National Security Power and Constitutional Imbalance

Executive Powers, Congressional Oversight, and Democratic Trust

Research Paper

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Executive Summary

Post-Watergate reforms expanded intelligence oversight, yet disclosure disputes, negotiated access, and limited individual sanctions recur. This paper offers a descriptive synthesis: a vocabulary, *constrained negotiated oversight*, and a coding scheme for how executive information control interacts with congressional incentives and uneven enforcement. It makes no predictive claim.

Four historical episodes (Pike and Church, Iran-Contra, National Security Agency bulk collection, and the Central Intelligence Agency Interrogation Program) are coded on eight process indicators developed with those cases; their fit is not independent validation and no cutoff is applied. In each, observations count against executive absorption of disclosure duties, and in none does the bargaining description fit where partisan and self-correction accounts do not. A Watergate tapes contrast, scored on the Senate committee's own demand, shows the same early conduct and a failed committee suit; the tapes came through a prosecutor insulated by regulation, under a holding that reserved congressional demands.

The Epstein Files Transparency Act (EFTA) supplies a contemporary congruence assessment using a frozen August 30, 2026 corpus of 1.38 million documents measured in twelve released data sets, with separately dated litigation updates.[1] It is included for executive custody and a documented, unresolved intelligence question (Appendix D). The analysis identifies disclosure and accounting disputes, not an overall noncompliance percentage. Preliminary judicial compulsion in *Phang v. Blanche* shows an Administrative Procedure Act route in use; its jurisdictional basis is on appeal. Unified party control and the Oversight Committee's party-line 19–24 rejection of a substitute recommending a House-directed suit to enforce its Bondi subpoena leave partisan explanations open.

The contribution is a bounded descriptive account and conditional reform proposals. Explicit access rights, protected judicial review, collectible remedies, and a civil action for congressional subpoenas could strengthen enforcement, but their effectiveness depends on standing, sovereign-immunity waivers, constitutional limits, and protection of victims.

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[1] Alan ElSheshai, *EFTA Document-Count Reconciliation*, June 28, 2026, content version 2796439c2001, "Counts," "Pairwise deltas," and "Verdict", unpublished supplement held with the paper's review record, available on request. Analysis of the twelve DOJ EFTA dataset manifests, the full-corpus classification table, and the public epstein-data.com concordance: deduplicating manifest PDF rows by Bates range and file hash and comparing the concordance-only identifiers produced 1,378,393 unique released documents. The count is read with this paper's August 30, 2026 measurement cutoff. Dated instruction and interval: DOJ/FBI, Epstein Project Processing Guidance, EFTA00172446, March 21, 2025, instruction "Do not add any exemptions; just redaction boxes"; the eight-month interval runs to EFTA's November 19, 2025 enactment.

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Introduction

In the half-century since the Pike and Church committees of 1975–76, the United States has built an elaborate architecture of intelligence oversight: the Hughes-Ryan Amendment, the Foreign Intelligence Surveillance Act (FISA), permanent intelligence committees in both chambers, the Inspector General Act, the Privacy and Civil Liberties Oversight Board, the USA FREEDOM Act, and the anti-torture provisions of the National Defense Authorization Act (NDAA) for fiscal

year 2016.[2] Yet selective disclosure, disputes over what compliance requires, uneven congressional escalation, and external rupture recur across decades, alongside reforms whose reach is contested.

Institutional scholarship already identifies electoral incentives, fragmented jurisdiction, secrecy, and executive control of access, alongside staffing and expertise.[3] These explanations are not reducible to incapacity. By 2014 the Senate intelligence committee had produced a study of more than 6,700 pages, but only its executive summary and its findings and conclusions became public; the Central Intelligence Agency (CIA) had searched committee staff computers and referred staff conduct to the Department of Justice (DOJ).[4] The episode illustrates a distinction this paper develops: substantial investigative capacity can coexist with restricted publication and weak individual accountability. It also produced policy and institutional consequences that a blanket failure verdict would conceal.

This paper offers a descriptive synthesis of those structural explanations, organized as a bargaining vocabulary. Information asymmetry, incentive misalignment, weak enforcement capacity, and limited expertise can shift oversight from compelled into negotiated compliance. Selective disclosure becomes an executive offer, while non-escalation can function as acceptance. This does not establish shared motives to stage an empty check: the same behavior can reflect disagreement, privacy constraints, anticipated legal defeat, or a strategic decision to secure partial gains. *Constrained negotiated oversight* names the recurring configuration to be described, not an assumed absence of substantive oversight.

The paper codes four historical episodes: Pike and Church (1975–76), Iran-Contra (1986–91), National Security Agency (NSA) bulk collection (2001–15), and the CIA Interrogation Program (2002–14). It adds the Watergate tapes dispute (1973–74) as a contrast and a contemporary

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[2] Hughes-Ryan Amendment, Foreign Assistance Act of 1974, Pub. L. No. 93-559, § 32, 88 Stat. 1795, 1804 (adding § 662 to the Foreign Assistance Act of 1961), codified at 22 U.S.C. § 2422 (repealed 1991, reenacted at 50 U.S.C. §§ 3091–3093). Foreign Intelligence Surveillance Act of 1978 (FISA), Pub. L. No. 95-511. Intelligence Oversight Act of 1980, Pub. L. No. 96-450. Inspector General Act of 1978, Pub. L. No. 95-452. S. Res. 400, 94th Cong. (1976) (establishing the Senate Select Committee on Intelligence (SSCI)); H. Res. 658, 95th Cong. (1977) (establishing the House Permanent Select Committee on Intelligence (HPSCI)). Privacy and Civil Liberties Oversight Board (PCLOB), 42 U.S.C. § 2000ee (Pub. L. No. 108-458, § 1061 (2004), as amended by Pub. L. No. 110-53, § 801(a) (2007)). USA FREEDOM Act of 2015, Pub. L. No. 114-23. National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92, § 1045 (codifying the McCain-Feinstein anti-torture provisions).

[3] Amy B. Zegart, "The Domestic Politics of Irrational Intelligence Oversight," *Political Science Quarterly* 126, no. 1 (2011): 1–25; Zegart, *Spies, Lies, and Algorithms: The History and Future of American Intelligence* (Princeton: Princeton University Press, 2022), ch. 8, pp. 198 (oversight driven by "information, incentives, and institutions," for reasons that have nothing to do with "which party was in power"), 212–15 (electoral incentives, "regardless of party or era"), and 216 (expertise). Zegart's *Eyes on Spies: Congress and the United States Intelligence Community* (Stanford: Hoover Institution Press, 2011) is held only as a summary reconstructed from secondary sources and is not relied on.

[4] Senate Select Committee on Intelligence (SSCI), *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, S. Rep. No. 113-288 (2014), Foreword, p. 1 (the April 3, 2014 vote to send the Findings and Conclusions and the Executive Summary to the President for declassification; the full study "totals more than 6,700 pages, remains classified"). Sen. Dianne Feinstein, "CIA Detention and Interrogation Report," 160 *Cong. Rec.* S1487–S1491 (daily ed. March 11, 2014) (the CIA's search of the committee's computer network, and the acting general counsel's "crimes report with the Department of Justice concerning the committee staff's actions").

congruence assessment of the Epstein Files Transparency Act (EFTA).[5] The evidence concerns U.S. constitutional institutions; extension to parliamentary or other national systems would require a different account of executive-legislative relations.[6]

The contribution is twofold. First, eight process indicators organize observable bargaining conduct, bracketed by the source of disclosure and individual-accountability outcomes.[7] Second, EFTA permits the paper to distinguish released-record measurements from legal compliance, and congressional action from judicial enforcement. The cases suggest that expanding information duties alone may leave important enforcement dependencies intact. They do not show that resources never help, that every negotiated settlement fails, or that structural remedies are sufficient. The recommendations therefore specify conditional institutional changes whose effects remain to be tested.

Literature Review

The underlying problem is old: inter-branch checking depends on information, and one branch holds it.[8] The Federalist authors recognized the executive's advantage in secrecy and intelligence (Federalist Nos. 64 and 70) but did not theorize how asymmetric control of the *information* on which checking depends would affect the checks themselves. Covert-action authority under the National Security Act of 1947's "other functions and duties" clause (§ 102(d)(5)), later constrained by Hughes-Ryan (1974), sits there. Senator Frank Church put the point this way in transmitting his committee's report:

> The root cause of the excesses which our record amply demonstrates has been failure to apply the wisdom of the constitutional system of checks and balances to intelligence activities . . . . The founding fathers foresaw excess as the inevitable consequence of granting any part of government unchecked power. This has been demonstrated in the intelligence field where, too often, constitutional principles were subordinated to a pragmatic course of permitting desired ends to dictate and justify improper means. Our

[5] Epstein Files Transparency Act, Pub. L. No. 119-38, 139 Stat. 656 (2025).

[6] Two works on secrecy that bear on this scope choice are not engaged in this edition: Rahul Sagar, *Secrets and Leaks: The Dilemma of State Secrecy* (Princeton: Princeton University Press, 2013), and Michael P. Colaresi, *Democracy Declassified: The Secrecy Dilemma in National Security* (New York: Oxford University Press, 2014). The project does not hold them, and nothing is attributed to a work that has not been read; both are to be read before submission, Colaresi's comparative argument in particular because it bears on the limit stated in the text.

[7] Table 4 specifies eight process indicators: demand posture, selective disclosure, justification proliferation, delayed compliance, executive self-definition, majority declines an available remedy, remedy attempted and defeated outside Congress, and informal negotiation. Exogenous rupture and limited individual accountability are brackets, recorded but not counted among the process indicators, so Tables 4 and 7 each have ten rows.

[8] For the classical-republican inheritance, see Polybius, *Histories* Book VI; John Adams, *A Defence of the Constitutions of Government of the United States of America* (1787–88). For the Federalist articulation, James Madison, *Federalist No. 51*; John Jay, *Federalist No. 64*; and Alexander Hamilton, *Federalist No. 70*, in *The Federalist Papers* (1788).

> recommendations are designed to place intelligence activities within the constitutional scheme for controlling government power.[9]

The closest literature supplies structural explanations the present framework inherits. Institutional histories trace Congress's evolving oversight arrangements; Johnson describes a repeated pattern of shock, intense oversight, remedial legislation, and a return to weak patrolling.[10,11,12] Zegart's account centers on rational political incentives that generate collectively weak oversight: committee arrangements and electoral rewards make intelligence oversight unattractive even where members possess formal powers.[see n. 3] She attributes weak oversight to information, incentives, and institutions regardless of party; the increment claimed here is the sequence in which those factors operate within one episode and the separate recording of access, policy, institutional, and sanction outcomes. Kibbe likewise asks how oversight arrangements themselves can become part of the problem, and Clark shows how restricted briefings can inhibit consultation and make silence appear to endorse executive choices.[13] On the legal side, Koh traced the Iran-Contra affair to executive initiative, congressional acquiescence, and judicial tolerance, and a separate literature treats negotiated accommodation over information as the ordinary and usually adequate mode.[14] *Constrained* adds a narrower condition: the record is

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[9] Frank Church, Letter of Transmittal, in Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, *Final Report*, Book II: *Intelligence Activities and the Rights of Americans*, S. Rep. No. 94-755 (April 26, 1976), p. iii. The sentence omitted at the ellipsis reads: "Our experience as a nation has taught us that we must place our trust in laws, and not solely in men."

[10] The institutional history relied on here is L. Britt Snider, *The Agency and the Hill: CIA's Relationship with Congress, 1946–2004* (Washington: Center for the Study of Intelligence, 2008). General references, not held in full text for this edition: Frank J. Smist, Jr., *Congress Oversees the United States Intelligence Community, 1947–1994*, 2nd ed. (Knoxville: University of Tennessee Press, 1994); David M. Barrett, *The CIA and Congress: The Untold Story from Truman to Kennedy* (Lawrence: University Press of Kansas, 2005).

[11] Loch K. Johnson, "Accountability and America's Secret Foreign Policy: Keeping a Legislative Eye on the Central Intelligence Agency," *Foreign Policy Analysis* 1, no. 1 (2005): 99–120, at 111: "The repeated pattern of intelligence accountability since 1975 has been one of shock, intense oversight response, remedial legislation, then back to weak patrolling." The same page treats the scandals as fire alarms: "Over these 30 years, five major fire alarms have led to approximately six years of high-energy retrospective investigations by overseers qua fireman." Johnson's books *A Season of Inquiry Revisited* (2015) and *Spy Watching* (2018) are among the six books named in the limited-source paragraph; nothing is attributed to their text.

[12] Kathryn Olmsted, "Reclaiming Executive Power: The Ford Administration's Response to the Intelligence Investigations," *Presidential Studies Quarterly* 26, no. 3 (1996): 725–737 (the executive's response to the 1975–76 Church and Pike investigations); James T. Currie, "Iran-Contra and Congressional Oversight of the CIA," *International Journal of Intelligence and CounterIntelligence* 11, no. 2 (1998): 185–210. Olmsted's book *Challenging the Secret Government: The Post-Watergate Investigations of the CIA and FBI* (Chapel Hill: University of North Carolina Press, 1996) covers the same investigations and is further reading.

[13] Jennifer Kibbe, "Congressional Oversight of Intelligence: Is the Solution Part of the Problem?" *Intelligence and National Security* 25, no. 1 (2010): 24–49; Kathleen Clark, "Congressional Access to Intelligence Information: The Appearance of a Check on Executive Power," Legal Studies Research Paper No. 12-07-02 (July 2012), https://ssrn.com/abstract=2112081, p. 15 (the leaders' "silence came to be seen as endorsement"). See also Mary B. DeRosa, "Congressional Oversight of US Intelligence Activities," in *National Security Intelligence and Ethics*, ed. Seumas Miller, Mitt Regan, and Patrick F. Walsh (Abingdon: Routledge, 2022), 216–231.

[14] Harold Hongju Koh, "Why the President (Almost) Always Wins in Foreign Affairs: Lessons of the Iran-Contra Affair," *Yale Law Journal* 97 (1988): 1255–1342, at 1258 (the answer lay in "a combination of three institutional factors: executive initiative, congressional acquiescence, and judicial tolerance") and Part II, 1291–1317. On

access-restricted within Congress, limiting whom its recipients may consult and what they may verify or publish; custody alone marks every information dispute, the Watergate contrast included.

Four adjacent frameworks bear on the argument. McCubbins and Schwartz's "police patrols versus fire alarms" shows oversight rationally substitutes reactive monitoring for active patrol; fire alarms presuppose rules that let outsiders see agency conduct and complain about it, which classified domains largely lack, a limit Zegart identified.[15] Michael Glennon argues that a permanent "Trumanite" security network operates with effective independence from the elected "Madisonian" institutions that supply legitimacy; the bargaining vocabulary describes how the two interact.[16] Kathleen Clark's account of limited-notification practice is the most direct existing statement of the bargaining mechanism.[17] Heidi Kitrosser's analysis of information "funneling" (non-public disclosure to small congressional groups, marked by a "near absence of public accountability") supplies the distinction between formal and substantive accountability used here.[18]

A substantive rival holds that law, press, courts, and inspectors general can constrain national-security power even without complete transparency or prosecutions. The summaries the project holds associate this view with Goldsmith's *Power and Constraint*; no argument or page is attributed to the book itself.[19] Withdrawal of legal opinions, altered surveillance authority, and

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negotiated accommodation over information: *United States v. AT&T*, 567 F.2d 121 (D.C. Cir. 1977); Peter M. Shane, "Legal Disagreement and Negotiation in a Government of Laws: The Case of Executive Privilege Claims Against Congress," *Minnesota Law Review* 71 (1987): 461–542, at 514–15 n.189 ("a very large number of information demands are being handled amicably between the branches," although "The available data, however, are insufficient" to show the disputed cases comparable) and 515 (the branches "found room for accommodation without documented cost to the public interest"); Neal Devins, "Congressional-Executive Information Access Disputes: A Modest Proposal—Do Nothing," *Administrative Law Review* 48 (1996): 109–137, at 110 ("Congressional committees are routinely able to get what they desire from agencies through direct requests and negotiation").

[15] Mathew D. McCubbins and Thomas Schwartz, "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms," *American Journal of Political Science* 28, no. 1 (1984): 165–179, at 166 (fire-alarm oversight as "a system of rules, procedures, and informal practices that enable individual citizens and organized interest groups to examine administrative decisions"). Zegart, "Domestic Politics," 7–8 and n. 30, observes that the authors never consider "a policy area like intelligence that is steeped in secrecy and has few interest groups on the scene."

[16] Michael J. Glennon, "National Security and Double Government," *Harvard National Security Journal* 5 (2014): 1–114, at 16–18 (the "Madisonian" institutions and the "Trumanite" network). The book of the same title (Oxford: Oxford University Press, 2014) develops the argument and is not relied on here.

[17] Kathleen Clark, "Congress's Right to Counsel in Intelligence Oversight," *University of Illinois Law Review* 2011, no. 3: 915–60, at 935 (Part I.D, "Limited Notification as Inoculation"); Clark, "Congressional Access to Intelligence Information."

[18] Heidi Kitrosser, "Congressional Oversight of National Security Activities: Improving Information Funnels," *Cardozo Law Review* 29, no. 3 (2008): 1049, at 1050 (the "information funnel" approach, "funneling information only to discrete groups of people") and 1072 ("the near absence of public accountability for behavior in the information funneling process"). Kitrosser, *Reclaiming Accountability: Transparency, Executive Power, and the U.S. Constitution* (Chicago: University of Chicago Press, 2015), is further reading.

[19] Jack Goldsmith, *Power and Constraint: The Accountable Presidency After 9/11* (New York: W. W. Norton, 2012). The project holds a summary of this book reconstructed from a review, the publisher's description, and academic reviews, and an Internet Archive lending-library copy protected by Adobe digital-rights management,

anti-torture legislation can count as correction on that view, and this paper cannot refute it merely by finding residual executive discretion after reform. The discriminating question is whether identified constraints alter access or conduct and endure.

Limited-source engagement for this edition. Six books that bear on the argument were not read in full: Goldsmith's *Power and Constraint*, Johnson's *A Season of Inquiry Revisited* and *Spy Watching*, Banks and Raven-Hansen's *National Security Law and the Power of the Purse*, Schwarz and Huq's *Unchecked and Unbalanced*, and Rudenstine's *The Age of Deference*. The project holds them only as summaries drawn from publisher descriptions and reviews, and for Goldsmith an Internet Archive lending-library copy protected by Adobe digital-rights management, which it could not read; no argument or page is attributed to their text.[20] Full-text engagement is deferred to a later edition.

These literatures motivate the synthesis. Incentives and information restrictions may explain non-escalation; legal remedies may offer partial correction; bargains may establish durable institutions. Congress can obtain real gains through negotiation, threatened sanctions, appropriations, or litigation, and such gains count against any absolute incapacity claim.[21]

Conceptual Framework

Constrained negotiated oversight is a descriptive label for a recurring configuration in which executive information control makes formal oversight powers operate through bargaining. This section supplies a vocabulary and a coding scheme, not a theory with predictions.[22] Recurrence

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which the project's tools cannot read and which it will not try to unlock. The rival stated in the text is this paper's formulation, and no argument or page is attributed to the book.

[20] What the project holds for each of the six books: for Goldsmith, *Power and Constraint* (New York: W. W. Norton, 2012), a summary reconstructed from the publisher's description and reviews and an Internet Archive lending-library copy protected by Adobe digital-rights management that could not be read; for Johnson, *A Season of Inquiry Revisited* (Lawrence: University Press of Kansas, 2015) and *Spy Watching* (Oxford: Oxford University Press, 2018), summaries reconstructed from publishers' descriptions and reviews; for William C. Banks and Peter Raven-Hansen, *National Security Law and the Power of the Purse* (New York: Oxford University Press, 1994), the publisher's abstract, https://academic.oup.com/book/50413; for Frederick A. O. Schwarz Jr. and Aziz Z. Huq, *Unchecked and Unbalanced: Presidential Power in a Time of Terror* (New York: The New Press, 2007), a web-researched summary and the publisher's page, https://thenewpress.org/books/unchecked-and-unbalanced/; and for David Rudenstine, *The Age of Deference: The Supreme Court, National Security, and the Constitutional Order* (New York: Oxford University Press, 2016), a research summary linked to the publisher's page. None supports page-specific quotation or a comprehensive account of the book.

[21] Alfred Cumming, *Congress as a Consumer of Intelligence Information*, Congressional Research Service Report R40136, January 28, 2010, summary (the President "has the authority to restrict the flow of intelligence information to Congress") and pp. 1–4 (including the statutory "Gang of Eight" notifications, p. 4), https://www.everycrsreport.com/files/20100128_R40136_8fa60d28782e3e5beb9c290da190c2578ee2c81f.pdf; Clark, "Congressional Access to Intelligence Information," p. 15 (restricted briefings and silence "seen as endorsement").

[22] The "bargaining" label proposes a self-reinforcing institutional pattern, not a formal non-cooperative game of the kind in Ariel Rubinstein, "Perfect Equilibrium in a Bargaining Model," *Econometrica* 50, no. 1 (1982): 97–109, or Vincent P. Crawford and Joel Sobel, "Strategic Information Transmission," *Econometrica* 50, no. 6 (1982): 1431–51. It describes an institutional pattern of the kind Knight and Pierson analyze (works cited at the end of this note):

in selected cases does not establish an invariant equilibrium or identify the causal contribution of any condition.

Congressional *constraint* operates on four dimensions. Congress can **compel** testimony and records by subpoena, but the records sit in executive custody, so production depends on the executive's own search and review. It is constrained in what it can **disclose**, since the most sensitive classified material reaches only the members briefed, under restrictions on consulting staff or counsel that can make silence look like endorsement.[23] It is constrained in **enforcement**. Criminal contempt and the false-statement and perjury statutes are ordinarily prosecuted by DOJ; the independent-counsel statute, in force from 1978 to 1992 and from 1994 to 1999, was the exception and produced the Iran-Contra pleas for withholding information from Congress. Neither House appears to have used its inherent contempt power since the 1930s. The Senate's civil-enforcement statute excludes any subpoena to an executive officer acting in an official capacity unless the refusal rests on a personal privilege; the House has no such statute, and whether it has a cause of action is unsettled in the D.C. Circuit (Appendix C, Table C.3).[24] And it

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the structural conditions tend to reproduce the configuration, a proposition these exploratory cases illustrate but do not test, and not a claim that each interaction reaches a game-theoretic solution. The case record also does not supply the separate payoffs (executive reputational cost, congressional electoral cost, public-trust cost) a formal model would need. A formal model would yield predictions about how the pattern shifts as each payoff changes; that is left to future work. See Jack Knight, *Institutions and Social Conflict* (Cambridge: Cambridge University Press, 1992); Paul Pierson, *Politics in Time* (Princeton: Princeton University Press, 2004).

[23] Clark, "Congress's Right to Counsel," pp. 917 (Rockefeller unable to consult staff or counsel), 935 ("Limited Notification as Inoculation"), and 959–60 (conclusion), https://www.illinoislawreview.org/wp-content/ilr-content/articles/2011/3/Clark.pdf; Cumming, *Congress as a Consumer*, summary and pp. 1–2, especially p. 2 n.5 (members' access to intelligence is "by virtue of their elected positions"; members are not subject to background checks, "nor are they issued security clearances").

[24] 2 U.S.C. §§ 192, 194 (criminal contempt, certified to "the appropriate United States attorney, whose duty it shall be to bring the matter before the grand jury"); 18 U.S.C. §§ 1001, 1621; 28 U.S.C. §§ 516, 547(1). Office of Legal Counsel, "Prosecution for Contempt of Congress of an Executive Branch Official Who Has Asserted a Claim of Executive Privilege," 8 Op. O.L.C. 101 (1984), https://www.justice.gov/file/150521/dl, 102 (a United States Attorney "is not required to refer a contempt citation in these circumstances to a grand jury or otherwise to prosecute an Executive Branch official who is carrying out the President's instruction in a factual context such as that presented by the December 16, 1982, contempt citation"; "our conclusions are limited to the unique circumstances that gave rise to these questions in late 1982 and early 1983"), 140 n.42 (the same conclusion "would apply to any attempt by Congress to utilize its inherent 'civil' contempt powers to arrest, bring to trial, and punish an executive official who asserted a Presidential claim of executive privilege"). Office of Legal Counsel, "Whether Congress May Use Inherent Contempt to Punish Executive Branch Officials Who Withhold Subpoenaed Materials Based on a Presidential Assertion of Executive Privilege," December 20, 2024, https://www.justice.gov/olc/media/1382626/dl, slip op. at 1 (the resolution for daily fines on the Attorney General "was brought to the House floor but failed to pass," citing 170 Cong. Rec. H4609 (daily ed. July 11, 2024)), 1–2 ("Congress cannot use its inherent contempt power to arrest, imprison, or otherwise punish an Executive Branch official for complying with the President's assertion of executive privilege"), 3 (under "longstanding Executive Branch precedent, the criminal contempt of Congress statute does not apply, and could not constitutionally be applied, to Executive Branch officials who do not disclose materials to Congress based on a presidential assertion of privilege," citing 8 Op. O.L.C. at 129; the recordings subpoenaed from the Attorney General were "the audio recordings of the Special Counsel's interviews"), and 4 (the Department told the Speaker in June 2024 that it "would not bring the matter before a grand jury or take any other action to prosecute the Attorney General"; the Department's letter itself was not opened for this edition). Todd Garvey, *Congressional Subpoenas: Enforcing Executive Branch Compliance*, Congressional Research Service Report R45653, March 27, 2019, p. 9 (on the 2012 citation of Attorney General Holder, "The DOJ shortly thereafter informed the Speaker that it would not take any action on the criminal contempt citation"). *United States v. Navarro*, No. 24-3006 (D.C. Cir. July 21, 2026), https://media.cadc.uscourts.gov/opinions/docs/2026/07/24-3006-

is constrained in **knowledge**, since the executive controls classification, redaction, and release, so Congress may not know what records exist to demand.[25] Enforcement is the firmest of the four, though most routes need a chamber vote and the executive or a court.

Our framework's primary scope is oversight structures with four recurring scope conditions.

Table 1. Conditions Defining the Framework's Primary Scope

2184223.pdf, slip op. at 2 ("the district court concluded that no such invocation of privilege had occurred"), 14–15 (after a change of administration "the government is deemed to have withdrawn from any further participation in this appeal"), and 37 ("we affirm the district court's judgment"), reh'g denied (D.C. Cir. Aug. 28, 2026), petition for cert. filed, No. 26-474 (U.S. Oct. 6, 2026). Independent-counsel statute: enacted in the Ethics in Government Act of 1978 and lapsed in December 1992 (PBS *Frontline*, "A Brief History of the Independent Counsel Law," May 1998); reauthorized "for an additional 5 years" by the Independent Counsel Reauthorization Act of 1994, Pub. L. No. 103-270, 108 Stat. 732 (approved June 30, 1994), it expired June 30, 1999. Inherent contempt: *Anderson v. Dunn*, 19 U.S. (6 Wheat.) 204 (1821); *McGrain v. Daugherty*, 273 U.S. 135 (1927); *Jurney v. MacCracken*, 294 U.S. 125 (1935); Garvey, CRS Report R45653, p. 16 (it "does not appear that either house has exercised its inherent contempt power to enforce subpoenas … since the 1930s"). Civil enforcement: 28 U.S.C. § 1365(a) (the section "shall not apply" to a subpoena to an executive officer or employee acting in an official capacity, unless the refusal rests on "a personal privilege or objection"); *Committee on the Judiciary v. Miers*, 558 F. Supp. 2d 53 (D.D.C. 2008); *Committee on Oversight and Government Reform v. Holder*, 979 F. Supp. 2d 1 (D.D.C. 2013) ("The motion to dismiss will be denied"); *Committee on Oversight and Government Reform v. Lynch*, 156 F. Supp. 3d 101, 115 (D.D.C. 2016) (the qualified privilege "invoked to shield material that the Department has already disclosed" outweighed, and "the records must be produced"); D.C. Cir. No. 16-5078, joint report of April 2, 2019 ("abeyance status is settlement proceedings ongoing") and clerk's order of May 14, 2019 ("granting motion to dismiss case voluntarily"); *Committee on Oversight and Government Reform v. Sessions*, No. 12-cv-1332 (D.D.C. October 22, 2018) (memorandum opinion and order), 2 (the parties' settlement was effective only on vacatur of the 2014 and 2016 orders, and "the Court will deny the parties' motion") and 8 (quoting the Department's appellate brief: "the Department has complied in full"); *Committee on the Judiciary v. Garland*, No. 1:24-cv-01911 (D.D.C.), complaint of July 1, 2024, minute entry of October 28, 2024 (cross-motions argued and "taken under advisement"), minute order of January 27, 2025 (case stayed), minute order of May 19, 2025 ("In light of the public release of the audio recording at issue in this case, the parties must show cause by May 21, 2025 as to why the case should not be dismissed as moot"), and stipulation of dismissal, ECF 31, May 21, 2025; 2 U.S.C. §§ 288b(b) (Senate Legal Counsel sues "only when directed to do so by the adoption of a resolution by the Senate") and 288d(a) (suit "under any statute conferring jurisdiction on any court of the United States (including section 1365 of title 28)"); *Committee on the Judiciary v. McGahn*, 968 F.3d 755 (D.C. Cir. 2020) (en banc) (standing); *Committee on the Judiciary v. McGahn*, 973 F.3d 121 (D.C. Cir. 2020) (no cause of action), judgment vacated on the grant of rehearing en banc (order of October 15, 2020). *Black v. House Committee on Oversight and Government Reform*, No. 1:26-cv-03084 (D.D.C. filed September 3, 2026), complaint ¶ 84 ("Congress has not authorized House committees to bring civil actions to enforce subpoenas against private citizens") and prayer for relief (a) (a declaration that the Committee "lacks any statutory, constitutional, equitable, or implied cause of action to enforce the Document Subpoena or Deposition Subpoena against Mr. Black in federal court"); the docket read October 31, 2026 shows no ruling (last filing September 9, 2026).

[25] Cumming, *Congress as a Consumer*, summary and pp. 1–2 (executive control over intelligence flow); Executive Order 13526 §§ 1.3 and 3.1–3.3 (executive classification and declassification authority), 3 C.F.R. 298 (2010 Comp.), https://www.govinfo.gov/content/pkg/CFR-2010-title3-vol1/pdf/CFR-2010-title3-vol1-eo13526.pdf.

Scope condition	Why it defines our framework's primary scope
Scope #1: Executive control over operational architecture **[defining]**	The executive controls the records, systems, and procedures through which oversight must operate.
Scope #2: High operational secrecy or technical complexity	The underlying activity is difficult for Congress or the public to observe directly.
Scope #3: Legally delegated rather than self-enforcing congressional authority	Congress's oversight power depends on rules and reporting obligations rather than direct structural control.
Scope #4: Structurally constrained access to independent domain-specific expertise	Congress cannot freely draw on the staff, counsel, or outside expertise needed to evaluate the domain independently.

Scope #1 bounds the cases; restricted access within Congress (Scope #4 and the disclosure constraint) separates constrained from ordinary accommodation. Whether Scope #1, or the preferences of congressional majorities, is the nearer constraint in a given episode is an empirical question that the coding records separately.

Scope is assigned from conditions preceding the disputed oversight outcome: custody of records, secrecy rules, governing access law, and the available expertise. A case stays in scope if Congress or a court subsequently breaks executive control; successful enforcement must not be excluded by redefining the outcome as absence of Scope #1. Table 2 records the initial conditions (✓ present, ◗ partly relaxed, ✗ materially relaxed).[26]

Table 2. Scope Conditions Across the Cases

Case	Scope #1 [defining]	Scope #2	Scope #3	Scope #4	Partisan *	Investigating chamber's majority relative to the President
Pike and Church (1975–76)	√	√	√	√	Divided	Opposition (both chambers)
Iran-Contra (1986–91)	√	√	√	√	Divided	Opposition (House throughout; Senate from January 1987)

[26] Domains with strong external accountability structures (organized professional communities; mandatory disclosure frameworks with structurally independent enforcement; domains in which the executive does not control operational architecture) fall outside our framework's primary scope. The paper does not test our framework against these domains; cross-domain extension is identified as a future-research direction.

Case	Scope #1 [defining]	Scope #2	Scope #3	Scope #4	Partisan *	Investigating chamber's majority relative to the President
NSA bulk collection (2001–15)	√	√	√	√ (2001–07: briefings by White House approval, beginning with the intelligence committees' chairs and ranking members; by 2009–11: four committees held the court orders, other members were limited to a classified summary, and most had no cleared staff)	Varied	By sub-period: opposition in the Senate committee in 2001–02 and 2007–08, same party in 2003–06 and 2009–14; the 2008 provider immunity passed an opposition Congress and the 2015 statute an opposition Congress

Case	Scope #1 [defining]	Scope #2	Scope #3	Scope #4	Partisan *	Investigating chamber's majority relative to the President
CIA Interrogation Program (2002–14)	√	√	√	◗ (to September 6, 2006: information restricted to the committee's chairman and vice chairman; afterward: full-committee access and staff review of more than six million pages)	Varied	By sub-period: opposition in the Senate committee in 2002 and 2007–08 (the review began in December 2007), same party in 2003–06 (access limited to the chairman and vice chairman) and 2009–14 (the study of a program begun under the other party)

Case	Scope #1 [defining]	Scope #2	Scope #3	Scope #4	Partisan *	Investigating chamber's majority relative to the President
EFTA (2025–)	√	◗ (most production unclassified)	◗ (Section 2(a) mandates publication and Section 2(c)(2) requires justifications to be submitted to Congress)	◗ (committees have substantive prior knowledge; Members may view the unredacted material only personally, by arrangement through Judiciary Committee leadership, under confidentiality undertakings)	Unified	Same party
Watergate tapes (1973–74), contrast	√ (tapes in presidential custody)	◗ (confidential, not classified)	◗ (committee subpoenas, plus grand-jury and trial subpoenas under ordinary criminal process)	✗ (no classification barrier to staff or counsel)	Divided	Opposition

* **Partisan configuration:** Divided = the opposition party controls at least one chamber of Congress; Unified = the president's party controls Congress; Varied = both occurred within the period. By case: Pike and Church (Democratic Congress, Ford); Iran-Contra (Democratic House and Republican Senate in 1986, Democratic Congress from January 1987, Reagan); NSA bulk collection and the CIA Interrogation Program (unified in 2003–06 and 2009–10, divided in 2001–02, 2007–08 and from January 2011); Watergate tapes (Democratic Congress, Nixon); EFTA (Republican House and Senate, Trump). The last column codes the chamber that did the investigating, the level at which the literature on divided government and investigations finds its effect.

EFTA partly relaxes Scope #2–#4 while preserving initial executive custody, so it is informative about transport beyond classified programs but is not a controlled comparison.

Hypothesised Preconditions

Table 1 defines scope; Table 3 lists conditions hypothesised to sustain bargaining within it. Information asymmetry tracks Scope #1 and #2, weak enforcement Scope #3, and limited expertise Scope #4; incentive misalignment has no scope counterpart. The four historical cases show all four; EFTA relaxes three (Table 2).

Table 3. Hypothesised Structural Preconditions

Structural condition	Role in our framework
Information asymmetry	Congress cannot verify what it is not shown; the post-1947 classification architecture, the classified-opinion framework of the Foreign Intelligence Surveillance Court (FISC), and EFTA's agency-controlled processing practices can each sustain asymmetry.
Incentive misalignment	Oversight of secret domains yields limited political reward, while escalation yields visible political risk. The McCubbins-Schwartz fire-alarm model relies on citizens and organized groups to sound alarms; where secrecy denies outsiders information and few organized groups exist, alarms come late, an extension Zegart makes.[27]
Weak enforcement capacity	Criminal prosecution ordinarily depends on executive prosecutors; civil litigation, appropriations, chamber discipline, and negotiated concessions have different dependencies. Walsh's Iran-Contra Final Report names the gap: *"congressional oversight alone cannot correct the deficiencies that result when an attorney general abandons the law-enforcement responsibilities of that office and undertakes, instead, to protect the President."*[28]
Limited expertise	Intelligence experience is rare in Congress (in the 116th Congress, eighteen of 535 members had ever worked in an intelligence agency);[29] the limited-notification architecture isolates informed members from the staff, counsel, and expertise needed to challenge what they receive.

Two of the ten indicators bracket each episode: the source of the triggering disclosure and the individual-accountability outcome. Eight process indicators describe the intervening demand, offer, and response. They are coding questions, not independent observations, and no cutoff is applied to them. Mixed and uncertain observations stay visible instead of being rounded into affirmative scores. The surviving Helms plea and fine already defeat a universal absence-of-accountability claim.[30]

Table 4. Observable Indicators of Negotiated Oversight, by Phase

[27] McCubbins and Schwartz consider the objection that fire-alarm oversight is biased and reply that "if the point is merely that fire-alarm oversight can be biased in various ways, then the same is true of police-patrol oversight" (McCubbins and Schwartz, "Congressional Oversight Overlooked," 172). The extension to classified domains is Zegart's ("Domestic Politics," 7–8 and n. 30); this paper applies it.

[28] Lawrence E. Walsh, *Final Report of the Independent Counsel for Iran/Contra Matters*, vol. 1 (Washington: U.S. Government Printing Office, 1993), Executive Summary p. xxi.

[29] Zegart, *Spies, Lies, and Algorithms*, 216: "Of the 535 members serving in the 116th Congress, only eighteen ever worked in an intelligence agency."

[30] Scope is assigned from executive custody and institutional constraints before the outcome. Later successful access does not remove a case from scope. The four historical episodes were used to develop the eight process indicators, and the Pike and Church profiles are separated in Appendix B; the number of marks in a column is a description, not a test, and no cutoff decides inclusion. Accountability, policy, institutions, and access remain separate outcomes.

Phase	Indicator	What it looks like in practice
1 — The scandal	Exogenous rupture *(bracket)*	The triggering disclosure breaks from outside the oversight channel (investigative press, leak, or litigation), not from Congress's own oversight machinery; the fire alarm rings externally.
2 — Congressional request	Demand posture	Congress reacts to the scandal with an investigation whose demand is bounded by what it can compel; the posture ranges from negotiated access to compelled production.
3 — Executive offer	Selective disclosure	Disclosure is partial enough to preserve the appearance of oversight without enabling full checking.
3 — Executive offer	Justification proliferation	Categories of withholding or redaction expand beyond the statute's clear terms.
3 — Executive offer	Delayed compliance	Disclosure arrives long after the demand, or not at all; the codebook dates it (Appendix B).
3 — Executive offer	Executive self-definition	The executive states its own reading of what compliance requires and acts on it.
4 — Congressional response	Majority declines an available remedy	A committee or chamber majority does not use a remedy open to it (a contempt vote, a civil action, a disclosure procedure, legislation). Evidence: recorded votes and unused procedures; merely considering a legally contested route does not establish its availability.
4 — Congressional response	Remedy attempted and defeated outside Congress	A remedy that Congress or its members invoked fails elsewhere (a court ruling, a declination to prosecute, a reversal). Evidence: the congressional initiator and request, the outside decision-maker, the requested result, and the observed disposition; an acknowledged request alone is not partial success.
4 — Congressional response	Informal negotiation	Oversight proceeds through tacit bargaining rather than formal enforcement.

Phase	Indicator	What it looks like in practice
5 — Accountability outcome	Limited individual accountability *(bracket)*	Individual accountability for the underlying abuse of power is limited: it is deferred, achieved and then narrowed or nullified by reversal or pardon, or declined at the outset. Surviving sanctions are recorded separately as counterevidence (Table 7 codes mixed cases ◗; Table 6 states how surviving sanctions are recorded). (Accountability of private principals for ordinary crimes, where it occurs, is a separate question this indicator does not track.)

In every historical case the triggering disclosure came from outside any access or standing rule Congress had set up: a press report, a leak, a shootdown.[31] That is the fire-alarm model working without its usual infrastructure (Johnson had already called the post-1975 scandals fire alarms),[see n. 11] and it may account for the timing of oversight more than for its outcome. Alarms were also raised inside the channel: the Church Committee found and disclosed a concealed interception program, which counts against the bracket under Table 6; the CIA resisted Vice Chairman Rockefeller's inquiry into its interrogation program;[32] and Senators Wyden and Udall warned publicly within classification limits.

Phase 3 carries a dynamic the single-indicator rows do not capture: the *graduated offer*. The executive offer is rarely one release. It is a sequence in which a limited first disclosure is enlarged only under continued pressure, each increment described as fuller transparency. It runs through the Phase 3 indicators and adds none of its own.

[31] On leaks as a channel the executive condemns in principle and tolerates in practice, see David E. Pozen, "The Leaky Leviathan: Why the Government Condemns and Condones Unlawful Disclosures of Information," *Harvard Law Review* 127 (2013): 512–635, at 513 ("There is a dramatic disconnect between the way our laws and our leaders condemn leaking in the abstract and the way they condone it in practice").

[32] SSCI, *Committee Study*, S. Rep. No. 113-288: Foreword, pp. 1 (the April 3, 2014 vote; the full study "totals more than 6,700 pages, remains classified"), 4 (the Department of Justice investigation "expanded by Attorney General Holder in August 2009," which kept CIA employees and contractors from appearing before committee staff), and 5 (staff "reviewed the more than six million pages of CIA materials" from early 2009 to late 2012); Findings and Conclusions, pp. 5–6 (the CIA "resisted efforts by Vice Chairman John D. Rockefeller IV, to investigate the program, including by refusing in 2006 to provide requested documents to the full Committee") and 6 (the CIA restricted access beyond the chairman and vice chairman "until September 6, 2006, the day the president publicly acknowledged the program, by which time 117 of the 119 known detainees had already entered CIA custody"); Executive Summary, p. 8 (review begun December 11, 2007 after a briefing that day; Terms of Reference approved March 5, 2009 "in a vote of 14 to 1"; a report "exceeding 6,700 pages, including approximately 38,000 footnotes"; approval on December 13, 2012 "by a bipartisan vote of 9-6"), p. 9 n. (approximately 9,400 CIA documents withheld by the White House pending an executive-privilege determination, requested in writing on January 3, May 22, and December 19, 2013), and p. 225 ("The White House did not respond to the requests"). The Executive Summary runs to 499 pages; with the Foreword and the Findings and Conclusions the released document is 525 pages. It was released December 9, 2014. *American Civil Liberties Union v. Central Intelligence Agency*, 823 F.3d 655 (D.C. Cir. 2016), affirmed dismissal of a Freedom of Information Act suit for the full report on the ground that it remained a congressional record.

Table 5. What the Vocabulary Describes at Each Phase (descriptions, not predictions)

Phase	Pattern the label describes
Triggering disclosure	The disclosure that forces the conduct into view originates outside the oversight channel (press, leak, or litigation), not from Congress's own investigative machinery.
Congressional request	Congress reacts with an investigation whose demand is bounded by what it can compel, ranging from negotiated access to compelled production.

