

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: [REDACTED] b6, b7C
Location of Interview/Activity: Washington, DC	

Subject Matter/Remarks

On July 8, 2005, [REDACTED] 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. b6, b7C

Also present were [REDACTED] b6
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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 [REDACTED] office and someone from [REDACTED] office would escort Mr. Berger to [REDACTED] office. Mr. Berger always left late in the b6
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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.

[redacted] was very professional and courteous. However, [redacted] was not warm and "fuzzy" with Mr. Berger. [redacted] told Mr. Berger he could take notes while he was at the Archives but [redacted] 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 [redacted] office. Mr. Berger sat at a small table in [redacted] office. [redacted] did not brief Mr. Berger on security procedures. [redacted] must have assumed a briefing was not required due to his previous positions as the NSA. [redacted] did not advise Mr. Berger on what he could and could not bring into the Archives. [redacted] 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 [redacted] 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 [redacted] accommodations to him. At the time of his review, Mr. Berger did not know nor did he consider the nature of [redacted] office and whether [redacted]. 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 [redacted] of the protocol in reviewing these records [redacted] 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 [redacted] 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 [redacted] for their testimony. [redacted] 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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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.]

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.

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] 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.

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.

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.

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

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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
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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. b1
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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
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Mr. Berger did not believe [redacted] personnel were suspicious that he was removing documents. They did not give him any indications of this. 6
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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. b

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
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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. b

[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. b6

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

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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.

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██████████ 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.

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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 ██████████

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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.

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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. ██████████

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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.

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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. 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

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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.

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Mr. Berger did not recall [redacted], unless [redacted] picked-up the documents.

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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.

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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.

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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.

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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.

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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.

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