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.	

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO STRIKE PLAINTIFFS' "COMMENTS," FILED AUGUST 27, 2003 AND IN OPPOSITION TO PLAINTIFFS' REQUEST FOR THE COURT TO CONSIDER SANCTIONS *SUA SPONTE* FOR FILING A FRIVOLOUS MOTION

Defendants file this Reply to Plaintiffs' Opposition to Defendants' Motion to Strike Plaintiffs' "Comments," Filed August 27, 2003 and Plaintiffs' Request for the Court to Consider Sanctions *Sua Sponte* for Filing a Frivolous Motion ("Opposition"), filed September 23, 2003. In their Opposition, Plaintiffs' continued use of intemperate language only proves the points made in Defendants' September 16, 2003 Motion to Strike Plaintiffs' "Comments," Filed August 27, 2003 ("Motion to Strike"). Moreover, Plaintiffs' defense of their misleading statements contained in Plaintiffs' Comments on Interior Secretary Gale Norton's and Acting Assistant Secretary Aureen [sic] Martin's Willful Violations of Preliminary Injunction ("Comments"), filed August 27, 2003, only confirms how misleading those statements were. Finally, Plaintiffs' request for the Court to sua sponte consider sanctions is an improper attempt to circumvent the requirements of Federal Rule of Civil Procedure 11(c)(1)(A).

Plaintiffs' Intemperate Language Proves the Points Made in Defendants' Motion to Strike

In their Motion to Strike, Defendants argued that Plaintiffs' Comments demonstrated "an utter lack of decency and civility . . . ." Motion to Strike at 12. Unfortunately, Plaintiffs' Opposition serves only to confirm the accuracy of this statement.

In their Introduction, Plaintiffs claim that their Comments contained an "accurate description of additional material misrepresentations of Norton, Martin, and their managers and counsel." Opposition at 2 (footnote omitted). Plaintiffs fail to explain, however, how their use of the word "fool" four times[1] is somehow an "accurate description" of Defendants' previous filings and appropriate for inclusion in their Opposition. Plaintiffs also claim that their language is acceptable because "'the challenged allegations describe acts or events that are relevant to the action.'" Id. (quoting Order, March 3, 2003 (denying Defendants' Motion to Strike) (internal citation omitted)). Plaintiffs cannot justify, however, how inflammatory phrases such as "'demonstrable' mendacity and admitted incompetence,"[2] "Norton is a liar, a fool, or both . . . ." "sucker bet,"[3] and "Orwellian newspeak"[4] are somehow suitable commentary on acts or events relevant to this litigation.[5]

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[1] See Opposition at 7 ("Norton is a liar, a fool or both . . . ."); Comments at 2 ("Norton is a liar, a fool or both . . . ."); id. at 14 n.27 ("Cason is lying or he is a fool . . . ."); id. at 21 n.41 ("[T]his claim is . . . the utterance of a fool.").

[2] Opposition at 4.

[3] Id. at 5 n.8.

[4] Id. at 6.

[5] These brief examples of Plaintiffs' scandalous language in no way constitute an (continued...)

Rather than attempting to rationalize such statements, however, Plaintiffs shamelessly and boldly assert them once again: "Plaintiffs state in their comments that Interior Secretary Gale Norton is a liar, a fool or both. For her and her counsel to perpetuate this nonsense proves conclusively the accuracy and propriety of plaintiffs' comments." Id. at 7. Such repeated conduct has no place in any litigation and can only further demean the litigants, the Bar, and the Court itself. The Court should curtail Plaintiffs' continued incivility.

Plaintiffs' Explanations of the Misstatements in their Opposition Only Confirm How Misleading Those Statements Were

Plaintiffs devote much of their Opposition to defending several statements that they made in their Comments. See generally id. at 5-13.[6] Much of this discourse demonstrates long-standing disagreements that Plaintiffs have with Defendants' positions. Unfortunately, as they have so often done, Plaintiffs equate such disagreement with deceit by Defendants. Plaintiffs then couch their misstatements in the same old, worn-out rhetoric,[7] peppering their Opposition with irrelevant references.[8] Such repetition of previous rhetoric and citation to irrelevant issues

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[5](...continued)
exhaustive list of Plaintiffs' intemperate remarks. Defendants will not repeat all such invective as doing so would merely serve to repeat the libels.

[6] Such a necessary and extensive defense of these statements proves to a degree how misleading those statements were.

[7] See Opposition at 2-3 ("Plaintiffs' description of Norton's continuing misconduct should be embarrassing . . . ."); id. at 4 ("Norton, Martin, and their counsel continue to lie and conceal information . . . .").

[8] See id. at 4 n.8 (discussion of alleged "forc[ing] out of office Messrs. Homan and Slonaker" and alleged "retaliation taken and threatened . . . against career Interior Department employees . . . .").

can only be an attempt to distract from the misleading nature of the underlying statements themselves.

