

never allow any servicemember—past or present—to simply fall through the cracks.

Now that the Senate has returned from its State work period, we should pass Senator SANDERS' bill as soon as possible, ensuring that our veterans get the care they deserve. Yet even as Senate Democrats try to improve the reliability of our veterans health care, certain Republican Members of Congress are content to scapegoat the VA. Even more disappointing is the fact that these same Republicans have, through their obstruction, deprived the VA of essential resources it needs to help veterans.

Last February Senate Republicans blocked legislation introduced by Senator SANDERS which would give the VA the tools needed to meet the demands of a changing veteran population. We tried to break that filibuster. We couldn't do it. We didn't have 60 votes.

That bill would help our Nation's veterans by improving health and dental care, providing educational and employment opportunities and addressing claims backlogs. The legislation that has been introduced this week does the same. That legislation was shot down because as the junior Senator from Florida said, it had a cost issue, but that junior Senator, a Republican Senator from Florida, was correct—taking care of our Nation's wounded veterans does cost money, but it is money well spent.

Senator RUBIO is not alone. The junior Senator from Alabama, along with the rest of his caucus, opposed the same bill because he didn't want to "bust the budget." Republicans didn't worry about busting the budget when they initially sent our troops by the hundreds of thousands to Iraq on a credit card, the credit card of the taxpayers of America, running up—in that war alone—about \$1.5 trillion in money that was borrowed.

Therein lies the problem. Republicans ignore the true cost of democracy. The lives and well-being of the brave men and women who fight to protect our way of life are part of the cost of our democracy. Instead, Republicans focus on the monetary costs only, the dollar bills, because any money going to our veterans is \$1 less going to billionaires, corporations, and unnecessary tax cuts.

The American people are tired of the doublespeak coming from the Republican Party when it comes to caring for our soldiers and our veterans. If Republicans support our Nation's soldiers, then help us protect our Nation's soldiers and help us support our Nation's soldiers. Instead, there is always an excuse, some exception they find to justify prevention of them standing with America's veterans and our soldiers.

Let's give American veterans the care and attention they deserve. As the Department of Veterans Affairs works to remedy these serious shortcomings, we in Congress must do our part to help. We owe America's veterans far

too much to leave them behind in their hour of need.

ERIC SHINSEKI

I wish to say a few words about the retired Secretary, retired general, Eric Shinseki, who resigned in the wake of the Veterans Affairs' troubling performance.

General Shinseki is a very good man, a devoted, disabled combat veteran. Under his leadership the VA drastically improved its care of veterans suffering from mental illness, and they addressed the issue of veterans' homelessness. He oversaw initiatives which decreased dependence on pain killers and other drugs, addressing a problem which was crippling many combat veterans.

General Shinseki's work at the VA has also helped cut waiting times for GI benefits down to just 1 week, helping countless veterans get paid the aid they were promised. As the Secretary has done his best, I am sorry his time as head of the VA ended with his resignation, but I understand why he felt the need to step aside.

Eric Shinseki has served this country for decades: on the battlefield, as Chief of Staff for the U.S. Army, and as Secretary of Veterans Affairs. I personally thank him for his service and wish him well as he undoubtedly continues his work for America.

#### RESERVATION OF LEADER TIME

Would the Chair announce the business of the day.

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is preserved.

#### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will be in a period of morning business until 5:30 p.m., with Senators permitted to speak therein for up to 10 minutes each.

Mr. REID. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### HARPER NOMINATION

Mr. MCCAIN. Mr. President, today the Senate will consider the nomination of Keith Harper as the U.S. Representative to the U.N. Human Rights Council.

I am generally deferential to the President's decisions when it comes to nominations brought before the Senate for confirmation, but in extraordinary circumstances I don't hesitate to oppose them. Given the extraordinary circumstances present in this case, I

must strenuously object to this nominee.

Mr. Harper is the latest State Department "bundler-blunder" that is slated for a U.S. ambassadorship. Earlier this year we saw the administration nominate several wholly unqualified top Democratic fundraisers to serve as ambassadors to various posts around the world.

One such fundraiser, Mr. George Tsunis, was nominated to serve as the U.S. Ambassador to Norway. During his confirmation hearing, Mr. Tsunis revealed his complete unawareness about the country in which he would serve as our Nation's top envoy. For example, he referred to Norway's head of State as their President, not knowing that the country is led by a constitutional monarch.

Another Presidential pick, Colleen Bell, for Hungary could not answer a single question at her Senate hearing about U.S. strategic interests in that country, but that is OK. I am certain her professional background as a TV soap opera producer will come in handy while the crisis in Ukraine continues to unfold.

Inside the beltway, these nominees are known as "campaign bundlers," partisan political operatives who have each fundraised hundreds of thousands—if not millions—of dollars for the President's campaign. Mr. Harper is another example of a campaign bundler wholly ill-suited to serve in the diplomatic post for which he has been nominated.

According to the Center of Responsive Politics, which tracks campaign donations, Mr. Harper is on a list called "758 Elites." These are donors who combined "at least \$180 million for Obama's re-election effort." That is a quote from the Center of Responsive Politics. Mr. Harper is classified as a bundler of \$500,000 or more, and his contribution level matched such notables as actor Will Smith, actress Eva Longoria, and Hollywood producer Harvey Weinstein.

I am not naive as to why some of these ambassadorships are doled out. Candidly speaking, Presidents from both parties frequently issue these diplomatic posts as political favors. But I have never before seen an administration this brazen in transmitting individuals who are so terribly and fundamentally unfit for foreign service. Traditionally, according to the retired Foreign Service group, about 30 percent of ambassadorships go to political appointees. Since the election of 2012, that is up to 50 percent. Some go to countries that, frankly, deserve better than someone whose only qualification is whether they raised \$500,000 or more for the campaign of President Obama.

