



President Barack Obama meets with Elouise Cobell in the Oval Office, Dec. 8, 2010.



OFFICIAL WHITE HOUSE PHOTO BY PETE SOUZA

# ELOUISE COBELL

## A SMALL MEASURE OF JUSTICE

BY MELINDA JANKO

**A**s I was driving the long stretch of Highway 89, from the Great Falls airport to the Blackfeet Reservation in Browning, Mont., to meet with Elouise Cobell, I wondered how many miles she had driven over the course of her lengthy court battle known as *Cobell v. (in succession) Babbitt, Norton, Kempthorne and Salazar*. How many miles had she logged on planes to and from Washington, D.C., where she was holding the federal government accountable for its mismanagement of billions held in Indian Trust Funds?

How many nights had she spent away from her beloved family and home on the Blacktail Ranch in Blackfeet where she was raised? How many steps had she taken, how many hours had she waited in a courtroom with her lawyers and accountants through the many years of litigation? What kind of person does it take to muster the courage, commitment and sacrifice needed to sue the U.S. government? On that two-hour stretch of highway from the Great Falls airport to Browning there is plenty of time to think. I can't imagine all the thoughts that ran through Cobell's mind in those countless hours of quiet solitude. What I do know is what kept her going: her passion for righting an historic wrong and her love for her people.

# ELOUISE COBELL



PHOTO COURTESY OF FIRE IN THE BELLY PRODUCTIONS

James "Mad Dog" Kennerly (Blackfeet)

**IT WAS FOR THE MARY JOHNSONS AND THE MAD DOG KENNERLYS OF INDIAN COUNTRY THAT COBELL FOUGHT SO LONG AND SO HARD. AND IT WAS BY NO SMALL COINCIDENCE THAT THE WOMAN WHO WAS HOLDING THE U.S. GOVERNMENT ACCOUNTABLE, HAD A KNACK FOR NUMBERS.**

When I first read about the Cobell lawsuit in a 2002 article in *Mother Jones* magazine I was shocked and appalled by the federal government's gross mismanagement of the Indian Trust Funds. It was hard for me to wrap my brain around the fact that despite the newspaper headlines of the *nouveau-riche* Indians of Gaming, there was a much bigger story in 21<sup>st</sup> century America; Indians who were land-rich, were living dirt-poor, without running water and electricity. The U.S. government trustee who managed the leasing of Indian oil and gas, timber and grazing lands through the Department of Interior had never given Indians an accounting of their royalty payments. Not once over the course of a century! How was that possible?

I was completely unaware of the lawsuit and I was ashamed of the neglect by my government! This was the largest class-action lawsuit ever filed against the U.S. so why weren't there front-page headlines all across America about this story? I wanted to know more, but as a non-Native who had never set foot on an Indian reservation and didn't know any American Indians, I was at a loss. But I couldn't get this story out from under my skin, and I couldn't force myself to look the other way. So I took my passion and started on a journey.

Eight years later I have formed friendships with Indians all across the country

and with one woman in particular, Elouise Pepion Cobell. What Cobell taught me, by example, was that heroes don't start out to be heroes; they simply do whatever it takes to make things right, no matter what the cost! As one of her lawyers said, "When you lead a movement that seeks fundamental change, there always has to be someone who simply refuses to go to the back of the bus, and that person is Elouise Cobell."

The decision to file the lawsuit in 1996 was shaped by many events throughout Cobell's life. One of them was Ghost Ridge. On my first trip to the Blackfeet Reservation she took me to the sacred burial site. The historic state marker along Highway 89, south of the Two Medicine River tells the story: "The Starvation Winter of 1883–1884 took the lives of 500 Blackfeet Indians who had been camping in the vicinity of Old Agency. This tragic event was the result of an inadequate supply of government rations during the exceptionally hard winter."

The story passed down to Cobell by her father every time they passed the site, however, was much bleaker: "There was an old agency where the Indian agent was housed to make sure the Indians didn't get off the reservation," Cobell recalled.

"They would not allow Indian people to hunt or carry arms because they wanted them to be dependent on the Indian agent. And so people just hung around and waited for their rations. The rations were diverted, black-marketed, and the women and children and men had to stay confined without any means to hunt. As a result, 500 Blackfeet Indians starved to death. And the government just dug big, open-pit graves and threw them in and covered it up.

"And I drive this road every single day, and some days I feel really, really tired of fighting this lawsuit against the United States government, and all I have to do is look up to the west and see Ghost Ridge, and remember all the people that starved to death for injustice. And so then it becomes their fight; it becomes the fight of the people of Ghost Ridge that we are trying to hold the United States government accountable for."

