



REPORT OF INVESTIGATION

Title (Name and address): Samuel R. Berger [redacted] b2		Type of Investigation: Criminal	Type of Report: <input checked="" type="checkbox"/> Final <input type="checkbox"/> Supplemental
Social Security Number: NA		<input type="checkbox"/> Employee	<input checked="" type="checkbox"/> Non-employee
<input type="checkbox"/> Former Employee	Date of Birth: NA	Date Entered on Duty: NA	Position and Grade: NA
Post of Duty: NA	Organization and Office: NA		
Period of Investigation: October 2003 to October 2005			

BASIS FOR INVESTIGATION

The Office of Investigations (OI), Office of Inspector General (OIG), received information that Samuel R. Berger, former National Security Advisor, removed classified documents from the National Archives and Records Administration (NARA), constituting a violation of criminal law. The investigation pertaining to Mr. Berger's actions was referred to the Department of Justice (DOJ) per the Inspector General (IG) Act (as amended) and 18 U.S.C. § 402a – Coordination of counterintelligence activities. The DOJ and Federal Bureau of Investigation (FBI), with the assistance of the OIG, conducted the criminal investigation involving Mr. Berger.

The NARA OI investigated and is reporting on the activities addressing NARA's responsibilities concerning Presidential records and Mr. Berger's access to those records.

ALLEGED VIOLATIONS

1. [redacted]
2. [redacted] b6, b7c
3. [redacted]

Distribution	No.	Case Number:	Signature of Special Agent Making Report:
Office of Inspector General	1	[redacted] b2	
National Archives and Records Administration	2	Signature of Person Examining Report:	
Assistant U.S. Attorney	1		
Other (Specify):		Title: Assistant Inspector General for Investigations	Office(City): College Park, MD
		Division Office: Headquarters	Date of Report: 11/4/05

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[REDACTED]
Archives employees contend Mr. Berger did not remove documents to disburse their contents and/or commit espionage. [REDACTED]
[REDACTED]

b2,
b5,
b6,
b7C

INVESTIGATIVE SUMMARY

EXHIBIT

The Presidential Records Act (PRA) of 1978 and Executive Order 13233 govern the official records of Presidents and Vice Presidents created or received after January 20, 1981. Upon the conclusion of a President's term of office, or if a President serves consecutive terms upon the conclusion of the last term, the Archivist of the United States shall assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President. The Archivist shall deposit all such Presidential records in a Presidential archival depository or another archival facility operated by the United States.

The William J. Clinton Presidential material was transferred to the legal custody of NARA at the end of President Clinton's administration. The [REDACTED] at NARA is responsible for Presidential records. [REDACTED]

b6, b7C

[REDACTED]. The majority of the Clinton Presidential records were sent to the Clinton Project [now the William J. Clinton Presidential Library] in Little Rock, AR. [REDACTED]

b2, b5

[REDACTED]. These documents designated as the "W" intelligence files, contain classified information [REDACTED] material.

On April 12, 2002, President Clinton signed a letter designating Mr. Berger and [REDACTED] as agents on his behalf to review relevant NSC documents regarding Osama Bin Laden/Al Qaeda, Sudan, and Presidential correspondence from or to Omar Bashir, contained in the Clinton Presidential records. This request was made to facilitate Mr. Berger's testimony to the Joint Intelligence Committee (Graham-Goss Commission). This request was forwarded by [REDACTED], [REDACTED] [REDACTED], in a letter dated April 15, 2002.

b6, b7C

The NSC's [REDACTED] sent a letter to [REDACTED], dated May 14, 2002, designating the guidelines for access to these highly sensitive records. The letter stated Mr. Berger was the only person from the Clinton administration who had been designated and had all clearances required for access

b6, b7C

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to the most sensitive "W" files. [redacted] said [redacted] repeatedly briefed Mr. Berger that he was not allowed to remove any documentation from NARA. The letter also stated notes may be taken but must be retained by NARA staff and forwarded to the NSC for a classification review and appropriate marking. [redacted] said the NSC told [redacted] Mr. Berger was made aware of this requirement.

b6, b7C

[redacted]

b2, b5

On May 30, 2002, Mr. Berger reviewed Clinton Presidential materials at Archives I (Washington, DC) for the purpose of preparing his testimony to the Graham-Goss Commission. Additionally, in response to requests from the National Commission on Terrorist Attacks Upon the United States (hereinafter the 9/11 Commission), Mr. Berger conducted a constitutional Presidential Privilege review of Clinton Presidential materials at Archives I on three occasions: July, September, and October 2003. On all of these visits, Mr. Berger reviewed documents including [redacted] material.

b2, b6, b7C

Under the PRA the Congressional committee agreed the incumbent President would request the records and turn them over to the 9/11 Commission. This was facilitated through Executive Office of the President (EOP) requests. According to [redacted], the established protocol was for NARA to conduct a review, at Archives I and at the Clinton Project, and determine which Clinton Presidential records were responsive to the EOP requests, with [redacted] making the final call on responsiveness for NARA. Clinton representatives reviewed the documents for privilege and discussed responsiveness with [redacted]. After the reviews, copies were sent to the NSC for the representative of the incumbent President to review before forwarding to the 9/11 Commission.

b2, b6, b7C

On all four visits to Archives I, Mr. Berger signed in as a visitor and was escorted to [redacted] office, room [redacted], where he conducted his review of documents including [redacted] material. Mr. Berger was allowed to bring personal items into the room including his portfolio and cell phone. [redacted]

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[redacted]

pursuant to DCID 6/9: Physical Security

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Standards for Sensitive Compartmented Information Facilities, Section 2.3.2.

[REDACTED]

b2, b6, b7C

Some NARA employees believed room [REDACTED] was "cleared" as it contained [REDACTED]

[REDACTED] acknowledged [REDACTED] received a [REDACTED] classified document from Little Rock, AR, [REDACTED], in response to an EOP request.

b2, b5, b6, b7C

[REDACTED]. According to NARA documentation, [REDACTED] since about 1993. During this investigation, this [REDACTED].

The Director of the CIA is the overall authority [REDACTED]. [REDACTED] material is governed by the DCIDs. According to CIA officials, NARA can make agency specific regulations requiring additional security measures as long as they exceed the requirements of the DCIDs.. [REDACTED]

b2, b6, b7C

[REDACTED] CIA Office of Security, advised that the CIA Director delegates their authority to the Senior Official of the Intelligence Community (SOIC). While some agencies have a designated SOIC, NARA does not. Therefore, NARA falls under the Director of Security, CIA, SOIC. Waivers to DCIDs have to be signed by the SOIC.

On May 30, 2002, Mr. Berger was provided original NSC numbered documents and original Staff Member Office Files (SMOFs). [REDACTED] indicated Mr. Berger did not have many questions for [REDACTED] as this review was in preparation for his testimony. [REDACTED] said Mr. Berger left his notes at NARA, and requested these notes be sent to the NSC for classification review.

b2, b6, b7C

On July 18, 2003, Mr. Berger was provided original NSC numbered documents and original SMOFs. [REDACTED] and Mr. Berger were sitting at the table in [REDACTED] office going over the documents during most of this visit. They were discussing responsiveness to the EOP2 request. Mr. Berger said he took several phone calls on this visit where [REDACTED] stepped out of [REDACTED] office.

b2, b6, b7C

Mr. Berger said he realized he was not going to be able to reconstruct in detail all the documents he had reviewed, so he needed to take his notes with him, about ten to

b2, b6, b7C

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twenty pages. Mr. Berger said at the end of the day, he folded his notes and put them in his suit pocket. Mr. Berger said he took the opportunity to do this when [redacted] was out of [redacted] office.

b6, b7C

[redacted] came to Archives I in July 2003 to assist Mr. Berger by reviewing Presidential records sent to Archives I from the Clinton Project in response to EOP2. [redacted] visit was separate from Mr. Berger's visit in July. [redacted] verified [redacted] reviewed documents classified to the [redacted] in [redacted] office.

b2, b6, b7C

[redacted] said Mr. Berger's handling of the documents on July 18, 2003, caused archival concerns in maintaining provenance. [redacted] said [redacted] and Mr. Berger [redacted] and Mr. Berger would pull out other documents. [redacted], therefore the documents became disorganized. [redacted] said Mr. Berger requested that on his next visit he preferred to see the documents in chronological order. [redacted] suggested to the [redacted] that on Mr. Berger's next visit they provide him with copies to allow for placement of the documents in chronological order.

b2, b6, b7C

On September 2, 2003, Mr. Berger was provided original NSC numbered documents and copies of SMOFs for review in response to EOP3. [redacted] said Mr. Berger was also provided a document faxed from the Clinton Project to Archives I on July 22, 2003.

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[redacted] said [redacted] did not spend as much direct time with Mr. Berger as [redacted] had on the previous visit. According to [redacted], during this visit, Mr. Berger asked [redacted] to leave [redacted] office several times so he could talk privately on the phone. [redacted] said [redacted] left as [redacted] trusted Mr. Berger and was aware that Mr. Berger, as National Security Advisor, had generated most of the documents [redacted] was reviewing. However, [redacted] said [redacted] did not like leaving [redacted] office because [redacted] works with sensitive items [redacted] and did not feel comfortable leaving Mr. Berger alone with this material. [redacted] said [redacted] knew of no statutory authority that allowed [redacted] to refuse to leave the room.

b2, b5, b6, b7C

Mr. Berger said he would say: "Sorry, I have to make a private phone call," and [redacted] would take this as [redacted] cue to leave. Mr. Berger said he told [redacted] he was happy to go outside [redacted] office to take the calls. Mr. Berger said instead [redacted] offered to leave [redacted] office while he was on the phone. Mr. Berger said once this pattern was established, he thought the offer for [redacted] to leave [redacted] office was "standing." [redacted] denied there was any such agreement.

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On September 4, 5, and 8, 2003, [redacted], formerly of President Clinton's National Security staff, reviewed classified documents responsive to EOP3 [redacted]. [redacted] said [redacted] inquired as to why [redacted] was not allowed to conduct the review in [redacted] office. [redacted] said [redacted] advised [redacted] [redacted] had other matters to attend to and that [redacted] staff would assist him.

[redacted]
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Next, [redacted] prepared for Mr. Berger's return. According to [redacted], the incident on September 2, 2003, in which [redacted] thought [redacted] witnessed Mr. Berger with something in his sock was in [redacted] thoughts as [redacted] prepared for Mr. Berger's next visit. [redacted] said they decided to hand number the documents provided to Mr. Berger on the back of each document as a means of controlling the documents. [redacted] said they numbered documents to feel secure that Mr. Berger was not removing documents. [redacted] said they numbered these documents themselves, without consultation with NARA General Counsel, Security, management, the OIG, or law enforcement. However, [redacted] said [redacted] told [redacted] of their intention to number the documents (by September 28th at the latest). [redacted] said [redacted] thought it was a good idea.

