RECEIVED
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

2003 MAR 12 PM 6:02

NANCY M.
MAYER-WHITTINGTON
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
Plaintiffs,	)	
v.	)	Case No. 1:96CV01285 (RCL)
	)	(Judge Lamberth)
GALE NORTON, Secretary of the Interior, et al.,	)	
Defendants.	)	

INTERIOR DEFENDANTS' SECOND MOTION AND SUPPORTING MEMORANDUM FOR RELEASE OF THE REPORT OF THE SPECIAL MASTER REGARDING IT SECURITY AND ANY INFORMATION REPORTED TO THE COURT REGARDING THE SPECIAL MASTER'S INVESTIGATION OR REPORT

Interior Defendants respectfully move for (1) release of the Special Master's report regarding his investigation of the Department of the Interior's information technology ("IT") security practices; and (2) provision to the parties of any information the Special Master reported to the Court regarding his investigation or report.[1]

On September 3, 2002, Interior Defendants filed their Motion For Release of the Report of the Special Master Regarding IT Security and any Information Reported to the Court Regarding the Special Master's Investigation or Report ("First Motion"). This Court denied the First Motion in an Order dated September 17, 2002. The Court stated that "[t]he Special Master, after a discussion of the status of his inquiry with the Court, agreed with the Court that the report he was in the midst of finalizing should not be submitted because it was directed largely at

[1] In accordance with Local Rule 7.1(m), counsel for Interior Defendants attempted to consult with counsel for Plaintiffs about this motion. Plaintiffs' counsel has not responded, and we presume Plaintiffs do not consent to this motion.

difficulties within OST, and did not address BIA, CIO, and Secretarial difficulties." Order, Sept. 17, 2002, at 1. Rather, the Court stated, "a report addressing the Department's failure to fix IT security is the appropriate way to proceed." Id. (emphasis in original). The Court stated that "[t]he Special Master readily agrees, and he has no interim or other report to submit, nor will he have a report until he has conducted and completed all of the necessary fact-gathering." Id. at 1-2.

The First Motion also sought any information the Special Master reported to the Court regarding his IT investigation or report. See First Motion at 3-4. The February 24, 1999 Order appointing the Special Master requires that "[a]ny information reported to the [C]ourt by the [S]pecial [M]aster shall also be reported to counsel for the parties," Order, Feb. 24, 1999, at 3. Although the Order denying the First Motion establishes that the Special Master reported information about his IT investigation and report to the Court, see Order, Sept. 17, 2002, at 1 ("The Special Master, after a discussion of the status of his inquiry with the Court, agreed with the Court that the report he was in the midst of finalizing should not be submitted because it was directed largely at difficulties within OST, and did not address BIA, CIO, and Secretarial difficulties."); id. ("[H]ere the discussion with the Special Master indicated that he disagrees with OST's actions regarding providing funding for IT security"), the September 17, 2002 Order did not address Interior Defendants' request for such information.

The Special Master has now concluded the additional investigation directed by the Court. His October 2002 Report stated that he "concluded [his] investigation into the IT security practices of the Department of the Interior with the deposition of former Assistant Secretary for Indian Affairs Kevin Gover," and that his "final report on this topic will soon issue." October

2002 Report of Special Master at 2 (Nov. 1, 2002). The Special Master's November 2002 Report stated:

> As reported in my October 2002 monthly report, I concluded the depositions related to my investigation into the IT security practices of the Department of the Interior. On November 22, 2002, Interior produced the final documents responsive to my various requests related to this investigation. Following review of those documents, I will issue my final report.

November 2002 Report of Special Master at 3 (Dec. 2, 2002). The Special Master's subsequent monthly reports contain no mention of the IT security investigation or final report.

In a January 2, 2003, letter to the Special Master, counsel for Interior Defendants noted their understanding that the Special Master had completed his IT security report, and requested that he issue the report and provide Interior Defendants with a copy. See Letter from John Warshawsky, Trial Attorney, Department of Justice, to Alan Balaran, Special Master (Jan. 2, 2003) (Exhibit 1). Counsel for Interior Defendants wrote again to the Special Master on February 27, 2003, this time asking that he advise them as to the approximate date on which he intended to release his IT security report. See Letter from Sandra P. Spooner, Deputy Director, Department of Justice, to Alan L. Balaran, Special Master (Feb. 27, 2003) (Exhibit 2). The Special Master has not responded to these inquiries.

