U.S. DISTRICT COURT
2002 JUN 24 PM 3:50
NANCY M.
MAYER-WHITTINGTON
CLERK

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
Plaintiffs,	)	Civil Action No. 96-1285 (RCL)
v.	)	
GALE A. NORTON, et al.,	)	
Defendants.	)	

MOTION TO STRIKE PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR ORDER TO SHOW CAUSE WHY INTERIOR DEFENDANTS AND THEIR EMPLOYEES AND COUNSEL SHOULD NOT BE HELD IN CONTEMPT FOR DESTROYING E-MAIL

The United States respectfully moves the Court, pursuant to Federal Rule of Civil Procedure 11 to strike Plaintiff's Reply Brief in support of the motion filed March 20, 2002 for an order to show cause. The motion, supporting memorandum and draft order were served on plaintiff on May 24, 2002, more than 21 prior to filing of this motion. Counsel for United States consulted with counsel for Plaintiffs about this motion on June 18, 2002, and counsel for Plaintiffs indicated that they would not withdraw or amend the reply brief and that they oppose this motion.

A memorandum in support of this motion and a proposed order are attached.

Respectfully submitted,

ROBERT D. McCALLUM, JR.
Assistant Attorney General

STUART E. SCHIFFER
Deputy Assistant Attorney General

J. CHRISTOPHER KOHN
Director

SANDRA P. SPOONER
Deputy Director
D.C. Bar No. 261495
Dodge Wells
Senior Trial Counsel
D.C. Bar No. 425194
Tracy L. Hilmer
D.C. Bar No. 421219
Trial Attorney
Commercial Litigation Branch
Civil Division
P.O. Box 261
Ben Franklin Station
Washington, D.C. 20044
(202) 307-0474

OF COUNSEL:

Sabrina A. McCarthy
Department of the Interior
Office of the Solicitor

DATED: June 24, 2002

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
Plaintiffs,	)	Civil Action No. 96-1285 (RCL)
v.	)	
GALE A. NORTON, et al.,	)	
Defendants.	)	

ORDER

This matter having come before the Court on the motion of the United States, pursuant to Federal Rule of Civil Procedure 11, to strike Plaintiff's Reply Brief in support of the motion filed March 20, 2002 for an order to show cause, the Court, upon consideration of all memoranda and evidentiary material submitted in support of and in opposition to Plaintiffs' March 20, 2002 Motion for Order to Show Cause Why Interior Defendants and Their Employees and Counsel Should Not Be Held in Contempt for Destroying E-mail, Plaintiffs' Reply filed on April 15, 2002 and exhibits thereto, and all memorandum and evidentiary material submitted in support of and in opposition to the motion to strike Plaintiffs' Reply Brief,

IT IS HEREBY ORDERED that the motion of the United States to strike Plaintiff's Reply Brief in support of the motion filed March 20, 2002 for an order to show cause is granted.

IT IS SO ORDERED.

_____

UNITED STATES DISTRICT JUDGE

Dated:

cc:

Michael F. Hertz
Dodge Wells
Tracy L. Hilmer
Commercial Litigation Branch
Civil Division
P.O. Box 261
Ben Franklin Station
Washington, D.C. 20044
Fax: (202) 616-3085

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

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

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

Joseph S. Kieffer, III
Court Monitor
420 - 7th Street, N.W.
Apartment 705
Washington, D.C. 20004

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on June 24, 2002 I served the Foregoing *Motion to Strike Plaintiffs' Reply in Support of Motion for Order to Show Cause Why Interior Defendants and Their Employees and Counsel Should Not Be Held in Contempt for Destroying E-mail*, by hand:

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

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

By U.S. Mail upon:

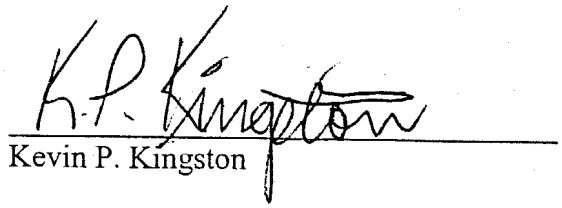
Elliott Levitas, Esq.
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

By Facsimile and U.S. Mail:

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Avenue, N.W.
12th Floor
Washington, D.C. 20006
(202) 986-8477

