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18 IN THE UNITED STATES DISTRICT COURT
19 FOR THE EASTERN DISTRICT OF CALIFORNIA

20 LARRY BERMAN,
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22 Plaintiff,
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24 v.
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26 CENTRAL INTELLIGENCE AGENCY,
27
28 Defendant.

) No. S-04-2699 DFL DAD
)
) **PLAINTIFF LARRY BERMAN'S**
) **OPPOSITION TO DEFENDANT**
) **CENTRAL INTELLIGENCE AGENCY'S**
) **STATEMENT OF UNDISPUTED FACTS**
) **AND STATEMENT OF ADDITIONAL**
) **FACTS IN OPPOSITION**

) Time: 10:00 a.m.
) Date: June 1, 2005
) Courtroom: 7 (Hon. David F. Levi)

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BERMAN'S OPPOSITION TO CIA'S STATEMENT OF MATERIAL FACTS

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<u>CIA FACTS AND EVIDENCE</u>	<u>BERMAN'S OPPOSITION</u>
<p>1. The PDBs contain information that, by itself or in connection with other information, could expose the existence of sensitive sources and methods of intelligence collection. (Decl. of CIA Information Review Officer Terry N. Buroker ¶ 34.)</p>	<p>Disputed. CIA's evidence is insufficient to support this conclusion. Nor does CIA's evidence establish materiality of fact to the two PDBs at issue here. <u>See also</u> Declaration of Bill Moyers ("Moyers Decl."), ¶¶ 7-9; Declaration of George Herring ("Herring Decl."), ¶¶ 6, 9, 10, 15; Declaration of Thomas Blanton ("Blanton Decl."), ¶¶ 7-40 and Exhibits ("Ex.") 4-24; 26-31 (showing 30 PDBs and PICLS, the predecessor document to the PBD, are already publicly available; and several thousand CIBs, which often contain verbatim or near verbatim information as contained in PDBs); Declaration of Larry Berman ("Berman Decl."), ¶¶ 20-28; <u>see also</u> Ex. 25 at 1 to Blanton Decl., ¶ 31 (John Diamond, <i>Few PDBs Declassified for Public</i>, USA Today (April 11, 2004)(reporting that CIA Director George Tenet said to a House-Senate investigative committee in 2002 that it is not the content of the PDBs that make</p>

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<u>CIA FACTS AND EVIDENCE</u>	<u>BERMAN'S OPPOSITION</u>
	<p>them sensitive but the fact that they are being briefed to the President), at http://www.usatoday.com/news/washington/executive/2004-04-11-public-pbds_x.htm.</p>
<p>2. The nature of the information in the PDBs itself supplies information about its provenance to an educated reader. (<u>Id.</u>)</p>	<p>Disputed. CIA's evidence is insufficient to support this vague conclusion. Nor does CIA's evidence establish materiality of fact to the two PDBs at issue here. <u>See also</u> Moyers Decl., ¶¶ 7-9; Herring Decl., ¶¶ 6-10; Blanton Decl., ¶¶ 7-40 and Exs. 4-31; Berman Decl., ¶¶ 20-28.</p>
<p>3. Disclosure of the PDBs could reveal information about the intelligence method of the PDB process itself. (<u>Id.</u> ¶ 35.)</p>	<p>Disputed. CIA's evidence is insufficient to support this vague conclusion. Nor does CIA's evidence establish materiality of fact to the two PDBs at issue here. <u>See also</u> Moyers Decl., ¶¶ 7-9; Herring Decl., ¶¶ 6-10, 15; Blanton Decl., ¶¶ 7-40 and Exs. 4-31; Berman Decl., ¶¶ 20-28.</p>
<p>4. The PDBs contain information foreign governments provided to the CIA. (<u>Id.</u> ¶¶ 49-52.)</p>	<p>Undisputed to the extent that some PDBs may contain information provided by foreign governments. CIA's evidence, however, is insufficient to</p>

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<u>CIA FACTS AND EVIDENCE</u>	<u>BERMAN'S OPPOSITION</u>
	support conclusion, if intended, that the PDBs at issue contain such information and, in any event, fact is not material.
5. Disclosing such information could subject the foreign governments to internal and external political pressure, thereby placing in jeopardy the CIA's relationship with those and other governments. (<u>Id.</u> ¶ 51.)	Disputed. CIA's evidence is insufficient to support this vague conclusion. Nor does CIA's evidence establish materiality of fact to the two PDBs at issue here. <u>See also</u> Moyers Decl., ¶¶ 7-9; Herring Decl., ¶¶ 6-10, 15; Blanton Decl., ¶¶ 7-40 and Exs. 4-31; Berman Decl., ¶¶ 20-28, 38-45 and Exs. 17-19.
6. Information from foreign liaison sources is also referenced in the PDBs. (<u>Id.</u> ¶ 42.)	Undisputed to the extent that some PDBs may contain information provided by foreign governments. CIA's evidence, however, is insufficient to support conclusion, if intended, that the PDBs at issue contain such information and, in any event, fact is not material.
7. If disclosed, information from foreign liaison sources could betray the sources and be exploited by third party governments with negative consequences for U.S. diplomacy and the ability of the U.S. intelligence community to maintain current intelligence relationships and to establish new relationships. (<u>Id.</u>	Disputed. CIA's evidence is insufficient to support this vague conclusion. Nor does CIA's evidence establish materiality of fact to the two PDBs at issue here. <u>See also</u> Moyers Decl., ¶¶ 7-9; Herring Decl., ¶¶ 6-10,

