

Chief's Address To The Nation

From Page 1

the course of representing a client, a lawyer shall not communicate or *cause another to communicate about the subject of the representation* with a person known to be represented by another lawyer in the matter, unless the lawyer has the prior consent of the lawyer representing such other person or is authorized by law or a court order to do so.”

“Listing the names and addresses of four class members and alleging they are the reason no one is getting paid is hardball, pure and simple,” says Matthew L.M. Fletcher, director of the Michigan State University Indigenous Law Center, who is not involved in the case. “I can imagine the writers of the letter believe that many members of the class will send letters to the four individuals they allege are holding this up. I also imagine that some of those letters will be pretty hostile, maybe even threatening. And class counsel probably knows that, too.” Even if the letter isn’t unethical, it is, at best, extremely problematic. Ted Frank, a lawyer for one of the appellants, Kimberly Craven, a Sisseton-Wahpeton Oyate citizen, fears it could lead to harassment of his client, adding, “We do not believe that the suggestion for class members to contact appellants is appropriate or productive.”

Frank says he expressed concern to class counsel about the letter when he learned of it, and they agreed to stop disseminating it, and asked websites that had posted the letter to remove it. Mary Lee Johns, one of the appellants who had their contact information listed, has characterized the letter as, “a typical ploy for people who are desperate for money.” Johns, a Cheyenne River Sioux citizen, told the *Lincoln Star Journal*, “I think it’s silly on their part.” When asked to explain her legal challenge, she declined to cite specifics, but told the paper she disagreed with a major component of the settlement agreement—giving the federal government money to buy back former tribal land.

Johns was referring to the \$1.9 billion Interior Department land-consolidation component of the settlement. Interior officials say the funds will be used to conduct, “voluntary buy-back and consolidation of fractionated land interests,” and say the plan should, “provide individual American Indians with an opportunity to obtain cash payments for divided land interests and free up the land for the benefit of tribal communities.” But Johns and others are expressing concerns over Interior’s ability to actually buy back enough land to really accomplish this goal. Plus, no one can be sure that the land Interior consolidates will actually end up going to tribes, rather than being held in perpetuity by the federal government.

The letter, still accessible via online caches as of press time, reads in part, “...because of the appeals, your Historical Accounting Class and Trust Administration Class payments cannot be made until after the appeals have been resolved, provided that we prevail on appeal. No one knows when that will occur.” It goes on to list the contact

information of all four appellants, inviting class members to reach out to them for an explanation. The letter adds: “Notwithstanding your frustration and difficulties, if you choose to contact any of the 4 appellants, please be civil in your communications.” The lead lawyer for the class counsel is Dennis Gingold, who is in private practice. Keith Harper, a Cherokee lawyer with Kilpatrick Townsend & Stockton, is among the many other attorneys involved in the case. Neither Gingold nor Harper responded to *ICTMN’s* request for an interview regarding the letter. Harper spent significant time last summer traveling through Indian country with lead plaintiff Elouise Cobell, attempting to explain why they believed the settlement is fair.

In the letter, the lawyers posit why the four filed their appeals: “At bottom, each believes that you are not entitled to the relief (nor the payment of your trust funds) that has been provided in the settlement agreement notwithstanding a century of abuse, malfeasance and breaches of trust by the United States government. Each of the appealing class members has filed papers that will kill the settlement if any one of them prevails on appeal. This means that you would receive nothing from the settlement: no payment, no scholarship funds, no land consolidation, and no further trust reform.”

Frank says that theory is wrong, pointing out that his appellant has always filed her appeals documents ahead of deadline, and that she has wanted the settlement to be the most lucrative it can be for Indians. The motives of the four individuals who have appealed are listed in court documents, publicly available to members of the class, although the *Cobell* lawyers have not always posted the complete appeals record on their website, which is supposed to be a vehicle for clarifying the case for class members.