Courtesy Copy by U.S. Mail:

Joseph S. Kieffer, III
Court Monitor
420 - 7th Street, N.W.
Apartment 705
Washington, D.C. 20004



Kevin P. Kingston

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
Plaintiffs,	)	Civil Action No. 96-1285 (RCL)
v.	)	
GALE A. NORTON, et al.,	)	
Defendants.	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STRIKE PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR ORDER TO SHOW CAUSE WHY INTERIOR DEFENDANTS AND THEIR EMPLOYEES AND COUNSEL SHOULD NOT BE HELD IN CONTEMPT FOR DESTROYING E-MAIL

Plaintiff's reply brief in support of the motion filed March 20, 2002 for an order to show cause (the "Reply Brief") contains factual misrepresentations about prior proceedings in this case and unsupported and unsupportable accusations of ethical misconduct against individuals, some of whom are neither parties to the case nor named as respondents in the March 20, 2002, motion. The counsel for plaintiffs who signed the Reply Brief have violated Federal Rule of Civil Procedure 11. As a sanction for the violation, the United States requests entry of an order striking the Reply Brief. As required by Rule 11(c)(I)(A), the United States served this motion upon plaintiffs more than 21 days before filing this motion. However, plaintiffs have not withdrawn or appropriately corrected the Reply Brief.

The United States presents this motion with considerable reluctance, recognizing that the government in general must be relatively thick-skinned, and also recognizing that the filing of this motion risks further bogging down this case in collateral proceedings. However, the Reply

Brief contains baseless accusations of wrongdoing that should not be tolerated and cannot be ignored. The March 20, 2002, motion was itself irresponsible (*See* Philip A. Brooks' Opposition to Plaintiffs' Motion for Order to Show Cause Why He Should Not Be Held in Contempt for Destroying E-Mail at 12-14), but the reply brief is even worse. This behavior must end.

I. RULE 11 REQUIRES COUNSEL TO UNDERTAKE A REASONABLE INQUIRY BEFORE MAKING FACTUAL ASSERTIONS IN A BRIEF

Rule 11 provides, in pertinent part,

> (b) By presenting to the court (whether by signing, filing, submitting or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, -
>
> (1) it is not being presented for any improper purpose, ...
>
> . . . . . .
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery . . . .

By signing the Reply Brief, plaintiffs' counsel made "a certification - a personal testimony as to the truth of the matter asserted - that the signer (1) has read the document (2) has concluded, after a reasonable inquiry into both the facts and the law, that to the best of his knowledge, information, and belief there is good ground to support the document, and (3) is acting without an improper motivation. 5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure, § 1335 (2d ed., 2001 Supp. 2001).[1] The rule imposes an objective test -

---

[1] Characteristically, plaintiffs' discussion of Rule 11 misstates the duties imposed by the rule. The rule does not, as plaintiffs claim, impose on litigation counsel the responsibility "for certifying the truthfulness and the accuracy of any filing." Reply Brief, at 4, n.6. The rule does,

whether a competent attorney who conducted a reasonable inquiry into the pertinent facts would have concluded that the allegations were well grounded. *See, e.g., In re Cendant Corp. Derivative Action Litigation*, 96 F. Supp. 2d 403, 405 (D.N.J. 2000); *Lewis v. Cooke*, 95 F. Supp. 2d 513, 526-27 (E.D. Va. 2000). The Reply Brief's multiple violations of Rule 11 in regard to factual assertions are in two general categories, misrepresentation of the record in this case, discussed in Part II, and unsupported accusations of unethical conduct, discussed in Part III.

II. THE REPLY BRIEF REPEATEDLY MISSTATES THE RECORD

The Reply Brief repeatedly misstates the record in this case, and, on the basis of the erroneous factual assertions, makes sweeping accusations of misconduct against the Secretary, Department of Interior employees, government counsel or anyone else who dares to disagree with plaintiffs' counsel. Three pages of the Reply Brief are spent on spurious accusations that the government "duped this Court and Plaintiffs" on the scope of the August 12, 1999 document retention order. Plaintiffs' March 20, 2002, motion asserted that overwriting of Solicitor's Office back-up e-mail tapes violated the August 12, 1999 order. That order required retention of categories of documents identified in "Attachment A." The government's response to the March 20, 2002, motion noted that "Documents and data maintained by the Solicitor's Office are not listed among the categories identified in Attachment A." Government's Opposition to Plaintiffs' March 20, 2002 Motion for Orders to Show Cause Why Interior Defendants and Their Employees and Counsel Should not Be Held in Contempt ("Government's Opposition") at 12.

