

DAVIS WRIGHT TREMAINE LLP

1 THOMAS R. BURKE (State Bar No. 141930)  
DUFFY CAROLAN (State Bar No. 154988)  
2 DAVIS WRIGHT TREMAINE LLP  
One Embarcadero Center, Suite 600  
3 San Francisco, California 94111-3611  
Telephone: (415) 276-6500  
4 Facsimile: (415) 276-6599

5 MEREDITH FUCHS  
Appearing *Pro Hac Vice*  
6 The National Security Archive  
George Washington University  
7 Gelman Library, Suite 701  
2030 H. Street NW  
8 Washington, D.C. 20037  
Telephone: (202) 994-7000  
9 Facsimile: (202) 994-7005

10 Attorneys for Plaintiff Larry Berman

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

13 LARRY BERMAN, ) No. S-04-2699 DFL DAD  
14 )  
15 Plaintiff, ) **DECLARATION OF PLAINTIFF LARRY**  
16 v. ) **BERMAN IN SUPPORT OF CROSS-**  
17 CENTRAL INTELLIGENCE AGENCY, ) **MOTION FOR SUMMARY JUDGMENT**  
18 Defendant. ) **AND IN OPPOSITION TO DEFENDANT**  
19 ) **CIA'S MOTION FOR SUMMARY**  
20 ) **JUDGMENT**  
21 ) Time: 10:00 a.m.  
22 ) Date: June 1, 2005  
23 ) Courtroom: 7 (Hon. David F. Levi)

21 I, Larry Berman, declare:

22 **A. Background of Professor Berman:**

23 1. I am a tenured Professor of Political Science at the University of California, Davis,  
24 and Director of the University of California Washington Center. At UC Davis, I teach classes on  
25 the American presidency and American Government, and I have taught a special class on the  
26 presidency, advisory processes and Vietnam. I am the author or co-author of ten books and  
27 numerous articles. My research and publications have focused on the presidency, foreign policy  
28

1 and Vietnam. Indeed, I have spent the last 25 years of my life researching, studying, lecturing and  
2 writing on the Vietnam war. Among the books I have authored are *No Peace, No Honor: Nixon,*  
3 *Kissinger and Betrayal in Vietnam* (2001), which draws on hundreds of declassified documents to  
4 provide an account of the secret negotiations that led to the end of the Vietnam war; *Planning of a*  
5 *Tragedy: The Americanization of the War in Vietnam* (1982), which makes extensive use of  
6 declassified materials; and, *Lyndon Johnson's War: The Road to Stalemate in Vietnam* (1989),  
7 which chronicles the information flow to President Lyndon B. Johnson.

8       2. I have been awarded fellowships or grants from the Guggenheim Foundation, the  
9 American Council of Learned Societies, the National Science Foundation, and several grants from  
10 presidential libraries, including the Ford, Johnson, Eisenhower, Truman and Roosevelt Libraries.  
11 For my work on presidential decision making on Vietnam, comparing the decisions of Presidents  
12 Johnson and Eisenhower, I was a co-recipient of the Richard E. Neustadt Award, given annually  
13 for the best book published during the year in the field of the American Presidency. *No Peace, No*  
14 *Honor* was recognized for special distinction by the Presidency Research Group of the American  
15 Political Science Association. I am also the recipient of the career award known as the Bernath  
16 Lecture Prize, given annually by the Society of Historians of Diplomatic Relations to a scholar  
17 under the age of 45 whose work has most advanced understanding of foreign policy and  
18 diplomatic relations. I have been a Fellow at the Woodrow Wilson International Center for  
19 Scholars in Washington, D.C. and a scholar is residence at the Rockefeller Foundation's Center in  
20 Bellagio, Italy.

21       3. I have appeared on a number of broadcasts, including Bill Moyers PBS series, "The  
22 Public Mind," David McCullough's American Experience series, "Vietnam: A Television  
23 History," C-SPAN's Book TV and several programs on the History Channel, most recently the  
24 2005 Inaugural series, The Presidents. Attached hereto as Exhibit 1 is a true and correct copy of  
25 my present curriculum vitae.

26       4. I make this declaration in support of this Cross-Motion for Summary Judgment and  
27 in opposition to the Central Intelligence Agency's ("CIA") Motion for Summary Judgment. I  
28

1 have personal knowledge of the matters stated herein, and would and could competently testify to  
2 them if called as a witness.

3 **B. *Historical Significance of The President's Daily Briefs and other Intelligence***  
4 ***Documents:***

5 5. My historical research and writings largely depends on publicly available  
6 information, including declassified intelligence documents reflecting what information was  
7 available and conveyed to the President.

