

S. HRG. 112-711

**NOMINATION OF KEVIN WASHBURN TO BE  
ASSISTANT SECRETARY FOR INDIAN AFFAIRS,  
U.S. DEPARTMENT OF THE INTERIOR**

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**HEARING**

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS**

**UNITED STATES SENATE**

**ONE HUNDRED TWELFTH CONGRESS**

**SECOND SESSION**

SEPTEMBER 14, 2012

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**FRIDAY, SEPTEMBER 14, 2012**

U.S. SENATE,  
COMMITTEE ON INDIAN AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:38 p.m. in room 628, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. DANIEL K. AKAKA,  
U.S. SENATOR FROM HAWAII**

The CHAIRMAN. The hearing will come to order.

Mr. Washburn and I were able to have a good meeting earlier this week. I look forward to continuing the dialogue with him today.

So over the past 18 months, I have worked closely with former Assistant Secretary Echo Hawk and Acting Assistant Secretary Laverdure. I have appreciated their support and hard work on behalf of our American Indians, Alaska Natives and Native Hawaiians. I am confident that if confirmed, Mr. Washburn will continue the difficult work that they have started.

The Committee has received letters of support for Mr. Washburn from over 40 Tribes, from 15 States and nearly 20 organizations. I look forward to hearing from Mr. Washburn today and reviewing his responses to additional questions that will be submitted in writing by other members of this Committee.

My colleague, Vice Chairman Barrasso, is regrettably unable to join us here today. As you may be aware, there are a lot of fires occurring in Wyoming. Senator Barrasso needed to be back in his State. I talked to him yesterday that situation and am glad that he is able to go home and help the family, too, as well.

Senator Barrasso and I will be happy to include Mr. Washburn's earlier statement in the record, if he chooses to submit one. I am going to ask for any comments from Senator Udall, then following that, I want to make some introductions.

Senator Udall?

**STATEMENT OF HON. TOM UDALL,  
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Great. Thank you very much, and good afternoon to all of you. I agree with you, what a wonderful crowd, and Dean Washburn has standing room only here in the Senate Indian Affairs. That is pretty special.

I want to thank Chairman Akaka for convening the hearing today and express my upmost support for the confirmation of my friend and associate, Kevin Washburn, as the new Assistant Secretary of Indian Affairs. Mr. Washburn has been the well-loved and very successful dean of the University of New Mexico law school since 2009. He has held numerous other positions of leadership in the academic, government and private sectors.

Now President Obama has asked Dean Washburn to serve our Nation as the Assistant Secretary of Indian Affairs. It is with heartfelt appreciation that I thank Dean Washburn for his willingness to accept this challenging and important responsibility. As an alumnus of the great institution from which Mr. Washburn is coming to us, I am proud to see the University of New Mexico and our great State represented by such a strong candidate for this position.

I look back fondly on my time at the University of New Mexico law school. Mr. Washburn has continued its stellar reputation by inspiring new generations of both Native and non-Native scholars, scholars that will serve not only this Country but their own Tribal nations proudly.

Mr. Washburn is no stranger to the Indian Affairs Committee. He has testified before the Senate Committee and the House Natural Resources Committee on numerous occasions, drawing on his diverse experience and expertise. He has also lived and worked with Tribes from all over our Country. I have had the opportunity to meet with many of the students from U&M Law School over the years. Their respect and excitement about Dean Washburn is always apparent. He has inspired them to work hard, to persevere and to reach their full potential, just as he has done in his own life.

Students and faculty alike are sad to see him go. But we know that his positive influence will only expand as he takes on this new role.

Of course, we can look to Mr. Washburn's family to see the source of much of his success. His wonderful wife, Libby Washburn, and two boys, Cole and Ford, are perhaps the best indicator of this man's fine character. We are pleased that they could be here to join us today.

The Office of Indian Affairs needs to be led by somebody who can work with Tribal governments and Tribal members with an attitude of respect, by somebody who combines a deep knowledge of Native American issue with a compassion that comes from common experience and common culture. I am confident that Kevin Washburn can be that leader.

I ask my colleagues on the Committee to support the nomination of Mr. Washburn and expedite the approval of him as Assistant Secretary. With that, Mr. Chairman, I would yield back to you, but I also see that my good friend and colleague from the House of Representatives, Congressman Tom Cole, I served with him in the

House, I have worked with him in the Senate, and it is wonderful to see him here as a witness on behalf of Dean Washburn and as an introducer.

So thank you, and I yield back.

The CHAIRMAN. Thank you. Thank you very much, Senator Udall.

We are pleased today, as he mentioned, to have our distinguished members here. And let me mention the two members of the Chickasaw Nation, and ask that they be able to say a few words on Mr. Washburn's behalf. The first is, of course, our very good friend, Congressman Tom Cole, who has worked hard for you both in that body as well as on this side with us for the American Indians. We really appreciate your work over the years and look forward to that continuing. You have done a great job for the indigenous people of this Country.

And the second is Governor Anoatubby, who is with us today. So we are honored to have you here. I just want to note one more person here, in case you don't know, I just want to recognize the former Senator Fred Harris. Thank you so much, Fred.

[Applause.]

The CHAIRMAN. Thank you for being here. Your presence makes a huge difference as well.

I am so glad, Congressman Cole, that you are able to be here. We are always so happy to have you here. Will you please proceed with your comments and your statement?

**STATEMENT OF HON. TOM COLE, U.S. REPRESENTATIVE FROM OKLAHOMA**

Mr. COLE. Thank you very much, Mr. Chairman. It is a great privilege for me as always to be in front of your Committee and to work with you on a common endeavor. No one has done more for the indigenous peoples of this Country than you have done. So it is a great privilege to be here.

Senator, it is always good to be with you. You may be a lofty Senator now, but we think you are still just a House guy.

[Laughter.]

Mr. COLE. And more importantly, you act like a House guy. So we like that. And Governor, it is a great honor always to be with you.

I am here, Senator, obviously to testify, say a few words on behalf of Dean Washburn. It is true, we belong to different parties. But we have an enormous number of things in common. We are obviously both from the same State of Oklahoma, we both belong to the great Chickasaw Nation. We both have degrees from the University of Oklahoma and Yale University.

And we found out in our conversation we went to the same high school, which really means he is superbly qualified, because it means his State Senator and his State representative that was there was my mom, who was Chickasaw. So there is a Chickasaw conspiracy running through his life.

What makes Kevin a superb selection by the President for this position obviously are not these things. It is the skills, the experience, the knowledge that he brings to the position of Assistant Secretary for Indian Affairs. He is, as you noted in your remarks and

as Senator Udall mentioned, a distinguished scholar, very well educated obviously at the University of Oklahoma, but also at Washington University and Yale University. He is widely published and admired as a leading expert on Indian law and issues relating to law enforcement in Indian Country.

He has taught at four distinguished universities and obviously now is dean of the University of New Mexico School of Law. And I must add parenthetically, particularly with Senator Harris there, I am going to find out some day why you New Mexicans are stealing all our bright, talented people, we are exporting them. Those are two of our brightest and two of our best that are there.

In addition, again, as was noted earlier, Kevin has an excellent record of public service. It is not just academic background or theoretical knowledge. But as a trial attorney at the Department of Justice, as an assistant United States attorney, he was counsel for the National Indian Gaming Commission, he has an experienced background that would be hard to replicate, let alone exceed.

His background has made him intimately familiar with Indian Country and all its diversity, all its complexity, all its richness. Kevin understands the challenges in Indian Country. It is trite but true to say that the First Americans are often the last Americans. We have had a difficult history. Economic obstacles are real, whether it is joblessness or economic challenges, lack of opportunity, education levels, income levels, health, they are all statistics that the members of this Committee are certainly intimately familiar with.

But Kevin understands the potential and the promise of Indian Country as well as its challenges. And he knows that when Tribal governments and individual Native Americans are empowered, and when agreements, treaties and commitments by the Federal Government are kept, extraordinary things are possible in Indian Country and by individual Native Americans.

I often like to say, Tribes aren't genealogical societies or fraternal associations. They exist to improve the lives of their people. Kevin doesn't just know that, he has seen it and he has lived it through the experience of our Tribe, the Chickasaw Nation. And he wants to ensure that all Tribes and all Native Americans have the same opportunities and the same chances to excel that have been made possible by our leadership and our Tribe, particularly Governor Anoatubby, that that experience is replicated across all of Indian Country.

So I could speak at length, but my Governor already warned me, don't take all the thunder, I have some things I want to say myself. But it is, I want to say again, a great privilege for me to be in front of this Committee and an enormous privilege to introduce Kevin to you and to recommend his confirmation by the United States Senate.

Thank you very much, Senator.

The CHAIRMAN. Thank you very much, Congressman Cole. It is always a delight to have you here and to hear you.

I would like now to call on Governor Anoatubby for any remarks he may have. Please proceed.



**STATEMENT OF HON. BILL ANOATUBBY, GOVERNOR,  
CHICKASAW NATION**

Mr. ANOATUBBY. Good afternoon, Mr. Chairman and thank you. It is good to be here, and good afternoon, Senator Udall.

It is a pleasure to sit at the table with Tom Cole. I see him back home occasionally and talk to him about issues from there. But it is really nice to be here today with him.

Obviously, having Kevin here is special as well, and to be speaking on his behalf. I will start out by saying, I express my unqualified support for his nomination as the next Assistant Secretary for Indian Affairs. As you have already heard, he has the combination of knowledge and practical experience which make him uniquely qualified to provide strong and effective leadership at the Bureau of Indian Affairs.

Now, I differ just a little bit, because I believe that his Chickasaw heritage means a whole lot. It means a whole lot. Because within the Chickasaw Tribe, we have had had an ongoing relationship with service, service to our people and service to others, as is evidenced by the presence of Tom Cole and his history of serving, and his family's history, his mother before him.

It actually is documented in history with one of our leaders who was a contemporary and friend of George Washington. They signed the Treaty of Hopewell in 1786. Since then, there have been instances in history that you can point to that show this good working relationship and the service. The first Congressman from Oklahoma, after it became a new State, one of the first Congressmen, was a Chickasaw, Charles David Carter. A good friend of Ronald Reagan, Holmes Tuttle, a Chickasaw, worked with him when he was in the position of Governor in the State of California. Obviously, Tom Cole being elected to Congress is an example.

Now we support Kevin Washburn, for the Assistant Secretary job. And prior to him we had another Chickasaw that served, Neal McCaleb. This is a long line of service that our people have had. And in my tenure with the Chickasaw Nation, it has been my pleasure to know many of these people, and also to see the positive developments that we have had in Indian Country over the years.

If you go back in time, you see a lot of poverty, a lot of issues that existed in our tribes. Many of those issues still exist, but within many Indian Nations, including the Chickasaw Nation, there have been major strides in economic development and in our ability to deliver services, which are directed toward enhancing the overall quality of life of our people. The Bureau of Indian Affairs has been going through a transition and is now providing more service, more support for Tribes who are willing to move forward and be self-determined.

It has been very satisfying for me to witness the personal development of the many Chickasaw citizens and other American Indians who have advanced their education and career through opportunities that either have been provided through their family and their investment or through the Tribal governments and Bureau of Indian Affairs. Many of these individuals have improved their situation and have gone on to make a lifetime commitment to serve their Tribe and other Indian people.

Kevin Washburn is a shining example of an individual who has made such a commitment. He began his legal education at the University of Mexico as a student at the American Indian Law Center's Pre-Law Summer Institute. As was mentioned, he was a 1993 graduate of Yale Law School. He clerked for the Ninth Circuit U.S. Court of Appeals, Judge William C. Canby, Jr. He was a civil trial attorney, a Federal prosecutor for the United States Department of Justice.

His commitment to Indian Country is well-documented. He has written extensively on Federal Indian policy, criminal law in Indian Country, Indian gaming law and other relevant topics. Even more significant is the fact that his scholarship has helped lead to significant advances in Federal Indian policy. He has been a prominent voice in the effort to improve criminal law enforcement in Indian Country. He helped to draft Tribal law in the Law and Order Act, which expands the power of Tribal courts to combat the crime that is on Indian reservations.

More than two dozen of his articles and book chapters have been published in legal journals, textbooks and legal handbooks used throughout the United States. He is the co-editor of the forthcoming 2012 edition of Felix Cohen's Handbook of Federal Indian Law. He worked with his wife, Elizabeth Rodke Washburn and colleagues Carole Goldberg and Rebecca Tsosie as author-editor of the Sixth Education of American Indian Law, Native Nations and the Federal system.

And many of you are familiar with him, he has been here before, and he has been in front of the House of Representatives to testify. He has earned the support of Indian Country, numerous individuals and organizations across Indian Country and these United States.

Of course, Secretary of Interior Ken Salazar applauded the nomination. Other ringing endorsements for Kevin's nomination include the National American Indian Housing Council, the National Congress of American Indians, United South and Eastern Tribes, the Affiliated Tribes of Northwest Indians, and the individual leaders of the InterTribal Council of the Five Civilized Tribes, the Albuquerque Journal and the Santa Fe New Mexican.

Kevin Washburn's combination of knowledge and practical experience make him uniquely qualified to provide the strong leadership necessary to ensure the Bureau of Indian Affairs can be and continue to be a positive force in helping enhance the quality of life of Indian people across this Country. As the Governor of the Chickasaw Nation, I wholeheartedly support his nomination and urge a quick confirmation.

The CHAIRMAN. Thank you very much, Governor, for your remarks. We certainly thank you for being here to add to the record.

So I want to thank both of you very much for being here and making the comments that you did. They will certainly help us with what we are about to do here in the U.S. Senate.

Before I ask my questions, I just want to recognize the present Acting Assistant Secretary Laverdure who is here. He testified before this Committee yesterday. Thank you so much for being here today.

I want to thank you so much for taking the time to be here. So I would like to ask that Mr. Washburn come to the table at this time. Congressman Cole, mahalo nui loa, thank you so much for being here, and Governor, as well. We certainly welcome your remarks.

I would like now to welcome Mr. Washburn to the table. It is good to have you here again this morning. Thank you for the time you have taken to spend time with us here talking together. We are delighted now to ask you to proceed with your testimony.

**STATEMENT OF KEVIN WASHBURN, NOMINEE TO BE ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR**

Mr. WASHBURN. Thank you, Mr. Chairman. It is a real honor to be here. Mr. Chairman and staff and Senator Udall, I am honored to be President Obama's nominee for Assistant Secretary for Indian Affairs. It was a high honor to have Representative Cole present for this meeting. I am grateful for his presence. It is always a high honor to be supported by Governor Bill Anoatubby, who has been such a wonderful leader of our Tribe. I will talk a little bit more about him later.

With me is my wife, Libby, and my boys, Cole and Ford. My wife Libby is a lawyer who also often practices Indian law. She is my chief guide, my chief partner and supporter, and I wouldn't have any business being before you here today if she wasn't part of my life. So I need to get that on the record.

[Laughter.]

Mr. WASHBURN. Libby is also a member of the Chickasaw Nation and her family, they still have their original Chickasaw allotment from 1906 near Paul's Valley, Oklahoma.

My mother, Shirley Stark, is also here. My Chickasaw lineage comes through my mom. She retired about 10 years ago as a community health representative and now serves as a member of the Tribal elders council. I want to thank the Governor for putting her on the Tribal elders council. Mom, would you stand up?

[Applause.]

Mr. WASHBURN. My mom turns out to be very important in my life. Everybody's mom is important, I guess, but my mom raised three children under difficult circumstances. She was often a single mother during that time. I wouldn't be here today, obviously, without her strong will.

I am proud to say that I do serve as Dean of the law school that produced Senator Tom Udall and more than 4,000 other very successful alums. Some of the students are with us here today, as well as several alums from the law school, and at least one professor. It is a real honor to have all of them today with me. It has been the greatest privilege of my professional life so far to be able to serve this law school.

Serving as Assistant Secretary will not be an easy job, in part because of the breadth and diversity of the constituents served by the position. If I am confirmed, I want you to know that I do have a healthy respect for the challenges I would face in that position. I believe, however, this is a time of special opportunity for Indian

Affairs in light of the leadership of this Committee and of the Obama Administration.

Chairman, the leadership of this Committee, and with the Obama Administration's strong interest, there has really been an extraordinary time in Indian Affairs. A lot has been accomplished in the last four years or so, and I anticipate some greater accomplishments just in the next few months. I am looking forward to helping make those happen if I am in the position to do so.

Some examples of the great victories of the Obama Administration and this Committee and Congress so far as the Cobell settlement, the Tribal Law and Order Act, which I worked on, several major Indian water settlements, permanent reauthorization of the Indian Health Care Improvement Act, amendments to strengthen the enforcement of the Indian Arts and Crafts Act, and most recently of course, the HEARTH Act. These are very important accomplishments. Certainly more work needs to be done, but I am really thrilled to perhaps have the opportunity to work on these important types of matters with this Committee.

