

ROBERT HUR SNOOPED THROUGH JOE BIDEN'S DIARIES AFTER WHITE HOUSE WARNED IT WOULD BE UNPRECEDENTED

Much of the press focus (Politico, NYT, WaPo) on the correspondence between Joe Biden's lawyers and DOJ has focused on Biden's complaints about Robert Hur's old geezer comments.

But a September 2023 letter (published by WaPo) regarding the way Robert Hur snooped through Biden's diaries, which Hur called notebooks to excuse his own prurience, is actually far more troubling.

The letter asserts, then substantiates, a claim that, "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."

It describes what happened with Biden's diaries:

- January 20, 2023: Hur seizes Biden's personal diaries and notebooks
- February 27, 2023: Stuart Delery writes letter noting that DOJ, courts, and Congress have recognized the unique status of presidential and vice-presidential writings
- Hur reviews diaries in their entirety without prior review by the White House

Counsel's Office

- Hur sends selections for “classification review” by the Intelligence Community
- October 8-9, 2023: Hur questions President Biden in the context of a criminal investigation about these materials

It then goes through the record, showing how the government found classified information in not just Reagan's, but also Poppy Bush's diaries, as part of Iran-Contra, but didn't do anything about the diaries themselves outside the context of the focus on Iran-Contra.

It then goes through the publication history of Jimmy Carter's diaries and memoirs from George W. Bush, Dick Cheney, Barack Obama, and Mike Pence to suggest they had used memorializations to write books that had classified information in them when first submitted to National Security Council for discretionary review.

The description of what happened with Pence's memoir is most telling. In the very same weeks when Hur was blowing off a letter from Stuart Delery telling him no one had done this before, DOJ's investigation of Mike Pence made no apparent move to do the same with any notes he used to write his memoir.

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.

Hur might retort that Trump's notes got seized in 2022, along with marked classified documents and a whole shit-ton of other documents that belong to the archives under the Presidential Records Act.

But there's no public hint that Jack Smith assessed those for criminal exposure. There's just one document charged against Trump, in any case, that has neither date nor classified markings, such that it might be a note.

There's an unstated reason why Hur's obstinance about treating Biden's diaries differently than other prosecutors before him: because when he was making the decision to snoop through all of Biden's diaries, Biden was under investigation for a crime that was never going to get charged, but his son was under investigation for crimes that – under Hur's former colleagues and subordinates in the Maryland US Attorney's Office – did end up getting charged, probably only because one of them reneged on a diversion and plea deal because an FBI informant empowered by Bill Barr attempted to frame Biden and his son. Hur's descriptions of Biden's diaries, which he describes to "include[] gut-wrenching passages about his son's death and other highly personal material," make it pretty clear they include information that could be detrimental to Hunter. In fact, it's not yet clear whether DOJ has returned Biden's diaries, or whether they're still treating him differently, even as Hur's former subordinates use pictures of sawdust to try to convict Hunter Biden.

It's really hard to treat Hur's decision to treat Biden differently as anything else but an attempt to snoop through Biden's diaries in search of other dirt.

And he did that in spite of fairly compelling arguments that he was doing something unprecedented.

Update: Bob Bauer wrote a Lawfare piece debunking some claims made by Ben Wittes that gets at the diaries distinction.