



TKL 4/25/05 12:55  
3:05-CV-00555 FIVE NAVY SEALS V. ASSOCIATED PRESS  
\*22\*  
\*OBJ.\*

1 JAMES W. HUSTON (BAR NO. 115596)  
2 DAVID C. DOYLE (BAR NO. 70690)  
3 KRISTINA M. HOY (BAR NO. 220167)  
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6 Attorneys for Plaintiffs  
7 FOUR NAVY SEALS AND JANE DOE

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CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY:  DEPUTY

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 FOUR NAVY SEALS AND JANE DOE,

12 Plaintiffs,

13 v.

14 ASSOCIATED PRESS, a New York corporation;  
15 SETH HETTENA, an individual; and Does 1  
through 50, inclusive,

16 Defendants.

Case No. 05 CV 0555 JM (JMA)

**OBJECTION TO THE  
DECLARATION OF SETH  
HETTENA IN SUPPORT OF  
DEFENDANTS' MOTION TO  
DISMISS AND STRIKE**

Date: May 6, 2005  
Time: 11:00 a.m.  
Ctrm: 6  
Judge: Jeffrey Miller

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19 Four Navy SEALS and Jane Doe hereby object to the following evidence submitted in the  
20 Declaration of Seth Hettena in Support of Defendants' Motion to Dismiss and Strike on the  
21 following grounds:

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Page: Line	Objectionable Evidence	Legal Ground for Objection
1:23-26	I submit this declaration in support of defendants' motion to dismiss the Amended Complaint, which challenges a true and accurate news report concerning photographs of Navy SEALs and their injured prisoners that I found posted on a public Internet website.	<b>Improper Legal Opinion (Fed. Rule Evid. 701); Lacks Foundation; Misstates Evidence</b>
2:11-13	The lawsuit arises out of a news report about photographs of Navy SEALs capturing and posing with Iraqi prisoners that I found posted on the World Wide Web where they were available for anyone to see.	<b>Argumentative; Lacks Foundation</b>
2:17-19	In some photos the SEALs were smiling for the cameras while sitting atop hooded and bound prisoners in the bed of a pickup truck; in others the officers mugged and appeared to mock the prisoners.	<b>Argumentative; Misstates Evidence</b>
2: 25-26	The photos I found posted on the Internet included one that showed the petty officer who was facing the charges of abuse.	<b>Irrelevant</b>
2:27-28-3:1-5	The prosecutions in San Diego arose out of the death of a prisoner in Iraq, who had been held by navy SEALs until shortly before he died in CIA custody at Abu Ghraib prison in November 2003. According to court documents, the SEAL punched, kicked and struck the prisoner with their rifles before he was turned over to the CIA. The charges brought against the nine SEALs included aggravated assault with intent to cause bodily harm and dereliction of duty.	<b>Irrelevant (Fed. Rule Evid. 402); Hearsay (Fed. Rule Evidence 801)</b>
3:6-12	The prosecutions I was covering also accused the SEALs of posing for photographs with the abused prisoner, which is itself a violation of Navy regulations. One of the photographs that formed the basis for this charge, which I saw when it was offered as a court exhibit, showed a Navy SEAL holding a can of Red Bull energy drink while he and others were posed around the prisoner. Another photo offered into evidence showed the petty officer and a SEAL pointing their guns at the prisoner.	<b>Improper Legal Opinion (Fed. Rule Evid. 701); Hearsay (Fed. Rule Evidence 801); Irrelevant (Fed. Rule Evid. 402)</b>

Page: Line	Objectionable Evidence	Legal Ground for Objection
3:13-18	I understand that, in addition to the San Diego prosecutions, other investigations into the conduct of SEALs in Iraq remain currently ongoing. Recently released Army documents show that there had been widespread concern within the military about abuse of prisoners while in the custody of SEALs units in Iraq. Brig. Gen. Richard P. Formica has investigated detention practices by all of the special operations forces in Iraq. His report, however, has not been released.	<b>Irrelevant (Fed. Rule Evid. 402); Hearsay (Fed. Rule Evidence 801); Lacks Foundation</b>
4:7-12	I understand that smugmug.com where this folder was posted is a commercial photo-sharing website, where individuals may post their photographs to the Internet for others to see and copy. The Camp Jenny Pozzi folder was readily located by Google and publicly available for anyone freely to inspect. The website looked just like any other public website located by Google, and I had no sense that the site was not fully intended to be available for general public viewing.	<b>Improper Technical Opinion (Fed. Rule Evid. 701); Lacks Foundation</b>
6: 3-8	Although she declined to say whether her husband was a SEAL, she confirmed my impression that these were indeed images of Navy personnel and prisoners in Iraq. She told me she had "dumped" into a folder on the website all of the photos that her husband had brought back from Iraq. She also told me that they were "CIA photos," explaining that the men in the photos captured the detainees at the behest of the Central Intelligence Agency.	<b>Hearsay (Fed. Rule Evidence 801)</b>
6: 14-17	When I presented the photographs to Commander Bender, the Navy promptly announced that it was opening a preliminary investigation into both the conduct depicted in the photographs and how the photographs came into the hands of the civilian who had publicly posted them on the Internet.	<b>Hearsay (Fed. Rule Evidence 801); Lacks Foundation</b>

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7: 13-16	A few weeks later, the Navy announced that the Naval Special Warfare Command had taken over the investigation, to take a more thorough look at the facts and circumstances surrounding the photographs, and that this investigation could lead to disciplinary proceedings.	<b>Hearsay (Fed. Rule Evidence 801); Lacks Foundation</b>
8: 6-7	The facts reported by me on December 3, 2004 are true and accurate in all respects, to the best of my knowledge, information and belief.	<b>Lacks Foundation; Misstates Evidence</b>
Exhibit C	[Entire Exhibit]	<b>Irrelevant; Lacks Foundation</b>

Dated: April 22, 2005

MORRISON & FOERSTER LLP

By: \_\_\_\_\_

Charles S. Evendorff

Attorneys for Plaintiffs  
FOUR NAVY SEALS AND JANE  
DOE