[redacted]
b2, b6, b7C

Mr. Berger next came to Archives I on October 2, 2003. He reviewed copies of NSC numbered documents, copies of SMOFs, and hard copies of emails, including those which [redacted] had reviewed, in response to EOP3. [redacted] said [redacted] told Mr. Berger [redacted] was not leaving [redacted] office for him to take private calls. [redacted] said [redacted] was working at [redacted] desk while Mr. Berger reviewed the documents. [redacted] also recounted that Mr. Berger made numerous visits to the men's room.

[redacted]
b2, b6, b7C

[redacted] said on this visit Mr. Berger was provided one file folder of documents at a time. Once Mr. Berger finished reviewing a file folder, [redacted] said they reviewed the hand numbering to ensure all the documents were returned. [redacted] said in the afternoon [redacted] was returning a file folder to a [redacted] member during one of Mr. Berger's many visit's to the men's room. The [redacted] member said they discovered a numbered document (#217) was missing from a file folder Mr. Berger had reviewed. [redacted] said they printed another copy of the document which was missing. [redacted] said [redacted] gave this second copy (#217) to Mr. Berger. [redacted] said [redacted] told Mr. Berger [redacted] had a way of "legally controlling" the emails. [redacted] said [redacted] emphasized to Mr. Berger that the document was numbered and apparently when he was provided the emails he had not been provided this one. [redacted] said Mr. Berger indicated he was sure he had seen this email and asked [redacted] if [redacted] remembered seeing this email. [redacted] said [redacted] told Mr. Berger [redacted] had seen similar information but that this unique email number was missing.

[redacted]
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Mr. Berger said he saw a version of the Millennium Alert After Action Review

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(MAAAR) and now had doubts that what he removed from Archives I in September was the final report. He said at this point, he wanted to track the evolution of the MAAAR. Mr. Berger said he slid the document (#217) under his portfolio.

b2, b6, b7C

Mr. Berger said that when [redacted] told him there was a missing document "the bomb should have burst in the air, but obviously it did not." Mr. Berger said when [redacted] gave him another copy of the document (#217), he slid this document under his portfolio also. Mr. Berger said [redacted] did not ask for it back. Mr. Berger said if [redacted] had asked for the document back, it would have "triggered" a decision for him to give the documents back.

b2, b6, b7C

According to [redacted], about five minutes later, Mr. Berger told [redacted] he had to make a private phone call and [redacted] had to leave [redacted] office. [redacted] said [redacted] was uncomfortable with this request but left [redacted] office. [redacted] said [redacted] stepped over to the desk outside [redacted] office that had a phone on it with [redacted] line accessible. [redacted] said [redacted] noticed [redacted] phone line was not lit. According to [redacted], [redacted] opened [redacted] office door at which point Mr. Berger "mowed" [redacted] down on the way to the men's room, a location from which he had recently returned.

b2, b6, b7C

Later that evening, Mr. Berger took a break to go outside. No one escorted him out of Archives I. In total, during this visit he removed four documents, all versions of the MAAAR. Mr. Berger said he left the building with all four documents (#150, #323, and two copies of #217) in his pockets. [redacted] Mr. Berger said if [redacted] had escorted him out of the building, he would have felt less confident that no one was in the area and more concerned someone might be watching his actions.

b2, b6, b7C

Mr. Berger said he did not want to take the risk of bringing the documents back in the building and the possibility [redacted] might notice something unusual. Mr. Berger said he placed the documents under a trailer in an accessible construction area outside Archives I. He returned to [redacted] office to finish his review. He said he removed the notes, about fifteen pages, near the end of the day. Mr. Berger said he then left Archives I, retrieved the documents from the construction area, and returned to his office.

b2, b6, b7C

[redacted] was working on other projects, therefore, all the documents were not checked before Mr. Berger left. Also, the folders were only given to staff when Mr. Berger went to the men's room. After Mr. Berger left, [redacted] said [redacted] and [redacted] returned the documents [redacted]. [redacted] said the folders were not checked at this time to determine if any additional hand numbered documents were missing as it was late, other staff had already left for the day, and they had no reason

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to believe Mr. Berger removed documents. At that time, [redacted] said they believed the email (#217) might not have been provided to Mr. Berger initially.

The first thing the next morning, Friday, October 3, 2003, the [redacted] said they began verifying that all documents provided to Mr. Berger on October 2, 2003, were present. [redacted] stated four numbered, classified, emails were missing from those provided to Mr. Berger on October 2, 2003. According to [redacted], all the missing documents had the MAAAR as an attachment.

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[redacted]

b2, b6, b7C

Upon discovery that classified documents were missing, [redacted] contacted [redacted], as [redacted] supervisor, [redacted], was on travel. [redacted] had also been working with the [redacted] on the production of the EOP requests [redacted] traveled to Archives I where [redacted] and [redacted] discussed what action should be taken. [redacted] said [redacted] stated the normal reporting process would be notification of the NSC as the equity holder and [redacted] may have raised the issue of who in the agency should be notified, mentioning the Archivist of the United States, NARA security, and the Inspector General. [redacted] said [redacted] called [redacted], to report the matter and seek guidance on how to proceed but [redacted] was on travel. [redacted] said [redacted] asked [redacted] if [redacted] contacted [redacted] boss, [redacted]. [redacted] said [redacted] told [redacted] [redacted] had tried but [redacted] was not available.

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The next day, Saturday, October 4, 2003, [redacted] said [redacted] talked with [redacted] who asked that [redacted] and [redacted] come up with a plan to handle this matter and report back to [redacted]. [redacted] said [redacted] received a call from [redacted] asking [redacted] to contact [redacted]. [redacted] said they were treating this incident as an unauthorized removal of classified documents, a breach of National Security Information. According to [redacted], it was [redacted] job to handle security violations. [redacted] said [redacted] was acting at [redacted] direction and if [redacted] had asked [redacted] to work with the OIG [redacted] would have. [redacted] stated NARA personnel conducted an inquiry per the NARA ISM.

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[redacted] stated [redacted] led the investigation [redacted] expanded that [redacted]

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was on [redacted] leadership team, [redacted] had expertise in Archives' matters, and [redacted] was the [redacted], [redacted]. [redacted] said [redacted] was told Mr. Berger removed only copies of documents. [redacted] said this did not effect [redacted] belief this was a serious matter.

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[redacted] said [redacted] told [redacted] [redacted] asked [redacted] to head up this investigation. It was clear to [redacted] and [redacted] that [redacted] was not in charge.

b2, b6, b7C

[redacted] considered [redacted] to be in charge of the incident even though [redacted] was a [redacted] and [redacted] was [redacted]. [redacted] believed [redacted] was only in charge until [redacted] was briefed. [redacted] said that [redacted], [redacted], and [redacted] all provided input on how to proceed.

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[redacted] said [redacted] stated [redacted] was stepping away from the decision making in this matter. [redacted] said [redacted] kept the lead and decisions on this matter separate from [redacted] because [redacted] was a [redacted]. [redacted] said [redacted] made this clear to [redacted] and [redacted]; and they indicated they agreed with [redacted] decision. [redacted] believed this was clear to [redacted] because [redacted] never said [redacted] had to run their ideas by [redacted]. [redacted] said, in [redacted] view, [redacted] was leading the inquiry [redacted].

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[redacted] said [redacted] considered this incident to be a potential crime and the unauthorized removal of classified documents should be reported to the FBI. [redacted] said [redacted] believed the FBI might want to look into this matter due to the level of classified materials involved. [redacted] said either [redacted] or [redacted] suggested the FBI be contacted. However, [redacted] said [redacted] never contacted the FBI and could not explain why the FBI was never contacted. [redacted] said [redacted] recalled [redacted] mentioning something about the FBI. [redacted] said [redacted] did not recall anyone mentioning contacting the FBI.

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That afternoon, [redacted], [redacted], and [redacted] met at Archives I. [redacted] said [redacted] advised them the normal procedures were to recover the documents as quickly as possible and to report the incident to the equity holder. [redacted], [redacted], and [redacted] decided to contact Mr. Berger and ask [redacted] to return the documents. [redacted] said they ran the idea of calling Mr. Berger by [redacted] and [redacted] authorized the contact. [redacted] said [redacted] indicated [redacted] just wanted to do what was right and deferred to [redacted]. [redacted] said while [redacted] was not in charge, [redacted] wanted to be informed on how this matter was proceeding.

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[redacted] said

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they decided to contact [redacted] as Mr. Berger would be more responsive to [redacted]. [redacted] said [redacted], and [redacted] called [redacted], on speaker phone, and told [redacted] copies of emails were missing from the material Mr. Berger reviewed. They asked [redacted] to call Mr. Berger. [redacted] said at some point during the day, they explained how they had numbered the documents and now they were missing. [redacted] said they told [redacted] if Mr. Berger took the documents by mistake then gave them back it would be reported as an inadvertent removal. [redacted] said it was clear to [redacted] NARA intended on reporting this incident regardless.

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[redacted] said [redacted] called Mr. Berger who told [redacted] that he did not think he had any documents. [redacted] said [redacted] called [redacted] (others were possibly on the line) and told [redacted] Mr. Berger's response. [redacted] said [redacted] was instructed to ask Mr. Berger a specific question. [redacted] said [redacted] suggested they contact Mr. Berger directly as asking a question through [redacted] was not efficient.

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[redacted] said [redacted] called Mr. Berger and advised him NARA was treating this matter as a security infraction and [redacted] was going to report this to the NSC. According to [redacted], Mr. Berger said they were mistaken and that he gave the documents back to [redacted] assistant. [redacted] said they asked Mr. Berger to see if he could find any documents.

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That evening, after [redacted] left Archives I, [redacted] said [redacted] took a call from Mr. Berger. According to [redacted], Mr. Berger asked if one of the misplaced emails was the one [redacted] had mentioned was missing and had given to him individually; and if the document that was missing contained information that was in several emails. [redacted] confirmed all the emails that were missing contained similar information.

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[redacted] said around 8:00 p.m., Mr. Berger called [redacted] cell phone and asked if [redacted] could talk, as he wanted to explain something. [redacted] said [redacted] was at [redacted] and could not speak then but agreed to call him later that night.

