



THE WHITE HOUSE
WASHINGTON

September 11, 2023

Special Counsel Robert K. Hur
Deputy Special Counsel Marc Krickbaum
Department of Justice
145 N Street Northeast
Washington, D.C., 20503

Re: Presidential and Vice-Presidential Writings

Dear Special Counsel Hur and Deputy Special Counsel Krickbaum:

We noted to you in our February 27 submission that the Department of Justice (the Department), the courts, and Congress consistently have recognized the unique status of presidential and vice-presidential writings. In that submission, we documented that the Department has never previously reviewed a President's or Vice President's personal notes for the purpose of identifying classified information, even though the Department has long been aware both that such notes routinely describe sensitive national security matters and that such notes have been retained by Presidents and Vice President after leaving office. We write now to elaborate on the Executive Branch's past practice with respect to such writings.

Presidents Jimmy Carter, Ronald Reagan, George H.W. Bush, George W. Bush, and Barack Obama, and Vice Presidents Dick Cheney and Mike Pence, each had classified or national security information in their personal diaries, notes, or book manuscripts after they left office. For most of these individuals, the National Security Council (NSC) discovered the classified information when reviewing the material prior to its publication. In the case of President Reagan and Vice President Bush, the Department became aware that their diaries contained classified or national security information during the Iran-Contra investigation.

Despite the discovery of classified information in these presidential and vice-presidential writings, none of these incidents resulted in any law enforcement action. To our knowledge, the government made no efforts to secure the writings in question, determine how classified information came to be in those writings, or identify whether the classified information in those writings was shared orally or in written form with individuals without security clearances.

Indeed, at no time in the last thirty years has the Government, including the Department, viewed as actionable the possibility of classified information in the individual writings of a former President or Vice President. For good reason. A President's "diary and his own notes . . . touch the core of the presidency as well as intimate and confidential communications by the President with himself." *United States v. Poindexter*, 727 F. Supp. 1501, 1505 (D.D.C. 1989).

Against this unbroken approach toward the writings of Presidents and Vice Presidents, your Office has seized former Vice President Biden’s personal diaries, notebooks, and notes; you reviewed them in their entirety without prior review by the White House Counsel’s Office (itself an unprecedented step); you have sent these materials for “classification review” by the Intelligence Community; and you have said that you intend to question President Biden in the context of a criminal investigation about these materials. The implication that these writings might be relevant to a criminal inquiry runs counter to decades of precedent as outlined in this letter.

Furthermore, your treatment of these materials as the topic of a criminal inquiry runs the substantial risk of causing irreparable harm to the Offices of the President and Vice President by deterring future Presidents and Vice Presidents from using diaries and notes in the context of the most stressful and important jobs in the world—jobs that also require nearly continuous interaction with sensitive national security information. In our February 27 submission, we explained at length that “Presidents and [V]ice [P]residents have long relied on their private notes and journals to introspect, deliberate, reflect, remember, or simply record, including on official matters,” and chilling this ability “could have a long lasting impact on the Presidency and the manner in which future Chief Executives carry out their functions.” Letter from Counsel to the President Stuart F. Delery to Special Counsel Robert K. Hur (Feb. 27, 2023); Mem. in Support of Mot. to Quash Subpoena to Archivist and Statement of Interest by the DOJ on Behalf of the U.S. Addressing Defendant’s Subpoena at 4, *United States v. Poindexter*, No. 88-00080-01 (HHG) (D.D.C. Dec. 6, 1989) (“DOJ Poindexter Statement of Interest”). Indeed, Presidents and Vice Presidents have long depended on the ability to take notes and the constitutional entitlement to the confidentiality of those notes. To intrude into the confidentiality of such notes by subjecting them to scrutiny in a criminal inquiry would inevitably chill Presidents’ and Vice Presidents’ ability and willingness to write their notes freely, to the detriment of their Article II functions. A similar chilling effect would occur if Presidents’ and Vice Presidents’ private introspections were required to become the public property of the Archives.

We outline below the history of how these materials have been treated in the last several decades and the respect given to them given their constitutional status.

