

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HARLYN GERONIMO,
Mescalero Apache Reservation
Mescalero, NM 88340

HARLYN C. GERONIMO,
Mescalero Apache Reservation
Mescalero, NM 88340

KATE GERONIMO,
Mescalero Apache Reservation
Mescalero, NM 88340

LYLE GERONIMO,
Mescalero Apache Reservation
Mescalero, NM 88340

JUANITA VIA MAKIL,
Mescalero Apache Reservation
Mescalero, NM 88340

JUANITA MAKIL,
Mescalero Apache Reservation
Mescalero, NM 88340

GINA MAKIL,
Mescalero Apache Reservation
Mescalero, NM 88340

ROBBY MAKIL,
Mescalero Apache Reservation
Mescalero, NM 88340

SHANNA MAKIL,
Mescalero Apache Reservation
Mescalero, NM 88340

NORBERT VIA,
Mescalero Apache Reservation

Civil Action No. _____

Case: 1:09-cv-00303
Assigned To : Roberts, Richard W.
Assign. Date : 2/17/2009
Description: General Civil

Mescalero, NM 88340)
)
FAWN VIA,)
Mescalero Apache Reservation)
Mescalero, NM 88340)
)
EILEEN VIA,)
Mescalero Apache Reservation)
Mescalero, NM 88340)
)
VERALYN MENDEZ,)
Mescalero Apache Reservation)
Mescalero, NM 88340)
)
ALBERT PLATTA,)
Mescalero Apache Reservation)
Mescalero, NM 88340)
)
PERCY PLATTA,)
Mescalero Apache Reservation)
Mescalero, NM 88340)
)
EUPHRASIA PLATTA,)
Mescalero Apache Reservation)
Mescalero, NM 88340)
)
CHERISSA MANGAS,)
Mescalero Apache Reservation)
Mescalero, NM 88340)
)
MURRAY RANDALL,)
Mescalero Apache Reservation)
Mescalero, NM 88340)
)
BRYAN RANDALL,)
Mescalero Apache Reservation)
Mescalero, NM 88340)
)
KAYLA RANDALL,)
Mescalero Apache Reservation)
Mescalero, NM 88340)
)
Plaintiffs,)

v.

BARACK HUSSEIN OBAMA,
in his official capacity as President of the
United States of America
The White House
Washington, DC 20500

ROBERT M. GATES,
in his official capacity as Secretary of Defense
1400 Defense Pentagon,
Washington, DC 20301-1400

PETE GEREN,
in his official capacity as Secretary of the Army
1400 Defense Pentagon,
Washington, DC 20301-1400

YALE UNIVERSITY,
2 Whitney Avenue, 6th Floor
New Haven, CT 06510

ORDER OF SKULL AND BONES,
an unincorporated association
The Tomb, Yale University Campus,
New Haven, CT 06510

Defendants.

**COMPLAINT TO FREE GERONIMO, HIS HUMAN REMAINS,
FUNERARY OBJECTS AND SPIRIT FROM
U.S. MILITARY CUSTODY TO HIS LINEAL DESCENDANTS
FOR RETURN TO HIS NATIVE LANDS**

Plaintiffs allege the following upon information and belief:

1. This action is brought by lineal descendants of the Native American Geronimo, under the Native American Graves Protection and Repatriation Act, to free Geronimo, his remains,

funerary objects and spirit, from one hundred years of imprisonment at Ft. Sill, Oklahoma, the Yale University campus at New Haven, Connecticut and wherever else they may be found, by securing the judgment of this Court that plaintiffs are lineal descendants of Geronimo entitled to ownership, control and possession of his remains and associated funerary objects and thereafter entitled to any licenses, permits, or permissions as may be necessary to remove such remains and funerary objects to return Geronimo's remains and funerary objects from the location or locations where they are found to his native land, at the headwaters of the Gila River among the surrounding mountains, near the Gila Cliff Dwellings National Monument in the Gila Wilderness Area of the Gila National Forest in southwestern New Mexico for burial in the manner of his fathers, and thereafter seeking designation and renaming of an appropriate area therein, the Geronimo Apache Native Lands Preserve, because Native Americans never considered their lands a wilderness, to be maintained in the state of nature as Geronimo knew and loved them. In 1922 the first Wilderness Area created on federal lands in the United States was carved from the Gila National Forest. It included the headwaters of the Gila River where Geronimo was born though Congress was unaware of it at the time.

THE PARTIES

The Plaintiffs

2. (a). The twenty plaintiffs who have commenced this action are lineal descendants of the Bedonkohe Apache named Goyahklo in his childhood, but known to the world since adulthood as Geronimo. Geronimo believed he was born in 1829. Geronimo took a young Mescalero Apache, Ih-Tedda, as his wife about September 23, 1885. Geronimo's

wife Ih-Tedda, known as Kate throughout her later years, gave birth to a daughter by Geronimo in prison at Ft. Marion, Florida on September 13, 1886, their first child. The daughter was named Marion by Colonel Loomis L. Langdon the officer in charge of the Indian prisoners, but was known as Lenna all her life. Ih-Tedda and Lenna were separated from Geronimo at the Mount Vernon Barracks, Alabama, in February 1889 when Geronimo insisted they take the opportunity offered to Ih-Tedda with Lenna and the other twelve Mescalero Apaches there to escape the deadly conditions at Mount Vernon and go to the Mescalero Reservation in New Mexico. Lenna spent about six weeks with Geronimo at the Louisiana Purchase Exposition in St. Louis in 1904. Geronimo mentions Lenna three times in his autobiographical "Geronimo's Story of His Life," fully acknowledging that she was his daughter. There are no known living lineal descendants of Geronimo other than those descended from his marriage to Ih-Tedda.

(b). Lenna Geronimo married Juan Via in 1906 while living on the Mescalero Apache Reservation in New Mexico. Lenna Geronimo gave birth, among other children, to Juanito Via in 1912 and to Percy Via in 1917 in this marriage, on the Mescalero Apache Reservation in New Mexico.