8 6. For example, in *Planning A Tragedy: The Americanization of the War in Vietnam*, I  
9 write about how in July and August of 1965, President Johnson committed the country to major  
10 combat in Vietnam by announcing a dramatic increase in troop strength in Vietnam and that  
11 additional U.S. forces would be sent as requested by then field commander General William  
12 Westmoreland. The accounts during this key buildup in the Vietnam war were assembled from  
13 numerous sources including: National Security Council Histories: *Deployment of Major U.S.*  
14 *Forces to Vietnam, July 1965*, which contain many declassified documents including State and  
15 Defense Department and CIA documents; an 8-volume BDM Corporation Studies, "*The Strategic*  
16 *Lessons in Vietnam*," which draws on declassified CIA documents and Military Assistance  
17 Command, Vietnam ("MACV") records; CIA estimates; White House and National Security  
18 Council meeting notes; and, Department of Defense documents. The documents help us to  
19 understand how a relatively low key commitment in 1965 became a quagmire by 1968 with over  
20 550,000 American troops committed to the Asian mainland and the U.S. no closer to achieving it's  
21 limited political objective than in 1965, before the Americanization. How did it happen, is still an  
22 important question of historical inquiry. The President's Daily Brief ("PDB") of August 6, 1965,  
23 may help us understand just what the President was being told in face of the growing requests for  
24 American deployments and express reservations about the selected option from the CIA Director,  
25 as evident from other declassified documents.

26 7. In my book *Lyndon Johnson's War*, I write about the key shift in the Johnson  
27 administration's policy towards Vietnam following the January 1968 Tet offense, where North  
28 Vietnamese troops and guerilla forces inside South Vietnam launched a massive offensive,

1 attacking over 100 cities throughout South Vietnam, during the Vietnamese new year, called Tet.  
2 Following the offensive, with 550,000 troops in Vietnam, General Westmoreland now requested  
3 another 206,000, just to hold the line. Johnson asked his close personal friend and Secretary of  
4 Defense Clark Clifford to convene a special task force that would consider Westmoreland's open-  
5 ended request. In the end, Clifford told Johnson, "we seem to have a sinkhole. We put in more—  
6 they match it. We put in more—they match it. I see more and more and more fighting with more  
7 and more casualties on the U.S. side and no end in sight to the action."

8 8. This historic account of a key turning point in the Vietnam war was constructed  
9 from numerous declassified documents and first hand accounts of what information was being  
10 conveyed to President Johnson during the months before and after Tet. Specifically, I made  
11 extensive use of meeting notes in which the President and the CIA Director along with other  
12 principals engaged one another on questions of Vietnam policy options and alternatives.

13 9. In *Lyndon Johnson's War* I also include a lengthy discussion of the Order of Battle  
14 controversy, involving what US intelligence knew about North Vietnam's combat strength. This  
15 account makes extensive use of declassified MACV and CIA documents as well as declassified  
16 transcripts from presidential conversations. The documents include Directorate of Intelligence  
17 Memoranda, enemy strength studies, Special National Intelligence Estimates ("SNIE") and related  
18 materials declassified as part of the *Westmoreland v. CBS* case.<sup>1</sup>

19 10. President's Daily Briefs ("PDBs"), the type of intelligence document at issue here,  
20 are particularly important to an accurate historical account of the American presidency and foreign  
21 policy because they represent factual information from numerous sources about world events  
22 compiled by the CIA and conveyed nearly daily to the president by the CIA. Understanding what  
23 the president knew and when is key to understanding how and why foreign policy decisions were  
24 made during relevant times in our history.

25 \_\_\_\_\_  
26 <sup>1</sup> The thousands of pages of declassified materials and interviews and notes utilized in all of my  
27 publications have been deeded to the Vietnam Archive at Texas Tech University in Lubbock,  
28 Texas and are part of the Larry Berman Collection. The materials are open for access to all  
students and scholars as part of their research on Vietnam and presidential decision-making. The  
collection is also part of the digitized record in the Virtual Vietnam Archive and are available at  
<http://www.vietnam.ttu.edu/virtualarchive/>.

1           11.     For example, a PDB dated April 1, 1968, just a day after President Johnson  
2 announced his decision not to seek re-election and focus on what he called the “search for peace”  
3 and a negotiated solution to the war, discusses the increasing rate of infiltration as a Hanoi plan for  
4 a settlement “on Communist terms and that it was Hanoi’s assumption that the US will accept an  
5 ‘armistice’ by early next year.” See Exhibit 4 to Declaration of Thomas Blanton (“Blanton  
6 Decl.”). The PDB also discuss growing disaffection among South Vietnam corps commanders as  
7 well as Vice President Ky with President Thieu’s handling of the war. This PDB, along with 9  
8 others, were declassified and publicly disclosed beginning in 1985 during the Reagan  
9 administration. Early April represents the period in which the U.S. went from a policy of  
10 escalation to eventual disengagement, and what the President was told about prospects for  
11 negotiations and halting the bombing remains absolutely essential to historical inquiry, especially  
12 since it would take four more years of negotiations to end American involvement in the war. In  
13 short, the historical significance of this type of intelligence document cannot be overstated.

