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DISTRICT OF COLUMBIA
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

INTERIOR DEFENDANTS' MOTION IN LIMINE
TO PRECLUDE THE TESTIMONY OF KYLE SAMPSON

Pursuant to Rule 104(a) of the Federal Rules of Evidence, Rule 7(b) of the Federal Rules of Civil Procedure, and Local Civil Rule 7.1, Interior Defendants respectfully move this Court for an order in limine prohibiting Plaintiffs from calling Kyle Sampson, Associate Counsel to the President, as a witness in the "Phase 1.5" trial.[1] Because the Phase 1.5 trial concerns the January 6, 2003 plans proposed by the Department of the Interior ("Interior") and by Plaintiffs, and because Mr. Sampson had no involvement whatsoever in the preparation of those plans, his testimony would be wholly irrelevant to the issues before the Court.

Plaintiffs' witness list for the Phase 1.5 trial identifies Mr. Sampson as one of Plaintiffs' witnesses, and describes his expected testimony as follows: "Matters concerning defendants' failure and inability to bring themselves into compliance with their trust duties and defendants' witness intimidation/retaliation." Plaintiffs' Witness List at 3. Mr. Sampson, an attorney in the

[1] In accordance with Local Civil Rule 7.1(m), counsel for Interior Defendants attempted to reach counsel for Plaintiffs to confer regarding this motion. Counsel for Plaintiffs has not responded, and Interior Defendants presume Plaintiffs will oppose this motion.

White House Office of Counsel, is not involved in or responsible for Defendants' efforts to bring themselves into compliance with their trust duties. Accordingly, his testimony on this issue would be of no assistance to the trier of fact. Indeed, in a September 27, 2002 Report and Recommendation, which the Court adopted, see Order (Oct. 18, 2002), the Special Master-Monitor stated that Mr. Sampson was not a "proper subject[] for deposition for [an]y purposes which this Court has authorized discovery" for the Phase 1.5 trial because he has "little or no knowledge of or responsibility for trust reform at the Department of the Interior." Report and Recommendation of the Special Master Monitor On Defendants' Motion For Protective Order And To Quash Deposition Subpoenas, at 6 (September 27, 2002) ("September 27, 2002 Report and Recommendation").

Plaintiffs' attempt to present Mr. Sampson's testimony regarding "defendants' witness intimidation/retaliation" can only be another improper attempt to relitigate issues already settled by the Court. In August, 2002, Plaintiffs served subpoenas for the depositions of Mr. Sampson and other government officials for the apparent purpose of obtaining discovery about two matters that the Constitution entrusts exclusively to the Executive Branch: the removal of the Special Trustee for American Indians, a purely executive official who serves at the pleasure of the President, and the Executive Branch's internal review and clearance of prepared testimony the Special Trustee would provide to a congressional committee. Defendants moved to quash the deposition subpoenas and sought a protective order precluding Plaintiffs from conducting the depositions. See Defendants' Motion For Protective Order And To Quash Deposition Subpoenas (Aug. 21, 2002).

On October 18, 2002, this Court granted Defendants' motion as to Mr. Sampson "for the reasons stated in the Special Master-Monitor's [September 27, 2002 Report and Recommendation]." Order, at 1 (Oct. 18, 2002). The September 27, 2002 Report and Recommendation reasoned that Plaintiffs should not be permitted to depose Mr. Sampson "concerning the Special Trustee's dismissal" because "the President has unbridled authority to dismiss [the Special Trustee] for any reason not subject to review by this Court or inquiry by litigants in this case." September 27, 2002 Report and Recommendation at 4. Similarly, the Report and Recommendation reasoned that Plaintiffs should not be permitted to seek discovery from Mr. Sampson about the "alleged suppression of the Special Trustee's planned written testimony before Congress about the status of the historical accounting project" because "if Congress had wanted the Special Trustee to be entirely independent of the Secretary, if not the President, to be able to report candidly to Congress, without interference by Secretary Norton or her key subordinates, Congress could have done so but did not." Id. at 5.

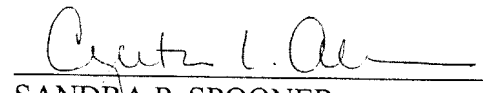
Inasmuch as the Court has already determined that any testimony Mr. Sampson could provide is irrelevant to the issues before the Court in the Phase 1.5 trial, and beyond the scope of proper judicial inquiry in any event, the Court should preclude Plaintiffs from calling Mr. Sampson to testify as a witness in the Phase 1.5 trial.

CONCLUSION

For the foregoing reasons, Interior Defendants respectfully move this Court for an order in limine barring plaintiffs from calling Mr. Kyle Sampson as a witness at the Phase 1.5 trial.

Respectfully submitted,

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



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April 28, 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

ORDER

Upon consideration of Interior Defendants' Motion In Limine To Preclude The Testimony of Kyle Sampson ("Interior Defendants Motion"), any responses thereto, and the record of the case, it is hereby ORDERED that Interior Defendants' Motion is GRANTED. It is further

ORDERED, that Plaintiffs will not be permitted to call Kyle Sampson to testify as a witness in the Phase 1.5 trial.

SO ORDERED this _____ day of _____, 2003.

_____
ROYCE C. LAMBERTH
United States District Judge

cc:

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CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on April 28, 2003 I served the foregoing *Interior Defendants' Motion in Limine to Preclude the Testimony of Kyle Sampson* by facsimile in accordance with their written request of October 31, 2001 upon:

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Per the Court's Order of April 17, 2003
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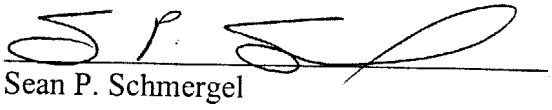

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