

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

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Case No. 1:24-cv-00700-TJK
(Consolidated Cases)

HERITAGE FOUNDATION, et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

CABLE NEWS NETWORK, INC., et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

**DEFENDANT U.S. DEPARTMENT OF JUSTICE'S
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, Defendant United States Department of Justice (“Defendant”) moves this Court to enter summary judgment in its favor. Attached in support of Defendant’s motion are (1) a memorandum of law, (2) a declaration and accompanying exhibits, (3) a statement of undisputed facts, and (4) a proposed order.

DATED: May 31, 2024

Respectfully submitted,

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**DEFENDANT U.S. DEPARTMENT OF JUSTICE'S
MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

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- Statement of Undisputed Facts

INTRODUCTION

These consolidated cases brought pursuant to the Freedom of Information Act (“FOIA”) concern a single law enforcement record: an audio recording of Special Counsel Robert Hur’s interview of President Biden. Disclosure of that record is unwarranted. Release of the audio recording would threaten critical law enforcement interests by chilling the potential cooperation of witnesses in current and future sensitive investigations. In addition, disclosure would constitute a significant invasion of privacy. Decades of controlling precedent establish that the privacy interests implicated by disclosure of law enforcement records are at their zenith when the disclosure involves nonpublic information about an uncharged individual. These privacy harms are amplified by the threat of malicious manipulation of audio files that has recently become much more acute.

The Department properly asserted a number of statutory FOIA exemptions to protect these vital law enforcement and privacy interests. First, Exemption 5 permits the government to withhold internal information that would be subject to a claim of privilege in civil litigation. Here, the Attorney General, as the chief law enforcement officer of the United States, determined that release of the audio recording posed an unacceptable risk of impeding future, high-profile law enforcement investigations and therefore requested that the President assert executive privilege in response to a congressional request for the same document. In response, the President formally asserted executive privilege. As a law enforcement record, the disclosure of which would harm the Executive’s ability to obtain witness cooperation in future investigations, the audio recording readily fits within the ambit of executive privilege and its historical usage. And the formal assertion of executive privilege means that the audio recording would not ordinarily be discoverable in civil litigation. It is therefore not available under FOIA.

Second, the Department properly withheld the audio recording in full pursuant to Exemptions 6 and 7(C), to protect against an unwarranted invasion of privacy. Significant privacy interests attach to the Special Counsel’s investigatory files, including the audio recording, and there is forceful precedent protecting it from disclosure. The President’s status as a public figure does not eliminate these significant privacy interests. Further, under the statute, only a substantial public

interest in disclosure could overcome such significant privacy interests. No such interest exists here, including because the Department has already released ample information that provides alternative sources that serve the public interests appropriately cognizable under FOIA. Not only has the Department released Special Counsel Hur's 345-page report detailing his investigation and the conclusions he reached, but the Department has also produced a written transcript of the same interview for which the plaintiffs seek the audio recording. As a result, any marginal increase in the public's understanding of how Special Counsel Hur carried out his investigation (the only public interest cognizable here) is insufficient to overcome the significant privacy interests at stake.

Finally, the audio recording is also exempt under Exemption 7(A), which allows the withholding of law enforcement records when disclosure "could reasonably be expected to interfere with enforcement proceedings." There is no question that the audio recording is a law enforcement record. And the Department is currently engaged in a number of ongoing law enforcement investigations in which it has determined that release of the audio recording would interfere with witness cooperation in those investigations.

For each of these reasons, the Department is entitled to summary judgment.

BACKGROUND

I. The Hur Investigation

On January 12, 2023, Attorney General Merrick Garland appointed Robert Hur as Special Counsel. Weinsheimer Decl. ¶ 4. The Special Counsel's Office ("SCO") was authorized to investigate the possible unauthorized removal and retention of classified documents at various locations associated with President Biden. *See id.* As part of the investigation, President Biden voluntarily agreed to sit for an interview with Mr. Hur. *Id.* ¶ 9. The interview occurred on October 8 and October 9, 2023, and collectively lasted just over approximately five hours. *Id.* The Special Counsel requested that the interview be recorded, and the President voluntarily agreed to that request.

Id. ¶ 10. At the interview, the SCO created an audio recording that documented the interview,¹ *id.* ¶¶ 10, 12, and SCO, with the assistance of a court reporter, later made a written transcript of the interview based on the audio recording, *id.* ¶ 13. The audio recording and transcripts were marked, maintained, and stored as Top Secret. *Id.* ¶ 15. Copies of both the audio recording and the written transcript were provided to representatives of the White House Counsel’s Office – which also stored and treated them as Top Secret and made them available as appropriate to President Biden’s personal attorneys. *See id.* ¶¶ 11, 15-16.

At the conclusion of the investigation, Mr. Hur submitted a report to Attorney General Garland pursuant to Department regulations (the “Hur Report”). *See* 28 C.F.R. § 600.8(c) (“At the conclusion of the Special Counsel’s work, he or she shall provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the Special Counsel.”). The Report stated that Mr. Hur “conclude[d] that no criminal charges are warranted,” Hur Report, at 1, and provided extensive discussion of the investigation and the decisions he reached, *see generally* Hur Report. The Department later produced a copy of the Hur Report to Congress and placed it on the Department’s public-facing website.² Weinsheimer Decl. ¶ 7. The Department also produced to Congress and released to FOIA requesters and posted on its public website a redacted copy of the transcript of President Biden’s interview. *Id.* ¶ 17. These public disclosures were discretionary; the Department did not make all withholdings or apply all redactions available under FOIA. *Id.* ¶ 46. Mr. Hur also testified before Congress concerning his investigation and his decision to decline prosecution. *See id.*

¹ Technically, two redundant audio recordings of the interview were made since SCO personnel utilized two separate audio recording devices during the interview. Weinsheimer Decl. ¶ 12. For convenience, this memorandum will refer to a single “audio recording” since both recordings reflect the same interview.

² The Hur Report is available at: <https://www.justice.gov/sco-hur>.

II. Congressional Requests for the Audio Recording

On February 27, 2024, two Committees of the House of Representatives (the Committee on the Judiciary and the Committee on Oversight and Accountability) subpoenaed the audio recording of Special Counsel Hur’s interview of President Biden. Weinsheimer Decl. ¶ 18. On May 15, 2024, Attorney General Garland informed President Biden that the Department’s Office of Legal Counsel had determined that the audio recording fell within the scope of executive privilege and that executive privilege could properly be asserted in response to the subpoenas. *See id.* ¶ 19; Ex. 5 (“Garland Ltr.”). The Attorney General agreed with that conclusion and requested that President Biden assert executive privilege over the audio recording. Weinsheimer Decl. ¶ 19; *see* Garland Ltr., at 6 (“[I]n my view, disclosure of the audio recording[] . . . poses an unacceptable risk of impairing cooperation in future high-profile investigations where voluntary cooperation is exceedingly important, such as those involving White House officials.”). The President did so on May 16, 2024. *Id.* ¶ 20. That same day, the Department informed the Chairmen of the relevant Congressional Committees that President Biden had asserted executive privilege over the audio recording. *Id.*; *see* Ex. 6 (“Uriarte Ltr.”).

III. Plaintiffs’ FOIA Requests

On February 8, 2024, Judicial Watch submitted a FOIA request to the Department seeking “all transcripts, audio recordings, and video recordings of all interviews of President Biden conducted during the course of the investigation led by Special Counsel Robert Hur.” ECF No. 1, ¶ 5. On February 12, 2024, the Heritage Foundation submitted a FOIA request to the Department seeking “[a]ll recordings in any format whatsoever, of the interview of President Joseph R. Biden, Jr. referenced in [the Hur Report].” ECF No. 25-1, ¶ 15. Thirteen media organizations submitted FOIA requests between February 16, 2024, and April 1, 2024, each of which also sought the audio recording. ECF No. 26, at 11-15, ¶¶ 19, 21-44.

IV. Procedural Background

On March 11, 2024, Judicial Watch filed its Complaint, ECF No. 1. The Heritage Foundation filed its Complaint on April 3, 2024. *See* ECF No. 7-1. One of the media organizations,

CNN, filed its initial Complaint on April 4, 2024, *see* ECF No. 7-2, which CNN later amended (on May 15, 2024) to add twelve additional plaintiffs, *see* ECF No. 26. On April 18, 2024, in light of the overlap of documents sought by Judicial Watch, Heritage, and CNN, the Department moved to consolidate the *Judicial Watch* case with *Heritage Foundation v. U.S. Department of Justice*, No. 24-cv-960 (D.D.C.) and *Cable News Network, Inc. v. U.S. Department of Justice*, No. 24-cv-961 (D.D.C.). ECF No. 7. While that motion was pending, the Department informed the Court that it had withheld the audio recording in full and that there are no video recordings of the interview. ECF No. 12, at 1 & n.1; *see* Weinsheimer Decl. ¶ 3, 8-9. On May 3, 2024, the Court granted the Department’s motion to consolidate. *See* May 3, 2024, Minute Order.

Because the Department has already produced a redacted written transcript of the interview, and because there is no video recording of the interview, the only record at issue in this case is the audio recording.³ *See* Weinsheimer Decl. ¶¶ 3, 8-9, 17. Soon after the Department informed the Court and the parties that it had withheld the audio recording in full, ECF No. 12, at 1, the Court set a summary judgment briefing schedule, *see* May 6, 2024 Minute Order.

STANDARD OF REVIEW

Under FOIA, federal agencies must make agency records available to the public upon request unless the records fall within one or more statutory exemptions. 5 U.S.C. § 552(a)(3), (b)(1)-

³ Some of the specific statements reflected in the audio recording are exempt under various FOIA exemptions not discussed here. For example, the audio recording contains classified information that would be exempt under Exemption 1. When the government produced the written transcript of the interview, the government redacted those specific statements pursuant to that and other FOIA exemptions. In this case, plaintiffs do not challenge withholdings that the Department would make to the audio recording that correspond to the redactions the Department made to the written transcript. For example, in a joint status report, Judicial Watch “confirm[ed] that it would not challenge any corresponding redactions made to the audio recordings.” ECF No. 12, at 1. The Department has also noted its understanding that Heritage does not seek the portions of the audio recording that would correspond to redactions made to the written transcript. *See* ECF No. 15, at 3. Heritage has not contradicted that understanding. *See* ECF No. 18. The media-organization plaintiffs have not contradicted in any filing the Departments’ understanding that this case does not involve a challenge to withholdings that would correspond to the Department’s redactions of the written transcript. Accordingly, this motion asserts those exemptions that justify the withholding of the audio recording in full.

(9). The statute reflects a “balance struck by Congress between the public’s right to know and the government’s legitimate interest in keeping certain information confidential,” *Ctr. for Nat’l Sec. Studies v. U.S. Dep’t of Justice*, 331 F.3d 918, 925 (D.C. Cir. 2003), given the “‘legitimate governmental and private interests’ that might be ‘harmed by release of certain types of information,’” *August v. FBI*, 328 F.3d 697, 699 (D.C. Cir. 2003) (quoting *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989)). “FOIA expressly recognizes that important interests are served by its exemptions, and those exemptions are as much a part of FOIA’s purposes and policies as the statute’s disclosure requirement.” *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 439 (2019) (cleaned up) (quoting *FBI v. Abramson*, 456 U.S. 615, 630-31 (1982) and *Encino Motorcars, LLC v. Navarro*, 584 U.S. 79, 89 (2018)). The Department bears the burden of justifying its withholdings of materials responsive to a FOIA request, and this Court reviews the Department’s response to that request *de novo*. See 5 U.S.C. § 552(a)(4)(B).

“Most FOIA cases are appropriately resolved on motions for summary judgment.” *Gilliam v. U.S. Dep’t of Justice*, 128 F. Supp. 3d 134, 138 (D.D.C. 2015) (citing *Brayton v. Off. of the U.S. Trade Rep.*, 641 F.3d 521, 527 (D.C. Cir. 2011)). Summary judgment is warranted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “The defendant in a FOIA case must show . . . that any exemptions claimed actually apply, and that any reasonably segregable non-exempt parts of records have been disclosed after redaction of exempt information.” *Light v. U.S. Dep’t of Justice*, 968 F. Supp. 2d 11, 23 (D.D.C. 2013).

A court may award summary judgment in a FOIA action on the basis of information provided by the agency through declarations that describe “the documents and the justifications for nondisclosure with reasonably specific detail,” that “demonstrate that the information withheld logically falls within the claimed exemption[s],” and that are “not controverted by either contrary evidence in the record nor by evidence of agency bad faith.” *Mil. Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981) (footnote omitted). “Ultimately, an agency’s justification for invoking

a FOIA exemption is sufficient if it appears logical or plausible.” *Judicial Watch, Inc. v. U.S. Dep’t of Def.*, 715 F.3d 937, 941 (D.C. Cir. 2013) (per curiam).

ARGUMENT

I. The Audio Recording Was Properly Withheld Pursuant to Exemption 5 Because the President Asserted Executive Privilege

The President has formally asserted executive privilege over the audio recording sought by plaintiffs. *See* Uriarte Ltr., at 1; Garland Ltr. at 3-11. The recording facially comes within the scope of executive privilege, which is recognized in civil litigation. The audio recording therefore is properly withheld pursuant to Exemption 5, which exempts records that are “inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5).⁴

A. Materials Subject to a Formal Assertion of Executive Privilege are Exempt Under Exemption 5

Exemption 5 “ensures that members of the public cannot obtain through FOIA what they could not ordinarily obtain through discovery undertaken in a lawsuit against the agency.” *Schiller v. NLRB*, 964 F.2d 1205, 1208 (D.C. Cir. 1992). The exemption incorporates “all civil discovery rules” and exempts documents that are privileged in civil discovery. *Martin v. Off. of Special Couns., MSPB*, 819 F.2d 1181, 1185-87 (D.C. Cir. 1987); *see U.S. Fish & Wildlife Serv. v. Sierra Club, Inc.*, 592 U.S. 261, 267 (2021) (Exemption 5 “incorporates the privileges available to Government agencies in civil litigation.”). Because Exemption 5 allows the withholding of material that cannot “ordinarily” be obtained through discovery, information that is subject to a “qualified” privilege remains unqualifiedly exempt under FOIA even if the privilege could be overcome in civil litigation. *FTC v. Grolier, Inc.*, 462 U.S. 19, 27 (1983) (“Whether its immunity from discov-

⁴ The audio recording easily satisfies the “inter-agency or intra-agency memorandums or letters” threshold. *See, e.g., Leopold v. U.S. Dep’t of Justice*, 487 F. Supp. 3d 1, 15 (D.D.C. 2020). The audio recording has remained at all times within the custody and control of the Executive Branch. Weinsheimer Decl. ¶ 16. The President’s counsel were able to review it in a secure storage facility within the Executive Office of the President. *Id.*

ery is absolute or qualified, a protected document cannot be said to be subject to ‘routine’ disclosure.”). That is, the balancing tests applicable to qualified privileges in ordinary civil litigation do not apply when privileged information is sought pursuant to FOIA.

“Executive privilege” is a privilege that may be invoked by the President to protect confidential Executive Branch information. *See Cong. Requests for Conf. Exec. Branch Info.*, 13 Op. O.L.C. 153, 154 (1989). The privilege is “constitutionally based,” and “[t]he existence of such a privilege . . . is a necessary corollary of the executive function vested in the President by Article II of the Constitution.” *Id.* It has been recognized by the Supreme Court, which has declared that the privilege “is fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution.” *United States v. Nixon*, 418 U.S. 683, 708 (1974). “[I]nformation subject to executive privilege deserves ‘the greatest protection consistent with the fair administration of justice.’” *Trump v. Mazars LLP*, 591 U.S. 848, 864 (2020).

The pedigree of the privilege dates to the earliest days of the Republic: its recognition “began with George Washington and the early Congress,” when, in 1792, President Washington convened a meeting of his Cabinet to consider how to respond to a congressional inquiry about General St. Clair’s campaign, stating that he “wish[ed] to take care that his response be ‘rightly conducted’ because it could ‘become a precedent.’” *Mazars*, 591 U.S. at 859 (quoting 1 Writings of Thomas Jefferson 189 (P. Ford ed. 1892)). Washington’s Cabinet unanimously concluded that while Congress “had authority to ‘institute inquiries’ and ‘call for papers,’” “the President could ‘exercise a discretion’ over disclosures, ‘communicating such papers as the public good would permit’ and ‘refusing’ the rest.” *Id.* (cleaned up). That “practice of refusing congressional requests for information, on the ground that the national interest would be harmed by the disclosure, was employed by many Presidents in the ensuing years.” 13 Op. O.L.C. at 155; *see generally History of Refusals by Exec. Branch Officials to Provide Info. Demanded by Cong.*, 6 Op. O.L.C. 751 (1982).

Executive privilege derives from Article II and separation-of-powers principles, and the Constitution empowers the President to invoke the privilege for a variety of reasons. *See, e.g.*, 13

Op. O.L.C. at 154-55 (noting executive branch assertions over information relating to foreign affairs, military and national security secrets, and deliberations within the Executive Branch); *In re Sealed Case (Espy)*, 121 F.3d 729, 736-38 (D.C. Cir. 1997) (discussing multiple judicially-recognized components of executive privilege); *Senate Select Comm. on Pres. Campaign Activities v. Nixon*, 498 F.2d 725, 729 (D.C. Cir. 1974) (en banc) (describing confidential communications with the President as “one species” of executive privilege); *Mazars*, 591 U.S. at 850 (noting that “executive privilege safeguards the public interest in candid, confidential deliberations within the Executive Branch”). One of the historically recognized areas in which executive privilege is necessary to protect the President’s constitutional authority is the law enforcement process. Accordingly, “the law enforcement component of executive privilege” recognizes that “[t]he President may invoke executive privilege to preserve the integrity and independence of criminal investigations and prosecutions.” *Assertion of Exec. Priv. Concerning the Special Counsel’s Interviews of the Vice Pres. & Senior White House Staff*, 32 Op. O.L.C. 7, 10 (2008); see 13 Op. O.L.C. at 154 (noting that “law enforcement” is one of the “generally-recognized components of executive privilege”); U.S. Const., Art. II, § 3 (charging the President to “take care that the laws be faithfully executed”).⁵ Although there is appropriately limited judicial precedent analyzing a presidential assertion of executive privilege, including over law enforcement files, the Supreme Court has made clear that the “longstanding practice” of the political branches “imposes . . . a duty of care to ensure that [courts] do not needlessly disturb ‘the compromises and working arrangements that [those]

⁵ See also, e.g., *Assertion of Executive Privilege with Respect to Prosecutorial Documents*, 25 Op. O.L.C. 1 (2001); Exec. Order No. 12,667, 54 Fed. Reg. 3403, 3403 (Jan. 18, 1989) (defining substantial questions of executive privilege as disclosures that would impair (1) “national security (including the conduct of foreign relations),” (2) law enforcement, or (3) “the deliberative process of the Executive branch.”); Position of the Exec. Dep’t Regarding Invest. Repts., 40 Op. Att’y Gen. 45, 46-48 (1941) (providing historical examples of Attorneys General “who have uniformly taken the . . . view” that “investigative reports are confidential documents of the executive department of the Government, to aid in the duty laid upon the President by the Constitution to ‘take care that the laws be faithfully executed,’ and that congressional or public access to them would not be in the public interest”); *Cong. Requests for Info. from Inspectors Gen. Concerning Open Criminal Investigations*, 13 Op. O.L.C. 77, 80 (1989) (“There are three generally-recognized components of executive privilege: state secrets, law enforcement, and deliberative process.”).

branches . . . themselves have reached.” *See Mazars*, 591 U.S. at 862 (quoting *Noel Canning*, 573 U.S. at 524-26).

As Attorney General Garland explained in his letter requesting that the President assert executive privilege over the audio recording, the “law enforcement component of executive privilege” can be asserted to avoid “‘the potential damage to proper law enforcement’ that would be caused by disclosure, including ‘the chilling effect’ on ‘sources of information[.]’” Garland Ltr., at 4 (quoting *Response to Cong. Requests for Info. Regarding Decisions Made Under the Indep. Couns. Act*, 10 Op. O.L.C. 68, 76 (1986)). Because “[t]his chilling effect can extend to future investigations and thus may exist even if disclosure occurs only once an investigation ends,” the Department “has long recognized . . . that executive privilege protects materials related to a closed criminal investigation where disclosure might hamper prosecutorial efforts in future cases.” *Id.* In 2008, President Bush asserted executive privilege in part for similar reasons to prevent the disclosure of the writeup of a special counsel’s interview of Vice President Cheney. *See* 32 Op. O.L.C. at 7. The availability of executive privilege to protect the Executive Branch’s law enforcement information and functions, and to maintain the constitutional separation of powers, is therefore well established. *See N.L.R.B v. Noel Canning*, 573 U.S. 513, 524 (2014) (stating that “[l]ong settled and established practice is a consideration of great weight in a proper interpretation of constitutional provisions regulating the relationship between” the branches).

Executive privilege is generally a qualified privilege that, when asserted outside the FOIA context, can be overcome by a sufficient showing of need that would further an authorized purpose. *See, e.g., Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 389 (2004) (“Once executive privilege is asserted . . . [t]he Judiciary is forced into the difficult task of balancing the need for information in a judicial proceeding and the Executive’s Article II prerogatives.”); *Mazars*, 591 U.S. at 864 (“[I]nformation subject to executive privilege deserves ‘the greatest protection consistent with the fair administration of justice.’” (quoting *Nixon*, 418 U.S. at 715)). But under Exemption 5, the analysis ends upon the determination that the information is susceptible to a claim of privilege,

and thus judicial balancing is not applicable. “The test under Exemption 5 is whether the documents would be ‘routinely’ or ‘normally’ disclosed upon a showing of relevance.” *Grolier*, 462 U.S. at 26. Since records subject to a formal assertion of executive privilege may be discovered only when there is sufficient need to overcome the privilege, they are “not ‘routinely’ or ‘normally’ available to parties in litigation and hence are exempt under Exemption 5.” *Id.* at 27. Thus, “if a document is protected by a valid claim of executive privilege,” it “will normally and properly be withheld under Exemption 5.” *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 57 F. Supp. 3d 48, 51 (D.D.C. 2014).

B. The Audio Recording Is Subject to a Formal Assertion of Executive Privilege

The President has formally asserted executive privilege over the sole record at issue in this case in response to congressional subpoenas. *Uriarte Ltr.*, at 1. For purposes of this litigation – which is governed by FOIA – the assertion is dispositive so long as the record in question is susceptible to a claim of executive privilege. Here, that threshold is clearly established. The audio recording was created during a law enforcement investigation, and the Attorney General has reasonably determined that its disclosure would cause harm to future investigations.

In his letter requesting that the President assert the privilege, Attorney General Garland provided a detailed accounting of why executive privilege (in its law enforcement component) properly applied to the audio recording; why an assertion would be consistent with historical precedent; and why Congress had not shown an adequate need to overcome that privilege. *See* *Garland Ltr.*, at 3-10. In brief, after noting an “overarching concern . . . ‘about the prospect of committees of Congress obtaining confidential records from Justice Department criminal investigative files for the purpose of addressing highly politicized issues in public committee hearings,’” *id.* at 4-5 (quoting 32 Op. O.L.C. at 10-11), the Attorney General noted his “more specific concern” that release of the recording “might affect the Department’s ability to obtain vital cooperation in high-profile criminal investigations – in particular, in investigations where the voluntary cooperation of White House officials is exceedingly important.” *Id.* at 5. The Attorney General explained that:

[I]f key witnesses in similar high-profile investigations expected that volunteering to sit for an interview and allowing that interview to be recorded would likely result in the release of that recording to Congress (and potentially the public), there is a significant risk that such witnesses would evaluate the Department's requests for cooperation differently in the future.

Id. Should that occur, “an inability to secure cooperation, or a diminution in the degree and extent of cooperation, would significantly impair the Department’s ability to conduct similar high-profile investigations where cooperation is exceedingly important.” *Id.* Consequently, the Attorney General concluded that disclosure of the audio recording would pose an “unacceptable risk” of impairing future, high-profile law enforcement investigations. *Id.* at 6; *see also id.* at 4 (noting the Department’s “long recogni[tion]” that executive privilege protects information when disclosure would “hamper prosecutorial efforts in future cases”). Given this articulated, reasonable prediction of harm to future law enforcement proceedings, Attorney General Garland requested that the President formally assert executive privilege over the recording, and the President did so. *Id.* at 1, 6; Uriarte Ltr., at 1.

The President’s assertion of executive privilege resolves this case. The audio recording is now subject to a formal, particularized assertion of executive privilege made by the President on the basis of an analysis by the Office of Legal Counsel and the recommendation of the Attorney General, the most senior law enforcement officer in the federal government other than the President. If a litigant were hypothetically to seek it in other fora (*e.g.*, in civil or criminal discovery, or in a lawsuit by Congress to enforce a subpoena), that litigant would need to make a substantial showing of need to overcome the privilege. *See, e.g., Senate Select Comm.*, 498 F.2d at 731; *In re Sealed Case*, 121 F.3d 729, 754 (D.C. Cir. 1997). The audio recording therefore is “not ‘routinely’ or ‘normally’ available to parties in litigation,” and thus is properly withheld under Exemption 5. *Grolier*, 462 U.S. at 26-27.

“[I]nformation subject to executive privilege deserves ‘the greatest protection consistent with the fair administration of justice.’” *Mazars*, 591 U.S. at 864 (quoting *Nixon*, 418 U.S. at 715). Requiring disclosure under FOIA of material susceptible to a claim of executive privilege and for which there has been a formal claim of executive privilege would yield inappropriate outcomes.

For example, it would mean that Congress could avoid the constitutionally mandated accommodation process and instead pursue the same information via FOIA litigation. *See United States v. AT&T*, 567 F.2d 121, 127 (D.C. Cir. 1977) (noting the “constitutional mandate” that the Executive Branch and Congress engage in a political accommodation process). As noted above, courts must give great weight to historical practice among the branches in an area where disputes are appropriately resolved through the political process. *Mazars*, 591 U.S. at 862.

Indeed, it would raise significant separation-of-powers concerns to interpret the FOIA to substantially burden the President’s constitutional authority to assert executive privilege or limit the effect of such an assertion, such as by compelling the Executive Branch to release under FOIA a record over which the President has asserted executive privilege. That is all the more reason to reject such an interpretation. *See, e.g., United States v. Palomar-Santiago*, 593 U.S. 321, 328-29 (2021) (“Courts should indeed construe statutes ‘to avoid not only the conclusion that [they are] unconstitutional, but also grave doubts upon that score.’” (citation omitted)); *Judicial Watch v. U.S. Secret Serv.*, 726 F.3d 208, 225-29 (D.C. Cir. 2013) (applying constitutional avoidance canon to avoid interpretation of FOIA that would raise difficult constitutional questions). As discussed, both executive privilege and the interbranch accommodation process are constitutionally based. *See Nixon*, 418 U.S. at 708 (the President’s ability to assert executive privilege is “inextricably rooted in the separation of powers under the Constitution”); *AT&T*, 567 F.2d at 127 (describing the accommodation process as a “constitutional mandate”). To construe the FOIA in a way that would nullify a formal presidential assertion of executive privilege – the invocation of which is an extraordinary occurrence – would therefore raise substantial constitutional questions. Accordingly, so long as Exemption 5 can reasonably be read to allow the government to withhold a record that is subject to a formal invocation of privilege (which indeed is the best interpretation of the statute), that interpretation must be selected. *Jones v. United States*, 526 U.S. 227, 239 (1999) (“‘[W]here a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter.’” (citation omitted)).

Furthermore, it would raise constitutional concerns if the FOIA were interpreted to undermine the structure of the constitutionally mandated accommodation process or to expand the judiciary's role in an area where, historically, disputes between Congress and the Executive branch “have been hashed out in the ‘hurly-burly, the give-and-take of the political process between the legislative and the executive.’” *Mazars*, 591 U.S. at 858-59 (quoting Hearings on S. 2170 *et al.* before the Subcomm. on Intergov'tl Rels. of the S. Comm. on Gov't Ops., 94th Cong., 1st Sess., 87 (1975) (A. Scalia, Assistant Attorney General, Office of Legal Counsel)). Given the “longstanding practice” of resolving interbranch disputes through constitutionally mandated, political accommodation, courts should “ensure that [they] not needlessly disturb the compromises and working arrangements that those branches themselves have reached.” *Mazars*, 591 U.S. at 862 (cleaned up) (quoting *Noel Canning*, 573 U.S. at 524-26). An assertion of executive privilege therefore must be given the due weight that is required to avoid upsetting the centuries-old dynamic between the political branches. *See id.* at 869 (“For more than two centuries, the political branches have resolved information disputes using the wide variety of means that the Constitution puts at their disposal.”).

II. The Department Properly Withheld the Audio Recording Pursuant to Exemptions 6 and 7(C) Because Disclosure Would Result in an Unwarranted Invasion of Privacy

Because the release of the audio recording would harm substantial privacy interests that are not outweighed by any meaningful public benefit, the Department also properly withheld the audio recording in full under Exemptions 6 and 7(C).

Exemption 6 allows an agency to withhold information about individuals in “personnel and medical files and similar files” when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). For the exemption to apply, the information at issue must be maintained in a government file and apply to a particular individual. *U.S. Dep’t of State v. Wash. Post Co.*, 456 U.S. 595, 602 (1982). Once that threshold requirement is met, Exemption 6 requires the agency to balance the individual’s right to privacy against the public’s interest in disclosure. *See Dep’t of Air Force v. Rose*, 425 U.S. 352, 372 (1976).

Similarly, Exemption 7(C) exempts from disclosure “records or information compiled for law enforcement purposes . . . to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). As a threshold matter, for Exemption 7(C) to apply, the records at issue must have been compiled for law enforcement purposes. *Schoenman v. FBI*, 575 F. Supp. 2d 166, 174 (D.D.C. 2008). If a record was compiled for law enforcement purposes, Exemption 7(C) – like Exemption 6 – requires individual privacy rights to be balanced against the public interest in disclosure. *See, e.g., U.S. Dep’t of Justice v. Reps. Comm. for Freedom of the Press*, 489 U.S. 749, 762 (1989). Once that threshold is met, however, courts have consistently held that Exemption 7(C) “is more protective of privacy than Exemption 6.” *U.S. Dep’t of Def. v. FLRA*, 510 U.S. 487, 496 n.6 (1994); *see Nat’l Archives & Recs. Admin. v. Favish*, 541 U.S. 157, 165-66 (2004). Accordingly, “[w]hen an agency invokes both exemptions, courts ‘focus’ on Exemption 7(C) because it ‘establishes a lower bar for withholding material.’” *Nova Oculus Partners, LLC v. SEC*, 486 F. Supp. 3d 280, 288 (D.D.C. 2020) (quoting *Citizens for Resp. & Ethics in Wash. v. U.S. Dep’t of Justice*, 746 F.3d 1082, 1091 n.2 (D.C. Cir. 2014) (*CREW*)).

The audio recording satisfies the threshold requirements of both Exemption 6 and Exemption 7(C). It qualifies as a “similar file[]” under Exemption 6 because the protected information applies to a particular individual and is contained in government records. *Wash. Post*, 456 U.S. at 602. With respect to Exemption 7(C), the audio recording was “compiled for law enforcement purposes” since it was prepared during Special Counsel Hur’s investigation. *See Weinsheimer Decl.* ¶ 10; *see also Boyd v. Exec. Office for U.S. Attys.*, 161 F. Supp. 3d 1, 10 (D.D.C. 2015) (“[I]t is clear that” records of investigative interviews meet the Exemption 7 threshold.). Because, as discussed below, the privacy interests at stake in the audio recording far outweigh the potential public interest in disclosure, the Department’s assertions of Exemptions 6 and 7(C) should be upheld. Directly applicable precedent clearly supports that outcome.

A. Under Clear Precedent, Disclosure Would Result in an Unwarranted Invasion of Privacy

Two recent D.C. Circuit decisions, both of which analyze Exemption 7(C) in the context of high-profile government investigations of leading public officials, strongly support the Department's withholding decision here.

The first precedent is *Judicial Watch v. National Archives and Records Administration*, 876 F.3d 346 (D.C. Cir. 2017) in which a court in this District upheld the Department's withholdings under Exemption 7(C) and the D.C. Circuit affirmed. The similarities between *Judicial Watch* and this case are striking. Both cases involve FOIA requests for law enforcement records about one of the most prominent political figures of the time (Hillary Clinton in *Judicial Watch*, and President Biden here). In both cases, the subjects of the FOIA requests were major-party candidates for president. *Id.* at 350. Both Secretary Clinton and President Biden had been subjects of a law enforcement investigation but were never charged with a crime. And in both cases, plaintiffs sought a sensitive, law enforcement record (a draft indictment in *Judicial Watch*, and an audio recording of a prosecutor's interview here). In *Judicial Watch*, the plaintiff (also one of the plaintiffs here) argued that Secretary Clinton's highly public career and the public's interest in an Independent Counsel's investigation into her conduct meant that her privacy interests were overcome and that the records should be released. *Id.* at 349-51.

The D.C. Circuit disagreed and held that the records were properly withheld under Exemption 7(C). *Judicial Watch* had argued that Secretary Clinton's privacy interests were merely "generic" and "minimal," but the court of appeals emphatically rejected that contention given that the information sought was a sensitive law enforcement record. *Judicial Watch*, 876 F.3d at 349. Rather, the court underscored that since Secretary Clinton had "been investigated but not charged with a crime," any "disclosure of material properly exempt under Exemption 7(C) 'represents a severe intrusion on [her] privacy interests.'" *Id.* The court reiterated longstanding D.C. Circuit precedent that even though Secretary Clinton held a highly public role, that did not mean that she had "surrender[ed] all rights to personal privacy." *Id.* (quoting *CREW*, 746 F.3d at 1092). Indeed, the

Court emphasized that Secretary Clinton’s status meant that the “disclosure of the requested information would produce the unwarranted result of placing Mrs. Clinton in the position of having to defend her conduct in the public forum outside of the procedural protections normally afforded the accused in criminal proceedings.” *Id.* at 350 (cleaned up). Thus, the court of appeals noted that the “great public attention” to the Independent Counsel’s investigation, as well as Secretary Clinton’s presidential candidacy, had “augmented” “the potential immediate harm to her.” *Id.* at 350.

On the other side of the balance, the D.C. Circuit focused on how any public interest in disclosure “is greatly reduced . . . precisely because of the voluminous information already in the public domain about the Independent Counsel’s investigation of . . . Mrs. Clinton.” *Judicial Watch*, 876 F.3d at 350. The Court catalogued the substantial amount of material that had already been made public – including a “Final Report” prepared by the Independent Counsel – and held that disclosure was unwarranted given that “Judicial Watch and the public at large” could already “readily assess” the Independent Counsel’s conduct. *Id.* at 351. In light of the strong privacy interests that Secretary Clinton retained in the law enforcement files, and the fact that disclosure would likely result in only a “slight” effect on the public’s understanding of the Independent Counsel’s activities, the Court held that Secretary Clinton was “entitled to move on with her life without having the public reminded of her alleged but never proven transgressions.” *Id.* at 350 (quoting *ACLU v. U.S. Dep’t of Justice*, 750 F.3d 927, 933 (D.C. Cir. 2014)) (cleaned up).

The D.C. Circuit re-applied many of the same principles in *Electronic Privacy Information Center v. U.S. Department of Justice*, 18 F.4th 712 (D.C. Cir. 2021) (*EPIC*), in which the Court of Appeals considered Exemption 6 and 7(C) withholdings of certain passages in the Mueller Report. That case, like here, involved a Special Counsel’s investigation of the sitting President, which had generated substantial public interest. *See id.* at 715-16; *id.* at 716 (noting that individuals implicated by potential disclosure “includ[ed] the President’s family, associates, and government officials”). The D.C. Circuit upheld some, but not all, of the challenged redactions, and the court’s analysis as to why some of the material could be withheld, while others could not, is instructive. The court of appeals ordered the Department to release some redacted passages, but only those

that (1) “would [] show how the Special Counsel interpreted the relevant law and applied it to already public facts in reaching his declination decisions,” and (2) “contain[ed] no new facts” that had not already “been made public elsewhere in [the Mueller] Report.” *Id.* at 720-21. Because these passages contained important legal analysis by Special Counsel Mueller that “ha[d] not [already] been released,” *id.* at 721, disclosure would “contribute significantly to public understanding,” *id.*, without revealing any “new private information,” *id.* at 722. Accordingly, the Exemption 7(C) balance tipped in favor of disclosure for those passages only. In contrast, the D.C. Circuit upheld the Department’s withholding of other passages when disclosure would have revealed “additional facts about individuals that are not disclosed elsewhere and that would be highly stigmatizing,” as that privacy interest outweighed the public’s interest in disclosure. *Id.*

The holdings of *Judicial Watch* and *EPIC* control this case. Like here, those cases sought information contained in the law enforcement files of either a Special Counsel or Independent Counsel; they involved very prominent political individuals; the privacy interests were significant; and there was substantial, alternative information available that allowed the public to understand the agency’s activities, including voluminous final reports prepared by the Special Counsel or Independent Counsel. As explained in detail in the following sections, the same analysis applies here. President Biden was investigated but not charged. Accordingly, he retains a substantial privacy interest in a law enforcement record that contains the sound of his voice and captures his tone and manner during a particularly sensitive time (an interview with a prosecutor). *See N.Y. Times Co. v. NASA*, 920 F.2d 1002, 1004-05 (D.C. Cir. 1990) (en banc); *see also infra* 19-24. That interest is only enhanced by the substantial risk that the audio would be misused. *See infra* 23-24. On the other side of the balance, disclosure of this single piece of evidence would do little to advance the public’s understanding of the Special Counsel’s investigation, particularly given that the Special Counsel has produced a voluminous report concerning his investigation and declination decision; he testified for hours about his decisions; and the government has already released a transcript of the same audio recording that plaintiffs seek here. Under these facts, *Judicial Watch* and *EPIC* – and substantial other D.C. Circuit precedent – demonstrate that the government has satisfied its

burden to show that the audio recording “logically” and “plausibly” falls within the protection of Exemptions 6 and 7(C). *See also Project on Gov’t Oversight, Inc. v. U.S. Off. of Special Couns.*, No. 22-cv-3381, 2024 WL 1213324, at *4 (D.D.C. Mar. 19, 2024) (upholding Exemption 7(C) assertion after noting that “‘general public curiosity’ about the conduct of government employees who have been cleared of wrongdoing cannot outrun those employees’ ‘legitimate and substantial privacy interests,’ even when those employees are ‘high level government . . . officials’” (quoting *Fund for Const. Gov’t*, 656 F.2d at 866, 864)).

B. Uncharged Individuals Have a Substantial Privacy Interest in Audio Recordings of Interviews with Law Enforcement Officers

There can be no question that the requested disclosure would implicate substantial privacy interests. The record at issue here is an audio recording of an individual whose conduct was the subject of a criminal investigation and who was not charged. It reflects probing questions from a prosecutor designed to elicit information to help the prosecutor determine whether a crime was committed, and if so, by whom. It also reflects the interviewee’s oral responses, including any pauses, hesitations, mannerisms, and intonations that occurred during that sensitive event. Weinsheimer Decl. ¶ 40. The plaintiffs in this matter have made clear in their complaints that they are seeking the audio file as part of their business of disseminating information to the public. *See* ECF No. 1, ¶ 3; ECF No. 7-1, ¶¶ 3, 16, 57-58; ECF No. 26, ¶¶ 3, 6, 8-20. If released, therefore, the recording of this law enforcement interview will be played on national television and be universally available on the Internet. *See* Weinsheimer Decl. ¶ 31. The recorded interview would thus be disseminated worldwide, even though the prosecutor determined that criminal charges were not warranted, and no indictment issued. Public dissemination of a law enforcement interview under circumstances of this sort would be exceedingly harmful.

The privacy implications of disclosing such a record under FOIA are unmistakable. As an initial matter, underlying any analysis of Exemption 7(C) is the important background principle that release of information about individuals contained in *law enforcement files* raises particularly

acute threats to personal privacy.⁶ Exemption 7(C) takes those heightened privacy concerns into account by setting a lower bar for the government to withhold information contained in law enforcement files as compared to other types of files. *See Prison Legal News v. Samuels*, 787 F.3d 1142, 1146 n.5 (D.C. Cir. 2015) (“Exemption 7(C) . . . establishes a lower bar for withholding material.”). Specifically, while Exemption 6 allows the government to withhold information contained in other types of files only when disclosure “would constitute a clearly unwarranted invasion of personal privacy,” Exemption 7(C) allows for withholding when disclosure “could reasonably be expected” to result in “an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6), (7)(C); *see Favish*, 541 U.S. at 165-66 (noting the “marked contrast” between the language of Exemptions 6 and 7(C), and stating that “Exemption 7(C)’s comparative breadth is no mere accident in drafting,” and that “[the Court] know[s] Congress gave special consideration to the language in Exemption 7(C) because it was the result of specific amendments to an existing statute”). In setting this lower threshold for withholding, Exemption 7(C) “recognizes the stigma potentially associated with law enforcement investigations and affords broader privacy rights to suspects, witnesses, and investigators.” *Bast v. U.S. Dep’t of Justice*, 665 F.2d 1251, 1254 (D.C. Cir. 1981).

These privacy interests are at their apex for individuals when prosecutors have decided not to charge. As recognized by the D.C. Circuit, “‘where individuals have been investigated but not charged with a crime,’ disclosure of material properly exempt under Exemption 7(C) ‘represents

⁶ *See e.g., Reps. Comm.*, 489 U.S. at 770-71; *ACLU*, 750 F.3d at 933; *Favish*, 541 U.S. at 171 (holding that “the fact that other pictures had been made public [does not] detract[] from the weighty privacy interests” in remaining pictures); *Judicial Watch*, 876 F.3d at 349 (determining “distinct” privacy interest in contents of subject’s investigation files although existence of Independent Counsel investigation into subject was public knowledge); *Kimberlin v. U.S. Dep’t of Justice*, 139 F.3d 944, 949 (D.C. Cir. 1998) (reasoning that merely because subject of investigation acknowledged existence of investigation – thus precluding Glomar response – does not constitute waiver of subject’s interest in keeping contents of OPR report confidential); *Hunt v. FBI*, 972 F.2d 286, 288 (9th Cir. 1992) (holding that “public availability” of accused FBI Special Agent’s name does not defeat privacy protection in substance of FBI’s internal investigation); *Parker v. DOJ*, 214 F. Supp. 3d 79, 88 (D.D.C. 2016) (determining former AUSA and other named individuals retained a substantial privacy interest in undisclosed records related to OPR investigation even if certain other information had been publicly disclosed).

a severe intrusion on the privacy interests of the individual[] in question.” *Judicial Watch*, 876 F.3d at 349 (quoting *Fund for Const. Gov’t v. NARA*, 656 F.2d 856, 866 (D.C. Cir. 1981)). And President Biden, despite being a public figure, retains those privacy interests even though a transcript of his interview has been publicly released, *see supra* 16-17. Individuals “retain[] a second, distinct privacy interest in the *contents* of the investigative files.” *CREW*, 746 F.3d at 1092 (emphasis in original). For the same reasons, the fact that President Biden’s involvement in the Hur Investigation is already known does not eliminate his privacy interest in the contents of the investigative files. *Judicial Watch*, 876 F.3d at 349. Accordingly, the starting point of the Exemption 7(C) analysis recognizes that where plaintiffs seek law enforcement files containing personal information about an uncharged individual – even of a public official – the privacy interests at stake are among the strongest recognized under FOIA.

The D.C. Circuit, sitting *en banc*, has recognized the substantial harm to privacy that can result specifically from the release of an audio recording, which is separate and distinct from privacy interests in written transcripts of the same conversation. *NASA*, 920 F.2d at 1005-07 (explaining that “voice inflections can contain personal information” and recognizing that an audio recording of individuals’ voices could be withheld even when a transcript had already been publicly released); *see also id.* at 1004 (noting that “it was the voice inflections, not the words spoken, that [the agency] was seeking to withhold because such inflections are personal to the [individuals on the recording]”). On remand in *NASA*, the district court held that the sound of an individual’s voice in an audio recording constituted “intimate details” that the FOIA privacy exemptions were designed to protect, and that “this privacy interest is substantial.” *N.Y. Times Co. v. NASA*, 782 F. Supp. 628, 631-32 (D.D.C. 1991).

The D.C. Circuit’s decision in *NASA* stands for the propositions that individuals have an important privacy interest in the sound of their voice, that this interest is distinct from any privacy interest reflected in the words of a written transcript, and that this interest is particularly significant when the recording captures a personal or sensitive conversation. *NASA*, 920 F.2d at 1003-05, *remanded*, 782 F. Supp. at 631-32. The *NASA* case involved a FOIA request for the audio recording

of astronauts aboard the *Challenger* shortly before the space shuttle exploded. 920 F.2d at 1003. A recorded interview of a federal prosecutor interviewing someone whom he is considering whether to formally accuse of a crime plainly reflects an event of extreme sensitivity. *See, e.g., Favish*, 541 U.S. at 165 (“[T]he concept of personal privacy under Exemption 7(C) is not some limited or ‘cramped notion’ of that idea.”). At least one court in this district has applied the reasoning of *NASA* to a law enforcement audio recording where a transcript was disclosed. *Pike v. U.S. Dep’t of Justice*, 306 F. Supp. 3d. 400, 412 (D.D.C. 2016) (“Under binding precedent, written transcripts of recordings do not contain information that is identical to the audio recorded version” (discussing *NASA*)) (Brown Jackson, J.) (emphasis removed); *see also* *Garland Ltr.*, at 5 (noting the “unique intrusion” that would result from release of an audio recording, which presents independent harms compared to the release of a written transcript).

Substantial precedent supports the proposition that release of files reflecting interactions with law enforcement can reasonably be expected to result in an unwarranted invasion of privacy. Courts have allowed the withholding under Exemption 7(C) of other aspects of law enforcement files that connect individuals with potentially sensitive law enforcement procedures. For example, multiple courts of appeals have allowed the withholding of Marshals Service booking photos or “mug shots” of arrested individuals. *See, e.g., Detroit Free Press, Inc. v. U.S. Dep’t of Justice*, 829 F.3d 478, 485 (6th Cir. 2016) (en banc) (holding that “individuals have a privacy interest in preventing disclosure of their booking photos under Exemption 7(C)”); *World Publ’g Co. v. U.S. Dep’t of Justice*, 672 F.3d 825, 827-32 (10th Cir. 2012) (finding that agency properly withheld booking photos); *Karantalis v. U.S. Dep’t of Justice*, 635 F.3d 497, 504 (11th Cir. 2011) (*per curiam*) (same); *see also Times Picayune Publ’g Corp. v. U.S. Dep’t of Justice*, 37 F. Supp. 2d 472, 477 (E.D. La. 1999) (noting that “a mug shot’s stigmatizing effect can last well beyond the actual criminal proceedings,” and that “[a] mug shot preserves, in its unique and visually powerful way, the subject individual’s brush with the law for posterity”).

Analogous reasoning applies to a recording of an individual being interviewed by a federal prosecutor considering whether to file charges. If the audio recording were released, hearing a

prosecutor’s probing questions designed to elicit whether information about whether a crime was committed and the interviewee’s response, including that interviewee’s tone and manner, raises concerns about an unwarranted invasion of privacy. These concerns are heightened where (as here) the interviewee was not charged with a crime and disclosure would lead to instantaneous and widespread dissemination. *See, e.g., Judicial Watch*, 876 F.3d at 349; *Detroit Free Press*, 829 F.3d at 482 (“[M]odern technology only heightens the consequences of disclosure”).

Privacy-based concerns have been recognized in refusing to release recordings of other presidents’ interactions with law enforcement. For example, a trial court played a video recording of a deposition of President Clinton, but the court refused to order release of the recording. *See United States v. McDougal*, 940 F. Supp. 224, 226-28 (E.D. Ark. 1996). The Eighth Circuit also refused to allow duplication of the video recording of the depositions in part because of the “potential for misuse.” *United States v. McDougal*, 103 F.3d 651, 658 (8th Cir. 1996); *see also Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 601, 608 (1978) (denying request for access to White House audiotapes that had been played for a jury, and for which transcripts already had been provided to the press, and noting concerns regarding “distortion through cutting, erasing, and splicing of tapes”).

The passage of time and advancements in audio, artificial intelligence, and “deep fake” technologies only amplify concerns about malicious manipulation of audio files. If the audio recording is released here, it is easy to foresee that it could be improperly altered, and that the altered file could be passed off as an authentic recording and widely distributed. *See Weinsheimer Decl.* ¶¶ 43-45. For example, a malicious actor could slow down the speed of the recording or insert words that President Biden did not say or delete words that he did say. *See id.* ¶ 43. That problem is exacerbated by the fact that there is now widely available technology that can be used to create entirely different audio “deepfakes” based on a recording. *See id.* ¶¶ 44-45; *See, e.g., Verma & Oremus, AI voice clones mimic politicians and celebrities, reshaping reality*, Wash. Post (updated Oct. 15, 2023) (“Rapid advances in artificial intelligence have made it easy to generate believable audio, allowing anyone . . . to copy somebody’s voice – leading to a flood of faked content on the

web[.]”). To be sure, other raw material to create a deepfake of President Biden’s voice is already available, but release of the audio recording presents unique risks: if it were public knowledge that the audio recording has been released, it becomes easier for malicious actors to pass off an altered file as the true recording. Weinsheimer Decl. ¶ 45.

In light of the foregoing, disclosure of the audio recording would harm substantial privacy interests. As discussed above, this remains true even though President Biden is a uniquely public figure. While courts recognize that public officials “may have a somewhat diminished privacy interest” given the nature of their role, they nonetheless emphasize that government officials “do not surrender all rights to personal privacy when they accept a public appointment.” *CREW*, 746 F.3d at 1092 (quoting *Quinon v. FBI*, 86 F.3d 1222, 1230 (D.C. Cir. 1996)). Accordingly, the D.C. Circuit has underscored that even high-ranking public officials who are associated with high-profile investigations retain weighty privacy interests protected by Exemption 7(C). *See, e.g., Judicial Watch*, 876 F.3d at 349-50 (recognizing that Secretary Hillary Clinton retained substantial privacy interests in non-public information from Independent Counsel’s Whitewater investigative files); *CREW*, 746 F.3d at 1092 (former Majority Leader of House of Representatives retained substantial privacy interest in the contents of an investigative file); *Fund for Const. Gov’t*, 656 F.2d at 864-66 (Watergate prosecution files).

C. Any Public Interest in Disclosure of the Audio Recording Does Not Outweigh the Privacy Interests at Stake Given the Substantial Amount of Information Already Available to the Public

On the other side of the balance, to overcome a privacy interest under Exemption 7(C), “a FOIA requester must (1) ‘show that the public interest sought to be advanced [by disclosure] is a significant one, an interest more specific than having the information for its own sake,’ and (2) ‘show the information is likely to advance that interest.’” *Boyd v. Crim. Div. of U.S. Dep’t of Justice*, 475 F.3d 381, 387 (D.C. Cir. 2007) (quoting *Favish*, 541 U.S. at 172). Where, as here, there is a “significant privacy interest in the contents of the . . . investigative files,” disclosure is

warranted “only where exceptional interests militate in favor of disclosure.” *Judicial Watch*, 876 F.3d at 350 (quoting *Fund for Const. Gov’t*, 656 F.2d at 866).

Critically, only certain public interests are cognizable under FOIA: “the only relevant public interest in the FOIA balancing analysis is the extent to which disclosure of the information sought would ‘shed light on an agency’s performance of its statutory duties’ or otherwise let citizens know ‘what their government is up to.’” *CREW*, 746 F.3d at 1093 (cleaned up) (quoting *FLRA*, 510 U.S. at 497). Thus, D.C. Circuit precedent requires that any public interest in disclosure be grounded on how release of the audio recording would inform the public about the activities of *Special Counsel Hur*, not on any conduct of President Biden. *See id.* (“[T]he relevant public interest is *not* to find out what [House Majority Leader] DeLay himself was ‘up to’ but rather how the FBI and the DOJ carried out their respective statutory duties to investigate and prosecute criminal conduct.”); *EPIC*, 18 F.4th at 720-21 (noting this principle “follow[s] decades of United States Supreme Court precedent,” and applying it to a FOIA case involving the report of Special Counsel Robert Mueller).

Because a plaintiff must show that disclosure “is likely to advance” a cognizable public interest, *see Boyd*, 475 F.3d at 387, an important consideration in the Exemption 7(C) analysis is whether the public already has access to substantial information about the topic. If fulsome information is already available, further disclosure that only marginally increases public understanding is unlikely to outweigh countervailing privacy interests. For example, as explained above, in *Judicial Watch*, the D.C. Circuit declined to order the production of a draft indictment of former Secretary of State Hillary Clinton, noting that the “[public] interest is greatly reduced . . . because of the voluminous information already in the public domain about the Independent Counsel’s investigation of . . . Mrs. Clinton,” including a final report by the Independent Counsel, a staff summary of the evidence, and information released by congressional committees. 876 F.3d at 350. “In these circumstances,” the court of appeals held that disclosure was inappropriate because “the incremental public interest in learning how the Independent Counsel carried out his investigation . . . by disclosure of a draft indictment appears slight.” *Id.*; *see also U.S. Dep’t of State v. Ray*, 502

U.S. 164, 178 (1991) (allowing withholding of additional information when the public interest had been “adequately served” by earlier release of redacted summaries of agency interviews).⁷

In light of the voluminous information already available to the public, disclosure of the audio recording would do little to meaningfully advance the public’s understanding of Special Counsel Hur’s investigation and his declination decision. *See Favish*, 541 U.S. at 175. First, the Department has released a copy of Special Counsel Hur’s final report, which explained his decisions and analyses. *See Hur Report*; *see also* 28 C.F.R. § 600.8(c) (requiring that “[a]t the conclusion of the Special Counsel’s work, he or she shall provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the Special Counsel”). The Hur Report is extensive: it comprises 345 pages of main text, more than 1,300 footnotes, and three appendices. It provides a detailed accounting of Mr. Hur’s investigation and decisions, including substantial discussion of the legal framework governing the handling of classified information, discussion of Mr. Hur’s investigatory steps and the evidence he uncovered, and detailed discussions of the reasons why Mr. Hur concluded that charges against President Biden would be unwarranted. *See generally* Hur Report, at 1-14 (executive summary). In addition, Mr. Hur publicly testified before Congress for more than five hours concerning his investigation and his decision to decline to recommend charges. Garland Ltr., at 3. Mr. Hur’s interview of President Biden is discussed many times in the Report. And, most importantly, the Department has already produced a

⁷ Courts outside of this Circuit apply a similar analysis. *See, e.g., Forest Serv. Emps. for Env’t Ethics v. U.S. Forest Serv.*, 524 F.3d 1021, 1028 (9th Cir. 2008) (“As a result of the substantial information already in the public domain, we must conclude that the release of the identities of the employees who participated in the Forest Service’s response to the Cramer Fire would not appreciably further the public’s important interest in monitoring the agency’s performance[.]”); *Off. of the Cap. Collateral Couns. v. U.S. Dep’t of Justice*, 331 F.3d 799, 804 (11th Cir. 2003) (finding that substantial public information was available about AUSA’s misconduct and that any “public interest in knowing how DOJ responded to [the AUSA’s] misconduct can be satisfied by this other public information”); *Associated Press v. U.S. Dep’t of Def.*, 554 F.3d 274, 293 (2d Cir. 2009) (“We conclude that the public interest in evaluating whether DOD properly followed-up on the detainees’ claims of mistaken identity have been adequately served by the disclosure of the redacted information[.]”).

verbatim written transcript of the interview.⁸ In light of this substantial amount of information already available to the public – including a written transcript of the recording that plaintiffs seek here – any additional benefit to the public of the release of the recording would be minimal. *See NASA*, 782 F. Supp. at 633 (upholding withholding of the *Challenger* audio recording given the “extremely speculative and subjective nature” of what additional information could be gleaned from an audio recording where “NASA has provided the public with a transcript of the tape”).

While the Report discusses the President’s interview and Mr. Hur testified that he relied in part on the audio recordings in reaching his decisions, *see* ECF No. 26, ¶ 18, that does not increase the weight of the public interest. To the contrary, these disclosures reduce the public interest in additional information. The cognizable public interest in the disclosure of the audio recording would be to help the public understand why Mr. Hur declined to recommend criminal charges, but that is already explained at length in other disclosures.

Moreover, the audio recording is only one piece of evidence among many that Mr. Hur considered and discussed in his report. During the course of the investigation, the Special Counsel’s Office “conducted 173 interviews of 147 witnesses” and “collected over seven million documents, including e-mails, text messages, photographs, videos, toll records, and other materials from both classified and unclassified sources.” Hur Report, at 29. In light of the extensive amount of evidence collected and analyzed by Mr. Hur, release of the audio recording – a single piece of evidence for which a written transcript is already available and that appears irrelevant to many of the asserted bases to decline prosecution – would do little to advance the public’s ability to evaluate Mr. Hur’s decisions, particularly given the substantial amount of other information available to the public. At bottom, “general public curiosity” about how President Biden sounded during the interview simply “is not enough” to warrant disclosure under Exemption 7(C). *Judicial Watch*, 876 F.3d at 350.