14           12.     In summary, my work as a historian would not be possible without access to  
15 documents such as those referenced above and those more fully referenced and relied upon in my  
16 books and articles.

17           **C.     My FOIA Request for PDBs of August 6, 1965, March 31, 1968 and April 2,**  
18 **1968:**

19           13.     On March 3, 2004, in furtherance of my work in connection with an ongoing  
20 scholarly project, I made a Federal Freedom of Information Act (“FOIA”) request to the CIA to  
21 obtain four PDBs dated August 6, 1965, August 8, 1965, March 31, 1968 and April 2, 1968.  
22 Attached hereto as Exhibit 2 is a true and correct copy of my March 3, 2004 FOIA request.

23           14.     In a letter dated March 17, 2004, the CIA acknowledged receipt of my FOIA  
24 request. Attached hereto as Exhibit 3 is a true and correct copy of the CIA’s March 17, 2004  
25 letter.

26           15.     In a letter dated April 15, 2004, the CIA denied my FOIA request stating, in  
27 pertinent part: “the President’s Daily Brief (PDB) contains inherently privileged, predecisional and  
28 deliberative material for the President and also requires withholding on this basis. Please note that

1 such predecisional material may be protected regardless of whether it is accepted, rejected, or  
2 otherwise incorporated by senior leadership. Therefore, your request is denied under FOIA  
3 exemptions (b)(1), (b)(3) and (b)(5).” In this letter, the CIA also stated its refusal to confirm or  
4 deny the existence of the requested PDBs.<sup>2</sup> Attached hereto as Exhibit 4 is a true and correct copy  
5 of the CIA’s April 15, 2004 denial letter.

6 16. On May 6, 2004, I appealed the decision to deny access to the requested PDBs. In  
7 my appeal letter, I pointed out, among other things, that the CIA has declassified and released  
8 portions of at least ten PDBs from the Johnson administration in 1985, 1989 and again in 1989  
9 without making any claim that they were exempt from disclosure. Indeed, the PDBs that were  
10 declassified and released include ones on August 7, 1965 and April 1, 1968, the day after and the  
11 day before the dates of two of the PDBs included in my FOIA request. Moreover, I pointed out  
12 that the matters reported in the PDBs are also reported in other declassified intelligence reports  
13 disseminated by the CIA. Therefore, I requested that the CIA review and declassify “reasonably  
14 segregable portions of the PDBs while protecting any truly sensitive information on sources and  
15 methods, etc. In that way the CIA could segregate whatever information is legitimately classified  
16 under (b)(3) exemption from any factual or analytical information whose disclosure would not  
17 disclose sources/methods of information.” Attached hereto as Exhibit 5 is a true and correct copy  
18 of my May 6, 2004 appeal letter.

19 17. In a letter dated, May 13, 2004, the CIA informed me that my appeal was accepted  
20 and arrangements were made for its consideration by the Agency Release Panel. Attached hereto  
21 as Exhibit 6 is a true and correct copy of this May 13, 2004 letter.

22 18. In a letter dated June 21, 2004, I was informed by the CIA that “the Agency  
23 Release Panel has considered [my] appeal and determined that the records must continue to be  
24 withheld in their entirety on the basis of Freedom of Information Act exemptions (b)(1), (b)(3) and  
25 (b)(5). Attached hereto as Exhibit 7 is a true and correct copy of the CIA’s June 21, 2004 letter  
26 denying my appeal.

27 \_\_\_\_\_  
28 <sup>2</sup> Despite this contention, the CIA has now admitted the existence of PDBs on August 6, 1965 and  
April 2, 1968. See Answer, ¶ 1.

1           19.     On December 22, 2004, after exhausting my administrative remedies, I caused to  
2 be filed the instant Complaint seeking access to the requested PDBs, among other things.