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<u>CIA FACTS AND EVIDENCE</u>	<u>BERMAN'S OPPOSITION</u>
¶¶ 49-52.)	15; Blanton Decl., ¶¶ 7-40 and Exs. 4-31; Berman Decl., ¶¶ 20-28, 38-45 and Exs. 17-19.
8. Also in the PDBs at issue is information that, if disclosed, would reveal the identities of intelligence sources, including individual human sources and foreign government and intelligence services sources. (Id. ¶ 53.)	Disputed. CIA's evidence is insufficient to support this vague conclusion. Evidence cited states only that disclosure "would <i>tend to reveal</i> the identities of intelligence sources, both as a result of the disclosure of the specific document and as part of a mosaic of information s discussed above." <u>See</u> Buroker Decl., ¶ 53 (emphasis added). Nor does CIA's evidence establish materiality of fact to the two PDBs at issue here, in that reference to disclosure of "individual human sources" in this paragraph of the Buroker Decl. is not specific to the two PDBs at issue here. <u>See also</u> Moyers Decl., ¶7; Herring Decl., ¶¶6, 8; Blanton Decl., ¶¶ 7-40 and Exs. 4-30; Berman Decl., ¶¶ 20-28.
9. Disclosure of the information described in paragraphs 1-8, above, reasonably could be expected to cause exceptionally grave damage to the national security. (Id. ¶¶ 49-65.)	Disputed. CIA's evidence is insufficient to support this vague conclusion. Nor does CIA's evidence establish materiality of fact to the two PDBs at issue here and, in any event,

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<u>CIA FACTS AND EVIDENCE</u>	<u>BERMAN'S OPPOSITION</u>
	<p>this fact standing alone is not material. <u>See also</u> Moyers Decl., ¶¶ 7-9; Herring Decl., ¶¶ 6-10, 15; Blanton Decl., ¶¶ 7-40 and Exs. 4-31; Berman Decl., ¶¶ 20-28.</p>
<p>10. Secret information collection techniques, capabilities, or technological devices are valuable from an intelligence gathering perspective only so long as they remain unknown. (<u>Id.</u> ¶ 60.)</p>	<p>Disputed. CIA's evidence is insufficient to support this vague conclusion. Nor does CIA's evidence establish materiality of fact to the two PDBs at issue here.</p>
<p>11. The unique nature of the PDB makes disclosure of any of its contents particularly dangerous because it is the only finished intelligence product that synthesizes all of the best available intelligence on topics that the U.S. government has determined to be the most important foreign policy issues facing the country at a given time. (<u>Id.</u> ¶ 38.)</p>	<p>Disputed. CIA's evidence is insufficient to support this vague conclusion. Nor does CIA's evidence establish materiality of fact to the two PDBs at issue here. <u>See also</u> Moyers Decl., ¶ 5-9; Herring Decl., ¶ 6, 9-11, 15; Blanton Decl., ¶¶ 7-40, 42, 44 and Exs. 4-31; Berman Decl., ¶¶ 20-28.</p>
<p>12. The PDBs are part of a mosaic that, if pieced together with information already available to foreign intelligence services, could give foreign governments an understanding, or enhance their understanding, of U.S. intelligence methods. (<u>Id.</u>)</p>	<p>Disputed. CIA's evidence is insufficient to support this vague conclusion. Nor does CIA's evidence establish materiality of fact to the two PDBs at issue here. <u>See also</u> Moyers Decl., ¶¶ 5,7,9; Herring Decl., ¶ 6, 9-11, 15; Blanton Decl., ¶¶ 7-40, and Exs. 4-</p>

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<u>CIA FACTS AND EVIDENCE</u>	<u>BERMAN'S OPPOSITION</u>
	31; Berman Decl., ¶¶ 20-28, 42, 44.
<p>13. “[The PDB] provides a bigger piece of any ‘mosaic’ that a hostile entity might assemble to use against the United States and its sources than most other intelligence documents would provide.” (<u>Id.</u> ¶ 39.)</p>	<p>Disputed. CIA’s evidence is insufficient to support this vague conclusion. Nor does CIA’s evidence establish materiality of fact to the two PDBs at issue here. <u>See also</u> Moyers Decl., ¶¶ 5-9; Herring Decl., ¶ 4, 6, 9-10, 15; Blanton Decl., ¶¶ 7-40, and Exs. 4-31; Berman Decl., ¶¶ 20-28, 42, 44.</p>
<p>14. Should multiple PDBs become publicly available over time, the pattern of information then disclosed would provide foreign intelligence services an understanding of the various intelligence methods used by the United States to gather specific kinds of information from various locations around the world. (<u>Id.</u> ¶ 62.)</p>	<p>Disputed. CIA’s evidence is insufficient to support this vague conclusion. Nor does CIA’s evidence establish materiality of fact to the two PDBs at issue here. <u>See also</u> Moyers Decl., ¶¶ 5-9; Herring Decl., ¶ 6, 9-10, 15; Blanton Decl., ¶¶ 7-40, and Exs. 4-31 (showing 29 PDBs/PICLS already publicly available; and several thousand CIBs, which often contain verbatim or near verbatim information as contained in PDBs); Berman Decl., ¶¶ 20-28.</p>
<p>15. The PDBs are communications to the President for the use in his duties in conducting national security and foreign policy, the disclosure of which would impede the President’s ability to make national security</p>	<p>Disputed. CIA’s evidence is insufficient to support conclusion that disclosure of two PDBs in question would impeded the President’s ability to</p>

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<u>CIA FACTS AND EVIDENCE</u>	<u>BERMAN'S OPPOSITION</u>
<p>and foreign policy decisions based on the best intelligence that the U.S. Intelligence is capable of obtaining. (<u>Id.</u> ¶ 77.)</p>	<p>make national security and foreign policy decisions. Nor does CIA's evidence establish materiality of fact to the two PDBs at issue here. <u>See also</u> Moyers Decl., ¶¶ 5-9; Herring Decl., ¶ 9-11, 15; Blanton Decl., ¶¶ 7-40, and Exs. 4-31; Berman Decl., ¶¶ 20-28.</p>
<p>16. Disclosure of the PDBs at issue would reveal the deliberative processes of U.S. foreign policy decision making and of providing intelligence to the President regarding foreign policy priorities. (<u>Id.</u> ¶ 68-73.)</p>	<p>Disputed. CIA's evidence is insufficient to support this vague conclusion. Nor does CIA's evidence establish materiality of fact to the two PDBs at issue here. <u>See also</u> Moyers Decl., ¶¶ 5, 9 (PDBs report facts, they do not contain policy recommendations); Herring Decl., ¶ 5, 9-11, 15; Blanton Decl., ¶¶ 3, 7-40, and Exs. 2 (<i>CIA Today</i>: "CIA's analysts only report information and DO NOT make policy recommendations..."), 4-31; Berman Decl., ¶¶ 20-28.</p>
<p>17. Such a disclosure would chill the presentation of timely intelligence collection and analysis. (<u>Id.</u> ¶¶ 74-76.)</p>	<p>Disputed. CIA's evidence is insufficient to support this vague conclusion. Nor does CIA's evidence establish materiality of fact to the two PDBs at issue here. <u>See also</u> Moyers Decl., ¶¶ 4, 7, 9; Herring Decl., ¶ 6-11,</p>

