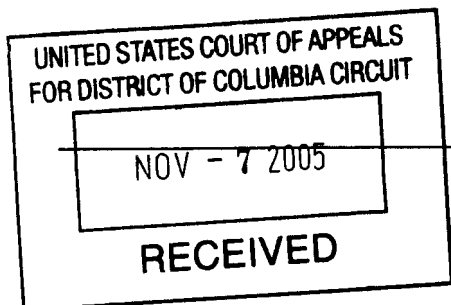




**U.S. Department of Justice**  
Civil Division, Appellate Staff  
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November 7, 2005

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:

Pursuant to Fed. R. App. P. 28(j), we call to the Court's attention that on November 3, 2005, plaintiffs filed in the district court an opposition to a government motion for a protective order, expressly citing Special Master Balaran's August 2003 "site visit" report as part of their ongoing efforts to pursue further discovery. See Docket No. 3207, filed 11/03/05, at 2 n.3 (copy attached). Plaintiffs have urged that the issue of Mr. Balaran's disqualification is moot. The government has argued that the matter continues to present a live controversy, in part because of plaintiffs' continued reliance on reports issued by Mr. Balaran in July 2003 in connection with NAID and in August and September 2003 in connection with specified site visits. Plaintiffs' reliance on the August 2003 site visit report underscores again that the issue of Mr. Balaran's disqualification is not moot.

We would appreciate your distributing copies of this letter, with the attachment, to the members of the panel before whom oral argument was heard on October 14, 2005. Thank you very much for your assistance.

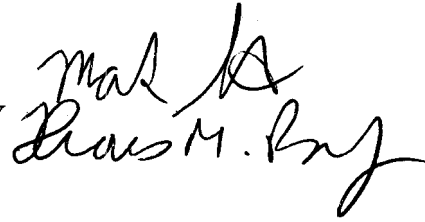
Respectfully submitted,

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Attorneys, Appellate Staff

Handwritten signatures in black ink. The top signature is "Mark B. Stern" and the bottom signature is "Thomas M. Bondy".

cc: Elliott H. Levitas  
G. William Austin, III  
Mark I. Levy  
Dennis Marc Gingold  
Keith M. Harper  
Earl Old Person