(c). Juanito Via, deceased, the son of Lenna and Juan Via and grandson of Geronimo was born in 1912. He served overseas in the U.S. Army in World War II. He is survived by two children, Harlyn Via, who changed his name to HARLYN GERONIMO, also an Army veteran with two tours of duty in Vietnam, and JUANITA VIA MAKIL, by Harlyn Geronimo's children, HARLYN C. GERONIMO, KATE GERONIMO and LYLE GERONIMO, and by Juanita Via Makil's children, JUANITA MAKIL, GINA MAKIL,

ROBBY MAKIL and SHANNA MAKIL. These nine descendants of Juanito Via are all surviving adult lineal descendants of Geronimo and plaintiffs in this action.

(d). Percy Via, deceased, the son of Lenna and Juan Via born in 1917, is survived by two children, a son, NORBERT VIA and a daughter FAWN VIA, by Norbert Via's daughter EILEEN VIA and by Fawn Via's children, VERALYN MENDEZ, ALBERT PLATTA, PERCY PLATTA and EUPHRASIA PLATTA; and by Veralyn Mendez's daughter, CHERISSA MANGAS. Percy is also survived by a son of his deceased daughter Germaine, MURRAY RANDALL, and a son and daughter of Murray Randall, BRYAN RANDALL and KAYLA RANDALL. These eleven descendants of Percy Via are all surviving adult lineal descendants of Geronimo and plaintiffs in this action.

The Defendants

3. Defendants (a) – (c) being sued in their official capacities are:
 - (a). Barack Hussein Obama, as President of the United States of America, whose address is the White House, Washington, D.C. 20500.
 - (b). Robert M. Gates, as Secretary of Defense, whose address is the Pentagon, Washington, D.C. 20301.
 - (c). Pete Geren, as Secretary of the Army, whose address is the Pentagon, Washington, D.C. 20301.
4. Yale University is a nonprofit, non-stock, corporation specially chartered under the laws of Connecticut, with its principal place of business in New Haven, Connecticut and is a private institution of higher education that accepts federal funding.
5. The Order of Skull and Bones, also known by similar names, is an unincorporated

association, self-described as a secret society, with its principal place of business in a building known as the Tomb, located on the Yale campus in New Haven, Connecticut; the Order is a separate entity from Yale University, its members are students, former students and alumni of Yale, and it is present on the Yale campus with the knowledge and permission of the University.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction under the provisions of the Native American Graves Protection and Repatriation Act , as amended, of November 16, 1990 (Public Law 101-601, 25 U.S.C. §§ 3001, et seq.) and 28 U.S.C. § 1331 because it involves controlling federal questions.
7. Venue in this judicial district is proper under the provisions of 28 U.S.C. § 1391(e)(1) because all the defendants who are officers of the United States reside in this judicial district, and (b)(2) because a substantial part of the actions and events giving rise to plaintiffs' claims occurred in this judicial district.

Facts on Which the Claims are Based

8. Geronimo, named and called Goyahklo at birth into adulthood, believed he was born in June 1829 in No-doyohn Canyon "In that country which lies around the headwaters of the Gila River ...This range was our fatherland; among these mountains our wigwams were hidden; the scattered valleys contained our fields; the boundless prairies, stretching away on every side were our pastures; the rocky caverns were our burying places."¹ The

¹ "Geronimo's Story of his Life" as translated by Asa Deklugie and told to S.M. Barrett, Duffield and Company, New York, 1907, p17.

location has been determined to be within the Gila National Forest and its Gila Wilderness Area by the Gila River where it branches into three streams adjacent to The Gila Cliff Dwellings National Monument in southwest New Mexico. It is marked by a small stone monument maintained by the U.S. Forest Service.

9. Geronimo was born into the Bedonkohe Apache Band of his mother which his father joined when they married. His father was born into the Nednai or Nedni Apache Band of which Geronimo's grandfather Maco, or Mahko, was chief. Geronimo's childhood and youth were spent in the area of his birth. "During my minority we had never seen a missionary, or a priest. We had never seen a white man. Thus quietly lived the Be-donko-he Appache."²
10. In 1846 at age 17, Geronimo was admitted into the council of warriors of the Bedonkohe and eligible to go on the warpath and to marry under Tribal custom. He found that "perhaps the greatest joy for me was that now I could marry the fair Alope" whom he had loved since childhood and for whom her father "asked many ponies for her. I made no reply but in a few days appeared before his wigwam with a herd of ponies and took Alope. This was all the marriage ceremony necessary for our tribe."³
11. Geronimo had assumed the care of his widowed mother and on his marriage made a home near her teepee, in a new teepee for Alope and himself "of buffalo hides and in it ... many bear robes, lion hides and other trophies of the chase." "Alope had made many little decorations of beads and drawn work on buckskin which she placed in our teepee. She

² Geronimo's Story, op.cit., at p.34.

³ Id. at p. 37-38.

also drew many pictures on the walls of our home. She was a good wife...We followed the traditions of our fathers and were happy. Three children came to us – children that played, loitered and worked as I had done.”⁴

12. While Geronimo was in his early twenties, in the summer of 1850, still called Goyahklo and unknown outside his tribe, the whole Bedonkohe Apache tribe, led by its Chief Mangas Coloradas “being at peace with the Mexican towns...went south into Old Mexico to trade,” stopping short of Casas Grandes in Chihuahua outside a town named Janos, called Kas-ki-yeh by the Indians, where they stayed for several days. From their campsite, the men “could go into town to trade leaving a small guard” to protect the women and children and keep the supplies and arms. “Late one afternoon, when returning from town we were met by a few women and children who told us Mexican troops from some other town had attacked our camp, killed all the warriors of the guard and killed many of our women and children. Quickly we separated, concealing ourselves as best we could until nightfall, when ...Silently we stole in one by one ... I found that my aged mother, my young wife, and my three small children were among the slain ... without being noticed I silently turned away and stood by the river ... as there were only eighty warriors left, and we were without arms or supplies, and were furthermore surrounded by the Mexicans far inside their own territory, we could not hope to fight successfully. So our Chief, Mangas Coloradas, gave the order to start at once in perfect silence for our homes ... leaving the dead upon the field ... I stood until all had passed, hardly knowing what I would do ... I did not pray, nor did I resolve to do anything in particular, I had no

⁴ Id. at p. 39.

purpose left. I finally followed the tribe silently, keeping just within hearing distance of the soft noise of the retreating Apaches.”