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<u>CIA FACTS AND EVIDENCE</u>	<u>BERMAN'S OPPOSITION</u>
	15; Blanton Decl., ¶¶ 7-40, and Exs. 4-31; Berman Decl., ¶¶ 20-28.
18. Any non-exempt information in the PDBs at issue is inextricably intertwined with information which is exempt from disclosure under FOIA. (<u>Id.</u> ¶ 78.)	Disputed. CIA's evidence is insufficient to support this vague conclusion. Nor does CIA's evidence establish materiality of fact to the two PDBs at issue here. <u>See also</u> Moyers Decl., ¶¶ 4, 7, 9; Herring Decl., ¶ 5-11, 15; Blanton Decl., ¶¶ 7-40, and Exs. 4-31; Berman Decl., ¶¶ 20-28.
19. It would be impossible to meaningfully segregate any non exempt information in the PDBs at issue from exempt information. (<u>Id.</u> ¶ 78.)	Disputed. CIA's evidence is insufficient to support this vague conclusion. Nor does CIA's evidence establish materiality of fact to the two PDBs at issue here. <u>See also</u> Moyers Decl., ¶¶ 4, 7, 9; Herring Decl., ¶ 5-11, 15; Blanton Decl., ¶¶ 7-40, and Exs. 4-31; Berman Decl., ¶¶ 20-28.

BERMAN'S ADDITIONAL FACTS IN OPPOSITION TO CIA'S FACTS

The Nature of the President's Daily Briefs

<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
20. Historic PDBs, such as those at issue here, can be disclosed with redactions to protect sensitive source and methods, <u>if</u> implicated, without harm to national	<u>See</u> Moyers Decl., ¶¶ 4, 7, 8, 9; Herring Decl., ¶ 3-11, 15; Blanton Decl., ¶¶ 7-40, and Exs. 4-31; Berman Decl., ¶¶ 20-

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<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
security.	28.
21. PDBs are finished intelligence, not draft reports.	<u>See</u> Moyers Decl., ¶ 4; Blanton Decl., ¶¶ 7-40, and Exs. 4-31; Berman Decl., ¶¶ 20-28.
22. The PPBs do not contain policy recommendations; rather, they report facts on world events to aid the President and executive branch officials who do set U.S. policy toward other countries.	<u>See</u> Ex. 2 to Blanton Decl., ¶ 3 (<i>CIA Today: Today's CIA – What We Do</i> : “CIA’s analysts only report information and DO NOT make policy recommendations...”); Moyers Decl., ¶ 5; Herring Decl., ¶ 5.
23. The information contained in the PDBs is assembled from various sources including satellite photographs, signal intercepts, Department of State cables, individual recruits and open source intelligence, which includes published and transcribed news accounts of foreign events, public comments by foreign leaders and other dignitaries and other publicly available information.	<u>See</u> Moyers Decl., ¶ 4; Herring Decl., ¶ 4.
24. Roughly 40 percent of the items covered in the PDBs are addressed in newspapers.	<u>See</u> Ex. 3 at 16 to Blanton Decl., ¶ 4 (John L. Helgerson, <i>Getting to Know the President: CIA Briefings of Presidential Candidates, 1952-1992</i> (Washington, D.C.; CIA Center for the Study of Intelligence, 1996, 165 pp), p. 163; <u>See also</u>

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<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
	http://www.cia.gov/cis/books/briefings/cia ; Ex. 39 at 3 to Blanton Decl, ¶ 47.
25. Indeed when President William Clinton was in office he complained that most days the PDBs contained information he had already read elsewhere.	<u>See</u> Ex. 39 at 3 to Blanton Decl., ¶ 47.
26. While the practice has varied from President to President, during the Johnson administration a briefer from the CIA was not present when the President read the PDB.	<u>See</u> Ex. 3 at 6 and 8 to Blanton Decl., ¶ 6; <u>see also</u> Ex. 19 to Berman Decl, ¶ 41 (August 6, 1965 President’s Daily Diary reflects no visit from CIA personnel or a CIA briefer).
27. Because no briefer from the CIA was physically present when President Johnson read the PDBs, the CIA did not receive from Johnson the feedback it received from President John F. Kennedy or more recent Presidents.	<u>See</u> Ex. 3 at 6 and 8 to Blanton Decl.

At Least 35 PDBs/PICLS Have Been Released and Are Publicly Available

<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
28. As many as 35 PDBs or predecessor documents know as Presidential Intelligence Check Lists (“PICLS”) have been released and are publicly available in various forms.	<u>See</u> Exs. 4-24 to Blanton Decl., ¶¶7-30 (showing CIA released in sanitized form 15 PBDs and 5 PICLS pursuant to mandatory declassification review process, and showing the content of 5 other PBDs has been published); <u>see also</u> Buroker Decl., n. 4 at 14 (10 PICLS released pursuant to JFK

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<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
	Assassination Review Act).
<p>29. Ten PDBs, dated April 1, 1968, August 7, 1965, June 8, 1967, June 9, 1967, June 7, 1967, June 6, 1967, June 5, 1967, May 27, 1967, May 16, 1967, May 13, 1967, from the Johnson administration have been officially released in “sanitized” form (i.e., redacted) by the CIA, pursuant to the mandatory declassification review process of the applicable Presidential Executive Order in force at the time.</p>	<p><u>See</u> Exs. 4-13 to Blanton Decl., ¶ 8.</p>
<p>30. These include PDBs from August 7, 1965 and April 1, 1968, the day immediately after and before the PDBs at issue in this lawsuit.</p>	<p><u>See</u> Exs. 4 and 5 to Blanton Decl., ¶ 9.</p>
<p>31. The PDB dated April 1, 1968 reads: “Hanoi report the Vietnamese Communists are organizing a broad offensive to take place in South Vietnam this summer. [Redacted] Hanoi expects the offensive to set the stage for a settlement on Communist terms and that the US will accept an “armistice” by early next year. [Redacted] report that a special mobilization of manpower is under way in North Vietnam to provide large numbers of new forces for the South.”</p>	<p><u>See</u> Ex. 4 at 2 to Blanton Decl., ¶ 10.</p>
<p>32. These ten declassified PDBs contain such items as this on one Egypt: “Nasir, in a speech to the nation on Saturday, outlined a ‘program of action’ to bring about political reform. We doubt that it will amount to much.”</p>	<p><u>See</u> Ex. 4 at 4 to Blanton Decl., ¶ 11.</p>

