UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et     .
al.                           .
                              .
          Plaintiffs,         .     Civil Action 96-1285
                              .
     v.                       .
                              .     Washington, D.C.
DIRK KEMPTHORNE, Secretary    .     Thursday, June 12, 2008
of the Interior, et al.       .     1:57 p.m.
                              .
          Defendants.         .

. . . . . . . . . . . . . .


TRANSCRIPT OF TRIAL - AFTERNOON SESSION
BEFORE THE HONORABLE JAMES ROBERTSON
UNITED STATES DISTRICT JUDGE

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Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription .


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01:21:06PM  1              P R O C E E D I N G S

01:21:06PM  2          COURTROOM DEPUTY:  Please come to order and remain

02:15:27PM  3   seated.

02:15:30PM  4          MR. QUINN:  Good afternoon, your Honor.

02:15:33PM  5          THE COURT:  Proceed.

02:15:34PM  6          MR. QUINN:  Before we begin plaintiffs' cross of the

02:15:37PM  7   witness, defendants would like to move into evidence exhibits

02:15:42PM  8   used that relate to Ms. Herman's testimony today.  That would

02:15:48PM  9   include Defendants' Exhibit 370.  That's the internal funds and

02:15:54PM  10  flowchart.

02:15:55PM  11         THE COURT:  Right.

02:15:56PM  12         MR. QUINN:  371, which is the table, the updated to

02:16:02PM  13  AR171, Defendants' Exhibit 342, which is the first binder set,

02:16:10PM  14  five total.  We referred to one of those today in the middle of

02:16:13PM  15  her testimony, as well as the documents that Ms. Herman

02:16:20PM  16  discussed and testified to in terms of historical money flow

02:16:25PM  17  examples.  That would be Defendants' Exhibits 474, 475, 477,

02:16:32PM  18  478, 479, 480, 481, Exhibit 485, Defendants' 486, Defendants'

02:16:48PM  19  491.  There is the highlighted table of 371 indicating that

02:16:54PM  20  relative to reliance of materials used in table 171, the color

02:17:04PM  21  highlighted table, that's Defense Exhibit 492, and then summary

02:17:09PM  22  table, Defendants' 495, and the electronic era own accounts

02:17:17PM  23  analysis, Defendants' 496.  Also we would like to move into

02:17:30PM  24  evidence the entire documents that are used in excerpted form

02:17:34PM  25  within Defendants' binder, Defendants' Exhibit 371, and I could


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02:17:38PM  1   identify those exhibit numbers for the Court.  That would be

02:17:40PM  2   Defendants' Exhibit 80, 85, 96, 380, 381, 385, 386, 387, 88, 89,

02:17:53PM  3   90, 391, 395, 413, 423, 424, 425, 426, 427, 428, 429, 430, 431,

02:18:11PM  4   432, 433.  That should cover the materials, entire historical

02:18:21PM  5   document Ms. Herman relied on in connection with the calculation

02:18:26PM  6   of Defendants' Exhibit 371, and we would ask the Court to admit

02:18:30PM  7   those into evidence at this time.

02:18:33PM  8          MR. DORRIS:  Your Honor, may I be heard on that a

02:18:35PM  9   moment?

02:18:35PM  10         THE COURT:  Yes.

02:18:36PM  11         MR. DORRIS:  Many, if not most of those exhibits, we

02:18:39PM  12  don't even have yet.  I've not had a chance to look at all of

02:18:47PM  13  the exhibits.  I don't have expect to have objections to many of

02:18:50PM  14  the ones he mentioned.

02:18:51PM  15         THE COURT:  Let's just take it under advisement,

02:18:53PM  16  consider the motion made.  If you have a chance to determine

02:18:56PM  17  which ones you object to we'll deal with those objections.

02:18:59PM  18         MR. DORRIS:  I can assure you I will by Monday

02:19:01PM  19  morning.

02:19:02PM  20         THE COURT:  All right, sir.

02:19:02PM  21         MR. DORRIS:  Thank you, your Honor.

02:19:03PM  22    MICHELLE HERMAN, WITNESS FOR THE PLAINTIFFS, PREVIOUSLY SWORN

02:19:03PM  23  BY MR. DORRIS:

02:19:03PM  24  Q.     Good afternoon, Ms. Herman.

02:19:05PM  25  A.     Good afternoon.


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|---|---|---|
| 02:19:06PM | **1** | Q.   Since October of 2007 what percentage of your professional |
| 02:19:14PM | **2** | time has been devoted to IIM trust issues that you testified |
| 02:19:17PM | **3** | about today? |
| 02:19:17PM | **4** | A.   Probably roughly 98 percent. |
| 02:19:20PM | **5** | Q.   Okay.  I'm not even going to ask about the other two |
| 02:19:26PM | **6** | percent.  How much of your time has been spent working on the |
| 02:19:30PM | **7** | revisions to AR-171 including what we have in this notebook we |
| 02:19:37PM | **8** | were given shortly before lunch? |
| 02:19:39PM | **9** | A.   I focused by efforts on that probably since the beginning |
| 02:19:44PM | **10** | of this year. |
| 02:19:44PM | **11** | Q.   So from January through now, early -- well, it's not so |
| 02:19:51PM | **12** | early anymore, June, you spent most of your professional time |
| 02:19:55PM | **13** | working on revising AR-171? |
| 02:19:58PM | **14** | A.   I don't know exactly when early in this year, but the time |
| 02:20:03PM | **15** | spent revising this has also, I'm also including our work on the |
| 02:20:06PM | **16** | data completeness validation. |
| 02:20:08PM | **17** | Q.   The two go somewhat hand-in-hand? |
| 02:20:10PM | **18** | A.   They do. |
| 02:20:11PM | **19** | Q.   Okay.  Let me tell you kind of where I'm headed and we kind |
| 02:20:18PM | **20** | of will march through this.  AR-171 and what has been developed |
| 02:20:25PM | **21** | from it are kind of in a couple different periods, at least from |
| 02:20:30PM | **22** | the sources you looked at, correct? |
| 02:20:31PM | **23** | A.   Yes, they are. |
| 02:20:33PM | **24** | Q.   And I want to start talking about the pre-1972 period and |
| 02:20:37PM | **25** | then we'll move chronologically forward, okay? |

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|---|---|---|
| 02:20:40PM | **1** | A.   All right. |
| 02:20:41PM | **2** | Q.   Now, in pre-1972 when we look at both AR-171 and then the |
| 02:20:53PM | **3** | new version, who provided that information to you? |
| 02:20:58PM | **4** | A.   The total collection number and the total disbursement |
| 02:21:01PM | **5** | number was provided by NORC.  The Osage numbers were determined |
| 02:21:05PM | **6** | by our firm, and the tribal IIM estimate was provided by Morgan, |
| 02:21:14PM | **7** | Angel & Associates. |
| 02:21:14PM | **8** | Q.   So for anything in the Osage column that is -- for the |
| 02:21:18PM | **9** | entirety of that chart, that is something that you have |
| 02:21:20PM | **10** | calculated? |
| 02:21:21PM | **11** | A.   That's correct. |
| 02:21:21PM | **12** | Q.   When you say your firm, was that you personally did those |
| 02:21:27PM | **13** | Osage calculations? |
| 02:21:27PM | **14** | A.   Myself and individuals who work for me. |
| 02:21:32PM | **15** | Q.   And then with respect to the tribal IIM, you said Morgan |
| 02:21:39PM | **16** | Angel, was it Mr. Angel that provided that to you? |
| 02:21:41PM | **17** | A.   Yes, Dr. Angel. |
| 02:21:42PM | **18** | Q.   And Dr. Angel provided to you the amount of money to put |
| 02:21:47PM | **19** | down for tribal IIM? |
| 02:21:49PM | **20** | A.   Dr. Angel provided an estimate, the ten percent, and then |
| 02:21:53PM | **21** | later fifteen percent numbers. |
| 02:21:55PM | **22** | Q.   Okay.  So he said approximately ten percent of tribal -- of |
| 02:22:04PM | **23** | the collections were tribal IIM for some period? |
| 02:22:07PM | **24** | A.   For the period 1934, I believe -- I'd have to look in the |
| 02:22:13PM | **25** | binder -- through 1951.  We utilized receipt data that Dr. |

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|---|---|---|
| 02:22:17PM | **1** | Angel had gathered times his ten percent estimate. |
| 02:22:20PM | **2** | Q.   Would you look in your binder to confirm -- I want to make |
| 02:22:25PM | **3** | sure we get this right as we move forward. |
| 02:22:27PM | **4** | A.   From 1934 through 1945 a ten percent estimate times a |
| 02:22:44PM | **5** | receipt number from a historical document Dr. Angel had found |
| 02:22:47PM | **6** | was utilized, and then from 1946 a fifteen percent number. |
| 02:22:55PM | **7** | There is no data available for 1950 and '51. |
| 02:22:58PM | **8** | Q.   And where are you looking at this moment, where in the |
| 02:23:01PM | **9** | binder? |
| 02:23:02PM | **10** | A.   At page -- I don't have the DX number, but it's A-1.1, one |
| 02:23:10PM | **11** | of. |
| 02:23:10PM | **12** | Q.   So we're looking in Defendants' Exhibit 372, and you're now |
| 02:23:15PM | **13** | looking under tab A-1.1? |
| 02:23:17PM | **14** | A.   That's correct. |
| 02:23:18PM | **15** | Q.   Okay.  So yours do not have Bates stamps? |
| 02:23:23PM | **16** | A.   No, they do not. |
| 02:23:25PM | **17** | Q.   And what's the red handwriting on the bottom right of the |
| 02:23:35PM | **18** | page you're looking at? |
| 02:23:36PM | **19** | A.   That's the page reference that I was referring to. |
| 02:23:39PM | **20** | Q.   Can you give that to me again? |
| 02:23:40PM | **21** | A.   Yes.  It's A01.1, one of. |
| 02:23:44PM | **22** | Q.   Okay.  That's going to be Bates page ten that we have? |
| 02:23:51PM | **23** | MR. QUINN:  We have a numbered copy if you want it. |
| 02:23:54PM | **24** | It's the same thing, but it does have the numbering on it. |
| 02:23:58PM | **25** | MR. DORRIS:  Okay. |

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|---|---|---|
| 02:23:58PM | **1** | BY MR. DORRIS: |
| 02:23:59PM | **2** | Q.   Mr. Quinn just gave me one with the Bates numbers.  Which |
| 02:24:02PM | **3** | would you prefer to work from? |
| 02:24:05PM | **4** | A.   If that has binder tabs, that's fine; if it doesn't, this |
| 02:24:08PM | **5** | would likely be easier. |
| 02:24:10PM | **6** | Q.   It does have binder tabs.  Would this be easier? |
| 02:24:13PM | **7** | A.   That's fine. |
| 02:24:14PM | **8** | MR. DORRIS:  Your Honor, may I approach the witness? |
| 02:24:15PM | **9** | THE COURT:  Yes, you may. |
| 02:24:16PM | **10** | BY MR. DORRIS: |
| 02:24:34PM | **11** | Q.   So when I look at this page ten it shows the percentage of |
| 02:24:38PM | **12** | receipts for tribal IIM at ten percent from 1934 through 1945, |
| 02:24:44PM | **13** | correct? |
| 02:24:45PM | **14** | A.   That's correct. |
| 02:24:45PM | **15** | Q.   And now that's different than what occurred back in the |
| 02:24:50PM | **16** | October version of AR-171, correct? |
| 02:24:53PM | **17** | A.   Fifteen percent was used from 1934 forward in the earlier |
| 02:24:58PM | **18** | version. |
| 02:24:58PM | **19** | Q.   So he went back and found some historical support that said |
| 02:25:02PM | **20** | no, it shouldn't be fifteen percent, it should be ten percent? |
| 02:25:05PM | **21** | A.   I don't know why Dr. Angel decided ten percent was more |
| 02:25:09PM | **22** | appropriate for that time frame.  My understanding is that this |
| 02:25:12PM | **23** | was the early years after the Indian Reorganization Act and he |
| 02:25:15PM | **24** | felt there would be fewer tribal IIM dollars. |
| 02:25:18PM | **25** | Q.   So in all fairness, this is something that Dr. Angel came |