“For two days and three nights we were on forced marches, then we made a camp near the Mexican border... Here I took some food and talked with other Indians who had lost in the massacre, but none had lost as I had, for I had lost all.

“Within a few days we arrived at our own settlement. There were the decorations that Alope had made – and there were the playthings of our little ones. I burned them all, even our teepee.

“I was never again contented in our quiet home ... I vowed vengeance upon the Mexican troopers who had wronged me, and whenever I .. saw anything to remind me of former happy days my heart would ache for revenge upon Mexico.”⁵

13. In the safety of their homeland among the mountains feeding the headwaters of the Gila River and “as soon as we had again collected some arms and supplies Mangas Coloradas, our chief, called a council and found that all of our warriors were willing to take the warpath against Mexico. I was appointed to solicit the aid of other tribes in this war.”⁶ That fall “We traveled in three divisions; the Bedonkohe Apaches led by Mangas Coloradas, the Chokonen (Chiricahua) Apaches led by Cochise and the Nedni Apaches by Whoa ... We usually marched about fourteen hours per day, making three stops for meals, and traveling forty to forty-five miles a day.”⁷
14. The Apaches traveled deep in to Sonora State, west of Chihuahua, to the town of Arispe

⁵ Geronimo’s Story, op.cit. at p 43-46.

⁶ Geronimo’s Story, op.cit., at p 42.

where they believed the Mexican troops that had slaughtered their people at Kas Ki-Yeh, were garrisoned. Though the Apaches probably never knew it, the Military Governor of Sonora General Carasco, who three years earlier led a Mexican battalion against U.S. forces under General Winfield Scott far to the south at Cerro Gordo in the Mexican-American war, confirmed that it was his troops that attacked the Bedonkohe Apaches at Janos, in Chihuahua. Both John C. Cremony, who was acting as a guide and interpreter for the U.S. Boundary Commission and John R. Bartlett who headed the Commission reported Carasco's account.

15. General Carasco told Cremony "We killed a hundred and thirty, and took about ninety prisoners, principally women and children. Col. Mehina, commanding the State of Chihuahua, was so enraged at my action that he made formal complaint to the Supreme Government."⁸ Bartlett himself reported Carasco as putting the death toll at about 25 with fifty or sixty women and children captured and sold as slaves in the interior.⁹ In General Carasco's defense it should be observed that as early as 1835 Sonora State offered 100 pesos for an Apache warrior's scalp and Chihuahua offered 100 pesos for an Apache warrior's scalp, fifty pesos for an Apache woman's scalp and 25 pesos for the scalp of an Apache child. At that time the peso was about equivalent to the U.S. dollar.
16. The Bartlett expedition was charged with surveying a border between the U.S. and Mexico from 1849 to 1851 as part of a Joint U.S. Mexican Boundary Commission. The

⁷ Geronimo's Story, op.cit., at p. 50

⁸ Life Among the Apaches, John C. Cremony, A. Roman & Co. San Francisco 1868, at p.39.

⁹ John R. Bartlett, Personal Narratives, Vol. I, D. Appleton, New York, 1854, pp. 206-07.

U.S. was anxious to extend U.S. territory to the south to secure lands offering a much easier passage for a railroad offered by the lower, flatter lands from El Paso, Texas across what is now southern New Mexico and Arizona, to reach Southern California. The Gadsden Purchase of 1853, based on Bartlett's survey, accomplished this.

17. The Apaches on foot with spears and with bows and arrows and some guns captured the day before the battle, confronted two companies of Mexican cavalry and two companies of infantry outside Arispe, many like General Carasco, veterans of the Mexican-American war only several years earlier. Because he "had been more deeply wronged than others" Goyahklo was chosen to direct the battle. He reported "I fought with fury," and at the end "Over the bloody field, covered with the bodies of Mexicans rang the fierce Apache war-whoop ... The Apaches had avenged the massacre of Kas-Ki-Yeh"¹⁰
18. Historians accept as fact that it was in the battle of Arispe that Goyahklo, meaning one who yawns, was first called and ever after known to the world as Geronimo. It was the Mexican soldiers who shouted "Geronimo" on seeing this fierce warrior, and his Apache brethren apparently impressed, if not relieved, quickly adopted it. Perhaps the battle occurred on St. Jeromes Feast Day, September 30, 1850, since Geronimo is Spanish for Jerome.
19. Portending the future, by late 1849, 5000 white Americans were estimated to be waiting in El Paso for safe passage to the California gold fields. It was between August 24 and September 5, 1851 that "Geronimo saw his first white Americans."¹¹ Geronimo told

¹⁰ Geronimo's Story, op.cit., at p. 52-54.

¹¹ Angie Debo, Geronimo, University of Oklahoma Press, 1976, p. 45, citing Bartlett. op.cit.,

Barrett "...we heard that some white men were measuring land to the south of us ... with a number of other warriors I went to visit them ...we could not understand them very well, for we had no interpreter ... we made our camp near their campWe gave them buckskin, blankets and ponies in exchange for shirts and provisions. We also brought them game. Everyday they measured land with curious instruments and put down marks which we could not understand. They were good men ... These were the first white men I ever saw."¹² This meeting was only three years after the Treaty of Guadalupe-Hidalgo of 1848, settling the Mexican American war which brought Geronimo's homeland into the United States and was harbinger to the flood of whites who would come to the region over the next 35 years when in 1886 Geronimo would be taken from his homeland as a Prisoner of War of the United States.