Phase	Pattern the label describes
Executive response	The executive preserves formal compliance while narrowing substantive accountability through selective disclosure, delay, self-definition, and expanded justification.
Congressional response	A committee or chamber majority objects within constrained channels, escalates weakly or late, or declines an available remedy; remedies pursued elsewhere fail.
Reform outcome	Reform follows; whether it alters the bargaining conditions is recorded case by case (Table 6).
Accountability outcome	Durable individual accountability for the underlying abuse is limited and often narrowed by reversal, pardon, or declination. Each surviving sanction against an identified official is recorded as counterevidence (Table 6).

The comparison is exploratory and descriptive. The indicators were developed with these episodes, so their fit cannot validate anything, and no cutoff is applied. Several cells moved when the hearing record was read more fully or the codebook was revised (Appendix B): firm marks track the depth of reading as well as the record. The Watergate tapes dispute of 1973–74 is coded on the same rows as a contrast (Table 7), scored like the others on Congress's own demand, the Senate committee's subpoenas for the tapes. Its early indicators fall within the other episodes' range: the subpoenas were refused and edited transcripts replaced the tapes; the committee's suit was later dismissed without production.[33] The tapes came instead through a

[33] *United States v. Nixon*, 418 U.S. 683 (1974) (decided July 24, 1974): 688 (the Rule 17(c) subpoena of April 18, 1974; on April 30 "the President publicly released edited transcripts of 43 conversations; portions of 20 conversations subject to subpoena in the present case were included"), 694–95 n.8 and 695–96 (the Special Prosecutor regulation, 38 Fed. Reg. 30739, as amended by 38 Fed. Reg. 32805, under which he "will not be removed from his duties except for extraordinary improprieties on his part"; "So long as this regulation is extant it has the force of law," though "it is theoretically possible for the Attorney General to amend or revoke the regulation"), 703 (quoting *Marbury v. Madison* that "it is emphatically the province and duty of the judicial department to say what the law is"), 706 ("Absent a claim of need to protect military, diplomatic, or sensitive national security secrets"), 708 ("a presumptive privilege for Presidential communications"), 710 (the President "does not place his claim of privilege on the ground they are military or diplomatic secrets"), 712 n.19 ("We are not here concerned with the balance between the President's generalized interest in confidentiality and the need for relevant evidence in civil litigation, nor with that between the confidentiality interest and congressional demands for information, nor with the President's interest in preserving state secrets"), and 713 ("The generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial"). *Senate Select Committee on Presidential Campaign Activities v. Nixon*, 498 F.2d 725 (D.C. Cir. 1974) (decided May 23, 1974): 726–27 (Butterfield's testimony of July 16, 1973; the committee "attempted informally to obtain certain tapes"; the President's letter of July 25, 1973 declining both subpoenas), 729–30 (the doctrines of *Nixon v. Sirica* "at least by analogy" controlling; presidential conversations "presumptively privileged"), 731 (the committee's showing must be that the tapes are "demonstrably critical to the responsible fulfillment of the Committee's functions"), 732 (the Judiciary Committee "now has in its possession copies of each of the tapes subpoenaed by the Select Committee," so the committee's need is "merely cumulative"), and 733 (the need is "too attenuated and too tangential to its functions"). The committee sued, its final report says, because "it appeared unseemly to attempt enforcement by initiating statutory contempt proceedings against the President (see 2 U.S.C. 192) or by employing the self-help measures at the Senate's command" (Senate Select Committee on Presidential Campaign Activities, *Final Report*, S. Rep. No. 93-981 (1974), 1081). S. Res. 194, 93d Cong. (1973), affirming that the committee was authorized to subpoena and sue the President, was submitted on November 2 and agreed to on November 7, 1973 (119 Cong. Rec. 35714, 36094–95; S. Rep. No. 93-981, 1082); *Senate Select Committee*, 498 F.2d at 727, dates its passage to

Special Prosecutor whom a Justice Department regulation insulated, on a criminal trial subpoena in a matter without classification barriers, and the Supreme Court reserved congressional demands and national-security secrets.[34] The contrast therefore points to the enforcement channel and the secrecy conditions, not to the early indicators, as what separated this outcome; it is not court-enforced congressional oversight. It is one episode coded by the same author, and a prospectively selected case remains for a later edition.

Table 6. Observations that would count against the description

November 2, the day it was submitted. The jurisdictional statute is Pub. L. No. 93-190 (1973). *Nixon v. Sirica*, 487 F.2d 700, 717 (D.C. Cir. 1973) (per curiam) (presidential conversations "are presumptively privileged"). On the October 1973 Stennis proposal: Richard Nixon, "Statement Announcing Procedures for Providing Information From Presidential Tape Recordings," October 19, 1973 ("Chairman Sam Ervin and Vice Chairman Howard Baker of the Senate Select Committee have agreed to this procedure"; Senator Stennis would "verify that the statement I am preparing is full and accurate"), The American Presidency Project, https://www.presidency.ucsb.edu/documents/statement-announcing-procedures-for-providing-information-from-presidential-tape; and "The President's News Conference," October 26, 1973 ("Senator Baker, Senator Ervin approved of the proposition"), The American Presidency Project, https://www.presidency.ucsb.edu/documents/the-presidents-news-conference-84; against which the committee's own report states that the two senators met the President "at the President's behest," that "Senators Ervin and Baker agreed to no such compromise," that the President "*unilaterally* offered certain materials to the committee" (emphasis in original), that "it was clearly understood by Senators Ervin and Baker that the committee, in all events, could pursue its lawsuit," that "these two Senators understood that the President was offering the committee verbatim transcripts of the conversations at issue, not mere 'summaries,'" and that "the 'Stennis Compromise' never materialized and the suit continued" (S. Rep. No. 93-981, 1081); National Archives, "Watergate and the Constitution," chronology, https://www.archives.gov/education/lessons/watergate-constitution/chronology.html (October 20, 1973: "Archibald Cox refuses to accept the Stennis compromise"). *United States v. Haldeman*, 559 F.2d 31 (D.C. Cir. 1976) (the arrests of June 17, 1972; sentences of imprisonment; the convictions of Haldeman, Ehrlichman, and Mitchell affirmed). Gerald R. Ford, Proclamation 4311, Granting Pardon to Richard Nixon, September 8, 1974 (reciting the resignation of August 9, 1974). Sequel: Ethics in Government Act of 1978, Pub. L. No. 95-521, 92 Stat. 1824, title VI (a special prosecutor appointed by a division of the court) and title VII (Senate Legal Counsel; a new 28 U.S.C. § 1364 for Senate civil actions, which "shall not apply to an action to enforce … any subpena or order issued to an officer or employee of the Federal Government acting within his official capacity," 92 Stat. 1879); Senate Historical Office, "Select Committee on Presidential Campaign Activities," https://www.senate.gov/about/powers-procedures/investigations/watergate.htm (the committee's report recommended "the establishment of a permanent special prosecutor, and the creation of a permanent congressional legal service"; "In 1974, Congress overrode a presidential veto and revised the Freedom of Information Act"). The contrast is scored on the Senate committee's own demand and coded from these decisions and records, not from the committees' full hearing records.

[34] The insulation followed a breach. On October 20, 1973 "the first Special Prosecutor was dismissed for not agreeing to the so-called 'Stennis Compromise,'" and the Attorney General and the Deputy Attorney General resigned (S. Rep. No. 93-981, 1081). The regulation the Court applied was then issued as Order No. 551-73, dated November 2, 1973 and signed by Robert H. Bork as Acting Attorney General (38 Fed. Reg. 30738–39, November 7, 1973), whom the Court calls "the author of the regulation" (*United States v. Nixon*, 418 U.S. at 695 n.9). It already contained the undertaking, quoted at 694–95 n.8, not to remove the Special Prosecutor without the President's first consulting congressional leaders; Order No. 554-73 of November 19, 1973 (38 Fed. Reg. 32805, November 28, 1973) extended that undertaking to any limit on his jurisdiction.

Claim	Observation against it	Decision rule and limit
Recurring process configuration	An in-scope episode in which the process indicators are mostly absent or contrary, or are present while the response and outcome rows show access enforced on Congress's demand and durable sanctions	No cutoff is applied and no tally is used as a test. The Watergate tapes column of Table 7 is the one contrast coded: scored on the Senate committee's demand, its early indicators are present; its committee sued after judging statutory and inherent contempt against the President unseemly, and lost; and its outcome came through a prosecutor's criminal process. On this rule the contrast does not count against the description, because its response row shows the committee's own remedy defeated and its accountability bracket is mixed; read to include access enforced for a prosecutor, it might.

Claim	Observation against it	Decision rule and limit
Executive absorption of disclosure duties (historical cases and EFTA)	Court-ordered or congressionally induced access to identified disputed records, or a durable change to an identified withholding practice	Count concrete production or policy change, including concessions under a credible threat; do not require conviction or unilateral congressional control. Applied to the historical cases, Church's publication over presidential objection, the 1991 notification statute, the USA FREEDOM Act, and the 2015 anti-torture statute count against absorption, and the 2005 statute counts in part, since only a temporary suspension of the interrogation techniques followed it.

Claim	Observation against it	Decision rule and limit
EFTA timing	Full responsive production, subject to lawful exclusions, by December 19, 2025	The deadline was missed; this tests timing, not motive or the legality of every exclusion.
EFTA justification	An adequate, reviewable accounting of disputed redactions under the governing legal construction	Marker frequency and counts of old guidance are not legal compliance tests. The court has not decided the notice’s substantive adequacy.

Claim	Observation against it	Decision rule and limit
Partisan versus structural explanations	Changes in escalation and access after an actual change of party control	Observe both willingness to invoke a remedy and the remedy's efficacy. No election outcome is assumed.
External-disclosure bracket	Congress discovers concealed abuse before an external disclosure	A congressional discovery counts against the claim even if subsequent publication is negotiated.
Individual-accountability bracket	Durable penalties for identified official misconduct attributable to oversight	Count surviving sanctions separately from access, policy change, and institution building.

These rules were written in September 2026, after the observations discussed here; they are not a preregistration. Preliminary judicial compulsion in *Phang* already qualifies any claim that enforcement outside DOJ prosecution is unavailable.[35]

Methodology

The design pairs an exploratory historical comparison with contemporary process tracing.[36,37] The four historical episodes were selected for temporal coverage, differing demand postures, and primary-source availability, not sampled from a defined population; the Watergate tapes dispute was added as a contrast because it is widely regarded as oversight that worked. It, and EFTA for its released record, relax the access restrictions that distinguish constrained from ordinary accommodation (Table 2), so the vocabulary should apply to them least; Watergate's process rows did not bear that out (Table 7). Because the concepts were developed using these cases, the recurring pattern is descriptive. It does not establish that executive control caused any outcome

[35] Table 6 is the single statement of the observations that would count against the description. No cutoff is applied: the indicators were developed with the historical cases and are not independently validated. Marker percentages and the number of pre-enactment guidance documents are not compliance tests. Concrete access or policy gains, including negotiated concessions and judicial compulsion, count against complete absorption. These rules were written in the September 2026 revisions and were not preregistered.

[36] The five comparison dimensions are: (a) institutional configuration (committee-level or individual-member-level access); (b) the course of the bargain (bargaining and defiance in both chambers in 1975–76; investigation after exposure in 1986–91; constraint built into the program's access rules in 2001–15; investigation under counter-pressure against the committee itself in 2002–14; adjudication in the 1973–74 contrast); (c) party configuration (which party held each chamber and the presidency); (d) statutory framework; (e) documented outcome.

[37] Primary-source bases. Pike and Church, 1975–76: House Select Committee on Intelligence hearings, *U.S. Intelligence Agencies and Activities*, Parts 1–6 (1975–76); Senate Select Committee, *Final Report*, Books I–VI (1976), and hearings, vols. 1–7 (1975); the committee report as printed in the *Village Voice*, February 16, 1976; Snider, *Agency and the Hill*. Iran-Contra, 1986–91: Walsh, *Final Report*, vol. 1 (1993); *Report of the Congressional Committees Investigating the Iran-Contra Affair*, H. Rept. 100-433, S. Rept. 100-216 (1987); the Cooper opinion (December 17, 1986); NSDD-286 (October 15, 1987); the Bush–Boren letter (October 30, 1989). NSA bulk collection, 2001–15: the NSA Inspector General's working draft (2009); the Wyden–Udall letters of 2011 and 2012; the Department of Justice white paper (2013); the Privacy and Civil Liberties Oversight Board report (2014); the USA FREEDOM Act (2015); the appellate decisions. CIA Interrogation Program, 2002–14: the SSCI study's Foreword, Findings and Conclusions, and Executive Summary (released December 9, 2014); Senator Feinstein's floor statement of March 11, 2014. Watergate tapes, 1973–74: the judicial decisions, the President's statements, and the Senate committee's final report cited in the Watergate note to the framework.

or that the vocabulary outperforms an institutional rival.[38] One author developed the indicators, chose the cases, and coded them; Appendix B gives the codebook, and no second coder has scored them.

Within each episode, the analysis asks who possessed the records, who requested access, what was offered or withheld, what remedy was attempted, and what changed. A defeated enforcement motion is evidence about political willingness; a failed suit is evidence about the remedy invoked and the court's reasons. Successful negotiated concessions count as outcomes. Access, policy change, durable institutions, and individual sanctions are recorded separately, so a gain on one dimension does not disappear because another remained limited.

EFTA extends the comparison to a mostly unclassified disclosure mandate. Enactment by a 427–1 House vote and Senate unanimous consent, enumerated withholding grounds, and an observable production make the case useful, but do not make noncompliance uniquely diagnostic of bargaining.[39] Unified party control, agreement or deference among pivotal members, ordinary administrative burden, legitimate privacy protection, contested statutory interpretation, and case-specific incentives can predict parts of the same sequence. The analysis compares those explanations against dated documents and procedural events; it does not assign a probability to the structural hypothesis or treat an inherited framework marker as proof of an unlawful redaction.

Process tracing distinguishes what each source establishes from what would connect it to a mechanism.[40] The March 21, 2025 training establishes an earlier instruction, not its continued use after enactment, and DOJ's privilege construction is documented while its legality is disputed, not measured by a text classifier. The source-to-inference table in the EFTA discussion presents such alternatives directly.

Corpus figures are frozen at August 30, 2026. Litigation is updated separately through the September 16 orders. No September corpus rerun is claimed. Detector performance is measured on its tuning set, with uncertainty and transport limits in Appendix A. The corpus figures rest on unpublished local analysis files, available on request, and are not publicly reproducible; historical findings and publicly filed orders can be examined independently.

The limits are substantial: selection favors visible controversies; withheld content remains unknown; retrospective indicators risk fitting the chosen cases; one author coded them; partly

[38] James Mahoney and Gary Goertz, "A Tale of Two Cultures: Contrasting Quantitative and Qualitative Research," *Political Analysis* 14, no. 3 (2006): 227–249. The comparison here is exploratory and claims neither a most-similar nor a most-different systems design; on the limits of those designs, see Adam Przeworski and Henry Teune, *The Logic of Comparative Social Inquiry* (New York: Wiley-Interscience, 1970), and Carsten Anckar, "On the Applicability of the Most Similar Systems Design and the Most Different Systems Design in Comparative Research," *International Journal of Social Research Methodology* 11, no. 5 (2008): 389–401.

[39] Three grounds support EFTA selection: enactment by a 427–1 House vote and Senate unanimous consent, enumerated redaction categories, and an empirically characterizable multi-million-page production. The searchable index is used for retrieval rather than as the population denominator; the manuscript's manifest population is defined separately. Enactment and statutory text sharpen rival tests but do not logically rule out every partisan or discretionary-withholding explanation.

[40] David Collier, "Understanding Process Tracing," PS: Political Science & Politics 44, no. 4 (2011): 823–830. Used for the distinction between a documented observation and its discriminating force among explanations. This paper does not assign decisive evidentiary-test labels to the training or marker counts.

shared sources reduce independence; and EFTA implementation differs from national-security policymaking. The source base is uneven. The NSA case rests mainly on two senators' letters, an inspector-general draft, and a later oversight-board report, and the CIA case on the Senate committee's own summary, one party's account of a two-party dispute. The paper does not identify the causal contribution of oversight failures to trust decline.

Historical Cases

The four cases illustrate different forms of bargaining. Case 1 (Pike and Church, 1975–76) is one disclosure dispute in two chambers: both committees bargained and both defied the executive, and the outcomes diverged where the parent chambers did. Case 2 (Iran-Contra, 1986–91) shows investigation after exposure, with records withheld or destroyed and a four-year statutory fight. Case 3 (NSA bulk collection, 2001–15) shows constraint built into the program's access rules, followed by statutory change. Case 4 (the CIA interrogation program, 2002–14) combines executive counter-pressure and continued secrecy with substantial investigation and anti-torture restrictions.

Case 1 — Pike and Church: One Disclosure Dispute in Two Chambers (1975–1976)

Phase 1: The scandal. Both committees were established in early 1975 (the Senate on January 27, the House in February) after a disclosure from outside the oversight channel: Seymour Hersh's December 1974 *New York Times* report on CIA domestic surveillance, which covered many of the subjects in the CIA's internal "Family Jewels" compilation and first revealed its existence.[41]

Phase 2: The congressional request. The two committees ran simultaneously against the same executive counterparty with equivalent formal powers, but under different resolutions, rules,

[41] Seymour M. Hersh, "Huge C.I.A. Operation Reported in U.S. Against Antiwar Forces, Other Dissidents in Nixon Years," *New York Times*, December 22, 1974, p. 1. Hersh's report dealt with many of the subjects disclosed in the Schlesinger-ordered "Family Jewels" internal CIA self-audit and first revealed the compilation's existence; the CIA released the compilation on June 26, 2007. Snider, *Agency and the Hill*, 33, 234 n.40. Victor Marchetti and John D. Marks, *The CIA and the Cult of Intelligence* (New York: Knopf, 1974). For the Senate authorization, S. Res. 21, 94th Cong. (1975), agreed to January 27, 1975, by a vote of 82 to 4 (Snider, *Agency and the Hill*, 34; the resolution is printed as agreed to in Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, *Rules of Procedure* (1975), appendix). For the House, the committee was established in February 1975 and reconstituted on July 17, 1975 after initial controversy over the Lucien Nedzi chairmanship (Snider, *Agency and the Hill*, 37–38), under H. Res. 591, 94th Cong. (see 122 Cong. Rec. 1632 (1976), Rep. Young: "House Resolution 591, in July 1975"; the resolution's own text is not held).

leadership, disclosure procedures, and contempt paths. Church relied mainly on negotiated access and Pike mainly on subpoenas, though each committee used both.[see n. 41,42,43]

Phase 3: The executive offer. To Church the executive offered negotiated, incremental disclosure, answered the committee's first inquiries about a telegram-interception program only after four months, and pre-empted the proposed statutory charter with Ford's Executive Order 11905 of February 18, 1976, issued 68 days before the April 26, 1976 date on Church's Book I (executive self-definition).[see n. 43] To Pike the executive responded with a September 1975 embargo on classified material, loans of documents on condition that the President arbitrate any release, an executive-privilege claim against one of the subpoenas behind the Kissinger contempt resolutions, and a White House briefing in December in place of delivery (delayed and conditional disclosure).[44,45]

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[42] On January 29, 1976 the House agreed to the committee amendment to H. Res. 982 by 246 to 124, with 62 not voting, and then to the resolution as amended (122 Cong. Rec. 1641, Roll No. 29). The amendment provides that the committee "shall not release any report containing materials, information, data, or subjects that presently bear security classification, unless and until such reports are published with appropriate security markings and distributed only to persons authorized to receive such classified information, or until the report has been certified by the President as not containing information which would adversely affect the intelligence activities of the CIA in foreign countries or the intelligence activities in foreign countries of any other department or agency of the federal government" (id. at 1632). The party totals are Snider's, not printed by the *Record*: "the House voted 246-124, with 127 Democrats joining 119 Republicans, to suppress the publication of the report" (*Agency and the Hill*, 39). The committee's later proceedings apply the condition: Representative McClory's motion asked that the report be "examined by a representative of the President of the United States for purposes of indicating classified information as materials required to be deleted from the report prior to publication in accordance with House Resolution 982": *U.S. Intelligence Agencies and Activities: Committee Proceedings*, Part 6 (1976), p. 2138. The findings nonetheless appeared through Daniel Schorr's leak to the *Village Voice*, which published them on February 16, 1976 (Snider, 39), and in book form as *CIA: The Pike Report* (Nottingham: Spokesman Books, 1977).

[43] Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, *Final Report*, S. Rep. No. 94-755, Book I: *Foreign and Military Intelligence* and Book II: *Intelligence Activities and the Rights of Americans* (both dated April 26, 1976), with Books III–VI (supplementary detailed staff reports, the report on the investigation of the Kennedy assassination, and supplementary reports on intelligence activities); *Intelligence Activities, Senate Resolution 21: Hearings Before the Select Committee*, 94th Cong., 1st Sess., vols. 1–7 (1975); *Alleged Assassination Plots Involving Foreign Leaders: An Interim Report* (November 20, 1975); Exec. Order No. 11905, *United States Foreign Intelligence Activities*, 41 Fed. Reg. 7703 (Feb. 19, 1976). The Senate Historical Office gives April 29, 1976 as the date the report was issued (71 days after the order); this paper uses the April 26, 1976 date printed on Books I and II (68 days).

[44] For the procedural confrontation, including the Kissinger contempt resolutions of November 14, 1975 and Antonin Scalia's Office of Legal Counsel appearance of November 20, 1975, see *U.S. Intelligence Agencies and Activities: Committee Proceedings, Hearings Before the Select Committee on Intelligence, House of Representatives, 94th Congress, 1st Sess., Part 4* (1975), 1383 ff. (meeting of November 14: resolutions of contempt) and 1413 ff. (meeting of November 20; Scalia prepared statement at 1456, stating at 1457 that the seven subpoenas were served on Friday, November 7 and returnable on Tuesday, November 11). For the Rogovin-Field exchange immediately preceding the suppression vote, see *U.S. Intelligence Agencies and Activities: Committee Proceedings, Hearings Before the Select Committee on Intelligence, House of Representatives, 94th Congress, 2d Sess., Part 6* (1976), 2127-2130. For the Rockefeller Commission as the executive-side parallel investigation, see *Report to the President by the Commission on CIA Activities Within the United States* (June 6, 1975).

[45] *U.S. Intelligence Agencies and Activities: Committee Proceedings, Hearings Before the Select Committee on Intelligence, House of Representatives*, 94th Cong., 1st Sess., Part 4 (1975), pp. 1275–76 (Director Colby's letter of September 30, 1975, setting the conditions, under which the committee "would reserve its right to submit the matter to judicial determination"; Chairman Pike: "essentially the conditions which Mr. McClory and I discussed with the President") and 1286 (October 1: "The motion is agreed to by a vote of 10 to 3"; on the House floor Representative

Phase 4: The congressional response. Both committees bargained and both defied; the outcomes diverged where the parent chambers did. Church negotiated access but did not defer on publication. It disclosed the SHAMROCK interception program on November 6, 1975 after a 7–3 committee vote and over President Ford's request for secrecy, and it published its assassination report over the administration's objection after a closed Senate session recorded no disapproval.[46] Its legacy followed: the Senate Select Committee on Intelligence (SSCI, May 1976), the House Permanent Select Committee on Intelligence (HPSCI, July 1977), FISA (October 1978), and the Intelligence Oversight Act of 1980; the proposed statutory charter never passed.[47] Pike bargained and then contested the bargain's scope. After Ford suspended its access to classified material in September 1975, the committee voted 10–3 on October 1 to accept documents on condition that disputed releases go to the President for written certification, and in December it declared substantial compliance on its contempt subpoenas after a White House briefing.[see n. 45] When it moved to release its final report without that review, the House enforced the certification term against its own committee: on January 29, 1976 it voted 246–124, with 127 Democrats joining 119 Republicans, to bar release of a report containing classified material unless restricted to authorized recipients or certified by the President.[see n. 42] That was the decision of a cross-party House majority; whether executive classification claims moved those votes is not shown by this record. The findings reached the public through Daniel Schorr's leak to the *Village Voice*.[48]

Phase 5: Individual accountability. Accountability was limited and partly reversed. Former Director of Central Intelligence Richard Helms pleaded nolo contendere in 1977 to two misdemeanors of not testifying fully to the Senate about CIA covert action in Chile; the plea, suspended sentence, and fine stood. Federal Bureau of Investigation (FBI) officials W. Mark Felt

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Broomfield later gave "a 9 to 3 majority," 122 Cong. Rec. 1640 (1976)); *U.S. Intelligence Agencies and Activities: Risks and Control of Foreign Intelligence*, Part 5 (1975), pp. 1601 (December 2: substantial compliance on the 40 Committee subpoena after members examined the material at the Executive Office Building) and 1771–72 (December 10: Pike, "It was, on the other hand, a compromise. We did not get everything we wanted, but we got more than they wanted to give us," and "substantial compliance on this subpena and the issue is moot"). Snider, *Agency and the Hill*, 200 (on September 18, 1975 Ford advised that the executive would provide no more classified materials, testimony, or interviews; on September 26, "at a White House meeting with Pike and the leadership of the House," the committee agreed that the President "would be the final arbiter") and 201 (Pike "contended his agreement did not extend to the committee's final report").

[46] *Intelligence Activities, Senate Resolution 21: Hearings Before the Select Committee to Study Governmental Operations with Respect to Intelligence Activities*, 94th Cong., 1st Sess., vol. 5 (1975), pp. 51 (Senator Tower: "President Ford has personally and specifically requested of the committee that it be kept secret"), 57 (hearing of November 6, 1975; the committee's vote "of seven to three that the information should be made public"), and 58 (first inquiries "last May"; no response "until early September"). Snider, *Agency and the Hill*, 276 (the committee published the assassination report over the administration's objection after "presenting the issue to a secret session of the full Senate and noting an 'absence of disapproval'"; Snider dates the release to December 1975, while the report itself is dated November 20, 1975).

[47] Snider, *Agency and the Hill*, 51 (S. Res. 400 passed May 19, 1976), 60 (Hughes-Ryan reporting reduced "from eight to two"); Intelligence Oversight Act of 1980, Pub. L. No. 96-450.

[48] House Committee on Standards of Official Conduct, *Report on Investigation Pursuant to H. Res. 1042 Concerning Unauthorized Publication of the Report of the Select Committee on Intelligence*, H. Rept. 94-1754 (Oct. 1, 1976), pp. 2, 42, recording Schorr's testimony that he gave his copy of the report to Clay Felker, who published it in the *Village Voice*.

and Edward S. Miller, convicted in 1980 for the 1972–1973 warrantless break-ins, were pardoned by President Reagan in April 1981 while their appeal was pending.[49]

Case 2 — Iran-Contra: Investigation after Exposure (1986–1991)

Phase 1: The scandal. The operation broke into public view through two external disclosures a month apart. On October 5, 1986 a cargo plane carrying military supplies to the Contras was shot down over Nicaragua, and its captured survivor, Eugene Hasenfus, said the flight was a CIA-assisted resupply operation.[50] On November 3, 1986 the Lebanese magazine *Ash-Shiraa* reported an Iranian faction's account of a secret U.S. spare-parts deal with Iran, and Attorney General Meese's November 25 press conference linked the two.[51]

[49] The accountability outcomes for the four cases. Pike/Church: Richard Helms pleaded nolo contendere in 1977 to two misdemeanor counts under 2 U.S.C. § 192 of failing to testify fully before the Senate Foreign Relations Committee regarding CIA activity in Chile, and received a suspended sentence and a $2,000 fine; see Office of Legal Counsel, "Richard Helms' Eligibility Under 5 U.S.C. § 8314 to Receive an Annuity or Retired Pay," 1 Op. O.L.C. 252 (1977) (plea of nolo contendere to two counts under 2 U.S.C. § 192), and "Helms Fined $2,000, Term Suspended," *Washington Post*, November 5, 1977; W. Mark Felt and Edward S. Miller were convicted on November 6, 1980 of conspiracy to violate citizens' constitutional rights through 1972–1973 warrantless entries and fined by Judge William B. Bryant on December 15, 1980 (UPI, "Fines, no jail terms in FBI case," Dec. 15, 1980; see also the pretrial rulings in *United States v. Felt*, 502 F. Supp. 71 (D.D.C. 1980), and the indictment described in *United States v. Gray*, 502 F. Supp. 150 (D.D.C. 1980)), then pardoned while their appeal was pending, Ronald Reagan, "Statement on Granting Pardons to W. Mark Felt and Edward S. Miller," April 15, 1981. Iran-Contra: the *North* conviction was vacated and the *Poindexter* conviction reversed on use-immunity grounds, and McFarlane's guilty plea remained in the historical record after his December 24, 1992 pardon, as documented in the Iran-Contra case narrative and its sources above. NSA bulk collection: Holder acknowledged member requests concerning Clapper; no charge is established in the reviewed record, per the NSA case narrative above. CIA Interrogation Program: the Durham review closed with no charges, the OPR professional-misconduct finding was reduced by Margolis, with no discipline shown in the record reviewed, and both CIA-personnel and committee-staff conduct were referred in the computer-search dispute, per the CIA Interrogation Program case narrative above.

[50] On the Nicaragua-side rupture that preceded *Ash-Shiraa*: a C-123 cargo plane carrying military supplies to the Contras was shot down over southern Nicaragua on October 5, 1986, and its captured surviving crew member, Eugene Hasenfus, publicly stated that the flight was a CIA-assisted weapons-resupply operation. Doyle McManus, "Downed Plane Not Ours, Shultz Says," *Los Angeles Times*, October 8, 1986 (the crash, the C-123 and the U.S. denials); Julia Preston, "Captured American Says CIA Ran Supply Missions," *Washington Post*, October 10, 1986, p. A1, Central Intelligence Agency copy (Hasenfus "said today he has been part of an extensive air resupply operation for the Nicaraguan rebels run from a Salvadoran Air Force base by CIA employes," at a press conference called by the Nicaraguan military, in a "wooden statement that seemed to have been rehearsed"; Abrams said there was "no relation at all" between the CIA and those aiding the resupply); "Shot Down on 10th Flight, Captured American Says: Asserts CIA Assisted in Operation," Associated Press / *Los Angeles Times*, October 9, 1986 (held in part). He spoke in Sandinista custody. The Hasenfus disclosure and the *Ash-Shiraa* report a month later were the two external ruptures that exposed the Contra and Iran halves of the operation and spurred the congressional inquiry.

[51] The Boland Amendment series is conventionally grouped in three phases: Boland I (Pub. L. No. 97-377, § 793, fiscal 1983 appropriations, effective December 21, 1982), Boland II (Pub. L. No. 98-473, § 8066, continuing appropriations for fiscal 1985, October 12, 1984), and Boland III (Intelligence Authorization Act for Fiscal Year 1986, Pub. L. No. 99-169, § 105, and fiscal 1986 continuing appropriations, Pub. L. No. 99-190, § 8050). *Al-Shira'*, November 3, 1986, pp. 24, 26, as translated by the Foreign Broadcast Information Service (relaying what "Hashemi's supporters" relate, "only to present the other side objectively": a secret visit to Tehran by "A secret U.S. envoy, Robert McFarlane," and "the sale of spare parts to Iran for its U.S.-made aircraft, tanks, radar, and other weapons"); *Report of the Congressional Committees Investigating the Iran-Contra Affair*, Preface, p. xv (the *Ash-Shiraa* report of November 3, 1986); Executive Summary, p. 10 (the Attorney General's November 25, 1986 press conference); and p. 399 ("The Administration has asserted that Boland II did not apply to the NSC staff"; the committees found those "post hoc arguments … not persuasive"). Separate Senate and House select committees

Phase 2: The congressional request. Senate and House select committees, established on January 6 and 7, 1987, held joint hearings and issued a joint report, alongside Walsh's Office of Independent Counsel. The conduct at issue was evasion of statutory appropriations restrictions: the December 1982 Boland limitation barred CIA and Defense support for overthrowing Nicaragua's government, the October 12, 1984 rider cut off funds for fiscal 1985, and National Security Council staff under National Security Advisers Robert McFarlane and John Poindexter, with Lt. Col. Oliver North, channeled covert support through the "Enterprise," on a reading of the rider the Administration disputed and the committees' majority rejected.see n. 51

Phase 3: The executive offer. The offer enlarged only as pressure mounted, from initial denials to the President's review board (the Tower Commission, reporting February 26, 1987). Meanwhile contemporaneous records were destroyed or withheld. Poindexter, North, and others shredded documents from November 21, 1986, as the Attorney General's inquiry began; the notes of Weinberger and Regan, and those dictated by Shultz, reached the Independent Counsel only in 1991 and 1992, after the committees reported; and in December 1992 he learned that Bush had failed to produce a diary with contemporaneous notes (selective disclosure and delayed compliance; the 1992 events are sequels).[52] The immunized testimony was Congress's act, not an executive offer: on the committees' application, with timing negotiated with the Independent Counsel, the district court issued immunity orders, and North and Poindexter testified publicly on July 7–14 and July 15–21, 1987, which bounded what any prosecution could use.[53] The executive also advanced a doctrine of presidential discretion over when to notify Congress of covert action, in the 1986 Cooper opinion, National Security Decision Directive 286 (NSDD-286), which also barred retroactive findings, and President Bush's 1989 letter to Senator Boren,

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were established by S. Res. 23 on January 6 and H. Res. 12 on January 7, 1987; they conducted joint hearings and issued a joint report.

[52] Walsh, *Final Report*, vol. 1, pp. xvii ("Contemporaneous notes of Regan and Weinberger, and those dictated by Shultz, were withheld until they were obtained by Independent Counsel in 1991 and 1992"), xviii ("Regan in 1992 provided Independent Counsel with copies of notes"; in December 1992 the office learned that Bush "had failed to produce a diary"; "The statute of limitations had run on November 1986 activities before OIC obtained its evidence"), xix (of the Hill and Platt notes of Shultz's meetings, "The most revealing of these notes were not provided to any Iran/contra investigation until 1990 and 1991"), xx (Weinberger's notes, "which he deliberately withheld from Congress and the OIC until they were discovered by Independent Counsel in late 1991"), 24 (Meese "gathered his team around mid-day on November 21, 1986"; North "returned to his offices in the early evening of November 21 and shredded stacks of memoranda and messages"), and 25 (the FBI's criminal investigation began November 26, 1986; Independent Counsel was appointed on December 19, 1986; the select committees were established on January 6 and 7, 1987). *Report of the Congressional Committees Investigating the Iran-Contra Affair*, letter of transmittal of November 17, 1987, and Preface, p. xvi (NSC staff "shredded relevant contemporaneous documents in the fall of 1986"), and Executive Summary, p. 10 (after learning "that the President had authorized the Attorney General to gather the relevant facts," North and Poindexter "shredded and altered official documents on November 21, 1986, and later that weekend"). The President's review board reported on February 26, 1987: *Report of the President's Special Review Board*, John Tower, Chairman (Washington: Government Printing Office, 1987), as listed among the sources of the congressional report.

[53] 18 U.S.C. §§ 6002, 6005 (immunity orders on the application of a congressional committee). Walsh, *Final Report*, vol. 1, p. 33 ("A compromise was reached between OIC and the Committees in March 1987, setting the timing for immunity grants for North and Poindexter"). *Report of the Congressional Committees Investigating the Iran-Contra Affair*, Appendix, p. 687 (the June 15, 1987 order compelling North to testify); the report cites North's public testimony on dates from July 7 to July 14, 1987 and Poindexter's from July 15 to July 21, 1987.

and the committees' minority report endorsed it (justification proliferation and executive self-definition).[54,55]

Phase 4: The congressional response. The select committees exposed the misconduct, and Congress then pressed for notice of covert-action findings within 48 hours, written findings, and a ban on retroactive findings. The administrations would compromise on the last two but not on the deadline, and the impasse lasted almost four years, through one vetoed bill, until the 1991 compromise: written, non-retroactive findings and a statutory definition of covert action were enacted, "timely" notice stayed in the statute, and the President's commitment to notify within a few days was recorded beside his reservation of constitutional authority to withhold longer.[56] The

[54] Charles J. Cooper, "The President's Compliance with the 'Timely Notification' Requirement of Section 501(b) of the National Security Act," 10 Op. O.L.C. 159 (1986) (memorandum opinion for the Attorney General, December 17, 1986); Ronald Reagan, National Security Decision Directive 286, "Approval and Review of Special Activities," October 15, 1987, §§ II.A.1 ("No Finding may retroactively authorize or sanction a special activity"), II.G.1, and II.G.4 (where notice is delayed, "Unless the President otherwise directs, not later than two working days after the President signs a Finding or associated MON, if any, the Intelligence Committees shall be notified") (declassified extract, Ronald Reagan Presidential Library, https://www.reaganlibrary.gov/public/archives/reference/scanned-nsdds/nsdd286.pdf); Minority Report, in *Report of the Congressional Committees Investigating the Iran-Contra Affair*, 431–633; President George H. W. Bush to Senator David L. Boren, Chairman, Senate Select Committee on Intelligence, October 30, 1989 (copy in the holdings of the National Security Archive, George Washington University); Office of the Vice President, "Vice President's Remarks to the Traveling Press," Air Force Two, en route to Muscat, Oman, December 20, 2005, https://georgewbush-whitehouse.archives.gov/news/releases/2005/12/20051220-9.html. Zivotofsky v. Kerry, 576 U.S. 1, 10–16, 20–22 (2015), declined the broad sole-organ claim attributed to Curtiss-Wright; recognition exclusivity rests on the Reception Clause and constitutional structure. It did not narrow a general sole-organ doctrine to a recognition exception. The continuity argument is structural and bounded by the three-document citation audit, not proof that the minority report caused later OLC doctrine.

[55] The directly searchable audit universe is three primary DOJ texts: John Yoo, The President's Constitutional Authority to Conduct Military Operations Against Terrorists and Nations Supporting Them, September 25, 2001 (SHA256 f7270cafc41315ca30a27e4efe75714063f276482412719cc025fe94ed3cce59); Yoo and Robert Delahunty, Authority for Use of Military Force To Combat Terrorist Activities Within the United States, October 23, 2001 (6506ab6baf596c3f2f43f74876db662753d082003d3f86cac161ba0c73cce700); Yoo, Applicability of 18 U.S.C. § 4001(a) to Military Detention of United States Citizens, June 27, 2002 (7289c7561653c94cde2ef81001a37ed65945d2222244cfdfef3f98e41d89703b). Hashes identify the held text extractions, available on request. Whole-text case-insensitive searches for Cooper, Boren, NSDD[-]286, Cheney, Iran[-]Contra, minority report/views, 100-433 and 100-216 were checked in context. The September 25 Cheney hit concerns 1991 Gulf War remarks and its Iran-Contra hit cites Koh; neither is a citation to the notification chain. No chain citation was found in this bounded universe. It does not cover other opinions, redacted text, unsearchable material, or indirect borrowing.

[56] Snider, *Agency and the Hill*, 66–68 (the recommendations of notice "no later than 48 hours" after a finding, written findings, and no retroactive findings; the two administrations' position: "While they were willing to compromise on the subsidiary issues (such as requiring findings to be in writing and the prohibition of retroactive findings) they would not accept a strict 48-hour time limit"; "The impasse lasted for almost four years"; legislation that "on one occasion, was vetoed"; the 1991 compromise, in which the "timely notice" language remained in the law and the conference report recorded the President's commitment to notify "within a few days") and 68 ("The Creation of a Statutory Inspector General for the CIA: 1989"). Intelligence Authorization Act, Fiscal Year 1991, Pub. L. No. 102-88, title VI, § 602(a)(2), 105 Stat. 442 (1991), codified at 50 U.S.C. § 3093 (a finding "shall be in writing" and "may not authorize or sanction a covert action … which already has occurred"; statutory definition of covert action in § 3093(e)). President George H. W. Bush to Senator David Boren, October 30, 1989 ("I anticipate that notice will be provided within a few days. Any withholding beyond this period would be based upon my assertion of the authorities granted this office by the Constitution."). NSDD-286, October 15, 1987 ("No Finding

discretion claim survived; the statutory floor moved. Separately, the immunity orders led the D.C. Circuit to set aside the North and Poindexter convictions under *Kastigar*.

Phase 5: Individual accountability. Fourteen persons were charged and eleven convicted, by an Independent Counsel appointed by a court at the Attorney General's request; accountability was partial and some consequences were undone. The convictions of North and Poindexter were set aside on use-immunity grounds (North's vacated and remanded for a *Kastigar* hearing, charges later dropped; Poindexter's reversed, in part also because the obstruction statute could not constitutionally reach some of the charged lying to Congress).[57] On December 24, 1992 President Bush pardoned six defendants, including Caspar Weinberger, who had been indicted on June 16, 1992 and was awaiting trial.[58]

Case 3 — NSA Bulk Collection: Constraint Built into the Program (2001–2015)

Phase 1: The scandal. In this case objection inside the oversight channel stayed muted for years, and the disclosures that changed the program came from outside. Bulk collection of telephone records began in late 2001 under presidential authorization and moved under Section 215 of the USA PATRIOT Act by court order in May 2006, the month a *USA Today* report described the collection. A December 2005 *New York Times* report had disclosed a companion program of warrantless interception, not the call-records collection.[59] Edward Snowden's disclosures, first published in *The Guardian* on June 5, 2013, revealed the court order and its Section 215 basis.[60]

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may retroactively authorize or sanction a special activity").

[57] *United States v. North*, 910 F.2d 843 (D.C. Cir. 1990) (convictions vacated and remanded for a *Kastigar* hearing); *United States v. Poindexter*, 951 F.2d 369, 379 (D.C. Cir. 1991) (convictions reversed; the majority also held that the term "corruptly" in 18 U.S.C. § 1505 was "too vague to provide constitutionally adequate notice that it prohibits lying to the Congress"). Both turned on the rule that the prosecution must prove its trial evidence independent of the immunized testimony, *Kastigar v. United States*, 406 U.S. 441 (1972). Judge Gesell dismissed the North case on September 16, 1991, on the Independent Counsel's motion: Walsh, *Final Report*, vol. 1, p. xxiv.

[58] Walsh, *Final Report*, vol. 1, "Summary of Prosecutions," printed pp. xxiii–xxv: fourteen charged, eleven convicted, two convictions overturned; two defendants pardoned before trial. The December 24, 1992 pardons covered convicted defendants McFarlane, Abrams, Fiers and George, and pretrial defendants Weinberger and Clarridge. Pardons do not erase the historical pleas, convictions, or report findings. On the appointment, p. xiii: after Attorney General Meese sought an independent counsel, the court's Special Division appointed Walsh on December 19, 1986.

