

*ABC News Special Report*

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1:22:21 p.m.

57 seconds

DAVID MUIR: An extraordinary turn of events here, Attorney General Merrick Garland just moments ago saying it is in the public's interest to appoint a special counsel now to look into classified documents discovered in at least two locations involving President Biden. These documents, of course, taken from the administration after he served as Vice President with then-President Obama. At first, U.S. Attorney John Lausch, who was appointed during the Trump years, had been handling this investigation. The attorney general saying that Lausch informed him that he would be leaving the department for the private sector in 2023, said he would not be able to handle this investigation long-term. Merrick Garland saying, moments ago, the extraordinary circumstances of this case, obviously saying, in so many words, because this involves a current and sitting President, the extraordinary circumstances of the case, and their dedication to independence and accountability that a special counsel is warranted in this case.

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2 minutes and 24 seconds

PIERRE THOMAS: And David, I have to tell you, the attorney general used the word "extraordinary," in part because it is extraordinary. You have a sitting President, two years into his term, and now he will be the subject of a full-scale criminal investigation. The bottom line here, David, is that these documents, which are classified, are supposed to be housed in very specific locations. You heard the attorney general say that this office — the Penn Biden Center office was not a place that was prescribed to be allowed to keep these kinds of documents. And when that occurs, the Justice Department takes it quite seriously, and now, I'm told, as well, that the key for this decision, in part, was built on the fact that these new documents discovered in December, discovered in December, were at his garage. It makes it more difficult to explain away the notion that the President himself might not have been personally involved in getting those documents to his private property. That will have to be determined, but the FBI has begun an investigation to look and talk to the people involved in moving those documents, David. Extraordinary situation.

MUIR: And Pierre, one quick follow-up for you. One of the main differences and you heard the attorney general point this out there that, at least initially when this all began to unfold, that the call went in the other direction, that the National Archives had been informed by lawyers connected to Biden about these documents. It wasn't the other way around, that they were searching, reached out to Biden and that he refused. It was the other way around in this case.

THOMAS: Right. It's important that the Biden officials, when they found these documents initially, did reach out to the National Archives and the National Archives, in turn, reached out to the Justice Department. So, that very much works in the president's favor in terms of them trying

to be transparent. But again, David, the bottom line is the documents were out of place for nearly six years. And the Justice Department now is tasked with finding out why were they out of place, who was responsible for putting them there, and what were the circumstances? Another key, David, they will look very closely at the documents, I'm told, to look at the content and to see if there's any financial gain the Vice President, now President, would have gotten out of having these materials. That will be key as well.

MUIR: Yeah. Make no mistake, Pierre, President Biden faces serious questions about these classified documents himself. He did address the issue yesterday and again this morning.

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1:27:42 p.m.

7 minutes and 45 seconds

MARY BRUCE: Lots of questions now, of course, about the security around these documents and, of course, that central question as to how on Earth these documents got there, who took them from the White House to this location? And of course, the President has been extremely careful in the way that he has commented on this, both instances when he has commented publicly, he has read very carefully from a pre-prepared statement, and he has gone out of his way to stress that they are cooperating fully with any review. I suspect that will be the case when they do comment eventually on a cooperation with the special counsel, and the President has said earlier this week that he was surprised to learn of the documents that were found in his private office at the Penn Biden Center. He said he didn't know what was in the documents themselves, and now, of course, David, we have a lot of the same questions that the special counsel will be looking into, primarily, who brought these documents out of the White House? What information is contained in them? Did Biden have any knowledge whatsoever of this? Is there any information in these documents that may, in some way, be politically damaging to Joe Biden?

MUIR: And for many of these questions, we're simply not going to get the answers because now, of course, there is a special counsel investigation.

BRUCE: Exactly. And you know, when you take a step back, it really is remarkable that you now have the current President and his predecessor, someone who has announced they are running for re-election, Donald Trump, and someone who is expected to likely run for re-election, Joe Biden, now both involved in dealing with the special counsel investigations related to the handling of classified documents. Of course, this White House has been very insistent on pointing out the key differences between these cases, and there are very big differences. Central among them, the fact that this White House and the Biden team were very quick to alert the National Archives when they discovered these documents, that they are fully cooperating with this review, versus the case with Donald Trump where he spent months resisting turning over hundreds of classified documents, even resisting a subpoena, ultimately leading to that FBI investigation and the FBI raid on his home in Mar-a-Lago, David.