The Reagan Diaries

President Reagan began keeping a daily diary immediately after his inauguration in January 1981. Ronald Reagan, *THE REAGAN DIARIES* ix (Douglas Brinkley ed., 2007). During his Presidency, he kept the diaries in his second-floor study in the White House residence. *Id.* at x. The diaries, which in redacted form were published several years after his death, contained both personal observations and detailed notes of meetings held throughout his presidency, including a host of meetings on national security and foreign affairs topics. *See, e.g. id.* at 202 (detailing positions taken by advisors in NSC meetings on military operations in Lebanon and NSC meetings on export policy with Libya); Ronald Reagan, *Monday, July 20, 1987*, REAGAN FOUNDATION: WHITE HOUSE DIARIES, <https://www.reaganfoundation.org/ronald-reagan/white-house-diaries/diary-entry-07201987/> (discussing policy disagreements during meetings with the President between Cabinet Secretaries about providing military assistance to allies).

At the conclusion of his second term, Mr. Reagan brought the diaries to his Los Angeles home and kept them there until his death in 2004. After returning to California, former President Reagan and former First Lady Nancy Reagan “would often sit together in their den after dinner, reading aloud from their diaries.” Reagan, *THE REAGAN DIARIES* at ix.

During that period, Mr. Reagan’s former National Security Advisor, John Poindexter, who had been indicted by the Independent Counsel for his role in the Iran-Contra matter, subpoenaed excerpts from the President’s diaries for his defense. *See Poindexter*, 727 F. Supp. at 1503. In connection with litigation over Mr. Poindexter’s subpoena, the Department filed a brief (separate from the Independent Counsel) on December 6, 1989, nearly a year after the end of President Reagan’s second term. In that brief, the Department acknowledged that the diaries contained classified information:

“We note that the diary excerpts we have seen are currently classified. Therefore, even if they are turned over to defendant, they are still subject to the appropriate procedures the Court is utilizing to determine whether they should remain classified, and whether the Government may need to invoke some of its rights under the Classified Information Procedures Act (18 U.S.C. App.) before the documents are used at trial.”

DOJ Poindexter Statement of Interest at 17 n.8 (emphasis added).

At the time that the Department acknowledged that the diaries contained classified information, the diaries were being kept in the Reagan home in California. We are unaware of any effort made by the Department to remove the diaries from the private home and place them in a location certified to store and protect classified material. For another 15 years, the Department did nothing with respect to what it knew to be classified information in Mr. Reagan’s diaries at the Reagans’ private home.

After Mr. Reagan passed away in 2004, former First Lady Nancy Reagan brought the diaries to staff at the Ronald Reagan Presidential Foundation (“Reagan Foundation”) to discuss publishing them and putting them on public display in the Ronald Reagan Presidential Library (“Reagan Library”).

The staff at the Reagan Foundation transcribed the handwritten diaries working in offices that were not certified for the storage or handling of classified information. Once transcribed, the staff did their own review of the materials looking for national security information. Using their best judgment, they tagged between 200-300 entries as related to national security and sent the diaries to the NSC to review for classified information.¹

¹ The Reagan Foundation’s submission to the NSC was entirely voluntary because former Presidents are not required to submit potential publications for preclearance review. We understand that some former Presidents and Vice Presidents have submitted their manuscripts, or portions thereof, for prepublication review and others have not. For example, NSC does not have a record of the submission for prepublication review of Bill Clinton’s *My Life*; Al Gore’s *An Inconvenient Truth*; George H.W. Bush’s *All the Best*; Dan Quayle’s *Standing Firm*; or Jimmy Carter’s *Keeping Faith* and *White House Diary*.

NSC's review resulted in the diaries as a whole being classified at the Top Secret/Sensitive Compartmented Information (TS/SCI) level based on the highly classified information in some of the entries. The NSC proposed redactions of the classified information to the Reagan Foundation officials. Those officials contested several of the proposed redactions, pointing out that some of the information proposed for redaction had already been published and consequently was already in the public domain. The NSC withdrew several of its proposed redactions, and the diaries were eventually published, with the classified information redacted, in 2007. Mr. Reagan's diaries were also publicly displayed at his presidential library, with several pages "left out for national security reasons." Anna Bakalis, *Library Gets First Look at 'Reagan Diaries,'* VENTURA COUNTY STAR (May 20, 2007).

The introduction to the published Reagan diaries states that NSC "read all five diary volumes" and redacted "about six pages of material for national security reasons." Reagan, *THE REAGAN DIARIES* at xiii. In the acknowledgements section of the book, the editor of the diaries thanks a supervisory archivist with the Reagan Library for "dealing with the national security classification redactions" and thanks the Reagan Foundation Chief of Staff for responding "[w]henver I had a question pertaining to NSC concerns." *Id.* at 694-95.