<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
<p>33. Another entry concerning the head of state in Indonesia reads: “Despite Sukarno’s long-standing kidney ailment, for which he delays proper treatment, he has seemed quite chipper lately.”</p>	<p><u>See</u> Ex. 5 at 4 to Blanton Decl., ¶ 12.</p>
<p>34. Portions of the content of five of the ten Johnson Administration-era PDBs, dated June 5, 1967, June 6, 1967, June 7, 1967, June 8, 1967, June 9, 1967, are included, in its Six Day War Volume (XIX) in a documentary series titled “Foreign Relations of the United States (“FRUS”), published by the State Department and available on the Internet at http://www.state.gov/r/pa/ho/frus/johnsonlb/xix/28058.htm.</p>	<p><u>See</u> Ex. 14 to Blanton Decl. ¶ 13; <u>see also</u> http://www.state.gov/r/pa/ho/frus/johnsonlb/xix/28058.htm.</p>
<p>35. At least 5 other PDBs, have been officially released by the CIA in sanitized form through the mandatory declassification review process.</p>	<p><u>See</u> Exs. 15-16; 18-20 to Blanton Decl., ¶¶ 14-26.</p>
<p>36. One of these PDBs, dated May 29, 1967, was released by the CIA in “sanitized” form on December 2, 2004 – the very month that Plaintiff Larry Berman filed the instant lawsuit.</p>	<p><u>See</u> Ex. 16 to Blanton Decl., ¶ 15.</p>
<p>37. This PDB, which appears in cable form, addressed to the President and marked “DAILY BRIEF,” contains entries regarding South Vietnam and North Vietnam with redactions. The South Vietnam entry reads: “ENEMY GROUND ACTIVITY OVER THE WEEKEND WAS LIMITED LARGELY TO</p>	<p><u>Id.</u>, ¶ 16.</p>

<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
<p>1 SPORADIC MORTAR ATTACKS, TERRORIST 2 RAIDS, AND SMALL-SCALE UNIT ACTIONS IN 3 THE NORTHERN PROVINCES AND WESTERN 4 HIGHLANDS. THERE ARE CONTINUING SIGNS, 5 HOWEVER, THAT A GENERAL OFFENSIVE BY 6 VIET CONG AND NORTH VIETNAMESE ARMY 7 FORCES IS IMMINENT. [REDACTED] ALL 8 POINT TO THE EARLY INITIATION OF A 9 COUNTRY-WIDE SUMMER CAMPAIGN – 10 PERHAPS BETWEEN NOW AND THE END OF 11 THE MONTH.”</p>	
<p>13 38. Another of these PDBs is dated April 25, 1967. 14 The full text of this PDB was likewise released by the 15 CIA in sanitized during the very month that Plaintiff 16 Larry Berman filed the instant lawsuit – December 10, 17 2004.</p>	<p>See Ex. 16 to Blanton Decl., ¶ 17.</p>
<p>18 39. This PDB, which appears in cable form, 19 addressed to the President and marked “DAILY 20 BRIEF,” contain an entry regarding South Vietnam 21 which states: “VOTERS HAVE NOW GONE TO THE 22 POLLS IN 900 OF THE APPROXIMATELY 1,000 23 VILLAGES SCHEDULED TO ELECT THEIR 24 OFFICIALS THIS SPRING. TOTAL TURNOUT SO 25 FAR HAS BEEN 77 PERCENT OF THOSE 26 REGISTERED. VIET CONG HARASSMENT WAS 27 LIGHT DURING THE LATEST POLLING LAST</p>	<p>Id. at 1, ¶ 18.</p>

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<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
SUNDAY.”	
<p>40. Another dated January 16, 1967, indicates that on January 15, 1993, it was released pursuant to the mandatory declassification review procedures. It consists of a one paragraph excerpt titled: “Possible Augmentation of Hanoi’s MIG Fighter Force.” The text states “The North Vietnamese May have received as many as 70 jet fighters recently. [redaction] 50 MIG-21 and 20-MIG-17 aircraft have been received by the North Vietnamese Air Force. The MIG-21s were described as having come from the USSR and being hidden near a mountain – possibly the range north of Phuc Yen Airfield. The location of the MIG-17s, which purportedly came from the Kwangsi Province, China, was not indicated.”</p>	<p>See Ex. 18 at 1 to Blanton Decl., ¶¶ 21, 22.</p>
<p>41. Another dated November 5, 1966, indicates that in August of 1993 it was approved for released pursuant to the mandatory declassification review procedures. This PDB states: “REVOLUTIONARY DEVELOPMENT MINISTER THANG IS COMPLAINING THAT CRITICISM OF HIS PROGRAM HAS RECENTLY BECOME FASHIONABLE AMONG SAIGON LEADERS. SOME OF THIS CRITICISM COMES FROM XY AND THIEU. IT PROBABLY STEMS FROM RESENTMENT OVER THE PUBLICITY</p>	<p>See Ex. 19 at 1 to Blanton Decl., ¶¶ 23, 24.</p>