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Near midnight, [redacted] called Mr. Berger who said he found two documents. [redacted] advised Mr. Berger NARA would make arrangements to pick the documents up in the morning.

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On Sunday, October 5, 2003, [redacted] said [redacted] informed [redacted] of the developments and [redacted] recommended [redacted] ask Mr. Berger to search his office again. [redacted] said [redacted] called Mr. Berger and asked him to search his office. [redacted] said Mr. Berger called back to say he was unable to locate any additional documents and it was possible that documents could have been disposed of in his

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office trash. [redacted] said [redacted] recommended to Mr. Berger he search his trash.

Later that morning, [redacted] and [redacted] picked-up documents from Mr. Berger. [redacted] said one document was an email which they had numbered by hand (#323) and the other was a facsimile of a textual document sent [redacted]. [redacted] identified the document from [redacted] as one Mr. Berger would have reviewed on September 2, 2003, not October 2, 2003, as thought. [redacted] said this was another copy of the MAAAR. [redacted] said they realized the implications that Mr. Berger took copies of documents on two separate visits (September 2, 2003 and October 2, 2003) and that the missing items all included the MAAAR.

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[redacted] said that afternoon [redacted] and [redacted] called [redacted] and told [redacted] what Mr. Berger had provided and the significance of the dates Mr. Berger reviewed the documents. [redacted] said [redacted] told [redacted] had to talk to Mr. Berger. [redacted] said [redacted] and [redacted] spoke with Mr. Berger to explain that one of the documents he returned was from his visit on September 2, 2003, and that documents removed on October 2, 2003, were still missing.

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According to [redacted], later that day, [redacted] called and told [redacted] Mr. Berger called [redacted] and said he [Mr. Berger] may have been incorrect and took the textual document on September 2, 2003.

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[redacted] said that evening, after talking with [redacted] and [redacted], a decision was made to contact the NSC. [redacted] said later that evening [redacted] spoke with the NSC's [redacted]. [redacted] gave him a short briefing and they set up a meeting for Monday, October 6, 2003. [redacted] said [redacted] also called [redacted], and gave [redacted] a short briefing and asked [redacted] to inform [redacted].

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According to [redacted], on October 6, 2003, the NSC's [redacted] met with [redacted] and [redacted] and advised [redacted] should formally report this to [redacted]. [redacted] said on October 6, 2003, [redacted] briefed [redacted]. [redacted] said that on October 6, 2003, [redacted] removed [redacted] by delegating [redacted] to handle this matter.

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[redacted] said [redacted] recounted what [redacted] knew of the matter and stressed that [redacted] wanted [redacted] to manage the situation so that [redacted] was not directly involved. [redacted] said [redacted] asked [redacted] to review NARA policies to ensure this did not happen again. [redacted] said [redacted] was now in charge of an issue [redacted] saw as two fold. One issue being the change in procedures that was required concerning

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██████████ said on October 10, 2003, ██████████ met with ██████████, ██████████, ██████████, and ██████████, ██████████. ██████████ said ██████████ shared potentially applicable statutes and executive orders at this meeting. ██████████ said at this meeting they concurred this could be a criminal matter and decided to report this to the OIG instead of going directly to the DOJ.

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■

The Inspector General (IG) was briefed on this matter on Friday, October 10, 2003. This same date, OI investigators along with ██████████, retrieved documents from Mr. Berger, at his residence, at the request of Mr. Berger's attorney. ██████████ said the documents appeared to be Mr. Berger's hand written notes. These documents were secured ██████████.

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██████████ was on travel over the holiday weekend. On Tuesday, October 14, 2003, the OI gathered information. On this date, an attorney representing ██████████ contacted NARA stating ██████████ had documents to turn over to NARA. These documents, notes taken concerning documents reviewed, were received by the OI and ██████████ and secured ██████████.

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On October 15 and 16, 2003, the IG briefed DOJ attorneys and the FBI on this matter. The DOJ accepted the criminal referral concerning Mr. Berger's actions. The FBI requested the OI stop all interviews of cleared ██████████ and any NARA employees with knowledge of the incident involving Mr. Berger. The OI obliged and at their request assisted the FBI in collecting evidence for the criminal investigation.

b6, b7C

On April 9, 2004, NARA's IG and the DOJ's IG met with the Assistant Attorney General, Criminal Division, and the DOJ attorneys to discuss reporting this matter to the 9/11 Commission. A decision was made that the DOJ would notify the 9/11 Commission.

On April 14, 2004, DOJ officials advised the OI they could conduct an investigation of NARA procedures as they related to Mr. Berger's visits, with requested limitations.

On April 1, 2005, Mr. Berger pled guilty to Unauthorized Removal and Retention of Classified Material. On September 8, 2005, Mr. Berger was sentenced to two years of probation, subsequent to pleading guilty. The Court ordered a \$25.00 special assessment, a fine of \$50,000, 100 hours of community service, and no access to any classified material for 3 years.

Case Title: Samuel R. Berger ██████████ b2 Case Number: ██████████ b2

OFFICIAL USE ONLY

Exhibit Number	Description
1	Interviews of [REDACTED] b6, b7C
2	Memo to clarify discrepancies in the preparation for review of documents
3	Interview of [REDACTED] b2
4	Director of Central Intelligence Directive 6/9
5	Interview of [REDACTED] b6, b7C
6	[REDACTED] b2
7	Interview of Samuel Berger, dated July 8, 2005
8	Interview of [REDACTED] b6, b7C
9	[REDACTED], dated September 2, 2003 b6, b7C
10	Interview of [REDACTED] b6, b7C
11	Interview of [REDACTED] b6, b7C
12	Interview of [REDACTED] b6, b7C
13	Interview of [REDACTED] b6, b7C
14	[REDACTED] b2
15	Interview of [REDACTED] b6, b7C
16	Interview of [REDACTED] b6, b7C
17	Memorandum of Verification, dated June 2005

Case Number: [REDACTED] b2	Case Title: Samuel R. Berger [REDACTED] b2
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MEMORANDUM OF INTERVIEW OR ACTIVITY

Type of Activity: <input checked="" type="checkbox"/> Personal Interview <input type="checkbox"/> Telephone Interview <input type="checkbox"/> Records Review <input type="checkbox"/> Other	Date and Time: May 31 – June 2, 2005
[REDACTED] b6, b7C [REDACTED] - to clarify discrepancies in the preparation for review of documents by Sandy Berger	Conducted by: [REDACTED] b6, b7C
	Location of Interview/Activity: Archives I, Washington, DC

Subject Matter/Remarks

[REDACTED] were interviewed together to get a complete understanding of how the documents were identified, pulled and prepared for review by Samuel R. Berger. This information was gathered after final interviews of [REDACTED]. Therefore, this information is deemed more accurate. The following information was deemed unclassified by the National Security Council.

The Clinton Presidential "W" files consisted of [REDACTED] federal record center boxes (another one was added sometime after October 2, 2003.) The materials in these boxes were either National Security Council (NSC) numbered documents or Staff Member Office Files (SMOFs), which were segregated. A box usually belonged to one person or a directorate. [REDACTED] These were the only files contained in the boxes with the exception of "overflow" files that came over from the administration as they were cleaning areas after the change of administrations. These files would be filled in folders but did not belong to an individual. [REDACTED]

The requested materials for all of Mr. Berger's reviews were narrowed by date, nothing prior to 1998, and subject matter, the Middle East. The best [REDACTED] could estimate, since [REDACTED] was not involved in the May 2002 search for materials, was that about [REDACTED] boxes from the universe of "W" files were searched. Of those, about one third were NSC numbered documents and the other two thirds were SMOFs.

Mr. Berger was provided [REDACTED] material on all his visits to NARA.

Case Number: [REDACTED] b2	Case Title: Samuel R. Berger [REDACTED] b2
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ENCLOSURE(2)

REPORT OF INVESTIGATION

- 4. [REDACTED] b6, b7C
- 5. [REDACTED]
- 6. [REDACTED]

RESULTS OF INVESTIGATION

The investigation substantiated that Mr. Berger unlawfully removed and retained classified documents from NARA. On September 8, 2005, Mr. Berger was sentenced to two years of probation, subsequent to pleading guilty to Unauthorized Removal and Retention of Classified Material, a misdemeanor. The court ordered a \$25.00 special assessment, a fine of \$50,000, 100 hours of community service, and no access to any classified material for 3 years.

This investigation substantiated that [REDACTED] facilitated access to [REDACTED] on at least five occasions. [REDACTED] documents were provided to Mr. Berger on four occasions. [REDACTED] documents were provided to [REDACTED], on one occasion. b2, b5, b6, b7C

[REDACTED] b2, b6, b7C

On September 2, 2003, there was a suspicion Mr. Berger may have removed classified material from the Archives. Neither [REDACTED] nor [REDACTED] reported this suspicion to any law enforcement entity. [REDACTED] b6, b7C

On October 3, 2003, [REDACTED] verified Mr. Berger removed classified material from NARA. Neither [REDACTED] nor [REDACTED] reported this incident to any law enforcement entity before conducting an investigation of the incident. b6, b7C

[REDACTED] conducted an investigation, including contacting the subject of the investigation, [REDACTED]. b6, b7

[REDACTED] b6, b7C

Case Title: Samuel R. Berger [REDACTED] b2

Case Number: [REDACTED] b2

OFFICIAL USE ONLY

MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

Then they turned to the documents of the day. This time, the emails were organized. He recalled being handed the documents individually, not in a folder. About mid-day, Mr. Berger came across another version of the MAAR. In October, Mr. Berger saw a version of the MAAR and now had doubts that what he removed in September was the final report. At this point, he wanted to track the evolution of the MAAR. He slid the document under his portfolio.

██████████ told Mr. Berger there was a missing document, one that ██████████ could not find. Mr. Berger said at this point "the bomb should have burst in the air, but obviously it did not." However, Mr. Berger did apprehend the consequences of what ██████████ said. Mr. Berger disassembled first, then he asked ██████████ if the document could have been misfiled. ██████████ said "No." Mr. Berger asked if they had not produced this document already. ██████████ said it was a different version.

b6,
b7C

██████████ gave him another copy of the document. Mr. Berger slid this document under his portfolio also. ██████████ did not ask for it back. If ██████████ had asked for it back, it would have "triggered" a decision for him to give the documents back.

b6,
b7C

In total, he removed four documents, all versions of the MAAR. Mr. Berger does not recall if he placed all the documents on his person at once or at different times. He did not put the documents on his person until he was alone. He removed the notes, about fifteen pages, towards the end of the day.