Born one of nine children on the Blackfeet Reservation on Nov. 5, 1945, Elouise Pepion was the great, great granddaughter of the revered Mountain Chief, the hereditary chief of the Blackfeet who refused to com-



87-year-old Mary Johnson (Navajo)

promise with the U.S. government. “I like to think a little bit of him trickled down to me,” Cobell said.

As a child she would always hear stories about missing money from her parents and relatives. The story that impacted her the most was about her aunt who needed the lease money from her land to get medical care for her sick husband. “It was a harsh winter and they traveled 30 miles through snow in a horse and buggy to get to the agency office, but they wouldn’t let them in,” Cobell recalled.

“They waited outside in freezing cold weather all day. At the end of the day the agency told them, ‘Come back tomorrow...’ The next day they waited again and at the end of the day the agency told them, ‘Go home.’ Their check finally came in the spring. My aunt died without ever seeing justice, and her husband died from lack of medical care.”

For every one of the 300,000 members of the class-action lawsuit there are hundreds of stories. James “Mad Dog” Kennerly, also

a Blackfeet Indian, lived in a modest home without running water, despite his 300 acres of oil producing land. Mad Dog made beaded necklaces to supplement his meager royalty payments. He shows me his oil and gas statement from the government.

“Over \$6,000 of oil taken from my land,” he said, “and I get \$89 bucks. Oh yeah, they’ll even tell you that they overpaid me. In the next check they take it out.” Like so many beneficiaries of the Indian Trust, Kennerly would go to the Bureau of Indian Affairs (BIA) office looking for answers to his questions, answers that never came. Kennerly died without ever seeing justice.

On the Navajo Reservation lives Mary Johnson, an 87-year-old woman with five oil wells pumping on her land. She speaks only Navajo so her story is translated to me through her son and daughter. The oil companies started drilling on Johnson’s land in the 1950s. You might imagine her living in a mansion after all these years, but she is too

poor to afford running water. Johnson could see the oil wells pumping and hear the sound of the oil rushing through the pipes on her land but she wasn’t getting the funds she so desperately needed.

One day she decided to take matters into her own hands. She marched out to one of her wells and shut it down. Minutes later, the BIA police and an oil company representative threatened to throw her in jail if she didn’t turn it back on. Others on the Navajo reservation took harsher measures and set their oil wells on fire.

It was for the Mary Johnsons and the Mad Dog Kennerlys of Indian Country that Cobell fought so long and so hard. And it was by no small coincidence that the woman who was holding the U.S. government accountable, had a knack for numbers.

After completing an accounting program at a business school in Great Falls, Mont., Cobell became the treasurer of the Blackfeet Tribe and, years later, a banker and founder of

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**“I TRIED TO DO THE RIGHT THING,” SHE SAID, “THE WAY THAT YOU BELIEVE GOVERNMENT SHOULD WORK. I REALLY TRIED TO FOLLOW THE ENTIRE PROCESS; I WENT TO THE ADMINISTRATION, I TOLD THEM THE STORIES, I TOLD THEM WHAT WAS HAPPENING. BUT THROUGH THE YEARS THEY TOLD MANY PEOPLE, ‘JUST SUE US.’ AND, SO, WE JUST SUED THEM.”**

the Native American Bank. As the treasurer, she discovered that the numbers on the books just didn't add up. Oil was being taken off the reservation but oil money was seldom coming in. She quickly learned that no accounts-receivable system was in place, so she started attending government meetings and asking questions. They told her she didn't know how to read an account statement. And that's when she started calling senators and congressmen and anyone who would or wouldn't listen. She banded together with a group of tribal finance officers from Red Lake, Jicarilla Apache, Turtle Mountain and White Mountain Apache reservations and David J. Matheson (Coeur d'Alene), Deputy Commissioner of Indian Affairs under the George H.W. Bush administration. Together, they started to get the attention of Congress.

In 1994 Congress passed the Indian Trust Reform Act and the Department of Interior appointed a Special Trustee to help remedy the problems in both the Tribal and IIM (Individual Indian Monies) Accounts. Two years later, however, nothing had changed. A chance encounter with Attorney General Janet Reno, however, changed everything.

Cobell met the Attorney General at an Indian banking conference where they were both speakers. She told Reno about the problems with the Trust Fund, and Reno asked her to write a letter requesting a meeting. Several months later, after calling Reno's office every week, Cobell finally got her meeting. In D.C. she was greeted by lawyers from the departments of Interior, Justice and Treasury, but no Attorney General. “Now Eloise,” one attorney told her, “don't you come in here with any false expectations,” she recalled.

