1951. Senator Gurney asked if that was all the Bureau needed.

The Commissioner returned with a request five times the size of the existing appropriation. A major portion of the request was to fund programs currently supported by the tribes. By this time tribes were spending $300,000 a year on law enforcement. The request asked for a total of 48 Special Officers -- eight in Area Offices and 40 assigned to reservations. At that time only the Billings, Phoenix, Portland and Minneapolis Areas had Special Officers assigned to them. Another five Special Officers would work in Navajo border towns. There would be 45 more Indian judges in addition to the existing 12. The requests would provide for 123 more police, 53 court clerks, 34 jailers and 37 other jail personnel such as, janitors and cooks. Congress granted an 80 percent increase over the previous year's amount.[127]

With the partial restoration of the funding, Mr. William Benge, a reservation Superintendent in New York, was named Chief Special Officer with Washington, D.C. as his headquarters. A few months later he was named Chief of the Branch of Law and Order with responsibility for all aspects of the BIA's criminal justice activitites. Previously, matters concerning the Indian police and the judges were handled by other branches. The Branch of Education had the assignment in the early part of the century, the responsibility was later moved to the Branch of Welfare.

In 1953, the Indian termination drive manifested itself in substantive legislation. Public law 83-277 limited the Indian liquor laws to Indian country. Before, it had been illegal to sell liquor to Indians anywhere in the United States. Within the reservations, local options were made available where state laws would permit.

During the period 1953-1970, a large number of Indian tribes and similar groups, through Congressional enactments, had their Federal trust relationships terminated. These actions subjected such tribal members and their reserations to State criminal and civil jurisdiction, if by some other Congressional enactment, they had not been previously made subject to such jurisdiction. The following Indian tirbes or similar groups terminated are as follows:

Name	Authorizing Statute	Effective Date
Alabama and Coushatta Tribes of Texas	68 Stat. 768	7-1-1955
Catawba Indians of South Carolina	73 Stat. 592	7-1-1962
Klamath and Modoc Tribes and the Yahooskin Band of Snake Indians (Oregon)	67 Stat. 718	8-13-1961
Mixed-blood Ute Indians of the Uintah and Ouray Reservation (Utah)	68 Stat. 724	8-27-1961
Ottawa Tribe of Oklahoma	70 Stat. 963	8-3-1959
Peoria Tribe of Oklahoma	70 Stat. 936	8-3-1959
Paiute Indians of Utah (Indian Peaks Band, Kanosh Band, Koosharem Band and the Shivwitz Band of Paiute Indians	68 Stat. 1099	3-1-1957
Ponca Indian Tribe of Nebraska	76 Stat. 429	10-27-1966
Tribes and Bands of Oregon including the following tribes, bands, groups or communities of Indians: Confederated Tribes of the Grande Ronde Community, Confederated Tribes of Siletz Indians, Alsea, Applegate Creek, Calapooya, Chaftan, Chempho, Chetco, Chetlessington, Chinook, Ckackamas, Clatskanie, Clatsop, Clowwewalla, Coos, Cow Creek, Euchees, Galic Creek, Grave, Joshua, Karok, Kathlamet, Kusotony, Kwatami or Sixes, Lakmiut, Long Tom Creek, Lower Coquille, Lower Umpqua, Maddy, Mackanotin, Mary's River, Multnomah, Munsel Cree, Naltunnetunne, Nehalem, Nestucca, Northern Mollalla, Port Oxford, Pudding River, Santiam, Scoton, Shasta, Shasta Costa, Siletz, Siuslaw, Skiloot, Southern Molalla, Takelma, Tillamook Tolowa, Tualatin, Tututui, Upper Coquille, Upper Umpqua, Willametta Tumwater, Yambill, Yaquina and Yoncalla	68 Stat. 724	8-13-1953

California Individual Rancheria Acts:

Name	Authorizing Statute	Effective Date
Coyote Valley	71 Stat. 283	1957
Laguna	61 Stat. 731	1958
Lower Lake	70 Stat. 58	1956

California Rancheria Act as Amended via 72 Stat. 691 & 76 Stat. 390

Name	Effective Date
Alexander Valley (Wappo)	8-1-1961
Auburn	12-30-1965
Big Valley (Pinoleville)	11-11-1965
Blue Lake	9-22-1966

The Uintah Basi

80th Year * No. 22 Tuesday, June 1, 1993

Mixed-blood Utes meet to become sovereign nation

By Mike Ross

Local Mixed-blood Utes have united together to organize what they call the Aboriginal Ute Nation (AUN), for purposes of gaining their "own self-determined rights."

According to Kevin Reed, appointed spokesman for AUN and Indian activist, the newly-formed tribe can legally form their own nation through international law. "It's very realistic for us to assume the responsibilities of full political jurisdiction."

The movement comes after years of mixed-blood members being denied of what Reed calls "self-determined rights," or basic civil rights, including the termination of mixed-bloods from the Ute Tribe.

"The U.S. is practicing genocide!" said Reed. "They are neglecting these people from recognition as human beings, and we believe the U.S. is in violation of many laws against us." Reed claims the Reagan and Bush administrations have ignored the rights of mixed-bloods but did seem optimistic, however, to President Clinton's campaign promises of supporting Indian self-determination.

Presently, the AUN is in the organizing stages: a new constitution detailing requirements for citizenship and guaranteed rights has been drawn up; interim council members Colleen Gardner, Ed Gardner, and Stewart Reed, are in place until a July 3 election; and a petition from the AUN describing the wrongs and injustices against mixed-bloods has been sent to President Clinton.

Reed says that if President Clinton does not respond, then an official complaint will be issued to the United Nations describing the basic wrongs practiced by the United States against the mixed-bloods in hopes of gaining national support for their efforts.

"We are doing this for our children, and our children's children," said Reed. "They deserve to have their civil rights upheld."

Reed seemed confident in the AUN's fight for rights. "We would challenge the state of Utah or the United States to go through arbitration with us concerning any of these issues. This is the only way to get a fair and unbiased opinion. These people are a grass-roots people trying to realize their right to self-determination."

A meeting discussing AUN issues was held May 29 at the home of Darrell Gardner, and more meetings and workshops are planned for the future to help interested individuals learn more about their basic civil rights. Colleen Gardner or Kevin Reed can be contacted at 353-4116 for more detailed information.

Lambs of Sacrifice: Termination, the Mixed-blood Utes, and the Problem of Indian Identity

BY R. WARREN METCALF

In 1954 the Bureau of Indian Affairs attempted to implement policies that would halt federal supervision and trust responsibilities over several tribes of American Indians. These new policies, collectively known by the rather ominous sounding name "termination," followed the will of Congress as expressed in House Concurrent Resolution 108. Passed in the preceding year, this document succinctly stated the determination of Congress to make Indians subject to the same laws and privileges as other U.S. citizens and to "end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship." The resolution further declared that all of this was to be accomplished "as rapidly as possible."[1]

In due course, more than a hundred tribal groups would be subjected to the termination process. The question of how the mixed-blood Utes of the Uintah and Ouray Reservation of Utah came to be terminated is the subject of this study. These people were members, for the most part, of the Uintah band of the Ute Tribe. Their story is little known for several reasons—not the least being that scholars of American Indian history have not considered them sufficiently "Indian" to merit study. In this regard they are like other mixed-blood peoples who have been neglected simply because they do not fall within traditional areas of inquiry. As Jennifer S. H. Brown recently pointed out, Anglo-American thought contains a deeply embedded "kind of racial dualism," which carries over into scholarly dichotomies of "Indian" and "white."[2]

The mixed-blood Ute story has also been neglected because it does not precisely fit the pattern in which Indians serve as the victims of the dominant culture, although it is true that Utah Senator

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1. House Concurrent Resolution 108, *U.S. Statutes at Large*, vol. 67, 1953.
2. Jennifer S. H. Brown, "Metis, Halfbreeds, and Other Real People: Challenging Cultures and Categories," *The History Teacher* 27 (November 1993): 21–2.

U.S. Senator Arthur V. Watkins, July 1952. Salt Lake Tribune *photograph in USHS collections.*

Arthur V. Watkins, one of the leading congressional proponents of termination, deserves the disproportionate responsibility for what happened to these people. However, it also remains true that the actual work of terminating the mixed-bloods fell to other Utes and their leaders, assisted by sympathetic BIA officials and even representatives of the National Congress of American Indians (NCAI). The unfortunate fact of the matter is that the mixed-blood Utes fell victim to the termination process largely as a result of the actions of other Indians and even the nominal defenders of Indian rights. Moreover, the mixed-blood Ute story involves the kinds of controversies that scholars sometimes prefer to avoid: rivalries between tribal leaders, petty jealousies, distrust between tribal bands, and a bitter fight over tribal membership. This last point was especially exacerbated by the windfall of some $18 million received by the tribe as a result of successfully prosecuted claims cases against the United States. In short, what happened to the mixed-blood Utes defies many of the accepted interpretations of the termination era.

The Utes at Uintah and Ouray received the news of the $18 million judgment in July 1950 when tribal claims attorney Ernest L. Wilkinson met with the tribe and explained the conditions of a settlement he had negotiated with the government. The situation was complicated by the fact that only two of the three Ute bands residing on the reservation, the Whiteriver and Uncompahgre bands, were party to the claims cases that produced the windfall award. This was so because these bands originally lived in Colorado and were removed to the Uintah Reservation in the aftermath of the 1879 Meeker Massacre. The claims cases derived from the value of the Colorado lands the

Whiterivers and Uncompahgres lost when forced to relocate. The third band, the Uintah Utes, constituted the remnants of the several Ute bands that once resided in Utah and as a consequence had no legal claim to the judgment money.

