



**Judicial  
Watch**<sup>TM</sup>  
*Because no one  
is above the law!*

May 2, 2005

VIA FACSIMILE (202-638-0862) AND U.S. MAIL

Office of Bar Counsel  
Board on Professional Responsibility  
District of Columbia Court of Appeals  
515 Fifth Street, N.W.  
Washington, D.C. 20001

**Re: Violation of Rules of Professional Conduct**

Dear Sir or Madam:

This is in regard to District of Columbia attorney Samuel R. Berger. Mr. Berger currently is chairman of a consulting firm called Stonebridge International, LLC and is former national security advisor to President Clinton. This complaint is being brought by Judicial Watch, Inc., an educational foundation that promotes integrity, transparency, and accountability in government, the courts, the legal profession, and the law. Mr. Berger has admitted in court to serious violations of law that are inconsistent with his duties as a lawyer under the Rules of Professional Conduct.

At the time he was preparing to testify before the 9/11 Commission investigating security and intelligence failures, Mr. Berger has admitted that he engaged in the following misconduct:

- Theft of classified material from the National Archives, specifically placing five copies of a highly secret memorandum relating the "millennium 2000" terror plot to bomb Los Angeles International Airport in his coat jacket and removing them from the Archives;
- Subsequently destroying three of the five documents with scissors at the office of his consulting firm;

- Lying to federal investigators by initially asserting that the removal of the documents was inadvertent, but later admitting that the removal and destruction of the documents was intentional.

Even more seriously, Mr. Berger's selective destruction of certain copies of a document (possibly those copies with handwritten notes) suggests that Mr. Berger was attempting to alter the historical record of his and the Clinton administration's actions relating to terrorism. By eliminating the documentary record, Mr. Berger quite possibly intended to deceive the 9/11 Commission regarding his true actions relating to terrorism while he was national security advisor.

Mr. Berger's conduct appears to violate the Rules of Professional Conduct for an attorney in the District of Columbia. These rules provide, among other things, that a lawyer has a duty not to: (1) commit a "criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects"; (2) engage in "conduct involving dishonesty, fraud, deceit, or misrepresentation"; and (3) engage in "conduct that seriously interferes with the administration of justice." Based on his admitted conduct, Mr. Berger has violated these and possibly other rules. *See* Rules of Professional Conduct § 8.4.

Due to the serious nature of this misconduct, Judicial Watch urges your office to promptly investigate and seek disciplinary action against Mr. Berger. We look forward to your response.

Sincerely,

JUDICIAL WATCH, INC.



Thomas J. Fitton  
President

# OFFICE OF BAR COUNSEL

June 1, 2005

**CONFIDENTIAL**

Thomas J. Fitton  
President  
Judicial Watch, Inc.  
501 School Street, S.W., Suite 500  
Washington, D.C. 20024

*Serving the District  
of Columbia Court  
of Appeals and its Board  
on Professional  
Responsibility*

Wallace E. Shipp, Jr.  
Bar Counsel

*Senior Assistant Bar Counsel*  
Elizabeth A. Herman  
Julia L. Porter  
Judith Hetherton

*Assistant Bar Counsel*  
Joseph N. Bowman  
Ross T. Dicker  
Catherine L. Kello  
John T. Rooney  
H. Clay Smith, III  
Traci M. Tait  
Asma Naeem

*Staff Attorney*  
Lawrence K. Bloom



Re: **Your Complaint re Samuel R. Berger**

Dear Mr. Fitton:

This is to acknowledge your letter of complaint of May 2, 2005, concerning Samuel R. Berger. You state that Mr. Berger entered a plea of guilty in a criminal matter in the District of Columbia, and that his admitted conduct appears to have violated Rule 8.4 of the District of Columbia Rules of Professional Conduct.

While this matter had already come to our attention, we nevertheless thank you for writing to us about your concerns.

Sincerely,

A handwritten signature in cursive script that reads "Judith Hetherton".

Judith Hetherton  
Senior Assistant Bar Counsel

JH:dcw



# Judicial Watch

*Because no one is above the law!*

**COPY**

June 16, 2006

VIA FACSIMILE (202-638-0862) AND U.S. MAIL

Mr. Wallace E. Shipp, Jr.  
Bar Counsel  
District of Columbia Bar  
409 E Street, N.W.  
Building B, Room 228  
Washington, D.C. 20001

**Re: Failure to Discipline Samuel R. Berger**

Dear Mr. Shipp:

This letter is to advise of you an apparent failure of the disciplinary process of the District of Columbia Bar. More than one year ago, I wrote to your office regarding undisputed misconduct by District of Columbia attorney Samuel R. Berger.<sup>1</sup> Since that time, however, despite Mr. Berger's admission to committing a serious crime, no disciplinary action has been taken against him.

In April 2005, Mr. Berger pled guilty in federal court to the theft of classified documents from the National Archives and the willful destruction of some of those documents. Despite this plain and egregious misconduct, according to the records of the D.C. Bar, no disciplinary action has been taken against Mr. Berger. This failure to act indicates either an unacceptable delay in the disciplinary process or an equally unacceptable disinterest by your office in this serious violation of law.

Accordingly, I again urge you to take prompt and appropriate action in regard to Mr. Berger. I am looking forward to your response detailing what has been done, if anything, to

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<sup>1</sup> See attached copy of May 2, 2005 letter and acknowledgment of receipt.

Mr. Wallace E. Shipp, Jr.  
June 16, 2006  
Page 2

discipline Mr. Berger. The public has the right to expect that a high-profile attorney like Mr. Berger is subject to the same ethical rules and standards as any other member of the Bar.