Mr. Berger had a long day and wanted to go home around 6 p.m. ██████████ wanted him to finish the review and said they only had about an hours worth of work left. He understood ██████████ was getting pressure from the White House to provide a response so he agreed. ██████████ suggested he take a walk and come back and finish up. Mr. Berger left the building with all the documents he put in his pockets. He was aware of the risk he was taking, but he also knew ██████████

b2,
b6, b7C

Mr. Berger exited the Archives on to Pennsylvania Avenue, the north entrance. It was dark. He did not want to run the risk of bringing the documents back in the building risking the possibility ██████████ might notice something unusual. He headed towards a construction area on Ninth Street. Mr. Berger looked up and down the street, up into the windows of the Archives and the DOJ, and did not see anyone. He removed the documents from his pockets, folded the notes in a "V" shape and inserted the documents in the center. He walked inside the construction fence and slid the documents under a trailer.

b6,
b7C

Mr. Berger came back into the building without fearing the documents might slip out of his pockets or that ██████████ and ██████████ staff would notice that his pockets were bulging. ██████████

b2,
b6, b7C

If Mr. Berger had been aware ██████████ staff was tracking the documents he was provided, he would not have removed them. He also said that if staff had escorted him out of the building for his walk, he would have felt less confident that no one was in the area and someone might be watching his actions.

b6,
b7C

Case Number: ██████████ b2	Case Title: Samuel R. Berger ██████████ b2
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MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

Mr. Berger does not recall reviewing his notes or [redacted] notes on this visit. b6, b7C

It is possible that [redacted], stopped by to introduce [redacted] but Mr. Berger did not have a vivid memory of this. b6, b7C

Mr. Berger was trying to balance his review carefully but was also trying to be expeditious. He skipped meals and drank diet cokes. He did go to the restroom, possibly with documents in his pockets, but did not discard documents there or rearrange them on his person. b6, b7C

On this visit, [redacted]

[redacted] did not tell Mr. Berger that [redacted] had numbered the documents or that [redacted] had a way of tracking these records. Mr. Berger said he would have "picked-up" on that comment. He said "I may be stupid, but I am not self destructive." As he left for the day between 7 and 7:30 p.m., [redacted] asked Mr. Berger [redacted] He totally missed that signal later realizing it was [redacted] subtle way to ask him if he removed documents. Mr. Berger believed no one knew he removed documents. b6, b7C

Mr. Berger left the building, retrieved the documents and notes from the construction area, and returned to his office.

On **October 4, 2003**, late in the afternoon, [redacted] called Mr. Berger to tell him [redacted] called from the Archives. Mr. Berger was aware [redacted] was the [redacted] [redacted] said documents were missing after Mr. Berger's visit on October 2, 2003. Mr. Berger panicked because he realized he was caught. Mr. Berger lied to [redacted] telling [redacted] he did not take the documents. b6, b7C

Mr. Berger remembers next calling [redacted] at [redacted] office. He knew it was not a good sign [redacted] was there on a Saturday. [redacted] described the documents stating there were four copies of three documents missing. Mr. Berger asked [redacted] if the four documents they were missing were copies of the MAAR. He told [redacted] he would see if he accidentally took them. Mr. Berger was agitated because he realized he was caught. b6, b7C

[redacted] called Mr. Berger and said "I hope you can find them because if not, we have to refer this to the NSC's [redacted]." [redacted] did not say what would be done if Mr. Berger returned the documents. When asked again, Mr. Berger became unsure whether [redacted] said this to him. However, he was sure the source of the statement was [redacted] asked Mr. Berger to go to his office to see if he could find the documents. b5, b6, b7C

Mr. Berger drove to his office late that afternoon. On the night of October 2, 2003, he had destroyed, cut into small pieces, three of the four documents. These were put in the trash. By Saturday, the trash had been picked-up. He tried to find the trash collector but had no luck. Neither [redacted] nor [redacted] offered to help him look through the trash. b6, b7C

Case Number: [redacted] b2	Case Title: Samuel R. Berger [redacted] b2
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MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

About 7 p.m., Mr. Berger called [REDACTED] and said "I think I solved the mystery." [REDACTED] said [REDACTED] was going into [REDACTED] and would call as soon as it was over. About 11:30 p.m., Mr. [REDACTED] called Mr. Berger. Mr. Berger told [REDACTED], "I found two documents but not the other two." [REDACTED] told him to get the documents from his office and lock them in the safe in his home. [REDACTED] was glad he found two but three were still missing. 9
b6,
b7c

Mr. Berger did not recall [REDACTED], unless [REDACTED] picked-up the documents. b6, b7c

On **October 5, 2003**, Mr. Berger recalled NARA staff picking up the two documents at his home. He understands that NARA staff recalled picking up the documents at his office. Mr. Berger was willing to accept that NARA staff came to his office.

There were additional conference calls. [REDACTED] was surprised when Mr. Berger returned the documents he removed in September. He knew he was caught, so he purported he must have removed the documents accidentally or inadvertently by sweeping them up with his documents. Later, Mr. Berger made a decision, on his own, to tell the truth. He said "I realized I was giving a benign explanation for what was not benign." Mr. Berger wanted to return everything he had taken. He realized he was returning documents he removed in September. He did not realize he returned more than they knew he removed. Mr. Berger was aware of the consequences but he knew returning the documents was the right thing to do. b6, b7c

Mr. Berger called [REDACTED] told [REDACTED] what happened, and asked what he should do. [REDACTED] told Mr. Berger to get a lawyer. Mr. Berger and [REDACTED] did not discuss this issue any further as they were [REDACTED] and knew it was better not to talk about this. b6,
b7c

Mr. Berger specifically recalled returning his notes to NARA staff at his home. He had flown in from New York, spent about an hour at his home, then flew back to New York to continue his travel. NARA staff never mentioned his notes. Mr. Berger believed if he had not returned them, they would never have known he removed his notes.

Mr. Berger does not know [REDACTED], nor did he have any contact with [REDACTED]. Mr. Berger had not met [REDACTED] prior to these visits to the Archives. Additionally, he did not contact the NSC on this matter. b6,
b7c

There were not any handwritten notes on the documents Mr. Berger removed from the Archives. Mr. Berger did not believe there was unique information in the three documents he destroyed. Mr. Berger never made any copies of these documents.

Mr. Berger said as a general point, he has dealt with classified information for twelve years. Some documents are sensitive and some are not super sensitive. This may not have anything to do with the documents classification. Other documents he reviewed had more sensitive information in them such as the Presidential Findings. He had seen most of the information in the MAAR disclosed in the press. He substituted his sense of sensitivity instead of thinking of classification. The MAAR did not involve sources and methods. It was a policy document.

Case Number: [REDACTED] <i>v2</i>	Case Title: Samuel R. Berger [REDACTED] <i>b2</i>
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MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

Some of the notes he removed did have information about the Presidential Findings. This was the authority from the President for actions to be taken.

██████████ had no reason to believe he was not acting in an appropriate manner. Mr. Berger said if there was always someone with him, he would not have taken any documents. After learning he was given special treatment by viewing the documents in ██████████ office, he suggested no exceptions to the rules should be given to former National Security Advisors or others. The Archives should thoroughly check people when they enter and exit the building. *b6, b7c*

Mr. Berger received enough phone calls which gave him the opportunity to remove the documents. He never sent ██████████ out of the room for the sole purpose of removing the documents. *b6, b7c*

The DOJ asked Mr. Berger if he removed any other documents from the Archives that we were not aware of to which Mr. Berger replied no.

Case Number: ██████████ <i>b2</i>	Case Title: Samuel R. Berger ██████████ <i>b2</i>
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b6, b7C

He walked out the door and into the hallway. The door closed. Shortly after it closed, started down the hall, he was stooped over right outside the doorway. He was fiddling with something white which looked to be a piece of paper or multiple pieces of paper. It appeared to be rolled around his ankle and underneath his pant leg, with a portion of the paper sticking out underneath.

ENCLOSURE(9)

MEMORANDUM OF INTERVIEW OR ACTIVITY

Type of Activity: <input type="checkbox"/> Personal Interview <input type="checkbox"/> Telephone Interview <input checked="" type="checkbox"/> Records Review <input type="checkbox"/> Other	Date and Time: June 2005
Activity or Interview of: Verification of Documents	Conducted by: <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> b6, b7C
	Location of Interview/Activity: Archives I, Washington, DC

Subject Matter/Remarks

This verification was done in [redacted] by [redacted]. This verification was done with the assistance of [redacted] and [redacted], in June 2005. Spreadsheets were generated in this verification process. They show the files identified as served on each visit and detailed notes.

b2,
b6,
b7C

First, we went through all the [redacted] boxes [redacted] and recorded the information from all the "out cards" placed in those boxes. (If the box was sealed we interpreted that to be indicative it had not been opened since it arrived.) The out-cards were different colors to distinguish between the out-cards left behind from the Clinton Administration.

b2,
b6, b7C

Next we went to the boxes which were provided to Sandy Berger on May 30, 2002. We verified each National Security Council (NSC) numbered package he was provided was still available as a package. We cannot verify each page is intact. The originals were unassembled, photo copied, and then reassembled in the same order by [redacted]. (This negated the need to look for torn corners still remaining in the packages.) Each package may contain multiple documents which may or may not be numbered sequentially. Some pages contain changes and only those pages are attached, not the full document.

b6, b7C

We verified each SMOF folder was still at NARA. We cannot verify the content of each folder. (We know documents had been removed from the folder titled [redacted] and others placed in the folder.) [redacted] has a file folder list but not a document level inventory. (Box 49 is the exception because the folder titles do not match the contents list.) The file folder lists reflecting the titles were with [redacted].

b2,
b6, b7C

For the documents Mr. Berger was served in May 2002, we verified all the NSC numbered packages and the Staff Member Office Files (SMOF) folders [redacted]. (Whole SMOF files were

b2,
b6, b7C

Case Number: <div style="background-color: black; width: 100%; height: 15px; margin-bottom: 5px;"></div> b2	Case Title: Samuel R. Berger [redacted] b2
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MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

2

provided to Mr. Berger but we believe [redacted] placed the documents [redacted] deemed non-responsive in an envelope in the back of the SMOF file.) For the May 2002 visit, no one reviewed documents pulled [redacted]. Mr. Berger took notes and left them with [redacted] to send to the NSC for classification. These were classified [redacted] [Note: Mr. Berger's notes reflected he reviewed a document similar to Millennium Alert After Action Report but not a copy of it. This document is believed to still be at NARA.]

