

# **“WHY DID MIKE PENCE WAIT SO LONG TO REVEAL HIS STASH OF CLASSIFIED DOCUMENTS?”**

At a press availability yesterday, Merrick Garland repeated a line he often uses, that DOJ applies the law the same for everyone.

“We do not have different rules for Democrats or Republicans, different rules for the powerful or the powerless, different rules for the rich and for the poor, we apply the facts, and the law in each case in a neutral, non-partisan manner,” Garland told reporters during a press availability at Justice Department headquarters. “That is what we always do.”

Many of the reporters covering it treated it as a comment about DOJ’s handling of the Trump and Biden classified document inquiries. Maybe it was.

Little did anyone know, though, that Garland might well have had the FBI’s collection of about a dozen documents with classified markings from Mike Pence’s home in mind.

Greg Jacob first told the Archives about the documents on January 18, six days ago and two days after the search. The next day, the FBI arrived in Indiana to collect the documents, which Jacob complained was against standard protocol. Yesterday Pence’s staff delivered several boxes to the Archives to check for adherence to the Presidential Records Act.

I don’t much care that Pence didn’t immediately run to the press to announce the documents, but it is the kind of thing that journalists who are

good at horse race coverage, unaware of many of the thus-far distinguishing details about the Trump documents, and ill-equipped to cover classified documents stories latched onto with Biden.

So in an effort to provide some structure for the kids-chasing-a-soccer-ball-like coverage we're already seeing, here's a table that summarizes what we know and don't know about all three cases.

|  | Trump | Biden      | Pence      |
|--|-------|------------|------------|
| Total documents with classified markings | ~325  | ~21 to 30  | ~12        |
| Docs per year in service                 | 81    | .625       | .85        |
| Obstruction                              | Yes   | None known | None known |
| Proof of personal knowledge              | Yes   | Unclear    | Unclear    |
| Trophy documents                         | Yes   | Possible   | None known |
| Compiled documents                       | Yes   | Possible   | None known |
| Empty classified doc folders             | 46    | None known | None known |
| Suspected outstanding documents          | Yes   | None known | None known |

Until we have answers about some of the details that currently distinguish Biden and Pence from Trump – like whether they knew of the documents (both claim they did not), whether they ever accessed the documents after leaving office, whether we have reason to believe they're harboring more – this should not be a story.

And the key difference, one that should be included in every story that tries to make such a comparison, is that Trump refused to give documents back, whereas Biden and Pence freely offered them up.

The reason that's important, aside from the both sides drama of it, is that it is an element of the offense that would be most likely to be used if DOJ took the unprecedented step of charging a former Original Classification Authority with harboring classified documents.

As we can now see, it happens that men who have aides pack them up at the end of their tenure go home with documents they didn't know they had. It happens. (By the time Kamala Harris leaves, there's likely to be a new protocol in place, so Harris can set a perfect record as the first woman being packed up.) What matters – what

distinguishes a mistake from a potential crime –  
is what you do with the documents when you  
become aware you have them.

It's possible we'll learn details that suggest  
Biden knowingly stashed classified documents.  
But thus far, we don't have any such details.  
And that should – but thus far has often not –  
show up in any competent coverage.