⁸ The Department applied a small number of redactions to the transcript to withhold specific information that is exempt under FOIA. Those are not challenged here. *See supra* 5 n.3.

III. **Because Release of the Audio Recording Can Reasonably Be Expected to Interfere With Law Enforcement Proceedings, the Department Properly Withheld the Audio Recording Pursuant to Exemption 7(A)**

The audio recording is also properly withheld under Exemption 7(A). That exemption allows an agency to withhold “records or information compiled for law enforcement purposes,” if disclosure “could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A). “Exemption 7(A) reflects the Congress’s recognition that ‘law enforcement agencies ha[ve] legitimate needs to keep certain records confidential, lest the agencies be hindered in their investigations or placed at a disadvantage when it [comes] time to present their case.’” *CREW*, 746 F.3d at 1096 (quoting *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 224 (1978)). To satisfy Exemption 7(A), an agency must show that disclosure of the requested law enforcement records “(1) could reasonably be expected to interfere with (2) enforcement proceedings that are (3) pending or reasonably anticipated.” *Mapother v. U.S. Dep’t of Justice*, 3 F.3d 1533, 1540 (D.C. Cir. 1993) (emphasis omitted). An agency may not “simply assert” that production would likely result in interference; rather an agency must “‘demonstrate *how* disclosure’ will do so.” *CREW*, 746 F.3d at 1098 (emphasis in original) (quoting *Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1114 (D.C. Cir. 2007)). “Exemption 7(A) explicitly requires a predictive judgment of the harm that will result from disclosure of information, permitting withholding when it ‘could reasonably be expected’ that the harm will result.” *Ctr. for Nat’l Sec. Studies*, 331 F.3d at 928.⁹ The Department has met its burden here, and can point to non-speculative, reasonably anticipated circumstances where the negative impact of disclosure would likely have significant adverse reverberations.

A. Disclosure of the Audio Recording Can Reasonably Be Expected to Interfere With Law Enforcement Proceedings

Attorney General Garland concluded, based on his personal consideration as the chief law enforcement officer of the United States, that disclosure of the audio recording “is likely to damage

⁹ As discussed above with respect to Exemption 7(C), the audio recording constitutes “records or information compiled for law enforcement purposes.” See *supra* 15; Weinsheimer Decl. ¶ 10. Accordingly, the threshold requirement for Exemption 7(A) is satisfied.

future law enforcement efforts.” Garland Ltr., at 1; *see id.* at 3-4 (“Production of these recordings . . . would raise an unacceptable risk of undermining the Department’s ability to conduct similar high-profile criminal investigations – in particular, investigations where the voluntary cooperation of White House officials is exceedingly important.”); *see generally id.* at 3-7 (discussing assertion of executive privilege over audio recording based on substantial risk of harm to law enforcement investigations). Courts regularly recognize that the potential to chill cooperation of witnesses is a type of harm that warrants withholding under Exemption 7(A). *See, e.g., Robbins Tire*, 437 U.S. at 225-26 (discussing legislative history regarding concern for premature disclosure of witness statements and resulting intimidation of witnesses); *Ctr. for Nat’l Sec. Studies*, 331 F.3d at 930 (upholding Exemption 7(A) withholding in part because witnesses “would be less likely to cooperate with the investigation” if their identities were disclosed); *Judicial Watch of Fla., Inc. v. U.S. Dep’t of Justice*, 102 F. Supp. 2d 6, 20 (D.D.C. 2000) (upholding Exemption 7(A) withholding after noting that the Department had indicated disclosure could, among other things, “discourage the continued cooperation of these witnesses”).

As the Attorney General explained, “[r]ecording interviews is a highly useful law enforcement tool.” Garland Ltr., at 5. Audio recordings allow investigators to conduct interviews with fewer persons present, “which can facilitate a more candid and robust engagement between investigators and the witness, including when sensitive information may be discussed,” they are a means “to ensure that a transcript accurately records the interviewee’s testimony,” and “they allow investigators and counsel to revisit certain elements of the interview by reviewing the audio recording or the transcript of that recording in light of subsequent investigative developments.” *Id.*; *see also* Weinsheimer Decl. ¶ 27. At the same time, “[t]he unique characteristics of audio recordings raise particularly pronounced concerns about chilling future cooperation.” Garland Ltr., at 5. The potential release of audio recordings “presents a unique intrusion, even when compared to the significant privacy interests that may be present in transcriptions,” and “that intrusion may be particularly severe when the recording is of a law enforcement interview – a consequential interaction conducted under criminal penalty for false statements – in a case where the interviewee has not

been charged with a crime.” *Id.*; *see id.* at 6 (recognizing “the disclosure of audio recordings presents a significant opportunity for misuse and possible manipulation”).

In light of these considerations, the Attorney General concluded that production of the audio recordings at issue here “poses an unacceptable risk of impairing cooperation in future high-profile investigations.” *Garland Ltr.*, at 6. Disclosure could lead critical witnesses in future high-profile investigations to “reasonably fear” that if they sat for a recorded interview, they too might hear their voice – during a moment of intense sensitivity – played on national television or made universally available on the internet. *Weinsheimer Decl.* ¶ 31. That fear could make them “less likely to cooperate with the Department’s investigatory efforts, including by refusing to sit for recorded interviews,” “[o]r they might cooperate less fully, such as by being less comprehensive in their answers during interviews.” *Garland Ltr.*, at 6. Either circumstance “would significantly impair the Department’s ability to investigate and prosecute such important matters.” *Id.* These are the same concerns about “chilling . . . cooperation with future Justice Department investigations” that Attorney General Mukasey expressed in his 2008 letter to the President. *See* 32 Op. O.L.C. at 11, 13. Accordingly, release of the audio recording “could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A).

B. Exemption 7(A) Textually Applies to the Audio Recording Here Because Similar Law Enforcement Proceedings are Reasonably Anticipated

To invoke Exemption 7(A), the D.C. Circuit requires that the government demonstrate that there are law enforcement proceedings that are either “pending or reasonably anticipated.” *Mapother*, 3 F.3d at 1540. In discussing this requirement, the D.C. Circuit has sometimes stated, based upon a statement in the Act’s legislative history, that the withheld material should “relate[] to a ‘concrete prospective law enforcement proceeding.’” *Carson v. U.S. Dep’t of Justice*, 631 F.2d 1008, 1018 & n.47 (D.C. Cir. 1980); *see, e.g., CREW*, 746 F.3d at 1097; *Juarez v. U.S. Dep’t of Justice*, 518 F.3d 54, 58 (D.C. Cir. 2008); *Bevis v. U.S. Dep’t of State*, 801 F.2d 1386, 1389 (D.C. Cir. 1986). In addition, the D.C. Circuit has held that Exemption 7(A) is “temporal in nature,”

CREW, 746 F.3d at 1097, such that “the relevant proceedings must be pending or reasonably anticipated at the time of the district court’s eventual decision, not merely at the time of [the] original FOIA request.” *Sussman*, 494 F.3d at 1115.

1. While Attorney General Garland’s letter places particular emphasis on potential harm to *future* investigations, there are also concrete, ongoing law enforcement investigations in which the Department anticipates that release of the audio recording could chill witness participation. Weinsheimer Decl. ¶ 34. In particular, as discussed in the Weinsheimer Declaration, the Department currently is engaged in ongoing matters for which there could be substantial public interest, and release of the audio recording here may make witnesses or potential witnesses in those investigations reasonably fear that if they sat for a recorded interview, audio recordings of their interview would ultimately be released to either Congress or the public. *See id.* ¶¶ 34-35. This fear could reasonably be expected to make witnesses (1) less likely to sit for an interview in the first instance, (2) less likely to consent to recording if they do sit for an interview, or (3) less forthcoming in their responses if they agree to sit for a recorded interview. *Id.* ¶ 35. Any of these results would interfere with ongoing law enforcement investigations. *Id.*

Exemption 7(A) may properly be asserted over the audio recording, even though it comes from a closed investigation, because release of the recording is expected to interfere with separate, ongoing investigations. The D.C. Circuit upheld an analogous Exemption 7(A) argument in *Center for National Security Studies*, in which the court of appeals held that the Department properly withheld the names of individuals who had been detained as part of the government’s investigation into the September 11 terrorist attacks. 331 F.3d at 920-21. More than 700 of those individuals had been detained on immigration charges, but at the time of the D.C. Circuit’s decision, less than 100 were still in custody. *Id.* at 921; *see id.* at 930 (noting that many detainees had been “released”). Accordingly, while some of those individuals could have still been subject to governmental monitoring, *see id.*, it is nearly certain that any “investigation” into at least some of those individuals had concluded. Yet, the D.C. Circuit held that the names of *all* the detainees was properly withheld

under Exemption 7(A) because release of the names as an aggregate could interfere with the government's ongoing counterterrorism investigations. *Id.* at 928; *see also Shapiro v. U.S. Dep't of Justice*, No. 12-cv-313, 2020 WL 3615511, at *16 (D.D.C. July 2, 2020) (upholding Exemption 7(A) withholding even though "the withheld documents may not have all come from active investigative files" when the agency only withheld information if release could be expected "to interfere with [other] ongoing enforcement proceedings").

2. Exemption 7(A) is also properly invoked because disclosure of the audio recordings "poses an unacceptable risk of impairing cooperation in *future* high-profile investigations where voluntary cooperation is exceedingly important, such as those involving White House officials." *Garland Ltr.*, at 6 (*italics added*). Although, as noted, some D.C. Circuit cases have suggested that the government ordinarily should satisfy Exemption 7(A) by pointing to a "concrete prospective law enforcement proceeding," *see, e.g., Juarez*, 518 F.3d at 58, the text of Exemption 7(A) is not so limited. Indeed, nothing in the text of Exemption 7(A) or in D.C. Circuit precedent should prevent its application to situations where information from a closed investigation would harm a future one that is "reasonably anticipated." As *Juarez* recognized, the call for "a 'concrete prospective law enforcement proceeding' . . . is not quite the formidable hurdle appellant would make it out to be" and is readily satisfied by showings of prospective law enforcement need. *Id.* at 59.

The justification behind the D.C. Circuit's expectation of a "concrete prospective" law enforcement proceeding is the belief that if the government cannot point to a specific ongoing or anticipated proceeding, then the disclosure of files from closed investigations is unlikely to cause harm. As the D.C. Circuit put it, "there [is] 'no reason to protect yellowing documents contained in long-closed files.'" *Mapother*, 3 F.3d at 1541 (quoting *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 870 (D.C. Cir. 1980)). In many circumstances, that makes sense: if an investigation is closed and all resulting proceedings have concluded, then the disclosure of facts contained in documents from the closed investigation will often not cause harm to other investigations, and that may be particularly true when other FOIA exemptions could prevent the release of the types of information that might be most expected to cause harm to future investigations.

But this case presents concerns different than the typical law enforcement investigation and prosecution. Even though Special Counsel Hur’s investigation has concluded, the nation’s chief law enforcement officer has determined that disclosure of the audio recording “poses an unacceptable risk of impairing cooperation in future high-profile investigations.” Garland Ltr., at 6. As the Attorney General noted, a “chilling effect” on potential witnesses “can extend to future investigations and thus may exist even if disclosure occurs only once an investigation ends,” and he concluded that this harm to future law enforcement interests justifies an assertion of executive privilege on that ground.¹⁰ *Id.* at 4 (citing 32 Op. O.L.C. at 10-11). As noted above, these concerns are not speculative: the Department is aware of specific, ongoing investigations in which witnesses declined to be audio recorded, suggesting they feared that their interview recording would be publicly disclosed in the future. Weinsheimer Decl. ¶ 34.

The Department reasonably anticipates that it will be called on in the future to engage in sensitive, high-profile investigations, including those that may involve White House or other senior government officials. Weinsheimer Decl. ¶ 32; *see id.* (noting that “[s]uch investigations have arisen in each of the last four administrations”). Release of the audio recording here poses heightened risks to witness cooperation in such investigations. Because of the high-profile nature of the Hur Investigation, disclosure of the audio recording of President Biden would predictably result in its widespread dissemination. Future officials (including in the White House) will be aware of the recording’s previous disclosure and any harms to privacy that resulted from that disclosure. Accordingly, if the audio recording is released here, it is reasonable to expect that witnesses in future high-profile investigations might worry that sitting for a recorded interview would result in

¹⁰ Because concerns related to potential harm to law enforcement investigations motivated the President’s assertion of executive privilege over the audio recording, the reasons supporting the audio recording’s withholding under Exemption 5 and Exemption 7(A) are similar, but not identical. Executive privilege is (as its name indicates) a recognized, constitutionally based privilege that would prevent regular disclosure of the audio recording in litigation, so Exemption 5 clearly applies. *See supra* 7-14. However, for the reasons stated here, Exemption 7(A) also applies because release of the audio recording “could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A). Accordingly, both statutory exemptions provide an independent basis to withhold the audio recording.

the recording – which reflects a sensitive interaction with law enforcement – being widely disseminated across television and the internet. *Id.* ¶¶ 31-32; *see* Garland Ltr., at 5 (noting concern regarding future investigations “where the voluntary cooperation of White House officials is exceedingly important”). The fact that the disclosure would occur even though the Special Counsel had determined that no charges were warranted would amplify that risk, allowing future witnesses to reasonably anticipate that even if no charges are filed as a result of the investigation, their recorded interviews with prosecutors might still become highly public. Weinsheimer Decl. ¶ 33. Accordingly, the Department’s considered judgment is that release of the audio recording could reasonably be expected to chill cooperation with reasonably anticipated future high-profile law enforcement investigations. *Id.*; Garland Ltr., at 5.

To the government’s knowledge, the D.C. Circuit has not yet considered the application of Exemption 7(A) in circumstances such as these. *Cf. Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 278 (2023) (“This Court has often admonished that ‘general language in judicial opinions’ should be read ‘as referring in context to circumstances similar to the circumstances then before the Court and not referring to quite different circumstances that the Court was not then considering.’” (quoting *Illinois v. Lidster*, 540 U.S. 419, 424 (2004))). The most analogous case is *Citizens for Responsibility and Ethics in Washington v. U.S. Department of Justice*, 658 F. Supp. 2d 217 (D.D.C. 2009). In that case, the Department asserted Exemption 7(A) over law enforcement records relating to an interview of then-Vice President Richard Cheney, raising similar arguments as the Department does here. *Id.* at 219, 225-30. Although the district court ultimately rejected the Department’s 7(A) argument in that case due to a lack of concrete, ongoing investigations, *id.* at 230, that decision is not binding on this Court, and for the reasons stated, the case for withholding the audio recording is even stronger. Accordingly, withholding is proper under Exemption 7(A).

3. For the reasons stated above, the audio recording may properly be withheld under Exemption 7(A) in a way that is consistent with D.C. Circuit precedent. However, if that precedent were construed to require the Department to identify a “specific” or “concrete” future law enforcement proceeding – such that reliance on expected harm to reasonably anticipated, future high-

profile investigations involving White House officials is not sufficient – then that precedent was wrongly decided, and the Department preserves its right to seek further review to correct it.

Any requirement that the Department identify a “specific” or “concrete” future law enforcement proceeding before asserting Exemption 7(A) is simply not present in the statutory text. *See Milner v. Dep’t of Navy*, 562 U.S. 562, 569-73, 580 (2011) (reversing decades-old interpretation of FOIA Exemption 2 when that interpretation did not comport with statutory text); *Food Mktg. Inst.*, 588 U.S. at 436-38 (similar with respect to interpretation of Exemption 4 that lacked textual basis but relied on legislative history); *see also Robbins Tire*, 437 U.S. at 232 (noting that the phrase “concrete prospective law enforcement proceeding” comes from a Senator’s floor statement). Under Exemption 7(A), the Department may withhold information from law enforcement files so long as disclosure “could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A). And the Supreme Court has expressly rejected the assertion that “determinations of ‘interference’ under Exemption 7(A) can be made only on a case-by-case basis.” *Robbins Tire*, 437 U.S. at 223; *see also id.* at 223-24 (“[S]ince subdivision (A) speaks in the plural voice about ‘enforcement proceedings,’ it appears to contemplate that certain generic determinations might be made.”); *id.* at 234 & n.15 (“Although Congress could easily have required in so many words that the Government in each case show a particularized risk to [an] individual ‘enforcement proceedin[g],’ it did not do so[.]”). Indeed, even the relevant floor statement must be “read in light of [its] primary concern”: ensuring that information is withheld only where its disclosure could interfere with prospective law enforcement efforts. *Id.* at 235; *see also id.* at 230 (recognizing that “the thrust of congressional concern in its amendment of Exemption 7 was to make clear that the Exemption did not endlessly protect material simply because it was in an investigatory file” and for which there was no articulated need for confidentiality).

As set out in Attorney General Garland’s letter and the Weinsheimer Declaration, release of the audio recording would lead to an unacceptable risk of hindering witness cooperation in future, high-profile investigations. Garland Ltr., at 5; Weinsheimer Decl. ¶¶ 22, 29. Courts regu-

larly recognize that impeding witness cooperation is a harm that justifies an Exemption 7(A) withholding. *See, e.g., Ctr. for Nat'l Sec. Studies*, 331 F.3d at 930. The Department reasonably expects that it will engage in future, high-profile investigations where the risk of this harm would be acute. Weinsheimer Decl. ¶ 32. The plain text of the statute does not require the Department to show anything more before it may assert Exemption 7(A). *See, e.g., Bates v. United States*, 522 U.S. 23, 29 (1997) (“[W]e ordinarily resist reading words or elements into a statute that do not appear on its face.”). Moreover, constitutional avoidance principles apply here for reasons similar to those discussed above. *See supra* 13-14.

IV. Disclosure of the Audio Recording Would Foreseeably Harm Interests Protected by FOIA Exemptions

Under the FOIA Improvement Act of 2016, in order to justify the withholding of a responsive record, the government must show that “the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b) [of FOIA],” or that “disclosure is prohibited by law.” 5 U.S.C. § 552(a)(8)(A)(i); *see Reporters’ Comm. for Freedom of the Press v. FBI*, 3 F.4th 350, 369-70 (D.C. Cir. 2021) (discussing foreseeable harm standard). Indeed, the amendment codified existing government policy that had been in place for years. *See id.* at 9 (noting that the policy was established by executive memoranda in 2009); S. Rep. No. 114-4 (2015), at 8 (same); Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 21, 2009) (presidential memorandum). And the Department already employed this standard when defending agency withholdings in litigation. *See* H.R. Rep. No. 114-391, at 9; *accord* Attorney General Holder’s Mem. for Heads of Exec. Dep’ts & Agencies Concerning the FOIA, at 1-2 (Mar. 19, 2009). As described by the D.C. Circuit, to satisfy the foreseeable harm requirement, the agency must “articulate both the nature of the harm [from release] and the link between the specified harm and specific information contained in the material withheld.” *Reporters’ Comm.*, 3 F.4th at 369.

Disclosure of the audio recording would foreseeably harm interests protected by each of the FOIA exemptions asserted here. Because the President formally asserted executive privilege over the audio recording in response to a congressional subpoena, release of the record here would

harm an interest protected by Exemption 5 (which covers material protected by executive privilege) by entirely vitiating the purpose of the privilege assertion, since Congress could have simply sought the record under FOIA rather than by subpoena. Furthermore, the President invoked executive privilege at the request of the Attorney General to prevent foreseeable harm to law enforcement investigations. *Garland Ltr.*, at 1; *Weinsheimer Decl.* ¶¶ 22, 48-50; *see id.* ¶¶ 23-35. For those reasons, release of the audio recording would harm interests protected by both Exemption 5 (via executive privilege) and Exemption 7(A). Release would also harm interests protected by Exemptions 6 and 7(C), because releasing the audio recording would result in unwarranted harm to privacy interests that an individual maintains in preventing the dissemination of an audio recording of an interview with a prosecutor. *See supra* 16-27; *see also Ecological Rights Found. v. EPA*, 541 F. Supp. 3d 34, 65 (D.D.C. 2021) (“[W]hen invoking Exemption 7(C), an agency need not establish much more than the fact of disclosure to establish foreseeable harm.”).

V. There Is No Reasonably Segregable, Non-Exempt Information

FOIA requires that “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.” 5 U.S.C. § 552(b). Here, there is one record at issue, and the Department has properly withheld it in full under multiple exemptions. In particular, the entire audio recording is subject to a formal claim of executive privilege, so the entire record is subject to Exemption 5. Moreover, because release of the record would unjustifiably infringe privacy interests related to the sound of an individual during a law enforcement interaction, the entire audio recording is properly withheld under Exemptions 6 and 7(C). Finally, because release of the audio recording could reasonably be expected to interfere with enforcement proceedings given the threat of chilling future witness participation, the record is properly withheld in full pursuant to Exemption 7(A). Accordingly, all information has been appropriately withheld in full, and there is no information to segregate. *See, e.g., Nat’l Ass’n of Crim. Def. Lawyers v. U.S. Dep’t of Justice*, 844 F.3d 246, 256 (D.C. Cir. 2016) (noting that

when an exemption applies to an entire record, “there are no non-exempt portions left to segregate”).

CONCLUSION

For the foregoing reasons, the Court should grant Defendant’s motion for summary judgment.

DATED: May 31, 2024

Respectfully submitted,

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

**CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON,**

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Case No. 1:24-cv-00700-TJK
(Consolidated Cases)

HERITAGE FOUNDATION, et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

CABLE NEWS NETWORK, INC., et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

DECLARATION OF BRADLEY WEINSHEIMER

I, Bradley Weinsheimer, declare the following to be true and correct:

1. I am an Associate Deputy Attorney General for the Department of Justice (“the Department”). I serve as the highest-ranking career official in the Department. I have held this position since July 2018. Prior to that time, I served in the Department’s National Security Division, from March 2016 to July 2018, serving as Acting Chief of Staff to the Assistant Attorney General from May 2016 until approximately February 2018. I have worked at the Department since 1991, including twenty years as an Assistant United States Attorney (“AUSA”) in Washington, D.C. As an AUSA, I handled a wide variety of narcotics, violent crime, and public corruption cases, and held numerous supervisory positions, including Chief of the Superior Court Division and Chief of the Grand Jury Section.

2. The statements made in this declaration are based on my personal knowledge as well as information obtained and reviewed in the course of my official duties, including conversations I had with Special Counsel Robert K. Hur (the “Special Counsel”) and members of his staff, as well as other individuals in the Department.

3. I understand that the plaintiffs in these consolidated cases all submitted Freedom of Information Act (“FOIA”) requests to the Department seeking an audio recording of an interview of President Biden, which is discussed further below. The Department has withheld the audio recording in full pursuant to FOIA Exemptions 5, 6, 7(A), and 7(C). I submit this declaration to provide detail and context concerning the Department’s invocation of these FOIA exemptions as they pertain to the audio recording.

The Hur Investigation and the Interview of President Biden

4. On January 12, 2023, Attorney General Merrick Garland appointed Robert K. Hur as Special Counsel. *See* Ex. 3, Order No. 5588-2023, *Appointment of Robert K. Hur as Special Counsel*. Mr. Hur was “authorized to conduct the investigation of matters that are the subject of the initial investigation . . . led by United States Attorney John R. Lausch, Jr., 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)." *Id.* ("SCO Investigation").

5. Mr. Hur resigned from his position of Special Counsel and left the Department in March 2024. I did not directly work on or oversee the SCO Investigation. I do, however, work on issues relating to disclosure of SCO Investigation documents both to Congress and pursuant to FOIA requests.

6. On February 5, 2024, Special Counsel Hur informed the Attorney General that Special Counsel Hur had concluded his investigation and furnished to the Attorney General a confidential 345-page report, plus appendices, in accordance with 28 C.F.R. § 600.9(a)(3) ("Hur Report"). As reflected in his report, Special Counsel Hur, "conclude[d] that no criminal charges are warranted[.]" Hur Report at 1.

7. I also participated in the review of the Hur Report to make recommendations as to what material, if any, should be redacted prior to congressional or public release by the Attorney General. President Biden did not assert executive privilege over any portion of the Hur Report or its appendices. *See* Ex. 4, February 8, 2024 Ltr. of Attorney General Merrick Garland, at 2 ("Feb. 8 Letter"). Attorney General Garland released to Congress and the public the Hur Report as it was provided to him by Special Counsel Hur without any further additions, redactions, or other modifications. *Id.* The Department has placed a copy of the Hur Report on its public-facing website. *See* 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., *available at* <https://www.justice.gov/sco-hur>.

8. During the course of the SCO Investigation, investigators conducted "173 interviews of 147 witnesses," and "collected over seven million documents, including e-mails, text messages, photographs, videos, toll records, and other materials from both classified and unclassified sources." Hur Report at 29. I understand that the Special Counsel Office's (SCO) standard

practice was to make audio recordings of witness interviews. I further understand there were no video recordings of any interview.

9. As part of the SCO Investigation, President Biden voluntarily agreed to sit for an interview with SCO. Special Counsel Hur and his Deputy Counsel conducted that interview (“the interview”). The interview occurred over the course of two days, October 8 and 9, 2023. Collectively, the interview lasted just over approximately five hours. Consistent with SCO’s general practice, the interview was recorded by audio, but not video.

10. Mr. Hur determined that it was important for the criminal investigation to have an audio recording of the interview so that the SCO would have a definitive source reflecting what exactly had been said during the interview. Accordingly, the Special Counsel requested that the interview be recorded, and President Biden voluntarily agreed to that request. Because the recording was created for these purposes during the course of a law enforcement investigation, the recording was compiled for law enforcement purposes.

11. The attendees at the interview included President Biden, Special Counsel Hur, the Deputy Special Counsel, representatives from the White House Counsel’s Office, President Biden’s personal attorneys, and limited Federal Bureau of Investigation (“FBI”) personnel. The interview was conducted in a space cleared for discussions up to the Top Secret level of classification. The individuals in attendance had appropriate clearances.

12. During the interview, FBI personnel operated two separate recording devices in the event one device malfunctioned and failed to record, which did not in fact happen. When questioning began, FBI personnel would turn on the recording devices, which would then be turned off during breaks in the interview. Consequently, while two audio recordings were made of the same interview, they are duplicative in that they recorded the same interview at the same time. I have personally listened to the entirety of the interview by listening to all of the audio recordings from both devices. The audio recordings I listened to are composed of several separate digital files. Even though the recordings I listened to are made up of separate digital files, I refer to the digital files collectively as “the audio recording” for simplicity.

13. After the interview, SCO created written transcripts of the audio recording with the assistance of a trained professional court reporter – one transcript for each day of the interview. I have read the entirety of the written transcripts of the interview. As I listened to the audio recording, I compared it to the transcripts of the audio recording and specifically listened for differences between the transcripts and audio recording. In a few instances, the transcripts indicate that some words from the audio recording are indiscernible. In listening to the audio recording and reviewing the transcripts, I agree that in those instances the words are indiscernible.

14. The interview transcripts are accurate transcriptions of the words of the interview contained in the audio recording, except for minor instances such as the use of filler words (such as “um” or “uh”) when speaking that are not always reflected on the transcripts, or when words may have been repeated when spoken (such as “I, I” or “and, and”) but sometimes was only listed a single time in the transcripts. Besides these exceedingly minor differences, based on my simultaneous review of the transcripts while listening to the audio recording, the transcripts accurately capture the words spoken during the interview on the audio recording with no material differences between the audio recording and transcripts. None of the minor differences include any audible substantive exchanges – that is, based on my review, there is no material omission of words between the audio recording and transcripts. Special Counsel Hur and FBI personnel who attended the interview and compared the audio recording to the transcripts also informed me of their determination that the transcripts accurately reflect the words spoken on the audio recording aside from the minor instances I described above. Special Counsel Hur emphasized to me that it was important for purposes of his investigation that the interview transcripts be accurate.

15. The audio files and transcripts were marked, maintained, and stored by SCO as Top Secret classified material. After the President’s interview, a copy of both written transcripts and a copy of the audio recording were made available to representatives of the White House Counsel’s Office, which made them available as appropriate to President Biden’s personal counsel. This enabled counsel to determine the accuracy of the transcripts.

16. Because the interview was treated as Top Secret, representatives of the White House Counsel's Office were required to keep the transcripts and the audio recording in a Sensitive Compartmented Information Facility ("SCIF"), which is a facility designed to store classified information. I understand that the interview transcripts and audio recording were maintained in a SCIF within the Executive Office of the President, which is where President Biden's personal counsel was permitted to review the audio recording and transcripts. The audio recording has remained at all times within the custody and control of the Executive Branch.

17. The Department has produced, both to Congress and pursuant to FOIA, redacted versions of the written transcripts of the interview and placed the transcripts on the Department's public-facing website. True and correct copies of the redacted transcripts are attached as Exhibits 1 (for October 8, 2023) and 2 (for October 9, 2023). I am aware of the process by which the transcripts were reviewed to determine what material should be redacted. Some of the redactions were made to remove sensitive information (including classified information) that was revealed during the interview, and the redacted transcripts were determined to contain no classified information. As of the time of this declaration, the audio recording remains a classified record maintained in a SCIF.

Congressional Subpoenas and Executive Privilege

18. On February 27, 2024, two Committees of the House of Representatives (the Committee on the Judiciary and the Committee on Oversight and Accountability) subpoenaed the audio recording of Special Counsel Hur's interview of President Biden. The Committees also subpoenaed another audio recording that is not at issue in these consolidated FOIA cases.

19. By letter dated May 15, 2024, Attorney General Merrick Garland informed President Biden that, with the advice of the Department's Office of Legal Counsel, he determined that the audio recording fell within the scope of executive privilege. *See* Ex. 5 ("Garland Letter"). The letter contained a detailed analysis discussing why executive privilege applies to the audio recording, *see id.* at 3-10, why the needs articulated by the Committees for the audio are "plainly insufficient to outweigh the deleterious effects that production of the recordings would have on the

integrity and effectiveness of similar law enforcement investigations in the future,” see *id.* at 1, and why executive privilege could therefore properly be asserted. Based on that analysis, Attorney General Garland requested that the President assert executive privilege over the audio recording. *Id.* at 1, 11.

20. On May 16, 2024, President Biden asserted executive privilege over the subpoenaed audio recording and instructed that it not be produced to the Committees. By letter dated May 16, 2024, Assistant Attorney General for Legislative Affairs Carlos Uriarte informed Representative Jim Jordan (Chairman of the Committee on the Judiciary) and Representative James Comer (Chairman of the Committee on Oversight and Accountability) that President Biden had done so. A true and correct copy of this letter is attached as Exhibit 6.

21. I understand that FOIA Exemption 5 generally authorizes the withholding of records that are privileged, *i.e.*, “that would not be available by law to a party other than an agency in litigation with the agency.” Because the President has asserted executive privilege over the audio recording, the Department would not make the recording available to a party in litigation with the Department.

Law Enforcement Implications

22. The Attorney General is the head of the Justice Department and the chief law enforcement officer of the federal government. As set out in the Garland Letter, the audio recording falls within the scope of executive privilege and its release presented an unacceptable risk to federal law enforcement interests and outweighed any congressional need for the files. Given that risk, the Attorney General requested that President Biden invoke executive privilege over the audio recording, and the President did so.

23. As the Garland Letter explains, “[m]aterials protected by executive privilege include materials contained in law enforcement files, over which the President ‘may invoke executive privilege to preserve the integrity and independence of criminal investigations and prosecutions.’” Garland Ltr., at 4 (quoting 32 Op. O.L.C. 7, 10 (2008)). “The law enforcement component of executive privilege protects against, among other things, ‘the potential damage to proper law

enforcement’ that would be caused by disclosure, including ‘the chilling effect’ on ‘sources of information.’” *Id.* (quoting 10 Op. O.L.C. 68, 76 (1986)). Further, “[t]his chilling effect can extend to future investigations and thus may exist even if disclosure occurs only once an investigation ends,” and, accordingly, “[t]he Department has long recognized . . . that executive privilege protects materials related to a closed criminal investigation where disclosure might hamper prosecutorial efforts in future cases.” *Id.*

24. Attorney General Garland applied these considerations and precedents to the facts and circumstances surrounding the audio recording of the interview and concluded that release of the audio recording would raise precisely these concerns. *See id.* Notwithstanding that the SCO Investigation had concluded, Attorney General Garland shared an “overarching concern” that animated a past assertion of executive privilege over law enforcement files, regarding “the prospect of committees of Congress obtaining confidential records from Justice Department criminal investigative files for the purpose of addressing highly politicized issues in public committee hearings.” *Id.* at 4-5 (quoting 32 Op. O.L.C. at 10-11). The Attorney General also described the “more specific concern” that production of the audio recording “might affect the Department’s ability to obtain vital cooperation in high-profile criminal investigations – in particular, in investigations where the voluntary cooperation of White House officials is exceedingly important.” *Id.* at 5.

25. In my experience as a prosecutor and Department official, interview subjects and their counsel understand and depend on the Department’s well-established and consistent practice of, to the greatest extent possible, maintaining the confidentiality of interviews except when introduced into the public record by official filings or proceedings, such as indictments or trials, or unless otherwise ordered by courts. In my experience and judgment, these considerations, including the expectation of confidentiality, factor into the decisions by an interview subject and their counsel about whether to sit for an interview and under what conditions.

26. The Attorney General also observed that “[t]here ‘is an admirable tradition, extending back through Administrations of both political parties, of full cooperation by the White House with criminal investigations,’” and that President Biden voluntarily agreed to the Special Counsel’s

request for a recorded interview, “[c]onsistent with this tradition.” *Id.* (quoting 32 Op. O.L.C. at 11). However, release of the audio recording here could threaten the continuation of that tradition: “if key witnesses in similar high-profile investigations expected that volunteering to sit for an interview and allowing that interview to be recorded would likely result in the release of that recording to Congress (and potentially the public), there is a significant risk that such witnesses would evaluate the Department’s request for cooperation differently in the future.” *Id.* “And an inability to secure cooperation, or a diminution in the degree and extent of cooperation, would significantly impair the Department’s ability to conduct similar high-profile investigations where cooperation is exceedingly important.” *Id.* Based on my experience as a career prosecutor and at the Department, I agree with this assessment.

27. As the Attorney General noted, and consistent with my own experience as a prosecutor, “[r]ecording interviews is a highly useful law enforcement tool, especially during high-profile or complex investigations.” *Id.* “Audio recordings enable investigators to limit the number of people physically present during interviews, which can facilitate a more candid and robust engagement between investigators and the witness, including when sensitive information may be discussed; they provide a mechanism for investigators and counsel for the witness to ensure that a transcript accurately records the interviewee’s testimony, as opposed to relying solely on an investigator’s notes; and they allow investigators and counsel to revisit certain elements of the interview by reviewing the audio recording or the transcript of that recording in light of subsequent investigative developments.” *Id.*

28. However, the nature of audio recordings during a law enforcement investigation also “raise[s] particularly pronounced concerns about chilling future cooperation” if released publicly. *Id.* As the Attorney General noted, and again consistent with my own experience as a prosecutor, “the disclosure of audio recordings can reveal characteristics that implicate privacy interests.” *Id.* “[R]elease of such recordings presents a unique intrusion, even when compared to the significant privacy interests that may be present in transcriptions.” *Id.* Furthermore, “that intrusion may be particularly severe when the recording is of a law enforcement interview – a consequential

interaction conducted under criminal penalty for false statements – in a case where the interviewee has not been charged with a crime.” *Id.* In addition, the disclosure of audio recordings “presents a significant opportunity for misuse and possible manipulation,” *id.* at 6, including by improper alteration of the recording, *see id.*

29. In light of those considerations, the Attorney General concluded that, “in [his] view, disclosure of the audio recording[] . . . poses an unacceptable risk of impairing cooperation in future high-profile investigations where voluntary cooperation is exceedingly important, such as those involving White House officials.” *Id.* “If witnesses in such investigations reasonably fear that materials like the recordings at issue here would subsequently be released to Congress or the public even when prosecutors declined to charge them with a crime, they may be less likely to cooperate with the Department’s investigatory efforts, including by refusing to sit for recorded interviews. Or they might cooperate less fully, such as by being less comprehensive in their answers during interviews.” *Id.* Under either circumstance, “this diminished cooperation would significantly impair the Department’s ability to investigate and prosecute such important matters.” *Id.*

30. I agree with these conclusions based on my experience as a career prosecutor and at the Department – which includes familiarity with the closed special counsel investigations overseen by Robert Mueller, John Durham, and Robert Hur. In each of those investigations, voluntary cooperation, or lack thereof, was exceedingly important.

31. Additional information regarding the Attorney General’s determinations regarding how disclosure of the audio recording would risk important law enforcement interests is set out in the Garland Letter. Based on my experience, I agree with those determinations as well. In explaining why executive privilege applied to the audio recording in this case, Attorney General Garland’s discussion focused on how disclosure of such a sensitive record could reasonably be expected to chill witness cooperation in future, high-profile investigations. *See* Garland Ltr. at 4-6. I concur that disclosure of the audio recording in this case could reasonably lead critical witnesses in future, high-profile investigations to fear that if they sat for a recorded interview, they too might hear their

voice – during a moment fraught with intense personal stress and privacy concerns – played on national television or universally available on the internet. As a result, such witnesses would be far less likely to cooperate by agreeing to an audio recorded interview. I therefore concur that disclosure of the audio recording here could reasonably be expected to interfere with future, high-profile law enforcement proceedings.

32. The Department reasonably anticipates that it will be called on in the future to engage in such sensitive, high-profile investigations, including those that may involve White House personnel or other senior government officials as witnesses. Such investigations have arisen in each of the last four administrations. The Department anticipates that release of the audio recording here would raise particularly acute threats of impeding witness cooperation in those anticipated, high-profile investigations. If the audio recording is released here, the Department expects there is a substantial risk that potential witnesses in these future high-profile investigations would reasonably worry that if they sat for a recorded interview with an investigator, the recording may be publicly released at the conclusion of the investigation even if no charges are brought or the recordings are not otherwise disclosed through official law enforcement proceedings. Given that such a recording would reflect a stressful and potentially difficult interaction with law enforcement, and that the recording likely would be widely disseminated if released, these fears could make potential future witnesses less likely to agree to a recorded interview with investigators. They might decline to sit for any interview, or they may not consent to the interview being recorded, or (even if they consent to a recorded interview) they may be more guarded and less candid in their answers. Any of these results would harm the Department's investigative efforts and ability to gather and rely upon factual information.

33. If the audio recording at issue here were released, that would exacerbate the foregoing concerns, because it would demonstrate to future witnesses that recordings of interviews may be released (and thus become highly public) even for investigations that result in no criminal charges. For these reasons and the reasons set out in the Garland Letter, the Department's

considered judgment is that release of the audio recording could reasonably be expected to chill witness cooperation with future high-profile law enforcement investigations.

34. The foregoing discussion, and the Garland Letter, emphasized potential harm to future investigations. In addition, the Department has law enforcement investigations that are currently ongoing for which release of the audio recording could reasonably be expected to chill witness participation in those investigations. This would prevent the government from developing factual information that often is gathered in witness interviews and would thereby interfere with the investigation. Specifically, the Department currently is engaged in ongoing investigations for which there is or could be substantial public interest, and release of the audio recording here could make witnesses or potential witnesses in these investigations reasonably fear that a recording of their interview with law enforcement may become public after the investigation closes. I am aware of ongoing investigations in particular in which witnesses declined to be audio recorded, suggesting they feared their interview recording would be publicly disclosed in the future. Such refusals reasonably would be expected to increase if witnesses believed an audio recording could be released in FOIA.

35. If an individual is asked to sit for an interview in a law enforcement investigation where the witness understands there is substantial public interest (or that there would be substantial public interest in the investigation if the public learned of the investigation's existence), then that individual might reasonably fear that a FOIA requester would be likely to seek the release of the audio recording, and that the recording might be released. Accordingly, this fear could reasonably be expected to make these witnesses or potential witnesses (in proceedings that are currently ongoing) less likely to either: (1) sit for an interview in the first instance; (2) consent to it being recorded; or (3) provide forthcoming and candid answers to questions. Any of these results would interfere with ongoing law enforcement investigations because the government would be prevented from developing factual information that often is important to the effective and efficient resolution of criminal investigations.

36. I understand that FOIA Exemption 7(A) generally authorizes the withholding of “records or information compiled for law enforcement purposes” to the extent that production of such records or information “could reasonably be expected to interfere with enforcement proceedings.” For the reasons discussed above, I concur that release of the audio recording could reasonably be expected to interfere with enforcement proceedings.

Privacy Concerns and Potential Public Interest in Disclosure

37. The potential release of an audio recording of a law enforcement interview also raises substantial privacy concerns. Those privacy concerns are at their apex when the subject of the audio recording was investigated but never charged with a crime, as is the case for President Biden. It is a bedrock principle of the U.S. justice system that individuals are entitled to a presumption of innocence. Release of law enforcement records that document sensitive interactions between an uncharged individual and law enforcement (such as an audio recording of an uncharged individual) pose substantial threats to that core tenet of American justice. Accordingly, the Department regularly seeks to protect citizens from any unwarranted intrusions of privacy that would occur due to the release of sensitive law enforcement records – particularly for individuals who were never charged with a crime.

38. Law enforcement interviews are highly stressful and consequential events. This is especially true when the person being interviewed is someone whose conduct is the subject of investigation. Such interviews can be wide-ranging and include personal or intensely private information that the witness would not otherwise be willing to share. Because criminal penalties are associated with making false statements to law enforcement personnel during the course of a federal criminal investigation, witnesses may feel compelled to provide more information to ensure their responses are complete and accurate, thus raising particular concern over release of an audio tape of that interview.

39. When a prosecutor conducts an interview as part of a criminal investigation, by its nature, the interview includes probing questions designed to elicit information to help the

prosecutor determine whether a crime was committed and if so, by whom. This was true of the interview of President Biden.

40. An audio recording also reflects the interviewee's verbal responses, including any pauses, hesitations, intonations, and mannerisms that occurred during that stressful and personal event. If released, those aspects of an individual's verbal responses could lead to an undue invasion of privacy and harassment. For example, members of the public who were not present for the interview and are not intimately familiar with details of the law enforcement investigation or the dynamics of the interview might point to speech mannerisms (such as hesitations or pauses) and unfairly speculate that those mannerisms demonstrate that the individual was being evasive or lying.

41. Such speculation would be unwarranted and not grounded in a detailed assessment of the facts and law that underlies the very purpose for recording an interview. That is, chief among the purposes for audio recording an interview is to create a clear record of the words said by the person being interviewed and how the person said them. In light of all the facts revealed during the investigation, and a determination of applicable law, the prosecutor may listen to the audio recording while making final charging decisions.

42. Given this, the release of an audio recording of a law enforcement interview raises especially acute privacy concerns, particularly if the conduct of the witness was the subject of an investigation but the witness was not charged with a crime. In a criminal prosecution, a trial will be public, and evidence developed in the investigation will become public. Defendants are afforded procedural protections to ensure not only due process but to safeguard important privacy and reputational interests. When no charges are filed, however, people interviewed as part of the investigation typically can expect that information they provided during the course of the investigation will be kept confidential, especially when that information may be highly personal. For that reason, the Department takes great care to protect its law enforcement files, consistent with the law, even in closed cases, remaining sensitive to the privacy and reputational interests of uncharged parties. In light of these privacy concerns (as well as other concerns relevant to law enforcement), publicly

disseminating through FOIA the audio recording of a law enforcement interview of an uncharged individual in these circumstances would be unprecedented and exceedingly harmful.

43. The possibility of malicious manipulation of audio files increases the risk that release of an audio recording could lead to substantial harm to personal privacy interests. Audio files can be improperly altered, and the altered files can be passed off as authentic recordings. These concerns are particularly apparent in the context of releasing an audio recording of a high-profile individual such as President Biden. If the recording of President Biden’s interview were released, there is a substantial risk that malicious actors could alter the recording to (for example) insert words that President Biden did not say or delete words that he did say.

44. In addition, this problem has been substantially exacerbated in recent years given that there is now widely available technology that can be used to create entirely different audio “deepfakes” based on a recording. *See, e.g.,* Verma & Oremus, *AI voice clones mimic politicians and celebrities, reshaping reality*, Wash. Post, Oct. 15, 2023 (“Rapid advances in artificial intelligence have made it easy to generate believable audio, allowing anyone . . . to copy somebody’s voice – leading to a flood of faked content on the web[.]”); Leffer, *AI Audio Deepfakes Are Quickly Outpacing Detection*, Scientific American, Jan. 26, 2024 (noting that it is now “trivial” to create a convincing audio deepfake, that there are services that cost “\$5 per month” and allow someone to “type and get convincing audio in a few seconds,” that “[t]here is no barrier to entry or technical skill involved,” and that it is very difficult to detect an audio deepfake); Collier & Cui, *Why AI-Generated Audio Is So Hard To Detect*, NBC News, Feb. 4, 2024 (noting “[t]he technology to produce a convincing audio recording of a person speaking is constantly getting better and has become widely available with a simple online search,” and discussing an instance of a faked audio recording of President Biden that was sent as a robocall to Democratic voters in New Hampshire).

45. While the source material to create an audio deepfake of President Biden’s voice is already available, release of the recording of his interview with Special Counsel Hur would make it far more likely that malicious actors could pass off a deepfake as the authentic recording. If the audio recording is released, the public would know that the audio recording of the interview

is available and malicious actors could create an audio deepfake in which a fake voice of President Biden can be programmed to say anything that the creator of the deepfake wishes. That deepfake could be passed off as an authentic copy of the recording and widely disseminated. In contrast, if the audio recording is *not* released, the Department or others would be much better able to establish the illegitimacy of any malicious deepfake. Accordingly, release of the recording of President Biden's interview with Special Counsel Hur would cause easily foreseeable and heightened privacy concerns.

46. The Department has made substantial information concerning the Hur Report available to the public. Department regulations require that “[a]t the conclusion of [a] Special Counsel’s work, he or she shall provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the Special Counsel.” 28 C.F.R. § 600.8(c). At the conclusion of the SCO investigation, Special Counsel Hur submitted the Hur Report to Attorney General Garland pursuant to that regulation. The Hur Report contains a detailed accounting of the SCO investigation and the reasons why Special Counsel Hur concluded that criminal charges were unwarranted. As mentioned above, the Department has placed a copy of the Hur Report on the Department’s public-facing website. The Department has also produced (both to Congress and pursuant to FOIA) the transcripts of the interview of President Biden with limited redactions. These public disclosures were discretionary; the Department did not make all withholdings or apply all redactions available under FOIA. In addition, the Department and Special Counsel Hur agreed that Mr. Hur would testify before Congress about his investigation, and Mr. Hur appeared and answered questions for more than five hours during a public hearing about his investigation and his charging decisions. Disclosing the Hur Report without any added redactions (and the transcripts of President Biden’s interview with limited redactions) ensured appropriate transparency without compromising the substantial privacy interests of those who were witnesses, subjects, or targets of the investigation.

47. I understand that FOIA Exemption 7(C) generally authorizes the withholding of “records or information compiled for law enforcement purposes” to the extent that production of

such records or information “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” In light of the clear harm to privacy interests that would result from release of the audio recording, and given that release of the recording would do very little to advance the public’s understanding of Special Counsel Hur’s activities given the substantial amount of information already in the public record, I have concluded that release of the audio recording clearly would result in an unwarranted invasion of personal privacy.

48. I also understand that FOIA generally directs agencies to withhold records only where “the agency reasonably foresees that disclosure would harm an interest protected by” one or more of FOIA’s exemptions.

49. I have concluded that release would result in foreseeable harm to the interests underlying the claimed FOIA exemptions for all the reasons I have described above. There would be foreseeable and concrete harm by release of a document over which the President has asserted executive privilege. Not only would it be contrary to a litigation privilege available to the government, its disclosure in a FOIA case would harm the separation of powers between the Branches by enabling Congress to evade a presidential assertion of executive privilege by submitting a FOIA request. Similarly, I have described at length the law enforcement harms that would result from the disclosure of the audio recording, including the likelihood that such disclosure will chill the cooperation of witnesses in ongoing and future investigations. The foreseeable harm to personal privacy is also apparent, as information about uncharged individuals who cooperate with law enforcement is entitled to the utmost privacy protection.

50. I also have determined that the audio recording must be withheld in full in order to protect the foreseeable harms identified above. Accordingly, because the entire record is exempt, segregation is not possible.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 31st day of May, 2024.

A handwritten signature in blue ink, appearing to read "Bradley Weinsheimer", written over a horizontal line.

Bradley Weinsheimer

EXHIBIT 1

[REDACTED]

DRAFT

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RECORDED INTERVIEW BETWEEN

SPECIAL COUNSEL ROBERT HUR (SCO), DEPUTY SPECIAL COUNSEL
MARC KRICKBAUM (SCO), ASSISTANT SPECIAL COUNSEL (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C) (SCO), SUPERVISORY SPECIAL AGENT (b) (6), (b) (7)(C) (FBI),
SPECIAL AGENT (b) (6), (b) (7)(C) (FBI), EDWARD SISKEL (WHC),
RICHARD SAUBER (WHC), RACHEL COTTON (WHC),
ROBERT BAUER (PC), DAVID LAUFMAN (PC)
and PRESIDENT JOSEPH R. BIDEN, JR.

Files: 231008_1215, 23108_1324, 231008_1216

Date of Interview: October 8, 2023

[REDACTED]

[REDACTED] DRAFT

2

R E C O R D I N G

1
2 SA (b) (6), (b) (7)(C): The date is October 8, 2023. The
3 time is approximately 12:15 p.m. And this is an interview
4 with President Joseph Biden.

5 MR. HUR: Thank you, (b) (6), (b) (7)(C). Good morning
6 everybody. Mr. President, thank you for your time.
7 Actually, it's technically afternoon. Good afternoon.

8 Thank you very much for being here; we appreciate
9 your time very much. I think, just for clarity of the
10 record, I should quickly go around and make a note of
11 everyone who's here. I'm Rob Hur, the special counsel,
12 joined by Marc Krickbaum and (b) (6), (b) (7)(C), also with the
13 Special Counsel's Office. And we're joined by two FBI
14 agents, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C).

15 President Biden, obviously, you're here. Thank
16 you very much. You're joined by members of the White House
17 Counsel's team: White House Counsel Ed Siskel, Dick Sauber
18 and Rachel Cotton, and also your two personal counsel, Bob
19 Bauer and David Laufman. Have I missed anybody who is not
20 seated at the table?

21 UNIDENTIFIED MALE SPEAKER: No.

22 MR. HUR: All right, good. Well, then, with that,
23 I have some preliminary matters to go over briefly, but
24 before I do that, do you all have anything else you'd like
25 to say before we jump in?

1 [0:01:19.5]

2 UNIDENTIFIED MALE SPEAKER: No.

3 PRESIDENT BIDEN: No.

4 MR. HUR: Okay. All right. Well, Mr. President,
5 I do want to take an additional minute and thank you for
6 being here and making this time for us. I know there's a
7 lot of other things in the world going on that demand your
8 attention.

9 PRESIDENT BIDEN: We may be interrupted by one.

10 MR. HUR: Understood. Understood.

11 PRESIDENT BIDEN: I don't -- I hope not.

12 MR. HUR: We hope not too.

13 PRESIDENT BIDEN: I just got off the phone with
14 Bibi Netanyahu.

15 MR. HUR: Yes, sir. So I also wanted to say that
16 we know that you have provided significant cooperation with
17 our investigation, and I wanted to personally recognize that
18 and thank you for it.

19 PRESIDENT BIDEN: The FBI knows my house better
20 than I do.

21 (Laughter)

22 MR. HUR: I'm not sure about that, sir.

23 PRESIDENT BIDEN: I'm pretty sure.

24 MR. HUR: I hope it's been obvious during the
25 months that we've been at work that my goals have been to --

[REDACTED] DRAFT

4

1 [0:02:14.2]

2 MR. HUR: -- do a thorough and professional job,
3 but also to do it as swiftly as possible. And your
4 cooperation has been very helpful in us trying to achieve
5 all of those goals, especially the efficiency of our, of our
6 investigation.

7 On the topic of cooperation, you know, as federal
8 prosecutors, we do assess cooperation at the end of an
9 investigation. Obviously, your willingness to sit for this
10 interview today and tomorrow and answer our questions is
11 part of that cooperation. It's obviously very important to
12 answer our questions truthfully. And we appreciate very
13 much your willingness, and we hope that you will be able to
14 -- that you'll put forth your best efforts and really try to
15 get your best recollection in response to the questions we
16 ask, because I acknowledge that some of the questions we are
17 asking relate to events that happened years ago.

18 PRESIDENT BIDEN: I'm a young man, so it's not a
19 problem.

20 (Laughter)

21 MR. HUR: Okay, great. Glad to hear it.

22 A couple of other ministerial notes. I may ask a
23 question that is unclear or badly phrased. I sometimes do
24 that; I often do that. If I ever ask a question that you
25 don't quite understand, you don't -- you need clarification,

1 [0:03:32.5]

2 MR. HUR: -- then you should say, I don't
3 understand what you're saying. You should ask me to try to
4 clarify it and I'll take another crack at it.

5 PRESIDENT BIDEN: Okay.

6 MR. HUR: And then should you ever want to take a
7 break today or tomorrow --

8 PRESIDENT BIDEN: By the way, there's a restroom
9 right behind us.

10 MR. HUR: Oh, thank you.

11 PRESIDENT BIDEN: For the rest of you as well.

12 MR. HUR: Good to know. Thank you.

13 Should you ever want to take a break during the
14 interview, including to confer with members of the White
15 House Counsel's office or your personal counsel, all you got
16 to do is just let us know that and we'll take a break.

17 PRESIDENT BIDEN: Okay.

18 MR. HUR: All right.

19 MR. BAUER: Rob?

20 MR. HUR: Yes.

21 MR. BAUER: On the question of clarity, the
22 question -- we don't want to interrupt the flow.

23 MR. HUR: Um-hmm.

24 MR. BAUER: Of course, if Ed or I have any
25 uncertainty about what you're asking --

1 [0:04:07.5]

2 MR. HUR: Sure.

3 MR. BAUER: -- we may also ask for clarity about
4 the question.

5 MR. HUR: I would be surprised if you did not,
6 Bob.

7 MR. BAUER: I'm confident of that.

8 MR. HUR: Okay. All right. Any other
9 preliminaries before we jump in? Okay.

10 Well, Mr. President, normally, we start these
11 kinds of interviews by asking the witness to tell us a
12 little bit about their background. You probably have had
13 your background documented as well or better than any other
14 person on the planet today, so we will not be asking you to
15 take us back to Scranton.

16 We will be asking you to take us back to more
17 recently, back to the end of the Obama Administration, so
18 January of 2017. So if you could cast your mind back to
19 that time, you, at that point --

20 PRESIDENT BIDEN: Piece of paper?

21 MR. BAUER: Yes, of course. Here.

22 MR. HUR: You, at that point, were about to become
23 a private citizen for the first time in 40 years. That
24 would be the first time in four decades that you were not
25 going to be in government service. So could you just --

1 [0:05:09.4]

2 MR. HUR: -- tell us a little bit about what you
3 were planning on doing with your time as a private citizen?
4 What kind of projects and pursuits you were thinking about
5 engaging in? And, a note about this question, I am thinking
6 about public, external-facing pursuits as opposed to
7 personal, family- oriented pursuits, if that helps narrow
8 the category of things that you can talk --

9 PRESIDENT BIDEN: I was going to become a
10 professor at the University of Pennsylvania, and I was
11 working at the University of Delaware for the Biden School
12 on domestic policy.

13 MR. HUR: Um-hmm.

14 PRESIDENT BIDEN: And so my objective was to stay
15 engaged in public policy debate and teach.

16 By the way, I taught before, when I was a senator,
17 on Saturdays for a number of years. I taught at Delaware
18 Law School. I taught a course on constitutional law on
19 Saturday mornings. So it was -- I wanted to continue that
20 kind of work.

21 MR. HUR: Understood. So with respect to your
22 professorship and the Penn Biden Center, how much of your
23 time did you anticipate spending on that post-vice
24 presidency?

25 PRESIDENT BIDEN: All of it.

1 [0:06:18.7]

2 MR. HUR: All of it?

3 PRESIDENT BIDEN: Yeah, I mean, it was a job. How
4 much time do you expect to spend on your -- I'm not being
5 facetious. I mean, I wanted to have recreation -- other
6 things, I don't mean that. But this was going to be my job.