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<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
<p>ACCORDED THANG AND HIS PROGRAMS. THANG’S RESIGNATION WOULD BE A REAL IMPEDIMENT TO REVOLUTIONARY DEVELOPMENT SINCE NO EQUALLY QUALIFIED SUCCESSOR IS IN SIGHT.</p>	
<p>42. Another dated December 20, 1967, indicates that on May 16, 1990, it was approved for released pursuant to the mandatory declassification review procedure. It includes the description “Daily Brief and Special Report.” It includes a six page section on South Vietnam and a “SPECIAL DAILY REPORT ON NORTH VIETNAM FOR THE PRESIDENT’S EYES ONLY.”</p>	<p><u>See</u> Ex. 20 to Blanton Decl., ¶ 25.</p>
<p>43. Most recently, President George W. Bush declassified and released to the National Commission on Terrorist Attacks Upon the United States (the “9/11 Commission”), excerpts of two PDBs dated December 4, 1998 and August 6, 2001.</p>	<p><u>See</u> Ex. 21 to the Blanton Decl., ¶ 27; <u>see also</u> Answer, ¶ 4.</p>
<p>44. Additionally, the former Director of Central Intelligence Robert M. Gates received CIA permission to characterize and to quote verbatim from two PDBs in his 1996 memoir “<i>From the Shadows: The Ultimate Insider’s Story of Five Presidents and How They Won the Cold War</i>,” including the September 2, 1983 PDB on the Soviet shoot-down of KAL-007 (at page 267) and a passage from the August 17, 1991 PDB on the</p>	<p><u>See</u> Ex. 22 to Blanton Decl., ¶ 28; <u>see also</u> Answer, ¶ 4.</p>

<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
impending break of up the USSR (at page 521).	
<p>45. Bob Woodward’s book titled “<i>Bush at War</i>” references and quotes from a PDBs dated September 12, 2001. In reference to the terrorist attacks on September 11, 2001, and the PDB of September 12, Woodward writes, “One report out of Kandahar, Afghanistan, the spiritual home of the Taliban, show the attacks were ‘the results of two years’ planning.’ . . . One said bin Laden associate – incorrectly – ‘gave thanks for the explosion in the Congress building.’”</p>	<p>See Ex. 23 at 2 and 3 to Blanton Decl., ¶ 29.</p>
<p>46. In addition to the PDB’s disclosed as referenced above, a number of PICLS, the predecessor document to the PDB have been released by the CIA in sanitized form pursuant to the mandatory declassification review process. These include “sanitized” PICLS from February 15, 1962, October 15, 1962, October 16, 1962, October 17, 1962, and October 18, 1962.</p>	<p>See Ex. 24 to Blanton Decl., ¶ 24.</p>
<p>47. The ten Johnson-era PDBs released by the CIA in sanitized form are <u>not</u> the same as the ten PICLS that the CIA claims were released pursuant to JFK Assassination Review Board, pursuant to the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107.</p>	<p>Compare Exhibit 24 to Blanton Decl. (PICLS) to Exhibits 4-13 to Blanton Decl. (PDBs); see also Buroker Decl., n. 4 at 14.</p>
<p>48. Nor are the 10 PICLS released pursuant to the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107, the same as</p>	<p>See Blanton Decl., ¶ 30.</p>

<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
the 5 PICLS released by the CIA pursuant to the mandatory declassification review process.	
49. The PICL is the predecessor to the PDB.	<u>See</u> Buroker Decl., ¶ 18.

The CIA's Blanket Policy on Non-Disclosure of PDBs And Advisory Committee Response

<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
50. Despite these disclosures, the CIA currently maintains a blanket policy of non-disclosure with respect to PDBs regardless of age and content.	<p><u>See</u> Ex. 38 to Blanton Decl., ¶ 46 (internal CIA memo in response to a specific request made by a Peter Pesavento for certain PDBs and CIBs the week before and after the 1969 moon landing, wherein the CIA recommended that the request for the PDBs be denied “in accordance with our current policy.”) (available at http://www.fas.org/sgp/advisory/iscap/cia050602.pdf); <u>see also</u> Ex 25 at 1 to Blanton Decl., ¶ 31. (John Diamond, <i>Few PDBs Declassified for Public</i>, USA Today (April 11, 2004)(reporting that CIA Director George Tenet said to a House-Senate investigative committee in 2002 that it is not the content of the PDBs that make them sensitive but the fact that they are being briefed to the President)(available at</p>

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<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
	<p>http://www.usatoday.com/news/washington/executive/2004-04-11-public-pbds_x.htm).</p>
<p>51. A December 20, 1991 declassified report of the Task Force on Greater CIA Openness to the Director of Central Intelligence Robert M. Gates states that one of the CIA’s goals to keep in mind in implementing any program to improve openness is “to preserve the mystique.”</p>	<p><u>See</u> Ex. 26 at 2 to Blanton Decl. ¶ 32.</p>
<p>52. Just a year or so later, in response to a specific request made by a Peter Pesavento for certain PDBs and Central Intelligence Bulletins (“CIBs”) the week before and after the 1969 moon landing, the CIA’s recommended that the request for PDBs be denied “in accordance with our current policy” but that it make a “reasonable accommodation on the CIBs” so as to “be in a stronger posture to defend the PDBs. . . .”</p>	<p><u>See</u> Ex. 38 to Blanton Decl., ¶ 46.</p>
<p>53. The State Department Historical Advisory Committee on Diplomatic Documentation, has criticized the CIA’s blanket policy of non-disclosure of PDBs.</p>	<p><u>See</u> Exs. 27 and 28 to Blanton Decl., ¶¶ 33, 34 (January 1-December 31, 2002 Report of the Advisory Committee on Historical Diplomatic Documentation; January 1-December 31, 2001 Report of the Advisory Committee on Historical Diplomatic Documentation).</p>

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<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
<p>54. For example, in its 2002 Report the Committee writes: “The Committee must continue to deplore the CIA’s blanket denial of declassification of the PDBs especially those that are thirty or more years old. The PDBs for the Nixon period should be included in [the Foreign Relations of the United States (FRUS) series], because they provide historians with an invaluable and irreplaceable source for documenting high-level policymaking. The Advisory Committee has never received a satisfactory formal explanation for the CIA’s exemption of the PDBs from declassification.”</p>	<p><u>See</u> Ex. 27 at 3 to Blanton Decl.</p>
<p>55. The CIA’s own Historical Review Panel has recommended that CIA records over 35-years-old, including PDBs, be declassified and made public. This recommendation was based on the collective judgment that PDBs can be released after items of continued sensitivity or source and method information are redacted. However, even as to this information, the Panel recognized that the sensitivity of such information diminishes over time.</p>	<p><u>See</u> Herring Decl., ¶ 6, and Ex. 1 thereto (March 6, 1996 memorandum from the Panel to the Director of Central Intelligence).</p>
<p>56. The PDBs sought by Professor Berman are nearly 40-years-old (August 6, 1965) and 37-years-old (April 2, 1968), respectively.</p>	<p><u>See</u> Ex. 2 to Berman Decl., ¶ 13.</p>

