

EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
RICHARD A. HORN,)	
)	
Plaintiff,)	
)	
v.)	C.A. 94-1756 (RCL)
)	
FRANKLIN HUDDLE, JR.,)	FILED UNDER SEAL
)	
Defendant.)	
_____)	

DECLARATION OF JOHN A. RIZZO
ACTING GENERAL COUNSEL
CENTRAL INTELLIGENCE AGENCY

I, JOHN A. RIZZO, hereby declare and state:

1. I am the Senior Deputy General Counsel of the Central Intelligence Agency (CIA). I have served in this position since 1995 and have been employed as an attorney with the Office of General Counsel (OGC) of the CIA since 1976.

2. Section 20 of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. § 403t, established the position of General Counsel of the CIA. The General Counsel serves as the chief legal officer of the CIA and performs such functions as the Director of the CIA may prescribe.

3. The position of General Counsel is currently vacant. I serve, therefore, as Acting General Counsel of the CIA.

I. PURPOSE OF THIS DECLARATION

4. I make the following statements based upon personal knowledge and information made available to me in my official capacity. I have directed that an inquiry be conducted into the lifting and rolling back of CIA employee Arthur M. Brown's cover and why this Court and the Court of Appeals were not made aware of this change in cover status. The inquiry included a review of CIA records and interviews of CIA personnel.

5. Based upon the results of this inquiry, I understand that an attorney within the Litigation Division of OGC was made aware in January 2005 that Mr. Brown's cover had been lifted and rolled back in 2002, but did not notify his OGC supervisors or the Department of Justice attorneys handling this case of this change in cover status. Clearly, the CIA had a duty to notify the Department of Justice and the Court of this change. I take responsibility for this failure and profoundly apologize to this Court. As a result, I will take appropriate disciplinary action in this matter. In addition, OGC was not made aware of the decision to lift and roll back Mr. Brown's cover between 2002 and 2005. As a result, the Department of Justice and the courts were not timely informed. I also have taken corrective action, which is described below, to ensure that OGC will be involved in

such decisions where, as here, the decision relates to matters that are the subject of litigation.

II. PROCEDURAL HISTORY

6. Through the exercise of my official duties, I am generally familiar with this civil action. I understand that the Plaintiff filed this civil action on 10 August 1994 seeking money damages from named federal defendants Franklin Huddle, Jr., the former U.S. Chief of Mission in Rangoon, Burma, and Arthur M. Brown, a former CIA employee (previously identified on the record in this case as "Defendant II"), in their individual capacities for alleged violations of civil rights and anti-wiretapping statutes during Plaintiff's employment with the Drug Enforcement Administration (DEA). I also understand that on 5 February 2000, George J. Tenet, then Director of Central Intelligence (DCI), asserted a formal claim of state secrets and statutory privileges describing the classified information contained in two Inspector General Reports (IG Reports) that were sought by the Plaintiff in discovery.

7. The CIA supported its state secrets and statutory privileges claim with an unclassified declaration by DCI Tenet filed under seal but available to the plaintiff and a classified declaration by DCI Tenet filed in camera for the Court's ex parte review (Classified DCI Tenet Declaration). Among the

categories of classified information described in the Classified DCI Tenet Declaration was the then-classified fact that Arthur M. Brown ("Defendant II") was a covert employee of the CIA.

8. The Government moved to dismiss this action on the basis of the state secrets and statutory privileges in November 2000 and this Court granted the Government's motion and dismissed this case as to both defendants in July 2004.

9. Plaintiff appealed. In June 2007, the U.S. Court of Appeals for the District of Columbia Circuit affirmed in part and reversed in part. The appeals court affirmed the dismissal as to defendant Brown ("Defendant II"), but reversed and remanded as to defendant Huddle.

III. SUBSEQUENT DEVELOPMENTS

10. Upon remand, the Chief of OGC's Litigation Division assigned this case to a new Litigation Division attorney in September 2007. In the process of preparing for proceedings on remand, this attorney learned in December 2007 that Mr. Brown was no longer under cover and that he had retired from the CIA. This attorney promptly notified the Chief of the Litigation Division and the Department of Justice. On 31 January 2008, the Government filed a Notice informing the Court that the CIA had lifted Mr. Brown's cover in 2002, that he had retired from the CIA in 2005, and that further information regarding these

developments would be forthcoming. I subsequently ordered an inquiry into the facts and circumstances leading to the roll back of Mr. Brown's cover and the failure of OGC to promptly notify the Department of Justice and the Court as to the cover change when it occurred.