7 MR. HUR: And how did your participation in the
8 efforts of the Biden Institute factor into that as well?

9 PRESIDENT BIDEN: Well, that was part of it as
10 well, and Penn knew that I was working with the Biden
11 Institute on domestic policy. And the real advantage I had
12 in the Penn job was they gave me money to hire staff. So I
13 was able to hire some first-rate people like the Secretary
14 of State now. He's my Secretary of State. He was working
15 for me at the Penn Center, at the Penn Biden Center. And so
16 it was, you know, it was about being engaged in matters that
17 I thought were still consequential. Domestic policy was
18 related mainly to matters having to do with the Judiciary
19 Committee and economic policy. And at Penn, it was mainly
20 to on foreign policy.

21 MR. HUR: One of the other things that we know
22 that you spent some -- a significant amount of time doing
23 after the end of your vice presidency was writing a book,
24 *Promise Me, Dad*. So when you were thinking about writing
25 that book at the end of your vice presidency, how much time

1 [0:07:39.1]

2 MR. HUR: -- did you anticipate that would take of
3 yours?

4 PRESIDENT BIDEN: I didn't anticipate. I couldn't
5 -- it took more time than the first book I wrote. I wrote a
6 best seller early on, it was on the Best Seller's list. And
7 then what I wanted to do was write a book about my son,
8 because he was a remarkable man, and I wanted to -- my
9 grandchildren and great-grandchildren and family to
10 understand who he was and have some documentation of it. I
11 wasn't writing it at the time thinking that it was going to
12 sell, you know, it was going to be a best seller, that kind
13 of thing.

14 I wanted people to know what a normal -- this is a
15 guy, you know, on his death bed grabbed my hand and said,
16 dad, I'm not afraid, don't -- promise me, dad, promise me,
17 dad, you'll stay engaged, promise me. Because he knew how
18 much I adored him, and he was worried I'd sort of walk away
19 from everything I'd always worked on. So I wanted people to
20 know what kind of man he was.

21 MR. HUR: And we're going to be talking about
22 *Promise Me, Dad* more further on, and tomorrow as well. But
23 please just allow me to say for a moment, I am so terribly,
24 terribly sorry for your loss.

25 PRESIDENT BIDEN: You know, a lot of people --

1 [0:09:01.1]

2 PRESIDENT BIDEN: -- have, have had similar
3 losses, or worse, without the kind of support I had. I have
4 a family that's an incredible family. And -- so I had -- I
5 just know that -- I wonder all the people out there -- I've
6 written about and talked about. So many brave people who
7 get up every morning and put one foot in front of the other.
8 And I don't know how the hell they do it. Just, just keep
9 moving forward. But I had a lot of help.

10 MR. HUR: One other thing we understand you spent
11 significant time on, I think toward the end of your vice
12 presidency as well as post-vice presidency, was the Biden
13 Cancer Initiative.

14 PRESIDENT BIDEN: Yes.

15 MR. HUR: Also known as the Cancer Moonshot. So,
16 can you tell us about your thinking in January 2017 about
17 how much time that was going to take of yours, and its
18 relative priority to other things that you were working on.

19 PRESIDENT BIDEN: It was high priority, and that's
20 one of the reasons why I liked Penn as well. Penn has a
21 great medical school, and a great cancer research facility
22 up there. And I talked with the president at Penn, and I
23 talked to the people at the school, and Beau had engaged
24 with them as well as a patient. And so -- the great thing
25 about Penn, it wasn't a straight line. I had access to --

1 0:10:28.2

2 PRESIDENT BIDEN: -- a whole range of experts who
3 could help me on the things, or I thought I could help --
4 they thought I could be added value, I think, as well. But
5 -- and the way that came about was, I -- in order to try to
6 deal with what Beau was facing, I visited every major cancer
7 research facility in the world, the world, with one
8 exception, to interview and find out about what they knew
9 about glioblastoma, what they knew about various -- because
10 I am still convinced -- I am still working on the Cancer
11 Initiative to -- what I found was that cancer docs are
12 incredible, but a lot of them walk by that mirror looking at
13 themselves as a Pulitzer Prize of -- a Nobel Prize about to
14 be won. They don't share data and information very much.
15 So under the Obama Administration, he told me I could begin
16 the research, see what we should be doing as an
17 administration to deal with cancer.

18 And what I did find out was there's very little
19 collaboration, and -- even on projects where there's a lot
20 of money the federal government puts out for research
21 projects. And the deal is, you're supposed to, once that
22 project is finished, publish it. Well, the vast majority
23 don't publish it for a long time, and they never publish
24 their failures. No -- look, when I say -- not their
25 failure, when they didn't reach the conclusion they were --

1 [0:12:08.7]

2 PRESIDENT BIDEN: -- looking for. And you learn
3 more from that as you learn anything else. So one of my --
4 and the President gave me *carte blanche* to engage any member
5 of the Administration. So, for example, we used to have
6 meetings at NIH where there was all the medical -- what I
7 did, I made sure that the Defense Department was there. I
8 made sure that the, the -- NASA was there. NASA knows more
9 about, about dealing with some of the things that have to do
10 when working that cancer. Many people die trying to -- when
11 they kill the cancer, they use a proton -- anyway.

12 So there are all kinds of things. And I wanted, I
13 wanted the Defense Department in there because they had
14 computers -- a million billion calculations per second. And
15 no medical facility had that. So I've tried to give every
16 resource that I've learned - I'm no doctor - I've learned
17 theoretically could be added value in determining what was
18 the source of certain cancers, and therefore, cures. So
19 that's how I got so deeply engaged in that.

20 MR. HUR: Understood. So, let me shift gears here
21 slightly. We've talked about the kinds of efforts and
22 initiatives that you were thinking about spending time on
23 after the end of your vice presidency. Could you tell us
24 what you were thinking back at the time, in January 2017,
25 about where you planned to spend your time? So we --

1 [0:13:43.9]

2 MR. HUR: -- understand that you, you rented a
3 home on Chain Bridge Road in McLean, Virginia.

4 UNIDENTIFIED MALE: Yeah.

5 MR. HUR: You obviously still have the lake house
6 in Wilmington at that time. At some point, you acquired the
7 beach home in Rehoboth. So there were a number of different
8 places where you could lay your head after the end of your
9 vice presidency. How did you think about where you were
10 going to be spending time?

11 PRESIDENT BIDEN: Well, I didn't think about the
12 beach house because I didn't have the capacity to -- for 36
13 years, I was listed as the poorest man in Congress. I mean,
14 literally listed by that rating. And I did fine, because I
15 had my salary. So I never thought of that. I commuted
16 every day.

17 But the reason for Penn wanting me to have a
18 facility in Washington was, they wanted me to continue to
19 engage with Congress and the Senate, presidency, and the
20 administrations -- each administration in debates about what
21 the foreign policy issues were. And so I was -- they had
22 often set up for me to be guest lecturers in Europe, or
23 wherever it was, to continue to engage in the fundamental
24 debates about the future of the foreign policy of the United
25 States.

1 [0:15:06.8]

2 PRESIDENT BIDEN: So that's why -- and, if you
3 notice, the Penn Biden Center was as close as you get to the
4 Capitol without being on the Capitol grounds. It had
5 conference rooms, and the like, so I could bring down
6 people. And they'd come down and debate issues like they do
7 in other fora, like the Council on Foreign Relations. That
8 was sort of the generic model.

9 MR. HUR: And given that, was that the, I suppose,
10 the reason for you to have a home in the Washington, D.C.
11 area?

12 PRESIDENT BIDEN: Yeah. Yeah. Yes, because my
13 wife was still teaching. In order for her to be able to
14 continue to teach at Northern Virginia Community College.
15 And rather than have her commute. And if I had gone back
16 and located in Delaware permanently, I wouldn't have had the
17 reach.

18 I'd been -- I'd be traveling a lot down here and
19 in other areas to not just engage American diplomats, but to
20 engage foreign diplomats to come and talk about foreign
21 policy.

22 MR. HUR: Understood.

23 PRESIDENT BIDEN: And with -- expose students too.
24 I mean, that was the whole idea here, expose the Penn
25 students to these opportunities.

1 [0:16:19.3]

2 MR. HUR: Okay. Any other questions on that
3 general overview?

4 All right. I'd like to move onto the next topic,
5 which generally is going to cover questions about your
6 handling of classified information and materials during your
7 vice presidency. And let me try to frame the following set
8 of questions for you. We do understand -- we well
9 understand that the President and the Vice President in our
10 system of government are the ultimate consumers of
11 intelligence and classified information. And in order for
12 you to properly do your constitutional duties, you have to
13 have ready and convenient access to classified information.

14 So part of the reason we've been talking to so
15 many people during the course of our investigation is, we're
16 trying to get a better sense of how vice presidents, and you
17 particular when -- you in particular when you were Vice
18 President, how you stored and accessed that information,
19 given that the handling rules, the classified handling rules
20 that apply to every other human being in government don't
21 necessarily apply to the President and Vice President.
22 Those two folks are different.

23 All that being said, in the end, we have to write
24 a report that explains how and why certain classified
25 documents got to where they got. So, part of why we're --

1 [0:17:52.0]

2 MR. HUR: -- asking this next set of questions,
3 and we've been talking to so many of the people we've talked
4 to is, we are just trying to understand the paper flow of
5 classified information. How does it get to a Vice
6 President? How did it get to then- Vice President Biden?
7 And then where did these documents go from there?

8 So it's -- that's the reason -- that's the
9 relevance of this next set of questions of that whole topic
10 to our investigation. So all that said, we hope that you
11 can share with us your recollections about how you handled
12 classified and those paper flows and processes during the
13 time that you were the Vice President.

14 So, we understand that, due to the sheer volume of
15 paper and the need to send material to Archives after, after
16 you're done with them, your papers were constantly being
17 collected by members of your staff. And new materials were
18 being provided to you. And part of the way that that
19 happened was that you received binders on a near-daily
20 basis. Sometimes they were unclassified binders; sometimes
21 they were classified binders. And this is, I suppose, a
22 more higher level, more general question.

23 I could see how there might be a tension between,
24 on the one hand, your staff being eager to collect that
25 stuff from you, make sure it's properly disposed of and --

1 [0:19:16.9]

2 MR. HUR: -- then sent to Archives, or whatever
3 needs to happen to it. But on the other hand, you may say,
4 well, I'm not done with that. I need, I need to read that
5 more than once; I need to hang onto it for a little bit; I
6 need to digest it so I can properly incorporate it into my
7 thinking and my decision making. And so I could understand
8 -- and I think we've got an understanding of those two
9 competing dynamics.

10 So with that framing, when you were Vice President
11 and you received classified documents that you wanted to
12 hang onto for a bit -- it wasn't just a, read it once and
13 send it on type thing. You wanted to hang onto it for a
14 little longer. How would you -- how did you handle that?
15 How did you store those materials, and how did it eventually
16 get returned to where it needed to go?

17 PRESIDENT BIDEN: Look, first of all, the binders
18 you talk about were binders that were for the Presidential
19 Daily Brief. It was a blue bag that has a lock on it that
20 comes over. It has a computer in it, and it has a -- I
21 mean, a laptop kind of deal. And it has a binder with the
22 -- all the most important -- I could show you one today, but
23 of the events of the day. So, it'd be Tab 1, 2, 3, 4, and
24 it will have a listing of what they are.

25 Almost everything, with minimal exceptions, in --

1 [0:20:53.7]

2 PRESIDENT BIDEN: -- that is classified. And so I
3 would sit there and either read that with other personnel.
4 We have a -- what they call a PDB, Presidential Daily Brief,
5 which I would attend. Or I would be reading it myself. And
6 when I took notes, I would take notes on the paper most of
7 the time to remind myself what I wanted to follow up on.
8 And then I'd sit with my national security team, and say we
9 should follow up on this, find out more about whether or
10 not, you know, who killed Cock Robin, you know, and find
11 out.

12 And so the binders like this that I received, I
13 mean, you know, a binder would be handed this way. I don't
14 recall getting a whole lot of those binders, and -- like,
15 something like you're handing me today. It would be the
16 Presidential Daily Brief that would have it.

17 But lots of times what I get is, I get briefed
18 from my national security advisor, I get briefed by my, my
19 -- whoever was handling various aspects of foreign policy
20 for me. And that's how I'd get -- they'd come in and they'd
21 have, you know, five papers in their hand. And they'd say,
22 here's a copy for you, let's go over what we're doing here.

23 That was the way -- I mean, I got very little
24 material that had on the front of it, you know, classi --
25 with the yellow or -- I mean, the red boundary on it, or --

1 [0:22:37.6]

2 PRESIDENT BIDEN: -- the blue one, whatever. I
3 got very little of that other than through the PDB that I
4 recall. Anything that had that on it, what I would do when
5 I finished it, I'd leave it on the desk and they'd collect,
6 they'd collect it, take it in.

7 And -- I'm trying to -- does that answer your
8 question?

9 MR. HUR: It's very helpful. I have a follow-on
10 question.

11 PRESIDENT BIDEN: Sure.

12 MR. HUR: Which is -- so let's focus on the PDB
13 materials, which I think you said had an electronic
14 component to it, like --

15 PRESIDENT BIDEN: Yeah, I never used that one.

16 MR. HUR: Okay. But there were also paper, hard
17 copy --

18 PRESIDENT BIDEN: It was a binder.

19 MR. HUR: A binder.

20 PRESIDENT BIDEN: A binder.

21 MR. HUR: A PDB binder, okay. So let's say you're
22 reviewing the PDB binder, and you think to yourself, this,
23 this stuff right here, this part of the PDB binder, that's
24 important, and I want to, I want to think about that some
25 more, I want to read it again. I want to talk to my --

1 [0:23:23.8]

2 MR. HUR: -- members of my own national security
3 staff about it. And I'm not ready for that to get whisked
4 away and taken off my desk.

5 PRESIDENT BIDEN: I don't ever recall that
6 happening. It may have. But usually what I'd do, I'd write
7 down on a notecard, follow up with Jake on "bang," follow up
8 with "boom on boom." And then I'd call my team in and say,
9 what, what do you think this means, that, that so-and-so
10 move forces here or there, or so-and-so said such-and-such,
11 and follow on that. And I'd ask, can you do me a memo on
12 that? And they'd go back and -- and, anyway.

13 MR. HUR: Okay. Understood. Do you recall any
14 instances in which, you know, say the PDB binder had Tabs 1
15 through 5 on it, 1 through 10, or something, where you would
16 actually remove something and say, you know, to make my
17 conversation with my national security staff, my team,
18 easier, I'm going to say, pull this out.

19 PRESIDENT BIDEN: I don't recall doing that.

20 MR. HUR: And then I'm going to say, hey, guys, I
21 need to follow up on this.

22 PRESIDENT BIDEN: I don't recall that.

23 MR. HUR: Okay.

24 PRESIDENT BIDEN: Taking anything out of the PDB
25 binder, you know. What I would do is, I'd say, I'm --

[REDACTED] DRAFT

21

1 [0:24:37.1]

2 PRESIDENT BIDEN: -- keeping the binder till this
3 afternoon, and I want to talk to you about this. Come back
4 in and take a look at it with me. But I don't ever recall
5 taking pieces of the binder out.

6 MR. HUR: I see. Okay. Were there occasions in
7 which you said, you know, I'm going to hang onto this PDB
8 binder for a while. Like, I need another day or two with
9 it?

10 PRESIDENT BIDEN: Well, there may be. We'd lock
11 it back up. I said, I want to see this one with what
12 tomorrow says. And so I'd keep it and then I'd have, I'd
13 have it with me in the office for a day, or whatever.

14 MR. HUR: Okay. And when you would have it with
15 you in the office for, for that additional period of time,
16 where did that end up getting --

17 PRESIDENT BIDEN: It was locked, and the staff
18 would -- I don't know where they put it, but the actual, the
19 actual case it was in was actually -- it had a lock on it.

20 MR. HUR: Okay. And whom would you end up asking
21 to do that?

22 PRESIDENT BIDEN: I never asked anybody, I just --
23 it just got done. I don't know -- I can't remember who.

24 MR. HUR: I see. Okay. But if you left the PDB
25 binder on your desk --

1 [0:25:42.4]

2 PRESIDENT BIDEN: Yes, they would take it.

3 MR. HUR: How did they know whether to take it,
4 and then --

5 PRESIDENT BIDEN: It was on my desk.

6 MR. HUR: -- it goes away.

7 PRESIDENT BIDEN: If it was on my desk, they'd
8 take it.

9 MR. HUR: Sir, just let me finish my question for
10 a moment.

11 How did they know -- if they saw a PDB binder on
12 your desk, how did they know whether to take it and know,
13 he's done with it, it can go away to wherever these things
14 go. Or, he needs it for another day, so let's lock it up
15 here. How did they know that?

16 PRESIDENT BIDEN: I don't ever recall the binder
17 alone being left on the desk. The binder would be in the
18 bag. If I put the bag on my desk, it says, take it away,
19 I'm finished with it. If I took it and I left it, and I
20 left it next to my desk, that meant hold onto it till
21 tomorrow.

22 MR. HUR: I see. And when you say next to your
23 desk, does that mean actually on the floor?

24 PRESIDENT BIDEN: I don't know where the hell.

25 MR. HUR: Okay. But someplace other than on --

[REDACTED]

DRAFT

1 [0:26:35.2]

2 MR. HUR: -- your desk?

3 PRESIDENT BIDEN: Yeah. It would be, it would be,
4 you know, sitting against the drawer or on the end table
5 behind me. But it would not be -- it was too big to put in
6 the outbox. I had two boxes on my desk, an in-box -- you
7 probably do too if you're ever able to keep up with what
8 you're doing -- and an out-box. Okay. So I would drop it
9 -- it's big. I mean, the briefcase is this big. I'd drop
10 it on top of those two boxes, and/or on my desk when I left.
11 That meant I'm finished with this, this particular --

12 MR. HUR: I see.

13 PRESIDENT BIDEN: -- PDB.

14 MR. HUR: But if it was not in that particular
15 place on your desk, then they -- your staff knew --

16 PRESIDENT BIDEN: They'd hold it --

17 MR. HUR: -- we got to hang onto this?

18 PRESIDENT BIDEN: They'd hang onto it till the
19 next day.

20 MR. HUR: Okay.

21 PRESIDENT BIDEN: And where they put it, I don't
22 know.

23 MR. HUR: Okay. All right. That's very helpful.
24 And we may circle back to that in a little bit. But let me
25 move on to -- as long as we're talking about your staff --

[REDACTED]

1 [0:27:35.7]

2 MR. HUR: -- we've gotten to know the names of
3 some of the folks who worked in your front-office staff
4 during your vice presidency, (b) (6), (b) (7)(C) Michele Smith,
5 (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C), who then became
6 (b) (6), (b) (7)(C). So I wanted to ask some questions
7 relating to duties that those -- I guess I'll call them
8 front-office staff. Is that an accurate description of
9 them?

10 PRESIDENT BIDEN: I never did, but sure.

11 MR. HUR: Okay. Well, what did you call them?

12 PRESIDENT BIDEN: By their first names.

13 MR. HUR: Okay.

14 PRESIDENT BIDEN: I'm not being facetious.

15 MR. HUR: No.

16 PRESIDENT BIDEN: I'm not being facetious. And,
17 by the way, a lot of this stuff would come back and whoever
18 -- if my intelligence team came in, and they gave me
19 something, they, they'd come and pick it up, whatever it
20 was.

21 So, for example, now, I'm trying to think back 10
22 years, but -- or more than 10 years, I guess. No, about 10
23 years. But today, I had a briefing with -- about what's
24 going on in Israel, a detailed briefing, in my residence
25 upstairs in a room that's not dissimilar to this off of --

1 [0:28:53.9]

2 PRESIDENT BIDEN: -- the bedroom. And I -- it was
3 a secure call. It finished, and I ordered one of my papers,
4 what I want, and I got on the phone, I said, Jake and
5 Tony Blinken -- Jake's my national security guy; Tony
6 Blinken is my Secretary of State. I said, guys, we got
7 to follow up on boom, boom, boom, what's going to happen
8 here. And then I took my papers, looked at what I need, put
9 them in a pile, and they're sitting in the middle of my
10 desk. Now, somebody now -- it would probably be [REDACTED] (b) (6), (b) (7)(C) would
11 come along and pick those up, or another -- or Tony may come
12 in, or whomever, and it's -- even though it's in the
13 residence, and grab whatever it is that I wanted. Or just
14 leave it there for me to be able to review when I get back.

15 MR. HUR: So what you just walked through was an
16 example of your practice as President?

17 PRESIDENT BIDEN: It was the same thing.

18 MR. HUR: It was.

19 PRESIDENT BIDEN: It was the same process. I just
20 can't remember who the individuals were doing it.

21 MR. HUR: Okay. But besides the PDB binder --

22 PRESIDENT BIDEN: Yeah.

23 MR. HUR: -- that was another flow of classified
24 documents to you -- your intelligence team, when you were
25 Vice President, bringing you classified material on --

1 [0:30:04.9]

2 MR. HUR: -- other topics? That also happened
3 when you were Vice President?

4 PRESIDENT BIDEN: You said beyond PDB?

5 MR. HUR: Yes, sir.

6 PRESIDENT BIDEN: Yeah, sure.

7 MR. HUR: Okay. Were there ever occasions -- I'll
8 ask the same question I asked before about the PDB -- about
9 this other category of classified documents. Were there
10 occasions when you thought, I want to hang onto this. I
11 gotta read it again, I gotta think about it some more, I
12 gotta wait until something else comes down --

13 PRESIDENT BIDEN: If it was marked with a -- if it
14 was in a binder, or had a, a marking on it, "Top Secret,"
15 you know, that cover page, or "Eyes Only," then I would
16 always give that back and have them hold it, wherever they
17 held it, and for me to --

18 But lots of times what happens is, Pat Moynihan
19 was right -- we over-classify everything. And one of the
20 things that I -- for example, every time Jake might --
21 writes me a memo, he puts on it "Eyes Only." Well, 99
22 percent of what's in there is not classified material. I
23 said, Jake, I'll read it, go through it, mark it up, ask
24 questions on it for him to get back to me. But I finally
25 said, Jake, only mark those things which really are --

[REDACTED] DRAFT

27

1 [0:31:20.9]

2 PRESIDENT BIDEN: -- "Eyes Only" "Eyes Only."
3 But, it's so easy just to say, anything I write must be
4 "Eyes Only." And 99.9 percent of it has nothing to do with
5 anything I couldn't pick up and read out loud to the public.

6 MR. HUR: Okay.

7 PRESIDENT BIDEN: Am I making any sense to you?

8 MR. HUR: Yes.

9 PRESIDENT BIDEN: Okay.

10 MR. HUR: Understood. So let me circle back now
11 to the questions relating to (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), Michele,
12 (b) (6), (b) (7)(C), those folks who -- maybe I'll describe it as folks
13 who sat at those desks right outside your West Wing office
14 when you were Vice President, that, that group of people.

15 PRESIDENT BIDEN: Okay.

16 MR. HUR: Did you ask those folks who sat at those
17 desks right outside your West Wing office as Vice President,
18 did you ask them to keep -- well -- did you ask them to hang
19 onto classified material that you would like to consult
20 again, and have them maintain it out in their office space?

21 PRESIDENT BIDEN: I don't recall that.

22 MR. HUR: Okay. Do you recall where classified
23 would be kept if you asked your staff to hang onto it?

24 PRESIDENT BIDEN: No.

25 MR. HUR: Okay.

1 [0:32:34.0]

2 PRESIDENT BIDEN: I assume they locked it up in
3 their, in their drawers in their desk, or there may be a
4 safe, I don't know.

5 MR. HUR: So if you had asked your staff to hang
6 onto some classified material that you, you didn't want to
7 go away quite yet, how, how did they know how long to hang
8 onto it? In other words, would they ever come back to you
9 and say, sir, it's been a few days, do you still need this,
10 or can we get rid of it?

11 MR. SISKEL: I just want to make -- because he
12 said he didn't recall ever doing that, so what -- is this --
13 can you rephrase your question, Rob?

14 MR. HUR: I'm sorry. I thought that he actually
15 did remember having some materials stored away and locked
16 away by his staff.

17 PRESIDENT BIDEN: I said I don't know where they
18 locked -- there's things that I've said that I might need
19 this tomorrow. My -- they could very well have then given
20 it back to the staffer who wrote it.

21 MR. HUR: Right.

22 PRESIDENT BIDEN: And remind them tomorrow when I
23 talk about it. They could have put it somewhere. I don't
24 know.

25 MR. HUR: So this next question I'm asking --

1 [0:33:35.9]

2 MR. HUR: -- right now is not about where it was
3 kept, but rather how long --

4 PRESIDENT BIDEN: I have no idea.

5 MR. HUR: -- did your staff know how to hang onto
6 it? Did they have a process where they said, sir, it's been
7 a couple of days, do you still need this?

8 PRESIDENT BIDEN: No. What would happen is,
9 whoever the person who wrote the memo that I want, they
10 would probably come back to say, do you still want to talk
11 about this? That's more likely.

12 MR. HUR: Okay.

13 MR. BAUER: And I just wanted to note, so it's clear
14 on the record, the President just used the word "probably."
15 I mean, in a given day -- I just want to get clear -- he's
16 giving his best recollection of conversations on tons of
17 material that could have come his way, and he would have
18 communicated his preferences and his wishes various -- in
19 various fashion. I just want to make that clear on the record.

20 MR. HUR: Understood. Understood. Okay. So back
21 when the time you were serving as Vice President, sir, did
22 you bring classified material back to the Naval Observatory
23 from the West Wing?

24 PRESIDENT BIDEN: I'm sure I did.

25 MR. HUR: Um-hmm. Can you tell us about what --

1 [0:34:44.0]

2 MR. HUR: -- kinds of material you would take back
3 with you? You talked about -- would you take PDB binders
4 back to the --

5 PRESIDENT BIDEN: No.

6 MR. HUR: -- Naval Observatory?

7 PRESIDENT BIDEN: Never -- no.

8 MR. HUR: Okay.

9 PRESIDENT BIDEN: Never -- PDB binders were
10 treated in a completely different way. They got locked up
11 -- when I finished reading it, they get locked up, they get
12 handed to whoever is going to take them, and it's usually
13 people from the intelligence community would come and get
14 them. I guess that's who came and got them. And -- but --
15 and if I was going to take something home to continue to
16 study it, or have staff over to the house to continue the
17 discussion, I would say, I'm taking this with me. And I'd
18 hand it back to whoever the staff person was that had the
19 clearance that I was talking to about it. But I don't
20 recall any specifics about that. But, I mean, that's how I
21 would do it if I was going to do anything.

22 And there's a lot of -- excuse me. Excuse me. A
23 lot of business got done as Vice President from the residence.
24 I mean, a lot of business got done. And so there was a whole
25 -- it was, it was, like, a machine, you know. I'd --

1 [0:36:00.4]

2 PRESIDENT BIDEN: -- leave something on the desk
3 that I was working out of in the office I set up in the Vice
4 President's office, and they'd come and clear it out. And,
5 you know, when I got finished -- I mean, it was much more
6 routine, because it was all in one place. There were
7 personnel on the ground like there are now. Not nearly as
8 many, but, you know, and so, you know, that's all -- I mean,
9 that's how I remember it.

10 MR. HUR: So --

11 MR. BAUER: I'm sorry, was the last part, sir, that's
12 how you remember it? I just want to make sure it's picked up.

13 PRESIDENT BIDEN: Yeah.

14 MR. BAUER: Yes.

15 MR. HUR: Okay. So it sounds like what you were
16 describing is that the system of your staff handling
17 classified material at the Naval Observatory was similar to
18 the way that it was handled in your West Wing office, which
19 is, if you were done with the classified, you left it on
20 your desk, and then your staff would take it and dispose of
21 it. And I think I'm hearing that this same thing happened
22 with respect to your workspace at the Naval Observatory?

23 PRESIDENT BIDEN: Generically, yeah. I had two
24 desks. I had a desk -- I had an office that I turned one of
25 the rooms into, an (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) a library, and I --

1 [0:37:19.0]

2 PRESIDENT BIDEN: -- had a desk there. And I'd
3 have meetings there with -- I'd call staff over there; we'd
4 have meetings. I'd even -- for example, I remember because
5 I saw a picture recently, that's where I saw Xi Jin ping, I
6 had him at the Vice President's residence. I had other
7 leaders there. So there would occasionally be lunches
8 there, that kind of thing.

9 So there was more done in the VP's residence than
10 clearly when I wasn't the Vice President, when I was a
11 senator, or when I was out of office.

12 MR. HUR: Okay. I'm not as -- I haven't had the
13 pleasure of actually visiting the Naval Observatory, but I
14 just want to have a better sense of where that workspace
15 was.

16 PRESIDENT BIDEN: Go look at it.

17 MR. HUR: Was it [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F)

18 PRESIDENT BIDEN: Yes.

19 MR. HUR: Okay.

20 PRESIDENT BIDEN: I mean, I think you've got to
21 have a sense -- I mean, that home used to be the Chief of
22 Naval Operations' office until we had to throw the governor
23 of Maryland out of office -- the Vice President. And then
24 that's when they took over the place for the Vice President.
25 And that's why it's called the Naval Observatory still.

[REDACTED] DRAFT

33

1 [0:38:38.4]

2 PRESIDENT BIDEN: And it's, it's a Victorian home,
3 it's a, you know, the (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F). You walk in,
4 (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) Left (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F).
5 There's a (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F). (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F)
6 all (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) are that they function, where they make the
7 meals, and things like that.

8 To the (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) And then
9 there's a -- (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) and there's a room
10 that I turned into (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) meaning where I would work
11 when I was home.

12 MR. HUR: And you mentioned a second office.

13 PRESIDENT BIDEN: Bedroom. There was a bedroom,
14 and there was a -- there's -- those Victorian homes, you
15 know how they have the -- (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F)

16 [REDACTED]
17 [REDACTED] And I put a small desk in there so I could
18 work (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) when I wanted to work in my pajamas, or,
19 you know --

20 MR. HUR: I see.

21 PRESIDENT BIDEN: That kind of thing.

22 MR. HUR: So was this space in your (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) --

23 PRESIDENT BIDEN: In the (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F)

24 MR. HUR: -- just outside?

25 PRESIDENT BIDEN: In the (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F)



1 [0:39:53.4]

2 MR. HUR: It was in the ^{(b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F)} I see. That's
3 helpful.

4 PRESIDENT BIDEN: My wife did not like it.
5 (Laughter)

6 MR. HUR: Okay. And I apologize if you've already
7 addressed this, I just -- I can't recall. Do you know where
8 your staff secured classified documents?

9 PRESIDENT BIDEN: No idea.

10 MR. HUR: At the Naval Observatory?

11 PRESIDENT BIDEN: No.

12 MR. HUR: All right.

13 PRESIDENT BIDEN: I don't know that they stored
14 anything at the Naval Observatory. They may have.

15 MR. HUR: I see.

16 PRESIDENT BIDEN: In other words, if they came,
17 they'd pick it up and take it wherever they were, you know,
18 back to the office in the West Wing. Or they'd take -- I
19 don't know where they took it.

20 MR. HUR: I see.

21 PRESIDENT BIDEN: But they didn't leave it there.

22 MR. HUR: Okay. So I think implicit in that is
23 you didn't have an understanding -- or you never directed
24 your staff, hey, I want you to keep this classified in a
25 safe here at the Naval Observatory?



1 [0:40:48.8]

2 PRESIDENT BIDEN: No.

3 MR. HUR: Okay. One of the things we've learned
4 by speaking to other members of your staff when you were
5 Vice President is that folks in the -- in your national
6 security staff actually kept track of classified binders
7 that had been provided to you, and they tried to track --
8 this one's been returned, but this one has not. Let's try
9 to find the ones that have not. Do you recall your staff --

10 PRESIDENT BIDEN: I don't ever recall them telling
11 me they were looking for a binder that I had that they
12 couldn't find. I don't ever recall that.

13 MR. HUR: Okay.

14 PRESIDENT BIDEN: It could have happened, but I
15 don't recall it.

16 MR. HUR: Okay. And I just want to make sure that
17 I'm understanding you clearly there. Do you recall your
18 staff ever coming directly to you and saying, sir, we can't
19 find Binder X, or Binder Y? Do you know where it is?

20 PRESIDENT BIDEN: I don't recall. I didn't say it
21 didn't happen, but I can't recall that.

22 MR. HUR: All right. Anything else on that before
23 I move on?

24 MR. KRICKBAUM: I had a slightly unrelated
25 question, Mr. President, but it is something you --

1 [0:41:58.4]

2 MR. KRICKBAUM: -- mentioned just a minute ago.
3 You said that sometimes Jake -- I think you were talking
4 about Jake Sullivan --

5 PRESIDENT BIDEN: Yeah.

6 MR. KRICKBAUM: -- I think you were talking about
7 today -- will write you a memo, and 99 percent of it is not
8 classified, but he'll still mark it as "Eyes Only."

9 PRESIDENT BIDEN: Or "Sensitive."

10 MR. KRICKBAUM: Yeah. We've been trying to
11 understand "Eyes Only," and what that means. Is that, is
12 that a -- is that used as a classification marking?

13 MR. BAUER: I would like to avoid having the
14 President address the legal requirements for classification.
15 I think it's clear he's relied on staff for that.

16 MR. KRICKBAUM: My question I think is different,
17 which is just, what do you understand "Eyes Only" to refer
18 to?

19 PRESIDENT BIDEN: Means I'm writing this for you.
20 It could be eyes only. I don't even want the President or
21 the Secretary of State or anyone. But this is, you know --

22 For example, I often had disagreements on policy
23 matters with some of the foreign policy team that -- really
24 good people that Barack had. I think it's fair to say
25 Barack relied on me to do a lot of foreign policy,

1 [0:43:19.7]

2 PRESIDENT BIDEN: -- because that's one of the
3 reasons he asked me to be Vice President, the chairman of the
4 committee, and all that. But if my team thought someone else
5 in the administration was exaggerating, or making a mistake,
6 or wanting to, you know, send more troops into Iraq - I'm
7 making this up - and I didn't want to. I might put "Eyes
8 Only," like, you know, this is not -- this is -- we're having
9 a fight with Charlie Schmedlap, in the administration about
10 what we do. The President's going to have to make a decision
11 on this. But the -- anything that was marked "Classified"
12 with those markers, I never ever remember doing anything other
13 than, being fastidious about where it went, how it got handled,
14 when it got back to whoever gave it to me.

15 MR. BAUER: And when you say, with those markings,
16 just for the record, if I may, sir --

17 PRESIDENT BIDEN: Do we have a copy of any of that
18 stuff?

19 MR. BAUER: Yes. You mean the colored borders?

20 PRESIDENT BIDEN: Yeah, the borders?

21 MR. KRICKBAUM: Yes.

22 PRESIDENT BIDEN: Because that's usually what they
23 put in front of a book -- if they give a binder, they'll
24 have a -- something on the -- you have there written,
25 President Biden, Binder 1. They have this -- they'd --

1 [0:44:47.7]

2 PRESIDENT BIDEN: -- slide in this sheet that
3 says, "Top Secret," or slide in a sheet that says,
4 "Classified," you know. And it's usually -- and it's easily
5 marked, you know, it's a different color.

6 MR. KRICKBAUM: And that's helpful. We know the
7 cover sheets that you're talking about.

8 PRESIDENT BIDEN: Yeah.

9 MR. KRICKBAUM: In your understanding, if
10 something is marked "Eyes Only," does that mean that it's
11 being treated as classified, or does it not mean that?

12 MR. BAUER: I'm sorry, what's the question again,
13 Marc?

14 MR. KRICKBAUM: Yeah.

15 PRESIDENT BIDEN: If it's marked "Eyes Only," does
16 that mean it's classified or not?

17 MR. KRICKBAUM: In your --

18 PRESIDENT BIDEN: The answer --

19 MR. KRICKBAUM: -- in your understanding.

20 PRESIDENT BIDEN: The answer is, I'm not sure.

21 MR. KRICKBAUM: Okay.

22 MR. BAUER: And just a general rule, I do want to
23 not interrupt the flow of the questioning. I really don't
24 want the President to be in a position where he's addressing
25 specific questions about the classification system --

1 [0:45:35.7]

2 MR. BAUER: -- distinctions among classification
3 categories, and whatever, for purposes of this interview.

4 MR. KRICKBAUM: I just mean to be asking about
5 what you understand those words to mean, "Eyes Only."
6 Because it's not a phrase that we are familiar with. So
7 we're trying to understand how --

8 PRESIDENT BIDEN: Right. That's why I think it
9 was mainly, look, keep this quiet, because you don't want
10 this getting around inside the administration. Not
11 classified, you don't want --

12 For example, I had real strong disagreements on a
13 couple of policy matters that were consequential relating to
14 the allocation of forces. And so there were some really
15 bright guys in the administration who I strongly disagreed
16 with on something. So, it might say, "Eyes Only," like,
17 Joe, this is what you asked for, .but just understand.

18 But I didn't -- it wasn't "Eyes Only" very often.
19 I'm trying to think how often. Maybe it's -- I can't
20 remember.

21 MR. KRICKBAUM: Okay.

22 MR. HUR: Good?

23 MR. KRICKBAUM: Yeah.

24 MR. HUR: Okay. All right. So we've talked about
25 your West Wing office, we've talked about the Naval --

1 [0:46:41.8]

2 MR. HUR: -- Observatory. And now I have a
3 similar set of questions with respect to the lake house in
4 Wilmington. So, when you were serving as Vice President,
5 did you have -- did you bring classified material with you
6 from the West Wing or the Naval Observatory to the lake
7 house?

8 PRESIDENT BIDEN: Occasionally, because I did a
9 lot of business from there. If you're in there for 99
10 hours, or whatever the hell you were, with 375 people, or
11 whatever the number was -- I'm teasing you.

12 (Laughter)

13 PRESIDENT BIDEN: You left everything in place. I
14 just hope you didn't find any risqué pictures of my wife in
15 a bathing suit. Which you probably did. She's beautiful.

16 But all kidding aside, I have a library, and the
17 library has a -- two filing cabinets in it, and it has built
18 into the walls -- when I built that home, built into the
19 walls, a space for a copy machine, for a -- what do you call
20 it, when they send these --

21 MR. SISSEL: Fax machine.

22 PRESIDENT BIDEN: Fax machine. I have shelves
23 that I have, I have binders like this in it that I put
24 together that aren't classified. They're about speeches
25 that I made on this matter, speeches I made on that matter.

1 [0:48:05.3]

2 PRESIDENT BIDEN: I just warn you all, never make
3 one great eulogy, because you get asked to do everybody's
4 eulogy.

5 (Laughter)

6 PRESIDENT BIDEN: You think I'm kidding? I'm not.
7 How many people you know did -- eulogize Teddy and Strom
8 Thurmond? You know. Anyway, all kidding aside.

9 So I have things that I like to get my hands on so
10 I don't repeat myself, you know, or that I want to get some
11 ideas. And -- but they're not classified that are sitting
12 up there.

13 I'm sure -- well, I'm not sure, actually. Anyway.
14 So there's that room, which is a formal library. You've
15 seen pictures of it. You've been in it, I assume. And it
16 also has a filing cabinet there, that can be locked, next to
17 the desk. And the drawers to the desk can be locked as
18 well. It's a -- and it's --

19 What I -- what you're able to do is an outgoing
20 senator is able to purchase his desk if he wants to. So I
21 purchased my desk for posterity's sake. And you can
22 purchase, when you leave the Cabinet, when you leave the
23 Senate, the vice presidency, or presidency, you can purchase
24 those chairs for \$6 million.

25 (Laughter)

[REDACTED] DRAFT

42

1 [0:49:28.3]

2 PRESIDENT BIDEN: You know -- I purchased that.
3 And you're able to purchase -- or I was given some
4 (indiscernible 0:49:33.1) Teddy Kennedy. My chair I had in
5 the Senate, all the years I had -- so I have -- there --
6 that chair is in that library as well.

7 So -- and then what I have is up on the -- I built
8 that house, [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F)

9 [REDACTED] so the sun would always shine.
10 I mean, I'm a frustrated architect, and if you went through,
11 you probably saw all those significant number of house plans
12 that I've drawn -- have drawn. And as a matter of fact, in
13 order to try to convince me not to run for the Senate for
14 the 19th time, my wife said, look, you don't run, I'll pay
15 for architectural school for you.

16 (Laughter)

17 PRESIDENT BIDEN: I'm deadly earnest, not a joke.
18 Any rate, so what I had was, I had a -- [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F)

19 [REDACTED]
20 [REDACTED]
21 [REDACTED], I can't remember exactly. And I
22 built that for two reasons, [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F). My dad was
23 getting ill, and I did not want he and mom to be living
24 alone. Although I commuted every day -- they lived not far
25 from me, along with the (indiscernible 0:51:11.7). Anyway.

[REDACTED]

DRAFT

1 [0:51:16.2]

2 PRESIDENT BIDEN: So I built -- when I built the
3 house, I built it, and had cut out -- [REDACTED]

4 looks out on -- we call it a lake, but it's a 10-acre pond
5 someone else had built. And there's a [REDACTED] You go [REDACTED]

6 [REDACTED] and there's a pool table and a couch, and then a
7 big fireplace, and [REDACTED], a

8 [REDACTED] as well as [REDACTED]. And then [REDACTED]

9 [REDACTED] it's a rectangle about [REDACTED] where

10 [REDACTED], and there's a [REDACTED]

11 and you [REDACTED] and -- because I wanted my

12 parents to be able to live there and have the privacy of

13 having a [REDACTED] as well. And then [REDACTED]

14 [REDACTED]

15 And so in [REDACTED] there are two file

16 cabinets that were attractive that I had when I was in

17 either the home -- I bought furniture for the home on Chain

18 Bridge Road, or -- so there are two big (indiscernible

19 0:52:28.2) that big, and were two double file drawers, each

20 of them in the corners. So there are files down there in

21 that, in that -- then -- so we call that the -- you wanna

22 call it the [REDACTED] whatever you

23 want to call it. You go [REDACTED] and you're in

24 [REDACTED] The whole [REDACTED] is a

25 beautiful [REDACTED] which cost me more than the whole house --

[REDACTED]

1 [0:52:55.9]

2 PRESIDENT BIDEN: -- literally, had it handmade
3 because I made the mistake of renting a place that had a
4 magnificent [REDACTED] anyway.

5 And then you go [REDACTED] to [REDACTED] And
6 the [REDACTED] I hav [REDACTED] here I took
7 the desk I had as a lawyer. The first big case I won, I
8 went out and bought a beautiful desk and credenza. You guys
9 may have done something similar. And I have that in there,
10 a couch and book shelving and a television in there. And
11 there is a file cabinet in there, plus the file cabinets on
12 the credenza behind that open with two big file drawers.
13 And there's file drawers in my -- on the desk. And so
14 there's other --

15 And then, as things piled up, there was -- [REDACTED]
16 [REDACTED], I wanted to have access for [REDACTED]
17 [REDACTED] to be able to come live with me if they
18 wanted to, or be with me. And what I did, I made sure I put
19 [REDACTED]. It's a -- so you wouldn't think
20 you're walking in [REDACTED]

21 So you [REDACTED]
22 [REDACTED]
23 [REDACTED]. And there is a big
24 television. And below the television, there are filing
25 cabinets, two long filing cabinets, that the television --

[REDACTED] DRAFT

45

1 [0:54:31.5]

2 PRESIDENT BIDEN: -- sits on. And so -- and then

3 [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F), and there's [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F)

4 [REDACTED] straight ahead, and a

5 [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) And so I can't think of what else. But it piled
6 up there. As FBI can tell you, they were up there.7 I also had, because I'm a frustrated architect, my
8 gift was a drafting board that I got for Christmas a long
9 time --

10 MR. HUR: I'm sorry, drafting what, sir?

11 PRESIDENT BIDEN: A drafting board. You know, you
12 sit --

13 MR. HUR: Board.

14 PRESIDENT BIDEN: Board. You sit and draft
15 designs. And so I have more stuff stacked up there now.
16 And what happens is, as Vice President, and as President, a
17 photographer takes hundreds of pictures of you. And if you
18 -- on the way out, just so you know what we're talking
19 about, you got to walk them by just so they know what I'm
20 talking about -- is -- there are pictures that are put on --
21 what kind of board is that called? Anyway --

22 MR. SISKEL: Poster board.

23 PRESIDENT BIDEN: A poster board or a sticker.

24 MR. SISKEL: Yeah. :

25 PRESIDENT BIDEN: And they're about three feet --

1 [0:55:44.6]

2 PRESIDENT BIDEN: -- by two feet, and there's
3 great pictures of all kinds of different things. And so I
4 have them hanging on the walls all over the downstairs, the
5 television room, and some in the library, because they --
6 you know, they tell stories like I --

7 You know, I went to Mongolia and, and great
8 pictures. I, unfortunately, embarrassed the hell out of the
9 leader of Mongolia. They were showing -- they were doing a -
10 - what they would do at the time of the invasion of the Mongols
11 into Europe in the 14 -- in the 800s. And they -- and then
12 show what a normal day was, or how they, how they bivouac. And
13 so we're out in the middle of nowhere and they're looking up
14 on the hill and we see this tiny line. You know,
15 it's a 20-mile horse race with all these kids under the age
16 of 16 on bareback racing to come down. And you know, there
17 are sumo wrestlers doin' everything they do.

18 And so they walked over and they had a target with
19 bales of hay a hundred yards away, and these guerillas were,
20 you know, taking shots. And I think -- I don't know if it
21 was to embarrass me or to make a point, but I get handed the
22 bow and arrow. I'm not a bad archer. But (indiscernible
23 0:57:12.9) where I can pull it back, so I -- and pure luck,
24 I hit the goddamn target.

25 (Laughter)

1 [0:57:20.9]

2 PRESIDENT BIDEN: No, I really did. Bales of hay
3 that were, like, 20 bales of hay with a big target in the
4 middle of the bale of hay. And so I didn't mean anything by
5 it. I turned to the prime minister and handed it to him and
6 the poor son-of-a-bitch couldn't pull it back. I was, I was
7 like, oh, God.

8 (Laughter)

9 PRESIDENT BIDEN: Anyway, so I have pictures like,
10 like that, you know, that are up against the wall, and down
11 here they're all over in my -- in the, in the West Wing.
12 Anyway, a lot of those pictures that you remember seeing
13 them piled up -- I know there must be 50 of them. I don't
14 know what to do with them, you know. So there's a lot of
15 stuff in that attic that is material that -- and some of it
16 is, you know -- I think some of it is notebooks of mine.
17 I'm not sure, but anyway, that's the totality of where
18 things would be.

19 MR. HUR: Understood. That was very helpful. We
20 have some photographs maybe to show you, but you have --
21 appear to have a photographic understanding and, and recall
22 of the house.

23 PRESIDENT BIDEN: No, and they busted their ass
24 for three years to build the house (indiscernible 0:58:36.9)

25 MR. HUR: And there are parts of what you just --

1 [0:58:41.6]

2 MR. HUR: -- helpfully shared with us that I'd
3 like to circle back on --

4 MR. BAUER: Can we -- well, here's a question I
5 have --

6 MR. HUR: Yes.

7 MR. BAUER: -- for you, Rob.

8 MR. HUR: Yes.

9 MR. BAUER: I was just mindful, I'm getting the 1-
10 hour mark. I'm wondering if we could take -- if it's okay
11 with you, Mr. President, is it all right --

12 PRESIDENT BIDEN: I'm okay to keep going.

13 MR. BAUER: If we could take 10 -- just a 10-
14 minute break or a 5-minute break, would that be okay?

15 MR. HUR: That would -- if you all would like to
16 keep going, I can keep going, but if you all would like to
17 take a break, that's also great.

18 MR. BAUER: I think on the hour mark, just to take
19 at least 5 minutes (indiscernible 0:59:08.8). Let's do
20 that.

21 MR. HUR: Okay.

22 MR. BAUER: And we have a work room for you here,
23 and we'll --

24 MR. HUR: Sounds good.

25 MR. BAUER: -- keep it really short.

[REDACTED]

DRAFT

1 [0:59:13.9]

2 MR. KRICKBAUM: Thank you.

3 MR. HUR: Okay. So be back here in 5 minutes?

4 MR. BAUER: Yeah, be back here in 5 minutes.

5 MR. HUR: Okay.

6 MR. BAUER: That's perfect.

7 SA (b) (6), (b) (7)(C) Okay.

8 PRESIDENT BIDEN: Careful leaving your book.

9 SA (b) (6), (b) (7)(C): The time is approximately 1:15.

10 We're going on break.

11 (End Track 231008_1215)

12 (Begin Track 231008_1324)

13 SA (b) (6), (b) (7)(C): It is 1:24. We're back from
14 break.

15 MR. HUR: All right. We're back from break.

16 Everyone that was in the room is back in the room now.

17 So I'd like to start on a different topic, which
18 is questions about the process of actually moving out of
19 your West Wing office, moving out of the Naval Observatory,
20 at the end of your vice presidency. Okay?

21 PRESIDENT BIDEN: Okay.

22 MR. HUR: So let's start with the West Wing
23 office. At the end of your vice presidency, as you were
24 preparing to leave that office, what files or documents do
25 you recall there actually being in your West Wing office?

[REDACTED]

1 [0:00:47.2]

2 PRESIDENT BIDEN: I don't have any idea.

3 MR. HUR: Okay.

4 PRESIDENT BIDEN: I mean, I'm trying to think. I
5 -- I don't know.

6 MR. HUR: Okay. Who was in charge of the process
7 of packing up your materials in --

8 PRESIDENT BIDEN: You know, I'm trying to think.
9 (b) (6), (b) (7)(C) was my main person. She was my executive
10 secretary. And so she would -- people would go through her
11 to get things. But you mentioned another woman or --

12 MR. HUR: (b) (6), (b) (7)(C), Michele Smith, (b) (6), (b) (7)(C)

13 (b) (6), (b) (7)(C)?

14 PRESIDENT BIDEN: (b) (6), (b) (7)(C). I think (b) (6), (b) (7)(C) --
15 did (b) (6), (b) (7)(C) -- was she the one that was getting
16 material to the University of Delaware and -- in other
17 words, one of them focused on taking the things that she
18 thought that Delaware might want, or that would go to the --
19 what's it called? You know, the federal government.

20 MR. BAUER: The Archives.

21 PRESIDENT BIDEN: The Archives. Or to Delaware
22 archive -- no. Yeah. Or wherever it would go. And so I
23 think (b) (6), (b) (7)(C) helped organize what she thought they'd want,
24 and -- because Delaware didn't want everything. I mean, as
25 I, as I recall. So -- but I, I think they were --

1 [0:02:24.8]

2 PRESIDENT BIDEN: -- the ones -- I don't want to
3 hold them responsible or get them in trouble, but I believe
4 they were the ones who were packing up -- not -- maybe they
5 weren't, they probably had guys come and help and pack it up
6 and were deciding, you know, where, where things were going,
7 to the best of my knowledge.

8 MR. HUR: Okay. And I think -- I just want to
9 make sure I'm clear -- that I'm understanding here. Was
10 there -- were there different people in charge of packing up
11 different types of --

12 PRESIDENT BIDEN: No.

13 MR. HUR: -- materials?

14 PRESIDENT BIDEN: No. I didn't -- I just left
15 that to the outer office to decide who packed what.

16 MR. HUR: Okay. But some materials were going to
17 the Delaware archives, but they didn't --

18 PRESIDENT BIDEN: I assume, yes. I assume they
19 were going -- some things were going to the Delaware
20 archives, and some things went to -- 'cause I didn't direct
21 them there -- went to the --

22 MR. BAUER: National Archives, to the federal
23 government.

24 PRESIDENT BIDEN: National Archives, yes.

25 MR. HUR: Okay.

1 [0:03:20.2]

2 PRESIDENT BIDEN: The federal government. And, and
3 some things went to the Biden Center. This is when I'm, I'm
4 finishing up as Vice President, right?

5 MR. HUR: Yes, sir. Yes, sir.

6 PRESIDENT BIDEN: Yeah. So anyway.

7 MR. HUR: And do you recall that there were some
8 things also that were going to go to your transition office?

9 PRESIDENT BIDEN: I'm sure there probably were.
10 They decided some -- I let them decide where things would
11 go, and, and the problem -- my generic problem was there was
12 a lot of stuff. No, I really mean it. Like, I don't want
13 it all at my house. I don't want all this -- you know, it's
14 not like there were things that -- I mean, like, what do you
15 do with all the memorabilia? I'm not being facetious. What
16 do you do with those, those statues, what do you do with
17 those -- I mean, you know -- so I just left it to them.

18 MR. HUR: And when you say you left it to them,
19 the them --

20 PRESIDENT BIDEN: The front office.

21 MR. HUR: -- I want to be clear on who the them
22 includes.

23 PRESIDENT BIDEN: And I'm sure that Steve
24 Ricchetti was my chief of staff and --

25 MR. BAUER: Um-hum, um-hum. He was.

1 [0:04:44.1]

2 PRESIDENT BIDEN: And so I'm sure it was more,
3 more of, like, a project with people who had been with me a
4 long time. I, I, I assume.

5 MR. HUR: Okay.

6 PRESIDENT BIDEN: Look, one of the things that I
7 used to get kidded about, they did a deal in the Congress
8 and the Senate when there was talking about staff and staff
9 rotation, and they concluded that the majority of my staff
10 had been with me for, like, 20 years. There was continuity.
11 People -- either I was really easy or what I was doing was
12 interesting. But -- no, I'm serious.

13 MR. HUR: Or both.

14 PRESIDENT BIDEN: Like, Ted Kaufman was with me
15 for 35 years, (b) (6), (b) (7)(C) -- you know, just a lot of
16 people. (b) (6), (b) (7)(C). People who were with me for the
17 vast bulk of my career, and who I never had to explain
18 anything to after a while. I'm not being facetious. On an
19 issue, you know, that -- follow up on this. Well, they --
20 you know, they knew the background, they -- and I'm not
21 talking foreign policy or classified. I'm just talking, you
22 know, how do we prevent the auto strike, you know. What do
23 we do to deal with -- well, anyway.

24 MR. HUR: So when it comes to the process of
25 packing up and sending your things from your West Wing --

1 [0:06:12.0]

2 MR. HUR: -- office to various places, do you ever
3 recall having a meeting or a conversation with Mr. Ricchetti

4 or (b) (6), (b) (7)(C)

5 or --

6 PRESIDENT BIDEN: No.

7 MR. HUR: Okay. Just, it happened?

8 PRESIDENT BIDEN: Yeah.

9 MR. HUR: Okay.

10 PRESIDENT BIDEN: That's my recollection. Now,
11 maybe they had meetings and maybe they did ask me questions.

12 I don't recall.

13 MR. HUR: Okay. Anything else on the West Wing
14 office? Okay.

15 So now let's talk about the Naval Observatory. So
16 you've been living there for eight years. So at the end of
17 your vice presidency, what kinds of papers or documents or
18 files were at the Naval Observatory as you were preparing to
19 leave and move out?

20 PRESIDENT BIDEN: Well, there were -- I'm trying
21 to think. A lot of my speeches, a lot of the initiatives
22 I've taken, a lot of -- there are probably some press
23 clippings, I'm guessing. I'm trying to think what else.
24 Photographs. I don't know.

25 MR. HUR: And where would those have been --

1 [0:07:40.2]

2 MR. HUR: -- within the Naval Observatory? You
3 mentioned a couple of work spaces earlier.

4 PRESIDENT BIDEN: Well, if you're talking about
5 anything that was a substantive matter, classified or
6 otherwise -- you know, the fight in the Judiciary Committee
7 over whether or not -- I was the guy who wrote the Violence
8 Against Women Act. It was -- really meant a lot to me. And
9 so they might find stuff on the Violence Against Women Act
10 in one section of a drawer or in the shelves of the library
11 or of the Naval Observatory.

12 Or issues, you know, relating to -- I know it's
13 gonna sound strange to you guys, but agriculture is a \$4
14 billion industry, agriculture is a \$4 billion industry in
15 Delaware and the Delmarva peninsula, and so -- or, you know,
16 I'd have a lot of political things that -- I, I don't know
17 where they were, but I know I had material that -- where I,
18 you know -- like, there's a whole, whole bunch of stuff
19 around about how -- what made me run for President in the
20 first place, and about how things were -- you know, I mean,
21 for example, I, I was a -- I got a job with a -- I didn't
22 take law school very seriously, but I won the International
23 Tort Competition. I was in -- matter of fact, the first
24 time in tort class, we had a really difficult professor. I
25 mean, very well-known, Professor at Syracuse, and --

1 [0:09:38.0]

2 PRESIDENT BIDEN: -- he called on me to -- you
3 know how they do in law school, discuss a case, you know, in
4 your first torts class. And I had never read the case, and
5 I stood up and I spoke for 10 minutes. The whole class
6 stood up, started clapping.

7 (Laughter)

8 PRESIDENT BIDEN: And he said, Mr. Biden, you'll
9 be a hell of a trial lawyer. He said, not a single thing
10 you -- had to do with that.