Some of my colleagues will say that what sets Mr. Harper apart from these other campaign donors is his cultural heritage. They say Mr. Harper would be the first Native American in history to hold the rank of U.S. Ambassador. They also say he should be

rewarded for his work as one of the lead class action attorneys in the Supreme Court case *Cobell v. Salazar*.

I truly respect that Mr. Harper would be the first Native American to serve as a U.S. Ambassador. What concerns me is his character—particularly his conduct in connection with a matter that could rightly be described as one of the greatest mistreatments of Native Americans by the Federal Government in recent memory. That matter is known as the Cobell case.

In the 1990s hundreds of thousands of Native Americans, led by Elouise Cobell, entered into a class action suit against the Interior Department for mismanaging billions of dollars in land assets that were held in trust for Indian tribes.

During my previous tenure as chairman of the Senate Committee on Indian Affairs, I worked with my colleague, then-vice chairman Byron Dorgan, to end the protracted Cobell lawsuit and enact legislation to settle the case in Congress.

Ultimately, it wasn't until 2010 that Congress finally passed legislation that compensated the Cobell plaintiffs at \$3.4 billion. My colleagues know that Mr. Harper was the co-lead counsel for the Cobell plaintiffs and often touted the number of his clients at about 500,000 Native Americans. When the lawsuit was settled, Mr. Harper and his legal team stood to earn up to \$99 million in attorney's fees that were written into the Cobell settlement legislation and paid for by the American taxpayer. Let me emphasize: For this good work, Mr. Cobell and his legal team were going to earn \$99 million in attorney's fees. Without a doubt, the legislation was a massive bonus check for Mr. Harper and his team, and he and his team have actually sued the Federal Government to receive another \$123 million—more than the \$99 million he already got. Most of the Native American clients will receive about \$1,000 each, and many are still waiting to receive their first payment to date.

Unfortunately, my Democratic colleagues conveniently ignore that Mr. Harper served on President Obama's 2009 transition team for Native American issues while he actively sued the Interior Department. Does it concern my colleagues that several months after the President installed his leadership team at Interior and Justice, the administration essentially fast-tracked the settlement with the Cobell attorneys or that just 1 year later Congress enacted the \$3.4 billion Cobell settlement legislation as a top White House priority, ending an over decade-long legal battle? Evidently not.

Now the administration claims there was no wrongdoing or conflict of interest on the part of Mr. Harper in his service to the President's transition team, and I have no choice but to take their word for it, albeit skeptical. But we do know of at least one appalling and unforgivable incident that has dogged Mr. Harper throughout the Sen-

ate's consideration of his nomination—and rightfully so.

When the Cobell lawsuit was settled and Mr. Harper's legal team stood to earn tens of millions of dollars, a number of Native American plaintiffs—Mr. Harper's own clients—raised grave concerns that their attorneys would receive such a sizable payout. They argued that more of the Cobell settlement should go to the thousands of Native Americans who had been wronged by Interior.

Four affected Native Americans banded together and filed a lawsuit to challenge the Cobell settlement for this and other reasons. One appellate told the court that “huge fees awarded to class counsel often indicate the interests of the absent class members have been sacrificed to those of the lawyers.” As a result of this legal challenge, the court temporarily delayed the Cobell payouts to the plaintiffs and, of course, to Mr. Harper.

In what can only be described as bullying, the Cobell legal team fired back at these four Native Americans. They transmitted a letter dated January 20, 2012, to all of their 500,000 clients that listed the home addresses and telephone numbers of the four appellants and urged all of Indian Country to call and harass them for challenging the Cobell settlement. The letter reads:

Your payments are being held-up by 4 people . . . [each] believes that you are not entitled to the relief (nor the payment of your trust funds) . . . This means you will receive nothing from the settlement: no payment, no scholarship funds, no land consolidation, and no further trust reform . . .

Here is the best part. In the letter that was sent to 500,000 people, it said:

[If] you want to ask them directly about their motives, you should contact them at the following address or phone numbers.

I hope my colleagues understand what was done there. These four Native Americans received harassing calls, death threats, had their jobs threatened. One had to disconnect their phone. Another was essentially run off her reservation.

I will submit two articles for printing in the RECORD at the conclusion of my remarks. The first is an article from the *Missoulian* entitled “Objectors to \$3.4B Indian trust settlement get angry phone calls,” which further describes how this letter affected their personal lives. The second is an article from the *Native American Times* entitled “Cobell Class Members question settlement, attorney conduct.”

The harassment letter was accessible on the Cobell team's Web site during the Harper committee hearing. It was on his Web site during the hearing in the committee, but it was promptly removed the day after I questioned Mr. Harper about it.

I will also submit for printing in the CONGRESSIONAL RECORD at the conclusion of my remarks the previously referenced letter provided that the contact information of those four individuals be redacted.

At his committee hearing, Mr. Harper adamantly denied any responsibility for the letter and blamed the strategy entirely on another Cobell attorney. However, Mr. Harper has since muddied his story and later admitted he was aware of the letter on the very day it was transmitted. If he didn't pen the harassment letter or approve it, as he dubiously claims, he certainly did nothing to retract it or denounce it until his Senate hearing.

There is also no disputing that Mr. Harper has held himself out and is overly proud of his status as one of the lead counsels on the Cobell case.

I would argue that those four Native Americans' human rights were abused. People such as Mr. Harper can't be a party to or complicit with a letter attempting to harass Native Americans for exercising their rights and then expect to obtain the Senate's imprimatur to serve as our Nation's ambassador on human rights. That is the irony of all of this. He clearly abused these people's human rights, and now he is going to be an ambassador on human rights?