[59] James Risen and Eric Lichtblau, "Bush Lets U.S. Spy on Callers Without Courts," *New York Times*, December 16, 2005 (under a presidential order, the agency "has monitored the international telephone calls and international e-mail messages of hundreds, perhaps thousands, of people inside the United States without warrants"); the report did not describe the collection of call records, which *USA Today* reported in May 2006. NSA Inspector General, *Working Draft*, p. 37 ("In response to a New York Times 'warrantless wiretapping' story published in December 2005, General Alexander briefed all FISC members on the PSP on 9 January 2006"). FISA Amendments Act of 2008, Pub. L. No. 110-261, § 201, 122 Stat. 2436, 2467–69 (July 10, 2008) (new FISA § 802(a): "a civil action may not lie or be maintained in a Federal or State court against any person for providing assistance to an element of the intelligence community, and shall be promptly dismissed, if the Attorney General certifies," among other grounds, assistance with an activity "authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007").

[60] Leslie Cauley, "NSA has massive database of Americans' phone calls," *USA Today*, posted May 10, 2006, updated May 11, 2006, https://usatoday30.usatoday.com/news/washington/2006-05-10-nsa_x.htm; Glenn Greenwald, "NSA Collecting Phone Records of Millions of Verizon Customers Daily," *The Guardian*, June 5, 2013.

Phase 2: The congressional request. Access rules changed across the period. From October 2001 briefings required White House approval and began with the chairs and ranking members of the intelligence committees.[61] By the 2010 and 2011 reauthorizations that was no longer the governing regime: the intelligence and judiciary committees held the court's orders, and a classified summary without legal analysis had been offered to all members, though the House committee did not circulate the 2011 paper. Notification remained limited in a narrower sense. Other members could not read the orders, and, as Senators Ron Wyden and Mark Udall told the Attorney General, most members had no staff cleared to read the documents. The two senators could not say publicly what they knew: their September 21, 2011 letter warned that the government relied on "secret" interpretations of surveillance law, and their March 15, 2012 letter pressed for declassification.[62] Senate Resolution 400 also supplied subpoena authority and a classified-information disclosure procedure.[63]

Phase 3: The executive offer. The executive controlled the architecture rather than negotiating disclosure. For the 2001–07 phase, the NSA Inspector General's working draft records that General Hayden gave over 49 briefings to members or staff and recalled that *"no one ever said that NSA should stop what it was doing."* That was Hayden's inference, not a finding of congressional consent (selective disclosure, executive self-definition).[see n. 61] On March 12, 2013, asked by Wyden in open session whether the NSA collected *"any type of data at all on millions, or hundreds of millions, of Americans,"* Director of National Intelligence James Clapper answered *"No, sir,"* then *"Not wittingly,"* an inaccurate answer; the transcript does not establish

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Privacy and Civil Liberties Oversight Board, *Report on the Telephone Records Program Conducted under Section 215 of the USA PATRIOT Act and on the Operations of the Foreign Intelligence Surveillance Court*, January 23, 2014, pp. 9 (presidential authorizations from late 2001 through early 2006; the first Section 215 order in May 2006; the June 5, 2013 *Guardian* article; the August 29, 2013 opinion), 96–98 (the 2010 and 2011 extensions; the order and application given to the intelligence and judiciary committees of both houses; other members "prohibited from reading" them; the briefing paper not made available to all House members in 2011), and 193 (later official releases). Administration White Paper, *Bulk Collection of Telephony Metadata Under Section 215 of the USA PATRIOT Act*, August 9, 2013, p. 18 ("By December 2008, all four committees had received the initial application and primary order"). USA FREEDOM Act of 2015, Pub. L. No. 114-23, §§ 103 (prohibition on bulk collection of tangible things) and 109(a) (effective "180 days after the date of the enactment"); House Roll Call 224, 114th Cong., 1st Sess. (May 13, 2015), H.R. 2048 passed 338–88, with Republicans 196–47. The post-2013 litigation is described in the note on the appellate decisions.

[61] NSA Office of the Inspector General, *ST-09-0002 Working Draft: Report on the President's Surveillance Program*, March 24, 2009, published by *The Guardian* on June 27, 2013: p. 24 (for members of Congress, the court, providers' outside counsel, and the NSA Inspector General, "General Hayden had to obtain approval from the White House"); p. 25 ("Between 25 October 2001 and 17 January 2007," Hayden "conducted over 49 briefings to members of Congress or their staff," and "during the many PSP-related briefings he gave to members of Congress, no one ever said that NSA should stop what it was doing"). The roster of the first briefings is reconstructed from pp. 23–25; Hayden's recollection is his inference, not a finding of congressional consent.

[62] Sen. Ron Wyden and Sen. Mark Udall to Attorney General Eric Holder, September 21, 2011, p. 1 (the government "is relying on secret interpretations of surveillance authorities"); Wyden and Udall to Holder, March 15, 2012, p. 2 (the opinions are "so highly classified that most members of Congress do not have any staff who are cleared to read them"; the Department of Justice and the Office of the Director of National Intelligence wrote to Senators Rockefeller and Wyden in August 2009 to announce a process for releasing significant opinions; "Not a single redacted opinion has been released"). The August 2009 letter itself was not opened for this edition.

[63] For the architectural framework: S. Res. 400, 94th Cong. (1976), agreed to May 19, 1976, by a vote of 72 to 22 (Snider, *Agency and the Hill*, 51); and Espionage Act criminal liability under 18 U.S.C. §§ 793–798.

that he knew it was false.[64] The executive claimed statutory authority, although the Second Circuit later held that Section 215 did not authorize this program. After June 2013 it released court opinions and orders in stages.[see n. 60]

Phase 4: The congressional response. In 2008 Congress barred civil suits against providers that had assisted the President's program, on the Attorney General's certification.[see n. 59] It extended Section 215 in 2010 and 2011 while four committees held the orders, which is consent under classification as much as denial of information. After the 2013 disclosures it legislated: the USA FREEDOM Act of 2015 ended bulk collection under Section 215 after a 180-day transition, passing a Republican-majority House 338–88 under a Democratic President, and left the Section 702 architecture intact.[see n. 60] In the courts, the Second Circuit held the program statutorily unauthorized without reaching the constitutional issue; the D.C. Circuit vacated a district-court injunction on standing grounds; and in 2020 the Ninth Circuit held that the collection exceeded Section 215 and may have violated the Fourth Amendment, without suppressing evidence.[65]

Phase 5: Individual accountability. On April 8, 2014, Attorney General Holder acknowledged Representative Sensenbrenner's letter about Clapper's testimony and said DOJ was reviewing material supplied by members, without confirming an investigation. No charge against Clapper is established by the reviewed record, and the five-year limitation period for the testimony has run. A member request, a committee referral, an investigation, and a charge are distinct events; this exchange establishes only the first.[see n. 64]

Case 4 — The CIA Interrogation Program: Investigation under Counter-Pressure (2002–2014)

Phase 1: The scandal. Until September 6, 2006, when the President publicly acknowledged the program, the CIA restricted information about it to the Senate committee's chairman and vice chairman; the executive chose when access widened.[see n. 32] The inquiry followed an external disclosure: in December 2007 the *New York Times* revealed that the CIA had destroyed videotapes of detainee interrogations, a destruction ordered in 2005 by Jose A. Rodriguez Jr., and the committee began its review on December 11, 2007, after the CIA Director briefed it that day.[66]

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[64] SSCI, Worldwide Threats hearing, March 12, 2013, printed p. 66 (Clapper exchange). House Judiciary Committee, *United States Department of Justice*, Serial No. 113-76, April 8, 2014, printed pp. 14–15 (PDF pp. 18–19), https://www.govinfo.gov/content/pkg/CHRG-113hhrg87497/pdf/CHRG-113hhrg87497.pdf: Holder acknowledges Sensenbrenner's letter, says member material is being reviewed, and declines to confirm an investigation. This does not establish a formal SSCI referral, a confirmed criminal investigation, or a charge. The general five-year limitation period for non-capital federal offences is 18 U.S.C. § 3282(a); for testimony given on March 12, 2013 it ran in March 2018, and the record reviewed here contains no charge.

[65] *ACLU v. Clapper*, 785 F.3d 787, 826 (2d Cir. 2015) (the program "exceeds the scope of what Congress has authorized"; constitutional claims not reached); *Klayman v. Obama*, 800 F.3d 559 (D.C. Cir. 2015) (per curiam) (preliminary injunction vacated; Judge Williams found no substantial likelihood of standing, a view Judge Sentelle shared in partial dissent, and Judge Brown found bare standing but no substantial likelihood that the plaintiffs' own records were collected); *United States v. Moalin*, 973 F.3d 977, 996 (9th Cir. 2020) (the collection "exceeded the scope of Congress's authorization" in 50 U.S.C. § 1861), and id. at 984 (the government "may have violated the Fourth Amendment," but suppression was not warranted).

[66] The external rupture for the CIA Interrogation Program inquiry: Mark Mazzetti, "C.I.A. Destroyed 2 Tapes Showing Interrogations," *New York Times*, December 7, 2007 (dateline Washington, Dec. 6), revealing that the CIA

Phase 2: The congressional request. The SSCI authorized its study on March 5, 2009. Staff reviewed more than six million pages of CIA documents before the committee approved the report in December 2012 by a 9–6 vote; the final report exceeded 6,700 pages, with approximately 38,000 footnotes.[see n. 32] Its demand ran through negotiated declassification of the CIA's own document set rather than compelled release. Attorney General Holder's expansion of the Justice Department inquiry in August 2009 left CIA personnel unavailable for staff interviews.

Phase 3: The executive offer. The executive released a fixed fraction and resisted further demand. Only the Executive Summary (499 pages, released with the Findings and Conclusions as a 525-page document) was made public, on December 9, 2014, while the full report, more than 6,700 pages, stayed classified (selective disclosure, executive self-definition, delayed compliance). The White House withheld approximately 9,400 CIA documents from the committee pending a determination on executive privilege, and three written requests in 2013 went unanswered.[see n. 32] Sen. Dianne Feinstein's March 11, 2014 floor statement described the counter-pressure: the removal in 2010 of documents already provided to committee staff; CIA searches of committee staff computers in January 2014; Director Brennan's January 15, 2014 emergency meeting; and a CIA criminal referral against committee staff. Feinstein named the stakes: "How this will be resolved will show whether the intelligence committee can be effective in monitoring and investigating our Nation's intelligence activities or whether our work can be thwarted by those we oversee."[67]

Phase 4: The congressional response. The outcome was mixed. Within the period, statutes of 2005 and 2006 limited both cruel treatment and accountability for it; the first, and then *Hamdan*

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had destroyed videotapes of detainee interrogations, a destruction ordered in 2005 by Jose A. Rodriguez Jr., who headed the clandestine service throughout that year, as Deputy Director of Operations until October 2005 and then as director of the National Clandestine Service (Declaration of Jose Rodriguez, *Salim v. Mitchell*, No. 2:15-cv-00286 (E.D. Wash.), Dkt. 175, ¶¶ 6–7, https://www.aclu.org/sites/default/files/field_document/175._declarationj_of_jose_rodriguez.pdf; the article calls him head of the Directorate of Operations). The specific count of ninety-two destroyed tapes did not appear in the 2007 reporting; it first surfaced publicly in a Department of Justice litigation disclosure, the government's March 2, 2009 letter to the court ("Ninety-two videotapes were destroyed"), *ACLU v. Department of Defense*, No. 04 Civ. 4151 (AKH) (S.D.N.Y.), endorsed and docketed March 3, 2009, Dkt. 330, in the American Civil Liberties Union's Freedom of Information Act suit seeking records of the treatment of prisoners in U.S. custody abroad; see American Civil Liberties Union, "CIA Destroyed 92 Interrogation Tapes," press release, March 2, 2009. The revelation and the ensuing DOJ preliminary review preceded the Senate Intelligence Committee's March 5, 2009 authorization of its detention-and-interrogation study.

[67] Feinstein, 160 *Cong. Rec.* S1487–S1491 (documents that "were no longer accessible" in May 2010; the January 2014 search of the committee's network, of which she was informed on January 15, 2014; the Inspector General's referral of the CIA's activities to the Department of Justice and the acting general counsel's crimes report concerning committee staff; the June 2013 CIA response to the study). Carrie Johnson, "No Criminal Charges In Senate-CIA Spat, Justice Department Says," NPR, July 10, 2014.

v. Rumsfeld, only paused the interrogation techniques.[68,69] After the period, FY2016 NDAA Section 1045 codified anti-torture provisions, a real policy and institutional gain.[70] The full report was not released: the committee sent only the summary for declassification, and in 2016 the D.C. Circuit held the full report a congressional record outside the Freedom of Information Act (FOIA).

Phase 5: Individual accountability. Accountability was declined at the outset. No senior official was prosecuted, and the Durham review closed with no charges. The Office of Professional Responsibility found professional misconduct by Yoo and Bybee; Associate Deputy Attorney General David Margolis declined to adopt those findings, treating the conduct as flawed judgment rather than misconduct, and the record reviewed shows no discipline. The computer-search dispute produced two referrals: the CIA Inspector General referred possible CIA personnel misconduct, and the acting general counsel filed a crimes report against committee staff.[see n. 67,see n. 70]

The four episodes illustrate constrained bargaining but do not establish it as an invariant property of U.S. constitutional architecture. Table 7 gives the exploratory coding, with the Watergate

[68] Detainee Treatment Act of 2005, Pub. L. No. 109-148, div. A, title X, 119 Stat. 2739–40 (December 30, 2005), §§ 1003(a) ("No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment") and 1004(a) (in a civil action or prosecution arising from authorized interrogation practices, a defense where the agent "did not know that the practices were unlawful and a person of ordinary sense and understanding would not know the practices were unlawful"). Military Commissions Act of 2006, Pub. L. No. 109-366, § 6(b), 120 Stat. 2600, 2633–35 (October 17, 2006) (replacing the War Crimes Act's offense for conduct "which constitutes a violation of common Article 3," added by the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998, Pub. L. No. 105-118, § 583, 111 Stat. 2386, 2436 (November 26, 1997), with enumerated "grave breach" offenses; the amendments, with one exception for later conduct, "shall take effect as of November 26, 1997"). National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92, § 1045, is the sequel.

[69] SSCI, *Committee Study*, Findings and Conclusions, p. 16 ("In late 2005 and in 2006, the Detainee Treatment Act and then the U.S. Supreme Court decision in Hamdan v. Rumsfeld caused the CIA to again temporarily suspend the use of its enhanced interrogation techniques"), and Executive Summary, p. 164 and n. ("A classified legal opinion from OLC concluding that the use of the CIA's six enhanced interrogation techniques proposed for use on Rahim … did not violate applicable laws was issued on July 20, 2007"; the opinion applied the War Crimes Act, the Detainee Treatment Act, and Common Article 3). *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).

[70] Department of Justice, "Statement of Attorney General Eric Holder on Closure of Investigation into the Interrogation of Certain Detainees," August 30, 2012 (the two remaining criminal investigations closed without charges). Office of Professional Responsibility, *Investigation into the Office of Legal Counsel's Memoranda Concerning Issues Relating to the Central Intelligence Agency's Use of "Enhanced Interrogation Techniques" on Suspected Terrorists*, July 29, 2009, released February 19, 2010 (professional-misconduct findings against John Yoo and Jay Bybee); Memorandum for the Attorney General from David Margolis, January 5, 2010 (declining to adopt those findings). This paper paraphrases rather than quotes both documents. Steven G. Bradbury, Memorandum for the Files, "Status of Certain OLC Opinions Issued in the Aftermath of the Terrorist Attacks of September 11, 2001," January 15, 2009, p. 4 (the "sweeping assertions" that the Commander in Chief authority "categorically precludes Congress from enacting any legislation concerning the detention, interrogation, prosecution" of enemy combatants are not OLC's position, while a law "constitutional in general may still raise serious constitutional issues if applied in particular circumstances"), https://www.justice.gov/sites/default/files/opa/legacy/2009/03/09/memostatusolcopinions01152009.pdf. National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92, § 1045.

tapes dispute as a contrast column; the evidence, the codebook, and the separate Pike and Church profiles are in Appendix B.[see n. 49]

Table 7. Exploratory per-indicator coding across the four historical cases and one contrast case, by phase[71] (indicators per Table 4; evidence and codebook in Appendix B; ✓ supported, ◗ mixed, ? insufficient evidence, ✗ contrary, n/a no congressional invocation documented)

Phase	Indicator	Pike and Church	Iran-Contra	NSA bulk collection	CIA Interrogation Program	Watergate tapes (contrast)
1	Exogenous rupture *(bracket)*	◗	√	√	√	◗
2	Demand posture	√	√	◗	√	√
3	Selective disclosure	√	√	√	√	√
3	Justification proliferation	◗	√	◗	◗	◗
3	Delayed compliance	√	√	√	√	√
3	Executive self-definition	√	√	√	√	√

[71] Pike and Church share a historical episode but differ in chamber, mandate, leadership, procedure, and demand posture. Appendix B separates their eight-indicator profiles. The combined column is an episode-level union, not a controlled comparison or evidence of identical outcomes.

Phase	Indicator	Pike and Church	Iran-Contra	NSA bulk collection	CIA Interrogation Program	Watergate tapes (contrast)
4	Majority declines an available remedy	✓ (House) / ◗ (Senate)	✗	◗	◗	?
4	Remedy attempted and defeated outside Congress	n/a	n/a	?	n/a	✓ (the committee's own suit)
4	Informal negotiation	✓	✓	◗	✓	◗
5	Limited individual accountability *(bracket)*	◗	◗	✓	✓	◗

Historical outcome comparison (dimensions are not interchangeable)

Episode	Access	Policy change	Institutional durability	Individual sanctions
Pike and Church	Extensive inquiry; official publication of Pike's report barred by the House; Church published substantial findings, twice over presidential objection	Reform followed the investigations	SSCI/HPSCI and FISA endured; causal attribution is shared with the broader reform coalition	Helms plea and fine survived; Felt and Miller pardoned

Episode	Access	Policy change	Institutional durability	Individual sanctions
Iran-Contra	Extensive compelled, immunized testimony; contemporaneous notes withheld until 1991–92 and documents destroyed	1991 Act: written, non-retroactive findings; covert action defined; "timely" notice kept with a recorded few-days commitment; statutory CIA inspector general (1989)[see n. 56]	Investigation documented evasion; the statutory floor moved while the discretion claim survived	Fourteen charged, eleven convictions in Walsh's accounting; reversals and pardons had differing effects
NSA bulk collection	Member briefings constrained; public access expanded after leaks	USA FREEDOM ended Section 215 bulk collection	Statutory and judicial constraints were real though narrower than the whole surveillance system	Member requests concerning Clapper acknowledged; no charge established
CIA Interrogation Program	Six million pages reviewed; executive summary public; full study withheld; committee access widened only on the President's 2006 acknowledgment	Detainee Treatment Act of 2005, after which the interrogation techniques were only paused; sequel: FY2016 NDAA anti-torture restrictions	Study and statutory restrictions are durable outputs	Durham closed without charges; disciplinary findings reduced; a statutory defense for personnel (2005) and a retroactive redefinition of the war-crimes offense (2006)
Watergate tapes (contrast)	Nothing produced to the Senate committee, whose suit was dismissed; the tapes ordered produced on the Special Prosecutor's trial subpoena, under a Justice Department regulation that insulated him	Sequel: the Ethics in Government Act of 1978, with a court-appointed special prosecutor and the Senate's civil-enforcement statute (excluding subpoenas to federal officers or employees acting in an official capacity)	A holding that a generalized privilege claim yields to a demonstrated need for evidence in a criminal trial, which reserved congressional demands and national-security secrets[see n. 33]	President resigned and was pardoned; Haldeman, Ehrlichman, and Mitchell convicted and sentenced to imprisonment

These outcomes qualify any failure thesis. Negotiation can produce effective oversight on access and policy without producing criminal sanctions, and the absence of prosecution does not cancel the other gains.

Contemporary Congruence Assessment: EFTA

Corpus-derived figures in this section and Appendix A refer to the records measured as of August 30, 2026; event-specific dates below keep their narrower scope.

EFTA is a DOJ records-disclosure case. Two grounds bring it within this paper: executive custody of records and control of the initial release process, and a documented but unresolved question about an intelligence link. The record documents contacts with foreign officials and a credentialed analyst's assessment; it does not establish a service-directed operation. DOJ holds records bearing on the question; the reviewed record does not show whether decisive records exist or who holds them (Appendix D).[72] The case therefore tries the bargaining vocabulary outside its original classified-policy setting, with the limits that extension entails.

EFTA imposes unusually express disclosure duties. Section 2(a) requires the Attorney General, "subject to subsection (b)," to publish within 30 days all unclassified records in the Department's possession on nine subjects, including internal communications about charging decisions (§ 2(a)(7)). Subsection (b), headed "Prohibited Grounds for Withholding," bars withholding, delay, or redaction "on the basis of embarrassment, reputational harm, or political sensitivity, including to any government official, public figure, or foreign dignitary" (§ 2(b)(1)). Section 2(c), headed "Permitted Withholdings," is permissive and limited: the Attorney General "may withhold or redact the segregable portions of records that" fall in five classes (§ 2(c)(1); Table 8). Section 2(c)(2) states that all redactions must be accompanied by a written justification published in the Federal Register and submitted to Congress; it sets no deadline and prescribes no Bates-level entries or segregability findings. Section 2(c)(4) requires publication of classification decisions after July 1, 2025. The itemized-accounting construction below is the author's analysis, not statutory language or a holding.

Table 8. Permitted Withholdings Under EFTA Section 2(c)(1)

[72] The question is a reason for selecting the case, not a finding of service direction or a coded condition: it adds no positive code for Scope #2 in Table 2. A link, if present, may implicate national-security interests, but that possibility alone supplies no class (E) withholding ground: class (E) reaches only information that is properly classified (Table 8), and the Act requires the Attorney General to declassify such information to the maximum extent possible (§ 2(c)(3)). Reports of it predate the dispute over the Act: Vicky Ward's July 2019 column and the October 2020 FD-1023. Appendix D gives each item of evidence with its limits, among them Epstein's 2015 request to a former Russian deputy minister, who undertook an inquiry; his instruction that investigators "use russian contacts"; his financial partnership with Ehud Barak; and John R. Schindler's assessment. The custody ground and the measurements in this section do not depend on the answer.

Section 2(c)(1) class	The Attorney General "may withhold or redact the segregable portions of records that"*
(A)	personally identifiable information of victims, or victims' personal, medical, and similar files whose disclosure would be a clearly unwarranted invasion of personal privacy
(B)	records that depict or contain child sexual abuse materials (CSAM) as defined under 18 U.S.C. § 2256 and prohibited under 18 U.S.C. §§ 2252–2252A
(C)	material whose release would jeopardize an active federal investigation or ongoing prosecution, with withholding narrowly tailored and temporary
(D)	images depicting or containing the death, physical abuse, or injury of any person
(E)	information specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and in fact properly classified pursuant to that order

* The word "that" can attach to "records" or to "portions." This table adopts the narrower reading, under which only the portions containing the listed matter may be withheld; the reviewed record does not show the Department claiming the broader one.

Section 3 requires a report to the House and Senate Judiciary Committees within 15 days of "completion of the release," listing the categories of records released and withheld, a summary of redactions with legal basis, and the government officials and "politically exposed persons" named in the released materials. The Act defines neither "completion" nor "politically exposed persons," and it has no enforcement or definitions section (Appendix C, Table C.1). It passed the House 427–1 and the Senate by unanimous consent.[73]

The Scandal

The Epstein matter reached EFTA through an external disclosure, as in the historical cases: Julie K. Brown's *Miami Herald* series "Perversion of Justice," whose first installment ran November 28, 2018, re-exposed the 2007–2008 federal non-prosecution agreement and its concealment from the victims. The Department's professional-responsibility office found that it "led to public outrage and media scrutiny"; the New York indictment followed in July 2019.[74] The House floor

[73] Epstein Files Transparency Act, Pub. L. No. 119-38, 139 Stat. 656 (2025). The House passed H.R. 4405 on November 18, 2025 by 427–1 (House Roll Call 289, 119th Cong., 1st sess.), and the Senate passed it by unanimous consent (Congress.gov, H.R. 4405, All Actions: "Received in the Senate, read twice, considered, read the third time, and passed, under the order of 11/18/2025, without amendment by Unanimous Consent. (consideration: CR S8211)", that is, 171 Cong. Rec. S8211 (daily ed. Nov. 19, 2025)); President Trump signed it on November 19, 2025. Unanimous consent records the absence of objection, not a counted vote.

[74] Julie K. Brown, "Perversion of Justice," *Miami Herald*, November 28, 2018, as cited by Department of Justice, Office of Professional Responsibility, report of November 2020 on the Southern District of Florida's resolution of its 2006–2008 investigation of Jeffrey Epstein, Executive Summary, p. iii n.3; OPR found that "The Miami Herald report led to public outrage and media scrutiny of the government's actions" and records the Southern District of New York indictment of July 2, 2019 (p. iv).

debate on EFTA (171 Cong. Rec. H4725–H4733, daily ed. Nov. 18, 2025) credited survivors' advocacy and did not mention the reporting.

The Congressional Request

The request built in two waves. First, public pressure to release the Epstein files mounted through 2025, and the executive met it with the graduated offers traced below. Second, the demand became statutory, and through Congress's own machinery: the bill reached the floor after Representative Massie gathered 218 signatures on a discharge petition, which forces a vote the leadership has not scheduled, and EFTA followed on November 19, 2025.[75] That is escalation inside the channel.

EFTA reaches unclassified records "in the possession of the Department of Justice," including the FBI and U.S. Attorneys' Offices, whoever originated them. Records held only by the CIA or NSA fall outside it; Epstein's own earlier requests to those agencies drew "neither-confirm-nor-deny" (Glomar) responses in 2011 and 2014.[76]

The Executive Offer

The offer was graduated. On February 27, 2025 the Department released a "first phase" of declassified files, binders labeled "The Epstein Files: Phase 1" handed to about fifteen online influencers at the White House; the contents were largely already public. The Attorney General framed the release as one that *"begins to provide"* accountability and, the same day, wrote the FBI Director demanding the *"full and complete"* files with *"no withholdings or limitations"*: a low first offer presented as an installment.[77] The FBI's internal Epstein Transparency Project

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[75] Office of Representative Thomas Massie, "Massie-Khanna 'Epstein Files Transparency Act' Passes House of Representatives," press release, November 18, 2025, https://massie.house.gov/news/documentsingle.aspx?DocumentID=395780 (the bill "received a vote after Rep. Massie successfully gathered 218 signatures on a discharge petition to force the legislation onto the House floor for consideration"); 171 *Cong. Rec.* H4725–H4733 (daily ed. November 18, 2025).

[76] The released agency Glomar correspondence documents three request cycles in which Epstein, through counsel, sought records about himself. A CIA Privacy Act response of July 29, 2011 to attorney Martin G. Weinberg (EFTA01089565) reported no records of an "open or otherwise acknowledged Agency affiliation" and declined to confirm or deny any "classified connection to the CIA" under Executive Order 13526 Section 3.6(a), referencing a prior 1999 cycle (acceptance letter P-1999-02450, November 5, 1999). A 2014 NSA cycle on FOIA Case 76098 comprises attorney Darren K. Indyke's appeal of March 4, 2014 (EFTA00583099), which quotes and describes an initial denial of January 17, 2014 that the production does not itself carry under a separate Bates; the NSA's acknowledgment of that appeal, March 25, 2014 (EFTA02726324, with a second, differently redacted copy at EFTA00605791); and the NSA appeal response of July 30, 2014 (EFTA00606101), which continued to neither confirm nor deny intelligence material on Epstein and named the Section 215 and Section 702 collection programs. A Glomar response is applied categorically and is by design uninformative as to whether responsive records exist, so the correspondence evidences the requests and the agencies' withholding posture, not any intelligence relationship.

[77] The pre-EFTA executive offer sequence. On February 27, 2025 the Department of Justice released what it called the "first phase" of declassified Epstein files, distributing binders labeled "The Epstein Files: Phase 1" to about fifteen online influencers at the White House; Kerry Breen, "Right-wing influencers get binders labeled 'The Epstein Files,' but downplay revelations," CBS News, February 27, 2025 (fifteen attendees; the Department's statement that the first phase "largely contains documents that have been previously leaked"). Office of the Attorney General, "Attorney General Pamela Bondi Releases First Phase of Declassified Epstein Files," February 27, 2025; Attorney General Bondi letter to FBI Director Kash Patel, February 27, 2025, demanding the "full and complete

(ETP) redaction pipeline followed in March 2025. Then an undated, unsigned Department and FBI memorandum made public in July 2025 tried to close at a low offer, concluding there was no incriminating client list and that *"no further disclosure would be appropriate or warranted"*; backlash reopened the question. The compelled offer examined here is the latest concession, not an endstate.

DOJ says it identified more than six million pages as potentially responsive and released over three million, nearly 3.5 million including earlier productions. The release measured here, the twelve data sets as counted through Bates EFTA02731789, contains 1,378,393 documents and, by known page counts, 2,729,256 pages; DOJ has also published Bates-EFTA records above that number, including reports named in the June 25 *Phang* order that sit in its Data Set 12 folder, and those are outside the counts.[78,79] Different inclusions, duplicates, and nonresponsive overcollection prevent subtraction from identifying a responsive withheld population. The December 19, 2025 deadline was missed; production continued through January 30, 2026, and the Section 3 Report followed February 14. The January 30 letter describes approximately 200,000 pages redacted or withheld based on privileges, not a disjoint withheld-only population, and the report supplies no count reconciliation. These are accounting limits, not a measured percentage of unlawful withholding.

Epstein files" with "no withholdings or limitations." The FBI's internal Epstein Transparency Project processing guidance (training dated March 21, 2025) was provided by the FBI directly to DOJ on March 23, 2025; the operational summary at EFTA00172473 states it was provided to all FBI personnel participating in the redaction project. An undated, unsigned Department of Justice and FBI memorandum made public in July 2025, https://www.justice.gov/opa/media/1407001/dl, stated that the review "revealed no incriminating 'client list'" and that "no further disclosure would be appropriate or warranted"; see also Associated Press, "A look at how the Epstein files dogged Pam Bondi's time as attorney general," PBS NewsHour ("July 2025: The walkback"; "an unsigned memo"). EFTA (Public Law 119-38) followed on November 19, 2025.

[78] Compliance status from DOJ EFTA Compliance Letters #1 (December 19, 2025), https://www.justice.gov/opa/media/1434851/dl, and #2 (January 30, 2026), https://www.justice.gov/opa/media/1426091/dl, with later dated developments noted below. Letter #2 (pp. 1–2) reports "more than 6 million pages… identified as potentially responsive" and "over 3 million responsive pages… nearly 3.5 million pages released" cumulatively; the 6 million is the identified pool, the 3.5 million the released total combined with prior releases (Letter #2 does not itemize them; Letter #1, p. 5, separately lists over 33,000 pages produced to Congress on August 22, 2025). Letter #1 (p. 6) reports that the U.S. Attorney's Office for the Southern District of New York produced 3.6 million records. The December 19, 2025 statutory deadline (§ 2(a)) was missed; the cited production sequence ran through January 30, 2026; February 14 was the report date; the § 2(c)(2) Federal Register per-redaction publication was absent at the May 27, 2026 check (federalregister.gov API: zero matches; DOJ had posted a Justice.gov "EFTA-FOIA Crosswalk" instead). DOJ's August 27, 2026 notice, "Report Under Public Law 119-38" (FR Doc. 2026-17533), republished the Section 3 Report without record-level entries. The September 16 order, ECF 43, pp. 17–18, discharged publication show cause while reserving content adequacy; this paper does not state a final judicial holding against the notice.

[79] Released-page count measured directly from the DOJ EFTA production manifests for Data Sets 1 through 12, as counted through Bates EFTA02731789: 1,378,393 Bates-EFTA PDF documents summing to 2,729,256 pages (three documents carry no recorded page count). An independent public mirror (epstein-data.com v5.2 concordance index) counts 1,380,964 EFTA-Bates documents and 2,731,789 pages; the release and content status of the 2,571 additional identifiers is unresolved, because each has a start-page image path and the sparse metadata does not distinguish them from matched entries (the project's October 12, 2026 audit, correcting its earlier reconciliation record). Bates-EFTA records that DOJ published above EFTA02731789 (Appendix A.1) are outside these counts. DOJ's January 30, 2026 Compliance Letter #2 (p. 2) reports releasing "over 3 million" responsive pages and "nearly 3.5 million" combined with prior productions; the February 14, 2026 Section 3 Report states no count. The gap between the claimed and measured totals is unreconciled in the compliance record.

Six aspects of implementation organize the following assessment: processing instructions, inherited markings, privilege claims, compliance reporting, completion claims, and official responsibility. Each rests on a statutory opening, an undefined term or a trigger the obligor controls (Table C.1). The label "self-defined compliance" describes agency choices under a disputed mandate; it does not pre-adjudicate their legality or infer a concealment motive.

Self-defined Compliance #1 — Earlier processing instructions

Full-corpus classification recovered nine copies of two review-guidance documents, including an FBI training deck dated March 21, 2025, eight months before enactment (EFTA00172446, pp. 1, 6).[80] Its instruction reads, "Do not add any exemptions; just redaction boxes", without a terminal period in the source.[81] This establishes what that training told processors to place on pages then. It does not establish that reasons were never recorded, that the instruction governed the post-EFTA review, or that a justification log could not be reconstructed.

Continuity is an inference requiring a documentary bridge. DOJ's January 30 letter describes post-enactment review protocols, updated guidance, and FAQs, which is affirmative rival evidence.[82] One such document is in the court record: the September 16 *Phang* order describes DOJ's "EFTA First Level Review Protocol," cited there as dated January 4, 2026 although attached to the December 19 letter, which required redaction of personal email addresses under the Privacy Act and of government personnel names.[83] The March 2025 training gave the same

[80] A phrase search of the project's full-text index for "just redaction boxes" returns nine documents: seven copies of a two-page guidance sheet (EFTA00161485, EFTA00161592, EFTA00163142, EFTA00163144, EFTA01649097, EFTA01655727, EFTA01655729) and two scans of the March 21, 2025 training deck (EFTA00172329, EFTA00172446). Recount in the author's recomputation record of September 30, 2026, content version 1dc567730c04, available on request.

[81] DOJ EFTA production, EFTA00172446, PDF p. 1 (March 21, 2025 training date), p. 6 ("Do not add any exemptions; just redaction boxes", without a period). EFTA00172329 is a second scan of the same training, not independent evidence. The instruction concerns the earlier processing workflow. DOJ's January 30, 2026 letter describes updated protocols and FAQs; neither the training nor released box-only pages proves that the old instruction governed post-enactment review. "EFTA" followed by eight digits is the Bates number DOJ stamped on each document of the production; each document is posted in the Department's Epstein Library at an address of the form https://www.justice.gov/epstein/files/DataSet%2012/EFTA02858481.pdf, with the data-set number and Bates number varying.

[82] U.S. Department of Justice, Office of the Deputy Attorney General, letter, "Epstein Files Transparency Act - Production of Department Materials" (Compliance Letter #2), January 30, 2026, pp. 2–3 (release totals; review protocols, updated guidance, and FAQs), 4 (Member access; privilege-based redactions; no withholding on classification grounds), 5 (third-party material produced with its original redactions; foreign-language and technically incompatible files not produced), and 6 ("Today's release marks the end of a comprehensive document identification and review process"; the report and the Federal Register justifications still to come).

[83] *Phang v. Blanche*, No. 1:26-cv-01417 (D.D.C.), Judge Emmet G. Sullivan: ECF 15, June 25, 2026 (preliminary-injunction order), https://clearinghouse-umich-production.s3.amazonaws.com/media/doc/172046.pdf; ECF 16, June 25, 2026 (memorandum opinion), pp. 17–18 (jurisdictional arguments), 36 (merits arguments treated as conceded, citing Local Civil Rule 7(b)), and 46, https://clearinghouse-umich-production.s3.amazonaws.com/media/doc/172048.pdf; ECF 42, September 16, 2026, https://cases.justia.com/federal/district-courts/district-of-columbia/dcdce/1:2026cv01417/291779/42/0.pdf; ECF 43, September 16, 2026, pp. 2 (merits conceded), 4 and 10 (the "EFTA First Level Review Protocol," cited "(Jan. 4, 2026)" although, by the order's own account at p. 11, attached to the December 19 letter; whether the Act permits Privacy Act redactions "is not presently before the Court"), 12 (the protocol "requires the redactions of government personnel and their email addresses"), 13 (appeal No. 26-5299; stay

rule for personnel names, so the protocol cuts both ways: it repeats one rule and gives another a statutory basis. The protocol is not among the nine guidance copies, and record-level review histories would still be needed to date any decision.

The training's other instructions identify earlier processing categories, not automatically unauthorized post-EFTA redactions. One contested episode is on the record: Wexner's name was redacted in an FBI document and, by the Attorney General's hearing testimony, restored within 40 minutes after Representative Massie raised it.[84] Section 2(b)(1) is the provision that governs a public figure's name; the Section 3 Report states that no record was redacted on those grounds, and whether the provision was breached turns on the reason for the redaction, which no published record states. Bondi's May 29 interview (pp. 36, 74, 86–87) acknowledges victim-protection failures.[see n. 81,85] Victim exposure and over-withholding require separate investigation.

Self-defined Compliance #2 — Inherited markings

The production carries four inherited record or redaction groupings: two proceedings and two FBI record or marking categories.[86] DOJ states that third-party material retained its original redactions, while also stating that documents were loaded for review; retention does not establish that no review occurred.[see n. 82] As of August 30, 2026, eight phrase queries return 2,670 documents (Set A), of which the classifier assigns 569 to inherited non-EFTA framework markers and 314 to common-law-privilege language; across the whole corpus the same classes

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denied), 15 (contempt premature), 16, and 17, https://cases.justia.com/federal/district-courts/district-of-columbia/dcdce/1:2026cv01417/291779/43/0.pdf. A further appeal, No. 26-5334, was docketed in the D.C. Circuit on September 21, 2026 (CourtListener docket). DOJ filed a protocol dated January 4, 2026 on the docket on September 24 (ECF 50-1, "Attorney Review Protocol for Epstein Files"; p. 8 lists Privacy Act withholdings, with exceptions for Senate-confirmed officials, public affairs staff, and two prosecuted prison guards); its title differs from the order's, ECF 59 calls it the January 4 protocol, and whether it is the text attached to the December 19 letter (ECF 50-2) is not established. Later entries: ECF 49, September 21, 2026; ECF 52, October 1, 2026; ECF 57, October 9, 2026; ECF 59, October 16, 2026; and the D.C. Circuit's per curiam order of October 28, 2026, Nos. 26-5299, 26-5334. Dockets read October 31, 2026; the joint notice ordered by ECF 49 has not been seen. Court pagination is used; these are separately dated updates, not a refreshed corpus run.

[84] Al Jazeera Staff, "Pam Bondi Epstein hearing: Key takeaways," Al Jazeera, February 12, 2026, https://www.aljazeera.com/news/2026/2/12/pam-bondi-epstein-hearing-key-takeaways (Bondi "said Wexner's name appeared numerous times in other files the department released and that the DOJ unredacted his name on the document 'within 40 minutes' of Massie spotting it"). This is a news account of hearing testimony; the hearing transcript was not reviewed for this edition.

[85] House Committee on Oversight and Government Reform, Transcribed Interview of Pamela Bondi, May 29, 2026, https://oversight.house.gov/wp-content/uploads/2026/06/Final-Bondi-Transcript.pdf: PDF/printed p. 27 (Blanche supervised review), p. 28 (six-million-page collection), p. 29 (missed deadline and more than 500 attorneys). These are Bondi's descriptions, not independent audit results. The introductory procedural statement identifies a transcribed interview rather than a sworn deposition. Liability for a false statement under 18 U.S.C. § 1001 differs from sworn perjury under § 1621; the availability of either requires its elements and prosecutorial action, not merely an inaccurate answer.

[86] The four inherited record or redaction groupings: Bureau of Prisons records withheld under FOIA Exemption 7(A) on the basis of *United States v. Tartaglione*, No. 16-cr-832 (KMK) (S.D.N.Y.), in *The New York Times Co. v. Federal Bureau of Prisons*, No. 20 Civ. 833 (PAE) (S.D.N.Y.), as the government's letter of April 28, 2021 (ECF 52) records (EFTA00085218, p. 1); the *United States v. Maxwell* trial record (sealed under Second Circuit rules, *Lugosch v. Pyramid Co. of Onondaga*); FBI investigative files (Privacy Act subsection (j)(2)); and files stamped "FOIA Exempt / SBU."

hold 571 and 444,298 documents, the latter almost all confidentiality-disclaimer boilerplate.[87] Because most of the eight queries are the marker phrases themselves, the markers' share of the query results is not a prevalence and is not reported. The Report never explains how the inherited markings fit Section 2(c); see Appendix A.

Self-defined Compliance #3 — Disputed privilege construction

The Section 3 Report invokes deliberative-process, work-product, and attorney-client privileges, none enumerated in § 2(c). It rests on Federal Rule of Evidence 501 and a clear-statement presumption for common-law privileges, citing *Trammel*, *Bassett*, *Castro-Huerta*, and above all *FBI v. Fazaga*, for the proposition that a privilege "should not be held to have been abrogated or limited unless Congress has at least used clear statutory language."[88,89] The strongest DOJ reading is that Congress legislates against established privileges, that § 2(a) nowhere mentions privilege, and that enumerating disclosure exceptions does not displace them.

Privilege is one of several bases DOJ applied that § 2(c)(1) does not list: the Privacy Act, redaction of government personnel names and email addresses, names redacted for "law-enforcement sensitive purposes," statutes that its crosswalk groups as "other applicable law," and non-production of "substantially similar" records and of foreign-language and technically incompatible files (Appendix C, Table C.2).[90] The *Phang* court rejected two of these rationales

[87] Document Set A is the union of eight phrase queries ("FOIA Exemption," "withheld pursuant to," "REDACTED," "Lugosch," "FOIA Exempt," "Tartaglione," "Privacy Act exemption," "proposed redactions") over Data Sets 1 through 12: 2,670 documents. Author's classification summary, generated May 3, 2026, content version bda36472330f (Set A: 569 inherited-framework, 314 common-law-privilege, and 1,576 fallback assignments; Set B, the 446,675 documents assigned to any signal cluster: 571 inherited-framework and 444,298 privilege-language documents). Author's recomputation of September 30, 2026, content version 1dc567730c04, which reproduces the Set A figures and divides its 314 privilege-language documents into 122 disclaimer-only, 100 with privilege language outside a redaction context, and 92 in a redaction context; the June 24, 2026 privilege-subclass manifest (content version 4b266cc08c98) divides the corpus-wide 444,298 into 435,453 disclaimer-only and 8,845 others. Records available on request.