b2,
b6,
b7C

For the documents Mr. Berger was served in July 2003 [EOP 2], we verified all NSC numbered packages and SMOF folders [redacted] [redacted]. We did not verify any page counts as Mr. Berger was provided with original NSC numbered packages and original SMOF folders (with the responsive documents tabbed).

b2, b6,
b7C

Mr. Berger took notes on a notepad he brought to NARA. Mr. Berger stated he removed notes when [redacted] left [redacted] office. He later provided these notes to [redacted]. Two pages of notes were turned over by [redacted] with an annotation indicating the notes were from Mr. Berger's July 2003 review. Two pages of notes remain [redacted] from this visit.

b2,
b6, b7C

For July 2003 [EOP 2], [redacted] reviewed the documents pulled at [redacted] and sent to [redacted]. Mr. Berger did not review these documents at this time.

b6,
b7C

For the documents Mr. Berger was served in September 2003 [EOP 3], we verified all the NSC numbered packages and SMOF folders [redacted]. The SMOF files were reviewed and responsive materials were tabbed. Copies were made of the tabbed materials and served to Mr. Berger. We compared the items served to Mr. Berger and the tabbed documents from the SMOF files to verify page counts. The NSC numbered documents were not verified for page count as originals were served.

b2, b6,
b7C

[redacted] had sent up copies of documents responsive to EOP 3 which Mr. Berger reviewed. At one point, after it was discovered Mr. Berger removed documents, [redacted] requested [redacted] send up the cover sheet of each document along with the page count of the document. [redacted] verified the page count provided by [redacted] was the same as the copy set provided to Mr. Berger. This was verified again during this review.

b6,
b7C

In September 2003, emails were provided to Mr. Berger (see notes under ADDITIONAL CLARIFICATION).

Mr. Berger said he removed notes on the September visit.

For the documents Mr. Berger was served in October 2003 [EOP 3], we verified the page count of the copies of the NSC numbered documents provided to Mr. Berger with the page count of the original NSC numbered documents. (Keep in mind there is no way to verify all the pages of the original NSC numbered documents were accurate as Mr. Berger had access to some or all of these originals in May 2002; and July and September 2003.)

Case Number: [redacted] b2	Case Title: Samuel R. Berger [redacted] b2
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MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

The documents were not in chronological order. Email #150 was placed at the front of the file so Mr. Berger would readily see it.

The SMOF files were reviewed and responsive materials were tabbed. Copies were made of the tabbed materials and served to Mr. Berger. For some reason (possibly the 9/11 commissions review) the tabs were removed. Instead, we compared the items served to Mr. Berger with the tabbed documents from the files to verify page counts.

This accounted for items numbered by [redacted] as 339 – 379. Items 1 – 338 are emails (see notes below). b2

ADDITIONAL CLARIFICATION:

The original recovered documents are [redacted] at NARA. The original recovered notes are at the FBI. b2

It was determined that it would be unrealistic to take Mr. Berger's notes and try to match them to each review. This is problematic as Mr. Berger's notes are not dated. His notes do not reference a document number or SMOF title, only a date. The boxes of what was produced on each visit do not exist as they did and it would take a considerable effort to recreate those. Also, Mr. Berger may have annotated in his words or from his recollection instead of taking exact notes off a document.

When pulling emails for EOP3, [redacted] used the search string provided by the NSC. [redacted] also searched by individual names and additional terms. [redacted] sat at the computer and reviewed the emails. If [redacted] thought they were non-responsive, they were never printed. [redacted] wrote the file number on the back of each email. After [redacted] printed the email, they were reviewed again for responsiveness, possibly by [redacted]. b6, b7C

To re-create this search for the email, [redacted] would have to determine the search terms and then filter out what [redacted] believed to be non-responsive. The remaining emails could be printed and compared to the emails provided to Mr. Berger for EOP3. Any emails for which there was not a duplicate copy could be reviewed again for responsiveness. This might give you emails which might be missing. This review would involve looking at a couple thousand emails. Currently, there is a problem with the email server and it is not accessible. b6, b7C

Case Number: [redacted] b2	Case Title: Samuel R. Berger [redacted] b2
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MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

At the end of the day, Mr. Berger tri-folded his notes and put them in his suit pocket. He took the opportunity to do this when [redacted] was out of [redacted] office due to him being on a private phone call. Mr. Berger said he did not recall being hesitant to remove his suit jacket during this visit. However, at some point, him not removing his jacket could have been related to the fact he placed the notes in his jacket. Mr. Berger knew he had to leave some notes behind so it would not be obvious he removed notes. He had been making notes and if he did not leave any behind it would have been noticeable. [Mr. Berger was surprised to learn he left only two pages of notes at the Archives.]

b6
b7C

The notes he removed were torn from the top of the note pad. Mr. Berger did not have time to sort through and determine which pages he wanted to take and which to leave. He said this was the scenario on all three occasions when he removed notes from the Archives. He was aware he would not have a complete set but some notes were better than none.

b6, b7C

Mr. Berger did not recall asking [redacted] to have the documents arranged chronologically on his next visit. However, he might have mentioned they were not arranged chronologically.

The Millennium Alert After Action Review (MAAR) should have been with the documents Mr. Berger was reviewing on this visit, but he does not recall seeing it. The Principals meeting was in June 2000 and invariably before these meetings a memo reflecting what they were going to talk about would have been circulated. The Principals consisted of the [redacted]

b6, b7C

[redacted], and others.

Mr. Berger did not remove any documents on this visit.

[redacted] came to the Archives in July 2003, to review documents in response to EOP 2. Mr. Berger did not ask [redacted] to look for the MAAR or any other specific documents.

b6, b7C

On **September 2, 2003**, Mr. Berger came to the Archives to review documents in response to EOP 3. Again, the boxes of materials were on a cart in [redacted] office between Mr. Berger's seat and the coffee table, or off to his side. [redacted] was working with Mr. Berger in the review of the documents. [redacted] spent about the same amount of time with Mr. Berger as [redacted] had on his visit in July 2003. Mr. Berger could not estimate a percentage on the amount of time. His recollection was that the documents were Xerox copies.

b6, b7C

Again, [redacted] always stepped out of [redacted] office when Mr. Berger made or received phone calls. [redacted] may have also stepped out to consult with [redacted] staff, for a minute, but he has no recollection of whether [redacted] staff would step in when [redacted] was out.

b6, b7C

Mr. Berger was not told anything about the process of the documents after his review and their presentation to the 9/11 Commission. It never occurred to Mr. Berger that by removing the MAAR from the Archives, it would not be provided to the 9/11 Commission. It was his assumption the box of documents he was reviewing at the Archives, or a copy of them, was going from the Archives to the

Case Number: [redacted] b2	Case Title: Samuel R. Berger [redacted] b2
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MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

White House. He did not assume that his removal of documents kept them from going forward to the 9/11 Commission. Mr. Berger knew he was not reviewing originals.

In late November and early December 1999, there were five to fifteen [terrorist] attacks. During this time, the Principals met every day for about an hour. They were operating more like a working group to get through the millennium. During this time, Ahmed Ressam was caught in Washington State with explosives to be used at the Los Angeles International Airport.

b6, b7C

After the millennium, Mr. Berger asked [redacted], to prepare the MAAR to determine where they were exposed and the vulnerabilities. There were fights over the jurisdiction of the funding. In March 2001, the Principals approved the recommendations and they were funded. After 9/11, the MAAR was widely discussed in the press. Mr. Berger commented the MAAR was not the most sensitive document he reviewed at the Archives.

Mr. Berger believed the MAAR was widely distributed among the FBI, the CIA, and the Department of State, for a total of about fifteen people. The MAAR was circulated three to four times to four or five people at each agency. All these agencies were subject to the EOP requests. [redacted] was going to testify concerning the MAAR.

b6, b7C

Mr. Berger read through the MAAR and took notes. There were twenty-nine topics for recommendations under four categories. He thought the 9/11 Commission would want to know what the Clinton Administration did to "fill in the holes." He was trying to move quickly through the document review. [redacted] had told him he still had three more days' worth of documents to review. Mr. Berger now says it was a foolish decision to take the MAAR and the notes out of the Archives.

b6, b7C

Mr. Berger believed this MAAR to be the final report. However, this would have been more likely if this version had a cover page/sheet. Mr. Berger did not return the MAAR to the pile that was returned to [redacted]. He did not have a recollection of putting other documents in this folder but he did have the intent to take the document. [There were two documents in what had been an empty folder after he removed the MAAR. [redacted] archivists did not move any documents into this folder.] He did not put any intentional markings on the documents. Mr. Berger did not recall receiving this folder separately from other folders. He did not recall seeing any other versions of the MAAR on this visit.

b6, b7C

During this visit, Mr. Berger received more calls as there were two op-ed articles out. One article stated Sudan offered Osama Bin Laden to the United States in 1996 but the Clinton Administration did not take the offer. Mr. Berger referred to this as an urban legend. The other article was by former Secretary of Defense Casper Weinberger who said the Clinton Administration was responsible for the attacks on September 11, 2001. These articles initiated a "flurry" of activities.

Mr. Berger took the first opportunity when [redacted] was out of [redacted] office to remove the document. He most likely put it in his jacket pocket, after folding it, but he does not have a precise recollection of where he put the document. It is perceivable he put it in his pants pocket. It was also possible he placed it in his portfolio and took it out. The document was twelve to thirteen pages. The notes were folded and put in his pocket. He would have put the notes on his person at the end of the day.

b6, b7C

Case Number: [redacted] b7	Case Title: Samuel R. Berger [redacted] b2
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MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

Mr. Berger did not believe [redacted] personnel were suspicious that he was removing documents. They did not give him any indications of this.

6
b6
b7C

Mr. Berger denied removing any documents in his socks. [He asked us to describe what the potential witness saw, which we did.] He stated his shoes frequently come untied [To which [redacted] said he was a witness.] and his socks frequently fall down. [At that point, Mr. Berger lifted his pant leg to reveal a sock falling down his ankle and pale skin.] Besides, it would have fallen out of his sock. He said this story was absurd and embarrassing.

b6
b7C

After leaving the Archives for the day, Mr. Berger went back to his office and put the document in an envelope on his desk.

On September 2, 2003, Mr. Berger called someone who was helping him review materials. He told them they should be prepared to answer the 9/11 Commission's questions concerning the MAAR.