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|---|---|
| 02:25:22PM 1 | up with and you've used what he provided to you? |
| 02:25:24PM 2 | **A.** That's correct. |
| 02:25:25PM 3 | **Q.** And then he told you to use fifteen percent from 1946 |
| 02:25:31PM 4 | forward; is that correct? |
| 02:25:32PM 5 | **A.** That's correct. |
| 02:25:33PM 6 | **Q.** And at what point in time do you stop using fifteen |
| 02:25:37PM 7 | percent? |
| 02:25:37PM 8 | **A.** When the IRMS data becomes available in 1986. |
| 02:25:42PM 9 | **Q.** So from 1946 through 1984 you've used fifteen percent based |
| 02:25:50PM 10 | on what Dr. Angel provided to you? |
| 02:25:52PM 11 | **A.** Through 1985, yes. |
| 02:25:54PM 12 | **Q.** Okay. Now, I don't see anywhere -- this chart that I'm |
| 02:26:02PM 13 | looking at dies out in 1951. Is that the same chart you're |
| 02:26:08PM 14 | looking at? |
| 02:26:08PM 15 | **A.** That's correct. |
| 02:26:09PM 16 | **Q.** And then what have you put behind this chart? |
| 02:26:15PM 17 | **A.** These are the receipt reports that were utilized to |
| 02:26:19PM 18 | calculate the estimate. |
| 02:26:21PM 19 | **Q.** Okay. Are these documents that Dr. Angel provided to you? |
| 02:26:25PM 20 | **A.** Yes, they are. |
| 02:26:26PM 21 | **Q.** Okay. And so you've included these because he said this |
| 02:26:30PM 22 | was part of his calculation? |
| 02:26:31PM 23 | **A.** That's correct. |
| 02:26:32PM 24 | **Q.** Have you reviewed these documents and studied them in order |
| 02:26:39PM 25 | to be able to answer questions about them today? |

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|---|---|
| 02:26:41PM 1 | **A.** I have reviewed them. I haven't studied them. Dr. Angel |
| 02:26:46PM 2 | and I discussed the various report that he had located over |
| 02:26:49PM 3 | time. |
| 02:26:49PM 4 | **Q.** Would it be fair to say that in terms of whether what is in |
| 02:26:56PM 5 | this exhibit that we're looking at now under this Tab A-1.1, |
| 02:27:04PM 6 | that that's something that Dr. Angel will be better able to |
| 02:27:07PM 7 | answer what was done than you? |
| 02:27:09PM 8 | **A.** Yes. Dr. Angel and I discussed the reports themselves, but |
| 02:27:13PM 9 | he would be better to discuss the percentage utilized to |
| 02:27:17PM 10 | estimate the total number. |
| 02:27:18PM 11 | **Q.** Okay. So that's tribal IIM pre-1972 and a little bit past |
| 02:27:25PM 12 | '72. I take it there's no tribal IIM reflected in your chart |
| 02:27:32PM 13 | prior to 1934? |
| 02:27:34PM 14 | **A.** That's correct. |
| 02:27:34PM 15 | **Q.** And so while it shows tribal IIM for the period 1921 to |
| 02:27:45PM 16 | 1951, it actually doesn't start until 1934? |
| 02:27:48PM 17 | **A.** That's correct. |
| 02:27:49PM 18 | **Q.** Now, the information in terms of total receipts and |
| 02:27:54PM 19 | disbursements, that came from Dr. Scheuren? |
| 02:27:59PM 20 | **A.** That's correct. |
| 02:28:01PM 21 | **Q.** And you told me I think before lunch there isn't anything |
| 02:28:09PM 22 | in this notebook that would show me how that was derived, is |
| 02:28:12PM 23 | there? |
| 02:28:12PM 24 | **A.** That's correct. |
| 02:28:12PM 25 | **Q.** Have you been provided that though from which you then took |

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|---|---|
| 02:28:15PM 1 | the numbers that you put here on your chart? |
| 02:28:18PM 2 | **A.** I was provided an e-mail that contained these numbers in |
| 02:28:21PM 3 | them. |
| 02:28:22PM 4 | **Q.** And where is that e-mail in this notebook? |
| 02:28:25PM 5 | **A.** I did not include the e-mail in the notebook. |
| 02:28:28PM 6 | **Q.** And the e-mail that you were sent just included two or |
| 02:28:33PM 7 | three numbers? |
| 02:28:33PM 8 | **A.** It included a collection number and a disbursement number |
| 02:28:36PM 9 | for each of the three periods. |
| 02:28:38PM 10 | **Q.** And you just took that from that e-mail and put it in your |
| 02:28:42PM 11 | chart without any further study or analysis or thought, correct? |
| 02:28:46PM 12 | **A.** It didn't appear in the first page of the chart because we |
| 02:28:51PM 13 | had to calculate the Osage number and the tribal IIM number, so |
| 02:28:57PM 14 | if you look on page -- it's 372, page eight. |
| 02:29:13PM 15 | **Q.** Okay. |
| 02:29:14PM 16 | **A.** The total column on the chart is always the sum going |
| 02:29:17PM 17 | across, so the values that were provided by NORC appear under |
| 02:29:19PM 18 | the estimated value titles, so you'll see they provided total |
| 02:29:24PM 19 | collection numbers and total business disbursement numbers. |
| 02:29:28PM 20 | **Q.** Okay. So they provided total collections and total |
| 02:29:32PM 21 | disbursements, and from that you had to take out what you |
| 02:29:35PM 22 | thought was Osage and come up then with the Other Receipts |
| 02:29:39PM 23 | column; is that correct? |
| 02:29:41PM 24 | **A.** The Osage was based on our calculations and then the |
| 02:29:44PM 25 | differential was other rights. |

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|---|---|
| 02:29:47PM 1 | **Q.** But it flows, the numbers flow from the numbers that you |
| 02:29:52PM 2 | were given by Dr. Sherod? |
| 02:29:55PM 3 | **A.** That's correct. |
| 02:29:55PM 4 | **Q.** Now, in terms of this, were you provided numbers for each |
| 02:30:01PM 5 | year during this period? |
| 02:30:02PM 6 | **A.** No. I was provided a number for each period. |
| 02:30:05PM 7 | **Q.** Who selected the periods? |
| 02:30:12PM 8 | **A.** Dr. Angel and Dr. Scheuren and I all discussed the periods. |
| 02:30:16PM 9 | **Q.** So you were involved in at least discussing the periods? |
| 02:30:19PM 10 | **A.** That's correct. |
| 02:30:19PM 11 | **Q.** Who made the decision as to what periods would be shown on |
| 02:30:22PM 12 | the chart? |
| 02:30:22PM 13 | **A.** I believe it was a mutual decision. |
| 02:30:24PM 14 | **Q.** Okay. Explain to me why these three periods were selected, |
| 02:30:29PM 15 | because other periods were used in the original version of |
| 02:30:33PM 16 | AR-171. |
| 02:30:34PM 17 | **A.** That's correct. The first period roughly approximates the |
| 02:30:38PM 18 | time frame that Treasury managed the accounts, the second period |
| 02:30:42PM 19 | approximates the time frame that the GAO managed the accounts, |
| 02:30:46PM 20 | and the third time frame is the remainder between when GAO |
| 02:30:50PM 21 | stopped managing the accounts and I had electronic data from the |
| 02:30:57PM 22 | GLGLDC system. |
| 02:30:58PM 23 | **Q.** When you say managed the accounts, what are you talking |
| 02:31:00PM 24 | about, what do you mean? |
| 02:31:01PM 25 | **A.** Excuse me. I should have said reviewed the accounts. |

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|---|---|---|
| 02:31:04PM | 1 | Q. Okay. I mean, BIA was involved all along, correct? |
| 02:31:10PM | 2 | A. That's my understanding, yes. |
| 02:31:11PM | 3 | Q. And so when you were just saying manage the accounts, you |
| 02:31:16PM | 4 | were talking about Treasury for a period reviewed the accounts, |
| 02:31:20PM | 5 | GAO for a period reviewed the accounts, correct? |
| 02:31:23PM | 6 | A. That's correct. |
| 02:31:23PM | 7 | Q. And then for the third period, from 1952 to 1972, what is |
| 02:31:30PM | 8 | that period? |
| 02:31:30PM | 9 | A. From 1952 to 1971 is the remaining period before the |
| 02:31:36PM | 10 | electronic data was available. |
| 02:31:37PM | 11 | Q. When nobody was reviewing the accounts? |
| 02:31:39PM | 12 | A. I believe there were internal audits performed by the BIA. |
| 02:31:43PM | 13 | Q. Okay. But nobody outside of BIA to your knowledge were |
| 02:31:46PM | 14 | reviewing the accounts? |
| 02:31:47PM | 15 | A. Not of which I'm aware. |
| 02:31:49PM | 16 | Q. Now, in terms of what you just said about who was |
| 02:31:56PM | 17 | responsible for reviewing the accounts, is that something that |
| 02:31:58PM | 18 | Dr. Angel told you or is that something that you discovered on |
| 02:32:01PM | 19 | your own? |
| 02:32:02PM | 20 | A. I searched through numerous packages of GAO settled account |
| 02:32:08PM | 21 | records in the national archives many years ago. I did not |
| 02:32:12PM | 22 | personally review Treasury records though. |
| 02:32:14PM | 23 | Q. Okay. So you had some familiarity from some of your |
| 02:32:18PM | 24 | earlier work, but was it Dr. Angel who told you when the |
| 02:32:22PM | 25 | particular periods were? |

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|---|---|---|
| 02:32:24PM | 1 | A. I've done a study of all of the packages available at the |
| 02:32:28PM | 2 | national archives. I was more than aware of the period that GAO |
| 02:32:32PM | 3 | studied the accounts. |
| 02:32:33PM | 4 | Q. So that's something that you knew based on your own work? |
| 02:32:36PM | 5 | A. That's correct. |
| 02:32:36PM | 6 | Q. Now, we've talked today about the original AR-171 that we |
| 02:32:47PM | 7 | looked at in October, and then we've looked at Defendants' |
| 02:32:52PM | 8 | Exhibit 371, which is a chart that is June 4, 2008? |
| 02:32:59PM | 9 | A. That's correct. |
| 02:33:00PM | 10 | Q. Now, at some point were you given -- you prepared another |
| 02:33:08PM | 11 | version of this sometime before June 4th, correct? |
| 02:33:11PM | 12 | A. That's correct. I believe it was May 30th. |
| 02:33:13PM | 13 | Q. And we were provided a chart on May 20th that you had |
| 02:33:18PM | 14 | prepared, correct, or dated May 20th? |
| 02:33:20PM | 15 | A. That's correct. |
| 02:33:21PM | 16 | Q. And then within a few days it changed significantly in the |
| 02:33:27PM | 17 | pre-1972 period, correct? |
| 02:33:29PM | 18 | A. There was a change in the pre-'72 period, yes. |
| 02:33:32PM | 19 | Q. You don't like that word "significantly," do you? |
| 02:33:35PM | 20 | A. It's a judgment word. |
| 02:33:38PM | 21 | Q. Okay. And you don't want to provide judgments like that? |
| 02:33:41PM | 22 | A. Not on Dr. Scheuren's work, no. |
| 02:33:46PM | 23 | Q. Okay. Fine. Now, I put together, I had our assistant copy |
| 02:33:53PM | 24 | the top lines of AR-171, the first revision that we've been |
| 02:33:59PM | 25 | provided, which was dated May 30, 2008, and then the third |