I believe that this Committee has already done a lot to improve the lives of Indian people and I hope to help to implement some of these laws that have been passed recently.

I have to tell you, I come to this work very honestly. One of the principles that will guide me in this position is the principle of Tribal self-governance. That is not from any ivory tower view of Tribal self-governance, but from gritty personal experience. Tribal self-governance made my life better. And let me tell you a little bit about that.

As I mentioned earlier, during much of my childhood, my mom was a single mother raising three children all by herself. I grew up going to Indian Health Service hospitals in Ada and Talihina, Oklahoma. My younger brother grew up with childhood asthma. Back in those days, if one of the kids had to go to the hospital, we kind of all had to go to the hospital, because we never knew when the appointment was going to occur or when we were going to get out of the hospital. So I spent a good deal of my childhood at an IHS hospital in Oklahoma.

I am proud to say, and by the way, that was tough because we often were there all day long, waiting for our appointment.

I am proud to say that after I graduated from high school, Governor Anotubby and the Chickasaw Nation took over control of our Indian Health Service Hospital, the Carl Albert Indian Hospital, and things really began to change. Under the Federal programs that allowed the Tribe to take over that hospital, life really started to improve.

And let me tell you, there was a lot of doubt about the wisdom of that action at the time it was taken. A lot of Tribal citizens didn't know if it was a very good idea for the Tribe to take over the IHS hospital and had some significant doubts about that.

It was not long, however, before very positive reports started coming back. And I will just tell you one little thing, I remember the first thing my mom said after the Tribe had taken over the hospital. She had gotten a call before an appointment, and the call basically was this, the hospital called and said, we have you scheduled for a certain time, I think it was 2 o'clock or something like

that. They said, we are running really late today, so don't come until 3 o'clock, there is no reason you need to be waiting around the hospital for an extra hour.

And that little thing was just a sign of respect to my mom, who had a lot of things on her plate. Suddenly, the customer service and the health care really began to improve at our hospital. It made our lives better.

I will tell you that there is a further chapter in that process that I won't tell you more about here, because there is just not enough time. But I will tell you that a lot of people were skeptical of Governor Anoatubby's decision to take over the hospital in Ada, Oklahoma, on behalf of the Chickasaw Nation. Medical care and health care obviously is exceedingly important. A lot of the Tribe was very skeptical about whether this would work. And Governor Anoatubby took significant personal political risk in deciding to take over that hospital. But he did it.

And if you wonder why he has been our Governor for more than 25 years, it is because he believed in the Chickasaw people, even when we didn't necessarily believe in ourselves. He showed that we could do this. So he has great loyalty among Chickasaw citizens, because he showed us that we can do this, and we can even do it better than the Federal Government.

Now, I realize that immediate conversion to self-governance is not the right approach for every Tribe. We weren't sure that it was the right approach for the Chickasaw Nation until we did it. I know that some direct service Tribes strongly believe that they want the Federal Government to continue to serve in the roles that the Federal Government has promised to serve. And the United States has many solemn obligations to those Tribes, and I will strongly support the efforts of the Bureau of Indian Affairs and the Bureau of Indian Education to live up to those solemn obligations. But I will also strongly support self-governance efforts and the efforts of Tribes to take over these operations themselves.

If confirmed, I pledge to consult openly and often with Tribal leaders and to work cooperatively with this Committee on the important issues that affect the lives of American Indians, Alaska Natives and yes, Native Hawaiians. I want to congratulate the Chairman yesterday for being able to report out the Native Hawaiian Government Reorganization Act. That is a major accomplishment, and that is something that I hope this Congress can finish during this term, because it is an important matter for the Native Hawaiians. I think it would be, justice would be well-served if that Act is passed.

I have a strong record of working with this Committee on numerous past occasions, both on legislation and as a witness in areas of subject matter expertise. Chairman, I will tell you, when your staff has called me to appear before this Committee, I have come and I have come at my own expense to testify to try to be helpful to this Committee. It has been a great honor for me to appear, and I look forward to appearing before this Committee in the future if I am fortunate enough to be confirmed.

I thank you for having me here today.

[The prepared statement and biographical information of Mr. Washburn follow:]

PREPARED STATEMENT OF KEVIN WASHBURN, NOMINEE TO BE ASSISTANT SECRETARY  
FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. Chairman, Mr. Vice Chairman, and Members of the Committee. My name is Kevin Washburn, and I am a member of the Chickasaw Nation of Oklahoma. I am honored to be President Obama's nominee for Assistant Secretary for Indian Affairs. And it is the highest honor to have Chickasaw Governor, Bill Anoatubby here to introduce me.

With me today are my wife, Elizabeth Rodke Washburn, and our two boys Cole and Ford. My wife is a lawyer who sometimes practices Indian law. She is my chief guide, partner and supporter. And if not for her influence in my life, I would have no business being before you today. Libby is also a member of the Chickasaw Nation. Her parents still own their family's original Chickasaw allotment from 1906, which now consists of 220 acres near Paola, Oklahoma.

I spent much of my childhood growing up in towns within the former reservation boundaries of the Chickasaw Nation, including Purcell and Ada. My Chickasaw lineage comes through my mother, Shirley, who worked for the Chickasaw Nation as a Community Health Representative before she retired, and who now serves as a member of our tribal Elder's Council. During much of my childhood, she was a single working mother, and it was by force of will that she successfully raised three children. Like some Indian women, my mother has a lot of strength and has even been accused of being domineering on occasion. I would never say that, of course, but I am grateful to Governor Anoatubby for appointing her to the Elder's Council several years ago. This keeps her busy and continues to give her life important purpose in retirement.

When I accepted the President's nomination to serve as Assistant Secretary of Indian Affairs, I was, and am, happily serving as Dean of the University of New Mexico Law School (UNM Law School), what I believe is one of our country's finest law schools. UNM Law School has produced many people who have served our nation here in Washington D.C., including Senator Tom Udall, Federal Circuit Court Judge Jimmie Reyna, and former Federal Communications Commissioner Gloria Tristani. The UNM Law School has also produced New Mexico's current Chief Justice, Attorney General, and United States Attorney, among other key officials in that state. In addition to serving this fine law school, I have been living in beautiful New Mexico, and working closely with the legal and judicial community in the state.

Serving as Assistant Secretary will not be an easy job, in part, because of the breadth and diversity of the constituents served by the position. I have a healthy respect for the challenges I would face if I am confirmed to serve in this important position.

I believe, however, that this is a special time of opportunity in Indian affairs, in large part, because of the many accomplishments of Congress and this Administration. With this Committee's leadership in Congress and the commitment of the Obama Administration, I believe that the United States has moved dramatically forward in Indian affairs within the last four years. These accomplishments inspired me to accept this nomination.

For example, Congress, working with the Administration, achieved settlement of the Cobell case, a case that was decades in the making and which cast a long dark shadow over the administration of Indian affairs since it was filed in 1996. There are some significant hurdles left for the settlement to be successful, but your commitment to settle the case has created strong goodwill in Indian country. And while working to pass the Cobell Settlement, Congress, with the support of the Administration, also enacted several other significant pieces of legislation, including, permanent reauthorization of the Indian Health Care Improvement Act, amendments to strengthen enforcement of the Indian Arts and Crafts Act, the Tribal Law and Order Act, a bill that I worked on and testified about, four Indian water settlements affecting seven tribes across the West, and most recently the Helping Expedite and Advance Responsible Tribal Home ownership Act (HEARTH Act).

While more work needs to be done in each of these areas, Congress and this Administration, has shown that, with cooperation and commitment, much can be accomplished to improve the everyday lives of Indian and Native communities.

As a result of these recent accomplishments, I came to realize that it might be a very special time to be in a leadership position in Indian affairs. The challenges are extreme, but the opportunities for improvement are real.

The next Assistant Secretary will have a significant role in implementing these new laws including the land consolidation plan under the Cobell settlement, the Tribal Law and Order Act, and the HEARTH Act. If I am confirmed, I look forward to help implement these new laws.

I strongly believe in public service. Except for one year teaching at Harvard Law School, my entire career has been spent in government public service or teaching in public law schools. I have nearly a decade of experience in federal public service in a variety of different contexts and primarily in Indian affairs. After leaving Federal Government service, I spent much of the next decade in academia critiquing federal Indian policy and working with Indian tribes in a variety of roles.

In sum, I have committed most of my adult life to understanding and seeking to reform federal Indian policy so that it serves American Indians and tribes better. For a person with my interests, there could be no better position from which to further this kind of work than the Assistant Secretary position.

Among the principles that will guide me if I am confirmed to be the Assistant Secretary for Indian Affairs is a strong commitment to tribal self determination and self governance. My commitment to these bedrock principles are borne not just from the lofty political philosophies that undergird the U.S. Constitution, but from gritty personal experience.

The Tribal Self-Governance program has had a deep personal impact on my life. As I mentioned earlier, during much of my childhood my mother was a working single mother with three children. I grew up as a child in the 1970s and 1980s going to Indian Health Service (IHS) hospitals for medical and dental care.

When I was a child, we often waited hours beyond the time of our appointment to be seen at the IHS hospital, as a result my mother often had to take all three kids to the hospital even if only one of us had an appointment because she had no idea if the appointment would be concluded by the time the other children would be finished with school. I had a brother who suffered from asthma throughout his childhood, and thus I spent many hours of my youth with both my siblings and my mother in IHS hospitals in Ada and Tahina, Oklahoma. We did not know any other way.

I am proud to say that, under the leadership of Governor Bill Anoatubby, the Chickasaw Nation took over the operation of the Carl Albert Indian Hospital under a 638 contract and later a self-governance compact. Frankly, this action was initially controversial. Our modern government was still relatively young, and after decades of being taught that we could not run this sort of program ourselves, I think that some Chickasaw citizens were a little skeptical about whether this was a good idea.

Soon, however, positive reports from back home started coming in. The first report I heard was my mom telling me that she had a doctor's appointment for a given time, and that she received a call from the hospital before she even left home telling her not to come at that time, but to come an hour later because they were running late. That does not sound like a difficult thing to accomplish, but it had never happened before. It was a simple courtesy. That phone call said, "we know that your time is important, and we do not want to waste your time."

To my family, it was a clear recognition that it was a new day for the Chickasaw Nation. In addition to medical care, real customer service and respect would now be provided to us at what had become our own hospital. The story of Chickasaw healthcare has another wonderful chapter that I will not explain here in order to save time. But let me say that healthcare was merely one of the areas where self-governance has improved Chickasaw lives. Another very visible and highly successful effort was in the area of law enforcement with the restoration of the Chickasaw Light Horseman.

But I would like to explain the lessons that I learned about tribal self-governance. As a political matter, Governor Anoatubby took a significant personal risk in pursuing self-governance over a matter so important to our people as healthcare. But if you wonder why he has been our Governor for 25 years it is because he believed in Chickasaw people even when we did not fully believe in ourselves.

My pride as a Chickasaw citizen grew substantially when my tribal government demonstrated it could provide services to Indian people better than the Federal Government can. And I am convinced that this is not just a matter of a Chickasaw ingenuity, or an Oklahoma work ethic, or even Governor Anoatubby's courageous vision. I think that there is a deeper truth at work and it is this: Indian tribes can serve their citizens, in many cases, better than the Federal Government can.

I am proud to say that the government to government relationship between the Federal Government and tribes is strong today because tribal self-governance is at its modern zenith.

My own personal commitment to the principle of tribal self-governance was further strengthened when I became a federal prosecutor. As an Assistant U.S. Attorney in Albuquerque, I handled cases from the Navajo, Mescalero and Jicarilla Apache reservations, locations 200 miles away from where I sat at my desk in Albuquerque near the federal courthouse.

I learned that some important government services, like criminal justice, are very difficult to provide from hundreds of miles away. I saw more evidence of this in Minnesota, where Assistant U.S. Attorneys in Minneapolis are the primary felony prosecutors on the Red lake reservation, a five hour drive away.

In my writings as an academic, I have questioned the logic of federal agencies serving Indian people. Let me note that I do not question the federal public servants who work in the Indian country context because I have found them to be capable, diligent, and hard-working. But the overall structure of having services provided by people hundreds of miles away is rarely effective. And this brings me back to the basic principle that Indian tribes can serve their citizens, in many cases, better than the Federal Government can.

I earned tenure at a top 20 law school largely on this basic insight: Indian self-governance has improved education, health care, and most other governmental services on reservations, but we have not adopted a self-governance model for criminal justice in Indian country. I am proud that my work contributed to your enactment of the Tribal Law and Order Act two years ago, which begins to address this problem.

Now, I realize that immediate conversion to full self-governance is not the answer for every tribe, and that an important aspect of tribal self-determination is insuring that tribes are able to choose whether they wish contract, compact or be a "direct-service" tribe for federal programs.

I have been educated recently by a tribal leader who helped me to understand that "direct-service" tribes wish to receive the benefits of the all of the solemn treaty promises made by the Federal Government. And if I am confirmed, I vow to work hard to insure that those important promises are kept.

If confirmed, I also pledge to consult openly and frequently with tribal leaders and to work cooperatively with this Committee in addressing all of the important issues that affect the lives of American Indians and Alaska Natives. I have a record of working with this Committee on numerous past occasions, both on legislation and as a witness in areas of subject matter expertise. It is an honor to appear before you now, but as a nominee.

I look forward to your questions.

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#### A. BIOGRAPHICAL INFORMATION

1. *Name:* (Include any former names or nicknames used.) Kevin K. Washburn
2. *Position to which nominated:* Assistant Secretary for Indian Affairs, Department of the Interior
3. *Date of nomination:* August 2, 2012
4. *Address:* (List current place of residence and office addresses.)  
Residence: 5016 Cresta DelSur Ct NE, Albuquerque, NM 87111.  
Office: UNM School of Law, 1117 Stanford, NE, Albuquerque, NM 87131.
5. *Date and place of birth:* August 9, 1967, Dallas, Texas
6. *Marital status:* (Include maiden name of wife or husband's name.) Married to Elizabeth Radke Washburn.
7. *Names and ages of children:* (Include stepchildren and children from previous marriages.) Colbert ("Cole") Evan Washburn (age 9) and Ford Wallace Washburn (age 8).
8. *Education:* (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)  
Ada High School, Ada, OK—1981–82.  
Moore High School, Moore, OK—graduated in May 1985.  
University of Oklahoma, Norman, OK—August 1985 to December 1989, received B.A. in Economics in December 1989.  
Washington University School of Law, St. Louis, MO—Aug. 1990–May 1991.  
Yale Law School, New Haven, CT—Aug. 1991–June 1993, received J.D. in June 1993.
9. *Employment record:* (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment, including any military service.)  
Dean, University of New Mexico School of Law, June 2009 to the present. Albuquerque, New Mexico. In addition to leading the School of Law, the dean has



the state constitutional responsibility to chair the Judicial Selection Commission and the statutory responsibility to chair the Judicial Compensation Commission for the State of New Mexico as well as serving personally or through a designate on other state boards and commissions.

Rosenstiel Distinguished Professor of Law, University of Arizona James E. Rogers College of Law, Tucson, Arizona. August 2008 through May 2009. Courses: Contracts, Criminal Law, Gaming/Gambling law.

Oneida Indian Nation Visiting Professor, Harvard law School, Cambridge, Massachusetts, August 2007 to May of 2008. Courses: American Indian law, Criminal law, Gaming/Gambling law.

Associate Professor of Law, University of Minnesota law School, Minneapolis, Minnesota, Fall 2002 through Summer 2008 (on leave at Harvard law School during 2007–2008 academic year). Earned tenure in May 2006; voted full professor by the faculty in December 2007 but resigned to join another faculty prior to the new status taking effect. Courses: American Indian law, Criminal law, Administrative law, Gaming/Gambling law, Property. Faculty Secretary, 2002–2003.

General Counsel, National Indian Gaming Commission, Washington, D.C., Jan. 2000–July 2002. Provided legal advice to Presidentially-appointed Chairman and Associate Commissioners of the independent federal regulatory agency responsible for regulating Indian gaming, then a \$13 billion industry existing in 28 states. Interacted with the Solicitor General of the United States and other Department of Justice officials on appellate matters.

Assistant United States Attorney, Albuquerque, N.M., Nov. 1997–Jan. 2000. Handled all aspects of prosecutions in the Violent Crime Section. Argued before the United States Court of Appeals for the Tenth Circuit, the United States District Court for the District of New Mexico, and the New Mexico Supreme Court. Trial Attorney, United States Department of Justice, Washington, D.C., Nov. 1994–Nov. 1997. Appointed through the Attorney General's Honors Program to the Environment and Natural Resources Division—Indian Resources Section.