The Special Master's report will almost certainly provide information that will be helpful to the Interior Defendants as they proceed with resolving IT security matters and implementing trust reform. In addition, the Special Master-Monitor is seeking to depose former Special Trustee Thomas Slonaker, and the report presumably will contain information that will be relevant to that deposition. Moreover, to the extent the report addresses issues that may be

relevant to the Phase 1.5 proceedings, Interior Defendants should be afforded the opportunity to address the report's findings as they prepare for trial. It has now been more than four months since the Special Master reported that he had concluded his investigation, and more than three months since he reported that Interior Defendants had produced the final documents related to this investigation. Federal Rule of Civil Procedure 53, pursuant to which the Special Master was appointed, requires the Special Master to file reports he has prepared with the clerk of the court and to "serve a copy of the report on each party." Fed. R. Civ. P. 53(e)(1). Accordingly, Interior Defendants respectfully request that a copy of the report be filed and served on the parties pursuant to Rule 53.

Furthermore, as noted above, the February 24, 1999 Order appointing the Special Master requires that "[a]ny information reported to the [C]ourt by the [S]pecial [M]aster shall also be reported to counsel for the parties." Order, February 24, 1999, at 3. In accordance with this Order, any information that the Special Master reported to the Court regarding his IT investigation or report must also be reported to counsel for the parties. Accordingly, Interior Defendants also respectfully request that the Special Master provide to the parties any

information (including any interim report or draft) he provided to the Court regarding his IT security investigation.

Dated: March 12, 2003

Respectfully submitted,

ROBERT D. McCALLUM
Assistant Attorney General
STUART E. SCHIFFER
Deputy Assistant Attorney General
J. CHRISTOPHER KOHN
Director

SANDRA P. SPOONER
D.C. Bar No. 261495
Deputy Director
JOHN T. STEMPLEWICZ
Senior Trial Attorney
CYNTHIA L. ALEXANDER
Trial Attorney
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
(202) 514-7194

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:96CV01285
	)	
GALE NORTON, Secretary of the Interior, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

Upon consideration of Interior Defendants' Second Motion For Release Of The Report Of The Special Master Regarding IT Security And Any Information Reported To The Court Regarding The Special Master's Investigation Or Report ("Interior Defendants' Motion"), any responses thereto, and the record in this case, it is hereby

ORDERED that Interior Defendants' Motion is GRANTED. The report of the Special Master regarding the Department of the Interior's IT security practices shall be released and served on the parties, and the parties shall be provided with any information (including any interim report or draft) the Special Master provided to the Court regarding his investigation or report.

SO ORDERED this _____ day of _____, 2003.

_____
Royce C. Lamberth
United States District Judge

cc:

Sandra P. Spooner
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
(202) 514-7194

Dennis M Gingold, Esq.
Mark Brown, Esq.
1275 Pennsylvania Avenue, N.W.
Ninth Floor
Washington, D.C. 20004
202-318-2372

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, NW
Washington, D.C. 20036-2976
202-822-0068

Elliott Levitas, Esq.
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

U.S. Department of Justice
Civil Division, Commercial Branch
1100 L Street, N.W., Room 10030
Washington, D.C. 20005

John Warshawsky

Telephone: (202) 307-0010 Facsimile: (202) 514-9163

January 2, 2003

By Facsimile

Mr. Alan Balaran
Special Master
1717 Pennsylvania Avenue, N.W.
Twelfth Floor
Washington, D.C. 20006

Re: Cobell v. Norton – TMIP Steering Committee Investigation

Dear Mr. Balaran:

We understand that you have completed your investigation of the TMIP Steering Committee and that you have completed your report setting forth your findings and conclusions resulting from this investigation. Therefore, we request that you issue your report and that you provide us with a copy.

Thank you for your consideration of this request.