11. On 14 February 2006, Plaintiff filed a Motion for Relief from Judgment as to Defendant II; or, in the Alternative, for an Order to Show Cause and/or for Sanctions.

IV. SUMMARY OF BROWN'S CURRENT EMPLOYMENT AND COVER STATUS

12. The results of the inquiry into the circumstances of the change in Mr. Brown's employment and cover status are described in Section V below. In summary, Mr. Brown's cover was 'lifted' in June 2002 and 'rolled back' to his entrance-on-duty (EOD) date with the CIA in February 1980. He retired from the CIA in February 2005. Therefore, the CIA has authorized Mr. Brown to disclose publicly--and the CIA acknowledges publicly-- that Mr. Brown was employed by the CIA from 1980 to 2005. As a consequence, the CIA and Mr. Brown acknowledge publicly that Mr. Brown served as a CIA employee in Rangoon, Burma, during the events alleged in this civil action. It is no longer necessary to refer to Mr. Brown in the record as "Defendant II."

13. Notwithstanding the change in his cover status, the CIA and Mr. Brown cannot disclose publicly without damage to the

national security the nature and details of Mr. Brown's classified intelligence activities on behalf of the CIA during the period in question.

V. BROWN'S CHANGE IN COVER STATUS

14. In response to the events described above, I ordered an inquiry into the circumstances of the change in Mr. Brown's employment and cover status and the CIA's failure to notify Department of Justice attorneys handling the case of that change when it occurred. I will now describe for this Court the results of that inquiry.

15. The CIA uses "cover" to conceal an employee's relationship with the CIA. A CIA employee who has no ostensible employment relationship with the CIA is "under cover" and is referred to as a "covert" employee.

16. The CIA creates a cover file for each covert employee. The cover file is the CIA's official record of a covert employee's cover history with the CIA. It indicates, among other things, the dates an employee was under cover, the types of cover used, and any changes in cover status.

17. Mr. Brown's cover file indicates that he was under cover from his entrance-on-duty (EOD) date of 19 February 1980 until 16 June 2002. The file indicates that Mr. Brown then

continued to serve the CIA as an overt employee until the date of his retirement from the CIA on 3 February 2005.

18. The file indicates that on 3 April 2002, Mr. Brown requested that the CIA "lift" and "roll back" his cover because he had been appointed as the National Intelligence Officer (NIO) for East Asia. The NIO is a senior level position requiring interaction with individuals across the intelligence community, in the private sector, and in academia. It would be difficult to serve in this position while under cover. The NIO for East Asia is a member of the National Intelligence Council (NIC). The NIC is composed of senior analysts within the intelligence community and substantive experts from the public and private sector who are appointed by, report to, and serve at the pleasure of, the Director of National Intelligence (DNI).¹ Among the duties of the NIC is to produce National Intelligence Estimates (NIEs), which represent the authoritative view of the Intelligence Community. See 50 U.S.C. § 403-3b.

19. In response to Mr. Brown's request, the CIA "lifted" his cover effective 16 June 2002. In addition, the CIA "rolled back" Mr. Brown's cover to his BOD date in 1980.

20. When cover is lifted, this has prospective application. In Mr. Brown's case, this means that from 16 June

¹ In 2002, the NIC worked for the DNI's predecessor, the DCI.

2002 he was no longer under cover, but was instead an overt employee of the CIA; that is, he could acknowledge publicly that he was an employee of the CIA from that date forward.

21. When cover is rolled back, however, this has retroactive application. In Mr. Brown's case, this means that he could acknowledge publicly not only that he was currently a CIA employee, but that he was an employee of the CIA since 1980.

22. A change in cover status, such as lifting or rolling back cover, affects only the authorization to disclose the fact of CIA employment. It does not, by itself, authorize public disclosure of the nature and details of classified intelligence activities, nor does it otherwise relieve an employee of the obligations of his secrecy agreement that he signed upon his employment with the CIA.

23. In retrospect, the CIA has concluded that it was a mistake to roll back Mr. Brown's cover in 2002. Notwithstanding that fact, after the CIA in 2000 had asserted the state secrets and statutory privileges over, among other things, Mr. Brown's then-secret employment relationship with the CIA--the CIA had a duty to promptly notify the Department of Justice and this Court. If such notification had been timely made, the record could have been corrected before this Court issued its decision on the Government's motion to dismiss. The CIA failed in this

duty and for that I express my profound apologies to the Department of Justice and to this Court.

