U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
2002 MAY 23 PM 5: 12
NANCY M.
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CLERK

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 TO STRIKE PORTIONS OF THE SEVENTH REPORT OF THE COURT MONITOR THAT REFER TO GOVERNMENT EMPLOYEES AS "CONTEMNORS"

The Secretary of the Interior and the Assistant Secretary - Indian Affairs ("Interior Defendants") hereby respectfully move this Court to strike those portions of the Seventh Report of the Court Monitor that refer to government employees as "contemnors." Counsel for the Interior Defendants have conferred with counsel for Plaintiffs about this motion; counsel for Plaintiffs stated that Plaintiffs oppose this motion.

In the Seventh Report of the Court Monitor ("Seventh Report"), filed May 2, 2002, the Court Monitor repeatedly refers to government employees against whom the Plaintiffs have sought contempt sanctions as "contemnors." See, e.g. Seventh Report at 24 ("This Court has questioned both the Secretary and the Deputy Secretary on their statements concerning the present contemnors that consist mainly of DOI attorneys and officials."); id. at 26 ("A specific example of that tone deafness is the further testimony of the Deputy Secretary concerning the role played by one of the attorney contemnors in the decision-making process on the reorganization."); id. at 27-28 ("[A particular Interior attorney] was . . . a contemnor central to

the core of the Court Monitor's First and Second Reports. . . ."); id. at 54 ("The Secretary and Deputy Secretary have testified that they continue to rely upon at least one of these contemnors . . . to provide them with the 'history' of trust reform and statutory and legal precedent."). In a May 7, 2002 letter, the Department of Justice advised the Court Monitor that the references in the Seventh Report to government employees as "contemnors" were "wholly improper." See Letter from Sandra P. Spooner, Deputy Director, Department of Justice, to Joseph S. Kieffer, III, Court Monitor (May 7, 2002) (Exhibit 1). The letter noted that, although Plaintiffs have sought contempt sanctions against certain individuals, the employees have vigorously denied any misconduct and "[t]he statements in [the Seventh Report] that they are, in fact, contemnors not only unjustly damages their reputations, but also suggests a prejudgment of this issue that is entirely inappropriate." Id.

In a letter dated May 13, 2002, the Court Monitor responded that "[t]he Seventh Report will stand as it is written." See Letter from Joseph S. Kieffer, III, Court Monitor, to Sandra P. Spooner, Deputy Director, Department of Justice (May 13, 2002) (Exhibit 2). The Court Monitor stated that "the overall thrust of the Seventh Report's comments about [these individuals] was that they had not been found liable for any civil or criminal penalties as of the date of the Report." Id. To support this contention, the Court Monitor quoted the following statement, which appears on page 79 of the Seventh Report: "Nearly 40 former or current senior managers, attorneys, and employees of the DOI, BIA, Solicitor's Office, and DOJ are before this Court on *allegations* of contempt. Id. at 3 (emphasis in letter).

In their Response to the Seventh Report, Interior Defendants strongly objected to the Court Monitor's use of the term "contemnor" to describe government employees who have not

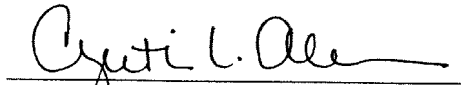
been held in contempt. See Department Of The Interior's Response To The Seventh Report Of The Court Monitor at 41-45 (filed May 16, 2002). Interior Defendants observed that these employees have not been held in contempt and that the Court Monitor's offensive reference to them as "contemnors" "unjustly damage[s] [their] reputations . . . and suggest[s] a prejudgment of this issue that the Court should not countenance." Id. at 42. Interior Defendants acknowledged the Court Monitor's May 13, 2002 letter in their Response, but explained that the repeated references to these individuals as "contemnors" throughout the Seventh Report was not redeemed by a statement elsewhere in the report that they were "before this Court on allegations of contempt." See id. at 42 n.16. The Interior Defendants requested that "the Court immediately direct the Court Monitor to remove from his Report all references to government employees as 'contemnors,' and all passages that presume to prejudge these individuals." Id. at 45.

A "contemnor" is "[a] person who is guilty of contempt before an instrumentality of government, such as a court or legislature." Black's Law Dictionary 312 (7th ed. 1999). None of the employees the Court Monitor describes as "contemnors" has been found guilty of contempt. A statement elsewhere in the Seventh Report referring to "allegations" of contempt does not excuse or justify the repeated use of the term "contemnor" to describe these individuals. Because the Court Monitor's use of the term "contemnor" in the Seventh Report is not only incorrect, but also highly improper and defamatory, and because the Seventh Report is a public document (one that has already been published on the Internet, see http://www.indiantrust.com/documents/2002.05.02_SeventhReport_CourtMonitor.pdf), Interior Defendants now renew their request in the form of a motion to strike.

Interior Defendants hereby respectfully request that the Court enter an order to strike from the Seventh Report the term "contemnor" wherever it is used to describe or refer to any person who has not been held in contempt.

Respectfully submitted,

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



SANDRA P. SPOONER
Deputy Director
D.C. Bar No. 261495
JOHN T. STEMPLEWICZ
Senior Trial Counsel
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

OF COUNSEL:

Sabrina A. McCarthy
Department of the Interior
Office of the Solicitor

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Defendants.	)	

ORDER

Upon consideration of Interior Defendants' Motion To Strike Portions Of The Seventh Report Of The Court Monitor That Refer To Government Employees As "Contemnors," any opposition filed, and the materials and record herein, it is ordered that the Interior Defendants' motion is GRANTED; and

IT IS ORDERED that the term "contemnor" shall be stricken from the Seventh Report of the Court Monitor wherever it is used to describe or refer to any person who has not been held in contempt; and

IT IS FURTHER ORDERED that the Court Monitor is directed to substitute for the copy of the Seventh Report in the record of this case a revised copy from which the term "contemnor" has been deleted wherever it is used to describe or refer to any person who has not been held in contempt.

SO ORDERED this _____ day of _____, 2002.

_____
ROYCE C. LAMBERTH
United States District Judge

cc:

Sandra P. Spooner
John T. Stemplewicz
Cynthia L. Alexander
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
Fax (202) 514-9163

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

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

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

Joseph S. Kieffer, III
Court Monitor
420 - 7th Street, N.W.
Apartment 705
Washington, D.C. 20004

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on May 23, 2002 I served the Foregoing *Interior Defendants' Motion to Strike Portions of the Seventh Report of the Court Monitor That Refer to Government Employees as "Contemnors"*, by facsimile in accordance with their written request of October 31, 2001 upon:

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

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

By U.S. Mail upon:

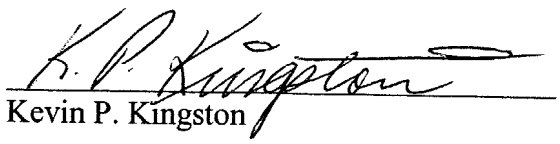
Elliott Levitas, Esq.
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

By fax and U.S. Mail upon:

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Ave., N.W.
12th Floor
Washington, D.C. 20006
(202) 986-8477

By Hand Delivery upon:

Joseph S. Kieffer, III
Court Monitor
420 - 7th Street, N.W.
Apartment 705
Washington, D.C. 20004



Kevin P. Kingston