TESTIMONY OF ELOUISE C. COBELL, LEAD PLAINTIFF IN *COBELL V. NORTON*

TESTIMONY
BEFORE THE COMMITTEE ON RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES

H.R. 4322
INDIAN TRUST REFORM ACT OF 2005

DECEMBER 8, 2005

The Trust Debacle has Gone on for Too Long

Good morning, Chairman Pombo, Ranking Member Rahall, and distinguished Members of the Committee on Resources. First, let me say how much I appreciate the work you and your staffs have done on this important issue. I welcome your continued involvement and leadership. We join with you in the hopes that this will point the way towards a resolution of this, thus far intractable, problem.

The mismanagement of the Individual Indian Trusts has been one of the biggest injustices ever perpetrated by representatives of our government. As the Court of Appeals has said, "the trusts at issue here were created over one hundred years ago through an act of Congress, and have been mismanaged nearly as long." Study after study by the Congress itself, the GAO, and now nearly ten years of judicial findings and opinions in both the district and appellate courts confirm that the injustice is pervasive, longstanding, and continuing – and the financial loss to hundreds of thousands of Native Americans has been incredibly large. For the record, I'd like to submit a list of just some of these studies and reports that confirm the magnitude of this problem. (See Appendix A.) It truly is amazing how many times and for how many years there has been a recognition of this massive problem, going back to the very inception of the Trust, in 1887. "Fraud, corruption and institutional incompetence almost beyond the possibility of comprehension" is how one bipartisan report characterized it. I hope you agree with me that the time for study and reflection is well past. It is time to do something about it. You and your staffs are well acquainted with this injustice, and we applaud you for moving to try to do something constructive about it. I hope you share my frustration that the U.S. Government has not similarly been constructive.

Quite the contrary. The U.S. Government is responsible for this outrage. Lands and resources – in many cases the only source of income for some of our nation's poorest and most vulnerable citizens – have been grossly mismanaged. The Government forced this trust on Indian peoples in 1887 because it thought it knew better than we how to manage our own property. Adding injury to insult, the Government then completely failed to faithfully discharge even the most basic trust responsibilities. A couple of examples are helpful. Although since the late 1970s, reports from all corners – including internal auditors – have stated that a lack of an accounts receivable system is an intolerable material weakness, even now, decades later, Interior has not even instituted this most basic reform. Further, they cannot tell beneficiaries how much they have in their accounts. Indeed, they cannot even produce an accurate list of beneficiaries. The Government itself is responsible for bringing us to this sorry state by failing to maintain and even destroying records. What is even worse, government now utilizes every possible mechanism of bureaucratic and legalistic delay, obfuscation and misrepresentation to prevent the wrong it did from being made right. This is shocking behavior, and as long as we work on this issue, none of us should ever lose sight of that fact. It is one thing to look at the sorry state of the trust and think that this is a wrong from the past. It is quite another to see that the wrong persists up to the present day and is magnified and perpetuated by the government's continued failure to do the right thing.

If you went to your personal bank to ask how much you had in your account, and the bank could not tell you how much money you had, what interest you were owed, what would you do? How would you feel? And if you were to find that the bank itself had deliberately destroyed the records of your account and continued to destroy your records even after you had asked for an accounting, and if your bank then tried to duck responsibility because of lack of records, what

would you do? That's just what has happened for over a hundred years. We have come to the courts and to you, our elected representatives, to seek justice.

Over 500,000 Indians have had their assets mismanaged. In total amount of funds mismanaged, this scandal – and lets call this what it is – a scandal – dwarfs all of the corporate misdeeds we've heard so much about. Enron, WorldCom, and others in the headlines are truly petty crimes next to the magnitude of this century-long and continuing injustice.

Yet the Government has not been constructive at all in trying to find a fair and final resolution. Time after time in the litigation, they have proven to be obstinate, difficult, and foot-dragging. But don't take my word for it – the Court of Appeals has criticized:

> [the] "record of agency recalcitrance and resistance to the fulfillment of its legal duties" and "intransigent" conduct. *Cobell v. Norton*, 391 F.3d 251, 255, 257 (D.C. Cir. 2004).

Time and again, both the district court and the appellate court have called out the government for its bad behavior. When anyone complains that this process has gone on too long and been too complex, they have only to look at these unfortunate tactics pursued by the Government in this case to see why this has been so.