At no point in this process was there any law enforcement inquiry into the fact that the diaries had been kept in a private home for decades and reviewed by individuals without security clearances.

The George H.W. Bush Diaries

George H.W. Bush maintained personal diaries throughout his adult life, including while serving as Vice President and President. See Lawrence Walsh, *Final Report of the Independent Counsel for Iran/Contra Matters: Volume I* at 474 (1993) ("Final Report of the Independent Counsel for Iran/Contra Matters"); George H.W. Bush & Brent Scowcroft, *A WORLD TRANSFORMED* (1999); George H.W. Bush, *THE CHINA DIARY OF GEORGE H.W. BUSH: THE MAKING OF A GLOBAL PRESIDENT* (Jeffrey A. Engel ed., 2008). As explained below, although Mr. Bush wrote extensively about foreign affairs and national security, and although these diaries came to the attention of the Department, they were never scrutinized for classified information for law enforcement purposes.

To create his diary, Mr. Bush regularly dictated his daily experiences, along with "personal and political observations," on cassette tapes. *Final Report of the Independent Counsel for Iran/Contra Matters* at 474. A secretary in Mr. Bush's Houston, Texas office would then receive cassette tapes of Mr. Bush's dictations and transcribe them, on some occasions returning the transcript to Mr. Bush. *Id.* Although at times described as a "nightly dictation," staff at the Office of the Vice President observed Mr. Bush made "sporadic" dictations. *Id.* at 474 n.10.

That practice continued into Mr. Bush's time as President. According to President Bush's biographer, President Bush carried an audio recorder in his briefcase to enable him to dictate his diary at various locations and times throughout the day, including early in the morning

at the White House, while traveling aboard Marine One and Air Force One, and in the study off the Oval Office.²

Until September 1992, only a handful of then-President Bush's staff were aware that President Bush kept a daily diary. *Id.* at 474. Around that time, an administrative assistant conducting an inventory of Bush family safes at the White House residence discovered binders containing typed transcripts of the diaries. *Id.* at 477. The assistant reportedly observed that the transcripts "made repeated references to Iran/contra," which was then the subject of an ongoing investigation by Independent Counsel Lawrence Walsh—an investigation that had previously requested any of Mr. Bush's diaries during the relevant time. *Id.* at 476-77. The White House Counsel's Office ultimately reviewed and produced transcripts of the diaries in December 1992. *Id.* at 477. The Independent Counsel investigated Mr. Bush's failure to produce his diaries in response to initial requests. *Id.* at 478-79.

Vice President Bush's dictated diaries contained reflections on his official duties, including meetings regarding Iran-Contra and private conversations with President Reagan. *Id.* at 481-82. As the Independent Counsel later explained, the diary Mr. Bush kept while serving as Vice President covered sensitive issues related to national security, including details on discussions related to the Iranian hostage crisis and information like "the fact that Israeli officials were extremely upset" following certain events. *Id.* at 480 n.74, 483; *see also* Bush & Scowcroft, *A WORLD TRANSFORMED* at 338, 374, 459 (publishing excerpts of Mr. Bush's presidential diaries detailing meeting between Secretary of State James Baker and Soviet Foreign Minister Eduard Shevardnadze, a "horrible intelligence report" following the invasion of Kuwait by Saddam Hussein, and a briefing from the CIA on damage to Kuwaiti oil fields).

Materials prepared for Independent Counsel Walsh also suggest that Vice President Bush's diaries contained classified information. A memorandum summarizing excerpts from Vice President Bush's diary appears to have been declassified with redactions applied on June 22, 1999, pursuant to a letter from the NSC. *See* Mem. from Megan Semple to Judge Walsh and Craig Gillen 1, 7 (Jan. 13, 1993) (containing a redaction to conceal the identity of someone who called Vice President Bush, along with a handwritten note next to the redaction reading "(b)(1) (b)(3) 50 U.S.C § 403," an apparent reference to the statute that specified the authorities of the Office of the Director of National Intelligence). Given the subject matter of Mr. Bush's diaries and the sensitivity of the published excerpts, it is likely that they contained other examples of classified information.