11 (Laughter)

12 PRESIDENT BIDEN: And -- but at any rate, so --
13 but in law school, I got in law school, and I got, believe
14 it or not, a job offer from some prestigious law firms. I
15 was not sure where I wanted to go, out west and where -- I
16 wanted to move to Idaho, I thought, and so I was going to go
17 out and interview with Boise Cascade. That's all I'd really
18 -- and -- but I took a job with the best-known trial firm in
19 Delaware in mostly civil defense issues. And, and so -- and
20 I remember a guy named (b) (6), (b) (7)(C) (phonetic), a brilliant guy
21 that went to Amherst and Harvard and said -- when he was
22 interviewing me said, in those days, you had to -- today you
23 would be killed. You had to put your photograph in the
24 upper right-hand corner when you're applying for a job. And
25 he looked at me and said, I assume you're expecting to be --

1 [0:11:05.4]

2 PRESIDENT BIDEN: -- hired on your looks.

3 (Laughter)

4 PRESIDENT BIDEN: And I said -- and I thought the
5 job was over, and I said, I said, well, it would improve the
6 look of your firm.

7 (Laughter)

8 PRESIDENT BIDEN: I mean, I was just --

9 So anyway, to make a long story short, they ended
10 up offering me a job. And in Delaware, it has -- used to have
11 the lowest pass rate in the country because we're not big on
12 encouraging lawyers to come and play in Delaware. It's a very
13 tight bar. And, and so what happened was you take the bar,
14 you graduate, and you have to clerk for somebody for six
15 months. (Indiscernible 0:11:51.6). And they don't give the
16 bar exam until the middle of September. You don't get your
17 results to your -- for the bar exam until January. And, and
18 so -- I -- but I got hired in the meantime by this firm
19 appropriately named Prickett, Ward, Burt Sanders. And, and
20 to make a long story not quite so long, I was sitting second
21 chair with the, with the, with the guy who ran the firm,
22 Prickett, Mr. Prickett, and there was a young man who we were
23 representing, [REDACTED] (b) (6), (b) (7)(C) (phonetic) getting -- and
24 (indiscernible 0:12:34.3) construction company, you know, I
25 had to turn those -- we have more oil refineries than any --

1 [0:12:39.9]

2 PRESIDENT BIDEN: -- place other than in Houston
3 in Delaware and Pennsylvania, (indiscernible 0:12:43.6) up
4 in that area.

5 And this poor kid is down a hundred-foot vessel,
6 chimney, scraping the hydrogen bubbles off of the inside.
7 They were made to shut the plant down once every --
8 whatever, about eight months or six months or a year,
9 whatever it is. And he was wearing the wrong pants, wrong
10 jeans, and he -- a spark caught fire and got caught in the
11 containment vessel and he lost part of his penis and one of
12 his testicles and he was 23 years old.

13 And I sat through the -- his presentation with
14 the, with the senior, and we had in Delaware, which is - the
15 Dupont family had no influence of course - contributory
16 negligence. If you were slightly contributory negligence,
17 you were out.

18 And so the senior partner turned to me and said,
19 write a memo for tomorrow, we're going to make a motion to
20 dismiss after presenting this case. So I did. I wrote this
21 memo. And son of a bitch, it prevailed. And I looked over
22 at that kid and his wife home with two little kids, and I
23 thought son of a bitch, I'm in the wrong business, I'm not
24 made for this.

25 And I -- there was a famous club called the --

1 [0:13:59.0]

2 PRESIDENT BIDEN: -- Wilmington Club -- no blacks,
3 Catholics are allowed -- have been allowed to be members.
4 The DuPont family name. And we went to a place called the
5 Wilmington Club, and he thought he was doing -- he said,
6 take the lunch at Wilmington. I said -- the only time I
7 ever lied that I can remember looking somebody in the eye,
8 and I mean sincerely, I said, oh, my dad's coming in today,
9 I was going to see -- okay. He didn't give a damn where I
10 went. I walked across and walked through to the second --
11 the basement on a public building and walked in with a guy
12 named Frank and I said I want a job as a public defender.
13 He said, don't you work for Prickett. He said, he said, are
14 you okay, like what the hell's the matter with you. I quit
15 and became a public defender.

16 The process of that was that's what got me -- I
17 had been involved in the civil rights movement. That got me
18 deeply involved in trying to reform the Democratic Party,
19 which was a southern Democratic Party. We were a slave
20 state by law. We were one of the border states so we
21 couldn't figure -- anyway, but the Democratic Party was a
22 conservative party in Delaware. The DuPont family ran the
23 Republican Party, but they were like Rockefeller Republicans
24 at the time. And so I got involved with a group of people
25 trying to reform the Democratic Party.

1 [0:15:17.9]

2 PRESIDENT BIDEN: And the whole point of telling
3 you all this is I had a lot of material that I kept notes on
4 and, and when that -- where as I was taking on the
5 Democratic Party. And they came to me and asked me to --
6 this group, this new Democratic coalition -- I had, in the
7 meantime, it's two years down the road, I was 26 years old,
8 27. And I went to work part time for a criminal defense
9 firm mainly, a real estate -- there were five people. And
10 so I was no longer a public defender because I couldn't be a
11 public defender and work for that firm.

12 And one thing led to another and I joined this
13 group to try to reform the party. And they came to me about
14 and I was making the case we've just got to get more
15 candidates to run, to -- we're not, we're not represented.
16 And the southern part of the state of Delaware will talk at
17 you like this, for real, you go down -- you think I'm
18 joking, I'm not joking. "Damn, boy, I don't agree with a
19 damn thing you say," but he said, "I know where you stand,
20 know where you stand." That's how they talk. And it was
21 solidly democrat, southern democrat. We were the only state
22 in the nation occupied by the military for 10 months with
23 drawn bayonets at every corner when Dr. King was
24 assassinated, and that's really what got me going.

25 Long story, and I'll end, because it relates --

1 [0:16:54.2]

2 PRESIDENT BIDEN: -- to maybe some of the other
3 things you may ask about, is that I had a lot of material
4 that I did recent. When you're the youngest guy in the
5 room, you get to turn the lights on and off. And so I, I
6 amassed a lot of material making the case why the party had
7 to change and, and they -- and it ended up that about 10
8 months in, the group from the area where I lived came to me
9 and said they wanted me to run for the state senate. I
10 said, no, no, no, I can't do that. I just -- I'm thinking
11 of starting my own law firm and it's going to -- no, I can't
12 do that. And because they meet in Dover and dah, dah, dah.

13 And then next thing that happened was I came back
14 about three weeks later. They said we want -- to the office
15 I was in at the time. I had now started my own office. And
16 I didn't realize no one my age ever started his own law
17 firm. I hired two lawyers. I had no freaking money. But I
18 hired them and paid them more than I was going to make, and
19 I started this firm. And there -- I remember standing
20 looking out over the public and they said how about running
21 for the county council. I said, no, no, I can't go down.
22 He said, they meet right across the street there only twice
23 a week at night. You can do this.

24 So to make a long story short, I ended up doing
25 it. But I wanted to be sure that I was going to lose --

1 [0:18:21.9]

2 PRESIDENT BIDEN: -- because -- so I ran in a
3 district that no one's ever won, a Democrat had never won.
4 And I won it.

5 And next thing you know, I'm in a tough position.
6 My generic point was there was a lot of material that I had
7 amassed that I wanted to save. I probably still have it
8 somewhere. And so that stuff would travel wherever the hell
9 I was --

10 MR. HUR: So, sir, that material that you just --
11 that you remember having, again, trying to steer us back to
12 the end of your vice presidency and focusing on your move
13 out of the Naval Observatory. Do you recall having these
14 types of things with you at the Naval Observatory and this
15 was part of the stuff you were trying to move out?

16 PRESIDENT BIDEN: No. I had most of it at my
17 house in that office.

18 MR. HUR: At the lake house?

19 PRESIDENT BIDEN: At the lake house.

20 MR. HUR: Okay, understood. Okay. So focusing on
21 the move out of the Naval Observatory and the documents and
22 the files that you had there, let me ask a couple questions.
23 Well, one is, sometimes when people move -- moving, in my
24 own experience, is a pretty terrible process, and sometimes
25 people go through and maybe they cull. They say, well, I --

1 [0:19:40.3]

2 MR. HUR: -- don't want to move this, I'm going to
3 throw this out, or why I should move this, I don't need it
4 anymore. Did you go -- did you do any of that culling or
5 thinning out or purging with respect to any of the stuff you
6 were moving out of the Naval Observatory?

7 PRESIDENT BIDEN: I don't recall, because I was so
8 damn busy trying to get set up in a job and what my
9 responsibilities would be. And also, I was -- my sister was
10 helping me. She's smarter than I am. My sister was helping
11 me with -- Delaware wanted to know whether or not I wanted a
12 Biden Library built there or a Biden Center. And the one
13 thing I did want, as pure ego, I wanted my kids, grandkids to
14 have a building on the -- in the mall. Have you ever been to
15 Delaware? It's like University of Virginia. It's a beautiful
16 mall. I mean, it really is gorgeous. And they're building a
17 building there, and I wanted to build the Biden Center, kind
18 of like the Kennedy Center. Matter of fact, I hired the woman
19 who ran the Kennedy Center to come down to help me bring in
20 speakers and things like that. No pay. This was just to get
21 the building built, which was still a process.

22 So I was doing a lot of that, and that wasn't --
23 among other things is I was leaving the vice presidency. I
24 don't recall going through anything that wasn't truly
25 personal and should be up next to my bed or my bedroom --

1 [0:21:14.7]

2 PRESIDENT BIDEN: -- or, you know. You know what
3 I mean? I don't recall --

4 MR. HUR: Okay.

5 PRESIDENT BIDEN: -- going through that stuff.

6 MR. HUR: Okay. So earlier, you know, we talked
7 about who was in charge of packing up your West Wing office.
8 So I'll ask the same question now. Who was in charge of --

9 PRESIDENT BIDEN: I don't know. I never asked
10 anybody. I did -- you know, it was, like -- people who work
11 with me even now, like, when I walk out of the office and I
12 want to get something done, I -- what I'll do is I'll ask
13 [REDACTED] . [REDACTED] doesn't have to do it all. [REDACTED] make sure

14 somebody -- you know, get the press team in here to -- so
15 the -- come up with a statement related to such and such.
16 She doesn't do the statement. You know, I'd just rather --

17 Anyway, so it's -- there's nobody in particular
18 other than the people who I can read it to right outside the
19 office and say, we've got to get this done. I can't -- I
20 don't ever recall saying, you know -- I don't know. There
21 was a library -- there was a bookshelf in the Vice
22 President's office, and I remember -- I think it had things
23 in there like genealogy of the [REDACTED] (b) (6), (b) (7)(C) I said make
24 sure that -- you know, that all gets taken care of, I mean,
25 as I'm walking out. But I don't recall ever saying, you --

1 [0:22:56.3]

2 PRESIDENT BIDEN: -- know, (b) (6), (b) (7)(C), you do --
3 not (b) (6), (b) (7)(C). (b) (6), (b) (7)(C), you do this, you do that. They'd
4 come to me and say, what do you want done with A, B, C or D,
5 and I can't remember, quite frankly, even any of those
6 questions, but I didn't, I didn't pay any attention to how
7 they packed it up.

8 MR. HUR: Okay. And I want to make sure that the
9 thrust of my question is clear in that -- it makes perfect
10 sense with respect to official-type matters, you, you grab
11 whoever is closest and say, I got to get something done. My
12 question is about packing up stuff in your personal
13 residence at the Naval Observatory. And our understanding
14 is that was -- you know, that was something that you
15 personally funded. You know, you had to pay on your own
16 credit card, a mover to take stuff out of the Naval
17 Observatory and then take it Wilmington. So with respect to
18 your personal effects, your personal documents, was there
19 a --

20 PRESIDENT BIDEN: One thing I remember on that was
21 furniture, because I wanted to make sure they didn't take
22 anything out of the VP residence that wasn't mine, you know
23 that was federal government property. But I don't remember
24 saying, you know, don't take or take this or send this. I
25 mean, I don't know how the staff decided what papers --

1 [0:24:19.2]

2 PRESIDENT BIDEN: -- you're kind of talking about,
3 you know, material, what would go to the residence and what
4 would go to -- is that how the stuff got in the garage?

5 MR. HUR: I'm sorry, sir. I didn't hear you.

6 PRESIDENT BIDEN: Is that how the stuff got in my,
7 my -- didn't get in my garage until much later. There was
8 stuff one day. I came home and all of it was on the garage
9 floor. This was later though. It must've been after --
10 anyway.

11 MR. HUR: Okay. Well, here's another question
12 relating to the move out of the personal residence at the
13 Naval Observatory. We understand that at some point,
14 towards the end of your vice presidency, there were some
15 boxes that you wanted to move yourself and that
16 Mr. Ricchetti and Mr. [REDACTED] (b) (6), (b) (7)(C) decided, well, we need to help
17 the Vice President out with this, and so you all loaded some
18 boxes into Mr. Ricchetti's minivan, and the minivan drove
19 those materials out of the Naval Observatory to where they
20 were going to go. Does that, does that ring a bell?

21 PRESIDENT BIDEN: No. The only thing that rings a
22 bell is you're making my point. They decided that there
23 should -- that -- what should be done, you know, that they
24 should help Biden move boxes or whatever. I don't ever
25 remember -- I'm sure there were things that -- boxes we --

1 [0:25:42.9]

2 PRESIDENT BIDEN: -- threw clothing in, threw
3 pictures in, threw -- you know. But I don't ever remember
4 packing up written material to go anywhere. It doesn't mean
5 it didn't happen, but I just don't remember any of that.

6 MR. HUR: Okay. Anything else on moving out of
7 the Naval Observatory? Nope? Okay.

8 All right. So now let's shift gears slightly and
9 talk about the Chain Bridge Road residence in McLean,
10 Virginia. So when you were wrapping up your vice presidency
11 and making arrangements for the rental of the house on Chain
12 Bridge Road, how long did you anticipate living there?

13 PRESIDENT BIDEN: I really had no idea. I'm not
14 being facetious when I say that. I knew that in order to
15 get the Penn Biden Center established, I had to -- and my
16 sister had spoken up at, at the Kennedy Center, and she
17 became friends with the woman who ran the Kennedy Center and
18 convinced her to come down and set up the Biden Center like
19 the Kennedy Center at Harvard. And, and so I, I don't, I
20 don't consciously remember -- it's kind of like my wife
21 asked me the other day, she spoke down at the Truman
22 Library. She said, Joe, have you decided on your library.
23 I said, I have no idea where I've got -- I mean -- and I
24 don't think I'm supposed to while I'm President think about
25 the library. But she said, Joe, but that's going to be --

1 [0:27:39.7]

2 PRESIDENT BIDEN: -- an important thing. She
3 said, you ought to talk to somebody about that, Joe. You
4 know, we -- I'm serious. That was a discussion we had. She
5 was very angry with me because she, she went out and did a
6 thing at the Truman Library, and she said, that's the place
7 where all that you've done is going to end up being located.
8 And I said, I don't know. There's the Biden Center. Can --
9 I don't know. And I really don't. I have no idea.

10 And apparently, there's -- my recollection is
11 there's people competing. Syracuse University would like
12 it, University of Delaware would like it. They want to do
13 it down here in Washington. They want -- I mean, I, I don't
14 know. And if I did know, I wouldn't know how -- how could
15 you raise money anyway while I'm a U.S. senator to do that
16 -- I mean President.

17 So my point is, it was the same kind of thing. I,
18 I wasn't thinking about -- I was just trying to think of --
19 I was hoping that I could have an influence internationally
20 like Tony Blair, like other leaders have from other
21 countries when they left and stayed engaged in the public
22 policy sides of the argument. Because I really do think
23 that, that with a little bit of luck, we -- I mean, the
24 world's changing, man.

25 What I was going to do, I was going to write a --

1 [0:29:21.8]

2 PRESIDENT BIDEN: -- book before I decided to run
3 about us -- I think the world goes through these major
4 inflection points where what's happening at that moment and
5 the two, four years around either side of it, and the
6 outcome of those discussions determine what the next six,
7 seven decades look like. I think that's where we are right
8 now.

9 For example, I think the Israeli thing has changed
10 it all. We're in a position where I fundamentally changed
11 the -- our position in the, in the Indo-Pacific. When I
12 told my team, my foreign policy team and intelligence
13 people, I was going to get Japan to engage in Europe and
14 work out a deal with South Korea, they looked at me like I
15 was nuts. But I got it done. When they -- this is not
16 classified. When I put together what they call AUKUS and
17 the ability of, of Australia to have nuclear capacity, which
18 really changes the whole dynamic in the Indian Ocean. When
19 I was able to bring together the quad: India, Australia,
20 Japan, the United States, there were -- I just had 16
21 Pacific Island leaders here that were heads of state. And,
22 I mean, we have a chance to fundamentally change and make
23 different and more secure that part of the world. Which
24 China's influence is seeking to be profound. Same way in
25 Africa. I mean, we have plenty of people in Africa, but --

1 [0:31:08.0]

2 PRESIDENT BIDEN: -- guess what, we're going to
3 build the first trans-continental railroad across that
4 country. We're going to make sure Angola has the most
5 significant, most significant influx of capital to build a
6 solar facility that's larger than any place in the world.
7 Again --

8 MR. HUR: Mr. President, I am so sorry to
9 interrupt you. I just want to make sure -- I have a fair
10 amount of material --

11 PRESIDENT BIDEN: Yeah, I'm going to stop. I just
12 wanted to give you an overall. That's the kind of stuff
13 that I was thinking about, what I would still be a part of
14 in the international community and U.S. interest, and that's
15 why Penn, Delaware, those things matter.

16 MR. HUR: Understood. And let me ask this
17 question in a slightly different way. When you were
18 deciding to move into Chain Bridge Road, the home there, I
19 suppose on one end of the spectrum you could say, I'm going
20 to furnish this place very, very sparsely. I'm not going to
21 bring much there because I'm not going to be there that
22 long. At the other end, you could say, I want to bring
23 pretty much everything I own because this is going to be my
24 primary residence. Where along the spectrum --

25 PRESIDENT BIDEN: In between.

1 [0:32:17.1]

2 MR. HUR: -- was Chain Bridge Road in your mind in
3 terms of how much stuff you decided to bring there? And
4 that's furniture, that's papers, that's personal effects,
5 things like that.

6 PRESIDENT BIDEN: I decided it had to look good,
7 because I was bringing people there that were heads of state
8 that were national security advisors, that were famous
9 people that I'm trying to get engaged in the Senate or --
10 and/or members of the House, the Senate, that kind of thing.
11 And so I made sure that it was furnished. It was -- already
12 had furniture, but I, I switched off some of the furniture
13 and brought in that furniture. Matter of fact, it's still
14 -- there was no place to put it. It's up in the third floor
15 of the White House there in the solarium, a couple leather
16 couches, paintings, that kind of thing.

17 And, and so that's what I brought along. And it
18 wasn't much. I mean, it was -- anyway, the, the place was
19 already nice, and I didn't have to do all the bedrooms
20 upstairs. I didn't need them all. So some of them are just
21 -- had a bed in it and that was it, you know.

22 MR. HUR: Understood. Okay. I think before we
23 took the break, if I remember correctly, you had mentioned
24 some specific pieces of furniture, and so I wanted to --

25 MR. BAUER: Specific what? I'm sorry, what?

1 [0:33:54.4]

2 MR. BAUER: -- Rob, I couldn't --

3 MR. HUR: Specific pieces of furniture.

4 MR. BAUER: Thank you.

5 MR. HUR: And please correct me if I'm
6 misremembering what you told us, but I think you mentioned a
7 couple of file cabinets that I think you said you purchased
8 in order to place them into the Chain Bridge Road residence.
9 Did I hear you correctly, or am I misremembering?

10 PRESIDENT BIDEN: No. Purchased -- that I
11 purchased -- I don't remember having any -- brought any -- I
12 may have. Actually, I'm not sure. (Indiscernible
13 0:34:24.1) --

14 MR. HUR: I may be misremembering, so --

15 PRESIDENT BIDEN: I'm not sure. I'm trying to
16 think what it looked like. Do we have any pictures of Chain
17 Bridge Road?

18 MR. HUR: I do, I do.

19 PRESIDENT BIDEN: I'll tell you (indiscernible
20 0:34:40.5).

21 MR. HUR: They should be in the binder in front
22 of you. If we go to -- well, actually, you know what, let's
23 just start at tab 14, and there are some photos here of part
24 of the Chain Bridge Road residence. And these begin with
25 Bates Number USSS523351_0001. There's another shot,

1 [0:35:15.1]

2 MR. HUR: USSS523352_001.

3 PRESIDENT BIDEN: Yeah.

4 MR. BAUER: Just to follow you, Rob --

5 MR. HUR: Yes.

6 MR. BAUER: -- are you going through -- these are
7 -- this is in sequence, because I'm -- the lettering -- or
8 the numbering that you were citing is -- I'm having a little
9 trouble following what was --

10 MR. HUR: Yeah, I'm sorry.

11 PRESIDENT BIDEN: No, that's all right.

12 MR. HUR: I see that it's --

13 PRESIDENT BIDEN: The second one shows the desk
14 looking out on two couches.

15 MR. HUR: Yes. So that's --

16 PRESIDENT BIDEN: Two leather couches.

17 MR. HUR: -- 2523352_0001.

18 UNIDENTIFIED MALE SPEAKER: Um-hum.

19 PRESIDENT BIDEN: And that's my desk and my
20 couches.

21 MR. HUR: Okay.

22 PRESIDENT BIDEN: And then I was deciding whether
23 to set this up as a -- that other room was a conference
24 room, but I don't (indiscernible 0:35:55.5) --

25 MR. HUR: And when you say the other room was --

1 [0:35:57.2]

2 MR. HUR: -- a conference room, are you referring
3 to --

4 PRESIDENT BIDEN: This room, you know, where all
5 the glass is. Well, the question is what was I going to do
6 with that open space.

7 MR. HUR: Yeah. Well, I actually have a slightly
8 different question, and I want to make sure that we're
9 looking at the same photo. I think it's 523353_001.

10 PRESIDENT BIDEN: Yeah.

11 MR. HUR: Okay. So that, you're referring to a
12 conference room. Let's start with --

13 PRESIDENT BIDEN: Well, I didn't -- I was -- I
14 can't remember what I did with it.

15 MR. HUR: I see.

16 PRESIDENT BIDEN: And the next one is the -- just
17 a different perspective looking at the -- where my desk was.
18 There -- and then --

19 MR. HUR: Yep. You're looking at 523356.

20 PRESIDENT BIDEN: Yeah. Now I'm looking at 79,
21 379. The last one.

22 MR. HUR: Okay. Got it. 523379.

23 PRESIDENT BIDEN: I don't remember. Isn't there a
24 file cabinet there somewhere though. I can't see it.

25 MR. HUR: So, so --

1 [0:36:46.4]

2 PRESIDENT BIDEN: Oh, here's one.

3 MR. HUR: So these photographs --

4 PRESIDENT BIDEN: Here, here it is.

5 MR. HUR: These photographs were taken in January
6 -- January 12th, 2017, right after the movers moved stuff
7 in.

8 PRESIDENT BIDEN: Yeah.

9 MR. HUR: And so you'll see in a number of these
10 photos, there are boxes stacked around.

11 PRESIDENT BIDEN: Yeah.

12 MR. HUR: So my first question is, who, who went
13 through these boxes and unpacked them and put their contents
14 in places?

15 PRESIDENT BIDEN: I don't know. I probably went
16 through some of them, but I don't remember. And -- because
17 a lot of them had pictures, photographs. There's a few of
18 them on the wall there. And then there were a lot of books
19 in those boxes too, I think.

20 MR. HUR: Okay.

21 PRESIDENT BIDEN: And I --

22 MR. HUR: And when you -- I think you said you
23 probably unpacked some of these boxes. What would've been
24 in the boxes that you probably unpacked?

25 PRESIDENT BIDEN: The books probably.

1 [0:38:02.1]

2 MR. HUR: Books.

3 PRESIDENT BIDEN: I don't know. I don't know.
4 I'm guessing I'd unpacked the books --

5 MR. HUR: Okay.

6 PRESIDENT BIDEN: -- because there's someplace to
7 put them. And --

8 MR. HUR: So it may be helpful now to go on to tab
9 15. I think you're already there. So this is another set
10 of --

11 PRESIDENT BIDEN: Fifteen? Yeah.

12 MR. SISSEL: Yeah.

13 MR. HUR: Yes.

14 UNIDENTIFIED MALE SPEAKER: (Indiscernible
15 0:38:27.5).

16 MR. HUR: So this is another set of photographs --

17 PRESIDENT BIDEN: Yep.

18 MR. HUR: -- of, I believe, the same room at Chain
19 Bridge Road, but I'd like you to take a look through them.
20 These have Bates numbers starting with [REDACTED], including
21 91_001 --

22 PRESIDENT BIDEN: Yeah.

23 MR. HUR: -- 63 and then Vanity Fair_001.

24 PRESIDENT BIDEN: Yeah.

25 MR. HUR: So is this that same office on that --

1 [0:38:59.1]

2 PRESIDENT BIDEN: Yeah, same one.

3 MR. HUR: -- kind of ground floor?

4 PRESIDENT BIDEN: Yeah.

5 MR. HUR: Okay.

6 PRESIDENT BIDEN: Same place.

7 MR. HUR: So -- I'm sorry, the basement, rather.

8 The lowest level.

9 PRESIDENT BIDEN: It's the lowest level --

10 MR. HUR: Lowest.

11 PRESIDENT BIDEN: -- at the Chain Bridge Road.

12 MR. HUR: Got it. Okay. So in these shots, it
13 looks like we can see the desk. I think you were talking
14 about this desk before.

15 PRESIDENT BIDEN: Yeah.

16 MR. HUR: Where did this desk come from?

17 PRESIDENT BIDEN: I own the desk. It -- I had it
18 in -- I think I had it at the Naval Observatory.

19 MR. HUR: Okay. Is this the desk that you used
20 for the time you were senator? Or, no, no. This is --

21 PRESIDENT BIDEN: No, this --

22 MR. HUR: -- a different desk.

23 PRESIDENT BIDEN: This is a desk I think I bought
24 from -- I can't remember. I had it a long time though.

25 MR. HUR: Okay.

1 [0:39:42.4]

2 PRESIDENT BIDEN: I still have it. I have it
3 upstairs.

4 MR. HUR: Okay. And here, we can see a file
5 cabinet.

6 PRESIDENT BIDEN: Yeah.

7 MR. HUR: We, we could not see the file cabinet in
8 the prior set.

9 PRESIDENT BIDEN: And I think that file cabinet is
10 one that ends up back at -- in the corner at the lake.

11 MR. HUR: I see. It's the same cabinet?

12 PRESIDENT BIDEN: I believe so.

13 MR. HUR: Okay.

14 PRESIDENT BIDEN: I'd have to look. It may not be
15 the same height, but I think so. It has -- and it has two
16 file drawers.

17 MR. HUR: I see. And so in these photos, when the
18 file cabinet was here at Chain Bridge Road, what kinds of
19 things were in it?

20 PRESIDENT BIDEN: Everything -- I believe
21 everything from, you know, empty files to -- I mean, I just
22 had files piled that I needed to file, to -- I don't know
23 what else was in there. I don't, I don't know. I don't
24 remember.

25 MR. HUR: Did, did anyone else keep files in --

1 [0:40:58.0]

2 MR. HUR: -- that file cabinet when it was at
3 Chain Bridge Road, or were they your files?

4 PRESIDENT BIDEN: No, they, they were all my
5 files, I believe, or at least under my control. May have --
6 somebody may have made up a file for me, but I don't think
7 -- it wasn't like somebody filed their papers in my file
8 cabinet.

9 MR. HUR: Okay. And the reason I ask is because,
10 you know, other people -- at least one other person lived
11 there, Dr. Biden lived there.

12 PRESIDENT BIDEN: Oh, she --

13 MR. HUR: Did she, for example, put things in that
14 cabinet?

15 PRESIDENT BIDEN: She wanted nothing to do with my
16 filing system.

17 (Laughter)

18 PRESIDENT BIDEN: You think I'm kidding, guys.
19 (Indiscernible 0:41:33.2).

20 MR. KRICKBAUM: We, we believe you.

21 PRESIDENT BIDEN: Not even close.

22 MR. HUR: Okay. All right. That's, that's
23 helpful. How often -- when you were living at Chain Bridge
24 Road, how often do you recall being in and out of the file
25 cabinet?

1 [0:41:50.9]

2 PRESIDENT BIDEN: I don't think very often. Most
3 of the stuff was static. But what I did do, I'd have
4 meetings here. I'd have staff meetings here. I would have,
5 you know -- anyway, have political meetings, I'd have
6 meetings relative to Penn.

7 And I went down -- I remember buying this
8 conference table. I believe it was the one I bought in
9 Wilmington at Berger Brothers, I believe. So when I had
10 meetings, I could actually assemble people around the table,
11 so --

12 MR. HUR: So you just told us where you bought the
13 conference table. Do you remember where did the file
14 cabinet come from?

15 PRESIDENT BIDEN: I don't know.

16 MR. HUR: Okay.

17 MR. SISKEL: And Rob, just so the record is
18 clear --

19 MR. HUR: Yes.

20 MR. SISKEL: -- when he was talking about the
21 conference table, he had moved onto tab 16, the first
22 picture behind tab 16.

23 MR. HUR: Understood. And that's --

24 PRESIDENT BIDEN: 052.

25 MR. HUR: -- at Bates LW ending in 52. All right.

1 [0:43:00.1]

2 MR. HUR: Thank you, Ed.

3 So with respect to the file cabinet, when it was
4 at Chain Bridge Road, you mentioned having meetings in this
5 space. Was the file cabinet one where you were in and out
6 of it --

7 PRESIDENT BIDEN: No.

8 MR. HUR: -- in relation to those meetings?

9 PRESIDENT BIDEN: No. I would never be in and out
10 of -- no matter where I was, going in and out of a file
11 cabinet in a meeting. I need to know -- I know ahead of
12 time what I wanted to talk about. And usually, it was just
13 notepads I'd have to talk about what I wanted to resolve.

14 MR. HUR: So when you were living in Chain Bridge
15 Road and there were documents relating to things that you
16 were working on, talking with your staff, where were
17 those --

18 PRESIDENT BIDEN: There, there weren't many
19 documents that I'd be talking to staff about. What I'd be
20 talking about is, like, here at Chain Bridge Road and Penn,
21 how do we get Senator Schmedlap to change his position on
22 such-and-such an issue. The -- but it was -- anyway, if you
23 take a look, it was -- look at all the cartoons we have on
24 the wall, that kind of thing. It was also to make it look
25 like a home, you know what I mean.

1 [0:44:34.0]

2 MR. HUR: Yes.

3 PRESIDENT BIDEN: And a study where --

4 MR. HUR: Yeah.

5 PRESIDENT BIDEN: -- I would be spending time.

6 MR. HUR: So during this time when you were living
7 at Chain Bridge Road and there were documents relating to
8 the Penn Biden Center, or the Biden Institute, or the Cancer
9 Moonshot, or your book, where did you keep papers that
10 related to those things that you were actively working on?

11 PRESIDENT BIDEN: Well, um... I, I, I, I, I don't
12 know. This is, what, 2017, 2018, that area?

13 MR. HUR: Yes, sir.

14 PRESIDENT BIDEN: Remember, in this timeframe, my
15 son is -- either been deployed or is dying, and, and so it
16 was -- and by the way, there were still a lot of people at
17 the time when I got out of the Senate that were encouraging
18 me to run in this period, except the President. I'm not --
19 and not a mean thing to say. He just thought that she had a
20 better shot of winning the presidency than I did. And so I
21 hadn't, I hadn't, at this point -- even though I'm at Penn,
22 I hadn't walked away from the idea that I may run for office
23 again. But if I ran again, I'd be running for President.
24 And, and so what was happening, though - what month did Beau
25 die? Oh, God, May 30th --



1 [0:46:26.1]

2 MS. COTTON: 2015.

3 UNIDENTIFIED MALE SPEAKER: 2015.

4 PRESIDENT BIDEN: Was it 2015 he had died?

5 UNIDENTIFIED MALE SPEAKER: It was May of 2015.

6 PRESIDENT BIDEN: It was 2015.

7 MR. BAUER: Or I'm not sure the month, sir, but I
8 think that was the year.

9 MR. KRICKBAUM: That's right, Mr. President. It --

10 PRESIDENT BIDEN: And what's happened in the
11 meantime is that as -- and Trump gets elected in November of
12 2017?

13 UNIDENTIFIED MALE SPEAKER: 2016.

14 UNIDENTIFIED MALE SPEAKER: '16.

15 PRESIDENT BIDEN: '16, 2016. All right. So --
16 why do I have 2017 here?

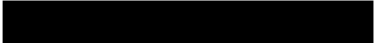
17 MR. SISSEL: That's when you left office, January
18 of 2017.

19 PRESIDENT BIDEN: Yeah, okay. But that's when
20 Trump gets sworn in then, January --

21 MR. SISSEL: Right.

22 MR. BAUER: Right, correct.

23 PRESIDENT BIDEN: Okay, yeah. And in 2017, Beau had
24 passed and -- this is personal -- the genesis of the book and
25 the title *Promise Me, Dad*, was a -- I know you're all --



1 [0:47:55.2]

2 PRESIDENT BIDEN: -- close with your sons and
3 daughters, but Beau was like my right arm and Hunt was my
4 left. These guys were a year and a day apart and they could
5 finish each other's sentences, and Beau -- I used to go home
6 on the train, and in the period that I was still in the
7 Senate -- anyway. (Indiscernible 0:48:27.6). There was
8 pressure -- not pressure. Beau knew how much I adored him,
9 and I know this sounds -- maybe this sounds so -- everybody
10 knew how close we were. There was not anybody in the world
11 who wondered whether or not -- anyway. And so --

12 MR. HUR: Sir, I'm wondering if this is a good
13 time to take a break briefly. Would that be --

14 PRESIDENT BIDEN: No, I -- let me just keep going
15 to get it done. Anyway, here's the deal. Beau -- I used to
16 go home when Beau was at -- from Penn, I used to go home on
17 the train on Fridays and always Jill and I would go -- as
18 the crow flies, Beau and his family lived a mile from where
19 we lived in Delaware. And, and so I'd go home and we'd have
20 dinner together on Friday nights when I'd get home. And my
21 mom, she had died, she had died. Anyway, she had been
22 living with us. And one night, when we were, were having
23 dinner, and Jill came on a different train, she was a little
24 bit later. We had the dinner and Jill said, I'm going to go
25 home and change, which is a mile away, and she left and --

1 [0:50:14.6]

2 PRESIDENT BIDEN: -- Beau said, dad, do you have a
3 minute. I said, sure. And he asked his wife to take his
4 children upstairs and -- so we could talk at the table.

5 And he looked at me and he said, dad, I know, I
6 know how much you love me, but he said, dad, and I know your
7 tendency is if something happens, you're just going to want
8 to quit, you're not going to want to be in the public eye
9 anymore. And he said -- I said, no, I'll be fine. He said,
10 dad, look at me, dad, and we have a thing in our family, I
11 don't know where it came from, but if you really wanted
12 someone to -- they'd say look at me, look at me. And I
13 said, I'm looking at you, pal. He said, promise me, dad,
14 give me your word as a Biden, dad. Give me your word you'll
15 not drop out. I said, Beau, I'm -- he said, promise me,
16 dad, God damn it, promise me, dad. You have to stay
17 engaged. You have to stay engaged, promise me. That's
18 where the title of the book came from.

19 And so at this period of time, I'm trying to
20 figure whether or not, when he passes, what am I going to do
21 other than what I'm already doing. When am I going to run
22 for the presidency? And in the meantime -- and I pretty
23 well decided I couldn't handle -- I'd stay involved, I'd
24 keep the promise I'd be involved (indiscernible 0:51:44.3)
25 politics. And then -- I forget the date, that's when --

1 [0:51:50.7]

2 PRESIDENT BIDEN: -- Charlottesville happened,
3 when those folks came out of the woods carrying -- literally
4 out of the fields carrying torches and Nazi swastikas and
5 singing the same damn anti-Semitic bile that was sung in
6 Germany in the early '30s, accompanied by the Ku Klux Klan
7 and the head of the, of the Klan. And then a young woman
8 got killed, and I spoke to her mom. And that's when I
9 decided that I, I, I, I, I've got to run, I've got to be
10 involved, because I thought, presumptuous of me, that I was
11 the antithesis everything that, that this guy stood for, and
12 I was -- I could beat him.

13 But then I got really worried what would happen to
14 the kids, how terrible they'd be -- he'd be with my
15 children. And in the meantime, I got a call from my
16 oldest granddaughter, Naomi, who was in her senior year at
17 Columbia Law School, and she -- we have a tradition in our
18 family, a child can ask for a family meeting. It's taken
19 seriously. I can only think of 10 occasions it's happened
20 since I was a kid. But when you come, you take it
21 seriously. And so that was a Thursday, and on Saturday we
22 had a family meeting. And so I had my -- Hunt's three
23 daughters and Beau's two kids, and we had a meeting in that
24 library you saw.

25 And, and they said, pop, you got to run.

1 [0:53:34.8]

2 PRESIDENT BIDEN: Daddy'd want you to run, we want
3 you to run, et cetera. And the real kicker was, I said,
4 well, it's going to be mean and I don't know girls, and my
5 youngest son is now a senior in high school -- grandson. He
6 said, pop, we know it's going to be mean, and he opens up
7 his cell phone and there's a picture of me walking out of
8 Beau's funeral and my hand on the casket and the flag at a
9 military funeral, very formal. And I had my hand around my
10 little son -- grandson, and I always used to hold Beau --
11 when he was little, I'd hold him by the chin, you know, when
12 I walk. And I was holding him the same way. And he said,
13 pop, we know it's going to be mean, and he shows me, he
14 said, look, pop, what it says. And I had my hand -- they
15 could see it was a military funeral, and my arm around my
16 grandson, and the bottom line was, Biden molests another
17 child. He said, but pop, you've got to run. Daddy'd want
18 you to run. That's when I decided to run.

19 So that's when things began to alter in terms of
20 my -- well, I still -- Penn provided a vehicle for that as
21 well, because I was a public figure, invited other world
22 leaders around, but that's when everything kind of changed
23 in terms of what I was going to do with my life.

24 I thought you didn't need to know that, but maybe
25 it -- you know, ask questions, what am I going to do with --

1 [0:55:01.4]

2 PRESIDENT BIDEN: -- the rest of my life, that's
3 when I decided to run.

4 MR. HUR: Understood.

5 PRESIDENT BIDEN: Sorry for the detail.

6 MR. HUR: No apology necessary. I think it now
7 might be useful to take a look at the next couple tabs of
8 photos of the Chain Bridge Road residence.

9 MR. BAUER: Which, which tab, Rob?

10 MR. HUR: I'm sorry, 16 and then 17. And let me
11 give some context for these photos. So the photos in tab
12 16, they are Bates LW 52, 53, 54, 55 and 56. These were
13 0:55:41.2

14 taken in July of 2019.

15 PRESIDENT BIDEN: Yep.

16 MR. HUR: Before -- I think soon before the move
17 out of Chain Bridge Road, so we've fast-forwarded some into
18 the summer of 2019. And then for a comparison, the photos
19 behind tab 17, these are taken the following month --

20 PRESIDENT BIDEN: The following, right.

21 MR. HUR: -- after, after -- yes, sir, in August
22 of 2019, after some things were moved out of these rooms in
23 Chain Bridge Road. And the -- just for the record, the
24 photos behind tab 17 are Bates'ed (verbatim) (b)(3) 117, 119,
25 122, 123, 124. So if you, if you kind of flip through --

1 [0:56:42.3]

2 MR. HUR: -- those photos behind tab 16 and 17,
3 you'll see that there -- some things were moved out --

4 PRESIDENT BIDEN: Yep.

5 MR. HUR: -- in July 2019. And so the things that
6 were moved out were that filing cabinet that we were talking
7 about --

8 PRESIDENT BIDEN: Yep.

9 MR. HUR: -- a few minutes ago, some prints and
10 photographs that were on the wall --

11 PRESIDENT BIDEN: Yep.

12 MR. HUR: -- and a printer. So with that context,
13 let me back up a little bit to ask, in July of 2019, when,
14 when things were being moved out of the Chain Bridge Road
15 home, how, how involved were you in that? What did you know
16 about that?

17 PRESIDENT BIDEN: What got moved out, what -- the
18 furniture, I was very involved.

19 MR. HUR: Very involved, okay.

20 PRESIDENT BIDEN: In terms of what was moved out.

21 MR. HUR: Yes, sir.

22 PRESIDENT BIDEN: Reason being, I thought it was
23 important to set up the lake house in the final form, what
24 it would look like, and to make sure that we had the down --
25 because -- downstairs as well, because we're going in now --

1 [0:57:46.1]

2 PRESIDENT BIDEN: -- well, when did I announce for
3 President?

4 MR. KRICKBAUM: May of --

5 MR. HUR: 2019.

6 PRESIDENT BIDEN: 2019.

7 MR. HUR: So several months before the move out.

8 PRESIDENT BIDEN: Yeah. And the reason was,
9 remember, when the pandemic had started to kick in, and so I
10 knew, if you notice, a -- and I don't blame them. They,
11 they -- the quick criticism of me, Biden should go back in
12 his tunnel and campaign from in his basement again. But I
13 -- what we did, we set up a theater in Delaware where I
14 could, I could go on television from, I could appear, I
15 could do -- and so I used -- I needed some of that furniture
16 in Delaware. And so that's what I picked out to send to
17 Delaware, for that reason, because we were campaigning out
18 of our basement --

19 MR. HUR: I see.

20 PRESIDENT BIDEN: -- basically, kind of.

21 MR. HUR: So with respect to that filing cabinet,
22 why, why did you pick that particular piece of furniture to
23 go to Wilmington?

24 PRESIDENT BIDEN: Well, well, because it -- there
25 was no sense in leaving it, and it could -- I knew the --

1 [0:58:50.1]

2 PRESIDENT BIDEN: -- place it could fit in the
3 house in that corner.

4 MR. HUR: Okay. And when it was moved out of
5 Chain Bridge Road to the lake house, what was in that
6 filing --

7 PRESIDENT BIDEN: I have no idea.

8 MR. HUR: Okay.

9 PRESIDENT BIDEN: I assume it was in it when it
10 got to the lake house. I don't know.

11 MR. HUR: And when it was moved out of Chain
12 Bridge Road and taken to Wilmington, did you do any of that
13 process I talked about earlier, the culling, the purging,
14 the --

15 PRESIDENT BIDEN: No.

16 MR. HUR: -- saying, I don't need this, I don't
17 need that.

18 PRESIDENT BIDEN: No.

19 MR. HUR: Okay.

20 PRESIDENT BIDEN: Because it wasn't -- it was just
21 -- it wasn't in the way. I mean, it would take more time to
22 do that, to throw stuff out that I want to throw out than it
23 sitting there in the file cabinet, you know what I mean.

24 MR. HUR: Do you know if the contents were removed
25 from the file cabinet? In other words, was it emptied to --

1 [0:59:45.0]

2 MR. HUR: -- make it lighter to move --

3 PRESIDENT BIDEN: I have no idea.

4 MR. HUR: -- or was it moved full? Okay.

5 PRESIDENT BIDEN: I guess it -- they probably
6 locked the cabinet and put it in a truck. I don't know
7 though. I don't know.

8 MR. HUR: Anything else on the move out of Chain
9 Bridge Road? No? Okay. So at this point, I would want to
10 shift gears to a separate property, the, the lake house.

11 PRESIDENT BIDEN: Okay.

12 MR. HUR: You, you talked some about that, but I'd
13 like to return to that right now.

14 PRESIDENT BIDEN: All right.

15 MR. HUR: And now I know you know this house very
16 well, but maybe for me the photos would be helpful.

17 PRESIDENT BIDEN: Sure. No, helpful to me too.

18 MR. HUR: So there are some photographs of the
19 Wilmington lake house behind tab 2.

20 MR. BAUER: Behind -- did you say behind tab 2?

21 MR. HUR: Tab 2, yes.

22 MR. BAUER: Okay, thank you.

23 MR. HUR: And so --

24 PRESIDENT BIDEN: Okay.

25 MR. HUR: -- these photos, Bates 20230120_JLH_0173.

[REDACTED]

DRAFT

1 [1:00:50.7]

2 PRESIDENT BIDEN: Yep.

3 MR. HUR: -- ending 182, ending 183, ending 188,
4 ending 177, ending 171.

5 PRESIDENT BIDEN: Yep.

6 MR. HUR: So I believe that these are photographs
7 of the room you were calling the [REDACTED] before?

8 PRESIDENT BIDEN: Yes.

9 MR. HUR: Okay.

10 PRESIDENT BIDEN: I just wanted you to know I
11 picked out the walnut tree that got cut down. I found the
12 guy who did Wintertree (phonetic) Museum Library, I picked
13 out the craftsman to come do this -- this room cost one-
14 third of the entirety of my entire home. Swear to God.

15 MR. HUR: Well --

16 PRESIDENT BIDEN: Anyway, and it's --

17 MR. HUR: -- it looks like it.

18 PRESIDENT BIDEN: It's not --

19 MR. HUR: It's very impressive.

20 PRESIDENT BIDEN: If you look up here, there's
21 seven different individual pieces of, of --

22 MR. SISSEL: Molding.

23 PRESIDENT BIDEN: -- molding. Anyway, I got a
24 little carried away.

25 MR. HUR: Okay.

[REDACTED]

1 [1:01:42.0]

2 PRESIDENT BIDEN: But okay.

3 MR. HUR: So you mentioned before in talking about
4 this room, there are some filing cabinets, or drawers,
5 rather --

6 PRESIDENT BIDEN: Yes.

7 MR. HUR: -- in it. So I think if we look at the
8 first photo behind tab 2 ending in 173, I think there's a
9 set of drawers behind the doors on the left-hand side.
10 Well, you know what, instead of my muddling through it this
11 way, why don't we go to the photos behind tab 3.

12 PRESIDENT BIDEN: Tab what?

13 MR. HUR: Tab --

14 MR. BAUER: Behind tab 3.

15 MR. HUR: Tab 3, yes.

16 MR. BAUER: Okay.

17 PRESIDENT BIDEN: Yeah. Now, you know what that
18 is -- you go back to tab -- the first page of the -- go back
19 to tab --

20 MR. SISKEL: Two?

21 PRESIDENT BIDEN: -- 2.

22 MR. HUR: Yep.

23 PRESIDENT BIDEN: And go to the second photograph.

24 MR. HUR: Ending in 182?

25 PRESIDENT BIDEN: 182.

1 [1:02:46.7]

2 MR. HUR: Yes, sir.

3 PRESIDENT BIDEN: If you look to the left -- if
4 you're sitting at the desk and you look to the left, I can't
5 quite see it, but that whole section between the flag and

6 [REDACTED] --

7 MR. HUR: Yes, sir.

8 PRESIDENT BIDEN: -- that are those doors that
9 open up --

10 MR. HUR: I see.

11 PRESIDENT BIDEN: -- and they open on the bottom
12 too. So there's -- the top opens to shelving, and the
13 bottom opens to filing. So the bottom -- so when you open
14 this up, the first -- the door on the -- the first door
15 there on the left, you see where there's a printer and
16 there's a -- what do they call it, the machine that --

17 MR. SISKEL: Fax machine.

18 PRESIDENT BIDEN: A fax machine.

19 MR. HUR: Yes, sir.

20 PRESIDENT BIDEN: And then this -- the thing
21 below, I don't use anymore. I never used the -- you can --
22 photographs, you can enlarge photographs. I think that's
23 what that's for.

24 MR. HUR: Okay.

25 PRESIDENT BIDEN: And there's the one file --

1 [1:03:39.9]

2 PRESIDENT BIDEN: -- drawer on the bottom.

3 MR. HUR: Yes, sir.

4 PRESIDENT BIDEN: And then to the left, there's
5 all the stuff for the printer and, you know, the -- it's ink
6 and stuff. And then what I have up top are -- I don't have
7 a magnifying glass now, but these are probably the speeches
8 that I kept that I would refer to and use for other reasons.
9 And then up top, you have the first book I met -- I wrote,
10 and the second book, and other books that, that I -- the
11 reason they're there, if someone wanted a signed copy, I'd
12 be able to reach one instead of going up in the attic and
13 get it. And, and the other side are folders that are
14 probably related to -- just I'm not sure. Anyway --

15 MR. HUR: Okay. That's --

16 PRESIDENT BIDEN: That -- and there's --

17 MR. HUR: That's very helpful.

18 PRESIDENT BIDEN: -- a little drawer above there
19 that has -- I'd have keys in it or miscellaneous stuff in,
20 in the drawer.

21 MR. HUR: Okay. So I'd like to focus on the, the
22 drawer -- I think you may be looking at the photograph
23 ending in 127.

24 PRESIDENT BIDEN: Yep.

25 MR. HUR: That drawer that's open there --

1 [1:04:55.3]

2 MR. HUR: -- towards the bottom.

3 PRESIDENT BIDEN: Yep.

4 MR. HUR: And it -- there's a closer-in shot of it
5 in the next photo, 128.

6 PRESIDENT BIDEN: Yep.

7 MR. HUR: So, so whose files are kept in here?

8 PRESIDENT BIDEN: My files.

9 MR. HUR: Okay. Anyone else's? Did Dr. Biden
10 keep anything in here?

11 PRESIDENT BIDEN: I don't believe so.

12 MR. HUR: Okay.

13 PRESIDENT BIDEN: Matter of fact, if it was, it
14 was a pure accident that it got there.

15 MR. HUR: Okay. And the materials in here, are
16 they -- were they official, work related, personal, a mix --

17 PRESIDENT BIDEN: They were mine. Whatever the
18 hell they were, they were mine.

19 MR. HUR: Okay.

20 PRESIDENT BIDEN: No, I'm not being facetious.
21 Whether they were official, not official, they were mine.

22 MR. HUR: Okay.

23 PRESIDENT BIDEN: I mean, I -- and I don't know
24 what they were though.

25 MR. HUR: Um-hum.



1 [1:05:41.1]

2 PRESIDENT BIDEN: For example, one is a
3 fundraising from 2020 campaign.

4 MR. HUR: Yep. And there's a closer shot of it on
5 the next photo in -- ending in 130.

6 PRESIDENT BIDEN: Yeah. Okay, yeah. All right.
7 So, you know -- and that is something, if you ever run for
8 office, you've got to keep.

9 MR. HUR: That will never happen, sir.

10 PRESIDENT BIDEN: That's what I said. Okay.

11 MR. HUR: So on this -- maybe looking at this
12 photograph ending in 130, there are -- well, actually,
13 before we, we talk about this, how often were you in and out
14 of this drawer?

15 PRESIDENT BIDEN: I have no idea.

16 MR. HUR: Focusing on the time when you were --
17 after your -- the end of your vice presidency, but before
18 you became President.

19 PRESIDENT BIDEN: Well, this -- the stuff that's
20 in here, the -- not very often. For example, something went
21 wrong (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F), I'd have -- this first thing is

22 (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) okay, and (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F)

23 (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F). Then some of this stuff would be -- I
24 can't read it, but -- because what I constantly do, what
25 drives everybody crazy with me, I'm constantly making --



1 [1:07:04.1]

2 PRESIDENT BIDEN: -- changes to the house. Even
3 when [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) [REDACTED], I've made
4 changes to the house. Okay. We're going to do that, you're
5 going to knock out that wall and put it in this way kind of
6 thing. So I -- really, I'm -- this is my baby, my hostage,
7 my, my interest. And so what would be in here is, for
8 example -- does that say bookshelves? I'm not -- I can't
9 read it.

10 Anyway -- and the other thing that could be in
11 here, and it wouldn't have been in here until I was living
12 -- until Chain Bridge Road was finished -- I mean, I
13 wouldn't be having -- would be -- I'm terrible, that's why I
14 have an accountant and a person that pays my bills. When I
15 sold the book, I made a lot of money. I mean, it truly
16 stunned me, because the first book sold as many copies and
17 was the best seller list, but they never promoted it. But
18 they came and started asking me to -- would, would I do an
19 event, talk about the book at the such-and-such book club or
20 the -- on Wall -- not Wall Street -- in New York City, et
21 cetera. And I started getting invitations from all over the
22 world to come and talk about my book, and they'd have 1,000
23 people show up, and they'd all buy a book and pay a fee to
24 come in. I ended up making more money on the sale of that
25 book than I made my whole life. And I gave -- I was able --

1 [1:08:41.9]

2 PRESIDENT BIDEN: -- to give a million dollars
3 away to charity. I've always wanted to do that. I gave
4 \$1,100,000 to charity.

5 And the point I'm making is that it was all brand
6 new to me. And so that's when I -- I remember meeting with
7 Colin Powell and Chuck Hagel. They wanted to see me. He
8 said, should we tell him, Chuck. He said, look, here's the
9 guy -- we recommend the following accountant for you, and we
10 recommend the following person that would, you know, pay the
11 bills every month. And now they wanted me to invest money.
12 They said, you'll be able -- they'll have -- create an
13 investment idea. I didn't want to invest anything. I
14 didn't want to have any conflict as a senator. So I don't
15 own a stock or a bond that I'm aware of. Now, my, my
16 pension, they have -- I guess they purchased stocks and
17 bonds. But I never wanted to have any argument. You know
18 how evolved this thing is? The thing I valued most my whole
19 life, my reputation and integrity. So I never ever wanted
20 to have anything that someone said, you bought that stock
21 and it went up because you traded. Never did that.

22 So what I would do, I'd keep these little skinny
23 -- my guess is these skinny notebooks I have here, were
24 probably notebooks, the ring binders --

25 MR. HUR: Yeah.



1 [1:10:15.8]

2 PRESIDENT BIDEN: -- were probably notebooks on
3 finances.

4 MR. HUR: Are you -- which photo are you looking
5 at right now, sir?

6 PRESIDENT BIDEN: I'm looking at 0130, and --

7 MR. HUR: 0130, okay. So we actually have a, a
8 better shot of these notebooks once they've been removed.
9 The next page, 131, shows the hand of an FBI agent taking
10 them out.

11 PRESIDENT BIDEN: Okay.

12 MR. HUR: And then in 132, the following
13 photograph, shows them --

14 PRESIDENT BIDEN: Okay.

15 MR. HUR: -- laid out on the ground. The label on
16 the middle is a little bit shiny, but they say, from left to
17 right, Obama/Biden -- I'll have to look up what the label
18 there says. And then lastly, foreign policy.

19 PRESIDENT BIDEN: Yeah.

20 MR. HUR: So these, these contain your notes --
21 some of your notes from the time that you were Vice
22 President.

23 PRESIDENT BIDEN: Yeah.

24 MR. HUR: Oh, I'm sorry, if you see in -- ending
25 131, that second notebook also says foreign policy on it.



[REDACTED]

DRAFT

1 [1:11:25.7]

2 PRESIDENT BIDEN: Yeah. Okay.

3 MR. HUR: So do, do you recognize these notebooks
4 from -- as being ones that you used during your vice
5 presidency?

6 PRESIDENT BIDEN: I, I used notebooks. I guess I
7 can't swear that I know each one of them or -- but, yes, I
8 mean, these are books that I would, I would keep notes in.

9 MR. HUR: Okay. And do you -- how did these
10 notebooks get in this particular drawer?

11 PRESIDENT BIDEN: I'm sure they were in whatever
12 it was when it got shipped -- when the stuff that they
13 shipped up, or it was already in there from before. Look,
14 during the period that I was a senator and Vice President, I
15 did a lot of work from, from the lake. I'd have meetings at
16 the lake. If you notice, you're in there -- I think the FBI
17 was in there. There are (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) and

18 (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) So I'd have meetings. And so what I
19 would do instead of me getting on the train and go down for
20 the 499th time, I'd have the staff come to me and we'd have
21 the meetings in Delaware and/or we'd have telephone
22 conferences, or you may remember, on -- I think on my desk,

23 (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F)

24 [REDACTED]

25 MR. SISKEL (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) honetic), yeah.

[REDACTED]

[REDACTED] DRAFT

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1 [1:12:51.7]

2 PRESIDENT BIDEN: [REDACTED] And so that's -- I
3 could have very well been doing these from Delaware as well,
4 so they may have never left. I don't know. Never left
5 Delaware, I mean.