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|---|---|---|
| 02:34:05PM | 1 | version, which is the June 4, 2008, and can you pull that up on |
| 02:34:10PM | 2 | the screen? I'll tell you what we'll do. Let me ask you before |
| 02:34:23PM | 3 | we look at this, were there any other revisions to AR-171 since |
| 02:34:30PM | 4 | October that we've not been provided a copy with? |
| 02:34:33PM | 5 | A. I'm sorry, since when? |
| 02:34:37PM | 6 | Q. Since October of 2007 when AR-171, you testified about it? |
| 02:34:42PM | 7 | A. That's correct. |
| 02:34:43PM | 8 | Q. Have you made any other versions of AR-171, revisions to |
| 02:34:50PM | 9 | it, other than the two that have been provided to us dated May |
| 02:34:54PM | 10 | 30 and June 4, 2008? |
| 02:34:57PM | 11 | A. I had several drafts that we had been working on prior to |
| 02:35:00PM | 12 | the revisions that were provided to you. |
| 02:35:03PM | 13 | Q. Okay. So the others were just drafts? |
| 02:35:07PM | 14 | A. That's correct. |
| 02:35:08PM | 15 | Q. And then when we were provided with AR-171, which I called |
| 02:35:14PM | 16 | here at R-1, revision one, of May 30, 2008, that was not a |
| 02:35:23PM | 17 | draft, correct? |
| 02:35:24PM | 18 | A. That was as of May 30th. |
| 02:35:26PM | 19 | Q. Right. It was not a draft, though, it wasn't marked |
| 02:35:29PM | 20 | "draft," was it? |
| 02:35:30PM | 21 | A. No, it was not. |
| 02:35:31PM | 22 | Q. That was what you thought at that time was the final |
| 02:35:33PM | 23 | version? |
| 02:35:34PM | 24 | A. That's correct. |
| 02:35:34PM | 25 | Q. And how soon after May 30, 2008 did you find out you were |

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|---|---|---|
| 02:35:40PM | 1 | going to have to change your chart again? |
| 02:35:42PM | 2 | A. I believe it was June 4th. |
| 02:35:44PM | 3 | Q. Okay. So you got new information a few days later? |
| 02:35:48PM | 4 | A. That's correct. |
| 02:35:49PM | 5 | Q. The information that you had gotten that you based the |
| 02:35:54PM | 6 | first revision of May 20th, 2008, when had you gotten that |
| 02:35:59PM | 7 | information from Dr. Scheuren? |
| 02:36:01PM | 8 | A. I don't recall specifically what date. It was right around |
| 02:36:06PM | 9 | May 20th, though. |
| 02:36:07PM | 10 | Q. So I understand you don't recall precisely the date, but |
| 02:36:13PM | 11 | approximately on May 20th Dr. Scheuren provided you some |
| 02:36:16PM | 12 | information that you used in putting on your chart for the pre- |
| 02:36:19PM | 13 | 1972 information, correct? |
| 02:36:20PM | 14 | A. That's correct. |
| 02:36:21PM | 15 | Q. And then about five days later, six days later, he provided |
| 02:36:28PM | 16 | other information that caused you to revise your chart? |
| 02:36:30PM | 17 | A. That's correct. |
| 02:36:30PM | 18 | Q. Now, let's look, if we might, can you -- I don't know if |
| 02:36:37PM | 19 | you can blow up kind of the middle there of receipts and |
| 02:36:41PM | 20 | disbursements. Can you see that any better? |
| 02:36:47PM | 21 | A. The middle section is kind of blurry. |
| 02:36:51PM | 22 | Q. Okay. Well, I'll tell you what. It was for me too. I had |
| 02:36:57PM | 23 | another chart prepared, but we can come back to this if you want |
| 02:37:01PM | 24 | to look at any of the figures. |
| 02:37:02PM | 25 | Can you pull up the chart that you based this on? And |

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|---|---|---|
| 02:37:08PM | 1 | can you blow that up for us? |
| 02:37:10PM | 2 | Now, this is the information that I will tell you that |
| 02:37:14PM | 3 | I had taken from those three versions of AR-171 that are |
| 02:37:18PM | 4 | identified there. And you will have a copy. I'll provide a |
| 02:37:29PM | 5 | copy too. |
| 02:37:32PM | 6 | We'll have this marked as Plaintiffs' Exhibit 117. |
| 02:37:34PM | 7 | (Plaintiffs' Exhibit No. 117 was marked for |
| 02:37:39PM | 8 | identification at about 2:37 p.m.) |
| 02:37:39PM | 9 | BY MR. DORRIS: |
| 02:37:40PM | 10 | Q. And let me represent to you we tried to faithfully take the |
| 02:37:45PM | 11 | information and the math. I'm sure that you'll have to chance |
| 02:37:48PM | 12 | to check it later to see if we took anything down wrong, but if |
| 02:37:51PM | 13 | you could, it is clear, I want you to look with me that in the |
| 02:37:57PM | 14 | Total column from that AR-171 to the first revision of AR-117 on |
| 02:38:05PM | 15 | May 30, 2008. The amount of total collections or revenues went |
| 02:38:10PM | 16 | up by about $105 million. Do you see that? |
| 02:38:14PM | 17 | A. I do. |
| 02:38:15PM | 18 | Q. And in all fairness, there were a few more years at the |
| 02:38:19PM | 19 | beginning included in that period now where it was a time frame |
| 02:38:24PM | 20 | from 1887 through 1908, correct? |
| 02:38:28PM | 21 | A. That's correct. |
| 02:38:29PM | 22 | Q. And then from what Dr. Scheuren gave you on May 30, 2008 to |
| 02:38:36PM | 23 | what he gave you six days later, it looks like about $565 |
| 02:38:46PM | 24 | million fell out of the revenue totals, correct? |
| 02:38:51PM | 25 | A. That's what it appears, yes. |

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|---|---|---|
| 02:38:53PM | 1 | Q. All right. And that's consistent with what you remember |
| 02:38:56PM | 2 | when you looked at it? |
| 02:38:58PM | 3 | A. Yes, it is. |
| 02:38:58PM | 4 | Q. All right. So the other information that when he provided |
| 02:39:08PM | 5 | that to you, did that cause you to have to change some of the |
| 02:39:13PM | 6 | other columns that you had already prepared? |
| 02:39:15PM | 7 | A. The Other Receipts column and the Tribal IIM column. |
| 02:39:18PM | 8 | Q. The Osage stayed the same between the May 30 and the June 4 |
| 02:39:24PM | 9 | version? |
| 02:39:24PM | 10 | A. That's correct. |
| 02:39:25PM | 11 | Q. And I noticed that the tribal IIM stayed the same for the |
| 02:39:31PM | 12 | period of 1921 to 1951? |
| 02:39:35PM | 13 | A. That's correct. |
| 02:39:36PM | 14 | Q. And is that something that -- how do you know whether that |
| 02:39:42PM | 15 | stayed the same or it changed? |
| 02:39:44PM | 16 | A. As we discussed, when we were looking at the receipt |
| 02:39:48PM | 17 | reports, we had utilized the historical receipt reports that Dr. |
| 02:39:52PM | 18 | Angel had gathered because NORF had provided an estimate for the |
| 02:39:58PM | 19 | entire time frame and we were only applying tribal IIM to the |
| 02:40:01PM | 20 | subset of that time frame. |
| 02:40:02PM | 21 | Q. I got lost. Let's go a little bit slower on that. I |
| 02:40:07PM | 22 | remember the tribal IIM starts in 1934. |
| 02:40:11PM | 23 | A. That's correct. |
| 02:40:11PM | 24 | Q. So when you were given the number by Dr. Scheuren on May |
| 02:40:17PM | 25 | 30, 2008, you knew what the total collections were for 1921 to |

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|---|---|---|
| 02:40:25PM | 1 | 1951, correct? |
| 02:40:27PM | 2 | A. That's correct. |
| 02:40:28PM | 3 | Q. You had to know what the collections were between 1934 and |
| 02:40:33PM | 4 | 1951 in order to determine what the tribal IIM was? |
| 02:40:38PM | 5 | A. That's correct. |
| 02:40:39PM | 6 | Q. And is there something -- is the chart that we were looking |
| 02:40:43PM | 7 | at in tribal IIM earlier, does that show what it was year by |
| 02:40:47PM | 8 | year? |
| 02:40:47PM | 9 | A. Dr. Scheuren didn't provide an annual estimate so we had to |
| 02:40:51PM | 10 | utilize the historical receipt reports that Dr. Angel had |
| 02:40:55PM | 11 | gathered, which have been provided to you. |
| 02:40:57PM | 12 | Q. Those are the ones that we just looked at in A-1.1? |
| 02:41:02PM | 13 | A. That's correct. |
| 02:41:03PM | 14 | Q. So that was a total collection number from Dr. Scheuren for |
| 02:41:09PM | 15 | the period, but you didn't have a breakout for year by year, |
| 02:41:12PM | 16 | correct? |
| 02:41:12PM | 17 | A. That's correct. |
| 02:41:13PM | 18 | Q. And you didn't have a breakout from 1934 to 1951, correct? |
| 02:41:18PM | 19 | A. That's correct. |
| 02:41:19PM | 20 | Q. And so when I look at the Bates page, Defense Exhibit 372, |
| 02:41:26PM | 21 | page ten, does that somehow show the $38.2 million figure |
| 02:41:36PM | 22 | somewhere? |
| 02:41:36PM | 23 | A. I'm sorry. I don't understand the question. |
| 02:41:39PM | 24 | Q. Okay. When I look at tribal IIM from 1921 to 1951 on the |
| 02:41:44PM | 25 | last two versions of AR-171, the May 30 and the June 4, 2008, I |

