



UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT

APR - 6 2004

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Civil Division, Appellate Staff
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Washington, D.C. 20530

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April 6, 2004

Mr. Mark J. Langer
Clerk, United States Court of Appeals
for the District of Columbia Circuit
United States Courthouse
Room 5423
Third & Constitution Avenue, N.W.
Washington, D.C. 20001

Re: Cobell v. Norton, No. 03-5288

Dear Mr. Langer:

Oral argument on the above-captioned petition for mandamus is scheduled for April 8, 2004, before Chief Judge Ginsburg and Circuit Judges Randolph and Henderson.

The petition seeks the disqualification of Special Master Alan Balaran in Cobell v. Norton, No. 96-1285 (D.D.C.). Pursuant to FRAP 28(j), we write to inform the Court that Special Master Balaran has resigned from the case, effective April 5, 2004. In our view, the resignation raises significant new issues that warrant taking the petition off the April 8, 2004 argument calendar. We will submit our position on those issues within fourteen days.

We are attaching the district court's April 6, 2004 order accepting the Special Master's resignation; the April 5, 2004 letter of resignation; and the district court's separate order of April 6, 2004 directing defendants to pay fees, including \$65,284.62 in fees to Douglas B. Huron, who represented the Special Master in opposing the government's motion for disqualification and petition for mandamus.

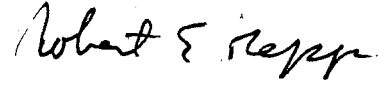
Please distribute copies of this letter, with the attachments, to the members of the panel assigned to the case. Thank you for your assistance.

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

GREGORY G. KATSAS
Deputy Assistant Attorney General

ROBERT E. KOPP



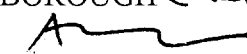
MARK B. STERN

THOMAS M. BONDY

CHARLES W. SCARBOROUGH



ALISA B. KLEIN



Attorneys, Appellate Staff

cc: Hon. Royce C. Lamberth
Douglas B. Huron
Elliott H. Levitas
Dennis Marc Gingold
Keith M. Harper
Earl Old Person

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,

Plaintiffs,

v.

GALE A. NORTON, Secretary of the
Interior, et al.,

Defendants.


Civil Action Number 96-1285 (RCL)

ORDER

With profound regret the Court accepts the resignation of Alan L. Balaran as Special Master. His letter of resignation, attached hereto, shall be filed in the record of this case.

SO ORDERED.

Date: April 6, 2004



Royce C. Lamberth
United States District Judge

LAW OFFICE

ALAN L. BALARAN, P.L.L.C.

ADMITTED IN DC AND MD

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WASHINGTON, D.C. 20006
TELEPHONE (202) 466-5010
FAX (202) 986-8477
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April 5, 2004

HAND DELIVERED

Honorable Royce C. Lamberth
United States District Court for the District of Columbia
333 Constitution Avenue, NW
Washington, DC 20001

Re: Cobell v. Norton, No. 96-1285

Dear Judge Lamberth:

I hereby tender my resignation as Special Master in the Cobell case, effective the close of business on April 5, 2004.

This is an extraordinarily important case. I have been privileged to work on it. For the past several months, however, my efforts have been undermined by a series of motions lodged by the Department of the Interior — one of Cobell's two co-defendants — seeking my disqualification.

It is evident Interior will continue filing such motions, preventing the case from moving forward. The agency's motivation is clear. In recent months, I have reported evidence of a practice — abetted by Interior — of energy companies routinely paying individual Indians much less than they pay non-Indians for oil and gas pipeline easements across the Southwest. I also have uncovered evidence that Interior fails to diligently monitor oil and gas leasing activities on individual Indian lands. To prevent further investigation into these matters, Interior seeks my removal from the Cobell case.

The timing of Interior's efforts to disqualify me is not coincidental. Interior filed its May 2003 disqualification motion shortly after I found the agency withheld salient data from its quarterly reports to the Court. The agency accused me of improperly retaining the services of a former Interior contractor to obtain information germane to that investigation. You found this accusation frivolous, suggesting it was Interior that acted improperly by impeding my investigation and that Interior had an ulterior motive for seeking my removal. You were correct.

Interior's disqualification attempts stemmed from events that took place several months earlier, beginning with my March 6, 2003 visit to the Office of Appraisal

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APR 5 2004

CHAMBERS OF
JUDGE LAMBERTH

Honorable Royce C. Lamberth
April 5, 2004
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Services of the Navajo Regional Office in Gallup, New Mexico. There, in the presence of the Department of Justice and Interior counsel, the Chief Appraiser admitted that he appraised oil and gas easements running across individual Indian lands for amounts considerably less than the appraised value of identical interests held by non-Indians. The Chief Appraiser also admitted destroying evidence of his 20-year practice of doing so. Interior has never denied that the Chief Appraiser destroyed valuable trust information or that energy companies pay individual Indians a fraction of what they pay similarly situated non-Indians as a result of these inadequate appraisals. (Nor has the agency taken any disciplinary action against the Chief Appraiser. To the contrary, it has gone to great lengths to protect him by retaining the services of two attorneys to defend his conduct during a recent deposition.)

