

EXHIBIT “5”

Rule 56 (f) Declaration of
Mark S. Zaid, Esq.

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

FRANZ BOENING

*

*

Plaintiff,

*

*

Civil Action No: 07-430 (EGS)

*

v.

*

CENTRAL INTELLIGENCE AGENCY

*

*

Defendant.

*

*

*

*

*

*

*

*

*

*

*

*

*

RULE 56(F) DECLARATION OF MARK S. ZAID, ESQ.

I, MARK S. ZAID, pursuant to 28 U.S.C. § 1746, 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 and in support of the plaintiff's Opposition to Defendant's Motion for Summary Judgment.

2. I am the attorney of record for plaintiff Franz Boening ("Boening"). 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 pertaining to national security since 1993. As part of my representation of Boening, I have executed a secrecy agreement providing me access to up to and including SECRET level information (and the same applies to my associate Bradley P. Moss, Esq.). I have, in fact, participated in classified meetings with Boening and the CIA to discuss or review the specific documents at issue in this case.

3. This action was filed on March 5, 2007 to challenge the conduct of the defendant Central Intelligence Agency ("CIA") with respect to the processing by the Publication Review Board of a memorandum drafted by Boening dated May 10, 2001. The memorandum detailed perceived violations of law and policy mistakes surrounding the

alleged relationship between the CIA and a foreign government official [1 ¼ lines deleted by CIA].

4. If the CIA is claiming that Boeing did not exclusively derive the information within his “M Complaint” from publicly available newspaper and magazine articles, or other federal agencies’ declassified documentation retrieved from the Internet, then discovery is essential prior to the granting of summary judgment for the CIA. This goes to the heart of the question surrounding Boeing’s sources.

5. Additionally, there exists a factual issue as to whether the U.S. Government, in light of available declassified records, has “taken affirmative measures to conceal” the CIA’s relationship with [one word deleted by CIA], thereby precluding summary judgment for the CIA at this time.

6. For more than a decade I have handled numerous prepublication review cases, particularly with the CIA, both at the administrative and litigation stages. See e.g. Sterling v. CIA, Civil Action No: 03-0603 (D.D.C.)(TPJ); Wendy Lee v. CIA, Civil Action No. 03-0206 (D.D.C.)(TPJ); Waters v. CIA, Civil Action No: 06-383 (D.D.C.)(RBW); Stillman v. CIA 209 F. Supp. 2d 185 (D.D.C. 2002), rev’d on other grounds, 319 F.3d 546 (D.C. Cir. 2003). Personally, I will openly concede that – notwithstanding the fact that the PRB sends conflicting messages to its current and former employees regarding whether a specific deadline exists for a response – a 30 day requirement is often unrealistic given the manner in which the current process has been structured for reviews. However, my experiences have revealed that delays that extend one to two years before a final response occurs have become a common routine pattern and practice with the CIA. The excessive delays have a significant impact on the submitter, especially since there is often a publication deadline involved or an important public interest underlying the contents. Moreover, at times the final response is negotiated to such an extent, i.e., that

“classified” information all of a sudden becomes unclassified, it makes a mockery of the classification system in general.

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

Date: November 12, 2007

/s/

Mark S. Zaid