

Letter to Terry Henry

Dear Mr. Henry:

I respond in more detail to your letter of April 18, 2007 concerning the March 15, 2007 meeting of The George Washington American Inn of Court at which I spoke, along with five other lawyers, on the aftermath of the Supreme Court decision in *Hamdan*. You state that I made "troubling" statements. And on review of your letter I agree that the statements you describe are troubling but I did not make them.

I had previously addressed the same group after Judge Robertson's initial *Hamdan* decision and was invited by Christopher Hoge, a program coordinator for the group to revisit the topic. Other panelists included lawyers from private practice, the Corporation Counsel, and the Department of Justice.

The discussion commenced after dinner and the other speakers preceded me addressing topics such as the new Military Commissions Act, substituted review for *habeas* actions, the *Hamdan* decision by the Supreme Court, and the like. I was the last and spoke for about twenty minutes.

I addressed two general areas, the *Hamdan* decision *sequellae* such as MCA, adequacy of the review process substituted for *habeas*, the implication of the Suspension clause. I also discussed the base, visits to it, and the regime of control applicable to visits and communications with prisoners including the secure facility process, the process of escorts on the windward side, the actual mechanics of the interview and visits and so forth. It was in this connection that I mentioned the Protective Order.

I explained that the Protective Order was the framework for visiting and communicating with the prisoners and the court. I also said that it was lengthy and different lawyers interpreted differently. I most certainly did not accuse others of violating the order. Nor did I say, at any time that my own violations of the order were less frequent than those of others. And I would have no reason to say so. I have not violated the order.

However I did mention the Paul Weiss example of likely prohibited conduct when they forwarded as legal mail an Amnesty Report on Abu Ghraib complete with pictures of Muslim prisoners being abused by their jailers. So far as I know the Paul Weiss dispute was resolved by agreement not by court decision.

I then contrasted with Paul Weiss' questionable conduct the entirely proper discussion with a client of the findings and conclusions of a public international legal body, such as the United Nations Report of Guantanamo, analyzing the findings of the report in context of a prisoner's specific petition, its specific allegations, and its underlying legal theories which formed the basis of the Report. Such analysis would be classic attorney client advice concerning the suit, its ongoing prospects, legal sources supporting the suit, and the buttressing of allegations in the prisoner's complaint by independent fact-finding and analysis.

That, in substance, was what I said about the protective order at the meeting. It has taken more time to write this down than it did for me to state the foregoing.

While I am not aware of any court reprimand of attorneys under the protective order, I do not believe I stated that at the meeting.

In short I have not violated the protective order. In fact I have scrupulously observed it as I would any other court order directing my conduct.

Accordingly I shall appreciate your immediate advice that you find this letter a "satisfactory reply" to your inquiry of April 18, 2007. As you may know I have applied for a visit in early May and, if such visits are still allowed, I would appreciate your advice so as to permit this visit.

Finally, I attach the declaration of Christopher Hoge, who invited me to the program and who was present throughout attesting to the essential accuracy of the foregoing account and the falsity of the allegations repeated in your letter. I have also sworn to the contents of this letter as well.

Sincerely

SMT