[88] DOJ, Section 3 Report, February 14, 2026, pp. 2–3 ("Summary of Redactions Made and Legal Basis"), https://www.justice.gov/opa/media/1434856/dl. The authorities it cites are Federal Rule of Evidence 501; *Trammel v. United States*, 445 U.S. 40, 47 (1980); *FBI v. Fazaga*, 595 U.S. 344, 355 (2022); *Bassett v. United States*, 137 U.S. 496, 505–06 (1890); and *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 642 (2022). In *Fazaga* the Court stated the clear-statement rule for the state-secrets privilege, applying it "[r]egardless of whether the state secrets privilege is rooted only in the common law (as respondents argue) or also in the Constitution (as the Government argues)" and citing the general presumption against abrogating common-law principles, *Norfolk Redevelopment and Housing Authority v. Chesapeake & Potomac Telephone Co. of Va.*, 464 U.S. 30, 35 (1983) (slip op. at 9), which is the strongest ground for extending the rule to ordinary privileges; the Act's answers are its express coverage of internal charging communications (§ 2(a)(7)) and its enumerated withholdings. The Court said its decision "addresses only the narrow question whether §1806(f) displaces the state secrets privilege" (slip op. at 13). The approximately 200,000-page privilege figure comes from the January 30 letter (p. 4) and is not a disjoint withholding total. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975), *Hickman v. Taylor*, 329 U.S. 495 (1947), and *Upjohn Co. v. United States*, 449 U.S. 383 (1981), are the author's background on the privileges, not authorities DOJ cites. The August 27, 2026 Federal Register notice republished the Section 3 Report "pursuant to Section 2 of the Act," and DOJ "claims that this satisfies section 2(c)(2)" (*Phang*, ECF 43, p. 17).

[89] U.S. Department of Justice, *Epstein Files Transparency Act: Section 3 Report to Congress*, February 14, 2026, pp. 2–3, https://www.justice.gov/opa/media/1434856/dl.

[90] U.S. Department of Justice, Office of Information Policy, *EFTA-FOIA Crosswalk*, pp. 1–2, April 30, 2026, https://www.justice.gov/oip/media/1438931/dl. The table contains no Section 2(c)(1)(E) row. The phrases "law-

(duplication and foreign-language impracticability), discharged its show-cause order for the personnel and email redactions, and reserved whether the Act permits Privacy Act redactions.

Author's legal analysis. The enacted text supports reading § 2(c)(1) as exclusive. The Act pairs "Prohibited Grounds for Withholding" with "Permitted Withholdings"; § 2(a)(7) makes internal Department communications about charging decisions covered records, which a full preservation of deliberative-process and work-product privilege would leave with little to reach; and § 2(c)(1) confines even permitted withholding to "segregable portions." In the December 9 *Maxwell* order a court applied structural reasoning of this kind at DOJ's request: it relied on the enumerated exceptions to hold that the Act covers grand-jury materials, and on the later-in-time and specific-over-general canons, with § 2(b)(1), to hold Rule 6(e) displaced for them. It did not address privileges.[91] DOJ's principal authority, *Fazaga*, stated its rule for the state-secrets privilege and called its own holding narrow; whether that rule reaches ordinary privileges under a disclosure mandate is undecided, and on DOJ's reading paragraph (7) still reaches communications that are unprivileged or segregable. The construction is contested, not adjudicated, and the release record does not reveal what privilege-withheld pages contain. The inference that privilege substituted for intelligence classification remains withdrawn.

Other legal regimes require separate treatment. FOIA exemptions govern FOIA and do not automatically migrate into EFTA. The Privacy Act bars disclosure without consent unless an exception applies, and its exception for disclosures "required under section 552" covers FOIA, not EFTA. 18 U.S.C. § 3509(d) separately protects child victims' identities. Housekeeping rules regulate handling, but 5 U.S.C. § 301 supplies no withholding authority. In *United States v. Maxwell*, the December 9, 2025 order held Rule 6(e) displaced for the covered grand-jury materials and modified the protective order with victim safeguards; the January 21, 2026 order in that case is discussed with the member-level routes below.[see n. 91]

Classification is a separate statutory ground: § 2(c)(1)(E), read with the declassification duty in § 2(c)(3) and the duty in § 2(c)(4) to publish each decision after July 1, 2025 to classify covered information. The Classified Information Procedures Act (CIPA) supplies criminal-case procedures, not a general EFTA exemption. The pending EFTA II bills would strike (E). That alone would not open classified records, because § 2(a) still reaches only "unclassified" records;

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enforcement sensitive purposes" and "substantially similar" are not in the crosswalk: Section 3 Report, p. 4 n.2 (individuals "whose names were redacted for law-enforcement sensitive purposes are not included"); *Phang v. Blanche*, ECF 43, pp. 4–5 (the Department's position that the handwritten interview notes are "substantially similar to" the typewritten reports).

[91] *United States v. Maxwell*, No. 20-cr-330 (S.D.N.Y.), Opinion and Order of December 9, 2025 (ECF 820), cited in *Phang* (ECF 16, p. 30) as 811 F. Supp. 3d 667: pp. 14 (§ 2(a) is "strikingly broad"; the enumerated exceptions), 15–16 (the later-in-time and specific-over-general canons: "Both canons apply here with force"), 16 (§ 2(b)(1)), 17 (Rule 6(e) overridden "in the very limited context of the Maxwell and Epstein grand jury materials"), 19 n.11, and 21 (the United States Attorney to "personally certify" compliance with § 2(c)(1)(A) before release), https://www.nysd.uscourts.gov/sites/default/files/2025-12/PAE%20Maxwell%20Opinion%202025.12.09%20%28As%20Docketed%29.pdf; Opinion and Order of January 21, 2026 (ECF 844), pp. 1 (motion by Representatives Massie and Khanna as amici), 4 ("No provision of the EFTA vests this Court with that authority"), and 7 and n.2 (without prejudice to a separate suit; the Representatives are "at liberty to pursue oversight of DOJ via the tools available to Congress"; DOJ's standing argument noted), https://www.nysd.uscourts.gov/sites/default/files/2026-01/Maxwell%2020cr330%20-%20Opinion%20%26%20Order%201.21.26.pdf. The December order concerns the covered Maxwell materials, not categorical repeal of grand-jury secrecy. 5 U.S.C. § 301; 18 U.S.C. § 3509.

§ 2(c)(3) would lose the withholding it applies to, while § 2(c)(4) would survive as the principal published check on classifying a record out of § 2(a). The bills' separate State-officer access to classified records is in Table C.4. A reviewer must apply the governing protection, not presume every inherited label valid or void.

Self-defined Compliance #4 — Discretionary Compliance Reporting

DOJ initially supplied no Federal Register notice and republished its Section 3 Report there on August 27, 2026, with categorical explanations, not entries keyed to records or pages.[92] Under the author's construction, "all redactions" requires enough linkage to permit review of each disputed redaction. DOJ's December 19 letter said that "A privilege log will be produced in due course as required under the Act." Section 3(2) separately requires a "summary of redactions made, including legal basis," so a categorical summary under § 2(c)(2) would duplicate it. And the June 25 *Phang* opinion described the provision as requiring a "redaction log" due with the production, though on merits DOJ did not contest at that stage.[93] DOJ's strongest rival is that categorical justifications accompany every member of each class, that the provision sets no deadline, and that record-level entries are impracticable for roughly 1.8 million page-slots with an apparent redaction box (uncorrected). The September 16 order discharged the publication show-cause requirement and reserved substantive adequacy.

Self-defined Compliance #5 — Self-declared Completion

DOJ's January 30 letter declared the identification and review process complete while describing remaining reporting obligations.[see n. 82] Section 3 makes that declaration the trigger for the report, which followed February 14. A completion announcement is not a judicial determination of compliance. A proposed amendment should resolve the uncertainty by requiring the Attorney General to post, with each release and by a stated date, a machine-readable index giving for each redaction or withheld record a public identifier, the governing ground, a harm explanation where relevant, the segregability decision, the review date, and an expiry for temporary withholding, with notice of its availability in the Federal Register and a date-certain report. Protected details should go to a sealed annex accessible to the reviewing court; the public log must not identify victims or reveal that an identified record is tied to an open investigation whose subject is unaware of it.

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[92] Department of Justice, "Report Under Public Law 119-38," August 27, 2026, 91 FR 55356–55362, FR Doc. 2026-17533, signed August 21 by Associate Attorney General Stanley E. Woodward Jr. https://www.federalregister.gov/documents/2026/08/27/2026-17533/report-under-public-law-119-38. The appendix republishes the Section 3 Report's categories, redaction summary and privileges, without itemized per-redaction entries or Bates numbers. The September 16 order, ECF 43, pp. 17–18, discharged publication show cause while reserving content adequacy; this paper does not state a final judicial holding against the notice.

[93] DOJ, Compliance Letter #1, December 19, 2025, pp. 3 ("A privilege log will be produced in due course as required under the Act") and 4 (the Department "will provide an explanation for any redacted and withheld materials as part of this production"). Pub. L. No. 119-38, § 3(2). *Phang v. Blanche*, ECF 16, June 25, 2026, pp. 36 (the Attorney General "does not respond substantively" to the merits arguments, which are treated as conceded) and 46 ("The Act required the production of the covered documents and the redaction log by December 19, 2025"). The 1.8 million figure is the uncorrected apparent image-only join, 1,842,147 of 2,729,178 page-slots (Appendix A.3).

Self-defined Compliance #6 — Official responsibility

The compliance letters and Section 3 Report bear Blanche's signature; Bondi's name appears on Letter #2 and the report without her signature. Signature allocation documents responsibility for those statements, not a design to evade it. Bondi's April removal and May 29 unsworn transcribed interview are political consequences distinct from a criminal sanction; whether any official incurred a durable legal penalty remains open.[94,95,see n. 85]

Epstein's state guilty plea and Maxwell's federal conviction are real accountability for private crimes; they do not establish accountability for official oversight failures. The 2007–2008 non-prosecution agreement and its concealment from victims remain central, but the district court's Crime Victims' Rights Act finding was followed by *In re Wild*, 994 F.3d 1244 (11th Cir. 2021) (en banc), which held that the Act authorized no freestanding enforcement action before federal proceedings began.[96,97] Maxwell's later prison transfer raises a separate question from the force of her conviction.[98]

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[94] Julie K. Brown, "The architect of DOJ's Epstein mess is fired," April 2, 2026, opening and subhead, https://jkbjournalist.substack.com/p/the-architect-of-dojs-epstein-mess; House Committee on Oversight and Government Reform Democrats, "Ranking Member Robert Garcia Statement on Firing of Attorney General Pam Bondi," April 2, 2026, https://oversightdemocrats.house.gov/news/press-releases/ranking-member-robert-garcia-statement-on-firing-of-attorney-general-pam-bondi (firing and Epstein-files rationale).

[95] Jennifer Jacobs et al., "Trump fires Pam Bondi as attorney general, installs Todd Blanche as acting AG," CBS News, updated April 2, 2026, https://www.cbsnews.com/news/trump-pam-bondi-attorney-general/ (Blanche named acting Attorney General).

[96] Non-prosecution agreement between the United States Attorney's Office for the Southern District of Florida and Jeffrey Epstein, signed September 24, 2007, p. 5 (the United States "will not institute any criminal charges against any potential co-conspirators of Epstein, including but not limited to" four named women). Office of Professional Responsibility, report of November 2020, Executive Summary, pp. i–iv: on June 30, 2008 Epstein pleaded guilty in state court to the pending indictment for felony solicitation of prostitution and, under the agreement, to an information charging procurement of minors to engage in prostitution; he "actually served less than 13 months," with work release from October 2008; and on July 12, 2019 Acosta submitted his resignation. *Doe 1 v. United States*, 359 F. Supp. 3d 1201 (S.D. Fla. 2019) (Crime Victims' Rights Act); *United States v. Maxwell*, 118 F.4th 256 (2d Cir. 2024) ("the NPA with USAO-SDFL does not bind USAO-SDNY"). The Senate confirmed Acosta as Secretary of Labor on April 27, 2017, 60–38 (Roll Call Vote 116, 115th Cong., 1st Sess.).

[97] In re Wild, 994 F.3d 1244 (11th Cir. 2021) (en banc), opinion introduction and concluding holding, https://media.ca11.uscourts.gov/opinions/pub/files/201913843.enb.pdf: no freestanding CVRA enforcement action before federal criminal proceedings commence. The contrary district-court finding must be read with this later en banc disposition.

[98] ABC News, "Ghislaine Maxwell invokes 5th Amendment in closed-door House Oversight deposition," February 9, 2026, https://abcnews.com/Politics/maxwell-expected-invoke-amendment-closed-virtual-house-oversight/story?id=129991066 (a "closed-door virtual deposition" in which she "repeatedly invoked" the privilege). DOJ, Compliance Letter #1, December 19, 2025, p. 5 (release on August 22, 2025 of the transcript and audio of "the Deputy Attorney General's interview of Ghislaine Maxwell"). Rep. Robert Garcia to Bureau of Prisons Director Marshall, August 1, 2025, https://oversightdemocrats.house.gov/imo/media/doc/2025-08-01-rg-to-bop-director-marshall-re-maxwell.pdf, p. 1 (transfer from Tallahassee to Federal Prison Camp Bryan, "a facility with far fewer restrictions and security measures"); Garcia to Warden Tanisha Hall, October 30, 2025, https://oversightdemocrats.house.gov/imo/media/doc/2025-10-30.garcia-to-fpc-bryan-warden-re-maxwell.pdf, p. 1 (such transfers for sex offenders "are at odds with BOP policy"). Rep. Ro Khanna to Chairman James Comer, February 8, 2026, https://khanna.house.gov/sites/evo-subsites/khanna.house.gov/files/evo-media-document/rep-khanna-letter-to-chair-comer-re-maxwell-deposition-88.pdf, p. 1 (a blanket invocation "appears inconsistent" with

Release, Redaction, and Justification Findings

The three analyses answer different questions and do not yield a single compliance percentage (Tables 9 and 10).

Table 9. What Each Measurement Establishes

Measurement	Supported interpretation	Limit
Release inventory	Pages represented in the measured release	Cannot derive a withheld responsive residual from DOJ's gross collection
Dark-box detector	Apparent flags and calibrated dark-box prevalence	Does not establish legal compliance or total redaction prevalence
Text classification	Assigned phrase and framework classes	Does not decide each redaction's operative legal basis

Table 10. Separate Measurements, as of August 30, 2026

Component	Result and denominator
Measured release (Data Sets 1–12, through EFTA02731789)	2,729,256 pages (sum of known counts); not a share of a reconciled responsive universe
DOJ collection	More than 6 million potentially responsive pages, including duplication and overcollection
January 30 letter	Approximately 200,000 pages redacted or withheld based on privileges; no disjoint withheld-only share established
Text-marker join	5,438 of 2,729,178 page-slots (0.199%); 3,186 visual-plus-marker and 2,252 marker-only
Dark-box census	2,729,175 pages processed; 81 pages in 33 corrupt files excluded, plus a three-page duplicate removed
Corrected dark-box prevalence	64.5%, conditional 95% calibration interval 62.0–66.6%; tuning and transport uncertainty excluded
Apparent image-only join	1,842,147 of 2,729,178 page-slots (67.498%); uncorrected
Overall compliance	Not estimable from these noncomparable populations

At the document level, the largest classifier assignment in the 2,670-document query set is a 1,576-document fallback class, which is not a verified population of unjustified redactions (Appendix A, Table 12).

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her not invoking the privilege when she met the Deputy Attorney General "to discuss substantially similar subject matter"). Rep. Jamie Raskin to President Trump, November 9, 2025, https://democrats-judiciary.house.gov/sites/evo-subsites/democrats-judiciary.house.gov/files/evo-media-document/2025-11-09-raskin-to-trump-wh-re-maxwell.pdf (whistleblower information about her treatment at Federal Prison Camp Bryan and a "Commutation Application"). Twelve senators to the DOJ Office of the Inspector General, December 24, 2025, https://www.blumenthal.senate.gov/imo/media/doc/20251224lettertodojoigonepsteinreleasefinal.pdf, p. 1 (requesting "an audit of the Department's compliance with the statute"). The letters record allegations, not findings, and waiver of the privilege is generally assessed proceeding by proceeding, so the contrast is not itself evidence of waiver.

The 64.5% dark-box estimate reuses the 400-page set used to tune the detector, its main weakness, so its 62.0–66.6% interval is conditional on that design; transport limits and unresolved white-box and media masking are set out in Appendix A, and neither this estimate nor the text counts supplies an overall compliance percentage.

The grand-jury motions

The July 2025 grand-jury unsealing motions were denied under the law then applied; after enactment, the December 9 *Maxwell* order changed access to the covered materials.[99,see n. 91] The sequence shows why contemporaneous legal constraints and later statutory changes must both be considered.

The Congressional and Judicial Response

Congress escalated unevenly, while private litigation independently produced compulsory orders (*Phang v. Blanche*, discussed below). The two channels must be tracked separately: a committee majority's refusal to pursue a suit shows political non-use, not that the suit would fail.

Response to the withheld documents

On January 21, 2026, Rep. Summer Lee offered a substitute for the pending Clinton contempt report. It would have replaced that report with a recommendation that the House direct the Committee to seek declaratory judgments enforcing its August 5, 2025 subpoena to Bondi, with House counsel appearing on the Speaker's authorization. It failed 19–24 on a party-line vote: every aye a Democrat, every no a Republican. The Committee also rejected, 19–25, an amendment substituting civil enforcement for criminal contempt against Clinton, and then

[99] The grand-jury-unsealing gesture. On July 18, 2025 the Government moved to unseal the grand jury transcripts in both *United States v. Epstein* (S.D.N.Y. 19 Cr. 490, Dkt. 61) and *United States v. Maxwell* (S.D.N.Y. 20 Cr. 330, Dkt. 785), the motion bearing the signature block of Attorney General Pamela Bondi and Deputy Attorney General Todd Blanche (signed /s/ by Blanche); U.S. Attorney Jay Clayton signed the Government's July 29 supplemental memorandum (Maxwell Dkt. 796) (the Main-Justice leadership appearing personally on a district-court filing is itself notable). Judge Engelmayer denied the Maxwell motion on August 11, 2025, holding that the Second Circuit's narrow *In re Craig* "special circumstances" exception to grand-jury secrecy did not reach summary-witness testimony largely duplicative of the trial record, and that granting it "would bloat the 'special circumstances' doctrine" (*United States v. Maxwell*, 794 F. Supp. 3d 215, 225–29 (S.D.N.Y. 2025), as the January 21, 2026 order in that case summarizes it at p. 5; the copy cited bears Bates DOJ-OGR-00015133–163, the prefix of DOJ's August 22, 2025 production to the House Oversight Committee). The parallel Southern District of Florida motion had already been denied on July 23, 2025 on the ground that no Federal Rule of Criminal Procedure 6(e) exception applied and that the Eleventh Circuit does not recognize the special-circumstances doctrine (*In re Grand Jury 05-02 (WPB) & 07-103 (WPB)*, No. 9:25-mc-80920-RLR, Dkt. 4 (S.D. Fla. July 23, 2025)). The proposed unsealing also kept covered material covered: the Government's July 29 supplemental brief proposed redacting uncharged third parties (Maxwell Dkt. 796 at 7), which victims' counsel attacked as a proposal that "smacks of a cover up" (McCawley/Farmer letter, Aug. 5, 2025, Bates DOJ-OGR-00015103–107), while separately-counseled third parties whom the Department had told on August 1 that they were "referenced in some capacity" in the materials, but declined to tell in what context, moved to keep the transcripts sealed entirely (Binder & Schwartz letter, Aug. 5, 2025, Bates DOJ-OGR-00015118–122). Later reporting indicates the futility was anticipated: per Maggie Haberman and Jonathan Swan, "Inside the White House Freakout Over the Epstein Files," *New York Times Magazine*, June 10, 2026, at a July 17, 2025 White House meeting the Deputy Attorney General laid out the unsealing petition as an option and predicted the courts would refuse, which would shift blame for withholding onto the judges while making the administration appear to favor release. That last point is reported intent, not part of the court record, and is treated here only as consistent with the litigated outcome the record establishes.

reported the Clinton criminal-contempt resolution 34–8.[100] Because the Lee text displaced the Clinton report, the vote is evidence of a committee choice against this remedy but not a clean test of it; it is compatible with partisan protection, and adoption would still have required action by the House. Public pressure preceded additional interview-summary releases in March, while related notes remained disputed; under Table 6 such concessions count as gains.[101,102]

Response to witness avoidance

The witness record mixes subpoenas, negotiated appearances, depositions, and unsworn interviews; it should not be summarized as a uniform denial. Maxwell appeared virtually on February 9 and invoked the Fifth Amendment; Bondi's May 29 appearance was an unsworn

[100] House Committee on Oversight and Government Reform, markup of January 21, 2026. Amendment offered by Rep. Lee to the amendment in the nature of a substitute to the committee report recommending that the House find former President William J. Clinton in contempt, https://docs.house.gov/meetings/GO/GO00/20260121/118877/BILLS-119-WJCContemptReport-L000602-Amdt-3.pdf: it would have struck the report and substituted a resolution that the Committee "shall initiate judicial proceedings in any Federal court of competent jurisdiction" to seek declaratory judgments affirming the Attorney General's duty to comply with the August 5, 2025 subpoena, with the House Office of General Counsel representing the Committee "at the authorization of the Speaker," who "shall consult with the Bipartisan Legal Advisory Group." H. Rept. 119-468, Roll Call Votes, https://www.govinfo.gov/content/pkg/CRPT-119hrpt468/html/CRPT-119hrpt468-pt1.htm: the Lee amendment failed 19–24 (Rollcall No. 1); an amendment by Rep. Min to authorize a declaratory-judgment suit against Clinton instead failed 19–25 (Rollcall No. 2); the report was ordered reported 34–8, with 2 voting present (Rollcall No. 3). The committee's roll-call sheet for the Lee amendment (PDF p. 22 of https://www.govinfo.gov/content/pkg/CRPT-119hrpt468/pdf/CRPT-119hrpt468-pt1.pdf) records every aye as a Democrat and every no as a Republican. Meeting transcript, https://docs.house.gov/meetings/GO/GO00/20260121/118877/HMKP-119-GO00-Transcript-20260121.pdf, printed pp. 48–49 (Lee describes the amendment as holding the Attorney General "in civil contempt") and 70 (vote announced, 19 to 24). These establish the proposal and outcome, not the truth of the underlying noncompliance allegation.

[101] Stephen Fowler, "DOJ removed, withheld Epstein files related to accusations about Trump," NPR, February 24, 2026, https://www.npr.org/2026/02/24/nx-s1-5723968/epstein-files-trump-accusation-maxwell (by NPR's review of serial numbers, "53 pages of interview documents and notes missing from the public Epstein database"; the Department's position that unpublished documents "are privileged, are duplicates or relate to an ongoing federal investigation"; and Ranking Member Garcia's statement that "the DOJ appears to have illegally withheld FBI interviews with this survivor"). For the March 2026 releases, see NPR, "Justice Department posts more Epstein files related to accusations about Trump," March 5, 2026, and James Hill and Peter Charalambous, "Epstein files: DOJ releases previously withheld FBI reports about sex abuse allegation against Trump," ABC News, March 6, 2026. The point is the compliance posture, not the truth of the underlying allegations: the release followed external pressure and was not compelled by contempt, an appropriations rider, or a court order.

[102] For the March 2026 additional interview-summary release, see NPR, "Justice Department posts more Epstein files related to accusations about Trump" (npr.org, March 5, 2026), and James Hill and Peter Charalambous, "Epstein files: DOJ releases previously withheld FBI reports about sex abuse allegation against Trump" (ABC News, March 6, 2026). The related notes dispute is addressed in *Phang*, ECF 16, pp. 35–36, and ECF 43, pp. 12–13, with the latter ordering further in-camera submissions; those orders are not the source for the March release. Wyden's February 25 and March 18, 2026 correspondence concerning the DEA memorandum (EFTA00173953) records a demand and an allegation of interference; DOJ disputed that account. A disputed allegation is not an adjudicated obstruction finding. The separate Treasury example is dated February 14, 2024: Senate Finance minority staff, Looking the Other Way, August 4, 2026, PDF pp. 5–6. The report also describes later EFTA disclosure of SARs and bank records. Controlled access in 2024 therefore does not establish permanent public unavailability or prove the same later outcome in a different agency.

transcribed interview; Gates's interview occurred June 10.[see n. 98,see n. 85,103] A threatened contempt vote that secures testimony is a concrete gain, even if document access remains disputed.

Response to the Federal Register justification requirement

The private Administrative Procedure Act (APA) action *Phang v. Blanche* is substantive counterevidence to a categorical enforcement-monopoly account. Judge Emmet G. Sullivan's June 25 preliminary injunction (ECF 15, with opinion ECF 16) required production or a showing of cause for specified emails, documents, and interview notes; it separately required initiation of foreign-language review and publication or a showing of cause for the redaction log.[see n. 83] It did not order immediate public release of every withheld record. The September orders show both the reach and limits of this route:

Date / order	**Compulsion and response**	**Evidentiary limit**
June 25, ECF 15–16	Preliminary APA relief, with July 2 obligations	Likelihood of success found on merits DOJ did not contest at the preliminary-injunction stage (Local Civil Rule 7(b)), so no exemption claim was adjudicated; the APA right of action, standing, and FOIA-adequacy rulings are contested and on appeal
July 25 / July 30; August 13 (recounted in ECF 43, pp. 6–8)	Court ordered in-camera submissions; DOJ submitted materials; further victim evidence requested	Judicial access and review occurred; not equivalent to full public production
September 16, ECF 42	Answer compelled by September 24; stay of filing deadlines denied	Procedural enforcement, not sanctions for the underlying disclosure dispute

[103] Selected dated appearances, not a complete roster or uniform-denial dataset: Maxwell, February 9, 2026 (Fifth Amendment invocation); Bondi, May 29 (unsworn transcribed interview); Gates, June 10 (transcribed interview). House Committee on Oversight and Government Reform, Bill Gates interview transcript, title page and introductory procedure, https://oversight.house.gov/wp-content/uploads/2026/06/Bill-Gates-Transcript.pdf; Committee release, https://oversight.house.gov/release/oversight-committee-releases-gates-and-groff-transcripts/. The former thirteen-subpoena/eight-appearance aggregation and description of Gates as still scheduled are withdrawn.

Date / order	Compulsion and response	Evidentiary limit
September 16, ECF 43, pp. 9–16, 19–20	Show cause discharged for victim names in five records, for private email addresses redacted under the Privacy Act, and for government-personnel names, the last two under DOJ's review protocol; notes and specified names required in camera; foreign-language review renewed for September 24, a date temporarily stayed on September 21 (ECF 49), when the court also denied DOJ's stay motion	Whether the Act permits Privacy Act redactions expressly reserved; the duplication and foreign-language rationales for non-production rejected; civil contempt declined as premature; appeal No. 26-5299 pending, and a second appeal, No. 26-5334, docketed September 21; new deadline not yet tested here
September 16, ECF 43, pp. 17–18	Federal Register publication show-cause issue discharged	Adequacy of the notice's content expressly left for later proceedings
October 1, ECF 52	DOJ moved for judgment on the pleadings, contesting among other things the right of action, standing, redactions, and foreign-language production	A motion, not a ruling; none seen. DOJ's September 24 answer (ECF 50, p. 11) had already pleaded no final agency action. The treatment of the merits as conceded concerns the preliminary injunction
October 9, ECF 57; October 16, ECF 59	Show cause discharged for names in three records and for the notes behind one report; redacted notes behind three reports ordered in camera and submitted	In camera only. DOJ says the redacted copies "did not exist" earlier and asks for a stay if publication is ordered
October 28, D.C. Circuit Nos. 26-5299, 26-5334	Stay pending appeal denied; motion to dismiss referred to the merits panel	The court noted that "production does not appear to be imminent"; no ruling on the merits of the appeal

The September and October entries postdate the August 30, 2026 corpus cutoff. Together the orders show one district court exercising APA review and in camera inspection without DOJ choosing to prosecute; standing, the APA right of action, and the adequacy of FOIA as an alternative are before the D.C. Circuit. They do not establish comprehensive public release, a final privilege holding, or a collected penalty. The Inspector General's audit is another review channel, subject to the Attorney General's authority under 5 U.S.C. § 413(a) to prohibit an audit that requires sensitive investigative information, with notice to Congress.[104]

Member-level routes

Three member-level routes are on the record. Representative Thomas Massie, an EFTA co-author, named three men DOJ should investigate on the House floor on February 24, 2026. The

[104] *Phang v. Blanche*, No. 1:26-cv-01417 (D.D.C. filed Apr. 27, 2026), complaint p. 1 and docket caption, https://www.courtlistener.com/docket/73246595/phang-v-blanche/; U.S. Department of Justice Office of the Inspector General, "Audit of the Department of Justice's Compliance with the Epstein Files Transparency Act," ongoing-work entry and preliminary objective, https://oig.justice.gov/ongoing-work; Lisa Hornung, "DOJ Inspector General to audit release of Epstein files," UPI, April 23, 2026, https://www.upi.com/Top_News/US/2026/04/23/justice-department-inspector-general-audit-epstein-files-release/7901776973145/ (announcement date). The Attorney General may prohibit an inspector-general audit concerning specified sensitive information, 5 U.S.C. § 413(a).

Speech or Debate Clause protects the floor statement, though not its republication outside Congress; the speech neither compels the withheld records nor alters the redaction process.[105] Second, the January 30 letter invites any Member to view unredacted material by arrangement through Judiciary Committee leadership under confidentiality undertakings, and the Section 3 Report says some have done so. DOJ then told the *Phang* court that it "should not supplant Congress's acceptance" of its explanation for not reviewing foreign-language documents; the court found no authority that congressional silence amends the Act.[106] Third, when Massie and Representative Khanna, the Act's co-sponsors, moved to participate as amici in *Maxwell* and obtain a special master, the court held on January 21, 2026 that the criminal case gave it no authority to supervise compliance, without prejudice to a separate suit, and noted without deciding DOJ's argument that the members would lack standing.[see n. 91]

The cumulative reading

The evidence supports a narrower cumulative reading: agency processing choices and contested interpretations shape disclosure, while political and judicial checks sometimes change that process. The dated training, inherited markers, and absence of an itemized public log do not jointly prove post-enactment continuity or unlawful privilege use. The following source-to-inference audit replaces decisive-test labels.[107]

[105] 172 *Cong. Rec.* H2266–H2267 (daily ed. February 24, 2026), https://www.govinfo.gov/content/pkg/CREC-2026-02-24/html/CREC-2026-02-24-pt1-PgH2266.htm (Rep. Massie: "I will name them right here," naming Leon Black, Jes Staley, and Leslie Wexner and asking why they were not being investigated). U.S. Const. art. I, § 6, cl. 1; *Gravel v. United States*, 408 U.S. 606, 625 (1972) (private republication "was in no way essential to the deliberations of the Senate"); *Hutchinson v. Proxmire*, 443 U.S. 111 (1979) (no immunity for republication of a speech first delivered in Congress). A member's naming is an allegation, not a legal disposition.

[106] DOJ, Compliance Letter #2, January 30, 2026, p. 4 (arrangements "made through the leadership of the House and Senate Committees on the Judiciary" and "subject to customary and appropriate confidentiality undertakings"); Section 3 Report, p. 3 ("certain members of Congress have come to the Department to inspect unredacted materials"); *Phang v. Blanche*, ECF 43, September 16, 2026, pp. 5 (the Department's position that the court "should not supplant Congress's acceptance of [its] explanation") and 16 (no authority "that Congressional silence in response to the January 30, 2026 letter functions as an implied amendment to the EFTA").

[107] The six-row source-to-inference audit is printed in "The cumulative reading" in this paper. Its exact observations, rivals, and missing links replace the earlier unpublished diagnostic table; no inaccessible supplementary table is required to inspect the argument.

Observation	What the source establishes	Rival or missing link
March 21 training	Earlier box-only page instruction	Updated post-enactment protocols; no demonstrated continuity
Inherited text markers	Presence of framework language in released records	Legacy markings, quotations, and incidental hits may not be operative reasons
Section 3 privilege account	DOJ's common-law-preservation construction	Author's contrary construction awaits adjudication
August 27 notice / September 16 order	Publication occurred; itemized adequacy remains contested	Categorical compliance reading remains live
Congressional and judicial action	Rep. Lee's substitute recommending a House-directed civil suit defeated on a party-line vote, 19–24; APA orders issued and in camera review undertaken	Political unwillingness and legal enforcement coexist; the substitute displaced another report, so the vote is not a clean test
Non-escalation by committee or chamber majorities	Recorded votes against an available remedy	Agreement or deference among pivotal members is a rival to executive information control as the nearer constraint

This is congruence with parts of the bargaining account, not a discriminating confirmation against partisanship, administrative burden, privacy protection, or judicial self-correction.

Table 11. What the bargaining vocabulary and two rival accounts would each expect, by episode (descriptive; not independent predictions)

Case	Observed result	Bargaining vocabulary	Partisan account	Fire-alarm or self-correction account	Do the accounts differ?
Pike and Church	Both investigated; the House barred official publication of Pike's report on a cross-party vote; Church published over presidential objection. Reform followed; SSCI/HPSCI and FISA endured. Helms's plea and fine survived; Felt and Miller were pardoned.	Conditional access and executive arbitration of release; a committee that publishes over executive objection is overridden where its chamber sides with the executive and sustained where it does not.	An opposition Congress escalates against the President; it does not expect a cross-party House majority to bind its own committee.	Outside alarm, investigation, publication, reform.	Partly. The House vote fits neither a simple partisan account nor executive control alone; publication and reform fit self-correction.

Case	Observed result	Bargaining vocabulary	Partisan account	Fire-alarm or self-correction account	Do the accounts differ?
Iran-Contra	Extensive compelled, immunized testimony; records withheld or destroyed. The 1991 Act moved the statutory floor while the discretion claim survived. Fourteen charged and eleven convicted; reversals and pardons had differing effects.	Withheld records, negotiated concessions, and a settlement that leaves discretion claims standing.	An opposition Congress investigates and legislates.	Exposure, prosecution by an independent counsel, statute.	No discriminating observation on access and policy. On sanctions, reversals and pardons fit the bargaining description and surviving convictions fit self-correction.

Case	Observed result	Bargaining vocabulary	Partisan account	Fire-alarm or self-correction account	Do the accounts differ?
NSA bulk collection	Member access constrained; objection muted under opposition and same-party Senates alike; provider immunity enacted by an opposition Congress (2008); public access expanded after leaks. USA FREEDOM ended Section 215 bulk collection. Member requests concerning Clapper acknowledged; no charge established.	Muted objection under classification; reform only after outside disclosure.	Escalation by the opposition Senates of 2001–02 and 2007–08 and little by the same-party Senates; no immunity from an opposition Congress for providers that assisted the President's program; a statute from an opposition Congress in 2015.	Leak, litigation, statute.	Partly. Muted objection under the opposition Senates and the 2008 immunity from an opposition Congress do not fit the partisan account; the bargaining description fits both as consent under classification, and the fire-alarm account fits the muted objection.

Case	Observed result	Bargaining vocabulary	Partisan account	Fire-alarm or self-correction account	Do the accounts differ?
CIA Interrogation Program	More than six million pages reviewed and the executive summary public; full study withheld. FY2016 NDAA anti-torture restrictions. Durham closed without charges; disciplinary findings reduced.	Counter-pressure and restricted publication alongside a statute.	An opposition Senate opens the review (2007) and a later majority investigates a program begun under the other party; persistence against its own party's administration is not expected.	Study, summary, statute.	Mixed: initiation fits the partisan account and persistence against same-party resistance does not; no on outcomes.

Case	Observed result	Bargaining vocabulary	Partisan account	Fire-alarm or self-correction account	Do the accounts differ?
EFTA	Missed deadline and contested privilege and reporting claims; post-enactment workflow continuity unproved; preliminary APA compulsion.	Delay and disputed definitions of compliance under executive custody.	A same-party committee declines to enforce; the one recorded vote was party-line.	A private suit compels through the courts.	No discriminating observation yet. A change of party control or the appellate rulings would supply one.

Case	Observed result	Bargaining vocabulary	Partisan account	Fire-alarm or self-correction account	Do the accounts differ?
Watergate tapes (contrast)	Nothing produced to the Senate committee, whose suit was dismissed; tapes ordered produced on the Special Prosecutor's trial subpoena; impeachment inquiry; resignation and pardon; senior aides convicted.	Scored on the committee's demand, the early indicators are present and the committee's own remedy failed.	An opposition Congress escalates.	Prosecutor, court, and impeachment inquiry produce the records and sanctions.	On the congressional channel, no: all three fit. On outcome, yes: the records came through a regulation-insulated prosecutor and the courts, which fits the self-correction account better than the bargaining description.

Rival hypothesis: partisan alignment

Partisan incentives and institutional constraints are compatible explanations. Research on congressional investigation finds that party control affects investigative activity, most robustly in the House, and Levinson and Pildes state the rival in general form: the distinction between party-divided and party-unified government rivals, and often dominates, the distinction between the branches.[108] EFTA arose under unified government, and the party-line defeat of the Lee substitute is the most direct evidence here for a willingness-based explanation, qualified by the fact that the substitute displaced another report. A unified-government implementation failure cannot by itself separate partisanship from the structural description.

Coded by investigating chamber and sub-period (Table 2), the episodes do not separate the accounts. Opposition chambers (Pike and Church; Iran-Contra, through 1991; the Watergate contrast) produced testimony, publication, suits, and statutory reform, though the House also bound its own committee in 1976. The CIA review began in an opposition Senate and targeted a program begun under the other party, as a partisan account expects; its persistence against a same-party administration's resistance does not fit that account. In the NSA case objection stayed muted under opposition and same-party Senates alike, an opposition Congress enacted the 2008 provider immunity, and an opposition Congress enacted the 2015 statute. In EFTA the same-party committee declined the civil remedy. A partisan account would expect most of this

[108] Douglas L. Kriner and Eric Schickler, *Investigating the President: Congressional Checks on Presidential Power* (Princeton: Princeton University Press, 2016), finding that House investigative activity directed at the executive is concentrated in divided government and that the effect intensifies with polarization, a result the authors distinguish from aggregate Senate investigative volume (ch. 1, p. 18); their measured mechanism is erosion of presidential public approval through publicity, not direct compulsion. Daryl J. Levinson and Richard H. Pildes, "Separation of Parties, Not Powers," *Harvard Law Review* 119 (2006): 2311–2386, at 2312 ("The practical distinction between party-divided and party-unified government thus rivals, and often dominates, the constitutional distinction between the branches"). David R. Mayhew, *Divided We Govern*, 2nd ed. (New Haven: Yale University Press, 2005), is further reading.

ordering, and these selected cases cannot test a probabilistic theory.[109] Non-use of a channel must still be distinguished from its unavailability: the civil route is open to the House in the district court on present authority, unsettled on appeal, and for the Senate outside its civil-enforcement statute and untested on any other basis (Appendix C, Table C.3).

If party control changes after the November election, subsequent escalation and production will supply further observations; no result is predicted here. Continued withholding would need its legal and factual grounds examined before being attributed to an institutional pattern.

Phang shows that one private plaintiff obtained preliminary APA compulsion in this setting, on an informational-injury theory and with the merits treated as conceded at that stage. Its public-production result, appellate treatment, and remedial durability remain unresolved. The paper therefore presents EFTA as a live congruence assessment with material counterevidence, not a completed causal test or a forecast that only external rupture can succeed.

Implications

The deepest consequence is constitutional, and it is not that negotiation replaces checking. The Supreme Court reads Madison's design as an "ongoing relationship" of "rivalry and reciprocity" and records that disputes over congressional demands for presidential documents have historically been settled in the political process, not in court; the D.C. Circuit speaks of an "implicit constitutional mandate to seek optimal accommodation."[110] The claim here is narrower. Accommodation presupposes that each branch can verify what the other offers and can escalate at a cost the other must weigh. In the classified domain the executive also restricts who in Congress may see the information, so verification is impaired, not merely costly: within each episode the evidentiary baseline is its own production, and the cases show checking that works through negotiation, with real gains and real limits.

The constraint has a second face. McCubbins and Schwartz pair fire-alarm oversight (decentralized monitoring triggered by outside complainants) with police-patrol oversight

[109] Zegart, *Spies, Lies, and Algorithms*, 198 (oversight has been difficult "for reasons that have nothing to do with who liked whom or which party was in power"). Fights over notification also fell under both configurations (Table 2). After Iran-Contra the intelligence committees pressed notice legislation against two administrations under an opposition Congress, an impasse that "lasted for almost four years" before the 1991 compromise (Snider, *Agency and the Hill*, 67). In the CIA case the agency left Chairman Graham's requests for information unanswered in 2002, under an opposition Senate, and resisted the inquiry of the minority vice chairman, Rockefeller, a Democrat, including by refusing documents to the full committee in 2006, under a same-party Senate (S. Rep. No. 113-288, Findings and Conclusions, 5–6; U.S. Senate, "Senators from West Virginia," https://www.senate.gov/states/WV/senators.htm). Further reading, not relied on for any claim: Linda L. Fowler, *Watchdogs on the Hill: The Decline of Congressional Oversight of U.S. Foreign Relations* (Princeton: Princeton University Press, 2015); Genevieve Lester, *When Should State Secrets Stay Secret? Accountability, Democratic Governance, and Intelligence* (Cambridge: Cambridge University Press, 2015).

[110] *Trump v. Mazars USA, LLP*, 591 U.S. ___ (2020), slip op. at 2 (an "ongoing relationship that the Framers intended to feature both rivalry and reciprocity"), 7 (such disputes "have been hashed out in the 'hurly-burly, the give-and-take of the political process'"), and 10–11 ("longstanding practice"); *AT&T*, 567 F.2d 121, 127 (Leventhal, J.) ("an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches"). See also Clark, "Congressional Access to Intelligence Information"; Kitrosser, "Congressional Oversight of National Security Activities."