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|---|---|---|
| 02:41:50PM | 1 | see that it's $38.2 million between '21 and '51? |
| 02:41:56PM | 2 | A. That's correct. |
| 02:41:56PM | 3 | Q. And is that somehow on this chart? |
| 02:41:59PM | 4 | A. Yes, it is. On page ten. |
| 02:42:01PM | 5 | Q. Okay. And where does it show it on this chart? |
| 02:42:06PM | 6 | A. It's the summary number at the bottom of the chart. |
| 02:42:10PM | 7 | Q. Okay. So it's the 38 and it's 150 here, so you use 38.2 on |
| 02:42:17PM | 8 | the chart? |
| 02:42:17PM | 9 | A. The spreadsheet rounds it. It's a display issue. |
| 02:42:21PM | 10 | Q. Okay. So now is this the receipts that are used to |
| 02:42:26PM | 11 | calculate this? Are those the same receipts then that Dr. |
| 02:42:30PM | 12 | Scheuren used to calculate the amount between 1934 and 1951? |
| 02:42:38PM | 13 | A. These reports were provided to Dr. Scheuren. I don't know |
| 02:42:42PM | 14 | how his model incorporated them. |
| 02:42:45PM | 15 | Q. So you've based tribal IIM on one set of data, and you |
| 02:42:49PM | 16 | don't know if that's consistent with the same data that Dr. |
| 02:42:53PM | 17 | Scheuren used. |
| 02:42:53PM | 18 | A. It's my understanding that Dr. Scheuren relied on these |
| 02:42:56PM | 19 | reports. I don't believe that this is the sum total of his |
| 02:42:58PM | 20 | analysis, though. |
| 02:43:00PM | 21 | Q. Are these the same receipts that you understand that he |
| 02:43:04PM | 22 | used in his report? |
| 02:43:05PM | 23 | A. These are the receipts that he used in his model. I don't |
| 02:43:09PM | 24 | know if these -- how these impacted his model. |
| 02:43:12PM | 25 | Q. So you don't know if these receipts, once put in the model, |

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|---|---|
| 02:43:17PM **1** | came out as being more or less than what is shown here? |
| 02:43:20PM **2** | **A.** I can't tell you that, no. |
| 02:43:21PM **3** | **Q.** Okay. Thank you. |
| 02:43:23PM **4** | Now, has it been explained to you why over $550 |
| 02:43:32PM **5** | million disappeared in that week between May 30 and June 4? |
| 02:43:37PM **6** | **A.** No. I'm sorry. You'd have to ask Dr. Scheuren. |
| 02:43:40PM **7** | **Q.** Now, let me be real clear on this question. Have you ever |
| 02:43:50PM **8** | seen the backup for any of Dr. Scheuren's calculations? |
| 02:43:54PM **9** | **A.** To the extent that he relied upon our data and data that |
| 02:43:58PM **10** | Moore & Angel provided to us as well, then I have. In terms his |
| 02:44:01PM **11** | calculations, I have not. |
| 02:44:02PM **12** | **Q.** Thank you. |
| 02:44:04PM **13** | Have you ever seen anything from Dr. Scheuren that |
| 02:44:07PM **14** | provided revenue and disbursement numbers on a year-by-year |
| 02:44:11PM **15** | basis? |
| 02:44:11PM **16** | **A.** No, not on an annual basis. |
| 02:44:13PM **17** | **Q.** Just based on these periods? |
| 02:44:18PM **18** | **A.** That's correct. |
| 02:44:18PM **19** | **Q.** So let's try to be real clear on this. In terms of when |
| 02:44:28PM **20** | you talk about there's been a total revenue through the IIM |
| 02:44:36PM **21** | system for everything before 1972, you're basing what you say on |
| 02:44:40PM **22** | numbers that Dr. Scheuren has provided, correct? |
| 02:44:43PM **23** | **A.** In terms of the collections and disbursements in totality, |
| 02:44:47PM **24** | yes. In terms of the Osage numbers, those were our |
| 02:44:51PM **25** | computations. |

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|---|---|
| 02:46:47PM **1** | ledger? |
| 02:46:48PM **2** | **A.** That's correct. |
| 02:46:48PM **3** | **Q.** Those two different ledgers? |
| 02:46:50PM **4** | **A.** I'm sorry. That's the way the system was referred to, or |
| 02:46:53PM **5** | as the finance system. |
| 02:46:55PM **6** | **Q.** You don't know if that's two different ledgers? |
| 02:46:58PM **7** | **A.** I'm sorry. That's the way the system itself was referred |
| 02:47:01PM **8** | to, as the name utilized. |
| 02:47:02PM **9** | **Q.** Okay. And have you worked extensively with that system? |
| 02:47:07PM **10** | **A.** No, I have not. |
| 02:47:08PM **11** | **Q.** In fact, your work with it has been very limited, correct? |
| 02:47:12PM **12** | **A.** It has been limited, yes. |
| 02:47:14PM **13** | **Q.** Would it be fair to say you've not worked with that system |
| 02:47:17PM **14** | at all? |
| 02:47:17PM **15** | **A.** No, that would not be fair. |
| 02:47:19PM **16** | **Q.** It would be limited, but some? |
| 02:47:21PM **17** | **A.** That's correct. |
| 02:47:22PM **18** | **Q.** All right. Now, the information that is on this chart, is |
| 02:47:27PM **19** | this all something that you prepared? |
| 02:47:29PM **20** | **A.** The initial data from the GLDL system was provided to us by |
| 02:47:35PM **21** | Clifton Gunnerson, another firm employed by Otaugh. |
| 02:47:39PM **22** | **Q.** Were they named something else before that? |
| 02:47:41PM **23** | **A.** That's correct. |
| 02:47:42PM **24** | **Q.** And what was their name? |
| 02:47:44PM **25** | **A.** Sheveria, Dunne and Lamey (ph). |

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| 02:44:52PM **1** | **Q.** And those are what you view as pieces of the collections, |
| 02:44:55PM **2** | collect? |
| 02:44:55PM **3** | **A.** That's correct. |
| 02:44:59PM **4** | **Q.** So really it's Dr. Scheuren's information or analysis that |
| 02:45:03PM **5** | you based your total number on, correct? |
| 02:45:04PM **6** | **A.** The total number, yes. |
| 02:45:06PM **7** | **Q.** Now, let's talk some about the next period, the period from |
| 02:45:13PM **8** | I guess that would be 1972 to when? |
| 02:45:16PM **9** | **A.** To 1985. |
| 02:45:17PM **10** | **Q.** And what is that, what would you call that period? |
| 02:45:24PM **11** | **A.** Basically we were starting with the finance system data, |
| 02:45:28PM **12** | the general ledger data. |
| 02:45:30PM **13** | **Q.** Was that electronic data? |
| 02:45:32PM **14** | **A.** The finance system, some information from that was manually |
| 02:45:36PM **15** | reentered. It was an electronic system but we don't have that |
| 02:45:41PM **16** | completely available to us today. |
| 02:45:42PM **17** | **Q.** Okay. What specific information did you use to come up |
| 02:45:49PM **18** | with the numbers that then appear on your chart for the period |
| 02:45:52PM **19** | of 1972 to 1985? |
| 02:45:54PM **20** | **A.** So if you switch to page 28. |
| 02:46:04PM **21** | **Q.** So this is in Defendants' Exhibit 372, page 28? |
| 02:46:10PM **22** | **A.** That's correct. |
| 02:46:32PM **23** | **Q.** Okay. And as we begin, I begin to ask you some questions |
| 02:46:36PM **24** | about this document, let me ask this: It refers in a number of |
| 02:46:42PM **25** | places to the GLDL. Is that the general ledger, detailed |

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| 02:47:46PM **1** | **Q.** Now, but who prepared this document we're looking at right |
| 02:47:52PM **2** | now? |
| 02:47:52PM **3** | **A.** Our firm did. |
| 02:47:53PM **4** | **Q.** Because up in the upper left it says Department of |
| 02:47:57PM **5** | Interior, Office of Historical Trust Accounting, but it was |
| 02:48:01PM **6** | actually prepared by FDI? |
| 02:48:02PM **7** | **A.** That's correct. |
| 02:48:03PM **8** | **Q.** And so a lot of times where we see the document that says |
| 02:48:09PM **9** | Department of Interior, Office of Historical Trust Accounting, |
| 02:48:12PM **10** | that's something that FDI actually prepared? |
| 02:48:15PM **11** | **A.** In this binder, yes. |
| 02:48:17PM **12** | **Q.** Now, when we look at this would it be fair to say that what |
| 02:48:23PM **13** | you did here is largely, if not totally, based on a spreadsheet |
| 02:48:29PM **14** | that you were provided by Sheveria, Dunne and Lamey? |
| 02:48:35PM **15** | **A.** In terms of the total collection numbers, yes, and excuse |
| 02:48:39PM **16** | me, the disbursement numbers. |
| 02:48:41PM **17** | **Q.** What about the collection numbers? |
| 02:48:43PM **18** | **A.** I believe that's what I just said, the total collection |
| 02:48:46PM **19** | numbers and the total disbursement numbers. Both. |
| 02:48:49PM **20** | **Q.** That's correct? |
| 02:48:49PM **21** | **A.** All right. I misunderstood. |
| 02:48:51PM **22** | **Q.** I apologize. |
| 02:48:55PM **23** | Now, that spreadsheet then also appears in your |
| 02:48:58PM **24** | notebook? |
| 02:48:59PM **25** | **A.** Yes, it does. |

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| 02:49:00PM | 1 | **Q.** I saw it over the lunch hour. Can you tell us where that |
| 02:49:04PM | 2 | is? |
| 02:49:04PM | 3 | **A.** I believe that's something within the notebook. GLDLR |
| 02:49:13PM | 4 | referring to receipts, GLGLD referring to disbursements, and |
| 02:49:18PM | 5 | GLDLB, referring to balances. |
| 02:49:19PM | 6 | **Q.** Well, let's go to GLDLD first, GLDLD, and we have Bates |
| 02:49:36PM | 7 | pages legal-size sheet -- are you with me, your Honor? |
| 02:49:39PM | 8 | THE COURT: Yes. |
| 02:49:39PM | 9 | BY MR. DORRIS: |
| 02:49:40PM | 10 | **Q.** It's a legal-size sheet that starts at Bates page 120 and |
| 02:49:46PM | 11 | goes to Bates page 121. Am I correct on that? |
| 02:49:50PM | 12 | **A.** That's correct. |
| 02:49:51PM | 13 | **Q.** So it's two legal sheets for the disbursements? |
| 02:49:55PM | 14 | **A.** That's correct. |
| 02:49:56PM | 15 | **Q.** Now, is this a document that you prepared? |
| 02:49:59PM | 16 | **A.** Yes. This is the summary of the information provided to us |
| 02:50:02PM | 17 | by Clifton Gunnerson. |
| 02:50:04PM | 18 | **Q.** Looking on the second page, which is Bates page 21 of |
| 02:50:08PM | 19 | Defendants' Exhibit 372, I see the source is Sheveria down in |
| 02:50:14PM | 20 | the bottom. It says Sheveria, Dunne and Lamey, Microsoft access |
| 02:50:19PM | 21 | 2000 database, and it goes on with some other language there. |
| 02:50:23PM | 22 | Do you see that? |
| 02:50:23PM | 23 | **A.** Yes, I do. |
| 02:50:24PM | 24 | **Q.** So what were you provided? |
| 02:50:26PM | 25 | **A.** They provided us some Microsoft access database containing |