---

however, impose the responsibility of undertaking a reasonable investigation before making factual assertions in a brief. The Reply Brief falls far short of both the strict standard plaintiffs seek to impose on government counsel and the more lenient standard of the rule itself.

Rather than addressing the argument actually made by the government - that the August 12, 1999, order did not list documents and data maintained by the Solicitor's Office - plaintiffs' counsel assert that the government hoodwinked everyone else by substituting a revised Attachment A at the last minute which deleted references to e-mails that had been contained in every other draft of Attachment A throughout negotiations of the Order. Reply Brief at 5-7. The precise charges of plaintiffs' counsel are clear and unambiguous:

> . Specifically, each draft of the negotiated order -consented to by plaintiffs and defendants- incorporated by reference supporting documents that included language explicitly listing "electronic files" and "electronic backups" within the scope of protection.

Id. at 5.

> Attachment A identifies types of documents that must be searched by defendants, and it includes an expansive explanatory footnote that defines documents to be <u>preserved</u>, searched, and produced to include "electronic files" and all their 'electronic backup."

Id. at 6 (emphasis in original).

> [o]n August 12, 1999, Attachment A was secretly altered <u>without notice or the consent</u> of the Master or plaintiffs -solely to delete the explanatory footnote. . . .

Id. at 7 (emphasis in original). On the basis of these factual allegations that on the day the August 12, 1999, order was entered, the government secretly removed language from the attachment that had been in every other draft of the negotiated order, plaintiffs' counsel charged that the government acted in bad faith, with intent to defraud at the time the August 12, 1999, Order was entered, Reply Brief, at 7, and compounded the fraud by using the "fraudulent" document to support a claim that the August 12, 1999, Order "is ambiguous because it does not

explicitly include e-mail or backup tapes by name."[2] *Id.* at 5 (emphasis is original).

The clear and unambiguous factual allegations made by plaintiffs' counsel on which the charges of fraud are based are clearly and unambiguously wrong. The July 1999 Report of the Special Master, which was sent to the Court on August 2, 1999, stated "After considerable negotiation, the parties have agreed to the terms of a document preservation order which delineates the respective obligations of the Department of the Interior and the Department of the Treasury regarding IIM records retention. See Exhibits 2 and 3." The version of Attachment A included in the July 1999 Report of the Special Master is identical to the Attachment A included in the Order issued on August 12, 1999 and does not contain the "explanatory footnote" which plaintiffs assert was contained in each draft. The July 1999 Report and Exhibit 2 thereto are Exhibit 1 to this memorandum. Moreover, contrary to the representations of plaintiffs' counsel, the versions of Attachment A which were included in drafts of the negotiated order circulated to the Special Master and plaintiffs' counsel on July 12, 1999 (*See* Exhibit 2), July 28, 1999 (*See* Exhibit 3), and August 5, 1999 (*See* Exhibit 4) were identical to the Attachment A to the Order as finally issued by the Court on August 12, 1999.

A "reasonable inquiry" to support the allegations that Attachment A to "each draft" of the negotiated order prior to August 12, 1999 contained the explanatory footnote, let alone the allegations of fraud and bad faith, would have required, at a minimum, a review of the files to ascertain what the earlier drafts actually said. If plaintiffs' counsel had not retained the earlier drafts, the accusations should not have been made.

---

[2] Of course, the argument the government actually made is that the August 12, 1999, Order is inapplicable because it does not cover documents maintained by the Solicitor's Office. Government's Opposition at 11.