6 MR. HUR: I see. So just to be clear -- just to
7 make sure I understand what you're saying, the notebooks
8 could've found their way into this drawer either because
9 that's where they were when you were conducting business
10 from the lake house --

11 PRESIDENT BIDEN: Yeah.

12 MR. HUR: -- during the vice presidency.

13 PRESIDENT BIDEN: Yeah.

14 MR. HUR: Or they could've been shipped here or
15 boxed up and brought to the lake house.

16 PRESIDENT BIDEN: It's -- the latter's unlikely if
17 they're all books from the, you know, '13 and '14 --

18 MR. HUR: Yes, sir.

19 PRESIDENT BIDEN: It's, it's likely they've been
20 there.

21 MR. HUR: Okay.

22 PRESIDENT BIDEN: That they would've never left
23 there. Now, obviously, the March 2020 fundraising thing,
24 that got there after the fact. And -- but -- so there's a
25 combination. I mean, there's -- I'm sure there's -- I --

1 [1:14:04.9]

2 PRESIDENT BIDEN: -- can't, I can't swear how they
3 got there, but it was -- I guess I was thinking that I'd --
4 if I had to bet and the Lord Almighty came down and said I
5 know the answer and your life depends on it, I guess that
6 they had been there maybe during that period in 2014. I
7 took it out and took it down on the train with me to take
8 notes. I don't -- but my guess is they were kept there.

9 MR. HUR: And would there -- who, who would have
10 placed the notebooks in this particular drawer?

11 PRESIDENT BIDEN: Probably me.

12 MR. HUR: Would it have been anyone -- okay.

13 During the time that you were Vice President, did
14 anyone else put things into these drawers?

15 PRESIDENT BIDEN: I'm sure they did. I'm sure it
16 happened, but I don't -- you know, after a meeting, we'd
17 have and we'd go on the porch and have lunch and they'd file
18 my stuff and put it in these folders or drawers. But I, I
19 can't swear to that. And there's another -- there's two
20 other file drawers.

21 MR. HUR: Yes.

22 PRESIDENT BIDEN: The next (indiscernible
23 1:15:13.2).

24 MR. HUR: That's the next tab. So why don't we
25 move onto - that's a good segue - to the photos behind --



1 [1:15:21.3]

2 MR. HUR: -- tab 4. And so these are photos that begin
3 with Bates 20230120_FBI_151 --

4 PRESIDENT BIDEN: Yeah.

5 MR. HUR: -- and goes -- includes 152, 153, 155,
6 156, 158, and 161.

7 PRESIDENT BIDEN: Yep.

8 MR. HUR: So let's start with the first of these
9 photos, _151.

10 PRESIDENT BIDEN: Yep.

11 MR. HUR: Is this another filing drawer within
12 that --

13 PRESIDENT BIDEN: Yes.

14 MR. HUR: -- same formal library?

15 PRESIDENT BIDEN: At the other end --

16 MR. HUR: Okay.

17 PRESIDENT BIDEN: -- of the library.

18 MR. HUR: And so this one, instead of the printer
19 and the fax machine above it --

20 PRESIDENT BIDEN: The television.

21 MR. HUR: -- this one has the TV. So what kinds
22 of things did you keep in here?

23 PRESIDENT BIDEN: I don't remember. They're
24 probably more personal, but I don't remember.

25 MR. HUR: Okay. And is this open drawer in --



1 [1:16:17.5]

2 MR. HUR: -- photo 151, is this also one that,
3 that your materials were in, or was anyone else's
4 material --

5 PRESIDENT BIDEN: No.

6 MR. HUR: -- in this drawer?

7 PRESIDENT BIDEN: No. Nobody else's material.

8 MR. HUR: Okay. All right. So we get a little
9 bit closer up in 152, and even closer in 153.

10 PRESIDENT BIDEN: Okay.

11 MR. HUR: And if you look at 153, there's a binder
12 there that says Corvette.

13 PRESIDENT BIDEN: Oh, yeah.

14 MR. HUR: And a binder --

15 PRESIDENT BIDEN: Okay. Now, I have stuff in
16 there. I remember this.

17 MR. HUR: Okay.

18 PRESIDENT BIDEN: I had all materials of things
19 that mattered to me personally, like the Corvette, the one I
20 did with Jay Leno.

21 MR. HUR: Yes, sir.

22 PRESIDENT BIDEN: You know, I, I kept all the
23 material relating to the Corvette because I -- my dad ran a
24 dealership, he was able to give me as a wedding gift for my
25 wife and I because he could afford the payments. He was --

1 [1:17:17.9]

2 PRESIDENT BIDEN: -- the manager; he didn't own
3 it. He couldn't afford a big gift, but he could afford the
4 payments. And it was \$5700 and I have all the material from
5 it. I have, like, the original key ring, the original --
6 anyway. And I got offered \$144,000 for it because it's
7 original. So -- but that's not the reason, but I have all
8 the stuff about the Corvette. There's probably photographs
9 in there, my guess, of the Corvette. I'm not positive.

10 And what's the other one say? Can anybody read
11 the first one?

12 MR. HUR: Does that say major?

13 PRESIDENT BIDEN: Major -- it probably is.

14 MR. HUR: Water? I should have it. But anyhow.

15 MS. COTTON: Major Speeches is what I read.

16 UNIDENTIFIED MALE SPEAKER: Major --

17 MR. HUR: Major speeches.

18 PRESIDENT BIDEN: Yeah.

19 MR. HUR: Okay. Thank you.

20 PRESIDENT BIDEN: Yeah. And so what probably
21 happened there was I -- you know, there would be -- stuff
22 would end up being left on that -- on the conference table
23 at the other end and things like that, and so I'm sure that
24 I've gone through that top of that desk and said, no, this
25 -- file this and file that stuff that was left on top of --

[REDACTED] DRAFT

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1 [1:18:29.5]

2 PRESIDENT BIDEN: -- the desk. I'm, I'm, I'm --
3 not every time, but on occasion, that's what I would do to
4 clear that desk off. And, and some of this stuff is more
5 personal. I don't have a magnifying glass, but this drawer
6 that opens --

7 MR. HUR: Yeah.

8 PRESIDENT BIDEN: -- the next page, 155. I'm sure
9 a lot of that's --

10 MR. HUR: Yeah, 155, it's hard to see.

11 PRESIDENT BIDEN: I'm sure a lot of that's
12 personal stuff. You know, like, the house and -- you know,
13 for example, there's so damn many different contractors I've
14 used about, you know, who's, who's going to fix that -- put
15 the roof on that, that pump house that's outside there, you
16 know, and what's going to happen with the change up -- you
17 know, for example, when I bought that property, that house
18 at the top that you -- you know, that -- where the Secret
19 Service is?

20 MR. HUR: Yes, sir.

21 PRESIDENT BIDEN: Well, that was about
22 three-quarters as long -- not -- maybe two-thirds as long as
23 it is now. And so what happened was when my, when my mom --
24 my dad got real sick and I wanted them to sell their house
25 and move in with me, and my mother would never -- even --

1 [1:19:47.9]

2 PRESIDENT BIDEN: -- though I did the whole
3 downstairs thing, my mother, when my dad died, moved back to
4 her house by herself, and I convinced her to come and live
5 with me. She said, well, riding down the driveway, and she
6 said how about that place there, how about making a little
7 cottage for me. Well, it had been a big garage, it had been
8 a barn for the property, the original property. So I have
9 all kinds of plans and things that are --

10 And so -- but there's, like, nine different
11 contractors I used here, different things. So my guess is
12 in that drawer there's a lot of things having to do with the
13 property, having to do with the right-of-ways, having to do
14 with the -- all the signatures I had to get to change to be
15 able to put the second story on, that kind of stuff.

16 MR. HUR: I see.

17 PRESIDENT BIDEN: But I'm not positive. I'd have
18 to go look at it. That's my guess.

19 MR. HUR: Yes, sir. So if you look at the photo
20 ending in 153, and then at --

21 PRESIDENT BIDEN: Yeah. Yep.

22 MR. HUR: Yeah, 153, you'll see that there's a
23 number sort of in the middle of the drawer. There are
24 notebooks that are spiral bound --

25 PRESIDENT BIDEN: Yep.

████████████████████

DRAFT

1 [1:21:01.7]

2 MR. HUR: -- that have black covers on them. And
3 then if you go a couple pages further in the tab, so ending
4 in 156, this is a photograph of that stack of notebooks laid
5 out on the ground.

6 PRESIDENT BIDEN: Gotcha.

7 MR. HUR: And so they have -- some of them have
8 labels on them. One of them says Af/Pak 1; one of them says
9 Daily Memo; one of them says Foreign Policy on the front.
10 And these, based on our review of them, appear to contain
11 further notes from your time as Vice President.

12 PRESIDENT BIDEN: Okay.

13 MR. HUR: Okay. So do you -- was this, was this
14 particular drawer in your Wilmington library, was this
15 someplace that you placed and kept these notebooks?

16 PRESIDENT BIDEN: I don't know. I mean, there's
17 probably other drawers that had them in it too, but these
18 are all things that are mine that I keep and I just file
19 away. And I'm -- none of them are relevant to, I don't
20 think anything I was doing, especially the years you're
21 talking about. Anyway --

22 MR. HUR: Okay. So were you -- was this
23 particular drawer a place where you stored these notebooks
24 from your time as Vice President?

25 PRESIDENT BIDEN: No. These are probably --

████████████████████

1 [1:22:46.7]

2 PRESIDENT BIDEN: -- materials that ended up in
3 Delaware that were in my desk and other places, and they'd
4 gather them up and put them in one drawer.

5 MR. HUR: I'm sorry, sir. I just didn't, I didn't
6 hear you.

7 PRESIDENT BIDEN: I said, I -- no. I don't -- why
8 they all got in one drawer is probably because I went through
9 my desk or things on top of my desk or in that -- on that, on
10 those shelves and they were all these notebooks. I put them
11 all together and put them in one spot. I'm sure these are not
12 all the books I've done on foreign policy as Vice President.

13 MR. HUR: So to the extent that there were other
14 notebooks containing your notes on foreign policy during
15 your time as Vice President, where are those?

16 PRESIDENT BIDEN: I have no idea. I wish I could
17 say I was more organized. No, I'm not being facetious. I'm
18 being deadly earnest. It's not like I, I had -- Jill used
19 to say to me, you ought to be like -- and then she stopped
20 saying -- but Franklin Roosevelt or Ronald Reagan. I said,
21 don't make me like Ronald Reagan. I'd joke. Every night,
22 he'd come home and he'd write a diary about what happened
23 that day, who he spoke to, classified, unclassified, just
24 everything he'd write in it, and he kept it all. She
25 thought, because she's an English professor of writing, --

[REDACTED] DRAFT

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1 [1:24:09.0]

2 PRESIDENT BIDEN: -- that I should just keep --
3 for posterity's sake, I should keep a diary. Every day, put
4 down important things that happened that day and move on. I
5 never was that organized. And so I -- anyway.

6 MR. HUR: Okay. If you look at, if you look at
7 the photograph ending in 156, several of these notebooks
8 have documents tucked into them --

9 PRESIDENT BIDEN: Yep.

10 MR. HUR: -- like in the top row, the third from
11 the left --

12 PRESIDENT BIDEN: Yeah.

13 MR. HUR: -- has some documents sticking out of
14 it. Same with the one all the way to the right. So were
15 these, were these documents tucked into these notebooks when
16 they were placed into this drawer?

17 PRESIDENT BIDEN: No. My guess is -- I don't
18 know. Highly unlikely. My guess is, like, when I finish a
19 -- I was just doing a brief [REDACTED] and I had a notebook,
20 and I got finished, and I took the PB (phonetic) notes and I
21 stuck them in that -- in a folder like this one sitting on
22 my desk upstairs. And, and my guess is I end up putting
23 them away and I forget that that -- whatever I slipped in
24 there is in there, but I don't know.

25 MR. HUR: All right. Anything else on those --

1 [1:25:50.5]

2 MR. HUR: -- drawers in the library, guys?

3 MR. KRICKBAUM: If I understood your last answer,
4 Mr. President, part of what you're saying is, for example,
5 if there were marked classified documents stuffed in those
6 notebooks, you were not aware of it?

7 PRESIDENT BIDEN: Correct.

8 MR. KRICKBAUM: Did I, did I understand that?

9 PRESIDENT BIDEN: And by the way, if they're -- I
10 don't -- if they're marked classified, one of those things
11 with circles around it and clearly it's a classified
12 document, not something that's eyes only or Secret or
13 selective or whatever the hell it is, other than saying Top
14 Secret, it would not be in here. I -- every time I saw
15 anything like that, I gave it to staff to say return this
16 wherever it was.

17 Now, the -- anyway. So -- but I could easily see
18 -- like, for example, the, the -- what do you have right
19 there in front of you? That.

20 MS. COTTON: This?

21 PRESIDENT BIDEN: Yeah.

22 MS. COTTON: Notes.

23 UNIDENTIFIED MALE SPEAKER: (Indiscernible
24 1:26:56.8).

25 PRESIDENT BIDEN: Okay. It says attorney work --

1 [1:27:02.1]

2 PRESIDENT BIDEN: -- product.

3 UNIDENTIFIED MALE SPEAKER: Don't read it out.

4 (Laughter, overlapping voices 1:27:03.1.)

5 PRESIDENT BIDEN: No, no, no, no, no, no, no. But
6 here's my point, what I would do if I was given this to
7 read, and I finished the -- you know, I'd stick it in a
8 notebook, pick up and I'd walk out, I'd forget I had it in
9 the notebook. That's what I'm trying to stay. But I didn't
10 store things in notebooks to keep them. That's not -- if I
11 were going to --

12 And if they're classified, I would take them --
13 I'd call -- I think I've done that here. I'm not sure. I
14 probably said to staff, hey, I found this, return it. And
15 so it's -- anyway.

16 What's this one here on 061? For POTUS 28/09/09.

17 MR. HUR: You're looking at the last photo in --

18 PRESIDENT BIDEN: Yeah.

19 MR. HUR: -- tab 4. So if we can look at this in
20 conjunction with the one before it.

21 PRESIDENT BIDEN: Sure.

22 MR. HUR: The, the photo --

23 MR. BAUER: In conjunction with which one, sir?

24 MR. HUR: I'm sorry. The photo before it ends in

25 158 --

1 [1:28:04.9]

2 MR. BAUER: Yes.

3 MR. HUR: -- and that has the notebook with Af/Pak
4 1 with a binder-clipped document stuck into it.

5 PRESIDENT BIDEN: Gotcha.

6 MR. HUR: And then if, if you --

7 MR. BAUER: Can -- could I just say one thing,
8 Rob? This is -- that's absolutely fine. I don't mean to
9 interrupt. I do want to mention one thing. We're -- in the
10 next few minutes, we're going to be at about two-and-a-half
11 hours --

12 MR. HUR: Yes, sir.

13 MR. BAUER: -- and I do know that the President
14 has a 3 o'clock or thereabouts barbecue --

15 PRESIDENT BIDEN: Staff.

16 MR. BAUER: -- that he has to host on behalf of
17 congressional or somebody. But by all --

18 PRESIDENT BIDEN: It's all the people that work in
19 here.

20 MR. BAUER: But -- yeah, by people working here,
21 exactly.

22 PRESIDENT BIDEN: All right. It's my fault.
23 We're going through -- but go quicker with your questions.

24 MR. BAUER: Yeah. If you want to start it the
25 next time or if you want to do it now, that's entirely up --

1 [1:28:38.5]

2 MR. BAUER: -- to you.

3 PRESIDENT BIDEN: Let's do it now.

4 MR. BAUER: Okay. That's absolutely up to you.

5 PRESIDENT BIDEN: So you started to say go back to
6 158, which I did, and it says --

7 MR. HUR: Yes, yes.

8 PRESIDENT BIDEN: -- has the number 10.

9 MR. HUR: Yeah.

10 PRESIDENT BIDEN: And it has Af/Pak 1.

11 MR. HUR: I think it might make sense maybe,
12 because this sort of enters a new topic, maybe to address
13 these tomorrow.

14 MR. BAUER: His concern is that it's going to take
15 too long, that it's not going to be a short -- and you said
16 let's move quickly, and I think the -- that the --

17 PRESIDENT BIDEN: Let's see if, if --

18 MR. BAUER: Much rather get through this is --

19 PRESIDENT BIDEN: If, if (b)(6), (b)(7)(C) (phonetic)
20 outside -- do you mind?

21 MS. COTTON: Sure. Do you want him to come in?

22 PRESIDENT BIDEN: Yeah.

23 MS. COTTON: Okay.

24 PRESIDENT BIDEN: I'll have him call up and see if
25 they're getting started. If not, I'd just like to get --

1 [1:29:19.8]

2 PRESIDENT BIDEN: -- it done.

3 MS. COTTON: (Indiscernible 1:29:20.0).

4 MR. BAUER: And if we can find that time, then we
5 just, you know -- .

6 MR. HUR: Sure.

7 MR. BAUER: -- have less to do tomorrow.

8 MR. HUR: Sure. Does it make sense to take a
9 break right now?

10 MR. BAUER: I think what we --

11 PRESIDENT BIDEN: I'm not, I'm not --

12 MR. BAUER: (Indiscernible 1:29:32.3).

13 PRESIDENT BIDEN: -- doing any breaks.

14 MR. BAUER: Okay. You ready to just go --

15 PRESIDENT BIDEN: I'd rather just keep going.
16 I'll go all night if we get this done.

17 All right. Have they started the barbecue yet?

18 (b) (6), (b) (7)(C): Not yet, sir.

19 UNIDENTIFIED MALE SPEAKER: Okay.

20 PRESIDENT BIDEN: Okay. When they start, tell
21 Jill I'm here, I'm ready to stop whenever they start.

22 (b) (6), (b) (7)(C): Yes, sir.

23 PRESIDENT BIDEN: Okay?

24 (b) (6), (b) (7)(C): Yes, sir.

25 MR. BAUER: And (b) (6), (b) (7)(C), roughly what time --

1 [1:29:49.8]

2 MR. BAUER: -- would that be?

3 (b) (6), (b) (7)(C): Probably in the next
4 (indiscernible 1:29:53.2) hour.

5 PRESIDENT BIDEN: The next hour?

6 (b) (6), (b) (7)(C): Yes, sir.

7 PRESIDENT BIDEN: Okay. If it's sooner, call,
8 okay?

9 (b) (6), (b) (7)(C): Yes, sir.

10 PRESIDENT BIDEN: All right.

11 MR. HUR: All right. So I'd like to move on maybe
12 to the photos that are in tab 5, because I think that way we
13 can --

14 PRESIDENT BIDEN: What is this, for POTUS?

15 MR. HUR: So that, that is a document that is --
16 that was discovered in the notebook labeled Af/Pak 1 in the
17 photograph ending 158.

18 PRESIDENT BIDEN: Gotcha. And there's something
19 behind that?

20 MR. HUR: There, there are a number of pages
21 behind that, that document, but I'd like to take that up --

22 PRESIDENT BIDEN: All right.

23 MR. HUR: -- after this next --

24 PRESIDENT BIDEN: Okay, good.

25 MR. HUR: -- set of questions.

[REDACTED]

1 [1:30:40.7]

2 PRESIDENT BIDEN: Want to play pool? My next
3 photograph.

4 MR. HUR: Okay. All right. So now we're going to
5 be talking about the photographs behind tab, tab 5, and so
6 these are Bates labeled 20230120_JLH_62, then 74, then 66,
7 then 76, then DSC_004, DSC_005.

8 So back to the first photo in this tab section, is
9 this the, is this the room you were talking about --

10 PRESIDENT BIDEN: Yes.

11 MR. HUR: -- earlier with the --

12 PRESIDENT BIDEN: Yeah.

13 MR. HUR: -- (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F)

14 [REDACTED]

15 PRESIDENT BIDEN: The screen that comes down that
16 covers the whole fireplace. That's (indiscernible
17 1:31:31.1) -- that's why it's a (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F).

18 MR. HUR: Okay. And is this the room that you --
19 I believe you mentioned you were, you were running a lot of
20 campaign operations out --

21 PRESIDENT BIDEN: Yes.

22 MR. HUR: -- of this particular -- okay.

23 PRESIDENT BIDEN: And outside, as you remember,

24 (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) and we had big,
25 thick clear plastic that would come down so that rain --

[REDACTED]

1 [1:31:55.0]

2 PRESIDENT BIDEN: -- couldn't come through and you
3 could pull up for the sun, and there's places we -- and so
4 there were, there were television cameras, there were
5 podiums, there were lighting systems, et cetera. If I were
6 going to do something, any -- then that's where I would do
7 speeches from. That's where I'd do interviews with, you
8 know, Meet the Press from, because it was during the
9 pandemic.

10 MR. HUR: Understood. Okay. So if we look at the
11 last two photos in this section, ending DSC_0004 and 0005,
12 one of the pieces of furniture we see in a little nook --

13 PRESIDENT BIDEN: Yep.

14 MR. HUR: -- I guess next to the couch, is a
15 two-drawer cabinet.

16 PRESIDENT BIDEN: Yep.

17 MR. HUR: So is this the same cabinet you were --

18 PRESIDENT BIDEN: My guess is it's the same one.
19 It could -- there's another one exactly like it --

20 MR. HUR: Okay.

21 PRESIDENT BIDEN: -- in the other corner over here
22 if you look at 004, go to the corner, you see a golf club?

23 MR. HUR: Yes.

24 PRESIDENT BIDEN: Well, there's a nook back in
25 there --

1 [1:32:55.5]

2 MR. HUR: Yes.

3 PRESIDENT BIDEN: -- and there's another one of
4 these, these filing cabinets there as well.

5 MR. HUR: Okay.

6 PRESIDENT BIDEN: Identical filing cabinet.

7 MR. HUR: Okay.

8 PRESIDENT BIDEN: Looks identical, I mean.

9 MR. HUR: Gotcha.

10 PRESIDENT BIDEN: Okay.

11 MR. HUR: So if -- so let's focus on the file
12 cabinet that's in the --

13 PRESIDENT BIDEN: 05?

14 MR. HUR: If we're looking at -- yes, 05.

15 PRESIDENT BIDEN: Yep.

16 MR. HUR: Perfect. Let's focus on that one. So
17 that one may be the same file cabinet that came from Chain
18 Bridge -- that was previously in Chain Bridge Road; is that
19 right?

20 PRESIDENT BIDEN: That's my guess.

21 MR. HUR: Okay.

22 PRESIDENT BIDEN: Either that one or the one
23 that's in the other corner.

24 MR. HUR: Okay. So if the one that we're looking
25 at in 0005 is not the one that was in Chain Bridge Road --

1 [1:33:35.2]

2 MR. HUR: -- then where was it before?

3 PRESIDENT BIDEN: It was probably -- I don't know
4 where it was. Maybe it was on the first floor. I don't
5 know. It could've been somewhere else in Chain Bridge Road.
6 I don't know.

7 MR. HUR: Okay. It sounds like -- well, it sounds
8 like the two cabinets that, that look alike --

9 PRESIDENT BIDEN: Yeah.

10 MR. HUR: -- were they both at Chain Bridge Road?

11 PRESIDENT BIDEN: I don't remember. I -- my guess
12 is they probably were, but I don't know that.

13 MR. HUR: Were they bought together as a matching
14 set?

15 PRESIDENT BIDEN: I don't know. I don't know.

16 MR. HUR: Okay, okay. Let's see. All right. So
17 then back to the cabinet in 5, 005.

18 PRESIDENT BIDEN: Yep.

19 MR. HUR: So what -- when this was moved in, who,
20 who picked that spot for it in this room?

21 PRESIDENT BIDEN: I probably did. I probably told
22 them where -- I didn't -- not with it being moved, but I --
23 you know, I'm kind of fastidious about where things go, so I
24 probably said put that -- those file cabinets in these two
25 places.

1 [1:34:40.9]

2 MR. HUR: Okay. And once it was placed there in
3 this room in the lake house, whose files were, were in this
4 cabinet?

5 PRESIDENT BIDEN: Mine.

6 MR. HUR: Okay. Exclusively yours?

7 PRESIDENT BIDEN: Yeah.

8 MR. HUR: Okay. And what kinds of files were kept
9 there when --

10 PRESIDENT BIDEN: I don't recall. It could be
11 everything from family photographs to -- I don't know. I
12 mean, it could be anything.

13 MR. HUR: Okay. Were you in and out of this
14 cabinet?

15 PRESIDENT BIDEN: Not very often, no.

16 MR. HUR: Okay. Was anyone else in and out of the
17 cabinet?

18 PRESIDENT BIDEN: Not that I'm aware of.

19 MR. HUR: Okay. So if we go to tab 6, there's
20 some photographs of the materials inside this cabinet. And
21 so the first photo, 20230120_FBI_0039, this shows the
22 interior of the top drawer.

23 PRESIDENT BIDEN: Yep.

24 MR. HUR: And it's --

25 PRESIDENT BIDEN: It makes sense. You see --

1 [1:35:50.2]

2 PRESIDENT BIDEN: -- those empty files?

3 MR. HUR: Yes.

4 PRESIDENT BIDEN: It very well may be that I put
5 those files in there with the papers cleaning off the pool
6 table that people drop stuff on or the conference table. So
7 I could have put those in there.

8 MR. HUR: Okay. And if you take a look at the --
9 I know it's a little bit hard to see, but if you can make
10 out the file folders, the titles written on any of those, do
11 any of those look familiar to, to you?

12 PRESIDENT BIDEN: No. I'm -- can you -- I can't,
13 I can't read them.

14 MR. HUR: Yeah. I --

15 PRESIDENT BIDEN: Can anybody else read what they
16 are?

17 MR. HUR: Okay. Well, maybe tomorrow we can pull
18 them up on a laptop and zoom in. But for now, that's fine.

19 And then if we go to the next photos in this
20 tab --

21 PRESIDENT BIDEN: Yep.

22 MR. HUR: -- ending in 40, that's a photograph of
23 the interior of the --

24 PRESIDENT BIDEN: Yep.

25 MR. HUR: -- bottom cabinet. And do you see --

1 [1:36:43.9]

2 MR. HUR: -- the binder on the right side, 2017 --

3 PRESIDENT BIDEN: Yep.

4 MR. HUR: -- invitations?

5 PRESIDENT BIDEN: Invitations, yeah.

6 MR. HUR: Okay. So if we go further on in the
7 photographs in this section, there's a couple photographs,
8 DSC_001 --

9 PRESIDENT BIDEN: Yep.

10 MR. HUR: -- and there's a finger pointing at the
11 right side of the bottom drawer there.

12 PRESIDENT BIDEN: Yep.

13 MR. HUR: And then DSC_002, you'll see a spiral-
14 bound black-covered notebook there with the label 1/6/12
15 Number 2 Foreign Policy.

16 PRESIDENT BIDEN: Yep.

17 MR. HUR: Okay. And then underneath that is
18 another one that's shown in FBI_0106, and that's labeled
19 daily 12/15/15, 2016, 2017, 2018.

20 PRESIDENT BIDEN: Yep. See it.

21 MR. HUR: Okay. So these notebooks, did you place
22 these notebooks here in this particular drawer of this
23 cabinet?

24 PRESIDENT BIDEN: I don't recall. I could've, but
25 I don't recall whether I placed them when the cabinet was --

1 [1:38:08.5]

2 PRESIDENT BIDEN: -- there or they came that way.
3 I don't recall.

4 MR. HUR: Okay. So one thing that we see in these
5 photographs of the bottom drawer --

6 MR. BAUER: Which photograph are you on, Rob?

7 MR. HUR: Let's look at ending in 0040, so that's
8 a few back from where we were.

9 MR. SISSEL: Wait a minute. What, what was
10 that (indiscernible 1:38:31.7).

11 MR. BAUER: Oh, yeah. Got it. Thank you.

12 MR. HUR: So --

13 MR. BAUER: Do you have it too?

14 MR. SISSEL: No, wait a minute.

15 MR. BAUER: No. Let's give us one second. We're
16 just --

17 MR. HUR: Sure, take your time.

18 MR. BAUER: -- moving to the right location.

19 MR. SISSEL: This one.

20 PRESIDENT BIDEN: Okay.

21 MR. HUR: Okay. So one thing that hits the eye is
22 on the left side, it's a bunch of hanging file folders.

23 PRESIDENT BIDEN: Yep.

24 MR. HUR: And on the right side, it's materials
25 that are stacked; they're not in hanging file folders.

[REDACTED]

DRAFT

1 [1:38:59.5]

2 MR. HUR: Do you recall why that was the case?

3 MR. BAUER: I'm sorry. Your question, Rob? I
4 apologize.

5 MR. HUR: Yes.

6 MR. BAUER: I couldn't hear it clearly.

7 MR. HUR: Do you recall why that was the case that
8 the stuff on the right side was --

9 PRESIDENT BIDEN: There was no hanging folders.

10 MR. HUR: -- stacked -- I'm sorry. I didn't hear
11 you, sir.

12 PRESIDENT BIDEN: Because there was no hanging
13 folders, I guess.

14 MR. HUR: Okay.

15 PRESIDENT BIDEN: I mean, I, I -- I don't have any
16 idea.

17 MR. HUR: Were there ever any -- were there ever
18 hanging file folders on the right side of that drawer?

19 PRESIDENT BIDEN: I don't have the slightest idea
20 in the world.

21 MR. HUR: Okay.

22 PRESIDENT BIDEN: I wouldn't be surprised if there
23 were; I wouldn't be surprised if there weren't.

24 MR. HUR: Okay.

25 PRESIDENT BIDEN: I, I, I don't know. I don't --

[REDACTED]

1 [1:39:33.1]

2 PRESIDENT BIDEN: -- think -- I don't know.

3 MR. HUR: So --

4 PRESIDENT BIDEN: My guess is if you see those
5 folders, they're not even all hanging. Did you see the rod
6 that they're supposed to hang on? It's not in place on the
7 right. They're only hanging on the left. They're not --
8 they can't be moved up and down if you take a look at it.

9 MR. HUR: Okay.

10 PRESIDENT BIDEN: So the idea that there was --
11 all that says to me is this thing was -- like, when it was
12 moved, it was, it was moved. I mean, you know, the -- you
13 put these skinny steel pieces down to hook the file on. You
14 see the skinny steel pieces aren't all in place. It goes
15 from where it's supposed to be all the way to the right,
16 because there's various forms of files. You can, you can
17 have long files and short files.

18 MR. HUR: Yes.

19 PRESIDENT BIDEN: So, anyway, I don't know what
20 that has to do with that.

21 MR. HUR: Yeah. We see a little bit of a better
22 shot of it in -- a couple pages later, DSC_2 and FBI 106. I
23 see -- are those the steel rails that you're talking about?

24 PRESIDENT BIDEN: Yeah.

25 MR. HUR: Yeah.

[REDACTED]

DRAFT

1 [1:40:41.2]

2 PRESIDENT BIDEN: Yeah.

3 MR. HUR: Okay. So in this same photo ending in
4 0002, there's that foreign policy notebook --

5 PRESIDENT BIDEN: Yep.

6 MR. HUR: And then another one underneath it.

7 PRESIDENT BIDEN: Yep.

8 MR. HUR: So these notebooks are in a different
9 place than the notebooks that were in your formal library
10 upstairs.

11 PRESIDENT BIDEN: This says to me just getting
12 them out of the way.

13 MR. HUR: I'm sorry, sir. Say that again.

14 PRESIDENT BIDEN: I mean, there's no rhyme or
15 reason to it. It's just getting them out of the way. You
16 know, they were sitting on the table, so I -- somebody or I
17 or somebody took them and dropped them in there.

18 MR. HUR: I see.

19 PRESIDENT BIDEN: I mean, it's not like -- I mean,
20 there's no conn -- anyway. The answer is I don't know.

21 MR. HUR: Okay.

22 PRESIDENT BIDEN: Okay.

23 MR. HUR: Oh. Okay. If we go another couple
24 photos forward, ending in 67 and ending in 68.

25 PRESIDENT BIDEN: Yeah.

[REDACTED]

1 [1:41:53.9]

2 MR. HUR: Do you see certain file folders here
3 with your, with your handwriting on them? Did, did you
4 write any of these titles on these file folders?

5 PRESIDENT BIDEN: Some of it looks like --

6 MR. BAUER: Can you make them out clearly, sir?

7 PRESIDENT BIDEN: Yeah.

8 MR. BAUER: Would it be helpful if they were
9 magnified?

10 PRESIDENT BIDEN: JRB Facebook. That doesn't look
11 like my writing.

12 MR. HUR: Um-hum.

13 PRESIDENT BIDEN: For VP Review, that doesn't look
14 like my writing. Well, look, UD policy documents, Obama --
15 what does that say? Iraq and Syria. That could be my
16 writing. I don't think so.

17 MR. HUR: Okay. So there were a number of -- and
18 just -- there are further closer-in shots later on in the
19 tab, 69, 70, 71.

20 PRESIDENT BIDEN: (Indiscernible 1:43:21.9)

21 UNIDENTIFIED MALE SPEAKER: Was that me?

22 PRESIDENT BIDEN: Gmail back up codes. I don't
23 remember that. Anyway.

24 MR. HUR: Okay. There are -- we can go back to
25 ending in 0068. There are a number of folders that you --

1 [1:43:41.6]

2 MR. HUR: -- can -- some you can see; some you can't
3 see. But there are a number of empty folders in here.

4 PRESIDENT BIDEN: Yep.

5 MR. HUR: For example, JRB Gmail backup codes is
6 empty, and there are a number of other folders that are just
7 empty. Do you recall -- you know, were there some folders
8 in here that the contents were removed and placed somewhere
9 else? What, what do you know about that?

10 PRESIDENT BIDEN: I have no idea.

11 MR. HUR: Okay. All right. Back to --

12 PRESIDENT BIDEN: And then I see M&T Banking.
13 That looks like it could be me. UD, Bauer, Iraq, political,
14 empty files. This looks like -- this JRB Facebook -- well,
15 I, I don't think I did that one, because I can't imagine I
16 look at Facebook.

17 MR. HUR: So putting the handwriting --

18 PRESIDENT BIDEN: I'm not being a smart guy. I --

19 MR. HUR: So putting the handwriting to one side,
20 when you take a look at the labels of these file folders,
21 what's in this file cabinet?

22 PRESIDENT BIDEN: Everything that was left on a
23 table somewhere. I mean, I -- there's no rhyme or reason to
24 what's in this file cabinet. University of Delaware,
25 Facebook, code, Syria. I mean, it's just anything that --

1 [1:45:18.1]

2 PRESIDENT BIDEN: -- was (indiscernible 1:45:18.2)
3 University of Delaware, (indiscernible 1:45:21.1), Mark Z,
4 Mark Zwonitzer, I assume that is. Biden Cancer. There --
5 the Biden -- the BRF Biden Foundation. (Indiscernible
6 1:45:45.8) M&T Bank. What's this one say? Can you see?
7 Anyway, I don't think there's any rhyme or reason. They're
8 clearly not based on subject-matter. I mean, they're all
9 over the board. So my guess is these are just things that I
10 decided not to throw away or -- as I said, they were just
11 miscellaneous stuff that was lying around and got put in a
12 drawer.

13 MR. HUR: Well --

14 PRESIDENT BIDEN: I see domestic policy.

15 MR. HUR: If we can flip to one particular photo
16 in here. It's towards the beginning.

17 MR. BAUER: I'm sorry. What number are -- pardon
18 me. What number is that?

19 MR. HUR: It is the fourth one in, it ends in
20 0002. It's of the black spiral-bound notebook on the right
21 side.

22 PRESIDENT BIDEN: Yeah, okay.

23 MR. BAUER: Got it.

24 MR. HUR: DSC_0002. So if you can see towards the
25 right side of that notebook there that's labeled 1/6/12 --

1 [1:47:07.6]

2 MR. HUR: -- Number 2 Foreign Policy. There's a
3 document sort of sticking out to the right side.

4 PRESIDENT BIDEN: Yeah.

5 MR. HUR: So there's a document that's tucked into
6 that particular notebook. So what do you recall about --
7 and I will, I will --

8 PRESIDENT BIDEN: I don't recall a single thing --

9 MR. HUR: -- represent to you --

10 PRESIDENT BIDEN: -- except that I can imagine --
11 there's times where I'd be in a meeting, whatever this was
12 about, foreign policy, and I'd have something -- I'd have --
13 okay, the meeting's over, I stick it in the book. Staff
14 doesn't know I put anything in the book when coming in. But
15 if they did anything at the time, they took that whole book,
16 put it in a drawer in my desk to get it out of the way, and
17 never went in the book to see what was in there. I mean,
18 what, what the edge was here. The only thing I can think
19 of.

20 MR. HUR: Okay. And I will represent to you that
21 that document that we can see the right edge of it sticking
22 out from the notebook, that that is a marked classified
23 document.

24 PRESIDENT BIDEN: Marked classified?

25 MR. HUR: Yes, sir.

1 [1:48:09.4]

2 PRESIDENT BIDEN: Little tiny print.

3 MR. HUR: Yes, sir.

4 PRESIDENT BIDEN: Yeah, okay.

5 MR. HUR: Well, I don't know how little tiny print
6 it is.

7 PRESIDENT BIDEN: Well, no, no, no. It -- because
8 it matters. It matters in terms of how important they think
9 it is. If you've got classified written in that really --
10 you probably can see -- anyway --

11 MR. BAUER: Can I just ask a clarification. Are
12 you representing that all of the documents in the
13 notebook --

14 MR. HUR: I'm sorry.

15 MR. BAUER: -- are classified?

16 MR. HUR: The, the documents include --

17 MR. BAUER: Include classified documents.

18 MR. HUR: -- marked classified documents.

19 MR. BAUER: They're not all classified documents.

20 MR. HUR: Yes.

21 MR. BAUER: Correct, thank you.

22 PRESIDENT BIDEN: So if it got put in with other
23 stuff, I could, I could see that them, meaning the staff,
24 not going through and putting away my book, wherever it was
25 at the time, open it up and looking through and pulling --

1 [1:48:50.1]

2 PRESIDENT BIDEN: -- out, you know, whatever's in
3 there.

4 MR. HUR: Okay.

5 MR. KRICKBAUM: Mr. President, did your staff go
6 through your notebooks, the ones that you were taking
7 handwritten notes in?

8 PRESIDENT BIDEN: I don't think so.

9 MR. KRICKBAUM: Okay. Okay.

10 MR. HUR: And following up on that, would your
11 staff --

12 PRESIDENT BIDEN: You ought to check them. I mean
13 -- but I don't ever recall --

14 MR. KRICKBAUM: Right, okay.

15 MR. HUR: And would your staff be scooping up
16 things from the table and placing them in drawers, or was
17 that something that you, that you did?

18 PRESIDENT BIDEN: I -- if I hadn't already done
19 it, they'd do it at the end of the day. Come in and clear
20 the desk, put them in drawers. I mean, for example, I have
21 a briefcase, I know it's here, but I have books in it that
22 have material that I've written, and not classified that I'm
23 aware of, but even if it were, it's mine -- you know, my
24 private notes, and they'll take it out if I'm -- they're
25 emptying the bag for me. And if I empty the bag and I'm --

1 [1:50:03.4]

2 PRESIDENT BIDEN: -- doing it on a desk, I'm
3 looking at it and I move to something else, they'll take
4 that and they'll put it in one of the drawers. In my
5 office, I have drawers, and you open those little doors in
6 that old Resolute Desk, and I have climate, foreign policy,
7 domestic policy, I don't know, Israel now or, you know --
8 and they'd open it up and flip it in that drawer. And I
9 had --

10 MR. BAUER: We're speaking here during the period
11 of the Presidency. I just want it clear on the record.

12 MR. HUR: Yeah.

13 PRESIDENT BIDEN: Yeah, yeah.

14 MR. BAUER: This is during the period of
15 presidency. Yes.

16 PRESIDENT BIDEN: No, no, I agree, but it would be
17 a not dissimilar thing when I wasn't, when I -- wherever I
18 had put stuff that, you know, I was -- we're working on.

19 MR. SISSEL: When you were Vice President.

20 PRESIDENT BIDEN: But even when I was -- if I had
21 -- I, I, I kept speeches and notebooks when I was running
22 for President, and they -- you know, my -- the same --
23 virtually, the same people who were in my Senate office, my
24 Vice President's office, and my office when I was when I was
25 in the Oval Office, and my -- when I was running, and as --

1 [1:51:20.8]

2 PRESIDENT BIDEN: -- President, there's a
3 continuum of a lot of these people.

4 MR. HUR: Okay. So I think we're done with those
5 particular photos.

6 PRESIDENT BIDEN: Okay.

7 MR. HUR: And my plan would be to go onto another
8 location within the lake house, the garage, and --

9 PRESIDENT BIDEN: Okay.

10 MR. HUR: -- those photos are in the next tab.

11 PRESIDENT BIDEN: That's the one I'm interested
12 in.

13 MR. HUR: Okay. So we'll keep going until you,
14 you tell us --

15 MR. BAUER: You're good with continuing, sir?

16 MR. HUR: -- you need to break for this barbecue.

17 PRESIDENT BIDEN: Yeah, I'm good with continuing.

18 MR. BAUER: Okay.

19 MR. HUR: Okay.

20 MR. BAUER: We'll continue.

21 MR. HUR: All right. So if we look at the photos
22 behind tab 7, there's just a couple of them:

23 20221221_ERT_005 and 009. So these photographs were taken
24 in, as the Bates number indicates, in December of 2022. So
25 do you recognize this garage?

1 [1:52:19.9]

2 PRESIDENT BIDEN: Yeah, I do.

3 MR. HUR: From the lake house. Okay.

4 PRESIDENT BIDEN: And by the way, this is the
5 second tranche of stuff that came to the -- this garage,
6 because there was stuff when I -- when they emptied the Penn
7 office and they emptied the -- what else, Chain Bridge Road.
8 There were -- a lot of stuff they gathered up and they just
9 took up and dropped in my driveway like this. And some of
10 them little skinny boxes, some open boxes, some -- but just
11 piled everything up. I remember walking in one day. The
12 garbage is out to the left here. You come out and this door
13 here, there's a door leaning against it. That door is a --
14 goes [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F), you know, [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F)

15 [REDACTED] in there. And for example, these fans --

16 MR. HUR: The ceiling fans, sir?

17 PRESIDENT BIDEN: The ceiling fans.

18 MR. HUR: Yes.

19 PRESIDENT BIDEN: They're, they're from the

20 [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F). And so it's when they started
21 to, you know, [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) because of the -- you know,
22 all the changes they were making. And so they just took it
23 and piled all that stuff there. These, these, these
24 cushions were from the furniture that was on [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) and
25 they piled it up there. That, that, that, that podium --



1 [1:54:01.6]

2 PRESIDENT BIDEN: -- and you can see this other
3 stuff is lighting, like you see on television, that stuff
4 was from the time that -- when we're doing the campaigns and
5 had been out there for a while. So there's a lot of -- and
6 this stuff is -- these -- I mean, for example, there's --
7 when they took down all the stuff from -- that we had in the
8 home and -- Chain Bridge Road -- like, I think one of these
9 is a mirror, a full-length mirror. I'm not sure. It's --
10 you know, it's the one you're looking at here.

11 MR. HUR: Are you talking about the --

12 PRESIDENT BIDEN: Box.

13 MR. HUR: -- the box in front of the rocking
14 chair?

15 PRESIDENT BIDEN: Yeah.

16 MR. HUR: Okay.

17 PRESIDENT BIDEN: This -- I'm looking at 20 --
18 okay, well same thing.

19 MR. HUR: Ending in 9?

20 PRESIDENT BIDEN: Ending in 9, yeah.

21 MR. HUR: Yeah.

22 PRESIDENT BIDEN: I think that has a mirror in it.
23 I'm not certain of that. These other things are filters for
24 the -- having nothing to do with being brought from
25 anywhere. Filters for the heating system --



1 [1:55:16.1]

2 MR. HUR: Oh, filters. I see.

3 PRESIDENT BIDEN: -- and I -- and, and in those
4 boxes.

5 MR. HUR: And which boxes are those, sir?

6 PRESIDENT BIDEN: I think if you look over top of
7 the big box, you see one, two, three, four, fi -- they all
8 look the same size.

9 MR. HUR: Yep.

10 PRESIDENT BIDEN: I think they are the filters for
11 the heating system.

12 MR. HUR: And are we looking at the, the photo
13 Bates number ending in 9?

14 PRESIDENT BIDEN: Yes.

15 MR. HUR: Okay. I'm using the treadmill sort of
16 as an anchor for the eye. Where relative to the treadmill
17 are you looking?

18 PRESIDENT BIDEN: I'm looking as you walk in, [REDACTED]

19 [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) at the end.

20 MR. HUR: Oh, yes.

21 PRESIDENT BIDEN: See those? I think that's what
22 that stuff is. It could be photographs that were boxed.
23 I'm not sure.

24 MS. COTTON: The white things at the edge behind
25 the rocking chair?



1 [1:56:05.3]

2 PRESIDENT BIDEN: Yeah.

3 MR. HUR: Oh, sort of peering through the rungs or
4 the spindles of the rocking -- back of the rocking chair?

5 PRESIDENT BIDEN: Yeah.

6 MR. HUR: I see. So, so when you --

7 PRESIDENT BIDEN: I --

8 MR. HUR: I guess just looking at those boxes as
9 a, as a lump, as a group, I think you characterized them as
10 that's the second tranche. Is -- where is the -- well,
11 maybe we start, what's in the second tranche? What is --

12 PRESIDENT BIDEN: I have no goddamn idea. I
13 didn't even bother to go through them.

14 MR. HUR: Okay. Do, do you know when this pile of
15 -- this tranche of boxes arrived in the garage roughly?

16 PRESIDENT BIDEN: No, because, because I had been
17 out. And now, it could be building material of what they're
18 doing now. It -- this is 20 --

19 MR. BAUER: 2021 I think.

20 MS. COTTON: 2022.

21 MR. BAUER: 2022.

22 MR. SISKEL: December of '22.

23 MR. HUR: Yeah, this is December of 2022.

24 MR. BAUER: December 2022, so much later. Yeah.

25 MR. HUR: Yeah.



[REDACTED]

DRAFT

1 [1:57:02.1]

2 PRESIDENT BIDEN: They -- when did they [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F)

3 [REDACTED] ?

4 MR. BAUER: About a [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F)

5 PRESIDENT BIDEN: Oh, yeah. Close. It could be

6 this is what [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F)

7 [REDACTED]. You ever seen a picture of the
8 house.

9 MR. HUR: I don't think I've seen it [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F)

10 PRESIDENT BIDEN: Well, well, no. I mean, whether
11 you saw it or not, if you saw a picture of [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F)

12 [REDACTED] --

13 MR. HUR: Yes.

14 PRESIDENT BIDEN: -- you'd understand what they
15 did. They [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) and because it is on

16 the -- it is [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) and [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F)

17 [REDACTED] (b)(1), (b)(6), (b)(7)(C), (b)(7)(E), (b)(7)(F)

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 That kind of stuff.

25 And then the whole back of the house was stucco.

[REDACTED]

[REDACTED]

DRAFT

1 [1:58:10.9]

2 PRESIDENT BIDEN: (b)(1), (b)(6), (b)(7)(C), (b)(7)(E), (b)(7)(F)

3 [REDACTED]

4 [REDACTED] And they, and they -- well,
5 anyway, (b)(6), (b)(7)(C), (b)(7)(E), (b)(7)(F), and in the meantime, I had
6 work done -- I don't know how long ago now. A couple years
7 ago, I had a (b)(6), (b)(7)(C), (b)(7)(E), (b)(7)(F), a (b)(6), (b)(7)(C), (b)(7)(E), (b)(7)(F) put on. I
8 had forgotten I had been in the goddamn house since -- how
9 long I'd been in the house.

10 And, anyway, so there's a lot of stuff that was
11 going on, and this is all what I had down here too, golf
12 clubs and -- now is this 2022 as well?

13 MR. HUR: Which photos are you looking at, sir?

14 MR. BAUER: December (indiscernible 1:58:55.6).

15 PRESIDENT BIDEN: I'm on 0024, ERT_0024, in the --

16 MR. SISKEL: Same tab 9.

17 PRESIDENT BIDEN: (Indiscernible 1:59:02.6).

18 MR. HUR: Of tab 9? These are also -- yes, these
19 are also December 2022. So that's great. I was actually
20 going to go to tab 9 right now. So if you look at ending in
21 24, this is, this is the same -- the photos were taken the
22 same day as the ones where we were looking at in tab 7, but
23 the photographer has now walked into the garage and rounded
24 the corner behind this huge pile of boxes and is taking a
25 photograph there. And do you see in the center of the --

[REDACTED]

1 [1:59:44.0]

2 MR. HUR: -- shot, there's a little hang tag that
3 says 1 on it?

4 PRESIDENT BIDEN: Yeah.

5 MR. HUR: And if you go to the next photo, which
6 is ending in ERT_0025, there's an even closer shot of that
7 box --

8 PRESIDENT BIDEN: Yeah.

9 MR. HUR: -- it's a little ripped up. It's got
10 that hanging tag 1 on it. So do you know -- what do you
11 know about this box? What's in it, and how it got there,
12 and when it got there?

13 PRESIDENT BIDEN: I guess it got -- I don't know
14 when the hell it got here. That says Pete Rouse. Christ,
15 that goes back a way. Same date.

16 MR. BAUER: Are you heading to another
17 (indiscernible 2:00:34.8) --

18 PRESIDENT BIDEN: I'm just going --

19 MR. BAUER: I see.

20 MR. HUR: Yeah. So you'll see more photos behind
21 that one. So the box in 25 and 26, that's the box that was
22 actually seen and found in December of last year. So it's
23 pretty beat up and torn at the corners. So then when the
24 agents recovered the materials, the box was -- it wasn't
25 going to hold up, it wasn't structurally sound, so they --

1 [2:01:03.4]

2 MR. HUR: -- put the stuff from the beat-up box
3 into a new box, and that's what's shown in DSC_003. So it's
4 the same stuff, just a more structurally sound box.

5 PRESIDENT BIDEN: Yeah, okay. Yeah, okay.

6 MR. HUR: Okay? And so some of them, for example,
7 ending in DSC_4, you can zoom in and see some of the, the
8 labels a little bit more sharply.

9 PRESIDENT BIDEN: (Indiscernible 2:01:40.6)
10 program. Beau Iowa.

11 MR. HUR: Yeah. So there's -- one of the things
12 that you can see is the Beau Iowa binder. The white one
13 next to it says income and expenses I believe.

14 PRESIDENT BIDEN: Yeah. That's the one I'm trying
15 to get squared away.

16 (Laughter)

17 MR. HUR: And, you know, for example, you can see
18 a manila folder that -- it looks like it says National
19 Constitution Center on it in the middle of the shot.
20 Washington Speakers Bureau a couple in front of it.

21 PRESIDENT BIDEN: Okay.

22 MR. HUR: Okay. So do you -- for example, do you
23 recognize the Beau Iowa binder, do you recognize the --

24 PRESIDENT BIDEN: Yeah. I mean, I've seen it
25 before.

1 [2:02:31.3]

2 MR. HUR: Okay.

3 PRESIDENT BIDEN: I think it was a -- why, why --
4 what was it about. Anyway, I can't remember. Okay.

5 MR. HUR: But do you remember how these materials
6 got into this box and then how that box got into the garage?

7 PRESIDENT BIDEN: No, I don't remember how it got
8 -- I don't remember how a beat-up box got in the garage.

9 MR. HUR: Okay. And do you remember how things
10 like the Beau Iowa binder got into --

11 PRESIDENT BIDEN: No, I --

12 MR. HUR: -- this spot?

13 PRESIDENT BIDEN: Somebody must've, packing this
14 up, just picked up all the stuff and put it in a box,
15 because I didn't.

16 MR. HUR: Okay. Do you have any idea where this
17 material would've been before it got moved into the garage?

18 PRESIDENT BIDEN: Well, if it was 2013 -- when did
19 I stop being Vice President?

20 MS. COTTON: 2017.

21 PRESIDENT BIDEN: So I was Vice President. So it
22 must've come from Vice President stuff. That's all I can
23 think of.

24 MR. HUR: So it does have some material in here
25 that relate to your activities post-vice presidency, --

1 [2:03:45.9]

2 MR. HUR: -- like the Washington Speakers Bureau
3 material. And there's also material in here that relates to
4 the book, *Promise Me, Dad*, with Mark Zwonitzer. So there is
5 some that dates after --

6 PRESIDENT BIDEN: See, that's what makes me think
7 just people gathered up whatever they found, and whenever
8 the last thing was being moved. So the stuff moving out of
9 the Vice President's residence, at the end of the day,
10 whatever they found, they put -- they didn't separate it
11 out, you know, Speakers Bureau and Penn or whatever the hell
12 it is, or Beau. They just put it in a single box. That's
13 the only thing I can think of.

14 MR. HUR: So, so given, given the subjects that
15 these files address, would these have been things that were
16 at the Naval Observatory, would they have been at Chain
17 Bridge Road, before they got here?

18 PRESIDENT BIDEN: Well, they were clearly
19 somewhere before they got there, so --

20 (Laughter)

21 MR. HUR: Yes.

22 PRESIDENT BIDEN: No, I'm not being a wise guy.
23 (Indiscernible 2:04:46.2). But my guess is that they --
24 based on the dates, they were Vice Presidential material
25 initially. They got put in a box and probably got sent --

1 [2:05:08.5]

2 PRESIDENT BIDEN: -- either to the Penn Center or
3 to Chain Bridge Road or, for some reason, got sent up to
4 Wilmington. But I don't think it'd be -- they didn't get to
5 Wilmington until 2022 or something, right? Or 20-whatever.
6 I don't know.

7 MR. BAUER: But to be clear, your question is
8 whether he knows --

9 MR. HUR: Correct.

10 MR. BAUER: -- has a clear recollection of how
11 they --

12 PRESIDENT BIDEN: No, I have no idea.

13 MR. BAUER: -- got (indiscernible 2:05:37.7).

14 Okay.

15 MR. HUR: Correct.

16 MR. BAUER: I want to make sure it's clear.

17 MR. HUR: But it's also helpful if he has thoughts
18 as to how --

19 MR. BAUER: Well, I mean, I'd like to stay with
20 his recollection and not put him in a position where he has
21 to speculate or --

22 MR. HUR: Understood.

23 MR. BAUER: -- create assumptions or try to engage
24 in detective work.

25 MR. HUR: Understood. So looking again --

1 [2:06:00.3]

2 MR. HUR: -- continuing to look at the contents of
3 this box in the garage, and I'm looking at DSC_0004.

4 MS. COTTON: I think he's moved on.

5 MR. SISSEL: Just make sure we're looking at the
6 same --

7 MR. HUR: Oh, sure.

8 MR. BAUER: (Indiscernible 2:06:08.0) we're not in
9 the same place at the moment.

10 MR. HUR: Oh, sorry.

11 MR. BAUER: No problem.

12 MR. HUR: Ending in 4.

13 MR. BAUER: We'll, we'll figure it out.

14 PRESIDENT BIDEN: (Indiscernible 2:06:12.3) --

15 MR. HUR: In tab 9. Three in from the back.

16 MR. BAUER: And what's the number again on the
17 end?

18 MR. HUR: DSC_0004.

19 MR. BAUER: Got it.

20 PRESIDENT BIDEN: Okay, yeah.

21 MR. HUR: So this is the one where you can see the
22 Beau Iowa binder and the income --

23 PRESIDENT BIDEN: Yeah.

24 MR. HUR: -- and expenses binder and -- so when we
25 look at the stuff that was in this particular box in the --

1 [2:06:37.5]

2 MR. HUR: -- garage, and we compare it to the
3 other things that were in the garage on that day, this is
4 the only box that has file folders in it. So, so it's a
5 little bit -- it's unusual. It's different from everything
6 else that was in the garage. And so --

7 PRESIDENT BIDEN: That day.

8 MR. HUR: All on that day, yes, sir. So -- but
9 when we look at it, it does seem to resemble, in appearance,
10 the materials that were in the file cabinet in the den. So
11 looking at tab 6.

12 MR. BAUER: Just going back a little bit to tab 6.
13 So the cabinets behind the pool table as I understand
14 (indiscernible 2:07:27.5).

15 MR. HUR: Behind the pool table -- or next to the
16 leather couch in, in --

17 MR. BAUER: Next to the leather --

18 MR. HUR: Yes.

19 MR. BAUER: Oh, I see, next to the leather couch,
20 okay.

21 MR. HUR: Yes. So just going back and forth,
22 there's blue hanging file folders, there's some red manila
23 folders, there's yellow manila folder, both in the garage
24 box and in the lower drawer of the cabinet in the den -- in
25 the pool table room. So it looks to us what happened was --

1 [2:08:00.3]

2 MR. HUR: -- the materials that were in the box in
3 the beat-up -- the materials that were in the beat-up box in
4 the garage, at some point, were in the cabinet in the pool
5 table room. They got put in a beat-up box and shoved out in
6 the garage.

7 MR. BAUER: Just for my sake, Rob, how do you -- I
8 just really -- I honestly don't quite understand.

9 MR. HUR: Yes.

10 MR. BAUER: These are file folders, right? They
11 could -- people buy file folders, so --

12 MR. HUR: Correct.

13 MR. BAUER: -- why do you assume that that's the
14 trajectory here? I hope, I hope --

15 MR. HUR: I am -- I'm not assuming. I'm saying
16 that it just --

17 MR. BAUER: You said, you said it looks to us like
18 this --

19 MR. HUR: -- from physical appearance. From
20 physical appearance. So --

21 MR. SISSEL: So maybe if there's a question about
22 it.

23 PRESIDENT BIDEN: Let me ask you a question.
24 You're saying you think that what I'm looking at in FBI_0039
25 was picked up, put in a box, and stuck out in the garage?