It was asked that [redacted], former Clinton staffer, be cleared to review these documents. Mr. Berger had not worked on a document search in thirty years. If he was working at the NSC, this is certainly something someone on his staff would have done for him. [redacted] was able to [redacted] cleared for [redacted] material but the [redacted] clearance.

b2
b6
b7C

On **October 2, 2003**, Mr. Berger was reviewing documents at the Archives. The documents were in accordion files. [redacted] had the documents in a box, on the floor, by [redacted] desk. The time [redacted] spent with him in reviewing the documents did not change. He did not recall NARA staff being more or less restrictive with the documents than on other visits.

b6
b7C

[redacted] first provided Mr. Berger the documents marked for review by [redacted]. A version of the MAAR was with these documents, marked [redacted]. Mr. Berger did not know why it was classified differently than the version he removed in September which was [redacted]. It was obvious to him this was a different version of the MAAR. Mr. Berger wanted to know how it was edited to now be classified as [redacted]. He needed to compare the two versions of the MAAR. [redacted] had mentioned the MAAR went through several iterations but the changes were over money not substantive. Mr. Berger placed this version under his portfolio while [redacted] assistant was in the office. He then returned the folder to [redacted] assistant. Mr. Berger has no recollection of post-it notes on this document or moving them to another document. The assistant was standing in the area by [redacted] desk where the files were.

b2
b6
b7C

Next, [redacted] provided him all but two documents the White House had sent back from the documents he reviewed for EOP 2. [The White House sent those two documents on to the 9/11 Commission.] [redacted]

b5
b1
b7C

Case Number: [redacted] b2	Case Title: Samuel R. Berger [redacted] b2
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MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

The [redacted] is an electronic system used during the Clinton administration by the NSC to manage their records. The [redacted] was used as a finding aid as it indexed NSC numbered documents. The White House transferred data from the [redacted] system to NARA, via a flat file. NARA put this data on a Window based system.

b2

Basic information, an overview or brief synopsis of the document, was entered into [redacted] and assigned a seven-digit number. A search engine was used and a key word search was performed on the system in response to EOP 2. A list of search terms was not provided to [redacted] was allowed to and ran searches and received hits in preparation for this visit. [redacted] printed the abstract and provided this information to [redacted]. The numbered documents had a cover sheet with the document number; however, one document may contain several pages. [redacted] searched [redacted] index for documents responsive to EOP 2. The NSC numbered documents were located at [redacted]. The system does not identify which documents are at which location. [redacted] system only allows the index sheet to be marked as [redacted]. All the NSC numbered documents may not be available. Some may have been destroyed while others might be misfiled. Twenty to thirty percent of the time, NSC numbered documents were not found where they were supposed to be.

b2, b6, b7C

[redacted] dealt mostly with NSC numbered documents. NSC numbered documents may have been printed on heavy paper stock, [redacted]. Copies of NSC numbered documents could be recognized as all were copied on 8" by 11" paper and were in black and white.

b2, b6, b7C

The NSC numbered documents have a cover sheet. Normally the first page is printed on bond paper. The classification is usually stamped in red ink. [redacted]

b2

Because these documents were numbered, someone could determine if a numbered document was missing. However, there could be several pages of one NSC numbered document and the pages may or may not have been individually numbered in consecutive order. Emails could also be included in the document. The NSC referred to one NSC numbered document as a package. Finalized NSC packages reflected a watermark.

b6, b7C

The NSC numbered documents were numbered on their face, but individual pages were not numbered. All NSC numbered documents have a cover sheet and are bound in some manner, either by staple, binder clip or appropriate means. [redacted] staff removed the staples or binding and made photocopies for the production to the White House. Any loose paper pieces would probably be gone. They were not bound together upon return to the box.

Staff Member Office Files (SMOFs) contained the papers an individual filed in a particular folder. This could include draft NSC numbered documents, memos, emails, notes, etc. Some of these documents were copies of the originals. Archivists consider everything in a SMOF folder to be an original as it was sent for preservation. It is not a copy until an archivist makes a copy.

The NSC also sent over electronic files to include an electronic email system that included unclassified [redacted] emails. These are not designated as the "W" files. [redacted]

b2

Case Number: [redacted] b2	Case Title: Samuel R. Berger [redacted] b2
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MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

[REDACTED]

[REDACTED] was the primary reviewer of the emails. NARA had received an email system at the end of the Clinton administration. This system, known as [REDACTED] contained emails the NSC designated as "records."

b2,
b6,
b7C

[REDACTED]

[REDACTED] printed and prepared the emails responsive to EOP 3. EOP3 had two paragraphs explaining what emails the 9/11 commission was requesting. They were emails from Mr. Berger to the Transnational Threats Staff ([REDACTED]) and the converse. They determined Mr. Berger and [REDACTED] did not always directly handle their email so they queried about eight people on their staff. [REDACTED] recalled the search was done by name and subject fields. NARA consulted with the White House on the search string(s) (words) they were using to query the current administrations emails and tried to use the same ones.

b6,
b7C

Once [REDACTED] received "hits," [REDACTED] reviewed the emails to determine if they were relevant to the request. [REDACTED] gave an example that an email might come up on the search having to do with Spain which would not have been responsive, so [REDACTED] would not have printed that email even though it came up in the initial search (terrorism). Once [REDACTED] believed the email was relevant, [REDACTED] printed a copy and wrote the file name [a number] on the back of each relevant email, in pen. The emails were grouped by classification then chronologically. This was done so the email could be segregated which would allow other reviewers with different security clearances to review the appropriate classified documents (i.e. [REDACTED]).

b6,
b7C

The documents for Mr. Berger's review were moved [REDACTED] to [REDACTED] office in Federal Records Center boxes. They were transported on a cart normally by two cleared individuals. This was done primarily to facilitate the cart being moved through the facility and over door jams. The boxes either had no descriptive words on them or if they did, the wording was covered with a clean sheet of paper. [REDACTED] believed if they covered the material in a closed box this was sufficient for transport in a government facility. [REDACTED] commented that classified information could be moved from one secure container to another secure container.

b2,
b6, b7C

Mr. Berger's review in May 2002

The materials pulled for Mr. Berger's visit in May 2002 were kept segregated in case he wanted to return and review the documents again. These original materials filled five federal record center boxes. One box contained NSC numbered documents. Four boxes contained SMOF files. Of these four boxes, one was box W-049 which was brought forward for the entire review. These boxes became know as an artificial collection or the "Berger Request."

Box W-049 was [REDACTED] SMOF files. In that box were several NSC numbered documents. When they could not locate a NSC numbered document, they would go to box W-049.

b6,
b7C

[REDACTED] staff was more sensitive as this was the first access of Clinton Presidential records.

b6, b7C

Case Number: [REDACTED] b2	Case Title: Samuel R. Berger [REDACTED] b2
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MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

██████████ explained that at this time the ██████ was not running. Because the ██████ was not running, a keyword search of the ██████ database was conducted by ██████, from the incumbent President's database, and a hard copy list of results, in the form of NSC numbered document numbers was provided to ██████ staff.

b2,
b5, b6,
b7c

██████████ contained in the correspondence requesting Mr. Berger's access to the records. ██████

██████████ could not find some of the NSC numbered documents so ██████ faxed a list back to the NSC of the ones ██████ could not locate. They told ██████ they could be in other files.

b6, b7c

██████████ said there was never an index of the SMOFs reviewed. ██████ said ██████ would not know if he removed originals during this visit.

b6, b7c

██████████ explained there was no automated search for SMOFs. Each box of SMOF material contained a folder file or inventory list. These lists were copied and collated and provided by the NSC. ██████ had to review the index of file folder lists in order to determine which folders might be responsive. SMOFs were searched by the file folder title using the keywords provided in the correspondence. This was a search where an archivist used their experience and intellect to decide what was responsive to the request. If documents in the SMOF were deemed non-responsive, by ██████, they were put in an envelope in the back of the SMOF folder.

b6,
b7c

An "out card" was left in each box to mark the place where an NSC numbered document or SMOF was removed and indicated it was pulled for "Berger Request." These cards were blue and made by the ██████ staff. This was because there were standard "out-cards" left in some files by Clinton staff.

b6,
b7c

██████████ could not recall if Mr. Berger was provided with any documents containing the Millennium Alert After Action Report (MAAAR) on his May 30, 2002, visit. [The subsequent physical review of the materials Mr. Berger reviewed did not indicate he was provided such.]

b6,
b7c

Some of the materials from the May 2002 review were assimilated into the materials responsive to EOP 2 and possibly additional EOP requests. In addition to the out cards left in the boxes from which the documents for Mr. Berger's May 2002 review were originally pulled, ██████ left out cards referencing they were in the "Berger Request" if those documents were pulled and carried forward in response to EOP 2. In the instances when documents responsive to EOP 2 were still in their original box, an out card was left in the original box indicating the document(s) were withdrawn for "Terror Com" or "Terrorism."

b6, b7c

Mr. Berger's review in July 2003

On July 18, 2003, Mr. Berger reviewed original textual documents, four boxes, in ██████ office. One box contained NSC numbered documents and three boxes contained SMOF files. ██████ had originally pulled 5 boxes worth of SMOF files. Documents deemed responsive were copied and placed in boxes for ██████

b2,
b6, b7c

Case Number: ██████████ b2	Case Title: Samuel R. Berger ██████ b2
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MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

██████████ was running searches for NSC numbered documents in response to EOP2. ██████████ realized searches were running faster than ██████████ could pull the documents. ██████████ decided to create a table listing the NSC numbers that needed to be pulled. ██████████ put them in numerical order and divided which ones could be found at ██████████ and which ones were in ██████████ to make ██████████ job go quicker. (The NSC numbered documents ██████████ had initially pulled were not incorporated into ██████████ table.)

5
b2,
b6,
b7c

██████████ pulled the NSC numbered documents. ██████████ used the list ██████████ created and annotated the status of the document. If it was pulled from a box, the box number was annotated on the index. If the document was pulled from boxes set aside from Mr. Berger's May 2002 visit, the list was annotated that the document was pulled from the "Berger Box." ██████████ prepared a list of NSC numbered documents ██████████. ██████████ sent this list, of six digit numbers only, to ██████████. ██████████ made "out-cards" for the documents ██████████ pulled in response to the 9/11 commission's requests. If the document was pulled but deemed to be non-responsive, it was placed in a file labeled non-responsive as opposed to being re-filed. If ██████████ found them to be non-responsive, they were marked as non-responsive and either removed or put aside in a file designated as non-responsive to EOP 2. They were not sure if it was the same file or a different non-responsive file.

b2,
b6,
b7c

They narrowed NSC's results based on the subject file. The list was sent over in two batches.

