

EXHIBIT 1

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

RICHARD HORN,

Plaintiff,

v.

FRANKLIN HUDDLE, JR., *et al.*,

Defendants.

Case No.: 94-1756 (RCL)

DECLARATION OF ROBERT J. EATINGER

I, ROBERT J. EATINGER, hereby declare and state:

1. I am submitting this declaration in support of my Initial Opposition to Plaintiff's Motion For Sanctions ("Plaintiff's Motion") [Dkt. 211].

Professional Background

2. I am currently the Acting Deputy General Counsel for Operations in the Office of General Counsel (OGC) of the Central Intelligence Agency (CIA). I have been employed as an attorney by the CIA since September 1991. Previously, from January 1983 until August 1991, I served as an attorney with the Judge Advocate General's Corps of the United States Navy, including an assignment with the Office of General Counsel of the National Security Agency.

3. From September 1991 until November 1995, I served as an attorney in the Litigation Division of OGC. I worked as a line attorney until 1994, when I was promoted to serve as one of two Deputy Chiefs of the Litigation Division. I left the Litigation Division in November 1995, and from then until August 1997, I served as the Legal Advisor for the CIA's Latin American Division.

4. I returned to the Litigation Division in August 1997 and remained with the Litigation Division until April 2004. From August 1997 until April 1999, I served as the Deputy

Chief of the Litigation Division. From April 1999 until April 2004, I served as the Chief of the Litigation Division.

5. In April 2004, I left the Litigation Division and have not worked in the Litigation Division since then. I have not supervised any litigation for the CIA since April 2004.

6. From April 2004 until September 2009, I worked in the CounterTerrorism Center of the CIA as a member of the Office of General Counsel. In September 2009, I became the Acting Deputy General Counsel for Operations.

Litigation Division Functions

7. From April 1999 until April 2004, while I served as Chief of the Litigation Division, I supervised a Deputy Chief and 8-10 line attorneys. At any given time, the Litigation Division was involved in approximately 400 cases implicating CIA interests, including cases in which the CIA was a party, *Bivens* actions against CIA employees, FOIA litigation, and other matters.

8. A line attorney (or in some cases the Deputy Chief) was assigned to manage each case in the Litigation Division's docket. That line attorney was primarily responsible for monitoring the case, interacting with the litigators from the Department of Justice, and handling whatever matters that would arise requiring CIA input. Cases would be reassigned from one line attorney to another when attorneys left the Litigation Division or to balance out the work loads of the line attorneys. It was common for cases to be reassigned from one line attorney to another. It was common for a line attorney to be responsible for a given case for only one year before another line attorney became responsible for that case.

9. As Chief of the Litigation Division, I had weekly meetings with the Deputy Chief and the line attorneys to discuss the status of their active cases. In addition, I met regularly with the Deputy Chief and line attorneys on particular cases as necessary.

10. During the years I worked in the Litigation Division, I was involved in a number of cases (maybe as many as five or six) in which I learned that it was necessary to update a declaration filed in court because of a change in cover status of a CIA officer. I believe that in each of these cases, the government had applied for protections under the Classified Information Procedures Act regarding the terms and conditions under which a covert CIA officer would testify, and had submitted a declaration stating that the officer was under cover, among other things. In some of these cases, the officers informed me or I otherwise learned that their cover status had changed after the declaration in their case was filed. In each case, I worked with the Litigation Division line attorney and the responsible Department of Justice attorney to notify the court and, when necessary, ensure that the declaration and other court filings were appropriately updated to reflect the change in cover status.

Involvement In *Horn v. Huddle*

11. At different times, different line attorneys were assigned to *Horn v. Huddle*. I cannot recall which line attorney was responsible for this case at any given time, but I understand that at one point while I was Chief of the Litigation Division, A. John Rasdan was the assigned line attorney.

12. While I served as Chief of the Litigation Division, I had occasional brief conversations with Arthur Brown about the case. To the best of my memory, these brief conversations took place during Mr. Brown's unannounced visits to the offices of the Litigation Division to check on the status of the case. These "drop-by" visits typically occurred while Mr. Brown was visiting the United States, after returning from various overseas assignments. On

these occasions, I would sometimes encounter Mr. Brown in the hallway or he would stop by my office. I do not recall ever having a formal, scheduled meeting with Brown during the time that I served as Chief of the Litigation Division.

13. I understand that Mr. Brown has filed a declaration in this matter stating that he informed John Radsan and me within a few months of June 2002 that there had been a change in his cover status. I do not recall any conversation with Mr. Brown in which he told me that his cover status had changed, and I do not believe such a conversation ever occurred.

14. In January 2008, an OGC Litigation Division line attorney informed me that Mr. Brown's cover had been lifted and rolled back in June 2002. To my knowledge, this is the first time that I was ever informed that Arthur Brown's status as a covert CIA employee had been changed.

15. In the summer of 2002, a line attorney was responsible for the day-to-day oversight of *Horn v. Huddle*. Nonetheless, I was generally familiar with this case at that time. I believe that in the summer of 2002, I would have known that the government had asserted the state secrets privilege, that the Court had sustained the assertion, and that a motion to dismiss based on the privilege was pending. I believe that I would have known that the identity of covert officers, including Arthur Brown, was among the state secret information asserted.

