

## OPINION

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# Presidential Records Act is a bipartisan scam

Confidentiality should end when writing memoir



**James Bovard**  
Board of Contributors  
USA TODAY

The closing scene of the 1981 movie “Indiana Jones and the Raiders of the Lost Ark” depicts the newly discovered biblical ark of the covenant being put in a crate, stamped “top secret,” and then carted down the aisles of an endless government warehouse where it would presumably be forgotten and lost forever.

Unfortunately, that scene from the first Indiana Jones movie exemplifies what happens to the papers of former U.S. presidents – despite the fact that Americans have a right to know how their rulers have wielded power.

The Presidential Records Act is in the news because former President Donald Trump allegedly violated that law by taking 15 boxes of official papers with him to Florida when he left the White House early last year. The boxes have been returned to Washington, and Trump issued a statement denouncing the hubbub as “fake news.” Lawsuits may follow. Trump previously made headlines by brazenly tearing up official documents that he was legally obliged to preserve.

“The Presidential Records Act is critical to our democracy, in which the government is held accountable by the people,” Archivist of the United States David Ferriero declared this month.

However, both the law and the accountability have become a façade.

The Presidential Records Act of 1978 was enacted after former President Richard Nixon tried to claim that his secret Oval Office tapes and other records were his personal property.

The law declared that “the United States shall reserve and retain complete ownership, possession, and control of Presidential records.” But this law has more loopholes than a congressional ethics reform bill.

Many folks remember that Nixon sought to keep control of the secret tapes, but few know that he fought ferocious legal battles to control 42 million pages of documents from his presidency. Historian Bruce Montgomery noted in a 1993 American Archivist article that Nixon’s lawsuits “managed to block the National Archives and Records Administra-



President-elect Barack Obama and, from left, former Presidents George H.W. Bush, George W. Bush, Bill Clinton and Jimmy Carter on Jan. 7, 2009, in the Oval Office. J. SCOTT APPLEWHITE/AP



President Donald Trump holds up documents as he speaks about the pandemic in April 2020. ALEX BRANDON/AP

tion from releasing the majority of his White House records.”

Suppressing those records assured that Nixon had a better reputation than he deserved when the former president died the following year.

The Nixon Library did not release the final batch of his secret tapes until 2013 – 39 years after Nixon was driven from office – and continued withholding tapes purportedly with national security concerns. The Lyndon B. Johnson Library was even more dilatory, not releasing the final batch of his secret tapes of presidential conversations until 2016 – 47 years after he left office.

Shortly after the 9/11 attacks, President George W. Bush issued an executive order that “effectively rewrote the Presidential Records Act, converting it from a measure guaranteeing public access to one that blocks it,” as law professor Jonathan Turley noted.

Although it was partially reversed years later, Bush’s edict required historians and others to prove “a demonstrated, specific need” for documents to overcome any assertion of privilege, however tenuous, by a former president.

Under Bush’s edict, vice presidents, former presidents or their designated representatives could block public release of records in perpetuity. The sitting president also gained veto power over any release of documents from former presidents, thus permitting each new president to blockade history.

President Barack Obama partially reversed Bush’s order in 2009 but retained plenty of veto powers for himself over what Americans could learn. As Politico reported, Obama White House lawyers repeatedly invoked procedures to “delay the release of thousands of pages of records from President Bill Clinton’s White House.” Eventually, Congress passed a law in 2014 to curb White House prerogatives, but the system remains rigged in favor of secrecy.

At the end of the Obama administration, 30 million pages of documents from his presidency were shipped to a vast empty furniture store near Chicago (Shades of “Indiana Jones”!).

The Obama Foundation, a private nonprofit organization, will control the official records of his time in office, rather than the National Archives and Records Administration, which administers all other presidential libraries going back to Herbert Hoover. Rather than opening the paper files to the public and researchers,

the Obama Foundation will eventually digitize the records. A National Archives news release noted that COVID-19 has delayed digitization efforts.

Pulitzer Prize-winning historian David Garrow warned, “The absence of a true Obama presidential library will have the effect of discouraging serious and potentially critical research into the Obama presidency.”

The de facto long-term secrecy of presidential papers subverts the “right of freely examining public characters and measures” that James Madison, the father of the Constitution, labeled in 1800 as “the only effectual guardian of every other right.” Instead of safeguarding self-government, the Presidential Records Act has become a propellant for windfall profits for ex-politicians.

Former presidents should forfeit any right to confidentiality of their papers on the day they sign a contract to write a memoir. Former Presidents Bill Clinton received a \$15 million advance for his memoir, George W. Bush received a \$10 million advance, and the Obamas received \$60 million for a two-book memoir deal.

Presidents can practically use any information they please to write their memoirs with expedited clearance of classified information. By keeping the vast majority of their records secret, former presidents prevent fact-checkers from exposing their fabrications and abuses of power.