1 [2:08:51.8]

2 MR. HUR: Not quite. I guess what I'm asking is
3 was what we're looking at in tab 9 --

4 PRESIDENT BIDEN: Yeah.

5 MR. HUR: -- three photos in --

6 PRESIDENT BIDEN: 004.

7 MR. HUR: ERT_0026.

8 MR. BAUER: Zero, zero what?

9 MR. HUR: 0026. So the beat-up box photo.

10 MR. BAUER: Okay, wait.

11 MS. COTTON: Wait, sorry.

12 MR. BAUER: We need a minute here --

13 MR. HUR: Sure.

14 MR. BAUER: -- because we're not in the right
15 spot.

16 PRESIDENT BIDEN: This is -- okay.

17 MR. BAUER: That's 0026. Okay.

18 MR. HUR: Yes. ERT_0026. So that's the stuff as
19 it was found in the beat-up box in the garage.

20 PRESIDENT BIDEN: Okay.

21 MR. HUR: Okay. So was that material previously
22 in the file cabinet that was in the pool table room and that
23 is shown in FBI_0040?

24 PRESIDENT BIDEN: Wouldn't it be more likely it
25 was on a floor in the garage, they took it off the garage --

1 [2:09:58.0]

2 PRESIDENT BIDEN: -- and put it in the file
3 cabinet? Why would you put it out in the -- unless you want
4 to throw it away.

5 MR. HUR: Well, maybe I framed this question --
6 well, what we are trying to do is try to figure out where
7 was this stuff in the garage before it was in the garage.

8 MR. BAUER: And my understanding, just to be
9 clear --

10 MR. HUR: Yes.

11 MR. BAUER: -- because I really don't want to be
12 unhelpful, I want to be --

13 MR. HUR: Yes.

14 MR. BAUER: -- helpful, is I thought, unless I
15 misunderstood --

16 MR. HUR: Yes.

17 MR. BAUER: -- his answer earlier was he doesn't
18 know how it got there.

19 MR. HUR: He doesn't recall. And my follow-up --

20 MR. BAUER: And I'm worried that he's about to
21 start sort of analyzing speculative assumptions --

22 MR. HUR: Sure.

23 MR. BAUER: -- or speculative assertions, which I
24 don't think is appropriate.

25 MR. HUR: Sure. Well, let me, let me get the --

1 [2:10:35.1]

2 MR. HUR: -- question out, because I've sort of
3 framed it kind of clunkily here. So given the physical --
4 given the fact that the materials in garage box 1 are
5 different from everything else in the garage in that they're
6 in hanging file folders, and given their physical -- you
7 know, there are some similarities between their appearance
8 and the stuff that's in the file cabinet in the, in the pool
9 table room, is it -- are we wrong to think that maybe the
10 stuff in the garage was formerly in the file cabinet?

11 PRESIDENT BIDEN: No, no more than I think you're
12 wrong if it was the opposite, stuff that was in the file
13 cabinet was in the garage.

14 MR. HUR: I see.

15 PRESIDENT BIDEN: In other words, I, I don't have
16 any idea.

17 MR. BAUER: Yeah. I think --

18 MR. HUR: Understood.

19 MR. BAUER: I think we're kind of going down a
20 trail here that I find confusing. Frankly, I just --

21 MR. HUR: Yes.

22 PRESIDENT BIDEN: They're obviously trying to
23 establish something.

24 MR. BAUER: -- do. His recollection is his
25 recollection --



1 [2:11:30.7]

2 MR. HUR: Okay.

3 MR. BAUER: -- and he doesn't know how it got
4 there.

5 MR. HUR: Okay, fair enough.

6 PRESIDENT BIDEN: No, but I, I don't have any idea.

7 MR. BAUER: Well, that's, that's -- then that's
8 the answer then I think.

9 PRESIDENT BIDEN: But I don't know, it just -- I
10 used to teach logic. I don't get even the assertion, but
11 anyway, it doesn't matter.

12 MR. BAUER: Well, it is what it is.

13 PRESIDENT BIDEN: Okay.

14 MR. HUR: All right.

15 PRESIDENT BIDEN: So --

16 MR. HUR: Any other questions on the garage before
17 we leave that subject? No?

18 PRESIDENT BIDEN: Yeah. When am I going to get
19 the rest of it cleared out.

20 (Laughter)

21 MR. HUR: It's an ongoing project. Okay. Should
22 we take a break?

23 PRESIDENT BIDEN: No, let's keep going.

24 MR. KRICKBAUM: Okay. The next subject is
25 probably -- it'll be 30 to 45 minutes, and we're going to --



1 [2:12:29.2]

2 MR. KRICKBAUM: -- need to get some additional
3 binders, so we're going --

4 MR. BAUER: I'm sorry, Marc, could you repeat
5 that?

6 MR. KRICKBAUM: Yeah. We're going to need to get
7 some additional binders for the next subject, so --

8 MR. BAUER: Are they off-site or on-site?

9 MR. KRICKBAUM: No, they're in here --

10 UNIDENTIFIED MALE SPEAKER: Here.

11 MR. KRICKBAUM: -- but it's going to take a couple
12 minutes to --

13 MR. BAUER: Oh, okay.

14 MR. KRICKBAUM: -- pull them out and assemble them.

15 MR. BAUER: Okay.

16 UNIDENTIFIED MALE SPEAKER: (Indiscernible
17 2:12:43.5).

18 MR. BAUER: So what, we reconvene in five minutes?

19 MR. HUR: Sure, because I do need to use the
20 restroom.

21 UNIDENTIFIED MALE SPEAKER: Yeah. I, I might, I
22 might use the restroom.

23 MR. SAUBER: You, you, you want these binders --

24 MR. KRICKBAUM: We're going to keep those out.

25 MR. SAUBER: Oh, okay.

[REDACTED]

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1 [2:12:55.2]

2 UNIDENTIFIED MALE SPEAKER: You're going to keep
3 those out? . . .

4 MR. HUR: Yeah. We might flip back to, to them.

5 SA (b) (6), (b) (7)(C): The time is 3:37. We're going on
6 break.

7 (End of recording)

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C E R T I F I C A T E

I, (b) (6), (b) (7)(C) certify that the foregoing pages (1 through 44) are a true and correct transcript, to the best of my ability, of the above pages, of the RECORDED INTERVIEW provided to me by the Special Counsel's Office.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this recording was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

October 11, 2023
Date

(b) (6), (b) (7)(C)
[REDACTED]
Transcriber

Within this transcript of proceedings, some of the names and/or technical terms are spelled phonetically, inasmuch as exhibits, files and supporting documentation were not made available to us for reference.

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C E R T I F I C A T E , C O N T .

I, (b) (6), (b) (7)(C) certify that the foregoing pages (45 through 155) are a true and correct transcript, to the best of my ability, of the above pages, of the RECORDED INTERVIEW provided to me by the Special Counsel's Office.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this recording was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

October 13, 2023
Date

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[REDACTED]

EXHIBIT 2

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RECORDED INTERVIEW BETWEEN

SPECIAL COUNSEL ROBERT HUR (SCO), DEPUTY SPECIAL COUNSEL
MARC KRICKBAUM (SCO), ASSISTANT SPECIAL COUNSEL (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)(SCO), SUPERVISORY SPECIAL AGENT (b) (6), (b) (7)(C) (FBI),
SPECIAL AGENT (b) (6), (b) (7)(C) (FBI), EDWARD SISKEL (WHC),
RICHARD SAUBER (WHC), RACHEL COTTON (WHC),
ROBERT BAUER (PC), DAVID LAUFMAN (PC)
and PRESIDENT JOSEPH R. BIDEN, JR.

Files: 231009_1212, 231009_1229, 231009_1245, 231009_1409

Date of Interview: October 9, 2023

[REDACTED]

R E C O R D I N G

1
2 SA (b) (6), (b) (7)(C): The date is October 9, 2023. The
3 time is approximately 12:12 p.m., and this is the second day
4 of the interview with Joseph R. Biden.

5 MR. BAUER: Good morning, Rob, and Marc, and
6 company. Yesterday in the course of an exchange about types
7 of presentations of documents, some, you know, cover sheets,
8 bold, big lettering; others smaller print, there was some
9 question that the President would like to address about just
10 how he sees -- whether there were any meaningful differences
11 between these types of documents and the way that he handled
12 them. And so I'm just going to let the President speak to
13 that issue. Or he would like to speak to that issue.

14 PRESIDENT BIDEN: (Laughs) The idea -- I want to
15 make clear that I didn't keep anything that wasn't -- I
16 thought was classified. And so the fact that I said I gave
17 back all the stuff that had borders on it and the rest, I
18 found anything else that was classified, code word, you
19 know, the classification categories, I gave that back, too,
20 or I didn't see it. One of the two. That's all.

21 MR. BAUER: That's it.

22 PRESIDENT BIDEN: I guess --

23 MR. BAUER: (Indiscernible 0:01:19.6)

24 MR. KRICKBAUM: Thank you for clarifying that. I
25 don't have any follow-up questions on that specific point

1 [0:01:26.8]

2 MR. KRICKBAUM: -- right now.

3 MR. HUR: I just had one follow-up clarifying
4 question on that clarification, Mr. President. And for the
5 record, I should say that everyone that was in the room
6 yesterday, is in the room today, I think.

7 So when you say you gave everything back in the
8 clarification you provided a minute ago, when -- like, what
9 time period are you (indiscernible 0:01:48.0) --

10 PRESIDENT BIDEN: Seven twenty-eight on such and
11 -- (indiscernible 0:01:48.3).

12 (Laughter)

13 MR. HUR: Well, sir, I'm asking whether
14 you --

15 PRESIDENT BIDEN: Whatever I ran across when I was
16 out of office.

17 MR. HUR: -- whether that was your practice when
18 you were Vice President?

19 PRESIDENT BIDEN: Yeah, when I was Vice President.

20 MR. KRICKBAUM: Or at the end of your Vice
21 Presidency?

22 PRESIDENT BIDEN: No, when I was Vice President I
23 gave back everything that I no longer had a need to look at,
24 and that was classified. (Indiscernible 0:02:08.1) Top
25 Secret or all those classifications. The question I --

1 [0:02:12.7]

2 PRESIDENT BIDEN: -- thought you were asking me
3 was when I was out of office, when I was at the Penn Biden
4 Center teaching, before I got elected President, after I was
5 out of office, what did I do with any document that I saw
6 that was classified, that met the classification Top Secret,
7 et cetera, code word, et cetera. Whenever that occurred I
8 just gave that back to the staff or left it on a desk to be
9 taken back, but I didn't keep any of those things.

10 MR. KRICKBAUM: And you said whenever that
11 occurred, when you found classified documents --

12 MR. BAUER: I'm sorry, just for the record, I
13 think he said if he had found.

14 MR. KRICKBAUM: If he had found.

15 MR. BAUER: He's not describing a regular practice
16 of returning documents that he found.

17 MR. KRICKBAUM: Were there occasions, Mr.
18 President, after you were Vice President, when you were
19 teaching at Penn, doing all the different things you were
20 doing after your Vice Presidency, were there any occasions
21 where you found documents with classification markings?

22 PRESIDENT BIDEN: Only ones I recall were the ones
23 that hadn't been written on. You know, I don't recall
24 having, having, in my possession, something that was code
25 word or highly classified that was in the small print --

1 [0:03:30.5]

2 PRESIDENT BIDEN: -- that occurs. I don't
3 remember that.

4 MR. KRICKBAUM: So it sounds like -- I want to
5 make sure I understand -- there were occasions where you
6 found, after the Vice -- after the Vice Presidency,
7 documents that had any classification markings at all.
8 That's really my question.

9 MR. BAUER: I'm sorry, could you repeat the
10 question?

11 MR. KRICKBAUM: Yes.

12 MR. BAUER: Because I didn't understand that.

13 MR. KRICKBAUM: Were -- was there ever a time,
14 after you were Vice President, before you were elected
15 President, that you found documents with any classification
16 markings on them at all?

17 PRESIDENT BIDEN: I think there was a notebook. I
18 don't remember if it had marked -- you know, that red marker
19 on it. Was that when I was Vice President or not Vice
20 President, that I returned? One of my staff guys, I -- I
21 don't recall ever keeping anything at all for my personal
22 use, as a professor at Penn, for any reason, that was marked
23 -- that had a government classification on it.

24 MR. KRICKBAUM: It sounds like there may have been
25 at least one occasion where you found something, I think --

1 [0:04:41.3]

2 MR. KRICKBAUM: -- you described it as maybe a
3 notebook --

4 PRESIDENT BIDEN: You guys described to me my
5 returning a notebook to one of my staff people that had
6 classification --

7 MR. BAUER: You mean documents like that that had
8 been inserted into a notebook?

9 PRESIDENT BIDEN: No, no. Didn't you guys tell me
10 that there was a, a series of papers stapled together that
11 had red border on them? And it said Top Secret or
12 Classified, that I gave to (b) (6), (b) (7)(C) or somebody to
13 return.

14 MR. BAUER: In your post-Vice Presidential period?

15 PRESIDENT BIDEN: I don't remember what period it
16 was. Anyway --

17 MR. KRICKBAUM: Okay.

18 PRESIDENT BIDEN: But the point is I never kept
19 anything when I wasn't Vice President or President that, in
20 fact, was classified document to be used by me for any
21 reason.

22 MR. KRICKBAUM: So that's an important point and
23 we understand that point that you just made. What I'm
24 trying to understand is, even if you didn't keep it, did you
25 ever find it. And what I'm asking is did you ever find --

1 [0:05:45.5]

2 MR. KRICKBAUM: -- anything that had classified
3 markings after you were Vice President?

4 PRESIDENT BIDEN: I don't recall finding anything
5 after I was Vice President that had classified markings on
6 it.

7 MR. KRICKBAUM: Okay. You mentioned a minute ago,
8 there may have been an incident with [REDACTED] (b) (6), (b) (7)(C) ?

9 PRESIDENT BIDEN: Didn't somebody tell me that
10 there was a notebook that had markings on it that had a
11 binder that I returned? Didn't [REDACTED] (b) (6), (b) (7)(C) say that or
12 somebody say that on my staff?

13 MR. BAUER: It was, it was [REDACTED] (b) (6), (b) (7)(C).

14 PRESIDENT BIDEN: [REDACTED] (b) (6), (b) (7)(C), [REDACTED] (b) (6), (b) (7)(C), a
15 staff member. Was that when I was Vice President, or after?

16 MR. BAUER: After.

17 PRESIDENT BIDEN: It was after I was Vice
18 President. I found a book -- I found paper that had that
19 red marking on it. I gave it to this kid who was working
20 for me named [REDACTED] (b) (6), (b) (7)(C), and I said return it. That's
21 what I was referring to.

22 MR. KRICKBAUM: Do you remember that or you're
23 being told --

24 PRESIDENT BIDEN: No, I just remember being told
25 that.



1 [0:06:46.0]

2 MR. KRICKBAUM: Okay. So if you don't remember
3 it, I take it you don't, you don't remember when it happened
4 after your Vice Presidency, is that right?

5 PRESIDENT BIDEN: No, I guess you guys interviewed
6 this kid (b) (6), (b) (7)(C). Ask him.

7 MR. KRICKBAUM: And do you remember -- I take it
8 also you don't remember anything about what was in the
9 classified document?

10 PRESIDENT BIDEN: No, I don't.

11 MR. KRICKBAUM: Do you remember anything about
12 where you were --

13 PRESIDENT BIDEN: No.

14 MR. KRICKBAUM: -- when you found it? Okay. I'm
15 just pausing to see if I have any other questions about that
16 subject. Were there -- are there any other occasions,
17 Mr. President, when you found classified -- documents with
18 classification markings after you were Vice President? I
19 just want to make sure that I'm covering --

20 MR. BAUER: Repeat the question, I'm sorry.

21 MR. KRICKBAUM: Yes. Were there any other
22 occasions after you were Vice President that you found
23 documents with classification markings on them?

24 PRESIDENT BIDEN: When I was no longer Vice
25 President; before I was President?





1 [0:07:38.9]

2 MR. KRICKBAUM: Yes, that's right.

3 PRESIDENT BIDEN: I don't recall any.

4 MR. KRICKBAUM: Okay.

5 MR. HUR: And just one follow-up. It seems to me
6 that part of what you were trying to get across in your
7 clarification statement this morning out of the gate was
8 you're trying to draw a distinction between on the one hand
9 cover sheets with big lettering --

10 PRESIDENT BIDEN: (Indiscernible 0:07:58.1)

11 MR. HUR: -- just let me finish my question, sir.
12 And red color borders, things like that, on the one hand.
13 And on the other hand, smaller letter classification
14 markings on documents. Was that the intent you were trying
15 to draw between those two types of classification markings?

16 PRESIDENT BIDEN: Yeah. Basically, yes.

17 MR. HUR: Okay. And so now that I understand that
18 clearly, is what you were trying to clarify that you may
19 have seen, after the end of your Vice Presidency, documents
20 with the first kind of classification markings, the big
21 letter ones with the color borders, but, but you don't
22 recall seeing documents with the classification markings of
23 the second kind that were small?

24 MR. BAUER: I'm sorry, I'm confused. I don't
25 think that was his answer.



1 [0:08:50.4]

2 MR. LAUFMAN: No, that's not it.

3 MR. BAUER: That was not his answer.

4 MR. HUR: Okay. Well, then what is --

5 MR. LAUFMAN: He said he didn't recall seeing
6 them, documents with any classification markings after he
7 left the Vice Presidency.

8 MR. HUR: Except --

9 MR. LAUFMAN: Whether they had cover sheets or
10 they were classified documents with smaller headers and
11 footers behind the cover sheet, he has no specific
12 recollection of seeing those documents after he left office.

13 MR. HUR: Okay. And the reason he's --

14 MR. LAUFMAN: Is that correct, Mr. President?

15 PRESIDENT BIDEN: Yes.

16 MR. HUR: And the reason he's mentioning the part
17 about the binder that he returned is because he was told
18 that, not because he has an independent recollection?

19 PRESIDENT BIDEN: I know that anything I found
20 that had -- when it was overwhelmingly clear that it was
21 classified, I returned. If you ask me how many times I did
22 that; I don't know. But I did not keep anything that was
23 marked -- that was clearly marked having been handed to me
24 when I was Vice President. That's the only point I was
25 trying to make.

1 [0:09:48.6]

2 MR. KRICKBAUM: Yeah, and I think, Mr. President,
3 you are making a distinction between something that was
4 clearly marked, that's what you just said -- it seems as if
5 you're saying it's possible that there was something perhaps
6 that was unclearly marked. And I think we're just trying to
7 understand that. So let me ask a specific question.

8 PRESIDENT BIDEN: Yes.

9 MR. KRICKBAUM: Were there any occasions when you
10 found documents that had classification markings in small
11 print after you were Vice President?

12 PRESIDENT BIDEN: No, but if I did I would have
13 returned them as well.

14 MR. KRICKBAUM: Okay, that's helpful. I just --
15 we wanted to make sure we weren't misunderstanding the big
16 letters versus small letters.

17 PRESIDENT BIDEN: No, no, I --

18 MR. KRICKBAUM: So thank you. Okay. Anything
19 else on that?

20 MR. HUR: No.

21 MR. KRICKBAUM: All right. So, Mr. President,
22 when we spoke yesterday, Mr. Hur showed you some photographs
23 and there was one document in particular that you seemed
24 curious about so I thought we would start with that one. So
25 if you grab binder 2, and flip to that -- just that very --

1 [0:10:51.8]

2 MR. KRICKBAUM: -- first blue tab. You see that
3 photo of a black notebook that
4 says --

5 PRESIDENT BIDEN: Yup.

6 MR. KRICKBAUM: -- Af/Pak 1 on it.

7 PRESIDENT BIDEN: Yeah.

8 MR. KRICKBAUM: And then flip ahead to the next
9 page, which is -- it ends in 0-0-2, that has a document that
10 we looked at yesterday, which is binder-clipped together in
11 the front of that notebook. And then in the, in the next
12 pages you'll see the document -- it's -- and actually before
13 I have you look at the document itself, Mr. President, is
14 this -- I think Mr. Hur covered this, but just to be clear,
15 this Af/Pak 1 notebook, was this a notebook that you used as
16 Vice President and took notes in as Vice President?

17 PRESIDENT BIDEN: The date is 4-20-09. Was I
18 still Vice President? I was, wasn't I? Yeah.

19 UNIDENTIFIED MALE: Yeah.

20 PRESIDENT BIDEN: Yeah.

21 MR. KRICKBAUM: Okay. And looking at this
22 document that's binder-clipped to the front of this, if you
23 look at the fourth page of this tab, it ends with 0-0-4.
24 Let me know when you're on that page.

25 PRESIDENT BIDEN: 1B66004?

1 [0:12:03.2]

2 MR. KRICKBAUM: Yes, sir.

3 PRESIDENT BIDEN: Mr. President -- yes, okay.

4 MR. KRICKBAUM: And first of all, did you -- have
5 you reviewed this document before our interview today in
6 preparation for the interview?

7 PRESIDENT BIDEN: I don't -- I was told about -- I
8 don't think I have.

9 MR. KRICKBAUM: Okay. I don't think we need to go
10 through this entire document.

11 MR. BAUER: Yeah. Marc, we will -- we'll clarify
12 or confirm that because it may be, as he sees it today, he
13 doesn't recognize it immediately, but it's possible that we
14 did review it with him.

15 PRESIDENT BIDEN: Wait. Hang on a second.

16 MR. BAUER: Yeah, take your time, sir.

17 PRESIDENT BIDEN: This was the letter I wrote to
18 the President about why I disagreed with Holbrooke and
19 company about their assessment of the situation in
20 Afghanistan.

21 MR. KRICKBAUM: Okay.

22 PRESIDENT BIDEN: I do remember -- I didn't read
23 it all, but I do remember this being shown to me.

24 MR. KRICKBAUM: All right.

25 PRESIDENT BIDEN: And I remember the letter.

1 [0:13:07.8]

2 MR. KRICKBAUM: And --

3 PRESIDENT BIDEN: Because I stayed up Thanksgiving
4 writing it. Pardon me?

5 MR. BAUER: I just want to note, this document --
6 you're right, sir. This document has lines and the document
7 you reviewed, which was the same one, did not have lines.
8 So that may be the reason why it is not familiar to you.

9 MR. KRICKBAUM: Got it.

10 MR. BAUER: Okay, thank you.

11 MR. KRICKBAUM: Mr. President, this is the
12 handwritten memo that you wrote to --

13 PRESIDENT BIDEN: Yup.

14 MR. KRICKBAUM: -- President Obama over
15 Thanksgiving of 2009?

16 PRESIDENT BIDEN: Yeah.

17 MR. KRICKBAUM: Okay. Why did you write this memo
18 to the President?

19 MR. BAUER: I mean, is that -- Marc, is that an
20 appropriate question? I mean, I --

21 PRESIDENT BIDEN: I'll tell you why I wrote it.
22 But it's none of your business why I wrote it.

23 MR. BAUER: (Laughs).

24 PRESIDENT BIDEN: I wrote it because I was trying
25 to change the President's mind, and I wanted to let him --

1 [0:13:50.9]

2 PRESIDENT BIDEN: -- know I was ready to speak out
3 no matter unless he told me don't say a word, I'm ready to
4 speak out, and to really, quite frankly, save his ass on what
5 was going on. And uh, and uh, I laid out what it was that I
6 thought the situation was in Afghanistan at the time, where
7 he was being misled. Not -- not intentionally, but where the
8 judgments were off and why it would be so much problem for
9 him. And I spent a lot of time sitting down -- I think it was
10 Thanksgiving Day -- it was around Thanksgiving that I wrote
11 this, up in Nantucket.

12 MR. KRICKBAUM: If you look at page 22, the date
13 is --

14 MR. BAUER: I just want to -- again, just so in
15 the future as we move through this, you know that we've
16 raised the question before about unnecessarily or without
17 clear linkage to the question of the location of classified
18 documents, probing the President on highly confidential
19 information he provided to the former President 44 or to any
20 senior members of the administration. So we want to be
21 helpful and if you could just draw that connection, it's
22 going to be a lot easier for the President to feel
23 comfortable describing confidential advice that he provided.

24 MR. HUR: Well, the President seems eminently
25 comfortable --

1 [0:15:02.8]

2 MR. BAUER: Yeah, Rob, I understand that.

3 MR. HUR: If we want to talk about this, Bob, why
4 don't we go offline, because we have very limited time.

5 MR. BAUER: Rob, while I understand that --

6 MR. HUR: (Indiscernible 0:15:09.1)

7 [REDACTED] (b) (6), (b) (7)(C), can we go off the record?

8 PRESIDENT BIDEN: Page 22 is typewritten --

9 MR. BAUER: Okay. Rob, you wanted to say something?

10 MR. HUR: Yes. So we've had --

11 (Track 231009_1212 ends)

12 (Track 231009_1229 begins)

13 SA [REDACTED] (b) (6), (b) (7)(C): We're back on the record.

14 MR. HUR: Go ahead, Mr. President. Sorry about
15 that.

16 PRESIDENT BIDEN: I don't recall me producing
17 anything that was typed or in typed form, and this is,
18 Embassy Kabul, subject Helmand views U.S. Troops -- I did
19 not write that document. So I'm not sure why it was part of
20 a handwritten document I wrote to the President, other than
21 when I got to him, they dug up other information that was
22 similar to that, what I was recommending. But I don't
23 recall the -- I -- that wasn't from my hand. This
24 handwritten stuff was from my hand, giving him information I
25 thought no one else was giving him, I thought it was --

1 [0:01:15.9]

2 PRESIDENT BIDEN: -- critical that he get to
3 change his position on what he was likely to do based on the
4 advice he'd been given thus far.

5 MR. KRICKBAUM: Understood.

6 PRESIDENT BIDEN: So to me it was very
7 confidential, because I did not want to embarrass the
8 President. I also did not want to get into a -- and --

9 I'll just tell you one thing, it has nothing to do
10 with the investigation, you'll understand why this is
11 sensitive. The President thought that I knew a lot more
12 about Afghanistan than he did and other members of the
13 administration. He knew I had a real difference with the
14 key foreign policy types, particularly -- whether it was
15 Eikenberry or whether it was -- anyway.

16 And he was looking for me to make my case as strong
17 as I could, without him having to ask for it or being
18 associated with it, because his concern in this period was he
19 didn't have overwhelming foreign policy experience, and how
20 could he take on the most premier members of the foreign policy
21 establishment in his administration. Quite a few that said,
22 go, do this. So he was looking for me to make the strongest
23 case I could. So I'd be the guy that'd basically take the
24 heat, which I was prepared to do because I knew as much about
25 it as they did. That's the context in which --

1 [0:03:14.1]

2 PRESIDENT BIDEN: -- this was happening. It's
3 like if you had a junior prosecutor that didn't want you to
4 be embarrassed, knew you'd never handled a particular
5 circumstance, he or she had done this extensively. You
6 don't want to take on the Attorney General on the issue.
7 But he or she knew a lot about it, so you'd look at him and
8 say what do you got, and make the strongest case possible
9 why the Attorney General was wrong, or your US Attorney,
10 whoever was your boss.

11 That was the context. And that's why I did not --
12 ordinarily if I did a memo this long, it would be
13 disseminated, go to him, go to his staff, go to -- this went
14 straight to him; nobody else.

15 MR. KRICKBAUM: Was it common for you to write a
16 20-page --

17 PRESIDENT BIDEN: No.

18 MR. KRICKBAUM: -- memo by hand?

19 PRESIDENT BIDEN: First time -- first and only
20 time I ever did it.

21 MR. KRICKBAUM: Okay.

22 PRESIDENT BIDEN: And by the way if I tried to
23 type it, it would take five times as long.

24 (Laughter)

25 MR. KRICKBAUM: I understand. Given the --

1 [0:04:13.1]

2 MR. KRICKBAUM: -- significance that the President
3 attached to your views, and the thought that you put into
4 this memo, Mr. President, obviously the decision the
5 President made was a very important one, and I'm just
6 curious whether after the fact you ever went back and
7 revisited this memo to see how your advice held up?

8 PRESIDENT BIDEN: No, I knew about the advice. I
9 knew the memo. I mean, at the time I probably could have
10 repeated verbatim, in that time period. I knew all the
11 points. One of the things that did come from this was we
12 got a commitment that there would be an absolute time limit
13 set to test the theories of the guys who wanted to go in and
14 do more and stay longer. And so it wasn't just, you know,
15 open-ended. We weren't going to put another 100,000 troops
16 and we weren't going to -- and so there was a timeframe put
17 on it, which was not what I wanted, but it was better than
18 the open-ended, you know, go-get-em guys.

19 MR. KRICKBAUM: Was this memo, Mr. President, was
20 this something that you consciously kept after your term as
21 Vice President? Is this something that you wanted to hold
22 onto?

23 PRESIDENT BIDEN: I don't recall whether I -- did
24 I have this? Was this in my possession, this memo?

25 MR. KRICKBAUM: Yes. To give you some context --

1 [0:05:39.9]

2 MR. KRICKBAUM: -- for this, Mr. President, it was
3 found in the front of this notebook that's on the first
4 page, and the notebook was found in the library at the lake
5 house, in one of the drawers in the cabinet.

6 PRESIDENT BIDEN: Okay.

7 MR. BAUER: But your answer is that you don't
8 know.

9 PRESIDENT BIDEN: I don't recall how it got back
10 -- I mean, I don't recall how it got back in the book,
11 because I sent it to the President and I gave it to the
12 President. And this looks like the original. I don't think
13 there's -- maybe there was a copy made, but I don't think
14 so.

15 MR. KRICKBAUM: It was faxed. Just to give you
16 some more context.

17 PRESIDENT BIDEN: Oh, okay, that's why.

18 MR. KRICKBAUM: Yeah, yeah.

19 PRESIDENT BIDEN: All right. Now I got it. I
20 wasn't sure how it got -- how I -- whether I gave -- handed
21 it to the President. It was faxed to the President, which I
22 have the copy.

23 MR. KRICKBAUM: Right.

24 PRESIDENT BIDEN: Okay.

25 MR. KRICKBAUM: You had the original.

1 [0:06:22.2]

2 PRESIDENT BIDEN: Yeah, I had the original and I
3 just put it in the book and that was it.

4 MR. KRICKBAUM: Okay. Did -- were you aware that
5 you had kept it after your term as Vice President? Did you
6 know that you had it?

7 PRESIDENT BIDEN: I, I, I, I don't know that I
8 knew, but it wouldn't have -- it wasn't something I would
9 have stopped to think about.

10 MR. KRICKBAUM: The reason I ask is it's been
11 written about. Bob Woodward wrote about it in one of his
12 books. Jules Witcover wrote about it in his biography of
13 you. So that's the reason I ask is if it was something that
14 you wanted to hang onto because it was going to be the
15 subject of reporting or history.

16 PRESIDENT BIDEN: I don't know if it was going to
17 be the subject of reporting, but I wanted to hang -- I guess
18 I wanted to hang onto it just for posterity's sake. I mean,
19 this was my position on Afghanistan. And it later became
20 discussed, unrelated to my discussion. It became discussed
21 inside the foreign policy establishment that I was
22 recommending and -- anyway.

23 MR. KRICKBAUM: I mentioned a couple of books.
24 Yesterday you mentioned that there was a book you were
25 thinking about writing before you decided to run for --

1 [0:07:35.0]

2 MR. KRICKBAUM: -- president. Did you ever
3 consider writing a book, a memoir or anything else, where
4 you discussed the Afghanistan debate in 2009 and your
5 position on it? Did you ever think about writing about
6 that?

7 PRESIDENT BIDEN: No, I give you my word, I never
8 thought about that.

9 MR. KRICKBAUM: Okay.

10 MR. BAUER: I'm sorry --

11 PRESIDENT BIDEN: When I was talking about writing
12 the book. I -- I've been of the view, from a historical
13 standpoint, that there are certain points in history, world
14 history, where fundamental things change, usually
15 technology. For example, without Gutenberg's printing
16 press, Europe would be a very different place. Literally a
17 different place, because the country would not have known
18 what was happening in other countries -- other parts of the
19 country. You know, think about a stupid idea, a notion.
20 Nixon probably would have been President where he used the
21 television (verbatim) where he's sweating -- I mean,
22 sincerely. He was sweating so profusely in that debate, a
23 lot of people thought he won the debate, but he lost the
24 debate because of his demeanor. The -- so there's a lot of
25 things that I think are fundamentally changing how --

1 [0:08:53.4]

2 PRESIDENT BIDEN: -- international societies function.
3 And they relate a lot to technology. And one of the things
4 that I was of the view, that a lot has changed in terms of
5 everything from the Internet to the way in which we communicate
6 with one another, to -- that has fundamentally altered the
7 ability -- I've had this discussion with the press --

8 MR. KRICKBAUM: Mr. President, I'm sorry to
9 interrupt you --

10 PRESIDENT BIDEN: No, I'm sorry. That's why I
11 wanted it.

12 MR. KRICKBAUM: I -- I agree with --

13 PRESIDENT BIDEN: It had nothing to do with
14 Afghanistan.

15 MR. KRICKBAUM: Okay. That answered my question.

16 MR. BAUER: And Marc, just really quickly, I
17 promise it'll be brief. I just really would like to avoid,
18 for the purpose of a clean record, getting into speculative
19 areas. When the President responded and said I don't recall
20 intending to keep this memo, you then said well, you know,
21 might you have thought it was important to keep it or
22 whatever and he said well I guess, I could have -- his
23 recollection as I understand it is, he does not recall
24 specifically intending to keep this memo after he left the
25 Vice Presidency and I want that to be -- I want these --

1 [0:09:57.3]

2 MR. BAUER: -- questions to be as clearly answered
3 and recorded on the transcript as possible.

4 MR. KRICKBAUM: I think we should take a break at
5 this point.

6 MR. LAUFMAN: Oh, come on. Come on.

7 (Track 231009_1229 ends)

8 (Track 231009_1245 begins)

9 MR. KRICKBAUM: We are back on the record.
10 Mr. President, the only other thing I wanted to ask you
11 about this document, is about the typewritten pages that are
12 at the back of it. So if you flip to -- on the bottom, the
13 Bates number, it ends in 0-0-2-3.

14 PRESIDENT BIDEN: Yup.

15 MR. KRICKBAUM: So this is a typewritten document.
16 It's got a confidential -- what appears to be a stamp at the
17 top. And the top of the document indicates it's from the
18 American -- AM Embassy Kabul. It's dated, what appears to
19 me to be, November '09. The only question I have for you
20 about this, Mr. President, is the confidential marking. Do
21 you recognize that to be a classification marking?

22 PRESIDENT BIDEN: No. I mean, confidential,
23 doesn't want to get around. It's not in a category, I don't
24 think, of code word, Top Secret, that kind of thing. But I
25 don't even know where it came from.

1 [0:01:04.6]

2 MR. KRICKBAUM: Are you familiar with
3 confidential as a level of classified information?

4 PRESIDENT BIDEN: Well, if I got a document that
5 said confidential it means -- it would mean that no one else
6 could see it but me and you give it -- or the people working
7 on this issue.

8 MR. KRICKBAUM: And are you aware that among
9 certain categories of classified information there is Top
10 Secret, Secret, and there's also a category of classified
11 information called Confidential. Is that something that you
12 are aware of, or not?

13 PRESIDENT BIDEN: I -- yes, I was aware of it. I
14 don't ever remember -- when I got any document that was
15 confidential, that was meant for me to read and/or discuss
16 with the people who sent me the memo. So...

17 MR. KRICKBAUM: Okay. We looked at this
18 handwritten memo that you wrote. Were there any other memos
19 or documents about Afghanistan from your time as Vice
20 President that you kept after you were Vice President?

21 PRESIDENT BIDEN: Not knowingly. I mean, it
22 wasn't anything I consciously -- there may have been
23 something that was kept in a notebook or something, but not
24 conscious.

25 MR. KRICKBAUM: Okay. In other words, you're --

1 [0:02:45.5]

2 MR. KRICKBAUM: -- not aware of this memo being
3 part, at any point of a larger collection of documents that
4 you held onto on purpose --

5 PRESIDENT BIDEN: Correct.

6 MR. KRICKBAUM: -- after you were Vice President?

7 PRESIDENT BIDEN: Correct.

8 MR. KRICKBAUM: You're not aware of that? Okay,
9 thank you. So we talked yesterday about the house that you
10 rented on Chain Bridge Road.

11 PRESIDENT BIDEN: Yup.

12 MR. KRICKBAUM: I wanted to show you at least one
13 more photo from that house. So if you could -- sorry to
14 make you flip, but --

15 PRESIDENT BIDEN: No, that's all right.

16 MR. KRICKBAUM: -- if you could go back to binder
17 1. And once you're at that, if you could flip to tab 13.

18 PRESIDENT BIDEN: Sorry. Okay.

19 MR. KRICKBAUM: I don't think we looked at this
20 photo yesterday and I just wanted to see if you recognize
21 this room that's in tab 13.

22 PRESIDENT BIDEN: That's on the first floor, when
23 you walk in the main door, it's the first door to the right.

24 MR. KRICKBAUM: And what was this room used for?

25 PRESIDENT BIDEN: For meetings with people that --

1 [0:03:54.4]

2 PRESIDENT BIDEN: -- whether it was having to do
3 with something at school or -- at -- school being Penn -- or
4 meetings with staff as to what was going on in terms of what
5 I was teaching --

6 MR. KRICKBAUM: Okay.

7 PRESIDENT BIDEN: -- or speaking to.

8 MR. KRICKBAUM: Did anybody else, other than you,
9 use this room?

10 PRESIDENT BIDEN: I don't think -- you mean
11 formally used it? No. But there was staff in and out of
12 it.

13 MR. KRICKBAUM: Fair enough. I guess what I'm
14 trying to get at, was this a space that was primarily
15 something you were using or was Dr. Biden using it?

16 PRESIDENT BIDEN: No, no, Jill -- Jill didn't want
17 any part of anything having to do with the United States
18 Congress, Senate, or my teaching. She was teaching. She
19 set up a little office off the kitchen. You know, it was
20 just a round table and it was just -- there was a big
21 kitchen in this place and there was kind of an alcove in the
22 front.

23 MR. KRICKBAUM: Got it. Sounds like a woman of
24 good judgment to me.

25 (Laughter)

1 [0:05:04.0]

2 MR. KRICKBAUM: So when you, for example -- I
3 believe you had some meetings at Chain Bridge Road when you
4 were working with Mark Zwonitzer on the book *Promise Me,*
5 *Dad.* Would you meet with Mark in this room or somewhere
6 else?

7 PRESIDENT BIDEN: I'd probably meet with him in
8 this room or in the living room, you walk in and walk
9 straight, because there was a nice view out the back.

10 MR. KRICKBAUM: Is that also on the main --

11 PRESIDENT BIDEN: Main floor, yeah.

12 MR. KRICKBAUM: Okay. All right. So speaking of
13 *Promise Me, Dad,* I think we talked a little bit about that
14 book yesterday, but I had some more questions for you about
15 it.

16 PRESIDENT BIDEN: Sure.

17 MR. KRICKBAUM: So Mark -- as you probably know,
18 Mark recorded his conversations -- when you all met to talk
19 about the book, he made recordings of those conversations
20 and we have some of them. In some of the recordings you
21 spoke to him about wanting to gather some materials from
22 your time as Vice President that you could use as reference.
23 And you specifically talked about gathering notebooks that
24 you had written in. Do you recall trying to collect those
25 notebooks that you could use them when you were talking --

1 [0:06:16.3]

2 MR. KRICKBAUM: -- to Mark?

3 PRESIDENT BIDEN: Not, not specifically.

4 But look, what I was doing, I was writing a book
5 about how the family responded to a son we knew was dying.
6 And so if I were -- if Beau had just gotten a new diagnosis
7 on something, where was I? Was I in country, was I, you
8 know -- what was I, what was I doing at the time. And this
9 is when I was Vice President as well, because he was
10 diagnosed when that occurred. So that's the context in
11 which I was looking. I actually got the book, and I started
12 to look through it. I haven't seen it in a long time. And
13 there are connections to a certain diagnosis and where I
14 physically was, what I, what I -- and what my thinking at
15 the time was about what I should or shouldn't be doing
16 really. It wasn't about -- it was more like having a
17 calendar in front of you. You know, like, if your wife said
18 why don't you write a book about how we met and where we met
19 and what -- well, you'd want to know, well let me see, when
20 did we meet, you know. I remember the day that I met in
21 1962, but anyway. But my point is, you know, it was more to
22 give me context, writing about it. Because I have to -- you
23 won't be surprised, it was a very, very, very hard book to
24 write.

25 MR. KRICKBAUM: Yeah. We understand. Having --

1 [0:08:12.6]

2 MR. KRICKBAUM: -- read it, that makes sense.

3 PRESIDENT BIDEN: Well, you know, if you read it,
4 you know, there's some references to where I was, as opposed
5 to anything having to do with where I was. At least that's
6 what I think about.

7 MR. KRICKBAUM: Do you know where your notebooks
8 were in the time period immediately after your term as Vice
9 President?

10 PRESIDENT BIDEN: No, but I think that what they
11 did, they gathered up my notebooks and I think they were in
12 drawers in this room.

13 MR. KRICKBAUM: In this room, in tab 13, the
14 first-level office?

15 PRESIDENT BIDEN: Yeah. Well, I'm not sure if
16 they were all in one place, but I think that's where they
17 would mainly be because there was a -- there was a -- this
18 -- you walk in, there was a fireplace in the middle of this
19 room. If you went left you walked through a little hallway
20 and you went into what was a living room, a more formal
21 living room. But you passed a little alcove that had file
22 drawers -- I mean, had -- I think it had bookcases and, you
23 know, drawers beneath it. But my guess would be there or in
24 the bookshelves. I don't know. I don't remember.

25 MR. KRICKBAUM: Okay. I want to ask you --

1 [0:09:43.1]

2 MR. KRICKBAUM: -- Mr. President, about a meeting
3 you had with Mark in February of 2017. So you were meeting
4 to talk about things that you were working on in the course
5 of writing the book. So you had just ended your Vice
6 Presidency about a month earlier. And at least according to
7 your schedule, on February 16th of 2017 you were scheduled
8 to meet with Mark at Chain Bridge Road and he recorded the
9 meeting. And so based on his notes it appears that you
10 talked about a lot of -- you covered a lot of ground during
11 that conversation, including some very, you know, difficult,
12 emotional subjects, as you referenced. And then at one
13 point -- and I'm giving you this as context for the question
14 I'm about to ask -- at one point, you know, it appears from
15 the recording that you were speaking to him about meetings
16 you had as Vice President. There was a meeting about Iraq
17 that you spoke to him about. And in that meeting, according
18 to what you said to Mr. Zwonitzer, the question came up of
19 will we ever see a unified Iraq in our lifetime. And in
20 talking to that -- about that to Mark, you then made a
21 comparison to Afghanistan. And you told him the story of
22 the fact of -- the memo, the handwritten memo, that we just
23 looked at. And you said that you wrote the President the
24 memo, you told the President that the day we left
25 Afghanistan, it would be the same as the day before we --

1 [0:11:07.5]

2 MR. KRICKBAUM: -- arrived. And in the course of
3 explaining that memo about Afghanistan, you said to Mark, "I
4 just found all the classified stuff downstairs." And so you
5 can imagine we are curious what you meant when you said, "I
6 just found all the classified stuff downstairs."

7 PRESIDENT BIDEN: I don't remember. And I'm not
8 supposed to speculate, right?

9 MR. BAUER: Correct.

10 PRESIDENT BIDEN: So -- okay, well, I don't
11 remember and it may have been -- I just don't remember.

12 MR. KRICKBAUM: Okay. Do you remember telling
13 Mark about the handwritten memo that you had written to
14 President Obama?

15 PRESIDENT BIDEN: I probably did. I don't
16 remember specifically, but my guess is I may have done that.

17 MR. KRICKBAUM: Okay. Do you remember telling him,
18 "I just found all the marked classified stuff downstairs?"

19 PRESIDENT BIDEN: Marked?

20 MR. KRICKBAUM: Telling Mark? Do you remember
21 saying that to him?

22 PRESIDENT BIDEN: No.

23 MR. KRICKBAUM: Okay. Do you remember actually
24 finding any classified stuff downstairs?

25 PRESIDENT BIDEN: No. The only thing I can --

1 [0:12:37.6]

2 PRESIDENT BIDEN: -- remember is I wanted to be
3 clear to him that I didn't want what he just heard me say
4 about the memo to Barack, even though it wasn't a Top Secret
5 thing (indiscernible 0:12:39.5), I didn't, I didn't want any
6 of that mentioned, it was confidential. I didn't -- not
7 confidential in the classification sense, but don't, don't
8 write about that. That's off the record. That's not
9 something I want to be talking about in the book about Beau.

10 MR. KRICKBAUM: At this point in time, you know,
11 around a month or so after you left the Vice Presidency,
12 were you still in the process of going through your stuff at
13 CBR, to see what was packed where and where everything was?

14 PRESIDENT BIDEN: Well, I don't specifically
15 remember, but I can't imagine not. I mean, they just drop
16 all these boxes in the library and boxes in the, in that --
17 there's a hallway in the back of the garage. A lot of stuff
18 in the garage itself, boxes piled up. And my problem was,
19 where in the hell is all this stuff going. You know, I
20 mean, it was just taking up a lot of room. And -- but it
21 wasn't so much I was looking for anything. It was, like,
22 well, what do I clear out. You know, what do I get out of
23 the way, sitting near a hallway or it's in the garage or
24 it's in, you know, in this library. It was more in that
25 context I can recall thinking about what was in boxes.

1 [0:14:02.1]

2 MR. KRICKBAUM: Okay.

3 PRESIDENT BIDEN: Not like I'm looking for
4 something, like I'm trying to compile things. But just
5 what'd they pack up, what's here.

6 MR. KRICKBAUM: I want to see if there's anything
7 else -- any other things that you remember about this day.
8 And so the schedule shows that you had an appointment from
9 8:30 to 9 a.m. with [REDACTED] (b) (6), (b) (7)(C). Do you know what that would be
10 referring to?

11 PRESIDENT BIDEN: Yeah, I had -- they had operated
12 on my shoulder and it was a workout schedule.

13 MR. KRICKBAUM: Okay. And then from 10 to 11 you
14 had a scheduling meeting at the house at CBR with Steve
15 Ricchetti, [REDACTED] (b) (6), (b) (7)(C), [REDACTED] (b) (6), (b) (7)(C), and [REDACTED] (b) (6), (b) (7)(C)
16 [REDACTED]. Do you, do you recall anything, I'd expect
17 not, from that particular meeting?

18 PRESIDENT BIDEN: No, that wouldn't be unusual in
19 the sense that they were the day-to-day people. Like, you'd
20 see [REDACTED] (b) (6), (b) (7)(C) walking in, and [REDACTED] (b) (6), (b) (7)(C), and [REDACTED] (b) (6), (b) (7)(C). But that -- you
21 know, just what's goin' on kind of thing. What's the day
22 look like.

23 MR. KRICKBAUM: And then you had lunch at the Four
24 Seasons Hotel at Georgetown.

25 PRESIDENT BIDEN: I ate there all the time.



1 [0:15:16.0]

2 PRESIDENT BIDEN: What'd I do there at the Four
3 Seasons? Who'd I have lunch with?

4 MR. KRICKBAUM: Actually, I'm not sure.

5 PRESIDENT BIDEN: I have no idea.

6 MR. KRICKBAUM: Still have to figure that out.

7 PRESIDENT BIDEN: I don't remember.

8 MR. KRICKBAUM: And is there anything that you
9 remember about what you were doing at the house before your
10 meeting with Mark that day, which would have been in the
11 afternoon? It started at 3:00, according to your schedule.
12 It could have changed based on events.

13 PRESIDENT BIDEN: Had I already decided who I was
14 taking to Penn with me? Had that all been settled by this
15 time? I don't remember.

16 MR. KRICKBAUM: You mean which people --

17 PRESIDENT BIDEN: Yeah.

18 MR. KRICKBAUM: -- were going to work with you at
19 Penn? I don't know the answer (indiscernible 0:15:57.0).

20 PRESIDENT BIDEN: I don't remember. Because there
21 were discussions that were going on, like, you know, do I
22 hire Tony to come on, do I hire so-and-so, will they provide
23 -- how much will they pay so-and-so to do -- you know, to be
24 a professor, that kind of thing. You know, the mechanics of
25 what would -- what I'd be doing at Penn and who I'd be --



1 [0:16:15.5]

2 PRESIDENT BIDEN: -- able to take with me. But I
3 don't know that. I mean, that was one of the things in this
4 time period I'm trying to work out. Is that right? Yeah.
5 Because I'm out of the Vice Presidency and I'm now going to
6 Penn, right? Had stuff been sent to Penn? This stuff's
7 from Penn. I don't remember (indiscernible 0:16:42.0) time
8 in.

9 MR. KRICKBAUM: Well --

10 PRESIDENT BIDEN: Anyway.

11 MR. KRICKBAUM: -- perhaps maybe I'll ask you
12 another question, Mr. President.

13 PRESIDENT BIDEN: Sure.

14 MR. KRICKBAUM: You said -- well, I think we
15 talked yesterday, in the basement of Chain Bridge Road you
16 had the office that you used there. Is that right?

17 PRESIDENT BIDEN: Yeah. It was more of a
18 combination family room, meeting room, television room, you
19 know, staff room. I mean, it wasn't -- you know, it just --
20 I'm a frustrated architect and I wanted to set it up so it
21 looked nice. And I was even talking about, do I spend the
22 money if they'd allow me and put in a swimming pool out
23 there kind of thing. Jill's going, what are you doing, what
24 are you talking about, stop. And but it was in the context
25 of making the place look nice and livable and feel like

1 [0:17:51.2]

2 PRESIDENT BIDEN: -- home.

3 MR. KRICKBAUM: Okay. And you said to
4 Mr. Zwonitzer, I had just found all the classified stuff
5 downstairs. What I want to try to understand, in February
6 of 2017, are there any other places, other than Chain Bridge
7 Road that you could have been talking about when you said
8 that?

9 PRESIDENT BIDEN: No.

10 MR. KRICKBAUM: And I guess --

11 PRESIDENT BIDEN: Trying to think. I had Chain
12 Bridge Road as a residence. I had pulled -- I'm out of the
13 Vice President's residence, right?

14 MR. KRICKBAUM: Yes. You had moved out more than
15 a month --

16 PRESIDENT BIDEN: And all of that stuff hadn't
17 been sent to my garage floor in Delaware, had it? Do we
18 know?

19 MR. KRICKBAUM: What we know, Mr. President, is
20 that the movers came to, to the Naval Observatory on January
21 7th and packed up your stuff and moved into Chain Bridge
22 Road that same day.

23 PRESIDENT BIDEN: Gotcha. But nothing moved to
24 Wilmington? There's only one other residence I had, my
25 originally, the lake -- you refer --

1 [0:18:59.1]

2 MR. KRICKBAUM: Right.

3 PRESIDENT BIDEN: It's no lake. It's a pond, but
4 -- okay, no, I can't think of anything -- any other place.

5 MR. KRICKBAUM: And I guess looking at, you know,
6 the evidence taken together, one simple theory -- and I'm
7 just going to ask you if you have anything you want to add
8 when I explain this theory. If the answer is no, the answer
9 is no.

10 PRESIDENT BIDEN: Okay.

11 MR. KRICKBAUM: One simple theory would be that
12 when you told Mark Zwonitzer in February of 2017, and you
13 were talking about Afghanistan, that you just found all
14 classified stuff downstairs, what you meant was you just
15 found all the classified documents about Afghanistan that
16 were later found in your garage in the lake house. And so,
17 we're trying to understand if that's what you meant or not.
18 And I understand you've told us you don't remember, but our
19 question is really if there's anything else -- any other
20 memory or thought you have on this that you want to share
21 with us as we try to make sense of the evidence.

22 PRESIDENT BIDEN: Other than, only thing I can
23 think of is I was referring to him that I knew of the
24 President -- the memo I wrote to the President, I didn't
25 want that in use for any reason.

1 [0:20:17.0]

2 MR. KRICKBAUM: Okay. And I think we covered this
3 at the beginning of our conversation today, but -- well,
4 actually we talked about the incident with Mr. (b) (6), (b) (7)(C) you
5 said you were told that you had given stuff to Mr. (b) (6), (b) (7)(C),
6 but you didn't know -- you don't remember that and you
7 didn't know what those documents were?

8 PRESIDENT BIDEN: No. I just know anything that
9 was so clearly marked confidential I just took and said
10 return it, get it out of here. That's what I know. And I
11 was telling the team that that's what I would do with it. I
12 mean, again, they said, well, yeah, (b) (6), (b) (7)(C) was your body
13 guy for a while, he remembers you saying to him boom, return
14 this.

15 MR. KRICKBAUM: So in February of 2017, when you
16 had this conversation with Mark Zwonitzer, I believe that
17 Mr. (b) (6), (b) (7)(C) was still your body guy. I'm trying to get a
18 sense of, if you had found classified documents at that
19 time, what would you have done with them? Who would, who
20 would you have given them to?

21 PRESIDENT BIDEN: I would have given to him to
22 give back to the -- you know, to the agency.

23 MR. KRICKBAUM: Okay. Is there anyone else that
24 you can think of that you would have --

25 PRESIDENT BIDEN: Well, if I -- my former --

1 [0:21:25.7]

2 PRESIDENT BIDEN: -- chief of staff was sitting
3 talking to me, if my -- if, you know, I, I, I would hand it
4 to them. It usually was a staff responsibility to return
5 this stuff.

6 MR. KRICKBAUM: Okay.

7 PRESIDENT BIDEN: So it wasn't like it was, you
8 know, I'd call my chief of staff or the head of the foreign
9 relations committee or whatever.

10 MR. KRICKBAUM: Okay. I want to look at a few
11 more documents.

12 PRESIDENT BIDEN: Sure.

13 MR. KRICKBAUM: So if you could go --

14 PRESIDENT BIDEN: That's kind of a neat room,
15 though, isn't it?

16 MR. KRICKBAUM: It's a beautiful room.

17 PRESIDENT BIDEN: I like the sun in there, too.

18 MR. HUR: Marc, before you move onto in the
19 specific documents, can I just ask a couple follow ups?

20 MR. KRICKBAUM: Please.

21 MR. HUR: So I wanted to follow up on something
22 that you said a couple of minutes ago, Mr. President, where
23 you were recalling the -- I think you said they gathered up
24 the notebooks and put them someplace, referring to the Chain
25 Bridge Road residence. And I just wanted to ask, who --

1 [0:22:23.4]

2 MR. HUR: -- would be the "they"?

3 PRESIDENT BIDEN: No, that's not what I meant.

4 The notebooks would have come in in a box dropped somewhere.

5 So there was notebooks in the hallway, the living room, all
6 over. I mean, not notebooks, but boxes.

7 MR. HUR: Okay.

8 PRESIDENT BIDEN: So I'm going to be living there
9 so I said, clear this place out. So what I probably did was
10 go through and found, found book -- found boxes that had
11 notebooks in them. I gathered the notebooks up and I put
12 them in basically one place. And I think they were put in
13 the library in that indentation I referenced. And -- but
14 that's the best of my recollection.

15 MR. HUR: Okay, thank you.

16 MR. KRICKBAUM: You said that if you had found
17 classified documents at this point in February -- if -- you
18 would have given that to (b) (6), (b) (7)(C) or another staff member?

19 PRESIDENT BIDEN: Yeah. I would have gotten rid
20 of them. I would have gotten them back to their source.

21 MR. KRICKBAUM: And why?

22 PRESIDENT BIDEN: Because what would I do? I
23 wasn't going to keep them for anything. I had no purpose
24 for them, and I think it would be inappropriate for me to
25 keep clearly classified documents. Now if I had written --

1 [0:23:31.4]

2 PRESIDENT BIDEN: -- notes in my book, they're my
3 notes and they're my property, but that document is not my
4 property.

5 MR. KRICKBAUM: And was it your understanding
6 after you left the Vice Presidency that at least for marked
7 classified documents that belonged to the government, that
8 you were not authorized to have those at your house after
9 you were Vice President? Was that your understanding?

10 PRESIDENT BIDEN: I didn't think of it that way.
11 I just thought of what would I need them for and I had no
12 authority to have them. I mean, why would I -- look, so I
13 mean, I -- just a continuation of an eight-year habit, of
14 returning classified information to its source. I mean, I
15 don't think it was conscious, like oh wait a minute, I got
16 to change my policy now here. I'm no longer Vice President.
17 Why would I keep them? And -- anyway.

