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Mixed Blood's Direction

A Newsletter for The Plaintiffs of Felter-vs-Kempthorne



COUNSEL OF RECORD REPORT # 18

We are at a very special point in the Felter v. Kempthorne case where we must keep up our Solidarity, Spirits and Prayers that our very significant Federal Indian Law case will survive the latest efforts by the United States to get rid of it.

On November 2, 2007, the defendant United States filed its Reply to our Opposition to the Renewed Motion to Dismiss. After a review of the defendant's Reply, I remain very positive that District Court Judge Roberts will agree that Felter v. Kempthorne must remain before him and go forward on the merits. The question at this point in the case is whether P.L. 108-108 applies to the claims in the Amended Complaint. In order to keep the case in the best position to survive the latest motion to dismiss, we have argued that the claim for an accounting must remain before Judge Roberts for further proceedings.

Overall, the defendant United States has done its very best at using every trick in the trade to evade the fact that there has never been accounting given to the Felter plaintiffs on the status of trust funds that were allocated by an Indian Claims Commission judgment before 1954. The defendants repeatedly emphasized the passage of time from 1954 to 2007 without explaining where a sufficient accounting of those trust funds occurred. Another trick used by the defendant was to argue that all of the Felter plaintiffs' claims are intended to attack the termination of the Mixed Blood Uintas as implemented under the Ute Partition and Termination Act (UPA). Further, defendants drew an erroneous parallel between Ute judgment money and Cherokee tribal lands. I firmly believe that Judge Roberts will agree that the Felter case is exactly the kind of case that P.L. 108-108 was intended to cover.

One important point that must be understood by all Felter plaintiffs is that if we totally rely on arguments that the UPA was illegally executed and implemented then we are exposing a series of federal cases attacking the legality of the UPA that are not favorable to us in keeping at least the claim for an accounting alive. That is why our Opposition primarily focuses on the accounting cause of action.

It would be difficult for me to detail the weaknesses of each and every factual and legal issue argued by the defendants in this Report. The fact that Felter v. Kempthorne was sent back by the U.S. District Court of Appeals for further action to clarify the application of P.L. 108-108 to the case has given us a great opportunity to keep our efforts at focusing attention on the repeal of the UPA in public view and out in the open. We are ultimately attacking the faulty implementation of the UPA toward the Original 490 terminated Mixed Blood Uintas. However, our efforts at keeping the attack on the UPA involves a separate approach with the U.S. Congress and other prominent people to convince them that the repeal of the UPA will serve the ends of justice.

In support of this effort, I will be "walking the halls of Congress" from December 10 - 13 on your behalf to advocate with members of Congress and their staff that they must help us get a bill before Congress to wipe the UPA out of existence. I will be updating these members of Congress on the status of the Felter v. Kempthorne case and urging them to support legislation to repeal the UPA. All of you must continue your own efforts at writing your own personal letters to your U.S. Senators and Congressional Representatives to urge that they take an interest in your situation and support the repeal of the UPA.

At this point, I cannot predict when Judge Roberts will render his decision to grant or reject the defendants' latest motion to dismiss the case. I did ask for an opportunity to deliver oral argument to him to clarify many of the issues argued by us in our opposition brief in light of the arguments thrown at us by the defendants' in their legal briefs. Judge Roberts may feel that he can make his decision on the record and without oral argument.

We are approaching the end of 2007 and I am looking at the situation with a very

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Government's Renewal

“My analysis”

By: Earl Denver

I've been asked to write an analysis, which means “the process of breaking a concept down into more simple parts, so that its logical structure is displayed,” of the governments renewed motion to dismiss our case.

It's not possible, for me, to fully analyze the government's reasoning for wanting to have our claim dismiss simply because I'm not qualified to go through each paragraph of each brief. To do so would only add to everyone's confusions. So I would like to concentrate on just a few particular areas and endeavor to explain the meaning of some words used and why they are used.

Let's go back and start with a brief summary of the events leading up to where our case stands today. I'll begin with the opinion handed down by the Appeal's Court in Washington D.C. On January 19, 2007 the Court of Appeal's rendered a unanimous opinion that remanded our case back to Judge Roberts. Now what does this word remand mean? The word remand is a verb, and means, “to send back; A higher court may remand a case to a lower court so that the lower court will take a certain action order by the higher court.” The Appeal's Court opinion was “we remand to the district court to determine whether P.L. 108-108 applies to any of Felter's claims!”