MUIR: And to underscore that point, Mary, the Biden administration, the President himself

making the point here that these documents had been voluntarily handed over. They claim that is the major difference here between the classified documents and the situation with the current President versus the previous President, but it is, I'm sure, head-spinning for many at home, the fact that we're dealing now with two special counsel investigations, a sitting President and a former President who could potentially be running against each other in the next election. Mary Bruce, live at the White House. I want to bring in our chief legal analyst, Dan Abrams. Dan, take us through the significance of what it is we just heard from Merrick Garland, the special counsel investigation. What could the current President now face here in the months ahead?

DAN ABRAMS: So, the purpose of the special counsel is intended to take the political taint out of it. This person is supposed to be able to investigate on his own, without pressure, in effect, without oversight from the attorney general. But the reality is special counsel statute that's been used in all the special counsels that we've heard about as of late still report to the attorney general. So, in the end, the attorney general still gets to make the final call. But I can assure you that be it Jack Smith, first one on the Trump documents, or Robert Hur, the new one on the Biden documents, if they make a recommendation to the attorney general to move forward with charges or to not move forward with charges, it would be stunning if the attorney general somehow rejected that recommendation. So, yes, while they still report to the attorney general, technically, as a practical matter, I would expect, and they're certainly intended to be able to evaluate this independently. But now there's going to be a big question, right, which is how could one investigation impact the other? In theory, they should have no impact on one another. They should be done completely independently, and each special counsel should be able to come up with his own conclusion. But what were to happen if Jack Smith were to determine that one of the crimes that Donald Trump should be charged with, not at the obstruction of justice, but the possession of the weapons — sorry, the possession of the documents, and the Biden special prosecutor were to say, Biden should not get charged for possession of the classified documents, that would create, I think, a tough situation for the attorney general.

MUIR: Yeah, no question about that, although that's a few steps certainly from where we are right now. they know it's the year 2023 in a very polarized country. All of this will get politicized as we move forward, but Dan, big picture here. Can you remember in recent history an attorney general facing a situation — an extraordinary situation like this where you're now dealing with investigations of a sitting President, the previous President, both cases involving classified documents and special counsels on both investigations?

ABRAMS: No, no, and no. I mean, you know, you could just have started with the first one, and the answer would have been no. I mean, this is a really tough situation for the attorney general, which is why, again, I think he's going to put so much power, so much autonomy, he's going to grant so much autonomy to each one of these special counsels, because it's so politically sensitive that he wants to be able to say, I didn't make this call. In effect, you could even hear, by the way, today, when he was talking about the previous U.S. Attorney who had been investigating the Biden documents up this point, John Lausch, he was basically saying, he weighed in on this, and he believed there should be a special counsel. So, already, we're seeing that Attorney General Garland is trying to say, this isn't all on me. I'm leaving this to serious pros who are digging in on the evidence, and they are helping me make these decisions.

MUIR: Our chief legal analyst, Dan Abrams, carefully taking us through this here today. Dan, thank you. One last question before we go. I want to bring back in our chief Justice correspondent, Pierre Thomas, because big picture here, Pierre, people at home are going to be saying, classified information when you look at the current President, the previous President, and classified documents discovered in offices, private offices, and at their homes? There are some serious questions, big picture here, about the handling of classified material in this country.

THOMAS: Absolutely, David. This is supposed to be some of the nation's most sensitive secrets, the things that are supposed to be guarded with all due haste, quite frankly, I've been talking to sources for years, and they've all made the point that they do not play around, and they do not allow people to be sloppy in handling of classified information. The nation's security is at risk. And David, in a practical sense, this is what the current administration will now face. Aides for the President, people associated with him, now being called before a grand jury. That is likely to happen. And at some point, Mr. Hur may even make the decision that he needs to talk to the President himself.

MUIR: And Pierre, before we go here, the FBI has been sent now to President Biden's home to secure these documents?

THOMAS: That is the guidance that we have, and again, some of these documents have already been turned over to the Justice Department, but again, and typically in these cases, does not take the word of anyone. So, the President's attorneys could have said, we've turned over everything. Now, the question will be for Mr. Hur and the investigators, can we count on that? And should we issue subpoenas to make sure we have everything?