

STING RAY: PROJECT VERITAS' SCHRODINGER'S PROXY

According to a court filing submitted on behalf of Spencer Meads, one of the former Project Veritas staffers whose phones were seized by the FBI on November 4, the circumstances that led to PV obtaining Ashley Biden's diary started no earlier than August 2020.

Under any stretch of the imagination, the period relevant to the diary investigation does not pre-date August 2020.

[snip]

[A]ll events relating to the Government's diary investigation began no earlier than August 2020. Accordingly, none of the work that Mr. Meads performed on behalf of Project Veritas before August 2020 – including newsgathering information and other information stored on his electronic devices before August 2020 – could have any possible relevance to or bearing whatsoever on the Government's diary investigation.

The government appears to agree. The timeline for the warrant served on Meads (and Eric Cochran, the other former PV staffer searched that same day) starts on August 1, 2020.

Following seizure of any device(s) and/or the creation of forensic image copies, law enforcement personnel (who may include, in addition to law enforcement officers and agents, attorneys for the government, attorney support staff, agency personnel assisting the government in this investigation, and outside technical experts under government control) are authorized to review the ESI contained therein that was sent, received, posted, created, or otherwise accessed, established, modified, or deleted between the time period August 1, 2020 and the present for information responsive to the warrant.

August 2020 is when, according to the filing from Meads, PV first learned of the diary.

Project Veritas first became aware of the diary's existence in August 2020

when Source 1 and Source 2 contacted Project Veritas through a proxy. PV Motion at p. 3. Just as Project Veritas and Mr. O’Keefe had never heard of Source 1 or Source 2 before this communication, Mr. Meads also had never heard of them. Nevertheless, Source 1 and Source 2 represented to Project Veritas that they were in possession of Ms. Biden’s diary, which they claimed Ms. Biden had left abandoned at a house located in Delray Beach, Florida. Id. Mr. Meads and Project Veritas had absolutely no involvement with how Source 1 and Source 2 acquired possession of the diary. [my emphasis]

The filing Meads cites to in that passage – PV’s original request for a Special Master – actually doesn’t provide that date. On the contrary, PV’s original filing is squishy about the date.

Earlier in 2020, two individuals – R.K. and A.H. – contacted Project Veritas through a proxy. Prior to this contact, neither James O’Keefe nor anyone at Project Veritas knew or had even heard of R.K. and A.H. [my emphasis]

That’s interesting, because a later PV filing insinuates that they first learned of the diary when a “tipster” called and left them a voicemail (a voicemail which would be responsive to the subpoena DOJ already served on PV) to let them know about it on September 3.

On or about September 3, 2020, a tipster called news outlet Project Veritas and left a voice mail. In the voice mail, the tipster indicated that a new occupant moved into a place where Ashley Biden had previously been staying and found Ms. Biden’s diary and other personal items: “[T]he diary is pretty crazy. I think it’s worth taking a look at.” Communications with the source (the

new occupant) who found Ashley Biden's abandoned diary and other abandoned items ensued. Project Veritas learned that Ashley Biden's other abandoned personal effects in the sources' possession included an overnight bag with the "B. Biden Foundation" logo and miscellaneous personal items. The source who found Ms. Biden's abandoned diary and another source brought the diary to Project Veritas in New York. The sources arranged to meet the Project Veritas journalist in Florida soon thereafter to give the journalist additional abandoned items.

PV seems to be erasing up to a month of events that Meads seems to know about, including how PV first learned of the diary. It is also obfuscating the different roles here – "the tipster," "the source," "another source," and "the Project Veritas journalist."

The temporal discrepancy may have to do with that proxy referenced by Meads. Meads says the first PV learned about it was via a proxy. PV implies, in that recent filing, that they didn't learn about the diary until receiving a voicemail in September. But as noted, the *first* PV filing also acknowledged the role of the proxy, even though it focused all its attention on the purported sources, R.K. and A.H., with no discussion of when or how the proxy got involved, or who that proxy was. Here's a longer version of that passage:

When National File published the diary, it claimed to have received the diary from a "whistleblower" at another news organization that had chosen not to report on the diary. Id. No Project Veritas employee had authority to, or was directed to, provide the diary to National File. Nor to provide it to anyone else. Project Veritas had no involvement in National File's publication of the diary and had no

advance knowledge that National File intended to publish it.

