

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
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U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,)
)
Plaintiffs,)
)
v.)
)
GALE A. NORTON, Secretary of the Interior),)
et al.,)
)
Defendants.)
)
_____)

Case No. 1:96CV01285
(Judge Lamberth)

**REPLY TO PLAINTIFFS' OPPOSITION TO
INTERIOR DEFENDANTS' AND BERT T. EDWARDS' MOTION
FOR ENLARGEMENT OF TIME TO RESPOND TO
PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE WHY
INTERIOR DEFENDANTS AND BERT T. EDWARDS, EXECUTIVE
DIRECTOR – OFFICE OF HISTORICAL TRUST ACCOUNTING,
SHOULD NOT BE HELD IN CIVIL AND CRIMINAL CONTEMPT**

Plaintiffs make no showing why the Court should not grant Interior Defendants' motion for enlargement. Interior Defendants have demonstrated good cause for the request, and the request was for a reasonable enlargement of 15 days.¹ Accordingly, Interior Defendants' motion should be granted.

1. As noted in the motion for enlargement, government counsel, who represent Edwards in his official capacity, needed to meet with Mr. Edwards in order to be in a position to address plaintiffs' charges, particularly those involving the false allegation that Mr. Edwards "is not a

¹As noted in the "Further Notice of Errata" filed by the government on March 11, 2003, the enlargement period from the original due date to March 27, 2003, as set forth in the joint motion for enlargement was erroneously computed to be 14 days due to a misreading of plaintiffs' fax timestamp (which was expressed in Greenwich Mean Time). By the Further Notice of Errata, the government corrected the enlargement period requested to 15 days. Ex. 1.

Certified Public Accountant. . . ." See *Plaintiffs' Motion for Order to Show Cause Why Interior Defendants and Bert T. Edwards, Executive Director – Office of Historical Trust Accounting, Should Not Be Held in Civil and Criminal Contempt for Lying Under Oath Regarding the Nature and Scope of the Historical Accounting* ("Plaintiffs' Motion") at 16-17. Further, private counsel requested to be present during government counsel's interview of Mr. Edwards, but were unavailable for several days due to previously-scheduled business travel and the desire to meet with Mr. Edwards themselves before government counsel interviewed him. Plaintiffs have not demonstrated that this basis for the requested enlargement was unreasonable in the circumstances, given the serious sanctions they seek to impose upon Interior Defendants and Mr. Edwards. In the interests of due process, the Court should grant Interior Defendants' motion for enlargement.

2. Plaintiffs have not demonstrated that they would suffer any prejudice from the Court's granting the motion for enlargement sought by Interior Defendants. It is unclear whether plaintiffs challenge the request by Mr. Edwards' personal counsel for enlargement to March 27, 2003. Counsel for Mr. Edwards explained in the March 7, 2003 joint motion for enlargement that they had only recently been retained to represent Mr. Edwards. Plaintiffs offer no reason why Mr. Edwards' private counsel should not be allowed a reasonable opportunity to review documents and meet with their client in order to prepare an appropriate response to Plaintiffs' Motion. Plaintiffs offer no basis for denying Mr. Edwards the right to consult with his counsel in the face of their charges of criminal and civil contempt. Interior Defendants sought no greater enlargement than that sought by Mr. Edwards in his personal capacity. Moreover, there is nothing precluding plaintiffs from raising the substance of the allegations in their motion in the course of Trial 1.5 through

competing documentary evidence, testimony and/or cross-examination, if the Court finds such inquiry relevant.

3. Consistent with their request for enlargement, Interior Defendants and Mr. Edwards filed their oppositions to Plaintiffs' Motion on March 27, 2003.² Plaintiffs' reply is now due on April 7, 2003, more than three weeks before Trial 1.5 is scheduled to begin. Accordingly, the requested 15-day enlargement has no impact on the Court's trial schedule.

For the reasons stated above, and in Interior Defendants' and Mr. Edwards' Motion for Enlargement, Interior Defendants request that the Court grant an enlargement of 15 days, to and including March 27, 2003, and accept Interior Defendants' opposition to Plaintiffs' Motion filed on that date.

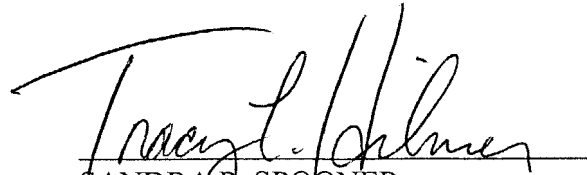
Respectfully submitted,

ROBERT D. McCALLUM, JR.
Assistant Attorney General

STUART E. SCHIFFER
Deputy Assistant Attorney General

J. CHRISTOPHER KOHN
MICHAEL F. HERTZ
Directors

²Interior Defendants' opposition was filed on March 27, 2003 at approximately 11:33 pm. The District Court's time stamp machine incorrectly reflected a filing date and time of March 28, 2003 at 12:33 pm. However, the opposition was re-stamped with the Court of Appeals' machine, which reflected the correct date and time. Ex. 2.



