UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MONTGOMERY BLAIR SIBLEY,

CASE NO.:12-CV-1984

PLAINTIFF,

VS.

YVETTE ALEXANDER, DON R. DINAN AND WILLIAM LIGHTFOOT,

PETITIONER'S VERIFIED MOTION FOR Rule to Show Cause Why Harvard Law School Should Not Be Held in Contempt of Court

Defendants.

Plaintiff, Montgomery Blair Sibley ("Sibley"), pursuant to 28 U.S.C. §1746, states that the matters stated herein are true under penalty of perjury and pursuant to Federal Rules of Civil Procedure, Rule 45(e) and the anomalous authority of this Court, moves for a Rule to Show Cause why Harvard Law School, should not be held in contempt of court and for grounds in support states:

I. HARVARD LAW SCHOOL SUBPOENA

On November 16, 2012, at Sibley's request pursuant to D.C. Superior Court Rule 45(a)(3), the Clerk of that Court issued a blank subpoena duces tecum which Sibley subsequently directed to the Records Custodian, Harvard Law School by serving its agent in the District of Columbia, Jonathan J. Wroblewski, Director, Office of Policy and Legislation, U.S. Department of Justice. A copy of that Subpoena with its proof of service is attached hereto as Exhibit "A".

After various communications between Sibley and counsel for the Harvard Law School, Sibley received a letter from counsel for Harvard Law School, a copy of which is attached hereto as Exhibit "B".

II. THIS COURT MUST ORDER THE SUBPOENAED RECORDS PRODUCED

Rule 45(e) states in pertinent part: "(e) Contempt – The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena."

As to the sufficiency of the service, Sibley maintains that insomuch as access to Mr. Wroblewski is precluded by the Praetorian Guards at the Department of Justice, service by FedEx was appropriate. Moreover, Courts have acknowledged that Rule 45 itself does **not** expressly require personal in-hand service, and a practical appreciation for the fact that the obvious purpose of Rule 45(b) is to mandate effective notice to the subpoenaed party, rather than slavishly adhere to one particular type of service. See e.g., Doe v. Hersemann, 155 F.R.D. 630 (N.D. Ind. 1994) (holding that service of a subpoena via certified mail is sufficient under Rule 45, particularly when Defendant does not deny actual receipt); Ultradent Prods., Inc. v. Hayman, 2002 U.S. Dist. LEXIS 18000, 2002 WL 31119425 (S.D.N.Y.2002) (finding majority rule unpersuasive and holding that although delivery to the person was required, delivery did not require personal in-hand service); Western Res., Inc. v. Union Pac. R.R., 2002 U.S. Dist. LEXIS 14897, 2002 WL 1822432 (D. Kan. 2002) (holding that delivery of subpoena via Federal express was sufficient because effective service under Rule 45 is not limited to personal service); King v. Crown Plastering, 170 F.R.D. 355 (E.D.N.Y. 1997) (holding that in-hand delivery is not required under Rule 45 so long as service is made in a manner that reasonably insures actual receipt of the subpoena). As such, Sibley maintains that service was properly made under Rule 45.

Second, Mr. Wroblewski was the proper person to serve as Harvard Law School is "doing business" in the District of Columbia and has <u>failed</u> to designate a registered agent for service of process. In particular, Harvard Law School operates a "Government Lawyer - Semester in

Washington" which both places its students in internship positions and requires attendance at a course in Washington, D.C. by Mr. Wroblewski. Proof of this activity is found in Exhibit "C" attached hereto. As such Harvard Law School is "doing business" in the District of Columbia. A search of the District of Columbia government records reveals that Harvard Law School has <u>not</u> designated an agent for service of process. As such, service upon Mr. Wroblewski as Harvard Law School's agent in the District of Columbia was proper.

Finally, the relevance of the records from Harvard Law School relate to the issue of the eligibility of Mr. Obama to be President as they may well reveal that he is <u>not</u> eligible to serve as President and hence, the Defendants may thus be precluded for casting their votes for him. First, those records will reveal admission application data which will include parentage, date and place of birth data. Morever, Mr. Obama has refused to release his Harvard Law School records raising to this Court the adverse inference that he has something to hide. *Accord: Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976)("[T]he Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them.")

IV. CONCLUSION

In *Seminole Tribe v. Fla.*, 517 U.S. 44, f/n #2 (1996), the Court held: "In any event, it is clear that the idea of the sovereign, or any part of it, being above the law in this sense has not survived in American law." It is this Court's duty to see that aspiration still holds fast by allowing the discovery process emblematic of a functioning court system to proceed.