3000 Central Intelligence Bulletins Have Been Declassified And These Bulletins Often Contain Similar or Identical Entries As Contained In The PDBs

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<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
<p>57. CIBs are another top level intelligence document created daily by the CIA for the President and other senior executive branch officials.</p>	<p>See Moyers Decl., ¶ 8; Berman Decl., ¶ 26.</p>
<p>58. Several thousand CIBs have been officially released in “sanitized” form by the CIA.</p>	<p>See Berman Decl., ¶ 45.</p>
<p>59. Some of these CIBs contain similar and sometimes identical entries as those contained in the publicly available PDB for the same day.</p>	<p>See Blanton Decl., ¶ 37; <u>see also</u> Moyers Decl., ¶ 8.</p>
<p>60. For example, the May 16, 1967 PDB contains the following entry pertaining to Laos:</p> <p style="padding-left: 40px;">Supplies brought to the North Vietnam – Laos border during late March and April are continuing to filter into Laos toward the Plaine des Jarres. [Redacted] inside Laos report that about 36 trucks a day – the highest rate in recent months – moved west along the route between 6 and 10 May. We still believe that this is a stockpiling operation in anticipation of the rainy season.</p> <p>The corresponding CIB entry for Laos on that same day reads:</p> <p style="padding-left: 40px;">Supplies brought to the North Vietnam – Laos border during late March and April are continuing to filter into Laos towards the Plaine des Jarres. Trained observers inside Laos report that about 36 trucks a day, the highest rate in recent months, moved west between 6 and 10 May. This activity along the principal route from North Vietnam still appears to be a stockpiling operation before the rainy season begins in northern Laos. [Redacted.] [Emphasis added.]</p>	<p>Compare Ex. 11 at 1 to Blanton Decl. to Ex. 29 at 7 to Blanton Decl.</p>

<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
<p>61. The May 16, 1967 PDB contains a redaction for the source of information but that source – “trained observers” – is fully disclosed in the officially released May 16, 1967 CIB.</p>	<p><u>Id.</u></p>
<p>62. The entries for Ecuador and Egypt in the May 16 PDB and May 16 CIB are also virtually identical.</p>	<p><u>Compare</u> Ex. 12 at 1 and 2 to Blanton Decl. to Ex. 29 at 7 and 8 to Blanton Decl.</p>
<p>63. The April 1, 1968 PDB – one day before the PDB at issue in this lawsuit – contains the following entry for Cyprus:</p> <p style="padding-left: 40px;">Prospects for talks between representatives of the Greek and Turkish communities are better now than at any time since the outbreak of violence in late 1963. Preliminary contacts between the two groups have been sided by the steady decrease in tension since last November. Much distrust remains, however, and no easy solution to the basic problem is in sight.</p> <p>The corresponding entry in the April 1 CIB on Cyprus reads:</p> <p style="padding-left: 40px;">Prospects for talks between representatives of the Greek and Turkish communities are better than they have been at any time since December 1963 when violence disrupted the existing uneasy political situation on the island. Preliminary contacts between the groups have been aided by the steady decrease in tension since last November. Much distrust and suspicion remains between the two communities, however, and no easy solution of their basic differences is in sight. [Redacted]. [Emphasis added.]</p>	<p><u>Compare</u> Ex. 4 at 4 to Blanton Decl. to Ex. 30 at 10 to Blanton Decl.</p>
<p>64. The April 1, 1968 PDB and the April 1, 1968 CIB</p>	<p><u>Compare</u> Ex. 4 at 3 and 4 to Blanton</p>

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<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
contain similar entries for Panama and Egypt.	Decl. to Ex. 30 at 5 and 9 to Blanton Decl.
<p>65. The August 7, 1965 PDB – one day after the PDB at issue in this lawsuit – contains the following entry on South Vietnam:</p> <p style="padding-left: 40px;">There has been no significant change in the situation at Duc Co in Pleiku Province, where South Vietnamese airborne troops are trying to eliminate Viet Cong harassment of a government paramilitary camp.</p> <p>The August 7, 1965 CIB contains four pages of partially-redacted text on Vietnam, with maps of both North and South Vietnam. Portions of the entry on South Vietnam read:</p> <p style="padding-left: 40px;">Following a Viet Cong mortar and small arms attack during the night of 5-6 August, heavy fighting was reported yesterday between two Vietnamese airborne battalions and Viet Cong forces near the government’s paramilitary camp at Duc Co, located along Route 19 in Pleiku Province. The government battalions, flown in on 2 August to eliminate the almost daily Viet Cong harassment of the camp since early June, have thus far killed 67 Viet Cong, while sustaining moderate to heavy casualties.</p> <p style="padding-left: 40px;">. . . Elsewhere, government forces have inflicted significant losses on Viet Cong units in three large-scale ground operations. A road clearing operation along Route 1 in Phu Yen Province has thus far resulted in 37 Viet Cong killed and 67 weapons captured, while enemy casualties in two recently terminated search and destroy operations in Quang Ngai and Binh Dinh Provinces totaled 60 killed and 14 captured. Government losses in all three operations were one killed and 14 wounded. [Redacted]</p>	<p>Decl.</p> <p><u>Compare</u> Ex. 5 at 3 to Blanton Decl. to Ex. 31 at 7 to Blanton Decl.</p>

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The CIBs and Afternoon Summaries of August 6, 1965 and April 2, 1968

<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
66. The CIB of August 6, 1965, the same date as one of the PDBs at issue in this lawsuit, has been released by the CIA in sanitized form pursuant to the mandatory declassification review process.	<u>See</u> Ex. 32 to Blanton Decl., ¶ 41.
67. The CIB of April 2, 1968, the same date as one of the PDBs at issue in this lawsuit, has been released by the CIA pursuant to the mandatory declassification review process.	<u>See</u> Ex. 33 to Blanton Decl., ¶ 42.
68. The Afternoon Summaries, prepared by the Department of State for the Secretary of State and the undersecretaries, for these days – August 6, 1965 and April 2, 1968 – have also been released under the mandatory declassification review process.	<u>See</u> Exs. 34 and 35 to Blanton Decl., ¶ 43.