P.L. 108-108 is an appropriations bill passed by Congress in late 2003. A section of this bill addresses the statute of limitation on Indian claims of mismanagement of Indian accounts. It states: *“[N]otwithstanding any other provision of law, the statute of limitations shall not commence to run on any claim, including any claim in litigation pending on the date of enactment of this Act, concerning the losses to or mismanagement of trust funds, until the affected tribe or individual Indian has been furnished with an accounting of such funds from which the beneficiary can determine whether there has been a loss.”*

In this bill, the word “notwithstanding” the first word used in this section of P.L. 108-108 is a preposition meaning “in spite of.” When used as an adverb it means “despite anything to the contrary.”

On August 31, 2007, the government filed, with the District Court of Washington D.C., a renewed motion to dismiss. On page 13 of their motion, the government states. “None of Plaintiffs' claims fit within the scope of P.L. 108-108, because the provisions setting aside the statute of limitations until an accounting is provided apply only to cases of trust fund mismanagement, not improper termination of federally recognized Indian status, asset mismanagement, or demands for an accounting.” The government is splitting hairs on this.

On September 27th, our Attorney, Dennis Chappabitty filed, on our behalf, an opposition to the motion to dismiss. In our brief, he states that, “On information and belief, defendants' failure to account for all plaintiffs' share of the allocated federal trust funds has resulted in unlawful benefit to defendants and other unintended persons and non-Indian business entities and resulted in an enormous loss of income to plaintiffs, their children and their heirs from funds held by the United States Treasury for their benefit as defined under the UPA.”

This is that portion of the share and Share Alike agreement of the Colorado Judgment handed down by the Court of Claims on July 13, 1950 that Senator Watkins held hostage and used as blackmail in forcing the Ute's into accepting the UPA. These funds were held in trust until they was released by the Indian Claims Commission in 1960, fully one year before the termination of federal supervision of the mixed-bloods' which was in 1961. Isn't it a miracle that the government can claim that money is not an asset and re-define word's when it fit's their purposes! I was taught that an asset is “all things, such as money, property, or goods, having economic value.”

On November 2nd after asking for an extension and receiving a seven-day extension, the government filed a reply to our response of September 27th. If you'll notice on page three of their brief, they make reference to the Cobell case by stating “in keep with this analysis of the Indian Trust Accounting provision the court found that the statute did not provide for the “revival of potentially long stale claims.” What they are doing is denying the word “notwithstanding” in P.L. 108-108 and quoting something said in 1993.

I've saved the best for last. Also on page three in the first paragraph line 7, they use the word “Moribund.” This word caught my eye right away. Moribund is a word which means “being on the point of death, its also a word used in Veterinary medicine meaning “in a dying state.” I find their use of this word to be in bad taste and offensive. To me this implies that our case, along with the terminated mixed-bloods, and their descendents are nothing more then dying dogs, which confirms the fact that these bureaucratic lawyers are nothing more then pompous arrogance mouthpieces of the current administration and administration of the past and their attitudes towards the American Indian!

In conclusion, I encourage you to stay strong! We've come to far to give up now just because some big words are wrangled about!



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positive attitude. We have done our very best and let's all take time out to pray to the Great Spirit that Justice will Prevail and we can proceed to litigate the Felter case on its merits.

Dennis G. Chappabitty
Counsel of Record

Our Heart's and prayers goes out to Idessa Hackford Reber and her Family who resently lost Husband and Father, John Reber.

Prayer Gathering

Were You There?

By: Oranna B. Felter, Lead Plaintiff.

Early this summer, Dennis Chappabitty, our Attorney, requested, that we hold a gathering to pray for a positive ruling to our case and for our people. On August 4th of this year, an all day prayer gathering was held at Sonny Denver's place on Whiterocks Road in Utah for the members of Felter v. Kempthorne.

I contacted Sonny about the possibility of holding the gathering at his residence. His place has a large enough lawn with plenty of trees to accommodate a large gathering and erect a sweat lodge. With His okay we started gathering the necessary materials to build a lodge. Beginning in early July with most of the material on hand, Sonny started erecting the Sweat Lodge in order to have it ready by August 4th.