WHEREFORE, Sibley respectfully request that this Court issue a Rule to Show Cause why Harvard Law School should not be held in contempt of court

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2012, a true copy of the foregoing was caused to be served (i) pursuant to LCvR 5.4 upon Andrew J. Saindon, Assistant Attorney General, Equity Section, 441 Fourth Street, N.W., 6th Floor South, Washington, D.C. 20001, Telephone: (202) 724-6643, Facsimile: (202) 730-1470, E-mail: andy.saindon@dc.gov and (ii) pursuant to U.S. Mail and Facsimile (617-495-5079) upon Barry A. Miller, University Attorney, Holyoke Center, Suite 980, 1350 Massachusetts Ave, Cambridge, Massachusetts, 02138-3834.

I declare under penalty of perjury that the foregoing is true and correct.

MONTGOMERY BLAIR SIBLEY Plaintiff 4000 Massachusetts Ave., N.W., #1518 Washington, D.C. 20016 (202) 478-0371

By: ______ Montgomery Blair Sibley

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MONTGOMERY BLAIR SIBLEY,

PLAINTIFF,

VS.

YVETTE ALEXANDER, DON R. DINAN AND WILLIAM LIGHTFOOT,

CASE No.:12-CV-1948

Order on Plaintiff's Verified Motion FOR RULE TO SHOW CAUSE WHY HARVARD LAW SCHOOL SHOULD NOT BE HELD IN **CONTEMPT OF COURT**

DEFENDANTS.

THIS MATTER came on to be heard on Order on Petitioner's Verified Motion for Rule to

Show Cause Why Harvard Law School Should Not Be Held in Contempt of Court and the Court being advised in the premises, it is hereby:

ORDERED AND ADJUDGED that the motion is granted. Harvard Law School shall show

cause within days of the date of this Order why they should not be held in contempt of court

for failing to comply with the subpoena duces tecum served on them in this matter.

DONE AND ORDERED in Chambers this _____ day of _____, 2012.

By: _____ United States District Judge

Copies to:.

Montgomery Blair Sibley Andrew J. Saindon

MONTGOMERY BLAIR SIBLEY

4000 Massachusetts Avenue, N.W. Apartment 1518 Washington, D.C. 20016-5136 Email: mbsibley@gmail.com 202-478-0371 (Voice/Fax)

December 4, 2012

Via FedEx Tracking #:872110718392 Jonathan J. Wroblewski Director, Office of Policy and Legislation U.S. Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530-0001

> Re: *Montgomery Blair Sibley vs. Yvette Alexander, et al.* D.C. Superior Court Case. No.: 2012-CA-008644 B

Greetings,

Please find enclosed a subpoena duces tecum for the Record Custodian, Harvard Law School. I am serving it upon you as an agent of Harvard Law School which is "doing business" in the District of Columbia through your activities in the "Semester in D.C." clinic and has failed to designate a registered agent in the District of Columbia as required by Title 29 of the District of Columbia Code.

Given the Praetorian Guards you work behind, if you object to this manner of service, I would be please to have my process server serve you directly if you will make yourself available to him. Of course, you can reach me at the number above to discuss this matter further.

yours,

Exhibit "A"

Superior Court of the	Bistrict of Columbia	
CIVIL D	DIVISION	
500 Indiana Avenue, M		
Washington, D.C. 20001	Telephone (202) 879-1133	
Montgomery Blair Sibley		
Plaintiff	SUBPOENA IN A CIVIL CA	SE
Yvette Alexander, et al.	CASE NUMBER: 2012-CA	A-008644 B
Defendant		
To: Record Custodian, Harvard Li	ew School	
VOU ARE COMMANDED to appear at the place, date,	and time specified below to testify	in the above case.
COURTROOM	DATE	TIME
in the above case. PLACE OF DEPOSITION	DATE	TIME
YOU ARE COMMANDED to produce and permit	inspection and copying of the	following documents
YOU ARE COMMANDED to produce and permit objects at the place, date, and time specified below (list DOCUMENTS OR OBJECTS	t documents or objects):	following documents
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Montgomery Blair Sibley vs. Yvette Alexander, et al. D.C. Superior Court Case. No.: 2012-CA-008644 B Subpoena Duces Tecum Addendum for Record Custodian Harvard Law School

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

DOCUMENTS OR OBJECTS:

- 1. All records related to Barack Hussein Obama, II, also known as Barack Hussein Obama, including, without limitation, application for admission and transcripts;
- 2. All records related to Barry Soetoro, including, without limitation, application for admission and transcripts.

PLACE OF PRODUCTION – Montgomery Blair Sibley, 4000 Massachusetts Ave, NW, #1518, Washington, D.C. 20016

DATE/TIME – December 21, 2012 at 11:00 a.m.

In lieu of a personal appearance, the requirements of this subpoena may be met by delivery of the material by mail or overnight delivery service to: Montgomery Blair Sibley, 4000 Massachusetts Ave, N.W., #1518, Washington, D.C. 20016, provided that the material is received on or before the return date set forth herein.

