

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD A. HORN,

Plaintiff,

v.

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

Defendants.

No. 1:94-cv-1756-RCL

UNDER SEAL

DECLARATION OF ARTHUR M. BROWN

I, Arthur M. Brown, declare as follows:

1. I have read the January 14, 2009 Memorandum Opinion ("Opinion"). In substantial part, the facts set forth in the Court's opinion appear to be based on a March 26, 2008 Declaration of the Central Intelligence Agency's ("CIA") Acting General Counsel, John A. Rizzo ("Rizzo Declaration"). The Rizzo Declaration makes two assertions that, based on my personal knowledge, are inaccurate. Those inaccuracies are then repeated in the Court's opinion. In order to ensure that the factual record is accurate, I submit this declaration.
2. Citing the Rizzo Declaration at ¶ 5, the Opinion states that "the office of general counsel within the CIA – which was involved in this litigation – was not informed of the change in Brown's cover status until 2005." Opinion at 4. That is incorrect. I recall notifying, in person, two attorneys in the Office of General Counsel ("OGC") Litigation Division, A. John Radson and Robert J. Eatinger, about the change in my cover status in 2002, within a few months of the agency's action. From the inception of this litigation, OGC had advised me that it should be the channel through which I was to communicate any classified information regarding this

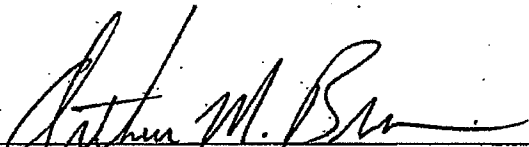
case, including information to be communicated to Department of Justice lawyers. Accordingly, I relied on OGC to communicate the change in my cover status to the Department of Justice.

3. Citing the Rizzo Declaration at ¶ 26, the Opinion states that I was the Chief of the CIA East Asia Division in 2005. Opinion at 5. In fact, I left that position at the end of December 2004, reported to a location outside the main agency building during January 2005, and retired from the CIA on February 3, 2005.

4. Additionally, citing the Rizzo Declaration at ¶ 26, the Opinion states that the East Asia Division OGC legal advisor and I reviewed a draft motion for summary affirmance and noted that the draft misstated my cover status. Opinion at 5. I wish to advise the Court that I have no recollection of that incident.

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

Dated: January 26, 2009


Arthur M. Brown