

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

ANTHONY SHAFFER,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:10-02119 (RMC)
)	
DEFENSE INTELLIGENCE AGENCY, et)	
al.,)	
)	
Defendants.)	
)	

JOINT CASE STATEMENT

Pursuant to the Court’s Order of November 26, 2012, the parties hereby submit this brief statement of the case and the statutory basis for all causes of action and defenses.

Plaintiff’s statement:

The basis for the plaintiff’s case is the First Amendment of the U.S. Constitution which grants him a constitutional right to publish any information that is unclassified. To the extent the U.S. Government claims the information is properly classified the First Amendment permits the plaintiff an opportunity to challenge that assertion.

Defendants’ statement:

The plaintiff contends that the defendants violated his First Amendment rights by refusing to allow him to publish certain information. Pursuant to a formal request by the plaintiff, the Department of Defense recently completed an administrative security review of the book. The Department determined that numerous passages of the manuscript contain classified information. There is no dispute that the plaintiff has no right to publish classified information,

and thus the sole issue for the Court's determination is whether the information in those passages is properly classified.

During that process, the plaintiff was given the opportunity to present open source materials in support of his contention that the information has been officially released by the Government and thus is no longer classified. Those materials will be contained in the administrative record presented to the Court. Because this case is brought pursuant to the Administrative Procedure Act, *see* Am. Compl. ¶ 1, review should be limited to that record, because it contains the materials that were before the agency at the time of its final determination.

Dated: January 25, 2013.

Respectfully submitted,

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