The misstatements concerning the August 12, 1999, order are not the only instances in the Reply Brief in which plaintiffs' counsel misstate the record and base unsupported accusations of misconduct on those misstatements. Part II of the Reply Brief is a compendium of similarly baseless accusations of alleged misrepresentations contained in the government's opposition. While some of the accusations are simply silly,[3] others are clearly false representations which are used as the basis of reckless accusations of misconduct. For example, the Government's Opposition stated that the "Special Master found that software systems at the Solicitor's Office headquarters office and 18 regional and field offices are backed up on a daily and weekly basis on tape media used to recover lost data in the event of a system crash." Government's Opposition at 4, quoted in the Reply Brief at 10. Plaintiffs' counsel assert that "Department of Justice counsel deceptively omitted the material fact that the Special Master was quoting from Glenn Schumaker's November 20, false declaration . . . " Reply Brief at 10 (emphasis in original). The Special Master did not, as plaintiffs' counsel claim, quote Mr. Schumaker's declaration. Rather, the Special Master cited Mr. Schumaker's declaration. Even a cursory review of the Special Master's opinion would have demonstrated that the statement in the Reply Brief was false. Plaintiffs' counsel compounds its factual error by asserting that the statement in the Government's Opposition that "[T]he Special Master's identification of the first period of overwriting (June to November 1998) conflicts with an earlier finding in the opinion that the Solicitor's Office had

---

[3] For example, plaintiffs' observation that compliance with the paper recordkeepking e-mail retention system depends on the good faith and vigilance of employees, Reply Brief at 8-9, hardly demonstrates the falsity of the government's statement that Interior had such a system in place. Contrary to plaintiffs' charges (Reply Brief at 9-10), the Special Master's finding that the e-mail backup tapes contain certain fields of information not captured in print-outs of the e-mails (a finding discussed at page 26 of the Government's Opposition), is not inconsistent with the government's statement that the Special Master "found only that e-mail backup tapes had been erased, not that e-mails generally had not been printed out."

begun saving backup e-mail tapes between February and November 1998 as a result of the Independent Counsel investigation. [Special Master's Opinion] at 4, citing Nov. 20, 1998 Declaration of Glenn Schumaker, ¶ 4" is a further example of the improper and unethical use of the Schumaker declaration. Again, a cursory inquiry would have shown that the government correctly referenced the Special Master's opinion.

The misrepresentations of the record by plaintiffs' counsel are by themselves sanctionable under Rule 11. *See Flanagan v. Shamo*, 111 F. Supp. 3d 892, 899 (E.D. Mich. 2000) (misrepresentation of a witness' deposition testimony is sanctionable). What is far worse is plaintiffs' counsel's use of its misrepresentations of the record to launch unsupported accusations of unethical, indeed, of criminal, conduct by government counsel and government employees. The unsupported accusations against individuals are discussed in Part III.

III. THE REPLY BRIEF REPEATEDLY MAKES UNSUPPORTED CHARGES OF UNETHICAL OR CRIMINAL CONDUCT AGAINST INDIVIDUALS

The Reply Brief is rife with serious accusations of wrongdoing by numerous individuals but is noticeably thin in evidentiary support for the charges. Most of the unsupported accusations are casual slanders, tossed off without a thought of the harm to the individuals involved. The following is a representative, but by no means exhaustive sample:

> [t]he Secretary, through her employees and <u>counsel</u> routinely destroyed an unquantifiable amount of relevant e-mail records.

Reply Brief at 3. Leaving aside the question of whether the backup tapes are "records," *See* Government's Opposition at 18-19, and also ignoring that plaintiffs have supplied no evidence that relevant e-mails were destroyed, there is absolutely no evidence that counsel have overwritten any backup tapes, nor have plaintiffs' counsel explained how Department of Justice

attorneys would be able to destroy Department of Interior electronic data even if they wanted to.

In the same vein, plaintiffs' counsel allege:

> Anne Shields called a TMIP meeting 9/7/99, the principal purpose of which was to inform the Court [of failures of TAAMS]. Over the following weeks, numerous e-mails necessarily had to have been sent by and between Anne Shields, Solicitor's Office attorneys and various employees discussing how, when and why and what this Court was to be informed as to the state of affairs that contradicted sworn testimony.
>
> . . . . . .
>
> Moreover, each of these e-mails was responsive to plaintiffs' discovery requests and was covered by the Special Master's May 11, 1999 order that compelled production (and preservation) of such e-mails that -without any doubt - would have revealed the pervasive deception that defendants and their counsel had practiced on this Court.

Id. at 22-23.

