

[Return to: Opinions](#)

Steal Their Land, Steal Their Money

Robert J. Miller

March 13, 2007



Robert J. Miller is a law professor at Lewis & Clark College and the chief justice of the Grand Ronde Tribe. He is the author of [Native America: Discovered and Conquered](#).

The United States owes a lot to the Indian Nations. American Indians helped early European settlers survive and succeed on this continent and American Indian governments contributed extensively to the political thinking that led to the creation of the federal government by our Founders.

The United States, however, also owes over 300,000 American Indians something else: up to \$200 billion for the mismanagement of their property over the past one hundred years.

In 1996, the Native American Rights Fund filed a class-action law suit against the United States for the mismanagement of tribal and individual Indian assets—Cobell v. Kempthorne. The case has already resulted in more than 12 federal court opinions but has not even progressed beyond the discovery phase. The federal government and its attorneys have actively resisted this case every step of the way. In fact, two Cabinet secretaries and the Assistant Secretary for Indian Affairs were held in contempt of court in 1999 and fined more than \$625,000 for discovery violations. Recently, the government went so far as to remove federal district court judge Royce Lamberth from the case for his alleged growing bias in favor of the Indian plaintiffs.

Originally, this case was discussed as being worth between \$2-10 billion in damages that the U.S. either embezzled from Indians or had just “lost” through its incompetence. Today, even Attorney General Gonzalez believes that the case may be worth up to \$200 billion for the over 300,000 plaintiffs.

The case arose from the complicated history of federal Indian policies and because the United States became the trustee for the Indian Nations and individual Indian people. Starting with the passage of the General Allotment Act in 1887, the United States has been responsible for the oversight and management of most of the tribal and Indian land and assets in Indian country. Under trust law, the U.S. was responsible for reasonably leasing and developing the land, then collecting the rents and profits and paying them to the Indian owners. The allegation of the Cobell plaintiffs—and the widely accepted truth of the matter—is that the U.S. has failed miserably in exercising its fiduciary and trust responsibilities to carefully protect these assets, collect the monies due and pay them to the Indian owners. Under the law, the U.S. owes an accounting to the Cobell plaintiffs, identifying all these funds and then personally paying for any lost or uncollected funds. The U.S. has actively resisted performing an accounting and seems reticent to find out what it owes these Indian people—people who are among the poorest of the poorest U.S. citizens. Instead, the United States has claimed that it would cost more than \$500 million to perform an accounting for the past 120 years of its trusteeship over Indian assets. The U.S. appears to be fighting a rearguard action in court while hoping for some kind of legislative fix.

Many people would like to see the Cobell case disappear: Congress has twice already considered “midnight” riders to kill the case. Senator John McCain and the Senate Committee on Indian Affairs have talked about proposing settlement amounts between \$7-8 billion and recent Senate and House bills have proposed such amounts.

LATEST

- **'The Richest Year Ever'** March 13, 2007
- **Steal Their Land, Steal Their Money** March 13, 2007
- **Plan Obsolescence In Colombia** March 13, 2007
- **There's Always Money For War** March 12, 2007
- **Reject Bush's Health Care Plan** March 12, 2007

ARCHIVES

SUBSCRIBE

Sign up for our free daily dispatch.
[Privacy Policy](#)



ENRICH PUBLIC DISCOURSE,
Tax Free.
Give to TomPaine.com.

On March 1, 2007, the Bush administration responded to questions from the Senate Committee on Indian Affairs. The administration now proposes to settle all the trust mismanagement claims and to pay for all the needed Indian trust reform efforts with \$7 billion. This, in spite of the acknowledgement that the true price tag of the lost and mismanaged funds could run into the hundreds of billions of dollars.

In their letter, Attorney General Alberto Gonzales and Interior Secretary Dirk Kempthorne told the Senate Committee that the administration was prepared to "invest" \$7 billion to settle all trust mismanagement claims. But they also appear to demand that the Congress extinguish the government's liability for all future trust claims. This last statement is the most egregious aspect of this sordid history. The United States government apparently wants to continue managing Indian assets but, at the same time, wants to prevent any future possible liability, no matter how woefully it might manage and fail to protect these assets.

The proposal was immediately called a "bad-faith offer" by the Cobell attorney. You might also call it a bad-faith settlement if it were your assets that the U.S. controlled but wanted to avoid any responsibility for. Senator Byron Dorgan, D-N.D., the chairman of the Senate Indian Affairs Committee, said:

This is the first time that the federal government has acknowledged a multi-billion dollar liability for the mismanagement of the Indian trust funds over the past century and more. That is a significant admission.

A more significant admission would be for the United States to live up to the debt it owes these Indian people and to account for and pay them the money that is legally theirs but that has been mismanaged and withheld from them for the past hundred years.