18 MR. KRICKBAUM: Okay. But I think, I think it
19 would be helpful for us to understand -- I think with
20 respect to your notebooks, that you wrote by hand, you view
21 those as yours --

22 PRESIDENT BIDEN: They are mine.

23 MR. KRICKBAUM: -- and you were authorized to have
24 them?

25 PRESIDENT BIDEN: And every President before me --

1 [0:24:36.1]

2 PRESIDENT BIDEN: -- has done the same exact
3 thing.

4 MR. KRICKBAUM: And I'm not arguing with you about
5 that right now, Mr. President.

6 PRESIDENT BIDEN: I just want to make sure we're
7 on the same page.

8 MR. KRICKBAUM: Well, I'm not meaning to address
9 that topic right now. I just want to make sure that you're
10 not making the same claim about a marked classified document
11 that was created by the United States Government. You're
12 not saying that was mine, I could have that if I wanted it.

13 PRESIDENT BIDEN: I never made that argument. I
14 don't know if that argument is legitimate, but I never made
15 that argument and I never responded that way intentionally.

16 MR. KRICKBAUM: Okay. That helps me understand
17 where the line is for you. So let's look at the documents
18 that I referenced earlier. If you could take -- go back to
19 binder 2.

20 PRESIDENT BIDEN: Right here.

21 MR. KRICKBAUM: And if you turn to the second tab
22 there, it says "Facts First" on that tab.

23 PRESIDENT BIDEN: Okay. You guys been workin'
24 like hell. That's a compliment. I don't mean that in a bad
25 way. It's a lot to put this together.

1 [0:25:33.7]

2 MR. KRICKBAUM: Understood. I'll wait for
3 everybody to get there. I think we're mostly there. So
4 this is what appears to be a red folder with handwriting on
5 it. And by the way, Mr. President, the next few documents
6 I'm going to go through with you were found in your garage
7 at the lake house. I'm telling you that for context.

8 PRESIDENT BIDEN: Okay.

9 MR. KRICKBAUM: Do you recognize this folder?

10 PRESIDENT BIDEN: No.

11 MR. KRICKBAUM: How about the handwriting? Is
12 that your handwriting?

13 PRESIDENT BIDEN: It looks like, it looks like my
14 handwriting.

15 MR. KRICKBAUM: And the phrase "Facts First," does
16 that have any significance to you?

17 PRESIDENT BIDEN: No, I was trying to remember --
18 I mean, when I saw that today I didn't know whether that
19 related to something or it was just me who was saying -- I
20 don't know. Was there a document "Facts First," I don't
21 know.

22 MR. KRICKBAUM: As I said a minute ago, this
23 folder had several documents related to Afghanistan from
24 2009 in it.

25 PRESIDENT BIDEN: Okay.

1 [0:26:26.3]

2 MR. KRICKBAUM: Do you have -- do you know
3 anything about how this folder and those documents got into
4 your garage?

5 PRESIDENT BIDEN: No, other than they must have
6 been taken when I was Vice President from the Vice
7 President's residence or the Vice President's office, to the
8 -- where was I -- did I have the Penn office yet. I think
9 either to the Penn office or to the residence in Wilmington.
10 I mean, that's the only thing I can think of.

11 MR. KRICKBAUM: There were also documents from the
12 Naval Observatory, or materials from the Naval Observatory,
13 that were moved to Chain Bridge Road. Is that --

14 PRESIDENT BIDEN: Okay.

15 MR. KRICKBAUM: -- is that your -- I'm asking
16 actually. That's a question. Do you know that?

17 PRESIDENT BIDEN: Well, I'm sure, I'm sure there
18 were. I don't know -- my problem was I never knew where any
19 of the documents or boxes were specifically coming from or
20 who packed them. Just did I get them delivered to me. And
21 so this is -- I'm, at this stage, in 2009, am I still Vice
22 President?

23 (Indiscernible whispering 0:27:42.3).

24 PRESIDENT BIDEN: Yeah, okay.

25 MR. KRICKBAUM: So it looks like you're --

1 [0:27:47.3]

2 MR. KRICKBAUM: .-- flipping ahead, which is great
3 because I'm --

4 PRESIDENT BIDEN: I'm sorry, I thought that you
5 wanted --

6 MR. KRICKBAUM: No, no, you're fine, Mr.
7 President. If you could flip to tab B7. I'm actually not
8 going to go through all of these with you today.

9 PRESIDENT BIDEN: Okay.

10 MR. KRICKBAUM: But B7, the first page there just
11 says tab 1 and then second page, which is -- it ends at
12 Bates number 18. I want to make sure we're all looking at
13 the same document. The subject is --

14 PRESIDENT BIDEN: First one is --

15 MR. KRICKBAUM: -- the title --

16 PRESIDENT BIDEN: -- Top Secret, HUMINT, COMINT it
17 says Office of the Director of National Intelligence, "Al
18 Qaeda allies pose a global threat to U.S. interests."

19 MR. KRICKBAUM: We're looking at the same one.
20 Mr. President, there's some lines underlined in the first
21 paragraph and there's a handwritten note in the margin. Is
22 that your handwriting?

23 PRESIDENT BIDEN: U.S. question mark?

24 MR. KRICKBAUM: Yes.

25 PRESIDENT BIDEN: In the margin?

1 [0:28:39.8]

2 MR. KRICKBAUM: Yeah.

3 PRESIDENT BIDEN: I underline documents and that
4 could be my writing. I can't swear to it.

5 MR. KRICKBAUM: Okay. When -- to give you some
6 context, this document was attached. There's a memo from
7 the National Security Advisor to the President in advance of
8 a National Security Council meeting. And this was an
9 attachment to that memo. And so my question is, at least
10 when you had copies of materials like that, that were your
11 copies, did anyone else take notes on your copies of memos
12 that you had as briefing material?

13 PRESIDENT BIDEN: Not simultaneously, but I -- if
14 I turned it over to my National Security Advisor to hand
15 him, he could have put notes on it, but not likely.

16 MR. KRICKBAUM: Okay. You mentioned the markings
17 at the top. Do you -- it says Top Secret. Any of the other
18 markings, do you recognize those or know what they refer to?

19 MR. BAUER: I'm sorry, what page are you on, Marc?

20 MR. KRICKBAUM: I'm sorry, I'm the very -- it's
21 Bated number 18. It's the first page of this document.

22 MR. BAUER: So the margin, meaning the underlining
23 in that first --

24 MR. KRICKBAUM: The -- it says at the top --

25 MR. BAUER: Oh, I see.

1 [0:29:48.9]

2 MR. KRICKBAUM: -- Top Secret --

3 MR. BAUER: I see.

4 MR. KRICKBAUM: -- HUMINT, COMINT, that one. Do
5 you recognize any of those particular --

6 PRESIDENT BIDEN: All I had to do was see Top
7 Secret. I don't remember -- HUMINT means human
8 intelligence, COMINT, FISA -- no, I mean, other than -- all
9 I had to see was Top Secret.

10 MR. KRICKBAUM: Okay. You recognize those as
11 classification markings, I assume?

12 PRESIDENT BIDEN: Yes.

13 MR. KRICKBAUM: Yeah. And you have referred a few
14 times today to things that are clearly marked classified and
15 I want to make sure I know how you're using that. As far as
16 you are concerned, is this document clearly marked as a
17 classified document?

18 PRESIDENT BIDEN: Yes.

19 MR. KRICKBAUM: Okay. If you then flip to
20 document B13 dash -- I'm sorry, tab B13-2.

21 PRESIDENT BIDEN: B13-2. Okay.

22 MR. KRICKBAUM: This is a couple paragraphs typed
23 up and at the top it says notes from a meeting on
24 September 29th, 2009, and it has a time. It indicates that
25 it's about Afghanistan/Pakistan. For context for you --

1 [0:31:12.1]

2 MR. KRICKBAUM: -- Mr. President, there was a
3 Principal's Committee meeting about Afghanistan/Pakistan on
4 this day. And I can see that you're reading what's typed up
5 there. Do you recognize this, sort of, vignette that's
6 typed up as something that you recall happening during a
7 meeting related to Afghanistan back in 2009?

8 PRESIDENT BIDEN: Generically, I do. Look, the
9 debate was -- let me move this -- the debate was, with
10 McChrystal and company, that if somehow we defeated Al Qaeda
11 and killed Bin Laden in Pakistan, we still have the same
12 level of commitment McChrystal was asking for to defeat the
13 Taliban in Afghanistan. The answer, the answer, the answer
14 Intelligence, State, and Defense was yes. Okay. I don't
15 know -- that's a question Panetta asked. So what was the
16 question?

17 MR. KRICKBAUM: Do you remember this exchange that
18 is documented here?

19 PRESIDENT BIDEN: Not per se, but it was a generic
20 exchange I remember. The debate related to whether or not
21 Pakistanis were -- if we got rid of Bin Laden in Pakistan,
22 and -- Panetta asked the question of Secretary of
23 Defense and others. So he's asking what's his name from
24 Texas, who was the Secretary of Defense? Gates.

25 UNIDENTIFIED MALE SPEAKERS: Gates.

1 [0:32:59.7]

2 UNIDENTIFIED FEMALE SPEAKER: Gates.

3 PRESIDENT BIDEN: Defeated Al Qaeda, kill Bin
4 Laden in Pakistan, will we still have the same level of
5 commitment McChrystal was asking for to defeat Taliban in
6 Afghanistan. Oh, okay. The answer Intelligence, State, and
7 Defense gave was yes. In other words, this was if, in fact,
8 Al Qaeda is defeated, Bin Laden is gone, would we still be
9 making a major investment in Afghanistan? And apparently
10 the State Department and the Defense Department both said
11 yes, would have the same level.

12 MR. KRICKBAUM: Okay. Let's move onto B14 --

13 PRESIDENT BIDEN: Now, were these, these notes
14 written like they're typed like this?

15 MR. KRICKBAUM: They were typed like this in the
16 folder that was found in the garage.

17 PRESIDENT BIDEN: Okay.

18 MR. KRICKBAUM: Do you remember anything about
19 how, how this document was created?

20 PRESIDENT BIDEN: No.

21 MR. KRICKBAUM: Okay.

22 PRESIDENT BIDEN: Because I didn't type anything.

23 MR. KRICKBAUM: Fair enough.

24 PRESIDENT BIDEN: No, I'm not being -- I know, I'm
25 a little embarrassed, but it wasn't anything I typed so --

1 [0:34:04.4]

2 PRESIDENT BIDEN: -- it may very well be that
3 whoever my National Security Advisor in that meeting, the
4 small group meeting, was asked that question, since he or
5 she recorded that.

6 MR. KRICKBAUM: B14-1.

7 PRESIDENT BIDEN: Yup.

8 MR. KRICKBAUM: So this is another typed document.
9 The title of it is Counterinsurgency Coin versus
10 Counterterrorism --

11 PRESIDENT BIDEN: Yup.

12 MR. KRICKBAUM: -- CT strategies. I just -- if
13 you could -- I'm not going to ask you about the substance of
14 this document, Mr. President, I wonder if you would -- if
15 you would look at the notes in the margins on page 2, the
16 next page, it's the Bates number 40 -- Bates number 41,
17 Bates number 42, and just tell me whether that's your
18 handwriting or if you recognize it.

19 PRESIDENT BIDEN: It looks like my handwriting.

20 MR. KRICKBAUM: Okay. And then I think that's the
21 last document I wanted to ask you about in this folder,
22 Mr. President. If you could turn to the next tab, which the
23 big blue tab is -- it says Afghanistan folder. So the first
24 page of that folder is a -- it's a scan of a manila folder.
25 It's got handwriting on it that says Afghanistan 2009.

1 [0:35:30.0]

2 MR. KRICKBAUM: Do you recognize that folder?

3 PRESIDENT BIDEN: It looks like my writing.

4 MR. KRICKBAUM: Okay.

5 PRESIDENT BIDEN: I couldn't swear to it.

6 MR. KRICKBAUM: Okay. If you go to tab B25, this
7 is a -- it's a typed document, it has handwriting on it.
8 It's, it's dated November 25, 2009, and it says memorandum
9 for the President from the Vice President. Is that your
10 handwriting on this document as well?

11 PRESIDENT BIDEN: It looks like it, yeah.

12 MR. KRICKBAUM: All right. This says that it is a
13 memo from -- for the President from you, and I will, I will
14 give you for context, Mr. President, that parts of this
15 typewritten document that you're looking at, are
16 incorporated into the handwritten memo that you wrote to
17 President Obama, the long one that we looked at earlier. So
18 there are some parts --

19 PRESIDENT BIDEN: Which came first?

20 MR. KRICKBAUM: This one is dated three days
21 earlier, the typewritten one is dated three days earlier.
22 And so my question is just whether you recall using this
23 memo or anything else as a resource or source material when
24 you were writing the handwritten memo?

25 PRESIDENT BIDEN: I'd have to take a look.

1 [0:36:54.8]

2 PRESIDENT BIDEN: Give me a second to look.

3 MR. KRICKBAUM: Of course, please take your time.

4 (Whispering)

5 PRESIDENT BIDEN: (Reading) Now what was the
6 question you asked me?

7 MR. KRICKBAUM: I was asking whether you used the
8 typewritten memo in B25 as a resource or a source material
9 when you wrote the handwritten memo to President Obama?

10 PRESIDENT BIDEN: Possible. My guess is not,
11 because this was -- if I got this -- if I wrote this on the
12 25th, I would have already been well into writing the
13 handwritten deal with Obama, which was Thanksgiving. What
14 date did it get to him?

15 MR. KRICKBAUM: You sent it on November 28th.

16 PRESIDENT BIDEN: 28th?

17 MR. KRICKBAUM: Yeah.

18 PRESIDENT BIDEN: I guess it's theoretically
19 possible, but I don't, I don't remember it that way.

20 MR. KRICKBAUM: Okay, that's fine.

21 PRESIDENT BIDEN: But this is -- okay. (Reading)

22 MR. KRICKBAUM: And Mr. President, if the answer
23 is that you don't remember --

24 PRESIDENT BIDEN: I, I don't remember the sequence
25 of the handwritten versus this, but -- and I'm reluctant --

1 [0:39:39.5]

2 PRESIDENT BIDEN: -- to speculate, but if this was
3 -- I received this before I wrote the other, it was added
4 argument why he should listen to my argument. I'm talking
5 about -- you know, "I had a long conversation with Eikenberry,
6 yes, I urge you to call him before you make a decision. Karl
7 can speak for himself and he has eloquently in some of his
8 cables, let me relay just a few things. Adding troops will
9 not speed up the ability to train Afghans because..." et
10 cetera. So these are criticisms of the proposal that was
11 being made to the President by, by others in the administration
12 wanting him to double down in Afghanistan.

13 MR. KRICKBAUM: Understood.

14 PRESIDENT BIDEN: So my guess is it probably was a
15 partial source to what I ended up sending as well on the
16 28th, or whatever date it was.

17 MR. KRICKBAUM: Okay. There is only one other
18 document I wanted to ask you about in this folder. It's
19 B37, which is toward the back.

20 MR. BAUER: Did you say 37 or 27?

21 MR. KRICKBAUM: Thirty-seven.

22 MR. BAUER: Okay, thank you.

23 MR. KRICKBAUM: This is another typewritten
24 document, Mr. President, it says "memorandum for principals"
25 at the top. I'm not going to ask you about the content --



1 [0:41:12.8]

2 MR. KRICKBAUM: -- of it, but I wanted you to just
3 look at the -- there's some handwritten notes in the margins
4 on the second page. And if you just flip through you'll see
5 notes in the margins on several pages. And I wanted to ask
6 if that appears to be your handwriting?

7 PRESIDENT BIDEN: It's hard to tell whether that
8 -- it could be. I mean, I make stars like that, you know,
9 asterisks like that.

10 MR. KRICKBAUM: Okay.

11 PRESIDENT BIDEN: But I don't -- I can't swear to
12 that, no.

13 MR. KRICKBAUM: Okay.

14 PRESIDENT BIDEN: (Reading) The issue of transfer
15 of Afghan responsibilities, critical.

16 MR. KRICKBAUM: And --

17 PRESIDENT BIDEN: This was -- I'm sorry. I'm
18 trying to figure out what this was.

19 MR. KRICKBAUM: I believe this was one of the
20 several memos that the National Security Advisor sent out to
21 the Principals Committee asking for views about various
22 proposals about troop levels. You know, the debate was
23 about how many and what was going to be the strategy. As
24 you know much better than I do, but I actually didn't have
25 any questions for you about the content.



1 [0:42:33.4]

2 PRESIDENT BIDEN: I'm just wondering the context
3 myself.

4 MR. KRICKBAUM: Yeah, yeah, understood. I --
5 Mr. President, if we could -- and I can recognize the desire
6 to read those documents again.

7 PRESIDENT BIDEN: I was just trying to see what
8 the context was.

9 MR. KRICKBAUM: Sure. We have fairly limited time
10 so --

11 PRESIDENT BIDEN: I'm sorry.

12 MR. KRICKBAUM: -- if I could --

13 MR. BAUER: By the way, just real quick question
14 on that. What is our time situation?

15 MS. COTTON: We're 1 hour and 10 minutes into the
16 interview for today.

17 MR. BAUER: One hour and what?

18 MS. COTTON: One hour and 10 minutes in.

19 MR. BAUER: Got it.

20 MR. KRICKBAUM: So I really do need to move on,
21 Mr. President.

22 PRESIDENT BIDEN: Okay, go ahead, I'm sorry.

23 MR. KRICKBAUM: I just had one other handwriting
24 question for you, which is back to binder 1. And it's tab
25 9. Bates number 0-0-4. I'm sorry, DSC_004.

1 [0:43:36.8]

2 PRESIDENT BIDEN: ERT you say?

3 MR. KRICKBAUM: DSC_004.

4 PRESIDENT BIDEN: I have ERT.

5 MR. KRICKBAUM: I think there's a DSC.

6 PRESIDENT BIDEN: Here you go, I got it.

7 MR. KRICKBAUM: You got it? This is a photo of
8 several folders in a box.

9 PRESIDENT BIDEN: Yeah.

10 MR. KRICKBAUM: And the one I wanted to ask you
11 about is it says Washington Speakers Bureau. You see that
12 one?

13 PRESIDENT BIDEN: Is that the one --

14 MR. KRICKBAUM: It's a manila --

15 PRESIDENT BIDEN: -- next to Beau or--

16 MR. KRICKBAUM: It's a manila folder. It is --

17 UNIDENTIFIED MALE SPEAKER: Further towards you.

18 UNIDENTIFIED MALE SPEAKER: Thanks.

19 PRESIDENT BIDEN: Okay, yeah.

20 MR. KRICKBAUM: Do you recognize that handwriting,
21 Mr. President? Is that yours?

22 PRESIDENT BIDEN: I think it's mine.

23 MR. KRICKBAUM: Okay. One second. A different
24 topic, and this is something that came up yesterday when
25 Mr. Hur was showing you photographs of the garage at the --

1 [0:44:38.3]

2 MR. KRICKBAUM: -- lake house. You made reference
3 to -- at some point, some materials ended up at the lake
4 house and you referred to that as tranche 2. And we're --
5 we wanted to follow up and understand what you meant -- what
6 you were referring to by tranche 2.

7 PRESIDENT BIDEN: Tranche 2. Give me one -- I
8 don't know. You're talking about when stuff got delivered
9 to the garage?

10 MR. KRICKBAUM: I believe so.

11 MR. HUR: And the photo that -- in which that,
12 that exchange occurred was --

13 PRESIDENT BIDEN: Right.

14 MR. HUR: -- behind tab 7 in binder 1.

15 PRESIDENT BIDEN: Yeah, okay, I see.

16 MR. HUR: Yes, sir. So if I recall, when you saw
17 that pile of boxes to the right of the treadmill there, I
18 think one of the things you said --

19 PRESIDENT BIDEN: This was stuff that came after
20 other stuff had already been delivered to the, to the
21 garage. Because some of this stuff relates to construction
22 stuff. All those fans were taken down, taken down from the

23 (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) --

24 MR. HUR: Yes, sir.

25 PRESIDENT BIDEN: -- where we had -- where we --

1 [0:45:53.2]

2 PRESIDENT BIDEN: -- do the interviews and things.
3 So my recollection is that there were two times that boxes
4 relating to my office, the job I held, were delivered to the
5 -- my garage. And most of this stuff, I think a lot of it's
6 still sitting there, is stuff that had to do with
7 construction and/or bringing other material from, I guess,
8 Chain Bridge Road, whether it was furniture. This is 2021?

9 MR. HUR: Um-hum.

10 MS. COTTON: No, it's 2022.

11 MR. HUR: This photo was taken in 2022.

12 PRESIDENT BIDEN: Yeah, this is stuff after
13 whatever was delivered from Chain Bridge Road had well been
14 delivered. Right? I moved out of Chain Bridge Road back --

15 MR. HUR: Yes.

16 PRESIDENT BIDEN: -- back in 2019 or 2020, right?

17 MR. HUR: Yes.

18 PRESIDENT BIDEN: So what I was referring to in
19 tranche 2, there were other, there were other things and the
20 other garage door were opened on the left there. There were
21 boxes there, too. I remember moving boxes, literally
22 physically moving them, with help, one side to the other so
23 I could get the Corvette in that garage on the left. But so
24 when I was talking about tranche, maybe I didn't follow --
25 there was a second time things were piled up in the garage.

1 [0:47:37.0]

2 PRESIDENT BIDEN: This was not the first time and
3 the first time was, I think, back when I moved out of either
4 my Vice President's office, or when I moved out of the Vice
5 President's residence, or I moved out of the Penn Biden
6 Center, moved stuff out of the Penn Biden Center. But there
7 was different stuff in there on both sides, I think. That's
8 what I meant. In other words, a lot of this stuff has
9 nothing to do with, with my being Vice President or with
10 anything. We were just doing work on the house.

11 MR. HUR: Okay. That's very helpful. And can
12 you, can you tell that by looking at these pictures from the
13 size --

14 PRESIDENT BIDEN: Well, I can tell that by the
15 fans to start with. Okay?

16 MR. HUR: Ah, okay. And how about --

17 PRESIDENT BIDEN: And I think, I think that one of
18 these things is marked "careful mirror" or something on the
19 other side.

20 MR. HUR: I see.

21 PRESIDENT BIDEN: I'm not mistaken. But that
22 thing going across, that's no file or anything. That's
23 something to do with, either a mirror or some -- something
24 that is furniture related, I think. But I'm not certain.

25 MR. HUR: Understood. Okay.

1 [0:49:07.1]

2 PRESIDENT BIDEN: I think it's still there. I
3 haven't been home in so long. They told me I'd be out of
4 the house (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F); it'll be (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F)

5 (Laughter)

6 MR. HUR: It's often like that. So that's very
7 helpful, Mr. President, thank you. In thinking about the
8 first tranche of stuff that you mentioned a second ago. And
9 the second tranche of stuff --

10 PRESIDENT BIDEN: I'm assuming there were two.

11 MR. HUR: Okay.

12 PRESIDENT BIDEN: That's my assumption. I just --
13 I don't know when the first time --

14 MR. HUR: Is?

15 PRESIDENT BIDEN: -- I walked into the garage and
16 all of a sudden there were all these boxes all over the
17 floor. I don't remember if that was way back when I left
18 the Vice Presidency.

19 MR. HUR: Yes.

20 PRESIDENT BIDEN: Or whether it was just before --
21 in this timeframe.

22 MR. HUR: Okay.

23 PRESIDENT BIDEN: I just don't remember.

24 MR. HUR: Okay.

25 PRESIDENT BIDEN: And I don't remember how the --

1 [0:49:53.4]

2 PRESIDENT BIDEN: -- hell it got there.

3 MR. HUR: Okay. So here's a different question
4 that doesn't focus on timing or how things got there.
5 Sometimes, in my own experience around the house, you know,
6 I get a particular -- a place gets messy and then I clean it
7 up and it looks spic and span, and then it gets messy again.
8 So is that what happened here, where the first tranche came,
9 stuff got dumped in your garage and you organized it, you
10 moved it all, unpacked the boxes and it was spic and span,
11 and then this stuff landed. Or was it not quite that stark.
12 Was it more like well, I did some unpacking of the first
13 batch. It wasn't all the way --

14 PRESIDENT BIDEN: I don't remember unpacking
15 anything. The thing I remember moving is just --

16 MR. HUR: Ah, moving.

17 PRESIDENT BIDEN: -- moving the boxes.

18 MR. HUR: Okay.

19 PRESIDENT BIDEN: And by the way there's -- in
20 there, there's two things. There's a bookcase. An old --
21 had nothing to do with anything. A bookcase that is against
22 one of those -- if you look at that picture, you'll see on
23 the [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) to
24 -- there's [REDACTED] (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) going up.

25 MR. HUR: Yes.

1 [0:51:08.8]

2 PRESIDENT BIDEN: And I think you could see it
3 looks like there is a -- something leaning against that

4 (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F)

5 MR. HUR: Yes.

6 PRESIDENT BIDEN: I think that is a bookcase,
7 unrelated to anything having to do with the Vice Presidency,
8 where some of the books that were sitting around, books came
9 back in boxes. You just took them out and stuck them there
10 to get rid of the box. You follow me? Does that make any
11 sense?

12 MR. HUR: Yes.

13 MR. KRICKBAUM: Yes, sir.

14 PRESIDENT BIDEN: And so things like that. I
15 don't, I don't know what -- and in the meantime -- I can't
16 remember when I had these cabinets put in, on both sides of
17 the garage, the gray cabinets.

18 MR. HUR: Yes, sir.

19 PRESIDENT BIDEN: They're for storage and they had
20 storage of things for paint and tools and golf clubs and
21 things like that. And a lot of on the (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) side --
22 (b) (6), (b) (7)(C), (b) (7)(E), (b) (7)(F) side of the garage, there was a lot of my wife's
23 crockery and vases and crystal pitchers, you know, for
24 drinks, drink kind of thing. And we -- I needed them to
25 store, you know, to get out of the way so they didn't get --

1 [0:52:31.1]

2 PRESIDENT BIDEN: -- broken. There was no other
3 place to put them. And that was stuff coming from
4 Chain Bridge Road and/or, originally, I guess, from the Vice
5 President's residence, Chain Bridge, you know, those kinds
6 of things.

7 And then there on the other side, there's a little
8 workbench on the other -- between -- that last, on the right
9 -- what you're looking at here, because you can see one,
10 two, three cabinet doors up and down. And then there's an
11 opening and there's a workbench there with a -- I think
12 there's a vice there, and a, you know, and stuff just piled
13 up there.

14 And, so, you know, and, and it may be -- I don't
15 know this -- I don't want to speculate. Anyway. But it
16 wasn't like the boxes were empty and taken away. It was
17 like --

18 MR. HUR: They were moved.

19 PRESIDENT BIDEN: They were moved to make room for
20 the Corvette. And initially what I had in there, I had the
21 Corvette -- because in one picture, you have it on this side
22 of the garage.

23 MR. HUR: Yes.

24 PRESIDENT BIDEN: And on the other side was a
25 tractor, a small tractor that could operate as a --

1 [0:53:48.8]

2 PRESIDENT BIDEN: -- tractor and/or as a lawn
3 mower. And it had a wagon, you know, a wagon you could hook
4 up to it. What I ended up doing is buying from one of these
5 garage places, you know, you go -- that could buy -- pass
6 gas stations that are selling wood sheds and, you know,
7 things like that. I bought a storage facility where I can
8 drive a tractor in there and store it, and a lot of garden
9 stuff and including -- I had in there -- what else did I put
10 in there? Tools, shovels, all that kind of stuff. Oh, and
11 the hard top for my Corvette is in there. And there's two
12 doors that close. And it's really more storage. So that's
13 why we ended up -- because we needed the space on the [REDACTED]
14 [REDACTED] of the garage.

15 MR. HUR: And that, that you were just talking
16 about, moving things around, the big stuff for the space for
17 the Corvette on [REDACTED] of the garage, was that before or
18 after your move out of Chain Bridge Road?

19 PRESIDENT BIDEN: I don't know, I can't remember.
20 I'm trying to think. If I can remember when the first
21 tranche of boxes got sent to me. I have no -- no, I can't.
22 Maybe I should have asked some of the former staff when the
23 hell that stuff came up and how it came up. I don't know.
24 But I honest to God don't remember.

25 MR. HUR: Okay.

1 [0:55:31.5]

2 PRESIDENT BIDEN: It may have been -- and by the
3 way, to complicate things. In the meantime, my Corvette was
4 being worked on because I had to do that show with --

5 MR. KRICKBAUM: Jay Leno.

6 PRESIDENT BIDEN: Jay Leno. Didn't have to, I
7 wanted to do that show with Jay Leno.

8 (Laughter)

9 PRESIDENT BIDEN: And there was a kid who used to
10 help me take care of my Corvette. Didn't work for me, but
11 -- and -- I can get his name. And he pulled it in and out
12 to, you know, work on the carburetor, you know, whatever,
13 get it up to the Chevrolet dealer (indiscernible 0:56:06.1),
14 whatever. So there was a lot of stuff going in and out, but
15 I don't remember when the boxes came or where they came
16 from.

17 MR. KRICKBAUM: Do you remember whether it was
18 when the Corvette was coming back after the Jay Leno show?
19 So, in other words, it goes out for Jay Leno, eventually it
20 comes back.

21 PRESIDENT BIDEN: Oh, no, it was, it was in and
22 out for a bunch of reasons.

23 MR. KRICKBAUM: Okay.

24 PRESIDENT BIDEN: Because it drove me crazy; I
25 wanted to drive it.

1 [0:56:32.4]

2 MR. KRICKBAUM: Got it. That makes sense; a
3 beautiful car.

4 PRESIDENT BIDEN: And the worst part was, they
5 said I couldn't drive it outside the driveway. It's a long
6 driveway. So I'd get it to the bottom of the driveway, tack
7 it up to about four grand (indiscernible 0:56:44.0) (makes
8 car sound) (indiscernible 0:56:47.0).

9 (Laughter)

10 PRESIDENT BIDEN: You think I'm kidding; I'm not.

11 MR. KRICKBAUM: We believe you.

12 MR. HUR: I believe you. Yes.

13 PRESIDENT BIDEN: Probably one of the best parts
14 to being Vice President and President, I get to drive all
15 these, you know, electric vehicles. I have. Damn, they're
16 quick.

17 (Laughter)

18 PRESIDENT BIDEN: You know, think about this. You
19 had one of those big 4 x 4s, the -- I think it's a Ford
20 Bronco, whatever it is. Zero to sixty in 4 6.

21 MR. HUR: Yes.

22 MR. KRICKBAUM: Instant torque.

23 MR. HUR: That's fast.

24 PRESIDENT BIDEN: Yeah. By the way, you know how
25 it works?

1 [0:57:19.3]

2 (Laughter)

3 PRESIDENT BIDEN: It's really cool.

4 MR. HUR: Sir, I'd love -- I would love, love to
5 hear much more about this, but I do have a few more
6 questions to get through.

7 PRESIDENT BIDEN: You can take 30 seconds, but you
8 put your foot on the brake, you hit, you hit a button that's
9 in the -- and it says "launch."

10 (Laughter)

11 PRESIDENT BIDEN: You step your foot on the
12 accelerator all the way down --

13 MR. HUR: Woah.

14 PRESIDENT BIDEN: -- until it gets to about 6, 7
15 grand. Then all of a sudden, it will say "launch." All you
16 do is take your foot off the brake. (Makes car sound)

17 (Laughter)

18 MR. HUR: It's on my bucket list.

19 All right. So let's -- with that, let's launch
20 into the next subject which relates to the Penn Biden
21 Center. So, I want to show you what's behind Tab 23.

22 MR. SAUBER: Which notebook?

23 MR. HUR: I'm sorry, Binder 1, the original binder.

24 So there's a number of photos there. The first
25 Bates is 20221201_WFO_0021. And then 22, and then 23.

1 [0:58:30.3]

2 MR. HUR: And it jumps to 102, 103, 104 and 114.

3 MS. COTTON: I'm sorry, Rob, which tab?

4 MR. HUR: Tab 23.

5 MS. COTTON: Twenty-three.

6 MR. HUR: So the first several photos ending at
7 Bates 21, 22 and 23, are one box. And then the remainder
8 behind that tab are of another box.

9 PRESIDENT BIDEN: 21, 22 and 23 are one box?

10 MR. HUR: Yes, sir.

11 PRESIDENT BIDEN: Okay.

12 MR. HUR: Okay. And then 102 onward are another
13 box.

14 PRESIDENT BIDEN: Okay.

15 MR. HUR: So these were boxes that were recovered
16 from the Penn Biden Center.

17 PRESIDENT BIDEN: Gotcha.

18 MR. HUR: And I'd like you just to take a quick look
19 at those photographs and tell me if you recognize these files,
20 if any of them jump out to you as ones that you recall.

21 MR. BAUER: Are you on a specific page, Rob, just
22 to be clear?

23 MR. HUR: Not right now.

24 MR. BAUER: Okay.

25 MR. HUR: He can look through all six or seven --

1 [0:59:31.8]

2 MR. HUR: -- of those photos.

3 PRESIDENT BIDEN: The one on, on 0103, cancer --
4 I've done a lot of work on cancer research. This was a more
5 current one, Leader Kevin McCarthy. It must have been
6 something I was, I guess, it had to do with the deal to
7 prevent the government shutdown. Not the shutdown, renegeing
8 on the debt, the national debt, the deal we made. [REDACTED] --
9 it probably had to do with her, stuff she's doing for abused
10 women. Genealogy -- I got a lot of genealogy stuff all
11 around. Private Biden, 6 (indiscernible 1:00:13.6) 16 and
12 15, I don't know what that is.

13 [REDACTED] -- [REDACTED]? I think it's [REDACTED].

14 (Indiscernible 1:00:23.3) could have been a guy that worked
15 for me for many -- when I was senator. I may have to call
16 him to ask him for some information and recollection. I
17 really can't read some of the others. Can you read it for
18 me (indiscernible 1:00:43.9)?

19 MR. HUR: Well, I think, for the second box, the
20 very last photograph in the tab section, is probably the
21 sharpest -- closest in.

22 MR. BAUER: Could you give me the number?

23 MR. HUR: I'm sorry. Bates 114.

24 MR. BAUER: Got it.

25 PRESIDENT BIDEN: 114.

[REDACTED]

1 [1:01:04.5]

2 MR. HUR: I think that's the clearest focus of the
3 -- and the closest in of those photographs.

4 MR. BAUER: May I ask, Rob, again, for the clarity
5 of record.

6 MR. HUR: Yes.

7 MR. BAUER: Is the question whether he recognizes
8 the topics, or whether he recognizes these specific
9 documents?

10 MR. HUR: These specific documents.

11 MR. BAUER: Not so much the topics, but the
12 documents.

13 PRESIDENT BIDEN: I don't remember --

14 MR. HUR: Or, rather, I'm sorry, these specific
15 files.

16 MR. BAUER: Oh, these specific files, okay.

17 MR. HUR: Yes. From the labels on the file
18 folders.

19 PRESIDENT BIDEN: Well, I remember -- you know, I
20 -- the Papal visit in 2015. I remember the -- Senator
21 Warren's stuff on Black Lives Matter. I was probably
22 categorizing that. VP speech on manufacturing,
23 manufacturers on 6/10. (b) (6), (b) (7)(C) (phonetic), that
24 (indiscernible 1:02:06.3) two staff (indiscernible
25 1:02:07.2) to work for me. (b) (6), (b) (7)(C) --

[REDACTED]

1 [1:02:09.1]

2 PRESIDENT BIDEN: -- (b) (6), (b) (7)(C) had another one.

3 MR. HUR: So jumping off of the question --

4 PRESIDENT BIDEN: (Indiscernible 1:02:13.9).

5 MR. HUR: -- that Bob just asked, which is -- let
6 me ask a slightly different question, which is given, given
7 it sounds like you're familiar with the topics that were
8 addressed in some of these file folder labels, do you recall
9 these as being files that (b) (6), (b) (7)(C) kept for you at the
10 Penn Biden Center?

11 PRESIDENT BIDEN: I don't recall whether they
12 were. But they're all stuff that I've worked -- I worked a
13 hell of a lot on law enforcement, I worked on marriage
14 equality. I'm the guy that got that changed. I worked on
15 Papal visits. I can't read that one. Oh, and something
16 about restoring the middle class. These are all subjects
17 that related to -- most of them -- the moonshot with (b) (6), (b) (7)(C)
18 (b) (6), (b) (7)(C). The Moon Shot was cancer, and (b) (6), (b) (7)(C) was one of my
19 docs who operated on me --

20 MR. HUR: Yes, sir.

21 PRESIDENT BIDEN: -- at Walter Reed.

22 MR. HUR: Do you recall asking (b) (6), (b) (7)(C) to pull any
23 of these files for you when you were -- when you and (b) (6), (b) (7)(C)
24 were at the Penn Biden Center?

25 PRESIDENT BIDEN: No, I -- well -- what dates --

1 [1:03:31.6]

2 PRESIDENT BIDEN: -- was I there? I don't
3 remember. The Penn Biden Center.

4 MR. SISSEL: After your vice presidency.

5 PRESIDENT BIDEN: I know, what are the dates?

6 MR. BAUER: Precise dates.

7 PRESIDENT BIDEN: Anyway, some of it I may have
8 had her pull (b) (6), (b) (7)(C) from -- because I was working on
9 cancer initiatives on my own. I mean, not for Penn, but --

10 MR. HUR: Yes.

11 PRESIDENT BIDEN: But I did work with Penn,
12 because they had a helluva cancer center there. You know,
13 McConnell, 7-13-15, I don't know what's going on there. But
14 I'm -- it may very well -- if they've been at the Penn --
15 these look like stuff that that may have been in (b) (6), (b) (7)(C)
16 file drawers or -- I don't know. (Indiscernible 1:04:22.1)
17 But not squirreled away. I mean, they look like they could
18 be current things I would be working on or around. But I
19 don't know.

20 MR. HUR: Okay. And when you say "current,"
21 you --

22 PRESIDENT BIDEN: I mean contemporaneous.

23 MR. HUR: At the Penn Biden Center?

24 PRESIDENT BIDEN: At the Penn Biden Center.

25 MR. HUR: Okay. All right.

1 [1:04:39.2]

2 PRESIDENT BIDEN: But I don't know that for a
3 fact.

4 MR. HUR: Understood.

5 MR. BAUER: So just to be clear, Rob. I'm really
6 sorry. I'm trying to be good. I just want to make sure I
7 understand. The question that you're asking -- I want you
8 to ask the question, because you don't want me to ask the
9 question. Is it, again, the -- recalling these specific
10 files, or is the question recalling working on topics like
11 this?

12 MR. HUR: The question was -- and I believe the
13 President answered it quite clearly -- given his familiarity
14 with the topics that are referenced on these file folder
15 labels, does he recall whether these folders were ones that
16 he had (b) (6), (b) (7)(C) keep, and that he referenced at the Penn
17 Biden Center after the end of his vice presidency?

18 PRESIDENT BIDEN: The subject matter, yes, like
19 cancer, (b) (6), (b) (7)(C), Violence Against Women, the genealogy. I
20 mean, there are things that were things that continued. And
21 I still communicate with the Pope, you know what I mean.
22 But is it constant? No. Anyway.

23 MR. HUR: Okay.

24 PRESIDENT BIDEN: He's my ticket.

25 (Laughter)

1 [1:05:52.1]

2 PRESIDENT BIDEN: That was a joke.

3 (Laughter)

4 MR. KRICKBAUM: I was thinking you both have --

5 MR. HUR: That's why we laughed.

6 MR. KRICKBAUM: -- you have full day jobs, so it's
7 probably not regular, regular communication.

8 MR. HUR: Okay. So keeping in mind the second box
9 that's shown in the photos towards the back half of this tab
10 section, from 102 onward. So within that box at the Penn
11 Biden Center was recovered --

12 PRESIDENT BIDEN: (Indiscernible 1:06:24.5) the
13 last things I have on that tab.

14 MR. SISSEL: Oh, which, which picture do you want
15 him to be looking at?

16 MR. HUR: We were just looking at 114.

17 MR. SISSEL: Do you want him still on that?

18 MR. HUR: We're about to move on.

19 MR. BAUER: To 102.

20 MR. HUR: But I just want him to have that in his
21 mind.

22 PRESIDENT BIDEN: All right.

23 MR. HUR: So we're about to move on to Tab 24.

24 PRESIDENT BIDEN: Oh. Okay.

25 MR. HUR: The first document at Tab 24, it's --



1 [1:06:54.1]

2 MR. HUR: -- got Bates ending WFO_0006. And I
3 will represent to you that this envelope that has on it
4 "Eyes Only" at the top and the bottom, and "VPOTUS" in the
5 middle was recovered within the box that's shown in 114,
6 which was the prior tab. Yes.

7 PRESIDENT BIDEN: Okay.

8 MR. HUR: Okay? So -- now flipping back --

9 PRESIDENT BIDEN: Someone went and pulled that out
10 of 114?

11 MR. HUR: Yes.

12 PRESIDENT BIDEN: Okay.

13 MR. HUR: That's where it was found.

14 PRESIDENT BIDEN: But I didn't -- but it wasn't
15 out like this?

16 MR. HUR: No, sir.

17 PRESIDENT BIDEN: Somebody pulled it out?

18 MR. HUR: Correct.

19 PRESIDENT BIDEN: Okay, good. I just wondered
20 what you're saying, that's all.

21 MR. HUR: Correct. Correct.

22 PRESIDENT BIDEN: Okay.

23 MR. HUR: So, now, we understand that the -- well,
24 let me ask you some questions first about the envelope
25 that's on 0006.



1 [1:07:46.1]

2 PRESIDENT BIDEN: Yup.

3 MR. HUR: So, in addition to the "Eyes Only" print
4 at the top and the bottom, and then "VPOTUS" in the middle
5 in black, there's some writing there that says, Iran 1/30,
6 and then some other numbers after that. Do you recognize
7 the handwriting?

8 PRESIDENT BIDEN: No. I mean, it could be mine,
9 but I don't know.

10 MR. HUR: Okay. So now I want to jump over to
11 Binder 3, so a whole separate binder. And towards --

12 PRESIDENT BIDEN: (Indiscernible 1:08:22.1). Get
13 out of my stuff.

14 (Laughter)

15 (Asides)

16 MR. KRICKBAUM: And we're done with two, Rachel,
17 so --

18 MS. COTTON: Okay, great.

19 MR. KRICKBAUM: -- to get it out of the way.

20 PRESIDENT BIDEN: All right.

21 MR. HUR: Okay? So behind the first blue tab,
22 which is labeled "Eyes Only" folder, the first thing you
23 should see is a document that's Bates labeled
24 20221201_WFO_0006, which is what we were just looking at,
25 the outside of the envelope.

1 [1:08:56.3]

2 PRESIDENT BIDEN: Oh, that.

3 MR. HUR: Yes, sir. ..

4 PRESIDENT BIDEN: Yeah, I got that.

5 MR. HUR: But now we're at Binder 3.

6 PRESIDENT BIDEN: Yup.

7 MR. HUR: And so I want to take you to some of the
8 contents of this document.

9 PRESIDENT BIDEN: Of the document itself?

10 MR. HUR: I'm sorry, sir, the contents of the
11 envelope.

12 PRESIDENT BIDEN: Okay.

13 MR. HUR: So let's go first to Tab A7. And you'll
14 see there a number of pages. The first Bates label is
15 1B49A70001 followed by 2, 3, 4, 5, 6, 7 through 10. What
16 you're seeing there are a number of lined pages -- mostly,
17 some of them aren't -- but with handwriting on them. If
18 you'll just take a moment to look through those pages. Once
19 you're done, I'll ask you if you -- if this is your
20 handwriting on these pages?

21 PRESIDENT BIDEN: It looks like my handwriting.

22 MR. HUR: Okay. We'll come back to these in a
23 moment, but I want to have you take a look at the other
24 contents of this envelope.

25 MR. SISKEL: Rob, just -- can you -- because --

1 [1:10:41.7]

2 MR. SISKEL: -- there's a bunch of different
3 pages, can you ask about specific pages?

4 MR. HUR: Sure.

5 MR. SISKEL: Just because I want to make sure it's
6 clear.

7 MR. HUR: Sure. Fair point. Okay. Let's start
8 with 1.

9 PRESIDENT BIDEN: Page 1 of -- that we were just
10 looking at?

11 MR. HUR: Yes, sir, behind Tab A7.

12 PRESIDENT BIDEN: Yup. Okay.

13 MR. HUR: So it looks like the first handwritten
14 words at the top are, hold sanctions regain. Does this page
15 have your handwriting on it?

16 PRESIDENT BIDEN: Yeah.

17 MR. HUR: How about the next page, which is, I get
18 portrait and landscape mixed up. I think this is landscape.
19 Horizontal.

20 PRESIDENT BIDEN: This may not be my handwriting.

21 MR. HUR: Okay. How about the next page, bearing
22 3?

23 PRESIDENT BIDEN: It looks like my handwriting.

24 MR. HUR: How about 4?

25 MR. BAUER: . Excuse me. The page before the one --



1 [1:11:41.0]

2 MR. BAUER: -- that is dated -- just to be
3 clear --

4 MR. HUR: One, in the caption of the --

5 MR. BAUER: Yeah. Number 0002 is that he said the
6 answer was not? I didn't hear that clearly.

7 PRESIDENT BIDEN: The answer is I'm not sure.

8 MR. HUR: I heard it clearly.

9 MR. BAUER: Yeah, correct. Okay. So now we're on
10 003?

11 MR. HUR: Three he said is his.

12 MR. BAUER: Okay.

13 MR. HUR: Now we're on 4, actually.

14 MR. BAUER: Okay.

15 PRESIDENT BIDEN: Breakfast is mine.

16 MR. HUR: Okay. How about 5, dated 1-28-15?

17 PRESIDENT BIDEN: I don't know.

18 MR. HUR: Okay. How about 6?

19 PRESIDENT BIDEN: It could be though. Sorry.

20 Same as 5.

21 MR. HUR: Six is the same as five?

22 PRESIDENT BIDEN: Yeah. In other words, I think
23 it is, but I'm not sure.

24 MR. HUR: Okay.

25 PRESIDENT BIDEN: The same with 7.



[REDACTED]

1 [1:12:45.3]

2 MR. HUR: Okay. How about 8?

3 PRESIDENT BIDEN: They all look the same to me.

4 MR. HUR: Nine and ten covered by that too?

5 PRESIDENT BIDEN: Let me see here. Yeah, --

6 PRESIDENT BIDEN: -- it's possible.

7 MR. HUR: Okay. Ed, was that in reference to 10?

8 MR. SISSEL: He was looking at 009.

9 MR. HUR: Nine.

10 PRESIDENT BIDEN: It's possible they're in my
11 writing. I'm looking at the spelling. If it's spelled
12 right, it's probably not.

13 (Laughter)

14 PRESIDENT BIDEN: You think I'm kidding, I'm not.
15 Anyway, okay.

16 MR. HUR: Okay. All right. So now I'd like to
17 direct your attention to some of the other documents that
18 were in that envelope.

19 PRESIDENT BIDEN: Okay.

20 MR. HUR: So let's start with tab A3.

21 PRESIDENT BIDEN: What? I'm sorry.

22 MR. HUR: Tab A3. Still in that same section, that
23 first blue flap. So A3 is Bates labeled -- actually, mine is
24 not Bates labeled. But it says at the top, "in response to a
25 question [REDACTED] (b)(5)

[REDACTED]

1 [1:14:32.7]

2 MR. HUR: [REDACTED] (b)(5) The document
3 behind Tab A4 has language on it. There's no Bates, but it's
4 Iran's nuclear negotiating positions as of early January 2015.

5 PRESIDENT BIDEN: Where, where did you see that?

6 MS. COTTON: Here.

7 MR. HUR: It's behind Tab A4.

8 MR. LAUFMAN: Sorry, Rob, which binder are you in
9 again?

10 MR. HUR: Binder 3.

11 MR. LAUFMAN: Okay.

12 PRESIDENT BIDEN: Oh, okay. Gotcha, yeah, I'm
13 sorry.

14 MR. LAUFMAN: Binder 3.

15 MR. HUR: Okay. And then behind Tab A5, there's
16 another document that was in that same envelope. No Bates,
17 but titled "Iran: [REDACTED] (b)(1)

18 [REDACTED]
19 PRESIDENT BIDEN: Yup.

20 MR. HUR: And then finally, Tab A6, again, no
21 Bates, but it's titled "Iran: [REDACTED] (b)(1)

22 [REDACTED]
23 PRESIDENT BIDEN: Okay.

24 MR. HUR: So, I don't want to ask you detailed
25 questions about the substance of these documents, but --

1 [1:15:35.4]

2 MR. HUR: -- having had the opportunity to take a
3 look at them, do you recall being provided these documents?
4 Because our understanding is that these were provided to you
5 during your vice presidency.

6 PRESIDENT BIDEN: The answer is, I don't recall
7 being provided them, but it doesn't surprise me I would be
8 provided them.

9 MR. HUR: I'm sorry, I didn't hear the last --

10 PRESIDENT BIDEN: I do not recall specifically
11 being provided them. But it would not be unusual for me to
12 be provided them.

13 MR. HUR: Okay. All right. So, let's look at
14 some other documents that may refresh --

15 PRESIDENT BIDEN: These are all in 2014?

16 MR. HUR: They're dated 2013 -- this one's dated
17 2013, behind Tab A6.

18 PRESIDENT BIDEN: The one behind A5 is 2014?

19 MR. HUR: Is dated 2014, yes.

20 PRESIDENT BIDEN: Okay. Got it.

21 MR. HUR: So, let's look at some other documents.
22 We're going to go back to Binder 1; that may refresh your
23 recollection on these. So, our understanding, sir, is that,
24 at this time, the Obama administration was addressing the
25 subject of a potential nuclear deal with Iran. There --

1 [1:16:42.5]

2 MR. HUR: -- were some members of Congress who were
3 considering their own views about such a deal with Iran, and
4 whether Congress should impose additional sanctions, which the
5 Administration determined would have interfered with the
6 Administration's negotiations about the nuclear deal.

7 So we understand that you, sir, were enlisted as
8 part of the Obama administration's effort to speak with
9 members of Congress about the Iran deal, and to encourage
10 them not to impose, as Congress, additional, or new
11 sanctions on Iran. So that's our understanding as to what
12 was going on at the time.

13 So, let me show you some photographs behind Tab
14 24. And these will be a series of photographs. It starts
15 with the second one behind that -- second one in that
16 section. The first Bates is 1B001_01223070_0001.

17 PRESIDENT BIDEN: Okay.

18 MR. HUR: There's some other photos here, 1223174,
19 1223084.

20 PRESIDENT BIDEN: You can tell it's old. I have
21 my arm around Lindsey Graham.

22 MR. HUR: 1225128. So let's look --

23 MR. SISSEL: Rob, just one thing to clarify for
24 the record, just because this tab has the envelope, a
25 picture of the envelope.



1 [1:18:07.3]

2 MR. HUR: Yes.

3 MR. SISKELE: These photos were not in the envelope?

4 MR. HUR: They were not. They were not in the
5 envelope.

6 PRESIDENT BIDEN: Okay.

7 MR. HUR: Good clarification.

8 So, if we look at the photos, they all end in 001,
9 but 3070 is the -- are the last four digits of the middle
10 set of digits. 3174, 3084. These are photographs of a
11 breakfast --

12 PRESIDENT BIDEN: Yup.

13 MR. HUR: -- that you had with a group of senators
14 at the Naval Observatory.

15 PRESIDENT BIDEN: Yup.

16 MR. HUR: And if you flip a little bit further,
17 getting to what at the top says, private schedule for Vice
18 President Joe Biden. Bates 14766_0001.

19 PRESIDENT BIDEN: Hang on a second. Is this it,
20 Private Schedule?

21 MR. HUR: Yes, sir. And if -- you'll see at the
22 bottom of the page, it says, 8 a.m. to 9:30 a.m., breakfast
23 with senators.

24 PRESIDENT BIDEN: Gotcha.

25 MR. HUR: Location, Naval Observatory, and then --





1 [1:19:12.1]

2 MR. HUR: -- it lists a number of members of
3 Congress.

4 PRESIDENT BIDEN: Okay.

5 MR. HUR: So, what do you recall about that
6 breakfast with the senators?

7 PRESIDENT BIDEN: Nothing.

8 (Laughter)

9 PRESIDENT BIDEN: No, I'm not being facetious. I
10 don't recall any --

11 MR. HUR: Okay.

12 PRESIDENT BIDEN: I would often have breakfasts like
13 this on a whole range of issues. I'd bring senators down.

14 The bad joke is, with President Obama, I would
15 always say to him, Mr. President, all politics is personal.
16 For example, even my staff wondered why the hell I'm calling
17 Cory Booker to make sure he's safe. Why are you calling
18 him? Because (indiscernible 1:19:56.4) because I called
19 when they were in, in -- Jesus -- in Israel. I called him
20 when they got home because I wanted him to know I cared
21 about him. It matters. So what I would do lots of times is
22 bring senators to the house to discuss whether they were
23 with me on a proposal, even though I knew what I wanted to
24 do, and say, what do you think? What kind of input --
25 because to get them bought into, whatever.





1 [1:20:23.9]

2 PRESIDENT BIDEN: And it may be -- I don't remember
3 the purpose of the meeting, but lots of times that I meet and
4 say, well, what do you guys think, you know, rather than just
5 selling something. And say, why do you think that would work,
6 et cetera. So I don't know what the topic was.

7 MR. HUR: Understood.

8 PRESIDENT BIDEN: And -- but it's not unusual to
9 have those meetings.

10 MR. HUR: Understood. Okay.

11 MR. BAUER: I just wanted to mention, I think
12 we're at 5 hours.

13 MR. HUR: Is that right?

14 MR. BAUER: It's 2 -- in fact, we're at 5 hours and
15 1 minute. Not that I -- not that we're keeping time on this.

16 MR. HUR: If you wouldn't mind, if you could
17 indulge us to just finish this line of questioning.

18 MR. BAUER: How much more time do you think you
19 would need?

20 MR. HUR: I really don't think I'll need more than
21 10 or 15 minutes on this.

22 MR. BAUER: I couldn't hear.

23 PRESIDENT BIDEN: 10 or 15 minutes.

24 MR. HUR: Yes, sir.

25 MR. HUR: And I'll do my best to make it closer --



1 [1:21:14.5]

2 MR. HUR: -- to 10.

3 MR. SAUBER: This line is what, Rob --

4 MR. HUR: About these particular documents that
5 were found at Penn Biden Center.

6 MR. SAUBER: Oh. Well --

7 MR. SISSEL: I mean, are you talking about the
8 ones in that envelope?

9 MR. HUR: Yes.

10 MR. SISSEL: And that's it?

11 MR. HUR: If that's, if that's the end of stoppage
12 time --

13 MR. SISSEL: Well, we're already at our stoppage
14 time.

15 MR. BAUER: We do have a stoppage time, and we're
16 at it. Ed, you want to shut it off for a minute?

17 MR. SISSEL: Sure.

18 MR. BAUER: Mr. President, just take 2 seconds.

19 MS. COTTON: No, I subtracted breaks.

20 MR. KRICKBAUM: Can I say one word to you guys?

21 MR. BAUER: Of course. Why don't we step out in
22 the hall?

23 MR. KRICKBAUM: Sure. It'll be, It'll be very
24 quick.

25 MR. BAUER: We'll be very quick, Mr. President --



1 [1:21:52.1]

2 MR. BAUER: -- I apologize.

3 (Track 231009_1245 ends)

4 (Track 231009_1409 begins)

5 MR. HUR: We're back from a brief break. If we
6 could -- I have a few questions again about these
7 photographs here. There's one with you with your arm around
8 Lindsey -- Senator Lindsey Graham.

9 PRESIDENT BIDEN: They're the old days.

10 (Laughter)

11 MR. HUR: Just for Bates number -- Bates number
12 purposes, 3174. So there, you're holding a clutch of
13 documents in your left hand that appears to include a manila
14 envelope. And then the prior page that shows you seated
15 around the breakfast table, Bates 3070, has some documents
16 next to you, on the floor next to your chair.

17 PRESIDENT BIDEN: Yup.

18 MR. HUR: So I'm pretty sure I know what the
19 answer to this is going to be, but the manila envelope that
20 we saw a moment ago in another photograph that said "VP Eyes
21 Only" at the top and bottom, that was recovered from Penn
22 Biden Center, did you have that envelope, and the documents
23 in it, with you during that breakfast?

24 PRESIDENT BIDEN: I have no idea.

25 MR. HUR: Okay. So another question about the --



1 [0:01:15.8]

2 MR. HUR: -- handwritten documents that we were
3 looking at a moment ago, you appeared to recognize some
4 of --

5 PRESIDENT BIDEN: Yeah.

6 MR. HUR: -- your handwriting --

7 PRESIDENT BIDEN: Yeah.

8 MR. HUR: -- on some of the pages.

9 PRESIDENT BIDEN: Yeah.

10 MR. HUR: Was the purpose of those notes to help
11 prepare for your breakfast meeting with the senators about
12 the Iran nuclear deal?

