

RECEIVED
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

2003 JUL 21 AM 11: 33

ELOUISE PEPION COBELL, et al.,

Plaintiffs,

v.

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

Defendants.

NANCY M.
MAYER-WHITTINGTON
CLERK

Case No. 1:96CV01285
(Judge Lamberth)

**OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL COMPLIANCE WITH THIS
COURT'S MAY 21, 2003 MEMORANDUM AND ORDER**

Plaintiffs' Motion to Compel Compliance with this Court's May 21, 2003 Memorandum and Order ("Plaintiffs' Motion to Compel") lacks merit and should be denied. Defendants' June 18, 2003 Report to the Court complies with the Court's May 21 Memorandum and Order ("May 21 Order").

The Court's May 21 Order denied Defendants' motion to reconsider the Court's March 5, 2003 Order directing payment to Special Master Alan Balaran. Defendants' motion was premised upon a recently enacted law that imposes limitations upon payments that may be made to the Special Master. In denying the motion, the Court stated that Congress's passage of legislation limiting the compensation of court officials was, in general, "extraordinary" and, in this case, "totally uncalled for" where "the special master is being compensated at an hourly rate [\$200] far below the market rate typically awarded to attorneys with his level of experience by the D.C. Circuit." May 21 Order at 5-6. The Court went on to say that, if Congress decides to enact similar limitations in the future, it "should have all available information at its disposal,"

id. at 7, and to order the United States to provide the Court with a complete statement of all discretionary funds that Defendants have used to pay private counsel for government employees and former employees. In doing so, the Court noted that it did not believe that the information it was requesting would require the production of privileged information. Id. at n.5.

On June 18, 2003, Defendants responded to the Court's May 21 Order. Among other things, Defendants provided the billing rates applicable to all private counsel at issue and the amount paid to them.' As apparently intended by the Court, this will allow Congress to compare the rates being charged by private counsel with the rate the Court has ordered paid to the Special Master and conclude that, to the extent the Special Master is being paid far below the market rate, private counsel are being paid no more and, in some cases, even less. The information provided will also allow Congress to compare the total amount paid to the Special Master with the total amount paid to 54 private law firms representing present and former government employees.

Plaintiffs' Motion to Compel insists that the Court's May 21 Order requires submission of more detail (e.g., the names of the private counsel involved and additional billing information). Some of this data is public information; the United States has no objection to providing it and it is attached (updated since June 18 with later payments). However, the Court made it very clear that it did not intend to direct production of privileged information. Detailed information about the billing of counsel implicates the work product doctrine, see, e.g., Washington Bancorporation v. Said, 1989 WL 946533, at *5 (D.D.C. May 10, 1989) (finding privileged and ordering

'Plaintiffs make much of the fact that defendants' submission "excludes" fees paid from discretionary funds available to the Secretary of the Interior. In fact, no such exclusion was made. If any fees had been paid from such a fund, they would have been reported.

redaction of all attorney billing information except amount billed); Indian Law Res.Ctr. v. Dep't of the Interior, 477 F. Supp. 144, 148 (D.D.C. 1979) (itemization of attorney fee records, including precise amount of attorney time spent, protected by the work product doctrine), and the Privacy Act, 5 U.S.C. § 552a. In any event, were the Court to consider ordering production of the additional information requested by plaintiffs, it should allow the private parties and their counsel to appear to protect their interests.

For the foregoing reasons, the Court should deny Plaintiffs' Motion to Compel Compliance with this Court's May 21, 2003 Memorandum and Order

Dated: July 21, 2003

Respectfully submitted,

ROBERT D. McCALLUM, JR.

Associate Attorney General

PETER D. KEISLER

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

Commercial Litigation Branch

Civil Division

P.O. Box 875

Ben Franklin Station

Washington, D.C. 20044-0875

(202) 514-7194

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

Date: _____

cc:

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

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, NW
Washington, D.C. 20036-2976
Fax (202) 822-0068

