



United States Department of the Interior

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS

Washington, D.C. 20240

MAY - 1 2002

Memorandum

To: Secretary

From: Tom Slonaker *Tom Slonaker*
Special Trustee for American Indians

Subject: Declaration to the Court

I have hesitated to respond to your faxed memo to me of April 25, 2002, because I believed the particular issue presented appeared to have been resolved. Last week I declined to sign a declaration on the Special Master's Second Investigative Report. However, after our conversation of yesterday, it is apparent that you may not be aware of some recent activities of the lawyers, especially DOJ.

I declined to sign a declaration because no one could explain why it was really necessary. The weight that the Court might give to my memo to the Deputy Secretary appears not to be a real issue. The Court is the fact finder in this matter and has had a chance to evaluate the integrity and performance of Mr. Thompson and myself in the courtroom under oath. In addition, I basically agree with the Special Master's opinion, so the Court is not asked to resolve a dispute.

Since no one could explain why a declaration was required to defend the Department's position, I and my Principal Deputy declined to sign a declaration for the following reasons.

First, on April 12, 2002, I sent a memo to the Solicitor concerning records production for the court at OST. That memo, a copy of which is attached (with its attachment), sets forth some of the problems OST has had with the assistance and representation -- or the lack thereof -- provided by the Solicitor's Office and DOJ. I am particularly concerned about the lack of legal advice concerning which trust documents are responsive to document production requests. The lack of legal advice concerning the production of documents responsive to Paragraph 19 was one of the root causes for the outcome of the first show-cause hearing.

Second, I have attached a copy of a memo (with its attachment) dated April 24, 2002, from Tom Thompson to the Solicitor setting forth additional problems with the DOJ's representation.

Third, I have attached a copy of a memo from the Deputy Secretary dated April 16, 2002. This memo outlines the failure of OST to properly perform records management and maintenance. His opinion apparently is based on a one-day visit by the Associate Deputy Secretary (ADS) to the Office of Trust Records in Albuquerque and discussion between the ADS, the Special Master, and the DOJ without any significant involvement by OST.

Fourth, on numerous occasions, I and my people have heard it stated that DOJ doesn't represent us but the Government. DOJ's focus is on litigation. Therefore, their advice does not necessarily serve either the best interests of DOI, including OST, and their employees, the beneficiaries, or trust reform in general.

Furthermore, signing or not signing a declaration has nothing to do with my willingness to take responsibility for the information I provided. I would not have submitted the April 22, 2002, memo to the Deputy Secretary if I believed it to be incorrect. In addition, I am quite willing to support it in Court, if the judge has questions about it, under oath, which is the highest standard of attestation. Thus, I respectfully decline your premise that I am doing a disservice to the Department and those who might be held responsible, especially since it appears that OST, Tom Thompson and I are those very people.

If, in fact, you or your staff believe the information provided in the memo is inaccurate, then it should not be submitted to the Court, with or without a declaration.

Again, I am quite willing to swear to the accuracy of my words to the Court and have done so recently. I hope my reticence to use the declaration approach suggested by DOJ and SOL is explained sufficiently here. I appreciate that you concede to me the freedom to craft a declaration that accurately states my views. I also believe not making a declaration accurately reflects my views. At my meeting with Bill Myers on Monday, I gave him a draft copy of OST's response to the "Emergency Report of the Special Master Regarding Defendant's Proposed Relocation of Records to the Lee's Summit Federal Records Center." While I am disinclined to sign a declaration in response to that report for the same reasons expressed above, I have not yet seen a draft of the Department's proposed response.

Attachments

cc: Deputy Secretary
Solicitor