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| 02:50:31PM | 1 | this information, and I wrote what's referred to as a cross-tab |
| 02:50:34PM | 2 | query to summarize it. |
| 02:50:35PM | 3 | **Q.** You're going to have to explain that to me, what that |
| 02:50:39PM | 4 | means. |
| 02:50:39PM | 5 | **A.** Basically it puts things into columns and rows instead of |
| 02:50:43PM | 6 | individual line items. |
| 02:50:47PM | 7 | **Q.** Okay. So you were given an electronic database and you |
| 02:50:49PM | 8 | didn't change anything in that database but you got it organized |
| 02:50:53PM | 9 | the way you wanted it? |
| 02:50:54PM | 10 | **A.** That's correct. |
| 02:50:59PM | 11 | **Q.** Good. What did you do to study, verify, check, anything |
| 02:51:02PM | 12 | about that database? |
| 02:51:04PM | 13 | **A.** I had conversations with the individuals from Clifton |
| 02:51:08PM | 14 | Gunnerson how about they compiled the information. |
| 02:51:10PM | 15 | **Q.** Other than those conversations, did you do anything else to |
| 02:51:15PM | 16 | study, analyze, or verify that database? |
| 02:51:18PM | 17 | **A.** No, I did not. |
| 02:51:19PM | 18 | **Q.** How long did those conversations last? |
| 02:51:22PM | 19 | **A.** I probably had three or four conversations of approximately |
| 02:51:30PM | 20 | thirty minutes to an hour apiece. |
| 02:51:31PM | 21 | **Q.** So three or four hours of conversations with those people, |
| 02:51:36PM | 22 | and you've used that information now for what is that, a |
| 02:51:42PM | 23 | fourteen- or fifteen-year period? |
| 02:51:44PM | 24 | **A.** The total collections and disbursements from that period, |
| 02:51:47PM | 25 | yes. |

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| 02:51:47PM | 1 | **Q.** Okay. Now, after you printed it off in this form, because |
| 02:51:52PM | 2 | it didn't come printed off to you in this form, right? |
| 02:51:55PM | 3 | **A.** That's correct. |
| 02:51:55PM | 4 | **Q.** Did you sit down and look over the column sum to see if |
| 02:51:59PM | 5 | there were some anomalies? |
| 02:52:00PM | 6 | **A.** Yes, I did. |
| 02:52:01PM | 7 | **Q.** Okay. And you found a number of anomalies, didn't you? |
| 02:52:05PM | 8 | **A.** I found gaps in the information, yes. |
| 02:52:07PM | 9 | **Q.** Okay, all right. And did you fill those gaps in? |
| 02:52:09PM | 10 | **A.** No, I did not. |
| 02:52:10PM | 11 | **Q.** Okay. And when you talked to the people from Sheveria, |
| 02:52:16PM | 12 | Dunne and Lamey, now Clifton Gunnerson, they acknowledged that |
| 02:52:20PM | 13 | there were gaps in the information they had been provided, |
| 02:52:22PM | 14 | correct? |
| 02:52:23PM | 15 | **A.** Actually, what the individuals explained to me was in many |
| 02:52:26PM | 16 | years the information was recorded at the area office level |
| 02:52:30PM | 17 | instead of the agency level, which would explain some of the |
| 02:52:33PM | 18 | gaps, and that in some other instances one region was processing |
| 02:52:38PM | 19 | information for another region, so while there appeared to be |
| 02:52:43PM | 20 | many gaps there aren't as many in essence as it appears. |
| 02:52:46PM | 21 | **Q.** Let me ask that question again. Even if the people from |
| 02:52:49PM | 22 | Sheveria, Dunne and Lamey acknowledged to you that there were |
| 02:52:52PM | 23 | gaps in the data, correct? |
| 02:52:53PM | 24 | **A.** That there were some gaps, yes. |
| 02:52:55PM | 25 | **Q.** And I notice that when I look at this sheet there are times |

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| | | |
|---|---|---|
| 02:53:00PM | 1 | that there's nothing there and there's a dash line and there are |
| 02:53:04PM | 2 | times that there's nothing there and it's just left blank? |
| 02:53:07PM | 3 | **A.** The dash line indicates a zero. |
| 02:53:08PM | 4 | **Q.** And the blank line indicates a zero also? |
| 02:53:11PM | 5 | **A.** No. The blank line indicates no data. |
| 02:53:14PM | 6 | **Q.** All right. So the dash line means there was data but it |
| 02:53:18PM | 7 | just adds up to zero? |
| 02:53:19PM | 8 | **A.** That's correct. |
| 02:53:20PM | 9 | **Q.** Okay. So for some things there was data about |
| 02:53:25PM | 10 | disbursements but that data all added up to zero? |
| 02:53:30PM | 11 | **A.** In one particular instance that I reviewed it was a posting |
| 02:53:33PM | 12 | in a reversal. |
| 02:53:34PM | 13 | **Q.** Now, let me just ask you to look. We have, I think it's |
| 02:53:42PM | 14 | the same spreadsheet, was actually an administrative record last |
| 02:53:46PM | 15 | time, correct? |
| 02:53:47PM | 16 | **A.** I don't recall, but I believe so. |
| 02:53:50PM | 17 | **Q.** Okay. Can you pull that up? This would be from AR-176. I |
| 02:54:07PM | 18 | think it's page ninety in the earlier. And can you focus on the |
| 02:54:12PM | 19 | first three columns there for us? Ms. Herman, this I think is |
| 02:54:24PM | 20 | the same spreadsheet. We can look at it some more. In fact, |
| 02:54:27PM | 21 | can you go just a little bit to the left here so you'll see the |
| 02:54:30PM | 22 | same GLDLD-1? Do you see that's the same sheet? |
| 02:54:37PM | 23 | **A.** It's not the same sheet from this notebook, but it appears |
| 02:54:42PM | 24 | to have the same data. |
| 02:54:44PM | 25 | **Q.** Okay. Well, we can look back and forth. I'm just trying |

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|---|---|
| 02:54:47PM **1** | to do something so we can move a little more quickly. I want |
| 02:54:50PM **2** | you to concentrate on the red things that I have or I've |
| 02:54:54PM **3** | highlighted in red there and you're going to tell me. |
| 02:54:58PM **4** | Antonio, you're going to have to help me here. Can |
| 02:55:05PM **5** | you blow up the top red bottom red one or the top red one at |
| 02:55:05PM **6** | all? |
| 02:55:19PM **7** | Okay. You see in the top red one for a ten that would |
| 02:55:22PM **8** | be an agency, correct? |
| 02:55:23PM **9** | A. Yes, Standing Rock. |
| 02:55:25PM **10** | Q. And it shows a disbursement total that year of over |
| 02:55:30PM **11** | a-million-eight, correct? |
| 02:55:32PM **12** | A. Excuse me. 1.8 million, yes. |
| 02:55:35PM **13** | Q. Okay. 1.8 million. |
| 02:55:39PM **14** | And if you would go down that column, Antonio, and you |
| 02:55:45PM **15** | see then a disbursement -- let's see. That was a ten. Let's |
| 02:55:52PM **16** | look at a disbursement at the bottom of the page that's in red, |
| 02:55:57PM **17** | which is 7.6 million rounding up, correct, for 862? Do you see |
| 02:56:05PM **18** | that? |
| 02:56:05PM **19** | A. I see the number but I can't see the year that it's |
| 02:56:08PM **20** | referring to. |
| 02:56:10PM **21** | Q. Okay. It's in the column 1973? |
| 02:56:14PM **22** | A. Okay. |
| 02:56:15PM **23** | Q. Are you with me? |
| 02:56:16PM **24** | A. Yes, I am. |
| 02:56:17PM **25** | Q. Let's look at one more on the next page, please. And it's |

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|---|---|
| 02:58:14PM **1** | numbers weren't ordered at the area office, for instance, |
| 02:58:16PM **2** | looking at this chart. |
| 02:58:18PM **3** | Q. You just don't know, do you? |
| 02:58:20PM **4** | A. You can't make the assumption that there was no revenues |
| 02:58:24PM **5** | for that agency. It could have been recorded at the regional |
| 02:58:27PM **6** | level. |
| 02:58:27PM **7** | Q. And it might have just been missed altogether, correct? |
| 02:58:30PM **8** | A. I'm sorry, I don't understand the question. |
| 02:58:32PM **9** | Q. In other words, you don't know if this was an instance of |
| 02:58:36PM **10** | underreporting revenue or not, do you? |
| 02:58:39PM **11** | A. Not looking at these two schedules, no, I do not. |
| 02:58:44PM **12** | Q. And you made no further investigation of these schedules to |
| 02:58:46PM **13** | determine that, did you? |
| 02:58:47PM **14** | A. We looked at other investment reports, for instance, that |
| 02:58:52PM **15** | were available during this time frame, and in terms of the |
| 02:58:54PM **16** | balance data it was very consistent with the information that |
| 02:58:57PM **17** | had been located from the GLDL. |
| 02:59:00PM **18** | Q. But with respect to the specific issues we're looking at |
| 02:59:03PM **19** | here, you did not investigate those specific issues? |
| 02:59:09PM **20** | A. No, I don't believe I did. |
| 02:59:16PM **21** | Q. Look back then under GLDLB, which is the balance, and this |
| 02:59:39PM **22** | is on Bates page 123. Do you see for 1972 and 1973 that agency |
| 02:59:46PM **23** | A-10 was shown as having balances there? |
| 02:59:49PM **24** | A. Yes, I do. |
| 02:59:51PM **25** | Q. So at least at the agency level they were tracking balances |

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|---|---|
| 02:56:24PM **1** | P-12 in 1973, and it shows disbursements of -- can you read that |
| 02:56:38PM **2** | number? |
| 02:56:39PM **3** | A. No, I'm sorry, I cannot. |
| 02:56:41PM **4** | Q. A little larger. |
| 02:56:43PM **5** | THE COURT: 3.6 million. |
| 02:56:46PM **6** | MR. DORRIS: I'm sorry, your Honor. |
| 02:56:48PM **7** | THE COURT: It says 3.6 million. I'm looking at the |
| 02:56:51PM **8** | hard copy. |
| 02:56:51PM **9** | MR. DORRIS: Thank you. 3.6 million. |
| 02:56:51PM **10** | BY MR. DORRIS: |
| 02:56:54PM **11** | Q. Now, when I look back then in your notebook at the revenue |
| 02:56:59PM **12** | side for this same period, if you'll look in 1973 at A-10, |
| 02:57:07PM **13** | you'll see that that shows no revenue? |
| 02:57:10PM **14** | A. I'm sorry, sir. Where are you now? |
| 02:57:12PM **15** | Q. I am on Bates page 116. |
| 02:57:27PM **16** | A. Thank you. |
| 02:57:27PM **17** | Q. Okay. A-10 in 1973 shows no revenue, correct? |
| 02:57:34PM **18** | A. That's correct. |
| 02:57:35PM **19** | Q. And A-62, which then is on the next page in 1973 shows no |
| 02:57:44PM **20** | revenue, and P-12 in 1973 shows no revenue. Do you see that? |
| 02:57:51PM **21** | A. I do. |
| 02:57:52PM **22** | Q. And so we end up then with just looking at that one year, |
| 02:58:01PM **23** | three instances where it shows disbursements going out from an |
| 02:58:05PM **24** | agency and no revenues coming in to that agency, correct? |
| 02:58:10PM **25** | A. That's correct, but you don't know that those revenue |