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

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

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

COBELL PRIVATE COUNSEL PAYMENTS THROUGH JULY 9,2003

FY	DC#	PRIVATE COUNSEL	PAYMENTS	CLIENTS
99	15053	PETER R GINSBERG	\$49,209.08	ANDREW ESCHEN
99	15067	WILLIAM A DOBROVIR	\$25,480.87	DANIEL MAZELLA
99	15065	JANIS SCHUELKE & WECHSLER	\$24,408.03	ELENI CONSTANTINE
99	15082	STEPTOE & JOHNSON	\$15,346.74	INGRID FALANGA
99	15063	SHEA & GARDNER	\$14,541.01	JAMES REGAN
99	15064	BRAND LOWELL & RYAN	\$7,625.91	RANDALL LEWIS
99	15066	JENKENS & GILCHRIST	\$26,289.16	ROBERTA MCINERNEY
		TOTAL OF FY 99	\$162,900.80	
0	15045	DANIEL F RINZEL	\$14,542.18	LEWIS WIENER
0	15104	CROWELL & MORING LLP	\$5,170.25	MICHAEL CARR
0	15044	MANATT PHELPS & PHILLIPS	\$10,253.23	RANDELL LEWIS
0	15051	JENKENS & GILCHRIST	\$32,582.83	REBERTA MCINERNEY
		TOTAL OF FY00	\$62,548.49	
1	15004	SEYFARTH & SHAW	\$47,652.34	ROBERTA MCINERNEY
1	15031	PIPER MARBURY RUDNICK WOLFE	\$3,243.42	CAROL SMALLEY
1	15043	MANATT PHELPS & PHILLIPS	\$3,581.95	RANDALL LEWIS
1	15066	LONDON & MEAD	\$45,138.27	KENNETH ROSSMAN
1	15071	BRAND & FRULLA PC	\$10,217.67	KAY HAYES
1	15073	CROWELL MORING	\$215,637.50	DOMINIC NESSI
1	15074	COBURN & SCHERTLER	\$9,737.04	DEBRA MEISNER
■	15082	RESOLUTION LAW GROUP	\$274,278.07	THOMAS CLARK
1	15085	ZWERLING & KEMLER	\$8,478.67	DEBORAH MADDOX
1	15090	OBER KALER GRIMES & SHRIVER	\$52,424.14	TIMOTHY ELLIOTT
1	15092	TROUT & RICHARDS	\$104,273.75	EDITH BLACKWELL
1	15096	ZUCKERMAN SPAEDER	\$28,084.80	HILDA MANUEL
1	15097	PATTON BOGGS LLP	\$176,852.37	EDWARD COHEN
■	15103	ZUCKERMAN SPAEDER LLP	\$100,948.39	ROBERT LAMB
		TOTAL OF FY 01	\$1,080,548.38	

2	15007	ROSS, DIXON & BELL, LLP	\$274,250.27	PHIL BROOKS
2	15008	PAUL HASTING JANOFSKY & WALKER	\$80,056.40	WILLIAM G MYERS
2	15009	LAW OFFICES OF PLATO CACHERIS	\$16,771.51	JOHN BERRY
2	15010	ASBILL, JUNKIN, MOFFITT & BOSS	\$59,745.27	STEVE SWANSON
2	15011	PIPER, MARBURY, RUDNICK & WOLF	\$30,163.45	JACK HAUGRUD
2	15012	MORRISON & FOERSTER	\$67,401.65	SABRINA MCCARTHY
2	15013	BAACH, ROBINSON & LEWIS	\$48,559.10	LOIS SCHIFFER
2	15014	SUTHERLAND, ASBILL & BRENNAN	\$123,310.72	CHARLES FINDLAY
2	15016	LAW OFFICES OF PLATO CACHERIS	\$9,588.13	GLEN SCHUMAKER
2	15017	PATTON, BOGGS	\$0.00	BRUCE BABBITT
2	15018	FELDSMAN, TUCKER, LEIFER,	\$116,927.46	JIM SIMON
2	15019	COBURN & SCHERTLER	\$16,967.72	JOHN BRYSON
2	15020	PRESTON, GATES, ELLIS &	\$30,708.91	MICHAEL ROSSETTI
2	15021	KATHLEEN E VOELKER, ESQ	\$27,964.06	JIM DOULAS
2	15022	WILEY, REIN & FIELDING	\$61,137.56	JIM EICHNER
2	15023	BERLINER CORCORAN & ROWE	\$243,875.88	JOHN MOST
2	15024	FRIED FRANK HARRIS SHRIVER &	\$90,813.98	SHARON BLACKWELL
2	15025	BENNETT & NATHANS	\$90,027.02	DAVID SCHUEY
2	15026	PIPER, MARBURY, RUDNICK & WOLF	\$114,312.56	SARA HIMMELHOCH
2	15028	BRAND & FRULLA	\$107,352.71	PETER COPPELMAN
2	15029	PIPER, MARBURY, RUDNICK & WOLF	\$33,877.10	JOHNCRUDEN
2	15032	BAACH, ROBINSON & LEWIS	\$71,557.52	ANNE SHIELDS
2	15034	CROWELL & MORING	\$12,158.21	ANDREW ESCHEN
2	15036	JONES, DAY	\$56,336.00	MICHAEL CARR
2	15037	COBURN & SCHERTLER	\$21,378.22	DAVID SHILTON
2	15039	ZWERLING & KEMLER PC	\$3,619.39	TERRY STEELE
2	15045	MANATT, PHELPS & PHILLIPS	\$209,666.98	NEAL MCCALED
2	15054	ARENT FOX KINTNER PLOTKIN &	\$40,468.50	KEN PACQUIN/ KEN RUSSELL
2	15057	REDMON PEYTON & BRASWELL	\$20,800.00	LEWIS WIENER
2	15061	JANIS SCHUELKE & WECHSLER	\$2,775.00	ELENI CONSTANTINE
2	15072	BEVERIDGE & DIAMOND	\$140,215.22	DARYL WHITE
2	15075	MORGAN LEWIS & BOCKIUS	\$29,026.47	WILLA PERLMUTTER
2	15085	KRAMON & GRAHAM	\$14,041.81	AMALIA KESSLER
2	15087	SEYFARTH SHAW	\$13,234.42	WALTER T. ECCARD
2	15101	SEYFARTH SHAW	\$6,366.35	BRIAN BERRELL
2	15103	JACKSON & CAMPBELL	\$23,975.95	THOMAS SLONAKER

