

# **ROBERT HUR COMPLAINED ABOUT BIDEN NOTES THAT TRUMP ALMOST CERTAINLY ALREADY DECLASSIFIED**

If you ignore the overreading Robert Hur confessed to in order to justify writing a 388-page report that should have been 75, if you ignore the way Hur improperly used prejudicial language to attack a Presidential candidate and set up impeachment frenzy among Republicans, there are some interesting historic details about Robert Hur's report, such as the details of what classified documents investigators found.

Thirty-four pages of the report consist of appendices, describing what investigators found where. And because Hur spent 156 pages explaining why he didn't indict Biden based on the actions of Senate staffers shipping 2,000 boxes of Speech and Debate protected documents first to the Archives and then the University of Delaware decades ago, there are descriptions of how virtually all of the documents got where they ended up (except, of course, the two folders of Afghanistan documents around which he builds the excuse to write a 388-page report).

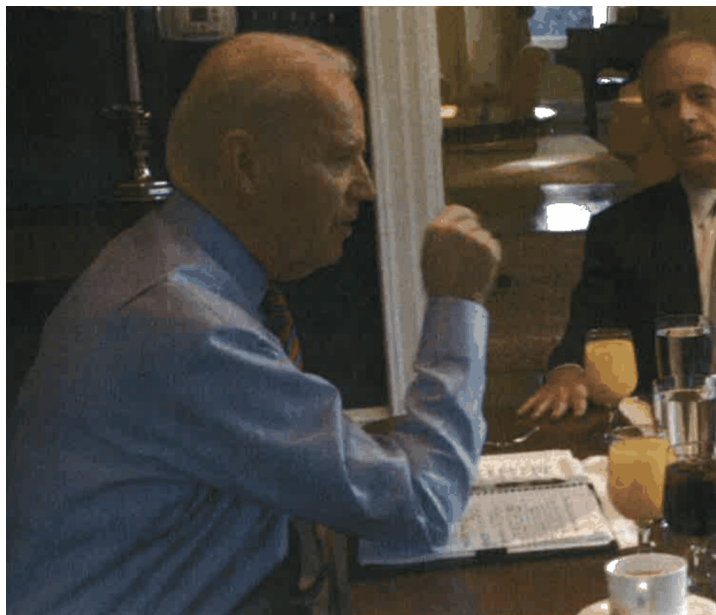
One of the most interesting descriptions, for example, explains how some of the most sensitive documents the FBI found – an envelope of documents about Obama's Iran deal, including several with a bunch of compartment markings – probably ended up at Penn Biden Center.

The report describes that the documents were compiled in anticipation of a January 29, 2015 breakfast meeting at the Naval Observatory at which Biden attempted to persuade six Senators who had traveled to Israel together to support

Obama's Iran deal. Biden's staffers got a bunch of compartmented documents delivered in advance; they were properly signed off in person. A picture of the breakfast meeting shows Biden with an envelope that may contain the documents in question.



Another picture shows Biden with some of the handwritten notes that would end up at Penn Biden Center.



Unlike he did with the Afghan documents, Hur did not invent a narrative to explain why Biden might have wanted to retain these. He noted that *Promise Me, Dad*, barely mention the Iran deal (it similarly barely mentioned the Afghanistan memo, but that didn't deter Hur).

Hur surmises that Biden simply kept these really sensitive documents on hand, and they got moved,

by someone else, when he left office.

Given his practice of having his front office staff store files he wanted to keep close at hand, Mr. Biden likely gave the EYES ONLY envelope to his executive assistant to keep within reach for future engagement with members of Congress. He and his staff appear to have eventually forgotten about it-along with other older files in the front-office collection-and staff members unwittingly moved it out of the West Wing at the end of the administration.

That's how Hur declined to prosecute some of the most sensitive documents discovered (documents that, it should be said, would require Senators to testify if they were ever charged).

Less interesting and far more tedious are Biden's Senate documents. Under Hur's supervision, the FBI spent what must have been days and days going through the boxes sent in several passes to University of Delaware, discovering decades-old documents, many labeled Confidential which, he conceded, could be either a classification mark or Senate discretion.