Any presidential memoir published while the vast majority of records of that president remain secret should be treated as self-serving propaganda.

Presidents are hired hands, not quasi-deities with a divine right to keep endless secrets from citizens they supposedly serve. Even President Joe Biden’s director of national intelligence, Avril Haines, recently lamented that the excessive secrecy of federal documents “erodes the basic trust that our citizens have in their government.”

The Presidential Records Act has become a bipartisan scam to prevent Americans from recognizing how badly they have been misgoverned.

Instead of a byzantine system that perpetuates cover-ups on shabby pretexts, our democracy needs blanket disclosures of tens of millions of documents that our rulers have no good excuse to continue shrouding.

*James Bovard, author of “Attention Deficit Democracy,” is a member of USA TODAY’s Board of Contributors. Follow him on Twitter: @JimBovard*

## ‘Crack pipe’ rhetoric is not only wrong, it’s also deadly



**Miriam Aroni Krinsky**  
Fair and Just Prosecution

The backlash and firestorm from the right has been disturbing.

When the Biden administration stopped taking applications Feb. 7 for its harm reduction program that pays for, among other things, “safe smoking kits,” some conservatives took to social media with sky-is-falling rhetoric.

The program amounted to crack pipe distribution “to minority communities in the name of racial equity” according to Sen. Marco Rubio, R-Fla. Similar sentiments circulated on social media from other members of the Republican Party, conservative commentators and, eventually, some of the American public.

These claims, of course, were proven untrue. Smoking kits, and other items distributed through the grant program, include hygienic supplies that help addicts remain safe, not crack pipes.

But beyond the false rhetoric and racist undertone is a sad and dangerous truth – misinformation is not only disquieting but also potentially deadly.

In December, with little fanfare and little public attention, the Department of Health and Human Services announced that it had set aside \$30 million for the grant program to help tackle

our country’s devastatingly high rate of overdose deaths.

Our nation’s overdose numbers have reached record high crisis levels. And past approaches to treating addiction with prison and punishment have failed. In an effort to improve our fight against addiction, the administration pledged to devote modest funding to services predicated on fundamentals of harm reduction. These programs allow treatment providers to work to mitigate the dangers of substance use, rather than demand abstinence alone. Since December, the program drew little notice – until this month.

Some of the outrage has stemmed from decades of misguided messaging on what can safely reduce drug deaths and end addiction. President Joe Biden is trying to replace “just say no” with smarter, evidence-based strategies.

Headlines chastising the Biden administration were off the mark. And the kits, as effective as they can be, are one small piece of the program.

### Drug overdose prevention

Harm reduction can include overdose prevention in safe injection sites. America’s first official site opened in November in New York City and has saved lives, but met with backlash.

These sites are dedicated spaces where people can use drugs under the supervision of trained medical staff.

Communities around the world are finding them to be a powerful way to reduce overdose deaths and connect people who use drugs with trusted treatment providers. More than 120 such sites are open in nearly a dozen countries. Although people consume potentially fatal drugs in these spaces, not one has ever seen a single overdose death, according to the Drug Policy Alliance.

This program covers an array of supplies, including clean needles, which serve a comparable purpose for heroin users as pipes for meth and crack users.

But headlines and outrage focused on crack – long connected in the public consciousness with Black Americans and violent crime. That focus undoubtedly wasn’t about the danger of the drug but about stoking false associations and fears. And these alarmist tweets and headlines obscured a far more important question. The nation should have been asking: Will the Biden administration’s program ultimately reduce suffering, avoid illness and save lives?

A 2019 report found that when crack users in Mexico City were given safe smoking kits, they became less likely to use pipes made from toxic materials or to share paraphernalia. Winnipeg, Canada, was distributing safe smoking kits in 2004, and a study published in 2015 found that the program contributed to a drop in Hepatitis C transmission.

The “just say no” approach has been a failure. In the decades since the war on

drugs began, the number of people who die annually from drug overdoses has grown by a mind-boggling 1237%. Harm reduction services help people stop using drugs by enabling them to build trusting relationships with treatment providers and find the daily stability they need to consider treatment.

### Safe spaces, safe equipment

Some critics opine that harm reduction strategies will encourage more people to begin using – but the evidence indicates that this is not happening in communities embracing harm reduction. A study of one of the first overdose prevention sites in Vancouver, Canada, found that overdose rates in the neighborhood dropped 35%, compared with 9.3% in the rest of the city.

Drug use is driven by social, emotional and economic factors. It does not appear that people are encouraged to use by safe spaces or safe equipment.

The alternative to decades of failed policies can be found in dedicating resources to such things as smoking safety kits, safe injection sites and other public health-based strategies.

It’s time to chart a new way forward. Let’s not accede to overblown headlines and misinformation that will cost lives.

*Miriam Aroni Krinsky is the executive director and founder of Fair and Just Prosecution and is a former federal prosecutor.*