VI. THE APPEAL

24. When Plaintiff appealed the dismissal of this action in August 2004, the CIA compounded this failure in the court of appeals. After Plaintiff appealed, the Government filed a motion for summary affirmance and, ultimately, appellate briefs. As further described below, because of the CIA's failure to notify the Department of Justice of the change in Mr. Brown's cover status, the Government's filings incorrectly indicated that Mr. Brown was still a covert employee of the CIA.

25. The appellate proceedings provided the CIA an opportunity to discover its mistake and correct the record in the district court and court of appeals, but we failed to do so. Before filing the Government's motion for summary affirmance in January 2005, the U.S. Attorney's Office for the District of Columbia transmitted the draft motion to OGC's for the customary agency legal, factual, and classification review. The draft motion consisted of two parts: a classified motion and a companion excerpted, unclassified motion. OGC's Litigation

Division in turn transmitted the draft motion to the Directorate of Operations (DO)² for the factual and classification review.

26. At this time, Mr. Brown was the Chief of the East Asia (EA) Division, a division within the NCS. EA Division has an OGC attorney assigned to it who serves as its legal advisor. Both Mr. Brown and the OGC legal adviser in EA Division reviewed the draft motion and identified those portions that--unbeknownst to the U.S. Attorney's Office--were inaccurate because they mistakenly stated that Mr. Brown was still under cover, when in fact his cover had been lifted and rolled back in 2002. The OGC legal adviser in EA Division brought these inaccuracies to the attention of the Litigation Division attorney who was handling the case in January 2005.

27. That Litigation Division attorney reviewed the draft motion with the NCS Associate Information Review Officer (AIRO), a CIA official responsible for conducting classification reviews of legal filings. Thereafter, he discussed with the Chief of the Litigation Division and the Assistant United States Attorney the classification status of other specific facts contained in the draft motion that were unrelated to Mr. Brown's cover status. There is no indication in the file that this attorney ever brought Mr. Brown's change in cover status to the attention

² The Directorate of Operations (DO) has since been renamed the National Clandestine Service (NCS) and will be referred to as such for the remainder of this declaration.

of the Chief of the Litigation Division or to the U.S. Attorney's Office. This attorney does not recall that he ever brought it to the attention of the Chief of the Litigation Division, or any other attorney in the Litigation Division, or the U.S. Attorney's Office. Furthermore, the Chief of Litigation does not recall that this matter was brought to his attention by the attorney. As a consequence, the CIA transmitted to the U.S. Attorney's Office an approved version of the draft motion for summary affirmance that incorrectly stated that Mr. Brown was still under cover. Subsequent Government pleadings on appeal consequently perpetuated the inaccurate information regarding Mr. Brown's cover status.

VII. CORRECTIVE ACTION

A. Cover Procedures

28. The CIA's initial mistake was failing to notify this Court when it changed Mr. Brown's cover status in 2002. When the NCS was considering changing Mr. Brown's cover status, it knew that he was a defendant in this action and that his cover status was a subject of the state secrets privilege assertion in this action. Under the circumstances, it should have known that a change in his cover status might have implications for this litigation. The NCS should have consulted with OGC during the cover roll back process so that OGC attorneys could have

discussed the matter with the Department of Justice and determined whether the Court should be notified. There is no indication that the NCS notified OGC at that time.³

29. In order to avoid this mistake in the future, I have asked the NCS to take the following corrective action. In all circumstances where an employee's cover status is relevant to pending legal proceedings, OGC and the NCS shall coordinate before any cover changes are made. The NCS has agreed to take this corrective action.

B. Office of General Counsel

30. When OGC reviewed the Government's draft motion for summary affirmance, the CIA missed an opportunity to discover and mitigate its initial mistake in changing Mr. Brown's cover without notifying the Department of Justice and this Court. I consider this the more serious of the two mistakes because, notwithstanding the NCS's initial failure to consult with OGC during the cover roll back process, during the CIA's review of the draft motion Mr. Brown and his OGC legal advisor put OGC's Litigation Division on actual notice of the inaccurate statements that Mr. Brown was still under cover.

31. As a career public servant and acting chief legal officer of the CIA, I understand OGC's professional legal

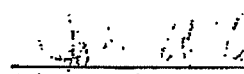
³ See Declaration of Robert J. Eyringer, at ¶ 4; Declaration of A. John Redan, at ¶ 4.

responsibilities and take very seriously its obligation of complete candor with the court. In this case, OGC did not perform up to the standards of this office, and the standards of performance the Court has every reason to expect from government attorneys. For that, I apologize and, as noted above, I will take appropriate disciplinary action in this matter.

* * *

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

Executed this 26th day of March, 2008.



John A. Rizzo
Acting General Counsel
Central Intelligence Agency