Wilkinson knew that a hopeless tangle of lawsuits and countersuits would ensue should only two of the three bands share in the award, and so he engineered an agreement by which the two Colorado bands were compelled to share the money with the Utah Utes as a condition of the settlement. Naturally, this "share and share alike" arrangement engendered considerable resentment on the part of the Colorado Utes, but that was not all. The Colorado bands had an additional reason to resent the Utah branch of the tribe: a large proportion of the Uintahs had intermarried with Indians of other tribes. Hence, in the 1950s context of the term, many of the Uintahs were "mixed-blood" Indians—descendants of different tribes.[3]

The mixed-blood issue contributed significantly to the controversy over who should share in the $18 million award—an argument that erupted during a period of experimentation and preparation for both tribal and governmental leaders. In Washington, members of Congress debated and then embraced the philosophy of termination but left the actual task of creating terminal programs with the Bureau of Indian Affairs and tribal leaders. Bureau officials, meanwhile, heeded the legislative mandate of House Concurrent Resolution 108 and began collecting information about specific tribes deemed "capable" of assuming the responsibilities rendered by the federal government. The huge Colorado judgment moved the Ute Tribe directly into this category, despite the fact that the tribe had previously been considered ill-prepared for termination. Suddenly tribal leaders found themselves subject to the demands of bureau and congressional policymakers, while tribal factions fought over control of the money. The ensuing disagreements reflected deep divisions within the tribe itself. As termination philosophy matured into policy, these accumulated pressures threatened the fragile equilibrium that existed among the three Ute bands.

Ute tribal leaders initially proposed to spend some of the money on a three-year development program (approved by Congress as

[3] According to statistics compiled by the BIA in 1954, only 4 percent of the 672 members of the Uncompahgre Band had one half or less Ute "blood" (to use the blood quantum definition employed by the bureau); less than 1 percent of the 308 Whiteriver Utes were one-half degree or less Ute, while more than half—52 percent—of the 785 Uintahs fell into this "mixed-blood" category. See "Population Figures of the Enrolled Members of the Ute Indian Tribe, Uintah and Ouray Reservation, March 1954," RG 75, BIA, accession #57A-185, box 196, file 9639-52-075, National Archives, Washington, D.C.

Public Law 120 on August 21, 1951) to provide immediate relief for the poverty-stricken tribal members and to develop several experimental programs. Unfortunately, problems quickly emerged over the plan's objective and which tribal factions would benefit the most from it. The plan itself offered something for almost everyone, including a per capita payment authorized by the secretary of the Interior. In October 1951 every enrolled member of the Ute Tribe received $1,000 in the form of an individual money account, subject to withdrawal upon the submission of a brief plan explaining how the funds would be used. The tribe offered very few restrictions on the money in the expectation that members would need the experience gained in handling large sums. According to Superintendent Forrest R. Stone, most of the Utes used the money to buy food and clothing and to pay old debts. He noted in his report to the bureau that almost every family bought an automobile or a truck, exercising "reasonably good judgment" in purchasing these vehicles, but added that there were also a "number of stupid transactions, both in the care that they have taken of their automotive equipment and the tendency to spread out in this direction far beyond their need."[4]

The per capita distribution continued out of tribal funds over the duration of the three-year program. Additional features of the plan included a program designed to add new land to the reservation and provide more grazing property, to survey the carrying capacity of tribal grazing lands, and to fund improvements on existing range lands through the construction of fences, stock ponds, and other useful projects. Other provisions of the program helped the members in a more personal way. A revolving credit fund of $1 million was established to provide loans to individual members, complete with a rather conservative Tribal Credit Committee. A housing rehabilitation program helped to remodel or build more than a hundred homes, with much of the lumber coming from tribal forestry reserves. The program also made arrangements to close the Uintah day and boarding school at Whiterocks and to transfer the Ute children to public schools in the Uinta Basin. A Reservation School Board was established to assist in this process and to act as a liaison with the local school boards.[5]

The Ute Planning Division intended that the various provisions

[4] Forrest R. Stone to Ralph M. Gelvin, February 7, 1952, RG 75, BIA, accession #57A-185, box 196, file 9020, National Archives, Washington, D.C.

[5] Ibid.

of the three-year program would further the development of the tribe as a whole and foster the "rehabilitation" of individual members. But all of these provisions—range enhancements, housing and credit programs, and involvement in the public schools—anticipated that participants would already possess a certain amount of experience in business, banking, and education. The assimilationist objectives of the program, therefore, made it inevitable that the most acculturated tribal members would be in a position to receive the greatest benefit from them. The per capita payment program formed the only exception to this general pattern, and government officials observed that the Utes took less interest in their farms, ranches, and off-reservation employment opportunities as a result of the tribal income.[6]

Not too surprisingly, tribal divisions widened between the more acculturated mixed-blood members and the full-bloods, especially as the mixed-bloods aggressively took advantage of the various provisions of the program. Over the course of the three years the program was in effect, for example, the average loan made under the credit program was $6,032.04 to the mixed-bloods but only $3,279.81 to the full-bloods. The majority of self-supporting households on the reservation were those of mixed-bloods. According to the reports submitted by bureau personnel, the mixed-bloods made "substantial progress" over the course of the program while the full-blood Utes demonstrated "no comparative improvement."[7] The evidence suggests, in fact, that the full-bloods lost considerable ground in the late stages of the three-year program. In March 1954, to cite one rather telling statistic, eighteen cars were repossessed from full-bloods. When merchants in nearby towns took steps to collect large grocery accounts, one case resulted in a civil suit against a full-blood family for refusing to pay a $2,200 bill.[8]

Full-blood Utes increasingly felt that the tribal leadership, particularly the members of the Tribal Business Committee and the Planning Division, had fallen under the control of the mixed-blood members of the tribe. According to their argument, these leaders claimed to represent the whole tribe, but because they were more acculturated, better educated, and enjoyed a higher standard of living, they "lacked the perspective and appreciation of the peculiar problems of the full-blood people."[9] Bureau personnel tended to support this assessment. Robert L. Bennett, a BIA programming officer who visited the reservation several times in 1953 and 1954, stated that the Uintah Agency staff spent 80 to 90 percent of their time working with the mixed-bloods. This was primarily so, he concluded, because the full-blood Utes did not know enough about the available services to take advantage of them.[10]

In the meantime, Senator Watkins began applying pressure on the Utes to produce what he called a "long-range rehabilitation" plan (his term for a termination program) in exchange for further installments of the award money. But Watkins discovered that the Utes could not be induced to formulate any type of program, terminal or otherwise, because of disagreements between the mixed-blood and full-blood factions. The mixed-blood group generated most of the early opposition to the planning effort and boycotted the "adult education" meetings sponsored by the Tribal Business Committee. The full-blood Utes also objected to the planning, both out of resentment toward the mixed-blood agitators and out of a growing sentiment that the programming effort failed to meet their needs. Rex Curry, the chairman of the Tribal Business Committee, sadly reported to Robert L. Bennett that the situation on the reservation had become "very confused" and that the tribe had been unable to make any "headway toward a beneficial program."[11]

Ironically, on May 12, 1953, the very day that Curry informed Bennett of the conditions on the reservation, Bennett, accompanied by Associate Commissioner H. Rex Lee, visited the office of Senator Watkins to discuss the Ute situation. Bennett had already made plans to visit the reservation in an attempt to suppress the opposition to the planning effort, and Watkins assisted by writing a pointed letter for him to deliver to Rex Curry and the Tribal Business Committee. In response to the discord on the reservation, the senator wrote: "Congress will expect you to keep very fully and completely your promises made to the Committee when this legislation [the three-year program] was approved." Then, addressing Curry, he added, "This

[6] "Annual Report to Congress—draft copy," December 22, 1954, RG 75, BIA, accession #57A-185, box 196, file 9639-52-075, National Archives, Washington, D.C.

[7] "Remarks by Robert L. Bennett on the Uintah and Ouray Program at Bureau Staff Meeting, 20 May 1954," RG 75, BIA, accession #57A-185, box 196, file 9639-52-075, National Archives, Washington, D.C.

[8] Ibid.

[9] "Ute Ten Year Development Program," RG 75, BIA, accession #59A-649, box 86, file 17541, National Archives, Washington, D.C., p. 10.

[10] "Remarks by Robert L. Bennett on the Uintah and Ouray Program at Bureau Staff Meeting, 20 May 1954."

[11] Reginald G. Curry to Robert L. Bennett, May 12, 1953, RG 75, BIA, accession #68A-4937, box 63, file 8365-54-015, National Archives, Washington, D.C.

applies not only to you and those representing the Ute tribes, but also the entire membership."[12] Watkins expected the tribal leaders to live up to assurances they had previously given to develop a long-range termination plan.

