

Of Counsel Report #15

The purpose of this "Of Counsel Report #15" will let you know the status of the preparation and filing of the Appellants' Opening Brief in Felter, et al. v. Kempthorne, Secretary of Interior, et al.

I filed a motion to extend the time for filing our Opening Brief until Monday, August 21, 2006. This was a two week extension from the original filing date of August 7. I am in the actual drafting process of the Opening Brief and you should be informed of what we are dealing with in the appeal of Judge Robert's January 27, 2006 dismissal of the *Felter* Amended Complaint.

However, I have been asked to explain why we are going forward with a campaign to get support for our effort at seeking an Act from Congress to reverse the Ute Partition Act (UPA). You must understand that we have been diligently going through the federal courts to vindicate the fact that the federal government used the UPA to wrongfully take property and monies owned by the 490 that *vested before* 1961. We are arguing that because the UPA was wrongfully implemented to cause this wrongful taking the Act was breached and must be declared null and void. If we are right, then the breach of the Act would void it out and return everyone back to their original status they had before 1954.

Arguments on appeal are always very hard to win even in the best possible situation. If the Court of Appeals agrees that Judge Robert's decision was correct, then we lose. We started our effort at getting tribal support by letting everyone know that we are going to present a Resolution to the National Congress of American Indians Grand Assembly to demand that the U.S. Congress repeal the UPA. We began this effort months ago with Oranna Felter spending many hours of her own time sending out letter to hundreds of tribes asking for their support. If we wait until the Court of Appeal makes a ruling on our appeal it could be several more months down the line. Because there is always a great risk that we will lose our appeal, we are forced to begin efforts to let the public know we want their help in petitioning Congress to reverse this evil law of extermination. Otherwise, we lose valuable time in seeking public support for our cause. We simply cannot wait on a decision to keep the ball rolling on getting support for an eventual repeal of the UPA by Congress.

If we persuade the Court of Appeals that Judge Roberts decision was wrong, then the Court will return the whole case or part of it back to Judge Roberts for more proceedings on the merits. You must understand that it is rare that a Court of Appeals issues an order saying "the judge was wrong and you win your case". What happens is that the Courts of Appeal reverse the district court judge's decision on lack of subject matter jurisdiction and send the case back to him for action on the "merits" of the complaint. In other words, even if we win before the Court of Appeals it does not mean we "win" the case with no further action required.

If you think all of this sounds complicated, you are right! For those of you have taken the time to read Judge Robert's decision dismissing the *Felter* Amended Complaint, I doubt that you are able to comprehend all of the legal technicalities involved in his January 27, 2006 Order. Even as an experienced attorney with many years of practice in federal court, I can say that understanding why Judge Roberts ruled against us the way he did has taken many many hours of sitting down and reading the complaint over and over. It has taken many more hours in researching the law he based his dismissal order on and to read over and over all of the contents of the Amended Complaint, the United States' Motion to Dismiss, our Opposition to the Motion to Dismiss and the United States' Reply.

In drafting the Appellants' Opening Brief, I am required by the Court of Appeals to be 1) clear, 2) cite the record and legal authorities fully, fairly and accurate and, in particular cite to controlling D.C. Circuit law, and 3) be concise. This means in simple terms that I cannot submit argument "out in left field" that is not already in the record of the proceedings before Judge Roberts. Many clients do not understand that their attorney on appeal is firmly restricted by rules of the courts of appeal to stay within the record of district court proceedings and not go outside these definite boundaries.

Often, clients read the opening brief with the expectation that their attorney will deliver a "fire and brimstone" argument for the court of appeals to "bring the thunder out of the heavens and smite the evil-doers dead." When they read a brief that is "clear", "concise" and within the record, they become disappointed because they expected something more. This is not how the federal appellate process works. As a full member of the Court of Appeals for the District of Columbia Circuit, I am ethically bound to adhere to follow the Local Rules and prepare your Opening Brief in compliance with those Rules.

I am drafting your Opening Brief and it involved a very time-consuming, tedious and difficult examination of everything in your case so I can maximize our efforts at getting Judge Roberts' Order of Dismissal reversed in whole or in part. The fact that we are dealing with a very difficult legal issue involving the technicalities of Federal Rule of Civil Procedure Rules 12(b)(1) and 12(b)(6) require a very clear "on point" discussion of legal issues as viewed against the allegations contained in the Amended Complaint. I am also duty bound to make clear and concise argument against the Judge's decision and insure that each of those arguments identify the basis for the argument that is contained in the record. This requires me to check and cross-check to insure my arguments originate from something that we, the United States defendants or Judge Roberts stated in all of the documents in the record. Unless you know the process and follow it to the tee, you would go crazy trying to understand what to do so you can make good arguments asking the Court of Appeals to reverse the Order of Dismissal.