16. I am confident that, had Mr. Brown informed me that his cover had been lifted and rolled back in the summer of 2002, I would have taken action. I would have discussed the issue with the line attorney assigned to the case. In addition, I would have contacted, or I would have directed the responsible line attorney to contact, AUSA Lisa Goldfluss to discuss whether the change in Mr. Brown's cover status required amending any of the court filings relating to the state secrets privilege. As noted above in Paragraph 10, on other occasions when I learned that

an officer's cover status had changed, I took action to ensure the responsible Department of Justice attorney was informed and that declarations or other court filings were amended as necessary to reflect the change in cover status.

17. I am also confident that, had Mr. Brown informed me of the change in his cover status in the summer of 2002, I would have memorialized this conversation with a note to the file. While I served as Chief of the Litigation Division, it was my practice that, whenever I learned significant information relevant to a case in which the Litigation Division was involved or whenever I took some action in a case, I would memorialize the information in a handwritten note or in an internal e-mail that I would send to a paralegal to place in the relevant case file.

18. Given that I did not take the actions described in Paragraphs 16 and 17, I am very confident in my belief that I never learned that Mr. Brown's cover had been lifted and rolled back until January 2008.

19. After I left the Litigation Division and joined the CounterTerrorism Center in April 2004, I no longer had any role in any CIA litigation. I do not recall participating in *Horn v. Huddle* in any way from April 2004 until January 2008.

20. This Court granted the motion to dismiss, and the appellate proceedings all occurred, after I left the Litigation Division in April 2004. At some point, I did learn that this Court had dismissed this case, but I do not recall ever having read the Court's opinion and I do not recall how I came to learn of the dismissal. I do not recall ever reviewing or reading any of the government's filings with the Court of Appeals. I also do not recall having read the decision of the Court of Appeals, but I did come to learn of the Court of Appeals' decision.

Arthur Brown as National Intelligence Officer

21. At some point while I served as Chief of the Litigation Division, I came to learn that Mr. Brown had accepted a new position as National Intelligence Officer (NIO) for East

Asia. I do not specifically recall how I learned of this fact, but it is quite possible that Mr. Brown may have mentioned that he had been appointed to this new position.

22. During the time that I served as Chief of the Litigation Division, I had little interaction with NIOs and I did not have a clear understanding of their duties and roles. I knew that the NIO position was a senior-level position and that all the NIOs collectively were responsible for approving the National Intelligence Estimates for the country's intelligence community, but I was not otherwise familiar with the position. In the summer of 2002, I would not have known whether NIOs were typically overt or covert employees. Since there is no requirement that an NIO be a CIA officer, to this day, I do not know whether NIOs are sometimes covert CIA officers.

Lack of Involvement In Cover Status Decisions

23. In 2002, the OGC was not part of the established process for decisions to lift or roll back an officer's covert status. It is my understanding that an office known as the "Cover Office" within the Directorate of Operations (now called the National Clandestine Service) was responsible for decisions whether to lift or roll back an officer's cover status, including the extent of any such changes. I understand that the terms of a rollback can differ from officer to officer. I also understand that sometimes an officer's cover can be lifted but not rolled back. Further, I understand that that sometimes an officer whose cover has been lifted and rolled back can say nothing about where he or she served, while on other occasions, an officer is authorized to disclose additional information, such as to identify the part of the globe where he or she served.

24. To my knowledge, the only way to know the specific terms of a change in cover status is to review an officer's cover file. I do not recall ever having seen the cover file for Mr. Brown.

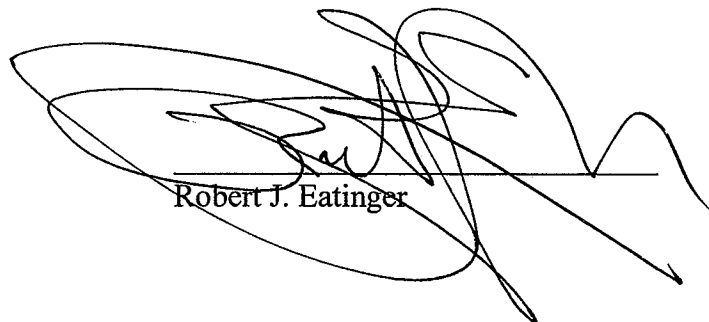
25. I could not have advised Mr. Brown or any other former covert officer on the terms of a cover lift and rollback because the OGC was not responsible for making decisions regarding changes in cover status, and I would have lacked personal knowledge of the terms and conditions of the authorized change in any particular officer's cover. In 2002, it was the Cover Office that decided whether to change an officer's cover status and, if so, the terms and conditions of that change. I also understand that it was the function of the Cover Office to explain to officers the terms and conditions of any change in cover status, including any limits on what an officer is authorized to state about the officer's prior service.

Relationship With Arthur Brown

26. During the period in which I served as Chief of the Litigation Division, I do not recall having any contact with Mr. Brown aside from brief conversations during his drop-by visits. I did not interact with Mr. Brown in any other way and I did not have a personal friendship with Mr. Brown. I would describe our relationship as a cordial professional relationship. Between the time that I joined the CounterTerrorism Center in April 2004 and Mr. Brown's retirement, I believe that we briefly interacted on some matters but I cannot remember anything about those brief interactions. I do not recall having communicated with Mr. Brown since he retired from the CIA.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 9th day of October 2009.


Robert J. Eatinger