Mr. Harper has not sufficiently answered my questions about his involvement with the harassment letter or how much in legal fees he has profited from Cobell over the years.

I will also submit for the RECORD his written responses to my hearing questions which conflict with his verbal testimony about the harassment letter and other matters.

I can't in good conscience support Mr. Harper's nomination. The global community faces serious human rights crises, and this is whom the administration sends to speak on behalf of all Americans, including Native Americans? I urge my colleagues to vote against Mr. Harper, and I call upon the administration to transmit a nominee who has an unblemished record of protecting human and civil rights—a record of accomplishment and integrity commensurate with this very important post.

Here is the situation. Mr. Harper will probably be confirmed today on a partisan vote—on a party-line vote. He won't get 60 votes. He will probably get 55 or maybe 1 or 2 less. This is another example of a deprivation that is taking place of my right to advise and consent and that of every single Member of the minority. This nomination would not have come to this floor if we still required 60 votes. But, instead, my colleagues across the aisle have decided to deprive Members on this side of their right of advice and consent because he will be confirmed, probably, today on a party-line basis despite the fact of a clear record of abuse of human rights by a majority here in the Senate.

I tell my colleagues on the other side of the aisle: If we gain the majority in this Senate as a result of this November's election, I will do everything in my power to restore their rights as a minority—their rights of advice and consent. The fact that it was taken away from us for the first time in the

history of the Senate is a despicable and black act that will live in history.

Mr. President, I yield the floor.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From Missoulian, Jan. 31, 2012]

OBJECTORS TO \$3.4B INDIAN TRUST  
SETTLEMENT GET ANGRY PHONE CALLS

(By Matt Volz)

HELENA.—Carol Good Bear started getting the calls about a week ago, after the attorneys who had negotiated a \$3.4 billion settlement over misspent Native American land royalties published the phone numbers and addresses of the four people objecting to the deal.

At first, the resident of New Town, N.D., hung up on the angry voices at the other end. After 15 calls, she unplugged her home phone and started screening her cellphone calls.

She said she worries for her safety now that her address is in the hands of hundreds of thousands of people who might blame her for holding up their money.

“To put my name out there for the public, I think that’s scary that these attorneys would use this tactic and intimidate me into dropping my appeal,” Good Bear said. “I don’t have protection. If somebody is upset about all this and comes at me with a gun, what am I supposed to do?”

The attorneys who published the Jan. 20 open letter represent up to 500,000 plaintiffs in the class-action lawsuit named after Elouise Cobell, the Blackfeet woman from Montana who spent nearly 16 years trying to hold the U.S. government accountable for more than a century’s worth of mismanaged Native American accounts.

The lawsuit claims U.S. officials stole or squandered billions of dollars in royalties owed for land leased for oil, gas, grazing and other uses.

Cobell died in October, just months after a federal judge approved the largest government class-action settlement in U.S. history.

Under the settlement, \$1.4 billion would go to individual Native American account holders. Some \$2 billion would be used by the government to buy up fractionated tribal lands from individual owners willing to sell, and then turn those lands over to tribes. Another \$60 million would be used for a scholarship fund for young Natives.

The settlement took a year to push through Congress, then months for final judicial approval. After the settlement was approved, Good Bear and three other people filed separate objections, each for different reasons.

Those appeals must be heard by a federal appeals court before any money from the settlement can be distributed, with the first scheduled to be heard Feb. 16.

The plaintiffs’ attorneys, led by Dennis Gingold of Washington, D.C., wrote in their letter that the “hopes and wishes of 500,000 individual Indians” had been delayed by those four people. If it wasn’t for them, the first payments would have been made before Thanksgiving, the letter said.

“There is little doubt that they do not share the desires or care about the needs of the class, over 99.9 percent of whom support a prompt conclusion to this long-running, acrimonious case,” the attorneys wrote.

The letter went on to list the names, phone numbers and addresses of Good Bear, Kimberly Craven of Boulder, Co.; Charles Colombe of Mission, S.D.; and Mary Lee Johns of Lincoln, Neb. The attorneys invited people to “ask them directly about their motives” and cautioned them to “please be civil in your communications.”

The letter was published in the “Ask Elouise” email that updates class members on the settlement and also was published on at least one website dealing with Native American issues.

Gingold said Monday that he was preparing for oral arguments and could not comment on the letter.

Good Bear and Johns, who agreed to speak to the Associated Press, said they believe the letter was an attempt to intimidate them into dropping their appeals, but it will not work.

“Obviously they don’t know me to think I could be brow-beaten into quitting,” Johns said.

Both said they have received phone calls of support interspersed with the angry ones.

Craven and Colombe declined to comment, referring questions to their attorneys. Craven’s attorney, Ted Frank, said in an email that he took his concerns to the plaintiffs’ attorneys and they agreed to stop disseminating the letter.

Frank said he was satisfied with that promise and that attempting to have the judge address whether the letter was right or wrong would only distract from the appeal.

“Other than a corrective communication and sanctions, there isn’t much else we could get in relief from the court, and neither is worth the distraction from preparation for oral argument,” Frank said.

Each objector is appealing the settlement for his or her own reasons. Craven and Johns both say the settlement does not include an accounting for how much money was lost, which is what Cobell originally set out to accomplish, and that many class members did not understand that they could have opted out of the deal.

Johns and Good Bear both object to the class of landowners that the settlement creates, saying each is different and their claims should be assessed differently. Johns added that the tribes should have been involved in the process from the start, not just individuals.