(Congress's own direct examination of agency activity). The argument so far has described the conditions under which alarms are scarce and late in the classified domain: the access and standing rules that let outsiders see agency conduct and complain about it are missing or barred, so alarms arrive from outside those rules, and Congress then bargains over a record the executive still holds. A distinct problem arises one step later, at enforcement: where the prosecutor who would act answers to the institution whose conduct is at issue, agencies holding jurisdiction and evidence may decline to act. That is not a police-patrol failure; it is the paper's separate enforcement-monopoly hypothesis.[111]

When detection does occur, durable individual accountability meets several distinct obstacles, and the cases do not show one cause for all of them.[see n. 57,see n. 58,see n. 64,see n. 70,112] (a) Charging discretion: the Durham closure and the absence of a charge after member requests concerning Clapper's testimony are decisions by a prosecutor inside the executive. The Department stated that the admissible evidence was insufficient to obtain and sustain convictions in the two closed investigations; the record does not establish that institutional dependence caused that assessment. (b) Immunity: North and Poindexter were prosecuted by Independent Counsel and convicted; the convictions were set aside by judicial application of the Fifth Amendment to congressionally immunized testimony, not by prosecutorial refusal. (c) Clemency: the December 1992 pardons were a presidential act. (d) Professional discipline: the Office of Professional Responsibility's findings against Yoo and Bybee were not adopted by Associate Deputy Attorney General Margolis. (e) Classification control over trial evidence: the central conspiracy and theft charges against North were dismissed when the Reagan Administration refused to declassify information, and the Fernandez prosecution was dismissed when the Attorney General barred disclosure of classified evidence; Walsh concluded that this discretion lets an attorney general block almost any potentially embarrassing prosecution that requires declassification.[113] Surviving Iran-Contra convictions and pleas, and the civil compulsion in *Phang*, show that the obstacles are not absolute. The enforcement-monopoly hypothesis concerns (a) only. Its natural test compares periods with and without an available independent counsel: the Iran-Contra pleas for withholding information from Congress came under that statute, and the Helms plea came from an ordinary

[111] The police-patrol / fire-alarm distinction is from McCubbins and Schwartz, "Congressional Oversight Overlooked," 166.

[112] Senate Finance Committee minority staff, Looking the Other Way: How Wall Street Banks enabled Jeffrey Epstein's sex trafficking, August 4, 2026, PDF pp. 4–6, https://www.finance.senate.gov/imo/media/doc/wyden_wall_street_epstein_report.pdf. The staff's conclusion that Bank of America likely violated AML law is an attributed legislative assessment, not an adjudication or proof that prosecutors made a formal declination. The report describes Treasury access at controlled facilities on February 14, 2024; later public SAR releases mean controlled access then is not a claim that those records remain permanently unavailable. Cited here as a further instance of detected conduct without enforcement: the staff report calls "[t]he lack of enforcement action against Wall Street banks and their employees regarding their handling of Epstein's accounts" a miscarriage of justice (printed p. 65).

[113] Walsh, *Final Report*, vol. 1, pp. xxi (the classification discretion "gives the attorney general the power to block almost any potentially embarrassing prosecution that requires the declassification of information"), xxiii (one case "dismissed when the Bush Administration declined to declassify information necessary for trial"), xxiv–xxv (Fernandez was indicted on June 20, 1988 for "obstructing the inquiry of the Tower Commission and making false statements to government agencies"; Judge Hilton dismissed the case on November 24, 1989, "after Attorney General Richard Thornburgh blocked the disclosure of classified information ruled relevant to the defense"), and 37 (on January 13, 1989 Judge Gesell dismissed "the central conspiracy and theft charges against North because the Reagan Administration refused to declassify certain information deemed relevant to these charges").

Department prosecution. Watergate is the earlier instance: a regulation-insulated prosecutor obtained what the Senate committee could not and charged senior aides, who were convicted.[114] It remains a hypothesis to be tested against charging records, not a finding.

A possible reinforcing mechanism is doctrinal continuity: notification disputes generated opinions, directives, and minority views that later officials could invoke. The evidence supports continuity of an argument, not a citation chain or causation: the three audited Yoo documents cite none of the Iran-Contra notification materials, and Cheney himself pointed back to the minority report on December 20, 2005.[see n. 54,see n. 55]

A further, untested hypothesis runs outward to public trust. It has separate links, each with its own observable test: that the public notices non-punishment of documented misconduct; that noticing it lowers confidence in the checking institutions specifically; and that lower confidence later increases tolerance of norm-breaking.[115] Public trust in government fell from 77% in 1964 to 17% in 2025, but the series is not monotone and combines surveys and modes; incumbency, economic performance, and issue salience are established rival influences, and this paper does not identify oversight's share of any change.[116,117] No causal claim about trust or backsliding is made.

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[114] *United States v. Nixon*, 418 U.S. at 687 (on March 1, 1974 a grand jury "returned an indictment charging seven named individuals"); *Haldeman*, 559 F.2d 31 (the convictions of Haldeman, Ehrlichman, and Mitchell affirmed).

[115] Steven Levitsky and Daniel Ziblatt, *How Democracies Die* (New York: Crown, 2018); Yascha Mounk, *The People vs. Democracy: Why Our Freedom Is in Danger and How to Save It* (Cambridge, MA: Harvard University Press, 2018).

[116] Marc J. Hetherington, "The Political Relevance of Political Trust," *American Political Science Review* 92, no. 4 (1998): 791–808; Hetherington, *Why Trust Matters: Declining Political Trust and the Demise of American Liberalism* (Princeton: Princeton University Press, 2005); Virginia A. Chanley, Thomas J. Rudolph, and Wendy M. Rahn, "The Origins and Consequences of Public Trust in Government: A Time Series Analysis," *Public Opinion Quarterly* 64, no. 3 (2000): 239–256; Jack Citrin and Donald Philip Green, "Presidential Leadership and the Resurgence of Trust in Government," *British Journal of Political Science* 16, no. 4 (1986): 431–453; Marc J. Hetherington and Jason A. Husser, "How Trust Matters: The Changing Political Relevance of Political Trust," *American Journal of Political Science* 56, no. 2 (2012): 312–325. For the post-Snowden Pew panel data, see Pew Research Center, "Public Perceptions of Privacy and Security in the Post-Snowden Era" (2014). For the 1964 (77%) and 2025 (17%) trust-in-government endpoints, see Pew Research Center, "Public Trust in Government" longitudinal series (1958–present).

[117] On non-uniform scandal effects on political trust: Marc Hetherington and Jason Husser, "How Trust Matters: The Changing Political Relevance of Political Trust," *American Journal of Political Science* 56, no. 2 (2012): 312–325 (post-9/11 pivot to the foreign-policy domain); Virginia Chanley, Thomas Rudolph, and Wendy Rahn, "The Origins and Consequences of Public Trust in Government," *Public Opinion Quarterly* 64, no. 3 (2000): 239–256 (branch-asymmetric scandal effects); Jack Citrin and Donald Green, "Presidential Leadership and the Resurgence of Trust in Government," *British Journal of Political Science* 16, no. 4 (1986): 431–453 (Reagan-era "Teflon"); and the post-Snowden Pew Research Center surveys and their retrospective review: Mary Madden, "Public Perceptions of Privacy and Security in the Post-Snowden Era," Pew Research Center, November 12, 2014, https://www.pewresearch.org/internet/2014/11/12/public-privacy-perceptions/; Lee Rainie and Mary Madden, "Americans' Privacy Strategies Post-Snowden," Pew Research Center, March 16, 2015, https://www.pewresearch.org/internet/2015/03/16/americans-privacy-strategies-post-snowden/; and Pew Research Center, "How Americans Have Viewed Government Surveillance and Privacy since Snowden Leaks," June 4, 2018, https://www.pewresearch.org/short-reads/2018/06/04/how-americans-have-viewed-government-surveillance-and-privacy-since-snowden-leaks/. Synthesis (the author's inference, not a finding of the cited works): scandal revelations are among several influences on trust, alongside economic and sociocultural drivers; whether their effect differs by frame (broad-victim privacy framing versus out-group national-security framing) is untested here.

A related hypothesis concerns public attention: a large partial release may satisfy some demands while leaving other disputes unresolved. This paper has not measured that mechanism.[118] Substantive constraints can matter even when distrust persists, and reforms should be judged against their actual target: USA FREEDOM ended Section 215 bulk collection while separate Section 702 authorities persisted.

Where federal responses leave demands unresolved, the demand can reappear elsewhere. In February 2026 the New Mexico House of Representatives created a special committee, the Survivors' Truth Commission, by House Resolution 1, adopted 62 to 0, to investigate Epstein, his co-conspirators, and his facilitators in New Mexico. A state commission is not a substitute for federal oversight of federal agencies, and its interim report offers no final findings.[119]

Recommendations

Conditional leverage reforms. Proposals 1 to 6 address the unclassified disclosure setting of one statute, Proposal 7 congressional subpoenas generally; the historical cases, where secrecy and standing doctrines blocked private suits, give no assurance that the first six would transfer. Proposals 1 to 3 build, for that statute, the access and standing rules whose absence makes alarms scarce. Records remain in agency custody, DOJ ordinarily conducts federal litigation (28 U.S.C. § 516), and courts must have jurisdiction. The APA route used in *Phang*, still contested on appeal, is the baseline. DOJ contests whether the Act carries a private right, whether FOIA forecloses APA review, and whether a journalist has standing; review proceeds on an administrative record, and in camera inspection rests on the court's inherent authority. An express cause of action would settle the first two questions and could prescribe de novo review, the agency's burden, in camera inspection, and fees for a plaintiff whose suit prompts release.[120]

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[118] Clark, "Congressional Access to Intelligence Information," pp. 14–15 (Part IV, "Critique of the Current System: Limited Access as Inoculation"), describes executive-imposed access restrictions and limits on consultation, with congressional silence converted into apparent endorsement; she does not identify a signed classified-access agreement as the instrument. Clark's account supports restricted consultation and silence converted into apparent endorsement; it does not address motive behind a later public release. This paper proposes, as an untested hypothesis, an extension to a public audience: that a large partial release may saturate attention on some dimensions while others remain unresolved. No intent is claimed. The hypothesis predicts that, after the release, coverage density and survey attention on the unresolved dimensions will fall relative to the resolved ones; 2026–27 coverage counts and polling could test it.

[119] New Mexico Survivors' Truth Commission, *Interim Report* (August 5, 2026), https://www.nmlegis.gov/handouts/HISC%20080526%20Item%201%20Interim%20Report.pdf, pp. 12–14 and 21, and "Disclaimer & Disclosures," p. 5. House Resolution 1 was approved February 16, 2026, 62–0; it established the Commission with a remit concerning Epstein, his co-conspirators, and his facilitators in New Mexico, granted witness-compulsion and subpoena powers, and the report records use of HR-1 subpoenas while expressly offering no final findings. The resolution's text creates "a special committee" and does not use the name; the Legislature's bill page records passage, 62–0, on February 16. New Mexico's Attorney General has separately sued DOJ under the Administrative Procedure Act over its refusal of his *Touhy* requests for investigative records for a state criminal investigation, *New Mexico v. U.S. Department of Justice*, No. 1:26-cv-02762 (D.D.C. filed Aug. 5, 2026); the allegations are the complaint's, and DOJ's motion to dismiss or for summary judgment (Oct. 12, 2026), which argues that the denial is committed to agency discretion and was not arbitrary, is pending as of the docket read October 31, 2026.

Constitutional and remedial feasibility. Each proposal regulates executive information control by statute. Where a refusal rests on a claimed exclusive power, Justice Jackson's third *Youngstown* category requires that power to be both exclusive and conclusive; a claim of executive privilege is instead balanced against Congress's need, as *Nixon v. Administrator of General Services* and *Mazars* describe, and that balance once defeated a Senate committee.[121] *Trump v. United States* identifies one exclusive power, direction of the Department's investigative and prosecutorial decisions; that limits any proposal to relocate charging authority and does not decide noncriminal disclosure duties. Standing differs by plaintiff. *TransUnion* bars suits by unharmed plaintiffs but distinguishes statutes that entitle the public to information, the theory accepted in *Phang*; a requester must still show adverse effects from the denial, a State must assert its own right, and a Member faces *Raines v. Byrd*. Relief differs by source: *Trump v. CASA* holds that universal injunctions likely exceed the equitable authority Congress has granted and reserves APA vacatur, and a new statute can specify its remedy within Article III limits. Any constitutional privilege, state-secrets claim, or sovereign-immunity bar must still be considered.[122]

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[120] *Phang v. Blanche*, ECF 16, pp. 17–18 (the Attorney General's arguments that the Act creates no private right of action, that the plaintiff lacks Article III standing, and that the APA waiver does not apply because FOIA is an adequate remedy) and 22 (informational injury, citing *FEC v. Akins*, 524 U.S. 11 (1998), and *Public Citizen v. U.S. Department of Justice*, 491 U.S. 440 (1989)); ECF 42 (administrative record); ECF 43, p. 10 (in camera review under the court's "inherent authority to review . . . material ex parte, in camera as part of its judicial review function"); appeals Nos. 26-5299 and 26-5334 (D.C. Cir.). Compare 5 U.S.C. § 552(a)(4)(B) (the court "shall determine the matter de novo," may examine records "in camera," and "the burden is on the agency to sustain its action") and (a)(4)(E)(ii) (a complainant "substantially prevailed" through "a voluntary or unilateral change in position by the agency"). The APA supplies no general fee entitlement, but eligible prevailing parties may recover under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d)(1)(A), (2)(B), unless the Government's position was substantially justified or special circumstances make an award unjust. That conditional recovery is not an EFTA-specific fee provision. Unlike FOIA's express voluntary-disclosure provision, § 2412(d) does not expressly count a voluntary or unilateral agency change as substantially prevailing; the proposed FOIA-style provision would specify that catalyst route.

[121] *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637–38 (1952) (Jackson, J., concurring), as applied in *Zivotofsky*, 576 U.S. at 10 (in the third category the President's "asserted power must be both 'exclusive' and 'conclusive' on the issue"); *Trump v. United States*, 603 U.S. 593, 620–21 (2024) (the President's "exclusive authority over the investigative and prosecutorial functions of the Justice Department and its officials"). For a statute regulating control of presidential records the Court asks whether it "prevents the Executive Branch from accomplishing its constitutionally assigned functions" and only then whether "that impact is justified by an overriding need to promote objectives within the constitutional authority of Congress," *Nixon v. Administrator of General Services*, 433 U.S. 425, 443 (1977). Presidential communications carry "a presumptive privilege," *United States v. Nixon*, 418 U.S. at 708; applying the presumption of *Nixon v. Sirica*, the D.C. Circuit held on May 23, 1974 that the Senate committee had not shown the tapes "demonstrably critical to the responsible fulfillment of the Committee's functions," *Senate Select Committee*, 498 F.2d at 730–31. The Court has since distinguished those decisions as involving "Oval Office communications over which the President asserted executive privilege," declined "to transplant that protection root and branch to cases involving nonprivileged, private information," and set out "special considerations" for a congressional subpoena of the President's personal information, *Mazars*, slip op. at 13, 18–20. For the Department's deliberations, a district court held that "the qualified privilege invoked to shield material that the Department has already disclosed has been outweighed by a legitimate need that the Department does not dispute," *Lynch*, 156 F. Supp. 3d at 115; the Committee's appeal was held in abeyance while "settlement proceedings" continued and was dismissed on its unopposed motion on May 14, 2019 (D.C. Cir. No. 16-5078).

[122] 5 U.S.C. § 702, https://www.law.cornell.edu/uscode/text/5/702 (waiver for relief other than money damages); 28 U.S.C. § 516; *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), slip op. at 26 (distinguishing public-disclosure

1. **Deadline-triggered access review.** A proposed amendment should impose the accounting duty described under Self-declared Completion directly, with a date, and give a person denied information it requires to be published an express cause of action in district court to compel it. A person who then identifies a logged record, and a victim whose own records are withheld or whose protected information is threatened with release, could challenge the entry. The court would review de novo, with the burden on the agency, and could inspect records in camera. Missing the accounting date would entitle a plaintiff to a schedule order, not automatic release or liability; a fixed date to lodge the accounting, not the word "expedited," gives the timetable its force. Refusal of an order would be enforced by civil contempt against a named officer, which the *Phang* court has so far called premature. The amendment should state whether it applies to the production already made and to pending actions, and should specify fees.

2. **Protected judicial review of disputed exclusions.** Identified disputes and the unredacted record would go to the district court under secure procedures, with victim notice where feasible and an opportunity to object before access. A magistrate judge could assist only through a valid 28 U.S.C. § 636 referral, and a special master could be appointed under § 636(b)(2) or Federal Rule of Civil Procedure 53, with the statute saying who pays; neither is a freestanding disclosure tribunal.[123] The court would set a production schedule and review temporary grounds at intervals. A missing log would permit an order compelling the log, not forfeiture of victim privacy. The added value is systematic record-level review and a required segregability finding for each withholding: the enacted text confines withholding to "segregable portions" but requires no finding, explanation, or reviewer. Treatment of constitutional privileges, including the state-secrets privilege that *Fazaga* held a statutory in camera procedure did not displace, remains unresolved.

3. **Collectible civil remedies for defined injuries.** Congress could authorize compensatory or bounded statutory damages for an identified victim or requester with concrete injury from a specified violation, after notice and a reasonable opportunity to cure. A claim against the United States requires an express money-damages waiver, which 5 U.S.C. § 702 does not supply, and the waiver must say whether damages require proof of actual harm and whether non-pecuniary harm counts, because the Court has read the Privacy Act's damages waiver narrowly on both points. It must also name the source of payment: a judgment paid from the permanent Judgment Fund costs the Department nothing, so an incentive to comply requires payment from the agency's own appropriations, as Congress

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laws; no "downstream consequences" from failing to receive the information); *Trump v. CASA, Inc.*, No. 24A884 (June 27, 2025), syllabus ("Universal injunctions likely exceed the equitable authority that Congress has given to federal courts") and slip op. at 11 n.10, https://www.supremecourt.gov/opinions/24pdf/24a884_8n59.pdf; *Raines v. Byrd*, 521 U.S. 811 (1997). These are design constraints, not assurances that any proposed plaintiff or remedy will survive.

[123] 28 U.S.C. § 636(b)(1)(A)–(C), (b)(2) (a magistrate judge may serve "as a special master pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure"), and (c)(1), https://www.law.cornell.edu/uscode/text/28/636; Fed. R. Civ. P. 53 (appointment and compensation of masters). A district judge may refer authorized matters and must review properly objected-to dispositive recommendations de novo; consent civil jurisdiction is a separate statutory route. The proposal does not presume that compulsory final adjudication can be assigned to a magistrate without those conditions.

provided for FOIA fee awards. Intent, defenses, limitation periods, and caps must be defined. No current authority for EFTA damages is asserted.[124]

These first three proposals are minimal specifications, not operative statutory text. A complete annex covering definitions, jurisdiction, waiver, standing, service, deadlines, appeals, appropriations, effective date, application to the completed production and to pending actions, severability, and interaction clauses is deferred to a later edition. The statutory analogies show possible mechanisms, not that transplanting a label creates an effective remedy.[125,126]

Every consequence in the package except the reporting and notice duties of Proposals 4 and 5 needs a plaintiff and a court (Appendix C, Tables C.4 and C.5). Consequences that attach without litigation and without touching victim protection are available: lapse of a temporary or non-enumerated withholding that is not logged and renewed, a burden on the agency to justify each entry, sworn certification by a named official, payment of any award from the Department's own appropriations, and a rule that congressional silence does not ratify a compliance position. Their design is left to a later edition.

4. **Auditable compliance reporting.** An auditor with an identified appointment process, conflict rules, secure access, and a separately stated budget would inspect processing records and report to Congress. The proposal must say which branch houses the auditor. A legislative-branch auditor on the Government Accountability Office model fits the functions in aid of Congress that *Slaughter* left open, but could hold no executive power and would inherit the limits on the Comptroller General's access suit (31 U.S.C. § 716(d)); an auditor inside the Department is subject to the Attorney General's authority to prohibit an audit that requires sensitive investigative information (5 U.S.C. § 413(a)). The

[124] Analogies only: 15 U.S.C. § 78p(b) permits shareholder enforcement of short-swing-profit recovery; FCRA § 1681n permits actual or statutory damages for willful violations, while § 1681o concerns actual damages for negligent violations. Privacy Act remedies appear in 5 U.S.C. § 552a(g); a plaintiff "must prove some actual damages to qualify for a minimum statutory award," *Doe v. Chao*, 540 U.S. 614, 616 (2004), and the Act "does not unequivocally authorize an award of damages for mental or emotional distress," *FAA v. Cooper*, 566 U.S. 284, 304 (2012). Judgments against the United States are ordinarily paid from the permanent appropriation in 31 U.S.C. § 1304(a); for FOIA fee awards Congress barred payment from the Judgment Fund and required payment "only from funds annually appropriated" to the agency, OPEN Government Act of 2007, Pub. L. No. 110-175, § 4(b). Section 1983 concerns action under color of state law; § 1985 creates distinct conspiracy remedies. These mechanisms do not create an EFTA damages waiver. DOJ may still conduct federal defensive litigation under 28 U.S.C. § 516.

[125] Clean Air Act § 304, 42 U.S.C. § 7604; Endangered Species Act § 11(g), 16 U.S.C. § 1540(g); Clean Water Act § 505, 33 U.S.C. § 1365; Resource Conservation and Recovery Act § 7002, 42 U.S.C. § 6972; Comprehensive Environmental Response, Compensation, and Liability Act § 310, 42 U.S.C. § 9659. These provisions authorize citizen enforcement subject to their respective jurisdictional and notice conditions; suits to compel non-discretionary agency duties supply the closest analogy for Proposal 1's access-review remedy. Private initiation does not exclude DOJ participation in federal litigation under 28 U.S.C. § 516. A citizen-suit provision does not dispense with a concrete injury, *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). Proposal 1 contains no damages component; Proposal 3 separately identifies the waiver and payment authority that damages would require.

[126] *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), establishes the modern Freedom-of-Information Act practice of requiring an agency claiming exemption to produce an itemized index correlating specific portions of withheld material to specific exemptions and supplying segregability analysis subject to adversarial review. Proposal 2 applies the *Vaughn* architecture to the proposed EFTA access-review scheme (extension to other statutes is reserved for later design), with protected review by the district court and magistrate assistance only through a valid 28 U.S.C. § 636 referral. Agency custody of records and DOJ participation in litigation remain dependencies; the analogy does not create an autonomous review institution.

statute would need enforceable record-preservation and access duties, and protected annexes would keep victim identities out of the audit. The Sarbanes-Oxley analogy supplies a reporting model, not automatic independence.[127]

5. **IG and whistleblower protections after *Slaughter*.** *Trump v. Slaughter* (June 29, 2026) invalidated the Federal Trade Commission's removal restriction and overruled whatever remained of *Humphrey's Executor* beyond its observation about bodies that exercise no executive power, while stating that Congress may establish agencies to assist it with its own functions and reserving, in Part III-B, investigative and informative functions in aid of Congress and the fate of officials not before the Court.[128] That reasoning places for-cause inspector-general (IG) protection in doubt without deciding it. The more defensible fallback is enforceable notice and reasons, preservation of pending records, direct lawful transmission to Congress, and court access for independently cognizable injuries. A rule barring closure of IG inquiries would in practice amend 5 U.S.C. § 413(a), and judicial review of urgent-concern or reprisal decisions would require changing provisions that now bar it or leave enforcement to the President; each requires separate analysis.[129,130]

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[127] Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745; § 404 (internal-controls auditing); § 101 et seq. (Public Company Accounting Oversight Board). The SOX/PCAOB architecture supplies a limited analogy for compliance auditing and reporting; 15 U.S.C. § 7211(h) routes the Board's annual report through the SEC to Congress. Proposal 4 would require its own appointment, access, preservation, budget, and enforcement provisions for executive-agency records. The analogy establishes neither automatic independence from executive supervision nor access to federal secrets. The Comptroller General is an officer of the legislative branch, *Bowsher v. Synar*, 478 U.S. 714 (1986); his civil action for records is barred when the President or the Director of the Office of Management and Budget certifies that a record could be withheld under 5 U.S.C. § 552(b)(5) or (7) and that disclosure "reasonably could be expected to impair substantially the operations of the Government," 31 U.S.C. § 716(d)(1)(C). When the Comptroller General sued the Vice President for energy task-force records, the suit was dismissed because he "does not have the personal, concrete, and particularized injury required under Article III standing doctrine, either himself or as the agent of Congress," *Walker v. Cheney*, 230 F. Supp. 2d 51, 53 (D.D.C. 2002). The Attorney General "may prohibit the Inspector General from carrying out or completing any audit or investigation" concerning specified sensitive information, 5 U.S.C. § 413(a).

[128] *Trump v. Slaughter*, No. 25-332, 609 U.S. ___ (June 29, 2026), slip op. at 21 ("If Congress wishes to establish independent agencies to assist it with its functions, it may do so") and 27–28 (Part III-B; "Nor do we determine the fate of officials not before us"), https://www.supremecourt.gov/opinions/25pdf/25-332_new_geil.pdf. The reasoning places for-cause inspector-general protection in doubt without deciding it; application requires an office-specific analysis.

[129] 5 U.S.C. §§ 403 (written reasons for removal of an inspector general, communicated to both Houses not later than 30 days before removal) and 416(b)–(g); 50 U.S.C. §§ 3033(k)(5)(F) and 3517(d)(5)(F) (urgent-concern actions "shall not be subject to judicial review"); § 3234 (reprisal protections; under § 3234(f) "The President shall provide for the enforcement of this section"); § 3341(j) (security-clearance reprisal; § 3341(j)(6) denies judicial review); § 3236 (external review panel). *Free Enterprise Fund v. PCAOB*, 561 U.S. 477 (2010), and *Seila Law LLC v. CFPB*, 591 U.S. 197 (2020), must now be read with *Trump v. Slaughter* (2026); an IG for-cause shield is a contested proposal, not a safe single-layer exception.

[130] Statute: 5 U.S.C. § 416(g), https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title5-section416&num=0&edition=prelim. Inspector-general removals: Congressional Research Service, *Removal of Inspectors General: Rules, Practice, and Considerations for Congress*, IF11546, updated January 27, 2025, pp. 1–2, https://www.congress.gov/crs_external_products/IF/PDF/IF11546/IF11546.9.pdf (current notice-and-reasons protection, advance notice for the 2020 removals, and the January 24, 2025 dismissals without the required notice).

6. **Congressional analytical capacity with governed access.** An analysis platform could help Congress inspect large productions within lawful access entitlements. It needs funding, secure custody, evaluation against independent samples, and human review of errors; the detector's tuning limits show that technology is itself a constraint. Contractors must have purpose-limited access and audit logs, and neither an artificial-intelligence result nor a framework-string match should release a record or establish a violation.

7. **Civil enforcement of congressional subpoenas.** None of the first six proposals changes Congress's position, the firmest constraint. A statute would have to supply a cause of action for either House, or a committee it authorizes by resolution, against an executive officer; jurisdiction reaching such officers, which for the Senate means amending its statute's exclusion; and a merits standard, which for a constitutionally based privilege remains the courts' balancing of the committee's need against the executive's interest.[131]

[131] Congressional Subpoena Compliance and Enforcement Act of 2017, H.R. 4010, 115th Cong. (engrossed in the House; passed October 23, 2017), https://www.govinfo.gov/content/pkg/BILLS-115hr4010eh/html/BILLS-115hr4010eh.htm, proposing 28 U.S.C. § 1365a: rules for "any civil action brought by the United States House of Representatives, the United States Senate, or a committee or subcommittee thereof," which "shall be filed in a United States district court of competent jurisdiction" ((a)(1)); a duty "to advance on the docket and to expedite to the greatest possible extent the disposition of any such action and appeal" ((a)(2)), a clause of the kind Table C.4 calls hortatory; a three-judge court if "expressly requested by the plaintiff in the initial pleading," which "shall be reviewable only by appeal directly to the Supreme Court," with notice of appeal "within 10 days" ((a)(3)); penalties "directly against the head of a Government agency or a component thereof held to have willfully failed to comply," with no appropriated or other Government funds to be used to pay them ((b)); and a privilege or other ground "(whether statutory, common law, or otherwise)" that "may be determined to have been waived" for a record not covered by a timely privilege log ((c)), the log that a new section 105 of the Revised Statutes would require of a recipient withholding a record, which "shall provide a log" stating "An express assertion and description of the legal basis asserted for withholding the record" (bill § 3). A statute confining that waiver would also have to say who decides, and at what stage, whether a ground is constitutionally based (for example, only on the President's personal assertion, subject to a judicial determination); whether an untimely log forfeits that characterization; and what standard governs statutory and common-law objections, the grounds a statute can fully govern. The bill grants neither a cause of action nor jurisdiction and does not amend 28 U.S.C. § 1365(a). A Senate suit requires "the adoption of a resolution by the Senate," 2 U.S.C. § 288b(b). Neither § 288b nor § 288d limits that resolution's debate. It is ordinarily debatable and exposed to a filibuster; if opponents sustain debate, cloture requires "three-fifths of the Senators duly chosen and sworn" (Standing Rules of the Senate, Rule XXII ¶ 2, S. Doc. No. 113-18 (2013), 16); a resolution directing suit "in the name of a committee or subcommittee" is out of order unless that committee reports it with four statements (§ 288d(c)). Privilege of consideration alone does not limit debate. An expedited procedure would need to specify treatment of the motion to proceed, debate on the resolution, amendments, and procedural appeals. On the merits and the courts' preference for settlement: Garvey, CRS Report R45653, pp. 22–23 (lower courts "have suggested that judicial intervention in such disputes 'should be delayed until all possibilities for settlement have been exhausted'"; a committee may overcome the presumptive privilege by showing "the subpoenaed evidence is demonstrably critical to the responsible fulfillment of the Committee's function"); *United States v. Nixon*, 418 U.S. at 708, 712 n.19. For the House authorization models, the Lee text of January 21, 2026 and H. Res. 430, 116th Cong. (2019) (a committee chair, "when authorized by the Bipartisan Legal Advisory Group," may initiate judicial proceedings). On penalties for an official following a presidential instruction, 8 Op. O.L.C. at 137 (Appendix C, Table C.3) (objecting to "inflicting punishment on an individual who failed to produce them"). The same opinion supports the civil route: Congress "could obtain a judicial resolution of the underlying privilege claim and vindicate its asserted right to obtain any documents by a civil action for enforcement of a congressional subpoena," prevailing "if it could establish that its need for the records outweighed the Executive's interest in preserving confidentiality" (id. at 137), and "there is little doubt that, at the very least, Congress may authorize civil enforcement of its subpoenas and grant jurisdiction to the courts to entertain such cases" (id. at 137 n.36). The Department later contested such suits: in *Miers* the executive moved to dismiss "on the grounds that the Committee lacks standing and a proper cause of action, that disputes of this kind are non-justiciable" (memorandum opinion of July 31, 2008, 1–2); in *Holder* the Attorney General took "the position that a

The House passed only procedural and remedial rules in 2017: expedition, an optional three-judge court with direct appeal, a discretionary waiver of privilege claims missing from a timely log, which a statute should confine to statutory and common-law grounds, and penalties on an agency head for willful noncompliance, payable without Government funds (Appendix C, Table C.3). For the House, which already has a contested judicial route, the gain would be a settled cause of action, that court, and penalties; it would not alone have changed the January 2026 outcome, which turned on the committee majority's choice. Two limits apply. The authorization step is at least a majority gate in either chamber, and no statute can supply a willing majority. The action changes the forum, not the law of privilege; personal penalties on an official following a presidential privilege instruction would meet the 1984 Office of Legal Counsel opinion's reasoning.

Adverse users and privacy. These mechanisms must work when the requester is a harasser, implicated associate, partisan state official or member, or a contractor seeking access beyond its assignment.[132] A victim's identifying or intimate material must not become a penalty for agency delay, and the amendment should make withholding of victim-identifying material and child sexual abuse material mandatory; the enacted § 2(c)(1) only permits it. Protected submissions, independent pre-access review, victim notice and objections where feasible, restricted-use orders, and reviewable access decisions should precede disclosure. A route-by-route adverse-user test remains for a later edition.

The pending EFTA II bills. EFTA II (H.R. 9694; S. 5005) would bar common-law privilege as a withholding ground, change "All redactions" to "Each redaction" in § 2(c)(2), strike § 2(c)(1)(E), and add § 4 causes of action for state officers, victims, and individual Members of Congress.[133] The privilege bar would resolve the construction dispute prospectively; "Each

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dispute between the legislative and executive branches must be resolved through negotiation and accommodation, and that the judiciary may not, or at least, should not, get involved" (memorandum opinion, 1); and in the *Holder* appeal, "In the event the Circuit decided to hear the matter on the merits, the Department also reasserted the jurisdictional arguments based on standing and separation of powers" (*Sessions*, opinion of October 22, 2018, 9).

[132] The EFTA II bills' access routes would reach victim material. A State attorney general, district attorney, or "other authorized State officer" conducting an investigation or proceeding would receive "full, unredacted access to, and copies of," records the Act permits to be withheld under § 2(c)(1) (H.R. 9694, § 4(c)(1)), subject to "any protective order entered by a court to protect the personally identifiable information of victims" (§ 4(c)(2)) and to filing under seal unless a court finds public disclosure lawful and non-identifying (§ 4(c)(3)), but production "shall not be limited to in camera review," and no protective order may prohibit the officer "from possessing or using the records as necessary for an investigation or judicial proceeding" (§ 4(c)(4)). A Member's access applies "Notwithstanding section 2(c) or any other provision of law" (§ 4(e)(1)(A)). Child sexual abuse material is described in the Act itself as "prohibited under 18 U.S.C. 2252–2252A" (§ 2(c)(1)(B)), statutes that bar its distribution whatever the permissive "may" in § 2(c)(1). On its text, § 4(e)(1)(A)'s "any other provision of law" would displace those statutes for a Member's access, and § 4(e) sets none of the handling conditions that § 4(c) and § 4(d) impose, such as "a secure facility" (§ 4(d)(2)) or "any protective order entered by a court" (§ 4(c)(2)).

[133] Epstein Files Transparency Act II, H.R. 9694 and S. 5005, 119th Cong., 2d Sess. (2026) (introduced July 15, 2026), § 2: the Attorney General "may not invoke any common law privilege, including the deliberative process privilege, attorney-client privilege, attorney work-product privilege, or law enforcement privilege"; § 2(c)(1)(E) struck; "All redactions" replaced by "Each redaction"; and a new § 4, with actions by State officers and victims (§ 4(a)(1), (b)(3)), including "monetary relief"; unredacted access for a State officer's own investigation or judicial proceeding (§ 4(c)(1): the Attorney General "shall make available for full, unredacted access to, and copies of," records permitted to be withheld or redacted under § 2(c)(1)); and access and an action for Members (§ 4(e)). On parens patriae suits against the United States, *Massachusetts v. Mellon*, 262 U.S. 447, 485–86 (1923); *Alfred L.*

redaction" would not itself supply an identifier, ground, or deadline. A State may not sue the United States as parens patriae for its citizens, though it may assert its own federal rights, such as § 4(c)(1) access to withheld records for its investigations. There is no separate waiver clause or damages measure; expressly authorizing monetary relief against the Attorney General supports a waiver, whose scope needs clarification.[134] A Member's suit would rest on a personal access right, a standing basis the D.C. Circuit has not settled since *Raines v. Byrd*. Neither the constitutionality, adoption, nor effectiveness of these proposals follows from the historical pattern.

Conclusion

The historical episodes document recurring constraints on congressional access and enforcement, alongside substantive gains in disclosure, policy, and institutional durability; observations in every case count against executive absorption of disclosure duties, and in none does the bargaining description fit where its rivals do not. *Constrained negotiated oversight* is a descriptive vocabulary and coding scheme for that pattern; the selected cases and indicators cannot validate an invariant equilibrium. The one contrast coded, scored on the Senate committee's own demand, shows the same early conduct and a failed committee suit; its

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Snapp & Son, Inc. v. Puerto Rico ex rel. Barez, 458 U.S. 592 (1982), n.16; *Massachusetts v. EPA*, 549 U.S. 497 (2007) (distinguishing a State's assertion of "its rights under federal law"). Section 4(d) requires "full, unredacted review" by State officers of "classified records described in section 2(a)" under court-approved procedures and bars refusal "on the grounds that the material is classified" (§ 4(d)(1), (3)); on a literal reading § 2(a) describes only unclassified records, and § 4(d)(5) allows public release of classified information only "in accordance with section 2(c)(3)," the provision whose trigger the bills remove. Against § 4(d) the executive would invoke *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988) (the President's "authority to classify and control access to information bearing on national security … flows primarily from this constitutional investment of power in the President"), and would meet its qualifier, "unless Congress specifically has provided otherwise" (id. at 530). On Member standing, *Raines*, 521 U.S. 811. The bill writes the Member's right as personal: "Notwithstanding section 2(c) or any other provision of law, upon the written request of any Member of Congress," the Attorney General shall within seven days "provide such Member with full, unredacted access" (§ 4(e)(1)(A)). Whether such a right supports standing is unsettled in the D.C. Circuit. *Maloney v. Murphy*, 984 F.3d 50 (D.C. Cir. 2020), held that members requesting information under 5 U.S.C. § 2954 had standing, but after the plaintiffs voluntarily dismissed their suit the Supreme Court vacated that judgment with instructions to dismiss, *Carnahan v. Maloney*, No. 22-425 (June 26, 2023). In *Neguse v. U.S. Immigration and Customs Enforcement*, No. 26-5072 (D.C. Cir. May 8, 2026), the panel denied a stay of a ruling that, in a concurring statement's description, held the Members likely to have standing because an appropriations rider "gave them an individual right" of access; that statement would hold the ruling contrary to *Raines*, citing 521 U.S. at 820 n.3.

[134] Alan ElSheshai, *Assessment of the Epstein Files Transparency Act II: H.R. 9694 / S. 5005* (EFTA II Memo, version 2.8.7, September 20, 2026; Parallax Publications, 2026-10 edition), M-3 ("The monetary remedies have no sovereign-immunity waiver") and M-9 (the parens patriae route), https://publications.disclosureworks.ai/legislation/efta-ii-memo/2026-10/. The absence of a separate waiver clause does not alone establish that conclusion. *Department of Agriculture Rural Development Rural Housing Service v. Kirtz*, 601 U.S. 42 (2024), slip op. at 5–6, recognizes waiver through an express cause of action against government; *FAA v. Cooper*, 566 U.S. 284, 291 (2012), requires discernible statutory scope, not magic words. H.R. 9694 § 4(a)(1) names the Attorney General of the United States as defendant and expressly authorizes monetary relief. That combination supports reading it as a waiver, but leaves the defendant's capacity, recoverable loss and payment source insufficiently specified. The drafting criticism is the scope and adequacy of that authorization, not the necessity of a separate immunity-stripping formula; a damages measure remains absent.

outcome came through a prosecutor insulated by regulation, using criminal process without classification barriers.

EFTA shows agency choices, disputed legal constructions, and a party-line refusal of one enforcement route within a strong statutory mandate. It also shows preliminary judicial compulsion under the APA. The frozen corpus measures released pages, visual flags, and text classes; it cannot identify a responsive withheld residual or an overall compliance percentage. The March 2025 training proves an earlier instruction, not continuity after enactment. The September *Phang* orders prevent the paper from treating all enforcement as unavailable, while leaving substantive compliance and remedial durability open.

The reform implication is conditional: clearer access rights, protected review, enforceable remedies, and a civil action for congressional subpoenas may change bargaining incentives, but must survive standing, immunity, removal, privacy, and appropriations constraints. Full legal drafting, full-text reading of the six books named in the literature review, and a venue-specific version remain for a later edition.

Appendix A — EFTA Document Redactions Quantitative Analysis

Objective. This appendix separates the measured release, visual redaction, and document-level text signals as of August 30, 2026. Section 2(c)(1) permits withholding or redaction of the segregable portions of records in five classes; Section 2(c)(2) requires written justifications for all redactions, published in the Federal Register and submitted to Congress. The measurements below do not establish a reconciled responsive universe or an overall compliance percentage.

Three terms are used throughout and kept distinct, because the source text blurs them. A **redaction marker** is the evidence that a redaction occurred, either a box drawn on the page or the bare word “REDACTED”; it says nothing about why. A **justification** is the text label stating the legal basis for a redaction, a Section 2(c) citation or an inherited framework marker such as a Privacy Act exemption or a “FOIA Exempt” stamp. A document is **redaction-marker-bearing** when its extracted text carries any redaction marker. The Justification Analysis classifies document-level text signals against a finite marker taxonomy; it does not adjudicate the legal basis for individual redactions or establish compliance with EFTA.

A.1 Scope, Corpus, and Limits

The corpus analysed is the twelve-data-set release (DS1 through DS12) on the DOJ Disclosures page of the Justice Department’s Epstein Library, as counted through Bates EFTA02731789: 1,378,393 Bates-numbered PDF documents, EFTA00000001 through EFTA02731789, delivered as Concordance load files with per-volume image trees.[135] It is not everything DOJ has published

[135] The twelve DOJ data-set manifests list 1,378,394 PDF rows, which collapse to 1,378,393 unique Bates documents: one Data Set 8 row (EFTA00022173 through EFTA00022175) is duplicated at two paths with the same SHA256. An independent public concordance (epstein-data.com) counts 1,380,964; the release and content status of the 2,571 additional identifiers is unresolved, because each has a start-page image path and the sparse metadata does not distinguish them from matched entries (the project’s October 12, 2026 audit, correcting its earlier reconciliation record). The sum of known PDF page counts is 2,729,256 after deduplicating the duplicate three-page row; three documents (EFTA00645624, EFTA01175426, EFTA01220934) have no recorded count. This defines the analyzed

under the Act. The project's metadata catalogue (content version 283ac296cb1a, the version of September 7, 2026, queried on September 30 and October 1, 2026) holds two further sets above that number, which share no Bates number and no file although their ranges interleave. One is a separately held court-records collection, filed by case: 4,001 PDFs (40,776 pages), EFTA02731941 through EFTA02805767. The other is 8,220 PDFs (85,660 pages), EFTA02739953 through EFTA02858497, listed in the project's fetch record of May 23, 2026, which has 8,240 rows because it logs 20 files twice; by file it places 8,124 in DOJ's Court Records folder, 60 in Freedom of Information Act (FOIA), 16 in Prior DOJ Disclosures, and 20 in Data Set 12 itself, including the FD-302 reports EFTA02858481, EFTA02858491, and EFTA02858495 named in the June 25 *Phang* order. The count is therefore incomplete even for Data Set 12, and those 12,221 PDFs (126,436 pages) are outside every figure reported here. For the 8,220, the fetch record, not a live inspection of the DOJ site, is the evidence for their location.

As of August 30, 2026, the released production this analysis covers sums to 2,729,256 pages, about 2.73 million, from known per-document page counts across Data Sets 1 through 12; three documents carry no recorded count. The full-population visual census, which walked the same production from its image inventory, counts 2,729,259 pages and successfully processed 2,729,175 of them, excluding 33 unprocessable corrupt files (81 pages, 0.003%) and dropping the three pages double-counted by the one duplicated three-page manifest row, the Data Set 8 duplicate.[see n. 135] These figures differ by small amounts, and each analysis has its own denominator: 2,729,256 summed pages, 2,729,259 inventoried pages, 2,729,175 processed census pages, 2,729,178 join page-slots, and 2,729,246 coded pages in the separate white-box calculation. Compliance Letter #2 (p. 2) reports *"over 3 million"* pages released and *"nearly 3.5 million"* combined with prior productions, a wider population that includes media and earlier productions. The measured Bates-PDF total is lower than DOJ's reported release total. The available records do not reconcile the two counting universes, and the Section 3 report supplies no page-total reconciliation, so both the released total and the roughly 6-million identified total remain unaudited executive figures.

