extraordinary juxtaposition of these events when he "thank[ed]" the President "for being here and making this time for us" given that there were "a lot of other things in the world going on that demand your attention." Interview Transcript ("Tr."), Day I, at 3. Subsequently, far from being "hazy," Report at 208, the President proceeded to provide often detailed recollections across a wide range of questions, from staff management of paper flow in the West Wing to the events surrounding the creation of the 2009 memorandum on the Afghanistan surge. He engaged at length on theories you offered about the way materials

were packed and moved during the transition out of the vice presidency and between residences. He pointed to flaws in the assumptions behind specific lines of questioning.

At the outset of the interview, you recognized that the questions you planned to ask “relate to events that happened years ago,” but nonetheless expressed your hope that the President would “put forth [his] best efforts and really try to get [his] best recollection in response to the questions we ask.” Tr., Day I, at 4. It is hardly fair to concede that the President would be asked about events years in the past, press him to give his “best” recollections, and then fault him for his limited memory.

The President’s inability to recall dates or details of events that happened years ago is neither surprising nor unusual, especially given that many questions asked him to recall the particulars of staff work to pack, ship, and store materials and furniture in the course of moves between residences. The same predictable memory loss occurred with other witnesses in this investigation. Yet, unlike your treatment of President Biden, your report accepts other witnesses’ memory loss as completely understandable given the passage of time. For example, you accepted without denigrating John McGrail’s failure to remember certain events while he served as then-Vice President Biden’s counsel: “McGrail’s memory of these events could well have faded over the course of more than 6 years.” Report at 238 n.923; *see also id.* at 67, 69 (noting Mr. McGrail’s failure to recall events despite emails that place him in the center of various discussions). So, too, you accept the memory lapse of one of the President’s personal lawyers who testified that in his initial search of the Penn Biden offices certain boxes were stored in a locked closet, noting only that “his memory was fuzzy on that point.” *Id.* at 265. And the events on which you found the lawyer’s memory to be “fuzzy” occurred only a few months before his interview. *Id.*; *see also id.* at 64, 66 (noting without comment the failures of recollection by numerous staffers).

Your treatment of President Biden stands in marked contrast to the lack of pejorative comments about other individuals. It is also in contrast to your own description of the President’s responses on other subjects as “clear forceful testimony” that would be “compelling” to a jury. *Id.* at 233.

Not only do you treat the President differently from other witnesses when discussing his limited recall of certain years-ago events, but you also do so on occasions in prejudicial and inflammatory terms. You refer to President Biden’s memory on at least nine occasions—a number that is itself gratuitous. But, even among those nine instances, your report varies. It is one thing to observe President Biden’s memory as being “significantly limited” on certain subjects. *Id.* at 5. It is quite another to use the more sweeping and highly prejudicial language employed later in the report. This language is not supported by the facts, nor is it appropriately used by a federal prosecutor in this context.

We request that you revisit your descriptions of President Biden’s memory and revise them so that they are stated in a manner that is within the bounds of your expertise and remit.

2. Your report criticizes President Biden’s “decision to keep his notebooks at home in unlocked and unauthorized containers” as “totally irresponsible,” applying to him the same criticism, in the same words, he had directed at former President Trump for keeping marked

classified documents. *Id.* at 228. Setting aside the significant difference of law and facts between the two cases (which the report recognizes), this kind of criticism of an uncharged party violates “long-standing Department practice and protocol.” *See* Office of the Inspector General, U.S. Department of Justice, *A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election* (June 2018) (finding that former FBI Director James Comey violated this practice and protocol when criticizing as “extremely careless” former Secretary of State Hillary Clinton’s use of unclassified systems to transmit classified material). Using President Biden’s own words does not make the criticism compliant with Department practice.

3. In an audio recording with Mr. Zwonitzer, the President said: “I just found all the classified stuff downstairs. I wrote the President a handwritten forty-page memorandum arguing against deploying additional troops to Afghanistan on the grounds that it would not matter.” Yet your report appears to conclude that the President was referring to marked classified Afghanistan documents, rather than the precise document referred to in the actual recording: the President’s handwritten letter to President Obama about Afghanistan, which the President viewed as a sensitive and private communication. Indeed, the President testified in his interview that, although he didn’t remember the comment to Mr. Zwonitzer, the “only thing that [he] can think of” was this handwritten letter to President Obama. *Tr.*, Day II, at 38. We believe that an accurate recitation of the evidence on this point would recognize the strong likelihood that the President was referring in the recording to his private handwritten letter to President Obama—the one mentioned on this recording immediately after the eight words that you are focused on—rather than the marked classified Afghanistan documents discovered in the Wilmington garage.

4. Your report erroneously (and repeatedly) makes statements about the value of the marked classified Afghanistan documents to President Biden, such as President Biden had a “strong motive” to keep them and they were an “irreplaceable contemporaneous record,” like the notebooks. *Report* at 203, 231. These statements are contrary to the evidence and the documents themselves. First, the President forcefully testified that he “never thought about” writing a book about the 2009 Afghanistan policy review. *Tr.*, Day II, at 22. Thus, the President had no need to retain the documents for that purpose. Second, the 2009 Afghanistan policy review was one of the most widely covered foreign policy decisions in history, documented in near real-time by public releases of government documents, leaks to newspapers, and publications by writers like Bob Woodward. The idea that the President needed to keep any classified documents related to these events, let alone the particular ones found in his garage, is implausible. This is particularly true given that the documents at issue primarily consist of drafts, duplicates, and a disorganized and incomplete assortment of briefing materials and presentations—nothing remotely resembling a consciously selected set of documents kept for historical value. Indeed, your report acknowledges that certain “important” documents are not in the folders, including documents that—if President Biden had sought to keep documents for history’s sake (which he did not)—one would expect to be included. However, your report fails to describe the haphazard and essentially random nature of the documents discovered. We believe that a fair and more accurate recitation of the evidence on this point would include a description of the documents that makes clear they do not appear to have been intentionally selected for retention.