Earlier in 2020, two individuals – R.K. and A.H. – contacted Project Veritas through a proxy. Prior to this contact, neither James O’Keefe nor anyone at Project Veritas knew or had even heard of R.K. and A.H. Those two individuals represented that they had material (including a diary) that Ashley Biden had abandoned at a house where she had been staying in Delray Beach, Florida. Project Veritas had no involvement with how those two individuals acquired the diary. All of Project Veritas’s knowledge about how R.K. and A.H. came to possess the diary came from R.K. and A.H. themselves.

R.K. and A.H. through their lawyers requested payment from Project Veritas for contributing the diary for potential publication. As described by these individuals, the diary appeared to be newsworthy. R.K. and A.H.’s lawyers negotiated an arm’s length agreement with two of Project Veritas’s in-house lawyers, wherein R.K. and A.H. reaffirmed that they had come to possess the diary lawfully. Pursuant to that agreement, R.K. and A.H delivered the diary and other materials reportedly abandoned by Ms. Biden to Project Veritas.

In the more recent filing, PV seems to address the role of the proxy almost 4,000 words after it suggests that the first it learned of the diary was that voice mail. Nine pages into the reply, PV’s lawyers reveal they have “interviewed” the “the individuals [plural] who steered the sources who found the abandoned diary” and complain that the government has not yet done so.

As our own investigation continues, we

have learned that the government has deliberately avoided learning information that disproves its false theory that Project Veritas was somehow involved in a “theft.” The undersigned have interviewed the individuals who steered the sources who found the abandoned diary and other abandoned personal items, to Project Veritas (including the tipster who left the voice mail for Project Veritas on or about September 3, 2020). Astonishingly, the government has not interviewed these individuals, despite knowing their identities and listing them by name in the documents. From an investigative standpoint, the government’s choice not to interview them is inexplicable. The only possible explanation is that the government wishes to remain willfully blind or deliberately ignorant and avoid obtaining evidence inconsistent with its false theory that Project Veritas was involved in the theft of the diary and other materials. The sources told those individuals, just as they told Project Veritas, that the diary and other items were abandoned by Ashley Biden in a place where she had been staying while undergoing rehabilitation treatment.

The description that the documents “list [these people] by name” suggests they are the suspected co-conspirators whose names appear (but are redacted in publicly released versions of) the warrants.

d. Evidence of the identity, locations, knowledge, and participation in the Subject Offenses of potential co-conspirators, such as communications with other individuals—including, but not limited to, [REDACTED]—about obtaining, transporting, transferring, disseminating, or otherwise disposing of Ashley Biden’s stolen property, including but not limited to communications reflecting the knowledge of co-conspirators that the property obtained from Ashley Biden had been stolen, and communications that contain personally identifiable information of co-conspirators and references to co-conspirators’ places of residence or locations at particular points in time.

Of course, a far more obvious explanation why the government hasn’t interviewed these people is that they’re suspects in a criminal

investigation.

In any case, after having spoken with “the individuals who steered the sources who found the abandoned diary” and confirmed those people were still going to claim the diary was found, not stolen, PV obscured the role of the proxy.

There’s at least one more way that PV’s story is inconsistent. The original PV filing explains that it did not publish the diary because it could not sufficiently authenticate it. And only after making that decision, PV claims, did it first try to return the diary to Ashley Biden’s lawyer, and then transfer the diary back across state lines to give it to local law enforcement in FL.

Project Veritas conducted due diligence to determine if the diary was authentic and investigated the potential news story. After significant deliberation, Project Veritas decided not to publish the diary and not to run any news story about it. Despite an internal belief that the diary was genuine, Mr. O’Keefe and Project Veritas could not sufficiently satisfy themselves with the diary’s authenticity such that publishing a news story about it would meet ethical standards of journalism.

The later PV filing describes the question of authenticity as one limited to whether Ms. Biden’s attorney confirmed it was hers.

When Ashley Biden’s lawyer would not confirm her client’s ownership of the found items provided to Project Veritas, the news outlet arranged, on or about November 3, 2020, for the items to be delivered to state law enforcement in Florida, in the jurisdiction in which the source informed Project Veritas it originally found the abandoned items.