Many Presidential Briefings And Declassified Intelligence Documents At Least As Sensitive As The PDBs Are Already Available To The Public

<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
69. Vast amounts of information, including presidential deliberations and CIA created intelligence reports and analysis available in the eleven Presidential Libraries and the Nixon Presidential Materials.	<u>See</u> Berman Decl., ¶ 38.
70. In the President Lyndon B. Johnson Library alone there are publicly available National Security Files, which reflect Presidential deliberations during the Gulf of Tonkin attacks in 1964, and the files of the	<u>Id.</u>

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<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
<p>deployment of combat forces to Vietnam. Also available are the meeting notes of Presidential Staff Assistant Tom Johnson, which include 120 meetings President Johnson had with his senior civilian and military advisors during 1967-1968, including 45 Tuesday luncheons. CIA intelligence reports and intelligence information cables are also available.</p>	
<p>71. There are over 5,000 hours of declassified tape recordings of presidential meetings, telephone calls, and conversations that took place in the Oval Office, White House and Cabinet Room that American presidents recorded from both political parties.</p>	<p><u>See</u> Berman Decl., ¶ 40; <u>see</u> http://www.whitehousetapes.org/; <u>see also</u> http://www.jfklibrary.org/download/pres_recordings_log.pdf (containing presidential recordings from President John F. Kennedy library). .</p>
<p>72. Daily diaries for President Johnson are available from the Johnson Library and reflect the President’s daily visitors, notations from the office staff on telephone conversations and presidential activities.</p>	<p><u>See</u> Berman Decl., ¶ 41 and Ex. 19 thereto.</p>
<p>73. The National Security Archive’s publication of <i>U.S. Policy in the Vietnam War, Part I: 1954-1968</i>, contains 217 documents from the CIA, as well as more than 2,000 other documents from the White House, National Security Council, State Department, Defense Department, and other federal agencies. It features detailed reporting from the field as well as analysis from the CIA, the Defense Intelligence Agency,</p>	<p><u>See</u> Berman Decl., ¶ 42.</p>

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<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
<p>American embassies overseas, U.S. regional military commands, especially the MACV, and the uniformed military services.</p>	
<p>74. The Virtual Vietnam Archive at Texas Tech University contains a CIA Agency Collection, which includes declassified document relating to the Vietnam War, including intelligence reports, memorandum and other communications regarding POW sightings and identification.</p>	<p><u>See</u> Berman Decl., ¶ 39; <u>see also</u> Ex. 17 (a print out of Finding Aid to Virtual Archive) and http://star.vietnam.ttu.edu/starweb/vva/servelet.setweb.</p>
<p>75. Daily morning briefings by Secretary of State Henry Kissinger to President Richard Nixon have been declassified and are publicly available.</p>	<p><u>See</u> Ex. 36 to Blanton Decl., ¶ 44.</p>
<p>76. Verbatim quotes from briefings by CIA director William Webster and National Security Advisor Brent Scowcroft to President George H. W. Bush appear in the joint Bush-Scowcroft memoir, <i>A World Transformed</i> (1998, p. 590.).</p>	<p><u>See</u> Ex. 37 to Blanton Decl., ¶ 45.</p>
<p>77. Information around the time of the requested PDBs has also been declassified and is publicly available.</p>	<p><u>See</u> Berman Decl., ¶¶ 29-37 and Exs. 8-16.</p>
<p>78. For example, a declassified March 28, 1968 cover memorandum from Special Assistant to the President for National Security Affairs Walt Rostow to President Johnson, states “Herewith CIA warns of a possible round of widespread coordinated enemy attacks between 28 March and April 2.” The referenced</p>	<p><u>See</u> Ex. 8 at 1 to Berman Decl., ¶ 29.</p>

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<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
document is a Directorate of Intelligence memorandum on "Possible New Offensive in Vietnam." .	
79. April 6, 1968 declassified notes of President Johnson's meeting with General Westmoreland, include the following comments from Westmoreland following the Tet offense, "since Tet enemy has suffered colossal military defeat. He has lost 60,000 men and 18,000 weapons."	<u>See</u> Ex. 9 at 2 to Berman Decl., ¶ 30.
80. An April 4, 1968 memorandum to President Johnson from Special Counsel Harry C. McPherson, states "I will always kick myself for my part in our 20 [parallel] problem."	<u>See</u> Ex. 10 at 1 to Berman Decl., ¶ 31.
81. An August 5, 1965 memorandum to President Johnson from National Security Advisor McGeorge Bundy starts with, "You have said that the main item on your mind is the Goldberg suggestion of a pause, but before you come to it, you may wish to have brief reports from Dean Rusk and Bob McNamara on their testimony and Congressional reaction this week."	<u>See</u> Ex. 12 at 1 to Berman Decl., ¶ 33.
82. August 5, 1965 declassified summary notes of a meeting of the National Security Council reflect that General Maxwell Taylor informed President Johnson that "[t]he increase in U.S. forces gave a lift to the South Vietnamese. We do not agree with Vietnam (South) on war aims, even though General Ky may state, for domestic consumption, that he wants to	<u>See</u> Ex. 11 at 1 to Berman Decl., ¶ 32.

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<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
<p>invade the North...The present military situation is serious but not desperate. No one knows how much Viet Cong resilience is still left. The arrival of additional U.S. forces must have convinced Hanoi that there chance of winning of the war is lessening....By the end of 1965, the North Vietnamese offensive will be bloodied and defeated without having achieved major goals. Hanoi may then decide to change its policy. 1966 could be a decisive year.”</p>	
<p>83. An August 5, 1965 Intelligence Information Cable from the CIA to President Johnson on the subject of Prime Minister Ky’s visit to Taiwan is also publicly available.</p>	<p><u>See</u> Ex. 13 to Berman Decl., ¶ 34.</p>
<p>84. An August 7, 1965 four page Joint Chiefs of Staff Memorandum for the Secretary of Defense on the “effects of Accelerated Interdiction in North Vietnam,” signed by General Earle Wheeler is also publicly available and supported by another declassified twelve page analysis of logistics requirements, an air strike program and the effects of accelerated interdiction.</p>	<p><u>See</u> Ex. 15 to Berman Decl., ¶ 36.</p>
<p>85. An August 9, 1965 memorandum to President Johnson from Special Counsel Harry C. McPherson contains McPherson’s recommendations on an order concerning the order of the draft call.</p>	<p><u>See</u> Ex. 14 to Berman Decl., ¶ 35.</p>
<p>86. Other examples of declassified documents include an April 2, 1965 declassified “Top Secret”</p>	<p><u>See</u> Ex 20 at 2 and 3 to Berman Decl., ¶ 46.</p>