[From Native American Times, Feb. 6, 2012]

COBELL CLASS MEMBERS QUESTION  
SETTLEMENT, ATTORNEY CONDUCT

(By Dana Attocknie)

ATTORNEYS RELEASED NAMES, ADDRESSES AND PHONE NUMBERS OF THE FOUR CASE APPELLANTS IN AN EMAIL TO THE PUBLIC AND MEDIA JAN. 20

WASHINGTON.—Class Counsel for the Cobell v. Salazar class action lawsuit sent out a letter Jan. 20 to Class Members throughout Indian Country explaining the reason for the delay in their monetary payment rests with four Class Members who are appealing the settlement.

“What they did by sending out this letter is very, very unethical,” Mary Lee Johns, Cheyenne River Sioux/Lakota, said. “They sent out this email to all the individuals and listed our names, addresses and telephone numbers. One of the individuals that appealed is getting death threats and now they got her address. This is not the way to conduct business in Indian Country.”

Johns is appealing the settlement along with Carol Eve Good Bear, Fort Berthold Reservation, and Charles Colombe, Rosebud Sioux. They are represented by David Harrison, an attorney based out of Albuquerque, N.M. They are in the early stages of their brief, which is due to be filed in March with oral argument set for May 15.

Harrison said the suggestion in the letter, dispersed by the plaintiff’s counsel, that the appellants don’t believe fellow Class Members are entitled to relief or payment from their trust funds is not true. “It’s not that they’re just trying to make sure that no-

body’s paid; they’re trying to make sure that this deal is legal,” Harrison said.

Another appeal is from Class Member Kimberly Craven, Sissten-Wahpeton Oyate, who is represented by Ted Frank, an attorney with the non-profit Center for Class Action Fairness located in Washington, D.C. The Craven brief was complete Jan. 6 and oral argument is scheduled for Feb. 16 in Washington, D.C. before a three judge panel.

Frank said Craven believes the settlement is illegal and it’s in the best interest of the Indian community that it be overturned. He said the Historical Accounting Class is not giving Class Members an opportunity to opt out if they feel their right to an injunction is more valuable than the monetary relief. In addition the structure of the settlement payments contradict what the D.C. circuit said would be permissible in earlier Cobell litigation, because it’s not rationally related to the damages Class Members have suffered, he said.

“So you have a problem that Class Members who have suffered the most injury are getting the same as or less than Class Members who have suffered no injury at all,” Frank said. “(Also) There’s the problem of conflict of interest created by the fact that Ms. Cobell negotiated a settlement that would pay \$12.5 million dollars to herself.” The beneficiaries of the settlement fall into two groups; the Historical Accounting Class and the Trust Administration Class. Harrison’s clients also question the fairness of the Accounting Class and the blanket \$1,000 payment everyone would receive.

“The courts have been saying all this time, and the plaintiffs have said, the case is about an accounting, we want an accounting, and now they’re saying ‘Oh heck with the accounting, just give everybody \$1,000 and we’ll call it even,’” Harrison said, adding that some account holders have a great deal of money go through their account while some people have very little. “One hundred and seven thousand Indians, collectively, only have \$15,000 between the whole bunch of them in their accounts in recent years, but every one of those 107,000 people is going to get \$1,000. . . to them the settlement probably seems like a very good deal.”

Harrison also said the leftover money to be divided between land owners is based on a formula that measures how much money has gone thru a person’s account, which would not be fair either. “They’re not going to be paid out based on how much (a person) lost or how much you have coming; it’s going to be based on how much you got. The people who got paid improperly; if they got paid more than they had coming they get unjustly enriched again and if they got paid less than they had coming they’re going to get victimized again, and that’s just the way the formula works.”

Last year some Individual Indian Money (IIM) account holders also questioned why their attorneys may receive more money than them from the \$3.4 billion settlement. The Class Counsel is requesting \$223 million, which is 14.75 percent of the 1.5 million dollars to be dispersed to Class Members. Lead attorneys for the settlement include Keith Harper, of Kilpatrick Townsend & Stockton LLP, and Dennis Gingold.

Harper toured Indian Country last year with other Cobell attorneys explaining the settlement and defended their request for remuneration. During a March 2010 meeting in Anadarko, Okla., Harper said the amount requested by the attorneys is not double the expenses. He then quoted Gingold, who said they are only asking for what their expenses were, and at the end of the day it’s up to the courts to decide what they will get paid.

Class Counsel’s letter to Class Members stated there is little doubt the appellants do

not have the same desires or care about the needs of their fellow Class Members, and the appellants' behavior does not seem to be in the best interest of Class Members.

Johns said she hasn't received many calls because of the letter, but most callers were supportive and one person just wanted to understand the settlement and the appeals. "This has nothing to do with Elouise Cobell, please understand that. People always use her passing away and all that to try and make us feel bad, but this has nothing to do with her. The reason why I did what I did was based upon what I believe was wrong with the suit," Johns said. "Now it has nothing to do with the money, it has nothing to do with any of that. It has to do with the protection. I'm doing it because I believe that they're opening up the gate to a lot of serious problems for Indian Country in the next 20 years."

Johns said she was upset when she initially found out that IIM account holders were, "jerked into this class action suit without our consent" and also that tribes weren't involved. She said since the class action was brought about by four individual Indians there was not the unique government-to-government relationship. She feels individualizing Indians will help break up the tribes and references the Dawes Act to illustrate her point. "You know the intent of the Dawes Act was to break up these tribes so that's one of the reasons why I was very concerned," she said. "We're standing basically by ourselves without the protection of our tribe." Another concern is the land. Johns said the settlement was originally supposed to be about an accounting and not about the land. She said the lands were severely mismanaged by the federal government and people put too many cattle on their land so it was overgrazed and ended up with prairie dogs and the grasses were just not the same. ". . . the biggest rip off was when the federal government sat down with the Cobell lawyers and made this deal because they were basically getting away free for this amount of mismanagement . . ." Johns said. "The federal government is winning on this one. They got home free without ever having to restore lands, and they didn't ever have to pay individual Indians for mismanagement of their land. They made this deal, and to me, it's an unholy deal that these attorneys have negotiated with the federal government so that they could collect \$99 million dollars. So who loses on this? They keep saying, 'Oh, you know, you're going to get this money.' What kind of money? You know maybe everybody is going to get maybe \$1,200 dollars . . . and yet look at what we're losing."

