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

13 LARRY BERMAN,

14 Plaintiff,

15 v.

16 CENTRAL INTELLIGENCE AGENCY,

17 Defendant.

No. S-04-2699 DFL DAD

) **DECLARATION OF GEORGE**  
 ) **HERRING IN SUPPORT OF LARRY**  
 ) **BERMAN'S CROSS-MOTION FOR**  
 ) **SUMMARY JUDGMENT AND IN**  
 ) **OPPOSITION TO THE CENTRAL**  
 ) **INTELLIGENCE AGENCY'S MOTION**  
 ) **FOR SUMMARY JUDGMENT**

) Time: 10:00 a.m.

) Date: June 1, 2005

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

21  
22 I, George Herring, declare:

23 1. I am a Professor of History at the University of Kentucky and Acting Director of  
 24 the Patterson School of Diplomacy. My field of specialization is the United States' foreign  
 25 relations, and I have written extensively about and regularly teach courses on the Vietnam War. I  
 26 am the author of numerous books, articles, and essays concerning the Vietnam War, including,  
 27 *America's Longest War: The United States and Vietnam, 1950-1975* (4th ed., 2002); *The Secret*  
 28

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1 *Diplomacy of the Vietnam War: The Negotiating Volumes of the Pentagon Papers* (1983), and *LBJ*  
2 *and Vietnam: A Different Kind of War* (1994) .

3 2. From 1990 to 1996, I served on the Central Intelligence Agency's (CIA) Historical  
4 Review Panel, which was comprised of prominent historians and political scientists from  
5 academia. The Panel was created by the CIA to advise the Director of Central Intelligence on the  
6 Agency's declassification program by providing advice and recommendations regarding how to  
7 proceed and how to prioritize document releases. I make this declaration in support of Plaintiff  
8 Larry Berman's Cross-Motion for Summary Judgment and Opposition to the Central Intelligence  
9 Agency's Motion for Summary Judgment. I have personal knowledge of the matters stated herein,  
10 and would and could competently testify to them if called as a witness.

11 3. I have reviewed many historic, top-level intelligence documents created by the  
12 CIA, including Presidential Daily Briefs ("PDBs") created during President Lyndon B. Johnson's  
13 administration and released by the CIA in sanitized form pursuant to the mandatory  
14 declassification review process. These include PDBs from August 7, 1965; May 13, 1967; May  
15 16, 1967; May 27, 1967; June 5, 1967; June 6, 1967; June 7, 1967; June 8, 1967; June 9, 1967;  
16 and April 1, 1968.

17 4. The PDBs that I reviewed contained concise reporting on major, contemporaneous  
18 international developments assembled from various sources such as satellite photographs, signal  
19 intercepts, Department of State cables, individual recruits and open source intelligence, which  
20 includes published and transcribed news accounts of foreign events, public comments by foreign  
21 leaders and other dignitaries and other publicly available information. PDBs often contain less  
22 detailed descriptions of material found in other top level intelligence such as Central Intelligence  
23 Bulletins.

24 5. The PDBs that I reviewed do not contain policy recommendations; rather, they  
25 report facts designed as an intelligence aid to the President and executive branch officials who do  
26 set U.S. policy toward other countries.

27 6. During my tenure on the Panel, the Panel made specific recommendations to the  
28 CIA that CIA records over 35 years-old, including presidential briefings, as well as other minutes

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1 of staff meetings and memoranda of conversations contained in the office files of the Director of  
2 Central Intelligence be declassified and made public through the National Archive Records  
3 Administration and/or the CIA's Center for the Study of Intelligence. This recommendation was  
4 based on the collective judgment of the Panel that factual material in the PDBs, and other  
5 documents over 35-years old can be released after items of continued sensitivity or source and  
6 method information are redacted. Even with respect to sources and methods, however, the Panel  
7 recognized that the sensitivity of such information diminishes over time but the historical  
8 significance of such information does not, and therefore some provision should be made for the  
9 eventual release of this information as well. The Panel's recommendation is memorialized in the  
10 March 6, 1996 memorandum from the Panel to the Director of Central Intelligence, a true and  
11 correct copy of which is attached to this Declaration as Exhibit 1.

12 7. Similar recommendations were made by the U.S. State Department's Historical  
13 Advisory Committee on Diplomatic Documentation and are contained in final reports which are  
14 matters of public record, such as those attached as Exhibits 28 and 29 to the Declaration of  
15 Thomas Blanton (U.S. State Department Historical Advisory Committee on Diplomatic  
16 Documentation for January 1-December 31, 2002, available on the Internet at  
17 <http://www.fas.org/sgp/advisory/state/hac02.html> and U.S. State Department Historical Advisory  
18 Committee on Diplomatic Documentation for January 1-December 31, 2001, available on the  
19 Internet at <http://www.fas.org/sgp/advisory/state/hac01.html>).