13 PRESIDENT BIDEN: I don't know, I didn't read the
14 substance of them, but it could have been notes after the
15 meeting too.

16 MR. HUR: Okay.

17 PRESIDENT BIDEN: If they're -- if it's my
18 handwriting. But I don't know.

19 MR. HUR: Okay. So let me ask you another
20 question that may refresh your recollection. So I
21 apologize, we're going to have to, again, do some
22 comparisons between things in Binder 1 and Binder 3.

23 MR. BAUER: Which one are you going to?

24 MR. HUR: Let's look at the photograph of you in
25 Binder 1. It's the one that has 5128 in the Bates.

1 [0:02:08.7]

2 MR. HUR: It's got you speaking with Mr. McDonogh.

3 MS. COTTON: Sorry, we lost the tab. Which tab
4 was it?

5 MR. HUR: I'm sorry, Tab 24. It's this one.

6 PRESIDENT BIDEN: That's in my office?

7 MR. HUR: Yes, sir.

8 MR. SISSEL: To clarify the record, your office as
9 Vice President?

10 MR. HUR: As Vice President.

11 PRESIDENT BIDEN: As Vice President, yeah.

12 MR. SISSEL: Okay.

13 MR. HUR: And so, I'd like to focus you -- well, I'd
14 like to focus you on the piece of paper that Mr. McDonogh is
15 holding in his left hand, along with a coffee cup.

16 PRESIDENT BIDEN: Yup.

17 MR. HUR: And then, if you compare it with the
18 document that's behind Tab A7 in Binder 3.

19 (Asides)

20 MR. HUR: Is this --

21 MR. BAUER: Just one second to get this stuff
22 lined up.

23 PRESIDENT BIDEN: A7.

24 MR. HUR: Yes, sir. So the second document in --

25 MR. SISSEL: The second page?

1 [0:03:06.0]

2 MR. HUR: .The second page, yes. And it's got
3 Bates 0002.

4 MR. BAUER: Could you bear with us one second,
5 because I'm trying to follow it too.

6 MR. HUR: Yes.

7 PRESIDENT BIDEN: Okay.

8 MR. HUR: So, if you take a look at the document
9 there at Bates 0002 that we pulled from Binder 3, and you look
10 real close at the photograph of the -- that Mr. McDonogh is
11 holding with you in your West Wing office, that there appears
12 to be some resemblance between those documents.

13 PRESIDENT BIDEN: I don't think there's any
14 resemblance. He has a whole section up there in the corner.
15 He has one, two, three across. Take a look at that picture
16 he's holding in his hand.

17 MR. HUR: Okay.

18 PRESIDENT BIDEN: There's no, there's no such --
19 in other words, it goes all the way to the far right corner
20 of the document. It may -- I don't know what relevance it
21 is, but it doesn't look like the same document to me.

22 MR. HUR: And how about with respect to the
23 remainder? But putting the stuff in the far right upper
24 corner to the side, with respect to the other parts of that
25 handwritten page. My only question is, does this --

1 [0:04:19.8]

2 MR. HUR: -- refresh your recollection as to the
3 purpose of these handwritten notes relating to the Iran
4 nuclear deal, or your breakfast meeting with the senators
5 the following day?

6 MR. BAUER: Rob, just to be clear.

7 PRESIDENT BIDEN: No.

8 MR. BAUER: I'm a little confused, because if
9 they're not the same documents --

10 MR. HUR: Yes.

11 MR. BAUER: -- what would be the basis of
12 refreshing his recollection?

13 MR. HUR: Well, if his response is that they do.

14 MR. BAUER: Okay.

15 MR. HUR: It doesn't refresh his recollection --

16 MR. BAUER: Okay.

17 PRESIDENT BIDEN: No, this doesn't refresh my
18 recollection. But I'm sure the purpose of the meeting was to
19 find out what the members of Congress thought about the Iran
20 deal. I mean, that's why I'd been meeting with them about it.
21 I assume that's why I was meeting with them about. I don't
22 know what else -- it's contemporaneous, and I'm sitting down,
23 and I'm having these discussions. And it says the people I'm
24 meeting with are the people who would have interest. You
25 know, Angus King and -- with the democrats. And --



1 [0:05:24.6]

2 PRESIDENT BIDEN: -- Bob Corker, Colin Kahl.

3 MR. HUR: . So after this breakfast, do you recall
4 having other conversations in the following days with other
5 members of Congress?

6 PRESIDENT BIDEN: I don't remember anything in
7 terms of the chronology, who I met, when and where. The
8 situation with regard to whether or not to make any deal
9 with Iran, I mean, with -- yeah, with Iran or not, has been
10 an ongoing, up and down discussion for a long time, even to
11 yesterday, before the Israeli thing. So it would not
12 surprise me if the meetings -- if someone at that meeting --
13 you showed me a picture -- Corker, one of these guys said,
14 well, what we're talking about with Afghanistan -- I mean,
15 what we're talking about with Iraq --

16 MR. SISKEL: Iran.

17 PRESIDENT BIDEN: Iran, because it's an ongoing
18 discussion. And we were negotiating also at the same time,
19 remember, with all our NATO allies on what we do, vis-à-vis,
20 Iran, and whether or not they were on or not. So there was a
21 lot of discussion. And it was not one of the subjects that I
22 knew a lot about, but I wasn't -- I did not have a
23 definitive view, I wasn't in making the case like I did in
24 Iraq and other places.

25 MR. HUR: And after the end of your vice --



[REDACTED]

1 [0:06:59.0]

2 MR. HUR: -- presidency, did you consult these
3 materials relating to the Iran nuclear deal at any point?
4 Did you know that they were at the Penn Biden Center?

5 PRESIDENT BIDEN: No. And I, I don't recall
6 consulting anything having to do with any material with
7 regard to Iran.

8 [REDACTED] (b)(1), (b)(5)

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 MR. SISSEL: And, sir, just to clarify, that's
16 during your --

17 PRESIDENT BIDEN: Oh, that's just --

18 MR. SISSEL: That's (indiscernible 0:07:57.5) your
19 presidency, which they're not interested in.

20 MR. HUR: Right.

21 PRESIDENT BIDEN: No, I know, but I want to give
22 you context in my, my -- the depth of my engagement. And,
23 anyway.

24 MR. HUR: Okay. So let me ask a slightly
25 different question, but riffing off one I asked you before.

[REDACTED]

1 [0:08:20.9]

2 MR. HUR: Did you consult these materials during
3 your work on *Promise Me, Dad* with Mr. Zwonitzer?

4 PRESIDENT BIDEN: I don't recall consulting any
5 material per se, that was in a folder or anything, for
6 *Promise Me, Dad*.

7 MR. HUR: Mr. President, do you have any idea how
8 these documents relating to the Iran nuclear deal ended up in
9 these files that were recovered from the Penn Biden Center?

10 PRESIDENT BIDEN: Other than when they were sent
11 to the Penn Biden Center, they followed on my vice
12 presidency, and it was one of the many subjects that were
13 talked about in my vice presidency. So whatever materials
14 taken from the vice presidency over to the -- over to Penn
15 Biden Center, that's what -- I mean, there's a lot of things
16 I'm sure that got to the Penn Biden Center that are no
17 longer being actively discussed.

18 MR. HUR: Anything else on this? Okay. I think I
19 came in under 10.

20 MR. BAUER: You did.

21 MR. HUR: Okay.

22 MR. BAUER: You did.

23 MS. COTTON: One minute under.

24 UNIDENTIFIED MALE SPEAKER: One minute under
25 budget.

1 [0:09:27.4]

2 UNIDENTIFIED MALE SPEAKER: Under budget.

3 MR. KRICKBAUM: Actually over budget.

4 MR. HUR: Thank you.

5 PRESIDENT BIDEN: By the way, my budgets exceed
6 \$1.7 trillion.

7 MR. KRICKBAUM: There you go.

8 (Laughter)

9 MR. HUR: Thank you, again, for your time
10 Mr. President. We're very grateful.

11 PRESIDENT BIDEN: Okay, well --

12 MR. HUR: We appreciate it very much.

13 PRESIDENT BIDEN: All right. I know it's a lot of
14 work for you -- putting a lot together. I may now write a
15 book, you have all this (indiscernible 0:09:51.2).

16 (Laughter)

17 MR. KRICKBAUM: We'll turn off the recorder.

18 MR. HUR: Yes, let's stop the recorder.

19 PRESIDENT BIDEN: That was a joke.

20 UNIDENTIFIED MALE SPEAKER: Yes.

21 MS. (b) (6), (b) (7)(C): The time is 2:19. This concludes
22 the interview.

23 (End of recording)

24

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[REDACTED]

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C E R T I F I C A T E

I, (b) (6), (b) (7)(C) certify that the foregoing pages (1 through 63) are a true and correct transcript, to the best of my ability, of the above pages, of the RECORDED INTERVIEW provided to me by the Special Counsel's Office.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this recording was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

October 16, 2023
Date

(b) (6), (b) (7)(C)
[REDACTED]
Transcriber

Within this transcript of proceedings, some of the names and/or technical terms are spelled phonetically, inasmuch as exhibits, files and supporting documentation were not made available to us for reference.

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C E R T I F I C A T E

I, (b) (6), (b) (7)(C) certify that the foregoing pages (64 through 97) are a true and correct transcript, to the best of my ability, of the above pages, of the RECORDED INTERVIEW provided to me by the Special Counsel's Office.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this recording was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

October 17, 2023
Date

(b) (6), (b) (7)(C)
[REDACTED]
Transcriber

Within this transcript of proceedings, some of the names and/or technical terms are spelled phonetically, inasmuch as exhibits, files and supporting documentation were not made available to us for reference.

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EXHIBIT 3



Office of the Attorney General
Washington, D. C. 20530

ORDER NO. 5588-2023

APPOINTMENT OF ROBERT K. HUR AS SPECIAL COUNSEL

By virtue of the authority vested in the Attorney General, including 28 U.S.C. §§ 509, 510, 515, and 533, in order to discharge my responsibility to provide supervision and management of the Department of Justice, and to ensure a full and thorough investigation of certain matters, I hereby order as follows:

(a) Robert K. Hur is appointed to serve as Special Counsel for the United States Department of Justice.

(b) The Special Counsel is authorized to conduct the investigation of matters that are the subject of the initial investigation, pursuant to 28 C.F.R. § 600.2(b), led by United States Attorney John R. Lausch, Jr., 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).

(d) The Special Counsel is authorized to prosecute federal crimes arising from the investigation of these matters. The Special Counsel is also authorized to refer to the appropriate United States Attorney discrete prosecutions that may arise from the Special Counsel's investigation.

(e) Sections 600.4 to 600.10 of Title 28 of the Code of Federal Regulations are applicable to the Special Counsel.

1/12/23
Date



Merrick B. Garland
Attorney General

EXHIBIT 4



Office of the Attorney General
Washington, D. C. 20530

February 8, 2024

The Honorable Richard Durbin
Chair, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Jim Jordan
Chairman, Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

The Honorable Lindsey Graham
Ranking Member, Committee on the
Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Jerrold Nadler
Ranking Member, Committee on the
Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Chair Durbin, Chairman Jordan, Ranking Member Graham, and Ranking Member Nadler:

Yesterday, in accordance with 28 C.F.R. § 600.9(a)(3), I informed you that Special Counsel Robert K. Hur had concluded his investigation and that I would provide you with his final report accompanied by appendices and a letter from counsel following completion of the White House's privilege review. The White House informed the Department of Justice today that the President has decided not to assert executive privilege over any part of the report or its appendices.

The Special Counsel regulations provide that when the Attorney General notifies Congress of the closure of a Special Counsel investigation, that notification is to include, consistent with applicable law, "a description and explanation of instances (if any) in which the Attorney General concluded that a proposed action by a Special Counsel was so inappropriate or unwarranted under established Departmental practices that it should not be pursued." 28 C.F.R. § 600.9(a)(3). As I informed you yesterday, there were no such instances during Special Counsel Hur's investigation.

Attached is the final report and all other materials as provided to me by Special Counsel Hur on February 5, 2024, without any further additions, redactions, or other modifications. Releasing these materials in full to you and to the public is in the public interest and is consistent with legal restrictions and Department policy.

Finally, consistent with 28 C.F.R. § 600.9(c), I will disclose this letter, Special Counsel Hur's transmittal letter, the report, its appendices, and the letter from counsel to the public after delivering these materials to you.

Sincerely,

A handwritten signature in black ink, appearing to read "Merrick B. Garland".

Merrick B. Garland
Attorney General

Enclosures

EXHIBIT 5



Office of the Attorney General
Washington, D. C. 20530

May 15, 2024

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

On February 27, 2024, the Committee on the Judiciary and the Committee on Oversight and Accountability of the United States House of Representatives (“Committees”) subpoenaed audio recordings of two of Special Counsel Robert K. Hur’s interviews conducted in connection with his investigation of matters related to classified documents discovered at the Penn Biden Center for Diplomacy and Global Engagement and your private residence.

The Department’s Office of Legal Counsel has concluded that the subpoenaed audio recordings fall within the scope of executive privilege and that you may assert executive privilege with respect to the recordings. I concur with this assessment. The Department has long recognized that executive privilege protects materials related to a closed criminal investigation where disclosure is likely to damage future law enforcement efforts, which I have concluded is the case here. To date, the Committees have failed to satisfy any of the potentially relevant standards for overcoming an assertion of executive privilege. The Committees’ needs are plainly insufficient to outweigh the deleterious effects that production of the recordings would have on the integrity and effectiveness of similar law enforcement investigations in the future. I therefore respectfully request that you assert executive privilege over the subpoenaed recordings. I also request that you make a protective assertion of executive privilege with respect to any other materials responsive to the subpoenas that have not already been produced.

This letter explains in further detail the legal basis for these privilege assertions. The Department has previously recognized that subpoenas like those at issue here raise distinct separation of powers concerns related to the integrity and effectiveness of future law enforcement investigations—in particular, investigations where the voluntary cooperation of White House officials is exceedingly important. See *Assertion of Executive Privilege Concerning the Special Counsel’s Interviews of the Vice President and Senior White House Staff*, 32 Op. O.L.C. 7, 10–11 (2008) (“*Special Counsel Assertion*”). As described in more detail below, the Department has already provided substantial accommodations in response to the Committees’ subpoenas, including by producing to the Committees the transcripts of the Special Counsel’s interviews. The needs the Committees have articulated to date for the recordings are plainly insufficient to overcome a privilege claim grounded in these important separation of powers concerns.

I.

In January 2023, I appointed Special Counsel Hur to investigate matters including the “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.” Att’y Gen. Order No. 5588-2023 (Jan. 12, 2023). As the Special Counsel later described, you cooperated with the investigation, including by providing a voluntary interview that took place over the course of two days. *See* 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.* at 5, 11 (Feb. 5, 2024).

In February 2024, Special Counsel Hur closed his investigation, submitting to me his final report concluding “that no criminal charges are warranted in this matter.” *Id.* at 1. Two days later, I informed the relevant committees in Congress that the Special Counsel’s investigation had concluded. *See* Letter for Richard Durbin, Chair, Senate Committee on the Judiciary, et al., from Merrick B. Garland, Attorney General (Feb. 7, 2024). The following day, I provided them with a copy of the Special Counsel’s report and notified the committees of your decision “not to assert executive privilege over any part of the report or its appendices.” Letter for Richard Durbin, Chair, Senate Committee on the Judiciary, et al., from Merrick B. Garland, Attorney General at 1 (Feb. 8, 2024) (“February 8 Letter”).

Soon after I transmitted the Special Counsel’s report to Congress, the Committees, along with the House Committee on Ways and Means, sent a request to the Department seeking four categories of material: (1) documents and communications, “including audio and video recordings,” relating to the Special Counsel’s interview of you; (2) the same as to the Special Counsel’s interview of your ghostwriter, Mark Zwonitzer; (3) two classified documents; and (4) various Department and White House communications regarding the Special Counsel’s report. *See* Letter for Merrick B. Garland, Attorney General, from James Comer, Chairman, House Committee on Oversight and Accountability, et al. at 3 (Feb. 12, 2024). Two weeks later, the Committees issued subpoenas for those four categories of material. *See* Letter for Merrick B. Garland, Attorney General, from James Comer, Chairman, House Committee on Oversight and Accountability, and Jim Jordan, Chairman, House Committee on the Judiciary at 1 (Feb. 27, 2024) (“February 27 Letter”) (enclosure). The Committees said that the materials were relevant to their assessment of whether sufficient grounds exist to draft articles of impeachment for consideration by the full House and, separately, the Judiciary Committee’s legislative oversight of the Department. *Id.* at 1–2. In doing so, the Committees cited House Resolution 918, which authorized them, along with the Ways and Means Committee, to “continue their existing investigations as part of an impeachment inquiry.” H.R. Res. 918, 118th Cong. (2023).

Throughout the Committees’ investigations, the Department has made substantial efforts to accommodate the Committees’ requests and subpoenas. Just three days after I received Special Counsel Hur’s report, I transmitted it to Congress and released it to the public in full without any additions, redactions, or modifications. *See* February 8 Letter. The Department has also produced responsive materials in connection with the Committees’ requests and the

February 27 subpoenas. Letter for Jim Jordan, Chairman, House Committee on the Judiciary, and James Comer, Chairman, House Committee on Oversight and Accountability, from Carlos Felipe Uriarte, Assistant Attorney General, Office of Legislative Affairs (Apr. 8, 2024) (“April 8 Letter”). The Department provided the transcripts of Special Counsel Hur’s interviews with you and Mr. Zwonitzer, correspondence regarding the Special Counsel’s report, and the two classified documents the Committees requested. *Id.* The Department has accordingly responded to each of the four requests in the Committees’ February 27 subpoenas. *Id.* at 1. The Department and Special Counsel Hur also agreed that the Special Counsel would testify before Congress about his investigation, and the Special Counsel appeared and answered questions for more than five hours. *See* Hearing Before the H. Comm. on the Judiciary on the Report of Special Counsel Robert K. Hur, 118 Cong. (Mar. 12, 2024).

Even after the Department’s responses and Special Counsel Hur’s testimony, the Committees continued to pursue additional information. Most recently, the Committees specifically requested the audio recordings of your interview and Mr. Zwonitzer’s interview with the Special Counsel. *See* Letter for Merrick B. Garland, Attorney General, from James Comer, Chairman, House Committee on Oversight and Accountability, and Jim Jordan, Chairman, House Committee on the Judiciary at 2 (Mar. 25, 2024); Letter for Merrick B. Garland, Attorney General, from James Comer, Chairman, House Committee on Oversight and Accountability, and Jim Jordan, Chairman, House Committee on the Judiciary at 2 (Apr. 15, 2024) (“April 15 Letter”). The Committees threatened to invoke contempt of Congress proceedings if the audio recordings were not produced. April 15 Letter at 4.

Pursuant to the accommodation process, the Department responded on April 25, 2024, to engage further with the Committees’ statements of their needs and to explain in additional detail our concerns and confidentiality interests. Letter for Jim Jordan, Chairman, House Committee on the Judiciary, and James Comer, Chairman, House Committee on Oversight and Accountability, from Carlos Felipe Uriarte, Assistant Attorney General, Office of Legislative Affairs (Apr. 25, 2024). To date, the Committees have not responded to this further explanation of the Department’s concerns. The Committees have scheduled meetings for May 16, 2024, to vote on resolutions holding me in contempt of Congress for failing to comply with their subpoenas. *See* Amendment in the Nature of a Substitute to the Committee Report for the Resolution Recommending That the House of Representatives Find United States Attorney General Merrick B. Garland in Contempt of Congress for Refusal to Comply with a Subpoena Duly Issued by the Committee on the Judiciary, 118th Cong. (2024) (“Judiciary Contempt Report”); Draft Resolution Recommending That the House of Representatives Find United States Attorney General Merrick B. Garland in Contempt of Congress for Refusal to Comply with a Subpoena Duly Issued by the Committee on Oversight and Accountability, 118th Cong. (2024) (“Oversight Contempt Report”).

II.

The audio recordings of your interview and Mr. Zwonitzer’s interview fall within the scope of executive privilege. Production of these recordings to the Committees would raise an unacceptable risk of undermining the Department’s ability to conduct similar high-profile

criminal investigations—in particular, investigations where the voluntary cooperation of White House officials is exceedingly important.

Executive privilege is “fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution.” *United States v. Nixon*, 418 U.S. 683, 708 (1974). The privilege is “a necessary corollary of the executive function vested in the President by Article II of the Constitution.” *Congressional Requests for Confidential Executive Branch Information*, 13 Op. O.L.C. 153, 154 (1989). It “has been asserted by numerous Presidents from the earliest days of our Nation,” *id.*, was explicitly recognized by the Supreme Court in *United States v. Nixon*, 418 U.S. at 708, and has been reaffirmed by the Court several times since then, *see, e.g., Trump v. Mazars USA, LLP*, 591 U.S. 848, 863 (2020); *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 389 (2004). As the Supreme Court has explained, “information subject to executive privilege deserves ‘the greatest protection consistent with the fair administration of justice.’” *Mazars*, 591 U.S. at 864 (quoting *Nixon*, 418 U.S. at 715).

Materials protected by executive privilege include materials contained in law enforcement files, over which the President “may invoke executive privilege to preserve the integrity and independence of criminal investigations and prosecutions.” *Special Counsel Assertion*, 32 Op. O.L.C. at 10.¹ The law enforcement component of executive privilege protects against, among other things, “the potential damage to proper law enforcement” that would be caused by disclosure, including “the chilling effect” on “sources of information,” and reflects a “sensitivity to the rights of innocent individuals who may be identified in law enforcement files but who may not be guilty of any violation of law.” *Response to Congressional Requests for Information Regarding Decisions Made Under the Independent Counsel Act*, 10 Op. O.L.C. 68, 76 (1986). This chilling effect can extend to future investigations and thus may exist even if disclosure occurs only once an investigation ends. *Special Counsel Assertion*, 32 Op. O.L.C. at 10 (“Although the law enforcement component of executive privilege is more commonly implicated when Congress seeks materials about an open criminal investigation, the separation of powers necessity of protecting the integrity and effectiveness of the prosecutorial process continues after an investigation closes.”). The Department has long recognized, therefore, that executive privilege protects materials related to a closed criminal investigation where disclosure might hamper prosecutorial efforts in future cases. *See id.* at 10–11.

That is precisely the concern at issue here. Even though Special Counsel Hur has concluded his investigation, I share the overarching concern expressed in *Special Counsel*

¹ *See also Response to Congressional Requests for Information Regarding Decisions Made Under the Independent Counsel Act*, 10 Op. O.L.C. 68, 75–78 (1986) (explaining the Executive Branch’s authority to withhold open and closed law enforcement files from Congress); *Prosecution for Contempt of Congress of an Executive Branch Official Who Has Asserted a Claim of Executive Privilege*, 8 Op. O.L.C. 101, 117 (1984) (“Since the early part of the 19th century, Presidents have steadfastly protected the confidentiality and integrity of investigative files from untimely, inappropriate, or uncontrollable access by the other branches, particularly the legislature.”); *Assertion of Executive Privilege in Response to Congressional Demands for Law Enforcement Files*, 6 Op. O.L.C. 31, 32–33 (1982) (similar concerning law enforcement files of the Environmental Protection Agency); *Position of the Executive Department Regarding Investigative Reports*, 40 Op. Att’y Gen. 45, 46–48 (1941) (providing historical examples of Attorneys General “who have uniformly taken the . . . view” that “investigative reports are confidential documents of the executive department of the Government, to aid in the duty laid upon the President by the Constitution to ‘take care that the laws be faithfully executed,’ and that congressional or public access to them would not be in the public interest”).

Assertion “about the prospect of committees of Congress obtaining confidential records from Justice Department criminal investigative files for the purpose of addressing highly politicized issues in public committee hearings.” *Id.* Also similar to the views expressed in *Special Counsel Assertion*, I have a more specific concern about how the production of the audio recordings might affect the Department’s ability to obtain vital cooperation in high-profile criminal investigations—in particular, in investigations where the voluntary cooperation of White House officials is exceedingly important. *Id.* (concluding that the disclosure of summaries of a special counsel’s interviews with senior White House officials would “significantly impair the Department’s ability to conduct future law enforcement investigations that would benefit from full White House cooperation”).

There “is an admirable tradition, extending back through Administrations of both political parties, of full cooperation by the White House with criminal investigations.” *Id.* (quotation marks omitted). Consistent with this tradition, you and Mr. Zwonitzer voluntarily agreed to the Special Counsel’s requests both for an interview and for that interview to be recorded. But if key witnesses in similar high-profile investigations expected that volunteering to sit for an interview and allowing that interview to be recorded would likely result in the release of that recording to Congress (and potentially the public), there is a significant risk that such witnesses would evaluate the Department’s requests for cooperation differently in the future. And an inability to secure cooperation, or a diminution in the degree and extent of cooperation, would significantly impair the Department’s ability to conduct similar high-profile investigations where cooperation is exceedingly important.

The unique characteristics of audio recordings raise particularly pronounced concerns about chilling future cooperation. Recording interviews is a highly useful law enforcement tool, especially during high-profile or complex investigations. Audio recordings enable investigators to limit the number of people physically present during interviews, which can facilitate a more candid and robust engagement between investigators and the witness, including when sensitive information may be discussed; they provide a mechanism for investigators and counsel for the witness to ensure that a transcript accurately records the interviewee’s testimony, as opposed to relying solely on an investigator’s notes; and they allow investigators and counsel to revisit certain elements of the interview by reviewing the audio recording or the transcript of that recording in light of subsequent investigative developments.

But as the Committees themselves acknowledge, *see* April 15 Letter at 3, the disclosure of audio recordings can reveal characteristics that implicate privacy interests. Courts have therefore recognized that the release of such recordings presents a unique intrusion, even when compared to the significant privacy interests that may be present in transcriptions. *See, e.g., New York Times Co. v. NASA*, 920 F.2d 1002, 1005–07 (D.C. Cir. 1990) (en banc) (explaining that “voice inflections can contain personal information” and recognizing the possibility of a privacy interest in an audio recording of astronauts’ voices even when a transcript had already been publicly released), *remanded* 782 F. Supp. 628, 631–33 (D.D.C. 1991) (emphasizing that the “very sound of [a person’s] words . . . constitute[s] a privacy interest” and exempting the audio recording from disclosure). And that intrusion may be particularly severe when the recording is of a law enforcement interview—a consequential interaction conducted under criminal penalty for false statements—in a case where the interviewee has not been charged with a crime. *Cf.*

Jud. Watch, Inc. v. Nat'l Archives & Recs. Admin., 876 F.3d 346, 349 (D.C. Cir. 2017) (explaining that “[w]here individuals have been investigated but not charged with a crime,” disclosure of certain private law enforcement information “represents a severe intrusion on the privacy interests of the individual in question” (quotation marks and brackets omitted)).

Moreover, as courts have also recognized, the disclosure of audio recordings presents a significant opportunity for misuse and possible manipulation. In 1996, for example, a trial court played a video recording of a deposition of President Clinton. *United States v. McDougal*, 940 F. Supp. 224, 226 (E.D. Ark. 1996). But the trial court refused to order release of that recording, warning that disclosure of the videotape of the President “might impede any future attempts to tailor an arrangement for obtaining a President’s testimony while minimizing the intrusion on his duties.” *Id.* at 228. And the Eighth Circuit likewise refused to allow the video recording of the depositions to be duplicated, in part because of the “potential for misuse” of the recording, such as through “cutting, erasing, and splicing.” *United States v. McDougal*, 103 F.3d 651, 658 (8th Cir. 1996); *see also Nixon v. Warner Communc’ns, Inc.*, 435 U.S. 589, 601, 608 (1978) (denying a press request for access to White House audiotapes that had been played for a jury, and for which transcripts had been furnished to the press, and recognizing that if audio recordings were released, there would not “be any safeguard, other than the taste of the marketing medium, against distortion through cutting, erasing, and splicing of tapes”).

For these reasons, in my view, disclosure of the audio recordings of the Special Counsel’s interviews with you and Mr. Zwonitzer poses an unacceptable risk of impairing cooperation in future high-profile investigations where voluntary cooperation is exceedingly important, such as those involving White House officials. If witnesses in such investigations reasonably fear that materials like the recordings at issue here would subsequently be released to Congress or the public even when prosecutors declined to charge them with a crime, they may be less likely to cooperate with the Department’s investigatory efforts, including by refusing to sit for recorded interviews. Or they might cooperate less fully, such as by being less comprehensive in their answers during interviews. Either way, this diminished cooperation would significantly impair the Department’s ability to investigate and prosecute such important matters.

My concerns about disclosing the audio recordings of the Special Counsel’s interviews with you and Mr. Zwonitzer mirror in many ways the concerns that led President George W. Bush to assert executive privilege in 2008 to protect information related to interviews conducted in another special counsel investigation involving the White House. In that matter, a House committee sought information about a closed investigation conducted by Special Counsel Patrick Fitzgerald into the disclosure of the identity of a Central Intelligence Agency employee. *Special Counsel Assertion*, 32 Op. O.L.C. at 7. The committee subpoenaed Federal Bureau of Investigation (“FBI”) “reports of the Special Counsel’s interviews with the Vice President and senior White House staff, as well as handwritten notes taken by FBI agents during some of the interviews.” *Id.* President Bush determined that these reports were covered by executive privilege on the grounds that disclosure of the reports would, among other things, impede White House cooperation with future Department criminal investigations. *See id.* at 9–11. For the reasons provided above, I have concluded that you may make a similar determination here with respect to the audio recordings.

Finally, I note that the Department’s disclosure of the transcripts of the interviews does not constitute a waiver and does not preclude an assertion of privilege with respect to the audio recordings. As I have explained, audio recordings have distinct features and law enforcement uses, which implicate privacy interests and risks of misuse to a greater degree than transcripts, and disclosure to Congress of the recordings would have a chilling effect on future cooperation in similar investigations. Moreover, it is well established that in the executive privilege context, “waiver should not be lightly inferred.” *In re Sealed Case*, 121 F.3d 729, 741 (D.C. Cir. 1997) (quotation marks omitted). Interpreting the production of the transcripts as a waiver of privilege would incentivize less Executive Branch cooperation and broader privilege assertions, undermining each branch’s “constitutional mandate to seek optimal accommodation” of each other’s legitimate interests. *United States v. Am. Tel. & Tel. Co.*, 567 F.2d 121, 127 (D.C. Cir. 1977). As the Department has emphasized, the accommodation process should and does “encourage, rather than punish, such accommodation by recognizing that Congress’s need for such documents is reduced to the extent similar materials have been provided voluntarily as part of the accommodation process.” *Assertion of Executive Privilege Concerning the Dismissal and Replacement of U.S. Attorneys*, 31 Op. O.L.C. 1, 8 (2007).

III.

A congressional committee may overcome a presidential assertion of executive privilege only if it establishes that it has a sufficient need for the subpoenaed materials. There is some question as to what standard of need the Committees must satisfy to overcome a privilege assertion here, but their articulated need for the audio recordings is insufficient to meet any potentially applicable standard.²

In their correspondence, the Committees have referenced certain general purposes underlying their investigations, including the Judiciary Committee’s oversight of the Department and “whether sufficient grounds exist to draft articles of impeachment against President Biden for consideration by the full House.” February 27 Letter at 1. But the Committees have offered no convincing reason why, particularly when they are in possession of transcripts of the two interviews that are the subject of their subpoenas, they also need audio recordings to inform their oversight or impeachment investigations.

The Committees have provided a handful of specific explanations of their need for the audio recordings. First, the Committees have stated that they are interested in understanding

² In the congressional oversight context, a committee may overcome an executive privilege assertion if the subpoenaed materials are “demonstrably critical to the responsible fulfillment of the Committee’s functions.” *Senate Select Comm. on Presidential Campaign Activities v. Nixon*, 498 F.2d 725, 731 (D.C. Cir. 1974) (en banc). The Department has “not settle[d] on the precise standard” for the showing of need that a committee must make to overcome a privilege assertion in an impeachment investigation. *See Exclusion of Agency Counsel from Congressional Depositions in the Impeachment Context*, 43 Op. O.L.C. __, at *3 (Nov. 1, 2019). If the standard for overcoming privilege in the impeachment context is akin to the standard that applies in a grand jury investigation, a committee would need to show that the recordings “likely contain[] important evidence” that “is not available with due diligence elsewhere.” *In re Sealed Case*, 121 F.3d at 754. Other potentially analogous standards might be drawn from other contexts. *See Nixon*, 418 U.S. at 713 (discussing the insufficiency of the President’s assertion of privilege in light of a court’s “demonstrated, specific need” for the information in a criminal case). As described in the text, the Committees’ stated need for the audio recordings would not satisfy any of these potential standards.

whether President Biden may have “willfully retained classified information and documents . . . to assist his family’s business dealings or to enrich his family.” Judiciary Contempt Report at 7; Oversight Contempt Report at 7; *see also* February 27 Letter at 1. Second, the Committees have indicated that they are interested in understanding “whether 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.” *Id.* Third, the Committees have stated that the audio recordings are relevant to their oversight of the Executive Branch, including 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.” *Id.* Such oversight, the Committees state, could lead to “potential legislative reforms” regarding the Department’s “use of a special counsel to conduct investigations of current and former Presidents,” such as “codifying certain qualifications and requirements of special counsels appointed by the Attorney General.” *Id.* at 2. The Committees have also stated that the audio recordings are relevant to their determination “if legislation is needed” to ensure that federal agencies “adequately account for records and documents meant to be returned to the federal government upon an executive branch employee’s departure from office.” Oversight Contempt Report at 2. Finally, the Committees have suggested that they need access to the audio recordings to verify the accuracy of the transcripts. Judiciary Contempt Report at 14–15; Oversight Contempt Report at 13–15.

The Department has already provided Congress information that satisfies these needs. As I noted above, just three days after I received the Special Counsel’s final report concluding that no criminal charges were warranted, I provided the report to Congress in its entirety, before the Committees had even requested it. *See* February 8 Letter. The Department also provided classified documents requested by the Committees, as well as correspondence regarding the Special Counsel’s report. April 8 Letter at 2. In direct response to the Committees’ stated interests, moreover, the Department provided the transcripts of the Special Counsel’s interview with you and his interview with Mr. Zwonitzer. *Id.* In addition, Special Counsel Hur himself appeared for a hearing before the Judiciary Committee, which was attended by the Chair and Ranking Member of the Oversight Committee, and he answered questions for more than five hours. *See* Hearing Before the H. Comm. on the Judiciary on the Report of Special Counsel Robert K. Hur, 118 Cong. (Mar. 12, 2024). Through these extensive efforts, the Department has “amply fulfilled its constitutional obligation to make a principled effort to acknowledge, and if possible to meet, the Committees’ legitimate needs.” *Assertion of Executive Privilege Over Deliberative Materials Generated in Response to Congressional Investigation Into Operation Fast and Furious*, 36 Op. O.L.C. 1, 8 (2012) (cleaned up).

Indeed, with respect to the first two interests identified above, given all the information the Department has provided to date, the Committees have not been able to explain how the audio recordings are “demonstrably critical to the responsible fulfillment of [their] functions,” *Senate Select Comm. on Presidential Campaign Activities v. Nixon*, 498 F.2d 725, 731 (D.C. Cir. 1974) (en banc), or why the recordings “likely contain[] important evidence” that “is not available with due diligence elsewhere,” *In re Sealed Case*, 121 F.3d at 754. This is unsurprising: the transcripts the Department produced to the Committees contain all the substantive content of the Special Counsel’s interviews with you and Mr. Zwonitzer, and

production of the audio recordings will thus not reveal any information relevant to the Committees' stated needs that is not available in the transcripts and other documents that are already in the Committees' possession.

To be sure, the Committees have recently stated that audio recordings can contain vocal elements that may not be reflected on the face of a transcript. *See* April 15 Letter at 3 (arguing that audio recordings “capture vocal tone, pace, inflections, verbal nuance, and other idiosyncrasies”). The Committees have suggested that these nonsubstantive elements of an interview can provide insight into whether a witness is being evasive. What is important here is that the Committees have not provided an explanation as to how these vocal elements in the Special Counsel's interviews shed any additional light beyond the transcript on whether President Biden may have “willfully retained classified information and documents . . . to assist his family's business dealings or to enrich his family.” Judiciary Contempt Report at 7. And the transcripts and related correspondence produced to the Committees also contain any information the Committees are seeking from the interviews as to whether there were scoping restrictions placed on the Special Counsel's interviews.

Moreover, with respect to the Committees' interests in the audio recordings as part of their oversight of the Executive Branch, the Committees have done nothing more than indicate that the vocal elements of the audio recordings “may possibly have some arguable relevance to the subjects it has investigated and to the areas in which it may propose legislation.” *Senate Select Comm. on Presidential Campaign Activities*, 498 F.2d at 733. In describing their legislative purpose, the specific areas of potential legislation the Committees have identified are “reforms” to the Department's “use of a special counsel to conduct investigations of current and former Presidents,” February 27 Letter at 2, and reforms to ensure that federal agencies “adequately account for records and documents meant to be returned to the federal government upon an executive branch employee's departure from office,” Oversight Contempt Report at 2. But the Committees “point[] to no specific legislative decisions” relevant to that effort “that cannot responsibly be made without access to materials uniquely contained in the [audio recordings].” *Senate Select Comm. on Presidential Campaign Activities*, 498 F.2d at 733. The Committees are plainly unable to establish a “demonstrably critical” need for the recordings, especially given that they are in possession of transcripts of those same interviews.

Finally, the Committees have suggested that they need access to the audio recordings to verify the accuracy of the transcripts, pointing to *United States v. Nixon*, 418 U.S. 683, and arguing that audio recordings can themselves have evidentiary value. Judiciary Contempt Report at 14; Oversight Contempt Report at 13–14. In *Nixon*, however, President Nixon had released only “edited transcripts” of a portion of the meetings covered by the audio recordings. 418 U.S. at 688. Here, by contrast, the Department produced unedited transcripts of the interviews to the Committees, and the Committees have identified no reason to believe that those transcripts—which were created by the Special Counsel's Office for use in a criminal investigation in which accuracy was of critical importance—contain any inaccuracies relevant to their impeachment inquiry. The Committees have thus not identified any “specific legislative decisions” that would be frustrated by an inability to compare the transcripts against the audio recordings for purposes of the Judiciary Committee's oversight investigation, nor have the Committees pointed

specifically to decisions in their impeachment inquiry that cannot be made without access to the audio recordings containing the same substantive material of the transcripts in their possession.

For these reasons, I conclude that the Committees have failed to satisfy any of the potentially relevant standards for overcoming an assertion of executive privilege. The Committees' needs are insufficient to outweigh the deleterious effects that production of the recordings would have on the integrity and effectiveness of similar high-profile law enforcement investigations in the future—in particular, investigations where the voluntary cooperation of White House officials is exceedingly important.

IV.

As discussed above, the Department has made substantial efforts to provide materials and accommodations in response to each of the four categories of materials the Committees have subpoenaed. *See supra* Part I. Indeed, in the weeks since the Department provided the two transcripts of the Special Counsel's interviews, correspondence regarding the Special Counsel's report, and the classified documents the Committees requested, the Committees have specifically identified only one set of materials that they are still seeking: the audio recordings of the interviews for which they have transcripts. *See* April 15 Letter at 4 (“If the Department continues to withhold materials responsive to the Committees’ subpoenas—namely, the audio recordings of Special Counsel Hur’s interviews with President Biden and Mr. Zwonitzer—we will have no choice but to invoke contempt of Congress proceedings.”); Judiciary Contempt Report at 3 (“The Department continues to withhold key material responsive to the subpoenas from the Judiciary and Oversight Committees—specifically the audio recordings of Special Counsel Hur’s interviews with President Biden and Zwonitzer.”); *accord* Oversight Contempt Report at 3.

Nevertheless, the Committees have scheduled votes on resolutions holding me in contempt of Congress for failure to comply with the subpoenas that leave open the possibility that they view the contempt citations as applying to other, unspecified subpoenaed materials as well. Judiciary Contempt Report at 1; Oversight Contempt Report at 1. The Department believes that, aside from the audio recordings, it has complied with the Committees’ subpoenas. Consistent with this view, other than the audio recordings, the Committees have not identified any specific materials that the Department has failed to produce or that the Committees continue to seek beyond what that the Department has already made available. Nonetheless, out of an abundance of caution, I am requesting that you make a protective assertion of executive privilege with respect to any remaining materials that might be responsive to the Committees’ subpoenas.

Presidents may make a protective assertion of executive privilege to “protect the interests of the Executive Branch pending a final determination about whether to assert privilege.” *Assertion of Executive Privilege Over Deliberative Materials Regarding Inclusion of Citizenship Question on 2020 Census Questionnaire*, 43 Op. O.L.C. ___, at *8 (June 11, 2019) (quotation marks omitted); *see also Protective Assertion of Executive Privilege Regarding White House Counsel’s Office Documents*, 20 Op. O.L.C. 1 (1996). Here, with respect to any materials beyond the audio recordings that the Committees believe are subject to the subpoenas and remain outstanding, the Department would need the opportunity to engage in the accommodation process with the Committees, including by reviewing the materials for possible privileged

information. In these circumstances, you may make a protective assertion of executive privilege with respect to any such materials.

V.

For the reasons set forth above, I believe it is legally permissible for you to assert executive privilege as to the audio recordings of your and Mr. Zwonitzer's interviews with Special Counsel Hur, and that you may make a protective assertion of executive privilege with respect to any remaining materials responsive to the subpoenas that have not already been produced. I respectfully request that you do so.

Sincerely,

A handwritten signature in blue ink, appearing to read "Merrick B. Garland", written in a cursive style.

Merrick B. Garland
Attorney General

EXHIBIT 6



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530

May 16, 2024

The Honorable Jim Jordan
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable James Comer
Chairman
Committee on Oversight and Accountability
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Jordan and Chairman Comer:

The Department of Justice (Department) has responded in good faith to your requests for information concerning Special Counsel Robert K. Hur's investigation, including the subpoenas issued by the Committee on the Judiciary and Committee on Oversight and Accountability (Committees) on February 27, 2024. Specifically, the Department has provided materials in response to each of the four categories of materials in the Committees' subpoenas. Despite this record of compliance, the Committees have scheduled meetings to consider resolutions citing the Attorney General for contempt. As the Department has previously explained, a contempt citation is not justified on this record.¹ I write to inform you that the President has asserted executive privilege over the requested audio recordings and is making a protective assertion of privilege over any remaining materials responsive to the subpoenas that have not already been produced. A copy of the Attorney General's letter to the President setting forth the legal bases for the assertions is enclosed with this letter.

When he was nominated, the Attorney General pledged to reaffirm the principles that have guided the Department and protected the rule of law for decades. That is exactly what the Department has done here. While our cooperation with Congress has been extraordinary, we also have a responsibility to safeguard the confidentiality of law enforcement files where disclosure would jeopardize future investigations. The Attorney General must draw a line that safeguards the Department from improper political influence and protects our principles, our law

¹ Letter from Hon. Carlos Uriarte, Assistant Att'y Gen., Off. of Legis. Aff., to Hon. Jim Jordan, Chairman, U.S. H. Comm. on the Judiciary, and Hon. James Comer, Chairman, U.S. H. Comm. on Oversight & Accountability at 10 (April 25, 2024).

The Honorable Jim Jordan
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enforcement work, and the people who carry out that work independently, without fear or favor. This protects the rule of law, now and in the future. The Committees seek to hold the Attorney General in contempt not for failing in his duties, but for upholding them.

The Department's record in this matter is clear. We have made substantial efforts to accommodate your interest in Special Counsel Hur's investigation. In addition to providing the Special Counsel's report and facilitating the Special Counsel's testimony, the Department provided the two classified documents the Committees requested, transcripts of the interviews of the President and of Mark Zwonitzer, and correspondence regarding the Special Counsel's report. In short, the Department has responded to each of the four requests in your subpoenas. As the Department wrote in prior letters to the Committees, these efforts reflect that we have taken seriously each of the reasons for which the Committees have said they are seeking this information and addressed the Committees' stated informational needs. For example, as the Department wrote previously, in producing the interview transcripts, the Committees now know what was asked during the interviews and what was answered. Despite our repeated requests over several months, the Committees have still not identified a remaining need for these audio files that would serve the asserted purposes of your investigations.²

We have repeatedly made clear that disclosure of the subpoenaed audio recordings would damage future law enforcement efforts and that the Committees' continued demands raise serious separation of powers concerns. As the enclosed letter from the Attorney General explains, "[t]he Department has long recognized that executive privilege protects materials related to a closed criminal investigation where disclosure is likely to damage future law enforcement efforts," which "is the case here." The letter further explains that producing the audio recordings to the Committees "would raise an unacceptable risk of undermining the Department's ability to conduct similar high-profile criminal investigations—in particular, investigations where the voluntary cooperation of White House officials is exceedingly important." It also explains that the Committees' "articulated need for the audio recordings is insufficient to meet any potentially applicable standard," and that the audio recordings will "not reveal any information relevant to the Committees' stated needs that is not available in the transcripts and other documents that are already in the Committees' possession." The Committees' "needs are plainly insufficient to outweigh the deleterious effects that production of the recordings would have on the integrity and effectiveness of similar law enforcement investigations in the future."

We are disappointed the Committees have refused to acknowledge or accommodate the Department's concerns and instead appear intent on proceeding with contempt votes. It is the longstanding position of the executive branch held by administrations of both parties that an official who asserts the President's claim of executive privilege cannot be prosecuted for criminal contempt of Congress.³ With the information you now have, the Committees ought not

² *Id.*; Letter from Hon. Carlos Uriarte, Assistant Att'y Gen., Off. of Legis. Aff., to Hon. Jim Jordan, Chairman, U.S. H. Comm. on the Judiciary, and Hon. James Comer, Chairman, U.S. H. Comm. on Oversight & Accountability (April 8, 2024).

³ See *Prosecution for Contempt of Congress of an Executive Branch Official Who Has Asserted a Claim of Executive Privilege*, 8 Op. O.L.C. 101, 102 (1984).

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Page 3

proceed with contempt and should instead avoid unnecessary and unwarranted conflict. In 2008, the Committee on Oversight and Government Reform took down a contempt vote after President Bush asserted executive privilege over the record of a Special Counsel's interview of the Vice President. The Department will continue to respond in good faith to legitimate oversight requests from these and other committees, consistent with our obligations under the constitutionally mandated accommodation process. We encourage the Committees to fulfill their constitutional duty as well.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. Uriarte', is positioned above the typed name.

Carlos Felipe Uriarte
Assistant Attorney General

Enclosure

cc:

The Honorable Jerrold L. Nadler
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Jamie Raskin
Ranking Member
Committee on Oversight and Accountability
U.S. House of Representatives
Washington, DC 20515

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

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Case No. 1:24-cv-00700-TJK
(Consolidated Cases)

HERITAGE FOUNDATION, et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

CABLE NEWS NETWORK, INC., et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

**DEFENDANT U.S. DEPARTMENT OF JUSTICE'S STATEMENT OF
MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE DISPUTE**

Pursuant to Local Civil Rule 7(h)(1), Defendant United States Department of Justice (“Department”) hereby respectfully submits the following statement of material facts as to which there is no genuine dispute.

	Defendant’s Statement of Undisputed Facts	
1.	On January 12, 2023, Attorney General Merrick Garland appointed Robert Hur as Special Counsel. Weinsheimer Decl. ¶ 4.	
2.	The Special Counsel’s Office (“SCO”) was authorized to investigate the possible unauthorized removal and retention of classified documents at various locations associated with President Biden (“the SCO Investigation”). <i>See id.</i> ¶ 4.	
3.	As part of the investigation, Special Counsel Hur interviewed President Biden (“the interview”). <i>Id.</i> ¶ 9.	
4.	The interview was recorded by audio means, but not by video. <i>Id.</i> ¶ 9.	
5.	The Department has produced, both to Congress and pursuant to FOIA, redacted transcripts of the interview. <i>Id.</i> ¶ 17.	
6.	Aside from minor inconsistencies (such as repeated words or the use of filler words such as “um”), the audio recording of the interview accurately reflects the words spoken during the interview. <i>Id.</i> ¶ 14.	
7.	At the conclusion of the SCO Investigation, Special Counsel Hur transmitted a confidential report to Attorney General Merrick Garland pursuant to 28 C.F.R. § 600.8(c) (“the Hur Report”). <i>Id.</i> ¶ 6.	
8.	Special Counsel Hur concluded that no criminal charges were warranted as a result of his investigation. <i>Id.</i> ¶ 6.	
9.	The Department produced a copy of the Hur Report to Congress and also placed a copy on the Department’s public-facing website. <i>Id.</i> ¶ 7.	

10.	Mr. Hur testified before Congress concerning his investigation and his decision to decline prosecution. <i>Id.</i> ¶ 46.	
11.	On February 8, 2024, Plaintiff Judicial Watch submitted a FOIA request to the Department seeking “all transcripts, audio recordings, and video recordings of all interviews of President Biden conducted during the course of the investigation led by Special Counsel Robert Hur.” ECF No. 1, ¶ 5.	
12.	On February 12, 2024, the Heritage Foundation and Mike Howell submitted a FOIA request to the Department seeking “[a]ll recordings in any format whatsoever, of the interview of President Joseph R. Biden, Jr. referenced in [the Hur Report].” ECF No. 25-1, ¶ 15.	
13.	Thirteen media-organization plaintiffs submitted FOIA requests between February 16, 2024 and April 1, 2024, each of which also sought the audio recording. ECF No. 26, at 11-15, ¶¶ 19, 21-44.	
14.	On March 11, 2024, Judicial Watch filed its complaint. ECF No. 1.	
15.	On April 3, 2024, the Heritage Foundation and Mike Howell filed their complaint in what was then Case No. 24-cv-960. ECF No. 7-1.	
16.	CNN filed its initial complaint on April 4, 2024 in what was then Case No. 24-cv-961. ECF No. 7-2.	
17.	The Department moved to consolidate the three cases, which the Court granted on May 3, 2024. <i>See</i> ECF No. 7; May 3, 2024 Minute Order.	
18.	CNN’s complaint was amended on May 15, 2024 to add twelve additional plaintiffs, each of which are associated with media organizations (collectively, the “Media Plaintiffs”). ECF No. 26.	
19.	The only record at issue in these consolidated cases is the audio recording. Weinsheimer Decl. ¶ 3.	

20.	The Department has withheld the audio recording in full pursuant to FOIA Exemptions 5, 6, 7(A), and 7(C). <i>Id.</i> ¶ 3.	
21.	Plaintiffs do not challenge any underlying redactions to the audio recording that would correspond to the same redactions that the Department made to the written transcript of the interview. <i>See, e.g.</i> , ECF Nos. 12, 15, 18.	
22.	On February 27, 2024, two Committees of the House of Representatives (the Committee on the Judiciary and the Committee on Oversight and Accountability) subpoenaed the audio recording of Special Counsel Hur’s interview of President Biden. <i>Id.</i> ¶ 18.	
23.	By letter dated May 15, 2024, Attorney General Garland informed President Biden that he had determined (with the advice of the Office of Legal Counsel) that the audio recording fell within the scope of executive privilege, and he asked that President Biden assert executive privilege over the audio recording. <i>Id.</i> ¶ 19.	
24.	President Biden formally asserted executive privilege over the audio recording. <i>Id.</i> ¶ 20.	
25.	The audio recording and transcripts were marked, maintained, and stored by SCO as Top Secret classified material. After the President’s interview, a copy of both written transcripts and a copy of the audio recording was made available to representatives of the White House Counsel’s Office, which made them available as appropriate to President Biden’s personal counsel. <i>Id.</i> ¶ 15.	
26.	Because the audio recording was treated as Top Secret, representatives of the White House Counsel’s Office who were given a copy of the audio recording were required to keep it in a Sensitive Compartmented Information Facility (“SCIF”) within the Executive Office of the President, which is where President Biden’s personal counsel were permitted to review the audio recording. The audio recording has	

	remained at all times within the custody and control of the Executive Branch. <i>Id.</i> ¶ 16.	
27.	The audio recording was created in the course of a criminal investigation and therefore was compiled for law enforcement purposes. <i>Id.</i> ¶ 10.	
28.	The use of audio recordings in law enforcement interviews is a highly useful law enforcement tool, especially during high-profile or complex investigations. <i>Id.</i> ¶ 27.	
29.	The release of an audio recording of a law enforcement interview can harm substantial privacy interests of the interviewee, and those privacy harms extend beyond any privacy-based harms that would result from the release of a transcript of the same interview. <i>Id.</i> ¶ 28.	
30.	The Department reasonably expects that release of the audio recording in these circumstances would pose an unacceptable risk of impairing cooperation in future high-profile investigations where voluntary cooperation is exceedingly important, such as those involving White House officials. <i>Id.</i> ¶¶ 29-33.	
31.	If a potential witness in a future investigation were to reasonably fear that materials like the recording at issue here would subsequently be released to Congress or the public (even when prosecutors declined to charge them with a crime) such witnesses might be less likely to cooperate with the Department's investigatory efforts, such as by refusing to sit for an interview, declining to allow an interview to be recorded, or being less comprehensive in their answers during interviews. <i>Id.</i> ¶¶ 29-33.	
32.	The Department reasonably anticipates that it will be called on in the future to engage in sensitive, high-profile investigations, including those that may involve White House personnel or other senior government officials as witnesses. <i>Id.</i> ¶ 32.	

33.	The Department has law enforcement investigations that are currently ongoing for which release of the audio recording could reasonably be expected to chill witness participation in those investigations. Specifically, the Department currently is engaged in ongoing investigations for which there is or could be substantial public interest, and release of the audio recording here could make witnesses or potential witnesses in these investigations reasonably fear that a recording of their interview with law enforcement may become public after the investigation closes. <i>Id.</i> ¶ 34.	
34.	If an individual is asked to sit for an interview in a law enforcement investigation where the witness understands there is substantial public interest (or that there would be substantial public interest in the investigation if the public learned of the investigation's existence), then that individual might reasonably fear that a FOIA requester would be likely to seek the release of the audio recording, and that the recording might be released. <i>Id.</i> ¶ 35.	
35.	If an individual fears that an audio recording of an interview in which they participated with law enforcement would be released, this could reasonably be expected to make that individual less likely to either: (1) sit for an interview in the first instance; (2) consent to it being recorded; or (3) provide forthcoming and candid answers to questions. Any of these results would interfere with ongoing law enforcement investigations because the government would be prevented from developing factual information that often is important to the effective and efficient resolution of criminal investigations. <i>Id.</i> ¶ 35.	
36.	The potential release of an audio recording of a law enforcement interview raises substantial privacy concerns. <i>Id.</i> ¶ 37.	
37.	An individual's privacy interest in their information contained I law enforcement	

	files is heightened when they have not been charged with a crime. <i>Id.</i> ¶ 37.	
38.	Law enforcement interviews are highly stressful and consequential events. <i>Id.</i> ¶ 38.	
39.	When a prosecutor conducts an interview as part of a criminal investigation, by its nature, the interview includes probing questions designed to elicit information to help the prosecutor determine whether a crime was committed and if so, by whom. <i>Id.</i> ¶ 39.	
40.	An audio recording of a law enforcement interview reflects the interviewee’s verbal responses, including any pauses, hesitations, intonations, and mannerisms that occurred during that stressful and personal event. <i>Id.</i> ¶ 40.	
41.	Release of an audio recording of a law enforcement that contains speech mannerisms (such as hesitations, pauses, or stutters) could allow individuals to unfairly speculate that those mannerisms demonstrate that the individual was being evasive or lying. <i>Id.</i> ¶ 40.	
42.	Malicious actors can manipulate audio files, such as by (for example) inserting words that were not said or deleting words that were said. <i>Id.</i> ¶ 43.	
43.	There is now widely available technology that can be used to create entirely different audio “deepfakes.” It is difficult to determine whether a “deepfake” is authentic or not. <i>Id.</i> ¶ 44.	

DATED: May 31, 2024

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
Civil Division

ELIZABETH J. SHAPIRO
Deputy Director

/s/ Joshua C. Abbuhl

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Counsel for the Defendant

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

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

Case No. 1:24-cv-00700-TJK
(Consolidated Cases)

HERITAGE FOUNDATION, et al.,

Plaintiffs,

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U.S. DEPARTMENT OF JUSTICE,

Defendant.

CABLE NEWS NETWORK, INC., et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

[PROPOSED] ORDER

After reviewing Defendant's Motion for Summary Judgment, and finding good cause presented, the Court **GRANTS** the Motion.

ORDERED that Defendant's Motion for Summary Judgment is **GRANTED**.

Dated: _____

The Honorable Timothy J. Kelly
UNITED STATES DISTRICT JUDGE