

National Native American Hall of Fame
2018 Inductee

ELOUISE COBELL
BLACKFEET NATION



ADVOCACY
INDIAN TRUST FUND REFORMER

Photo by Kelly Gorham

Three 50-minute class periods

This lesson is best suited to the upper grades but can be applied to grades 4-8 in simplified form.

By Shane Doyle, EdD

SELECTED COMMON CORE STATE STANDARDS/SUBJECTS

English, Writing, Literacy, Sociology, Government, History

CCSS Literacy SL 10-1

Initiate and participate effectively in a range of collaborative discussions (one-on-one, in groups, and teacher-led) with diverse partners on grades 9-10 topics,

texts, and issues, building on others' ideas and expressing their own clearly and persuasively.

CCSS Literacy SL 10-1d

Respond thoughtfully to diverse perspectives, summarize points of agreement and disagreement, and, when warranted, qualify or justify their own views and understanding and make new connections in light of the evidence and reasoning presented.

CCSS Literacy WHST 10-4

Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience.

CCSS Literacy RH 10-5

Develop and strengthen writing as needed by planning, revising, editing, rewriting, or trying a new approach, focusing on addressing what is most significant for a specific purpose and audience.

GOALS FOR UNDERSTANDING

Students will understand

Who is Elouise Cobell.

The impact Elouise Cobell had on the assertion of Native American rights.

The significance of the *Cobell v. Salazar* case?

The process of taking a lawsuit through the American judicial system.

How to engage towards positive social action and justice.

ESSENTIAL QUESTIONS

Who is Elouise Cobell?

How did her life experiences lead her to a sense of purpose and vision for her life's work?

What life experiences have you had that have made you feel passionate about something?

Do we have an obligation to work toward change when we are unhappy with the things happening around us?

Do you see yourself as an advocate? Who benefits from your advocacy?

Do you have agency and the capacity for positive social action?

What traits from the list of Hall of Fame eligibility criteria did you recognize in Elouise Cobell? Can you provide examples of where, or how these traits were demonstrated?

STUDENT OBJECTIVES

Students will be able to

Identify some of the key events in Elouise Cobell's work.

Understand the life events that influenced Elouise Cobell’s vision and work.

Examine events in their own lives that have inspired passion or vision for a cause.

Identify important actions they can take as an advocate.

Create a plan to act on behalf of things that should “never happen again”.

Understand the basic premise of **trust lands**.

ASSESSMENT EVIDENCE

Suggested Formative Assessment of Learning Outcomes

Active listening through note taking/ word web

Class discussion

Culminating Performance Assessment of Learning Outcomes

Never again action plans

LEARNING MAP

ENTRY QUESTIONS

Is anyone familiar with Elouise Cobell?

Visit <https://www.youtube.com/watch?v=fKbDZQGfDqo> to view the ten-minute video “Truth to Power”.

Elouise Cobell is known for her success with the Cobell Case, but she had a very distinguished life in other ways too. Let’s do some small group reading about her life.

MATERIALS

Computer and internet access, or printed copies of the materials listed below.

LEARNING MODALITIES

Auditory

Visual

SITUATED PRACTICE

Introduce the students to the Blackfeet activist, rancher, and banker Elouise Cobell. Allow students to gather in small groups to read the following paper written about Elouise's life.

Elouise Cobell by Bethany Berger

https://cobellscholar.org/wpcontent/uploads/2015/11/cobell_chapter.pdf

While a peer is reading, students should take notes using the word web (included at the end of this lesson) to demonstrate connections between key experiences in Elouise Cobell's life that eventually lead to winning the largest class action lawsuit against the US government ever. (If teachers prefer to integrate more technology, there are several free websites where students can construct word webs online.)

OVERT INSTRUCTION

To gain more context for Elouise Cobell's work and our coming discussion, the class should watch the PBS documentary "100 Years: One Woman's Fight for Justice". The film is available on Netflix.

Following the screening of this film, examine the concept of justice. Assist students in understanding the trust relationship tribes have with the Bureau of Indian Affairs by explaining the following:

How did you observe Elouise Cobell using her agency (her capacity to act)? What was the effect of her social actions? What is our responsibility as members of a social environment to take actions that confront injustice?

The federal Indian trust responsibility is a legal obligation under which the United States "has charged itself with moral obligations of the highest responsibility and trust" toward Indian tribes (Seminole Nation v. United States, 1942). This obligation was first discussed by Chief Justice John Marshall in Cherokee Nation v. Georgia

(1831). Over the years, the trust doctrine has been at the center of numerous other Supreme Court cases, thus making it one of the most important principles in federal Indian law.

