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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE EASTERN DISTRICT OF CALIFORNIA

13 LARRY BERMAN,

14
15 Plaintiff,

16 v.

17 CENTRAL INTELLIGENCE AGENCY,

18 Defendant.

) No. S-04-2699 DFL DAD

) **PLAINTIFF LARRY BERMAN'S**
) **STATEMENT OF UNDISPUTED FACTS**
) **IN SUPPORT OF CROSS-MOTION FOR**
) **SUMMARY JUDGMENT**

) Time: 10:00 a.m.

) Date: June 1, 2005

) Courtroom: 7 (Hon. David F. Levi)

1 ***Historical Significance of PDBs and Other Intelligence Documents***

<u>UNDISPUTED MATERIAL FACT</u>	<u>SUPPORTING EVIDENCE</u>
<p>2 1. Plaintiff Larry Berman is a tenured Professor of</p> <p>3 Political Science at the University of California, Davis,</p> <p>4 and a noted historian and author on the presidency,</p> <p>5 foreign policy and Vietnam.</p>	<p>Declaration of Larry Berman (“Berman Decl.”), ¶ 1.</p>
<p>6 2. Professor Berman’s historical research and</p> <p>7 writings largely depend on publicly available</p> <p>8 information, including declassified intelligence</p> <p>9 documents reflecting what information was available</p> <p>10 and conveyed to the president.</p>	<p><u>Id.</u>, ¶¶ 1,5.</p>
<p>11 3. PDBs and other presidential briefings are of</p> <p>12 particular importance to Professor Berman’s work and</p> <p>13 an accurate historical account of the American</p> <p>14 presidency and foreign policy because such documents</p> <p>15 represent factual information conveyed to the</p> <p>16 presidency.</p>	<p><u>Id.</u>, ¶¶ 5, 10.</p>
<p>17 4. Learning what the President knew and when is</p> <p>18 important to understanding how and why foreign</p> <p>19 policy decisions are made during the nation’s history.</p>	<p><u>Id.</u>, ¶¶ 5, 10.</p>

20 ***Plaintiff Larry Berman’s FOIA Request For PDBs of August 6, 1965, March 31, 1968 and***

21 ***April 2, 1968.***

<u>UNDISPUTED MATERIAL FACT</u>	<u>SUPPORTING EVIDENCE</u>
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<u>UNDISPUTED MATERIAL FACT</u>	<u>SUPPORTING EVIDENCE</u>
<p>1</p> <p>2 5. On March 3, 2004, in work in connection with an</p> <p>3 ongoing scholarly project, Professor Berman made a</p> <p>4 Federal Freedom of Information Act (“FOIA”) request</p> <p>5 to the CIA to obtain four PDBs dated August 6, 1965,</p> <p>6 August 8, 1965, March 31, 1968 and April 2, 1968.</p>	<p><u>See</u> Exhibit (“Ex.”) 1 to Berman Decl., ¶ 13.</p>
<p>7 6. In a letter dated April 15, 2004, the CIA denied</p> <p>8 Professor Berman’s FOIA request under FOIA</p> <p>9 exemptions (b)(1), (b)(3) and (b)(5).</p>	<p><u>See</u> Ex. 4 to Berman Decl., ¶ 15.</p>
<p>10 7. In this letter, the CIA also refused to confirm or</p> <p>11 deny the existence of the requested PDBs.</p>	<p><u>Id.</u></p>
<p>12 8. On May 6, 2004, Professor Berman appealed the</p> <p>13 CIA’s denial.</p>	<p><u>See</u> Ex. 5 to Berman Decl., ¶ 16.</p>
<p>14 9. In his appeal letter, Professor Berman requested</p> <p>15 that the CIA declassify “reasonably segregable portions</p> <p>16 of the PDBs while protecting any truly sensitive</p> <p>17 information on sources and methods, etc.”</p>	<p><u>Id.</u></p>
<p>18 10. In a letter dated June 21, 2004, Professor Berman</p> <p>19 was informed by the CIA that “the Agency Release</p> <p>20 Panel has considered your appeal and determined that</p> <p>21 the records must continue to be withheld in their</p> <p>22 entirety on the basis of Freedom of Information Act</p> <p>23 exemptions (b)(1), (b)(3) and (b)(5).</p>	<p><u>See</u> Ex.7 to Berman Decl., ¶ 18.</p>
<p>24 11. On December 22, 2004, after exhausting his</p> <p>25 administrative remedies, Professor Berman filed a</p> <p>26 complaint in the U.S. District Court for the Eastern</p> <p>27 District of California against the CIA seeking access to</p>	<p><u>See</u> Berman Decl., ¶ 19.</p>

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<u>UNDISPUTED MATERIAL FACT</u>	<u>SUPPORTING EVIDENCE</u>
the PDBs dated August 6, 1965, March 31, 1968 and April 2, 1968, among other relief. ¹	

DATED this 2nd day of May, 2005.

DAVIS WRIGHT TREMAINE LLP

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The National Security Archive

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¹ The CIA has averred that a March 31, 1968 PDB was not prepared. See Answer, n. 1 at 2.