A mediator was appointed to try to find common ground and work toward a settlement of this case. Our side worked in good faith with the mediator for a year and a half. In that time, the Government did not make one proposal for resolving the case. Not one: not even a counter-offer. Ultimately, the mediation process collapsed under the weight of the Government's arrogance and intransigence.

Now, as committees of jurisdiction in both houses of Congress have taken up the matter, the Government is still actively countering progress. We have done our part in furthering this legislative settlement effort. We worked with Indian Country to develop 50 Principles for settling the case – including specifics on the amount of a fair resolution. After the settlement bill was introduced in the Senate, our side continued in good faith. We made clear what we agreed with as well as our concerns. We came to the table to negotiate and discuss. We have heard nothing from the Government that suggests it will approach this process any more constructively than it has approached the litigation and mediation. They have not provided any specific suggestions whatsoever. They have yet to say specifically what a fair number for resolving the historical accounting is or what they believe is an acceptable amount. In short, they have taken no position and offered no guidance.

Members of the Committee, if you wish to exert leadership in bringing this terrible injustice to an end, you must call the Government to account. Do not allow their foot-dragging to continue. Call them to task. Demand that they participate in the legislative process. Demand that they inform you of the specific contours of a settlement they will support. If there is hope for a legislative settlement, they should no longer be allowed to simply sit back and say "no" to all settlement offers without members of this committee denouncing their recalcitrance. If not, a legislative settlement will never occur.Use your influence to raise the profile of this issue to call their continued intransigence what it is – a continuing slap in the face to Indians that magnifies the underlying wrongdoing. For by failing to acknowledge the problem and working to resolve it, they continue the more than a century old tradition of kicking the problem to the future with no justice for anyone in sight. Meanwhile, beneficiaries who have been mistreated their entire lives do not see a resolution as even possible in their lifetimes. Many have given up hope after so many false starts in the past.

H.R. 4322 is a Starting Point, But More Work is Needed

We are encouraged that you have said that H.R. 4322 is a starting point and a placeholder and that dialogue, discussion and negotiation are encouraged and welcomed. We have been engaging in a very constructive dialogue with Sen. McCain and Ranking Member Dorgan on their bill, and we look forward to a similarly constructive process with you, Chairman Pombo and Ranking Member Rahall.

We are encouraged by some aspects of this preliminary bill. The fact that any settlement would be paid out of the Claims Judgment Fund is indeed necessary so that fixing this problem will not diminish the Interior Department's budget. This would further punish the victims by reducing funding for vital Indian programs.

We are also encouraged that the bill recognizes that the settlement amount must range in the billions of dollars, although we also believe it is time for those in Congress to put forward a specific proposed settlement amount.

Further, since any settlement would be a return of the victims' own money, we are pleased that the bill insures that beneficiaries will not be disqualified from any other benefit for which they are eligible and that it will not be treated as taxable income.

However, I believe there are some critical shortcomings to the bill as presently drafted. There are two sources of guidance that should inform any appropriate legislative settlement. First, the 50 Principles for Settlement which present a consensus roadmap to resolution from Indian Country.

The 50 Principles for Settlement represent an unprecedented coming together of Indian Country at the request of both the leadership of this Committee and the Senate Indian Affairs Committee to offer guidance. The result was an extraordinary product that set out detailed principles and the rationale for each Principle. No longer can it be said that Indian Country does not – in the main – agree on the proper approach to fixing this century of malfeasance and mismanagement. To the extent that a resolution followed the roadmap set out by the owners of the land and assets in question, it would be a success.

We are disappointed that the vast majority of the Principles have not, at this point, been included in this bill and request that you take another look at this historic document and the ideas it puts forward.

The second source of guidance for an appropriate settlement is the rulings in the *Cobell* case itself. Plaintiffs have waged a long and hard battle against difficult odds, and have achieved a remarkable record of success. The plaintiffs cannot accept a settlement that fails to honor the many victories won at the District Court and the United States Court of Appeals.

We appreciate that you are actively soliciting our input on the bill before us. Candidly, we believe the bill needs a lot of work. We are heartened by your commitment to this process and also by your comments that this bill is intended to mark a starting point on a possible road to resolution. With that in mind, we offer these specific comments on the bill. These are not intended nor should they be construed as a comprehensive list of the areas of concern. But these are the areas of greatest concern and require serious consideration and modification.