3           **D.     *The CIA's Current Position Cannot Be Reconciled With Its Earlier Disclosures***  
4 ***of PDBs and Near Verbatim CIBs:***

5           20.     Despite the CIA's current position that the PDBs must be classified as a series and  
6 therefore withheld in their entirety (*see* Answer, ¶ 6; *see* also Exhibit 4 hereto), portions of at least  
7 ten Johnson-era PDBs have been officially released by the CIA pursuant to the mandatory  
8 declassification review process and are publicly available. *See* Exhibits 4-13 to Blanton Decl.  
9 The dates of these PDBs are April 1, 1968 (five pages), June 9, 1967, (three pages, including a  
10 June 9 "Late Item"), June 8, 1967 (two pages, including a June 8 "Late Item"), June 7, 1967 (one  
11 page), June 6, 1967 (one page), June 5, 1967 (three pages with "Late Item"), May 27 1967 (one  
12 page), May 16, 1967 (two pages), May 13, 1967 (one page), August 7, 1965 (four pages). *See*  
13 *also* Thomas S. Blanton, *The President's Daily Brief* (April 12, 2004), available at:  
14 <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB116/> (wherein these ten PDBs are attached in  
15 PDF format). Portions of five of these PDBs are published in the U.S. State Department's series  
16 on Foreign Relations of the United States ("FRUS"): Johnson Administration (1964-1968) Six  
17 Day War Volume (XIX), and are available on the State Department's official website at  
18 <http://www.state.gov/r/pa/ho/frus/johnsonlb/xix/>; *see* Exhibit 15 to Blanton Decl.

19           21.     In addition to these ten PDBs, I have recently discovered that several other PDBs  
20 are publicly available through the Virtual Vietnam Archive at Texas, Tech University:

21           a.       A May 29, 1967 PDB, which indicates that it was released by the CIA in  
22 sanitized form on December 2, 2004, references, among other things, events in South Vietnam and  
23 North Vietnam with apparent redactions for source and method information. *See* Exhibit 15 to  
24 Blanton Decl.

25           b.       An April 25, 1967 PDB, which indicates that it was released by the CIA in  
26 sanitized form on December 10, 2004, contains an entry regarding South Vietnam's elections. *See*  
27 Exhibit 16 to Blanton Decl.

28

1 c. A January 16, 1967 PDB, which indicate that it was released by the CIA on  
2 January 15, 1993, contains a one paragraph excerpt titled: "Possible Augmentation of Hanoi's  
3 MIG Fighter Force." See Exhibit 18 to Blanton Decl.

4 d. A November 5, 1966 PDB, which indicates that it was released by the CIA  
5 in 1993, includes a section on South Vietnam. See Exhibit 19 to Blanton Decl.

6 e. A December 20, 1967 PDB, which indicates that it was released on May 16,  
7 1990, includes the description "Daily Brief and Special Report." This PDB includes a six page  
8 section on South Vietnam and a "SPECIAL DAILY REPORT ON NORTH VIETNAM FOR THE  
9 PRESIDENT'S EYES ONLY." See Exhibit 20 to Blanton Decl.

10 22. In addition to the PDBs mention above, the content of other PDBs has been  
11 publicly disclosed in various ways.

12 23. For example, in 2004, President George W. Bush declassified and released portions  
13 of two recent PDBs dated December 4, 1998 and August 6, 2001 to the National Commission on  
14 Terrorist Attacks Upon the United States (the "9/11 Commission). These two PDBs were attached  
15 to the Complaint as Exhibit B and are attached to the declaration of Thomas Blanton as Exhibit 21  
16 in support of this Motion.

17 24. The CIA has also admitted in its answer that the CIA reviewed and approved for  
18 publication the former Director of Central Intelligence Robert M. Gates' 1996 memoir "*From the*  
19 *Shadows*," which quotes verbatim from two PDBs, including the September 2, 1983 PDB on the  
20 Soviet shoot-down of KAL-007 (at page 267) and a passage from the August 17, 1991 PDB on the  
21 impending break up of the USSR (at page 521). See Answer ¶ 4; see Exhibit 22 to Blanton Decl.

22 25. Bob Woodward's book titled "*Bush at War*" references and quotes from a PDBs  
23 dated September 12, 2001. In reference to the terrorist attacks on September 11, 2001, and the  
24 PDB of September 12, Woodward writes, "One report out of Kandahar, Afghanistan, the spiritual  
25 home of the Taliban, show the attacks were 'the results of two years' planning.' . . . One said bin  
26 Laden associate – incorrectly – 'gave thanks for the explosion in the Congress building.'" See  
27 Exhibit 23 to Blanton Decl.

28



1           26.     In addition to these publicly available PDBs, I have discovered that some Central  
2 Intelligence Bulletins (“CIBs”) that have been declassified and released to the public contain  
3 similar and often verbatim information as contained in the publicly available PDBs. CIBs are an  
4 intelligence digest prepared by the CIA for the President and other selected executive branch  
5 officials. See <http://www.odci.gov/csi/books/briefing/cia-5.htm>.

