

Counsel of Record Report # 5
December 14, 2003



BEFORE I TALK ABOUT THE CURRENT STATUS OF *FELTER, et al., V. NORTON, et al.*, I must reflect back at the enduring Spirit of our Tribal Elders who are no longer with us. The history of the federal government's policy of stealing our land, destroying our tribal cultures, forcibly taking our youth far away to teach them non-tribal values, and then trying to squeeze our tribal identities out of us is a significant part of our every day lives as indigenous people. According to the defendants' view in *Felter*, this proven history of injustices committed long ago has no legal value in the federal court system. In other words, our Elders should never have told us their stories of personal pain, forced imprisonment, watching outsiders steal their land so that we could take those stories into our hearts and souls and turn them into a *sacred mission* to seek justice in the federal court system. As we are all aware, the fact that the *Felter* case was filed in the federal court proves that our Elders spoke powerful and spiritual words - "Never give up on seeking justice for our People".

AS FOR MYSELF, MY CHIRICAHUA GRANDMOTHER AND MY MOTHER were and always will be central in passing on the *legacy* of our proud survival in the face of evil forces who wish we would stop talking about and reminding America and the World that we, as indigenous people, were never adequately compensated for the loss of identity, theft of our tribal cultures, loss of tribal languages and loss of our sacred tribal homelands. They wish that we would just shut up and stop crying about what was stolen and never given back.

I OFTEN REFLECT ABOUT THE SMALL 'BANDS' OF MY GRANDMOTHER'S Chiricahua People out in the desert eluding the U.S. Calvary dead set on exterminating each and everyone of them from the oldest to the youngest. When they finally cornered the beleaguered Geronimo, he came down from his mountain fortress out of concern for the young Apaches who he knew must carry on a *sacred legacy of seeking justice for the injustices committed on them and their families*. Geronimo also came down upon the "word" of the federal government that they would be sent away to Florida for a year or two then returned to a reservation carved out for them in their spiritual homeland in the desert American Southwest.

They said the locals full of hatred would kill them if they allowed Geronimo and the Chiricahua to remain in the homeland after they were captured in 1886.

OF COURSE, THE UNITED STATES LIED TO GERONIMO, all of the Chiricahua and other Apache Band members who turned themselves in to the U.S. Calvary in 1886. My Great-Grandfather, James Nicholas, was one of those young men who were crowded on filthy boxcars and shipped like animals to Florida where many died. Geronimo never went back to his spiritual homeland, dying at Ft. Sill, Oklahoma in 1909. My grandmother was released from formal federal "POW" status in 1913 and sent off to Indian school. As a boy, I listened to the stories of personal sacrifice and bravery of the Apache People passed down through my Grandmother and Mother. The long ago sacrifices and extreme bravery of the warriors and each and every tribal member in the face of the evil bent on murdering them is the reason why I am here with you now. The oppressor, the United States of America, and their cohorts thought they could stomp out of us our sacred mission of vindicating the rights of our ancestors so we would just shut up and go away. In his old age, Geronimo said that he would have fought to the death in the Sierras if he had known the government would lie to him.

IN EVERY CASE OF INJUSTICE THERE MUST BE ONE GLARING EXAMPLE of how deep the "wounds" have been inflicted on the "victims" of governmental abuse. In the *Felter* case, that

glaring example is found the "Ute Distribution Corporation Shareholders" list, dated July 15, 2003. What kind of caring human being would take solstice in knowing that their shares in the UDC were gained by an unconscionable and immoral taking of those shares from poor, weakened and uneducated mixed-blood Uintas while the Bureau of Indian Affairs watched this grave injustice happen? What kind of judicial system would allow itself to be used to justify the unconscionable and immoral taking of the UDC shares from those mixed-bloods who Congress said should be the only ones to benefit from those shares after their so-called "termination"? What kind of judicial system would allow attorneys to come before it and engage in fraudulent presentation of bogus testimony and evidence, and then turn these frauds into "truths" by a massive well-orchestrated "cover-up"? Sadly, the courts' "goof-ups" are now the law of the land and protected as "res judicata."

HOW DID SOME COMPANY CALLED "WAYNE HUMMER & COMPANY" come to own 100 UDC shares? How did "William T. Piper, Joint Venture" come to own 162 UDC shares? Who are "Deseret Holdings, LC and 1st Arrow Trust? How did they get their UDC shares? Who are the flesh and blood persons behind the numerous "trust" who own UDC shares? How did simple shares granting *only* cattle and sheep "grazing rights" turn into shares of immense value?