Bennett arrived at Fort Duchesne on May 19, 1953, and hand-delivered Watkins's warning. He and other BIA officials (most notably H. Rex Lee) had already decided to intervene in the affairs of the tribe, because, as Bennett noted in his official report, "the Bureau could not place the entire responsibility on the tribal leadership to attain what in the main are Bureau objectives."[13] In other words, Watkins, Lee, and Bennett felt that they could no longer wait for the tribe to do their bidding. Efforts had to be made to resolve the crisis and get on with the planning effort. To Francis McKinley and the Ute planning committee, however, interference from the BIA on behalf of a U.S. senator amounted to nothing less than economic blackmail. The Utes desperately needed the funding, but many intuitively distrusted the new termination policy. Few understood it, and unsettling rumors swept the reservation.[14] After Bennett delivered the letter to Curry and the committee, someone mimeographed it and copies quickly circulated throughout the tribe. Bennett claimed that the letter had a positive effect, but later events proved his assessment far from accurate. Even he admitted that the threat of termination produced a certain amount of panic. In an official report to his BIA superiors he noted that "rumors are flying around here like bees about '30-day notices,' etc."[15]

Resolving the divisions within the tribe and developing a long-range plan satisfactory to most tribal members consumed the remainder of 1953 and much of 1954. In October the Utes met in general council and adopted a plan for each community to submit proposals to an elected tribal planning board that would consist of nineteen elected members. Beyond the creation of the planning board, however, the Utes refused to take action. A month later Bennett again visited the reservation to stimulate the "programming effort." When he arrived he found the Utes had adopted a strategy of "doing nothing"

[12] Arthur V. Watkins to Reginald O. Curry, May 12, 1953, and William C. Reed to Reginald O. Curry, May 25, 1953, RG 75, BIA, accession #57A-185, box 196, file 9639-52-075, National Archives, Washington, D.C.

[13] Robert L. Bennett to G. Warren Spaulding, June 24, 1953, RG 75, BIA, accession #57A-185, box 196, file 9639-52-075, National Archives, Washington, D.C.

[14] Robert L. Bennett, Travel Report, Division of Program, May 25, 1953, RG 75, BIA, accession #68A-4937, box 63, file 8365-54-013, National Archives, Washington D.C.

[15] Ibid

in the hope of eventually getting their money anyway. He made the belated discovery that the Utes preferred the status quo. After attending several meetings with tribal groups, he reported to his superiors that the Utes did not feel ready to manage their own affairs, although they also understood that they had to produce some kind of planning document for the BIA and Watkins's committee. Bennett concluded that "a program must be developed to meet this situation."[16] Exactly what he had in mind remained to be seen.

Meanwhile, Bennett also agreed to address the tribe over KJAM radio in Vernal on November 4, 1953. He told the Utes that they were at a "crossroads where they must choose a course which will affect their future and their children's future for all time to come," and this, he said, had come about "because of developments in Washington." He then explained House Concurrent Resolution 108 and other related termination legislation in an attempt to impress upon the Utes the importance of creating their own plan. He also spent considerable time explaining how the Menominee Tribe had failed to prepare a plan and consequently had a termination program written for them—by Watkins, no less.[17] While Bennett did not favor Watkins's style of forcing the termination issue, he nonetheless hoped his remarks would scare the Utes into action. He later reported that the radio address was designed to promote and explain the tribal programming effort, but he also admitted that he exaggerated the termination threat to the Utes in an attempt to "stir up" the tribe. He did not realize at this point how dangerous the threat actually was.[18]

In the aftermath of Bennett's November visit and radio address, the tribal planning board resumed its work in earnest. None of the elected board members had the slightest experience in creating a comprehensive, long-range termination program, and they naturally looked to Rex Curry and the Tribal Business Committee for direction. But Curry, an assimilated Ute and graduate of Brigham Young University, intended to follow Senator Watkins's orders. Other members of the tribal leadership were dismayed by Curry's cooperative attitude on the pending threat of termination. Francis McKinley, for one,

[16] Robert L. Bennett to G. Warren Spaulding, "Field Trip Report," November 19, 1953, RG 75, BIA, accession #57A-185, box 196, file 9639-52-075, National Archives, Washington, D.C.

[17] "Radio Address Delivered by Robert L. Bennett, Program Officer, Over Radio Station K.J.A.M.," November 4, 1953, RG 75, BIA, accession #57A-185, box 196, file 9639-52-075, National Archives, Washington, D.C.

[18] Robert L. Bennett to G. Warren Spaulding, "Field Trip Report."

found himself increasingly estranged from the process, and he strenuously objected to Watkins's strong-arm tactics.

Most members of the Uncompahgre Band also resented the planning effort, and when the planning board issued its first preliminary proposals it appeared to John Tabbee and other well-informed Uncompahgres at Ouray that the new program would simply be an extension of the three-year program.[18] As they saw it, the new program would be no better than the old in that the mixed-bloods would once again receive most of the benefits. Some Uncompahgres even asserted that the "real" problems confronting the tribe derived from the fact that the mixed-bloods had taken over the tribal government.[19] In protest of this perceived situation the Uncompahgre Band largely withdrew from the planning process, which had become quite acrimonious anyway. The argument over the mixed-blood issue came up in every meeting and invariably disrupted the proceedings.[20]

In light of these developments, the full-blood Uncompahgres decided that the threat of termination demanded that "something new and dynamic" be developed as an alternative. They concluded, therefore, to essentially "go it alone" and argued for a division of the tribe as the best way to confront the problems besetting them.[21] Early in the new year, leaders of the Uncompahgre Band approached Francis McKinley with the idea of developing a new program, the main point of which would be to separate Uncompahgre assets from those of the rest of the tribe. This left McKinley in a difficult position since he intuitively sympathized with the Uncompahgres. Yet he was still the tribal planning officer, and support of their proposal meant that he would have to turn his back on Curry and the elected representatives of the planning board. Unsure of what approach to take at this fateful juncture, McKinley made plans to attend a special "emergency" conference in Washington, D.C.—a gathering specifically convened by the National Congress of American Indians to confront the threat posed by termination policy.

At this critical juncture Senator Watkins again decided to intervene. He had been observing the affairs on the reservation for more than a year, and his patience had come to an end. In February 1954 he delivered his ultimatum. Just before the February NCAI conference

[18] "Ute Ten Year Development Program," p. 8.
[19] Ibid., pp. 9–10.
[20] "Remarks by Robert L. Bennett on the Uintah and Ouray Program at Bureau Staff Meeting, 20 May 1954."
[21] "Ute Ten Year Development Program," pp. 9, 14–5.

he wrote another letter to tribal business manager Rex Curry to explain exactly what type of program he would accept, stating that "further legislation for aid or assistance to the Utah Tribe [would] greatly depend upon the activities of the Tribe in performing in good faith the promise which they undertook in 1950, namely to formulate the report and plan" (i.e., a seven-year termination program). As if to underscore the gravity of his threat, Watkins informed Curry that he expected the "final phase" of the Ute program to be tendered within ninety days and added that all of the essential elements could be easily found in other termination bills currently before Congress. If the tribe needed assistance in drafting the legislation, Watkins said he would be happy to provide it.[22]

Watkins also specifically instructed Curry and other members of the tribe to ignore Indian rights advocates from the NCAI and the Association of American Indian Affairs (AAIA).[23] It is hard to imagine that the senator's ultimatum would have surprised Curry. He was well acquainted with Watkins's objectives and in certain ways even sympathetic to them. But tribal planning coordinator Francis McKinley and other tribal leaders, particularly those associated with the Uncompahgre and Whiteriver full-bloods, were stunned by this sweeping declaration of the senator's intentions. They feared that Watkins planned to use the better educated and acculturated mixed-blood Uintahs to demonstrate that the Utes were prepared for termination legislation and thus "prematurely and unwittingly thrust the full-blood Utes into a way of life for which they were not prepared."[24]

McKinley probably took umbrage at Watkins's warning that Curry and the other tribal leaders should ignore Indian rights advocates from the NCAI and the AAIA. The admonition strongly hinted that Watkins knew all about the pending NCAI conference and its antitermination agenda.[25] But McKinley decided to attend the conference anyway. The February 1954 "emergency" conference of the NCAI proved to be a pivotal event in the history of the organization because it confronted federal termination policy and specifically addressed the plethora of termination bills then emerging from Watkins's senate subcommittee. Forty-three tribes from twenty-one states sent repre-

[22] Arthur V. Watkins to Reginald O. Curry, February 18, 1954, RG 75, BIA, accession #57A-185, box 196, file 9639-52-075, National Archives, Washington, D.C.
[23] See Watkins's comments in "House Report No. 2680," 83d Cong., 2d Sess. (Washington, 1954), pp. 7, 12.
[24] "Ute Ten Year Development Program," pp. 12–14.
[25] Watkins to Curry, February 18, 1954.

sentatives to the conference, which ultimately adopted a "Declaration of Indian Rights" calling for the federal government to honor treaty obligations and trust responsibilities.