Very truly yours,

John Warshawsky
Trial Attorney
Commercial Litigation Branch
Civil Division

cc: Mr. Dennis Gingold (by facsimile)
Mr. Keith Harper (by facsimile)

Exhibit 1
Def's 2nd Motion to Release
SM's IT Security Report

********** -COMM. JOURNAL- ********** DATE JAN-02-2003 ***** TIME 14:45 ********

MODE = MEMORY TRANSMISSION START=JAN-02 14:41 END=JAN-02 14:45

FILE NO.=710

STN NO.	COMM.	ONE-TOUCH/ ABBR NO.	STATION NAME/TEL NO.	PAGES	DURATION
001	OK	*	99868477	002/002	00:00:41
002	OK	*	93182372	002/002	00:00:45
003	OK	*	98220068	002/002	00:00:35

-DOJ/CIVIL DIVISION -

********** - - ***** - 202 514 9163- *********

FACSIMILE TRANSMITTAL

To: Mr. Alan L. Balaran [Facsimile number (202) 986-8477]
Mr. Dennis M. Gingold [Facsimile number (202) 318-2372]
Mr. Keith Harper [Facsimile number (202) 822-0068]

From: John Warshawsky, Trial Attorney
United States Department of Justice
Commercial Litigation Branch, Civil Division
1100 L Street, N.W., Room 10030
Washington D.C. 20005

Office telephone: (202) 307-0010
Facsimile number: (202) 514-9163

Pages (including cover page): 2

Comments:

Date of transmission: Thursday, January 2, 2003

NOTE: THIS FACSIMILE IS INTENDED ONLY FOR THE ABOVE-DESIGNATED ADDRESSEE. IT MAY CONTAIN INFORMATION WHICH IS PRIVILEGED, CONFIDENTIAL, OR OTHERWISE PROTECTED FROM DISCLOSURE TO ANYONE OTHER THAN THE ADDRESSEE.

IF YOU ARE NOT THE ADDRESSEE AND HAVE RECEIVED THIS FACSIMILE IN ERROR:

(1) PLEASE DO NOT REVIEW, DISSEMINATE, OR OTHERWISE USE ANY OF THE TRANSMISSION, AND

(2) PLEASE ADVISE THE SENDER OF THIS FACSIMILE IMMEDIATELY.

United States Department of Justice
Civil Division
Commercial Litigation Branch

Sandra P. Spooner
Deputy Director

P.O. Box 875, Ben Franklin Station
Washington, D.C. 20044-0875

Tel: (202) 514-7194
Fax: (202) 307-0494
Email:sandra.spooner@usdoj.gov

February 27, 2003

BY FACSIMILE

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Ave., N.W.
Twelfth Floor
Washington, DC 20006

Re: Cobell v. Norton - TMIP Steering Committee Investigation

Dear Mr. Balaran:

On September 3, 2002, we filed a motion seeking release of your report regarding the IT security practices of the Department of the Interior and any information (including any interim report or draft) you provided to the Court regarding your investigation or report. On September 17, 2002, the Court denied our motion on the ground that your report should not be submitted because "it was directed largely at difficulties within OST, and did not address BIA, CIO, and Secretarial difficulties." Order, Sept. 17, 2002, at 1. The Court stated that "[i]n the Court's view, a report addressing the Department's failure to fix IT security is the appropriate way to proceed." Id. The Court further stated that "[t]he Special Master readily agrees, and he has no interim or other report to submit, nor will he have a report until he has conducted and completed all of the necessary fact-gathering." Id. at 1-2.

In accordance with the February 24, 1999 Order appointing you, which requires that "[a]ny information reported to the [C]ourt by the [S]pecial [M]aster shall also be reported to counsel for the parties," Order, Feb. 24, 1999, at 3, we also sought any information you reported to the Court regarding your IT investigation or report in our September 3 motion. The Court did not address this request in its September 17, 2002 Order.

Your October 2002 Report stated that you "concluded your investigation into the IT security practices of the Department of the Interior with the deposition of former Assistant

Secretary for Indian Affairs Kevin Gover," and that your "final report on this topic will soon issue." October 2002 Report of Special Master at 2 (Nov. 1, 2002). Your November 2002 Report stated:

> As reported in my October 2002 monthly report, I concluded the depositions related to my investigation into the IT security practices of the Department of the Interior. On November 22, 2002, Interior produced the final documents responsive to my various requests related to this investigation. Following review of those documents, I will issue my final report.

