

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

THOMAS WATERS, JR

Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY

Defendant.

Civil Action No: 06-383 (RBW)

* * * * *

DECLARATION OF MARK S. ZAID, ESQ.

The undersigned hereby declares as follows:

1. I am a person over eighteen (18) years of age and competent to testify. I make this Declaration on personal knowledge. This Declaration is submitted in support of the plaintiff's Motion for Permanent Injunction Or, Alternatively, for Preliminary Injunction.

2. I am the attorney for the plaintiff in this matter and I am a partner in the Washington, D.C. law firm of Krieger & Zaid, PLLC. I am admitted to practice law in the States of New York, Connecticut and the District of Columbia, as well as the D.C. Circuit, Second Circuit and Fourth Circuit Court of Appeals, and the United States District Courts for the District of Columbia, Maryland, Eastern District of New York, Northern District of New York and the Southern District of New York. I have been litigating cases involving the federal government for more than a decade. I routinely prosecute lawsuits asserting challenges under the Freedom of Information Act, 5 U.S.C. § 552 (particularly with respect to Exemption One), and Privacy Act, 5 U.S.C. § 552a, and actively represent individuals associated with or within the intelligence, law enforcement or military communities. It is safe to say that I have litigated more prepublication review challenges (now five) during the last ten years than anyone in the history of the process. Since 1998, I have also served as the Executive Director of The

James Madison Project (www.jamesmadisonproject.org), which seeks to educate the public on secrecy and national security issues.

3. On March 2, 2006, I inquired of the Director, William Leonard, Information Oversight Security Office (“ISOO”), National Archives & Records Administration, as to whether the defendant Central Intelligence Agency had communicated with ISOO regarding the plaintiff’s manuscript and the classification decisions. ISOO “is responsible to the President for policy and oversight of the Government-wide security classification system and the National Industrial Security Program.” It is the lead agency in the federal government that develops “security classification policies for classifying, declassifying and safeguarding national security information generated in Government and industry.” See <http://www.archives.gov/isoo/>.

4. Mr. Leonard responded that same day that he had not “been advised of any reclassification actions per 1.7 (c) of the Order by CIA in this regard.”

5. The Order Mr. Leonard referred to is Executive Order 12958, as amended by Executive Order 13292, which President Bush issued in March 2003. “This order prescribes a uniform system for classifying, safeguarding, and declassifying national security information, including information relating to defense against transnational terrorism.” <http://www.fas.org/sgp/bush/eoamend.html>.

6. Section 1.7 (c) governs the specific requirements where information may be reclassified after declassification. They include when:

- (1) the reclassification action is taken under the personal authority of the agency head or deputy agency head, who determines in writing that the reclassification of the information is necessary in the interest of the national security;
- (2) the information may be reasonably recovered; and
- (3) the reclassification action is reported promptly to the Director of the Information Security Oversight Office.

7. The CIA did not abide by these requirements in reclassifying as classified the previously approved unclassified text that exists within the plaintiff's manuscript.

I do solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge.

Date: March 7, 2006

/s/

Mark S. Zaid, Esq.
Attorney for Plaintiff