J.R. Reed and Bennie Earl Lebeau, aka "Blue Thunder," two Spiritual Leaders were contacted and invited to come and conduct the Sweat Ceremony and be with the people. Both agreed, and were able to attend despite having full schedules.

Notices were printed and sent out to all of the case members well in advance plus it was posted on the website, and one week prior to the prayer gathering a notice was put in the local paper.

The day before the event took place, Canopies, tables went up, chairs set out and finishing touches were made to the Sweat Lodge. Traditional foods were prepared, consisting of boiled meat, berries, fresh fruits and vegetables, for those in attendants to eat at the conclusion of the Sweat Lodge Ceremony. As you know August is one of the hottest months of the year. When we arrived at Sonny's home on the day of the prayer gathering, I could tell it was going to be a scorcher.

I was glad to see Earl Denver, our Website designer, developer and the publisher of our Newsletter had traveled from California to attend and participate in the Sweat. Bernard Lucero was unable to attend but his wife Genevieve was able to be there. Also in attendance while the Sweat Ceremony was in progress was Clara Whitehead and her daughter Arlissa, Roberta Denver who brought her two Granddaughters, Janice (Nielson) Bailey and her Son, Nola Zuniga, her Daughter and Granddaughter. Cal Hackford, his Wife Louise, their daughter Lavae and my family arrived as the Sweat was ending and took part in the afternoon and evening activities.

I was very impressed with Janice's Son who attended a sweat for the first time. He didn't sweat but was willing to be the doorman, help with the water and those inside the lodge when called upon and for those who needed help on the outside. He is a descendent and as I watched him performing these duties, I thought to myself this is where and how we learn, and if only one was here to learn it was a blessing, his Grandmother Naturitch Kolb Nielson would have been so very proud to watch her grandson as I know she had watched when she was a young woman, with her Mother and Grandma Rose Daniels.

The Sweat went really good, everyone was given a blessing at the lodge door by J.R. and Ben. After the Sweat Lodge ceremony had ended, everyone gathered together to hear J.R. and Ben talk about traditional Native beliefs and how we must stick together and pray as often as we can for our lawsuit, to have forgiveness in our hearts and spirits and to pray for all relations everywhere.

Ben, aka Blue Thunder prayed and blessed the food in traditional Native American way.

With the meal finished and evening fast approaching, and with everyone gathered in a circle, the drum was brought out and placed in the center of everyone gathered around and the prayer service was started. Many prayer songs were sung, not just by the singers at the drum but also by everyone.

As darkness fell over the gathering, after a long day, Sweating, praying, good food and singing and despite the heat, everyone started getting ready for his or her journey home renewed with hope. The entire day ended on an upbeat note, a very good day, and one that will be long remembered and not soon forgotten. A spiritual day!

As the cleaning up was taking place, a comment was made that out of all the members on our case we were lucky if there were thirty who chose to attend this important gathering. Everyone who had a part in putting this together had poured out their hearts and souls into making this gathering a place where our people could come, sweat, eat traditional food, be blessed, fellowship with one another and most important for those who haven't been brought up in the Native American tradition a place where they could start learning the meaning of what it means to be an American Indian.

There is so much for you to gain! Take the opportunity to come to future prayer gatherings and pray for our attorney who is fighting for our futures, he fights for our ancestors, he fights for our loved ones who have passed on, he fights for the terminated 490 and their descendents.

It has been a long five years... but we have all stuck together, more than any other time ever, and I believe this is why the opposition is scratching their heads in disbelief. I once again ask you to come, in force, to the meetings and special events with a good feeling and spirit, with pride in your heart. Be proud of "who you are..." teach you children that Native American people never give up or never give in. When injustices have been committed against them such as what happened to the mixed blood Uinta people. Don't sit home or go to a movie or the UBIC when you know in your heart that you should be at a meeting with the rest of your people. Think of what your mother, father, uncle, aunt, brother, sister that have already taken the journey would want you to do. If they were here would they be at the meeting? Would they be hoping you and I would be there to represent them, to pray for them and with them?

Remember, your mothers, grandmothers, sisters, brothers, aunts and uncles, grandparents are counting on you to stand tall and stand together against the opposition and this has to start with making a commitment to be at the "meetings"!