While there, McKinley encountered Robert L. Bennett, and he used the opportunity to explain the situation on the reservation and in particular to discuss at length the Uncompahgre proposal to separate from the rest of the tribe.[27] McKinley may have recognized a kindred spirit in Bennett, who by all accounts listened sympathetically. Bennett had already spent several months working with Watkins to draft comprehensive termination legislation for the other Indians in Utah, so he already had an intimate awareness of the senator's intentions. Bennett listened carefully as McKinley told him about Watkins's threatening letter of February 14 to Curry and the panic that it had generated on the reservation. A solution remained elusive, but Bennett agreed with McKinley on at least one important point: some method had to be found to subvert Watkins's termination plan.[28]

After considerably more discussion, Bennett and McKinley hit upon the idea of separating the full-bloods from the mixed-bloods and dividing the tribal assets between the groups. To do this, however, they would have to overcome the probable opposition of Watkins's main facilitator on the reservation, Rex Curry. Ultimately, the two men were able to convert Curry to the idea of allowing the full-bloods to "go it alone."[29] Forty-one years after the fact, Bennett reminisced that he, McKinley, and Curry held "a meeting out in a bean field . . . [and] decided that we would present a proposal which would terminate all the Mixed-bloods."[30]

The three men drafted an agreement to partition the tribe and then took it to the Uncompahgre leaders who gave it an enthusiastic reception. The original plan called for a division of the tribe into the original three bands, with an additional group for the mixed-bloods. At later meetings held to allow comment on the proposal, some Whiterivers and full-blood Uintahs expressed concern about dividing the tribe by bands. At Fort Duchesne on March 16, a Whiteriver Ute named Wallace Jack accused the Uncompahgres of "kicking the Whiterivers out" and leaving them "no place to go." Julius Murray

[27] "Ute Ten Year Development Program," pp. 15–6.
[28] "Remarks by Robert L. Bennett on the Uintah and Ouras Program at Bureau Staff Meeting, 20 May 1954."
[29] Ibid.
[30] Robert L. Bennett interview by Thomas Cowger, oral history interview, Albuquerque, New Mexico, May 20–21, 1983, National Anthropological Archives, Smithsonian Institution, p. 102.

Ute Indian Agency headquarters at Fort Duchesne on the Uintah and Ouray Reservation, 1964. USHS collections.

speculated that the Whiterivers would also pull out, leaving the full-blood Uintahs at the mercy of the mixed-bloods. He said, "this is a very dangerous proposition. It is only the full-blood people who will suffer and the mixed-blood people will take care of themselves."[31]

When the Whiteriver and full-blood Uintahs objected to the proposal, McKinley, Bennett, and the Uncompahgre leaders elected to change the method of dividing the tribe from a division by bands to a division between the mixed- and full-bloods.[32] At this point in the negotiations the mixed-bloods demonstrated considerable opposition, the intensity of which alarmed the full-bloods in all three bands and united them behind the proposal.[33]

In many respects the new proposal to divide tribal assets between the mixed-bloods and the full-bloods represented a real breakthrough for Bennett, McKinley, and Curry because it simultaneously resolved two long-standing problems. First, it eliminated the age-old mixed-blood question and, second, it provided a sudden opportunity to protect the balance of the tribe by sacrificing the mixed-bloods to Watkins's termination program. In his report to the bureau on April 15, 1954, Bennett suggested the latter point in several significant ways. He argued, quite directly in fact, that the partitioning process would result in the immediate termination of the mixed-blood Utes. The full-bloods would then be in position for "intensive work" with the BIA to prepare them for "eventual termination."[34]

It stands to reason that if Bennett and the tribal leaders had, in fact, favored termination, they would not have taken steps to separate the more acculturated members from the rest of the tribe. The full-blood Utes virtually acknowledged this to be the case in the "Ute Ten

[31] "Notes, Bennett Field Trip, March 1954," RG 75, BIA, accession #68A-4937, box 63, file 8305-54-013, National Archives, Washington, D.C.
[32] "Ute Ten Year Development Program," p. 17.
[33] "Remarks by Robert L. Bennett on the Uintah and Ouray Program at Bureau Staff Meeting, 20 May 1954."
[34] Robert L. Bennett to Homer B. Jenkins, April 15, 1954, RG 75, BIA, accession #57A-185, box 196, file 9639-52-075, National Archives, Washington, D.C.

Year Development Program." This document, written after the division of the tribe, explained that the full-bloods were motivated out of "concern" that Watkins would focus his termination agenda on the Utes primarily *because of* the relatively high degree of acculturation possessed by the mixed-bloods.[35] The document also described the aims and accomplishments of the three-year program for "assimilating the Ute Indian into the American culture and society with all the rights, privileges, and responsibilities of the citizenship." The termination of the mixed-bloods, it went on to state, essentially met this objective—a frank admission that more than half of the Uintah Band had been sacrificed to meet the terminationist agenda.[36]

Following the formulation of the plan to separate the mixed-bloods from the tribe, Bennett, McKinley, and Curry spent the first few weeks of March 1954 presenting the proposal to several Ute communities across the reservation. The Uncompahgres at Ouray were the first to hear of it, and they received it enthusiastically. The comments of John Tabbee expressed the sentiments of most of the full-blood Uncompahgres. He said that Bennett had taken the original arguments of the Uncompahgres and given them "character and substance." He also noted that the Uncompahgres had not been fully aware, until Bennett pointed it out, that the Uintahs "were getting the greater share" of the judgment money.[37]

In commenting on the threat of termination posed by Watkins, Tabbee spoke for many when he said, "We highly value our status as Indians. We know we have certain privileges which other people don't have and it would be difficult to surrender them."[38] An influential Uncompahgre leader named Pawwinnee also addressed the Ouray group and seconded Tabbee's sentiments. He noted, somewhat disingenuously, that the full-bloods had a basic idea of what to do all along but did not know how to proceed until Bennett arrived with the plan to divide the tribe. "Now," he said, "it is up to us to develop it and give it substance." He also warned that the full-bloods needed to "think about the future instead of how soon they are going to receive money. In planning think about our community and the future of our people. We have the poorest section of the reservation—no excuse for people who are supposed to have money."[39]

[35] "Ute Ten Year Development Program," pp. 12–3.
[36] Ibid., p. 28.
[37] "Notes, Bennett Field Trip, March 1954."
[38] Ibid.
[39] Ibid.

Bennett, McKinley, and Curry received a considerably cooler reception in the predominantly mixed-blood communities in the northern part of the reservation. Bennett's official report provides a good chronology of these meetings. On March 8 he wrote that the three of them came under "violent personal attack" from mixed-blood spectators at the Tribal Business Committee meeting. On March 11 more resistance developed in a meeting held at Fort Duchesne when the mixed-bloods attempted to have McKinley fired. Bennett later recalled that when the three leaders first presented the plan to the mixed-bloods, the meetings became quite "ugly" and featured a lot of name calling. He reminisced that on one occasion he sat between Curry and McKinley and literally held on to their coat tails, so that when they were insulted they could not jump up and respond.[40]

When Bennett left the reservation for ten days at mid-month, considerably more contention erupted as the mixed-bloods threatened law suits and "other actions" against the rest of the tribe. Bennett characterized the mixed-blood antagonism as personal and not directed against the merits of the plan.[41] He had good reason to characterize the opposition this way because it deflected the criticism away from the partitioning proposal. In point of fact, the mixed-bloods had several reasons to object to the proposal itself. Albert H. Harris, a BIA employee and mixed-blood Uintah of Ute-Shoshone descent, offered some of them in his comments at the Fort Duchesne meeting. He argued that splitting the tribe would result in many committees "instead of one" and that it would bring "earlier taxation." He felt that the tribe needed more time to consider the issues, especially given the terminationist mood of Congress. If they were all going to be terminated it would be easier to divide assets *after* the fact.[42] In making this point Harris unwittingly touched the heart of the issue. He did not grasp, at that time, the real reason for partitioning the tribe: to protect the full-bloods from termination by sacrificing the mixed-blood Uintah population.

Following his return to the reservation, Bennett continued to work with McKinley and Curry to refine the resolution for presentation to the tribe at the General Council meeting scheduled for March 31, 1954. The language and provisions called for the division of the tribal assets between the full-blood and mixed-blood groups. Mixed-

[40] Robert L. Bennett interview, May 20–21, 1993, p. 103.
[41] Robert L. Bennett to Homer B. Jenkins, April 15, 1954.
[42] "Notes, Bennett Field Trip, March 1954."

blood members were defined as those having less than one-half Ute Indian blood, and both groups would exercise jurisdiction and control of their own people and property.[45] The resolution also contained an interesting proposal for the creation of a committee to draw up partitioning plans. Bennett and his confederates anticipated mixed-blood opposition—the proposed committee would consist of a majority of full-blood members (six to three over the mixed-bloods). Also, the plans created by the new committee would require the approval of the Tribal Business Committee. In other words, the resolution made it clear that the partitioning of the tribe would be controlled by the full-bloods and that the mixed-bloods would have input in the process, nothing more.[46]

Ernest L. Wilkinson, October 1964. Salt Lake Tribune *photograph in USHS collections.*

The situation came to a climax at the March 31 General Council meeting. What actually took place is a matter of considerable controversy, though it is known that Robert L. Bennett, Ernest L. Wilkinson, and John S. Boyden attended and that Wilkinson presented the prepared resolution calling for the division of the tribe and the termination of members having less than 50 percent Ute Indian ancestry.

The meeting had been orchestrated well in advance. Attorneys Wilkinson and Boyden, along with area director L. L. Nelson and BIA employees Bennett, McKinley, and Curry, met in the morning before the General Council meeting to discuss the proposed resolution and how best to present it to the tribe. In fact, Wilkinson, Boyden, and Nelson had already had plenty of time to discuss a course of action,

[45] Proposed Resolution, drafted for the General Council of the Uintah and Ouray Reservation, March 31, 1954, RG 75, BIA, accession #68A-4907, box 62, file 8365-54-013, National Archives, Washington, D.C.