6           27.     For example, the May 16, 1967 PDB contains a number of items that are also  
7 included in the declassified May 16, 1967 CIB, including a near verbatim entry pertaining to Laos  
8 and similar entries pertaining to Ecuador and Egypt. Compare Exhibit 12 to Blanton Decl. to  
9 Exhibit 29 to Blanton Decl. The same is true of the April 1, 1968 PDB and the declassified April  
10 1, 1968 CIB, which contain near verbatim entries for Cyprus and similar entries pertaining to  
11 Panama and Egypt. Compare Exhibit 4 to Blanton Decl. to Exhibit 30 to Blanton Exhibit. See  
12 also Plaintiff Larry Berman’s Opposition To CIA’s Statement Of Undisputed Facts and Additional  
13 Facts in Opposition at Nos. 62 – 69 (with additional comparisons between PDBs and same day  
14 CIBs).

15           28.     Often the declassified CIBs contain more detailed information than the  
16 corresponding PDBs. Compare Exhibit 5 to Blanton Decl. to Exhibit 31 to Blanton Decl.

17           **E.     Other Publicly Available Intelligence Documents or Intelligence Accounts On or**  
18 **Surrounding August 6, 1965 and April 2, 1968**

19           29.     A declassified March 28, 1968 cover memorandum from Special Assistant to the  
20 President for National Security Affairs Walt Rostow to President Johnson, states “Herewith CIA  
21 warns of a possible round of widespread coordinated enemy attacks between 28 March and April  
22 2.” The referenced document is a Directorate of Intelligence memorandum on “Possible New  
23 Offensive in Vietnam.” Attached here to as Exhibits 8 are true and correct copies of the March 28,  
24 1968 cover letter and Directorate of Intelligence memorandum, which I originally obtained from  
25 the President Lyndon B. Johnson Library in Austin, Texas and which is now available on the  
26 Virtual Vietnam Archive at Texas Tech University.

27           30.     April 6, 1968 declassified notes of President Johnson’s meeting with General  
28 Westmoreland, reflecting CIA Director Dick Helms’ attendance, include the following comments

1 from Westmoreland following the Tet offensive, “[s]ince Tet enemy has suffered colossal military  
2 defeat. He has lost 60,000 men and 18,000 weapons.” Attached here to as Exhibit 9 is true and  
3 correct copies of the April, 1968 meeting notes, which I originally obtained from the Johnson  
4 Library and which is now available on the Virtual Vietnam Archive.

5 31. An April 4, 1968 memorandum for the President from Special Counsel Harry C.  
6 McPherson discussing McPherson’s concerns regarding an order restricting bombing south of 20  
7 [parallel]. “I will always kick myself for my part in our 20 [parallel] problem,” McPherson writes.  
8 The memo goes on to recommend appointment of someone to “manage the peace talks. . . .”  
9 Attached as Exhibit 10 is a true and correct copy of this memorandum, which I originally obtained  
10 from the Johnson Library and which is now available on the Virtual Vietnam Archive.

11 32. August 5, 1965 declassified summary notes of a meeting of the National Security  
12 Council reflects that General Maxwell Taylor informed President Johnson that, “[t]he increase in  
13 U.S. forces gave a lift to the South Vietnamese. We do not agree with Vietnam (South) on war  
14 aims, even though General Ky may state, for domestic consumption, that he wants to invade the  
15 North...The present military situation is serious but not desperate. No one knows how much Viet  
16 Cong resilience is still left. The arrival of additional U.S. forces must have convinced Hanoi that  
17 there chance of winning of the war is lessening...By the end of 1965, the North Vietnamese  
18 offensive will be bloodied and defeated without having achieved major goals. Hanoi may then  
19 decide to change its policy. 1966 could be a decisive year.” Attached hereto as Exhibit 11 is a  
20 true and correct copy of the August 5, 1965 summary notes, which I originally obtained from the  
21 Johnson Library and which is now available on the Virtual Vietnam Archive.

22 33. Another August 5, 1965 memorandum to the President from National Security  
23 Advisor McGeorge Bundy starts with “You have said that the main item on your mind is the  
24 Goldberg suggestion of a pause, but before you come to it, you may wish to have brief reports  
25 from Dean Rusk and Bob McNamara on their testimony and Congressional reaction this week.”  
26 Attached hereto as Exhibit 12 is a true and correct copy of this August 5, 1965 memorandum,  
27 which I originally obtained from the Johnson Library and which is now available on the Virtual  
28 Vietnam Archive.

1           34.     An August 5, 1965 Intelligence Information Cable from the CIA discusses Prime  
2 Minister Ky's visit to Taiwan. Attached hereto as Exhibit 13 is a true and correct copy of this  
3 August 5, 1965 cable, which I originally obtained from the Johnson Library and which is now  
4 available on the Virtual Vietnam Archive.