“You ought to be ashamed of yourself,” Cobell replied. “You have got to understand that every day Indian people are dying in Indian communities without the money that they need for the basics of life, and you ought to be ashamed of yourself.” It was the straw that broke the camel's back!

“I tried to do the right thing,” she said, “the way that you believe government should work. I really tried to follow the entire process; I went to the administration, I told them the stories, I told them what was happening. But through the years they told many people, ‘Just sue us.’ And, so, we just sued them.”

On June 10, 1996, Cobell, along with the

Native American Rights Fund and lead attorney Dennis Gingold filed a class-action lawsuit against the United States Department of Interior for the mismanagement of the Indian Trust Funds belonging to over 300,000 individual tribal members, the largest class-action lawsuit ever filed against the United States government.

When Cobell filed the lawsuit, she expected it to take about three years. Instead, it languished in the courts for 15 long years. On one of her many flights to D.C. she was asked by a fellow passenger what she did for a living.

“I knew from experience that if I told him I was a banker he would just nod his head and stare out the window. So I told him I was reforming the U.S. government,” she recalled. “His response was, ‘Say what?’ But that was a good way for me to get people talking about this lawsuit.”

For 10 of those 15 years in the court, the presiding judge was Federal Judge Royce C. Lamberth, a Republican from Texas, appointed by President Reagan.

Judge Lamberth is known for his “take no bull” attitude. During the case he held two Secretaries of Interior in contempt of court: Bruce Babbitt (Clinton Administration) for

failing to produce documents related to the lawsuit and Gale Norton (G.W. Bush Administration) for failing to initiate a court-ordered Historical Accounting.

I was honored to interview Judge Lamberth. "I'm a judge who just calls them as he sees them," he said. On July 12, 2005, this was how he saw it:

"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. 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."

On July 11, 2006, the U.S. Court of Appeals for the District of Columbia Circuit removed Judge Lamberth, stating that he had lost his objectivity. Cobell was disappointed with the decision but she never lost hope. "We might have lost our judge but we didn't lose the facts," she said. "And victory is going to come no matter what judge."

Over the many years we knew each other, Cobell and I would often talk about the lawsuit. Even in those times when victory seemed far away she would always say, "I know I am doing the right thing," and then she'd say it, what I called the Elouise mantra: "the stars are aligned, the stars are aligned." And then it came to pass.

When candidate Barack Obama became President he kept his campaign promise to bring a fair and just resolution to the Cobell lawsuit. In December 2009, after six months of negotiations and 13 years of contentious litigation, Cobell and her lawyers agreed to a \$3.4 billion settlement. In November, 2010 Congress ratified the settlement and in December of 2010, President Obama made the announcement, "After years of delay," he said, "this bill will provide a small measure of justice to Native Americans whose funds were held in trust by a government charged with looking out for them." On June 21, 2011, the



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Federal District Court in Washington, D.C., gave it the final stamp of approval.

The Cobell settlement included \$1.5 billion for the members of the class, \$1.9 billion for a Land Consolidation Program and \$60 million for a college scholarship fund for Indian youth. It is the largest government settlement ever awarded in the history of the United States.

Imagine the celebration that took place after winning a 30-year battle with the most powerful government in the world! But for Cobell, there would be no celebration until after government checks were received by the Indian Trust beneficiaries.

Finally, over the Christmas holidays of 2012, the first round of government checks, or "Elouise checks" as many referred to them, were sent out to 300,000 beneficiaries. The checks averaged between \$1,000 to \$2,000 per person. Many used their funds to buy Christ-

mas gifts for their family or to pay for heat, food and medical care. Some gave a portion of their funds to help others, in the name of Elouise Cobell.

The woman who fought so long and hard for justice, however, never saw those checks. On October 16, 2011, just four months after the Court's final approval of the settlement that bore her name, Elouise Pepion Cobell succumbed to a deadlier battle, cancer. As her lead attorney, Dennis Gingold, said at her funeral, "She saw the finish line but she never crossed it." The following week the Department of Interior flew its flags at half-mast in her honor. ✨

Melinda Janko is the producer/director of *A Small Measure of Justice*, a feature length documentary about Elouise Cobell's fight for justice and the filing of the largest class-action lawsuit in U.S. history. Filming for the documentary began in 2004 at the opening of the National Museum of the American Indian. The film is now in post-production for a theatrical release scheduled at the end of 2013. For more information visit: [www.asmallmeasureofjustice.com](http://www.asmallmeasureofjustice.com) or contact Melinda Janko at [Mjanko2@aol.com](mailto:Mjanko2@aol.com).