[46] Ibid.

since the three of them had ridden out to Uintah from Salt Lake City in Wilkinson's car.[47]

According to Bennett's official version of the meeting, the Utes received the proposal calmly and accepted it without serious opposition. He took pains to note that a mixed-blood Ute offered a motion to accept the proposal and another seconded it.[48] Unofficial versions of the meeting, however, tell a far different story. According to Waubin Waunzitz, who chaired the meeting, the proposal to divide the tribe was not even on the agenda. Waunzitz claimed that Wilkinson simply pushed him aside and took control. Wilkinson then presented the resolution and explained that the move would be in the best interests of the tribe. The mixed-blood Utes, unprepared for this intrusion, had no answer for it. Finally, to placate the attorneys, Waunzitz called for a feasibility study on the proposal, but before a vote could be taken a large number of the Uintahs walked out. Many of those remaining either abstained from voting or thought that they were voting for the feasibility study.[49] According to Bennett, 152 Indians voted in favor of the resolution, with only 8 voting in opposition. But exactly what they were voting for remains a controversy. Nevertheless, the results of this vote were used to justify dividing the tribe, and Watkins again got what he demanded.

After the fateful step of dividing the Utes, both groups had little choice but to go forward with their separate development plans. Once again, Watkins and his legislative mandate forced the issue. Deadlines had to be met. One of the last came on April 5, 1956, when the publication of the final rolls officially divided the Ute Indian Tribe. According to statistics compiled by the BIA, 1,314 full-blood Utes retained membership in the tribe, while 490 mixed-bloods found themselves scheduled for termination.[50]

The decision to divide the Ute Tribe and terminate the mixed-blood members gains added significance when cast into historical perspective, for the mixed-blood question has a long and illustrative history. Determining which version of tribal history to believe presents significant difficulty, particularly in light of the fact that the official

[47] L. L. Nelson to Ralph M. Gelvin, April 7, 1954, RG 75, BIA, accession #57A-185, box 196, file 9639-52-075, National Archives, Washington, D.C.

[48] "Remarks by Robert L. Bennett on the Uintah and Ouray Program at Bureau Staff Meeting, 20 May 1954."

[49] Deposition of Waubin Waunzitz, September 18, 1969, *Affiliated Ute Citizens of the State of Utah v. United States*, in possession of Parker S. Nielson, Vernon, Utah.

[50] "Bureau of Indian Affairs Memorandum," Homer B. Jenkins, April 10, 1956, RG 75, BIA, accession #59A-643, box 86, file 17071, National Archives, Washington, D.C.

version, developed by BIA programming officer Robert L. Bennett in early 1954 to justify his actions, proved to be highly selective.

According to the series of reports Bennett filed with his BIA superiors, the three bands on the Uintah and Ouray Reservation willingly shared their funds with one another for most of the first half of the twentieth century without regard to the derivation of the funds. But in Bennett's account, the turning point came in 1950 with the $18 million award. At the time of the settlement, claims attorney Wilkinson engineered a "share and share alike" agreement among *all three bands*, despite the fact that the judgment applied only to the two Colorado bands—the Uncompahgre and Whiteriver Utes. Many full-blood Utes, mostly Uncompahgre and Whiteriver, refused to vote on this measure, and it was passed over their abstaining protest.

Bennett asserted that the Uncompahgre and Whiteriver Utes subsequently believed that the mixed-blood Uintahs made much more effective use of the three-year program, a situation that provoked resentment since most of the money derived from sources intended for the two Colorado bands.[27] In fact, Bennett made the rather questionable assertion that the mixed-bloods developed the plan largely for their own benefit. He also claimed that the Uintah leaders planned to use the forthcoming Spanish Fork judgment funds for their exclusive benefit, a revelation that increased interband antagonism.[28]

Bennett maintained that, regardless of which faction received the most benefit, the evolution of the three-year program demonstrated the divergent desires of the two groups. To bolster his claim he might well have pointed to the official report on the program which noted that "experience gained under the three-year program led to the formulation of legislative proposals to partition and distribute the tribe's assets between the Mixed-blood and Full-blood members." And further, "Probably the most significant result of the three-year program was to develop an accent on the divergent interests of the Mixed-blood and Full-blood members of the tribe."[29]

Beyond the contentions made by Bennett, the larger question about the genealogy of the mixed-bloods remained. Specifically, who were these people? Ute tradition holds that the mixed-bloods were actually Indians of Paiute, Navajo, Shoshone, and other extractions

[27] "Remarks by Robert L. Bennett on the Uintah and Ouray Program at Bureau Staff Meeting, 20 May 1954."

[28] Robert L. Bennett to Homer B. Jenkins, April 15, 1954.

[29] "Annual Report to Congress—draft copy," December 22, 1954.

who married into the tribe.[32] The "Uintah" Utes descended from several Utah bands that once inhabited central and eastern Utah and evolved into a composite tribe after the removal of the Utah bands to the Uintah Valley following the Spanish Fork Treaty of 1865. Some of these earlier bands shared extensive cultural contact with neighboring Indian peoples. The Pah Vant and San Pitch Utes, for example, lived near the Kwiumpats Band of Southern Paiutes and adopted similar methods of sustaining themselves in the desert environment.[33] The Cumumba or Weber Utes lived in the present Ogden area and intermarried extensively with the Northern Shoshones. In fact, the Cumumba Utes may have been bilingual.[34]

An even more striking example of cultural exchange may be seen in the circumstances of the Sheberetch and Weeminuch Ute bands of southeastern Utah. These two groups, particularly the Weeminuch, operated in a region devoid of governmental control during the latter half of the nineteenth century. Far from the political and population centers of the state of Colorado and territory of Utah, the Sheberetch and the Weeminuch roamed freely between the Colorado Utes to the east, the Southern Paiutes to the west, and the Navajos to the south. They often served as intermediaries in the systematic cattle raiding that took place in the region. Navajos, for example, frequently used Weeminuch territory as an escape route for moving cattle northward out of New Mexico Territory. Much evidence suggests that the Weeminuch occasionally joined Navajos and Paiutes in raids on Mormon settlements in southern Utah. The Ute warrior Autenquer (or Black Hawk, as he is usually known in Utah lore) frequently included Navajo and Paiute warriors in his raiding parties.[35]

The salient point is that the Uintah Ute people had a long history of incorporating members of other tribes into their social structure. It is not at all surprising that they continued to adopt Shoshone, Paiute, and Navajo people into the band following the Ute removal to Uintah in the 1860s and 1870s.

Perhaps the most significant problem faced by the mixed-bloods of the Uintah and Ouray Reservation was the same as that faced by

[32] Bennett frequently admitted this to be the case. See "Remarks by Robert L. Bennett on the Uintah and Ouray Program at Bureau Staff Meeting, 20 May 1954."

[33] Fred A. Conetah, *A History of the Northern Ute People* (Salt Lake City: Uintah and Ouray Tribe, 1982), p. 24.

[34] Kathryn L. Mackay, "Indian Cultures, c. 1840," in Deon C. Greer et al., *Atlas of Utah* (Ogden and Provo, Ut.: Weber State College and Brigham Young University Press, 1981), p. 77.

[35] R. Warren Metcalf, "A Reappraisal of Utah's Black Hawk War" (M.A. thesis, Brigham Young University, 1989), pp. 61–63.

mixed-blood people elsewhere in the United States: their relative lack of legal and social standing as a distinctive and legitimate cultural group. Recent scholarship has attributed the "invisibility" of racially or ethnically mixed populations to the "deeply embedded" racial dualism (white and Indian) in American thought. As Jennifer S. H. Brown notes, "there is no separate term in common American usage to designate people who combine the two ancestries."[56] An outgrowth of this racial dualism is the traditional belief that mixed-bloods are marginal people "suspended between cultures" and incapable of inclusion into either group. Consequently, a common stereotype holds that mixed-bloods are somehow psychologically disadvantaged in terms of participation in these societies. A considerable amount of evidence demonstrates, however, that this perception is false. Anthropologists and sociologists have revised the stereotype by showing that such people tend to develop complex, bicultural methods of adaptation, or, as ethnohistorian James A. Clifton put it, they become "culturally enlarged."[57]

Moreover, according to the notion of racial dualism, membership in cultural groups such as Indian tribes follows lineal descent—in the common idiom, "blood lines." It springs from the European concept that one's racial origins determine one's identity and characteristics, a kind of rigid, biological determinism used to explain cultural distinctiveness. But these racial constructs are European in origin, entirely lacking in Native American cultures prior to European contact. Among these indigenous peoples, skin color and other racial characteristics were considered irrelevant. Membership in a clan or band depended instead on language, behavior, social affiliation, and loyalty. According to Clifton, the most common identity question asked of strangers was not, "What nation do you belong to?" or "Of what race are you?" More typically, strangers would ask, "What language do you speak?"[58]

The fact that Indian tribes came to define membership in terms of blood quantum merely reflects the acceptance of the European construct. But this tendency has confused the older, ethnically derived methods with the newer racial ones. The problem with identifying Indians by race is that it presumes certain intrinsic characteristics, and

[56] Brown, "Metis, Halfbreeds, and Other Real People," p. 21.

[57] James A. Clifton, "Alternate Identities and Cultural Frontiers," in James A. Clifton, ed., *Being and Becoming Indian* (Chicago: Dorsey Press, 1989), p. 29.