5           35.     An August 9, 1965 memorandum to the President from McPherson contains  
6 McPherson's recommendation and the recommendation of others on an order concerning the order  
7 of draft call. Attached hereto as Exhibit 14 is a true and correct copy of this August 9, 1965  
8 memorandum, which I originally obtained from the Johnson Library and which is now available  
9 on the Virtual Vietnam Archive.

10          36.     An August 7, 1965 four page Joint Chiefs of Staff Memorandum for the Secretary  
11 of Defense on the "Effects of Accelerated Interdiction in North Vietnam," signed by Chairman  
12 Earle Wheeler, recommends a stepped up air interdiction campaign aimed at destroying the will of  
13 the enemy and their capability to support the insurgency in the South. This memorandum is  
14 supported by a 12-page analysis of logistics requirements, an air strike program and the effects of  
15 accelerated interdiction. Attached hereto as Exhibits 15 are true and correct copies of the August  
16 7, 1965 Joint Chiefs of Staff memorandum and the 12-page analysis, which I obtained from the  
17 Johnson Library.

18          37.     In addition to the CIBs on April 2, 1968 and August 6, 1965, attached as Exhibits  
19 31 and 32 to Blanton Decl, several CIBs surrounding these relevant dates have been released by  
20 the CIA in sanitized form and are available from NARA. These include a March 29, 1968 CIB, an  
21 April 3, 1968 CIB and an August 9, 1965 CIB. Attached hereto as Exhibit 16 are true and correct  
22 copies of these CIBs obtained from the NARA on my behalf.

23           **F.     Other Declassified Documents Revealing Deliberations of the President and**  
24 **Information from Intelligence Community**

25          38.     There is already a vast amount of information available in the eleven Presidential  
26 Libraries and the Nixon Presidential Materials. NARA estimates that there are over 400 million  
27 pages of textual materials; nearly 10 million photographs; over 15 million feet of motion picture  
28 film; nearly 100,000 hours of disc, audiotape, and videotape recordings; and approximately half a

1 million museum objects. I have conducted presidency and Vietnam related research in the  
2 Roosevelt, Truman, Eisenhower, Kennedy, Johnson and Ford Presidential Libraries as well as in  
3 the Nixon Presidential Materials in Archives II. At the LBJ Library, for example, I was able to  
4 read the National Security File, which is the working file of President Johnson's special assistants  
5 for national security affairs, the files of the Gulf of Tonkin attacks in 1964, and files of the  
6 deployment of major forces to Vietnam. Also available are Presidential Staff Assistant and Deputy  
7 Press Secretary Tom Johnson's meeting notes which include 120 meetings President Johnson had  
8 with his senior civilian and military advisors during 1967-1968, including 45 Tuesday luncheons.  
9 The Vietnam Country File documents in chronological order and in 72 volumes, with separate  
10 folders for NODIS cables, Special Intelligence materials, and special messages. Boxes 48-51 are  
11 identified as "special intelligence materials," Boxes 66-67 contain in folder 3S, "CIA Assessments  
12 of Communists Response to certain US Actions." There is a wealth of material related to CIA  
13 Intelligence Reports and Intelligence Information cables, boxes 158-61; 178, 180-181, 187, 191,  
14 201, 223-226, 230-232; 240-246; 258-59. At the Gerald Ford Library, I was able to read the  
15 Henry Kissinger-Brent Scowcroft MEMCONs – transcript like memoranda of high level policy  
16 discussions on Vietnam – as well as National Security Agency declassifications of radio messages  
17 from helicopters during the final evacuation from Saigon. At the Nixon Materials project in  
18 Archives II, a wealth of information has been declassified from the Paris Peace talks file as well as  
19 the Kissinger papers, MEMCONS and related materials. The Johnson and Nixon libraries are also  
20 actively engaged in making the presidential tapes available to researchers. All of the libraries also  
21 have extensive materials on the cable exchanges between the White House and Federal  
22 Departments such as State and Defense.

23 39. The Virtual Vietnam Archive at Texas Tech University contains a CIA Agency  
24 Collection and Finding Aid, which list contains declassified documents related to the Vietnam  
25 War, Vietnam and Southeast Asia. According to the Finding Aid, this collection contains  
26 "situation reports of South Vietnam and Laos, (some monthly, others weekly); intelligence reports  
27 on North Vietnam or on special topics such as air capacity; memorandum and other  
28 communications regarding POW sightings and identification; and miscellaneous reports on other

1 topics. Some of the documents have been ‘sanitized.’” Attached hereto as Exhibit 17 is a true and  
2 correct copy of a word printout of the Finding Aid, which is accessible on the Internet at  
3 <http://star.vietnam.ttu.edu/starweb/vva/servlet.setweb>.