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MAR 11 3 49 PM '03

ELOUISE PEPION COBELL, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 1:96CV01285
(Judge Lamberth)

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FURTHER NOTICE OF ERRATA

On March 7, 2003, the Secretary of the Interior and Assistant Secretary – Indian Affairs ("Interior Defendants") and Bert T. Edwards filed *Interior Defendants' and Bert T. Edwards' Motion for Enlargement of Time to Respond to Plaintiffs' Motion for Order to Show Cause Why Interior Defendants and Bert T. Edwards, Executive Director – Office of Historical Trust Accounting, Should Not Be Held in Civil and Criminal Contempt* and a Memorandum of Points and Authorities in support of such motion, and a Motion for Expedited Consideration of that Motion. In those filings Interior Defendants and Mr. Edwards stated that their responses are currently due on March 13, 2003 and requested a fourteen-day enlargement of that date to March 27, 2003. Further review of the plaintiffs' certificate of service, which shows the date and time Plaintiffs' Motion was faxed to government counsel (expressed in Greenwich Mean Time) as "2003-02-27 00:29:54 (GMT)" (Attachment A hereto), indicates that plaintiffs in fact served their motion on February 26, 2003, just before 7:30 pm local time, and that Interior Defendants' and Mr. Edwards' responses are due on March 12, 2003, not March 13, 2003. The Notice of Errata filed on March 10, 2003 also contains the same error.

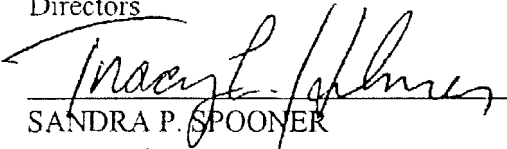
Accordingly, Interior Defendants and Mr. Edwards further correct their filings to reflect that they seek a 15-day enlargement to March 27, 2003, rather than a 14-day enlargement as previously stated.

Respectfully submitted,

ROBERT D. McCALLUM, JR.
Assistant Attorney General

STUART E. SCHIFFER
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Directors


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Deputy Director

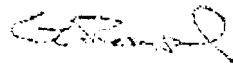
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE WHY INTERIOR DEFENDANTS AND BERT T. EDWARDS, EXECUTIVE DIRECTOR-OFFICE HISTORICAL TRUST ACCOUNTING, SHOULD NOT BE HELD IN CIVIL AND CRIMINAL CONTEMPT FOR LYING UNDER OATH REGARDING THE NATURE AND SCOPE OF THE HISTORICAL ACCOUNTING was served upon the following by facsimile, pursuant to agreement, on this day, February 26, 2003.

Mark Nagle
United States Attorney's Office
555 Fourth Street, N.W.
Washington, D.C. 20001
202.514.8780

Christopher J. Kohn
U.S. Department of Justice
Civil Division
Room 10036
1100 L. Street, N.W.
Washington, D.C. 20005
202.514.9163



GEOFFREY REMPEL

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on March 11, 2003, I served the foregoing Further Notice of Errata by facsimile, in accordance with their written request of October 31, 2001 upon:

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, NW
Washington, DC 20036-2976
202-822-0068

Dennis M Gingold, Esq.
Mark Brown, Esq.
1275 Pennsylvania Avenue, NW
Ninth Floor
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202-318-2372

and by U.S. Mail upon:

Elliott Levitas, Esq.
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

and by U.S. Mail and by facsimile upon:

Bruce A. Baird, Esq.
Michael X. Imbroscio, Esq.
Nicole J. Moss
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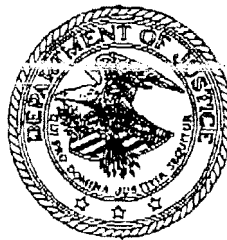
and by facsimile upon:

Joseph S. Kieffer, III, Esq.
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Kevin P. Kingston

*** MULTI TX/RX REPORT ***

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FROM: Department of Justice
Civil Division

Fax No. (202) 353-3565
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Labat-Anderson

TO: Allan Balaran Keith Harper Dennis M. Gingold Joseph S. Kieffer, III
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Bruce A. Baird
Michael X. Imbroscio
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Covington & Burling
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NUMBER OF PAGES SENT (INCLUDING COVER PAGE): 6

Further Notice of Errata

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on March 31, 2003 I served the foregoing *Reply to Plaintiffs' Opposition to Interior Defendants' and Bert T. Edwards' Motion for Enlargement of Time to Respond to Plaintiffs' Motion for Order to Show Cause Why Interior Defendants and Bert T. Edwards, Executive Director – Office of Historical Trust Accounting, Should Not Be Held in Civil and Criminal Contempt* by facsimile, in accordance with their written request of October 31, 2001 upon:

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Dennis M Gingold, Esq.
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Sean P. Schmergel