Judicial law Clerk, Hon William C. Canby, Jr., U.S. Court of Appeals for the Ninth Circuit, Phoenix, AZ, Sept. 1993 to Sept. 1994.

Law Clerk, Steptoe & Johnson (Phoenix, Arizona and Washington, D.C.) Summer 1993.

Law Clerk, Kaye Scholer Fierman Hays & Handler (Washington, D.C.) Summer 1992.

Law Clerk, Meyer Hendricks Victor Osborn & Maledon (Phoenix, Arizona) Summer 1992.

Law Clerk, Montgomery & Andrews (Albuquerque and Santa Fe, New Mexico) Summer 1991.

Law Clerk, McAfee & Taft (Oklahoma City, Oklahoma) Spring 1990.

10. *Government experience:* (List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.)

United States Department of Justice, Served as advisor on a committee to plan Attorney General Eric Holder's Listening Conference in St. Paul, Minnesota, 2009–10 (unpaid, but reimbursed for travel to meetings in Seattle, WA; Santa Ana Pueblo, NM & St. Paut MN); also served as unpaid informal advisor to then-United States Attorney Tom Heffelfinger, Chair of the Native American Issues Subcommittee of the Attorney General's Advisory Committee, 2004 to 2005.

United States Sentencing Commission, Member—Ad Hoc Advisory Committee on Native American Sentencing Issues, Washington, D.C., 2002 to 2004; Co-Drafted Report Presented to the Sentencing Commission at a Public Hearing in Washington, D.C. on November 4, 2003.

Chief Judge, Court of Appeals, Saginaw Chippewa Tribe of Indians, Mt. Pleasant, Michigan, Spring, 2008 to the present.

Justice of the Appellate Court, Sac & Fax Tribe of the Mississippi in Iowa (also known as the Meskwaki Nation), Tama, Iowa, 2008–2009.

Dean, University of New Mexico School of Law, current position as Dean of the state's only law school involves service on more than a dozen state government boards and commissions, some of which is delegated to other law school employees.

11. *Business relationships:* (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.)

Washburn Consulting, LLC, a Minnesota Limited Liability Company, President & Sole Member (provides consulting services to entities involved in the gaming industry, such as tribal governmental entities, banks, law firms and other business entities) (2007 to present).

Trustee, Law School Admission Council, June 2006 to June 2009 and June 2012 to the present. Member or Liaison to Minority Affairs/Diversity Committee, 2003 to 2007; Test Development and Research Committee, 2007 to 2009 (appointed to Board of Trustees by then-LSAC Chairman Kent Syverud; reappointed by LSAC Chair Steven Willborn). This position is uncompensated, but all travel expenses are reimbursed.

Member, National Conference of Bar Examiners, Criminal Law and Procedure Drafting Committee; Member since 2006; present term runs until 2015. This position is paid.

12. *Memberships:* (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.)

Licensed attorney and member, New Mexico Bar (since 1994) Licensed attorney in Minnesota (since 2004)

Member, U.S. Supreme Court Bar (since 2000)

Elected Member, American Law Institute (since 2007)

Member, presently or in the past of numerous association related to law practice, including: American Bar Association (since 1993, though not continuously); Federal Bar Association (since 1991, though not continuously); Supreme Court Historical Society (since 2007); and American Association of Law Schools (since 2002).

Member, Editorial Board, Gaming Law Review and Economics: Regulation, Compliance and Policy, a law and economics journal published ten times per year, 2012 to present.

Member, Executive Committee of Board of Authors and Editors, Cohen's Handbook of Federal Indian Law, 2005 to present; editor primarily responsible for updates to Chapter 9 (Criminal Jurisdiction), Chapter 12 (Indian Gaming) and Chapter 21 (Economic Development).

Center for Civic Education, Informal Consultant on Curriculum, 2004 to 2006. Innocence Project of Minnesota, Member, Board of Directors, 2002 to 2003.

New Mexico Bar Association Indian Law Section, Member of Board of Directors, 1998 to 2002, and Chair, Indian Law Writing Competition, 1998 to 2003.

Minnesota American Indian Bar Association (MAIBA), Member, 2002–2008 and Service on Scholarship Committee 2002–2004.

Member, Board of Directors, Yale Law School Fund, 1998–2004, also served as Class Agent, Class of 1993, from 1992 to 2012. Also, Member, Yale Law School Class Reunion Committee 1998, 2003, 2008.

Citizen (enrolled member) of the Chickasaw Nation of Oklahoma.

13. *Political affiliations and activities:*

(a) List all offices with a political party which you have held or any public office for which you have been a candidate—NONE.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years—NONE.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years:

\$1,000 to Senator Jeff Bingaman of New Mexico, 2009–10;

\$1,000 to Senator Michael Bennet of Colorado, 2010;

\$500 to David Schultz of Saint Paul, Minnesota, for his candidacy for Ramsey County Attorney, 2009;

\$500 to Barack Obama's presidential campaign;

\$525 to ACTBLUE, 2009; \$525 to Senator Michael Bennet for Colorado, 2009.

14. *Honors and awards:* (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.)

*Scholarships:*

Various Scholarships/Fellowships at the University of Oklahoma during my undergraduate education from 1985 to 1989.

Gustavus Buder Scholarship (full tuition scholarship) at Washington University of St. Louis School of Law, from 1990 to 1991.

Various Scholarships/Fellowships at Yale Law School from 1991 to 1993.

*Professional Awards:*

Bronze Medal for Commendable Service, Environmental Protection Agency (for representing the agency in successful Clean Air Act litigation), June 7, 2000.

Award for Sustained Superior Performance, United States Attorney's Office, September 13, 1999 (cash award).

Special Commendations for Outstanding Service, United States Department of Justice, May 7, 1998 (for successfully litigating *Montana v. EPA*, 941 F. Supp. 945 (D. Mont. 1996) and 137 F.3d 1135 (9th Cir. 1998).

Special Commendation for Outstanding Service, United States Department of Justice, April 8, 1997.

15. *Published writings:* (List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.)

*Books and Book Chapters:*

Author and Editor, COHEN'S HANDBOOK OF FEDERAL INDIAN LAW 4th Edition (forthcoming 2012), primary responsibility for Chapter 9 (Criminal Jurisdiction), Chapter 12 (Indian Gaming) and Chapter 21 (Economic Development).

Editor/Author, INDIAN LAW STORIES (with co-editors Carole Goldberg and the late Philip Frickey) (Foundation Press 2010).

Sole Author, THE LAW OF GAMING/GAMBLING: CASES AND MATERIALS (Aspen 2010).

Author/Editor, CAROLE GOLDBERG, REBECCA TSOSIE, ELIZABETH ROOKE WASHBURN AND KEVIN K. WASHBURN, AMERICAN INDIAN LAW: NATIVE NATIONS AND THE FEDERAL SYSTEM: CASES AND MATERIALS, 6th Ed. (Lexis/Nexis 2010).

Author, Chapter 9, Restoring the Grand Jury, in GRAND JURY 2.0: MODERN PERSPECTIVES ON THE GRAND JURY, Roger Fairfax, Editor (Carolina Academic Press) (2010).

2007 and 2009 updates, COHEN'S HANDBOOK OF FEDERAL INDIAN LAW 3rd Edition (2005), primary authorship and editorial responsibility for updates to Chapter 9 (Criminal Jurisdiction), Chapter 12 (Indian Gaming) and Chapter 21 (Economic Development). Member of the Executive Board of Editors.

Author, Tribal Voting Rights and Election Law, Section 4.06, COHEN'S HANDBOOK OF FEDERAL INDIAN LAW 3rd Edition (2005).

*Articles In Law Reviews:*

Elena Kagan and the Miracle at Harvard, 61 JOURNAL OF LEGAL EDUCATION 67 (2011).

The Next Great Generation of Indian Law Judges, 81 UNIVERSITY OF COLORADO LAW REVIEW 959 (2010).

Conflict and Culture: Federal Implementation of IGRA by the National Indian Gaming Commission, the Bureau of Indian Affairs, and the Department of Justice, 42 ARIZONA STATE LAW JOURNAL 303 (2010).

Book Review, Felix Cohen, Anti-Semitism, and American Indian Law, 33 AMERICAN INDIAN LAW REVIEW 583 (2009) (peer reviewed) (review of DALIA TSUK MITCHELL, ARCHITECT OF JUSTICE: FELIX S. COHEN AND THE FOUNDING OF AMERICAN LEGAL PLURALISM).

Remembering DeGiacomo, 38 N.M. L. REV. 235 (2008).

Paternalism or Protection?: Federal Review of Tribal Economic Decisions in Indian Gaming, 12 GAMING LAW REVIEW AND ECONOMICS 435 (2008).

Sex Offender Registration in Indian Country, 6 OHIO STATE JOURNAL OF CRIMINAL LAW 3 (2008) (peer reviewed) (with Virginia Davis.).

The Legacy of *Bryan v. Itasca County*: How an Erroneous \$147 State Property Tax on a Mobile Home Provided the Legal Foundation for \$200 Billion in Indian Gaming Revenues, 92 MINNESOTA LAW REVIEW 919 (2008).

Restoring the Grand Jury, 76 FORDHAM LAW REVIEW 2333 (2008).

Tribal Self-Determination at the Crossroads, 38 CONNECTICUT LAW REVIEW 777 (2006).

Federal Criminal Justice and Tribal Self-Determination, 84 NORTH CAROLINA LAW REVIEW 779 (2006).

American Indians, Crime and the Law, 104 MICHIGAN LAW REVIEW 709 (2006).

The Federal Criminal Justice System in Indian Country and the Legacy of Colonialism, 52 THE FEDERAL LAWYER 40 (March/April 2005).

Reconsidering the Commission's Treatment of Tribal Courts, 17 FEDERAL SENTENCING REPORTER 209 (February 2005). (this article is part of a minisymposium evaluating the proposal, with three federal judges and a federal public defender writing commentaries).

Tribal Courts and Federal Sentencing, 36 ARIZONA STATE LAW JOURNAL 403 (2004).

A Different Kind of Symmetry, 34 NEW MEXICO LAW REVIEW 263 (2004).

The Mechanics of the Indian Gaming Management Contract Approval Process, 9 GAMING LAW REVIEW 333 (2004).

Lara, Lawrence, Supreme Court Litigation and Lessons from Social Movements, 40 TULSA LAW REVIEW 25 (2004) (Essay in Symposium on *United States v. Lara*, 124 S. Ct. 1628 (2004)).

A Legacy of Public Law 280: Comparing and Contrasting Minnesota's New Rule for the Recognition of the Tribal Court Judgments with the Recent Arizona Rule, 31 WILLIAM MITCHELL LAW REVIEW 479 (2004) (Essay in Annual Symposium on Developments in Minnesota Law) (with Chloe Thompson).

Federal Law, State Policy and Indian Gaming, 4 NEVADA LAW JOURNAL 285 (2004) (Essay in Symposium on Cross-Border Issues in Gaming).

Recurring Problems in Indian Gaming, 1 WYOMING LAW REVIEW 427 (2001); cited in *In re: Gaming Related Cases*, 331F.3d 1094 (9th Cir. 2003) (majority opinion by Circuit Judge W. Fletcher); excerpted in ROBERT N. CLINTON, ET AL., *AMERICAN INDIAN LAW: NATIVE NATIONS AND THE FEDERAL SYSTEM: CASES AND MATERIALS* 954–57 (4th Ed. 2003).

Recent Developments, 21 AMERICAN INDIAN LAW REVIEW 183 (1997).

*Congressional and Other Invited Testimony:*

Live testimony, Field Hearing, on Holding Federal Court in Indian Country, United States Indian Law and Order Commission (Troy Eid, Chairman), Santa Fe, New Mexico (April 19, 2012).

Prepared Statement (and live testimony), Oversight Hearing on Internet Gaming Law: What's at Stake for Indian Tribes?, United States Senate, Committee on Indian Affairs (Daniel K. Akaka, Chairman)—112th Congress, 2nd Session (February 9, 2012).

Prepared Statement (and live testimony), Natural Gas as a Transportation Fuel: Response to House Memorial 41 Requesting a Study" (with co-authors Kevin Boberg and Jeffrey Kendall), Hearing before the State of New Mexico 51st Legislature, Science, Technology and Communication Interim Committee, Santa Fe, New Mexico (November 28, 2011).

Prepared Statement (and live testimony), "The Implications of the Tribal Law and Order Act of 2010 for Sentencing Reform Field Hearing, United States Sentencing Commission (Chief Judge William K. Sessions, III, Chair), Phoenix, Arizona (January 21, 2010).

Prepared Statement (and live testimony), Oversight Hearing on the Department of the Interior's New Guidance on Land-Into-Trust for Gaming for Indian Tribes, United States House of Representatives, Committee on Natural Resources (Nick. J. Rahall, Jr., Chairman), 110th Congress, 2d Session (February 27, 2008).

Prepared Statement (and live testimony), Oversight Hearing on Law Enforcement in Indian Country, United States Senate, Committee on Indian Affairs (Byron Dorgan, Chairman), 110th Congress, 1st Session (June 21, 2007).

Prepared Statement (and live testimony), Oversight Hearing on the Minimum Internal Control Standards in Indian Gaming, United States House of Representatives, Committee on Resources (Richard Pombo, Chairman), 109th Congress, 2d Session (May 11, 2006).

Prepared Statement (and live testimony), Oversight Hearing on the Regulation of Class III Indian Gaming following the Decision by the United States District Court for the District of Columbia in *Colorado River Indian Tribe v. NIGC*, United States Senate, Committee on Indian Affairs (John McCain, Chairman), 109th Congress, 1st Session (September 21, 2005).

Prepared Statement (and live testimony), Oversight Hearing on the Regulation of Indian Gaming, United States Senate, Committee on Indian Affairs (John McCain, Chairman), 109th Congress, 1st Session (April 27, 2005).

In Re Minnesota General Rules of Practice, Minnesota Supreme Court. Provided oral and written testimony to the Minnesota Supreme Court in October 2002 on the need for a rule recognizing tribal court judgments in state courts. The court adopted such a rule in December 2003.

*Other Publications:*

Op-Ed, Justice Serna's Legacy, Santa Fe New Mexican, August 12, 2012.

Op-Ed, Law School a Wellspring of Future U.S Leaders, Albuquerque Journal, July 9, 2012. Op-Ed, Horse Racing Earns Increased Scrutiny, Albuquerque Journal, June 18, 2012.

Op-Ed, No One Size Fits All in Judicial Selection, Albuquerque Journal, September 19, 2011.

Op-Ed, Hoping for a Smoother [Redistricting] Process This Time, Albuquerque Journal, August 14, 2011.

Op-Ed, Judicial System Rises to Challenges of Times, Albuquerque Journal, December 17, 2010.

Op-Ed, Dean [Fred Hart] Transformed UNM Law School Into Success, Albuquerque Journal, December 4, 2010.

Op-Ed, UNM Law School's Legacy Rich in Accomplishments, Albuquerque Journal, November 11, 2010.

Published Lecture, American Indians, Crime and the Law: Five Years of Scholarship on Criminal Justice in Indian Country, Inaugural William C. Canby, Jr., Distinguished Lecture, 40 ARIZONA STATE LAW JOURNAL 1003 (2008).

Contributing Writer, Center for Civic Education, WE THE PEOPLE: THE CITIZEN AND THE CONSTITUTION (2009) (a civics textbook written with federal funding for use in secondary education).

Constitutional Mythbusters: The U.S. Constitution and American Indian Tribes, (Tucson) Arizona Daily Star, A10, Sept. 14, 2008 (together with other authors).

Interview of Professor Washburn, entitled "Misplaced Justice," High Country News, Jan. 21, 2008.

Conference Transcript, The New Realism: The Next Generation of Scholarship in Federal Indian Law, Public Safety and Criminal Justice, Materials Related to the National Congress of American Indians Conference at Berkeley, Cal., Nov. 17, 2006, printed at 32 AMERICAN INDIAN LAW REVIEW 1, 60-66 (2007).

Brief Essay on Bryan V. Itasca County, in KATE ROBERTS, MINNESOTA 150: THE PEOPLE, PLACES AND THINGS THAT SHAPE OUR STATE, Minnesota Historical Society (2007).

Op-Ed, Iowa Credited for Step to Enforce Tribal Judgments, Des Moines Register, May 29, 2007.

Interview of Professor Washburn, The Big Gamble: Minnesota Governor Faces Political Repercussions Over Indian Gaming, Grand Forks Herald, Nov. 28, 2004.

Op-Ed, Don't Overestimate Gaming Industry Revenues, (Minneapolis) Star Tribune, Oct. 1, 2004.

Interview of Professor Washburn, entitled Tribal Sovereignty for Beginners, Grand Forks Herald, Apr. 6, 2003.

16. *Speeches*: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of on topics relevant to the position for which you have been nominated.