██████████ believed the search runs may be with the materials and the keywords would be reflected at the top of the printout.

b6,
b7c

██████████ pulled SMOF files responsive to EOP 2. ██████████ recalled the NSC sent over copies of SMOF inventory sheets and highlighted the ones the NSC believed were responsive to EOP 2. ██████████ felt the NSC was not consistent and missed some of the relevant folders so ██████████ did a "second SMOF pull/search." The total became SMOF's responsive to EOP2. ██████████ believed ██████████ annotated the NSC inventories with ██████████ handwriting. This became a new artificial file. ██████████ probably still maintains the non-responsive file but these files were probably moved forward for subsequent requests.

b6,
b7c

If documents in the SMOF were deemed responsive, then a tab was placed around those documents, they were copied and provided ██████████.

b2

For the SMOF files, an out card was left to mark the place where a SMOF was removed and indicated it was pulled for "Terror Com" or "Terrorism." In addition, ██████████ wrote on the SMOF, in pencil, where the file came from. These documents have not been re-filed in the originating box.

b6,
b7c

In July 2003, ██████████ came in to assist Mr. Berger by reviewing documents ██████████. ██████████ reviewed the NSC numbered documents from ██████████, responsive to EOP 2.

b2,
b6,
b7c

In July, the textual document sent by facsimile from ██████████ was put in its own folder when received at ██████████. This document contained the MAAAR and is believed to have originated in

b2

Case Number: ██████████ b2	Case Title: Samuel R. Berger ██████████ b2
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MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

6

SMOF [redacted]. At some point, either before or after Mr. Berger's visit in October, an [redacted] staff member looked in the folder labeled [redacted] and saw there was a document in the folder. However, it was later determine it did not contain the right document. The original document remains at the [redacted].

b2, b6
b7c

If Mr. Berger or [redacted] with Mr. Berger deemed any NSC numbered documents non-responsive, they were not sure if they were placed in the non-responsive box or put back with the materials.

b6,
b7c

For the July production, the NSC sent copies of the file folder lists (inventories), per box, highlighting the SMOF files which they thought were responsive. [redacted] made a note if [redacted] pulled the document or if [redacted] thought it was non-responsive. [redacted] made a new copy of the inventories and determined which [redacted] thought was responsive.

b6,
b7c

The production to the White House for EOP2 was done in two deliveries. The first delivery was from what was deemed responsive by [redacted] after Mr. Berger's review. The White House sent a copy of what was not forwarded to the 911 commission to [redacted].

b6,
b7c

The second delivery was from what was deemed responsive after [redacted] review. [redacted] sent up documents which were reviewed by [redacted]. Some of these records were deemed non-responsive to EOP 2 while being reviewed by [redacted] and [redacted]. The documents deemed responsive were sent to the White House.

b2,
b5, b6,
b7c

[redacted] The White House sent a copy of what was forwarded to the 911 commission to [redacted].

[redacted] staff did not distinguish between the documents pulled for EOP2 and EOP3. The EOP2 request was more restrictive than EOP3. When pulling EOP3, they went back to the production of EOP2. [redacted]

b5

[redacted] They did review the EOP2 documents which the White House did not forwarded to the 9/11 commission. Mr. Berger was provided these documents but they did not know if Mr. Berger reviewed these documents again as he had reviewed them for EOP2.

The White House staff was going to look at what they did not send to the 911 commission for EOP 2 to determine if it was responsive to EOP 3. [redacted] began to review the original files which were pulled for EOP 2 to determine if the documents deemed non-responsive for EOP 2 were responsive to EOP 3. This meant going in a SMOF file and reviewing any material that was not tabbed as responsive to EOP 2. If the tabs were white and had a checkmark on them, the document(s) were copied for EOP 2. NSC numbered documents would have been treated as a whole. [redacted] probably reviewed the documents [redacted] and [redacted] deemed non-responsive for EOP 2 to see if they were responsive to EOP 3. Staff at the [redacted] did a similar search for these materials and sent a copy of documents responsive to EOP 3 to [redacted].

b2,
b6,
b7c

Mr. Berger's review in September 2003

Mr. Berger was served copies from the [redacted] deemed responsive to EOP3. Mr. Berger was served two SMOF folders from the [redacted] and one SMOF folder from [redacted]. He was served one redwell folder containing NSC numbered documents from [redacted]. He

b2,
b6, b7c

Case Number: [redacted] b2	Case Title: Samuel R. Berger [redacted] b2
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MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

was also given all the emails but only had time to review a portion of them. [redacted] marked the emails Mr. Berger reviewed. b6, b7C

[redacted] searched the email system using the search terms which were responsive to EOP 3. b6, b7C

The copies of materials from the SMOFs had a cover sheet indicating where the documents originated. They believed there was only one box of materials provided to Mr. Berger. They could not be sure due to the volume of the emails.

Included in this production was a document sent from [redacted]. The document was placed in a folder someone created labeled [redacted]. Today, the [redacted] document is not in the folder, but two other documents are in this folder. b2

Mr. Berger came to do his review of these documents deemed responsive to EOP 3. This copy set was sent to the White House.

Then a second copy set was pulled and sent. [redacted] took their copy set of what they produced to the White House for EOP 2. This included the documents sent up by [redacted]. [redacted] and [redacted] tabbed the documents the White House sent forward to the 911 commission [redacted] from their copy set. [redacted] and [redacted] began reviewing those documents for responsiveness to EOP 3. [redacted] is unsure if they tabbed the documents which were provided to the White House from this set for EOP 3. b5, b6, b7C

Someone indicated the documents were reviewed after Mr. Berger's visit on September 2, 2003, to determine if anything was missing. [redacted] said there was no review of documents Mr. Berger saw on September 2, 2003, to ensure nothing was missing (not after he left). There was not a control set of documents so there was no way to determine if any documents were removed. Today, there could be an attempt to verify the NSC numbered documents and the SMOFs Mr. Berger was provided. However, the real "wildcard" would be the recreation of the emails Mr. Berger was provided. [redacted] used the search terms to query the email, then [redacted] reviewed those for responsiveness on-line and printed what [redacted] deemed as responsive. This was followed by [redacted] reviewing the documents for responsiveness. b6, b7C

After the September visit, the emails were divided in folders as [redacted], which were served to [redacted]. b2, b6, b7C

In preparation for Mr. Berger's review on October 2, 2003, [redacted] numbered the copies, in pencil, in the bottom left corner. The back page of the document was numbered but not the entire document. A document in this case might contain several pages stapled together. The numbers were assigned sequentially. There was a list of numbers that corresponded to a record type. Then they were organized chronologically and numbered. Most of these documents were emails. [redacted] has a recollection that either [redacted] double-checked the numbering. Neither [redacted] had a recollection of doing this. The documents were placed in folders, b6, b7C

Case Number: [redacted] b2 Case Title: Samuel R. Berger [redacted] b2

MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

separated by responsiveness to paragraphs two and three in the EOP requests. They were also then sorted chronologically. There were about five folders. The numbering sequence was written on the folder. About 25 documents were from SMOF files.

numbered most of the copies. became tired or it was late and did not finish numbering the documents. provided a note that left asking to complete the numbering the morning of October 2, 2003. numbered the remaining documents.

b6,
b7C

Mr. Berger's review in October 2003

On October 2, 2003, Mr. Berger was served one box of textual material and one box of emails. [They removed the emails Berger had reviewed in September. Then they put the emails in order (see list).] These were numbered and placed in folders. The folders were not numbered, only the documents inside. The folders were not served in numerical order. They had been divided by classification and which paragraph they addressed in the EOP request before they were numbered. The folders were in large accordion folders.

Mr. Berger reviewed his and notes first. Really, they were the first items in the box. could recall the order documents were served as they were not in the room, with the exception of. Then, Mr. Berger was provided one folder at a time for review.

b6,
b7C

reviewed folders given to him by at his desk to determine if any numbers were missing. They had not thought through what would be done if a document was found to be missing.

b6,
b7C

was reviewing the folders at someone's desk, outside office, when discovered #217 missing. believed he verified it was missing.

b6, b7C

gave the date of the document before the missing email and the date of the document after the missing email, from email #216 and #218. This was the time frame in which searched the emails, using the same search terms which were responsive to the EOP request. The staff was able to verify there was an email that should have been printed and produced to Mr. Berger in that time frame. located the missing email. then left for the day, before printing the missing email called back to the office to ensure knew what to look for on the email system in order to find the email in question. told another copy of this email was printed, wrote #217 on the back, and provided to.

b6,
b7C

took the email (#217) into Mr. Berger. Shortly after that, left office. The sofa phone light was lit but then went off. went back in office and Mr. Berger left abruptly.

b6,
b7C

commented to staff that may have not filed #217 (the second copy) in the right place.

Case Number: b2	Case Title: Samuel R. Berger b2
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MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet) ⁹

After determining four documents were missing, on October 3, 2003, [redacted] assisted in running a quick search and reprinted the missing numbered emails. These were differentiated from the originally marked copies by adding the date and time on the back of each. b6, b7C

The staff noticed [redacted]. However, the date and content was different from the email the sticky was on now (#156). b5

After picking-up documents from Mr. Berger office, on October 5, 2003, [redacted] spoke to [redacted] and told [redacted] one document was the textual document sent up from Little Rock and the other was #323. b6, b7C

Additional Notes:

[redacted] recalled [redacted] instructing Mr. Berger he could take notes but the notes would have to stay at NARA during at least one of his visits, possibly more. b6, b7C

All documents, even copies, were treated as originals. All documents had classification markings on them. [redacted] did not add cover sheets as these were raw unprocessed presidential records. Photocopies were made [redacted] with the designated photocopying machine. All documents provided from the [redacted] were copies. b2, b6, b7C

[redacted] was involved in the verification of NSC numbered documents NARA still held. [redacted] took the list(s) [redacted] used to pull files for Mr. Berger's visits reflecting the NSC numbered documents. [redacted] compared the NSC numbered documents segregated for Mr. Berger's reviews with the list of the files [redacted] pulled for his visits. [redacted] determined no NSC numbered documents were missing. This is not to say pages could not be missing from those documents. [redacted] was not sure if anyone had determined if the NSC numbered documents Mr. Berger reviewed in May 2002 had been verified. b6, b7C

[redacted] was asked to verify the documents sent up by the [redacted] which were responsive to EOP 2 and EOP 3. [redacted] recalled that the [redacted] sent up copies of their cover sheets, which were placed on top of the documents they forwarded to [redacted]. The cover sheets had written on them the number of pages the package contained. [redacted] added these up and compared that number to the number of copies [redacted] still had. They matched. [redacted] was able to locate the cover sheets and can locate the documents which were sent to the White House and probably can locate the documents from this pull deemed non-responsive. b2, b6, b7C

Neither [redacted], nor [redacted] ever wrote up anything concerning this incident or verification. [redacted] was never asked to and did not prepare a statement of facts. However, [redacted] asked [redacted] to prepare a flow chart, which is actually more of a time line. The flow chart is with the administrative files [redacted]. [redacted] provided the drafts of flow charts. b2, b6, b7C

Case Number: [redacted] <i>b2</i>	Case Title: Samuel R. Berger [redacted] <i>b2</i>
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MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

All inventory lists are kept with the series of records. There is not a centralized inventory. If the records are unprocessed the inventory list provided with the documents is used.