4 40. Researchers are now making extensive use of declassified presidential tape  
5 recordings that American presidents from both political parties secretly recorded. This amounts to  
6 over 5,000 hours of conversations. Several sets of conversations are already available  
7 commercially in books such as Michael Beschloss’s two volumes “*Taking Charge: The Johnson*  
8 *White House Tapes, 1963-1964*” (Simon and Schuster, 1997) and “*Reaching for Glory: Lyndon*  
9 *Johnson’s Secret White House Tapes, 1964-1965*” ( Simon and Schuster, 2001), and Stanley  
10 Kutler’s “*Abuse of Power: The New Nixon Tapes*” ( The Free Press, 1997). In my teaching, I  
11 utilize John Prados’s “*The White House Tapes: Eavesdropping on the President*” (The New Press,  
12 2003), which provides both a book and CD-set of the secret oval office conversations recordings  
13 made by eight US Presidents. Attached as Exhibit 18 is a true and correct copy of the book jacket  
14 and excerpts from this book, The Miller Center of Public Affairs at the University of Virginia has  
15 a project titled WhiteHouseTapes.org which allows access for listening to the recordings from my  
16 computer. See <http://www.whitehousetapes.org/>; see also  
17 [http://www.jfklibrary.org/download/pres\\_recordings\\_log.pdf](http://www.jfklibrary.org/download/pres_recordings_log.pdf) (containing presidential recordings  
18 from President John F. Kennedy library).

19 41. Another valuable resource available to scholars at the Johnson Library is the  
20 President’s Daily Diary which serves as a guide to the president’s daily visitors and contains  
21 valuable notations from the office staff on telephone conversation recordings as well as  
22 presidential activities. This enables the researcher to know whether a member of the Cabinet,  
23 Congress or Agency visited the White House or received a call from the President. See  
24 <http://www.lbjlib.utexas.edu/johnson/archives.hom/diary/diarycol.asp>. Attached hereto as Exhibit  
25 19 is a true and correct copy of President Johnson’s diary from August 6, 1965.<sup>3</sup>

26 42. One of the most valuable new resources for scholars of the war is the National  
27 Security Archive’s publication of *U.S. Policy in the Vietnam War, Part I: 1954-1968*, under the

28 <sup>3</sup> Noticeably absent from this diary is any visit from CIA personnel or a CIA briefer.

1 editorship of Dr. John Prados. This collection of declassified materials contains 217 documents  
2 from the CIA, as well as more than 2,000 other documents from the White House, National  
3 Security Council, State Department, Defense Department, and other federal agencies. It features  
4 detailed reporting from the field as well as analysis from the CIA, the Defense Intelligence  
5 Agency, American embassies overseas, U.S. regional military commands, especially the MACV,  
6 and the uniformed military services. In the section pertaining to the Tet offense there is a valuable  
7 study by the President's Foreign Intelligence Advisory Board and the National Security Agency.  
8 The "Intelligence Estimates" subset features the most complete selection of National Intelligence  
9 Estimates ("NIEs")<sup>4</sup> and Special National Intelligence Estimates (SNIEs) on Vietnam ever  
10 assembled, along with important CIA interpretive materials. The collection is available on  
11 microfiche.

12 43. Much previously classified intelligence information has been declassified and is  
13 now publicly available on the CIA's own website, through the U.S. National Archives & Records  
14 Administration, and through FRUS. For example, among the declassified documents now  
15 publicly available on the CIA's website is a previously classified study authored by former CIA  
16 official Harold P. Ford, titled *CIA and the Vietnam Policymakers: Three Episodes 1962-1968*,  
17 which, according to the CIA's website, chronicles the intelligence community's analytic  
18 performance during the Vietnam war with particular focus on the efforts of CIA analysts and  
19 which references several intelligence community documents. *See*  
20 <http://www.cia.gov/csi/books/vietnam>.

21 44. Additionally, over 1,100 NIE and other publications prepared by the National  
22 Intelligence Council, which reports to the Director of Central Intelligence, have been declassified  
23 and made publicly available through the CIA's website. Among the NIE's available on the CIA's  
24 website are 70 on China under Mao (1948-1976), and a collection of those on the Soviet Union  
25 and International Communism. *Id.*

26 \_\_\_\_\_  
27 <sup>4</sup> According to CIA, NIEs are "the most authoritative written judgment concerning a national  
28 security issued prepared by the Director of Central Intelligence." *See* CIA's Special Collections at  
[http://www.foia.cia.gov/soviet\\_estimates.asp](http://www.foia.cia.gov/soviet_estimates.asp). According to the CIA, NIEs are addressed to the  
highest level of policymakers, up to and including the President. *Id.*

1           45.     Through my research I also have discovered that other previously classified  
2 intelligence documents, which are now publicly available, include several thousand CIBs.