20. The Spanish, and after 1821, Mexican governments never posed a direct threat to the undeniably remote and idyllic homeland of the Bedonkohe Apaches high in the rugged mountains where the waters of the Gila River formed with "boundless prairies, stretching away on every side." From the day in December 1535 when three Spaniards and a Negro Moor led by Cabeza de Vaca, seven years after their shipwreck near Galveston, first encountered Apaches west of the Rio Grande river from the present site of El Paso until 1848, Spanish and Mexican encounters with Apaches near the Gila River headwaters of Geronimo's homeland, if any, were insignificant. Cabeza de Vaca wrote of the Apaches he met in his "Relacion," "They gave us beans and many squashes to eat, gourds to carry

at pp. 358, 373.

¹² Barrett, op.cit., at pp. 113-14.

water in, blankets of cowhide (buffalo) and other things ... great festivities were made over us ... They have the finest person of any people we saw, of the greatest activity and strength, who first best understood us and intelligently answered our inquiries.”¹³ All the early Spanish explorers made similar reports. But from the late 18th Century a virtual state of war usually existed between the government of Spain, then Mexico, with their sparse population in Chihuahua and Sonora and the Apache raiders which was a stand off until after Geronimo’s surrender. “In the 1880's large-scale operations were begun against the raiders of the northern Sierras in cooperation and conjunction with military campaigns in the United States. By 1891, the Apaches of Sonora and Chihuahua were totally destroyed.”¹⁴

21. The Apaches in the United States fared little better. Pressure of white migration increased rapidly throughout the 1850's. In 1855 Dr. Michael Steck was appointed U.S. agent to southern tribes in New Mexico and Arizona. Initiating a reservation policy, he persuaded the Mescaleros, Warm Springs and Mimbreno tribal leaders to sign a land cession treaty. The Warm Springs tribe and the Mimbreno ceded the U.S. 12 to 15,000 square miles while retaining reservations of 2 to 2,500 square miles. Steck favored removing these Indians north to the Gila River where the Bedonkohe lived. It was farther from growing white settlements and travel routes, and “you throw open for settlement the finest and most desirable portion of New Mexico.” By 1857, the Jackass Mail Route from Mesilla, New Mexico on the Rio Grande to Apache Pass in eastern Arizona was making nearly

¹³ Apache Chronicle by John Upton Ferrell, World Publishing Co., 1972 at p 4.
¹⁴ T.R. Fehenbach, Fire and Blood , MacMillan Pub. Co.1973 at p 461.

weekly crossings not fifty miles south of the Gila River and its successor, Butterfield Overland Mail Company, carrying mail and passengers, began twice weekly service on September 16, 1858 on the same route on which small parties were also constantly traveling.¹⁵

22. The Civil War impacted heavily on the Apaches. The Confederate States, long interested in extending slavery to California, moved quickly to force Steck to abandon his agency and federal military posts to evacuate New Mexico and Arizona as a Confederate force from Texas invaded under Colonel John Robert Baylor. On August 1, 1861 Baylor proclaimed himself governor of the "Territory of Arizona", the southern half of Arizona and New Mexico, with his headquarters on the Rio Grande at Mesilla, New Mexico about forty miles north of El Paso. On March 20, 1862, Baylor sent instructions to Tucson stating "The Congress of the Confederate States has passed a law declaring extermination to all hostile Indians. You will therefore use all means to persuade the Apaches or any tribe to come in for the purpose of making peace, and when you get them together kill all the grown Indians and take the children prisoner and sell them ..." President Jefferson Davis denied that there was such a law.¹⁶
23. Union forces were recruited in California under the command of Brigadier General James Henry Carleton to address the Confederate invasion of Arizona and New Mexico. By May 20, 1862 his forces occupied Tucson. The objective was to drive the Confederate forces from the region, reoccupy the abandoned forts and reestablish federal control, but

¹⁵ Debo, *op.cit.*, at p. 56.

¹⁶ Debo, *op.cit.*, at p. 66.

rising Chiricahua Apache attacks soon made the Apaches his principal target. By his General Order No. 12, his command was directed “to attack all Apaches” not bearing flags of truce. Within months he ordered “the rejection of any truce overture.... His Apache philosophy can be summed up in one word: extermination.”¹⁷ On September 18, 1862, Carleton reached Mesilla and assumed command of the Department of New Mexico, the Confederates having fled. Called “the Union Baylor” by historian Dan L. Thrapp within months, he forced the Mescalero, and within a year the Navajo, into a nearly unlivable tract to the east on the Pecos River called Bosque Redondo where they “fought each other and starved and suffered.”¹⁸

24. Mangas Coloradas, called “beyond comparison the most famous Apache warrior and statesman of the present century” by John Cremony writing in 1868, played a major role in Geronimo’s life.¹⁹ He led the Behonkohes to Kas-Ki-Yeh in 1850 where Geronimo lost all his first family, to Janos where three Apache bands avenged that tragedy and remained his Chief until his murder on January 13, 1863. Mangas Coloradas who stood six feet six inches tall, was lured to his death, as were so many Indians, under a flag of truce, going to the abandoned Penos Altas settlement to meet a party of gold seekers and a unit of the Union Army’s California Column. There, Brigadier General Joseph Rodman West placed Mangas Coloradas in custody with a clear indication of his wishes. During the night he was shot and killed while “trying to escape.” An Army surgeon cut off his head, “boiled it in a great black pot and sent the skull to a phrenologist in the east who stated it was

¹⁷ Edwin R. Sweeney, Cochise, University of Oklahoma Press, 1991 at pp 202-03.