I do not have copies of any formal speeches; rather my speeches are typically generated from notes or power point presentations.

17. *Selection*:

(a) Do you know why you were selected for the position to which you have been nominated by the President?

Yes, I believe that it is because of my long term commitment to improving public policy and law in Indian country and my interest in being part of the Indian affairs team at the Department of the Interior.

(b) What in your background or employment experience do you believe affirmatively qualifies you for this particular appointment?

I am a proud member of the Chickasaw Nation of Oklahoma and I spent much of my childhood growing up within or near my tribe's former reservation boundaries. I grew up receiving federal Indian services from the Bureau of Indian Affairs and the Indian Health Service and, later, from my tribe which was an early proponent and adopter of tribal self-determination and self-governance initiatives. With the help of federal programs and my tribe, and a strong work ethic, I have succeeded in escaping poverty and becoming a successful professional.

I believe strongly in public service. Except for one year teaching at Harvard Law School, my entire career has been spent in government public service or teaching in public law schools. I have nearly a decade of experience in federal public service in a variety of different contexts and primarily in Indian affairs. After leaving Federal Government service, I spent much of the next decade in academia critiquing federal Indian policy and working with Indian tribes in a variety of roles.

I have broad experience in Indian country that spans the United States. I have lived in Arizona, Connecticut, Minnesota, New Mexico, Oklahoma, and Washington, D.C. In addition to working with tribes in those states, I have worked with tribes in many other states, including California, Iowa, Kansas, Michigan, Montana, Nevada and Wisconsin.

In addition to substantive knowledge of some areas of Indian affairs, I also have management experience in complex governmental and academic organizations. I have a healthy respect for the significant challenges presented in assisting in the management of such institutions.

#### B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations, or business organizations if you are confirmed by the Senate?

Yes. However, rather than resigning from the University of New Mexico, I will assume "leave without pay" status, so that I may return to an academic position at the university when my government service concludes. As for my consulting work, I will terminate all existing contracts and render the business dormant.

2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, please explain—No.

3. Do you have any plans, commitments, or agreements after completing government service to resume employment, affiliation, or practice with your previous employer, business firm, association, or organization?

I have no firm plans, commitments or agreements, but I may resume my academic position with the University of New Mexico School of Law, as noted in question 1 above.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No, except for the University of New Mexico School of Law, as noted in question 1 above.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?—Yes.

#### C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers.

I am an employee of the University of New Mexico School of Law and have nearly two years of additional service required to vest in its defined benefit retirement

plan. I would not resign, but take leave from this employer if I am confirmed as Assistant Secretary.

I have retirement plans (401a, 457b, 403b, SEP and TSP) established with Vanguard, Fidelity, TIAA-CREF and the federal Thrift Savings Plan from UNM and previous employers. These accounts will continue to exist, though the employers have no further involvement with them at this time.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of the Interior's designated ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of the Interior's designated ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

In my capacity as an academic, I have written numerous academic works that relate to criminal justice in Indian country and Indian gaming and I have also been invited to testify on numerous occasions before Congressional committees. Many of those works critique current Indian policy and suggest changes, but usually not with respect to specific legislation. Also in my capacity as an academic, I advised in the drafting of the Tribal Law and Order Act of 2010. In my role as a legal academic, I signed onto a letter from academics in support of the Senate's version of the reauthorization of the Violence Against Women Act, which passed the Senate earlier this year.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of the Interior's designated ethics official to identify potential terms of an ethics agreement that I have entered into with the Department's ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?—Yes.

#### D. LEGAL MATIERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain.

Yes, I believe that a disgruntled client or former client of the law school clinic filed a complaint against our law school and several professors and student attorneys in 2011. I believe that I was named in my capacity as dean. I do not recall the nature of the complaint, but it was reviewed by the NM Attorney Disciplinary Board and dismissed fairly soon after it was filed because, I gather, it had no basis.

In addition, when I was an Assistant U.S. Attorney in 1999, I was accused of misconduct by misstating the law during the trial of an Indian country criminal case. Although, as a matter of routine the issue was referred to the Department of Justice Office of Professional Responsibility (OPR), I was not disciplined or cited. The case is reported here: *U.S. v. Pemberton*, 2000 WL 912741 (C.A.10 N.M.).

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation, or ordinance, other than for a minor traffic offense? If so, please explain.

Yes, in 1996 or so, I was convicted of "Reckless Driving (speeding 20 mph over posted limit)" for driving 95 in a 55 mph zone in the Commonwealth of Virginia.

3. Have you or any entity, partnership or other association, whether incorporated or unincorporated, of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain.—Not to my knowledge.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain.—Yes, see Question 2 above. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination.—None.

#### E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees?—Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures?—Yes.

3. Will you cooperate in providing the committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee?—Yes.

4. Please explain how if confirmed, you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress.

Consistent with executive branch protocols, I will meet with Congressional members and staffers as concerns arise and listen to any concerns involving existing and proposed Department regulations.

5. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?—Yes.

#### F. GENERAL QUALIFICATIONS AND VIEWS

1. How does your previous professional experiences and education qualify you for the position for which you have been nominated?

I am a lawyer with a nearly two decades of experience in public service and teaching and have been focused for my entire career on Indian affairs, among other important matters.

I have broad experience in Indian country that spans the United States. I have become keenly aware of issues facing tribes in Arizona, Minnesota, New Mexico, and Oklahoma because I have lived in those states and studied those issues. I have also visited or worked with tribes in many other states, including California, Connecticut, Idaho, Iowa, Kansas, Michigan, Montana, Nebraska, Nevada, Washington and Wisconsin. I also have fairly substantial experience in Washington, D.C., both in the executive branch and in assisting in matters in Congress.

In addition to substantive knowledge of several key areas of Indian affairs, I also have management experience in governmental and academic organizations and understand the challenges involved in making policy in complex political environments with numerous stakeholders.

Having begun my career in Indian country, I have also succeeded in more mainstream settings in law and the academy. I believe that I may have the skills that will allow me to have a positive effect in Indian affairs.

2. Why do you wish to serve in the position for which you have been nominated?

Frankly, it is a daunting challenge, but I wish to serve Indian country and help to continue the tremendous strides that this Administration, working with Congress, has made in recent years.

I wish to be part of a team that has achieved substantial success in addressing serious problems in Indian country.

3. What goals have you established for your first two years in this position, if confirmed?

To follow through on several important initiatives that are already in progress, including implementing appropriate recommendations from the Indian Law and Order Commission and the Commission on Indian Trust Administration and Re-



form, and to assist in the development of a new agenda in Indian country for the President's second term, if it comes to be.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills?

At this time, I do not believe I am lacking any skills that are necessary to serve successfully in this role. However, I have been keenly focused on issues in New Mexico for the past three years and will need to adopt a broader perspective to educate myself on the national issues facing Indian country, as well as many of the important issues arising in other regions of Indian country.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when society's problems should be left to the private sector, and what standards should be used to determine when a government program is no longer necessary.

I believe that some societal problems can be addressed by the private sector, but that government has an important and significant role in addressing society's problems. In Indian country, of course, the Federal Government is only one governmental actor, so the question of whether government should be involved in addressing problems is only the first question. Sometimes the more illuminating and difficult question is "which government?"

The United States has a unique relationship with Indian tribes and Alaska Native entities as provided by the U.S Constitution, treaties, court decisions and Federal statutes and regulations. I believe through this government-to-government relationship, the Federal Government plays an important role in Indian country and provides many important services to tribes. A strong working relationship has developed between tribes and the Federal Government as the different entities determine when tribes should remain autonomous and when they should work together with the Federal Government.

In light of consultation policies, I believe that the Federal Government and tribes can collectively determine when a federal program is no longer needed.

6. Describe the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated.

The missions of the Bureau of Indian Affairs and the Bureau of Indian Education are 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. These agencies have literally hundreds of programs and initiatives. However, the mission of these agencies is often met by supporting the primary role of Indian tribes in achieving each of the objectives stated in the BIA's missions. The devolution of power to tribal governments has been a salutary improvement in services to Indian people.

7. What do you believe to be the top three challenges facing the department/agency and why?

The economy, appropriations and the Department's budget are significant challenges. The recession has had a major impact on Indian tribes and Indian people. In a tough economy, Indian people need federal support and appropriations more than at any other time. In my view, appropriations and budget cuts should be made strategically to minimize harm. Because of important self-determination and self-governance initiatives, much of the federal appropriations to BIA is passed through directly to Indian tribes. If BIA budget cuts are enacted, it will be challenging to determine how to allocate cuts between federal and tribal actors.

The fiscal challenges may undermine other needs, such as implementation of new initiatives such as the Tribal Law and Order Act of 2010, the Hearth Act of 2012, and addressing the continued fallout from the Supreme Court's decisions in the *Carcieri* case in 2009 and the *Patchak* case in 2012. It is imperative that progress be made in each of these areas and more, despite the difficult fiscal climate.

8. In reference to question number six, what factors in your opinion have kept the department/agency from achieving its missions over the past several years?

The *Cobell* case has been a significant obstacle to progress in Indian country for the past fifteen years. Its lengthy journey changed the culture at the Department in ways good and bad. The settlement of this case removes a large obstacle to progress and will allow a more constructive agenda to develop. One of the major objectives, however, must be to reform the Indian trust regime so that the facts like those leading to the *Cobell* case are never repeated.

The agency has more than 200 years of American history that it must overcome in performing some of its missions.

9. Who are the stakeholders in the work of this department/agency?

The most important stakeholders are Indian people and Indian tribes (including Alaskans), all of whom are represented through both formal channels, such as their tribal governments, and less formal channels, such as Indian organizations. The Department's employees are important stakeholders, too, as they are primarily charged with the important mission of serving Indian people. Other stakeholders include Congress, members of the public, other people living in Indian country, and other governmental entities at the state and federal levels.

10. What is the proper relationship between the position to which you have been nominated, and the stakeholders identified in question number nine?

The proper relationship between the Assistant Secretary and Indian people and tribes is one of ongoing consultation, cooperation and collaboration. Indian tribes and the United States have a formal government-to-government relationship to serve Indian people. The Assistant Secretary's office must serve, in part, as a central rallying point for Indian initiatives across the Federal Government. The Assistant Secretary must also help to educate all of the other stakeholders of the issues and solutions to problems in Indian country.

11. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices.

a) What do you believe are your responsibilities, if confirmed, to ensure that your department/agency has proper management and accounting controls?

In light of the *Cobell* case and so much other federal litigation, this is an exceedingly important question for a person seeking to occupy the position of Assistant Secretary for Indian Affairs. Public service is a public trust, and public officials have the responsibility to insure that governmental systems are managing tax payer money and Indian trust money wisely. It is the Assistant Secretary's responsibility to insure adequate management and accounting systems are in place.

Having said this, some of the Department's systems in this area have been challenged for decades and it will take far more than a single official to insure that good systems are implemented effectively. The Department will need to work closely with Congress to improve the Department's systems, particularly around trust fund management.

b) What experience do you have in managing a large organization?

In my service as the General Counsel of the National Indian Gaming Commission, I assisted in helping manage a federal agency and I had roughly 12 employees who reported to me, directly or indirectly.

In my more recent service as the dean of a small law school, I lead a larger organization with roughly 125 full-time employees. While the law school is a small organization compared to the Department and the BIA, its stakeholders include dozens of professors and other staff, hundreds of students, thousands of alumni, and other large and important constituencies, such as the judiciary, the legislature and the state's governor.

12. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals.

a) What benefits, if any, do you see in identifying performance goals and reporting on progress in achieving those goals?

Measuring progress is an important step in insuring accountability to stakeholders. Marking progress in a visible manner can also be important for reasons internal to the organization. For example, it can help to boost the morale of employees.

b) What steps should Congress consider taking when a department/agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing, or consolidation of departments and/or programs?

All of those steps should be considered, but the list is not exhaustive. A department may be failing to achieve performance goals because it has not been adequately funded. Thus, in addition to the steps identified in the question, Congress should also consider asking whether the department has been allocated adequate resources to accomplish its goals. Moreover, in Indian affairs, the question of whether tribal governments can handle the task more effectively than the Federal Government is always a fair question, so perhaps a new word, "tribalization," should be added to "privatization" on the list.

c) What performance goals do you believe should be applicable to your personal performance, if confirmed?

Those set by the Secretary and Indian Tribes and Alaska Natives. If confirmed I would work with the Secretary and Indian Tribes and Alaska Natives to set goals and objectives to be accomplished and should be evaluated at regular intervals to determine whether they have been accomplished.

13. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you?

Through my work in primarily professional environments, I have tended to adopt a fairly collegial model with my staff. I like to hire excellent staff and delegate as much responsibility as they can bear successfully. I have not, to my recollection, had employee complaints brought against me.

14. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please explain.

As the General Counsel at the NIGC, I helped prepare agency testimony and obtain OMB approval for that testimony. I also met occasionally with Committee staff, primarily of the Committee on Indian Affairs, but also appropriations staffers on both sides of Congress.

As an academic, I have frequently testified before Congressional committees. In that capacity, I have often consulted with agency staffers and committee staffers to determine how I could provide testimony that would be constructive to the legislative process.

Congress has an important responsibility of government, both in setting policy and in providing the funding to meet policy goals Congress has set. A good working relationship with Congress is crucial.

15. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency.

That relationship should be characterized by respect and independence. The IG has an important role and must be given access to the information necessary to perform that role well; the IG must also have the independence to make objective and thoughtful critiques and recommendations.

16. In the areas under the department/agency's jurisdiction to which you have been nominated, what legislative action(s) should Congress consider as priorities? Please state your personal views.

I am not yet aware of the Department's legislative priorities or which legislation is currently pending before Congress.

17. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending in an open manner through a set of fair and objective established criteria? If yes, please explain what steps you intend to take and a timeframe for their implementation. If not, please explain why.

Yes. In the area of control, substantial tribal consultation is necessary to determine how to allocate discretionary spending.

G. FINANCIAL DATA (NOT RELEASED TO THE PUBLIC.)

The CHAIRMAN. Thank you very much, Mr. Washburn, for your testimony. It was very personal, and I also want to add my aloha and welcome to Mom.

Mr. WASHBURN. Thank you, Chairman.

The CHAIRMAN. And the way we say it in Hawaii, we ought to blame her for you.

[Laughter.]

The CHAIRMAN. Mr. Washburn, in your testimony you commit to making sure the Federal Government upholds its treaty and Federal trust responsibility to Tribes. My question to you is, what impact do you think the current budgetary climate and the potential for sequestration have on your ability to uphold the Federal trust responsibility?

Mr. WASHBURN. Thank you, Mr. Chairman. That is something that is deep on my mind, very heavy on my mind these days as well. I am not sure I have all the answers. I will commit to you that if I am confirmed, I will be a voice within the Department for strong arguments and advocacy for protection of the resources that we need to carry out our solemn obligations to Tribes under the treaties and the trust responsibility. I can't guarantee that I can

preserve resources as they have been. But I will work very, very hard to keep them that way. I will support the President's budget when he sends it over. But in the meantime, until that time, I will work very hard to ensure that the Bureau of Indian Affairs and the Bureau of Indian Education are fairly treated within that budget process.

The CHAIRMAN. As you may know, I introduced the Native Class Act to encourage incorporating culture and Native languages into curriculum for Native students. I think you know that I have always stressed culture for indigenous groups, and that we have to prepare our future generations, of course, with all of this and also the language.

How do you feel about allowing flexibility in Native education to better meet the cultural needs of Native students?

Mr. WASHBURN. Mr. Chairman, thank you for that very important question. And thank you for your longstanding commitment, both to education and the preservation of culture. I think that the cultures that we have, in all the Native nations, are what make us special. We have to work to ensure that the culture continues and that students learn about their cultures.

I am not at the Department of Interior yet, and I don't know all the ins and outs of what happens at the Bureau of Indian Education, but I believe that culture is what makes us special. The traditions and the culture and the language are crucial to who we are as peoples, and that goes for Native Hawaiians, too. It has been wonderful to see how much the Native Hawaiians have maintained their culture, and so many of the Tribes have as well. We have to preserve that in every opportunity.

The CHAIRMAN. Thank you for that.

In your opinion, Mr. Washburn, what are the biggest challenges to Indian economic development, and how do you plan to meet these challenges?

Mr. WASHBURN. Thank you, Chairman. One of the challenges I think, obviously the possibility of sequestration and the difficult budget environment and the difficult economic environment that we are in, that has to be the one that I would say weighs most heavily on my soul and the one that I am most concerned about. We will have to work very, very hard to ensure that Tribes don't suffer. Poor communities often suffer worse when we are tightening up budgets. We will have to work very, very hard to keep that from happening. I pledge to you that if I am confirmed I will be a strong voice for preserving budgets as best we can so that poor communities don't suffer unduly from budget tightening and belt tightening.

