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The Native American Rights Fund filed the *Cobell v. Norton* (previously *Cobell v. Babbitt*) trust fund case on June 30, 1996. It was brought on behalf of all past and present individual trust beneficiaries. From the inception, the Indian plaintiffs have sought expeditious resolution of this case. The Native American Rights Fund has vigorously pursued litigation because we want resolution. We do not care if achieving fairness and stopping abuse of individual Indian beneficiaries comes through litigation, mediation or a settlement act, or arbitration for that matter. The means are unimportant. What is important is that we do so quickly and fairly. It has been clear that the government does not want to see a resolution to this case.

Since the inception of this case, the Courts have rendered over eighty published decisions that have taken the government to task. And each time the government has appealed each decision or has lied to and deceived the Court. In the latest ruling from the United States District Court for the District of Columbia, Judge Royce C. Lamberth has told it like it is. The extensive factual record proves that the U.S. Department of the Interior is unable or just outright refuses to discharge its fiduciary duties under applicable law.

FEDERAL JUDGE SAYS GOVERNMENT CONTINUES TO MISTREAT INDIANS

WASHINGTON, July 12 -- U.S. District Judge Royce C. Lamberth has excoriated the Interior Department for its continuing mistreatment of Native Americans.

In 34-page ruling the judge used some of the sharpest language he has invoked in his nearly 10 years overseeing a class action lawsuit over the government's acknowledged problems in handling individual Indian Trust accounts.

The history of the lawsuit is "a story shot through with bureaucratic blunders, flubs, goofs and foul-ups, and peppered with scandals, deception, dirty tricks and outright villainy--the end of which is nowhere in sight," the judge wrote. "Despite the breadth and clarity of this record, Interior continues to litigate and relitigate, in excruciating fashion, every minor, technical legal issue."

What prompted the judge's ire was a request by the lawyers for the Indians. They had accused the department of misleading and deceiving Indians about the impact of the long-running lawsuit and failing to provide basic information about their property. Among other things, the government repeatedly had blamed both Lamberth and the lawsuit for many of the department's own shortcomings in helping Indians, the lawyers said.

The lawyers welcomed the judge's ruling, saying it would help Indians learn more about their property rights and the lawsuit. In addition, the lawyers said it should give them a wealth of information from Indians about how the government has misled them about the litigation and its impact on their lands and their trust accounts.

Many Indians remain unaware of the suit and the problems it has exposed about the

government-run trust system, said both the judge and the lawyers. In the ruling, Judge Lamberth noted that "despite Interior's near wholesale abdication of its trust duties, the vast majority of the Indian [trust] beneficiaries remain unaware that anything is out of order."

"This ruling is unprecedented and it is very, very helpful to Indian people," said Keith Harper, plaintiffs counsel and an attorney with the Native American Rights Fund. "It will ensure that Indian landowners will have basic and critical information about their lands. It is obvious that when people are wrongfully deprived of such information, they cannot possibly make appropriate decisions about their property. This groundbreaking order ameliorates that problem."

"This is information they should have had all along, but Interior has been determined to taint information about this case and our clients' property with misinformation about the Cobell lawsuit and fears of what it would do to Indian land holdings," he said.

Elliott Levitas, another of the Indians' lawyers, said the ruling will force the government to make its first formal notice to all members of the class action suit. "This will be a notice that has been approved by the court and it will be devoid of all the twists and misstatements that have been contained in Interior's communications to Indians," he said.

The judge's ruling came a week in advance of a July 20 hearing by the Senate Indian Affairs Committee into proposals for resolving the Cobell versus Norton lawsuit. In his ruling, the judge accused the department of forgetting what the case is all about and praised the Indians who brought the lawsuit.

The Cobell lawsuit may seem complex, the judge wrote. "But when one strips away the convoluted statutes, the technical legal complexities, the elaborate collateral proceedings, and the layers upon layers of interrelated orders and opinions from this Court and the Court of Appeals, what remains is the raw, shocking, humiliating truth at the bottom: After all these years, our government still treats Native American Indians as if they were somehow less than deserving of the respect that should be afforded to everyone in a society where all people are supposed to be equal."