On August 20, 2003, I issued a report chronicling my findings. This report was just the beginning. I soon began to uncover evidence that Interior was putting the interests of private energy companies ahead of the interests of individual Indian beneficiaries.

On September 19, 2003, for example, I visited Minerals Management Service's (MMS) Office of Minerals Revenue Management (MRM) in Dallas — the repository of Interior's oil and gas audit files. My visit was prompted by two events: (1) the March 2003 report of Interior's Office of the Inspector General, revealing that MMS officials not only fabricated oil and gas audit files but were rewarded for their efforts; and (2) Justice's denial of my repeated requests for access to these files. As you noted in your March 15, 2004 decision denying Interior's disqualification motion, since August 1999, I have visited dozens of sites to ensure that Interior was safeguarding trust documentation in accordance with your directives. Interior not only approved of these visits, but encouraged its employees to cooperate with me fully during my inspections. My visit to Dallas was different. After only two hours, during which I uncovered chaotic record-keeping practices and missing audit files, MMS officials informed me that Justice ordered that I leave.

The reason for this dramatic shift in policy is obvious. Whereas my previous investigations exposed random incidents of unprotected trust documents in remote Interior locations, my recent findings implicated the agency's systemic failure to properly monitor the activities of energy companies leasing minerals on individual Indian lands. The consequences of these findings could cost the very companies with which senior Interior officials maintain close ties, millions of dollars. (In that regard, I direct you to the recent Inspector General Report of Investigation (PI-SI-02-0053-I), discussing the relationship between Interior's most senior officials and energy company executives.) Interior did not want this information to come to light and for the first and only time during my five-year tenure as Special Master, ordered me to leave a site.

Honorable Royce C. Lamberth

April 5, 2004

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Just one week after my Dallas site visit, in a motion filed on September 26, 2003, Interior issued the following ultimatum: either you rule on its disqualification motion by October 15, or the government would file a mandamus petition in the Court of Appeals, seeking to have that Court disqualify me. At that time, the government knew you were beginning a six-defendant criminal trial on October 1, 2003, that involved multiple counts of murder, drug offenses, and racketeering, making it impossible for you to rule on the disqualification issue by the October 15 "deadline." Interior was just going through the motions and, in mid-October, filed its mandamus petition in the Court of Appeals.

It is evident that Interior, supported by the Department of Justice, is committed to removing me from this case. It is also plain that the agency's efforts to unseat me bear no relationship to the reasons it offers in its disqualification motion, but rather to my discovery of significant problems with its appraisal and record-keeping practices. A full investigation into these matters might well result in energy companies being forced to repay significant sums to individual Indians. Interior could not let this happen.

Justice has been much too long in coming for the hundreds of thousands of Native Americans whose land the government has supposedly held in trust, in some cases for over a century. Billions of dollars are at stake. It is past time to get systems in place that will enable the Departments of the Interior and Treasury to track trust data accurately in the future, as well as render an honest and reliable accounting in the present. In this respect, my presence in the case has become a distraction. And while I am confident that Interior's disqualification motions would ultimately be denied, I have no doubt that were I to continue as Special Master, the agency's efforts to disqualify me would persist and accelerate. Given this, I will be of no practical service to the Court. I hope that, with my resignation, the parties will be able to move rapidly toward fundamental reforms. I also hope that, understanding this background, my successors will be more efficacious.

Finally, on a personal note, you are a courageous, decisive, and diligent judge who strives to do justice in each and every case. It has been my honor to have served with you. Thank you for giving me this opportunity.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan L. Balaran". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Alan L. Balaran
Special Master

cc: Dennis M. Gingold, Esq. (via hand delivery)
Sandra P. Spooner, Esq. (via hand delivery)

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.

Plaintiffs,

v.

GALE NORTON, et al.

Defendants.

Civil Action No.
96-1285 (RCL)

ORDER

Pursuant to this Court's Order dated February 24, 1999 appointing a Special Master in the above-captioned litigation; and

Pursuant to this Court's Order dated August 12, 1999 directing the Special Master to file reports with this Court on the first day of each month and in consideration of the attached monthly Report of the Special Master dated April 5, 2004, it is hereby

ORDERED that the Final Monthly Report of the Special Master be filed in the record of this case.

Upon review of the compensation request for services and expenses rendered by Alan L. Balaran, the Security Assurance Group, and Douglas B. Huron, and, upon finding them to be reasonable, it is hereby

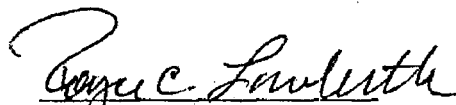
ORDERED that the defendants pay the Law Office of Alan L. Balaran the sum of \$40,452.09 no later than April 30, 2004;

ORDERED that the defendants pay Douglas B. Huron the sum of \$65,284.62 no later than April 30, 2004; and

ORDERED that the defendants pay Security Assurance Group the sum of \$12,975.25 no later than April 30, 2004.

SO ORDERED.

Date: 4-6-04


Royce C. Lamberth
United States District Judge

cc: Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Ave., N.W.
Thirteenth Floor
Washington, D.C. 20006

Dennis M. Gingold, Esq.
1275 Pennsylvania Ave., N.W.
Ninth Floor
Washington, DC 20004

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