PV notes that it turned over the diary to

Florida law enforcement on November 3, without noting that that was Election Day, after which point the diary would be of no further use in swaying the election.

Much later in the filing, PV references an email that James O’Keefe sent on October 12, 2020, explaining why he wasn’t going to publish it (which, given the timing, may have led “a whistleblower” to share it with National File). PV claims that it did so because the “sordid nature of the diary’s contents” required a higher threshold for authentication, and presents this decision as proof that PV is not a political spy firm (which, particularly given the headfake PV did on complying with a subpoena, is irrelevant to some of the First Amendment issues).

Although there was compelling evidence of the diary’s authenticity, James O’Keefe and Project Veritas’s newsroom staff ultimately found that the evidence of authenticity did not rise to a level sufficient to satisfy their journalistic ethical standards for news publishing. This remains fully consistent with their internal belief that the diary was genuine – the sordid nature of the diary’s contents required that a high threshold be satisfied prior to running a story on it. As James O’Keefe summarized the editorial concerns in an October 12, 2020, email:

[snip]

If James O’Keefe is a “political spy,” as his politically motivated detractors (such as those in corporate competitors like the New York Times) falsely allege, he could have simply published a salacious news story regarding Ashley Biden’s diary. But he did not. James O’Keefe’s and Project Veritas’s fidelity to their journalistic ethics include high editorial standards. To the extent they harbored any doubt that the diary

was authored by Ashley Biden, the United States Attorney's Office for the Southern District of New York and the FBI have removed all doubt. Nothing could be better confirmation of the diary's authenticity and the claims therein than the government's use of federal law enforcement to invade the homes of journalists who did not even run a story on the diary, but only considered doing so, and then turned all material provided to it by sources over to law enforcement.

That's not what the email said. It said that PV was utterly convinced *the diary* was genuine, but not the allegations in it (a heavily-edited video of a sweaty O'Keefe released this November 5, after the first searches, also said they couldn't confirm whether the "contents" of the diary "occurred").

To release means the action is *less wrong* than the necessary wrongs that would follow if the information were not utilized and published. But in this case *even more harm* would be done to the person in question and Project Veritas if we were to release this piece. We have no doubt the document is real, but [i]t is impossible to corroborate the allegation further. The subsequent reactions would be characterized as a cheap shot. [italics original, bold mine]

More importantly, O'Keefe warned *of harm to PV if they were to publish*. PV doesn't back off publication because of controversy, that's what it sells. Which raises questions about what harm to PV that O'Keefe knew others would understand, without further explanation.

Before I get into that, few points about this email. First, note the way that O'Keefe doesn't mention Ms. Biden by name (though makes it clear

that's what the reference was to). One possible explanation for that is that lawyers coached him to avoid using it. But by publishing the email, PV gave prosecutors reason to insist that mere keyword searches will not be an adequate way to respond to the subpoena, as a search on "Ashley Biden" would not return this email. Also note the typeface irregularities, which is possibly nothing more than bolding of the substantive part of it. That will lead prosecutors to want an electronic copy of this, to understand whether the alternate typeface was cut-and-pasted from somewhere. There are also pngs attached (which may just be the footers), which will be another thing prosecutors will rightly want to see an electronic copy of. O'Keefe has claimed to have privileged relationships with 45 lawyers, yet that mob has already twice succeeded in giving the government justification to ask for more expansive searches.

Other details about the diary may explain why O'Keefe was worried about harm to PV. PV never acknowledges that it turned the diary over to law enforcement only after National File claimed to know the precise location of the diary and know of an audio recording of Ashley Biden admitting the diary was hers.

National File also knows the reported precise location of the physical diary, and has been told by a whistleblower that there exists an audio recording of Ashley Biden admitting this is her diary.

[snip]

National File obtained this document from a whistleblower who was concerned the media organization that employs him would not publish this potential critical story in the final 10 days before the 2020 presidential election. National File's whistleblower also has a recording of Ashley Biden admitting the diary is hers, and employed a handwriting expert who verified the

pages were all written by Ashley. National File has in its possession [sic] a recording of this whistleblower detailing the work his media outlet did in preparation of releasing these documents. In the recording, the whistleblower explains that the media organization he works for chose not to release the documents after receiving pressure from a competing media organization.

