

ONE HUNDRED TENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

Majority (202) 225-5051

Minority (202) 225-5074

February 14, 2007

The Honorable Henry A. Waxman  
Chairman  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
2157 Rayburn House Office Building  
Washington, DC 20515

Dear Mr. Chairman:

This letter requests that the Committee continue its conscientious and bipartisan investigation into the classified document thefts by former National Security Advisor Sandy Berger at the National Archives in 2002 and 2003. Mr. Berger's actions raise serious questions about the procedures at the Archives for safeguarding top secret materials and specific questions as to whether the 9/11 Commission received everything it requested. Pursuant to Rule X(m)(7) of the House Rules, oversight of the National Archives is squarely within this Committee's jurisdictional authority.

As our staff report of January 9, 2007 detailed, questions remain concerning Mr. Berger's actions. Mr. Berger pleaded guilty to removing highly classified documents from the Archives during two of his four visits to the Archives. These materials were so highly classified Mr. Berger's own White House deputy was not permitted to see them. At the Archives, Mr. Berger was provided original materials for which there were no copies or inventory. The Archives official who provided the materials to Mr. Berger said that she would "never know what if any original documents were missing."

Officials from the 9/11 Commission told our staff they now have deep concerns about the materials Mr. Berger had access to. Executive Director Philip Zelikow and General Counsel Daniel Marcus said the Justice Department never told them that Mr. Berger had access to originals. Knowing this, Dr. Zelikow told staff he now has "grave concern."

As your staff knows, the senior Justice Department officials involved in the Berger prosecution – Chief of the Counterespionage Section John Dion and Deputy Assistant Attorney General for the Criminal Division Bruce Swartz – said they were unable to recollect information regarding the questions posed to Mr. Berger concerning his first two visits to the Archives. Berger's plea deal covered materials he admittedly stole on his third and fourth visits to the National Archives – September 2 and October 2, 2003. The Department, however, has been conspicuously silent about the extent of its investigation into Mr. Berger's first two visits to the Archives on May 30, 2002 and July 18, 2003. The Archives Inspector General has stated that Berger was never questioned regarding these first two visits.

Our staff report concluded that the Justice Department was unacceptably incurious about Berger's Archives visits on May 30, 2002 and July 18, 2003. In investigating Mr. Berger, the Justice Department apparently gave him a free pass due to his stature as a famous former White House official. The Department's investigation came up lacking in a number of areas. The Justice Department never notified the 9/11 Commission that Berger viewed original, uninventoried documents. One Archives staff member reported that Mr. Berger was concealing documents in his socks. Mr. Berger denied this, but was unable to explain what was seen on his lower leg. The Department failed to subpoena Berger's medical records to determine if there was any medical reason for him to have white-colored material on his lower leg. Furthermore, and most glaringly, the Department failed to administer a polygraph examination despite one being called for in Mr. Berger's plea. In his plea, Mr. Berger signed-up for the polygraph. Why was it was never administered?

Our Committee has a responsibility to pursue this matter. We must ask the Justice Department to account for its actions in the course of the Berger prosecution. We must seek to declassify the materials Mr. Berger admitted to taking, five drafts of the Millennium Alert After-Action Report. Questions also remain for Mr. Berger. Pursuant to the Committee's deposition authority, Mr. Berger should be deposed and asked to provide a full account of his actions. As Archives officials have said, we may never know what original documents are missing. Although this may be true, we as a Committee can still set the record straight by having Mr. Berger explain his actions under oath. Our Committee, the 9/11 Commission, and the public have a right to a full account from Mr. Berger and the Justice Department. This can only be accomplished by further investigation.

When the Committee was asked in October by ten other members of Congress to look into this matter, we chose to be careful and deliberate and avoid injecting the issue into the election. Instead, we sought only to review the Inspector General's report to determine whether further investigation was warranted. Given all that we have learned, it is clear that further investigation is now warranted.

Mr. Chairman, thank you for your continued leadership.

Sincerely,



Rep. Tom Davis



Rep. Christopher Shays



Rep. John L. Mica



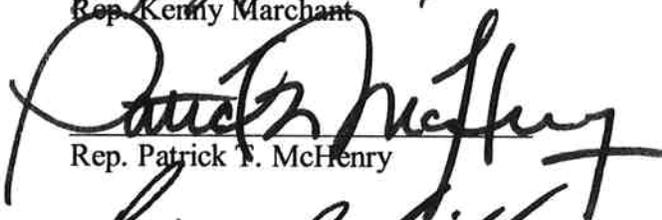
Rep. Todd Russell Platts



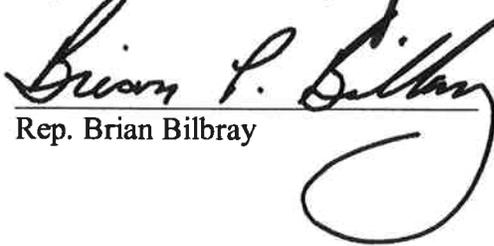
Rep. John J. Duncan



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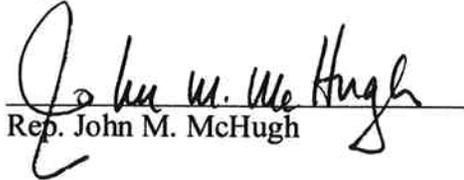
Rep. Patrick T. McHenry



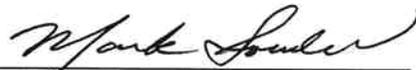
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Rep. Dan Burton



Rep. John M. McHugh



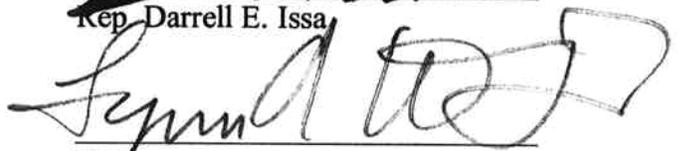
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HENRY A. WAXMAN, CALIFORNIA  
CHAIRMAN

TOM DAVIS, VIRGINIA  
RANKING MINORITY MEMBER

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February 20, 2007

The Honorable Tom Davis  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
508 Cannon House Office Building  
Washington, DC 20515

Dear Mr. <sup>Tom</sup>Davis:

I received your letter of February 14, 2007, concerning issues relating to National Security Advisor Sandy Berger. I appreciate your input on this matter, and will take your views into consideration in determining appropriate subjects for investigation by the Committee. I hope that you will continue to contact me with your oversight ideas as the 110<sup>th</sup> Congress progresses.

Sincerely,



Henry A. Waxman  
Chairman