

Counsel of Record Report #2 **May 28, 2003**



Since my last Report, the defendants named in our lawsuit, *Felter, et al., v. Norton, et al.*, filed their motion to dismiss. The defendants' motion to dismiss argues that the *Felter* complaint does not establish: 1) subject matter jurisdiction in the United States District Court; 2) the complaint does not identify where the United States government has waived its sovereign immunity; 3) the complaint is completely barred by the statute of limitations; and all the claims in the complaint are barred by the principles of res judicata and collateral estoppel.

Without a doubt, the legal grounds argued by the defendants in their attempt to persuade the Court to dismiss the case will require a great deal of research to overcome their motion and keep the case before the United States District Court, District of Columbia. The defendants filed their motion on May 20, 2003 and Judge Royce C. Lamberth signed an order on May 19, 2003 setting September 17, 2003 as the date we must file our response to the motion to dismiss. They also filed their "Objection to Plaintiffs' Designation of Related Case". The defendants have until October 31, 2003 to file their reply to our response to the motion. Although it sounds like a long time to research, draft and finalize our response, we must immediately begin work on developing the legal strategy to successfully overcome the defendants' efforts to get the case dismissed.

Without a great deal of elaboration at this time, the majority of the United States argument for dismissal consist of a "been there and done that" approach. The defendants draw reference in their motion to at least six (6) cases that were previously filed and adjudicated on "issues pertinent to all the claims plaintiffs allege here." Hence, the defendants contend that everything set out in our complaint is subjected to the legal doctrine of res judicata and collateral estoppel because those issues were handled in prior litigation and we cannot now raise them before the Court. The defendants also argue that the statute of limitations to file an action against the United States has passed and the complaint should be dismissed.

Our task will be to thoroughly research these cases and examine those prior cases and the holdings of the court decisions to argue that those cases do not dispose of the claims raised in the *Felter* lawsuit. We must also develop a position that the statute of limitations does not apply to the facts stated in our lawsuit. The defendants' motion to dismiss will be posed on our internet website (www.undeclaredutes.net) and I urge all of you to read it and provide us with your comments, thoughts and ideas. I will be attending the clients' meeting in Heber, Utah set for June 28, 2003 and look forward to hearing your input on the theories proposed by the defendants in their motion to dismiss. Because I will be in Heber to meet with you in June on the current legal status of the *Felter* case, this Report is only a brief summarization of the basics implicated in the motion to dismiss and developing the legal strategy to over the motion and keep the case alive.

I urge all who are able to attend the Heber clients' meeting to also support the efforts of our "core team" of organizers who have planned a "Walk for Truth, Justice and Reconciliation" in Heber and to come by the booth to be set up at the Heber Pow-wow to further our efforts to get word out to the national and international public about the *Felter* lawsuit and the history of this

injustice that has affected the lives of so many of you. We have also been fortunate to have another "core team" working on public relations. They have been contacting media and news organizations in an effort to get the truth about how a conspiracy of lies led up to and caused the loss of your tribal identity and right to benefit from lands and minerals that are now in the hands of non-Indians who were never supposed to gain benefit from the Ute Partition Act in the first place.

As I have stated before, let's keep our prayers for strength and vision as we all go forward in a battle of tremendous proportions against defendants who do not want their role in this massive injustice against the "Mixed-Blood" members of the Uinta Band of Utes to come out in the United States District Court. Remember - None of us can win standing alone - we must stand strong against the winds that our enemies will be sending our way in their attempts to break us apart and cast doubt among our midst and keep our eyes on the horizon. I look forward to seeing all of you in Heber next month.

Dennis G. Chappabitty
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