The CHAIRMAN. Thank you, Mr. Washburn. Executive Order 13175 requires Federal agencies to establish regular and meaningful consultation with the Tribal governments. The Department of Interior adopted and enhanced Tribal consultation policy in December 2011.

How will you implement and improve government to government consultation Department-wide, should you be confirmed?

Mr. WASHBURN. Thank you, Mr. Chairman. Tribal consultation in our policy-making is probably the most important thing we do at the Department of Interior. I am proud to say that during the

Clinton Administration, there was a real effort to broaden consultation across agencies, beyond just the Bureau of Indian Affairs. In the last couple of years, you mentioned the Executive Order that really seeks to increase consultation and improve consultation. I know you have been a powerful supporter of those efforts. I want to thank you for that.

I think that the Assistant Secretary for Indian Affairs has an important leadership role to play in consultation with Tribes across the Department, even outside the Bureau of Indian Affairs and the Bureau of Indian Education. We have been doing it longer than other agencies. We understand the importance even better than other agencies do.

So I will exercise that leadership role to ensure that all corners of the Department and beyond the Department are properly exercising their obligations to consult with Tribes and carefully considering the views of Tribes in all policy-making.

The CHAIRMAN. Thank you very much for that.

I will ask you one more, I have more questions. We will have a second round and I will have my colleague here ask his questions.

Mr. Washburn, in 2011, the Department of Interior issued a strategic plan after consultation with Indian Tribes. Among the priorities identified were strengthening the Tribal justice system, community safety and education for Indian students. What strengths do you bring to the position of Assistant Secretary that would allow you to carry out these priorities on behalf of Native people?

Mr. WASHBURN. Thank you, Mr. Chairman. Let me say I have broad experience in law enforcement. I worked as a Federal prosecutor. So I know, I have prosecuted violent crimes from Indian reservations, so I know the importance of a safe environment for children and other Tribal citizens. I bring that background and experience to this position.

I have also served as the Chief Judge of the Saginaw-Chippewa Court of Appeals in Michigan, and I have worked as a Tribal judge at other reservations as well. So I have been involved intimately in the Tribal justice efforts. I certainly have a good background on Tribal justice.

And I think we really need to support Tribal courts. Tribal courts are very important, and they are doing very important work within Indian Country. They need our support. I pledge to you that if I am confirmed, I will support Tribal courts. I haven't been provided the copy of the strategic plan yet, but I will tell you, I am grateful to know that there is one, because that needs to be my road map to go forward. When I am new at the Department, if I am confirmed, I will take it out and look to see where I need to be headed. It is nice that I will have some marching orders when I begin.

The CHAIRMAN. Thank you.

Senator Udall?

Senator UDALL. Thank you, Chairman Akaka. I think you have covered very well many of the areas.

I wanted to first just try to answer Congressman Cole's question of why these Oklahomans are fleeing over to New Mexico. I give credit to our flagship university, the University of New Mexico, for having the wisdom to pick Fred Harris as a professor and have him come over, and his wife, Marg, who is also accompanying him here

today. And then having the wisdom to see Kevin Washburn and say, he should be the dean of our law school, of which we are very proud.

I can tell you that I talked in my opening statement about him inspiring students. There are some here in the audience. We have the governor from San Ildefonso Pueblo who just graduated, Terry Aguilar, who just graduated from the University of New Mexico, Dean Washburn was his dean. As soon as he graduated, his Pueblo leaders got together and said, we are going to make you governor. That is the kind of thing that Dean Washburn inspires.

I used to invite him every time he would come to Washington to come to my staff. But now this year, two of them have gone to law school. They are fleeing me for law school. So I am not going to do that any more. You are too inspiring.

But anyway, I wanted to ask you, you mentioned the Bureau of Indian Education, which is so important. I don't think people realize it, but we have 50,000 students, Native American students, in these BIE schools. I am just wondering what your thoughts are in terms of Indian education, achievement. I know when we passed the No Child Left Behind reform, we had a section of that that dealt with Indian education.

Do you have any thoughts on how you might tackle those achievement issues? It is not just in Native schools, we are doing it all over the Country, we are struggling, trying to figure out how we are going to educate people for the 21st century.

Mr. WASHBURN. That is one of the greatest challenges we face, Senator. I think that Chairman Akaka's suggestion that culture has to be part of the answer, we have to teach in culturally competent ways and ways where we can really reach our students. So I think this is one of the most important questions before us. We have to close that achievement gap, that is crucial. Indian communities need to be producing good leaders.

One of the things we have done at the University of New Mexico very well for very many years is produce leaders for New Mexico, many of whom are Navajo or Pueblo. We need to ensure that those children growing up in the BIE schools are also becoming leaders and going back to their Tribes and being capable and competent to serve those Tribes well. So we have to work very hard to close that achievement gap.

I don't have all the answers, but I am looking forward to wrestling with those important challenges. Thank you.

Senator UDALL. Thank you.

Governor Anotubby, you talked about the Chickasaw heritage and the Dean has talked about how you ventured out in the area of taking over the Indian Health Service, which was at the time, you had some doubts and everything. I applaud you for doing that, because that is the experience we have had with many of the Tribes in New Mexico as we have seen, when they take over a clinic or expand an operation that is there, if you really put your mind to it, you can get better service.

I hope one of the things that you try to do, you are obviously, Mr. Washburn, not in charge of the Indian Health Service in any respect. But you will be part of the Government that will interact with the other branches of government. And I think you will exert

a positive influence on the kinds of things in terms of self-determination and moving forward.

Let me ask a question about, I know I just have a quick 21 seconds here. Why don't I let you go back for your round, Mr. Chairman, and then I will come back after that?

Okay, he is going to let me go ahead. This is a very generous chairman.

Part of the trust responsibility of the Federal Government, specifically the BIA, is to protect the resources. You mentioned this in your opening, the resources of the Tribes. With the onset of climate change in the west and us seeing it be much hotter out there and the related disasters, Tribes, because they are so close to the land, they are probably the first to feel the impact. In New Mexico in the last few years, there has been serious drought. Then we have forest fires and we have floods after that. This has really impacted Tribe very directly.

As Assistant Secretary, how will you ensure that the BIA is on the scene helping Tribes access Federal assistance after disasters and mitigation assistance to prevent disasters?

Mr. WASHBURN. Thank you, Senator Udall.

The tragedies, the environmental catastrophes seem to be becoming more severe, the weather-related events, floods and droughts and that sort of thing. I think we at the Bureau of Indian Affairs have a significant role to play in helping Tribes access the needs that they have. I learned a lot from talking to you, Senator, and I am grateful for your helping to educate me on this.

I know that there is a bill pending in the Senate that this Administration supports that would allow Tribes to work directly with FEMA to get disaster relief. We support that bill, the Administration supports that bill. I would certainly like to be in a position, if I am confirmed, to exercise some leadership in helping Tribes learn best how to interact with FEMA and other government agencies, so that they get the relief they need, quickly, when they need it, when disaster strikes. I would be thrilled to have an opportunity to work with you and the Committee more on that sort of legislation.

Senator UDALL. Great. Thank you very much, and thank you, Chairman Akaka.

The CHAIRMAN. Thank you very much, Senator Udall.

Mr. Washburn, the Native Hawaiian people are the only federally-recognized indigenous group with an established trust relationship but without a government to government relationship. Can you share your views on whether Native Hawaiians should have access to the same relationship with the Federal Government as other recognized Native peoples?

Mr. WASHBURN. Chairman, thank you for that question. I know there is no one who has pushed harder on this issue than you personally. I am grateful for your leadership in this area.

The Native Hawaiians are in a very similar situation to Native Alaskans and American Indians on the mainland. There is every reason that they should also have a government to government relationship with the United States. I personally fully support that. The Hawaiian culture is just as valid and just as strong and the language is vibrant and the history is there. They deserve to have

a similar treatment as similar entities, such as Tribal governments.

I will work with you. I again congratulate you on getting the bill out of Committee yesterday and I hope that that bill passes as it is, because I would look forward to implementing such a bill, if I were confirmed.

The CHAIRMAN. Thank you very much. Mr. Washburn, committee roundtables and hearings have shown that the Federal recognition process has long been considered broken. So my years with this Committee and working with the indigenous peoples of our Country, I felt that we, this Committee really needed to speak directly to Tribes. As a result, the staff and all of us have put roundtables and discussion groups together with Tribes here in Washington, just to hear them directly. It has helped us understand some of the issues that they have among the Tribes.

I want to also point out that we have always kept in touch with the officials, but now we are hearing directly from the Tribes. I want to continue that as long as we can.

My question to you is, will you commit to undergoing an evaluation of the process and propose ways to make the process more timely and efficient?

Mr. WASHBURN. Thank you, Chairman. I have heard similar criticisms over the years of the process, and I am grateful for the leadership that you have brought to this issue, to hear from Tribes directly. I am looking forward to working with your staff to get the benefit of the information that you have obtained from the Tribes and to hear from Tribes directly myself, if I am confirmed. I also agree that something needs to happen with regard to those issue. Recognition and acknowledgment issues have festered for years, and I daresay decades now.

Again, I have a healthy respect for the challenges that must be lurking therein, because no one has fixed it in all this time. But I certainly hope to be part of the solution. I will commit to looking into that issue if I am confirmed.

The CHAIRMAN. Thank you so much.

Mr. Washburn, this Committee has heard from many witnesses as we did again yesterday that the effects of the Supreme Court's Carcieri decision go far beyond Indian Country and will continue to worsen, if legislation is not enacted. My question to you is, what ways do you think the Carcieri case adversely affects Tribal and non-Tribal communities.

Mr. WASHBURN. Thank you, Chairman. The Carcieri case had a lot of pernicious effects. I fully support your efforts to address the issues within. I am grateful for those efforts. I know the Administration has expressed support for a clean Carcieri fix to address those problems.

There are myriad problems that are created. It creates different classes of Tribes with different opportunities available to them for land into trust, and that sort of thing. It creates a great deal of uncertainty as to lands that have been taken into trust for some of those Tribes. And uncertainty about land status is deeply problematic in Indian Country where criminal jurisdiction and other significant public safety issues follow land status.



So I am grateful for your leadership in seeking to clear all of that up. I will work with you in any way I can to ensure that you are successful in clearing up those problems.

The CHAIRMAN. Thank you very much.

I would like to thank my colleague for being here, and his deep interest in you. He has served this Committee real well over the years, because of his deep interest in the challenges that face the indigenous peoples of our Country.

I want to tell you that we are delighted to have had your statements and your responses to our questions. We will be sending out additional questions for the record. I appreciate all the work you have done throughout your career on behalf of the Native peoples, and look forward to working closely with you should you be confirmed by the Senate. We will certainly try to move as quickly as we can on that here in the U.S. Senate.

I want to thank all of you for being here, and again, to thank Mom for being here as well. I look upon all those who are here as supporters of your efforts here. I only want to stress that it is only as we work together that we can accomplish as much as we can in the time that we have.

The indigenous peoples of this Country, of course, have made the Country from the beginning. I come back to what I said about culture, and that is why it is so important that we retain our own cultures as we blend them together in future efforts to meet the challenges of new times. So for that, it is exciting.

I thank you again, your family as well, and all of those who are here in your support. As I said, we look forward to great years ahead for the indigenous people of our Country.

Mr. WASHBURN. Thank you, Chairman.

The CHAIRMAN. Thank you. Do you have any final comments you want to make?

Mr. WASHBURN. No, Chairman, only again to thank you for your long leadership. I know that you turned 88 this week, and there was a lot of celebration about that around the Country, and gratefulness for your long service to the cause. So thank you for that.

I have enjoyed working with you and your staff. I want to thank you for your leadership in Indian Country.

The CHAIRMAN. Thank you very much. I want to thank Congressman Cole and Governor Anotubby for being here as well as others, and our former Senator here, our friend, and tell you that this has been a good hearing.

The hearing is adjourned.

[Whereupon, at 3:38 p.m., the Committee was adjourned.]



## A P P E N D I X

### PREPARED STATEMENT OF HON. WALTER DASHENO, GOVERNOR, PUEBLO OF SANTA CLARA

I am writing you as Governor of the Pueblo of Santa Clara, a federally recognized Pueblo Indian tribe in Rio Arriba and Santa Fe Counties, New Mexico. President Obama has recently named Kevin Washburn, a member of the Chickasaw Indian Nation, who is presently the Dean of the University of New Mexico Law School, to be the new Assistant Secretary of the Interior for Indian Affairs, succeeding Larry Echo Hawk as the top federal executive department official dealing with issues affecting Indian tribes and people.

Dean Washburn is an exceptional individual, who has brought great energy and innovation to the UNM Law School, and who has a distinguished record of public service and academic attainment. We think he would bring excellent skills to the Interior Department's handling of Indian Affairs, and this is an area in which his brand of thoughtful leadership is badly needed. We understand that late in an election year, it is difficult to get any presidential appointees confirmed, but Dean Washburn's appointment is and should be seen as utterly nonpolitical. More importantly, leaving this position vacant will disproportionately impact two million Indian people, a population segment that is more subject to and dependent on federal laws and policies than any other.

I am therefore writing to urge that the Senate Committee on Indian Affairs promptly hold a hearing on Dean Washburn's nomination, and that you and your colleagues do whatever you can to get the full Senate to bring his confirmation to a vote.

Thank you for considering our views on this matter of such vital importance to Indian country.

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### PREPARED STATEMENT OF ALAN R. PARKER, PROFESSOR, ADVANCED STUDIES IN TRIBAL GOVERNMENT, EVERGREEN STATE COLLEGE

Chairman Akaka and members of the Senate Committee on Indian Affairs;

It is an honor to provide this testimony to you on behalf of Dean Kevin Washburn who has been nominated by President Barack Obama to serve as the Assistant Secretary of Indian Affairs, U.S. Department of the Interior. Kevin is a proud citizen of the Chickasaw Indian Nation who is also a distinguished lawyer and currently serves as the Dean of the School of Law, the University of New Mexico. My purpose in providing testimony is to urge you to move expeditiously on behalf of this nominee so that he may begin to serve the President as his principal advisor on Indian Affairs policy matters and a leader within his Administration on issues that are critically important to the 562 Indian Tribal Nations.

It has been my privilege to serve for the past fifteen years as a member of the faculty and currently teach tribal students enrolled in the Evergreen State College Master in Public Administration program. Our unique program of Advanced Studies in Tribal Governance is not offered at any other College or University in the US. Prior to joining the faculty at Evergreen State in 1997, I practiced law for twenty years in Washington DC. During that time I had the opportunity to serve as Staff Director to the Senate Committee on Indian Affairs, (1987 thru 1991) and as Chief Counsel during the formative years after the Committee was first established as the Temporary Select Committee on Indian Affairs in 1977 thru 1981. You may recall that recommendations to create a separate committee that would be independent of the conflicting interests that arose when members of the Senate Interior and Insular Affairs Committee considered fulfilling the Federal Government's Trust Responsibilities to the Tribes in conjunction with matters that dwelt with commercial developments on public lands nearby to Indian Country Lands, such as Oil and Gas developments, hard rock mining and timber harvesting. The recommendation to create a separate committee independent of such conflicting commercial interests came

from tribal leaders who served on the American Indian Policy Review Commission. The AIPRC was created by Joint Resolution of the U.S. Congress in 1975 and undertook an historic and comprehensive study of Federal Indian Policy during the Commission's two-year life span, 1975–1977.

Mr. Chairman, I mention this history behind the creation of the Senate Committee on Indian Affairs to provide a brief outline of the context of the policy framework that you and Mr. Washburn are now confronting. As I am sure you are aware, the Obama Administration recently brought to a successful conclusion a 16 year effort by the Federal Government to settle an historic class action lawsuit filed by Ms Eloise Cobell, formerly Treasurer to the Blackfeet Indian Nation. Ms Cobell filed suit in federal court to seek an accounting for mismanagement by the Department of Interior of Indian Trust Allotments. The facts alleged in the *Cobell* case told the story of outright theft of Indian monies generated, primarily, by oil and gas leases of properties held in Trust that took place over many generations. The federal judge presiding over this lawsuit saw that, although there was a mountain of evidence of gross mismanagement of the Federal Government's duties as a trustee over hundreds of thousands of leases, the case cried out for a settlement. Judge Robertson did not think justice could be done by presiding over the years of litigation that would be needed to prove and sustain the claims of damage on behalf of 300,000 plaintiffs represented in the class action. The Obama Administration negotiated with plaintiffs an agreement for a \$4 billion settlement that required Congressional approval. When the authorization for the settlement, which came through this committee, was presented to the tribes in December of 2011, Secretary Salazar appointed a Trust Reform Commission. This Commission is comprised of three tribal leaders, Fawn Sharp, President of the Quinault Indian Nation who serves as Chair of the Commission, Peterson Zah, former President of the Navajo Nation, and Tex Hall, Chairman of the Three Affiliated Tribes of North Dakota. In addition, he appointed two Native American distinguished law professors, Bob Anderson and Stacy Leeds. It was a privilege to be able to attend the inaugural meeting of the Trust Reform Commission in March of this year in Washington D.C. as I witnessed the efforts of the Commission to get a sense of direction and what they might accomplish in the future.