[58] Ibid., p. 11.

since membership in a particular race is derived entirely from parentage, as the theory goes, one can do little to alter or escape it. Indeed, in the Euro-American tradition, native peoples have been presumed to possess certain controlling characteristics of behavior and physiognomy.[59]

The Utes followed the standard administrative procedure of the 1950s in establishing their membership criteria, although in recent years defining tribal membership according to race has come into serious question. In his definitive study of American Indians and the 1980 Census, C. Matthew Snipp noted that Indian tribes have historically relied upon an administrative definition derived from the "blood quantum" theory to delineate membership.[60] This theory holds that the amount of blood a person possesses from a particular race determines the degree to which that person resembles and behaves like other members of that race.[61] However, since racial blood types cannot be directly observed (again, according to the theory), the degree of blood quantum must be inferred from ancestry. As a consequence, most tribes came to rely on some type of benchmark for identifying ancestors considered to be "100 percent" members. Usually tribal censuses taken in the late nineteenth or early twentieth centuries served in this fashion. The Uintah and Ouray Utes used the 1934 date of tribal incorporation under the Indian Reorganization Act as the benchmark.

In more recent times, blood quantum definitions have been undermined by genetic science and social theory. Modern research has shown that genealogical bloodlines do not clearly determine who is an Indian and who is not, nor is there any biologically significant way of determining the degree of "blood" at which a person is considered to be an Indian. As a consequence, blood quantum definitions are no longer legally enforceable for most purposes.[62]

Standards of ethnicity constitute a potentially more accurate way of defining Indian identity, or, in this case, delineating membership in the bands of Ute Indians, for identity according to ethnicity derives

[59] Ibid., p. 26.

[60] According to Snipp, racial definitions generally fall into three categories: "mystical" definitions, which assert that modern racial groups have descended from mysterious ancient civilizations—a standard he terms the "most pernicious" and "far removed" from reality; "biological" definitions, which divide the human race into four main groupings based on genetic indicators; and "administrative" definitions which are created by bureaucratic and political institutions such as the Bureau of the Census or tribal governing bodies. See C. Matthew Snipp, *American Indians: The First of This Land* (New York: Russell Sage Foundation, 1989), p. 28.

[61] Ibid., p. 32.

[62] Ibid., p. 34.

from a common cultural and historical heritage. Typically, ethnicity follows certain standards of speech, dress, and behavior that are not fixed. In other words, people can learn or unlearn or, for that matter, adopt or reject these cultural patterns. Groups that define themselves ethnically have a potentially greater capacity for adopting or encompassing new membership.[3] According to ethnohistorians such as Clifton, the pattern of biological inbreeding among people of European, African, and Indian descent has been so extensive that relatively few Indians can trace their ancestry exclusively to full-blood Indians. As Clifton put it, "the Indian population of North America is an amalgam of composite indigenous American, European, African, and other ancestries." In point of fact, he notes, many contemporary Indians have little or no "native American biological ancestry" at all.[4]

The logical consequence of this tendency to define Indian identity along blood quantum lines is that the process of determining tribal membership has invariably been politicized. At times when Indian identity has been little valued by the dominant society, membership in Indian tribes has been relatively inclusive. Robert L. Bennett noted, for example, that from 1911 through 1936, a period that might be termed the "highpoint" of assimilation policy as applied to the Utes, the three bands freely shared tribal funds, regardless of derivation.[5] Unfortunately, the opposite tendency has also proven true. At times when Indian identity has been highly valued, either for cultural or economic reasons, tribes have been forced to adopt exclusive membership requirements. In the Ute case, with the tremendous increase in tribal funds from the Colorado judgment and from oil and shale royalties, both the full and mixed-blood Utes struggled to control the membership process. In other words, with the advent of new money, membership in the tribe became a sharply contested political battleground upon which the blood quantum argument merely served as a convenient excuse for fighting over the real issue—the question of who would get the judgment money.

One of the most obvious aspects of the struggle over tribal membership is that it coincided with Senator Arthur V. Watkins's campaign to terminate the Utes, which induced the full-blood Uncompahgres to move beyond the usual political measures and take drastic steps to

[3] Clifton, "Alternate Identities and Cultural Frontiers," p. 26.
[4] Ibid., p. 23.
[5] "Remarks by Robert L. Bennett on the Uintah and Ouray Program at Bureau Staff Meeting, 20 May 1954."

protect both their status as Indians and their tribal resources. Had it not been for Watkins's interference, the membership issue would probably have subsided relatively quickly. A 1933 episode is instructive in this regard. During that year the Utes came into a substantial amount of money through the settlement of some claims against the United States. With the prospect of the membership receiving large per capita payments, a group of full-blood Utes petitioned the commissioner of Indian Affairs to halt the enrollment of mixed-blood Utes into the tribe. No action was taken, however, and following the disbursement of $1,100 per capita the entire matter faded from view. A few years later, with the incorporation of the tribe under the provisions of the Indian Reorganization Act, the mixed-blood Utes were enrolled without significant protest.[6]

Twenty years after the 1933 incident similar circumstances arose; the latter episode concerned not only the divergence of the mixed-bloods and the full-bloods but also the bitter disagreement between the Colorado and Utah bands over rights to the Colorado judgment funds. The Uncompahgres held legitimate grievances against the formula employed by Wilkinson to share their money with the other Utes, and in time these grievances evolved into genuine animosity among the three bands.[7] The Uncompahgres increasingly came to believe that the actions of the government "progressively reduced" their share of judgment monies. The so-called "share and share alike" agreement of 1950 vexed them most of all.[8]

When combined with threats from Watkins, either delivered personally through correspondence or vicariously through BIA personnel, the mixed-blood question assumed even greater importance for the Utes. Because the mixed-bloods were considered neither fully Indian nor fully white, they found themselves without defenders or advocates in the fight over the money and the subsequent decision to partition the tribe. They became the sacrificial lambs of Senator Watkins's termination program.

[6] For a brief overview of these events, see Reginald O. Curry to Secretary of the Interior Oscar L. Chapman, November 30, 1950, RG 75, BIA, accession #57A-185, box 196, file 13916, National Archives, Washington, D.C.
[7] Robert L. Bennett to G. Warren Spaulding, "Field Trip Report."
[8] "Ute Ten Year Development Program."

Uintah Basin Standard 13 Oct 98

13 Oct 1998

Decision says mixed bloods don't have right to jointly manage water with tribe

By Lezlee E. Whiting

The Assistant Secretary of the Interior ruled last Monday that mixed blood Ute Indians who were terminated from tribal rolls in 1954 were given their water rights when they were given their share of tribal land, and have no right to now share in the management of the tribe's lucrative water resources.

Ute Distribution Corporation, the agency established to represent mixed-blood Ute Indians, sued the Ute Tribe in federal court in 1995 asserting "a right of joint management" over about 27 percent of the water rights now held by the tribe. UDC already manages 27 percent of the proceeds from the "indivisible assets" – such as lease payments for gas, oil and mineral rights – which were given to the 490 mixed-blood Utes when their names were taken off tribal rolls.

Attorneys for the group maintained that water rights should be included as "indivisible assets," but in writing the decision for the Interior Department, Acting Assistant Secretary of Interior Michael. J. Anderson concluded that tribal water rights "were an asset susceptible to equitable and practicable distribution and this asset had in fact already been divided and distributed."

According to Anderson, the mixed-blood group also has no interest or claim to benefits provided to the tribe in the Central Utah Project Completion Act legislation.

What the decision does is "keep things the way they are now," said Ute Tribe counsel Tod Smith. "I don't think the tribe has ever disputed that if you had land with water rights you had the water, but the UDC took a board argument that they had joint management. His (Anderson) contention was the water had already been divided.

As part of the Ute Partition Act, each tribal member who was terminated was given acreage. If the land came with water rights, the mixed-blood retained that water right. If the land was not irrigable, there was no water. Much of the land, and the associated water rights, distributed to the mixed-bloods has been sold to the Ute Tribe and UDC.

By law, UDC may file an administrative appeal of the decision in U.S. District Court. Smith says because of that the case is "still active."

UDC officials were unable to be reached for comment prior to press time.

Vernal Express Aug. 12, 1998 Tetler 0588

Mixed bloods future hangs on legal loophole

A bid by Utah's "mixed-blood" Utes to share in the management of certain tribal assets could hinge on whether they sued the Ute Indian Tribe as a corporate or political entity.

A three-judge panel of the U.S. 10th Circuit Court of Appeals in Denver sent the question back to U.S. District Court in Salt Lake City last week after ruling that in one critical respect, the tribe is immune from suit.

The Ute Distribution Corp., which represents the tribal interests of the mixed blood Utes, filed a lawsuit in 1995 asserting a claim over the management of certain water rights.

At issue are the terms of the Ute Partition and Termination Act of 1954, which provided for the division and distribution of tribal lands and other assets on the Uintah and Ouray Reservation between full-blooded and mixed-blood Utes.

Indivisible assets — such as gas, oil and mineral rights — remained in trust for the benefit of both the full-blood and mixed-blood Utes under the joint management the Tribal Business Committee and the representative of the mixed bloods.