Contact Information for Plaintiff:

Montgomery Blair Sibley 4000 Massachusetts Ave, NW, #1518 Washington, D.C. 20016 Voice/Fax: 202-478-0371



December 5,2012

Dear Customer:

The following is the proof-of-delivery for tracking number 872110718392.

Delivery Information:			
Status:	Delivered	Delivered to:	Receptionist/Front Desk
Signed for by:	A.OWENS	Delivery date:	Dec 5, 2012 08:59
Service type:	FedEx Standard Overnight		
Special Handling	Deliver Weekday		
	Direct Signature Required		

NO SIGNATURE IS AVAILABLE

FedEx Express proof-of-delivery details appear below; however, no signature is currently available for this shipment. Please check again later for a signature.

Shipping Information:

Tracking number:

872110718392

Ship date:

Dec 4, 2012

Recipient:

US

Shipper: US

Thank you for choosing FedEx.



HARVARD UNIVERSITY Office of the General Counsel

Barry A. Miller University Attorney barry_miller@harvard.edu Holyoke Center, Suite 980 1350 Massachusetts Avenue Cambridge, Massachusetts 02138-3834

> 1.617.495.8210 £617.495.5079

December 14, 2012

By Mail and Fax - 202-478-0371

Montgomery Blair Sibley 4000 Massachusetts Ave., N.W., #1518 Washington, D.C. 20016

Re: Subpoena in Sibley v. Alexander, No. 2012-CA-008644 B (D.C. Super. Ct.) removed to U.S. District Court <u>C.A. No. 12-01984 (D.D.C.)</u>

Dear Mr. Sibley:

I am an attorney in the Office of General Counsel at Harvard University (formally known as the "President and Fellows of Harvard College" or "Harvard"). A subpoena that you purported to serve on Harvard Law School has been forwarded to me.

This letter constitutes our objection to your subpoena under Rule 45(c), Superior Court Rules of Civil Procedure, and Rule 45, Fed. R. Civ. P. Harvard objects to your subpoena, *inter alia*, on the following grounds:

- 1. Service by Federal Express is not the personal service contemplated by the rules.
- 2. President and Fellows of Harvard College is not subject to service of process in the District of Columbia.
- 3. You did not properly serve an authorized agent for service of process. This Office is the authorized agent for service of process for President and Fellows of Harvard College. Your delivery by Federal Express of a subpoena to a part-time lecturer is not service on an agent authorized to accept service.
- 4. You did not obtain court permission for an examiner to depose and obtain documents from President and Fellows of Harvard College in Massachusetts.

Montgomery Blair Sibley December 14, 2013 Page 2

- 5. As the plaintiff, you are not permitted to serve a subpoena. Rule 45(b)(1) provides that service must be made by a person who is not a party.
- Under D.C. Superior Court Civil Rule 30, depositions may not be taken without leave of court within 70 days of the filing of a complaint in any case involving the District of Columbia or its officer or agency, or the United States or its officer or agency. Under Fed. R. Civ. P. 26(d), discovery may not be taken before the initial discovery conference. You do not appear to have received leave of court.
- 7. Your subpoena appears to seek material that is not reasonably calculated to lead to the discovery of information relevant to your claim. At a minimum, it is overbroad and burdensome.
- 8. We would also object to providing any materials protected by the attorney-client privilege or the work product doctrine, or any materials that are not properly the subject of discovery, such as internal educational records not material to a case.

Please be advised that Harvard reserves all of their rights, including the right to move to quash the subpoena and the right to seek monetary sanctions against you for filing and pursuing frivolous discovery.

Sincerely; buy mil Barry A. Miller

University Attorney

cc: Andrew J. Saindon
Assistant Attorney General
441 Fourth Street, N.W.
6th Floor South
Washington, D.C. 20001



OFFICE OF CLINICAL AND PRO BONO PROGRAMS

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Government Lawyer - Semester in Washington

Overview

Students spend the entire Spring semester (except for Spring break) in Washington, D.C. working as legal interns in a variety of federal offices while taking an evening course on government lawyering. Placements are principally in federal government offices where lawyers conduct research and provide legal advice and assistance on policy, legislative or regulatory matters, rather than investigating and litigating cases. Students may choose to start the clinic early by spending the Winter Term in Washington, D.C. working full-time at their placement offices. Students also attend class twice a week (see below for more on the class) and write a 1-credit research paper that relates to the student's Semester in Washington placement. To get an inside view of the Program, students may access the Semester in Washington iSite, which contains detailed information about last year's syllabus, course



requirements, events, funding, housing, placements, etc. (note that this pertained to last year's program, and information for the 2013 Program is subject to change).