Johns said the Cobell attorneys should have made sure the lands were restored back to their original state before an agreement was made. She said Class Counsel sat down with the federal government when they originally lost the case and that's when the government said it would throw in \$3.5 billion if an Administration Class was included for the mismanagement of lands, plus some of the money would be used to purchase lands that were fractionated shares. "Now, there's another part of this that people didn't understand, was this whole \$1 billion dollars that they're giving the federal government to buy the land back. That's a bait and switch deal," she said. "Before that land that they purchased for \$100 can be given back to your tribe, your tribe has to pay the federal government \$100. So basically, all it did was give the federal government \$1 billion dollars to buy Indian land . . . to me it's a shell game and the Indians are the ones who are losing out."

Johns other concerns are: the settlement is a complicated process, the Bureau of Indian

Affairs could not participate in explaining to the individual Indians what their rights were, and it was not clear how to opt out. She said there are cases, with members of the Three Affiliated Tribes for example, where Indian people are seeking justice in court but because of the class action settlement they cannot seek a claim against the federal government. "If you didn't opt out, you're forever barred from ever going to court on mismanagement," Johns said. "One of the things that the federal government wanted to do was hurry up and get this done so they could wash their hands of us. They opted out."

Frank also mentioned the case of Ramona Two Shields v. United States, where "the government is arguing that the Cobell settlement is preventing these Indians from getting their fair recovery."

Johns also questions who the lead plaintiff is now. In other words who is directing Class Counsel? Lead Plaintiff Elouise Cobell died Oct. 16, 2010. The remaining plaintiffs are James Louise Larose, Thomas Maulson and Penny Cleghorn. Johns said people may say she's being unfair by appealing the case but questions who is looking out for the Indian people—"People like the four of us that really truly want to make sure that this is good for the people," she said. "Everybody's glad that I did it," Johns said. "My tribe passed a resolution that was totally against the Cobell (class action suit/settlement). I feel very confident that what I'm doing is in the best interest of . . . my family and those who got up and objected to Cobell all along."

Cobell spokesperson Bill McAllister told Native Times that Class Counsel is not commenting on the case.

From: askelouise@cobellsettlement.com

Sent: Friday, January 20, 2012

To: Mary Zuni

Subject: Ask Elouise Letter

DEAR INDIAN COUNTRY: Following the passing of our leader and friend, Elouise Cobell, Class Counsel is responding to your continuing questions and concerns regarding the settlement of the Cobell lawsuit.

What is the current status of the settlement? Unfortunately, notwithstanding the hopes and wishes of 500,000 individual Indians and despite Class Counsel's best efforts, the settlement has been delayed by 4 class members, each of whom is challenging the landmark settlement in the U.S. Court of Appeals for the D.C. Circuit. We expect that these appeals will be resolved in another 6 months, provided that no appellant seeks further review in the Supreme Court.

But for these appeals, your Historical Accounting Class payments would have been distributed before Thanksgiving 2011, and it is likely that your Trust Administration Class payments would have been made by Easter 2012.

However, because of the appeals, your Historical Accounting Class and Trust Administration Class payments cannot be made until after the appeals have been resolved, provided that we prevail on appeal. No one knows when that will occur. Historical Accounting Class payments should be made within a few weeks after the appeals are decided. Trust Administration Class payments should be made within about 6 months after you receive your Historical Accounting Class payment.

Class Counsel understands your increasing frustration and concerns. We know the difficulties many of you face and we have spoken to hundreds of you who are in extremis this winter season. It is with our utmost sympathy and disappointment that we share this unfortunate news.

Who is appealing? And, why are they appealing? Your payments are being held-up by

4 people: Kimberly Craven (Sissten-Wahpeton Oyate), Charles Colombe (Rosebud Sioux), Carol Eve Good Bear (Fort Berthold Reservation), and Mary Lee Johns (Cheyenne River Sioux). Notably, Colombe, Good Bear and Johns are represented by David (Davey) Harrison, an Albuquerque lawyer and former BIA employee.

Their reasons vary slightly, but are the same on one fundamental point. At bottom, each believes that you are not entitled to the relief (nor the payment of your trust funds) that has been provided in the settlement agreement notwithstanding a century of abuse, malfeasance and breaches of trust by the United States government. Each of the appealing class members has filed papers that will kill the settlement if any one of them prevails on appeal. This means that you would receive nothing from the settlement: no payment, no scholarship funds, no land consolidation, and no further trust reform.

Craven has railed against the settlement since it was first announced over two years ago, going so far as to claim: "after 14 years of acrimonious litigation, the Cobell plaintiffs are entitled to no monetary recovery whatsoever from the courts." (<http://thehill.com/blogs/congress-blog/judicial/112807-bailing-out-the-smartest-guys-in-the-room>). Mary Johns has sought to remove the judge who approved the settlement, Thomas F. Hogan. There is little doubt that they do not share the desires or care about the needs of the class, over 99.9% of whom support a prompt conclusion to this long-running, acrimonious case.

Why would anybody appeal? I'd like to contact these class members, how do I do that? We know of no explanation for their behavior that is consistent with your best interests. However, if you want to ask them directly about their motives, you should contact them at the following address or phone numbers: Kimberly Craven, Mary Lee Johns, Carol Eve Good Bear, Charles Colombe.

Notwithstanding your frustration and difficulties, if you choose to contact any of the 4 appellants, please be civil in your communications.

