

EXHIBIT “1”

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
JANE DOE et al.

Plaintiffs

-against-

05 Civ. 7939 (LTS)

CENTRAL INTELLIGENCE AGENCY et al.,

Defendants.

----- X
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 plaintiffs' Opposition to Defendants' Motion to Dismiss.

2. I am an attorney for the plaintiffs in this matter and I am the managing 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, particularly with respect to access to information, for nearly a decade; essentially my entire professional legal career. I routinely prosecute lawsuits asserting challenges under the Freedom of Information Act, 5 U.S.C. § 552, and Privacy Act, 5 U.S.C. § 552a, and actively represent individuals associated with or within the intelligence, law enforcement or military communities. 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. I have been authorized by the defendant Central Intelligence Agency (“CIA”) to receive classified information from the plaintiffs. I executed a secrecy agreement that permitted this authorization to be granted. As a result, I must submit all substantive (and lately even procedural) court filings to the CIA first so that it may conduct a classification review of the information therein. That is the reason why the underlying Complaint in this action is so heavily redacted. According to the CIA, the redacted information is considered classified and cannot be publicly released. Until the CIA states differently or this, or another, Court rules otherwise, I must abide by that determination for to do otherwise would risk potential civil or even criminal penalties. However, at no time has the CIA ever informed me that I did not have proper access to that information. In fact, I have participated in meetings with CIA officials on several occasions to discuss the same information. My lawful access has never been in question.

4. Plaintiff Jane Doe lives outside the United States. By letter dated April 3, 2006, I set forth some of my concerns to the CIA, through their counsel, regarding how its positions were impacting my ability to effectively represent my clients. See Exhibit “2”. The CIA declined to cooperate in any way. In fact, the CIA will not even permit me to review an unredacted copy of the Complaint I drafted. I am not permitted to maintain a copy in my office due to the classification concerns and it is unreasonable to expect I can remember every little detail I wrote nearly one year ago.

5. Because the CIA considers the substantive information underlying the plaintiffs’ legal claims to be classified I cannot have an attorney-client telephone conversation with her unless a secure government telephone line was utilized to protect any classified information from unauthorized disclosure. This has been a continuing problem for many

of my cases. I often represent CIA employees and sometimes they are based overseas. That makes communication with them extremely difficult. We have submitted numerous requests to the CIA over the years to have a secure telephone installed at our office (just as many independent defense contractors do), but the CIA continually denies or ignores our request. Of course, it would be a simple matter to use one of the CIA's secure phones for such a conversation and we would be more than willing to do so (assuming the call is not monitored of course). In fact, I faced a similar circumstance in another case involving a different intelligence agency and access to a secure telephone was arranged. Nor can these conversations take place via e-mail either, for the very same reasons a regular telephone cannot be used. Additionally, for the reasons set forth in the unredacted Complaint that will not be repeated here, Jane Doe, unlike many of my other CIA clients, cannot travel outside of her country of residence for a face-to-face meeting.

6. Furthermore, even if I was able to meet with my clients or the CIA would facilitate communications, I would not be allowed to present that information to this Court for consideration. Because the CIA claims that much of the information in this case is classified it will not allow me to type that information into a brief on my unsecure computer. Nor will it agree – despite my willingness to do so and knowing that we have made a similar arrangement in at least one other CIA case – to allow me to use a CIA computer at a secure facility to draft my brief.

7. The last time I had a case in this District involving the state secrets privilege, Sterling v. Tenet, 01 Civ. 8073 (S.D.N.Y.)(AGS), I was reprimanded by the CIA for using my office computer to draft an Opposition brief. The CIA threatened to revoke my security clearance if such a “transgression” occurred again. It did not matter that what I

wrote persuaded the late Honorable Allen Schwartz to agree that the CIA had “inappropriately” invoked the privilege. I prefer not to be subjected to further administrative discipline by the CIA and seek merely to comply with its requirements, no matter how unreasonable they may be.

8. Let it be perfectly clear that I am not requesting the Court to compel the CIA to turn over any documents or release any classified information that is within the CIA’s possession. I am not seeking for the CIA to impart any information, classified or unclassified, verbal or written, to me. I am seeking to exercise the basic fundamental rights that exist within the attorney-client relationship, which includes speaking to my clients and using whatever information I properly and have been lawfully authorized to obtain in a legal filing.

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: June 18, 2006

/s/

Mark S. Zaid, Esq.
Attorney for Plaintiffs