Kevin Washburn will be challenged to work with this Commission and assist them in their efforts to design recommendation to not only reform the management of several billion dollars of Indian Funds currently under investment but also to consider the future role of the Bureau of Indian Affairs in trust management of the millions of acres of trust lands and resources. It is clear to me in my work with tribal leaders in the Northwest that the elected leadership of the tribes no longer see themselves as passive beneficial owners of these trust resources. This Committee recently reported out legislation, the HEARTH Act, authorizing a much more independent role for tribal leadership.

Once he is confirmed, Mr. Washburn will also be challenged to represent the Obama Administration as they consider what steps they may be able to take in today's toxic political environment to implement the UN Declaration on the Rights of Indigenous Peoples. Although President Obama has reversed the Bush Administration's negative vote against the UN Declaration when it came before the UN General Assembly in September of 2007, there have been no follow up announcements regarding the Presidents plans to implement the Declaration in the United States. Mr. Washburn will also be asked by U.S. Tribes to advise them regarding the contacts that have been made from leaders of Maori and 1st Nations who are very interested in Trade Relations with Indigenous Nations across the Pacific Rim.

Mr. Chairman, thank you for your decision to schedule this confirmation hearing on Kevin Washburn's nomination and I urge you to move expeditiously on it and to present a favorable vote for action in the U.S. Senate as soon as possible.

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PREPARED STATEMENT OF RANDALL VICENTE, GOVERNOR, PUEBLO OF ACOMA

Dear Chairman Akaka and Vice Chairman Barrasso:

On behalf of the Pueblo of Acoma Tribal Administration and Tribal Council, I am writing to urge the Committee's positive consideration of President Obama's nomination of Kevin Washburn to serve as Assistant Secretary of Indian Affairs. The position of Assistant Secretary of Indian Affairs is, in many ways, one of the most difficult in the Federal Government. The challenges are many, the historic and legal complexities often overwhelming, and the funding generally insufficient. It takes an extraordinarily competent leader to succeed in this position. We believe Kevin Washburn is just such a leader.

Because he has served as the dean of the University of New Mexico Law School since June 2009, we have come to know Dean Washburn well. He has proved to be an enlightened educational leader. He has taken the UNM Law School to new heights, including securing its place not only as a leading center of academic study of Indian law, but also as a place where Native students can be challenged and nourished. As a result, the law school graduates many Natives who have gone on to assume leadership roles in their communities, in Indian affairs and beyond. Already, Dean Washburn has had a hugely positive impact on Indian law.

His academic and professional credentials are extraordinary, ranging from serving in several positions in the U.S. Department of Justice, serving as general counsel to the National Indian Gaming Commission, and holding several high academic positions. However, from Indian country's perspective, one of his most important contributions has been to serve as a role model to our youth, demonstrating that anything is possible for them. Again, the Pueblo of Acoma strongly endorses the nomination of Dean Washburn and urges you to move his nomination forward swiftly through the Senate.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. AKAKA TO  
KEVIN WASHBURN

*Question 1.* High school graduation rates for Native American students are currently around 58 percent. If we are losing nearly half of our Native students before they can graduate from College, they cannot be the future leaders that Indian Country needs. How will you work with Congress and the Department of Education to see what improvements can be made to assist our next generations with their education?

Answer. There is no greater investment than the investment we make in our children, and a strong education is a cornerstone of that investment. If confirmed as the Assistant Secretary for Indian Affairs, I will continue to work with the Department of Education and tribal governments to implement the President's Executive Order 13592 (White House Initiative) in order to expand educational opportunities and improve educational outcomes for American Indian and Alaska Native students. This coordinated interagency effort is being managed within the Department of the Interior through the Bureau of Indian Education.

*Question 2.* In carrying out the trust responsibility in policy areas that impact Native peoples, how do you plan to deal with internal conflicts that may occur within the Department and among the Bureaus?

Answer. If confirmed, I hope to communicate widely with colleagues in the Department to identify such conflicts early. Where conflicts are found to exist, I will advocate forcefully within the Department to insure that the Department meets its solemn responsibilities to Indian tribes and native people.

*Question 3.* The United States Government holds treaty and trust responsibilities and obligations to Indian tribes and the Office of the Secretary for Indian Affairs is tasked with upholding these obligations. What do you see is the role of the Assistant Secretary in providing direct services such as education services, public safety, and economic opportunity to the Country's 566 Indian tribes?

Answer. The Assistant Secretary is responsible for working with the Bureau of Indian Affairs and the Bureau of Indian Education to ensure that both Bureaus carry out their trust and treaty obligations to all 566 tribes whether through direct service, self-determination contracts, or self-governance compacts. If confirmed, I will work with the tribes receiving direct services to insure that the Bureaus are not only carrying out their respective obligations, but that the needs of the tribes are identified, and improvements are made as applicable to improve overall services.

*Question 4.* Many problems facing Indian tribes are not neatly located under the Department of the Interior's sole jurisdiction. How will you encourage collaboration between the Department of the Interior and other Departments to address concerns of Indian tribes if you are confirmed?

Answer. While the Administration has made it a priority to insure that all agencies of the executive branch have policies requiring consultation with affected tribal governments, the Assistant Secretary for Indian Affairs has a unique responsibility to insure that tribal interests are heard across the Federal Government. In the past, the Assistant Secretary has often exercised a leadership role in addressing Indian issues and, if confirmed, I will work hard to continue this tradition and improve upon it.

*Question 5.* Indian water rights settlements are important not only for Tribes to gain access to water, but also for surrounding communities to understand how much

water they may lawfully use. Access to water is a key determinant in rural economic development, yet funding water rights settlements is not easy because some mistakenly believe them to be earmarks. How would you promote the settlement and funding of Indian water rights settlements?

Answer. Funding for Indian water settlements has been a continuing challenge for the United States. In negotiating Indian water settlements, I will explore all available funding sources for those settlements, including both traditional funding mechanisms and new and creative ways to provide the necessary funding.

*Question 6.* The Department participated in the Committee's roundtable on protecting sacred sites. In addition, the Department has held listening sessions on sacred sites. Under your leadership, will you continue to make sacred site protection a priority?

Answer. If confirmed, I plan to continue working with the staff of the Bureau of Indian Affairs as well as the other Bureaus within the Department and other agencies to find a path forward for addressing sacred sites in a respectful manner in consultation with Indian tribes. Addressing sacred sites is complex with no easy answers, but the issue will continue to be a priority.

*Question 7.* Throughout Indian country, Native communities have been faced with numerous natural disasters in recent years. Please discuss the importance of collaborating and coordinating with other agencies and affected tribes in responding to and recovering from natural disasters.

Answer. Not only have the number and severity of natural disasters increased over the past several years, but the disproportionate impacts to tribal communities and governments have increased dramatically as well. In my State of New Mexico alone, several Pueblos have experienced natural disasters that have severely impacted not only tribal citizens, infrastructure and economic development, but natural, cultural and historic resources, some of which may never be replaced.

Tribal governments nationwide struggle with a lack of capabilities and resources to respond to these disasters. Tribes often may also face an equal or greater struggle to recover from the impacts of disasters to tribal governments and individual tribal members. These challenges require coordination and cooperation not only from the Federal family, but also the coordination and cooperation of State, local governments, non-governmental organizations and private industry.

Additionally, legislation is currently pending to give tribes the option of applying directly for Federal disaster assistance, rather than only being able to apply through a state. The Administration fully supports this legislation.

*Question 8.* Are there any issues you anticipate recusing yourself from?

Answer. I have signed an ethics agreement with the Department of the Interior that covers my recusals. There are no general issues from which I would anticipate recusing, if confirmed. However, I anticipate recusing myself from all matters specific to my own tribe, the Chickasaw Nation, and all matters specifically involving other entities with whom I have worked within the past 24 months.

*Question 9.* In your view, are there situations in which Congress should exercise its plenary authority to recognize Indian tribes?

Answer. Yes. Congress' plenary authority allows it to federally recognize an Indian Tribe. Congress has acted to recognize tribes under this authority numerous times in its history.

*Question 10.* Can you describe how treating all Native Governments the same under federal law leads to greater self-determination and flexibility to solve local challenges for each individual tribal group?

Answer. If confirmed, I will need to become better informed of the broader context prior to answering this question. I understand that "equal justice under law" may sometimes require the Federal Government to treat similarly-situated Native Governments similarly, but I also understand the need to provide administrative flexibility so that Native Governments can adapt to local conditions and effectively address the specific challenges that they face. If I am confirmed, I look forward to developing a better understanding of how to effectively reconcile these interests.

*Question 11.* As you know, the Tribal Law and Order Act was enacted in 2010. Since then, this Committee has heard about the difficulties tribes are facing in the implementation of the Act. In your view, what are some of the burdens that tribes are struggling with in the implementation of TLOA?

Answer. I am not yet at the Department and I am not familiar with all of the burdens that tribes may be struggling with to implement the Tribal Law and Order Act (TLOA), however, if confirmed as the Assistant Secretary for Indian Affairs, I will examine Indian Affairs programs to see if TLOA could be implemented more effectively and efficiently and to lessen any burden on Indian tribes.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN BARRASSO TO  
KEVIN WASHBURN

**Education**

Recently, the Haskell Indian Nations University underwent an investigation by the U.S. Department of Education Inspector General regarding allegations of certain falsified student scores. The Haskell Indian Nations University president has announced several changes in policies and procedures to avoid the problems raised in these investigations.

*Question 1.* If confirmed, how will you personally be involved in ensuring accountability from the University employees and students in following these policies and procedures, among other rules of conduct?

Answer. I have not had the opportunity to be informed sufficiently in order to develop recommendations regarding this matter. If confirmed as the Assistant Secretary for Indian Affairs, I will examine the Indian Affairs programs under my purview to see whether changes could be made to make the programs more accountable to the rules of conduct.

**Irrigation**

There are a number of different water delivery-related projects administered by the Bureau of Indian Affairs, including the Wind River Irrigation Project (WRIP) on the Wind River Indian reservation in Wyoming. According to a 2006 Government Accountability Office (GAO) report, there is a significant backlog in irrigation project repair and maintenance for many of these projects. At prior Committee hearings in 2009, both Secretary Salazar and Mr. Larry Echo Hawk (at his confirmation hearing) committed to review these irrigation issues.

*Question 2.* If confirmed, will addressing these deferred maintenance problems identified in the 2006 GAO Report be a priority?

Answer. If confirmed as the Assistant Secretary for Indian Affairs, I will thoroughly review the deferred maintenance problems identified in the 2006 Government Accountability Office Report and work with the appropriate staff to address the backlog of repair and maintenance.

*Question 3.* If confirmed, will you provide leadership in developing a more comprehensive plan of action for the future of the Bureau of Indian Affairs irrigation projects?

Answer. I have not had the opportunity to be informed sufficiently in order to develop a plan on how to adequately maintain irrigation systems in Indian Country. If confirmed as the Assistant Secretary for Indian Affairs, I will examine Indian Affairs programs under my purview to see whether changes could be made to make the programs more effective and efficient.

**Law Enforcement**

High crime rates, emerging prescription drug abuse, lack of detention facilities, insufficient funding, high declination rates for Federal prosecutions, and recidivism remain challenges for Indian Country law enforcement, detention, and tribal courts.

Congress passed the Tribal Law and Order Act to begin addressing these issues. In addition, Congress funded the High Priority Performance Goal pilot program through the Bureau of Indian Affairs, with one of the four initial sites located on the Wind River Indian Reservation.

*Question 4.* If confirmed, how do you plan to continue implementing this pilot program on the Wind River Indian Reservation?

Answer. I have not had the opportunity to be informed sufficiently in order to develop recommendations on implementing the High Priority Performance Goal Initiative on the Wind River Reservation. I understand that the High Priority Performance Goal Initiative at the first four sites, one of which was the Wind River Reservation, was a great success for public safety efforts in Indian Country. If confirmed as the Assistant Secretary for Indian Affairs, I will work to examine the High Priority Performance Goal Initiative.

The Tribal Law and Order Act requires the Bureau of Indian Affairs submit to Congress an annual detailed spending report. The Act was passed over two years ago, yet the Bureau of Indian Affairs has failed to submit any report.

*Question 5.* If confirmed, what will you do to ensure this report and subsequent reports are timely submitted to Congress?

Answer. I have not been briefed on the annual spending report required by the Tribal Law and Order Act, but will look into this matter, if confirmed, and work to insure the timely submittal of reports to Congress as provided by law.

**Energy**

There is significant potential for energy development on American Indian and Alaska Native lands. The Energy Policy Act of 2005 authorized Tribal Energy Resource Agreements (TERAs) to facilitate energy development on tribal trust lands and to bypass cumbersome bureaucracy.

I introduced, and the Committee just approved on September 13, 2012, 8.1684, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2011, to improve the "TERA" process and provide a more effective and accessible way to develop Indian energy resources.

*Question 6.* Please explain your views on how the Bureau of Indian Affairs can best assist Indian tribes that wish to develop their trust energy resources in achieving their goals.

Answer. I have not had the opportunity to be informed sufficiently in order to develop recommendations regarding what role the Department should play in encouraging tribes to develop their energy resources. If confirmed as the Assistant Secretary for Indian Affairs, I will work with Indian Affairs' Office of Indian Energy and Economic Development and the Bureau of Indian Affairs to examine programs under my purview to consider what improvements could be made to encourage tribes to develop their energy resources.

**Energy**

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*Question 7.* What are your views on the "TERA" process authorized in title V of the Energy Policy Act of 2005?

Answer. I have not been briefed on the TERA process authorized by title V of the Energy Policy Act, but I will look into this matter, if confirmed.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
KEVIN WASHBURN

**Letter of Support for Spokane Tribe Equitable Compensation Act**

In 2008, the Interior Department testified before the Senate Indian Affairs Committee on my Spokane Tribe Grand Coulee legislation (S. 1388), and raised a number of concerns the legislation, while expressing a willingness to work on a solution. This Congress we addressed those concerns by removing the land transfer and clarifying the Bureau of Reclamation's jurisdiction. In October 2011, the Interior Department testified before this Committee again on my Spokane Tribe Grand Coulee legislation and expressed new concerns about the delegation of authority over land within the tribe's reservation and about it being termed a "settlement bill." At the same time the Department again expressed willingness to help find a way forward.

Just days ago the Committee again passed my Spokane Tribe Grand Coulee with more changes made to satisfy the Department of Interior, the Department of Justice and the Office of Management and Budget. Yet, after all these changes I don't yet have the support of this Administration.

*Question 1.* Mr. Washburn, do you support justly and equitably compensating the Spokane Tribe for the damage done to them by the building of the Grand Coulee Dam and will you work with me to obtain the support of this Administration for such legislation?

Answer. I am unfamiliar with legislation that would compensate the Spokane Tribe for the building of the Grand Coulee Dam. I will examine the issue, if confirmed, and will work with the Committee on ways to solve the problem.

**Tribal Jail Facility Startup and Staffing**

As part of the American Recovery and Reinvestment Act (ARRA), Congress appropriated \$225 million for the construction of tribal correctional facilities. Three tribes in Washington State (Nisqually, Puyallup and Yakama) competed for and were awarded grants to build correctional facilities. These much needed facilities are now being constructed or are being readied to open. However, it has come to my attention that the Bureau of Indian Affairs and the Department of Interior may now be proposing funding levels for the startup and operation of these facilities that are in-



adequate to ensure that they can safely and effectively be open and serve tribal communities. The Federal Government has a trust responsibility to operate these facilities in a safe and effective manner.

*Question 2.* Mr. Washburn, as a former federal criminal prosecutor, you know the epidemic of crime that is afflicting reservations across Indian Country. I am sure you are aware of the need for adequately sized and safe correctional facilities on reservations so that incarcerated individuals can serve their time near their loved ones in a safe environment. Will you commit to utilizing your fullest abilities to ensure the Federal Government fulfills its responsibility to staff and supply these facilities at adequate levels?

Answer. If confirmed as the Assistant Secretary for Indian Affairs, I will thoroughly review this issue consistent with the Federal Government's obligations to Indian tribes.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TIM JOHNSON TO  
KEVIN WASHBURN

**Tribal Law and Order Act**

*Question 1.* How will you use your experience as Chief Judge for the Court of Appeals and Justice of the Appellate Court with the Sac & Fox Tribe of Indians to further improve the court systems in Indian Country?