¹⁸ Debo, op cit, at 68.

larger than Daniel Webster's."²⁰ Geronimo called the murder of Mangas Coloradas "perhaps the greatest wrong ever done to the Indians."²¹

25. After the Civil War, westward movement of white populations from the east accelerated and U.S. policies to establish military forts, corral Indians into reservations and pursue renegades confronted all the Western Indian tribes with the loss of their homelands and freedom. The pursuit, forced removal and massacre of Indians also increased, far outweighing Indian attacks on white populations during the prior centuries. To soften the assault, President Grant proclaimed a Peace Policy toward the Indians and established a Board of Indian Commissioners to guide and evaluate Indian administration. Congress appropriated \$70,000 for "collecting the Apaches of Arizona and New Mexico upon reservations, furnishing them with subsistence to promote peace and civilization among them," and General George Crook was sent to command the Department of Arizona which included many cavalry veterans of the Civil War, all in 1871. Crook rose from Major to Major General in the Civil War with distinguished combat service in the Union cavalry at South Mountain, Antietam, Chickamauga, Winchester, Fishers Hall, Cedar Creek and Appomattox. General William Tecumseh Sherman, who was commanding General of the U.S. Army from 1869 to 1883 called General Crook the "greatest Indian fighter and manager ever known."²² In turn General Crook called the Apaches "the greatest light cavalry in history." Attacks on Indians both by the military and civilians

¹⁹ Life Among the Apaches, op.cit. p. 30.

²⁰ Debo, op cit, at pp. 68, 69.

²¹ Geronimo's Story, op.cit., at p. 119.

²² Terrell, op.cit., at p. 282

were commonplace and often unreported. An exception was the attack on a band of Western Apaches living peacefully near Ft. Grant in eastern Arizona, south of the Gila River on April 30, 1871. More than 100 Apaches, most women and children, were massacred by an Anglo-Mexican group from Tucson of 140 men led by William S. Oury, an early settler in Arizona active in fighting Indians.²³

26. Crook led the conquest of Apacheria, invading Apache sanctuaries and forcing Indians onto reservations, usually the least desirable and most remote lands in the area. Simultaneously the pressure of white migration into and across the homelands of Apaches and settlements in their midst foreshadowed the end of Apache freedom. In 1881 the Atcheson, Topeka and Santa Fe Railroad from the east joined with the Southern Pacific from the west at Deming, New Mexico, completing the second transcontinental rail link from the Atlantic to the Pacific in the U.S. Deming is less than an hour's drive by car today and a hard day's ride for swift Apache warriors at the time, riding with three ponies in turns, from the headwaters of the Gila to the north, where Geronimo was born.
27. Over the years since Alope's death, Geronimo had lost wives and children and many relatives and friends, to violence, sickness and hardship. In his last months of freedom, a detail of seventy eight Army scouts found Geronimo's camp near Nacori in Sonora on August 7, 1886. They killed several and captured nearly all the women and children. Except for the married son who was with him, Geronimo lost all his family, including his two wives and several children who were captured and one child who was killed. In a daring rescue, Geronimo and four warriors were able to slip into the Army camp, find

²³ Sweeney, op.cit., at p. 313.

Geronimo's wife She-gha and a three year old daughter and escape with Army scouts in hot pursuit on September 22. It was the next day that this small party encountered a Mescalero group gathering pinon nuts. Among the party was Ih-Tedda, who became Geronimo's wife and gave birth to Lenna through whom Geronimo's only surviving lineal descendants came.

28. Willa Cather was 13 years old, living in Red Cloud, Nebraska when Geronimo surrendered to General Miles in 1886. Her life long interest in the frontier and the Indian, focused for years on New Mexico, gave her great wisdom about the Indian history and ways. She wrote "Their country ... was a part of their religion; the two were inseparable. ...[with] places more sacred than churches, more sacred than any place is to the white man."²⁴ Cather found that "just as it was the white man's way to assert himself in any landscape, to change it, make it over a little ... it was the Indian's way to pass through a country without disturbing anything, to pass and leave no trace ... to vanish into the landscape, not to stand out against it ... an Indian hunt was never a slaughter. They ravaged neither the river nor the forest, and if they irrigated they took as little water as would serve their needs ..."²⁵

"For many years Father Latour [Cather's fictional Archbishop of New Mexico] used to wonder if there would ever be an end to the Indian wars while there was one Navaho or Apache left alive. Too many traders and manufacturers made a rich profit out of that warfare, a political machine and immense capital were employed to keep it

²⁴ Willa Cather. "Death Comes for the Archbishop" Alfred A. Knopf, 1927, pp. 294-95.
²⁵ Id. at pp. 233-34.

going.”²⁶

29. As a defender of the homeland of his people and their freedom Geronimo has few rivals in history. For 36 years from the slaughter of his family at Kas-ki-yeh in 1850 to his surrender to General Nelson A. Miles induced by false promises on September 4, 1886 and soon violated by President Grover Cleveland, Geronimo struggled to protect and defend his people and the mountain highlands and surrounding prairies where they lived from the onslaught of an overwhelming flood of westward moving foreigners. The last impossible phase of his struggle is described in the neutral scholarship of the Encyclopedia Britannica which fails to include the 3,000 to 4,000 Mexican soldiers who hunted Geronimo:

During this last campaign, which lasted 18 months, no fewer than 5,000 troops and 500 Indian auxiliaries had been employed in the apprehension of a band of Apaches comprising only 35 men, 8 boys and 101 women, who operated in two countries without bases of supply. Army and civilian losses totaled 95; Mexican losses were heavy, but unknown; Geronimo's losses were 13 killed, but none from direct U.S. Army action.