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|---|---|
| 02:59:54PM **1** | and they were tracking disbursements, correct? |
| 02:59:56PM **2** | A. Yes, but it's very common to record receipts at the area |
| 03:00:00PM **3** | office level. |
| 03:00:01PM **4** | Q. And okay. And you think that's -- |
| 03:00:05PM **5** | THE COURT: How is the area office level shown on this |
| 03:00:08PM **6** | spreadsheet? |
| 03:00:09PM **7** | THE WITNESS: For this particular agency, your Honor, |
| 03:00:10PM **8** | it would be a 300. It varies by the agency that you're |
| 03:00:14PM **9** | discussing. Typically it ends in 300 or 50. |
| 03:00:23PM **10** | THE COURT: Are you telling me that for 1973 the area |
| 03:00:26PM **11** | office might have recorded revenues of 6.7 million? |
| 03:00:34PM **12** | THE WITNESS: That the revenues recorded at the area |
| 03:00:37PM **13** | office could pertain to any one of the agencies within that |
| 03:00:40PM **14** | area. |
| 03:00:59PM **15** | THE COURT: I'll wait to be enlightened. |
| 03:01:04PM **16** | BY MR. DORRIS: |
| 03:01:07PM **17** | Q. Well, let's look at this one, Miss Herman. We're on the |
| 03:01:14PM **18** | revenue sheet, okay? |
| 03:01:15PM **19** | A. Okay. |
| 03:01:16PM **20** | Q. Page 116 of Exhibit 342. |
| 03:01:19PM **21** | A. Yes. |
| 03:01:20PM **22** | Q. Look at agency A-7. Do you see it? |
| 03:01:23PM **23** | A. Yes, I do. |
| 03:01:24PM **24** | Q. So in '72 it collected 2.6 million and the area office |
| 03:01:30PM **25** | collected 7.9? |

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|---|---|---|
| 03:01:31PM | **1** | **A.** That's correct. |
| 03:01:33PM | **2** | **Q.** Those are two different revenue numbers, correct? |
| 03:01:36PM | **3** | **A.** Yes, they are. |
| 03:01:37PM | **4** | **Q.** And in the 1973 agency A-07 collected nothing, or at least |
| 03:01:46PM | **5** | on this sheet, an area office then collected 6.6. Do you see |
| 03:01:51PM | **6** | that? |
| 03:01:51PM | **7** | **A.** I do. |
| 03:01:51PM | **8** | **Q.** So it went down. The area office went down, correct? |
| 03:01:55PM | **9** | **A.** Yes, it did. |
| 03:01:57PM | **10** | **Q.** And then the next year A07 shows it collects 2.8 million |
| 03:02:02PM | **11** | and the area office collects seven. Do you see that? |
| 03:02:06PM | **12** | **A.** Yes, I do. |
| 03:02:07PM | **13** | **Q.** So do you think that for A-07, that whatever it was |
| 03:02:13PM | **14** | collected there in 1973 is somehow in the area office number? |
| 03:02:17PM | **15** | **A.** I can't make that assessment looking at this sheet. |
| 03:02:20PM | **16** | **Q.** Okay. So there are a number of anomalies like that that |
| 03:02:24PM | **17** | you see here where it shows disbursement at times where there's |
| 03:02:27PM | **18** | no revenue and it raises questions of the accuracy of this |
| 03:02:32PM | **19** | information, correct? |
| 03:02:32PM | **20** | **A.** It raises questions as to whether or not it's complete. I |
| 03:02:40PM | **21** | don't think it raises questions as to the accuracy. |
| 03:02:42PM | **22** | **Q.** What is here you think is accurate in terms of what was |
| 03:02:45PM | **23** | recorded in the system, but whether everything got recorded in |
| 03:02:49PM | **24** | the system you don't know? |
| 03:02:50PM | **25** | **A.** I remember placing this from hard copy records. |

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|---|---|---|
| 03:02:55PM | **1** | **Q.** So this hasn't informed the electronic information that was |
| 03:02:59PM | **2** | being run at the time? |
| 03:03:00PM | **3** | **A.** This was data entered from hard copy records of the |
| 03:03:04PM | **4** | electronic system. |
| 03:03:05PM | **5** | **Q.** So Sheveria, Dunne and Lamey had hard copies that they then |
| 03:03:10PM | **6** | entered into a database? |
| 03:03:12PM | **7** | **A.** That's correct. |
| 03:03:14PM | **8** | **Q.** And do you know whether or not you ever checked to see if |
| 03:03:16PM | **9** | they had all the hard copies that were available, did you? |
| 03:03:19PM | **10** | **A.** They represented that they had complete hard copies for |
| 03:03:23PM | **11** | some of the periods and they were missing several reports. |
| 03:03:27PM | **12** | **Q.** So there you know that you're missing some reports, |
| 03:03:30PM | **13** | correct? |
| 03:03:30PM | **14** | **A.** That's correct. |
| 03:03:31PM | **15** | **Q.** All right. Now, let's look for a minute when we look down |
| 03:03:39PM | **16** | the chart here -- when did they prepare this database? |
| 03:03:43PM | **17** | **A.** I don't recall. I'm sorry. |
| 03:03:45PM | **18** | **Q.** You don't remember what year? |
| 03:03:47PM | **19** | **A.** I'm sorry, I don't. |
| 03:03:49PM | **20** | **Q.** Okay. All right. When I look at this revenue I counted up |
| 03:03:54PM | **21** | 88 agencies or area offices. There were 44 on each sheet. I'm |
| 03:04:01PM | **22** | not going to ask you to count them. |
| 03:04:02PM | **23** | **A.** Thank you. |
| 03:04:03PM | **24** | **Q.** But when we look down this first column in 1972, you see |
| 03:04:08PM | **25** | there is a lot more missing or blanks, correct? |

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|---|---|---|
| 03:04:12PM | **1** | **A.** I'm sorry. Relative to what? |
| 03:04:15PM | **2** | **Q.** When you look down for 1972 there are a number of agencies |
| 03:04:21PM | **3** | and area offices where there's no -- or area offices where |
| 03:04:26PM | **4** | there's no information, correct? |
| 03:04:27PM | **5** | **A.** That's correct. |
| 03:04:28PM | **6** | **Q.** And there are actually 26 agencies there in that column |
| 03:04:31PM | **7** | with information, and the total on page 118 is 132.5 million. |
| 03:04:36PM | **8** | Do you see that? |
| 03:04:37PM | **9** | **A.** I see the total, yes. |
| 03:04:42PM | **10** | **Q.** When I look in 1978 about halfway through the chart and |
| 03:04:47PM | **11** | counted there were 49 agencies with numbers there with a total |
| 03:04:53PM | **12** | revenue of 419 million. Do you see that? |
| 03:04:57PM | **13** | **A.** Yes, I do. |
| 03:04:58PM | **14** | **Q.** And then when I looked over at 1982 there were 57 agencies |
| 03:05:04PM | **15** | or area offices reporting with revenues over $600 million. Do |
| 03:05:11PM | **16** | you see that? |
| 03:05:11PM | **17** | **A.** I'm sorry, I've lost you. I apologize. |
| 03:05:14PM | **18** | **Q.** Yes. In 1982 there are even more agencies and area offices |
| 03:05:20PM | **19** | reporting and the revenues go over $600 million, correct? |
| 03:05:26PM | **20** | **A.** That's correct. |
| 03:05:26PM | **21** | **Q.** Does it appear to you looking at this chart then that there |
| 03:05:29PM | **22** | is an underreporting of revenues and collections during this |
| 03:05:33PM | **23** | period? |
| 03:05:33PM | **24** | **A.** I don't know if these increases and decreases in |
| 03:05:37PM | **25** | collections have to do with changes in, for instance, oil prices |

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|---|---|---|
| 03:05:41PM | **1** | or leasing or anything else of that nature. |
| 03:05:44PM | **2** | **Q.** Or whether it may be related to the fact that the -- they |
| 03:05:51PM | **3** | could not find reports for certain periods, correct? |
| 03:05:54PM | **4** | **A.** That's correct. |
| 03:05:54PM | **5** | **Q.** Now, look back at the disbursement summary. |
| 03:06:00PM | **6** | **A.** I'm sorry, at which page? |
| 03:06:02PM | **7** | **Q.** Page 120. |
| 03:06:16PM | **8** | **A.** Yes. |
| 03:06:16PM | **9** | **Q.** Before I ask you this, before we start looking, let me ask |
| 03:06:20PM | **10** | you this question: If you saw for a particular agency the exact |
| 03:06:26PM | **11** | same dollar amount in two consecutive years, would that raise a |
| 03:06:32PM | **12** | red flag to you? |
| 03:06:34PM | **13** | **A.** Potentially. |
| 03:06:35PM | **14** | **Q.** Did you look at you this chart to see if it happened? |
| 03:06:39PM | **15** | **A.** I believe it did in some years. |
| 03:06:41PM | **16** | **Q.** In how many years? |
| 03:06:42PM | **17** | **A.** I don't recall. |
| 03:06:43PM | **18** | **Q.** Okay. Well, let's look at couple. Look under 1972 and |
| 03:06:49PM | **19** | 1973 at area office D-00. Is that Anadarko? |
| 03:06:54PM | **20** | **A.** Yes, it is. |
| 03:06:55PM | **21** | **Q.** And you got the exact same dollar figure there, correct? |
| 03:06:59PM | **22** | **A.** That's correct. |
| 03:06:59PM | **23** | **Q.** From '72 to 73, so that's a red flag for you. Potentially |
| 03:07:06PM | **24** | it's my understanding that in some instances Sheveria, Dunne and |
| 03:07:10PM | **25** | Lamey had to use reports from earlier years. Can you explain to |

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## 619

| Time | # | Text |
|------|---|------|
| 03:07:15PM | 1 | me, please? |
| 03:07:16PM | 2 | A.   I'm sorry? |
| 03:07:16PM | 3 | Q.   I don't understand what you've just told me. |
| 03:07:20PM | 4 | A.   I'm sorry. |
| 03:07:21PM | 5 | Q.   Maybe repeat what you said. |
| 03:07:23PM | 6 | A.   I'm sorry.  I probably didn't explain myself very |
| 03:07:27PM | 7 | effectively. |
| 03:07:28PM | 8 | Q.   You may have explained yourself beautifully.  I just didn't |
| 03:07:33PM | 9 | understand it.  Now, are you saying that, for example, in 1972 |
| 03:07:37PM | 10 | they didn't have information so they used information from 1973? |
| 03:07:41PM | 11 | A.   I believe I misspoke.  I apologize. |
| 03:07:44PM | 12 | Q.   What did Sheveria, Dunne and Lamey tell you about this when |
| 03:07:53PM | 13 | you asked them about it?  Did you ask them about it? |
| 03:07:55PM | 14 | A.   I don't know if I asked them about this particular year or |
| 03:07:57PM | 15 | not.  As I mentioned, we had several conversations. |
| 03:07:59PM | 16 | Q.   Did Sheveria, Dunne and Lamey ever tell you they didn't |
| 03:08:01PM | 17 | have reports so they used earlier-year reports? |
| 03:08:04PM | 18 | A.   I don't recall.  I'm sorry.  I believe that they did have |
| 03:08:07PM | 19 | to use some earlier reports for a particular month after a |
| 03:08:09PM | 20 | particular year but I don't recall.  I'm sorry. |
| 03:08:12PM | 21 | Q.   Okay.  Is this one of those situations where you don't have |
| 03:08:16PM | 22 | a precise recollection but you kind of remember them telling you |
| 03:08:22PM | 23 | something to that effect? |
| 03:08:22PM | 24 | A.   I would have to look at my notes. |
| 03:08:24PM | 25 | Q.   You have notes of those conversations? |