Any Settlement Should not be Overseen by One of the Wrongdoers

One of the most disturbing aspects of H.R. 4322 is the placing of the Secretary of Treasury – a defendant in the *Cobell* lawsuit and one of the parties principally responsible for the historic and continuing victimization of Indian trust beneficiaries – as the person in charge of the settlement funds. While it is certainly true that the Treasury Department is better than the Interior Department as far as failed trustee-delegates, frankly, that is not saying much. The Treasury Department has been Interior's partner in crime for far too long. It has been found in breach of trust. It has failed to reform. Is it reasonable, given the history of this case, to ask trust beneficiaries to accept their victimizer as the entity to provide for a fair distribution? Of course not.

To make matters worse, the Department of Treasury has had a record of bad faith in the *Cobell* litigation. In February 1999, after a three week trial, the Secretary of Treasury along with the Secretary of Interior was held in contempt of Court for flouting Court orders, *orders that they had consented to. See Cobell v. Babbitt*, 37 F.Supp.2d 6 (D.D.C. Feb 22, 1999). Adding insult to injury, the plaintiffs and the district court learned months afterwards than during the contempt trial itself, Treasury Department employees, in violation of court orders and in contradiction of representations made to the Court, destroyed 162 boxes of disbursement related documents – including untold numbers of IIM account related information. Treasury Department lawyers waited over three months to report the destruction to the Court. *See, e.g., Cobell v. Babbitt*, 91 F.Supp.2d 1, 60 (D.D.C. Dec 21, 1999) (determining that the destruction of the 162 boxes and the government's failure to report the incident "misconduct").

Simply put, the Treasury Department has a record of cover-up, malfeasance, breach of trust, lack of candor with the Courts, spoliation of evidence and contempt of Court. The suggestion that any settlement fund be handled by such an entity cannot be acceptable to the beneficiary class.

I routinely go out to Indian Country to speak with members of the beneficiary class. Virtually every time, I am asked whether we will agree to have the government – meaning the Executive Branch -- handle the monies when we prevail. Always, I promise, we will never agree to that to cheers from the allottees I speak with. I can say with confidence that an Executive Branch entity will not be acceptable to the beneficiary class.

Equally infirm is the appointed Special Master who answers to the Administration. Bear in mind that Indian Country has considerable experience with this Administration appointing individuals that are to serve a salutary function on behalf of the Indian Trust. Take by way of example the experience with the 1994 Indian Trust Fund Reform Act.

Mr. Chairman, I along with many other Indians sought for nearly a decade legislation to remediate the government's failure as trustee for our assets. We worked hand-in-hand with both the Houses – in particular, Representative Mike Synar and his distinguished colleague Bill Clinger and the Senate. Finally, in October of 1994, the Trust Reform Act was enacted. One of the core aspects of the law was to establish the Office of the Special Trustee. Indian Country representatives wanted the Special Trustee to be independent. But the Interior Department vigorously objected to that. So the Act was watered down and the Special Trustee reported to the Secretary of Interior. That was the first problem – inadequate independence. One of the principal rationales for supporting the establishment of the OST was to get proper direction and guidance

in the management from individuals with considerable applicable reform and trust experience. Also, it was to keep people who did not know what they were doing – like Ross Swimmer who was so disastrous as Assistant Secretary for Indian Affairs for beneficiaries – as far away from our money as possible.

Then to my utter dismay, in 2003, Secretary Norton fired then Special Trustee Thomas Slonaker and replaced him with none other than Ross Swimmer. Imagine all our hard work just to have our trust, our assets, and trust reform put in the hands of a person universally recognized by Indian Country as hostile to Indian interest and a failed trustee-delegate. That, of course, is not the only example. After all, Jim Cason as we speak is acting as Assistant Secretary for Indian Affairs.

It is with these considerations in mind that we analyze whether it makes sense to work hard for nearly a decade to get a settlement and then have the settlement put under the control of a person appointed by an Administration that has put Mr. Swimmer in charge of trust reform. Under what rationale would that make sense to us? I struggle to comprehend why anyone would think it would.

Worse than who the Bill empowers – namely Treasury Department and the Special Master appointed by Administration – is who the Bill disempowers – the Court. Over the century of mismanagement, one entity has stood up for trust beneficiaries – the Court. Even detractors from our lawsuit – Steven Griles, Jim Cason, Kevin Gover, Bruce Babbitt and many others – have admitted under oath that this lawsuit has been the impetus for any improvements that have been made. Under this legislation, the only ameliorative entity – the Court – would be eliminated from the picture entirely.