The federal Indian trust responsibility is also a legally enforceable fiduciary obligation on the part of the United States to protect tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of federal law with respect to American Indian and Alaska Native tribes and villages. In several cases discussing the trust responsibility, the Supreme Court has used language suggesting that it entails legal duties, moral obligations, and the fulfillment of understandings and expectations that have arisen over the entire course of the relationship between the United States and the federally recognized tribes. "The BIA's mission is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes and Alaska Natives. We will accomplish this through the delivery of quality services, maintaining government-to-government relationships within the spirit of self-determination." (US Department of the Interior Indian Affairs)

To say this an easier way, you can think of the BIA like a bank except they hold land instead of money in accounts belonging to Native American people. Banks have to keep careful records of the financial transactions people make every day so that the money they are holding in accounts like checking and savings accounts is accurate for each person. Elouise Cobell saw that people's land accounts were not being carefully recorded and many records were being lost, misplaced, or mishandled. She knew this was wrong. Think of it like this: Imagine that you have been saving money in your piggy bank for years. Finally, your bank is too full to hold any more money, so you take your money to the bank and put it in an account under your name. A few months later you decide you want to buy a really cool new bike. You go to the bank to withdraw your money, but the teller says, "I'm sorry, it appears you have no money in your account."

Is there something wrong about this situation? What makes things right or wrong. Are there things that are or should be universally right or wrong. When you look at the world around you do you see things that are wrong? What are some of these things? (List student suggestions on the board.)

If there were no money in your bank account, you'd probably say, "What?!!! I walked in here with my piggy bank and I gave you all my money and you promised to hold on to it for me in my account until I needed it and now you're telling me you don't have my money? You better do some digging and find out where my money went and figure out how you're going to get it back to me!" This is what Elouise Cobell expected the BIA to do.

How did you observe Elouise Cobell using her capacity to act? What was the effect of her actions? What is our responsibility as members of a society to take actions to address an injustice.

CRITICAL FRAMING

Write this quote on the board: “We will have to repent in this generation not merely for the vitriolic words and actions of the bad people, but for the appalling silence of the good people.” – Martin Luther King Jr. What would have happened if Elouise Cobell had just sat down and quieted herself when she first started asking questions of things that didn’t seem right and the BIA made fun of her for it?

After Elouise Cobell’s death, a small piece of paper remained taped to her office computer. It read:

First they ignore you,
Then they laugh at you,
Then they fight you,
Then you win.

In small groups pose the following questions for discussion:

Is there anything in your world right now you feel is worth fighting for even if you have to hang tough for a long time, maybe even 15 years?

Is there anything in your community right now that you believe is wrong and should be righted? Is there anything that has happened in your community that makes you say, “I will never let that happen again.”?

TRANSFORMED PRACTICE

Check out this wiki link on How to Create an Action Plan:

<https://www.wikihow.com/Create-an-Effective-Action-Plan> Review part 1 steps 1-11 and use them as a guide for our coming work. In small groups or as individuals students should choose a wrong from their community that they would like to make right. Once a wrong has been chosen, students should follow the creating-an-action-plan steps to create a plan for bringing change to this wrong, so that it never happens again. For inspiration students can explore the work of these teens and others:

<https://www.sadd.org/>

<https://www.facebook.com/TADDORG>

https://d3n8a8pro7vhmx.cloudfront.net/honorearth/pages/2283/attachments/original/1477960687/factsheet_DAPL.pdf?1477960687

<https://www.nativewomenswilderness.org/mmiw>

Students should be given adequate time to complete their action plans in class or as homework. The plans should be actionable in real time. Upon completion of the plans, students should present their plans to the class. If desired, students could choose one or two plans to carry out as a class.

DIFFERENTIATED INSTRUCTION FOR ADVANCED AND EMERGING LEARNERS

Struggling learners may need to have a printed copy of all articles and have more time to read and locate important points using a highlighter. Struggling learners may compose shorter word webs (filling in one or two circles instead of 3). They may also be paired with a student who can allow them to follow along as they talk through the contents of the word web together. Students may identify a wrong, and create an action plan either as an audio, or video submission. If writing is a challenge a student can use an audio recording of their thoughts and ideas, supported by their verbal notes. Advanced learners could research the work of other young people and present this work to the class; in order to inform their peers of important work of which they can become involved. They could also lead, or be responsible for keeping class justice projects moving forward and communicating among groups.