By orders from Pres. Grover Cleveland, and contrary to terms agreed upon by Miles, Geronimo and 14 companions were placed under military confinement, finally at Ft. Sill, Okla.²⁷

30. Geronimo described what General Miles promised the treaty would assure his people as follows: “I will take you under government protection; I will fence you much land; I will give you cattle, horses, mules, farming implements ... you yourself will not have to work. In the fall I will send you blankets. There is plenty of timber, water and grass in the land to which I will send you. You will live with your tribe and with your family. If you agree

²⁶ Id. at p.292.

to this treaty you shall see your family within five days.” I said to General Miles “I hardly believe you.” He said “This time it is the truth.”²⁸

31. President Cleveland made his position clear in a telegraph to the War Department two weeks before General Miles persuaded Geronimo to surrender by false promises. “I hope nothing will be done with Geronimo which will prevent our treating him as a prisoner of war, if we cannot hang him which I would much prefer.”²⁹ President Cleveland rejected all of the agreement General Miles made and Geronimo began a deadly eight year journey as a prisoner of war in Texas, Florida and Alabama before arriving at Ft. Sill, Oklahoma on October 4, 1894 with 296 surviving Chiricahuas, too late to build housing before winter. On arrival at Ft. Sill, the Apaches were greeted by hundreds of Comanches and Kiowas. Miles knew his promises were false, but he did seek at the time to persuade the President to authorize imprisonment in a more western climate, suggesting Ft. Leavenworth, Kansas.

32. Britton Davis, born in Brownsville, Texas in 1860, the son of Edmund J. Davis, lawyer, judge, Brigadier General and Radical Republican governor of Texas from 1869-1873, graduated from West Point in 1881 and arrived in Arizona, a second lieutenant in the Third Cavalry, with General George Crook in July 1882 where he served in efforts to capture Geronimo until 1886 when he resigned from the Army to manage a mining and cattle company, the property of a New York firm, in Chihuahua, Mexico.

Davis characterized Geronimo as “a thoroughly vicious, intractable, and

²⁷ Encyclopedia Britannica (1967), Vol. 10, p. 362.
²⁸ Geronimo’s Story, op.cit., at pp.145-46.

treacherous man His word, no matter how earnestly pledged was worthless.”³⁰ His assessment was comparable to most recorded opinion of his contemporaries and historians up to the time of his book. Davis claimed Geronimo had ordered his second cousin Perico, and two Indian scouts to murder him.³¹

Davis’ double standard is painfully revealed by his expressed admiration for Al Sieber, a famous chief of Indian scouts. Davis wrote about an earlier incident, among many similar ones he described, in which a lone Indian was captured “after a brush with a small band” and had to be fed and guarded until they reached a military post.” The next morning “a trooper was crouched by the embers of the cook’s fire, eating his breakfast, the Indian, his breakfast finished, was crouched beside him smoking a cigarette. Sieber walked up behind the Indian and shot him through the head. As the body pitched forward into the fire the trooper merely glanced up at Sieber with the protest, ‘Say, Al, if you were going to do that why in hell didn’t you do it before he got his belly full of grub’ and went on with his breakfast.

“Such was the callousness with which the white man had come to regard the taking of the red man’s life ... we hunted them and killed them as we hunted and killed wolves.”³²

The purpose of Davis’ book, however, was to prove Geronimo was never captured, as others wanted credit for it. He makes his case by reporting that he had

²⁹ Senate Exec. Doc. 117, 49 Cong., 2 sess., p.4

³⁰ Britton Davis, The Truth About Geronimo, Yale University Press, 1929, at p. viii.

³¹ Id. at p. 150.

³² Davis, op.cit., at p. 50.

observed to General Miles that he had

“recently come from Ft. Apache where the Chiricahuas not with Geronimo are located Whenever there is news of a raid, the Chiricahua, in order not to be involved in the fighting, go into the post and are quartered in the quartermaster corral. I would suggest a false report of a raid be spread and when the Indians are in the corral, they be surrounded by the troops, disarmed, taken to the railroad and shipped east as prisoners of war. Geronimo’s band in the field will then be isolated, will no longer receive aid and comfort, as heretofore and will surrender. ‘Why that would be treachery said the General. I could never do that.... a few weeks later the Chiricahuas at Fort Apache, being assembled to receive rations, were surrounded by troops, disarmed and sent by railroad to Florida. This was in August. In September, Miles, in his negotiations with Geronimo, used this fact to bring about the surrender’ ... By These Means We Conquered Them. Finis.³³

Davis conceded “It must be said in justice to General Miles that he opposed the ploy to send these people to Ft. Marion ...Miles ... suggested Ft. Union, New Mexico, but was advised by the Washington authorities that no proposition looking to the location ... west of the Missouri River could be entertained.”³⁴

33. Geronimo is the most demonized Native American in U.S. history. In the 1870's and 1880's he was the most feared and hated Native American in the U.S. and Mexico. He was also the most hunted and endangered Apache in those years. In his struggle for the homeland and freedom of his people he caused many deaths and few in history have experienced as much violence over so long a period of time. But few who demonized Geronimo ever sought to understand the causes of his conduct. Many never considered the Native American fully human, or moral.
34. Of the more than 500 Chiricahuas imprisoned in 1886 as members of Geronimo’s tribe, one in four had died in 3 ½ years, two out of five in eight years. It took the Black Plague

³³

Davis, op.cit., at pp. 236-37.

a century to kill half the population of Europe. Dr. Walter Reed, later to achieve lasting fame for discovering the cause and mosquito carrier of yellow fever in Cuba during the Spanish-American War, became post surgeon at Mt. Vernon Barracks, Alabama on August 15, 1887. Having earlier served at Ft. Apache in Arizona, he knew the Apaches there “were remarkably exempt from lung ‘troubles.’” By 1889 he admitted his earlier opinion that the Apaches were overcoming susceptibility to pulmonary diseases in that climate was “not well founded.” On November 18, 1889 he reported that within the last four months three women and a girl of thirteen, “all strong young women when my former report was made,” had died of pulmonary consumption and three men and three women were ill with the same disease “and within 90 days not one of these will be alive,” “Not one case has shown any improvement under treatment.” Carlisle statistics of July 1, 1889 showed that 27 of the original 112 Chiricahua Apache students died there, 25 from tuberculosis.³⁵ Had Geronimo not sent his wife Ih-Tedda and daughter Lenna to the Mescalero Reservation that summer, he may have had no surviving descendants. As Naiche, Cochise’s son and Chief of the Chiricahua, who fought with Geronimo to the end, said “The sun rises on my friends; they are here. The sun sets and they are gone.”³⁶ Since the mid-1860's, the Bedonhokes had been living with the Chiricahuas and Geronimo became identified as a Chiricahua. By 1906 only five Bedonkohe survived. Of the other four pictured in “Geronimo’s Story,” one is Geronimo’s sister, two are his cousins.³⁷

³⁴ Davis, op.cit., at p. 234.