The judge, a Texas native, also reached back into the history of the American West and the treatment of Native people in his ruling.

"For those harboring hope that the stories of murder, dispossession, forced marches, assimilationist policy programs, and other incidents of cultural genocide against the Indians are merely the echoes of a horrible, bigoted government-past that has been sanitized by the good deeds of more recent history, this case serves as an appalling reminder of the evils that result when large numbers of the politically powerless are placed at the mercy of institutions engendered and controlled by a politically powerful few," he wrote.

"It reminds us that even today our great democratic enterprise remains unfinished. And it reminds us, finally, that the terrible power of government, and the frailty of the restraints on the exercise of that power, are never fully revealed until government turns against the people."

Interior's failure to carry out its duty to properly care for Native Americans is illustrated by the department's continuing resistance to the lawsuit, the judge said.

"This is yet another factor forestalling the final resolution of the issues in this case and delaying the relief the Indians so desperately need," Lamberth said. "...It is against this background of mismanagement, falsification, spite, and obstinate litigiousness that this Court is to evaluate the general reliability of the information Interior distributes to IIM [Individual Indian money] account holders."

The judge declared while it was "undeniable" that the Interior Department has failed in its duties as a trustee-delegate for Native Americans, "it is nevertheless difficult to conjure plausible hypotheses to explain Interior's default. Perhaps Interior's past and present leaders have been evil people, deriving their pleasure from inflicting harm on society's most vulnerable.

"Interior may be consistently populated with apathetic people who just cannot muster the necessary energy or emotion to avoid complicity in the Department's grossly negligent administration of the Indian trust," he said. "Or maybe Interior's officials are cowardly people who dodge their responsibilities out of a childish fear of the magnitude of effort involved in reforming a degenerate system. Perhaps Interior as an institution is so badly broken that even the most well-intentioned initiatives are polluted and warped by the processes of implementation."

"...The government as a whole may be inherently incapable of serving as an adequate fiduciary because of some structural flaw. Perhaps the Indians were doomed the moment the first European set foot on American soil. Who can say? It may be that the opacity of the cause renders the Indian trust problem insoluble."

"On numerous occasions over the last nine years, the Court has wanted to simply wash its hands of Interior and its iniquities once and for all," Lamberth said. "The plaintiffs have invited the Court to declare that Interior has repudiated the Indian trust, appoint a receiver to liquidate the trust assets, and finally relieve the Indians of the heavy yoke of government stewardship.

"The Court may eventually do all these things--but not yet. Giving up on rehabilitating Interior would signal more than the downfall of a single administrative agency. It would constitute an announcement that negligence and incompetence in government are beyond judicial remedy, that bureaucratic recalcitrance has outpaced and rendered obsolete our vaunted system of checks and balances, and that people are simply at the mercy of governmental whim with no chance for salvation.

"The Court clings to a slim and quickly receding hope that future progress may vitiate the need for such a grim declaration. This hope is sustained in part by the fact that the Indians who brought this case found it in themselves to stand up, draw a line in the sand, and tell the government: Enough is enough--this far and no further.

"Perhaps they regret having done so now, nine years later, beset on all sides by the costs of protracted litigation and the possibility that their efforts may ultimately prove futile; but still they continue. The notice requirement established by the Court today represents a significant victory for the plaintiffs. For the first time in the history of this case, the majority of Indian beneficiaries will be aware of the lawsuit, the plaintiffs'

efforts, and the danger involved in placing any further confidence in the Department of the Interior.

"Perhaps more importantly, the Indians will be advised that they may contact class counsel for guidance on their trust-related concerns. This likely will bring to light a wealth of new evidence concerning Interior's mismanagement of the trust; it will also open an avenue to relief for individuals throughout Indian country whose suffering might otherwise be buried forever in a bureaucratic tomb.

"Real justice for these Indians may still lie in the distant future; it may never come at all.

This reality makes a statement about our society and our form of government that we should be unwilling to let stand. But perhaps the best that can be hoped for is that people never forget what the plaintiffs have done here, and that other marginalized people will learn about this case and follow the Indians' example."