Two scope limits remain: image forms not tightly bounded by the dark-box detector, and unmeasured audio/video masking.

The text-classification step reads text, not images. The classifier cannot detect an image mask without a text signal. The visual census separately detects dark rectangles. The white-box recomputation, as of August 30, 2026, gives a point estimate near 0.1%, but its detector is not census-grade: precision is about 6%, three of 220 unique candidate pages are excluded as unclear, leaving 217 evaluable pages, and only twenty detector-negative pages form an unbiased miss sample. A prevalence of a few percent is not excluded.[136] The inspected white-box pages were identified as legacy FBI FOIA-style records; this limited provenance finding does not date

manifest population, not a reconciled census of every released page. The further Bates-EFTA files described in A.1 are not included in these counts.

[136] Author's White-Box Calibration Recompute: Results, June 26, 2026, content version a9018094c891, available on request. Final accounting is 220 unique candidate pages minus three unclear exclusions = 217 evaluable pages: one was unclear at first pass and two more were reclassified during white-box adjudication. Detector precision is about 6%; only twenty random detector-negative pages support the miss estimate. The resulting approximately 0.1% point estimate has a wide upper bound and is not census-grade.

every redaction or establish the complete later workflow.[137] The prior six- and twelve-span examples were generic visual annotations recoded as zero white-box spans, so they cannot establish white-box examples. The reported 64.5% estimator and interval remain dark-box-only; a separate white-box point lift near 0.1 percentage point is not incorporated into them.

Audio, video, and images are released media this redaction analysis does not score for redaction. DOJ reports more than 2,000 videos and 180,000 images. The project's June 2026 transcription run processed 557 on-disk media files; its status CSV records 546 `ok` and 11 `no-audio` entries. Of the 546 nominal successes, 471 have zero transcript characters and only 75 have nonempty transcripts. Recorded durations total 446.938 hours among the `ok` entries: 426.228 hours in the empty group and 20.710 hours in the nonempty group. A second accounting, regenerated June 15, 2026, covers 3,175 restored media files from Data Sets 9 through 11: 513 have transcript text, 906 have an audio stream with no speech recognized, and 1,756 have no audio stream. A successful process status is not intelligible-content coverage, and `no-audio` is not a listening-based finding of silence.[138] Neither accounting measures audio bleeping or video masking, which remain unquantified and excluded from redaction estimates.

A.2 Methodology

The methodology has three parts, one for each analysis step.

Release method. The released-page denominator is the sum of known per-document page counts across all twelve data sets, cross-checked against the visual census's independent page inventory and against the public concordance. DOJ's more-than-six-million-page figure is a gross potentially responsive collection with duplicates and overcollection. It is not a valid denominator for the measured release or for a withheld responsive residual. The audio and video inventory and transcription pipeline is described in the project's media-accounting artifacts; it produced the file counts and transcription coverage cited in the Release Analysis.

Redaction method (page-level visual census). The August 30 accounting records 2,729,175 processed pages after corrupt-file exclusions and duplicate correction. A deterministic raster detector flags dark rectangles. Its six configurations were evaluated and tuned on the same 400-page adjudicated gold set; the selected confusion matrix is TP 261, FN 2, FP 14, TN 123, giving sensitivity 0.992 and specificity 0.898. These are tuning-set performance measures, not independent validation. The set contains DS9 (185), DS10 (141), DS11 (73), and DS12 (1), with no DS1–8 pages. The Rogan–Gladen correction transports those measured error rates to the

[137] The adjudicated examples were described as inherited FBI FOIA-style records, with exemption annotations and earlier production stamps. That provenance inference is limited to the inspected pages, not every white box or the entire EFTA workflow. The March 2025 training cannot establish post-enactment continuity. The final calibration accounting is 220 unique candidates, three unclear exclusions, 217 evaluable labels; the separate point estimate remains imprecise.

[138] First accounting, the project's June 2026 transcription run: file-status record (SHA256 1bbc0d28731a01622bf33411eb2b9151be8362a131b2b83c9dc704940d5ff587), columns status, duration_sec, and transcript_chars: 557 files, 546 ok (471 with empty and 75 with nonempty transcripts) and 11 no-audio; the ok durations total 446.938 hours, of which 20.710 have nonempty output. Second accounting, regenerated June 15, 2026: 3,175 restored media files from Data Sets 9 through 11, of which 513 have transcript text, 906 have an audio stream with no speech recognized, and 1,756 have no audio stream. These are file-level processing counts, not listening-based or whole-media negative findings. Local records, available on request.

census; bootstrap uncertainty is conditional on that transport and the selected detector.[139] Apparent flags are observable counts; the corrected estimate has no corresponding identified page set. White boxes are outside this detector's target.

Justification method (text-marker classification). As of August 30, 2026, to classify document-level redaction and framework-language signals, without measuring whether individual redactions carried a legally sufficient justification, each PDF's text layer was extracted with pdftotext -layout (optical character recognition used ocrmypdf and Tesseract, but nine manifest PDFs still lacked a text layer and had no completed OCR), and a deterministic, priority-ordered regular-expression rule-set assigned each document to one of nine clusters by the redaction-justification language in its text. The rule-set is reproducible: the same input text yields the same cluster every time, with no model or sampling dependence. Two populations were examined. Document Set A[see n. 87] is the eight-phrase-query union, the 2,670 documents whose extracted text matches at least one of eight redaction-related phrase queries ("FOIA Exemption," "withheld pursuant to," "REDACTED," "Lugosch," "FOIA Exempt," "Tartaglione," "Privacy Act exemption," "proposed redactions"). Document Set B is the broader classifier-driven population, the 446,675 documents the classifier assigns to any cluster other than the no-signal cluster; Set A is the headline denominator. Set B was examined diagnostically, found dominated by confidentiality-disclaimer boilerplate, and retained to explain why a denominator comparison would mislead (A.3.3). The Set A and Set B tables reported here are those of the classification summary generated May 3, 2026. The June 24, 2026 runs classified all 1,378,393 documents in about seven minutes (426.677 seconds on ten workers) and then refined the privilege subclasses; their 444,298 privilege-language documents match the May summary.

Reliability checks and classification provenance. The nine processing-guidance items are nine copies of two documents: seven copies of a two-page guidance sheet and two scans of the March 21, 2025 training deck. Five copies were read in full and identified as guidance rather than records adjudicated for redaction legality. The privilege-language refinement is pinned to the June 24, 2026 privilege-subcluster classification run and its input hash.[140] Its 444,298 documents comprise 435,453 `DISCLAIMER_ONLY` (98.01%), 346 `PRIV_REDACTION_CONTEXT`, 3,788 `PRIV_PRESENT_BUT_NOT_REDACTION_CONTEXT`, and 4,711 `PRIV_PRESENT_NO_DISCLAIMER_NO_CONTEXT`. The four classes sum exactly to the denominator. A context label still does not adjudicate a privilege claim; the intermediate classes must not be silently collapsed into a binary justification/no-justification result. The manifest and row-level inputs take precedence over stale overview counts.

Reproduction. The classification inputs, scripts, run manifests, and selected outputs are held with the local review materials and are available on request, subject to applicable access restrictions. No durable public archive, DOI, or publicly accessible analysis repository is established here. The notes identify versions and files where possible; published DOJ records

[139] Author's detector tuning evaluation, June 9, 2026, "Gold standard" and detector configuration/results: six configurations evaluated on the same 400-page gold set, TP 261/FN 2/FP 14/TN 123; DS9 185, DS10 141, DS11 73, DS12 1. The record is held locally and available on request. It supports tuning-set performance, not independent validation or transport to DS1–8.

[140] Author's privilege-subcluster classification manifest, run_timestamp 2026-06-24T02:44:50Z, input_tsv_sha256 75c83cb396e0d4c6efdc379ad261b27be69eba702b291346a3a9c314771b8a89, subcluster_counts. Local classification run manifest, available on request. The four counts sum to 444,298; 435,453/444,298 rounds to 98.01%. This replaces stale summary prose.

and court orders are independently accessible. Reproducibility is therefore limited by access to the local analysis substrate, not presented as already satisfied by a public repository.

A.3 Findings

A.3.1 Release Analysis

As of August 30, 2026, the measured released production sums to 2,729,256 pages by known page counts. DOJ's gross potentially responsive collection exceeds six million pages and includes duplicates and overcollection. The difference is not a population of responsive records withheld in full, and no unreleased share is established. The Section 3 Report supplies no page count reconciling the measured release with DOJ's reported release totals.[see n. 78,see n. 79]

The released media are distinct from this PDF-page analysis. Of 557 on-disk files in the first transcription accounting, only 75 have nonempty transcript output; 471 nominal successes are empty and 11 report no audio. In the second accounting of 3,175 restored files, 513 have transcript text. The transcripts therefore cover a small, selected portion of recorded content and cannot support corpus-wide negative findings.[see n. 138] Media redaction remains unmeasured.

A.3.2 Redaction Analysis

How many released page-slots carry dark-box flags? The visual census counts those flags across all 2,729,175 processed pages; it does not verify every flagged page as redacted.

The **apparent** result, the exact pages the detector flagged, is that 1,845,330 pages (67.6%) carry at least one dark-box flag. The apparent rate counts dark-box flags only. White-box prevalence is a separate point estimate with a wide upper bound and is not incorporated into the corrected dark-box rate. Joining the census against the text-marker classification shows the joint distribution of flags and text markers: 1,842,147 pages (67.50%) carry a dark-box flag with no text marker, only 3,186 pages (0.12%) carry both a flag and a text marker, 2,252 pages (0.08%) carry a text marker with no detected box, and 881,593 pages (32.30%) carry neither a dark-box flag nor a text marker. These four categories sum to 2,729,178 rather than the 2,729,175 censused pages because the census-to-classification join universe is 2,729,178 page-slots: the one duplicated three-page manifest row (A.1) enters the join twice, double-counting three pages. The three-page difference is bookkeeping, not measurement.

The **corrected** dark-box estimate is 64.5% (95% calibration interval 62.0–66.6%), as of August 30, 2026. Its complement, 35.5%, estimates absence of dark boxes, not absence of all redaction. The image-only join cell is an uncorrected 67.498%; it has no separately calibrated 64% estimator. White-box prevalence remains incompletely bounded and is outside the dark-box estimator and interval.[see n. 137]

The detector is computationally practical but its performance remains design-dependent. The 400-page gold set was also used to select among six configurations, so the 64.5% correction may inherit selection optimism. An independently described 120-page manual re-code returned 68.3% (95% interval 59.6–76.0%); overlap with a broad interval is not proof of transportability. Earlier vision-model estimates covered different populations or had incomplete recall and are not

interchangeable validation studies.[141] A held-out, dataset-stratified audit would be needed to establish census-wide performance independently; this revision does not claim to have run one.

Transport sensitivity (illustrations, not confidence bounds). With apparent prevalence about 0.676, the Rogan–Gladen formula is `(apparent + specificity - 1) / (sensitivity + specificity - 1)`. Holding sensitivity at 0.992 and varying specificity from 0.84 to 0.96 gives approximately 62.0% to 66.8%; holding specificity at 0.898 and lowering sensitivity to 0.97 gives about 66.1%. These scenarios show how plausible error-rate shifts alter the estimate; they are not empirical DS1–8 rates or a substitute for a transport audit. Data Sets 1–8, absent from the tuning set, hold only 39,016 of 2,729,175 pages (1.43%), so transport error there can move the corrected estimate by about 1.4 points at most. The published 62.0–66.6% calibration interval excludes model selection, dataset transport, and unmeasured white-box error.

The join has 5,438 text-marker-bearing page-slots (0.199%) as of August 30, 2026: 3,186 with a visual flag and 2,252 without one. Most detector flags fall in the image-only cell, which is why the text-based Justification Analysis sees so little of the detected dark-box activity. This is a distribution of flags and markers, not a count of verified redactions or legally sufficient justifications.

A.3.3 Justification Analysis

As of August 30, 2026, Set A contains 2,670 documents selected by eight phrase queries, including incidental hits and 181 C0 no-signal documents. Table 12 reports classifier assignments, not adjudicated legal justifications. The 883 framework-language assignments and 1,576 fallback assignments do not establish statutory justification present versus absent.

Table 12. Document Set A classifier assignments (N=2,670 phrase-query documents, as of August 30, 2026; shares are shares of the query results, not prevalence)[see n. 87]

Count (share of query results, not a prevalence)	Category	Description and examples
314 of 2,670 (11.76%)	Common-law-privilege language	C7 privilege-framework strings; not a count of the five statutory Section 2(c) bases. On the privilege-subclass refinement, 122 of the 314 are confidentiality-disclaimer boilerplate only, 100 carry privilege language outside a redaction context, and 92 carry it in a redaction context.

[141] Author's Full-Corpus Visual-Redaction Census: Results, June 11, 2026, SHA256 prefix 3666abfbe851, "Headline"; VRFA 120-Page Human Gold-Set Results, June 1, 2026, d272a4713224, fields n, seed, human_image_only_present_rate_pct and ci95 (120 pages, seed 7752, 68.3%, interval 59.6–76.0); VRFA Detector-Recall Validation, May 31, 2026, 12080b07a9aa, "Method" and "Results" (1,500-page uniform sample; incomplete recall); VRFA Residual GPT-4o Rescore, May 31, 2026, 7791bf386f6a (47,408-page enriched candidate population). Held local supplements, available on request. The census correction uses the detector's tuning evaluation, not an independent holdout; interval overlap does not validate transport across datasets.

Count (share of query results, not a prevalence)	Category	Description and examples
569 of 2,670 (21.31%)	Inherited-framework markers	"Tartaglione" (Bureau of Prisons FOIA litigation exemptions); "Lugosch" (the Second Circuit sealing standard as applied in the Maxwell litigation); "Privacy Act exemption" (FBI investigative records under 5 U.S.C. § 552a(j)(2)); and FOIA-exemption cover/justification language. (FBI "FOIA Exempt / SBU" form-stamps, 2 documents, are counted in the Residual row.) These inherited frameworks are not themselves Section 2(c)(1) bases. The classifier does not establish that each marker was the operative basis for a DOJ redaction.
1,576 of 2,670 (59.03%)	C7 fallback with no matched inline framework	A finite-rule fallback, not proof of no justification; no finer unpinned subdivision is asserted here.
211 of 2,670 (7.90%)	Residual	Documents matching one of the eight phrase queries incidentally (181 no-signal documents: a legal citation, a policy discussion, a court opinion citing a redacted source, or an image-only redaction whose only textual hook is incidental), plus 19 internal DOJ FOIA processing emails, 2 FBI "FOIA Exempt / SBU" form-stamp documents, and the nine processing-guidance copies, which match phrases like "REDACTED" but are *meta-documents instructing how to redact* rather than redacted records.
2,670	**(all phrase-query documents)**	

Three findings come from the justification analysis.

The largest assignment is the fallback class. Its 1,576 documents are rule assignments, not independently verified bare-marker redactions. The 314 common-law-privilege assignments and 569 inherited-marker assignments establish framework-language classes, not 883 legally justified documents, and 122 of the 314 are disclaimer boilerplate only. The classifier supplies no validated statutory-justification rate.

The inherited-marker count is fixed by the query design. Set A contains 569 inherited-marker documents among 2,670 phrase-query records; across the whole corpus the same clusters hold 571 documents, so 569 of the 571 fall inside Set A because they contain the phrases that were searched for. Their share of Set A therefore measures the query design, not prevalence. Set B, the

446,675 documents assigned to any signal cluster, is dominated by confidentiality-disclaimer boilerplate (435,453 of its 444,298 privilege-language documents are disclaimer-only), so it is not a useful robustness denominator and no rate against it is reported. Neither set is a random sample of legally disputed redactions.

A pre-EFTA processing instruction is documented. The March 21, 2025 training (EFTA00172446, pp. 1, 6) directs boxes without exemptions on the page. It predates the statute, but does not establish later continuity or the impossibility of reconstructing justifications. The January 30 account of updated guidance is a rival explanation requiring dated workflow evidence. The August 27 notice and September 16 court order establish publication while leaving substantive adequacy contested.[see n. 81,see n. 83]

A reader can inspect EFTA00172446 at the DOJ portal, using the document's first page for its date and sixth page for the instruction. The earlier unpaginated white-box examples are omitted because a document identifier without the relevant image page does not adequately identify the claimed mask. This removes examples, not the separately qualified calibration result.

The Section 3 Report separately invokes three common-law privileges and reports no withholding under § 2(c)(1)(E). Its preservation construction and the author's contrary reading are analyzed in the main text. The January 30 privilege-based approximately 200,000-page figure is not a count of documents assigned to a privilege-language cluster, nor a disjoint withheld-only total. No public itemized reconciliation is established.[see n. 88]

A.4 Conclusion

Section 2(c)(2) provides that all redactions "must be accompanied by a written justification published in the Federal Register and submitted to Congress." It does not expressly require every withholding to appear on that record or each justification to name a category, although DOJ's December 19 letter (p. 4) promised "an explanation for any redacted and withheld materials" under that provision. The enumerated withholding bases and the publication requirement are separate textual obligations.

As of August 30, 2026, the classifier assigns inherited-framework markers to 569 of the 2,670 phrase-query records, a share fixed by the query design and not a prevalence. The former 5% marker threshold is withdrawn: a marker need not state the operative withholding basis. Counts of pre-enactment guidance are likewise not a compliance test. DOJ's account of retained original redactions also describes review; the records do not establish categorical absence of reconsideration.

No overall compliance percentage is assigned. The earlier 84% noncompliance and 16% compliance estimates, along with their 54% floor and 46% ceiling, rested on incompatible denominators. DOJ's gross collection cannot identify the responsive withheld residual. The corrected 64.5% dark-box estimate cannot classify each page's legality or total redaction status. White-box prevalence remains incompletely bounded; audio and video masking is unmeasured. These gaps do not license a replacement compliance percentage.

The earlier training, the privilege construction, and the absence of public record-level entries identify questions for audit and adjudication. They must not be converted into proof of post-enactment workflow continuity, a settled privilege holding, or a numerical compliance judgment.

The September judicial record demonstrates active enforcement while leaving material disputes unresolved.

A.5 References

These references record where the analyzed data came from. Bates numbers refer to documents in the DOJ EFTA production.

Governing statute. Epstein Files Transparency Act, Pub. L. No. 119-38, 139 Stat. 656 (H.R. 4405), enacted November 19, 2025. Section 2(c)(1) permits withholding or redaction of the segregable portions of records in five classes; Section 2(c)(2) provides that all redactions "must be accompanied by a written justification published in the Federal Register and submitted to Congress"; Section 3 requires a report to the House and Senate Judiciary Committees listing the categories of records released and withheld, a summary of redactions with legal basis, and the government officials and politically exposed persons named in the released materials.

Primary data source. U.S. Department of Justice, Epstein Library, "DOJ Disclosures" (Epstein Files Transparency Act (H.R. 4405), Data Sets 1–12), https://www.justice.gov/epstein/doj-disclosures. The production was released in twelve data sets (Data Set 1 through Data Set 12). As counted here it comprises 1,378,393 Bates-numbered PDF documents, Bates EFTA00000001 through EFTA02731789, delivered as Concordance load files; A.1 describes Bates-EFTA records outside that count.

DOJ compliance instruments. The framework the production is measured against is DOJ's Section 3 Report and its two compliance letters: Letter #1 dated December 19, 2025, and Letter #2 dated January 30, 2026.

Federal Register check. DOJ's August 27, 2026 notice republishes the Section 3 Report without Bates-level entries. In *Phang*, ECF 43, pp. 17–18, the court discharged the publication show-cause requirement while reserving the notice's substantive adequacy. The author's itemization reading and DOJ's categorical reading are distinguished in the main text.

Appendix B — Per-Indicator Coding Evidence (Historical Cases)

This appendix holds the codebook and the evidence for each per-indicator coding in Table 7, including the Watergate tapes contrast. Cells that add a fact not stated in the body carry their own notes.

Pike and Church are observed separately below. Their shared episode is not a controlled comparison: chambers, authorizing resolutions, leadership, disclosure rules, and enforcement paths differed. Both committees bargained and both defied the executive. Church's inquiry produced substantial public findings and durable institutions; Pike's obtained evidence and lost the fight over official publication when the House bound its committee. Neither outcome alone identifies posture, or the parent chamber's response, as the cause.

Codebook (actor scored, and what earns each mark). Each case is scored on Congress's own demand; for the Watergate contrast that is the Senate committee's subpoenas for the tapes, the demand that was litigated. The House Judiciary Committee's own subpoenas of 1974 are not

scored: the President answered the first of them with edited transcripts, and the committee charged his failure to comply with all four in an article of impeachment.[142] The Special Prosecutor's trial subpoena is recorded in the outcome rows. Each cell is scored on the period in the case heading: evidence from before it is labelled as an antecedent and evidence from after it as a sequel, and outcomes may be scored after a period ends. The executive-offer rows score the executive's conduct at the time, not whether its position later stood, which the response and outcome rows record. Scored this way, delay and self-definition mark almost any executive that resists a demand, so those rows describe the exchange and do not by themselves separate episodes. One author wrote the codebook and applied it; no second coder has scored the cells.

Indicator	**Actor whose conduct is scored**	**√ supported**	**◗ mixed**	**✗ contrary**
Exogenous rupture *(bracket)*	Source of the triggering disclosure	The disclosure that prompts the inquiry comes from outside Congress	The trigger is external, but Congress itself discovers concealed conduct during the episode	Congress discovers the conduct first
Demand posture	Congress	A committee or chamber formally demands records or testimony	The demand is limited to letters or requests without formal process	No demand is made. The row records the form of the demand; it is present in any investigation and does not discriminate between episodes
Selective disclosure	Executive	Records are withheld, destroyed, conditioned, or released only in part	Disclosure is substantially complete with identified gaps	Full production
Justification proliferation	Executive	Grounds for withholding expand beyond the governing text	One ground is asserted, or the evidence concerns claimed authority and not withholding	No ground beyond the governing text

[142] The Senate committee's subpoena sought "'original electronic tapes' of five conversations between the President and his former Counsel, John W. Dean, III" (*Senate Select Committee*, 498 F.2d at 726). On April 29, 1974 the President announced "my answer to the House Judiciary Committee's subpoena for additional Watergate tapes" (Richard Nixon, "Address to the Nation Announcing Answer to the House Judiciary Committee Subpoena for Additional Presidential Tape Recordings," April 29, 1974, The American Presidency Project, https://www.presidency.ucsb.edu/documents/address-the-nation-announcing-answer-the-house-judiciary-committee-subpoena-for-additional). In the House committee's debate a member spoke of "the edited transcripts sent to us by the White House" (House Committee on the Judiciary, *Debate on Articles of Impeachment*, 93d Cong., 2d Sess. (1974), 73); the President "released to the public partial, unauthenticated transcripts of these five conversations, among others" (S. Rep. No. 93-981, 1082); and "By order of May 2, 1974," the D.C. Circuit "took judicial notice of the President's public release of transcripts, with partial deletions, of each of the tapes at issue here" (498 F.2d at 732). The House committee's third article of impeachment charged that the President "has failed without lawful cause or excuse to produce papers and things as directed by duly authorized subpenas issued by the Committee on the Judiciary of the House of Representatives on April 11, 1974, May 15, 1974, May 30, 1974, and June 24, 1974" (*Debate on Articles of Impeachment*, 449), and the committee adopted it by 21 votes to 17 (id., 489).

Indicator	Actor whose conduct is scored	✓ supported	◗ mixed	✗ contrary
Delayed compliance	Executive	Production came ninety days or more after the demand, or never came	Production came after the date the demand set but within ninety days	Production by the date demanded
Executive self-definition	Executive	The executive states its own reading of what compliance requires and acts on it	It states a reading but defers to a congressional or judicial process before acting	It accepts the requester's reading
Majority declines an available remedy	A committee or chamber majority	Most of the considered remedies shown to be available are declined, by recorded vote or non-use	Some are used and others declined	Those available are used
Remedy attempted and defeated outside Congress	A court or prosecutor acting on a remedy Congress or its members invoked	The remedy fails	Partial success	The remedy succeeds (n/a when no congressional invocation is documented)
Informal negotiation	Congress and the executive	Documented bargaining over access or release, whether or not it produced terms; bargaining later overtaken by adjudication is scored here, and the adjudication in the remedy row	Terms are imposed or offered with limited bargaining, or the parties' accounts dispute that a bargain was struck	No bargaining is documented: access is sought only by demand and adjudication
Limited individual accountability *(bracket)*	Prosecutors, courts, and the President	No durable sanction for an identified official	Some sanctions survive and others are reversed or pardoned	Durable sanctions

A mark of ? means insufficient evidence to apply the row: the sources may not separate the conduct, establish a requested remedy's disposition, resolve a considered route's legal availability, or date both demand and production. The ninety-day line is a coding convention, not a legal standard. The remedies considered are those named in each evidence cell: a contempt vote, a suit, a disclosure procedure, legislation, or impeachment. The majority-remedy mark describes route choice among possible substitutes, not weak escalation or enforcement effort. In the external-remedy row, n/a means no congressional invocation is documented in the sources read; ? means a request is documented but its disposition is not; ◗ requires partial success. These marks are distinct from ✗, a successful remedy.

Separate eight-indicator profiles (✓ supported; ◗ mixed; ? insufficiently separated evidence; ✗ contrary)

Process indicator	Pike	Church	Basis
Demand posture	✓	✓	Pike relied mainly on subpoenas and contempt resolutions, Church mainly on negotiated access; each used both
Selective disclosure	✓	?	Pike: a September 1975 embargo, then documents loaned on condition that the President arbitrate release, and a briefing in place of delivery. Church: the only evidence read is a four-month delay in answering the first SHAMROCK inquiries, which the delay row scores; no withholding or conditioning is documented in the sources read[see n. 45,see n. 46]
Justification proliferation	◗	?	An executive-privilege claim against one Pike subpoena and classification as the ground for the release conditions; no separate Church evidence[see n. 44]
Delayed compliance	◗	✓	Pike: subpoenas served November 7, 1975 and returnable November 11 were met by accommodations the committee accepted as substantial compliance on December 2 and 10, inside ninety days, after the September embargo had ended in the October 1 agreement. Church: inquiries of May 1975 answered in early September, about four months later[see n. 44,see n. 45,see n. 46]
Executive self-definition	✓	✓	For Pike the President was made final arbiter of release; for Church, Executive Order 11905 pre-empted the statutory charter[see n. 43]
Majority declines an available remedy	✓	◗	Pike: the committee accepted presidential-certification terms 10–3 and did not take its contempt resolutions to the floor, and the House voted 246–124 to bar release absent restricted distribution or presidential certification. Church: the committee published twice over presidential objection and the Senate recorded no disapproval, but the statutory charter was not enacted[see n. 42,see n. 47]
Remedy attempted and defeated outside Congress	n/a	n/a	None was attempted; the Pike committee reserved a right to seek judicial determination and did not use it
Informal negotiation	✓	✓	Pike bargained over release terms and over the contempt subpoenas; Church bargained over access throughout[see n. 45]

Counting firm ✓ marks only, as description: Pike five of eight, Church four, Iran-Contra six, NSA three, the CIA program five, and the Watergate contrast five. These counts are not a test and do not rank the episodes: the contrast ties Pike and the CIA program, exceeds Church and NSA, and falls below Iran-Contra. Against the previous edition, Watergate's majority-remedy mark changes from ✓ to ? because consideration of contempt against a sitting President does not establish its contested legal availability; its firm count falls from six to five. The external-remedy marks change from ◗ to n/a for Iran-Contra and the CIA program, because the cited proceedings lack a documented congressional invocation, and from ◗ to ? for NSA, because the request's disposition is unestablished. None of these three changes affects a firm-mark count. Pike and Church remain n/a on that row. No other mark changes; the episode-level union in Table 7 retains the combined Pike and Church column as supported on selective disclosure and delay. The successful institutional products of the Church inquiry remain positive outcomes.

Case	Indicator	Coding	Evidence
Pike and Church	Exogenous rupture	◗	The inquiries followed Hersh's December 1974 *New York Times* report, which covered many of the subjects in the "Family Jewels" compilation and first revealed its existence, a disclosure from the press and not from Congress's own oversight.[see n. 41] Within the episode the Senate committee itself found and disclosed the SHAMROCK interception program, having first inquired in May 1975; under Table 6 a congressional discovery counts against the bracket.[see n. 46]
Pike and Church	Demand posture	✓	Both committees made formal demands. Pike relied mainly on subpoenas and contempt resolutions and Church mainly on negotiated access, though each used both.[see n. 44,see n. 46]
Pike and Church	Selective disclosure	✓	The executive suspended the Pike committee's access to classified material in September 1975, then loaned documents on condition that the President arbitrate any public release, and met the subpoenas behind the Kissinger contempt resolutions with reading-room access and a briefing in place of delivery.[see n. 45] To Church it answered the first SHAMROCK inquiries only after four months,[see n. 46] which the delay row scores; Church's own profile therefore marks this row ?. This cell no longer rests on the House vote of January 29, 1976, which was an act of the House.
Pike and Church	Justification proliferation	◗	Executive privilege was asserted against one Pike subpoena, and classification was the ground for the release conditions; the record read here does not show grounds multiplying beyond those two.[see n. 44,see n. 45]
Pike and Church	Delayed compliance	✓	Dated events: the September 1975 embargo on classified material; the October 1 agreement; the November 14 contempt resolutions; the accommodations of December 2 and 10. For Church, first inquiries about SHAMROCK in May 1975 were answered in early September, about four months later. Pike's subpoenas, served November 7 and returnable November 11, were met by accommodations accepted on December 2 and 10, inside ninety days, so Pike's own profile marks this row ◗.[see n. 44,see n. 45,see n. 46]
Pike and Church	Executive self-definition	✓	Ford's Executive Order 11905 (February 18, 1976) set an executive-branch charter 68 days before the April 26, 1976 date on Church's Book I, and the proposed statutory charter never passed; for Pike, the President was made final arbiter of release. Scored on conduct, each is the executive's own reading, acted on: the order was issued in place of a statutory charter, and from September 18, 1975 the executive withheld classified material from the Pike committee until, on September 26, Pike and the House leadership agreed, and on October 1 the committee voted 10–3, that the President would be final arbiter of what it would make public.[see n. 43,see n. 45]

Case	Indicator	Coding	Evidence
Pike and Church	Majority declines an available remedy	✓ (House) / ◗ (Senate)	Remedies considered: contempt, a suit, publication, and legislation. House: the committee accepted presidential-certification terms 10–3 on October 1, 1975 and declared substantial compliance on its contempt subpoenas in December instead of taking them to the floor; on January 29, 1976 the House voted 246–124, with 127 Democrats and 119 Republicans in the majority, to bar release of a report containing classified material unless restricted to authorized recipients or certified by the President.[see n. 45,see n. 42] Senate: the committee published SHAMROCK and the assassination report over presidential objection and the Senate recorded no disapproval, but the statutory charter was not enacted.[see n. 46,see n. 47]
Pike and Church	Remedy attempted and defeated outside Congress	n/a	None was attempted. The Pike committee reserved a right to seek judicial determination and did not use it, and its contempt resolutions were not taken to the House floor.[see n. 45] The one prosecution in the episode for an offence against Congress, of Helms, ended in a plea and fine.[see n. 49]
Pike and Church	Informal negotiation	✓	Both committees bargained: Pike over release terms with the President (the October 1 agreement) and over the contempt subpoenas (the December compromise, of which Pike said "we got more than they wanted to give us"); Church over access throughout.[see n. 45,see n. 43]
Pike and Church	Limited individual accountability	◗	Accountability was limited and partly reversed. Former Director of Central Intelligence Richard Helms pleaded nolo contendere in 1977 to two misdemeanors of not testifying fully to the Senate about CIA covert action in Chile, drawing a suspended sentence and a $2,000 fine; FBI officials W. Mark Felt and Edward S. Miller, convicted in 1980 of conspiracy to violate citizens' rights through 1972–1973 warrantless break-ins, were pardoned by President Reagan while their appeal was pending, as he announced on April 15, 1981. The Helms plea and fine remained.[see n. 49]
Iran-Contra	Exogenous rupture	✓	The Hasenfus shootdown (October 5, 1986) exposed the Contra-resupply half and the *Ash-Shiraa* report (November 3, 1986) the Iran half; both broke from outside the oversight channel.[see n. 50,see n. 51]
Iran-Contra	Demand posture	✓	The House and Senate select committees (H. Res. 12 and S. Res. 23) held joint hearings with subpoena power and obtained testimony under immunity orders.[see n. 51,see n. 53]
Iran-Contra	Selective disclosure	✓	Senior officials held back information from Congress: the contemporaneous notes of Weinberger and Regan, and those dictated by Shultz, were withheld until 1991 and 1992, and Poindexter, North, and others shredded documents from November 21, 1986, as the Attorney General's inquiry began and before the Independent Counsel was appointed or the select committees were established.[see n. 52] The previous edition scored this cell mixed on the ground that immunity bounded later prosecutions, which describes Congress's act and not the executive's disclosure.

Case	Indicator	Coding	Evidence
Iran-Contra	Justification proliferation	✓	A doctrine of presidential discretion over notification was advanced in the Cooper opinion, NSDD-286, and the 1989 Bush letter to Senator Boren, and endorsed in the committees' minority report. NSDD-286 also narrowed that discretion while reserving it: it barred retroactive findings and, where prior notice was withheld, set notice to the committees within two working days unless the President directed otherwise.[see n. 54]
Iran-Contra	Delayed compliance	✓	The select committees reported in November 1987 without the contemporaneous notes of Weinberger and Regan, and those dictated by Shultz, which were never produced to them. The notes reached the Independent Counsel only in 1991 and 1992, Weinberger's in late 1991; Regan's 1992 notes and the December 1992 discovery that Bush had failed to produce a diary are sequels. The Independent Counsel records that the limitation period had run on November 1986 activities before his office obtained its evidence.[see n. 52] The previous edition scored this cell contrary because the committees convened promptly, which describes Congress and not the executive.
Iran-Contra	Executive self-definition	✓	The executive treated covert-action notification as a matter of presidential discretion and reserved constitutional authority to withhold notice beyond a few days.[see n. 54,see n. 56]
Iran-Contra	Majority declines an available remedy	✗	Remedies considered: immunity orders, a public report, and legislation, all used. The intelligence committees pressed notification legislation for almost four years, through one veto, to the 1991 Act; they did not obtain the 48-hour rule, and the constitutional reservation stood, which is the partial success of a remedy used, not a remedy declined.[see n. 56] The sources read document no remedy that the committees or either chamber declined, so the cell is contrary, and Iran-Contra is the one historical case in which Congress used every remedy it considered. The December 1992 pardons are a presidential act and are not scored in this row.
Iran-Contra	Remedy attempted and defeated outside Congress	n/a	Initiator/request: no congressional act invoking the scored prosecutions is documented here; the Attorney General requested appointment of an independent counsel. Decision-maker: the Special Division appointed Walsh, who prosecuted. Requested result: investigation and, if warranted, prosecution. Observed disposition: convictions, reversals and pardons are retained in individual accountability below, rather than scored as a congressional remedy merely because an offence was against Congress.[see n. 58] This n/a is a limit of the cited coding warrant, not a finding that no congressional referral ever occurred.
Iran-Contra	Informal negotiation	✓	The 1991 notification settlement was negotiated between the intelligence committees and two administrations, and the timing of the immunity orders was negotiated between the committees and the Independent Counsel in March 1987.[see n. 56,see n. 53]

Case	Indicator	Coding	Evidence
Iran-Contra	Limited individual accountability	◗	Mixed. The prosecutions, including those for offences against Congress, are scored here rather than as congressional invocations: McFarlane, Abrams and Fiers pleaded guilty to withholding information from Congress, and George was convicted of false statements and perjury before Congress. The Fernandez case, charging obstruction of the Tower Commission and false statements to government agencies, was dismissed after the Attorney General barred disclosure of classified evidence.[see n. 57,see n. 113] Of fourteen persons charged, eleven were convicted and several convictions and pleas survived. North's conviction was vacated and Poindexter's reversed on use-immunity grounds. Bush pardoned four convicted defendants (McFarlane, Abrams, Fiers, George) and two awaiting trial (Weinberger, Clarridge). Pardons foreclosed or remitted criminal consequences; they did not expunge the convictions, pleas, or historical findings.[see n. 58]
NSA bulk collection	Exogenous rupture	✓	The program's court order and Section 215 basis reached public view through Snowden's June 2013 disclosures; a May 2006 *USA Today* report had described the collection of call records. Both came from outside Congress.[see n. 60] A December 2005 *New York Times* report, also from outside, concerned warrantless interception of international calls and e-mail under the same presidential program and did not disclose the call-records collection; the NSA then briefed the surveillance court's judges.[see n. 59] Wyden and Udall raised alarms inside the channel in 2011 and 2012, within classification limits.[see n. 62]
NSA bulk collection	Demand posture	◗	Wyden and Udall used public letters under secrecy constraints. S. Res. 400 also permitted subpoenas and a formal classified-information disclosure process; the letters were not the only authorized means of challenge.[see n. 62,see n. 63]
NSA bulk collection	Selective disclosure	✓	The legal interpretation was given to four committees and withheld from the public and, in the orders themselves, from other members; the first court opinion explaining it was issued on August 29, 2013.[see n. 62,see n. 60]
NSA bulk collection	Justification proliferation	◗	The evidence concerns collection authority, the classified reading of Section 215 that the Second Circuit later held the statute did not authorize, and not grounds for withholding; classification was the single withholding ground throughout. Scored mixed because the indicator as defined is only partly engaged.[see n. 60]
NSA bulk collection	Delayed compliance	✓	In August 2009 DOJ and the Office of the Director of National Intelligence announced a process for releasing significant court opinions; in March 2012 Wyden and Udall wrote that not one redacted opinion had been released, and the first opinion on the program appeared after the 2013 disclosures.[see n. 62,see n. 60]
NSA bulk collection	Executive self-definition	✓	In 2001–07 briefing access required White House approval; from 2006 the government's classified applications, approved by court orders, supplied the statute's operative meaning until the August 2013 opinion and the later appellate rulings.[see n. 61,see n. 60]

Case	Indicator	Coding	Evidence
NSA bulk collection	Majority declines an available remedy	◗	Remedies considered: legislation and the S. Res. 400 disclosure procedure, which was not used. In 2008 Congress barred civil suits against assisting providers;[see n. 59] it extended Section 215 in 2010 and 2011 while four committees held the orders and a classified summary had been offered to all members (in 2011 the House committee did not circulate it); after the 2013 disclosures it enacted the USA FREEDOM Act. Hayden's recollection that *"no one ever said that NSA should stop what it was doing"* concerns the 2001–07 briefings and is his inference, not proof of consent.[see n. 60,see n. 61]
NSA bulk collection	Remedy attempted and defeated outside Congress	?	Initiator/request: Sensenbrenner sought action on Clapper's testimony. Decision-maker: the Attorney General. Requested result: investigation and prosecution if warranted. Observed disposition: Holder acknowledged the letter and review of member-supplied material on April 8, 2014, but did not confirm an investigation. The record establishes a request, not its disposition or partial success; no charge is established.[see n. 64] Private plaintiffs' litigation is outside this row.[see n. 65]
NSA bulk collection	Informal negotiation	◗	Terms of access were set by the executive and the court more than bargained; the Wyden-Udall letters are the trace of constrained bargaining.[see n. 62]
NSA bulk collection	Limited individual accountability	✓	Holder acknowledged Sensenbrenner's letter and member-supplied material on April 8, 2014. That is a request for action, not proof of a formal committee referral or a confirmed investigation. No charge is established in the reviewed record.[see n. 64]
CIA Interrogation Program	Exogenous rupture	✓	The December 2007 *New York Times* report of the destroyed interrogation videotapes preceded the committee's review, which began on December 11, 2007 after the CIA Director briefed it that day; the ninety-two-tape count surfaced in March 2009 litigation.[see n. 66,see n. 32] Committee access had widened only on September 6, 2006, the day the President publicly acknowledged the program, by which time 117 of the 119 known detainees had entered CIA custody: an executive choice, not a congressional discovery.[see n. 32]
CIA Interrogation Program	Demand posture	✓	The SSCI authorized a study based on more than six million pages of CIA records (March 5, 2009), a strong demand that nonetheless ran through negotiated declassification of the CIA's own record rather than compelled public release.[see n. 32]
CIA Interrogation Program	Selective disclosure	✓	Until September 6, 2006 the CIA restricted information to the committee's chairman and vice chairman; the White House withheld approximately 9,400 documents pending a determination on executive privilege; and only the Executive Summary (499 pages, released with the Findings and Conclusions as a 525-page document) was made public, on December 9, 2014, while the full report, more than 6,700 pages, stayed classified.[see n. 32]

Case	Indicator	Coding	Evidence
CIA Interrogation Program	Justification proliferation	◗	The evidence concerns interrogation authority more than withholding. The Office of Legal Counsel's January 15, 2009 memorandum for the files stated that the earlier opinions' categorical claim, that the Commander in Chief power precludes Congress from legislating on detention and interrogation, was not sustainable, while reserving as-applied constitutional objections.[see n. 70] The withholding grounds were classification and a pending executive-privilege determination.[see n. 32]
CIA Interrogation Program	Delayed compliance	✓	The committee approved the study in December 2012; the executive's declassification review then ran until the December 2014 release of the Executive Summary, and the full report was not released. The study period itself (March 2009 to December 2012) is the committee's time, not executive delay.[see n. 32]
CIA Interrogation Program	Executive self-definition	✓	The White House withheld approximately 9,400 CIA documents pending an executive-privilege determination and did not answer the committee's three written requests of 2013, and the CIA disputed the committee's findings in its June 2013 response.[see n. 32,see n. 67]
CIA Interrogation Program	Majority declines an available remedy	◗	Remedies considered: a study, declassification, release of the full report, and legislation. The committee approved the study 9–6 and voted to send the Executive Summary to the President for declassification; it did not release the full report, which the D.C. Circuit held in 2016, as a sequel, to be a congressional record under the committee's control. Congress legislated in 2005 and, as a sequel, in 2015.[see n. 32,see n. 70,see n. 68]
CIA Interrogation Program	Remedy attempted and defeated outside Congress	n/a	Initiator/request: the CIA Inspector General referred possible misconduct by CIA personnel, and the acting general counsel filed a crimes report concerning committee staff. Decision-maker: DOJ. Requested result: criminal investigation. Observed disposition: no charges; DOJ reported insufficient evidence to warrant a criminal investigation. Both referrals were executive-origin; no congressional invocation is documented in this evidence. They remain counter-pressure and accountability evidence in the following rows.[see n. 67]
CIA Interrogation Program	Informal negotiation	✓	The release proceeded through negotiation amid CIA counter-pressure (the staff-computer searches, the criminal referral, and declassification fights).[see n. 67]
CIA Interrogation Program	Limited individual accountability	✓	Accountability was declined. No senior official was prosecuted; the Durham review closed with no charges; Margolis declined to adopt the Office of Professional Responsibility's misconduct findings against Yoo and Bybee, and the record reviewed shows no discipline; the CIA Inspector General referred possible CIA personnel misconduct, and the acting general counsel filed a crimes report against committee staff; both referrals ended without charges.[see n. 67,see n. 70] The Detainee Treatment Act of 2005 gave personnel who relied on authorized practices a defense, and the Military Commissions Act of 2006 redefined the war-crimes offense with effect from November 26, 1997.[see n. 68]

Case	Indicator	Coding	Evidence
Watergate tapes (contrast)	Exogenous rupture	◗	The conduct first came to light outside Congress, when police arrested five men inside the Democratic National Committee offices on June 17, 1972. But the existence of the tapes, the records in dispute, was disclosed by the Senate committee's own questioning of Alexander Butterfield on July 16, 1973.[see n. 33]
Watergate tapes (contrast)	Demand posture	✓	After informal requests failed the committee issued two subpoenas in July 1973, the demand on which this column is scored. The Special Prosecutor's trial subpoena under Rule 17(c), of April 18, 1974, is recorded in the outcome rows.[see n. 33]
Watergate tapes (contrast)	Selective disclosure	✓	The President declined both committee subpoenas on July 25, 1973. On April 30, 1974, answering the House Judiciary Committee's subpoena, he released edited transcripts in place of the tapes; they were sent to that committee and published, not produced to the Senate committee, and they covered, with partial deletions, each of the five conversations it had subpoenaed, as the D.C. Circuit took judicial notice.[see n. 33,see n. 142]
Watergate tapes (contrast)	Justification proliferation	◗	One ground was asserted, a generalized executive privilege claimed to be absolute; the Supreme Court rejected its absoluteness.[see n. 33]
Watergate tapes (contrast)	Delayed compliance	✓	The committee never received the subpoenaed tapes from the President. When the D.C. Circuit ruled on May 23, 1974, ten months after the subpoenas, it treated the committee's need as merely cumulative because the House Judiciary Committee by then held copies. The Supreme Court's order of July 24, 1974 ran on the Special Prosecutor's subpoena, not the committee's.[see n. 33]
Watergate tapes (contrast)	Executive self-definition	✓	The President stated his own reading, that the privilege was his to define, and acted on it by refusing the committee's subpoenas and substituting edited transcripts. The courts' later determinations are recorded in the remedy and outcome rows: the D.C. Circuit decided the committee's subpoena under a presumption of privilege, and the Supreme Court held, on the Special Prosecutor's subpoena, that it is the province of the judiciary to say what the law is and that a generalized claim must yield to a demonstrated need for evidence in a pending criminal trial.[see n. 33]
Watergate tapes (contrast)	Majority declines an available remedy	?	On the Senate committee's demand, the committee considered statutory contempt, the Senate's self-help (inherent contempt), and a suit. Its report says "it appeared unseemly" to proceed against the President by statutory contempt or "the self-help measures at the Senate's command" (S. Rep. No. 93-981, 1081–1082). These were considered alternatives whose legal availability against a sitting President was contested, so their non-use does not support a firm available-remedy mark. The committee used a suit, with a Senate authorization resolution and a special jurisdictional statute counted as parts of that route. The mark describes route choice among substitutes, not weak escalation. Impeachment remains outside this cell because the House Judiciary Committee's third article concerned that committee's own subpoenas.[see n. 33,see n. 142]

Case	Indicator	Coding	Evidence
Watergate tapes (contrast)	Remedy attempted and defeated outside Congress	✓ (the committee's own suit)	The committee's suit was dismissed, and on May 23, 1974 the D.C. Circuit affirmed: applying the presumption of privilege it had stated in *Nixon v. Sirica*, it held that the committee had not shown the tapes to be demonstrably critical to its functions. The tapes were compelled on the Special Prosecutor's trial subpoena, not the committee's.[see n. 33]
Watergate tapes (contrast)	Informal negotiation	◗	In October 1973 Senators Ervin and Baker met the President at his request. By the President's account, he proposed that Senator John Stennis listen to the tapes and verify a statement of their contents, and the two senators approved. The committee's final report states that they "agreed to no such compromise" and that the President "*unilaterally* offered certain materials to the committee"; the same paragraph says that the two senators understood him to be offering "verbatim transcripts of the conversations at issue, not mere 'summaries,'" that the committee "in all events, could pursue its lawsuit," and that the proposal never materialized and the suit continued. The mark rests on the codebook's first mixed category, terms the executive offered with limited bargaining, as the report's "unilaterally" describes them. The committee's earlier informal attempts were requests, not bargaining, and are not scored here.[see n. 33]
Watergate tapes (contrast)	Limited individual accountability	◗	The President resigned on August 9, 1974 and was pardoned on September 8, 1974; Haldeman, Ehrlichman, and Mitchell were convicted and sentenced to imprisonment, and their convictions were affirmed.[see n. 33]

Appendix C — Statutory Openings, Enforcement Routes, and Remedy Matrix

This appendix holds five tables that support the statutory analysis and the Recommendations. It does not count toward the main-text length. Page references are to the primary documents cited in the notes; "Letter #1" and "Letter #2" are DOJ's compliance letters of December 19, 2025 and January 30, 2026, and "ECF" numbers are docket entries in *Phang v. Blanche*.