³⁵ Debo, op.cit., at pp. 343.

³⁶ “Wild Justice”, Lieder and Pace, Random House, 1997 at p 37.

³⁷ Geronimo’s Story, op cit., photograph between pp. 18 and 19.

35. President Theodore Roosevelt, was interested in Geronimo. He brought Geronimo to Washington with his favorite pony of the time, to ride in his Inaugural Parade in March 1905, where Geronimo nearly stole the show. Hats were thrown in the air and shouts of “Hooray for Geronimo”, “Public Hero Number Two” were reported as the crowd saw Geronimo and a small group of mounted Indians who followed the President and the Army Band in that order. Woodworth Clum, son of the famous Apache Agent John Clum, who had attempted to turn Geronimo over to Arizona officials to be hanged years earlier, stood next to President Roosevelt in the reviewing stand. He asked Roosevelt “Why did you select Geronimo to march in your parade, Mr. President? He is the greatest single handed murderer in American history.” President Roosevelt answered “I wanted to give the people a good show.”³⁸
36. On March 9, 1905, four days after the inauguration, Geronimo met with President Roosevelt. He asked to be permitted to return to his homeland: “Did I fear the Great White Chief? No. He was my enemy and the enemy of my people. His people desired the country of my people. My heart was strong against him. ... I lived in the home of my people ... They trusted me, the soldiers of the Great White Chief drove me and my people from our home ... When they followed we slew all that we could. We starved, but we killed. I said we would never yield, for I was a fool. The white soldiers took me and made me a prisoner far from my own country ... We are sick there and we die ... my hands are tied as with a rope ... I pray you to cut the ropes and make me free. Let me die in my own country, an old man who has been punished enough and is free.” President

³⁸ Woodworth Clum, Apache Agent, Houghton Mifflin, 1936, pp. 291-92.

Roosevelt answered: "There would be more war and more bloodshed ... it is best for you to stay where you are ... I do not think I can hold out any hope for you. That is all I can say, Geronimo, except that I am sorry, and have no feeling against you."³⁹

37. The following year, President Roosevelt approved the request of S.M. Barrett, Superintendent of Schools at Lawton, Oklahoma to record and publish Geronimo's story of his life told in his own way after Barrett was rejected by the command at Ft. Still. The memoir was translated by Asa Deklugie, a young cousin of Geronimo – both were grandsons of Chief Mahko of the Nednai Apache band. Earlier Geronimo had insisted that Asa be sent to the famous Carlisle Indian School in Pennsylvania so many young Chiricahua and Bedonkohe sons of prisoners died. Geronimo's son Chappo, died only days after being sent from Carlisle, in the last stage of tuberculosis to be with his father, still imprisoned in Alabama. Through a chain of military commands requiring their endorsements, Barrett's request reached President Roosevelt with a final recommendation "The manuscript is an interesting autobiography of a notable Indian, made by himself. There are a number of passages which ... are decidedly objectionable ... The entire manuscript appears in a way important as showing the Indian side of a prolonged controversy, but it is believed that the document either in whole or in part should not receive the approval of the War Department."⁴⁰ President Roosevelt, at least, freed the words of Geronimo, if not the man.

38. Geronimo made headlines in 1907, when 78 years old. After attending a 4th of July

³⁹ Norman B. Wood, Lives of Famous Indian Chiefs, Indian Historical Publishing Co. 1906. Also reported in the Vinita Chieftan (Oklahoma).

celebration at Cuche, Oklahoma, instead of returning to Ft Sill, he hid in some woods along a creek. It was widely reported he was on his way to Mexico to join Apaches still hiding there, but soldiers found him the next day. In October 1907 Geronimo was permitted to attend a big Indian gathering held by the Shawnees at their ceremonial grounds near Collinsville, Oklahoma. He briefly addressed about 1500 Indians from different tribes in his native Apache, an Athabaska language foreign to the plains Indians, which was translated into different tribal languages. Barrett who was present recorded those words. "Brothers, I am glad to see so many of you and see you playing the old games. I shall not keep you long, but you have asked for my advice. Our way of life is gone. Your children must travel the white man's road. Schools and churches will help you and them. I have spoken."⁴¹

39. In the last Chapter and pages of his story, Hopes for the Future, Geronimo said "I am thankful that the President of the United States has given me permission to tell my story. I hope that he and those in authority under him will read my story and judge whether my people have been rightly treated ... There is a great question between the Apaches and the Government. For twenty years we have been held prisoners of war ... We do not ask for all of the land which the Almighty gave us ... but our people are decreasing in numbers here and will continue to decrease unless they are allowed to return to their motherland ... There is no climate or soil, which, to my mind, is equal to ... that land which the Almighty created for the Apaches. It is my land, my home, my fathers' land, to which I now ask to

⁴⁰ Geronimo's Story, op.cit., at pp. XXIII-XXV.

