

Indian 'advocate' acted as 'adversary'

To the editor:

As everyone knows, the assistant secretary for Indian affairs, holding the highest U.S. government position for Indian affairs, is (or is supposed to be) the advocate for Indians and Indian rights.

Certain actions taken by the recent assistant secretary for Indian affairs, which are just coming to light, could lead the average person to logically conclude that under the form of "advocacy" practiced by Ross O. Swimmer the Indians and Indian tribes could probably fare better without such an "advocate."

In days of old, Indians could tell who their adversaries were because they wore uniforms like Custer. However, when they wear sheep's clothing they are hard to spot.

Sometimes it appears that if the courts were not friends of the Indians, they would have no friends at all.

The Oklahoma Court of Criminal Appeals ruled that the state may not prosecute an Indian for refusing to collect state sales tax on cigarettes that

he sells at his store on an Indian allotment in Tulsa County. (*State v. Brooks*, No. S-85-117, October 14, 1988.)

Upon learning that the court had held in favor of an Indian against the state, the "advocate" for the Indian apparently went berserk. In a letter of Nov. 3, 1988, to the Oklahoma district attorney, District 14, Swimmer stated:

"I was dismayed to learn that the Oklahoma Court of Criminal Appeals on Oct. 14, 1988, reaffirmed on rehearing its earlier conclusion that individual Indians selling cigarettes on an Indian allotment in Tulsa County are not subject to Oklahoma criminal laws if they refuse to collect the state sales tax from their customers."

I realize it shouldn't be necessary, but I must remind the reader that those are the words of the "advocate" for the Indian, not the "adversary."

One would expect words like that from one representing the interests of the state against the Indian. It's a sad state of affairs when the highest official in government, who is supposed to be protecting the rights of Indians,

chooses to represent the interests of a particular state instead.

Swimmer went beyond just simply lodging his dismay and complaining about the court in finding in favor of the Indian when he pleaded:

"... I urge you to seek (U.S.) Supreme Court review of the *Brooks* decision. If you do so, I will urge the Solicitor General to recommend that the Supreme Court take the case and reverse the decision of the Court of Criminal Appeals."

How disappointing it must have been to Swimmer to learn that the U.S. Supreme Court, in *Oklahoma v. Brooks*, No. 88-798, on April 17 denied the petition by the State of Oklahoma for a writ of certiorari in that case. In other words, the Supreme Court upheld the Oklahoma Court of Criminal Appeals, who found in favor of the Indian.

But, Swimmer cannot afford to feel too bad about the courts being a better friend of the Indian than he was because former Secretary Donald Hodel apparently liked what he was doing as he "... awarded Swimmer

the department's highest citation and gold medal for his 'invaluable counsel and leadership in support of this nation's government-to-government relationship with Native Americans.'"

Hodel then went on to say, "His unswerving faith in the inherent abilities and talents of Native Americans has resulted in policies that provide Indians with the opportunity to truly control their own destinies." This is from an Interior Department news release.

Makes one wonder if Hodel was talking about the same Swimmer who reacted so strongly to an Indian who tried to put into practice those "... inherent abilities and talents ... (to capitalize on an) opportunity to truly control (his) own destiny."

Apparently Swimmer has now decided to sing a different tune, as he is supposed to be working with one of the largest law firms in Tulsa, Okla., and quite naturally he wants to work for Indians, for a fee, of course.

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