

TRANSCRIPT OF PROCEEDINGS

RAMAH NAVAJO CHAPTER, ET AL.,)

Plaintiffs,)

v.)

Civil No. 90-0957ZH/WWD)

BRUCE BABBITT, SECRETARY OF THE)
INTERIOR, ET AL.,)

Defendants.)

Deposition of: James J. Thomas

Pages: 1 through 74

Place: Washington, D.C.

Date: January 12, 2000

HERITAGE REPORTING CORPORATION

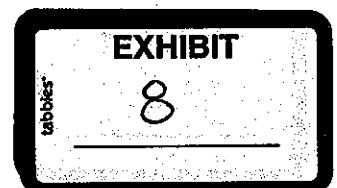
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1 chart a sub-exhibit, or maybe we can call it 4-A. I have
2 simply xeroxed the page, and the cover sheet. So we will
3 make that 4-A.

4 (Deposition Exhibit No. 4-A was marked
5 for identification.)

6 (Brief Pause.)

7 BY MR. GROSS:

8 Q What happened to Mr. Nuvumsa's report within the
9 agency?

10 A I do not know.

11 Q Let me show you a blue bound document, with a GAO
12 logo on it, dated June 1999. Have you seen this document?

13 A Yes, I have.

14 MR. GROSS: Can we make this Exhibit 5, please.
15 And that is an extra copy.

16 (Deposition Exhibit No. 5 was marked for
17 identification.)

18 BY MR. GROSS:

19 Q What is this document, Mr. Thomas?

20 A It is a document that was produced by the Office
21 of the General Accounting Office to study the issue of
22 contract support costs for Congress.

23 Q Did you have any input into this document?

24 A I was interviewed by the authors of the document.

25 Q Do you remember what the nature of the interviews

1 you gave were?

2 A I believe -- yeah. I believe I was interviewed to
3 ascertain some of the procedures, some historical
4 information about how contract support funds were utilized,
5 and how they were requested. Just general information about
6 how the Bureau handled contract support funds over the
7 years.

8 Q Let me direct you to page 34 and 35 if you would.
9 At the bottom of page 34, there is a sentence that begins,
10 "The 1988 amendments to the Act require the agencies to
11 provide contract support costs to tribes for their
12 reasonable costs associated with administering BIA's and
13 HHS' programs. However, since at least 1993, neither BIA
14 nor HHS has requested full funding for these costs, nor has
15 the Congress appropriated full funding for them."

16 Do you have any reason to disagree with that
17 statement?

18 A Well, I would not disagree, but I would say
19 that it baffles me as to how they would know the bureau's
20 request, which is usually done internally as part of the
21 departmental -- the department is part of the body that
22 deals with OMB.

23 Q Well, let me ask you. Aren't there annual budget
24 justifications that make up the BIA request, or the total
25 Interior Department request to the Congress for

1 appropriations?

2 A Yeah. Maybe that's the point that I am making,
3 that it would be a departmental -- it is part of the
4 departmental request.

5 Q My point is that aren't there pages and pages of
6 components to that budget, those annual budget
7 justifications dealing with the Bureau of Indian Affairs?

8 A Yes. My point is that the bureau does not request
9 dollars from Congress as an entity.

10 Q Okay. But I am assuming --

11 A The request --

12 Q This is my assumption.

13 A -- comes from the President to Congress. In other
14 words, the Bureau cannot by itself go to Congress and say
15 this is what we need. It has to be done in the context of
16 the administration's budget request. But other than that, I
17 don't have any reason to question that statement.

18 MR. ZAVITZ: I think what he is saying is that
19 with the clarification that the President's budget request
20 did not request full funding --

21 THE WITNESS: Right.

22 MR. ZAVITZ: -- would be an accurate statement.
23 And I guess he is saying that it is not necessarily -- the
24 budget's request does not necessarily reflect what BIA
25 internally had requested.

1 MR. GROSS: All right. Let's go on.

2 (Brief Pause.)