Clinical Placements

Placements are coordinated by the clinic director, Jonathan Wroblewski, in consultation with students and the Office of Clinical and Pro Bono Programs. Clinical work exposes students to the distinct forms of lawyering practiced by government attorneys in diverse policy positions in the federal government. Students are required to work at least 30 hours a week in the 2013 Spring semester. Students who choose to start the clinic early in the Winter 2013 term must work 40 hours/week. Clinical placements may span various practice settings in Congress and federal agencies or departments. Placements in past years have included the House and Senate Judiciary Committees, the Departments of Justice and State, the White House Counsel's Office, the Central Intelligence Agency, and the Federal Communications Commission. Students who are admitted to the clinic will meet individually with the clinic director to discuss their areas of interest and placement possibilities. Every effort will be made to provide a placement to meet each student's interest, but students who are accepted in the clinic may need to commit to the Semester in Washington Clinic prior to confirmation of a definite placement. During the clinic, the director will meet one-on-one with students on a periodic basis to discuss their ongoing work experience and progress. Clinical work fulfills the JD pro bono requirement.

Please note: Given the nature of government office hiring and the timing of security clearances it is possible that placements may not be finalized until after you commit to this clinic. We make every effort to place students in your interest area, but your decision to take the Semester in Washington Clinic may have to be made before you know your final placement.

Course Component

Students attend an evening class twice a week during the Spring semester, taught by the clinic director, Jonathan Wroblewski. Readings and classroom discussions will be supplemented by guest speaker events and visits to government offices on several occasions throughout the semester. Case studies will supplement the core readings. The course will focus on the role of the government lawyer in policymaking and the many forces that influence the work of policymaking generally, and the government lawyer's part in that process specifically. The course will examine the skills required of government attorneys in policymaking, the unique ethical, legal, and moral issues they face, and the impact of politics and ideology on their work. The course will explore the role of think tanks and interest groups on policymaking, how these organizations have proliferated in Washington over time, and how their work and their influence have changed. The course will look at the discourse in policymaking in Washington, whether it has changed, and the implications of the state of discourse for the government lawyer involved in policymaking, legal advice, and advocacy. Finally, the course will explore the process of policymaking, the use of data and research in policymaking, and the role of the bureaucracy. The course will include student discussions of their experiences in their clinical placements. Students will be required to come to class prepared to discuss relevant elements of their work each week. Guest speakers, including government lawyers, issue advocates, and think tank scholars, will visit the class may also include visits to government offices to examine, for example, how data used in the policymaking process is actually collected and synthesized. A course paper relating to the student's work or to classroom subjects will be required in lieu of an examination. The course fulfills the Professional Responsibility requirement.

Writing Component

As part of the course, students will write an extensive research paper that relates to the student's Semester in Washington work experience and receive 1 writing credit. The Program Director, Jonathan Wroblewski, will serve as faculty sponsor of this extended paper.

Travel and Housing

Students will be reimbursed for one round-trip travel between Boston and Washington, D.C. (or the equivalent, although restrictions apply) and will also receive funding assistance to help offset relocation costs. Other living expenses, including housing, utilities, public transportation, meals, etc., are the responsibility of the student. The Office of Clinical and Pro Bono Programs helps facilitate housing opportunities, though most students prefer to make their own housing arrangements. Students receiving financial aid may request supplemental loan amounts of up to \$1200 to enable them to participate in the clinic.

Other Considerations

Applicants should consider whether the clinic will preclude or restrict their participation in certain campus activities, and if so be prepared to make appropriate arrangements. Additionally, applicants will need to evaluate their progress in completing JD degree requirements prior to enrolling in the Clinic. Students should review their degree audit and/or meet with the Registrar's Office to ensure that you will meet the necessary residency requirements and graduation requirements before committing to participate in the Semester in Washington Clinic.

Application

Enrollment is by application only, and limited to 2L and 3L students. Students must be enrolled full-time at Harvard Law School in 2012-2013 to apply. For questions on eligibility (joint-degree students, study abroad participants, etc.), please contact the Office of Clinical and Pro Bono Programs.

The first round of applications was due Aug 17, 2012. To apply during the second round, students must submit the following information by Oct 5, 2012 via an online form:

- 1. Online Application
- 2. Statements of Interest
- 3. Current resume
- 4. Writing sample of no more than 10 pages
- 5. Academic transcript

Clinical and Course Information

Government Lawyer: Semester in Washington Clinic

Winter-Spring or Spring clinical Open to 2L, 3L students Co-requisite: Government Lawyer: Semester in Washington Clinical Seminar (offered in Spring 2013) Application deadline: Aug 17

Contact

Jonathan Wroblewski

Clinic Director, Semester in Washington jwroblewski@law.harvard.edu

Office of Clinical and Pro Bono Programs

clinical@law.harvard.edu 617-495-5202

CONTACT Harvard Law School 1563 Massachusetts Avenue Cambridge, MA 02138

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