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Bureaucrats Circle Their Wagons

Posted Dec. 7, 2001

By [Kelly Patricia O Meara](#)

Being a winner on the big game board of politics sometimes takes more than an en-thusiastic roll of the dice. Secretary of the Interior **Gale Norton** learned this recently by landing on the "Bureaucrat Go to Jail" space when U.S. District Judge Royce Lamberth scheduled civil contempt-of-court proceedings against her and other officials who have handled the looted Indian trust fund.



Media Credit: UPI

Norton has failed to comply with court orders on the Indian trust.

Clearly annoyed and frustrated by the government's recent moves, Lamberth wrote that **Norton** and Assistant Secretary of Indian Affairs Neal Mc-Caleb "failed to comply" with court orders and provided "false and misleading" information about their efforts to correct the trust-fund system. The judge also testily questioned **Norton's** basic knowledge of the fund.

But none of this information and judicial jousting comes as a shock to the 300,000 American Indians affected by the mismanagement of money generated from their lands (see "Total Lack of Trust," Sept. 17). For them, **Norton** is just another in a long line of bureaucrats who have promised to make the badly abused trust fund their top priority only to back away from reform or even account for the tens of billions of dollars missing from it.

Recall that this fund was put in place more than 100 years ago under the General Allotment Act of 1887, which divided more than 11 million acres of land among the individual American Indians. Monies generated from the leasing of oil, mineral, timber or grazing rights on their lands were supposed to be placed in the trust fund then paid out to the respective

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Indian owners. Though the monies were paid to the government, the funds never reached the Indians.



The agencies responsible for the trust fund include the U.S. departments of Interior and Treasury, which for decades spent tens of millions of dollars attempting to account for the stolen funds only to claim that even this could not be done until the accounting system was restructured.

Norton recently announced the creation of the Bureau of Indian Trust Assets Management (BITAM), to be headed by Ross Swimmer, who was head of the Bureau of Indian Affairs (BIA) during the Reagan administration. Many familiar with the Indian trust fund tell Insight that this is the secretary's latest attempt to stave off the contempt charges and keep details of this century-old scandal under wraps just a little longer.

In fact, it was just three months ago that **Norton** claimed Interior's inability to account for the missing funds was due to poorly implemented information systems. She said the Trust Asset Accounting Management System (TAAMS) would, when fully implemented, correct many of the problems. The \$40 million TAAMS computer system still is not working. And critics say **Norton** apparently has moved a few more spaces into the swamp by creating BITAM and finding a Reagan-era patsy to front it.

Washington lawyer Dennis Gingold, the lead attorney on a class-action lawsuit filed by Eloise Cobell and four other American Indians, laughs at **Norton's** effort to deal with the problem by adding to the bureaucracy. He tells Insight, "You expect them to make big mistakes on substantive issues because they know nothing of trust matters, but you wouldn't expect them to make mistakes on political issues. Yet here they go again."

Gingold explains, "What this 'restructuring' means is that if the secretary pulls this off, and I don't believe she will, the next interior secretary will start from scratch because **Norton** obviously has no intention of doing anything during this administration. The people who created this restructuring have no background in trust management, and no intelligent thought process has gone into it. I've said it over and over again: This is nothing more than rearranging the deck chairs on the Titanic." In fact, according to Gingold, naming Swimmer to head the new bureaucracy only adds insult to injury for his Indian clients.

"Swimmer," Gingold continues, "apparently was involved with one of the big Cherokee Nation corporations that went into the tank because he made bad loans to various people from that corporation and, as a result, they couldn't repay loans to another bank. This guy has a very checkered past managing financial issues. As assistant secretary of interior under Reagan, he was one of the main reasons the late Oklahoma congressman Mike Synar pressed so hard to enact what eventually became the 1994 Trust Reform Act. The trust was that badly mismanaged under Swimmer's watch."

And Gingold is just warming up. "It also was during Swimmer's watch that there were no meters on the individual oil wells, so the oil companies were effectively on an honor system. That's crazy. The oil companies just told the Bureau of Indian Affairs, 'We took X many barrels of oil.' There was no way to audit them. Swimmer is one of the reasons this mess exists, and now he's being put back in charge. That shows either utter ignorance for this problem or a total disdain for the trust beneficiaries."

The problem with the restructuring, Gingold adds, is systemic. "What **Norton** is trying to do is avoid contempt charges by showing that someone is in charge, but it isn't going to work. She is just creating another bureaucracy. Every time the interior secretary from administration to

administration is directly challenged by Congress or the courts this is what happens. They're not even changing the people. And the reason it never works is because it is the senior management that is incompetent, and that includes the secretary."

Gingold is proceeding with civil and criminal contempt charges and is seeking "the most severe coercive and criminal sanctions available under the law against the secretary and everyone else involved." So far he has filed motions against 39 people — past and present officials of the departments of Interior and Justice — and says he intends to add Treasury officials to the list, including former secretary Robert Rubin, who also was found in contempt of court by Lamberth for his handling of the trust fund. In the meantime, while the lawyers slug it out in court, the Indians are forced to wait for money that is long overdue.

Cobell, a banker from the Blackfeet Reservation in northwest Montana and originator of the class-action lawsuit, tells Insight she's come to refer to the BIA as the "Bureau of B.S." Cobell is angry about the secretary's recent announcement of yet another restructuring. But, she says, "The real question is, 'Why are they fighting the receivership?' I mean, let's face it. **Norton** wouldn't put her money in this bureau to be managed, so why does she think it's okay for us? Why does she think that we should continue to settle for not having our money properly managed?"

Cobell says, "We don't need a new bureau, because that was the problem in the first place. What we need is an outside receiver. This Swimmer, if allowed, is only going to put the good ol' boys back in there, and it will start all over again. What everyone is missing here is that people are suffering. Behind all these 'lost' assets are real people who need these trust funds. It's their money, and it should be managed properly. Politicians shouldn't be managing our money, and I doubt that anyone who could do otherwise would allow them to manage theirs. So why are we so lucky?"

Whether **Norton** has a "Get Out of Jail Free" card is yet to be seen. It's clear, however, that the secretary is in the hands of a judge more than a little irritated at the pace of the game and 100 years of dirty dealing. "This judge," Gingold explains, "has heard this song for five years, and I don't think he's going to take any more games. He's been through this for too long, and you'd almost have to have been born yesterday to be suckered by these people. It already has been demonstrated that Judge Lamberth wasn't born yesterday."

Perhaps the judge's own warning provides the best sense of what **Norton** is up against. In last week's hearing he told government lawyers, "This contempt trial is going to be your worst nightmare."

Meanwhile, it appears that if it weren't for bad luck, Secretary **Norton** wouldn't have any luck at all. First, Lamberth scheduled the contempt-of-court proceedings. Then, two days later, the federal judge unsealed a request by the special court-appointed master, saying, "It is the recommendation of the special master that the court intervene and assume direct oversight of those systems housing Indian trust data."

Stay tuned, boys and girls: This time the Indians may win.

Kelly Patricia O'Meara is an investigative reporter for Insight.



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