Mr. Bush published portions of his diary excerpts and made his diaries available to biographers and authors. Michael Wines, *Bush Makes Public Iran-Contra Diary*, N.Y. TIMES (Jan. 15, 1993).³ For instance, for the book *Destiny and Power*, Jon Meacham wrote that Mr. Bush "granted me access to his diaries," Meacham, *DESTINY AND POWER* at 603, with "no

² *See* C-SPAN, *Life and Presidency of George H.W. Bush* (Nov. 8, 2015), <https://www.c-span.org/video/?400044-1/life-presidency-george-hw-bush>; Politics and Prose, *Jon Meacham, "Destiny and Power,"* (Dec. 1, 2015), <https://www.youtube.com/watch?v=7QGZ4Rhtp4s>.

³ *See also* Meacham, *DESTINY AND POWER* at 603-04 (noting that Bush's diaries had been referenced or excerpted in three prior books) (citing Herbert Parmet, *GEORGE BUSH: THE LIFE OF A LONE STAR YANKEE* (1997); Bush & Scowcroft, *A WORLD TRANSFORMED*; George H.W. Bush, *ALL THE BEST* (1999)).

conditions whatsoever,” Nat’l Const. Ctr., *Jon Meacham: The American Odyssey of George H.W. Bush* (Nov. 12, 2015) <https://www.youtube.com/watch?v=nQIZo4lj8H4> (reflecting an interview in which Meacham says, “He gave me his vice-presidential, presidential diaries, gave me the audio with no conditions whatever. I didn’t have to ask him if I could quote something, I didn’t have to show him anything. Nothing.”).⁴

We are aware of no effort made by the Independent Counsel or the Department either to assess whether Mr. Bush’s diaries contained classified information given their extensive discussion of national security and foreign affairs matters for the purposes of opening a criminal inquiry or to take steps to secure Mr. Bush’s copies of the diaries. This was despite the fact that Mr. Bush’s diaries themselves became a focus of a criminal investigation related to the delay in producing them to the Independent Counsel and the Department was aware that they touched upon some of the same information as Mr. Reagan’s diary—which the Department recognized as classified. *See* DOJ Poindexter Statement of Interest at 17 n.8.

The Pence Book

Former Vice President Mike Pence published his own memoir on November 15, 2022. *Mike Pence, SO HELP ME GOD* (2022). Even though Mr. Pence, as a Vice President, had not signed any agreement requiring pre-clearance review, he voluntarily submitted his manuscript to the NSC prior to publication for review for classified information.

Emmet Flood of Williams & Connolly submitted the manuscript to the NSC in June 2022. Ryan Cole, an Indiana writer, was copied on correspondence. We are unaware of whether these two individuals possessed security clearances at the time, or whether draft manuscripts were handled in accordance with security protocols for classified information, but the manuscript was not sent to the NSC under the requirements for transmitting classified materials.

The NSC review resulted in a number of proposed redactions of presumably classified information, which Vice President Pence and his team accepted to the manuscript before it was published.

Two months after the publication date, Vice President Pence’s attorneys discovered classified government documents in his home in Indiana, and the National Archives was notified two days later. Katherine Faulders et al., *FBI finds Another Classified Document in Search of Former Vice President Mike Pence’s Indiana home*, ABC NEWS (Feb. 10, 2023). A consent search of the home was conducted by Federal Bureau of Investigation agents on February 10, 2023, during which an additional classified document was found and “six additional pages” were also seized. *Id.* It is unclear the nature of the additional pages. We do not know whether the agents searched for drafts of the manuscript that the NSC had determined contained material that needed to be redacted.

But one thing is clear: the manuscript prepared by Mr. Pence with the help of Mr. Cole and Mr. Flood, which presumably also was reviewed by the publishers at Simon & Schuster, contained material that the NSC required to be redacted. Yet, even including the later search for classified documents, we know of no law enforcement inquiry into this writing.

⁴ We do not believe that Mr. Meacham’s book was submitted for prepublication review.

The Carter Diaries and Book

While serving as President, Jimmy Carter dictated diary entries several times throughout the day—“seldom exercis[ing] any restraint on what [he] dictated”—which were transcribed by his secretary. Jimmy Carter, *WHITE HOUSE DIARY* xiii (2010); *see also* Jimmy Carter, *KEEPING FAITH* xiii (1982). By the time that he left office, he had totaled approximately 5,000 pages of transcribed notes in 18 volumes. Carter, *KEEPING FAITH* at xiii. Our understanding is that the Carter diaries, like the Bush and Reagan diaries, were never scrutinized for classified information.

