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U.S. Court of Appeals for the District of Columbia Circuit Orders Oral Argument in *Felter v. Kempthorne*

Sacramento, California, October 29, 2006 - By Order, dated October 23, 2006, the U.S. Court of Appeals for the District of Columbia Circuit ordered "on its own" oral argument in the *Felter v. Kempthorne* appeal on Monday, December 11, 2006 at 9:30 AM before Circuit Judges Tatel and Kavanaugh and Senior Judge Williams.

As part of a "*Journey for Justice*", a lawsuit was filed against the U.S. Department of the Interior in the U.S. District Court, District of Columbia on November 4, 2002. The plaintiffs in this federal civil action included both originally terminated "Mixed Blood" members of the Uinta Band of Utes in Utah and their descendants. They sought the return of their original status as federally-recognized Indians before the enactment of the "Ute Partition and Termination Act" (UPA) in August 1954. Key to their argument was that the Bureau of Indian Affairs (BIA) had incorrectly implemented the UPA and, thus, the Court must declare the racially-based law as "null and void."

On January 27, 2006, Judge Roberts dismissed *Felter* finding that the case was not filed within the applicable six year period found in 28 U.S.C. § 2401(a).

Oranna Felter, the lead plaintiff in this action, cited that the UPA is the only remaining law on the books "legalizing" an inherently "genocidal" Act of the U.S. Congress. Felter further noted that when she was terminated in 1954 she was a minor and left unprotected by the BIA from the documented actions of numerous unscrupulous characters bent on fleecing her and the other 489 terminated Uintas out of their land, water and minerals.

The most glaring example of the utter failure of the UPA is that the "Ute

Distribution Corporation" (UDC), an entity created under the UPA to manage the affairs of the terminated Uinta, largely consist of non-Indian individuals and large corporations. A list of shareholders in the UDC dated July 15, 2003 includes the "Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints Real Estate Division" (5 shares), "Wayne Hummer & Company" (100 shares), Chicago, IL, Zions First National Bank (7 shares), Salt Lake City, UT and the "William T. Piper Joint Venture" (162 shares), State College, PA.

Dennis G. Chappabitty, Esq., counsel of record in the appeal, stated that Judge Roberts' order dismissing *Felter* turned on the faulty premise that the years of 1954 and 1961, when a list of terminated Mixed-Bloods was published in the Federal Register, started the clock ticking under 28 U.S.C. § 2401(a). Chappabitty added that the UPA was not implemented within the intent of Congress from the beginning: "This genocidal act of our own U.S. Congress against its own Indigenous People, the Mixed-Bloods of the Uinta Band, is, by all standards, the most complicated and multi-layered and misunderstood law of all times." He noted that the fact that the majority of the UDC shareholders are now non-Indians emphatically proves that the UPA was mismanaged from 1954 until 2006: "It is within the tortured and confused history of this evil law as alleged in the *Felter* complaint that Judge Roberts got lost and agreed with the defendant United States that either 1954 or 1961 began the time for the six year statute of limitations to toll."

Chappabitty argued on appeal that a law, P.L. 108-108, enacted by Congress on November 10, 2003 as a consequence of the *Cobell* trust accounting litigation must apply to *Felter* and its cause of action for an accounting to require remand to the lower court and further discovery: "No accounting has been made to Appellants of their pre-existing non-UPA property and the money that were maintained and managed by the BIA." P.L. 108-108 has provisions within it exempting any claim from the statute of limitations, *including any claim in litigation pending on the date of the 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."

One major issue raised in the *Felter* complaint was that the BIA's failure

to properly implement the UPA led to commingling and conversion of extremely valuable property rights and monies owing to the plaintiffs *acquired and vested to their ownership prior to the enactment of the UPA*. Chappabitty expressed his dismay that Judge Roberts January 2006 order could be read as "your 'Indian' status was terminated in 1954 or at the latest 1961 so the defendant United States owes no duty to account for any alleged illegal commingling of funds or property you claim to have acquired before the UPA was enacted."

In Chappabitty's opinion, the fact that the Court of Appeals scheduled oral argument on the *Felter* appeal "on its own motion" indicates that the three-judge appellate panel wants to clarify the record before rendering its decision to affirm or reject Roberts' decision: "I did not stress the need for oral arguments in my briefs which tells me that the Judges see some substantial basis to reverse the January 2006 order dismissing *Felter*."

Oranna Felter has repeatedly stressed to the public that the UPA was enacted by Congress to terminate the entire Ute Indian Tribe and not only the "Mixed-Blood" members of the Uinta Band: "If ever there was a law based on race remaining on the books that allowed me and hundreds of other innocent Indians to continue to be victimized by a federal policy that has been rejected long ago, the UPA is it." She noted that the Ute Indian Tribe of the Uinta Ouray Indian Reservation in eastern Utah should be rightly concerned because the UPA remains law: "Our position is that either the UPA must be repealed for all times or it must be applied to the remaining Bands of the Ute Indian Tribe and they must be terminated."

To the disappointment of the *Felter* plaintiffs, their effort at seeking a resolution from the National Congress of American Indians at its 63rd Annual Conference held in Sacramento, CA was stopped by the Ute Tribe who opposed their effort secure support from this organization to endorse the repeal of the UPA: "I was totally appalled that an Indian Tribe would support the continuation of a patently genocidal law that should be stamped out like the 'Jim Crow' laws' that allowed for racially-based discrimination in this United States." Calvin Hackford, also a lead plaintiff in *Felter*, explained that the Ute Indian Tribe's opposition must be understood in terms of its own acquisition of the Mixed-blood's land though numerous unethical and immoral maneuvers that allowed it to evade the UPA's mandated termination: "When you see the truth through

all the 'smoke and mirrors' thrown up for over a half a century by the BIA and the Ute Tribe, you can see why no one wants to see Utah's own deep dark secret brought out in the light of day - many powerful and rich companies and individuals have reaped massive financial benefits over many years from the pain, agony and mental torture we were all forced to endure." Chappabitty, a member of the Comanche Nation of Oklahoma, added that this is a "Spiritual Battle" for fundamental justice that will go on until the *Felter* case is won or Congress repeal the UPA: "We can only guess who might be behind some of entities named on the UDC shareholder's list since that organization's operations are shrouded in secrecy."

Chappabitty believes that the continuing saga of his client's *Journey for Justice* is one of encompassing many significant international human rights issues: "My clients have been fighting out there in the high plains of Utah against all odds for 52 years, a fact that is a reflection of the human spirit to overcome a grave injustice that ripped their Indian identities from them and handed it over to non-Indians for their use and benefit - how inhumane can a situation get?"

Chappabitty wryly commented that federal law grants more humane protections to cows, horses, fish and illegal aliens than that ever accorded to his clients, many who died in poverty and from illnesses because of the injustice that they were forced to endure for years: "One of my clients, Alvin Denver, Sr., proudly fought in WWII to protect the freedoms we all enjoy as U.S. Citizens only to come home and find that Congress would soon strip him of his "Uinta" Ute Indian identity in 1954 - they objected and objected to this injustice and no one listened." Alvin "Sonny" Denver died after he joined the *Felter* case as one of the original terminated "490" Uintas.

For the complete story and to view the legal pleadings and the July 2003 UDC shareholder's list, you are urged to go to: www.undeclaredutes.net