The *Cobell* lawyers did not mention in their letter that if an appeal were to cause the settlement to be vacated, there could still be federal trust reform, and further settlements. Those things, however, would no doubt take years to be resolved. Nor did the lawyers in their letter mention *their* motive for objecting to the appeal. They will be paid over \$100 million if the settlement clears. Most individual class members will receive less than \$2,000.

Frank also points out that the appeals are not the only issue holding up payment to the class, as no trust administration payments can be made until the district court resolves lead plaintiff Elouise Cobell’s motion to reconsider the district court’s original denial of \$10.5 million of her request for payment of \$12.5 million from the settlement fund.

“Whether one agrees or disagrees with the merits of the appeals, there really can be no dispute about the importance of respecting the right of those pursuing the appeals to be heard and to have their claims reviewed,” says Eric Eberhard, Distinguished Indian Law Practitioner in Residence at the Law School at Seattle University. “Simple fair-

ness requires no less.”

Eberhard says there is no doubt that delays in implementing the settlement at any point can lead to hardship for the intended beneficiaries of the settlement, but he strongly believes that it is fundamental to the system of justice that everyone has a right to appeal at this stage of the proceedings. “The Court of Appeals will sort out the merits of the claims made in those appeals,” he says. “Given the long history of the *Cobell* litigation and the numerous appeals that have been filed by all parties over the years, my personal hope is that all of the parties would respect the rights of each to be heard in court. That right was the unspoken premise of the claim filed in the federal district court back in 1995 by the original plaintiffs. They expected the right to be heard and to have their claim reviewed to be respected by the courts and the United States.”

The hard fact is, even if just one of the appeals is successful, the whole trust litigation will be back to square one—the government will not have been required to do an accounting of their mismanagement, and *no* money would be on the table. Fletcher notes, too, that if one of the appeals wins, then the *Cobell* lawyers may decide to appeal to the U.S. Supreme Court for review. The justices there – rarely kind to Indian interests – could end up seriously damaging the trust relationship between tribes and the federal government. “Imagine the court’s *Jicarilla* decision, but on steroids,” Eberhard says.

Still, the appellants – like every other American citizen – have the right to appeal. In this case, they claim that they are not simply trying to void the settlement for the sake of being antagonistic. Rather, their motives are to get a better deal for Indians, and to strengthen the ability of class members to get a full accounting of what the government has mismanaged. For now, their cases await action in the U.S. Court of Appeals for the D.C. Circuit. The settlement was announced in December 2009, after being hammered out behind

closed doors by members of the Obama administration and *Cobell* lawyers and lead plaintiffs. Read more:

Craven Appeal of Cobell Moves Forward Short Takes

*I am pleased to announce that the new swimming pool parking lot construction, with C-3 Construction of Ada, OK, commenced the week of February 20th and is scheduled to be completed before the Memorial Day weekend.

*Groundbreaking for the new Culture Center took place on March 5.

*NATIVE VOTE!... In recent years the Native Vote has been publicly credited for making a tangible difference in elections - from local positions to presidential campaigns; please register to vote and exercise that right this election year!

*I was recently elected to serve another term as Vice-Chairman/Secretary of the Self Governance Communication Education Tribal Consortium (SGCETC), Bellingham, WA.

*I welcome the following new employees to the Sac & Fox Nation government: Joshua Gibson / Compliance Officer - Shawnee Casino; Mosiah Bluecloud / Language Instructor #1 - Sauk Language; Randy Osborn / Resident Advisor #4 - Juvenile Detention Center; Katheryn Grant / Language Instructor #2 - Sauk Language; Joshua Colegrove / Resident Advisor #17 - Juvenile Detention Center; Georgia Blanchard / Enrollment Assistant - Enrollment; Sandra Ring / Resident Advisor #5 - Juvenile Detention Center; Quinton Ellis / Custodian II - Shawnee Multi-Purpose Center; and Jay VanZant / Controller - Finance.

*The new Grievance Committee members are: Sandra Massey, LaVonda Abney, and Randle Carter.

I thank you once again for allowing me to lead our Nation as Chief and continue to ask for your prayers for the Business Committee as well as myself.