⁴¹ 31 Oklahoman, (Daily newspaper) October 18, 1907, Barrett, Sociology of the American

be allowed to return. I want to spend my last days there, and be buried among those mountains.”⁴²

40. Geronimo died, a prisoner of war, at Ft. Sill Oklahoma on February 17, 1909, six hundred miles east of his homeland at the headwaters of the Gila River, identified by Asa Deklugie as upstream from the three forks of the river near The Cliff Dwellings National Monument in the Gila Wilderness area of the Gila National Forest in southwestern New Mexico.⁴³

He was buried at Ft. Sill in the dress of a chief with his possessions. “His warriors stood guard over his grave for months, mindful of what had happened to Mangas Coloradas’s remains.”⁴⁴

41. It was the decisions of U.S. Presidents, made in Washington, D.C., primarily decisions of Grover Cleveland and Theodore Roosevelt, that caused Geronimo to be taken, as a prisoner of war, far from his homeland, first to Florida, then Alabama and finally Oklahoma, and then refused permission to return to his homeland during his lifetime that led to his burial in Oklahoma making this Complaint necessary to free Geronimo to his lineal descendants to be buried in his homeland as he wished.

42. After the dust settled, Geronimo’s two principal adversaries in his last years expressed their opinions of him. General Crook whose relations with Geronimo over nearly six years were never good, said “Geronimo had the best head on his shoulders of any Indian with whom I ever came in contact.” After their surrender, Crook tried to help the

Indians, p.132.

⁴² Geronimo’s Story, op.cit., at pp. 213-15.

⁴³ Debo, op cit, at p. 8.

⁴⁴ Wild Justice, op.cit, at p. 44.

Chiricahua prisoners find a natural home of their own, intervening personally for the purpose with President Cleveland and visited them at Ft. Pickens.

General Miles said of Geronimo “He was one of the brightest, most resolute, determined leading men that I have ever encountered. He had the clearest, sharpest, dark eyes I think I have ever seen, unless it was that of General Sherman, when he was at the prime of life. Every movement indicated power, energy and determination. In everything he did, he had purpose.”⁴⁵ General Miles successfully defended the imprisoned Chiricahua from a plan to separate them into various locations around the country in 1894 arguing it would be “gross injustice and refined cruelty to separate families and friends.”⁴⁶

Maurice Salzman, an Arizona lawyer where Geronimo was most feared and hated, writing in 1909 against fifty years of demonization of Geronimo proclaimed “I venture to prophesy that as time passes ... when we shall be able to look back on this Indian war Chief with a historical perspective, we will decide that he was one of the greatest ‘Americans’ that ever lived.”⁴⁷ Faulk himself ventured to say “In the decades that have passed since his death, Geronimo indeed has grown steadily in his stature as a great American.”⁴⁸

43. It has been claimed and widely repeated that in 1918, or 1919 a group of Yale University students, members of a campus organization called the Order of Skull and Bones, including Prescott Bush, father of former President George H.W. Bush and grandfather of

⁴⁵ Nelson A. Miles, *Personal Recollections*, The Werner Company, 1897 at pp.520-21.

⁴⁶ Debo, *op.cit.*, at p. 359.

⁴⁷ Odie B. Faulk, *The Geronimo Campaign*, Oxford University Press, New York, 1969, at p.

218.

former President George W. Bush, opened the tomb of Geronimo and removed his skull, other bones and items buried with the body and took them to the Order's premises on the Yale campus in New Haven, Connecticut. To assure that all existing remains of Geronimo and funerary objects are recovered by Geronimo's lineal descendants, the Order of Skull and Bones and Yale University must account for any such articles that are or have been in their possession, or on their property, and persons with knowledge must provide any facts known to them concerning the claims.

**FIRST CLAIM FOR RELIEF AGAINST ALL DEFENDANTS
ON BEHALF OF ALL PLAINTIFFS**

**Action to Recover Human Remains and Associated Funerary Objects by Lineal
Descendants of Geronimo and for An Accounting of all Human Remains and Funerary
Objects Presently, or At Any Time in the Past, Possessed by Each Defendant**

44. Plaintiffs repeat and reallege each and every allegation of the preceding paragraphs as if fully set forth herein.
45. Plaintiffs are lineal descendants of the Native American Geronimo and are therefore entitled to ownership and control of his human remains and associated funerary objects that are, or may be or may have been in the possession, or control of defendants under provisions of the Native American Graves Protection and Repatriation Act, (Public Law 101-601, effective November 16, 1990; 25 U.S.C. §3002(a)(1)). Plaintiffs seek an order of the Court finding that they are lineal descendants of Geronimo entitled to ownership and control of the human remains and associated funerary objects of Geronimo and further ordering defendants to provide a full and detailed accounting of all human remains

⁴⁸ Id. at p. 220.

and associated funerary objects of Geronimo in their present possession, or that have at any time been in their possession, and to surrender to plaintiffs all human remains and related funerary objects in their control or possession.

**SECOND CLAIM FOR RELIEF AGAINST ALL DEFENDANTS
ON BEHALF OF ALL PLAINTIFFS**

Action for Damages and Attorneys Fees

46. Plaintiffs repeat and reallege each and every allegation of the preceding paragraphs as if fully set forth herein.
47. Plaintiffs as lineal descendants of Geronimo have been grievously damaged by the wrongful seizure and possession of the human remains of Geronimo and defendants have profited from their wrongful seizure and possession for which plaintiffs are entitled to compensatory and punitive damages, attorneys fees and costs.

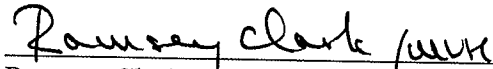
PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment as follows:

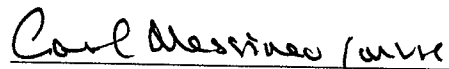
- a. For an order compelling defendants to account for and turn over to plaintiffs all human remains and associated funerary objects of Geronimo subject to their authority and power, or in their control or possession.
- b. For compensatory and punitive damages in an amount to be determined at trial and for interest thereon.
- c. For attorneys fees and costs of suit incurred herein.
- d. For such other and further relief as the Court deems just and proper.

Dated: February 17, 2009

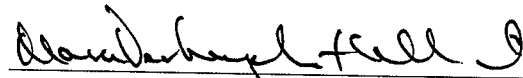
Respectfully submitted,



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