PV wouldn't need confirmation from *Ms. Biden's attorney* if they had a recording, via whatever means, of her admitting that it was hers. Unless that recording was itself criminal or for some other reason impossible to acknowledge. Then they would need something more. They tried to get something more – confirmation from *Ms. Biden's attorney* – and after the attorney refused, they turned the diary over to law enforcement.

And that's interesting because the substance of communications with *Ms. Biden*, her attorney, and her father are among the things, the warrants describe, that SDNY is seeking. Among other things (including the communications with suspected co-conspirators like the proxy), they're looking for:

- Evidence of communications regarding or in furtherance of the Subject Offenses, such as communications with or relating to Ashley Biden (and representatives thereof) and/or Ashley Biden's family, friends, or associates with respect to her stolen property.
- Evidence regarding the value of Ashley Biden's stolen

property, such as communications about the resale or market value of any of the items stolen from her, or any plans to sell or market the same.

- Evidence of steps taken in preparation for or in furtherance of the Subject Offenses, such as surveillance of Ashley Biden or property associated with her, and drafts of communications to Ashley Biden, President Biden, and Ashley Biden's associates regarding her stolen property and communications among co-conspirators discussing what to do with her property.

In his heavily-edited flopsweat video, O'Keefe states PV "never threatened or engaged in any illegal conduct." It would be unusual for PV not to try to confront anyone with a valuable document; their schtick is misrepresenting the response of their targets. And in all of PV's communications, they emphasize efforts to validate the diary, which might be a way to spin other kinds of communications.

It could still be the case that SDNY's investigative steps are inappropriate, even if they have PV dead to rights participating in the theft of the diary.

But all these discrepancies sure make PV's claims to be uninvolved less convincing.

Especially given the way lawyers for Meads – the former PV staffer who seems to know that that

September 3, 2020 call is not the first that PV heard of the diary – torque a precedent from a different circuit pertaining to someone who didn't learn about a source until after an illegal recording, to claim that even a journalist actively involved in a crime to *obtain* documents cannot be prosecuted.

While the Government attempts to draw a distinction between passive and active involvement in allegedly unlawful activities relating to obtaining Ms. Biden's diary (see Opposition at pp. 3-4), this distinction makes no difference from a legal standpoint. Simply put, it makes no difference whatsoever whether the nature of Meads' involvement was passive or active. In *Jean v. Massachusetts State Police*, 492 F. 3d 24 (1st Cir. 2007), the plaintiff was a political activist who obtained and posted on her website a copy of a video recording that was made in violation of the Massachusetts electronic interception statute. *Id.* at 25-26. When the police threatened to charge the plaintiff with a felony unless she abided by its cease and desist demand, the plaintiff obtained injunctive relief in federal district court. *Id.* at 26. The Government argued that the plaintiff "assisted, conspired, or served as an accessory to [the recorder's] violation . . ." and, further, that the plaintiff's "active collaboration with [the recorder] . . . made his unlawful dissemination possible in the first instance."

[snip]

Additionally, the Government's incorrect argument that "active involvement" by a journalist somehow eviscerates First Amendment protections for legitimate newsgathering materials does not hold that the First Amendment protects news

organizations from punishment where they publish information obtained lawfully from a third party. *Bartnicki*, 532 U.S. at 535. This holding does not support the Government's position that First Amendment protection is unavailable to journalists who have involvement in unlawful conduct that is the subject of a Government investigation.

The facts of *Jean v. MA* may match the story that Meads and PV are telling about the diary, but they don't match what the government clearly alleges behind some redactions: that PV had a role in the actual theft. And Meads seems to overstate the involvement of Jean in the illegal recording so as to make a claim that journalists *cannot* be investigated for a crime committed while reporting. It's an interesting legal argument to feel you need to make, especially if you know what led up to a seemingly exculpatory voicemail that PV now purports to be the start of this story.

Update: One detail that should get more attention is that the diary in question dates to 2019 and ends with a period when Ms. Biden was in rehab or something. Its earliest entry is dated January 25, 2019 and the final entry was dated September 18, 2019. To suggest, as PV and others have, that it was found at the rehab facility is to claim that the diary went unnoticed for 11 months.

These events are covered by three SDNY dockets: 21-mc-813 for James O'Keefe, 21-mc-819 for Eric Cochran, and 21-mc-825 for Spencer Meads.