Not satisfied with attempting to hide the misleading nature of the statements in their Comments, Plaintiffs add more misleading statements to their Opposition. Plaintiffs persist in claiming that Interior Defendants submitted "no competent evidence" in response to the Court's July 28, 2003 Preliminary Injunction ("Preliminary Injunction"). Opposition at 4-5; see also id. at 4 ("refusal to provide competent evidentiary support"); id. at 5 ("devoid of competent evidence"); id. at 13 ("no competent evidence"). Here again, Plaintiffs confuse disagreement with deception. As Plaintiffs are well aware, Interior Defendants submitted approximately 922 pages of material in Interior Defendants' Submissions in Compliance with Preliminary Injunction (August 11, 2003) ("Interior's Submissions") in response to the Court's Preliminary Injunction. Though Plaintiffs may disagree with statements contained in Interior's Submissions, it is misleading to suggest that nothing in those 922 pages passes for "competent evidence."

Plaintiffs mislead the Court in other ways as well. Plaintiffs remonstrate that "[t]his Court has addressed motions to strike allegedly scandalous material in other cases and consistently has denied such motions." Opposition at 2 n.3 (emphasis added). Plaintiffs fail to note, however, cases cited by Defendants in their Motion to Strike where this Court has granted such motions.[9] Plaintiffs also contend that Defendants refer to "off-the-record discussions between counsel," id. at 7 n.14, when Defendants in fact cite an on-the-record pleading filed by

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[9] See Motion to Strike at 2 (citing Johnson v. McDow, 236 B.R. 510, 523 (D.D.C. 1999) (striking "scandalous and highly insulting allegations . . . ."); Alexander v. FBI, 186 F.R.D. 21, 53 (D.D.C. 1998) (finding "no evidence to support the claim made by plaintiffs" and therefore striking it from the record); Pigford v. Veneman, 215 F.R.D. 2, 4-5 (D.D.C. 2003) (striking unsubstantiated allegations against government counsel)).

Plaintiffs, Motion to Strike at 6-7. Plaintiffs further claim that Defendants "cite to no authority to overcome the disfavored nature of the Rule [regarding motions to strike] in circumstances like these where there is no jury . . . ." Opposition at 4 n.5. But Plaintiffs cannot explain why a non-jury setting could make a difference in an instance like this where a jury would not typically see Plaintiffs' Comments anyway, or why the requirement of civility should be ignored because this is a non-jury case. Finally, Plaintiffs contend that Interior Defendants did not comply with the Court's Preliminary Injunction because Interior's information technology systems do not fall under the two exceptions to the Preliminary Injunction. Id. at 8. However, Plaintiffs do not mention the Preliminary Injunction's discussion, within one of the two exceptions, of certification that some Interior systems already securely house trust data: "(b) Immediate disconnection shall not be required for each . . . Reconnected System that the Interior Defendants certify . . . (2) is secure from Internet access by unauthorized[10] users . . . ." Preliminary Injunction at 3-4.[11] Plaintiffs thus attempt to mislead the Court into thinking that Interior Defendants have not complied with the Preliminary Injunction by refusing to cite one of the Preliminary Injunction's key provisions.

Plaintiff's Request for Sanctions is Incongruous and Violates Federal Rule of Civil Procedure 11(c)(1)(A)

Plaintiffs ask "that this Court *sua sponte* consider the appropriateness of sanctions for Norton, Martin, and their managers and counsel in accordance with FED. R. CIV. P. 11(c)(1)(b)

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[10] See Errata, July 30, 2003 (substituting "unauthorized" for "authorized").

[11] The Preliminary Injunction requires Interior Defendants to provide "a specific justification in support" of such certification, "stating in specific terms the security measures that are presently in place to protect unauthorized Internet access to the Individual Indian Trust Data that the Information Technology System houses or provides access to." Preliminary Injunction at 4. Interior Defendants provided such justifications throughout Interior's Submissions.

[sic]." Id. at 3. Plaintiffs' request is incongruous because it presents an oxymoron: if the Court grants Plaintiffs' request, then it is not acting sua sponte. Moreover, Plaintiffs' request is an unauthorized attempt to circumvent the extensive requirements of Federal Rule of Civil Procedure 11(c)(1)(A). Rather than bypassing those requirements, if Plaintiffs wish the Court to consider sanctions, then they must adhere to the procedures set out in that rule.[12]

Conclusion

Like their Comments, Plaintiffs' Opposition continues to demonstrate an utter lack of civility and a cavalier disregard for factual accuracy. The Court should not entertain such conduct and should, therefore, strike Plaintiffs' Comments in their entirety.

Dated: October 2, 2003

Respectfully submitted,

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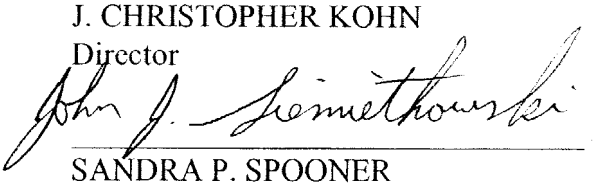

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[12] Even if Plaintiffs were to adhere to the rule's requirements, sanctions are not warranted.

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CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on October 2, 2003 I served the foregoing *Defendants' Reply in Support of Their Motion to Strike Plaintiffs' "Comments," Filed August 27, 2003 and in Opposition to Plaintiffs' Request for the Court to Consider Sanctions Sua Sponte for Filing a Frivolous Motion* by facsimile in accordance with their written request of October 31, 2001 upon:

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