Table C.1. Statutory openings for executive self-definition in the Act[143]

[143] Pub. L. No. 119-38, §§ 2(a), 2(b)(1), 2(c)(1)–(4), 3; 18 U.S.C. §§ 2252–2252A; DOJ, Compliance Letter #1, December 19, 2025, p. 3; Compliance Letter #2, January 30, 2026, p. 4; Section 3 Report, February 14, 2026, pp. 2–4; Department of Justice, "Report Under Public Law 119-38," 91 Fed. Reg. 55356 (August 27, 2026) (the Act "requires the Department of Justice to publish a justification for redactions and classification of records"); *Phang v. Blanche*, ECF 43, p. 6; *United States v. Maxwell*, Opinion and Order of January 21, 2026, p. 4. The format row rests on the project's text-extraction record (Appendix A.2).

Enacted feature	Who determines it	What the record shows
§ 3: report due "Within 15 days of completion of the release"	The Attorney General, by declaring completion; no date certain	Completion declared January 30, 2026; report dated February 14, 2026
§ 3: report goes to "the House and Senate Committees on the Judiciary"	The statute	The committee that issued the August 5, 2025 subpoena and marked up contempt is the House Oversight Committee, which § 3 does not name
§ 3(3): "politically exposed persons"	Undefined; applied by DOJ	The Section 3 Report (p. 3) states that the term "was not defined" in the Act and applies its own reading; its note 2 (p. 4) states that individuals "whose names were redacted for law-enforcement sensitive purposes are not included," although § 3(3) ends "with no redactions permitted under subsection (b)(1)"
§ 2(c)(3): "covered information" withheld as classified to be declassified "to the maximum extent possible"	Undefined term; DOJ	Letter #2 (p. 4) states that no files are withheld or redacted on the classification ground
§ 2(c)(4): "All decisions to classify any covered information after July 1, 2025" to be published and submitted to Congress	Undefined term; DOJ; the duty has its own trigger and does not depend on § 2(c)(1)(E)	The record reviewed here contains no published classification decision; the August 27 notice describes the duty as publishing "a justification for redactions and classification of records"
§ 2(c)(2): no deadline, no named recipient beyond "Congress," and "redactions" but not withholdings	DOJ	Letter #1 (p. 3) promised a privilege log "as required under the Act"; the court later recorded DOJ's position: "Defendant states that there is no deadline for submission of the redaction information" (ECF 43, p. 6)
§ 2(c)(1): "may withhold or redact the segregable portions of records that"	The Attorney General	Withholding is permissive even for victim-identifying material and child sexual abuse material, though distribution of child sexual abuse material is separately barred by 18 U.S.C. §§ 2252–2252A; the text requires no segregability finding, explanation, or reviewer

Enacted feature	Who determines it	What the record shows
§ 2(b)(1): a prohibition keyed to the basis of a redaction	DOJ	The subsection has no test, certification duty, or consequence, and it can be audited only if each redaction carries a stated reason; the Section 3 Report (p. 2) states that no record was withheld or redacted on those grounds
§ 2(c)(1)(C): "narrowly tailored and temporary"	DOJ; no expiry or review	Not tested in the record reviewed
§ 2(a): "searchable and downloadable format"	DOJ	Not assessed here against the format duty. After the project's own text extraction nine manifest PDFs still lacked a text layer (Appendix A.2), which does not by itself show a breach
No enforcement, definitions, appropriations, or severability section		The January 21, 2026 *Maxwell* order (p. 4): "No provision of the EFTA vests this Court with that authority"

Table C.2. Bases for redaction or non-production that DOJ applied and § 2(c)(1) does not list[144]

Basis	Primary source	Status
Deliberative-process, work-product, and attorney-client privileges	Section 3 Report, pp. 2–3; Letter #1, pp. 2–3; Letter #2, p. 4 (approximately 200,000 pages)	Contested; not adjudicated
Privacy Act	Letter #1, p. 2 ("as allowed under the Act and other applicable law. See Sec. 2(c)(1); see also 5 U.S.C. § 552a"); the review protocol as described in ECF 43, pp. 4, 10	Reserved: "Whether the EFTA permits Defendant to redact information pursuant to the Privacy Act is not presently before the Court" (ECF 43, p. 10)
Names and email addresses of government personnel	The review protocol as described in ECF 43, p. 12; the March 21, 2025 training gave the same rule for personnel names (EFTA00172446, p. 5)	Show cause discharged, with no ruling on the statutory basis
"Law-enforcement sensitive purposes"	Section 3 Report, p. 4 n.2	Not adjudicated

[144] Section 3 Report, pp. 2–4; Compliance Letter #1, pp. 2–3; Compliance Letter #2, pp. 4–5; Office of Information Policy, *EFTA-FOIA Crosswalk*, April 30, 2026, p. 1, https://www.justice.gov/oip/media/1438931/dl; *Phang v. Blanche*, ECF 43, pp. 4–5, 10, 12, and 14–16 ("Defendant's rationale is without merit," p. 16); EFTA00172446, p. 5 (the March 21, 2025 training: "REDACT Names: Agents, IAs, support personnel, TFOs, AUSAs").

Basis	Primary source	Status
"Information the withholding of which is allowed under other applicable law"	Office of Information Policy crosswalk, p. 1, which lists this ground, citing the Privacy Act, in its column headed "EFTA Exemption(s)" and lists, under FOIA Exemption 3, the Bank Secrecy Act (31 U.S.C. § 5319), the Pen Register Act (18 U.S.C. § 3123(d)), 18 U.S.C. § 3509(d), section 6103 of the Internal Revenue Code, and Rule 6(e)	Not adjudicated; the Rule 6(e) entry sits beside the December 9 *Maxwell* holding
"Substantially similar" or duplicative records	DOJ's response as recounted in ECF 43, p. 5	Rejected (ECF 43, p. 12)
Foreign-language records	Letter #2, p. 5; ECF 43, pp. 5, 14–16	Rationale held "without merit"
Technically incompatible files	Letter #2, p. 5	Not adjudicated

Table C.3. Congress's routes for enforcing a subpoena against an executive officer[145]

[145] 2 U.S.C. §§ 192, 194, 288b(b), 288d(a); 8 Op. O.L.C. at 102, 140 n.42, and the opinion of December 20, 2024, slip op. at 1, 3, 4; 170 Cong. Rec. H4609 (daily ed. July 11, 2024); Garvey, CRS Report R45653, p. 9; *United States v. Navarro*, No. 24-3006 (D.C. Cir. July 21, 2026); *Lynch*, 156 F. Supp. 3d 101, and D.C. Cir. No. 16-5078; *Anderson v. Dunn*, 19 U.S. (6 Wheat.) 204 (1821); *McGrain v. Daugherty*, 273 U.S. 135 (1927); *Jurney v. MacCracken*, 294 U.S. 125 (1935); Garvey, CRS Report R45653, p. 16; 28 U.S.C. § 1365(a); *Miers*, 558 F. Supp. 2d 53; *Holder*, 979 F. Supp. 2d 1; *McGahn*, 968 F.3d 755 (en banc); *McGahn*, 973 F.3d 121, vacated on the grant of rehearing en banc (October 15, 2020); H. Res. 430, 116th Cong. (2019); H.R. 4010; *Raines*, 521 U.S. 811; *Sessions*, opinion of October 22, 2018, 2, 8; *Garland*, No. 1:24-cv-01911, minute orders of January 27 and May 19, 2025, and ECF 31; *Black*, No. 1:26-cv-03084; 2 U.S.C. § 288d(c); Senate Rule XXII ¶ 2; *United States v. Maxwell*, Opinion and Order of January 21, 2026, p. 7 and n.2.

Route	Authority	Dependence	Status
Criminal contempt	2 U.S.C. §§ 192, 194	The certified contempt goes to "the appropriate United States attorney, whose duty it shall be to bring the matter before the grand jury"	The Office of Legal Counsel concluded in 1984 that a United States Attorney is not required to refer a contempt citation to a grand jury or otherwise to prosecute an executive official carrying out the President's instruction "in a factual context such as that presented by the December 16, 1982, contempt citation," and limited its conclusions to those circumstances; its 2024 opinion states the conclusion generally, as "longstanding Executive Branch precedent." The Department declined to act on the 2012 citation of Attorney General Holder and the 2024 citation of Attorney General Garland, each after a presidential privilege assertion; it prosecuted Peter Navarro, a former official for whom the courts found no invocation of privilege, and the D.C. Circuit affirmed his conviction on July 21, 2026, after the Department, under a new administration, withdrew from the appeal

Route	Authority	Dependence	Status
Inherent contempt	*Anderson v. Dunn* (1821); *McGrain v. Daugherty* (1927); *Jurney v. MacCracken* (1935)	A majority of the House concerned, which tries and confines the contemnor itself; against an official who withholds on a presidential privilege assertion, the Office of Legal Counsel took the view in a 1984 footnote, and reaffirmed it on December 20, 2024, that Congress may not use the power	Long dormant; it does not appear that either House has used the power since the 1930s. A resolution to impose inherent-contempt fines on the Attorney General failed on the House floor on July 11, 2024, as the 2024 opinion records

Route	Authority	Dependence	Status
Senate civil enforcement	28 U.S.C. § 1365(a); 2 U.S.C. §§ 288b(b), 288d(a)	A Senate resolution directing Senate Legal Counsel to sue (2 U.S.C. § 288b(b)); the resolution is ordinarily debatable and exposed to a filibuster; if opponents sustain debate, cloture requires three-fifths of the Senators duly chosen and sworn (Senate Rule XXII), unless an applicable expedited procedure limits debate, and one directing suit in a committee's name must first be reported by that committee with four statements (§ 288d(c))	By its terms § 1365 does not apply to a subpoena to an executive-branch officer or employee acting in an official capacity, unless the refusal rests on a personal privilege or objection and not on a governmental privilege. Senate Legal Counsel may sue "under any statute conferring jurisdiction" (2 U.S.C. § 288d(a)); whether a suit on another jurisdictional basis could reach an official-capacity executive subpoena is untested

Route	Authority	Dependence	Status
House civil enforcement	No statute; authorization by the House (in the Lee text, a House resolution, with counsel appearing on the Speaker's authorization after consulting the Bipartisan Legal Advisory Group; under H. Res. 430 of the 116th Congress, a committee chair "when authorized by the Bipartisan Legal Advisory Group")	A majority-party gate at the authorization step	District courts have entertained such suits (*Miers*, 2008; *Holder*, 2013). In the Holder suit the court held in 2016 that the qualified privilege "invoked to shield material that the Department has already disclosed" was outweighed and ordered that material produced; the Department's appellate brief, as the district court later quoted it, said the Department

Route	Authority	Dependence	Status
			"has complied in full," and in 2018 that court refused to vacate its orders as the parties' settlement required; the Committee's appeal was dismissed in 2019 on its unopposed motion, during settlement proceedings. The Judiciary Committee's 2024 suit against Attorney General Garland for audio recordings of the Special Counsel's interviews was argued in October 2024, stayed in January 2025, and dismissed by stipulation on May 21, 2025, after the recording's public release and without a ruling. The en banc D.C. Circuit held that a House committee has standing (*McGahn*, 2020); a panel then held that it lacks a cause of action, and that judgment was vacated when rehearing en banc was granted on October 15, 2020. The question is unsettled; a private recipient of two subpoenas in the Oversight Committee's Epstein investigation has asked a district court to declare that the Committee lacks any cause of action to enforce them against him (*Black*, filed September 3, 2026, pending on the docket read October 31, 2026)

Route	Authority	Dependence	Status
House-passed statutory model	H.R. 4010, 115th Cong. (engrossed in House), proposing a new 28 U.S.C. § 1365a	Whatever authorization the underlying action requires: the bill presupposes an action "filed in a United States district court of competent jurisdiction" and supplies neither a cause of action nor jurisdiction	A docket clause to expedite "to the greatest possible extent" (hortatory) and, if the plaintiff requests it, a three-judge court reviewable only by direct appeal to the Supreme Court; monetary penalties "directly against the head of a Government agency" held to have willfully failed to comply, not payable from appropriated or other Government funds; a discretionary waiver (a privilege or other ground "may be determined to have been waived") for a record not covered by the timely privilege log that a new section 105 of the Revised Statutes would require, reaching grounds "whether statutory, common law, or otherwise." The bill does not amend § 1365(a), and the Code contains no § 1365a

Route	Authority	Dependence	Status
Member-level suit	None	A court; no chamber vote	Individual members lack standing to sue over an institutional injury (*Raines v. Byrd*); the January 21, 2026 *Maxwell* order left the Act's co-sponsors free to file a separate suit and noted, without deciding, DOJ's argument that they would lack standing

Table C.4. Remedy matrix[146]

Route	Who sues	Whom; waiver	What must be shown	Relief	Speed	What the route does not supply
APA, as in *Phang*	A person with informational or economic injury	The Attorney General in his official capacity; 5 U.S.C. § 702 waives immunity for relief other than money damages; whether FOIA is an adequate alternative remedy is contested	Agency action not in accordance with law, on an administrative record; the merits were treated as conceded at the preliminary injunction, and DOJ's October 1 motion contests them	Injunction and declaration	Complaint April 27, 2026; preliminary injunction June 25, 2026	An EFTA-specific cause of action and EFTA-specific provisions for de novo review, agency burden, in camera inspection, and fees; conditional recovery under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), is distinct[see n. 120]

[146] *Phang v. Blanche*, No. 1:26-cv-01417 (D.D.C.) (complaint filed April 27, 2026; ECF 15 and 16, June 25, 2026); 5 U.S.C. §§ 552(a)(4)(B), (a)(4)(E), 702; 31 U.S.C. § 1304(a); Pub. L. No. 110-175, § 4(b); H.R. 4010; Senate Rule XXII ¶ 2; H.R. 9694 and S. 5005, 119th Cong., new § 4(a)(1)–(2), (b)(3), (d), and (e); on § 4(d), *Egan*, 484 U.S. at 527, 530; on § 4(e), *Raines*, 521 U.S. 811, *Maloney*, 984 F.3d 50, vacated, *Carnahan v. Maloney*, No. 22-425 (U.S. June 26, 2023), and *Neguse*, No. 26-5072. The rows for Proposals 1, 3, and 7 describe this paper's proposals.

Route	Who sues	Whom; waiver	What must be shown	Relief	Speed	What the route does not supply
Proposal 1	A person denied information the amendment requires to be published, to compel the accounting, with findings naming the harms the duty prevents; then a person who identifies a logged record, or a victim	The agency or official; § 702 suffices for non-monetary relief	De novo review, with the burden on the agency	A schedule order, production, or correction; fees to be specified	A fixed accounting date	Secure court procedures (Proposal 2)
Proposal 3	An identified victim or requester with concrete injury	The United States; requires an express money-damages waiver and a named source of payment	Liability and amount; intent, defenses, and caps to be defined	Compensatory or bounded statutory damages	After notice and an opportunity to cure	An incentive, unless the award is paid from the agency's own appropriations

Route	Who sues	Whom; waiver	What must be shown	Relief	Speed	What the route does not supply
Proposal 7	Either House, or a committee it authorizes by resolution, under an express cause of action	An executive officer, under a jurisdictional grant that for the Senate amends the exclusion in 28 U.S.C. § 1365(a)	Validity of the subpoena; for a constitutionally based privilege, the committee's need weighed against the executive's interest	An order to comply; penalties on the model of H.R. 4010, for willful noncompliance only	A three-judge court with direct appeal, on request; the docket clause is hortatory	A willing majority at the authorization step, and in the Senate, if opponents sustain debate, a cloture margin unless an applicable expedited procedure limits debate; a waiver reaching constitutionally based privilege; a lower showing on the merits

Route	Who sues	Whom; waiver	What must be shown	Relief	Speed	What the route does not supply
EFTA II § 4(a)(1), State officers	A State attorney general, district attorney, or "other authorized State officer," for the State "or the residents thereof"	The Attorney General of the United States; no separate waiver clause; the express authorization of suit for "monetary relief" supports a waiver, with its scope requiring clarification[see n. 134]	Unlawful withholding, redaction, or delay	Declaratory, injunctive, and monetary relief, costs, and fees	The court "shall advance on the docket and expedite the disposition of a civil action filed under this subsection to the greatest extent practicable" (hortatory)	A State-held right for suits on behalf of residents (the State's own right is the § 4(c)(1) access for its own investigations and proceedings), clarity on the scope and adequacy of the monetary authorization, and a measure of damages
EFTA II § 4(a)(1) and (b)(3), victims	A "victim": directly harmed and meeting one of § 4(g)(1)(A)'s identification routes, including an affidavit alleging that harm, subject to § 4(g)(1)(B)'s exclusion and victimization exception	Same	Same	Same	The same hortatory clause (§ 4(b)(3)(B))	An express procedure to determine direct harm and apply § 4(g)(1)(B)'s exclusion before access, specifying an independent decision-maker, burden and timing; the affidavit route alone supplies no such procedure

Route	Who sues	Whom; waiver	What must be shown	Relief	Speed	What the route does not supply
EFTA II § 4(e)	Any Member of Congress	The Attorney General of the United States	Non-compliance with a written request for unredacted access within 7 calendar days, or with a written notice of violation within 30 days	Declaration, injunction, mandamus, costs, and fees	Not stated	A settled answer to *Raines v. Byrd*: the access right is written as personal to each Member, a basis for standing the D.C. Circuit has not settled
EFTA II § 4(d), classified records	A State attorney general, district attorney, or "other authorized State officer" conducting an investigation or proceeding	The Attorney General of the United States, who "may not refuse, delay, or object to access … on the grounds that the material is classified"	A request for "classified records described in section 2(a)"	"Full, unredacted review" in a secure facility under court-approved procedures	Not stated	An answer to the Article II objection the executive would raise (*Department of the Navy v. Egan*), and, on a literal reading, any records, since § 2(a) describes only unclassified records

Table C.5. Consequences that attach without a court[147]

Obligation	Consequence that attaches without litigation
Enacted § 2(a) 30-day deadline	None
Enacted § 2(b)(1) prohibition	None
Enacted § 2(c)(2) justification	None
Enacted § 3 report	None; the trigger is the obligor's own declaration of completion
Proposal 1	None; a right to sue
Proposal 2	None; court review
Proposal 3	None; adjudicated damages, then payment
Proposal 4	Reporting of a refusal to Congress

[147] Pub. L. No. 119-38, §§ 2(a), 2(b)(1), 2(c)(2), 3; *United States v. Maxwell*, Opinion and Order of December 9, 2025, p. 21 (the United States Attorney to "personally certify" compliance with § 2(c)(1)(A) before protected material is released); *Phang v. Blanche*, ECF 43, p. 16. Each consequence listed for a proposal is this paper's design, not current law.

Obligation	Consequence that attaches without litigation
Proposal 5	Notice and reasons, which current law already requires in part
Proposal 6	None
Proposal 7	None; a right to sue, after authorization by the chamber
Devices named in the Recommendations and not yet designed	Lapse of a temporary or non-enumerated withholding that is not logged and renewed; a burden on the agency to justify each entry; sworn certification by a named official, on the model of the *Maxwell* protective order's requirement that the United States Attorney "personally certify" compliance; payment of any award from the agency's own appropriations; a rule that congressional silence does not ratify a compliance position

Appendix D — Intelligence-Network Underlay Assessment

Here, Words of Estimative Probability (WEP) denotes verbal probability terms; EFTA denotes the Epstein Files Transparency Act. Portable Document Format (PDF) page references identify pages in released electronic carriers.

A documented but unresolved question about an intelligence link is one of the two grounds for including EFTA in this paper. This appendix presents the evidence for a link and audits it. It retains documented contacts, instructions, investments, and attributed assessments, but withdraws the aggregate numeric/WEP calibration. The question is unresolved: the records do not establish that the Epstein-Maxwell enterprise was a service-directed intelligence operation. DOJ holds records bearing on it; the reviewed record does not show whether decisive records exist or who holds them. The other ground, executive custody, and the paper's EFTA measurements do not depend on the answer.

Evidence bearing on the question. The principal items are these; each is examined, with its limits and its ordinary explanations, under the criterion named.

- **A request to a former Russian official.** In July 2015 Epstein asked Sergey Belyakov, a former deputy minister with a Federal Security Service (FSB) academy education, for help concerning a woman, and Belyakov undertook an inquiry (Criterion 3). Senator Wyden's letter lists fifteen meetings with Russian officials and bank executives from 2015 to 2017 (Criteria 3 and 4).
- **An instruction to use Russian contacts.** In September 2015 Epstein directed counsel to have investigators "use russian contacts" (Criterion 2).
- **A partnership with a former Israeli prime minister.** Epstein's Southern Trust contributed to a partnership whose general partner Ehud Barak owned, and which invested in Carbyne, an Israeli emergency-response technology company (Criterion 7).
- **A source report held by the FBI.** An October 2020 FD-1023 records a confidential source's allegation that Epstein was "a co-opted Mossad Agent" (Criterion 3).
- **The Acosta remark.** Vicky Ward's 2019 column reports, from one unnamed former official, that Alexander Acosta had been told Epstein "belonged to intelligence"; Acosta denies making the assertion (Criterion 5).

- **An analyst's assessment.** John R. Schindler, a former National Security Agency counterintelligence officer, argues that Epstein did intelligence work and, from 2024, ties the Mega Group co-founded by Epstein's benefactor to a 1997 Israeli codename, citing unnamed officials in 2026 (Criterion 5).
- **A passport in another name.** Agents recovered an expired Austrian passport in another man's name bearing Epstein's photograph (Criterion 9).
- **Family history.** Robert Maxwell's reported intelligence ties, and Victor Ostrovsky's memoir allegation of a Mossad role (Criterion 11).

These items make a link a question the record raises. They do not answer it. None shows service direction, tasking, payment, or official acknowledgment, and several rest on one another (Table D.3).

Alternative explanations and limits. Criteria 1 to 11 give the ordinary explanation for each item. A 2025 *New York Times Magazine* investigation offers an ordinary account of Epstein's wealth and rise: "Abundant conspiracy theories hold that Epstein worked for spy services or ran a lucrative blackmail operation, but we found a more prosaic explanation for how he built a fortune."[148] It describes expense-account abuse, inside deals, and a climb through Bear Stearns connections and personal introductions. Its subject is the fortune and his rise. It does not discuss the passport or find that no service relationship existed, so it bears on whether a service funded him and leaves the rest of the question open. Schindler's July 2025 guide also reports a public denial by former Israeli prime minister Naftali Bennett, that the "accusation that Jeffrey Epstein somehow worked for Israel or the Mossad running a blackmail ring is categorically and totally false."[149] That is a denial by a former officeholder, not a finding.

D.1 Methodology

The eleven headings below remain an organizational checklist, not a validated scoring instrument. The appendix assigns no score and applies no elevation rule.[150] No empirically estimated likelihood ratios, base rates, or calibration study support conversion of these heterogeneous observations into a percentage or verbal probability. Intelligence Community Directive (ICD) 203 distinguishes the likelihood of an event or development from the analyst's confidence in the basis for that judgment; its separate source-quality standard addresses the credibility of underlying sources. Neither standard validates a numerical mapping, and none is used.[151]

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[148] David Enrich, Steve Eder, Jessica Silver-Greenberg, and Matthew Goldstein, "Scams, Schemes, Ruthless Cons: The Untold Story of How Jeffrey Epstein Got Rich," *New York Times Magazine*, December 16, 2025, https://www.nytimes.com/2025/12/16/magazine/jeffrey-epstein-money-scams-investigation.html. Secondary. The word "passport" does not appear in it.

[149] John R. Schindler, "EXCLUSIVE: Your Guide to Epstein and Intelligence," *Top Secret Umbra* (Substack), July 2025, https://topsecretumbra.substack.com/p/exclusive-your-guide-to-epstein-and. The held capture is dated July 13, but the piece links Bennett's post on X, https://x.com/naftalibennett/status/1944721571555270793, whose identifier dates it to July 14. The post itself could not be opened, so Bennett's words are quoted as the guide reports them.

[150] This appendix applies no weighting or probability-elevation rule. The eleven headings organize bounded source findings; they do not add up to an intelligence-operation probability. Ordinary financial structures, third-party conduct, and familial association are not independent evidence of an intelligence operation.

The relevant questions are actor, action, provenance, independence, and alternative explanation. A court or agency record can reliably establish that an allegation was recorded without corroborating its substance. Repeated productions of one email are one observation. Introductions to officials, private investment, and advice about publicity have ordinary explanations that must be evaluated before inferring tasking. Labels below describe the narrow predicate supported, not a score toward a service-operation conclusion.[152]

Table D.1. Evidence families and inference limits.

Evidence family	Dependence	Supported predicate	Missing inference
Introduction and calendar emails	Duplicate productions and replies share a thread	Arranged contacts	Meeting content, tasking, or intelligence purpose
Investment correspondence and bank questions	Overlapping business transaction	Financing structure and requested ownership confirmation	Service funding or operational use
Wolff/Thomas/Barrack correspondence	Quoted chains recur across carriers	Offers, advice, contact permission, statements about press inquiries	Executed compromise operation or changed target conduct
Schindler / Gertz / earlier MEGA reporting	Gertz quotes Schindler; older reports do not identify the codename with the group	Named analyst's interpretation and its genealogy	Independent official corroboration of the bridge
Family history, source reporting, institutional-looking email	Different provenance does not make the underlying allegations mutually corroborative	Association or recorded allegation	Operational continuity, authenticated service status

D.2 Bounded source findings

Bates identifiers below refer to the public United States Department of Justice (DOJ) document carriers.[153]

[151] United States, Office of the Director of National Intelligence, *Analytic Standards*, Intelligence Community Directive 203, January 2, 2015, as amended, § D.6.e(1)–(2), pp. 4–5 in the current eight-page PDF, https://archive.dni.gov/files/documents/ICD/ICD-203.pdf. Standard (2) distinguishes "the likelihood of occurrence of an event or development, and the analyst's confidence in the basis for this judgment." Standard (1) separately addresses source quality and credibility. This directive does not validate a checklist or a numerical mapping; this appendix uses its checklist only to organize findings and applies no numerical mapping.

[152] The indicators and eleven-criterion checklist are the author's synthesis. These works supply general intellectual lineage, not a source-authored checklist or attribution of canonical status to these indicators: William J. Daugherty, *Executive Secrets: Covert Action and the Presidency* (University Press of Kentucky, 2004); Loch K. Johnson, *Strategic Intelligence* (5 vols., Praeger, 2007); Christopher Andrew and Vasili Mitrokhin, *The Sword and the Shield: The Mitrokhin Archive and the Secret History of the KGB* (Basic Books, 1999); and Ronen Bergman, *Rise and Kill First: The Secret History of Israel's Targeted Assassinations* (Random House, 2018).

[153] Each EFTA Bates document is hosted in the U.S. Department of Justice's Epstein Library at the uniform resource locator (URL) pattern `https://www.justice.gov/epstein/files/DataSet%20{N}/{BATES}.pdf`, where `{N}` is the data-set number and `{BATES}` the Bates number; e.g., Bates EFTA02346409 in Data Set 11 resolves to `https://www.justice.gov/epstein/files/DataSet%2011/EFTA02346409.pdf`. U.S. Department of Justice, Epstein Library, "DOJ Disclosures" (Data Sets 1–12),

The eleven topics are numbered for reference; their titles describe the evidence under review, not thresholds or scores. “Not established” means the reviewed evidence does not establish the specified inference, not that the underlying proposition has been disproved.

Criterion 1 — Multi-counterparty facilitation (documented contact arrangements)

The records document an introduction or arrangement for at least two independent United States (U.S.) counterparties, Peter Thiel and Tom Pritzker. Epstein introduced Thiel to Sergey Belyakov in the July 1, 2015 message, “peter - sergey , sergey- peter.” Thiel replied that it would be good to meet in San Francisco and copied his assistant; Belyakov subsequently requested timeslots for July 8 (EFTA00635218). For Pritzker, Epstein wrote “Churkin set 10th lunch” on December 29, 2016 (EFTA01057777); the staff calendar names Churkin and Tom Pritzker for lunch on January 10, 2017 (EFTA02200098). For Thiel, Epstein wrote “churkin confirmed friday” on October 4, 2016, and Thiel replied “Noon or 1pm on Friday?” (EFTA02448518); the October 7 staff message states, “It is for 3pp at 12:30! Peter Thiel and Vitaly Churkin will be coming” (EFTA02040190). These are a direct introduction and documented arrangements, not merely separate appointments with a common host.[154]

Public biographies describe Belyakov’s Federal Security Service (FSB) academy education and former deputy-minister post (the Russian Government relieved him of it on August 6, 2014, before the 2015 contacts), and Churkin’s United Nations (UN) ambassadorship.[155,156,157] Those are

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https://www.justice.gov/epstein/doj-disclosures.

[154] U.S. Department of Justice, EFTA production: EFTA00635218, July 1–6, 2015 introduction and replies (Data Set 9); EFTA01057777, December 29, 2016 Epstein-to-Pritzker email (Data Set 9); EFTA02200098, January 9, 2017 message with January 10 calendar (Data Set 10); EFTA02448518, October 4–5, 2016 Epstein–Thiel exchange (Data Set 11); EFTA02040190, October 7, 2016 lunch arrangements (Data Set 10). The calendar supplies a scheduled lunch, not a record of its discussion or independent proof of attendance. The searches were not exhaustive and the productions were not deduplicated; those limits do not affect the distinct identities of the two U.S. counterparties.

[155] National Research University Higher School of Economics, Institute for Social Policy, “Sergey Belyakov, President, Association of private pension funds (ANPF),” speaker biography, hosted March 2019, https://isp.hse.ru/data/2019/03/20/1186698188/%D0%91%D0%B5%D0%BB%D1%8F%D0%BA%D0%BE%D0%B2%20EN.pdf. The institutional biography reports graduation from the Academy of the Federal Security Service in jurisprudence and service as Deputy Minister of Economic Development. It supplies biographical context, not evidence of intelligence tasking in the EFTA contacts.

[156] Government of the Russian Federation, “О Белякове С.Ю.” [On S.Yu. Belyakov], Order No. 1471-r, August 6, 2014, http://government.ru/docs/14170/, which records his 2012 appointment as Deputy Minister of Economic Development (Order No. 1412-r) and the decision to relieve him of the post. RIA Novosti, “Председателем правления фонда ‘ПМЭФ’ стал гендиректор МИД РФ Вязалов” [Foreign Ministry director general Vyazalov becomes board chairman of the SPIEF foundation], August 31, 2015, https://ria.ru/20150831/1220033802.html, calls him a former deputy minister who previously headed the board of the St. Petersburg International Economic Forum foundation. Titles translated by the author.

[157] United Nations, Department of Public Information, “New Permanent Representative of Russian Federation Presents Credentials,” BIO/3763, May 1, 2006, https://press.un.org/en/2006/bio3763.doc.htm; United Nations Protocol and Liaison Service, ST/SG/SER.A/294/Add.14, https://digitallibrary.un.org/record/575586/files/ST_SG_SER-A_294_Add-14-EN.pdf. The appointment record identifies Vitaly I. Churkin as Ambassador Extraordinary and Plenipotentiary and Permanent Representative, with credentials presented May 1, 2006. These are the primary public basis for his diplomatic status; the emails do not establish it.

biographical facts, not intelligence predicates. A career diplomat's ambassadorship is not an intelligence indicator; diplomatic office is not itself evidence of covert tasking. The searches behind this finding were not exhaustive, and duplicate productions were not deduplicated. This establishes at least two counterparties, not that no others exist; Thiel's two pairings count as one U.S. counterparty. No reviewed record states what was discussed at any of these meetings. The finding concerns facilitated contact and does not establish wrongdoing or intelligence activity by Thiel, Pritzker, or Belyakov. The May 21, 2018 Carbyne thread names Trae Stephens and Founders Fund and asks Epstein, "If you want to put in a word with Peter maybe :)", but refers to "Chris and Nicole" in the preceding introduction (EFTA02656963, pp. 1–3). The quoted chain identifies Chris Hopkins; it does not supply Nicole's surname. It is not counted as Epstein brokerage.[158] The Black/Barak calendar entries (EFTA00389511 and EFTA02046653) show common-node scheduling, not brokered contact; these calendar entries do not establish brokerage involving Leon Black or demonstrate wrongdoing by him or Stephens.

Criterion 2 — Private-dispute instruction (requested action documented; service direction not established)

Epstein's September 20, 2015 12:20 PM message directs Karp to have Nardello "use russian contacts …" (EFTA02486513, p. 2). The September 21 page-1 header belongs to the outer message. The instruction is stronger evidence of requested action than an introduction, but neither execution, result, nor an intelligence purpose is established. The surrounding chain identifies Brad S. Karp as a partner at Paul, Weiss, Rifkind, Wharton & Garrison and concerns surveillance of a woman and the feasibility of a private case in London or New York. Karp reports that earlier surveillance had stopped and that no evidence had yet been found for the allegation being investigated; he discusses a London lawyer's advice about a possible criminal trial for blackmail. Epstein asks to speak with that lawyer. Correspondence with outside counsel about a private dispute is therefore the explanation supported by the thread itself. The limit on execution concerns the particular request for Russian contacts, not Karp's report of earlier surveillance. Nothing in this carrier identifies a state-service principal or distinguishes that requested action as intelligence tasking.[159] Wyden's letter identifies the woman in Epstein's July 2015 email to Belyakov, discussed under Criterion 3 (p. 13), treats the subject of an August 23, 2015 Paul, Weiss surveillance exchange (EFTA02488634) as "presumably" the same person (p. 14), and quotes this September 20 message as the same surveillance "a month later" (p. 16, citing EFTA02486513). The link between this thread and the woman is therefore the letter's, drawn from sequence; neither that passage of the letter nor the thread names her. The December 2018 Qatar security-company forward (EFTA02612143) records a request for further business details after discussion; it does not itself establish state-service tasking.

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[158] Throughout this paper, "EFTA" is the Bates prefix for the U.S. Department of Justice EFTA Disclosures production; a parenthetical Bates number (e.g. EFTA02656963) is the primary-document citation for the item it follows. Each Bates is cited inline at its first mention only; later references to the same document do not repeat the citation.

[159] United States Department of Justice, EFTA02486513–EFTA02486515, Data Set 11, September 20–21, 2015, pp. 1–2, https://www.justice.gov/epstein/files/DataSet%2011/EFTA02486513.pdf. Page 1 identifies Karp's law firm and contains the surveillance update and discussion of a private case; page 2 contains the September 20, 12:20 PM request. The released rendering has encoding damage, including "have na=dello use russian contacts or ." The private-dispute characterization rests on the surrounding correspondence, not a guess about the nationality of the requested contacts.

The November 8, 2017 Boies/Mossad messages (EFTA00964912 and EFTA00964979, p. 1 each) are questions Epstein asks Barak about Boies seeking former operatives for private investigations. Questions about another person's conduct are not Epstein's operational instructions or proof of what occurred. They therefore do not corroborate the Karp instruction as a second service-direction episode.

Criterion 3 — Contacts with foreign officials (contacts documented; operational relationship not established)

The records describe contact with Belyakov, Churkin, and Barak. EFTA02612143 also records Epstein's November 2018 introduction of Barak to a Qatari correspondent and Barak's December 2018 thanks for a meeting with "HH HBJ," apparently Hamad bin Jassim; that meeting was Barak's. Official positions and Belyakov's reported FSB academy education supply biographical context; they do not transform every interaction into an intelligence relationship. Wyden's March 20, 2026 letter describes a 2015 Epstein email to Belyakov at p. 12 and lists meeting rows at pp. 13–14.[160] The meeting rows support the existence of arrangements, not their content. The email is different. On July 24, 2015, Epstein wrote to Belyakov "I need a favor" and asked "Suggestions?" about a woman he said was "attempting to blackmail a group of powerful biznessman in New York," and gave her hotel (EFTA01203506). The letter calls Belyakov then Russia's Deputy Minister of Economic Development, but the Russian Government had relieved him of that post nearly a year earlier.[see n. 156] Belyakov replied "give me a few days to get information about her" and, on July 27, that he was meeting "a guy who knows her/about her," asking for "any details about case you have mentioned" (EFTA00634422). Epstein answered "saying pwerful men taking advantage of women like her etc."; Belyakov wrote "Got it" and then "Text you tomorrow," where the email thread ends (EFTA00850284; EFTA00697997). This records a former Russian deputy minister undertaking an inquiry about a private individual at Epstein's request and receiving case details from him. It does not show what, if anything, Belyakov learned or passed back, or in what capacity he acted. "Favor" is Epstein's word; the thread does not establish service tasking. Wyden's letter heads the exchange "Epstein provided the Russian government with the location of women who were on your payroll for unknown reasons" and treats Belyakov's FSB academy education and former forum chairmanship as indicators of ties to Russian intelligence (p. 12); of Epstein's meetings with Russian officials generally, it asks whether he was working with them "to help silence victims of his trafficking scheme or protect other powerful figures in his orbit" (p. 14). Those are the letter's inferences, which these records do not establish.