You must also understand that drafting and filing Opening Brief on appeal require many hours of printing, copying and binding the documents in 14 bound copies with one bound original. I must collect relevant documents and compile them into an "appendix" and

deliver to the Court of Appeals 11 of these copies not to mention copies for the United States. All in all, this is a very tedious job even when the issues are restricted to a limited district court record.

I wanted you let you know in my Report the details of the situation and what efforts I am required to engage in to advocate for your interest to best of my ability. I have many hours left in finalizing the Opening Brief and Appendix. While we wait for a decision on our appeal, I urge all of you to continue your efforts at asking the public and your local U.S. Congressional members for support.

Without a doubt, I will have my hands full researching and drafting the Appellants' Opening Brief and Appendix. There is a great deal of work that must go into finalizing a legal brief on appeal and making sure all the legal issues are adequately addressed. Recently, we have initiated a very intensive letter writing campaign to seek support from the Indian Nations in the United States and Canada. Around 1,200 individual letters have been sent out by Oranna and over half of those were to case members. I understand that most of our case members did not take the time to fill them out and get them back to her when Indians all over the United States have sent in their letters. **GET YOUR LETTERS OF SUPPORT BACK TO ORANNA NOW!** This effort at seeking support from the public to write letters their Congressmen and Senators urging them to repeal the Ute Partition Act takes a great deal of time, effort and money.

Another aspect of our "support" campaign is the drafting of a resolution of support for presentation to the Tribes attending the 63rd Annual Convention of the National Congress of American Indians in Sacramento, CA. The NCAI Convention is scheduled for October 1 through October 6. We firmly believe that the passage of a resolution by the Tribes and individuals attending the October Convention will add pressure on Congress to repeal the Ute Partition Act.

I urge all of you to write your own letters to your Congressional delegation and keep the effort up at educating our federal legislators and the general public about the need to repeal the Act and restore the stolen identities to all of the 490 terminated Uintas and their descendants! We must have the commitment of each of you to keep up the Battle and help us in this very important public awareness campaign.

One thing is that we cannot give up and let up on our efforts to keep the "ball rolling." I feel that many of you threw up your hands in disgust and frustration when Judge Roberts dismissed our case. I am challenging you to "relight the fires" and let everyone in the Civilized World know we are not going to back down. Let's not give the scoundrels who cheated you out of your land and stole your identity any comfort knowing that we are running away with our tails between our legs. We are not going to back down!

Our NCAI efforts will take money to achieve our goal in Sacramento. Those who will be

attending the Sacramento Convention with me to convince the Tribes that we need their support must rely on you to continue paying so we will be successful in October. Cal, Oranna and Earl have spent many many hours on the case will be attending the NCAI Conference with me and it is because of case funds starting to run low that they will be paying their on way on an important part of the case that should be paid by funds sent in by you. You need to help all you can whenever you can, regardless of what someone says or how much you have paid. If anyone has extra funds, we could use it and the ones who haven't paid their initial amount and their requested two hundred dollars need to get their funds in immediately!! Even though Cal, Oranna and Earl will be paying their own expenses to get to and from Sacramento on an important mission, we will still have other important things like flyers, posters and other informational material to hand out at the NCAI Conference. This cost money!

PAY YOUR DUES ASAP! DO NOT GIVE UP! STAY WITH US IN THIS MOST SIGNIFICANT BATTLE TO REVERSE A LIVING AND BREATHING GENOCIDAL ACT OF OUR OWN U.S. CONGRESS.

I reminded you in my last Report that I am a direct descendant of the Warm Springs Chiricahua Warriors, Women and Children who suffered the same mistreatment when they were captured and sent off in railroad box cars to the deadly heat and humidity in Florida and Alabama. Many of my Chiricahua Relations died along the way and they are buried far and away from their Southwestern Desert Home and Strongholds. It was because of my own personal and undying hatred for what was done to my Great-Grandfather, Nico Pas, and my Grandmother, Minnie Nicholas, that I became involved in your case. I wanted to be part of a legal and Congressional effort to eradicate and stomp out an evil Act of our own U.S. Congress that has caused so much damage to those terminated members of the Uinta Band. I feel badly when key plaintiffs like Oranna and Cal Hackford are out there with such personal dedication to every aspect of this Sacred Battle and they don't get the highest level of moral and monetary support from each one of you.

It's because of my Chiricahua ancestors that I am here on this Earth fighting this battle with you today. These Apaches faced a deadly foe, made very tough decisions and it is because of their standing together over a hundred years ago in battle that I carry forward with each of you. Once we break apart and lose our Spiritual direction and energy, then the thieves and scoundrels who call your Land their own know that Utah's own dirty little secret will remain hidden.

STAND UP AND WRITE THOSE LETTERS OF SUPPORT! REACH DOWN INTO YOUR HEARTS AND SOULS AND ASK YOURSELF IF YOUR FAMILY MEMBERS WHO HAVE GONE ON TO THE SPIRIT WORLD WOULD WANT YOU TO GIVE UP!

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