As Mr. Carter prepared the diaries for publication, the drafts were reviewed by numerous people, including his wife Rosalynn Carter and an editor. Carter, *WHITE HOUSE DIARY* at 539. While Mr. Carter noted that his published diary excerpts “omit about three-fourths of the diary,” he “decided to make the entire diary (including [his] detailed handwritten notes) available at the Carter Presidential Library in the near future.” *Id.* at xiv.

Mr. Carter’s own words suggest that the diaries may well contain national security information, although they were not submitted for prepublication review. In the published diary, he notes that his diary addresses “Middle East peace negotiations, nuclear weaponry, U.S.-China relations, [and] energy policy.” *Id.* at xiv. The dust cover to the published diary notes that Mr. Carter “narrated the progress of secret negotiations such as those that led to the Camp David Accords” in his diaries. *Id.* In Mr. Carter’s memoir, excerpted diary entries reveal his reflections on highly sensitive matters—detailing secret diplomatic engagements with foreign adversaries, international nuclear weapons negotiations, conversations with foreign heads of state, and intelligence briefings pertaining to national security, *see, e.g.*, Carter, *KEEPING FAITH* at 199, 205, 418, 438—illustrating the likelihood of even more sensitive matters being in the underlying unpublished diaries.

As of 2010, Mr. Carter continued to keep the entire set of diary notes in his personal residence. Carter, *WHITE HOUSE DIARY* at xiii. Separately, reports have suggested Mr. Carter—like Mr. Pence—found classified materials at his Georgia home on at least one occasion after he left office, returning them to the National Archives. Zeke Miller et al., *Classified Records Pose Conundrum Stretching Back to Carter*, ASSOCIATED PRESS (Jan. 24, 2023).

We are unaware of the Department or the National Archives and Records Administration ever seeking to review former President Carter’s diary notes for potentially classified information, even after the return of classified materials from his home to the Archives.

Books by Barack Obama, George W. Bush, and Dick Cheney

Though they were not required to submit their manuscripts for pre-clearance review, Presidents Obama and Bush, along with Vice President Cheney, had representatives submit their book manuscripts to the NSC for review prior to publication. *See* Barack Obama, *A PROMISED LAND* (2020); George W. Bush, *DECISION POINTS* (2010); Dick Cheney & Liz Cheney, *IN MY TIME* (2011).

In each of these three cases, representatives sent the NSC draft materials via private email for pre-clearance review.

In former President Obama's case, the NSC identified information that was still classified or not officially acknowledged, and asked Mr. Obama—through his representatives—to revise the relevant sections. In former President Bush's case, the NSC determined that the manuscript contained information that remained currently classified and requested redactions or edits. Former Vice President Cheney's draft manuscript excerpts contained quotations from a foreign official, which the NSC treats as classified. In each case, following NSC's review, the authors made changes to the manuscript. President Obama, President Bush, and Vice President Cheney named and thanked NSC staff for their review of the texts. *See* Obama, *A PROMISED LAND* at 704; Cheney & Cheney, *IN MY TIME* at 530; Bush, *DECISION POINTS* at 480.

Each of these processes proceeded without any law enforcement involvement or interest. The presumably uncleared ghost writers, assistants, agents, publishers, and lawyers involved with these manuscripts were not the subject of any law enforcement interest or inquiry, and there was no investigation into what underlying records had informed the authors' writings or whether drafts, notes, or other writings existed which contained the same classified information identified by the NSC.

* * *

For at least 30 years, the Government—including specifically the Department—has been aware that former Presidents and Vice Presidents frequently have possessed diaries, notes, draft manuscripts, and other writings that contained classified information. At no time has the Government sought to ensure that such material was maintained in a location certified to store classified material, much less initiated a criminal investigation into the failure to do so.

We look forward to discussing these issues in the near future, as we believe that the constitutional significance of these writings and the long uninterrupted practice of the Government treating such writings as within the constitutional prerogatives of the President and Vice President bear directly on your investigation.

Respectfully,



Richard Sauber
Special Counsel to the President

WHITE HOUSE COUNSEL'S OFFICE
1650 PENNSYLVANIA AVENUE NW, WASHINGTON, DC 20502
WHITEHOUSE.GOV