5. Your characterization of the box in the garage as containing only matters of “great personal significance” to the President is inconsistent with the facts. The evidence shows that this tattered box contained a random assortment of documents, including plainly unimportant ones such as: a short-term vacation lease; a VP-era memorandum on furniture at the Naval Observatory for purchase; talking points from speeches; campaign material; empty folders; a 1995 document commemorating Syracuse Law’s 100-year anniversary; and other random materials. In his interview, President Biden commented regarding one of the folders, which read “Pete Rouse”: “Christ, that goes back a way,” confirming that he had not encountered that material in recent years. Tr., Day I, at 144. When asked how things like a binder labeled “Beau Iowa” got into the “beat-up” box, the President responded “Somebody must’ve, packing this up, just picked up all the stuff and put it in a box, because I didn’t.” *Id.* at 146. When asked about the later-dated material, the President responded: “[s]ee, that’s what makes me think just people gathered up whatever they found, and whenever the last thing was being moved. So the stuff moving out of the Vice President’s residence, at the end of the day, whatever they found, they put – they didn’t separate it out, you know, Speakers Bureau and Penn or whatever the hell it is, or Beau. They just put it in a single box. That’s the only thing I can think of.” *Id.* at 147. Some of the documents in the box contain what appears to be staff handwriting—including a D.C. tax return and a W2—further indicating that the box was likely filled by staff. We believe that an accurate recitation of the evidence on this point would include a description of these facts.

6. In the course of his recorded conversations with his writing assistant, the President makes a comment—“they didn’t even know I have these.” Your report repeatedly cites the comment (*e.g.*, Report at 8, 64, 65, 230, 242) and, from these six words, asks the reader to conclude that President Biden was “distinguish[ing] between his notecards, which his staff was in the process of implementing protocols to safeguard, and his notebooks, which ‘they didn’t even know I have.’” *Id.* at 65. The President’s comment does not support this unfounded conclusion. It is unclear who the President was referring to as “they” or what he was referring to as “these,” let alone that he was somehow distinguishing between his notecards and his notebooks. We believe the report should not make such unsupported assumptions—or leave the erroneous impression that the fact of President Biden’s notebooks was unknown, when the report itself shows that it was well known and even documented in photographs.

7. There are a number of inaccuracies and misleading statements that could be corrected with minor changes:

- “We considered the possibility that Mr. Biden alerted his counsel that classified documents were in the garage but our investigation revealed no evidence of such a discussion because if it happened, it would be protected by the attorney-client privilege.” Report at 22. In fact, your investigation revealed no evidence of such a discussion because it did not happen—not because of any privilege. The President testified he was unaware that there were any classified documents in his possession. Tr., Day II, at 2, 41-42. You did not ask him in his interview or in the additional written questions if he had “alerted his counsel” about classified documents; if you had, he would have forcefully told you that he did not.
- The report states that the President Biden’s book, *Promise Me, Dad*, “is not known to” contain classified information. Report at 97. The book does not

contain classified information and there has never been any suggestion to the contrary.

- “*While it is natural to assume* that JRB put the documents in the box on purpose and knew they were there, in fact there is a shortage of evidence on these points.” *Id.* at 215 (emphasis added). We do not understand the basis for claiming this is a “natural” assumption.
- In connection with its discussion of the Reagan diaries, the report states that the Special Counsel’s Office “viewed the materials that were deemed to be classified at the Top Secret/SCI” level from the Reagan diaries, citing a December 1, 2023 production from the National Security Council. *Id.* at 199-200. This is not accurate; as was stated in the production letter, you viewed only a sample of such material. We offered to make the full volumes available for your review.
- The report claims that the Archives staff asked to see President Biden’s notes from one of his visits to the Archives in 2017, *id.* at 231, citing an earlier chapter, but such a proposition is not made in the earlier chapter, leaving us to raise the question of whether it is accurate.
- The header on page 333 refers to the discovery of a document in President Biden’s home in the second-floor office, but the text asserts that the document was found in the third-floor den. The header appears to be inaccurate.

We respectfully request your close attention to these issues before finalizing your report.

Respectfully,



Richard Sauber
Special Counsel to the President



Bob Bauer
Personal Counsel to Joseph R. Biden, Jr.

Exhibit 2

The Oversight Project



SENT VIA: DOJ FOIA Portal

February 9, 2024

FOIA/PA Mail Referral Unit
Department of Justice
Room 115
LOC Building
Washington, D.C. 20530-0001

Re: Records Relied Upon by Special Counsel Robert K. Hur.

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the implementing FOIA regulations of the Department of Justice (DOJ), 28 C.F.R. § 16 (2022), I respectfully request the following records:

All Records relied upon in making the following statements highlighted in screenshots from Special Counsel Robert K. Hur's *Report on the Investigation Into Unauthorized Removal, Retention, and Disclosure of Classified Documents Discovered at Locations Including the Penn Biden Center and the Delaware Private resident of President Joseph. R. Biden, Jr.* (Feb. 2024).

The Oversight Project



Screenshot 1:

Given the intelligence and military officials present and the topics discussed at the meetings Mr. Biden recounted for Zwonitzer, Mr. Biden should have realized that his notes did or were likely to contain classified information. But taken as a whole, the evidence will likely leave jurors with reasonable doubts about whether Mr. Biden knew he was sharing classified information with Zwonitzer and intended to do so. For these jurors, Mr. Biden's apparent lapses and failures in February and April

⁹⁴⁷ *See id.*

⁹⁴⁸ Zwonitzer 7/31/23 Tr. at 83.

2017 will likely appear consistent with the diminished faculties and faulty memory he showed in Zwonitzer's interview recordings and in our interview of him.⁹⁴⁹ Therefore, we conclude that the evidence does not establish that Mr. Biden willfully disclosed national defense information to Zwonitzer.

The Oversight Project



Screenshot 2:

Third, as discussed to some extent above, Mr. Biden will likely present himself to the jury, as he did during his interview with our office, as a sympathetic, well-meaning, elderly man with a poor memory. While he is and must be accountable for his actions—he is, after all, the President of the United States—based on our direct

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observations of him, Mr. Biden is someone for whom many jurors will want to search for reasonable doubt. It would be difficult to convince a jury they should convict him—by then a former president who will be at least well into his eighties—of a serious felony that requires a mental state of willfulness.

The Oversight Project



Screenshot 3:

In his interview with our office, Mr. Biden's memory was worse. He did not remember when he was vice president, forgetting on the first day of the interview when his term ended ("if it was 2013 – when did I stop being Vice President?"), and forgetting on the second day of the interview when his term began ("in 2009, am I still Vice President?").⁸³⁹ He did not remember, even within several years, when his son Beau died.⁸⁴⁰ And his memory appeared hazy when describing the Afghanistan debate that was once so important to him. Among other things, he mistakenly said he "had a real difference" of opinion with General Karl Eikenberry, when, in fact, Eikenberry was an ally whom Mr. Biden cited approvingly in his Thanksgiving memo to President Obama.⁸⁴¹

In a case where the government must prove that Mr. Biden knew he had possession of the classified Afghanistan documents after the vice presidency and chose to keep those documents, knowing he was violating the law, we expect that at trial, his attorneys would emphasize these limitations in his recall.