Through these prayer meetings and gatherings we come together in a show of force. We will let our loved ones who have passed on know that we have not forgotten them, that through us, they will live and they will one day soon "rest in peace." Please keep the "fires burning on our journey to justice."



Pray List

A list of individuals in need of our prayers.

Please say a prayer for, or send a card to the following individual's who are suffering and need to know that they are not forgotten!

Richard H. Curry Sr. (Original), Injuries from a car accident
519 E. 700 N. Roosevelt, UT 84066.

Louise Hackford, Wife of Cal Hackford, Recovering from Cancer treatment,

HC 67 P.O. Box 250 Whiterocks, UT 84085.

Chance Peterson, Grandson of Oranna B. Felter, Kidney Stones,
P.O. Box 1901 Roosevelt, UT 84066.

Robyn Elise Bumgarner, Daughter of Craig Bumgarner, recovering from surgery,

1801 Dalton, Tulare, CA 93274.

Kyle Edrington, Grandson of Elmer Hackford, having tests to find out his illness,

725 S. 100 E. Roosevelt, UT 84066.

Sonja N. Anderson, not feeling well,

HCC 66 Box 9, Neola, UT 84053.

Mike Hackford, is really sick illness unknown,

C/O Cliff Hackford, 269 N. 100 E. Roosevelt, UT 84066.

Juanita Lucero LaRose, Asthma,

2375 W. 1000 N. Vernal, UT 84078.

Bernard Lucero, (Original), Recovering from Surgery,

P.O. Box 319, Neola, UT 84053.

Last but not least, Please take time out of your busy day to stop in and visit,

Naturitch K. Nielsen, (Original) Matriarchy of our case.

822 Lagoon, Unit 56-15, Roosevelt, UT 84066.



The Mixed Blood's Direction

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Send comments to the Mixed Bloods Direction at the address below or e-mailing edenver@bak.rr.com and they will be forward to the Attorney for review. We're looking forward to hearing from you...

The Mixed Bloods Direction
27913 Taft Hwy
Taft, CA 93268

Editorial

The Reber Case

Some of you may not be aware of the Hunting and Fishing Case involving Rickie L. Reber, who is a plaintiff in our case, "Felter v. Kempthorne.

The Nations highest Court, the U.S. Supreme Court in August "denied Rickies petition" to have his case heard after the Utah Supreme Court reinstated his 2004 conviction for poaching a deer with his Son in Uintah County. Mike Humiston, Rickie's attorney stated "Its not a judgement on the merits (of the case,) they simply have too many cases!

The Utah Supreme Court overturned a decision by the Utah Court of Appeals and reinstated Rickies conviction and reaffirming the agreement between the State and the Ute Tribe. In this agreement the Ute Tribe handed over all authority and jurisdiction over the original boundaries of the Reservation known as the exterior, to the State of Utah.

What this case was not about was poaching, in my opinion, but about jurisdiction, in a decision rendered by the U.S. District Court and treaty rights. Rickie Reber and his attorney, Mike Humiston should be applauded for the stand they took even though the outcome was not in Rickies favor.

The results of the actions taken by the Ute Tribe only shows the contempt the tribe has for the terminated mixed-blood's. Last year the Ute tribe gave Kermit Hackford, Rickies Uncle and a terminated Uinta, a ticket for hunting Elk. They not only ticketed Kermit but took his Elk, Gun and here's the kicker, his lawfully issued tribal hunting permit. Its our understanding that this case is one that Rickies attorney, Mike Humiston is really going to be focusing hard on. It's going to be interesting.

We, as Mixed-blood Uinta need to support and defend each other in case's such as this. One thing we need is a vision. Without a vision there can be no future and one vision is to support Felter v. Kempthorne not just morally but financially. As long as the Ute Partition Act is law it will always be a millstone and albatross hanging from the neck's of all of us!



Native American 10 Commandments

The Earth is our Mother, care for her.

Honor all your relations.

Open your heart and soul to the Great Spirit.

All life is sacred; treat all beings with respect.

Take from the Earth what is needed and nothing more.

Do what needs to be done for the good of all.

Give constant thanks to the Great Spirit for each new day.

Speak the truth; but only of good in others.

Follow the rhythms of nature; rise and retire with the sun.

Enjoy life's journey, but leave no tracks.