Answer. I hope that my experience as a tribal judge will offer me better insights into the unique opportunities and challenges facing tribal courts. If confirmed, I hope that my background will help me to work with tribes to foster constructive changes and to help them evolve in the same manner that state and Federal court systems have evolved over time. For more than three years as Dean of the University of New Mexico School of Law, I have also overseen almost all of the judicial education for state court judges in New Mexico, including the training of more than 100 magistrate and municipal judges who, like some tribal judges, do not necessarily have formal law school educations.

*Question 2.* How would you approach the continued improvement and implementation of the provisions of the Tribal Law and Order Act?

Answer. If confirmed, I look forward to working within the Department, with the Departments of Justice and Health and Human Services, and with tribal governments and other entities to support tribes seeking to implement provisions of the Tribal Law and Order Act (TLOA). I have considerable experience in this area and, if confirmed, I very much look forward to seeing the TLOA implemented as widely as tribes wish.

*Question 3.* Numerous tribes face police staffing shortages. In South Dakota, our reservations cover hundreds of miles, making it difficult for police to travel to assist as backup or to track down leads. In your viewpoint, explain how the BIA-OJS can work together to implement the successful procedures of the High Priority Performance Goal Presidential Initiative throughout Indian Country?

Answer. While I have not had the opportunity to be informed sufficiently in order to develop recommendations to successfully implement the High Priority Performance Goal Initiative throughout Indian Country. I understand that the High Priority Performance Goal Initiative at the first four sites was a great success for public safety efforts in Indian Country.

*Question 4.* With the proposed increase to the Office of Tribal Justice staffing, I am hopefully that the justice system in Indian Country will further improve. Can you explain how the Bureau will work with the Department of Justice in properly addressing widespread concerns of public safety on our tribal reservations?

Answer. I have not been briefed on how the Bureau of Indian Affairs works with the Department of Justice to address public safety in Indian Country, but I will look into this matter, if confirmed, and will thoroughly review public safety issues consistent with the Federal Government's trust relationship and obligations to Indian tribes.

**Bureau of Indian Affairs**

*Question 5.* President Obama made it a priority to strengthen government-to-government relations between the United States Federal Government and tribal governments. How will you continue President Obama's desire to create a working relationship with Indian Country?

Answer. If confirmed, I look forward to helping to lead the effort in achieving consistent and effective communication between the Federal Government and tribal governments. I anticipate having strong personal communications with tribal gov-

ernments and working hard to insure that the Department engages in effective communication and meaningful government-to-government consultation with tribal leaders on matters of interest to tribes and Native people.

*Question 6.* In order to create a better government-to-government relationship, inter agency communication is important to tribal organizations. What would you propose to increase the fluidity of communication between agencies?

Answer. I understand that the Federal Government's many responsibilities toward tribal governments and Native people are spread across numerous agencies. I believe that it is incumbent on the Assistant Secretary of Indian Affairs to play a lead role in insuring that communication across agencies is effective and that the Department can be a valuable resource to agencies that have less experience with tribal consultation or that only have episodic interactions with tribal issues. (f confirmed, I hope to be useful in insuring fluid communication across the Federal Government.

*Question 7.* With continued talks of the potential re-structuring the Bureau of Indian Affairs and the Bureau of Indian Education, how will you assure that tribes' have input on this process and that negative effects are eliminated?

Answer. I am not aware of these talks, but I look forward to learning more about any such efforts. I believe that any efforts to restructure the Bureaus must involve tribal consultation and must be focused on improving the ability of the Bureaus to meet the needs of tribal governments and Indian people. If confirmed, I will work hard to insure that the Bureaus are structured in a way that serves their constituents effectively and efficiently.

#### **Bureau of Indian Education**

*Question 8.* Quality education is an integral cog in addressing the several social and economic problems in Indian Country. South Dakota has some of the poorest counties in the nation, and three of them are within reservation borders. Schools struggle day to day with keeping the lights on and keeping their students warm in the winter months. How would you address these issues when it is proposed that ISEP Formula Funds be reduced for these schools?

Answer. If confirmed, I will work to find ways to improve educational efficiencies, offer new program options that could reduce travel costs and review school financial audits to ensure fidelity of funds within the Indian School Equalization Program (ISEP) Formula Funds. As you know, ISEP is the base funding mechanism within the Department of Interior for Bureau of Indian Education (BIE) schools from which all expenses are covered. I understand that the ISEP funding is critical to BIE schools in that it supports basic education services for all students, such as students in the English Language Learners, and Gifted and Talented programs.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO  
KEVIN WASHBURN

#### **Off-Reservation Gaming**

Last year, the Obama Administration rescinded a Bush Administration "guidance document" that was aimed at preventing "reservation shopping." The Artman Guidance, as it's sometimes called, applied a commuting distance standard for taking land into trust for the purpose of gaming. In testimony you've provided to the Committee, you've clearly opposed the guidance document in the past.

*Question 1a.* To your knowledge, is the Administration intending to replace this guidance with some other rule or guideline meant to prevent abuses in the land into trust process?

Answer. To my knowledge, the Administration is not planning to issue new guidance regarding land into trust or Indian gaming. If confirmed as the Assistant Secretary, I would take steps necessary to adhere to the Indian Gaming Regulatory Act and the Department's appropriate regulations. If, in my duties, I determined that further clarification was warranted to successfully implement the law, I would consider issuing additional guidance. It is important to note, however, that such guidance or clarification has significant tribal implications. Therefore, I would commit to consulting with affected Indian tribes prior to the issuance of any final guidance.

*Question 1b.* If the Administration is not replacing the Artman Guidance, do you believe current regulations are adequate to prevent reservation shopping?

Answer. I believe that the factors contained in the Department's existing regulations, safeguard decision-making on tribal gaming applications. If, in my duties, I determined that further clarification was warranted to successfully implement the law, I would consider issuing additional guidance. It is important to note, however,

that such guidance or clarification has significant tribal implications. Therefore, I would commit to consulting with affected Indian tribes prior to the issuance of any final guidance.

*Question 1c.* Do you think there should be any limitation on the distance a tribe can develop a casino away from its existing reservation? Are there other standards besides distance that you think should be applied?

Answer. Since 2009, I have served as the Dean of the University of New Mexico Law School. Since that time, I have not closely followed recent developments regarding Indian gaming policy. Tribal gaming has changed considerably in the time since I served at the National Indian Gaming Commission (NIGC). At this time, I am not familiar with the Department's current position on off-reservation gaming, but I understand that it is rare for the Department to take off-reservation land into trust for purposes of Indian gaming. It is also my understanding that the law allows such action only in limited circumstances.

These cases should be addressed on a case-by-case basis and there may be several relevant factors which should be considered. It is my understanding that in 2008, the Department adopted regulations that consider factors, such as the distance from any existing reservation, the tribe's historical relationship to the land at issue, and the effect of the action on other tribes.

*Question 1d.* Current regulations (25 CFR 151.11(b)) provides that the Secretary of the Interior "shall give greater scrutiny to the tribes justification of anticipated benefits" when taking land into trust. What is your interpretation of the "greater scrutiny" standard? Is there ambiguity in that term and would you be considering issuing guidance on this issue?

Answer. Greater scrutiny generally entails a closer and thorough examination of the facts and whether the application of those facts meet the requirements of the law. As to issuing guidance, I would take steps necessary to adhere to the Department's fee-to-trust regulations. If, in my duties, I determined that further clarification was warranted to successfully implement the law, I would consider issuing additional guidance. It is important to note, however, that such guidance or clarification has significant tribal implications. Therefore, I would commit to consulting with affected Indian tribes prior to the issuance of any final guidance.

#### **ONIDR/Bennett Freeze**

As you know, we were able to lift the Bennett Freeze on the Navajo/Hopi reservation just a few years ago. My staff is currently exploring with the Navajo Nation potential legislation to phase out the Office of Navajo-Hopi Indian Relocation (ONHIR), an outdated agency that's spent over \$500 million for the past 35 years building houses to help settle a land dispute that was effectively resolved when the Bennett Freeze was lifted. A month ago, we supplied your office with some draft language, but haven't heard back from BIA.

*Question 2a.* Would you be willing to assist us in responding to our proposal to close ONHIR?

Answer. Yes. If confirmed, I would be willing to work with your office regarding your proposal to close the Office of Navajo-Hopi Indian Relocation.

*Question 2b.* Have you been to the Bennett Freeze area?

Answer. I have visited the Navajo Reservation a number of times although I have not been to the Bennett Freeze area. I would welcome the opportunity to learn more and assist with this issue if confirmed.

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#### RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. LISA MURKOWSKI TO KEVIN WASHBURN

*Question 1.* Federal Indian programs have historically been chronically underfunded relative to need. I am concerned that given the Nation's current fiscal difficulties, Indian programs may be forced to endure crippling cuts in the sense that chronically underfunded programs are most vulnerable to further reductions. Do you intend, if confirmed to the position of Assistant Secretary for Indian Affairs, to advocate for the protection of funding levels for Indian programs in the Department of the Interior and how will you go about prioritizing among programs in difficult financial times? In your judgment, which of the Department's Indian programs are most severely underfunded and what is your strategy for adjusting funding for these programs relative to need.

Answer. I have not had the opportunity to be informed sufficiently in order to develop recommendations to adjust funding of programs to relative need. Nonetheless, I understand that there are longstanding concerns about funding levels provided for

Indian programs. If confirmed, I commit to looking at budget levels and program needs.

*Question 2.* From time to time tribes have complained that when difficult decisions have to be made about funding priorities for the Bureau of Indian Affairs, the Department reflexively protects funding for its own federal Indian bureaucracy at the expense of funding that directly serves tribes and tribal members. Do you believe that this criticism is fair and what will you do ensure that a proper balance is struck between rightsizing the bureaucracy and ensuring that sufficient funds exist to support vital tribal programs.

Answer. I understand that there are longstanding concerns about funding levels provided for Indian programs. If confirmed, I commit to looking at budget levels and program needs.

*Question 3.* Do you believe that historic appropriations to fund Small and Needy tribes are sufficient relative to need? Please explain any gap relative to need.

Answer. I am unfamiliar with the funding for Small and Needy tribes but, if confirmed, I will review how this funding fits into the Bureau's overall trust responsibility. Generally, I am committed to a fair and balanced approach to considering funding needs.

*Question 4.* The Alaska Land Transfer Acceleration Act, Public Law 108-452, aspired to complete the transfer of Native allotments pursuant to the 1906 Alaska Allotment Act by the 50th anniversary of Alaska's admission to statehood. This aspiration was far from met when it came to Alaska allotments. While the allotment transfer process rests with the Bureau of Land Management, what would you intend to do in your role as Assistant Secretary for Indian Affairs to ensure that the goal of completing 1906 Act transfers is accelerated and remains visible within the Department of the Interior? What is the Department's current timetable for completing the transfer of Native allotments to those who are entitled to land?

Answer. I have not had the opportunity to be informed sufficiently in order to develop recommendations regarding the 1906 Act transfers. If confirmed as the Assistant Secretary for Indian Affairs, I will work with leadership in the Bureau of Land Management to see whether improvements could be made to make the Native allotment conveyance program more effective and efficient. With respect to the Department's timetable for completing the transfers of Native allotments, I have not yet been briefed on this matter, but will look into it if confirmed.

*Question 5.* Tribal courts in P.L. 280 states are not currently funded by the Bureau of Indian Affairs. This seems to be based on an internal policy of the BIA as well a remnant of the assimilation era. Your predecessor Larry EchoHawk, testified in 2010 that he would like to see the BIA reassume responsibility for funding tribal courts in P.L. 280 states. What is your position on BIA funding tribal courts in P.L. 280 states?

Answer. I have not had the opportunity to be informed sufficiently in order to develop a position on Bureau of Indian Affairs' funding for tribal courts in P.L. 280 states. If confirmed as the Assistant Secretary for Indian Affairs, I will thoroughly review this issue consistent with the Federal Government's obligations to Indian tribes.

*Question 6.* During the 2010 Alaska Federation of Natives Convention, former Assistant Secretary EchoHawk appointed an Alaska Native policy advisor specifically to offer guidance on Alaska Native issues. He told the convention that an aide with a background in Lower 48 Indian issues isn't necessarily the best qualified to be an expert on Alaska Native issues. How familiar are you with the Alaska Native Claims Settlement Act model, Alaska Native corporate and tribal issues, and the differences between Lower 48 tribes and Alaska Native tribes, especially in terms of geographical, and jurisdictional challenges? Do you plan to appoint an Alaska Native policy advisor as EchoHawk did, to advise you on issues that pertain to Alaska's 229 tribes, which comprise over 40 percent of all federally recognized in the nation?

Answer. I certainly appreciate the uniqueness of Alaska Native issues in terms of tribes, corporations, and background legislation and programs. Although budget considerations will certainly have bearing on staffing in the Assistant Secretary's office, I can see the need for staff in the office with the expertise and experience to deal with these uniquely Alaskan Native and related issues.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JON TESTER TO  
KEVIN WASHBURN

*Question 1.* Will you visit Montana to meet tribal leaders, tour reservations, and see our unique challenges?

Answer. I have some past experience working with the Confederated Salish & Kootenai Tribes, and I have friends on several other Montana reservations. If confirmed, it will be my honor to visit Montana reservations, meet tribal leaders, and learn more about the issues facing these tribes.

**Transportation Funding**

In August, DOI announced it would not allow Montana tribes to use the Wyoming Cost-to-Construct (CTC) figure in the Indian Reservation Roads (IRR) program funding formula. However, it did not tell Montana tribes until too late. Without immediate action, they'll lose over \$2 million, costing jobs and interrupting projects. In a telephone call and in-person, the current, acting Assistant Secretary told my staff that the BIA would hold tribes harmless for this error.

*Question 2.* Will you uphold that commitment?

Answer. I am not familiar with this issue, but I will thoroughly review this issue if confirmed as Assistant Secretary and work to insure that the Montana tribes are treated fairly. I am not specifically aware of the commitment by the Acting Assistant Secretary, but I will be mindful of any commitments my predecessor made in good faith.

**Transportation Funding**

In August, DOI announced it would not allow Montana tribes to use the Wyoming Cost-to-Construct (CTC) figure in the Indian Reservation Roads (IRR) program funding formula. However, it did not tell Montana tribes until too late. Without immediate action, they'll lose over \$2 million, costing jobs and interrupting projects. In a telephone call and in-person, the current, acting Assistant Secretary told my staff that the BIA would hold tribes harmless for this error.

*Question 3.* Will you make sure that no transportation money is distributed until the issue is fixed?

Answer. If I am confirmed, I would seriously consider all reasonable options. I have not had the opportunity to be informed sufficiently in order to make a commitment, but I would hope to quickly find a solution that is fair to Montana tribes and minimally disruptive to other tribes. Indian Water Rights. Indian water rights are a major issue in Montana and throughout the west. There are a number of water settlement bills pending, including settlements for the Blackfeet and Fort Belknap Tribes in Montana.

*Question 4.* Will these Indian water rights settlements will be a priority for you? If so, what will you do to support and facilitate the negotiation process?

Answer. If confirmed, Indian water rights settlements, including those in Montana, will be a priority for me. I intend to work closely with Deputy Secretary Hayes and the Secretary's Indian Water Rights Office to assure that the Assistant Secretary's Office and the Bureau of Indian Affairs play a key policy role in settlement decision making in addition to continuing to provide critical staffing and funding support for the negotiation process.

*Question 5.* How will you ensure that your representatives have decision-making authority? This particularly applies to Blackfeet. After hearing about problems, the current, acting Assistant Secretary committed to me that he would personally negotiate on behalf of the Department of Interior. I understand that he has and I appreciate it. Will you assume that role, too?

Answer. I am very committed to settling Indian water rights claims as an alternative to lengthy, costly and divisive litigation. Montana has been a leader in settling Indian water rights claims and, if confirmed, I look forward to working closely with you and your staff on the remaining Indian water rights claims in Montana. I will make every effort to see that the personal commitments of Acting Assistant Secretary Laverdure are continued if I am confirmed to be Assistant Secretary for Indian Affairs.

Indian water rights are a major issue in Montana and throughout the west. There are a number of water settlement bills pending, including settlements for the Blackfeet and Fort Belknap Tribes in Montana.

*Question 6.* Every year, we face a daunting challenge to find enough money to keep these infrastructure projects going. Once we get them built, what is your plan for maintaining these incredibly valuable, yet complex water systems?

Answer. I have not had the opportunity to be informed sufficiently in order to develop recommendations on how to adequately maintain water systems in Indian

Country. If confirmed as the Assistant Secretary for Indian Affairs, I will work on examining Indian Affairs programs under my purview to see whether changes could be made to make the programs more effective and efficient.