Isn't there something you can do to speed up this process? No. Class Counsel has reached out to the 2 attorneys who represent the 4 appealing class members to resolve or settle whatever issue they may have with the settlement. However, we have been rebuffed or ignored each time. Unless each of the appealing class members withdraws his or her appeal, there is no way to shorten the judicial review process.

Haven't you been paid? Class Counsel has not been paid. We are in the same position that you are in—we will not be paid until the appeals have been resolved.

Prior Ask Elouise letters can be found on the settlement website: [http://cobellsettlement.com/class/ask\\_elouise.php](http://cobellsettlement.com/class/ask_elouise.php). There is also a "frequently asked questions" section to answer the most common questions received: <http://cobellsettlement.com/press/faq.php>.

Kind Regards,

CLASS COUNSEL,  
*Cobell v. Salazar.*

QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR JOHN MCCAIN FOR KEITH HARPER, NOMINATED TO BE U.S. REPRESENTATIVE TO THE U.N. HUMAN RIGHTS COUNCIL SENATE FOREIGN RELATIONS COMMITTEE HEARING ON SEPTEMBER 24, 2013

1. How long did you serve as "co-class counsel" on Cobell?

The Cobell class was certified on February 4, 1997, and so I began to serve as class counsel on that date.

2. On what date did you first learn about the January 20, 2012 "Ask Elouise" letter?

I learned of the January 20, 2012, "Ask Elouise" letter on January 20, 2012, after it was released.

3. Did you receive a draft or have prior knowledge of the January 20, 2012 letter before it was published?

No.

4. As co-class counsel, was it your responsibility to review documents and communications to plaintiffs including the January 20, 2012 "Ask Elouise" letter, prior to transmission or publication?

No. Lead Counsel—who is a solo practitioner not part of Kilpatrick Townsend & Stockton LLP ("Firm")—was responsible for determining who among the litigation team were responsible for which tasks. Under this arrangement, the principal attorneys each had their own areas of responsibility. The "Ask Elouise" letters were not part of my responsibilities.

Lead Counsel did not circulate the January 20, 2012, "Ask Elouise" letter either to me or, to the best of my knowledge, to any of the lawyers in the Firm prior to its publication.

5. How did you become aware of the January 20, 2012 "Ask Elouise" letter?

I became aware of the "Ask Elouise" letter on January 20, 2012, after the letter's public release, when a lawyer representing one of the appellants sent an e-mail in objection.

6. When the letter became public, why did you reportedly refuse to respond to press inquiries concerning the letter?

At the time of the letter's release, we were in active litigation. Although I personally did not support the letter, I was told by a Firm colleague that the Class Representatives, at the time, did support it. Accordingly, I was duty bound to not comment in a manner contrary to the letter and therefore could not express my reservations publicly about the re-publishing of the contact information of appellants.

7. What is your understanding of how the January 20, 2012, "Ask Elouise" letter was transmitted to plaintiffs? By mail, online, print publishing, email, or other?

At the time of the September 24, 2013, hearing, my understanding was that the letter was posted on January 20, 2012, on the internet site [www.indiantrust.com](http://www.indiantrust.com) and that it had not been mailed or emailed to the entire class of 500,000 individuals. I have since confirmed that the letter was not emailed or mailed to the entire class of 500,000 individuals. Rather, I have now been informed that it was emailed by the claims administrator at the direction of Lead Counsel's litigation consultant, on January 20, 2012, to a listserv comprised of those who had requested periodic electronic updates on the litigation. It was also posted on the [indiantrust.com](http://indiantrust.com) website at approximately that same time.

Because I was not responsible for managing postings to the website, or distributions to the listserv, I did not understand the precise manner in which the letter was posted and distributed until I was informed by colleagues after the September 24, 2013, hearing.

8. Is it correct that you would not receive attorney's fees under the Cobell settlement legislation until the appeal discussed in the January 20, 2012 "Ask Elouise" letter was resolved?

Yes.

9. Is it correct that one of the appellants identified in the January 20, 2012 "Ask Elouise" letter appealed the settlement because she determined that plaintiff attorneys were seeking excessive attorney's fees?

No.

10. What is your connection to the website, "Indian Trust Settlement" ([www.IndianTrust.com](http://www.IndianTrust.com))?

My connection to the website was, and remains, of limited scope.

The website [www.indiantrust.com](http://www.indiantrust.com) is owned by a litigation consultant to the Lead Counsel. Lead Counsel and the litigation consultant maintained custody and control of the website content at all times while the case was in active litigation, which ended in December 2012. During that time, the website published material relevant to the case, such as court filings. I and other Class Counsels worked on briefs and other materials, which were filed by paralegals or the litigation consultant. After filing these documents, the litigation consultant to Lead Counsel published them to the website.

I understand that the website is presently administered by the Garden City Group (GCG), the official claims administrator for the Cobell case, though the litigation consultant maintains ownership.

11. On what date was the January 20, 2012 "Ask Elouise" letter ([www.indiantrust.com/elo/1\\_20\\_12](http://www.indiantrust.com/elo/1_20_12)) removed from the Indian Trust Settlement website?

After learning of the letter's release, I expressed my misgivings about publishing the letter, especially the contact information of the appellants, to both other Class Counsel and other professionals at Kilpatrick Townsend. I urged my colleagues to facilitate removing the letter and to avoid posting material that could be construed to suggest harassment of appellants. On or around January 21, I was informed by colleagues that discussions about removing the letter from the website would be held with one of the appellant's attorneys who had objected to the letter. I understand from GCG that on January 22, 2012, the litigation consultant for Lead Counsel requested that GCG remove the letter from the website. On or about January 22, I was told by a Firm colleague that the letter was removed from the website. Additionally, my colleagues and I checked the website at that time and there found no link to the letter. Thus, at the time of my testimony on September 24, 2013, I was under the impression that the letter was indeed not on the [Indiantrust.com](http://Indiantrust.com) website.

