

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

APR 01 2005

UNITED STATES OF AMERICA

Criminal Number:

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

v.

VIOLATION:

Count One:

18 U.S.C. § 1924

SAMUEL R. BERGER

Unauthorized Removal and

Defendant

Retention of Classified Documents

FACTUAL BASIS FOR PLEA

The United States of America, through its undersigned attorneys, and the defendant, SAMUEL R. BERGER, personally and through his undersigned counsel, hereby stipulate to the following facts pursuant to United States Sentencing Commission Guidelines § 6A1.1 and Rule 32(c)(1) of the Federal Rules of Criminal Procedure:

1. In or about April 2002, the defendant was designated to review Clinton Administration presidential records that were stored by the National Archives and Records Administration ("NARA"). In this capacity, the defendant served as a consultant of the United States. At that time and thereafter, the defendant possessed a United States government security clearance and was aware of the laws and rules regarding the handling and storage of classified information.

2. In 2003, the defendant visited NARA's Washington, D.C. office to review presidential records for production to The National Commission on Terrorist Attacks Upon the United States (also known as the 9-11 Commission). In each of the visits, which occurred on July 18, September 2, and October 2, the defendant reviewed classified documents.

3. On September 2, 2003, after his document review, the defendant concealed and removed a copy of a classified document from its proper place of storage at the National Archives. The defendant was aware that he had no authority to remove the document. The defendant ultimately stored the document at his office in the District of Columbia, knowing that his office was a location not authorized for the storage of classified documents.

4. On October 2, 2003, after another document review, the defendant concealed and removed four copies of classified documents from their proper place of storage at the National Archives. The defendant was aware that he had no authority to remove the documents. The defendant ultimately stored the documents at his office, which he knew was a location that was not authorized for the storage of classified documents. After reviewing the documents that night, the defendant cut three of the documents into small pieces and discarded them.

5. Each of the five documents that the defendant removed on September 2 and October 2 bore markings that identified them as classified United States government documents, and the defendant was aware that they were classified United States government documents. The five documents were copies of versions of the same document.

6. On October 4, 2003, NARA staff called the defendant and advised him that copies of documents were missing from his October 2 review. Initially, the defendant did not tell NARA that he had taken the documents. Later that night, the defendant told NARA that he had accidentally misfiled documents and had found two. On October 5, NARA staff members went to the defendant's office, and the defendant personally handed the staff members two documents, one of which was the document that he removed on September 2, and the other was one of the documents that he removed on October 2.

7. The National Commission on Terrorist Attacks Upon the United States (also known as the 9-11 Commission) received copies of each document in the normal course of document production.

8. During the defendant's July 18, September 2 and October 2 visits to NARA, the defendant made handwritten notes of classified material that he had reviewed. The defendant concealed and removed the notes from NARA. The defendant was aware that he was not authorized to remove his notes.

9. All of the defendant's handwritten notes were returned to the United States.

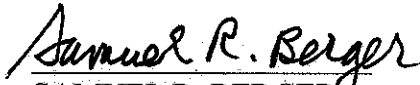
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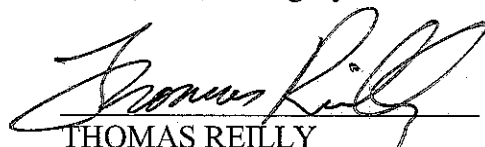
FOR THE DEFENDANT

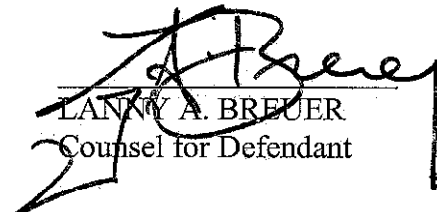
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