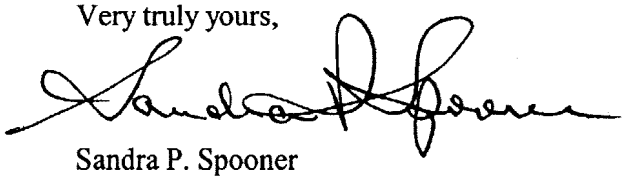
November 2002 Report of Special Master (Dec. 2, 2002).

In a January 2, 2003, letter to you from John Warshawsky, we noted our understanding that you had completed your report on Interior's IT security, and requested that you issue your report and provide us with a copy. We received no response.

As we have explained, Interior is actively involved in long term and short term planning to improve the security and integrity of information technology systems that house Indian trust data, with the ultimate goal of achieving A-130 compliance. See Letter from Sandra P. Spooner to Alan L. Balaran (Aug. 23, 2002). We again request that you issue your report so Interior may utilize any information you have gathered that may help guide its efforts. In addition, as you may be aware, the Special Master-Monitor is seeking to depose former Special Trustee Thomas Slonaker during the week of March 24, 2003, and the report may contain information that will be relevant to that deposition.

We ask that you advise us as to the approximate date on which you intend to release your IT security report no later than next Tuesday, March 4, 2003. Thank you for your prompt consideration of this request.

Very truly yours,



Sandra P. Spooner

cc: Dennis Gingold, Esq.
Keith Harper, Esq.

********** -COMM. JOURNAL- ********** DATE FEB-27-2003 ***** TIME 16:35 ********

MODE = MEMORY TRANSMISSION START=FEB-27 16:26 END=FEB-27 16:35

FILE NO.=798

STN NO.	COMM.	ONE-TOUCH/ ABBR NO.	STATION NAME/TEL NO.	PAGES	DURATION
001	OK	*	99868477	003/003	00:01:00
002	OK	*	93182372	003/003	00:01:15
003	OK	*	98220068	003/003	00:00:47

-DOJ/CIVIL DIVISION -

********** - - ***** - 202 514 9163- *********

IMPORTANT: This facsimile is intended only for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable law. If the reader of this transmission is not the intended recipient or the employee or agent responsible for delivering the transmission to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this transmission or it's contents is strictly prohibited. If you have received this transmission in error, please notify us by telephoning and return the original transmission to us at the address given below.

FROM: Department of Justice
Civil Division, Commercial Litigation Branch
Corporate Financial Section
P.O. Box 875, Ben Franklin Station
Washington, DC 20044

Fax No.: 202 514-9163 Voice No.: 202 514-7194
Email: sandra.spooner@usdoj.gov

SENT BY: Sandra P. Spooner

TO: Alan L. Balaran, Esq. **FAX No.:** 202 986-8477
Dennis M. Gingold, Esq. 202 318-2372
Keith Harper, Esq. 202-822-0068

DATE: February 27, 2003

NUMBER OF PAGES SENT (INCLUDING COVER PAGE): 3

SPECIAL INSTRUCTIONS:

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on March 12, 2003 I served the foregoing *Interior Defendants' Second Motion and Supporting Memorandum for Release of the Report of the Special Master Regarding IT Security and Any Information Reported to the Court Regarding the Special Master's Investigation or Report* by facsimile in accordance with their written request of October 31, 2001 upon:

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976
(202) 822-0068

Dennis M Gingold, Esq.
Mark Kester Brown, Esq.
1275 Pennsylvania Avenue, N.W.
Ninth Floor
Washington, D.C. 20004
(202) 318-2372

By U.S. Mail upon:

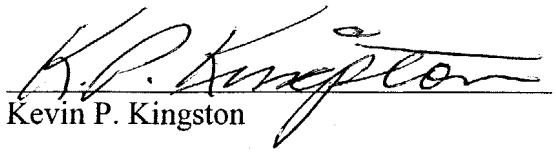
Elliott Levitas, Esq.
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

By facsimile and U.S. Mail upon:

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Avenue, N.W.
13th Floor
Washington, D.C. 20006
(202) 986-8477

By Hand upon:

Joseph S. Kieffer, III
Special Master Monitor
420 7th Street, N.W.
Apartment 705
Washington, D.C. 20004
(202) 478-1958



Kevin P. Kingston