

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELUISE PEPION COBELL, : Civil Action 96-1285
et al. :
Plaintiffs :
 : Washington, D.C.
V. : Thursday, April 8, 2010
 :
KEN SALAZAR, Secretary of :
the Interior, et al. :
 :
Defendants : 12:06 p.m.

*TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE JAMES ROBERTSON
UNITED STATES DISTRICT JUDGE*

APPEARANCES:

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Also Present: DAVID HAYES,
DEPUTY SECRETARY OF THE INTERIOR

Court Reporter: REBECCA STONESTREET
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by computer-aided transcription.

P R O C E E D I N G S

COURTROOM CLERK: This is civil action 96-1285, Elouise Cobell, et al. versus Ken Salazar, et al. Keith Harper for the plaintiffs and David Hayes for the defendants.

THE COURT: Well, David Hayes -- all right. Well, he's a lawyer. We're delighted to have Secretary Hayes with us. He's putting his lawyer's hat back on again.

We have had an in-chambers conference to discuss the status of the settlement approval that is necessary for this matter. The public is obviously interested in this, and so I want to make a short statement and then ask counsel if they want to comment on it.

After nearly 15 years of hard fought litigation, the settlement of this case was reached and announced last December. From where I sit, the settlement appears to be a win/win proposition; a win for Indian individual money accountholders, who will receive payments and who will have the assurance that their IIM account balances are correct; a win for the government, which will at least make a start on solving the terrible problem of fractionated land holdings in Indian country.

I said the settlement appears to be a win/win proposition. I have not ruled that it is fair and reasonable to members of the plaintiff class. That is a formal decision, and is yet to be determined. We must go through a process, a

1 process that includes preliminary approval, publication to
2 Indian country, the opportunity to file objections, and then
3 what is known as a fairness hearing so that objectors can be
4 heard.

5 None of that can happen, however, if Congress does not
6 act to assure the parties and this Court that the proposed
7 settlement is within my jurisdiction and that funds will be
8 appropriated or approved to pay for it. The deadline
9 established by the settlement agreement for Congress to act has
10 been twice extended, from the end of last year to the middle of
11 February, and again to the middle of this month, April 16th.

12 The need for Congress to act is real. Until or unless
13 Congress acts, the lawyers who have devoted themselves to this
14 case for 15 years on both sides are on hold, and, more
15 importantly, all of Indian country is on hold. And I don't want
16 to be too melodramatic about this, but justice is on hold.

17 With my approval, plaintiffs' counsel have been in
18 Indian country to assure the members of the plaintiff class that
19 settlement is still alive. Last week the government filed a
20 consented motion that would permit its representatives to do the
21 same, and that motion is hereby granted.

22 But this cannot continue. Again, from where I sit,
23 this does not look like a partisan matter. It does not seem to
24 me that this is one of those issues that will cause gridlock.
25 It just needs an appropriate sense of priorities. It needs to

1 get done.

2 I have consulted with the parties before coming here
3 today, and I am hereby approving their agreement to extend the
4 deadline again, but only for another six weeks, until the start
5 of Congress' Memorial Day recess. If Congress has not acted by
6 the middle of May, I will convene a public hearing on this
7 matter. I will invite - the operative word is "invite." I will
8 invite the Secretary of the Interior, the Director of Management
9 and Budget, and again, by invitation, of course, appropriate
10 members of Congress, to explain to me, to Indian country, and to
11 the American people why the approval required by this settlement
12 agreement has not been given.

13 Now, that's all I have to say. Counsel are here from
14 both sides. Mr. Kirschman?

15 MR. KIRSCHMAN: Your Honor, the Deputy Secretary of the
16 Department of Interior, David Hayes, will speak for the
17 government, with your permission.

18 THE COURT: Mr. Hayes certainly has my permission.

19 MR. HAYES: Thank you very much, Your Honor. I want to
20 simply reiterate the Administration's commitment and interest in
21 moving forward with this settlement.

22 As you know, the President, the Secretary of the
23 Interior, the Attorney General have all publicly stated their
24 support for this settlement. We believe it is a historic
25 settlement, an opportunity to turn the page on a period of

1 history where the trustee has not performed as the trustee needs
2 to.

3 We are anxious to proceed to full notice of the class
4 so that all of the hundreds of thousands of individual Indians
5 who have interest in this matter will have an opportunity to
6 learn fully about the settlement, to have an opportunity to come
7 forward to your court and have their answers -- their questions
8 answered, have any objections heard, so that we can proceed with
9 the judicial resolution of this matter.

10 I will also say that obviously, Your Honor, we will
11 respect your request today, that we understand your interest in
12 a timetable certain on this matter. We share a common interest
13 in bringing this to resolution.

14 I will say for the record that the Administration has
15 been working very closely with the leadership in Congress.
16 Secretary Salazar has been personally engaged, and we will
17 continue to do so. And now, with your instructions today, we
18 will increase, even increase our attention to this matter, if
19 that is possible.

20 And with regard to your call for a potential appearance
21 by the Secretary of the Interior in mid-May if we do not have
22 Congressional approval by then, I'm certain that the Secretary
23 will be happy to participate in such a hearing, and will work
24 with you and with the Congress towards resolution of this
25 important matter.

1 THE COURT: Thank you, Mr. Hayes, Mr. Secretary.
2 Mr. Harper?

3 MR. HARPER: Good afternoon, Your Honor. First let me
4 thank the Court for its continuing attention to this case and
5 this matter. It is, of course, of utmost importance to our
6 beneficiary class and the entirety of Indian country. We, of
7 course, agree, Your Honor, with your statement that this is a
8 win; it is a win for our trust beneficiaries, it is a win for
9 Indian country, and it turns the page on a problematic past.

10 We are disappointed that we have not yet had the
11 legislation necessary to implement this important settlement.
12 We continue to be in a position to work with the Administration
13 and with Congress to try to get it done as soon as possible. We
14 appreciate your role in trying to push this forward.

15 You did mention that we have been out in
16 Indian country. And on that note I just wanted to say that that
17 has confirmed our understanding with our beneficiary class that
18 this is something they want, this is something that the vast
19 majority of individuals that we've met with have supported.
20 Indeed, we've done some 40 meetings, and in the vast majority of
21 those, there is not a single dissent. Everybody has been in
22 support. There are a few folks here and there that have made
23 statements in opposition, but then, of course, there are
24 procedures in place to deal with those individuals to the extent
25 that they are not satisfied with the resolution.

1 So we want to make clear that our trips out to
2 Indian country have not been in vain, that they have
3 demonstrated conclusively that there is broad support. We are
4 again disappointed that the legislation has not been enacted
5 yet, but we will too join with the Administration in redoubling
6 our efforts to try to make sure that it gets done as soon as
7 possible.

8 Thank you, Your Honor.

9 THE COURT: Thank you, Mr. Harper. If there's nothing
10 further, I think we've said what we need to say and done what we
11 need to do today.

12 Again, the defense motion for leave to contact the --
13 make appropriate contact with the plaintiff class is granted,
14 and if there's nothing further, we're adjourned until about the
15 middle of May. Hopefully we don't -- hopefully we'll reconvene
16 for a different purpose at that time.

CERTIFICATE OF OFFICIAL COURT REPORTER

I, Rebecca Stonestreet, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

SIGNATURE OF COURT REPORTER

DATE