

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CLERK'S OFFICE
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

MAY 19 2 59 PM '03

ELOUISE PEPION COBELL, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 1:96CV01285
(Judge Lamberth)

RECEIVED

**INTERIOR DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR
ENLARGEMENT OF TIME TO FILE OPPOSITION TO INTERIOR DEFENDANTS'
MOTION AND MEMORANDUM TO REQUIRE PLAINTIFFS' COMPLIANCE
WITH COURT'S ORDERS CONCERNING "ATTACHMENT C"**

Plaintiffs' Motion for Enlargement of Time to File Opposition to Interior Defendants' Motion and Memorandum to Require Plaintiffs [sic] Compliance with Court's Orders Concerning "Attachment C" ("Plaintiffs' Motion") should be denied. Plaintiffs' Motion, if granted, would allow Plaintiffs to continue flouting the Court's orders protecting the seal on Attachment C, which the Court held is protected by the deliberative process privilege. Interior Defendants' motion seeks an order directing Plaintiffs to remove from their website privileged material that the Court has already ordered stricken from the record.

Contrary to Plaintiffs' bald contention, the First Amendment is not implicated by their wrongful publication of a sealed, privileged document. They brazenly urge the Court to give them more time because the web-posted documents referencing Attachment C are "in the public domain." Plaintiffs' Motion at 1. The documents are in the public domain because Plaintiffs' blatantly and repeatedly have refused to protect the seal on Attachment C, first in violation of the Court's October 18, 2002 Order

and now in violation of the Court's Memorandum Opinion and separate Order of April 11, 2003.

Plaintiffs should not be rewarded for their improper actions.

Finally, Plaintiffs argue that they should be given more time to oppose Interior Defendants' motion because they "are engaged fully in prosecuting Trial 1.5." Plaintiffs' Motion at 1. Interior Defendants are also fully engaged in Trial 1.5. More importantly, for every day Plaintiffs keep these references to Attachment C on their website, the harm to Interior Defendants increases because the protection of the seal on Attachment C becomes less meaningful.

For the reasons set forth above, the Court should deny Plaintiffs' Motion.

May 19, 2003

Respectfully submitted,

ROBERT D. McCALLUM, JR.
Assistant Attorney General
STUART E. SCHIFFER
Deputy Assistant Attorney General
J. CHRISTOPHER KOHN
Director



SANDRA P. SPOONER
D.C. Bar No. 261495
Deputy Director
JOHN T. STEMPLEWICZ
Senior Trial Counsel
JOHN R. KRESSE
Trial Attorney
D.C. Bar No. 430094
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
(202) 514-7194

ROYCE C. LAMBERTH
United States District Judge

cc:

Sandra P. Spooner, Esquire
John T. Stemplewicz, Esquire
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
Fax (202) 514-9163

Dennis M Gingold, Esquire
Mark Kester Brown, Esquire
1275 Pennsylvania Avenue, N.W.
Ninth Floor
Washington, D.C. 20004
Fax (202) 318-2372

Keith Harper, Esquire
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976
Fax (202) 822-0068

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

Alan L. Balaran
Special Master
1717 Pennsylvania Avenue, N.W.
12th Floor
Washington, D.C. 20006

Earl Old Person (*pro se*)
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417
Fax (406) 338-7530

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on May 19, 2003 I served the foregoing *Interior Defendants' Opposition to Plaintiffs' Motion for Enlargement of Time to File Opposition to Interior Defendants' Motion and Memorandum to Require Plaintiffs' Compliance With Court's Orders Concerning "Attachment C"* by hand upon:

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976
(202) 822-0068

Dennis M Gingold, Esq.
1275 Pennsylvania Avenue, N.W.
Ninth Floor
Washington, D.C. 20004
(202) 318-2372

Mark Kester Brown, Esq.
607 - 14th Street, NW
Box 6
Washington, DC 20005
(202) 318-2372

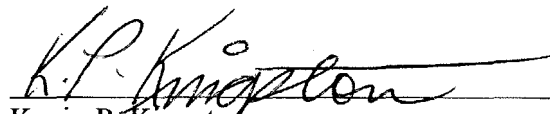
By U.S. Mail upon
Elliott Levitas, Esq:
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

Per the Court's Order of April 17, 2003,
by facsimile and by U.S. Mail upon:

Earl Old Person (*Pro se*)
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417
(406) 338-7530

By facsimile and U.S. Mail:

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Avenue, N.W.
13th Floor
Washington, D.C. 20006
(202) 986-8477


Kevin P. Kingston