Cobell v. Salazar Case and Settlement

Excerpt from: The Indian Trust Fund Litigation: An Overview of Cobell v. Salazar

August 20, 2008 – November 30, 2012

Background

First filed in 1996, *Cobell v. Salazar* involved the Department of the Interior's (DOI's) management of several money accounts. These money accounts, known as IIMs (an abbreviation for Individual Indian Monies) are monies which the federal government holds for the benefit of individual Indians rather than property held for the benefit of an Indian tribe.¹The conflict in the case emanated from the federal government's trust responsibility with respect to American Indians. One of the earliest formulations of the

concept of the federal government as trustee for Indian tribes came from the U.S. Supreme Court in 1831, likening the relationship to that of "a ward to its guardian."² In the capacity of trustee, the United States holds title to much of Indian tribal land and land allotted to individual Indians. Receipts from leases, timber sales, or mineral royalties are paid to the federal government for disbursement to the appropriate Indian property owners. The United States has fiduciary responsibilities to manage Indian monies and assets which have been derived from these lands and are held in trust.³

The case was premised on statutory duties imposed upon the federal agencies handling Indian monies as well as on the existence of property rights in funds and assets held in trust for Indians. The courts have recognized broad powers of Congress with respect to Indian affairs legislation and Indian property, but have also recognized that Indian property may not be taken for a public purpose without just compensation.⁴ This case was not a claim for just compensation; it was a claim for an accounting by the trustee (i.e., the United States) for receipts and disbursements representing the trust corpus held for the benefit of individual Indians.

The *Cobell* litigation sprang out of the federal government's trust responsibility with respect to three groups of money accounts held in trust for individual Indian beneficiaries. These accounts are commonly referred to as the Individual Indian Money (IIM) accounts. They include (1) Land-based Accounts—established to receive revenues derived from the approximately 11 million acres held in trust by the U.S. for individual Indians;⁵ (2) Special Deposit Accounts (SDAs)—intended to be temporary accounts to hold funds that could not be immediately credited to the proper IIM account holder; and (3) Judgment and Per Capita Accounts—established to receive funds from tribal distributions of litigation settlements and tribal revenues.⁶ Congress has delegated to the Secretary of the Interior and the Secretary of the Treasury its responsibilities as trustee with regard to the IIM accounts.⁷ The Bureau of Indian Affairs (BIA) has general responsibility for trust land management and income collection.⁸

The BIA, Office of Trust Funds Management, and the Office of the Special Trustee all have trust obligations relating to IIM accounts. Most transactions involving IIM accounts require BIA approval.⁹ Therefore, one of BIA's most important duties is managing IIM funds derived from income-producing activities on allotment land, including grazing leases, timber leases, timber sales, oil and gas production, mineral production, and rights-of-way. The Office of Trust Fund Management (OTFM) is responsible for BIA's fiduciary duty to keep accurate financial records of these activities. OTFM also shares the banking aspect of DOI's trust responsibility with the Treasury Department. OTFM and BIA officers collect payments and deposit them into local banks where there is a Treasury General Account.¹⁰ The Treasury Department maintains a single "IIM account" for all IIM funds, rather than individual accounts, while OTFM is responsible for maintaining accounting records for the individual funds.¹¹ Treasury also invests the funds at the direction of DOI.¹² Finally the Office of the Special Trustee for American Indians is responsible for "trust reform efforts" as established under the Trust Fund Management Reform Act.¹³

The federal government—as holder of these accounts in trust for the Indian beneficiaries—has fiduciary obligations to administer the trust lands and funds arising from them for the benefit of the beneficiaries. The federal government has stipulated, however, that it does not know the exact number of IIM trust accounts that it is supposed to administer; nor does DOI know the correct balances for each IIM account.¹⁴ DOI has conceded that it is unable to provide an accurate accounting for a majority of IIM trust beneficiaries.¹⁵ The Treasury Department also has problems with trust fund management procedures. First, the Treasury Department has permitted the destruction of documents over six years and seven months old, and made no effort to ensure that documents related to accounting for IIM accounts are preserved.¹⁶ In addition, there can be a time lapse between the deposit of funds with the Treasury Department and the investment of those funds.¹⁷ There can also be a time lapse between the issuance of a check and when the payee presents the check, resulting in lost interest.¹⁸