We also expect many jurors to be struck by the place where the Afghanistan documents were ultimately found in Mr. Biden's Delaware home: in a badly damaged box in the garage, near a collapsed dog crate, a dog bed, a Zappos box, an empty bucket, a broken lamp wrapped with duct tape, potting soil, and synthetic firewood.⁸⁴²

⁸³⁹ Biden 10/8/23 Tr. at 146; 10/9/23 Tr. at 45.

⁸⁴⁰ Biden 10/8/23 Tr. at 82-83.

⁸⁴¹ Biden 10/9/23 Tr. at 17; Recovered document D20.

⁸⁴² See Chapter Six.

The Oversight Project**Screenshot 4:**

After all, the Afghanistan documents and the 2009 troop surge played no role in *Promise Me, Dad*, the book Mr. Biden wrote with Zwonitzer in early 2017.⁸³⁶ There is no reason to believe Mr. Biden intended to discuss the 2009 Afghanistan troop debate in his book, which, as explained in Chapter Five, covered his experiences in 2014 and 2015. In dozens of hours of recorded conversations with Zwonitzer in 2016 and 2017, when Mr. Biden talked about a vast array of topics, the Afghanistan documents never came up again.⁸³⁷ This may suggest that after February 16, 2017, the documents were simply not on Mr. Biden's mind.

Mr. Biden's memory also appeared to have significant limitations—both at the time he spoke to Zwonitzer in 2017, as evidenced by their recorded conversations, and today, as evidenced by his recorded interview with our office. Mr. Biden's recorded conversations with Zwonitzer from 2017 are often painfully slow, with Mr. Biden struggling to remember events and straining at times to read and relay his own notebook entries.⁸³⁸

⁸³⁶ See generally Biden, *PROMISE ME, DAD*; Chapter Five.

⁸³⁷ See generally FBI Serials 315, 335.

⁸³⁸ See generally *id.*

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Screenshot 5:

We have also considered that, at trial, Mr. Biden would likely present himself to a jury, as he did during our interview of him, as a sympathetic, well-meaning, elderly man with a poor memory. Based on our direct interactions with and observations of him, he is someone for whom many jurors will want to identify reasonable doubt. It would be difficult to convince a jury that they should convict him—by then a former president well into his eighties—of a serious felony that requires a mental state of willfulness.

We conclude the evidence is not sufficient to convict, and we decline to recommend prosecution of Mr. Biden for his retention of the classified Afghanistan documents.

* * *

Notebooks containing classified information. FBI agents recovered from unlocked drawers in the office and basement den of Mr. Biden's Delaware home a set

The Oversight Project**Screenshot 6:**

Several defenses are likely to create reasonable doubt as to such charges. For example, Mr. Biden could have found the classified Afghanistan documents at his Virginia home in 2017 and then forgotten about them soon after. This could convince some reasonable jurors that he did not retain them willfully. When Mr. Biden told his ghostwriter about finding “all the classified stuff downstairs,” his tone was matter-of-fact. For a person who had viewed classified documents nearly every day

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for eight years as vice president, including regularly in his home, finding classified documents at home less than a month after leaving office could have been an unremarkable and forgettable event. Notably, the classified Afghanistan documents did not come up again in Mr. Biden’s dozens of hours of recorded conversations with the ghostwriter, or in his book. And the place where the Afghanistan documents were eventually found in Mr. Biden’s Delaware garage—in a badly damaged box surrounded by household detritus—suggests the documents might have been forgotten.

In addition, Mr. Biden’s memory was significantly limited, both during his recorded interviews with the ghostwriter in 2017, and in his interview with our office in 2023. And his cooperation with our investigation, including by reporting to the government that the Afghanistan documents were in his Delaware garage, will likely convince some jurors that he made an innocent mistake, rather than acting willfully—that is, with intent to break the law—as the statute requires.

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The Oversight Project



To further narrow down the scope of the request, requester does not seek correspondence that merely forwards press clippings, such as news accounts or opinion pieces, newsletters, and published or docketed materials, if that correspondence has no comment or no substantive comment added by any party in the thread.

The terms “pertaining to,” “referring,” “relating,” or “concerning” with respect to any given subject means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

The term “record” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (emails), MMS or SMS text messages, instant messages, messaging systems (such as iMessage, Microsoft Teams, WhatsApp, Telegram, Signal, Google Chat, Twitter direct messages, Lync, Slack, and Facebook Messenger), contracts, cables, telexes, notations of any type of conversation, telephone call, voicemail, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electronic records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A record bearing any notation not a part of the original text is to be considered a separate record. A draft

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or non-identical copy is a separate record within the meaning of this term. By definition a “communication” (as that term is defined herein) is also a “record” if the means of communication is any written, recorded, or graphic matter of any sort whatsoever, regardless of how recorded, and whether original or copy.

The terms “and” and “or” should be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The terms “all,” “any,” and “each” should each be construed as encompassing any and all. The singular includes the plural number, and vice versa. The present tense includes the past and vice versa. The masculine includes the feminine and neuter genders.

The term “communication” means each manner or means of disclosure or exchange of information (in the form of facts, ideas, inquiries, or otherwise), regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in an in-person meeting, by telephone, facsimile, e-mail (desktop or mobile device), text message, MMS or SMS message, messaging systems (such as iMessage, Microsoft Teams, WhatsApp, Telegram, Signal, Google Chat, Twitter direct messages, Lync, Slack, and Facebook Messenger), regular mail, telexes, releases, or otherwise.

“Communications with,” “communications from,” and “communications between” means any communication involving the related parties, regardless of whether other persons were involved in the communication, and includes, but is not limited to, communications where one party is cc’d or bcc’d, both parties are cc’d or bcc’d, or some combination thereof.

Please consider all members of a document “family” to be responsive to the request if any single “member” of that “family” is responsive, regardless of whether the “family member” in question is “parent” or “child.”

