

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

ELOISE PEPION COBELL et al.)	
)	
Plaintiffs)	
)	
v.)	Civil Action No.
)	96-1285 (RCL)
GALE A. NORTON)	
SECRETARY OF THE INTERIOR, et al.)	
)	
Defendants)	
)	
)	
)	

**SPECIAL REPORT OF THE COURT MONITOR ON POTENTIAL EVIDENCE
REGARDING THE ALLEGED SUPPRESSION BY WHITE HOUSE AND
DEPARTMENT OF JUSTICE ATTORNEYS OF THE WRITTEN TESTIMONY
OF THE SPECIAL TRUSTEE PREPARED FOR THE SENATE COMMITTEE
ON INDIAN AFFAIRS’ JULY 25, 2002 HEARING REGARDING THE
DEPARTMENT OF THE INTERIOR’S HISTORICAL ACCOUNTING**

I. INTRODUCTION

This Special Report of the Court Monitor (Special Report) is made pursuant to this Court’s Orders of April 16, 2001 and April 15, 2002 regarding the appointment of the Court Monitor to review and monitor “all of the Interior defendants’ trust reform activities and file written reports of (the Court Monitor’s) findings with the Court” including “any other matter (the Court Monitor) deems pertinent to trust reform.” It addresses potential evidence concerning the alleged suppression of the written testimony of the Special Trustee for American Indians (Special Trustee) for submission to the Senate Committee on Indian Affairs regarding his opinions on the historical accounting ordered by this Court to be carried out by the Defendants.

II. BACKGROUND

On July 31, 2002, the United States Attorney for the District of Columbia provided this Court with notice that the incumbent Special Trustee for American Indians, the Honorable Thomas Slonaker, had resigned from office, effective July 30, 2002. Copies of Mr. Slonaker’s letter of resignation and the response of the Secretary of the Interior

(Secretary) were attached to that Notice.¹ Subsequently, the Special Trustee not only stated to the press that he was forced to leave his position by the Secretary who told him that he would be fired if he did not resign but also that he was told by White House and Department of Justice (DOJ) attorneys that he could not submit his drafted written testimony to the Senate Committee on Indian Affairs regarding his opinions concerning the conduct of an historical accounting for the Individual Indian Money accounts as presented to Congress in the Department of the Interior's (DOI) *Report to Congress on the Historical Accounting of Individual Indian Money Accounts* (Report), submitted to this Court on July 2, 2002.

Mr. Slonaker also was reported in an *Indianz.Com* website article on August 5, 2002, entitled, "Probe into Indian trust fund ouster expands," to have stated the following:

"He told Indianz.Com in an interview that Norton, Griles and Brian Waidmann, Norton's chief of staff, took part in a Tuesday afternoon meeting when the bad news was given.

'I was asked to leave,' Slonaker said.

The blunt directive occurred just days after Slonaker bristled with Department of Justice and White House attorneys over testimony he was to provide to Congress. The Indian committee sought his views on the Bush administration's proposal to account for fund (sic) owed to more than 500,000 Indian beneficiaries.

"They took exception to what a lot of what I was planning to say in the written testimony,' he said of the government attorneys. 'Two thirds of the document was stricken.

....

I think Justice may take a pretty strict view of what can help or harm their case, he said.'" *Id.* at 1-2.

III. DISCUSSION

Since the resignation of the Special Trustee, a number of parties have called for an investigation or hearings into the events and circumstances surrounding both the resignation of the Special Trustee or the alleged suppression of his written testimony sought by the Senate Committee on Indian Affairs on the historical accounting, or both. There likely will be other requests for inquiry into this matter and for the release of all documents associated with it.

The *Cobell* plaintiffs have asked that the Court Monitor conduct an investigation of both the circumstances surrounding the Special Trustee's alleged firing and the suppression of

¹ See Notice To The Court, filed July 31, 2002.

his written testimony before the Senate Committee on Indian Affairs. The Department of Justice has opposed this request partially on the grounds that inquiries into the circumstances surrounding termination of the Special Trustee by or with the authorization of the President would constitute “an impermissible invasion of the President’s constitutional authority.”² Plaintiffs have also subpoenaed for deposition the attorneys and other officials identified by them as allegedly involved in this matter – subpoenas that DOJ will undoubtedly seek to have this Court quash.

The Court Monitor has not begun any investigation or review of the circumstances surrounding the resignation of the Special Trustee or the reasons for it. However, as part of the Court Monitor’s continuing monitoring and review of the progress of trust reform pursuant to the above-cited Orders of this Court, and in the Court Monitor’s specific and continuing review of the impact on that progress of the diminishment of the capability of the Office of the Special Trustee to carry out its Congressionally-mandated oversight and advisory roles³, the Court Monitor has come into possession of one document among others obtained from DOI officials that may be relevant to these putative investigations and hearings. Also, and possibly more importantly, it may be relevant to this Court’s consideration of any motions placed before it by the parties to the *Cobell* litigation regarding any potential inquiry by this Court into the Special Trustee’s statements, the actions of White House or DOJ attorneys regarding the alleged suppression of the Special Trustee’s written testimony before the Senate Committee on Indian Affairs, and the potential reasons for the Secretary’s alleged request for his resignation.

IV. CONCLUSION

This document, submitted herewith under seal to this Court at Attachment C, does not directly pertain to the resignation of the Special Trustee or the Secretary’s reasons for requesting that resignation. However, it does pertain to Mr. Slonaker’s statements surrounding the alleged actions of the White House and Department of Justice attorneys in striking and suppressing the written testimony of the Special Trustee prepared by him for submission to the Senate Committee on Indian Affairs containing his opinions about the DOI’s planned historical accounting as addressed in their Report.

The document is submitted under seal to this Court because the substance of the document may support Mr. Slonaker’s allegations of the involvement of White House and Department of Justice attorneys in review and suppression of the written testimony of the Special Trustee and, if it does support those allegations of attorney involvement, it may be subject to a claim (whether tenable or not) of attorney/client privilege or confidentiality under the work product doctrine. It is respectfully submitted that this Court is the best arbiter of future requests for its release or protection that will ultimately follow this acknowledgement of its existence. It is for this reason that the document is being transferred from the possession of the Court Monitor to this Court.

² See letters from Dennis Gingold, Esquire, and Sandra Spooner, DOJ, attached to this Special Report at Attachments A and B..

³ See, generally, Seventh Report.

Copies of the *Special Report of the Court Monitor On Potential Evidence Regarding the Alleged Suppression By White House And Department of Justice Attorneys Of The Written Testimony Of The Special Trustee Prepared For the Senate Committee On Indian Affairs' July 25, 2002 Hearing Regarding The Department Of The Interior's Historical Accounting* have been provided to:

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