After I was informed on September 24, 2013, that the letter was still available through an Internet search, my law partners requested that GCG delete the letter so that it would be unavailable through an Internet search. I have been told that GCG did so on September 24, 2013.

12. Why was the January 20, 2012 "Ask Elouise" letter removed from the website when it was and was it removed under your request or direction?

After I was informed on September 24, 2013, that the letter was still available through an Internet search, my law partners immediately requested that GCG delete the letter so that it would be unavailable through an Internet search. I have been told that GCG did so on September 24, 2013.

13. What is your interpretation of the cap on fees, expenses and costs in the Claims Resolution Act of 2010 for Cobell v. Salazar?

While Congress considered capping fees as an amendment to the Claims Resolution Act, it ultimately decided not to do so. The Class Representatives, our clients, did have an agreement with Defendants that neither side would appeal any fee award between \$50 and \$99.9 million. In addition, under this same agreement, Class Representatives agreed not to affirmatively assert Counsel be paid more than \$99.9 million in attorneys' fees.

14. Were you part of a petition to federal courts for \$223 million in attorney's fees in the class action lawsuit, Cobell v. Salazar?

The Class Representatives, our clients, decided that, consistent with the Agreement with Defendants, there would be an express request for \$99.9 million in fees. The Petition

for Fees specifies that "Plaintiffs hereby assert a fee of \$99.9 million for Class Counsel's work through December 7, 2009." The Petition went on to explain that the Court had the discretion to award more under the controlling law, but that both Plaintiffs and Defendants agreed not to appeal if the award was between \$50 and \$99.9 million. The Petition also stated, consistent with client direction, that in comparable cases, awards ranging around \$223 million would be consistent with controlling law. I was one of the counsel who signed this petition on behalf of our clients. The Court ultimately awarded the \$99 million amount asserted by plaintiffs in the petition for fees.

As I understand it, the Class Representatives, especially Ms. Elouise Cobell, believed that it was critically important and consistent with the best interest of the Class to seek a fee award in accord with fee awards for non-Indian class actions of similar size and complexity. She expressed concern that otherwise attorneys would be reluctant to represent Native American plaintiffs without financial means who are deprived of their rights by the federal government or other entities. This was unacceptable to Ms. Cobell and she was particularly sensitive to this point because, as she made clear on the record, she had grave difficulties finding lawyers to bring the Cobell case in the first place.

15. Are you associated with a petition for additional fees related to the Cobell settlement? If so, for how much?

No.

16. Approximately how many hours did you bill your clients for work in relation to Cobell at Kilpatrick and Native American Rights Fund (NARF)?

As a partner with Kilpatrick, I worked a total of 4,837.7 hours on Cobell through June 30, 2013.

I am no longer at NARF and I do not have access to this information, however, NARF's court filings indicate I worked 19,671 hours on the Cobell case.

17. Approximately how much in fees have you collected to date in relation to Cobell?

On July 27, 2011, District Judge Thomas Hogan awarded plaintiffs \$99 million in attorney's fees. Of that amount, Judge Hogan awarded approximately \$85 million to be distributed, after all appeals were final, to Class Counsel. Class Counsel included Dennis Gingold, Thaddeus Holt, and Kilpatrick Townsend & Stockton LLP. The remainder of approximately \$14 million was set aside because other counsel who had worked on the case in times prior were seeking their own award, which in aggregate amounted to approximately \$14 million. The Court later ordered that these fee issues be mediated but thus far the mediation has not been fruitful.

18. What fees did you secure from tribal governments for work on the class action lawsuit, Cobell, or any other lawsuit against the federal government for mismanagement of tribal trust assets? Please identify each tribal government, the type of fee, and the rate that was negotiated for each.

We did not receive any payment for fees from tribal governments for work on the Cobell case. As for tribal trust lawsuits, the Firm received the fees as follows for our four tribal clients:

Ak-Chin Indian Community (AZ) agreed to pay the Firm hourly fees on a monthly basis so there was no contingency fee.

Tohono O'odham Nation (AZ) agreed to pay discounted hourly fees on a monthly basis plus a 6% contingency fee at the end of the case. The amount of that fee paid to the Firm at the end of the case was \$1,425,000 (this was in addition to the fees paid each month since 2006).

Initially, in 2006, the Passamaquoddy Tribe of Maine agreed to pay fees in an identical

manner as the arrangement with Tohono O'odham. However, within a few months of our engagement, the Tribe asked us to change the arrangement so it would not have to pay the discounted hourly rates on a monthly amount. Accordingly, we modified the agreement consistent with the client wishes so that compensation for attorneys' fees was exclusively through a contingency fee. Unlike other clients, the Passamaquoddy Tribe made no payment of fees on a monthly basis throughout the litigation, thus the contingency fee agreed to was 15%. This is well below the standard of 30%–40% for comparable contingency fee arrangements. When the case settled, the amount paid to the firm was 15% of the settlement or \$1.8 million. In an October 1, 2013, letter to Indian Country Today, Passamaquoddy Chief Joseph Socobasin on September 24, 2013 confirmed that the Tribe "was very happy with the settlement representation prepared by Kilpatrick Townsend & Stockton firm."

The Salt River Pima-Maricopa Indian Community (AZ) has not given the Firm permission to disclose the specifics of its fee arrangement. However, we can disclose that they paid monthly fees with a contingency at the end similar to Tohono O'odham.

19. In your negotiations with tribal governments over fees referenced above, were tribal governments made aware that the defendant, the federal government, would be responsible for covering or directly paying their fees to you?