In the interest of expediency and to minimize the research and/or duplication burden on your staff, please send records electronically if possible. If this is not possible, please notify me before sending to the mailing address listed below. If access to this request will take longer than twenty business days, please let me know when I might receive records or be able to inspect the requested records. Please produce responsive documents as soon as they become available. In all cases, please communicate with me at the below email address.

The Oversight Project



Please comply fully with 5 U.S.C. § 552(b). Accordingly, without limitation to the foregoing, if any portion of this request is denied for any reason, please provide written notice of the records or portions of records that are being withheld and cite each specific exemption of the Freedom of Information Act on which the agency relies. Moreover, to the extent that responsive records may be withheld in part produce all reasonably segregable portions of those records. Additionally, please provide all responsive documents even if they are redacted in full.

Fee Waiver Request

This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) nonprofit, Heritage Foundation does not have a commercial purpose and the release of the information requested is not in Heritage Foundation's commercial interest. Heritage Foundation's mission is to formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense. Heritage Foundation uses the information requested and analyzes it in order to educate the public through social media,¹ broadcast media² (traditional and nontraditional) and press releases.³ The requested information is in the public interest because there has immense press coverage and scrutiny concerning Special Counsel Hur's report and President Biden's mental competence to hold Office.

Because this is a request by a member of the news media for information of public interest, made in my capacity as an author for the Daily Signal⁴ (a major news outlet⁵), I actively gather information of potential interest to our Daily Signal audience, and I use my editorial skills to turn raw materials into a distinct work, and I distribute that work to our Daily Signal audience through podcasts⁶ or

¹ Heritage Foundation on X. [@Heritage] (Accessed: 2023, October 16). 677.2K followers. <https://twitter.com/Heritage>

² Fox News. (Accessed: 2023, October 16). Heritage Foundation launches Conservative Oversight Project aimed at 'exposing' Biden admin, leftist policies. <https://www.foxnews.com/politics/heritage-conservative-oversight-project-biden-admin-leftist-policies>

³ Heritage Foundation. (Accessed: 2023, October 16). Press. <https://www.heritage.org/press>.

⁴ Daily Signal. (Accessed: 2023, October 16). Mike Howell. <https://www.dailysignal.com/author/mike-howell/>

⁵ Daily Signal on X. [DailySignal] (Accessed: 2023, October 16). 84.4K Followers. <https://twitter.com/DailySignal>

⁶ Apple. (Accessed: 2023, October 16). The Daily Signal Podcast. <https://podcasts.apple.com/us/podcast/the-daily-signal-podcast/id1313611947>

The Oversight Project



articles. I also post our distinct work on our Oversight Project social media page.⁷ By function, the Oversight Project is primarily engaged in disseminating information to the public. Staff members for the Oversight Project regularly appear in television, radio, print, and other forms of media to provide expert commentary on salient issues in the national debate. I request that you waive all applicable fees associated with this request.

If you deny this request for a fee waiver, please advise me in advance of the estimated charges if they are to exceed \$50. Please send me a detailed and itemized explanation of those charges.

Thank you in advance for considering my request. If you have any questions, or feel you need clarification of this request please contact me at oversightproject@heritage.org.

Sincerely,

Mike Howell
Director and Investigative Columnist
at The Daily Signal
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, D.C. 20002

⁷ Oversight Project on X. [@OversightPR] (Accessed: 2023, October 16). 8,756 Followers. <https://twitter.com/oversightpr>

Exhibit 3

Congress of the United States
Washington, DC 20515

February 27, 2024

The Honorable Merrick B. Garland
Attorney General
Department of Justice
950 Pennsylvania Ave. N.W.
Washington, DC 20530

Dear Attorney General Garland:

On February 12, 2024, the Committee on the Judiciary (“Judiciary Committee”), along with the Committee on Oversight and Accountability (“Oversight Committee”) and the Committee on Ways and Means, wrote you¹ requesting a narrow and specific set of material in the possession of the Department of Justice relating to Special Counsel Robert K. Hur’s investigation of President Joe Biden’s “willful” mishandling of classified information.² On February 16, the Department responded, failing to produce any of the requested material and stating instead that it was “working to gather and process” responsive documents.³ The Department, however, offered no timeframe by which it expected to make any productions or, indeed, any commitment that it would produce all of the material requested.

The Oversight and Judiciary Committees, in coordination with the Ways and Means Committee, are investigating whether sufficient grounds exist to draft articles of impeachment against President Biden for consideration by the full House.⁴ The Committees are concerned that President Biden may have retained sensitive documents related to specific countries involving his family’s foreign business dealings.⁵ The Committees further seek to understand whether the White House or President Biden’s personal attorneys placed any limitations or scoping restrictions during the interviews with Special Counsel Hur or Mr. Mark Zwonitzer precluding or addressing any potential statements directly linking President Biden to troublesome foreign payments. Additionally, the Judiciary Committee requires these materials for its ongoing oversight of the Department’s commitment to impartial justice and its handling of the investigation and prosecution of President Biden’s presumptive opponent, President Donald J. Trump, in the November 2024 presidential election. The documents requested are directly

¹ Letter from Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, et al., to Attorney Gen. Merrick B. Garland, U.S. Dep’t of Justice (Feb. 12, 2024) (hereinafter “February 12 Letter”).

² Special Counsel Robert K. Hur, *Report on the Investigation Into Unauthorized Removal, Retention, and Disclosure of Classified Documents Discovered at Locations Including the Penn Biden Center and the Delaware Private Residence of President Joseph R. Biden, Jr.*, DEPT. OF JUSTICE at 6 (Feb. 8, 2024) (hereinafter “Hur Report”).

³ Letter from Asst. Attorney Gen. Carlos Felipe Uriarte, U.S. Dep’t of Justice, to Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, et al. (Feb. 16, 2024).

⁴ See H. Res. 918, 118th Cong. (2023); Memorandum from Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability, Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, & Hon. Jason Smith, Chairman, H. Comm. on Ways & Means, to H. Comm. on Oversight & Accountability, H. Comm. on the Judiciary, & H. Comm. on Ways & Means. Re: Impeachment Inquiry (Sept. 27, 2023) (hereinafter Impeachment Inquiry Memorandum); February 12 Letter, *supra* note 1.

⁵ February 12 Letter, *supra* note 1.

The Honorable Merrick B. Garland

February 27, 2024

Page 2

relevant to both the impeachment inquiry and the Judiciary Committee's legislative oversight of the Department.