Congressional oversight committees became concerned with IIM mismanagement in the late 1980s and began holding oversight hearings regarding the IIM accounts in 1988. Four years later, the House Committee on Government Operations produced a report highly critical of the Interior Department.¹⁹ In 1994, Congress enacted the Indian Trust Fund Management Reform Act (the Reform Act),²⁰ recognizing the federal government's pre-existing trust responsibilities and further identifying some of the Interior Secretary's trust fund responsibilities, such as providing adequate accounting for trust fund balances; providing adequate controls over receipts and disbursements; providing accurate and timely reconciliations; preparing and supplying periodic statements of account performance and balances to account holders; and establishing consistent, written policies and procedures for trust fund management.²¹ Significantly, the original House bill ([H.R. 1846](#)) would have made the accounting duty prospective only. When another similar bill was introduced to replace [H.R. 1846](#), that provision was left out. This new bill became the Reform Act, and the courts interpreting it in the *Cobell* litigation have determined that DOI owes a historical accounting duty going back to June 24, 1938.²² As the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) stated, "the 1994 Act identified a portion of the government's specific obligations and created additional means to ensure that the obligations would be carried out."²³

December 7, 2009, Settlement

On December 7, 2009, the Secretaries of the Interior and Treasury reached a settlement agreement with the plaintiffs' class. However, under its own terms, the settlement would not be effective until authorized by Congress.⁶³ The settlement agreement originally called for Congress to authorize it legislatively by December 31, 2009.⁶⁴ The deadline, however, was extended eight times to February 28, 2010, April 16, May 25, June 15, July 9, August 6, October 15, and finally to January 7, 2011.⁶⁵ After a number of failed attempts to approve the settlement,⁶⁶ Congress finally authorized the settlement through the Claims Resolution Act of 2010 (CRA), which was signed by President Obama on December 8, 2010.⁶⁷

The settlement agreement addressed the claims of two separate classes. One class, the "Historical Accounting Class," is defined as those Indian beneficiaries who had an open IIM account between October 25, 1994, and September 30, 2009, in which there was at least one cash transaction credited to it.⁶⁸ The "Trust Administration Class" is defined as those individual Indian beneficiaries alive as of September 30, 2009, who have or had IIM accounts between roughly 1985 to the present (the time period when IIM accounts were kept in electronic databases) and individual Indians who, as of September 30, 2009, had recorded or other demonstrable ownership interest in land held in trust or restricted status, regardless of the existence of an IIM account or proceeds generated from the land.

The settlement agreement released the federal government from claims related to the mismanagement of the IIM accounts of both the Historical Accounting Class and the Trust Administration Class. However, the settlement also specifically excluded from the release (1) claims related to the payment of the account balances of existing IIM accounts; (2) claims related to the payment of existing amounts in special deposits accounts, tribal accounts, or judgment fund accounts; (3) claims related to the breaching of trust or alleged wrongs after September 30, 2009; (4) claims for damages to the environment other than those claims expressly identified as Land Administration Claims; (5) claims for trespass; (6) claims against tribes, contractors, and other third parties; (7) equitable, injunctive, or non-monetary claims for boundary correction and appraisal errors; (8) money damages arising from boundary or appraisal errors that occur after September 30, 2009; (9) claims arising out of leases, easements, rights-of-way, and similar encumbrances existing as of September 30, 2009; (10) claims related to failure to assert water rights and quantification; and (11) health and mortality claims. The settlement also stated that no further monetary obligations shall attach to the federal government after the funds agreed upon in the settlement are dispensed.

In return for this release of liability, the settlement established two funds. The first fund would receive \$1.412 billion from the Judgment Fund and will be called the "Accounting/Trust Administration Fund." From this fund, each member of the Historical Accounting Class shall receive \$1,000. After this payment is made, the next stage involves establishing the identities of the members of the Trust Administration Class and paying each member a pro rata amount. This amount involves a \$500 base payment. In addition, each member of the class will receive a pro rata amount of the remaining monies in the Accounting/Trust Administration Fund. Any money remaining in this fund will be used to finance a program called "Funds for Indian Education Scholarships," which provides for the cost of post-secondary education for Indian students.

The second fund, called the "Trust Land Consolidation Fund," would receive \$2 billion. This fund, which will terminate in 10 years, will be used to acquire fractional interests in trust or restricted land pursuant to 25 U.S.C. §2201 et seq., which authorizes the Land Consolidation program. This program is the principal vehicle by which the federal government consolidates fractionated trust and restricted lands. Monies from

this account will also be made available for the "Funds for Indian Education Scholarships."

The CRA excludes amounts received by individual Indians pursuant to the settlement from inclusion as gross income for federal tax purposes. The settlement and CRA also left for the district court's consideration the amount of attorneys' fees and the amount of the incentive award for the named plaintiffs of the class.