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## 620

| Time | # | Text |
|------|---|------|
| 03:08:26PM | 1 | A.   No.  I believe I have notes where they indicated that they |
| 03:08:30PM | 2 | didn't have data for a particular year. |
| 03:08:33PM | 3 | Q.   And where are those notes? |
| 03:08:35PM | 4 | A.   I believe that they're in my office. |
| 03:08:38PM | 5 | Q.   And that's out in California? |
| 03:08:40PM | 6 | A.   Yes, it is. |
| 03:08:41PM | 7 | Q.   Let's look, for example, under 1974 and 1975.  The C stands |
| 03:08:50PM | 8 | for what region? |
| 03:08:51PM | 9 | A.   Billings. |
| 03:08:52PM | 10 | Q.   Billings?  Do you look all the way for the Billings region, |
| 03:08:56PM | 11 | that would be C50 through C59, and then what's the E range on? |
| 03:09:02PM | 12 | A.   Alaska. |
| 03:09:05PM | 13 | Q.   Where? |
| 03:09:05PM | 14 | A.   Alaska. |
| 03:09:09PM | 15 | Q.   Alaska.  Do you see for those two years, everything for |
| 03:09:11PM | 16 | those two regions and agencies are precisely the same? |
| 03:09:13PM | 17 | A.   Yes, I do. |
| 03:09:19PM | 18 | Q.   That's a lot of red flags there, correct? |
| 03:09:21PM | 19 | A.   It's a potential that these reports were more used from the |
| 03:09:27PM | 20 | same year, yes. |
| 03:09:28PM | 21 | Q.   Could it be that somehow they did some averaging there, or |
| 03:09:31PM | 22 | do you know? |
| 03:09:31PM | 23 | A.   That's not my understanding, no. |
| 03:09:33PM | 24 | Q.   Okay.  Let's look over in 1983 and 1984.  And this may be a |
| 03:09:40PM | 25 | little more difficult, but down five, you see the $3.198 million |

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## 621

| Time | # | Text |
|------|---|------|
| 03:09:50PM | 1 | number twice for that would be A-10? |
| 03:09:54PM | 2 | A.   I'm sorry, what year, sir? |
| 03:09:56PM | 3 | Q.   For agency A-10, 1983 and 1984, do you see the same thing? |
| 03:10:02PM | 4 | A.   Yes, I do. |
| 03:10:03PM | 5 | Q.   Look down at the bottom of those same two columns for '83 |
| 03:10:08PM | 6 | and '84.  Do you see the bottom through three numbers are all |
| 03:10:13PM | 7 | the same for 462, 42, 46? |
| 03:10:19PM | 8 | A.   Yes, I do. |
| 03:10:19PM | 9 | Q.   Would it surprise you if I told you that when you go |
| 03:10:25PM | 10 | through and total all the disbursements that are exactly the |
| 03:10:29PM | 11 | same from year to year that it's over $580 million? |
| 03:10:33PM | 12 | A.   I would have to perform that calculation to tell you that. |
| 03:10:36PM | 13 | Q.   Okay.  Look at the next page, page 21.  What's the F |
| 03:10:41PM | 14 | region? |
| 03:10:42PM | 15 | A.   Portland. |
| 03:10:44PM | 16 | Q.   And look under 1974 and '75 for the Portland region. |
| 03:10:52PM | 17 | A.   Yes, I do. |
| 03:11:01PM | 18 | Q.   So were reports just missing for one of those years so they |
| 03:11:06PM | 19 | used the same figures from one year to the next? |
| 03:11:07PM | 20 | A.   I would have to check. |
| 03:11:09PM | 21 | Q.   Did you ask them about each one of these things, or had you |
| 03:11:15PM | 22 | discovered those before we pointed them out to you here in court |
| 03:11:19PM | 23 | today? |
| 03:11:19PM | 24 | A.   I don't believe I asked them about each of these instances |
| 03:11:21PM | 25 | that we discussed.  I did notice that there were some numbers |

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Official Court Reporter

## 622

| Time | # | Text |
|------|---|------|
| 03:11:25PM | 1 | that were the same. |
| 03:11:26PM | 2 | Q.   Now, the information then that was used here was for the |
| 03:11:35PM | 3 | period of 1972 through 1985? |
| 03:11:40PM | 4 | A.   That's correct. |
| 03:11:40PM | 5 | Q.   Was incomplete, correct? |
| 03:11:43PM | 6 | A.   Potentially, yes. |
| 03:11:45PM | 7 | Q.   Oh, you were told it was incomplete, correct? |
| 03:11:48PM | 8 | A.   It appears that it may be incomplete, yes. |
| 03:11:52PM | 9 | Q.   And at times things were significantly a red flag to you |
| 03:11:57PM | 10 | that you would question the accuracy of some of the information |
| 03:12:00PM | 11 | on this chart, correct? |
| 03:12:01PM | 12 | A.   I believe I said that it seemed inconsistent that the |
| 03:12:04PM | 13 | numbers were the same. |
| 03:12:05PM | 14 | Q.   So does that mean you do question the accuracy of some of |
| 03:12:12PM | 15 | the information on this chart? |
| 03:12:13PM | 16 | A.   It appears that it's an estimate. |
| 03:12:15PM | 17 | Q.   Okay.  Before you just said that there was nothing that was |
| 03:12:19PM | 18 | indicated about this period being an estimate, was it? |
| 03:12:22PM | 19 | A.   That's correct. |
| 03:12:23PM | 20 | Q.   So now we know that pre-1972 is all estimated, correct? |
| 03:12:27PM | 21 | A.   No.  The Osage numbers were calculated by us. |
| 03:12:31PM | 22 | Q.   Were estimated by you, correct? |
| 03:12:33PM | 23 | A.   We had data points for many of the years prior to 1972. |
| 03:12:39PM | 24 | Q.   Okay.  So you had some information but not complete.  We'll |
| 03:12:42PM | 25 | come back to that. |

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| | | |
|---|---|---|
| 03:12:43PM | **1** | But for the total collections and disbursements pre- |
| 03:12:48PM | **2** | '72, those were estimated, correct? |
| 03:12:49PM | **3** | **A.** That's correct. |
| 03:12:49PM | **4** | **Q.** For the period now from 1972 to 1985, you would say |
| 03:12:53PM | **5** | properly to characterize it as an estimate also, correct? |
| 03:12:58PM | **6** | **A.** Some of the numbers have been estimated. |
| 03:13:00PM | **7** | **Q.** And exactly which have been estimated and which haven't you |
| 03:13:04PM | **8** | can't tell us sitting here today? |
| 03:13:07PM | **9** | **A.** Not as I sit here today. |
| 03:13:08PM | **10** | **Q.** Do you have data that would permit you to tell us what was |
| 03:13:13PM | **11** | estimated and what was not estimated during that period? |
| 03:13:16PM | **12** | **A.** I would have to talk to Caren Dunne from Sheveria, Dunne |
| 03:13:20PM | **13** | and Lamey. |
| 03:13:21PM | **14** | **Q.** Did you ever talk, have conversations? |
| 03:13:24PM | **15** | **A.** Yes. |
| 03:13:24PM | **16** | **Q.** Did you ever talk with Greg Sheveria about this? |
| 03:13:26PM | **17** | **A.** I don't believe so. |
| 03:13:28PM | **18** | **Q.** All of your conversations with Sheveria, Dunne and Lamey |
| 03:13:31PM | **19** | were with Caren Dunne? |
| 03:13:32PM | **20** | **A.** I believe so. |
| 03:13:33PM | **21** | **Q.** Now, let me ask you one other question on this area, this |
| 03:13:38PM | **22** | period, the estimated period from '72 to '85. When I look at |
| 03:13:49PM | **23** | the revenue numbers, look at sheet 118, Bates page 118. |
| 03:14:03PM | **24** | **A.** Can you tell me what tab that's in, sir? |
| 03:14:05PM | **25** | **Q.** That's under GLDLR for the receipts. |

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| | | |
|---|---|---|
| 03:14:11PM | **1** | When I look across the totals here at the bottom for |
| 03:14:20PM | **2** | this period, is that the total receipts that you used? |
| 03:14:29PM | **3** | **A.** I don't. We reduced this number by beginning balances. |
| 03:14:33PM | **4** | **Q.** Okay. Let's look then at the Defendants' Exhibit 371. |
| 03:14:43PM | **5** | Were you passed up a copy of that? |
| 03:14:45PM | **6** | **A.** No, I was not. |
| 03:14:46PM | **7** | **Q.** Okay. Do you have that? |
| 03:14:53PM | **8** | **A.** Yes. |
| 03:14:57PM | **9** | **Q.** You do? |
| 03:14:58PM | **10** | **A.** Yes. |
| 03:14:58PM | **11** | **Q.** Can you pull that up on the first page and look under Total |
| 03:15:03PM | **12** | Column G for 1972 through 1985? |
| 03:15:14PM | **13** | MR. DORRIS: Your Honor, Mr. Quinn has handed me a |
| 03:15:14PM | **14** | hard copy that might benefit the witness to have. I think one |
| 03:15:18PM | **15** | was handed up to the Court earlier this morning. |
| 03:15:20PM | **16** | THE COURT: All right. |
| 03:15:22PM | **17** | THE WITNESS: Thank you. |
| 03:15:26PM | **18** | BY MR. DORRIS: |
| 03:15:30PM | **19** | **Q.** Okay. As I'm looking at 1972 all the way through 1983, it |
| 03:15:49PM | **20** | appears to me to track dollar for dollar what the totals are. |
| 03:15:58PM | **21** | **A.** I'm sorry, I don't believe I understand your question. |
| 03:16:00PM | **22** | **Q.** Okay. I'm looking at page 118 in Defendants' Exhibit 372. |
| 03:16:07PM | **23** | **A.** Correct. |
| 03:16:07PM | **24** | **Q.** Okay. And now I'm looking at the Total column that you |
| 03:16:13PM | **25** | have here on Defendants' Exhibit 371. |

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| | | |
|---|---|---|
| 03:16:20PM | **1** | **A.** We only made adjustments in three of the years. I believe |
| 03:16:25PM | **2** | that's what you're referring to. |
| 03:16:31PM | **3** | **Q.** When you say you made beginning balances, what do you mean? |
| 03:16:35PM | **4** | **A.** Within the IRMS system it was posed a new receipt, a new |
| 03:16:40PM | **5** | collection, and those funds represent the net amount of activity |
| 03:16:44PM | **6** | that has happened prior. |
| 03:16:46PM | **7** | **Q.** Now you're talking about the IRMS system. I'm totally |
| 03:16:50PM | **8** | confused. |
| 03:16:51PM | **9** | **A.** It records the summary level information from the GLDL |
| 03:16:56PM | **10** | system. |
| 03:16:56PM | **11** | **Q.** How many years do you have summary-level information for |
| 03:17:05PM | **12** | the GLDL years? |
| 03:17:08PM | **13** | **A.** We're just using the paper time frame of the IRMS system, |
| 03:17:12PM | **14** | which is why these adjustments appear on this report and not on |
| 03:17:17PM | **15** | the AR-171. |
| 03:17:19PM | **16** | **Q.** Okay, I'm lost. The IRMS system that you haven't had time, |
| 03:17:29PM | **17** | you had information beginning in February of 1985 and you are |
| 03:17:34PM | **18** | now going back and taking hard paper copies of receipts that |
| 03:17:38PM | **19** | were run from the IIM system prior to that time and keying them |
| 03:17:44PM | **20** | back in? |
| 03:17:44PM | **21** | **A.** Yes. Primarily transaction registers. |
| 03:17:51PM | **22** | **Q.** You're doing that and now you're making some adjustments to |
| 03:17:56PM | **23** | some of the calculations on Sheveria Dunne's records? |
| 03:18:02PM | **24** | **A.** Yes. |
| 03:18:08PM | **25** | **Q.** The number on your final chart of June 4 is 426.6 million, |