Congress's authority to access information is broadest during an impeachment investigation,⁶ a fact which even Presidents and other Executive Branch officials have traditionally recognized.⁷ Indeed, conducting an impeachment inquiry based on anything less than all pertinent evidence would be an affront to the Constitution and irreparably damage public faith in the impeachment process.⁸

In addition, pursuant to the Rules of the House of Representatives, the Judiciary Committee has jurisdiction to consider potential legislative reforms to the Department of Justice and its use of a special counsel to conduct investigations of current and former Presidents of the United States.⁹ Such potential legislative reforms may include, among other things, codifying certain qualifications and requirements of special counsels appointed by the Attorney General. The circumstances of Special Counsel Hur's investigative findings and President Biden's public denial of these findings demonstrate why such potential legislative reforms may be necessary.

In its February 16 letter, the Department stated that it was reviewing responsive materials for "classification" and "confidentiality interests."¹⁰ The Department provided no timeline by which its review would be complete or a commitment that it would produce all responsive material following the review. Additionally, the Judiciary and Oversight Committees believe that the information and documents requested are primarily unclassified. To the extent that the subpoenas compel the production of classified material, the Department may produce those materials under separate cover. Accordingly, considering the seriousness of this matter, please find the attached subpoena for the requested materials.

⁶ TODD GARVEY, CONG. RSCH. SERV., LSB11083, IMPEACHMENT INVESTIGATIONS, PART II: ACCESS, at 1 (2023) ("[T]here is reason to believe that invocation of the impeachment power could improve the committees' legal claims of access to certain types of evidence relevant to the allegations of misconduct against President Biden."). See also *In re Application of Comm. on the Judiciary*, 414 F. Supp. 3d 129, 176 (D.D.C. 2019) ("[D]enying [the House Judiciary Committee] evidence relevant to an impeachment inquiry could pose constitutional problems."), *aff'd*, 951 F.3d 589 (D.C. Cir. 2020), *vacated and remanded sub nom. on other grounds DOJ v. House Comm. on the Judiciary*, 142 S. Ct. 46 (2021); *In re Request for Access to Grand Jury Materials*, 833 F.2d 1438, 1445 (11th Cir. 1987) (concluding that "limit[ing] the investigatory power of the House in impeachment proceedings . . . would clearly violate separation of powers principles.").

⁷ See GARVEY, *supra* note 6, at 2 ("As a historical matter, all three branches have suggested that the House possesses a robust right of access to information when it is investigating for impeachment purposes."); Jonathan David Schaub, *The Executive's Privilege*, 70 DUKE L.J. 1, 87 (2020) ("[P]residents and others have recognized throughout the history of the country that their ability to withhold information from Congress disappears in the context of impeachment.").

⁸ See *In re Application of Comm. on the Judiciary*, 414 F. Supp. 3d at 176 ("Impeachment based on anything less than all relevant evidence would compromise the public's faith in the process."); *In re Request for Access to Grand Jury Materials*, 833 F.2d at 1445 ("Public confidence in a procedure as political and public as impeachment is an important consideration justifying disclosure."); *In re Report and Recommendation of June 5, 1972 Grand Jury*, 370 F. Supp. 1219, 1230 (D.D.C. 1974) ("It would be difficult to conceive of a more compelling need than that of this country for an unswervingly fair [impeachment] inquiry based on all the pertinent information.").

⁹ Rules of the House of Representatives, R. X, 118th Cong. (2023).

¹⁰ Letter from Asst. Attorney Gen. Carlos Felipe Uriarte, *supra* note 3.

The Honorable Merrick B. Garland

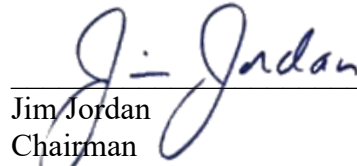
February 27, 2024

Page 3

Sincerely,



James Comer
Chairman
Committee on Oversight and Accountability



Jim Jordan
Chairman
Committee on the Judiciary

cc: The Honorable Jamie B. Raskin
Ranking Member
Committee on Oversight and Accountability

The Honorable Jerrold L. Nadler
Ranking Member
Committee on the Judiciary

Enclosure

Exhibit 4

The Oversight Project



SENT VIA: DOJ FOIA Portal

February 22, 2024

Director of Public Affairs
Office of Public Affairs
Department of Justice
950 Pennsylvania Avenue N.W.
Washington, D.C. 20530-000

Re: Request for Expedited Processing FOIA-2024-01098

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the implementing FOIA regulations of the Department of Justice (DOJ), 28 C.F.R. § 16 (2022), I respectfully request expedited processing pursuant to 28 C.F.R. § 16.5(e)(1)(iv) for the above FOIA request (hereinafter “Request”)

Pursuant to 28 C.F.R. § 16.5(e)(1)(iv), I request expedited processing for this request. I certify the following statement of facts in support of expedited processing to be true and correct pursuant to 28 C.F.R. § 16.5(e)(3). As you know, I am permitted to make application for expedited processing “at any time” Id. at § 16.5(e)(2). I do so now as to the Request.

Background:

Special Counsel Robert K. Hur’s Report on the *Investigation Into Unauthorized Removal, Retention, and Disclosure of Classified Documents Discovered at Locations Including the Penn Biden Center and the Delaware Private resident of President Joseph. R. Biden, Jr.* (Feb. 2024) (“Report”) repeatedly raised questions concerning President Biden’s mental capacity. These instances are detailed in the Request.

The following factual Appendices are attached and expressly incorporated herein and made part of this request (as are the factual sources cited therein):

- Appendix A is a compilation of news articles about Special Counsel Hur’s investigation and report.¹

¹ [https://thf_media.s3.amazonaws.com/2024/Oversight Project/Appendices%20A&B.pdf](https://thf_media.s3.amazonaws.com/2024/Oversight%20Project/Appendices%20A&B.pdf)

The Oversight Project



- Appendix B is a February 12, 2024 letter from Rep. James Comer, Chairman of the House Committee on Oversight and Accountability, Rep. Jim Jordan, Chairman of the House Judiciary Committee, and Rep. Jason Smith, Chairman of the House Committee on Ways and Means requesting records related to Special Counsel Hur’s investigation.²

Immediately after the release of the Report there was massive press interest in this issue, including multiple calls for consideration of invocation of the 25th Amendment based on the Report’s description of President Biden’s mental faculties. *See* App. A. at 0004–7; 0033–36, 0038–42, 0047–50, 0080–82, 0083–87, 0131–134, 0140–143, 0165–167, 0258–275, 0291–310, 0426–429, 0495–499, 0500–502, 0520–522, 0556–571, 0589–611, 0682–0685, 0686–688, 0689–0692, 0717–0735, 0771–0773, 0895–897, 0996–1014, 1071–1086, 1124–1128, 1140–1148, 1156–1164, 1174–1183, 1263–1266, 1278–1288, 1329–1343, 1344–1358, 1390–1404, 1441–1458, 1468–1486, 1513–1530, 1540–1560, 1591–1594, 1603–1606, 1610–1612, 1637–1640, 1655–1657, 1674–1676, 1677–1679, 1683–1685, 1706–1709, 1723–1724, 1731–1748.³

Expedited Processing is Warranted under 28 C.F.R. § 16.5(e)(1)(iv)

1. This provision provides that expedited processing shall be granted regarding: “A matter of widespread and exceptional media interest in which there exists possible questions about the government’s integrity which affect public confidence.”