The October 2020 Federal Bureau of Investigation (FBI) form FD-1023 records a confidential source's intelligence allegation; government custody authenticates it as a source report, not an FBI finding.[161] The released form identifies a numbered confidential source, contact by encrypted messaging on October 16, a report dated October 19, and first-level approval that day. The source claims to have shared calls and taken notes, but the Epstein paragraph also uses

[160] Senator Ron Wyden to Leon Black, March 20, 2026, pp. 12–14 and 16, https://www.finance.senate.gov/imo/media/doc/senator_wyden_letter_to_leon_black_redacted.pdf. Page 12 describes the 2015 Belyakov email; the table on pp. 13–14 contains fifteen meeting rows, including an October 6, 2016 row spelling the name "Sergey Beliakov" and labeling him a "Russian government official." The letter's statement at p. 12 that Belyakov was then Deputy Minister is not relied on, nor are its labels of him as a "Russian government official" (pp. 12, 14); see the Russian Government order cited at Criterion 3. Page 16 (n. 46) quotes the September 20, 2015 message to Karp (EFTA02486513).

recollection and a conclusion that the source became convinced of an intelligence role. An ordinary explanation for this carrier is an agent recording a source's recollections, secondhand assertions, and interpretation of personal contacts, rather than establishing service tasking. The three released pages provide no reliability rating, demonstrated reporting track record, attached call notes, or independent corroboration of the Epstein allegation. References to previous reporting do not supply that reporting. These administrative and asserted-access markers do not distinguish the allegation from that ordinary explanation or establish its truth. The ambiguous machine-transcribed recording is not needed to establish any participant's identity or this contact predicate.[162]

Criterion 4 — Sustained temporal pattern (repeated contacts and transactions)

The cited meeting rows span 2015–2017,[see n. 160] and the March 2019 Carbyne correspondence (EFTA02634615; EFTA01035810) extends the business record. EFTA01035810 transmits financial statements and a forecast under consent language. This establishes duration of correspondence and business dealings, not duration of a service operation. No Israeli registry filing is relied on, because no identified filing and page is available.

Criterion 5 — Credentialed intelligence-community source attribution (attributed assessment; not official corroboration)

The cited public interpretations are those of John R. Schindler, a former National Security Agency (NSA) counterintelligence officer and credentialed intelligence-studies analyst. His July 10, 2019 *Observer* piece (the paper was formerly the *New York Observer*) wrote that *"It appears that Jeffrey Epstein was involved in intelligence work, of some kind, for someone—and it probably wasn't American intelligence either,"* with Russian and Israeli services on a hedged suspect list.[163] His January 6, 2024 *Top Secret Umbra* piece "MEGA, NSA, and the Ugly Truth About the Epstein Sexpionage Network" advanced an interpretive bridge from the 1997 NSA-intercepted Israeli "MEGA" intelligence codename to Leslie Wexner's 1991-cofounded Mega

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[161] FBI, *Confidential Human Source Reporting Document*, form FD-1023, October 19, 2020, EFTA00090314–EFTA00090316, pp. 1–3 (FBI case 804I-LA-3315657-INTELPRODS). The form records a confidential human source's account that Epstein "trained as a spy under" Ehud Barak and was "a co-opted Mossad Agent." An FD-1023 documents an uncorroborated source's reporting, not an FBI finding or endorsement; it does not establish formal intelligence-service status, and it is cited only as an official-government record of an uncorroborated source allegation, without adopting the allegation or inferring an intelligence-operational character. The report answers a handling agent's question about "improper domestic or foreign influence over the electoral process in the U.S.," and its Epstein paragraph sits among other uncorroborated assertions about named people; the recollection about Acosta is at p. 1. The p. 1 header records a numbered confidential source, October 16 contact by encrypted messaging, and an October 19 report; p. 3 records submission and first-level approval. Neither is a reliability evaluation. The source claims call access and note-taking but the notes and referenced prior reports are not supplied in these three pages. The carrier gives no source track record, reliability grade, independent validation of the Epstein claims, or basis for assessing the source's motives. Because its assessor is an anonymous source rather than a named, credentialed intelligence-community analyst, it is not official or independent analyst corroboration of Criterion 5.

[162] EFTA01621008 is a 3-hour-27-minute media carrier with machine transcription. This paper has no auditable timecodes or secure speaker identification for it, and does not rely on it to confirm Summers's identity, a February 14, 2013 recording date, or particular utterances.

[163] John R. Schindler, "It Sure Looks Like Jeffrey Epstein Was a Spy—But Whose?," *Observer*, July 10, 2019, https://observer.com/2019/07/jeffrey-epstein-spy-intelligence-work/.

Group. That piece concluded that *"MEGA was viewed by Israel intelligence officials as a vehicle for espionage and influence operations in the United States"* and was *"co-founded by Jeffrey Epstein's billionaire benefactor."*[164]

Attribution limit. Schindler's credentials identify the author of an assessment. They do not independently corroborate his underlying interpretation, supply a likelihood ratio, or fulfill a mandatory threshold in a probability rule. His publications from 2019 through 2026 are examined below as a source genealogy to distinguish source dependence from multiple independent confirmations.

The *foundational* publication is his July 10, 2019 *Observer* piece "It Sure Looks Like Jeffrey Epstein Was a Spy—But Whose?".[see n. 163] That piece named Russian and Israeli services on a hedged suspect list without yet invoking the MEGA framing. It was keyed to Vicky Ward's opinion column[165] reporting that U.S. Labor Secretary Alexander Acosta had been told Epstein *"belonged to intelligence,"* to what the piece called Acosta's "non-denial denial," and to Robert Maxwell's reported intelligence ties: a British counterintelligence assessment that he worked for the Soviet Committee for State Security (KGB), and what the piece called "pervasive allegations" that he worked for Mossad.

Later record on the Ward account. Ward's 2019 column attributes the remark to a single unnamed former senior White House official describing Acosta's Trump transition interview; Ward did not hear it from Acosta and cites no document.[see n. 165] In a transcribed interview with the House Committee on Oversight and Government Reform on September 19, 2025, the questioner told Acosta that Steve Bannon had publicly stated that Acosta told him Epstein "belonged to intelligence." This appendix has not located the statement the questioner described. Acosta replied that he did not recall speaking to Bannon about Epstein and "never made that assertion," and said he has "no knowledge of his membership in the intelligence community."[166] He added that he had called the report untrue at his 2019 press conference ("I said, that's not truthful"), although his answer at that press conference, as transcribed the same day, was "I would hesitate to take this reporting as fact" and "I can't address it directly because of our guidelines," adding that "a lot of reporting is just going down rabbit holes."[167] The October 2020 FD-1023 discussed under Criterion 3 records a related recollection, that one of Epstein's defense lawyers told Acosta that Epstein "belonged to both U.S. and allied intelligence services"; it postdates the 2019 publication, and its independence from that account is not established in the released report, so it is not counted here as independent corroboration.[see n. 161] In July 2025, two months before the interview, Ward said she stood by the reporting and glossed the remark this

[164] John R. Schindler, "MEGA, NSA, and the Ugly Truth About the Epstein Sexpionage Network," *Top Secret Umbra* (Substack), January 6, 2024, https://topsecretumbra.substack.com/p/mega-nsa-and-the-ugly-truth-about.

[165] Vicky Ward, "Jeffrey Epstein's Sick Story Played Out for Years in Plain Sight," *The Daily Beast*, July 9, 2019, https://www.thedailybeast.com/jeffrey-epsteins-sick-story-played-out-for-years-in-plain-sight/. An opinion column; the remark is attributed to "a former senior White House official" recounting the transition interview.

[166] House Committee on Oversight and Government Reform, transcribed interview of R. Alexander Acosta, September 19, 2025, released October 17, 2025, https://oversight.house.gov/release/oversight-committee-releases-acosta-transcript, transcript pp. 147–148 ("I said, that's not truthful" is at p. 147); the opening warning is at p. 7.

[167] Press conference of Labor Secretary R. Alexander Acosta, July 10, 2019, in *CNN Newsroom*, transcript, at 15:20, http://transcripts.cnn.com/TRANSCRIPTS/1907/10/cnr.07.html. Schindler's *Observer* piece quotes the same answer and prints "would hesitant."

way: “that’s not as far-fetched an idea as it sounds … You don’t have to be a spy. You don’t have to be on a government’s payroll. But it does mean that you are a useful asset.”[168] In February 2026, without addressing the remark, she wrote that it is “unlikely Epstein was working for the CIA or Mossad, as conspiracy theories have suggested.”[169] The account therefore remains second-hand and unverified. Its subject denies it, in a transcribed interview that opened with a warning that knowingly false statements could be prosecuted; its author stands by her reporting without reading it as state employment; and no reviewed record establishes service status.

The *January 2024 formulation* is his January 6, 2024 *Top Secret Umbra* piece “MEGA, NSA, and the Ugly Truth About the Epstein Sexpionage Network”.[see n. 164] This is the earliest formulation of his MEGA-codename → Mega-Group interpretive bridge found in the Schindler writing reviewed here (the 2019 Observer piece and the eight 2020–2023 Top Secret Umbra Epstein posts reviewed for this appendix,[170] none of which advances the MEGA bridge; the August 2021 post links Webb’s Mega Group article only under the words “conspiracy theorists who don’t know much about real-world intelligence matters”). The piece block-quotes the May 1997 *Washington Post* NSA-intercept reporting by Nora Boustany and Brian Duffy.[171] As quoted by Schindler, that reporting describes an Israeli intelligence officer in Washington telling his superior in Tel Aviv, *“The ambassador wants me to go to MEGA to get a copy”* of a letter from Secretary of State Warren Christopher to Yasser Arafat; the superior rejected the request: *“This is not something we use MEGA for.”* The piece also cites Lisa Miller’s May 4, 1998 *Wall Street Journal* identification of the “Mega Group”.[172] The Mega Group is described there as a 20-member club of wealthy Jewish American businessmen co-founded in 1991 by Charles Bronfman, Seagram co-chairman, and Les Wexner, the most notable client of Epstein’s money-management business according to JPMorgan’s client-review record (EFTA01480549).

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[168] Vicky Ward, interview by Amy Goodman, *Democracy Now!*, July 28, 2025, https://www.democracynow.org/2025/7/28/ghislaine_maxwell_vicky_ward (“that is my reporting, and I 100% stand by it”). In the same interview she also renders the remark as “I thought he belonged to intelligence.”

[169] Vicky Ward, “Epstein Was A One-Man Intelligence Operation,” *Vicky Ward Investigates*, February 6, 2026, https://www.vickywardinvestigates.com/p/epstein-was-a-one-man-intelligence.

[170] John R. Schindler, *Top Secret Umbra* (Substack), https://topsecretumbra.substack.com/: “The Epstein Mystery Deepens” (July 2020); “The Epstein Intelligence Mystery Rolls Along” (October 2020); “The Epstein Spy Cover-Up Continues” and “UPDATE: Epstein and Intelligence” (November 2020); “The Epstein Scandal and Intelligence: An Update” (August 2021); “Epstein Wasn’t an Isolated Incident” (January 2022); “The CIA Director Has Got to Go” (April 2023); and “How Epstein’s Effort to Entice Trump Led to the Kremlin” (August 2023).

[171] Nora Boustany and Brian Duffy, “A Top U.S. Official May Have Given Sensitive Data to Israel,” *The Washington Post*, May 7, 1997 (archive date), https://www.washingtonpost.com/archive/politics/1997/05/07/a-top-us-official-may-have-given-sensitive-data-to-israel/8a160042-26b9-40b4-80e9-32f7579733aa/, paragraphs beginning “According to a source who viewed,” “One official with knowledge” and “The officials said that the context of the conversation.” The archive copy consulted labels its publication date May 6; no print-page number is asserted. The underlying intercept is not available. The original report uses “Mega”; the uppercase rendering above is Schindler’s quotation.

[172] Lisa Miller, “Titans of Industry Join Forces To Work for Jewish Philanthropy,” *The Wall Street Journal*, May 4, 1998, https://www.wsj.com/articles/SB894240270899870000, opening paragraphs and sections “Big Challenges,” “No Threat,” and “Pricey Dues.” Section locators are given in place of newspaper page numbers. The piece describes the Study Group, also informally called the Mega Group, and its philanthropic activities; it makes no connection to the 1997 intercept.

The piece's closure formulation reads: *"We know that MEGA was viewed by Israel intelligence officials as a vehicle for espionage and influence operations in the United States. We know that it was co-founded by Jeffrey Epstein's billionaire benefactor. The rest remains speculation."*[see n. 164] Note Schindler's own *"The rest remains speculation"* hedge.

The Bill Gertz column "Inside the Ring: Former NSA counterspy says Jeffrey Epstein was part of Israeli network," *Washington Times*, January 10, 2024 is textually derivative of Schindler. The column quotes Schindler's MEGA closure formulation, including "The rest remains speculation," and brings the attribution into mainstream-newspaper form, while saying in its own voice that in 1998 "The Wall Street Journal solved the mystery." It is documented as appearing four days after the Schindler January 6, 2024 piece. The textual dependence, not the four-day publication-precedence interval alone, is what establishes derivative status. Publication precedence alone would not establish derivative sourcing, since the 1997 *Washington Post* and 1998 *Wall Street Journal* primaries had been public for decades and could in principle have been independently bridged by any analyst. The four-day ordering supports the textual-derivation reading but does not by itself do the inferential work.[173]

The *expanded substrate* is Schindler's February 2026 five-part *Top Secret Umbra* series "EXCLUSIVE: Epstein and Intelligence" (Parts I–V).[174] Part IV, dated February 20, 2026, advances a stronger Mega Group claim; the closure quoted above belongs to the January 2024 article, not Part IV.

Framing-evolution arc. The Schindler corpus exhibits a progression relevant to the source genealogy in Criterion 5. Stage (i) is the 2020-07-31 *Top Secret Umbra* "The Epstein Mystery Deepens",[175] the first Top Secret Umbra Schindler-Epstein piece, restating the 2019 *Observer* hedged-multi-service framing without yet invoking MEGA. Stage (ii) is the 2024-01-06 *Top Secret Umbra* "MEGA, NSA, and the Ugly Truth", Schindler's publication of the MEGA-codename → Mega-Group interpretive bridge and the formulation examined in Criterion 5. Stage (iii) is the 2026-02 five-part *Top Secret Umbra* series, Part IV, an expansion of the Mega Group argument, not the source of the January 2024 closure quotation. A six-year framing progression can reflect genuine evidentiary accumulation, analyst confirmation drift, or changed publication incentives in post-Epstein-arrest discourse. The reviewed sequence runs from a dismissal (2021) to an adoption resting on reports public since 1997 and 1998 (2024). A July 2025 guide re-quotes the "rest remains speculation" closure while saying the analysis "leaves little doubt that Israel and its friends constituted the secret force – though likely not the only one – looming behind Epstein's criminal *kompromat* operation."[see n. 149] Part IV (2026) hardens the claim: the "speculation" hedge is gone from the codename bridge, the Israeli liaison explanation is called "untrue," and unnamed "senior Western intelligence officials" are cited, while Epstein's own involvement in creating the group is still called "unconfirmed, but … plausible."[176] No stage reviewed cites new documentary evidence for the codename-to-group identification. This paper

[173] Bill Gertz, "Inside the Ring: Former NSA counterspy says Jeffrey Epstein was part of Israeli network," *Washington Times*, January 10, 2024, section reproducing Schindler's three-sentence MEGA closure formulation, https://www.washingtontimes.com/news/2024/jan/10/inside-ring-former-nsa-counterspy-says-jeffrey-eps/.

[174] John R. Schindler, "EXCLUSIVE: Epstein and Intelligence," Parts I–V, *Top Secret Umbra* (Substack), February 16–23, 2026, beginning at https://topsecretumbra.substack.com/p/exclusive-epstein-and-intelligence.

[175] John R. Schindler, "The Epstein Mystery Deepens," *Top Secret Umbra* (Substack), July 31, 2020, https://topsecretumbra.substack.com/p/the-epstein-mystery-deepens.

relies on the documented source sequence as a citation genealogy, not as evidence of increasing truth without independent corroboration.

Schindler-interpretive-bridge caveat. The MEGA-codename → Mega-Group identification is Schindler's interpretive bridge within the credentialed-source chain used here, not an original identification: Whitney Webb raised that identification as a possibility on August 7, 2019.[177] The May 7 *Washington Post* report describes a disputed codename "Mega" through officials' accounts of an intercept, which led them to believe that Mega "may be someone in the U.S. government," without identifying it with any 1991-founded philanthropy circle.[see n. 171] Duffy and Boustany's follow-up reports surveillance of possible suspects, explicitly cautions that investigators had not determined that those individuals had acted improperly, and records alternative Israeli explanations, including a decoding or translation error involving "Elga," said to refer to the Central Intelligence Agency (CIA).[178] Gellman's May 17 archive article records Israel's formal account that "Mega" referred to the CIA's Israel-desk officer and an ordinary intelligence-liaison channel, and reports a U.S. official saying the administration "has accepted it as plausible," while the FBI had not told the White House its investigation was closed.[179] That is an ordinary explanation for the proposed request for a diplomatic letter. It remains an attributed explanation, not a confirmed identification. The contemporary reports record suspicion and an ongoing investigation, not a resolved identification of the codename; they do not establish its eventual outcome. Miller's 1998 report describes philanthropy, seminars, and shared projects as the activities of the Wexner-Bronfman-cofounded group; those supply an ordinary explanation for its meetings and investments.[see n. 172] None of these four articles identifies the codename with that group. None of them makes the bridge; Schindler is the credentialed analyst cited here, not its originator. The reviewed reporting supplies no evidence distinguishing a group-tasking interpretation from ordinary liaison and philanthropic activity. Similar names alone do not establish that connection.

Bounded negative preserved. The exact queries `"Mega Group"` and `MegaGroup`, with snippet review, found no identifiable Epstein-email hits in the full-text search (FTS) index searched

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[176] John R. Schindler, "EXCLUSIVE: Epstein and Intelligence: Part IV," *Top Secret Umbra* (Substack), February 2026, https://topsecretumbra.substack.com/p/exclusive-epstein-and-intelligence-851. Part V uses "speculation" on a different question, whether Epstein worked for U.S. agencies.

[177] Whitney Webb, "Mega Group, Maxwells and Mossad: The Spy Story at the Heart of the Jeffrey Epstein Scandal," *MintPress News*, August 7, 2019, section "The 'Mega' Mystery and the Mossad," https://www.mintpressnews.com/mega-group-maxwells-mossad-spy-story-jeffrey-epstein-scandal/261172/ (the connections "raise the possibility" that Mega was a group, and the codeword "could plausibly have referred" to it).

[178] Brian Duffy and Nora Boustany, "FBI Starts Surveillance of Officials for Leak: NSA Intercept Suggests U.S. Source for Israel," *The Washington Post*, May 8, 1997 (masthead of the archive copy consulted), https://www.washingtonpost.com/archive/politics/1997/05/09/fbi-starts-surveillance-of-officials/aff06ffe-1352-4884-94e6-5ef931251506/, paragraphs beginning "The sources cautioned" and "Still another Israeli official." The archive URL is dated May 9. The archive copy consulted includes advertising interference; these are paragraph locators, not asserted newspaper page numbers.

[179] Barton Gellman, "Israel Asserts Monitored Talk Was Not Spying: Agents Allegedly Spoke of a Normal Contact," *The Washington Post*, May 17, 1997 (archive date), https://www.washingtonpost.com/archive/politics/1997/05/17/israel-asserts-monitored-talk-was-not-spying/dbed6867-2fd4-404c-94fc-c9be278bd3ee/, paragraphs beginning "In the explanation delivered in Washington" and "The Clinton administration has given no public indication." No print-page number is asserted.

September 23, 2026, including a secondary report (EFTA02856277).[180] This is a later search observation, separate from the August 30 corpus accounting. It cannot establish absence of differently worded references, unindexed records, or a concealed relationship.

Criterion 6 — Formal state-service documentation (not established)

The material reviewed for this appendix contains no declassified state-service personnel record, employment file, or official acknowledgment of formal intelligence-service status for either Epstein or Maxwell. Formal service status is not established; the appendix does not infer formal state-service status from the contact and attribution records in criteria 1–5.

Illustrative exhibit not establishing Criterion 6: the July 2010 ucia.gov display address

EFTA00736184, p. 1, preserves Epstein's forwarding to counsel of an email whose displayed address uses ucia.gov and whose signature presents the sender as Joint Military Attaché School (JMAS) faculty. The current federal .gov registry lists that domain under the CIA, a record that does not date the registration to this exhibit; institutional references identify JMAS as a Defense Intelligence Agency (DIA) school.[181,182] The released flattened record does not supply transport headers, authentication results, authoritative faculty identification, or the alleged attachment's contents. Domain authenticity does not authenticate this individual message or show that it originated on CIA infrastructure. Epstein's characterization of it as possibly misdirected classified material is his statement, not a classification determination. A forwarded subject does not rule out misdelivery. This exhibit establishes only the preserved display and forwarding, and does not establish service status.

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[180] Alan ElSheshai, *Mega Group Query Records*, September 23, 2026, two JavaScript Object Notation (JSON) query outputs retained with the paper's review record (commit 606784639c72), available on request. An earlier September 18 search reported the same result, but its run record and index identity were not retained, so this note relies on the September 23 records. Software: Parallax EFTA full-text-search utility over the EFTA indexed corpus; phrase query `"Mega Group"` and exact-token query `MegaGroup`, each with `--limit 25 --json`: six document hits and, on snippet review, zero identifiable Epstein emails (one web-search capture, one unrelated OCR phrase, one Nu Skin article, one fashion article, one Wexner biographical clipping, and one 151-page secondary report, EFTA02856277); `MegaGroup` returned zero hits. The result is limited to those queries and snippets in indexed text; it does not exclude differently worded mentions, unavailable text, or email content outside those snippets.

[181] The displayed ucia.gov address is visible on EFTA00736184, p. 1. The Cybersecurity and Infrastructure Security Agency's .gov registry (dotgov-data, current-full.csv, retrieved October 30, 2026, https://github.com/cisagov/dotgov-data) lists ucia.gov under the Central Intelligence Agency. That is a current record. The display does not authenticate the displayed sender in EFTA00736184 or establish transport through CIA infrastructure. The flattened released email lacks the technical authentication evidence and authoritative sender identification necessary for that inference.

[182] Joint Military Attaché School (JMAS), Defense Intelligence Agency, Directorate for Mission Services, Joint Base Anacostia-Bolling, Washington, D.C.; JMAS trains members of the uniformed services and Department of Defense civilians for duty in the Defense Attaché Service. See Defense Intelligence Agency, "Joint Military Attaché School (JMAS)," https://www.dia.mil/Training/Joint-Military-Attache-School-JMAS.

Criterion 7 — Financial infrastructure (private financing documented; intelligence financing not established)

The SUM (E.B.) Limited Partnership financing is documented in the February 28 to March 14, 2019 email chain (EFTA02634615). That chain projects an increase from about 13% to about 26.33% of Carbyne, an Israeli emergency-response technology company, on a fully diluted basis after warrant exercise. Its $3.6 million Preferred-Right contribution table assigns $2.4 million (66.67%) to Southern Trust and $1.2 million (33.33%) to Montilla / NJF Capital (copied to Nicole Junkermann); those contribution shares are not established ownership-interest splits. The wire instructions name Bank Leumi LeIsrael, branch 832 (Pinkas); they were sent by Tomer Toor of Furth, Wilensky, Mizrachi, Knaani, a Tel Aviv law firm, and the funds were later confirmed received in Ergo's account. The partnership agreement (EFTA00810711) supplies the legal structure: it names Ergo (E.B. 2014) Ltd. as General Partner, and its § 12 treats Ehud Barak as the General Partner's sole owner and beneficiary, restricting the General Partner's authority if he becomes permanently disabled or, without the approval of the holders of a majority of the Preferred Rights, ceases to be the General Partner's sole owner and beneficiary. Epstein's March 14, 2019 "Yes" confirms the controlling-person statement, but is not the first primary admission: his signed August 19, 2015 letter (EFTA01110744) identifies him as president and sole shareholder. These document identifications reflect the substrate reviewed as of August 30, 2026.

These features also fit ordinary investment and reputational privacy: a vehicle, partnership, local bank, and counsel are not distinctive intelligence-financing indicators. Barak's February 11, 2016 statement that two executives were not fully aware of the partnership (EFTA02704699) does not establish deliberate compartmentalization, its cause, or a service purpose. Combining nondiagnostic features without base rates does not make the conjunction diagnostic. The financial structure is therefore retained as a documented business relationship; it does not establish intelligence financing.

EFTA01035810 preserves the financial-statement and forecast chain; EFTA01373148 records Deutsche Bank compliance seeking ownership confirmation. A bank's inquiry is distinct from an independently verified conclusion. The cited partnership agreement identifies Ergo as General Partner, while the signed August 19, 2015 letter establishes Epstein's stated Southern Trust role. No separate registry filing is relied on here. The United States Virgin Islands (USVI) complaint supplies allegations about the entity, not an adjudicated intelligence-financing finding.[183]

Criterion 8 — Media and influence correspondence (execution not established)

The correspondence supports the following actor/action predicates. It does not establish an executed compromise operation, a curated recruitment system, foreign-service tasking, or resulting change in Trump's conduct. Attempted influence and discussion of leverage are analytically distinct from demonstrated deployment.

Table D.2. Media and influence correspondence.

[183] *United States Virgin Islands v. JPMorgan Chase Bank, N.A.*, No. 1:22-cv-10904 (S.D.N.Y.), USVI Second Amended Complaint attached to docket 119 (Southern Trust allegations). JPMorgan's Third-Party Complaint against Jes Staley, docket 70, is a different pleading and does not supply those allegations.

Cluster	Documented actor and action	Limit
December 8, 2015; EFTA00839265 and EFTA00839268, p. 1	Epstein offers Thomas photographs; Thomas separately asks whether he may pass to a political reporter a contact Epstein had sent him that afternoon; Epstein's reply, "Pass on midelfart wealthiest girl in Norway," names a different person and does not plainly authorize the requested hand-off	No instruction to distribute the photographs, no proof of publication or target response
December 15–16, 2015; EFTA02346409, p. 1	Epstein asks for advice; Wolff proposes using a possible Trump denial for publicity or political benefit	Advice by Wolff, not an executed plan or tasking by a service
March 9, 2016; EFTA02469569, p. 1	Epstein tells Barrack about press inquiries and his own nonresponse	Possible informational courtesy; no express threat, requested return, or demonstrated influence
December 1, 2018; EFTA01014745, p. 1	Epstein and Wolff discuss a defensive media response	Self-protection and public relations are live explanations; no intelligence purpose shown

The first thread's photograph offer and contact authorization must not be merged. Thomas asks about passing to a political reporter a contact Epstein had sent him; Epstein's reply, "Pass on midelfart wealthiest girl in Norway," names a different person and does not plainly authorize that hand-off. Calling it a photograph-dissemination directive would change the object of the permission. The House image carriers supply context for the contact reference, not proof that a photograph was distributed.[184]

The December 16 Wolff quotation preserves the comma after "for you": "You can hang him in a way that potentially generates a positive benefit for you, or, if it really looks like he could win, you could save him, generating a debt." This is Wolff's proposed strategy in reply to Epstein, not a record of execution. The committee's parallel email packet and staff memorandum are related carriers rather than independent proof that the strategy was used.[185,186]

The December 2018 quotations must likewise remain separate and chronological. In EFTA01014745, Epstein writes at 10:51 AM: "im aware. im thinking what would trump do". Wolff's 10:56 AM message begins "Claims are ludicrous and self-serving" and ends "this is all about Donald Trump." His 10:57 AM outer message separately says "…all about Donald Trump, the real villain." The outer Coordinated Universal Time (UTC) header is 15:57:27; the quoted

[184] U.S. House Committee on Oversight and Government Reform, Epstein Estate Documents, Seventh Production tranche, image carriers HOUSE_OVERSIGHT_031454.jpg and HOUSE_OVERSIGHT_031604.jpg, released by the Committee at oversight.house.gov. The Committee's released images are also mirrored on the Internet Archive (archive.org, collection Epstein_Estate_Documents_-_Seventh_Production), cited here only as a fallback access path; the House Oversight Committee is the originating source.

[185] U.S. House Committee on Oversight and Government Reform (Democrats), three-email packet, "3-emails_redacted.pdf," oversightdemocrats.house.gov.

[186] U.S. House Committee on Oversight and Government Reform, Republican Staff Memorandum, "Democrats Pursue Anti-Trump Hoax in Epstein Investigation," November 16, 2025, oversight.house.gov.

inner times are displayed local times. The two Wolff messages are not one quotation, and Epstein's 10:51 message is not a reply to them.

Wolff's earlier 9:09 AM message reads: "Maybe we do agree to a big interview with you– Landon Thomas or something like that. But this has to be war gamed out." The words "or something like that" are retained; EFTA01014756 is a related carrier. This is documented planning of a media response, not evidence that Trump was the target of a foreign-service operation. The records do not show a subsequent publication or conduct change; secondary accounts of unsuccessful attempts to assemble material do not supply that missing execution evidence.[187,188]

Criterion 8 therefore does not support a service-operation inference. The actor/action findings remain useful without converting a photograph offer, contact permission, courtesy message, or strategic discussion into proved compromise deployment.

Criterion 9 — Clandestine tradecraft (a passport in another name documented; operational use not established)

The cited burner-phone passages concern third parties. On November 29, 2016, Wolff tells Epstein about leaving messages on a burner phone and being collected at a different location by the other person's driver, adding "spy tradecraft!" (EFTA01060472, p. 1). This is Wolff's characterization of another person's arrangements, not evidence that Epstein operated that protocol. EFTA01741880, p. 1, preserves the November 28 statement about contacting the person through his wife; EFTA01787496 reproduces that quoted message inside a November 29 follow-up. The repeated quote is not a separate independent burner-phone episode.

EFTA02466645, p. 1, is a March 31, 2016 Epstein–Ruemmler discussion of reporting about 1Malaysia Development Berhad (1MDB) and legal theories concerning others' transactions. Its reference to burner phones does not document Epstein's use of one. The Barak incomplete-awareness statement is also not evidence of clandestine practice. These records therefore do not establish the subject's compartmentalized communications or counter-surveillance behavior.

The Austrian passport. This item does concern Epstein himself. Property the FBI recovered in July 2019, originally held in a safe at his residence, included an expired Austrian passport in another man's name with a photograph the agents identified as Epstein's (EFTA01301613, p. 1; EFTA00159104, pp. 2–3).[189] This appendix does not name that man: nothing reviewed shows

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[187] The non-publication is independently documented in The Intercept, "Epstein Gave NY Times Journalist Tips About Trump. Why Did They Never Get Reported?", November 14, 2025, https://theintercept.com/2025/11/14/epstein-new-york-times-trump/, which reports that the Trump-related material Epstein supplied to New York Times reporter Landon Thomas Jr. never appeared in print.

[188] Charles Homans, Steve Eder, Jan Ransom, and Michael Rothfeld, "The Untold Story of Jeffrey Epstein's Death and His Final Days in Jail," *New York Times Magazine*, June 16, 2026, https://www.nytimes.com/interactive/2026/06/16/magazine/jeffrey-epstein-death-final-days.html. Secondary; cited for context only and not as a primary basis for any criterion finding.

[189] FBI inventory and amendment: EFTA00159104, pp. 1–3, July 31, 2019; item record: EFTA01301613, p. 1. Booklet images: EFTA00021627 (Data Set 8) and EFTA00258505 (Data Set 9), which show one booklet. Prosecutors: *United States v. Epstein*, No. 19-cr-490 (S.D.N.Y.), Dkt. 30, p. 1, and Dkt. 23 at 2 as quoted in Dkt. 32, p. 25. Defense: Dkt. 24, pp. 7–8 (July 16, 2019); Dkt. 31, p. 1 (July 18, 2019). Opinion: Dkt. 32, pp. 24–25, and

that he knew of the document, consented, or did anything wrong. The booklet shows an issue date of May 21, 1982 (EFTA00021627, p. 3). It carries border marks from France, Spain, the United Kingdom, and Saudi Arabia dated 1982 to 1983 (EFTA00021627, pp. 4–8). An official mark dated January 12, 1987 ties it to another passport, and nothing reviewed identifies that passport's holder (EFTA00258505, p. 2).

The record holds competing accounts. Prosecutors said the stamps "reflect use of the passport," while recording that they did not know how it was procured or whether it was "genuine or fabricated," and argued that possession "gives rise to the inference the defendant knows how to obtain false travel documents." Defense counsel said it was acquired in the 1980s, "when hijackings were prevalent," and "only to be presented to potential kidnapers, hijackers or terrorists"; then that "a friend" gave it to him, that he "never used the document to travel internationally," and that the stamps predate his receipt of it. Those are counsel's assertions, and nothing reviewed verifies them or dates his receipt. The judge weighed the passport as a flight-risk factor and made no finding about intelligence work. In July 2025 an FBI agent wrote, "We don't have any additional documentation to show that he traveled under a different name" (EFTA01656330, p. 5). Austria's Justice Minister reported that prosecutors examined a suspicion of document falsification against Epstein, closed the matter on his death, and did not establish its purpose.[190]

The passport therefore documents possession of a travel document in another name, with an ordinary explanation offered and unverified. It does not establish who procured or altered it, who made the recorded journeys, or why he kept it, and it does not identify a service, handler, tasking, or operational use. Repeated images of one booklet, and later summaries of counsel's account, are not independent evidence.

Criterion 10 — Independent foreign-government acknowledgment (not established)

None of the public sources reviewed here shows a foreign government acknowledging Epstein, Maxwell, or any associated entity as an asset of its intelligence service.

Criterion 11 — Family and business associations (continuity not established)

Three different strands require separation. The first is Robert Maxwell's alleged Mossad *sayan* role, asserted in Victor Ostrovsky's 1994 memoir. A *sayan* (Hebrew for "helper"; plural *sayanim*) is described in the memoir literature as a Jewish diaspora volunteer who provides logistical, financial, informational, or operational assistance to Israel's foreign intelligence service (Mossad) without being a formal officer of the service. Victor Ostrovsky and Claire Hoy, *By Way of Deception: The Making and Unmaking of a Mossad Officer* (St. Martin's Press, 1990), supplies the general definition and examples of roles. The Maxwell-specific claim

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p. 33 (release denied). Most of these leads were assembled in a public Substack article, Sofia Fontaine, Soror FV, "Epstein's Forged Austrian Passport Belonged to a Real Man. The FBI Planned to Call Him in 2019, and No Record Shows It Did," October 26, 2026, https://sororfv.substack.com/p/epsteins-austrian-passport-belonged, credited as a lead; every fact above rests on the cited primaries.

[190] Federal Minister of Justice (Austria), reply 4385/AB, XXVIII. GP, April 13, 2026, p. 2 (author's translation): a report to the Vienna public prosecutor's office, a suspicion under §§ 223(2) and 224 of the Criminal Code, and discontinuance under § 190 of the Code of Criminal Procedure on the suspect's death. A closure on death decides nothing about the merits.

belongs to Victor Ostrovsky, *The Other Side of Deception* (HarperCollins, 1994), which also gives the alleged Mossad-Kidon-kill account of November 4–5, 1991.[191] The latter book explicitly calls Maxwell a "sayan on the grand scale" while distinguishing that status from being an agent himself; the allegation is more specific than a description of ordinary business contacts, but is still the memoir's account. The 1990 definition does not independently corroborate it. Ordinary family relationships and separate criminal or professional careers explain the associations below without requiring inherited service tasking. Neither the general definition nor the 1994 allegations about Robert establish tasking of Epstein or Ghislaine, or distinguish operational inheritance from those ordinary explanations. The cited passages of the FBI Foreign Counterintelligence file on Robert Maxwell (105-25063) and a bounded optical character recognition (OCR) search of it do not establish that Mossad role. Instead, Part 1 records a 1954 informant's statement that Maxwell claimed British intelligence service and missions; OCR across the eight-part FBI Vault release found no Mossad reference and only incidental, unrelated mentions of Israel. The cited pages are readable except for the informant's withheld identity, not heavily redacted.[192]

The second strand is Ghislaine Maxwell's documented participation in Epstein's criminal enterprise, *United States v. Maxwell*, No. 20-cr-330 (S.D.N.Y. June 29, 2022), ECF 696, *aff'd*, No. 22-1426 (2d Cir. Sept. 17, 2024). Judgment was entered on her convictions for conspiracy to transport minors (18 U.S.C. § 371), transportation of a minor (18 U.S.C. § 2423(a)), and sex trafficking of a minor (18 U.S.C. § 1591(a), (b)(2)); judgment was not entered on the jury's guilty verdicts on the other two conspiracy counts (Counts One and Five, each charged under 18 U.S.C. § 371), as multiplicitous. Those convictions do not establish continuation of Robert Maxwell's asserted intelligence operation.

The third strand is Whitney Webb's assertion that Christine Maxwell, Ghislaine's sister, co-founded Chiliad Inc., which none of the company, trade or federal records cited here states and this appendix has not verified. Chiliad claimed in its own press release that its technology was deployed across the FBI, while contemporaneous trade reporting identified Chiliad as a vendor for the FBI counterterrorism database; federal award records document nine FBI awards; and an Air Force Small Business Innovation Research (SBIR) award record carries the company's own abstract describing an FBI enterprise deployment. Those records do not verify that a specific

[191] Sayan definition and roles: Victor Ostrovsky and Claire Hoy, *By Way of Deception: The Making and Unmaking of a Mossad Officer* (New York: St. Martin's Press, 1990), pp. 86–89. Maxwell as a "sayan on the grand scale": Victor Ostrovsky, *The Other Side of Deception: A Rogue Agent Exposes the Mossad's Secret Agenda* (New York: HarperCollins, 1994), ch. 22; alleged Kidon termination account and November 4–5, 1991 chronology: id., ch. 31. These are Ostrovsky's memoir claims, not official findings. The 1990 definition passage contains no Maxwell attribution, and a case-insensitive Maxwell search of the book's full text returned no hits. This is a bounded text-layer negative, not proof against extraction omissions. The Maxwell-specific attribution is at the 1994 chapters cited above; chapter 31 attributes the termination account to a conversation with Ephraim.

[192] FBI, Robert Maxwell Foreign Counterintelligence File 105-25063, eight-part Freedom of Information Act (FOIA) release, https://vault.fbi.gov/robert-maxwell/. Part 1, pp. 229 and 231, records an informant's report about claimed British intelligence connections. OCR of all 1,312 pages of the eight parts (Tesseract 5.3.4, default English settings, 150 dpi, run October 30, 2026) found no Mossad match, and 29 pages returned no text (run record with page-text hashes and the full hit list retained with the paper's review record, commit 61408900bcb, available on request); this is a bounded OCR negative, not proof of absence, and OCR is known to miss words in this file. Incidental Israel references include Part 3, p. 76 and Part 4, p. 31; these are examples, not an exhaustive two-hit inventory. The cited readable pages withhold the informant's identity.

Chiliad contract built the warehouse, and this appendix has not verified Webb's claims about Alan C. Wade's founding role and CIA post.[193]

Family association and a criminal conviction do not establish operational inheritance. This criterion does not establish continuity or service direction.

D.3 Conclusion

Table D.3. Bounded results by criterion.

Criterion	Bounded result
1	Multiple contact arrangements documented; meeting content and tasking unknown
2	A request in a private-dispute counsel thread; service tasking not established
3	Contacts with current and former officials documented; one request to a former Russian deputy minister, who undertook an inquiry, with outcome and capacity unknown; intelligence-operational relationships not established
4	Repeated correspondence and transactions over years; operational duration not established
5	Credentialed analyst's assessment documented; source genealogy limits independence
6	No formal service-status documentation established by the reviewed record
7	Private financing structure documented; service financing not established

[193] Company claim: Chiliad, "Chiliad, the Company That Solved the 9/11 'Connecting the Dots' Problem, Hires Dan Ferranti as CEO," company press release distributed by Business Wire, March 3, 2008, company and FBI-deployment sections, https://www.businesswire.com/news/home/20080303005669/en/Chiliad-Company-Solved-911-Connecting-Dots-Problem (republished by InKnowVation, https://www.inknowvation.com/sbir/story/chiliad-company-solved-911-connecting-dots-problem-hires-dan-ferranti-ceo-industry). Contemporaneous trade reporting: W. David Gardner, "FBI Shows Off Counterterrorism Database," *InformationWeek*, August 30, 2006, https://www.informationweek.com/fbi-shows-off-counterterrorism-database/d/d-id/1046592, FBI demonstration and vendor-identification sections. Federal records: Alan ElSheshai, *Chiliad Publishing: USAspending Award-Search Response*, June 24, 2026, content version 05027b786b53, results and page_metadata, unpublished supplement held with the paper's review record, available on request, counted 60 returned awards and nine FBI awards, including DJFA8N0825200 for Federated Query Services, https://api.usaspending.gov/api/v2/search/spending_by_award/. The archived request used recipient_search_text ["CHILIAD PUBLISHING INCORPORATED", "CHILIAD PUBLISHING"], award_type_codes ["A", "B", "C", "D"], subawards false, page 1, limit 100, sort "Award Amount", order "desc"; page_metadata.hasNext is false. Full application programming interface (API) request and field list: *Chiliad Research Search Log*, June 24, 2026, content version b511aa302212, "API and Registry Attempts," held with the same review record and available on request. Small Business Innovation Research (SBIR) program, SBIR.gov award 31535, abstract and contract field (FA8750-05-C-0134; FBI enterprise deployment), https://www.sbir.gov/awards/31535. The official records do not connect a particular award to construction of the Investigative Data Warehouse or verify Alan C. Wade's CIA title at Chiliad's founding. The Christine Maxwell and Wade claims are Webb's: Whitney Webb, *One Nation Under Blackmail*, vol. 2 (Walterville, OR: Trine Day, 2022), ch. 21, section "Christine Maxwell's Chiliad," nn. 50–53. Webb names both as co-founders and places Wade in a top CIA post at the founding; her statement that he became chief information officer concerns the period before September 11.

Criterion	Bounded result
8	Offers, contact permission, and strategic discussion; no executed service operation established
9	Cited third-party conduct does not establish subject tradecraft; possession of a passport in another name documented, with competing explanations; Epstein's use of it and its purpose unresolved
10	No independent foreign-government acknowledgment established
11	Family and business associations; operational continuity not established

The aggregate numeric/WEP assessment is withdrawn. Confidence is strongest in the narrow documentary predicates, namely what identified messages say and what arrangements they record, and substantially weaker concerning execution, purpose, and service direction. That distinction cannot be converted into an aggregate probability from the present checklist. Repeated carriers and derivative commentary do not create independent corroboration.

The Schindler interpretation remains an attributed hypothesis, with the codename-to-group bridge unproved by the older primary reporting. The September 23 exact-query negative is bounded by its query and index. The contact and financial records do not impute wrongdoing to the named counterparties, and the records do not establish that the enterprise was an intelligence operation. The question is therefore one of two grounds for including EFTA, stated as unresolved. The other ground, executive custody and disclosure duties, and the paper's EFTA measurements stand whatever the answer.

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