

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	
GALE NORTON, Secretary of the Interior, <u>et al.</u> ,)	
)	
Defendants.)	
)	

Case No. 1:96CV01285
(Judge Lamberth)

DECLARATION OF JAMES E. CASON

1. I am the Associate Deputy Secretary, United States Department of the Interior

2. Deputy Secretary Griles and I planned to meet with the Special Trustee, Tom Slonaker, on April 19, 2002. Due to the content of the Special Master's emergency report on the OST records program, we had decided to cancel the meeting. Within minutes afterward, Deputy Secretary Griles informed me that the Court Monitor had made it clear that cancelling the meeting would not be prudent.

3. A meeting was convened shortly thereafter. Present were the Court Monitor Kieffer, the Special Trustee Slonaker, Deputy Secretary Griles, OITT Director Swimmer and me. Also participating, via telephone, was Principal Deputy Special Trustee, Tom Thompson.

4. Court Monitor Kieffer took a lead role in chairing the meeting. He admonished the group to not take notes on the conversation. I did not take notes, therefore my notes are made to the best of my recollection. Deputy Secretary Griles protested that he would need notes to accurately relate the conversation to the Secretary; he did take notes. The Court Monitor also observed that he did not expect to see the conversation revealed or repeated by the participants.

5. He told us that the Department had a major problem that was adversely affecting trust reform. The problem involved the communication and working relationship between Special Trustee Slonaker (and OST) and the remainder of the senior management team. He said he believed that the senior management team was undermining the Special Trustee's efforts to provide trust reform oversight. He indicated he thought that the senior management team was deliberately excluding the Special Trustee from meetings related to trust reform efforts.

6. Court Monitor Kieffer subsequently expressed what I took to be an ultimatum to the group; in essence, the senior management must find a way to work together with the Special

Trustee (or else). The "or-else" took the form of an impending report the Court Monitor proposed to file. The Court Monitor held up a document which he told us was the first half of a planned report of approximately 80 pages. The Court Monitor read a few lines indicating that Interior's senior management team was the problem.

7. Court Monitor Kieffer observed that the report was not finished and that our actions would dictate the conclusions to be drawn in the report and, I believe, whether it would need to be filed. I believe the intent of the conversation was to compel the Department's senior management to embrace the Court Monitor's point of view or endure the adverse appraisal to be forthcoming in his report.

8. Deputy Secretary Griles stated that he strongly disagreed with the Court Monitor's perception of the situation, that the Court Monitor should feel free to file his report and that the Department would strongly contest the report if it included the point of view and conclusions presented by the Court Monitor.

9. Deputy Secretary Griles stated that the senior management team was not undermining the Special Trustee nor, in any way, preventing the Special Trustee from carrying out his oversight mission. To the contrary, Deputy Secretary Griles and I described our desire to involve the Special Trustee as a member of the senior management team and provided examples of our attempts to do so. I expressed an opinion that the efforts to include the Special Trustee were generally unproductive; in most cases, little material contribution was offered.

10. Deputy Secretary Griles asked the Court Monitor (and the Special Trustee) to provide evidence to support the Court Monitor's conclusions. The Court Monitor explained that our "strategic planning" efforts had materially excluded the Special Trustee. Deputy Secretary Griles countered that the advice of the Special Trustee had been sought on several occasions; however, nothing other than a promise of comments had been forthcoming. The group identified 4 or 5 instances where we had sought comments; the Court Monitor acknowledged that he had only been told about two.

11. The meeting also included dialogue regarding the distinction between the Special Trustee's "oversight" vs. "operations" roles. Regarding oversight, I stated that, to the best of my knowledge, the senior management team had not interfered, in the least, with the Special Trustee's oversight of the trust reform program. Then, I directly challenged the Special Trustee to cite any examples where we had done so; to the best of my recollection he provided no specific examples requiring a response.

12. I also commented about OST's operational responsibilities. I told the Court Monitor that there seemed to be an apparent disconnect between decision making authority and responsibility. I cited our recent experience that after 30 days of contempt trial, the Secretary was being held accountable for the Department's performance and that the Special Trustee seemed to be accountable for nothing. Based on that point of view, it seemed that the senior

management team had a role in ensuring that OST's operations performance was acceptable. As an example of operations concern, the Special Master's emergency report on OST's records management program was raised. The Special Master's report was highly critical of the Special Trustee, Principal Deputy Special Trustee and OST's records manager. The Court Monitor acknowledged the Special Master's report and then suggested that if we thought the Special Master's report was critical, just wait until his own report was issued. The Court Monitor made it clear (at least to me) that in his report, we, the senior management team, would be the targets of his criticism.

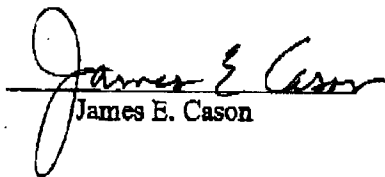
13. The Court Monitor also observed that there was little to be gained by any potential appeal due to the fact that the Judge (presumably, Lamberth) was a poker playing buddy of the Chief Justice. Although I'm unsure about the title and which Court, the implication was clear that we had to deal with him and the Judge ... no one else would review this matter on our behalf.

14. During the conversation, Deputy Secretary Griles commented to Principal Deputy Special Trustee that his assistance was needed in Washington. Mr. Griles observed that it would be difficult to justify a Phoenix, AZ duty station given the nature of the work to be done and the relative location of other OST staff.

15. The meeting concluded in about an hour. It was extremely frank and to the point. It was my conclusion that the Court Monitor had clearly chosen sides and that he was acting the role of the apologist for the Special Trustee. It was my conclusion that the senior management team had been put on notice that we must accept the Court Monitor's point of view or suffer unpleasant consequences. Deputy Secretary Griles was equally blunt that we wanted to operate as a team, but that the Special Trustee didn't seem to be inclined to be part of it; that the Court Monitor's perceptions were not accurate; that the Court Monitor should file his report; and, that it would be strongly challenged if it contained his unfounded conclusions. The Deputy Secretary observed that the current dissension was unproductive and that change was needed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this ^{4th} ~~20th~~ day of ^{June} ~~May~~, 2002.


James E. Cason