> [p]laintiffs were provided nothing and the Secretary and her counsel continued to destroy evidence in massive quantities.

Id. at 23.

> Solicitor's Office attorneys on the brief (Mmes. Blackwell and Lundgren and Mr. Carr) obviously knew that e-mail was continuing to be destroyed . . . in fact, they and their colleagues routinely destroyed their own e-mail.[4]

Id. at 4, n.6. Plaintiffs' counsel raise the ante even higher:

> [t]he Secretary's trial counsel (e.g., Messrs. Brooks, Findlay and Eichner and Ms. Schiffer) as a matter of practice filed pleadings and procured supporting declarations in this regard that are materially false and deceptive.[5]

Id. at 3. This language appears to track 18 U.S.C. § 1622, and thus appears to be a thinly veiled

---

[4] Ms. Lundgren and Mr. Carr are neither parties to this suit nor respondents to the March 20, 2002 contempt motion.

[5] Mr. Eichner is neither a party to this suit nor a respondent to the March 20, 2002 contempt motion.

accusation of criminal conduct.[6] Plaintiffs' counsel also assert that the November 20, 1998 declaration of Glenn Schumaker, a Management Information System official of the Department of the Interior, was perjurious on its face, Reply Brief at 10, n.13. The accusation that the declaration is perjurious is an accusation that Mr. Schumaker wilfully gave false testimony on a material matter, *United States v. Dunnigan*, 507 U.S. 87, 94 (1993). Plaintiffs' counsel do not even bother to identify which statement or statements in the declaration they believe are false, let alone proffer evidence showing that any errors were wilful or material.

The accusations in the Reply Brief are very serious charges. Secretary Norton, government counsel and the Department of the Interior employees accused in the Reply Brief were injured by these charges as soon as the Reply Brief was filed and was made part of the public record. *Redd v. Fisher Controls*, 147 F.R.D. 128, 132 (W.D. Texas 1993). However, Plaintiffs' counsel have proffered no evidence to support any of these charges. Charges of unethical conduct by opposing counsel, a party, or a third party without supporting evidence violate Rule 11. *Laurino v. Tate*, 220 F. 3d. 1213, 1216-18 (10th Cir. 2000) (affirming Rule 11 sanctions for allegations in a brief, without supporting evidence, that police officers may have committed perjury); *United States v. Stafford*, 136 F.3d 1109, 1113 (7th Cir. 1998) (attorney ordered to show cause why he should not be sanctioned for accusing a prosecutor of unethical behavior when he had made "no effort to substantiate his serious charge even to the extent of submitting an affidavit"); *Nault's Auto Sales v. American Honda Motor Co.*, 148 F.R.D. 25, 35-37 (D.N.H. 1993) (attorneys sanctioned for accusing opposing counsel of perjury and subornation of perjury when support for the accusations did not rise beyond suspicion).

---

[6] 18 U.S.C. § 1622 provides "whoever procures another to commit any perjury is guilty of subornation of perjury . . . ."

This "deluge of *ad hominem* assaults and insupportable accusations of contempt, perjury, and criminal activity," *Nault's Auto Sales,* 148 F.R.D. at 36, cannot be excused, even if plaintiffs' counsel believe the accusations are correct.[7] In *Nault's*, plaintiff's counsel also accused defendant's employees of submitting perjured declarations in a discovery dispute, and accused defense counsel of perjury, subornation of perjury, fraud and other criminal conduct in the context of a discovery dispute. Although expressing its own concerns with defendants' discovery, the court stated that:

> [Plaintiff's counsel's] subjective good faith belief in the veracity of their accusations which they have leveled against opposing counsel is entirely irrelevant to the inquiry at hand. They are of course free to believe whatever they choose to believe. They are not free to indiscriminately bludgeon the professional reputations of opposing counsel out of frustration, or in angry overreaction, or on mere suspicion alone.
>
> . . . . .
>
> When making serious charges of unprofessional and criminal conduct against an individual in pleadings filed with the Court, the certitude of suspicion alone is not enough. Exasperation and frustration may serve as explanations, but not acceptable excuses. Rule 11 demands objectively reasonable conduct, including a reasonable inquiry into the facts.