20 8. The 10 declassified and released PDB's of President Johnson's administration,  
21 which I have reviewed and which are attached to the Berman Complaint, are representative of the  
22 type of information contained in other PDBs I have reviewed.

23 9. Based on my review of PDBs, historic PDBs -- such as the ones sought by  
24 Professor Berman here, which are 40 or so years old -- contain factual material that can be released  
25 after items of continued sensitivity or source and method information are redacted. Such released  
26 have already taken place with the 10 redacted PDBs from the Johnson administration that are  
27 attached to Plaintiff Larry Berman's Complaint, which I have reviewed, and the several thousand  
28 Central Intelligence Bulletins that are now a matter of public record.

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1           10.     Moreover, the claim that these documents cannot be released in redacted form  
2 without harm to national security or without somehow disclosing information that could lead to  
3 the disclosure of a source or method is belied by the enormous amount of historic top-level  
4 intelligence and executive branch information during this time that is already publicly available,  
5 some of which includes sources and methods from that point in history.

6           11.     Further, my review of PDBs demonstrates that there is no danger to the deliberative  
7 process caused by non-recommendatory documents such as PDBs prepared during the Johnson  
8 Administration. Indeed, already publicly available and declassified documentation includes far  
9 more sensitive intelligence information and, among other things, the actual deliberations of our  
10 country's top policymakers on an array of foreign policy issues.

11           12.     For example, the now declassified study by Harold P. Ford, titled *CIA and the*  
12 *Vietnam Policymakers: Three Episodes 1962-1968*, available on the CIA's own website, which  
13 describes in exacting detail the advice given to President John F. Kennedy and President Lyndon  
14 B. Johnson by their top advisers, and information conveyed by the CIA and the Director of Central  
15 Intelligence. This study includes direct quotes from minutes, notes, intelligence reports, estimates  
16 and many other executive branch and intelligence community documents. This study is publicly  
17 available on the Internet at <http://www.odci.gov/csi/books/vietnam/epis2.html>.

18           13.     In addition, the U.S. State Department's Bureau of Intelligence and Research has  
19 also published an in depth study titled *Vietnam 1961-1968*, which includes extensive discussion of  
20 intelligence subjects through the 1960s and an annex that presents excerpts or the entire contents  
21 of documents that are referred to in the paper. These include once secret excerpts of the highest  
22 level intelligence products prepared by the intelligence community on Vietnam from the period  
23 1961-1968, including daily intelligence memoranda on Vietnam. The study is available on the  
24 Internet at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB121/index.htm>.

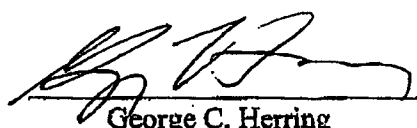
25           14.     The *Foreign Relations of the United States (FRUS)* volume on Vietnam concerning  
26 the period when President Johnson decided to intervene in the fighting in South Vietnam provides  
27 an extensive collection of once highly secret State Department cables, memoranda to the  
28 president, and records of presidential meetings disclosing the information and policy advice that

1 was available to Johnson when he made decisions on bombing and troop deployments. *Foreign*  
2 *Relations of the United States, 1964-1968, II, Vietnam January-June 1965*. The volume is  
3 available on the Internet at <http://www.state.gov/r/pa/ho/frus/johnsonlb/vi/>. The *FRUS* series  
4 presents the official documentary historical record of major U.S. foreign policy decisions and  
5 significant diplomatic activity. *FRUS* volumes contain documents from Presidential libraries,  
6 Departments of State and Defense, National Security Council, Central Intelligence Agency,  
7 Agency for International Development, and other foreign affairs agencies. Agencies whose  
8 documents are included in a volume participate in a declassification review.

9 15. Given the vast amount of historic information that has been made publicly  
10 available from the Kennedy, Johnson and Nixon administrations without harm to national security  
11 or the Presidential deliberate process, any claim that disclosure, in redacted form if necessary, of  
12 three 40 year-old PDBs from the Johnson administration would be harmful to present day national  
13 security interests or harm the deliberate process is simply not credible. On the other hand,  
14 disclosure of such historic information is necessary for an accurate and thorough record of  
15 American history.

16 I declare under penalty of perjury that the foregoing is true and correct.

17  
18 Dated: 4/29/05

19   
20 George C. Herring  
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