Sincerely,

JUDICIAL WATCH, INC.

A handwritten signature in black ink, appearing to read 'T. J. Fitton', written in a cursive style.

Thomas J. Fitton  
President

cc: Chief Judge Eric T. Washington  
District of Columbia Court of Appeals  
Martin R. Baach, Chair  
Board on Professional Responsibility

# OFFICE OF BAR COUNSEL

June 22, 2006

## **CONFIDENTIAL**

Thomas J. Fitton  
President  
Judicial Watch, Inc.  
501 School Street, S.W., Suite 500  
Washington, D.C. 20024

*Serving the District  
of Columbia Court  
of Appeals and its Board  
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Wallace E. Shipp, Jr.  
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Traci M. Tait  
Asma Naeem

*Staff Attorney*  
Lawrence K. Bloom



**Re: In re Samuel R. Berger**  
**DCCA No. 05-BG-482**  
**Bar Docket No. 126-05**

Dear Mr. Fitton:

This is to acknowledge your letter of June 16, 2006, addressed to Wallace E. Shipp, Jr., copied to Chief Judge Eric T. Washington and Martin R. Baach, concerning Samuel R. Berger, an inactive member of the District of Columbia Bar. You state that Mr. Berger entered a plea of guilty in a criminal matter in April 2005 and you ask to be advised of the status of any disciplinary matter.

The enclosed order of the District of Columbia Court of Appeals entered on June 7, 2005, in *In re Samuel R. Berger*, DCCA No. 05-BG-482, Bar Docket No. 126-05, is a matter of public record. That order "referred [the matter] to the Board on Professional Responsibility to refer to Bar Counsel to investigate and proceed as appropriate under D.C. Bar Rule XI, § 8." The order provides, in relevant part, that "Bar Counsel [shall] inform the Court if the matter is resolved without the necessity of further court action." The docket of the Court of Appeals reflects no filing advising that the matter has been resolved without the necessity of further court action.

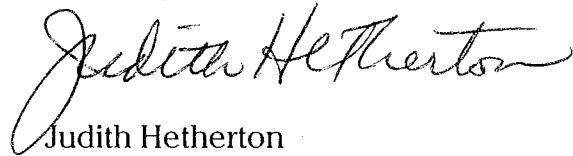
D.C. Bar Rule XI, § 17(a), provides in relevant part:

Except as otherwise provided in this rule or as the Court may otherwise order, all proceedings involving allegations of misconduct by an attorney shall be kept confidential until either a petition has been filed under section 8(c) or an informal admonition has been issued. . . .

Thomas J. Fitton  
June 22, 2006  
Page 2

Thus, we thank you for your inquiry but we are not at liberty to provide you with any other information concerning the status of this matter.

Sincerely,

A handwritten signature in cursive script that reads "Judith Hetherton". The signature is written in black ink and is positioned above the printed name and title.

Judith Hetherton  
Senior Assistant Bar Counsel

Enclosure (Court Order of June 7, 2005)

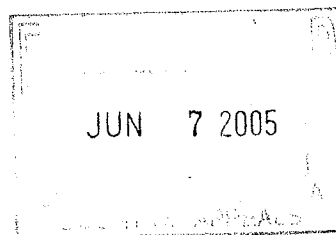
cc w/enclosure:

Garland Pinkston, Jr., Esquire  
Clerk, District of Columbia Court of Appeals

Martin R. Baach, Esquire  
Chair, Board on Professional Responsibility

JH:dcw

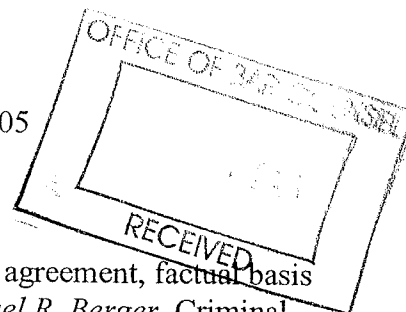
District of Columbia  
Court of Appeals



No. 05-BG-482

In the Matter of  
SAMUEL R. BERGER,  
An Inactive Member of the Bar of the  
District of Columbia  
Court of Appeals.  
Bar Registration No. 167452

BDN: 126-05



ORDER

On consideration of the certified copies of the information, plea agreement, <sup>factual basis</sup> for the plea, and docket entry of April 1, 2005, in *United States v. Samuel R. Berger*, Criminal No. 1:05-mj-00175-JMF, in the United States District Court for the District of Columbia, and it appearing that the offense to which respondent entered a guilty plea is not a "serious crime" as defined by D.C. Bar Rule XI, § 10 (b), it is

ORDERED that this matter is referred to the Board on Professional Responsibility to refer to Bar Counsel to investigate and proceed as appropriate under D.C. Bar Rule XI, § 8. It is

FURTHER ORDERED that Bar Counsel inform the Court if the matter is resolved without the necessity of further court action.

BY THE COURT:

ANNICE M. WAGNER  
Chief Judge

Copies to:

Lanny A. Breuer, Esquire  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2401

Martin R. Baach, Esquire  
Chair, Board on Professional Responsibility  
409 E Street, N.W., Suite 208  
Washington, D.C. 20001

A true Copy

Test:

Garland Pinkston, Jr.  
Clerk of the District of Columbia Court  
of Appeals

BY

  
DEPUTY CLERK

No. 05-BG-482

Wallace E. Shipp, Jr., Esquire  
Bar Counsel, Office of Bar Counsel  
409 E Street, N.W., Suite 228  
Washington, D.C. 20001

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