Courts have held that the DOJ Regulation requires the requester to show: (1) that the request involves a “matter of widespread and exceptional media interest” (28 C.F.R. § 16.5(e)(1)(iv)); and (2) that the matter is one “in which there exists possible questions about the integrity of the government that affect public confidence” (*id.*). *See Edmonds v. FBI*, No. 02-cv-1294 (ESH), 2002 WL 32539613, *3 (D.D.C. Dec. 3, 2002). It is not necessary to show “prejudice or a matter of current exigency to the American public.” *Id.*

First, the DOJ Regulation requires showing that the matter about which questions of integrity have been raised is the subject of widespread national media attention. *See Am. Oversight v. DOJ*, 292 F.Supp.3d 501, 507–508 (D.D.C. 2018)

² *Id.*

³ *Id.*

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(denying motion for expedited processing because general media interest in Solicitor General’s nomination is insufficient to show media interest in possible ethics questions concerning the nomination). There need not be a showing that the disclosure would shed considerable light on agency operations; only that there is “exceptional” and “widespread” media interest. *See CREW v. DOJ*, 870 F.Supp.2d 70, 81 (D.D.C. 2012), *rev’d on other grounds*, 746 F.3d 1082 (D.C. Cir. 2014). While the media interest need be “widespread” and “exceptional” it need not be overwhelming. *See ACLU v. DOJ*, 321 F.Supp.2d 24, 31–32 (D.D.C. 2004) (rejecting DOJ’s position that requester’s citation to what the court described as “only a handful of articles” was insufficient to show “widespread and exceptional media interest” because those articles “were published in a variety of publications and repeatedly reference the ongoing national discussion about the Patriot Act and Section 215” (second quotation added)); *Edmonds v. FBI*, No. CIV A. 02-1294 (ESH), 2002 WL 32539613, at *3 (D.D.C. Dec. 3, 2002) (numerous national newspaper and network television broadcasts concerning whistleblower’s allegations of security lapses in FBI translator program met test).

Second, the DOJ Regulation requires showing that “there exists possible questions about the government’s integrity that affect public confidence.” *CREW v. DOJ*, 436 F.Supp.3d 354, 361 (D.D.C. 2020) (quoting 28 C.F.R. § 16.5(e)(1)(4)) (emphasis by Court). It does not “require the requester to prove wrongdoing by the government in order to obtain documents on an expedited basis.” *Id.* at 362. “The primary way to determine whether such possible questions exist is by examining the state of public coverage of the matter at issue, and whether that coverage surfaces possible ethics issues so potentially significant as to reduce public confidence in governmental institutions.” *Am. Oversight v. DOJ*, 292 F.Supp.3d 501, 508 (D.D.C. 2018). This is not an extraordinarily high bar. *See, e.g., CREW*, 436 F.Supp.3d at 361 (complaint sufficient to survive a motion to dismiss where it alleged Attorney General’s action regarding disclosure of Mueller Report “supported an inference that at best, the Attorney General undertook to frame the public discussion on his own terms, and at worst that he distorted the truth”); *ACLU v. DOJ*, 321 F.Supp.2d 24, 32 (D.D.C. 2004) (allegations in press that Section 215 of the Patriot Act may be unconstitutional and reports that Members of Congress have alleged abuses of Section 215 “implicate[] government integrity” and hence are sufficient to meet test); *Edmonds*, 2002 WL 32539613, at *3–4 (test met where plaintiff alleged security lapses in FBI translators program, national news covered the issue, and two Senators expressed concern regarding “the significant security issues raised by plaintiff’s allegations and the integrity of the FBI”).

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2. The facts amply support expedition here. Multiple national media outlets have published articles or aired programming regarding the Report and its findings that President Biden has diminished mental faculties. *See generally* App. A. These news reports often explore the idea that President Biden may no longer be fit for the job of President because of cognitive impairment. *Id.* Some even raise the prospect that there should be consideration of invoking the 25th Amendment. *See* App. A at 0004–7; 0033–36, 0038–42, 0047–50, 0080–82, 0083–87, 0131–134, 0140–143, 0165–167, 0258–275, 0291–310, 0426–429, 0495–499, 0500–502, 0520–522, 0556–571, 0589–611, 0682–0685, 0686–688, 0689–0692, 0717–0735, 0771–0773, 0895–897, 0996–1014, 1071–1086, 1124–1128, 1140–1148, 1156–1164, 1174–1183, 1263–1266, 1278–1288, 1329–1343, 1344–1358, 1390–1404, 1441–1458, 1468–1486, 1513–1530, 1540–1560, 1591–1594, 1603–1606, 1610–1612, 1637–1640, 1655–1657, 1674–1676, 1677–1679, 1683–1685, 1706–1709, 1723–1724, 1731–1748. Moreover, several Congressional Committees have spoken directly to these issues. *See* App. B at B 0003.⁴

There is more than enough evidence to sustain a finding of “possible questions about the government’s integrity that affect public confidence”. Again, this bar not a very high bar. For years, many in the news and in American political discourse (and even in international discourse) have questioned President Biden’s mental acuity and by extension his fitness to hold what has often been referred to as the most mentally and physically demanding job in the world.

Thank you in advance for considering my request. If you have any questions, or feel you need clarification of this request please contact me at oversightproject@heritage.org.