Some of the documents are marked "CONFIDENTIAL." While that is a valid marking for classified information, the term "CONFIDENTIAL" is also used in other contexts not involving classified information. Senate staffers could have understood these to be internal committee documents or simply sensitive documents created by authors who wanted to limit the number of people who viewed them.

It should trouble Members of Congress that Hur never took Speech and Debate under consideration in his analysis, particularly given that these were documents that Biden specifically didn't want to retain.

Hur spent almost four pages discussing two binders (and one corresponding document found at Penn Biden Center) titled, "Weekend with Charlie Rose," which were not marked as classified on the front.

It was, quite obviously, a briefing book that got brought back from Aspen to the Wilmington house and never moved from there.

In searching the contents of the box in the garage where they found one of the "Weekend With Charlie Rose" binders, agents found binders from other trips Mr. Biden took as vice president in the same box. 1340 A naval enlisted aide recalled that Mr. Biden kept such binders after returning from his trips. 1311

There must be hundreds of similar briefing books top officials brought back from one or another Aspen conference. That's a problem. It's not a crime.

You can see how tedious – and unnecessary – parts of this exercise were.

It's Hur's analysis of Biden's diaries that I find most interesting, and troubling. Hur's approach to these diaries is one of the most obvious flags of political bias in a report full of them.

Take his use of language. The word "diaries" appears 103 times in the report [note: someone with interns should replicate this work, as it is inexact]. In about five of those instances, Hur quotes the people around Biden referring to these notebooks as *diaries*. Two instances discuss the Presidential Record Act's language treating diaries as personal records, exempt from PRA. Maybe ten or so appear in a section where Hur envisions that Biden would describe these as diaries as a defense, but the word is always put in Biden's mouth. Hur adheres to using "notebooks" here.

Mr. Biden will likely say, he never believed his **notebooks**, which he thought of as his personal **diaries**, fell within that arrangement. He treated the **notebooks** markedly differently from the rest of his notes and other presidential records throughout his vice presidency, for example, allowing staff to store and review his notecards, but not his **notebooks**. 914 This treatment, he will argue, and the extremely personal content of some of the **notebooks**, shows that he considered them to be his personal property. Mr. Biden's **notebooks** included gut-wrenching passages about his son's death and other highly personal material. 915 His claim that he believed he did not need to send what he considered to be his personal **diary** to be stored at a government facility will likely appeal to some jurors. 916

We expect Mr. Biden also to contend that the presence of classified information in **what he viewed as his diary** did not change his thinking. As a member of the exclusive club of former presidents and vice presidents, Mr. Biden will claim that he knew such officials kept **diaries**, and he knew or expected that those **diaries**-like Mr. Reagan's- contained classified information. 917 He also understood that former presidents and vice presidents took their **diaries** home upon leaving office, without being investigated or prosecuted for it. [all emphasis mine]

But the overwhelming bulk of those remaining 85 or so uses of the word "diaries" describe Reagan's (or in two cases, other Presidents') diaries.

By contrast, there are 461 uses of the word "notebook" in Hur's report. That's the word Hur uses to refer to what he quotes people around Biden calling the President's diaries.

Reagan had diaries. And as a result, when DOJ discovered them, they remained untouched.

Biden has notebooks. By calling these notebooks, Hur permitted himself to do with Biden's most private thoughts what DOJ did not do with Reagan's: review them all.

Mr. Biden's notebooks, which contained, among other things, his handwritten notes taken during classified meetings as vice president, presented a challenge. None of the pages contained classification markings but investigators assessed some of the content was potentially classified. Classification review by intelligence agencies of unmarked information is more challenging and time-consuming than for marked documents. **We therefore reviewed all of Mr. Biden's handwritten notes** and selected thirty-seven excerpts totaling 109 notebook pages to submit for classification review. Investigators selected entries they believed were most likely highly classified and that a jury of laypeople would find was national defense information under the Espionage Act. [my emphasis]

All the gut-wrenching passages about Beau and whatever else (likely including a great many gut-wrenching passages about Hunter)? They're identified with footnotes to make it easier for Jim Jordan to find them. Not dick pic-sniffing, honest. Just an attempt to find 37 excerpts that a jury of laypeople might believe were National Defense Information, even though the Presidential Records Act has a clear exception for diaries, and so this was never going to be charged anyway.