2	15104	HOGAN & HARTSON	\$139,948.15	J. STEVEN GRILES
2	15120	PORTER WRIGHT MORRIS & ARTHUR	\$709.60	ROBERTA MCINERNEY
2	15121	PORTER WRIGHT MORRIS & ARTHUR	\$19,409.60	BRIAN FERRELL
2	15122	PORTER WRIGHT MORRIS & ARTHUR	\$21,513.37	WALTER T. ECCARD
2	15124	BAKER & MCKENZIE	\$17,934.60	GLEN SCHUMAKER
2	15125	BAKER & MCKENZIE	\$10,900.99	JOHN BERRY
		TOTAL OF FY02	\$2,519,847.81	
3	150XX	MILLER & CHEVALIER	\$0.00	TERRY VIRDEN
3	15003	MCKENNA, LONG & ALDRIDGE	\$491,538.63	GALE NORTON
3	15011	ELIZABETH FLEMING, ESQ	\$8,457.75	MICHAEL ROSSETTI
3	15023	HOWREY, SIMON, ARNOLD & WHITE	\$7,423.27	DONNA ERWIN
3	15024	TROUT & RICHARDS	\$35,174.74	MICHAEL ROSSETTI
3	15027	KELLOGG, HUBER, HANSEN, TODD, EVANS	\$17,285.54	TERRY PETRIE
3	15034	O'MELVENY & MYERS	\$12,448.00	MICHAEL QUINN
3	15035	HOWREY, SIMON, ARNOLD & WHITE	\$2,260.42	MICHELE SINGER
3	15037	COVINGTON & BURLING	\$58,221.54	BERT EDWARDS
3	15042	HOGAN & HARTSON	\$10,005.00	JAMES CASON
3	15044	DICKSTEIN, SHAPIRO, MORIN & OSHINSKY	\$8,044.83	DAVID SHILTON
3	15045	DICKSTEIN, SHAPIRO, MORIN & OSHINSKY	\$7,821.80	JOHN BRYSON
		TOTAL OF FY03	\$658,681.52	
		TOTAL OF ALL YEARS	\$4,484,527.00	

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on July 21, 2003 I served the foregoing *Opposition to Plaintiffs' Motion to Compel Compliance with this Court's May 21, 2003 Memorandum and Order* by facsimile in accordance with their written request of October 31, 2001 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.
Mark Kester Brown, Esq.
607 - 14th Street, NW
Box 6
Washington, D.C. 20005
(202) 318-2372

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

By U.S. Mail upon:

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

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.
13th Floor
Washington, D.C. 20006
(202) 986-8477


Kevin P. Kingston