IN EVERY CASE OF INJUSTICE THERE IS ALSO a judicial system that was constructed around the American principle that the powerful should be able to keep what they took from the poor and weak, even if they did it illegally or immorally. These established judicial principles that protect the defendants in *Felter* are called "sovereign immunity", "statute of limitations", "res judicata", "collateral estoppel" and "failure to state a claim", among others. Your status as a plaintiff in *Felter* will be tested under legal and judicial principles that were never intended to give you much of an "edge" in suing the powerful United States who failed to protect the legal interest of the original 490 terminated mixed-blood Uintas. In this case, the powerful United States has employed all of these legal principles in its efforts to destroy your efforts to get justice and redress for the wrongs that have affected all of you, as plaintiffs in *Felter*, as a result of the defective execution of the Ute Partition Act. To say the least, we have a hard "uphill" struggle in our efforts to seek justice from the federal courts.

AT THIS STAGE IN THE FELTER CASE, the defendants filed, on November 26th, their "Reply" to our Motion in Opposition to the Defendants' Motion to Dismiss." The defendants' "Reply" simply rehashed their earlier arguments that all the causes of action should be dismissed because they have already been fully litigated on their merits or we have not proven that the United States has waived its sovereign immunity. I strongly considered the filing of a "surreply" on your behalf to address several arguments raised in the defendants' "Reply." However, upon extensive research and analysis of the "surreply" matter, I decided that it would not be helpful to our overall goal of overcoming the defendants' Motion to Dismiss to take such an approach.

AS FOR WHEN U.S. DISTRICT COURT JUDGE ROBERTS will decide whether to grant the defendants' motion to dismiss the *Felter* case, **I do not know**. We have asked for an opportunity to present oral argument in opposition to the Motion to Dismiss. However, the Judge has broad discretion in foregoing oral arguments and making his decision on the record before him.

THE SITUATION THAT YOU "INHERITED" AFTER MANY YEARS OF dispute over the execution of the Ute Partition Act has been complicated and made confusing because of the ability of the Department of the Interior, the Bureau of Indian Affairs and their influential and powerful cohorts to use "smoke and mirrors" and a great deal of fraud, deception and outright lies to obtain favorable court decisions that the Ute Partition Act was correctly implemented toward a group of mixed-blood Uintas who "voluntarily" sought termination.

Your mission of seeking justice in the federal courts is further frustrated due to the fact that these fraudulent and deceptive actions have miraculously turned themselves into truths that the defendants claim as their defense against your lawsuit. The defendants in *Felter* are

using the confusing parade of decisions and factual allegation in the numerous cases to its advantage. We see the case as simple. Whether Judge Roberts will let the defendants confuse him and buy into their arguments remains to be seen. The history of the litigation over the Ute Partition Act and other related legal issues unfortunately proves that the courts can be manipulated to make decisions based on bad facts or bogus legal arguments concocted by the federal attorneys and their non-federal cohorts. As I have previously challenged to all - Show me clear and convincing proof that the members of the Uinta Band voted in a legally-called tribal meeting to "voluntarily" terminate themselves from federal supervision. No one has met my challenge. That is how simple we see this case. Two very thoroughly researched books by Parker M. Nielsen and R. Warren Metcalf pierce through the lies and deception and throw light on a chapter of American history that the powerful who gained at your expense would rather forget.

WHEN I DECIDED TO REPRESENT EACH OF YOU and file the *Felter* action, I knew that we had a very difficult challenge that would implicate the financial interest of the rich and powerful who will take every opportunity to humiliate, degrade and seek sanctions from those of us who are "spear-heading" the legal attack on your behalf. They seek to instill fear in us that they hope will take sap our strength and divide us into separate smaller factions. The rich, powerful and influential who used hook and crook to gain ownership over your valuable land, water, minerals, UDC shares do not want the story told in a court of law of how they robbed the weak and poor Uintas of their legacy in their land and identity as Uintas.

WE MUST CONTINUE TO GET THE WORD OUT ABOUT HOW you and your Uinta ancestors were wronged by one of the most powerful nations in the world acting in conspiracy with non-Indians who now "own" your heritage and pass themselves off as representing your interest in the Ute Distribution Corporation.

I AM IN THERE FOR THE LONG HAUL WITH EACH OF YOU. In the event we are dismissed out of court by Judge Roberts, we will not give up but continue with even more fervor to keep the fight up and speak for our long gone ancestors whose spirits are right along our side in this battle.

ALL OF YOU ARE "WINGED MESSENGERS" OF TRUTH who seek to expose the corruption and massive failure of the United States government in regard to the Ute Partition Act. As the Christmas Holiday approaches, we all need to pray to the creator that justice will be achieved and that we will get stronger in the face of efforts by our enemies to destroy our mission of justice.

We speak the language of social justice and spiritual truth against liars. If we lose the whole world loses. We will not lose but teach the truth of the matter to our cowardly oppressors in the end.

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