Id, at 36-37. Finding the conduct unreasonable and the accusations unsupported, the court struck the offending memoranda, ordered plaintiff's counsel to write a letter of apology which was to be made part of the record in the case, and ordered that all future filings by plaintiff's counsel be reviewed in advance by a Rule 11 committee. *Id.* at 37-38. Here, the government is merely asking for the first sanction imposed by the *Nault's* court - that the offending and offensive Reply Brief be stricken.

While the behavior exhibited in the Reply Brief would justify far harsher sanctions, it is

---

[7] Of course, the accusations are even more unethical if plaintiffs' counsel are simply using them for tactical purposes or for some other reasons without a belief that they are accurate.

the government's hope that the minor sanction will be sufficient to end the abusive accusations and permit the case to proceed with civility and professionalism.

The Reply Brief runs directly counter to the principals espoused in the D.C. Bar Voluntary Standards for Civility in Professional Conduct ("Civility Standards").[8] The Civility Standards state, *inter alia*:

> Except within the bounds of fair argument in pleadings or in formal proceedings, we will abstain from disparaging personal remarks or acrimony toward such participants and treat adverse witnesses and parties with fair consideration.
>
> . . .
>
> We will not bring the profession into disrepute by making unfounded accusations of impropriety or making ad hominem attacks on counsel, and , absent good cause, we will not attribute bad motives or improper conduct to other counsel.

Civility Standards ¶¶ 3 and 5 (Exhibit 5). Although the Civility Standards are voluntary, this Court has recognized that "these standards provide useful and appropriate guidance to lawyers when questions are raised about professional conduct." *Alexander v. FBI*, 1999 WL 314170 *1 (D.D.C. 1999) (directing all counsel planning to attend redeposition of witness to certify in advance "that they have carefully read the D.C. Bar Voluntary Standards for Civility in Professional Conduct. . . ."); *see also Blumenthal v. Drudge*, 186 F.R.D. 236, 239-40 (D.D.C. 1999) (Friedman, J.) ("Lawyers are not to reflect in their conduct, attitude or demeanor their clients' ill feelings toward other parties and may not 'even if called upon by a client to do so, engage in offensive conduct directed towards other participants in the legal process,' or 'bring the

---

[8]This Court has explicitly endorsed the Civility Standards in its Local Rules. *See, e.g.*, Local Civil Rule 83.8(b)(6)(v) (requiring applicants for admission to the bar of the District Court to certify familiarity with Civility Standards); Local Civil Rule 83.9 (requiring each member of the bar of the District Court to certify familiarity with Civility Standards upon renewing membership every three years).

the profession into disrepute by . . . making ad hominem attacks.'") (quoting Civility Standards).

CONCLUSION

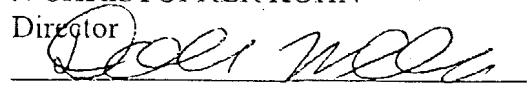
For the foregoing reasons, the Government requests that Plaintiffs' Reply Brief be stricken.

Respectfully submitted,

ROBERT D. McCALLUM, JR.
Assistant Attorney General

STUART E. SCHIFFER
Deputy Assistant Attorney General

J. CHRISTOPHER KOHN
Director



SANDRA P. SPOONER
Deputy Director
D.C. Bar No. 261495
Dodge Wells
Senior Trial Counsel
D.C. Bar No. 425194
Tracy L. Hilmer
D.C. Bar No. 421219
Trial Attorney
Commercial Litigation Branch
Civil Division
P.O. Box 261
Ben Franklin Station
Washington, D.C. 20044
(202) 307-0474

OF COUNSEL:

Sabrina A. McCarthy
Department of the Interior
Office of the Solicitor

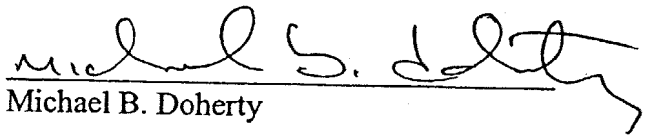
DATED: May 24, 2002

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on May 24, 2002, I served the foregoing *Motion to Strike Plaintiffs' Reply in Support of Motion For Order to Show Cause Why Interior Defendants and Their Employees and Counsel Should Not Be Held in Contempt for Destroying E-Mail* by hand-delivery upon:

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

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



Michael B. Doherty

EXHIBITS