3           46.     Other examples of declassified documents include an April 2, 1965 declassified  
4 memorandum from CIA Director John McCone to President Johnson. In this memorandum, the  
5 CIA Director questions the effectiveness of the Rolling Thunder bombing campaign, writing, in  
6 part, “[I] think what we are doing is starting down a track which involves ground force operations  
7 which, in all probability, will have limited effectiveness against guerrillas, although admittedly  
8 will restrain some VC advances. However, we can expect requirements for an ever increasing  
9 commitment of U.S. personnel without materially improving our chances for victory.” Attached  
10 hereto as Exhibit 20 is a true and correct copy of this April 2, 1965 memorandum, which I  
11 originally obtained from the Johnson Library and is now available on the Virtual Vietnam  
12 Archive.

13           47.     A few weeks later, McCone followed up in a letter to the President, which  
14 references a February 18, 1965 Special National Security Estimate that predicts Hanoi will seek to  
15 “secure a respite” if the a sustained bombing campaign damages important economic and military  
16 targets. Attached hereto as Exhibit 21 is a true and correct copy of the April letter, which attaches  
17 both an April 2, 1965 memo from McCone to the Secretary of State, the Secretary of Defense and  
18 the Special Assistant to the President and the February 19, 1965 Estimate, which I obtained on the  
19 Internet from the Virtual Vietnam Archives.

20           48.     An April 30, 1965 CIA Office of National Estimates report, referenced in my book,  
21 *Planning a Tragedy*, notes that “the general outlook remains dreary and in some respects the  
22 dangers of the situation have increased.” This report continued with the warning that there was a  
23 great likelihood that the United States would be asked to take over the fighting in Vietnam.  
24 Attached hereto as Exhibit 22 are true and correct experts from my book containing this April 30,  
25 1965 report, which I obtained from the Johnson Library.

26           49.     A July 1, 1965 memorandum from Secretary McNamara to President Johnson,  
27 titled "Program of Expanded Military and Political Moves with Respect to Vietnam," contains  
28 extensive analysis and recommendations regarding military options and, in general, reflects that at

1 the highest level policy was being discussed. Attached hereto as Exhibit 23 is a true and correct  
2 copy of the content of this memorandum as republished in my book *Planning a Tragedy*.

3 50. In the fifteen years since publication of *Lyndon Johnson's War* and in the over  
4 twenty years *since Planning A Tragedy* was published, so much more declassified materials have  
5 been added to the record for scholarly inquiry. These include the multi-volume series edited by  
6 William Conrad Gibbons, "*The U.S. Government and the Vietnam War: Executive and Legislative*  
7 *Roles and the Relationships*," containing numerous CIA reports and documents including  
8 materials from Directors John McCone and William Raborn, numerous Intelligence Estimates on  
9 communist military capabilities. Attached hereto as Exhibit 24 are true and correct excerpts from  
10 this series, including verbatim quotes from underlying source documents such as NIEs and SNIE  
11 and a July 14, 1965 report of an ad hoc study group of the JCS titled, "Intensification of the  
12 Military Operations in South Vietnam, Concept and Appraisal."

13 51. Also available is the multi-volume *The Bunker Papers: Reports to the President*  
14 *from Vietnam, 1967-1973* from Ambassador Ellsworth Bunker, which republish verbatim  
15 Bunker's telegrams to the President. Attached hereto as Exhibit 25 are true and correct excerpts  
16 from *The Bunker Papers*, which excerpts include reports on March 28, 1968 and April 4, 1968.

17 52. Professor Jeffrey Kimball has recently published "*The Vietnam War Files*" in  
18 which over 140 print documents and taped White House conversations bearing on Nixon  
19 administration strategy in Vietnam are made available for scholarly research. Attached hereto as  
20 Exhibit 26 are true and correct excerpts from this series, including an index of source documents  
21 and the content of an August 11, 1972 CIA memorandum on "Impact of the U.S. Bombing And  
22 Mining Program on North Vietnam."

23 53. More recently is the availability of the previously classified tapes of General  
24 Creighton W. Abrams, edited by Lewis Sorley and published by Texas Tech University Press.  
25 Most of these are tapes are of Weekly Intelligence Estimate Updates ("WIEU"). The WIEU  
26 sessions were started by Westmoreland and continued by his successor General Abrams. Attached  
27 hereto as Exhibit 27 are true and correct exemplar excerpts from this publication.

28



1           54. In summary, given the great volume of highly deliberative and sensitive  
2 information available revealing policymaking at the highest levels of our government during key  
3 times during our history, it is just not credible that the pared down, summary factual information  
4 contained in the PDBs at issue here cannot be released without harm to present day national  
5 security. Indeed, history has proven otherwise.

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

7  
8 Dated: 4-28-2005

  
Larry Berman

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