Sincerely,
George Thurman,
Principal Chief

AIRC Features Massey On Poster From Page 1

Nina Fox, Sadie Fox, and Abbey Runnels; Osage - Mary Bighorse; Ponca - Curtis Lieb; Cherokee - Matt Roberts; Pawnee - William Pratt, Jr.; Euchee - Euchee Language Project; Choctaw - John Blue; Kiowa - Tim Aunko; and Shawnee - Ruthe Blalock Jones, Maggie Boyett, and Lilly Jones.

All posters include the AIRC turtle logo created by Visual Communications Manager Judy Webb, who also designs the posters based on the features provided by Runnels. Jackie Hill, Publications Coordinator, gives final approval on behalf of the department, and Runnels gives final approval before distribution.

“They’re really popular,” Runnels said, “and interest grows every year. We get requests for them from all over the nation.”

The posters are available to the public free of charge at the Tulsa Library. The new posters made their debut at the Central Library’s March 3rd Circle of Honor Award presentation to Kirke Kickingbird, Kiowa tribal member. In honor of the honoree’s tribal lineage the AIRC also made available the Kiowa READ poster.

A high resolution PDF version of the poster can be obtained via email by contacting Teresa Runnels at trunnel@tulsalibrary.org.

Massey Honored By Being A Representative

“It shocked me!” said Henrietta Massey about appearing on the AIRC poster. “It’s an honor to be a representative.”

Massey supports the endeavors of the AIRC, especially in the area of language preservation. The Sauk Language Department, Euchee Language program, and AIRC created the Native Language Supplemental Packet that received the Oklahoma Humanities 2011 “Humanities in Education” Award.

“It’s always been a dream of mine for our Sauk language to be preserved in written form for our future generations,” she said.

She appreciates the work of Teresa Runnels on behalf of all tribes, especially since she is also a tribal member through her mother, the late Billie Washington. Her father is Wiley Washington, Muscogee (Creek) Nation.

“I’m really proud of that Sac and Fox girl,” Massey said.

Massey is a full blood who was selected as Senior Woman of the Year in 2004. She has served the tribe in various committees, including Repatriation, Language Working Group, Gaming Committee/Commission, Business Committee, Grievance, Law and Order, Budget, Election, Constitutional Revision, Amendment, Activity, Pow Wow, and Youth group coordinator.

She is currently one of the language preservationists for the Sauk Language Department, the secretary for the Repatriation Committee, and chairman of the Gaming Commission.

She is the daughter of Henry Scott, who served the tribe for 16 years in office as Second Chief and Committeeman as well as a traditional and Native American Church leader, and Mamie Butler Scott, an

honored War Mother and Senior Woman of the Year in 1983.

She had three brothers: Thomas and Leslie, who both served in the Army (Leslie died in service), and Francis “Chibe” Scott, who also served as an original member of the Repatriation Committee and Language Working Group and who was the Wolf Clan Chief.

She married Ray Massey, Choctaw Nation, and is the mother of Raymond Massey, Pharmacy Technician at the Black Hawk Health Center who is also Chairman of the Employee Committee and Wolf Clan Chief, and Sandra Massey, Historic Preservation Officer and current Grievance Committee member.

**Benefit
Hand Games
&
Box Supper**



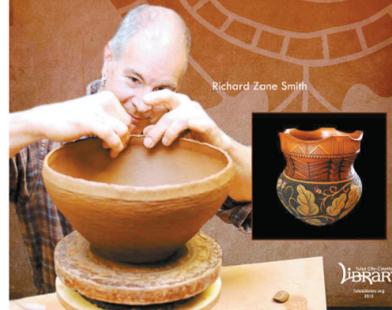
**April 1st
3pm - ????????**

Community Building
MC • RG Harris, - Apache, Oklahoma
Head Singer • Herb Adson - Pawnee, Oklahoma

**sponsored by
PowWow Committee**

read

Eahsëhami's
(WYANDOTTE)



Richard Zane Smith

LIBRARY