In its lawsuit, the Ute Distribution Corp. asked the federal courts to declare that certain water rights had not been partitioned, remained in trust for the benefit of both the full- and mixed-blood Utes and were subject to joint management. The tribe responded with a motion to dismiss, arguing that it was immune from suit, and that it had not waived that immunity. However, U.S. District Judge David Winder concluded that the Ute Partition and Termination Act had limited the tribe's immunity with respect to disputes over the joint management of indivisible assets.

According to Winder, allowing the tribe to assert immunity "would contradict the overriding national interest of ensuring that federal trust property is managed in an orderly manner according to the joint scheme set forth by Congress in the (1954 act)."

The tribe appealed, saying there is nothing in the act expressly authorizing a suit. The Ute Distribution Corp., countered with an alternative argument: a "sue and be sued" provision in the tribe's corporate charter constituted an express waiver of immunity.

Writing for the appeals court, Judge Michael Murphy agreed with the tribe that the act is devoid of any language clearly expressing an intent to subject the tribe to lawsuits over the joint management of indivisible assets. Therefore, the district court was wrong to conclude that the tribe's immunity was waived by the act.

However, the appeals judges directed the district court to consider the mixed-bloods' alternative argument relating to the tribal charter, which, among other things, asserts a power "to sue and be sued in courts of competent jurisdiction within the United States."

Murphy said courts have held that a "sue and be sued" clause may constitute a waiver of immunity, but this waiver is limited to actions involving the corporate activities of the tribe and doesn't extend to actions in its capacity as a political governing body.

The judges remanded the case to district court "to determine whether the tribal corporate entity is both a named and proper defendant in this case." The answer will determine whether the lawsuit can continue.

UBS February 9, 1999

Mixed-blood medicine man targets officials in suit

Folder 0588

A mixed-blood Ute Indian from Whiterocks, who has served as a spiritual leader in sweat lodge ceremonies for Native Americans incarcerated at the Central Utah Correctional Facility in Gunnison, has filed a $3 million lawsuit against the Utah Department of Corrections.

Darrell A. Gardner Sr. and four inmates -- including Gardner's son, James, -- allege the Department of Corrections is violating American Indian prisoners' religious freedoms by not providing regular sweat lodge ceremonies.

Gardner hasn't been able to act in his role as a spiritual leader for the Native American inmates since the Native American Religious Task Force tightened certification requirements for medicine men who lead sweat lodge ceremonies. The task force rejected Gardner because his name does not appear on the Ute Tribe's rolls.

The task force was formed about 1 ½ years ago and is made up of tribal leaders, Corrections officials and Legislators. Prior to that time, Gardner and other volunteers were allowed to lead American Indian prayers at the prison on their own word that they qualified.

Gardner, who has been helping at sweats in prison for ten years, said he can no longer go because he is a "half-breed."

Lori Bradley, Native American program coordinator for the Department of Corrections, confirmed that Gardner had been rejected by the Ute Tribe nine months ago when he tried to resume serving as a sweat lodge leader at Gunnison.

About 200 inmates throughout the prison system participate regularly in sweat lodge ceremonies which are offered on average every six weeks to two months.

Prison officials say they must comply with the way the task force wants the ceremonies run, but Gardner says it should be those participating in the sweat lodges -- not tribal officials -- who choose their spiritual leaders.

Terminated Utes cheated out of UDC stock holdings

Dear Editor,

Ute Distribution Corporation has kept me in the dark all these years and claim they do not have to tell me anything because I no longer have UDC stock. The UDC payments per ten shares units on the average paid out at $18,000 a year to the white stockholders who got their hands on these Indian mineral rights from the termination law.

It took the corporation years to freeze out the original Indian members. The money was held back while the directors convinced our Indian terminated people these stock were "worthless." We were told many times by several of these directors running these Indian affairs who were sworn into this leadership position that these stocks were not worth the paper they were wrote on. If we could sell them to do so.

UDC was in force three years before it was made legal under the termination 671 law. By 1964 and 1965 there were very few Indians left, many local up standing citizens around Roosevelt and valleys around Salt Lake City became wealthy, and others who invested outside of Utah.

A man living around Provo Utah holds 180 of these so called worthless stocks. If my math is right, this means this instant white Indian stockholder reaps $108,000 every three months. This amounts to approximately $324,000 a year.

We formed a little group to approach the Securities and Exchange Commission in Salt Lake City. When this man realized who we were and why we came we got the good old fashion run around as this person, could not get us out of his office fast enough.

When I did the research about this UDC Corporation, I found out it was never listed on the New York Stock Exchange. If the United States Senate can lose years of our pleading and documented proof, right out from under their noses, as they did when, Sen. Mark Andrews asked for this act to be investigated, we as tax-paying Indians who lived on our reservation where many of these outcasts Indians have been reduced to be subjects of Utah state welfare as well as the full blood members who are now subjected to the same do not have a chance. Termination Act provided resources via tribal funds to subsidize Utah State Welfare programs.

About 30 some years ago several citizens concerned for the Indian people and the destitute status they were in, were threaten by a state official "where did you get this information from?" "Your office," came their reply. "If you make this figure public you will not be able to buy a wheelbarrow to get out of town."

Considering all the above information it does not take much to see what really happened to these outcast Indians. The Department of the Interior started ignoring the Indians needs for protection as this law acquired them to do. This is why I call the Ute Petition Act political genocide. Not only does it apply to we terminated people but it will get the entire northern Ute Tribe in time. To clear the air, I am responsible solely for this article.

It's funny to me because some of you are doing everything you can to stop our struggle, you are blood relatives to many of these outcast Indians, including me.

Illa Chivers
Grove, Oklahoma

Uintah Basin Standard 19, Sept 2006 RTC 0588

Judge told to review ruling

STATUTE OF LIMITATIONS PROPERLY APPLIED?

Uintah Basin Standard 23 Jan 2007

By Lezlee E. Whiting

Over 600 plaintiffs seeking redress from the federal government for terminating them or their ancestors as members of the Uinta Band of Ute Indians, have been given a second chance to continue their legal battle.

At issue is whether the federal circuit court judge who dismissed their complaint one year ago, properly applied a specific law when he determined their case was filed after the statute of limitations had expired.

Last Friday, a three-judge panel from the U.S. Circuit Court of Appeals remanded the case of Felter v. Kempthorne back to Washington, D.C.-based U.S. District Court Judge Richard W. Roberts for review.

In January 2006, Roberts sided with the federal government, ruling that the allegations against them for wrongdoing in the 1950s and 1960s in connection with the Ute Partition Act were filed 35 years too late.

According to Robert's decision, lead plaintiff Oranna Felter of Roosevelt, should have filed her claims in 1967 at the very latest. Felter was a young girl at the time the Uinta Band members who had less than 50 percent Ute blood had their names stricken from tribal rolls.

The appellate court has directed Roberts to consider whether the terminated Utes had access to their financial records and received an accounting of what had transpired before ruling that the statute of limitations had run its course in the case.

> "We all stuck in there behind our attorney who has proudly stood up and fought a lonely battle for us terminated mixed-blood Uintas."
>
> — Oranna Felter, lead plaintiff

Sacramento, Calif. attorney Dennis Chappabitty, who represents the plaintiffs, has said his clients never received any accounting throughout the course of their legal battles to have the Ute Partition Act declared invalid.

"We all stuck in there behind our attorney who has proudly stood up and fought a lonely battle for us terminated mixed-blood Uintas and our descendants when no other attorney would touch this with a 10-foot pole," said Felter. "All of the members on our case have been dedicated to seeing this case through, and we appreciate their support and prayers."

There are 668 individuals

SEE RULING on page 4

Union hoop victory

Cats whip Morgan, now in 2nd place

Democracy is the art of running the circus from the monkey cage.
H. L. Mencken

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RULING

Continued from page 1

listed as plaintiffs in the complicated civil court complaint. Felter said the recent court ruling has a sweet taste of victory because through the past 54 years the group has been "kicked out of the court, ridiculed by the BIA, the Ute Indian Tribe and Utah's own congressional delegation."

The litigation seeks relief for alleged injustices inflicted on members of the Uinta band of Ute Indians who were terminated from tribal membership roles with the implementation of the 1954 Ute Partition Act. The lawsuit claims the termination act was flawed and that the federal government acted illegally in carrying it out.

The plaintiffs have always claimed that parents who agreed to termination for themselves and their children, did not understand its consequences and were not given adequate information about the serious repercussions of the decision they were making.

In December Chappabitty presented oral arguments before the U.S. Circuit Court of Appeals, seeking to have the lower court's ruling overturned.

Chappabitty, a Comanche and Chiricahua Apache, believes that the judges "took a very compassionate attitude toward the plaintiffs' allegations of skulduggery and deceit."

Four-hundred ninety people, 260 of them children and all of them members of just one of the Ute Tribe's three bands – were terminated as tribal members during a time in the nation's history when the federal government was moving towards ending their stewardship over Indian tribes.

A reversal of the termination policy began under the Nixon Administration in the 1970s. The Ute Partition Act, however, was never withdrawn and the Ute Tribe remains the only tribe in history to have a portion of its members terminated.

According to Felter, additional information will be going out to the plaintiffs to update them on the standing of the case.

Judge rejects Indian status claim

By Geoff Liesik

An 8th District Court judge has ruled that the state has jurisdiction to prosecute Jesse Doyle Clark for the near-fatal stabbing of another man in 2004 at the Rock Creek Ranch, after dismissing Clark's claim that he is a member of a federally recognized Indian tribe.