Yes. Two tribes—the Passamaquoddy Tribe and the Tohono O'odham Nation—agreed to have the funds directly paid to the Firm. This was not unusual and indeed the model used in other cases such as the Osage litigation (represented by another Washington, D.C., based law firm). The Tribes had full ability to opt for non-direct payment to the attorneys. The Salt River Pima-Maricopa Indian Community, for example, decided to keep the terms of counsel fees confidential and therefore did not seek direct payment to counsel. For the tribes that did authorize direct payment, they did so expressly. Both the Passamaquoddy Tribe and the Tohono O'odham Nation expressly authorized direct payment to our Firm in tribal council resolutions approving the settlements.

20. Please identify which tribes you negotiated fees referenced in the above questions between 2008 and 2010?

None of the fees negotiated for tribal trust cases were negotiated in this time frame. All were negotiated in 2006 or early 2007.

21. Did you negotiate Cobell fees at different rates for different tribes? Why is there a variance in rates?

No. Cobell fees were not negotiated for or with tribes. The fee in Cobell was determined by the court and paid out of the common fund. Therefore, all plaintiffs in the Cobell case, irrespective of tribal affiliation, were treated the same.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

#### ENERGY POLICY

Mr. BARRASSO. Mr. President, today the Obama administration released a new plan intended to shut down American powerplants. Instead of celebrating his policies in the Rose Garden, President Obama delegated the bad news to the Environmental Protection Agency.

Make no mistake about it; what they are announcing today is another step in the President's plan to make electricity rates "necessarily skyrocket."

Remember, that is what the President promised Americans when he was running for President the first time in 2008.

Of course, when he was elected Congress said no—no to his radical plan. Even when the Democrats controlled the House of Representatives, NANCY PELOSI was the Speaker of the House, and the Democrats had 60 Members of the Senate—even with complete Democratic domination in both Houses of Congress—Congress still said: No, Mr. President, this is a bad idea.

So the President decided he knew better than the American people, the elected representatives. He decided to go around Congress and go around the American people.

I turn to the front page of today's Wyoming Tribune Eagle out of Cheyenne, WY, and the headline is: "Obama Lets EPA Do His Dirty Work." The subheadline says: "The president's charge to limit emissions has caused him so much criticism that he is no longer leading the pack." On the front page of the Wyoming Tribune Eagle they go on to say:

When the Obama administration unveils its much-anticipated proposal to curb power plant emissions, this cornerstone of the president's climate change policy—the most significant environmental regulation of his term—will not be declared in a sun-bathed Rose Garden news conference or from behind the lectern in a major speech.

It will not be announced by the president at all, but instead by his head of the Environmental Protection Agency, while President Barack Obama adds his comments in an off-camera conference call. . . .

Talk about something that is unpopular with the American people, it is this.

About 1 year ago, the President put out rules limiting carbon dioxide emissions from new powerplants—powerplants that were being constructed—but today—today—his Environmental Protection Agency is applying tight new limits on the emissions of existing powerplants—powerplants that are already there producing energy.

The administration says it is going to allow States "flexibility" in how they meet the new limits. I believe any "flexibility" that is being offered is just an illusion. States will have a severely limited number of options for what they can do to meet the standards. Every one of those options is going to raise the cost of energy for American families. That means consumers will not even get the illusion of flexibility; they will get higher energy costs.

Businesses are going to have to find ways to pay for their own higher bills because it is not just going to be families, when they turn on the light switch, who are going to get a higher electric bill. As the President said, electricity rates will necessarily skyrocket, but businesses are going to have to find ways to pay for their higher energy costs, which will mean hiring fewer people, laying off people, passing on the cost to others.

That is why the U.S. Chamber of Commerce says an aggressive policy targeting coal-fired powerplants will lead to less disposable income for families and thousands of jobs lost. So families will have less disposable income and thousands of jobs will be lost.

We just learned last week that our economy shrank by 1 percent in the last quarter. The U.S. economy shrank. This is the first time in years the economy actually shrank by 1 percent in the last quarter. It is the first time it has happened, actually, since 2011. Our labor force participation rate is at the same level it was when Jimmy Carter was the President of the United States. So now the Obama administration wants to put more Americans out of work.

The action they are taking today is the height of irresponsibility and it is tone-deaf leadership. The Obama administration is going to try to defend their extreme regulations by saying, once again, these changes will help save lives and keep families healthy. The fact is they are totally ignoring the undeniable fact that when Americans lose their jobs, their health and the health of their children suffer.

There is an enormous public health threat from high unemployment, specifically chronic high unemployment. It increases the likelihood of hospital visits, illness, and premature death. It hurts children's health and the well-being of families. It influences mental illness, suicide, alcohol abuse, spouse abuse. It is an important risk factor in stroke and high blood pressure and heart disease—major things that impact a family, raise the cost of care. I saw it in my days of medical training in medical practice, and the White House knows it too.

One might say: How does the White House know? The New York Times actually ran an article on this in November of 2011—November 17, to be exact. The headline of the article was "Policy and Politics Collide as Obama Enters Campaign Mode." "Policy and Politics Collide as Obama Enters Campaign Mode." The article says a meeting occurred in the White House between the American Lung Association and then-White House Chief of Staff William Daley, and the meeting was about the Environmental Protection Agency's proposed ozone regulations.

In that White House meeting, White House Chief of Staff Daley asked a simple question when confronted with the argument that additional Clean Air Act regulations would improve public health. Daley asked: "What are the health impacts of unemployment?" Well, I have just gone over them with you, Mr. President. Those are the health impacts of unemployment. So the White House knows about it—to tally aware about it.

When the Environmental Protection Agency announced these new rules today, the President himself was reportedly talking off camera—a conference call—on the phone with the