The district court approved the settlement on July 27, 2012. A few members of the class appealed the settlement to the U.S. Court of Appeals for the D.C. Circuit, which upheld the fairness of the settlement. After the Supreme Court denied a petition for *certiorari* and the appeal period expired, the settlement became final on November 24, 2012.

BIBLIOGRAPHY AND ADDITIONAL RESOURCES

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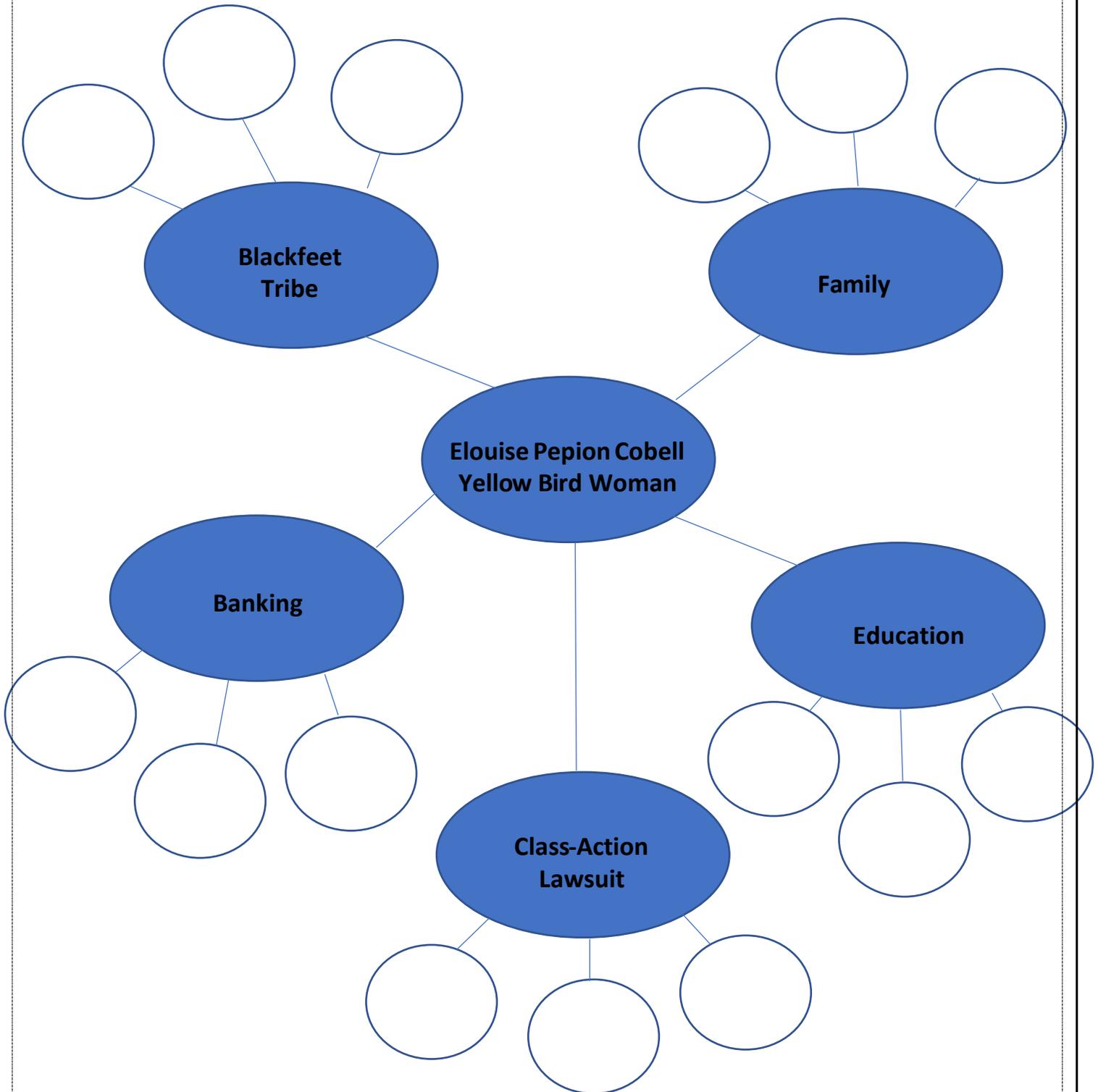
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Elouise Cobell Research Word Web



A word web is a graphic organizer that illustrates connections between ideas using words or short phrases. This word web will show connections within your research about Elouise Cobell