In a seven page ruling, Judge A. Lynn Payne said Clark had failed to prove that he has a "significant degree of Indian blood" and that he is "recognized as an Indian by a tribe or society of Indians or by the federal government," the two legal requirements set forth in an 1846 U.S. Supreme Court case to establish who may be considered an Indian.

Defense attorney Mike Humiston had sought to have the case against his client dismissed, arguing that Clark is a member of the Uintah Band of Indians and that the alleged offenses occurred on land that remains within the exterior boundaries of the Uintah and Ouray Indian Reservation.

Humiston said his client is the descendant of an individual who was never allowed to enroll as a member of the Ute Indian Tribe as a result of the 1954 Ute Termination Act. The UPA terminated 455 mixed-blood Utes from federal supervision and excluded another 220 individuals from future tribal membership.

Humiston said many of the people terminated or excluded from the Ute Tribe were members of the Uintah Band, which he argued continues to exist as an independent tribe because "federal law presumes that a tribe consists of the majority of its members."

But Payne cited the Utah Supreme Court's decision in State v. Reber – a case he presided over at the trial court level, with Humiston representing the defendant – which held that the Uintah Band was no longer a separate entity once it joined the White River and Uncompahgre bands in 1937 to adopt the Ute Indian Tribe Constitution. That meant that when the UPA was enacted 8 years later, "there was no Uintah Band to be expelled from the Ute Tribe," the judge wrote.

Payne added that the language of the UPA specifically states that upon termination, former tribal members no longer enjoy Indian status and are subject to state jurisdiction.

"The UPA clearly grants the state jurisdiction over all individuals who were listed in the termination proclamation," Payne wrote.

The judge later added that he was "concerned" that Humiston had failed to address the issue of Indian blood in his argument; that he did not address the Utah Supreme Court's ruling on the Uintah Band's status as a separate entity outside of the Ute Tribe; and that he failed to argue for an "extension, modification or reversal" of existing law, all of which could be considered violations of Rule 11 of the Utah Rules of Civil Procedure.

Payne ordered Humiston to appear before him on May 12 to explain his actions and possibly face sanctions.

Humiston, contacted by telephone on Wednesday, had not yet received a copy of the judge's ruling. He responded with disbelief when informed of the judge's allegations of possible Rule 11 violations.

"I can't believe he's doing this," Humiston said. "This is insanity. You can quote me on that: This is insanity!

> "This is insanity. You can quote me on that: This is insanity!"
>
> – Defense attorney Mike Humiston

"Denying the motion, I anticipated that," he continued, "but I'm creating a record for an appeal and he knows I'm doing that and he knows I can. All I can say is, good God! What planet is he living on?"

Humiston said the arguments he made in the motion filed with the court are legitimate and are currently pending before the U.S. 10th Circuit Court of Appeals in the Reber case. He also criticized Payne's citation of the 1846 U.S. Supreme Court case in his ruling.

"That is not the law," Humiston said. "He's accusing me of not following the law and he's talking about a Supreme Court ruling that came down in 1846. He's talking about a completely different era."

Humiston said in the late 1970s, Congress directed the Interior Department to create a list of all federally-recognized Indian tribes. He said subsequent to that, case law has established that blood quantum is not the government's business and that tribes have an absolute right to determine their membership.

In the case of Clark, Humiston said he is recognized by the Uintah Band of Indians as a member of their tribe, noting that the band is a diverse group.

"The Uintah Band consists of some members of the Ute Tribe, some who were terminated and some who were never terminated and never enrolled," the attorney said. "It's a mixed bunch."

Humiston has unsuccessfully tried to have Payne removed from the case once before. He said he'll likely try again, characterizing the judge's apparent move to seek sanctions against him as "bizarre" and indicative of a "personal vendetta."

Unlike Humiston, Duchesne County Attorney Stephen Foote said he was "definitely pleased" with Payne's ruling.

"It's a well written, well researched opinion," Foote said.

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Mixed-blood Utes petition for repeal or completion of UPA

Mixed-blood Uinta Utes who were terminated from federal recognition by the Ute Partition Act in 1954 are circulating petitions seeking to have the act repealed or completed.

The petitions call for the UPA to be repealed, which would allow the original 490 terminated individuals and their descendants to be federally recognized again and reclaim their American Indian identity. If that cannot be done, the petitioners are seeking to have the UPA completed, resulting in the termination of the entire Ute Tribe from federal protection, said Oranna B. Felter.

Felter is the lead plaintiff in a federal lawsuit against the U.S. government that seeks to overturn the UPA. Felter was 10 years old when Congress "forced termination on her and her people," she said. Of the 490 terminated mixed-bloods, 260 were children who did not have a vote in the termination.

"There is no proof anywhere that the mixed-blood Uintas ever 'voted' for their own termination," Felter said.

Felter said Curtis Ceespooch, chairman of the Ute Tribe Business Committee, choose not to support the repeal of the UPA at the National Congress of American Indians, held during the first part of June in Reno.

"All full-blood Ute tribal members need to blame your tribal council and not the terminated mixed-bloods," Felter said of the petition for completion of the UPA. "This could have been avoided. We will not be held hostage any longer to a congressional law that Curtis Cesspooch and the council support."

Felter's group handed out petitions at a meeting during late of June to everyone in attendance, and sent notices out of the date the petitions had to be returned for verification and recording. She said the target date was Monday, Aug. 4.

"But due the huge amount of petitions that are coming in every day, we have decided to extend the target date to Sept. 1," Felter said.

She said the extension is intended to give individuals who live out of state enough time to get their petitions turned in.

"I have had many calls from our members who were wondering how they would be able to get the petitions back before Aug. 1," Felter said.

The petitions can be signed any of the original 490 terminated mixed-blood Uintas still living. Heirs of terminated mixed-blood Uintas are also being asked to sign their ancestor's names to the petitions.

"We are asking Congress to restore the deceased to federal recognition so their heirs will be able to continue to inherit the rights of that person," Felter said. "We don't want the rights to die with our members, or to forget our ancestors who died with broken hearts and spirits because of an illegal termination."

Felter said people who are not terminated mixed-bloods have also been signing special "support petitions" on the group's behalf.

"This means a lot to all of us," she said.

Anyone with questions about the petitions can contact Felter at 435-722-3220 or by mail at P.O. Box 465, Fort Duchesne, UT 84026.

Felter said there will be no further deadline extensions for the petition. A meeting will be held after the Sept. 1 deadline to discuss the outcome of the petition drive.

AUC responds to Felter group

Dear Editor,

We would like to respond to an article published in the Vernal Express, dated Aug. 6, under the headline "Mixed-blood Utes petition for repeal or completion of UPA."

The affiliated members of the Ute Indian Tribe have the only legally-authorized, duly-appointed representatives to speak for them in the body of the Affiliated Ute Citizens and we have never relinquished our authority to anyone else. Further, the Ute Indian Tribe is not going to let anyone supersede its authority, especially someone who is no longer an enrolled member and has no asset interests in the Ute Indian Tribe.

Oranna Felter is misrepresenting herself by implying that she has some kind of authority to take actions on behalf of the mixed-bloods and full-bloods of the Ute Indian Tribe in regard to the Ute Partition Act of 1954 and she is misrepresenting the facts regarding the Ute Partition Act.

She may be the lead plaintiff in a federal lawsuit against the U.S. government but it does not seek to overturn the UPA, and she has her facts wrong. The Ute Partition Act was just that: a partition act, which was in fact completed by 1961.

The truth is the Uintah & Ouray Reservation Termination Act was never implemented by the Congress of the United States because the Ute Indian Tribe – mixed-blood and full-blood – did not agree to be terminated in 1964.

In a letter to Margaret Reed from Sen. Inouye, then chairman of the Senate Committee on Indian Affairs, dated Feb. 7, 1991, he states: "Section 24 of the Act (UPA) did contemplate the "eventual" termination of the Ute Indian Tribe and directed the Secretary of the Interior to file an annual report with Congress advising of the progress in developing a plan for such purpose. In 1975, when the period of "termination" was in disrepute, the 1954 Act was amended to delete the provision requiring this annual report. There is no current proposal for termination of the Ute Indian Tribe."

Termination for the Ute Indian Tribe, which includes the original 490 affiliated members, was officially withdrawn by Congress in 1975.

The 490 original affiliated members of the Ute Indian Tribe, a federally recognized tribe, would like Oranna Felter or any of her followers to prove to us that we are congressionally terminated. The BIA has not been able to do it through their records and Sen. Inouye says it never happened and will not now happen. Perhaps she and her colleagues have the magic wand.

The National Congress of American Indians told Oranna's attorney, Dennis Chappabitty, in June of this year that in order to repeal the UPA they would have to petition the Ute Indian Tribe (the Ute Tribe Business Committee and the Affiliated Ute Citizens) to have the act repealed since they are the only ones who can do it. Thus far no such petition has been presented to either entity.

Denial is a terrible thing. Sooner or later Oranna and her purported followers will have to accept the fact that there is no such thing as "terminated Utes," "terminated mixed-bloods," or terminated anything from the Uintah and Ouray Reservation that she so proudly touts as being something factual.

No one is to blame for anything, including her misinformation. That is just the way it is. She and her colleagues need to get over it and give it a rest!

Arlene Gardner
Vernal
Vice President
Affiliated Ute Citizens of the Ute Indian Tribe

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