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10 Plaintiff *Pro Se*

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DANIEL J. BERNSTEIN,

Plaintiff,

v.

UNITED STATES DEPARTMENT  
OF COMMERCE, et al.,

Defendants.

C 95-00582 MHP

**PLAINTIFF'S  
EVIDENTIARY OBJECTIONS TO  
THIRD COPPOLINO DECLARATION  
AND MOTION TO STRIKE**

Date: October 7, 2002

Time: 2:00 p.m.

Place: Courtroom 15, 18th Floor

18 Plaintiff Daniel J. Bernstein objects to the Third Declaration of Anthony J. Coppolino  
19 filed by the Defendants on September 3, 2002. The declaration is inadmissible under Federal  
20 Rule of Evidence 402 as irrelevant, under Rule 602 as being outside the declarant's personal  
21 knowledge, and under Rule 802 as hearsay. Plaintiff moves to strike that declaration.

22 **ARGUMENT**

23 This is a classic case of inadmissible hearsay within hearsay.

24 The declaration's attachment is an excerpt from David Kahn's 1973 book *The Code-*  
25 *breakers*. Mr. Kahn is a historian. The book reports and summarizes information that Mr. Kahn  
26 obtained from other sources.

27 The declaration is being offered as evidence that, sixty years ago, cryptanalysis helped  
28 the United States military. *See* Defendants' Reply, at 1:27, 10:2-13. For example, in an attempt

1 to prove that cryptanalysis helped the United States surprise Japan in 1942, the declaration states  
2 that Mr. Kahn stated that General Marshall stated that cryptanalysis helped the United States  
3 surprise Japan in 1942. This is inadmissible as a statement from Mr. Kahn because Mr. Kahn  
4 has no personal knowledge of the military events, and it is inadmissible as a statement from  
5 General Marshall because it is hearsay.

6 The ancient-document exception to hearsay does not make this declaration admissible.  
7 The ancient-document exception allows authentication of Mr. Kahn's book as a substitute for  
8 Mr. Kahn's presence as a witness; it does not permit Mr. Kahn to testify that General Marshall  
9 made the aforementioned statement.

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DANIEL J. BERNSTEIN