#### **Federal Support for Water Settlements**

Under the current federal negotiation process, the parties often spend decades negotiating a settlement with the full participation of the Department of the Interior, yet Interior defers taking an official position until the settlement reaches Congress. This often forces a lengthy renegotiation, sometimes of key terms of the settlement, in order to address Interior concerns. This process is not fair to the parties who have spent decades negotiating the settlement, and it does not seem a wise use of federal resources.

*Question 7.* Are there changes you can make to Interior's settlement process to ensure that it is fair, efficient, and does not unduly prolong a final settlement?

Answer. It is my understanding that Indian water rights settlements are managed within the Department under a coordinated interagency approach through the Deputy Secretary's Office. While important decision making occurs at the Departmental level, final decisions must be coordinated with other Federal agencies through the Office of Management and Budget. If confirmed, I would be an active participant with other Departmental decision makers in advising the Secretary with respect to these important settlements. I will also review current procedures in order to develop innovative and effective policy proposals on how to minimize the time it takes to make settlement decisions.

#### **Water Priority**

The Department is often faced with conflicting water rights between tribes and various federal entities—BOR projects, Park Service, Forest Service, other tribes.

*Question 8.* How would you insure that the federal trust responsibility to tribes is carried out given these often conflicting interests?

Answer. If confirmed, I would ensure that Indian Affairs would contribute its resources and unique knowledge to the challenging task of crafting and implementing Indian water rights settlements, including educating other agencies as necessary about the unique Federal reserved water rights held by tribes and the trust obligation that all agencies have with respect to these rights.

*Question 9.* What process would you put into place to ensure that the conflicts are resolved in a transparent manner consistent with the federal trust responsibility?

Answer. I understand that the Department has sought to minimize the potential for conflict by establishing the Secretary's Indian Water Rights Office as part of the Secretariat, thereby ensuring high-level policy guidance and direction from the Office of the Secretary (OS) on all matters relating to Indian water rights settlements. I further understand that OS has a specific policy on how disputes among agencies are resolved during settlement negotiations. I have not had the opportunity to be informed sufficiently regarding that policy but, if confirmed as the Assistant Secretary for Indian Affairs, I will carefully examine it and work with my leadership to see that the Federal trust responsibility is appropriately considered in resolving interagency disputes.

#### **Water Rights Waivers**

The Department of Interior has been requiring more and more extensive waivers in water rights settlement legislation, not just of water rights claims and water related claims, but broader categories of claims. Sometimes tribes are being asked to waive claims that have never been raised in the negotiations or the underlying litigation. The waivers seem more and more focused on comprehensively eliminating any liability on the part of the Federal Government for as many different kinds of claims as possible, even those with little direct relation to water rights (e.g. riverbed movement claims).

*Question 10.* Would you support a review of the waiver language within the Department as a check on whether the current language is properly focused on the types of claims that need to be resolved and whether the waivers are consistent with the federal trust responsibility.

Answer. I believe that waivers in Indian water rights settlement need to be considered on a case by case basis and tailored to address the unique circumstances that arise in each settlement. If confirmed, I will review waiver language within the Department to insure that it is consistent with the Federal trust responsibility.

#### **Communities Working Together to Share Water**

Many, if not most, of the Indian water rights settlements that have been enacted by Congress to date involve the identification of additional water supplies or involve

construction of projects to provide additional water supplies in order to ensure that the tribal water right and as mitigation for non-Indian water rights. Even though this has been the case for decades, folks tell me that the Department has changed its position. Now, it will not support any project that provides benefits to non-Indians, even for mitigation purposes.

*Question 11.* Do you agree that the best way to reach agreements in these settlements is to work with the entire reservation community; both Indian and non-Indian?

Answer. Yes, I agree that the United States must work with all interests, both Indian and non-Indian, that have a stake in a final settlement of Indian water rights claims. Indian water settlement negotiations necessarily involve the interests of an entire reservation community, as water basin boundaries usually do not coincide with reservation boundaries.

*Question 12.* Do you agree with this change in position of the Department?

Answer. I have not been informed that the position of the Department has changed with respect to delivering water to non-Indian communities as part of an Indian water rights settlement. If confirmed, I will work with my leadership team to examine this issue.

*Question 13.* How would you address this issue as Assistant Secretary?

Answer. If confirmed, I will work with leadership in the Bureau of Indian Affairs and the Secretary's Indian Water Right Office to examine this issue.

### **Energy Development**

Tribes in Montana face significant opportunities and challenges related to energy development. On one hand, it represents a great source of non-federal income. On the other hand, it has the potential to pollute sacred lands.

*Question 14.* What role do you see DOI playing in encouraging tribes to become active energy developers, rather than passive royalty collectors?

Answer. I have not had the opportunity to be informed sufficiently in order to develop recommendations regarding what role the Department should play in encouraging tribes to become active energy developers. If confirmed as the Assistant Secretary for Indian Affairs, I will work with the Office of Indian Energy and Economic Development and the Bureau of Indian Affairs on examining the programs under my purview to see whether changes could be made to encourage tribes to become active energy developers.

### **Cobell/Land Into Trust**

Since the 1934 Indian Reorganization Act passed, tribes have been reclaiming reservation lands from fee status and placing them in trust for the tribe. However, years-long delays in BIA processing the paperwork (appraisals, title work, etc.) are famous. To complicate those paperwork duties, the Cobell settlement includes a requirement that DOI spend \$1.9 billion to buy back fractionated lands and place them in trust . . . within 10 years.

*Question 15.* What assurances can you give that DOI is ready to meet this important challenge?

Answer. I have not had the opportunity to be informed sufficiently in order to develop recommendations regarding how the Cobell settlement will be implemented. If confirmed as the Assistant Secretary for Indian Affairs, I will work to examine how the land consolidation provisions of the Cobell Settlement can be implemented in a manner that insures the Department can effectively use the Trust Land Consolidation Fund within 10 years.

*Question 16.* What will you do to correct current problems so they don't get compounded when we add a lot more work?

Answer. If confirmed as the Assistant Secretary for Indian Affairs, I will thoroughly review how the Department's land consolidation activities will be carried out, and work to ensure that the Department's administrative processes enable the Department to carry out land consolidation in an effective and efficient manner.

*Question 17.* To what extent will you work with tribes to allow them to do some of the work themselves? For example, Montana's Confederated Salish and Kootenai Tribe has a real estate department including appraisers, title researchers, etc. They are competent, eager to reclaim their lands, and claim to be able to do the job better than the BIA. Will you give them an opportunity to demonstrate it?

Answer. It is my understanding that the Indian Land Consolidation Act, as amended, does provide tribes opportunities to carry out some of the work on behalf of the Department. I will work with Department leadership to insure that tribes that are able and willing to carry out some of the Department's land consolidation activities and have the opportunity to do so, where appropriate.

*Question 18.* Will DOI operate some of these programs using direct funding to tribes by way of cooperative agreements, 638 contracts or another legal vehicle?

Answer. While I am aware that the Indian Land Consolidation Act and other statutes provide the authority for tribes to perform some of the Department's land consolidation activities, I am unfamiliar with the specific mechanisms that could or will be used. If confirmed, I will review what mechanisms are available for tribes to carry out the Department's land consolidation activities.

#### **Little Shell/Recognition Process**

Tribes across the nation, including Montana's Little Shell Tribe, have complained about the federal acknowledgment process for generations. This committee has held numerous hearings about what most people recognize is a "broken recognition process".

*Question 19.* Do you agree it is broken, or at least needs work? Explain.

Answer. Several members of Congress and tribes have attested to the need for revisions to the Federal acknowledgment regulations, citing the burdensome, expensive, and lengthy process required for Indian tribes to become federally recognized. It is my understanding that Indian Affairs has previously committed itself to revising the regulations, and that the regulatory reform should consider all aspects of the regulations including the timing of responses, the standards for reviewing mandatory criteria and the criteria themselves. It is also my understanding that the Assistant Secretary's office articulated principles for reform during its last testimony before the Committee. If confirmed as Assistant Secretary, I would continue this work and involve all stake holders in any reform process.

*Question 20.* Will you work with this committee and Indian Country to create a new process that is timely, respects tribal sovereignty, and based on history, science and culture?

Answer. Yes. I understand the Committee's roundtable discussion on this matter earlier in the year highlighted the challenges faced by the Federal acknowledgement process for decades. If confirmed, I look forward to deliberating in a spirit of collaboration the concepts that are raised in any reform process.

*Question 21.* Do you support my legislation to recognize Montana's Little Shell Tribe?

Answer. While I am unfamiliar with specific legislation to recognize the Little Shell Tribe, it is my understanding that the Department does not oppose the bill.

#### **Gaming**

In September 2005, you told this Committee that you support an amendment to the Indian Gaming Regulatory Act (IGRA). You stated, "It is crucial that at a minimum the IGRA be amended to ensure that the National Indian Gaming Commission (NIGC) has authority to promulgate the Minimum Internal Control Standards." (MICS)

*Question 22.* In your opinion, do tribal governments generally support amending IGRA? For what purposes?

Answer. Since 2009, I have served as the Dean of the University of New Mexico Law School. Since that time, I have not closely followed recent developments regarding Indian gaming policy. Tribal gaming has changed considerably in the time since I served at the National Indian Gaming Commission (NIGC). Thus, I am unaware of whether tribal governments generally support amending the Indian Gaming Regulatory Act (IGRA) and, if so, for what purposes.

*Question 23.* Specifically, do you think they support amending IGRA for the purpose of granting additional authority to the NIGC?

Answer. Since 2009, I have served as the Dean of the University of New Mexico Law School. Since that time, I have not closely followed recent developments regarding Indian gaming policy. Tribal gaming has changed considerably in the time since I served at the National Indian Gaming Commission (NIGC). Thus, I am unaware of whether tribal governments generally support amending the Indian Gaming Regulatory Act (IGRA) and, if so, for what purposes.

Tribes argue that the NIGC maintains a strong role in regulating class III Indian gaming, that the NIGC has never issued a violation of the MICS, and that tribal-state compacts should remain the primary role for outlining regulatory requirements at the local level.

*Question 24.* Do you still support amending IGRA:

- i. For any purpose; and
- ii. For the specific purpose of addressing Class III regulation?

Answer. Since 2009, I have served as the Dean of the University of New Mexico Law School. Since that time, I have not closely followed recent developments regard-



ing Indian gaming policy. Tribal gaming has changed considerably in the time since I served at the National Indian Gaming Commission (NIGC).

Furthermore, if confirmed as the Assistant Secretary for Indian Affairs, I would have a very limited role in the regulation of tribal gaming operations (this role is largely limited to the review of class III tribal-state gaming compacts). I respect the role of the NIGC, and its Chairwoman, and would defer to its judgment as to whether further powers are needed to improve the regulation of tribal gaming.

With respect to the other provisions of IGRA, I remain committed to implementing the law and the Department's regulations as they currently exist. I believe that the law and the regulations, as they are currently written, are sufficient to allow the Department to fulfill its responsibilities and consider the range of interests Congress was contemplating when it enacted IGRA.

*Question 25.* How do you view the "independence" of the National Indian Gaming Commission?

Answer. Each agency is governed by laws enacted by Congress. An agency must follow the letter of the law and be true to the spirit of the laws that govern its conduct. Federal agencies should also endeavor to work cooperatively with one another to achieve good government. In the past, when I served as General Counsel to the National Indian Gaming Commission (NIGC), I met regularly with representatives of the Department of the Interior. Such communication is important because the Department and the NIGC have complementary roles to play with regard to Indian gaming.

If I am confirmed, I will follow the law. I will also endeavor to communicate well with the NIGC to strive toward rational and consistent policy across the Federal Government. In addition, I would respect the NIGC's own statutory responsibilities and expect respect in return for my efforts to meet the Department's statutory responsibilities.

*Question 26.* How would you resolve any differences of opinion between the BIA and the NIGC on the question of "Indian lands" determinations?

Answer. It is important for agencies to work together so that the Federal Government has a rational and coherent policy on similar, related or shared issues. To the extent that these are legal questions, I would seek to resolve differences through careful consultation with the National Indian Gaming Commission (NIGC) and the Office of the Solicitor at the Department. I remain committed to the principles of thoughtful cooperation and good government.

*Question 27.* What is the appropriate role of the Assistant Secretary in Indian gaming policy?

Answer. The Assistant Secretary for Indian Affairs must help the Secretary meet both the Department's and the Secretary's statutory obligations which are set forth in the Indian Gaming Regulatory Act (IGRA) and other laws. Where policy set forth in IGRA is uncertain, the Assistant Secretary for Indian Affairs must endeavor, in careful consultation with Indian tribes, to help develop workable policy.

### **Off-Reservation Gaming**

Off-reservation gaming has become a controversial topic in Indian Country. Some people argue that it is simply "reservation shopping" and amounts to tribes building casinos near urban areas. However, others argue that off-reservation gaming helps give poorer tribes an opportunity to generate revenue to provide for their members and competition between tribes is a good thing. In recent years, there has been an explosion of new or renewed applications of Native American tribes to build tribal casinos hundreds or thousands of miles from their existing reservation or other aboriginal lands. Do you think that there should be any limitation on the distance a tribe can develop a casino away from its existing reservation or aboriginal lands?

*Question 28.* If so, what distance would you propose? If not, why not?

Answer. Since 2009, I have served as the Dean of the University of New Mexico Law School. Since that time, I have not closely followed recent developments regarding Indian gaming policy. Tribal gaming has changed considerably in the time since I served at the National Indian Gaming Commission (NIGC). At this time, I am not familiar with the Department's current position on off-reservation gaming, but I understand that it is rare for the Department to take off-reservation land into trust for purposes of Indian gaming. It is also my understanding that the law allows such action only in specific circumstances.

These cases should be addressed on a case-by-case basis and relevant factor should be considered. It my understanding that in 2008, the Department adopted regulations that consider factors, such as the distance from any existing reservation, the tribe's historical relationship to the land at issue, and the effect of the action on other tribes.

*Question 29.* Would you propose issuing any guidance on this issue? If not, why not?

Answer. If confirmed as the Assistant Secretary, I would take steps necessary to adhere to the Indian Gaming Regulatory Act and the Department's regulations. If, in my duties, I determined that further clarification was warranted to successfully implement the law, I would consider issuing additional guidance. It is important to note, however, that such guidance or clarification has significant tribal implications. Therefore, I would commit to consulting with affected Indian tribes prior to the issuance of any final guidance. In addition, I believe that the factors contained in the Department's existing regulations, safeguard decision making on tribal gaming applications.

Some have argued that there should be a reasonable limitation on the distance between gaming facilities and reservations or aboriginal lands, by imposing a commutability standard. That is, limit applications to a commutable distance defined as the distance a reservation resident could reasonably commute on a regular basis to work at a tribal gaming facility located off-reservation.

*Question 30.* Would you treat land into trust applications for gaming purposes that exceed the commutable distance differently from land into trust applications for gaming purposes that do not exceed the commutable distance?

Answer. I believe that the factors contained in the Department's existing regulations, safeguard decisionmaking on tribal gaming applications. These factors include the consideration of the distance of the proposed gaming site from the applicant tribe's reservation or trust lands. I believe that certain factors, such as distance and historical connection, should be given considerable weight when making these decisions; nevertheless, I do not believe that any particular factor taken alone, including distance, should be dispositive.

If confirmed as Assistant Secretary, I would review each tribal gaming application on a case-by-case basis and weigh the relevant factors accordingly to the unique circumstances facing each tribe and all affected communities.

*Question 31.* If so, how would you treat the two different types of applications differently? If not, why not?

Answer. Each tribal gaming application should be reviewed on a case-by-case basis in light of all of the factors relevant to the unique circumstances facing each tribe and all affected communities.

Alternatively, some people argue that rather than a commutability standard, tribes should only be able to build off-reservation tribal casinos on land where they have a historical connection.

*Question 32.* What do you think of this approach?

Answer. It is my understanding that in 2008, the Department adopted regulations that consider factors, such as distance and historical connection. These factors should be given considerable weight when making these decisions; nevertheless, I do not believe that any particular factor, including distance taken alone, should be dispositive. Each tribal gaming application should be reviewed on a case-by-case basis in light of the legal requirements and all of the factors relevant to the unique circumstances facing each tribe and the affected communities.

*Question 33.* If you agree that there should be some historical connection to any location where they intend to build an off-reservation casino, what factors would you consider in determining whether a historical connection exists?

Answer. It is my understanding that in 2008, the Department adopted regulations that require the Assistant Secretary to consider whether an applicant tribe has a significant historical connection to its proposed gaming site. If confirmed, I would consider an applicant tribe's evidence pertaining directly to these factors to establish whether it has a significant historical connection to the proposed gaming site. I would closely analyze and scrutinize each tribe's application to ensure that its claims are supported by the evidence, and that any historical connection is "significant"—as the regulations indicate.