Sincerely,

Mike Howell
Director and Investigative Columnist
at The Daily Signal
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, D.C. 20002

⁴ *Id.*

Exhibit 5



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

February 26, 2024

Mike Howell
oversightproject@heritage.org

Re: FOIA-2024-01112
DRH:ERH:GMG

Dear Mike Howell:

This is to further acknowledge receipt of your Freedom of Information Act (FOIA) request dated and received in this Office on February 12, 2024, in which you requested copies of the interview transcript of President Joseph Biden as conducted by Special Counsel Robert Hur and written responses of President Biden.

You have requested expedited processing of your request pursuant to the Department's standard involving "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." See 28 C.F.R. § 16.5(d)(iv) (2018). Pursuant to Department policy, we directed your request to the Director of Public Affairs, who makes the decision whether to grant or deny expedited processing under this standard. See *id.* § 16.5(d)(2). The Director has determined that your request for expedited processing should be granted.

Although your request has been granted expedited processing, we are required to advise you that the records you seek require a search in and/or consultation with another Office, and so your request falls within "unusual circumstances." See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii) (2012 & Supp. V 2017). Accordingly, we have not yet completed a search to determine whether there are records within the scope of your request. The time needed to process your request will necessarily depend on the complexity of our records search and on the volume and complexity of any records located. Any decision with regard to the application of fees will be made only after we determine whether fees will be implicated for this request. Your request has been assigned to the expedited track and will be processed as soon as practicable.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request for expedited processing, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001, or

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you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically submitted within ninety days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas R. Hibbard". The signature is fluid and cursive, with a prominent initial "D" and "H".

Douglas R. Hibbard
Chief, Initial Request Staff

Exhibit 6



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

February 26, 2024

Mike Howell
oversightproject@heritage.org

Re: FOIA-2024-01114
DRH:ERH:GMG

Dear Mike Howell:

This is to further acknowledge receipt of your Freedom of Information Act (FOIA) request dated and received in this Office on February 12, 2024, in which you requested copies of recordings of President Joseph Biden related to the interview conducted by Special Counsel Robert Hur.

You have requested expedited processing of your request pursuant to the Department's standard involving "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." See 28 C.F.R. § 16.5(d)(iv) (2018). Pursuant to Department policy, we directed your request to the Director of Public Affairs, who makes the decision whether to grant or deny expedited processing under this standard. See *id.* § 16.5(d)(2). The Director has determined that your request for expedited processing should be granted.

Although your request has been granted expedited processing, we are required to advise you that the records you seek require a search in and/or consultation with another Office, and so your request falls within "unusual circumstances." See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii) (2012 & Supp. V 2017). Accordingly, we have not yet completed a search to determine whether there are records within the scope of your request. The time needed to process your request will necessarily depend on the complexity of our records search and on the volume and complexity of any records located. Any decision with regard to the application of fees will be made only after we determine whether fees will be implicated for this request. Your request has been assigned to the expedited track and will be processed as soon as practicable.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request for expedited processing, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001, or

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you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically submitted within ninety days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

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Douglas R. Hibbard
Chief, Initial Request Staff

Exhibit 7



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

February 26, 2024

Mike Howell
oversightproject@heritage.org

Re: FOIA-2024-01120
DRH:ERH:GMG

Dear Mike Howell:

This is to further acknowledge receipt of your Freedom of Information Act (FOIA) request dated and received in this Office on February 12, 2024, seeking copies of recordings of Mark Zwonitzer related to the interview conducted by Special Counsel Robert Hur.

You have requested expedited processing of your request pursuant to the Department's standard involving "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." See 28 C.F.R. § 16.5(d)(iv) (2018). Pursuant to Department policy, we directed your request to the Director of Public Affairs, who makes the decision whether to grant or deny expedited processing under this standard. See id. § 16.5(d)(2). The Director has determined that your request for expedited processing should be granted.

Although your request has been granted expedited processing, we are required to advise you that the records you seek require a search in and/or consultation with another Office, and so your request falls within "unusual circumstances." See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii) (2012 & Supp. V 2017). Accordingly, we have not yet completed a search to determine whether there are records within the scope of your request. The time needed to process your request will necessarily depend on the complexity of our records search and on the volume and complexity of any records located. Any decision with regard to the application of fees will be made only after we determine whether fees will be implicated for this request. Your request has been assigned to the expedited track and will be processed as soon as practicable.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request for expedited processing, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following

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the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically submitted within ninety days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

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Douglas R. Hibbard
Chief, Initial Request Staff

Exhibit 8



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

February 26, 2024

Mike Howell
oversightproject@heritage.org

Re: FOIA-2024-01121
DRH:ERH:GMG

Dear Mike Howell:

This is to further acknowledge receipt of your Freedom of Information Act (FOIA) request dated and received in this Office on February 12, 2024, seeking copies of all images collected as part of the investigation of Special Counsel Robert Hur.

You have requested expedited processing of your request pursuant to the Department's standard involving "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." See 28 C.F.R. § 16.5(d)(iv) (2018). Pursuant to Department policy, we directed your request to the Director of Public Affairs, who makes the decision whether to grant or deny expedited processing under this standard. See *id.* § 16.5(d)(2). The Director has determined that your request for expedited processing should be granted.

Although your request has been granted expedited processing, we are required to advise you that the records you seek require a search in and/or consultation with another Office, and so your request falls within "unusual circumstances." See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii) (2012 & Supp. V 2017). Accordingly, we have not yet completed a search to determine whether there are records within the scope of your request. The time needed to process your request will necessarily depend on the complexity of our records search and on the volume and complexity of any records located. Any decision with regard to the application of fees will be made only after we determine whether fees will be implicated for this request. Your request has been assigned to the expedited track and will be processed as soon as practicable.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request for expedited processing, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001, or

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you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically submitted within ninety days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

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Douglas R. Hibbard
Chief, Initial Request Staff

Exhibit 9



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

February 26, 2024

Mike Howell
oversightproject@heritage.org

Re: FOIA-2024-01122
DRH:ERH:GMG

Dear Mike Howell:

This is to further acknowledge receipt of your Freedom of Information Act (FOIA) request dated and received in this Office on February 12, 2024, seeking communications between the Office of Special Counsel Robert Hur and private counsel for President Joseph Biden as referenced in the Report of Special Counsel Hur.

You have requested expedited processing of your request pursuant to the Department's standard involving "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." See 28 C.F.R. § 16.5(d)(iv) (2018). Pursuant to Department policy, we directed your request to the Director of Public Affairs, who makes the decision whether to grant or deny expedited processing under this standard. See *id.* § 16.5(d)(2). The Director has determined that your request for expedited processing should be granted.