3 BY MR. GROSS:

4 Q There is a sentence at the top of page 47 of the
5 NCAI report, Exhibit 6, that reads as follows: "Not only
6 has the BIA not requested funds in the annual agency budget
7 request sufficient to fully fund known contract support cost
8 needs, but Congress has often refused to fund agency
9 requests even in the face of substantial known shortfalls."
10 Would you agree with that statement?

11 A Read the statement again?

12 MR. GROSS: Here, you can read it as it appears on
13 the page.

14 (Brief Pause.)

15 MR. ZAVITZ: Yes, I would guess to the extent that
16 it reflects the Presidential budget request, as opposed to
17 BIA.

18 THE WITNESS: With that caveat, I would agree,
19 yes.

20 BY MR. GROSS:

21 Q Okay. Thanks. To your knowledge, Mr. Thomas --
22 well, let me step back. Are you aware of Sections 114 and
23 314 of the Appropriations Act for Interior and related
24 agencies for Fiscal Year '99?

25 A I believe I am, yes.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CROWNPOINT INSTITUTE OF TECHNOLOGY,
INC., a tribal organization of the Navajo Nation,

Plaintiff,

vs.

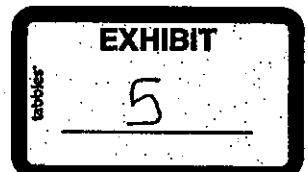
No. CIV 04-531 JP/DJS

GALE A. NORTON, Secretary of the Interior,
DAVID W. ANDERSON, Assistant Secretary
of the Interior--Indian Affairs in the United
States Department of the Interior, ELOUISE
CHICHARELLO, Director, Navajo Regional
Office, Bureau of Indian Affairs, United States
Department of the Interior, and the UNITED
STATES OF AMERICA,

Defendants.

ORDER

On July 15, 2004, Plaintiff filed its Verified Application for Temporary Restraining Order and for Preliminary Injunction to Preserve Funds (Doc. No. 14). The Court held a hearing on Plaintiff's Verified Application for Temporary Restraining Order on July 15, 2004. Plaintiff was represented by Attorney Michael P. Gross. James M. Tutt, President of Plaintiff Crownpoint Institute of Technology, Inc., was personally present. Defendants were represented by Tamara Ulrich, Attorney for the United States Department of Justice, and Dory Richards, Attorney for the United States Department of the Interior. Having considered all relevant written information and oral presentations by counsel for the parties, the Court concludes that the Plaintiff has failed to meet the extremely high burden imposed by FED. R. CIV. P. 65 for the granting of extraordinary relief in advance of the development of a broader evidentiary record on which the Court can make a more deliberate judgment. The Court does not read City of Houston v. Department of Housing & Urban



Development, 243 F.3d 1421 (D.C. Cir. 1994) to preclude Plaintiff from seeking and obtaining monetary damages in the event it is determined, after a more complete evidentiary hearing, that Plaintiff is entitled to damages from Defendants based on Plaintiff's claim for additional contract support costs. In its Verified Application for Temporary Restraining Order, Plaintiff requests the Court to grant the extraordinary relief of ordering the Secretary of the Interior immediately to pay into the registry of the Court \$758,050.00 of fiscal year 2004 funds appropriated to the Bureau of Indian Affairs for contract support costs and enjoining the Defendants from obligating that money to any other entity, so that the funds will be preserved for payment to the Plaintiff in the event it is eventually determined that the Plaintiff is entitled to that amount for contract support costs.

However, as Plaintiff acknowledged in its Verified Complaint for Injunction and a Writ of Mandamus, for Declaratory Judgment and Other Relief (Doc. No. 1), "If those funds are no longer in the Secretary's possession plaintiff is entitled to a judgment against the United States to be drawn from the permanent and indefinite judgment fund pursuant to 25 U.S.C. § 450 m-1(a) and 1(d) and 41 U.S.C. § 612(a)." It appears to the Court that Plaintiff has failed to establish that it will suffer irreparable harm by the denial of Plaintiff's requested extraordinary relief.

IT IS THEREFORE ORDERED that Plaintiff's Verified Application for Temporary Restraining Order and for Preliminary Injunction to Preserve Funds (Doc. No. 14) is denied.



SENIOR UNITED STATES DISTRICT JUDGE