██████████ has a courier card. ██████ received the card in the mail and was never briefed by NAS and did not sign any receipt or other forms. However, ██████ received informal training on the transmittal of classified information through ISOO several years ago.

b6,
b7C

The original MAAAR was never served to Mr. Berger. It did not come up on any of the search terms. ██████ staff later searched by the word "Millennium" or the NSC number and provided a copy of the original MAAAR to the White House.

b6,
b7C

After Mr. Berger's review, non-responsive documents were normally placed in a separate area. These documents would be reviewed in subsequent requests.

Tabs were being removed for reviewing and copying for several months as the EOP requests extended beyond EOP3. ██████ staff said there was much room for human error on the exact documents the tabs were placed around. Some of the tabs had notes on them and some were written over. There were two tabs in the bottom of a box, not attached to anything.

b6, b7C

If an NSC numbered document had already been provided in EOP 2 (original), a copy of the NSC numbered document was moved forward to the EOP 3 production. Out cards were only placed in the box when an original was removed. All photocopies of documents provided to Mr. Berger had a cover sheet indicating where the copy originated. Mr. Berger did review documents from ██████ in response to EOP 3.

b2

The other copies provided to Mr. Berger had a cover sheet on them indicating their origin. Some copies even reflected the NARA "slug."

The staff ensured all emails identified as removed by Mr. Berger were produced. On October 10, 2003, they confirmed everything they expected to have they had and had annotated if they could not find a document during the original search.

Copies of the materials provided to the NSC responsive to the EOP requests are maintained ██████

b2

Each collection ██████ has an inventory. These are kept in folders ██████. ██████ does not create a new inventory but kept the one that came with the boxes from the White House. Each box from the Clinton administration records, the "W" files, stored in the ██████ is numbered sequentially and has in inventory sheet contained within. A copy of each inventory sheet is kept in a Hollinger box ██████. The NSC passed these over as a set.

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b6,
b7C

██████████ indicated that copies of classified material were marked with the same classification as the original by virtue of the fact the classification marking on the original carried over to the copy. Furthermore, emails included the classification ██████ in the metadata that served as the "cover" for the emails.

b2,
b6, b7C

Case Number: ██████████ b2	Case Title: Samuel R. Berger ██████ b2
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MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

11

About a month ago, the [redacted] staff went through the documents Mr. Berger reviewed and tracked them down from their final destination [pulled for additional EOP requests] to their originating box.

b6, b7c

[redacted] staff maintains the inventories sent over from the White House. A very few of these inventories are maintained in an electronic finding aid, [redacted].

b2, b6, b7c

The Millennium Alert After Action Review (MAAAR) was 13 pages long.

#150 – has no email content, subject line only, just attachment

#217 – has 3 lines in the email with the attachment

#323 – has a short email, 3 paragraphs, with the attachment

Case Number:

[redacted]


b2

Case Title:


Samuel R. Berger [redacted]

b2

MEMORANDUM OF INTERVIEW OR ACTIVITY

Type of Activity: <input checked="" type="checkbox"/> Personal Interview <input type="checkbox"/> Telephone Interview <input type="checkbox"/> Records Review <input type="checkbox"/> Other	Date and Time: July 8, 2005 9:30 a.m.
Activity or Interview of: Samuel R. Berger	Conducted by:  b6, b7C
	Location of Interview/Activity: Washington, DC



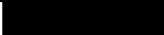
Subject Matter/Remarks



On July 8, 2005,  b6, b7C interviewed Samuel "Sandy" R. Berger, former National Security Advisor (NSA) to President William J. Clinton, at the Bond Building, 1400 New York Avenue, Washington, DC. Mr. Berger participated as part of his plea agreement.

Also present were  b6, b7C

Mr. Berger described his personality as intense and a uni-tasker. He did not believe anyone would describe him as arrogant. He did not feel he was overbearing and did not seek to intimidate anyone while at the Archives. Mr. Berger provided the following information:

Mr. Berger visited the Archives, Washington, DC, to review documents requested from the Clinton Presidential materials. Mr. Berger did not have a vivid recollection of visiting the Archives on May 30, 2002, to review documents in preparation for his testimony before the Graham-Goss / Joint Intelligence Committee. Mr. Berger did recall his visits to the Archives to review documents to determine if Executive Privilege needed to be exerted prior to documents being provided to the National Commission on Terrorist Attacks Upon the United States (hereafter, the 9/11 Commission).

On every visit to the Archives, Mr. Berger came in the Pennsylvania Avenue entrance of the Archives, proceeded through the magnetometer, and signed a log book at the security desk. Someone from security called  b6, b7C office and someone from  office would escort Mr. Berger to  office. Mr. Berger always left late in the

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MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

evening, around 7 p.m. There were no guards in the lobby at that time. Therefore, no one ever checked his belongings on his way out.

██████████ was very professional and courteous. However, ██████ was not warm and "fuzzy" with Mr. Berger. ██████ told Mr. Berger he could take notes while he was at the Archives but ██████ made it clear he could not remove them. He did not understand the documents could have been sent to the National Security Council (NSC) for review and classification. [Mr. Berger did ask that his notes from his May 2002 review be sent to the NSC for review. The NSC returned his notes as classified.] He did understand the notes would remain at the Archives for him to use on subsequent visits.

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All document reviews by Mr. Berger were conducted in ██████ office. Mr. Berger sat at a small table in ██████ office. ██████ did not brief Mr. Berger on security procedures. ██████ must have assumed a briefing was not required due to his previous positions as the NSA. ██████ did not advise Mr. Berger on what he could and could not bring into the Archives. ██████ did not provide Mr. Berger paper. On every visit, Mr. Berger brought his leather portfolio with a note pad inside. It was his practice to wear a suit but he did not recall if he wore a coat to the Archives.

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Mr. Berger did not believe he received preferential treatment until after his visits when he learned ██████ office was not an appropriate facility to view classified material. Mr. Berger believed he was afforded the opportunity to review documents in a more comfortable environment after someone described the ██████ accommodations to him. At the time of his review, Mr. Berger did not know nor did he consider the nature of ██████ office and whether ██████. He believed he was in a suitable location to review the documents. Mr. Berger did not consider asking that the documents be sent to another location for review as he was not aware of another convenient location to conduct the review.

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Mr. Berger stated ██████ of the protocol in reviewing these records ██████ his notes had to remain at the Archives and the Archives would send them to the NSC for classification.

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Mr. Berger made a general statement that he went to the restroom on an average of every thirty minutes to one hour to use the facilities and stretch his legs. This was the only room he went to besides ██████ office.

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Mr. Berger explained that after 9/11, the Clinton Administration was inundated with calls on their response to this terrorist attack. It was obvious he was going to have to testify on their actions. Mr. Berger put in over 100 hours of his time, unpaid, in order to be responsive. Everyone else stepped back from the questions but Mr. Berger felt responsible.

Mr. Berger reviewed the documents at the Archives not only for privilege but also to refresh his recollection for his testimony and assisting in preparing others ██████ for their testimony. ██████ only had tangential contact with the records. Mr. Berger had unique knowledge of the records and the appropriate clearances.

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In May or June 2003, [redacted] called Mr. Berger to say [redacted] received a request from the 9/11 Commission. [redacted] acted as the liaison between the Clinton Administration and the Archives. [redacted] asked Mr. Berger to go to the Archives to review records in response to the Executive Office of the President's (EOP) requests.

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On July 18, 2003, Mr. Berger reviewed material in response to EOP 2. The boxes of materials were on a cart in [redacted] office between Mr. Berger's seat and the coffee table, or off to his side. [redacted] handed Mr. Berger "bunches" of folders. Once he completed the review, [redacted] would hand him another bunch. If [redacted] was not sitting with Mr. Berger, [redacted] was working at [redacted] desk, usually on the computer at an angle to him where he could see [redacted] over his right shoulder.

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The documents were not organized chronologically. Mr. Berger would read the documents, trying to save all his questions instead of interrupting [redacted] work. He was trying to be sensitive to [redacted] work responsibilities. [redacted] and Mr. Berger would read over the documents on which he had questions. [redacted] ruled on responsiveness to the 9/11 Commission.

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There were more questions to be answered in July 2003, as this was the first EOP request he was involved with. Some of the questions included what constitutes a document, does the 9/11 Commission want duplicate copies of the same information, do they want copies of the same document that contained additional notes, etc. There were two or three calls to [redacted] on these issues during Mr. Berger's review.

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Mr. Berger started his own company, Stonebridge, in 2001. [redacted] had [redacted] phone number from setting up appointments for Mr. Berger's visits. He told his secretary not to call him at the Archives unless there was a time sensitive issue. His secretary probably called him at [redacted] number about a half dozen times on this visit. Mr. Berger told [redacted] he was happy to go outside [redacted] office to take the calls. [redacted] asked Mr. Berger if he needed privacy to which he said "yes." [redacted] said instead that [redacted] would go outside [redacted] office while he was on the phone, which [redacted] did. Once this pattern was established, he thought the offer for [redacted] to leave [redacted] office was "standing." [redacted]. Mr. Berger had no intent to order [redacted] out of [redacted] office. While Mr. Berger was on the phone, he was left alone in [redacted] office. He used the phone closest to the couch. It was a hard line and he wanted that privacy with his clients. Mr. Berger did not use his cell phone and never told [redacted] it was not working.

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Mr. Berger could not recall specifically if [redacted] left [redacted] office when [redacted] made phone calls. The only other time [redacted] left [redacted] office during his reviews was maybe to step out to get more boxes or consult with [redacted] staff. He did not recall if any of [redacted] staff stepped in the office with him when [redacted] stepped for these moments. Mr. Berger did not take any breaks to leave the building during this visit.

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[redacted]. At some point, Mr. Berger took notes. He realized he was not going to be able to reconstruct in detail all the documents he had reviewed, so he needed to take his notes with him, about ten to twenty pages.

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