Although your request has been granted expedited processing, we are required to advise you that the records you seek require a search in and/or consultation with another Office, and so your request falls within "unusual circumstances." See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii) (2012 & Supp. V 2017). Accordingly, we have not yet completed a search to determine whether there are records within the scope of your request. The time needed to process your request will necessarily depend on the complexity of our records search and on the volume and complexity of any records located. Any decision with regard to the application of fees will be made only after we determine whether fees will be implicated for this request. Your request has been assigned to the expedited track and will be processed as soon as practicable.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request for expedited processing, you may administratively appeal by writing to the Director, Office of Information Policy, United

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States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically submitted within ninety days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

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Douglas R. Hibbard
Chief, Initial Request Staff

Exhibit 10



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

February 26, 2024

Mike Howell
oversightproject@heritage.org

Re: FOIA-2024-01123
DRH:ERH:GMG

Dear Mike Howell:

This is to further acknowledge receipt of your Freedom of Information Act (FOIA) request dated and received in this Office on February 12, 2024, in which you requested a copy of the interview transcript of Mark Zwonitzer as conducted by Special Counsel Robert Hur.

You have requested expedited processing of your request pursuant to the Department's standard involving "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." See 28 C.F.R. § 16.5(d)(iv) (2018). Pursuant to Department policy, we directed your request to the Director of Public Affairs, who makes the decision whether to grant or deny expedited processing under this standard. See *id.* § 16.5(d)(2). The Director has determined that your request for expedited processing should be granted.

Although your request has been granted expedited processing, we are required to advise you that the records you seek require a search in and/or consultation with another Office, and so your request falls within "unusual circumstances." See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii) (2012 & Supp. V 2017). Accordingly, we have not yet completed a search to determine whether there are records within the scope of your request. The time needed to process your request will necessarily depend on the complexity of our records search and on the volume and complexity of any records located. Any decision with regard to the application of fees will be made only after we determine whether fees will be implicated for this request. Your request has been assigned to the expedited track and will be processed as soon as practicable.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request for expedited processing, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001, or

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you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically submitted within ninety days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

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Douglas R. Hibbard
Chief, Initial Request Staff

Exhibit 11



U.S. Department of Justice
Office of Information Policy
441 G Street, NW
Sixth Floor
Washington, DC, 20530-0001

Telephone: (202) 514-3642

February 29, 2024

Mike Howell
Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
oversightproject@heritage.org

Re: FOIA-2024-01098
DRH:GMG

Dear Mike Howell:

This responds to your Freedom of Information Act (FOIA) request dated and received in this Office on February 9, 2024, seeking records relied upon to make various statements within the Report of Special Counsel Robert Hur.

Upon review of the statements detailed in your request, all of which reference the interview of President Joseph Biden as conducted by Special Counsel Hur, I have interpreted your request as seeking a copy of the transcript of that interview.

By letter dated February 12, 2024, you requested a copy of the President Biden interview transcript as well as the written responses of President Biden as referenced in the Report of Special Counsel Hur. That request is currently being processed in FOIA-2024-01112. Insomuch as your request of February 9, 2024, is partially seeking the same the records as your request of February 12, 2024, I am closing the administrative tracking number (FOIA-2024-01098) associated with this request. Please reference FOIA-2024-01112 in any future correspondence on this matter.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c) (2018). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaison, Valeree Villanueva, for any further assistance and to discuss any aspect of your request at: Office of Information Policy, United States Department of Justice, 441 G Street NW, Sixth Floor, Washington, DC 20530-0001; telephone at 202-514-3642.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601

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Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with this Office's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in blue ink, appearing to read "Douglas R. Hibbard".

Douglas R. Hibbard
Chief, Initial Request Staff

Exhibit 12



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

February 13, 2024

Mike Howell
The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
oversightproject@heritage.org

Re: FOIA-2024-01113
FOIA-2024-01121
DRH:ABP

Dear Mike Howell:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) request dated and received in this Office on February 12, 2024, seeking copies of all images collected as part of the investigation of Special Counsel Robert Hur.

As an initial matter, on February 12, 2024, you submitted a related FOIA request to this Office seeking copies of images of recovered classified records as referenced in the Report of Special Counsel Robert Hur. That request has been assigned tracking number FOIA-2024-01113. Insomuch as your request for all images collected as part of the investigation of Special Counsel Hur (FOIA-2024-01121) entirely encompasses the records you have requested in FOIA-2024-01113, I have administratively closed FOIA-2024-01113 as a duplicative request. To be clear, the records you have requested in FOIA-2024-01113 will be processed in response to FOIA-2024-01121.

The records you seek require a search in and/or consultation with another Office, and so your request falls within "unusual circumstances." See 5 U.S.C. § 552 (a)(6)(B)(i)-(iii) (2018). Because of these unusual circumstances, we need to extend the time limit to respond to your request beyond the ten additional days provided by the statute. For your information, we use multiple tracks to process requests, but within those tracks we work in an agile manner, and the time needed to complete our work on your request will necessarily depend on a variety of factors, including the complexity of our records search, the volume and complexity of any material located, and the order of receipt of your request. At this time we have assigned your request to the complex track. In an effort to speed up our process, you may wish to narrow the scope of your request to limit the number of potentially responsive records so that it can be placed in a different processing track. You can also agree to an alternative time frame for processing, should records be located, or you may wish to await the completion of our records search to discuss either of these options. Any decision with regard to the application of fees will be made only after we determine whether fees will be implicated for this request.

We regret the necessity of this delay, but we assure you that your request will be processed as soon as possible. If you have any questions or wish to discuss reformulation or an

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alternative time frame for the processing of your request, you may contact this Office by telephone at the above number, by e-mail at doj.oip.foia@usdoj.gov, or you may write to the Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001. Lastly, you may contact our FOIA Public Liaison, Valeree Villanueva, at the telephone number listed above to discuss any aspect of your request.

Insomuch as you are also seeking the records of Assistant Attorney General Jolene Ann Lauria and Chief Human Capital Officer Mike Williams, I suggest that you direct your request to the Justice Management Division (JMD) if you have not already done so. JMD is the Department component that would maintain the records of those officials. Contact information for JMD can be found on www.foia.gov.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448.

If you are not satisfied with this Office's determination in response to FOIA-2024-01113, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,



Douglas R. Hibbard
Chief, Initial Request Staff