That makes no sense for a number of reasons. Courts have the greatest institutional competence to make distributions in a fair manner. They are often called upon to do just that. Courts are armed with Rule 23 and related case law that provides sound guidance in resolving difficult distribution issues. Courts are best at providing an opportunity to be heard and other due process protections to the beneficiary class and weighing the evidence presented to it through well-settled rules of procedure and evidence. More importantly, unlike the "political branches" (i.e. the Executive Branch and Congress), Courts make judicial and not political determinations. A court sitting in equity – like the *Cobell* court – is charged with considering the evidence and acting equitably in fashioning appropriate remedies. That is precisely the type of institution that should be figuring out how to divide the funds among the beneficiary class. It is the most competent to do so.

And what possible justification is there to eliminate the Court's role? Because the Executive Branch doesn't like this Court? The Administration has no legitimate interest in dictating how the settlement funds are distributed. None. If there is a settlement, their liability for the agreed-to period for the accounting claim would cease. Who gets what after that is an issue for the beneficiary class and the court to determine. Nobody wants the involvement of the malfeasor in that process; they have done quite enough damage in their century of mismanagement.

At bottom, this is an issue of trust. We cannot trust the people who have abused us for a century. We can trust the courts and the judicial process.

Importantly, the Indian Land Working Group, the larges national association of allottee groups has specifically said that they do not want Treasury involved. Specifically, they have said

that they "support the named representatives of the class and their counsel in making decisions on what is a fair settlement and a fair manner to distribute the funds." As we do, they have endorsed the federal courts as the appropriate body to handle any distribution. (See Appendix B)

A Settlement Must Include Real Trust Reform

The *Cobell* case is far more than merely about the mismanagement of our assets in the past. It is also about the future – how the trust lands and monies of Indian people will be managed in the future. Quite obviously then, a settlement of this case requires cessation of this persistent and continuing wrongdoing , in other words, real trust reform. If the underlying problems with administration of the trust are not corrected, then much of our effort to ensure that our children will not suffer the same indignities and abuse as their parents and grandparents will have been for naught.

I have called for the appointment of a receiver during the period of reform. I continue to think that is the most effective way to make sure that the needed changes are made, and we don't all find ourselves with a trust problem needing your attention again in a few years and additional lawsuits in the future.

I understand that the government has resisted the receivership approach. While we will continue to press for a receivership in the litigation, I believe that some other measures ***may*** be sufficient for reliable and meaningful trust reform. Chief among them is to codify in statute the trust duties and standards, provide for enforceability in courts of equity with meaningful remedies against a trustee breaching its responsibilities, and independent oversight with substantial enforcement authority to ensure that beneficiary rights are protected. Right now, the Individual Indian Trust is missing all of these elements, and that is part of the reason that this problem has persisted for so long. These missing elements of accountability are the sole germane distinctions between this trust and all other trusts throughout this nation that are safely and soundly managed. Without these elements, there is no accountability. If Congress truly wants to fix this problem once and for all, it must fundamentally reform the trust. Anything less will invite the same problems and abuses we are all too aware of.

Without a resolution of these three issues, there is no use in moving forward with settlement negotiations, since these three positions are critical to the beneficiary class who are counting on me to make sure this problem gets resolved in a full and fair manner.

A Fair and Just Settlement for Taxpayers and Indians

We have supported the 50-point settlement proposal that was developed by Native American leaders this summer for several reasons. First, we believe it is in the best interests of all Americans to resolve this dispute. Secondly, we would like to end this unhappy chapter in our history in a spirit of compromise. Third, we want to see the trust reorganized now to prevent a continuation of this massive failure.

Our lawsuit has dragged on for almost 10 years, largely because of the government's policy of delaying any resolution. In truth, we stand ready to end this costly litigation with the fair and just settlement proposed by Indian Country. Simply put, too many of our Trust

beneficiaries are dying while this case remains in the courts. I want to get them access to their money – or at least a portion of it – now -- in their lifetimes.

The settlement the Native American leaders proposed is a good deal -- especially for taxpayers. While the price tag comes to nearly $27.5 billion, it is a bargain for a government that has acknowledged its responsibility for this 118-year-old mess.

Here's why:

First, it would resolve a dispute that members of Congress have said has run too long and cost too much. It is estimated that the government alone has spent more than $100 million on this lawsuit. Those expenses will only grow as Attorney General Gonzales presses ahead with plans to hire even more lawyers for trust litigation.

Secondly, the government's liability is growing. That's because the courts have declared that Indian Trust beneficiaries are entitled to both the principal amounts that should have been recorded in their accounts – plus compounded interest on that money.