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<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
<p>memorandum to President Johnson from CIA Director John McCone regarding the Rolling Thunder bombing campaign, in which McCone states, "I think what we are doing is starting down a track which involves ground force operations which, in all probability, will have limited effectiveness against guerrillas, although admittedly will restrain some VC advances. However. We can expect requirements for an ever increasing commitment of U.S. personnel without materially improving our chances of victory." In this memorandum, McCone also offered, "it is my judgment that if we are to change the mission of ground forces, we must also change the ground rules of the strikes against North Vietnam. We must hit them harder, more frequently, and inflict greater damage." McCone concluded the memo by stating that if he was unwilling to take these accelerated actions, "we must not take the action concerning the mission of our ground forces"</p>	
<p>87. A few weeks later in another declassified "Top Secret" memorandum to the President from McCone, which references a February 18, 1965 NIE, McCone predicts Hanoi would seek to "secure a respite" if the sustained bombing campaign damaged important economic and military targets.</p>	<p><u>See Ex.21 at 2 to Berman Decl., ¶ 47.</u></p>

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<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
<p>88. An April 30, 1965 CIA Office of National Estimates report states, “the general outlook remains dreary and in some respects the dangers of the situation have increased.”</p>	<p>See Ex. 22 at 3 and 4 to Berman Decl., ¶ 48.</p>
<p>89. According to the CIA’s own website, National Intelligence Estimates (“NIE”) are top level national security intelligence documents that contain forward looking assessments analyzing specific issues of national importance or crisis situations.</p>	<p>See Berman Decl., ¶ 42, n. 4; see also CIA’s Special Collections at http://www.foia.cia.gov/soviet_estimate.s.asp.</p>
<p>90. A July 1, 1965 memorandum to President Johnson from Secretary McNamara contains extensive analysis and recommendations regarding military options and, in general, reflects that at the highest level policy was being discussed.</p>	<p>See Ex. 23 to Berman Decl., ¶ 49.</p>
<p>91. Multi-volume series on Vietnam, which contain and reference numerous CIA reports and documents are also publicly available.</p>	<p>See Berman Decl., ¶¶ 50-53.</p>
<p>92. For example, a series edited by William Conrad Gibbons titled “<i>The U.S. Government and the Vietnam War: Executive and Legislative Roles and Relationships</i>,” contains numerous CIA reports and documents including materials from Directors McCone and Raborn and numerous NIEs on communist military capabilities.</p>	<p>See Ex. 24 to Berman Decl., ¶ 50.</p>
<p>93. The multi-volume <i>The Bunker Papers: Reports to the President from Vietnam, 1967-1973 from</i></p>	<p>See Ex. 25 to Berman Decl., ¶ 51.</p>

<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
<p>1 <i>Ambassador Ellsworth Bunker</i>, which republishes 2 verbatim Bunker’s telegrams to the President.</p>	
<p>3 4 94. And the recently published “<i>The Vietnam War</i> 5 <i>Files</i>” by Professor Jeffrey Kimball, makes publicly 6 available over 140 print documents and tape White 7 House conversations bearing on the Nixon 8 administration strategy in Vietnam.</p>	<p><u>See</u> Ex. 26 to Berman Decl., ¶ 52.</p>
<p>9 95. Previously classified tapes of General Creighton 10 W. Abrams, successor to General Westmoreland, 11 containing sessions of Weekly Intelligence Estimate 12 Updates are also now publicly available.</p>	<p><u>See</u> Ex. 27 to Berman Decl., ¶ 53.</p>
<p>13 96. The CIA itself has made much previously 14 classified intelligence information publicly available on 15 its own website, through the U.S. National Archives & 16 Records Administration and FRUS.</p>	<p><u>See</u> Berman Decl., ¶ 43; Herring Decl., ¶ 12.</p>
<p>17 97. For example, among the declassified documents 18 now publicly available on the CIA’s website is a 19 previously classified study authored by former CIA 20 official Harold P. Ford, titled <i>CIA and the Vietnam</i> 21 <i>Policymakers: Three Episodes 1962-1968</i>, which, 22 according to the CIA’s website, chronicles the 23 intelligence community’s analytic performance during 24 the Vietnam war with particular focus on the efforts of 25 CIA analysts and which references several previously 26 classified intelligence community documents.</p>	<p><u>Id.</u></p>
<p>27 98. Additionally, over 1,100 NIEs and other 28</p>	<p><u>See</u> Berman Decl., ¶ 44.</p>

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<u>MATERIAL FACT IN OPPOSITION</u>	<u>SUPPORTING EVIDENCE</u>
<p>publications prepared by the National Intelligence Council, which reports to the Director of Intelligence, have been declassified and made publicly available through the CIA's website.</p>	
<p>99. The U.S. State Department's Bureau of Intelligence and Research has also published an in depth study titled <i>Vietnam 1961-1968</i>, which includes extensive discussion of intelligence subjects through the 1960s and an annex that presents excerpts or the entire contents of document that are referred to in the study. These include once secret excerpts of the highest level of intelligence products prepared by the intelligence community on Vietnam, including daily intelligence memoranda on Vietnam.</p>	<p><u>See Herring Decl., ¶ 13; see also http://www.gwu.edu/~nsarchi/NSAEBB/NSAEBB121/index.html.</u></p>
<p>100. The U.S. State Department's Foreign Relations of the United States ("FRUS") volume on Vietnam provides an extensive collection of once highly secret State Department cables, memoranda to the president, and records of presidential meetings disclosing information and policy advice that was available to Johnson when he made his decision on bombing and troop deployment.</p>	<p><u>See Herring Decl., ¶ 14; see also http://www.state.gov/r/pa/ho/frus/johnson/vi/.</u></p>

DATED this 2nd day of May, 2005.

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The National Security Archive

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