I was interested in what Hur selected anyway, but this background – the linguistic games Hur played to be able to snoop in Biden's diaries – made the inquiry more important. Some of the 37 excerpts he chose were predictable.

Several weeks after the killing of Osama bin Laden, for example, then-Vice President Joe Biden wrote down his recollections about it, just like every other person involved.

5/28/11	7 pages <sup>13</sup>	Recollection of raid on Osama Bin Laden	TOP SECRET//HCS-O// [4 SCI Control System Markings]// ACCM [Program Name]// ORCON/NOFORN
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On June 19, 2013, not quite two weeks after the first Snowden leaks, Biden attended a briefing by the National Security Agency.

6/19/13	1 page <sup>16</sup>	Brief from the National Security Agency	SECRET//REL
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Because it's Joe Biden, there has to be an Amtrak connection.

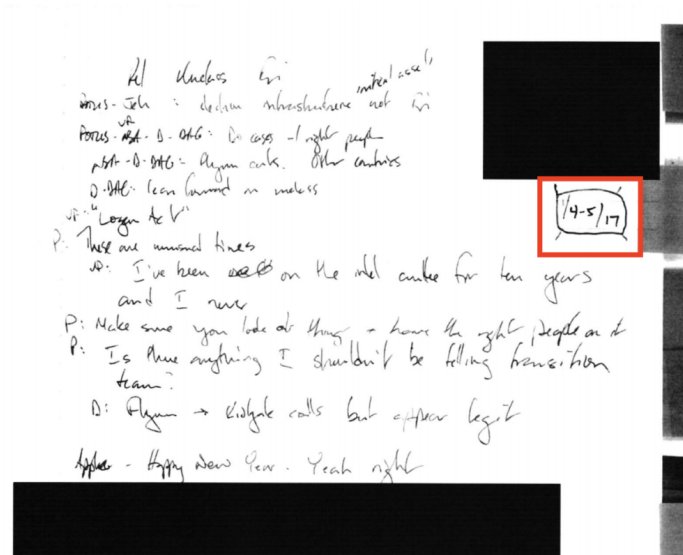
5/14/16	2 pages <sup>15</sup>	Counterterrorism discussions, including on "Acela North Bound"	SECRET**
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But the selection that fries my ass about this exercise – the selection that makes me confident this shit is intended to blow up later in the year – is this one.

1/5/17	2 pages <sup>17</sup>	Sensitive Topic	TOP SECRET//HCS-O//ORCON/NOFORN
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I have no doubt in my mind that these two pages of Biden's diary are his version of these notes, Peter Strzok's memorialization of Jim Comey's description of what happened in the January 5, 2017 White House meeting where Comey, Barack Obama, Joe Biden, Susan Rice, and Sally Yates discussed what the fuck they were going to do about the fact that Trump's incoming National Security Advisor had been picked up on FISA intercepts undermining Obama's policy on Russia.

The red outline, as most will remember, is where someone who participated in Jeffrey Jensen's review *added* an inaccurate note to package this up for a campaign attack on Biden.



The reason this fries my ass is that this meeting is something that Donald Trump and his allies have spent years politicizing and – as proven by that added misleading date – lying about.

The other reason this fries my ass is that Trump has *declassified details* of this, over, and over, and over. Hell, he even declassified the intercepts that might explain the HCS-0 classification. It's not entirely clear who did the declassification review of this (Hur had State stand in for the National Security Council to avoid conflict, but not in this case).

But particularly given the politicized background of this investigation, Hur should have left this well enough alone. It should not be the case that by licensing himself to snoop in Biden's diaries, Hur can dig out the things Donald Trump would most like to read.

Robert Hur licensed himself to rifle through Joe Biden's most personal thoughts by calling Biden's stacks of paper "notebooks" rather than "diaries." He then provided specific details about not just where to find the painful memories of his family struggles. But also one event that Trump has spent years trying to misrepresent.