A fundamental principle of trust law, confirmed by the court of appeals, is that the government is liable for any funds that it cannot prove with appropriate and competent evidence that it paid to the beneficiaries. Since both sides agree that the government should have paid roughly $13 billion into the individual Indian Trust accounts since 1887, that means that the government must be able to prove each of those transactions. And amount not paid plus interest on what is owed. This puts potential liability of the federal government well in excess of $100 billion.

The historical accounting will continue to be costly. The Interior Department is now telling you that it will cost at least $12 billion to reconstruct those records. That's far too expensive for an accounting. Well before the court of appeals reached that conclusion, we were saying that in the district court.

A 2002 study conducted for the Interior Department -- and made public in our lawsuit -- places the liability for the government on trust accounts at anywhere between $10 billion and $40 billion. That's their internal number.

That's why Indian Country's $27.5 billion proposal is a bargain. After all, I would argue that it is a far better bargain for the taxpayers to be spending this money directly on making Indian account holders than wasting money on what both we -- and the courts -- regard as a highly questionable accounting.

The proposed settlement makes a generous assumption on behalf of the government. It assumes for purposes of calculation that the government has enough records to prove that it accurately made 80 percent of the payments it was supposed to have made to trust beneficiaries and that it made them on time. That's an exceedingly kind estimate considering that independent assessments of the "accountings" the government has completed to date plainly demonstrate that in actuality they can account or prove less than 1% of the transactions that have occurred. In other words, while they, as trustee-delegate, have the unconditional obligation to prove each transaction, they can prove almost none of them, yet our proposal still would presume they made the vast majority of them properly.

Moreover, these funds would not have to be appropriated. They would come from the Treasury Department's Judgment Fund. The funds would be disbursed by the courts over several years based on provisions and guidance set forth in the settlement bill..

Remember, too, this is not welfare, a social program, or reparations for past abuses and discrimination. *This is money that all along belonged to the individual Indians*. It was never properly recorded to their accounts because of the government's continuing inability to serve as a proper trustee. The government repeatedly has acknowledged this failure and that failing has been documented in scores of reports. Now, the government has a chance to settle this issue for all time and at a price that is far less than the account holders are entitled to by law.

Government Has Repeatedly Acted in Bad Faith

It is especially regrettable that the government's unwillingness to deal in good faith with the courts, the Congress, mediators, and the plaintiffs has been matched by a continuing, persistent pattern of deception and misrepresentation. Two recent examples are worthy of this committee's attention.

Last month, the Court of Appeals granted a request from *both* sides of the *Cobell* case that a structural injunction requiring a detailed accounting methodology be set aside. We also requested that the case be returned to the district court for further proceedings including the district court considering the issue of "impossibility" of doing a traditional and fair accounting, and determining an alternative equitable restitution methodology. The Court of Appeals, in its recent decision, opens the door to just such a determination.

In essence, the Court of Appeals recognized that it is appropriate for the district court to adjudicate whether the loss and willful destruction of records by government officials has made an historical accounting impossible. For years, we have consistently argued for and the government has vigorously opposed such a determination. This appellate mandate has set the table for an early and fair resolution of the *Cobell* case by the district court. With the weight of an uncontested record of evidence and the government's admissions that a complete and fair accounting is futile, impossibility will be conclusively demonstrated. At that point an alternative to an historical accounting must be selected to decide what is a fair equitable restitution. We will be seeking such a proceeding at the proper time.

The government however, would have you believe that this decision was a victory. It has seized on some comments or "dicta" from Judge Williams to suggest that this decision has a favorable legal impact on procedural matters not even at issue before this court. As you know, commentary, not necessary to the holding of the court on issues
before it is not binding on the district court or indeed any court. This dicta, as lawyers call it, has no precedential impact. Moreover, where, as here, the judicial commentary contravenes the decisions of prior appellate panels, it is entitled to no weight whatsoever. The clear rule in this and almost every other federal judicial circuit is that when there is a conflict between panels of the circuit, the decision of the panel that first decided the issue prevails over the later decision. This "first-in time rule" applies with great force in this matter since the language upon which Interior Defendants rely directly contravenes at least three prior appellate panel decisions. To illustrate what this means, we submit the following:

FIRST-IN-TIME DECISION PREVAILS IF THERE IS INTRACIRCUIT CONFLICT

***Cobell VI* (2001)**		***Cobell XVII* (2005)**
APA Deference • "*Chevron* deference is not applicable in this case. (p. 1102)."		**APA Deference** • "[T]he district court owed substantial deference to Interior's plan. (p. 10).
Duty to Account • "Therefore, the 1994 Act reaffirms the government's preexisting fiduciary duty to perform a complete historical accounting of trust fund assets." (p. 1102).	**PREVAILS OVER** →	**Duty to Account** • The 1994 Act "clearly reaffirms the requirement that the Secretary complete an accounting." (p. 7).
Scope of Accounting • The 1994 Act makes clear that T-Ds must account for *all* funds, "irrespective of when they were deposited" and "All funds means *all funds*." (p. 1102).		**Scope of Accounting** • "While Congress in the 1994 Act plainly faulted the United States' management … the Act's general language doesn't support the inherently implausible inference that it intended to order the best imaginable accounting without regard to cost." (p. 8).
Fiduciary Trust Case • "This departure from the *Chevron* norm arises from the fact that the rule of liberally construing statutes to the benefit of the Indians arises not from ordinary exegesis, but 'from principles of equitable obligations and normative rules of		**Fiduciary Trust Case** • "The choices at issue required both subject-matter expertise and judgment about allocation of scarce resources, classic reasons for deference to administrators." (p. 10).

behavior,' applicable to the trust relationship between the United States and the Native American people." (p. 1101).		
Role of Common Law of Trusts		**Role of Common Law of Trusts**
• The general "contours" of the government's obligations may be defined by statute, but the insterstices must be filled by general trust law." (p. 1101).	**PREVAILS OVER**	• "[U]nder the APA the court may to a degree use the common law of trusts as a filler of gaps left by the statute, but in doing so it may not assume a fictional class trust of beneficiaries completely and uniformly free of bars or limitations that the common law may provide." (p. 15).
Broad District Court Discretion		**Broad District Court Discretion**
• "Once a right and violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." (p. 1108).		• "Here the district court invoked the common law of trusts and quite bluntly created the character of the accounting as its domain. It thus erroneously displaced Interior as the actor with primary responsibility for 'work[ing] out compliance with the broad statutory mandate.'" (p. 10).
Cost of Accounting		**Cost of Accounting**
• "Neither a lack of sufficient funds nor administrative complexity, in and of themselves, justify extensive delay …" and an absolving of fiduciary obligations." (p. 1097).	**PREVAILS OVER**	• "Congress' post-1994 appropriations fall equally short of supporting a mandate to indulge in cost-unlimited accounting – in fact, they suggest quite the opposite." (p. 8-9).

For further illustration of this point, see Appendix C. At the proper time, we intend to seek a ruling from the court that will make this explicit. In short, don't believe what you may be hearing from the government about their legal victory. Like so much else that they have said to the Courts, the Congress, and the public, it is simply not the truth.

"Progress Report" is No Progress

The second example is equally stark. In September, the government put out a self-congratulatory "progress report" on its handling of trust issues. I am sure it was made available to members of the Committee. It is deceptive, misleading and inaccurate from beginning to end. It would have you believe that the management of Indian Trust accounts has been and is satisfactory, availability of financial records is good, and losses suffered by Indians insignificant. None of that is true. Hundreds of reports, findings, and studies from the Congress, the GAO, Inspectors General, Federal Courts, and the Government's own experts have concluded that the handling of these accounts has ranged from incompetent to fraudulent. And, the damage to Native Americans has been massive.

Mr. Chairman, we have called on the government to allow the Court to examine this document for accuracy. They have, thus far, refused. And, there is good reason for their reluctance. Ask government officials who come before you if they are prepared to swear to the truthfulness of this document in a court where sanctions for perjury are available.

We have prepared a brief rebuttal to the Government's brochure and I would like to make it part of the record. (See Appendix D.) It clearly demonstrates that the "Progress Report" is just one more attempt to deceive the Congress and the public. If the Government wants to test their report against our rebuttal, we would welcome it. Let's see who is telling the truth.

Conclusion

Thank you very much for this opportunity to testify and your leadership on this important issue. We look forward to working with you in the coming weeks to address these concerns and remain hopeful that a legislative settlement can be reached that will best serve the interests of the government, the American people, and the beneficiaries who have been victimized for far too long. But, we remain mindful that should a legislative settlement that is fair to the beneficiaries not be reached, we must and we will continue to press our case in the courts and we fully expect that we will, in time, prevail.