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| | | |
|---|---|---|
| 03:18:15PM | **1** | and Sheveria, Dunne and Lamey's spreadsheets shows 445.8 |
| 03:18:22PM | **2** | million, correct? |
| 03:18:23PM | **3** | **A.** That's correct. You can turn to page 28 and you can see |
| 03:18:26PM | **4** | the adjustments that were made. |
| 03:18:28PM | **5** | **Q.** It's just going to show me that approximate $20 million |
| 03:18:31PM | **6** | adjustment was correct? |
| 03:18:33PM | **7** | **A.** For beginning balance transaction, yes. |
| 03:18:38PM | **8** | **Q.** But you've not looked for any others to see whether similar |
| 03:18:42PM | **9** | adjustments would be appropriate? |
| 03:18:44PM | **10** | **A.** Because we have not rekeyed that data in its entirety. |
| 03:18:49PM | **11** | **Q.** Does rekeying any of that data permit you to look at any of |
| 03:18:53PM | **12** | the disbursement data to see if any of it was stated too high? |
| 03:18:59PM | **13** | **A.** This is a unique issue getting beginning balances posting. |
| 03:19:03PM | **14** | Beginning balances post as cash, as new money to the system. |
| 03:19:06PM | **15** | You don't have the same issue with disbursements. |
| 03:19:08PM | **16** | **Q.** Okay. Now let's talk about the period of from 1985 forward |
| 03:19:16PM | **17** | for a few minutes. That is the IRMS time frame, correct? |
| 03:19:20PM | **18** | **A.** IRMS and TFAS. |
| 03:19:23PM | **19** | **Q.** And TFAS. And that is information that you are more |
| 03:19:27PM | **20** | familiar with than you were with these earlier periods, is that |
| 03:19:31PM | **21** | fair? |
| 03:19:31PM | **22** | **A.** That's what I spent the majority of my time studying, yes. |
| 03:19:36PM | **23** | **Q.** Since 1997? |
| 03:19:39PM | **24** | **A.** That's correct. |
| 03:19:39PM | **25** | **Q.** There were substantial changes between AR-171 that you |

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03:19:45PM **1** testified to in October in the numbers during that period and

03:19:49PM **2** what you are showing on your present chart, correct?

03:19:52PM **3** **A.** There were some changes, yes.

03:19:54PM **4** **Q.** Okay. Now, are those changes detailed in this notebook

03:19:59PM **5** somewhere?

03:20:00PM **6** **A.** The total numbers that we have reflected in this notebook.

03:20:04PM **7** I can't show you all 115 million transactions.

03:20:09PM **8** **Q.** I'm not sure you'd be permitted to. But I don't want to

03:20:15PM **9** see all 115 million transactions, but let me ask you, let me ask

03:20:22PM **10** you the question this way. I understood your data completeness

03:20:27PM **11** validation, that part of that was you were going to look at what

03:20:32PM **12** was admittedly an incomplete database that you had been given to

03:20:36PM **13** try to fill in or restore some of the gaps?

03:20:38PM **14** **A.** Yes. We have continued to restore transactions to the

03:20:42PM **15** database.

03:20:42PM **16** **Q.** So actually since the point in time where you here in

03:20:45PM **17** October, you are putting in more transactions into the database,

03:20:49PM **18** correct?

03:20:50PM **19** **A.** That's correct.

03:20:50PM **20** **Q.** And is that part of the reason the number changes?

03:20:54PM **21** **A.** The number changes actually in totality went down more as a

03:21:00PM **22** result of our transaction mapping.

03:21:01PM **23** **Q.** So it's not from putting more information in the system,

03:21:04PM **24** that's not what made it go down, correct?

03:21:06PM **25** **A.** No, it did not. I mean, we add transactions to the record

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03:21:10PM **1** set, both collections and disbursement transactions.

03:21:13PM **2** **Q.** And how many transactions have you restored and the dollar

03:21:18PM **3** value of those since October of 2007?

03:21:21PM **4** **A.** I don't know that number as I sit here.

03:21:27PM **5** **Q.** Do you have that number available, though? Is that

03:21:30PM **6** something you just don't remember?

03:21:31PM **7** **A.** Yes, I could calculate that number.

03:21:33PM **8** **Q.** Now, with respect to the changes that have been made, have

03:21:38PM **9** you -- can you bring up that comparison chart? I've done a

03:21:43PM **10** chart that shows how the revenues have gone down by almost $250

03:21:50PM **11** million between these two AR exhibits. Look at this chart.

03:22:26PM **12** What I've tried to do there is at that time total collections

03:22:28PM **13** that you had from the October AR-171 and then the one on June

03:22:34PM **14** 4th, and do you see, assuming that my math is right here on

03:22:39PM **15** Plaintiffs' 119, that roughly $243 million less in revenue is

03:22:46PM **16** now shown?

03:22:46PM **17** **A.** That's correct.

03:22:47PM **18** **Q.** Did you explain that to us already on direct?

03:22:52PM **19** **A.** I don't recall if I did or not.

03:22:54PM **20** **Q.** All right. I missed it if you did, but what you're saying

03:22:58PM **21** is, is that because primarily of some additional transaction

03:23:03PM **22** mapping, that the numbers have been revised since October of

03:23:09PM **23** 2007, correct?

03:23:11PM **24** **A.** Yes. AR-171 was actually created in March of 2007.

03:23:16PM **25** **Q.** Okay. So it's additional -- how much of the additional

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03:23:21PM **1** transaction mapping that causes this change occurred before

03:23:24PM **2** October when you testified last time?

03:23:26PM **3** **A.** I can't tell you that as I sit here today.

03:23:30PM **4** **Q.** Okay. Now, can you explain in as simple of terms as

03:23:35PM **5** possible how a transaction mapping, for example, in 1986 can

03:23:41PM **6** cause the IIM beneficiaries to lose $43.7 million in receipts?

03:23:47PM **7** **A.** Perhaps if we could bring up one of the examples we

03:23:51PM **8** discussed earlier today that might facilitate the conversation.

03:23:54PM **9** **Q.** Well, it would help me if you could just describe it, how

03:23:58PM **10** transaction mapping can cause this to go down.

03:24:01PM **11** **A.** Okay. I'll describe it in the context of that example if

03:24:05PM **12** that's okay.

03:24:06PM **13** **Q.** However it would be best for you to describe it.

03:24:08PM **14** **A.** Okay. As you recall on the example of the forestry

03:24:15PM **15** payment, and your Honor asked me about why would you process a

03:24:18PM **16** transfer with a check code, and we discussed the fact that the

03:24:22PM **17** collections on the other side would then again be posted and a

03:24:25PM **18** collection to the system as A-01, so prior to mapping that

03:24:30PM **19** transaction those would have been counted as unique collections

03:24:34PM **20** and disbursements instead of counting them as transfers because

03:24:39PM **21** of the coding within the system itself.

03:24:43PM **22** **Q.** Okay. So that you did explain that one before a little

03:24:47PM **23** bit, but I want to ask you some questions about that example as

03:24:50PM **24** I recall it. I think you answered Judge Robertson's questions

03:24:55PM **25** that the system would not let you use a certain code where it

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03:25:03PM **1** didn't balance out. Those are my words and not yours.

03:25:06PM **2** **A.** That's correct.

03:25:07PM **3** **Q.** And what code was that?

03:25:09PM **4** **A.** An 12 code was used for those types of transactions.

03:25:13PM **5** However, the other major instance when that code would not be

03:25:18PM **6** used was with many of the distribution programs within the

03:25:21PM **7** system.

03:25:22PM **8** **Q.** Now, with respect to that, that was a restraint put in the

03:25:27PM **9** system to try to protect the accounting system, correct?

03:25:30PM **10** **A.** That was one of them, yes.

03:25:32PM **11** **Q.** And to try to protect the beneficiaries, correct?

03:25:34PM **12** **A.** I don't know why the accounting system was programmed the

03:25:38PM **13** way it was.

03:25:38PM **14** **Q.** Okay. But as a result it was then the accounting system

03:25:46PM **15** was used in a fashion that it was not intended to be used,

03:25:51PM **16** correct?

03:25:51PM **17** **A.** Not necessarily. There was another code in the system, for

03:25:55PM **18** instance, referred to as a debit memo that was used in

03:25:58PM **19** conjunction with the distribution programs, and that would be

03:26:03PM **20** reflected as cash again, as new money when the credits were

03:26:07PM **21** posted.

03:26:07PM **22** **Q.** Now, in terms of this then are you saying how much of this

03:26:15PM **23** difference are you saying come from those type of examples --

03:26:19PM **24** the type of example you've just given with this type of

03:26:24PM **25** transaction and transaction mapping?

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1　A.　The transaction mapping and the new transactions that we've

2　restored since AR-171 would result in these differences.

3　Q.　And how much is from restored transactions, how much is

4　from mapping, do you know?

5　A.　As I mentioned, I don't know the number nor amount of

6　transactions we restored since that time.

7　Q.　Okay.  Now, the next period that you go into with respect

8　to this AR-171 is then what affected 1995?

9　A.　Beginning in 1996 I believe we have audited reports.

10　Q.　Okay.  And what have you -- you've -- did you go to the

11　audited reports and use that information?

12　A.　We used the interest and the total collections and the

13　total disbursements from the audited reports.

14　Q.　Okay.  And those began in 1996?

15　A.　That was the second period of audit reports.

16　Q.　Okay.  And so you used all that information from 1996

17　through 2007?

18　A.　That's correct.

19　Q.　But you didn't use that same information during the first

20　audit period by Arthur Andersen; is that correct?

21　A.　I used the interest numbers and the balance numbers, but

22　not the receipt and disbursement numbers.

23　Q.　Okay.  So for one audit period you used it for all that

24　information, interest, balance, receipts and disbursements,

25　correct?

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Official Court Reporter

1　A.　That's correct.

2　Q.　And for another period you picked two of the pieces of

3　information out of Arthur Andersen's report but not collections

4　and disbursements?

5　A.　That's because the collection number I calculated was

6　higher than that which was reported in the audit.

7　Q.　For each of those years?

8　A.　I don't recall if it was for each of those years.  There

9　was a large difference in the first year.

10　Q.　So you used whatever number would be most favorable to the

11　plaintiffs?

12　A.　At least in the first year.  I don't recall all three

13　years.  I'd have to look at the numbers.

14　Q.　So you don't know whether Arthur Andersen's number would

15　end up being favorable to the government or favorable to the

16　plaintiffs?

17　A.　I used a higher number at least in the first year.  I'd

18　have to look at the report itself.  It's right here.  We could

19　look at it.

20　Q.　I'm only asking this question for this:  I recall earlier

21　you said you used audited reports because when a third party had

22　come and reviewed the information you thought that it would be

23　better than simply using what was in the IRMS system?

24　A.　I was concerned that the numbers I had calculated in the

25　first year were much higher and so I used what I felt to be a

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Official Court Reporter

1　more conservative number, a higher revenue number.

2　Q.　So there are times then that you used what third parties

3　have done and times you didn't?

4　A.　I just disclosed the only times we didn't use the audit

5　numbers.

6　Q.　Were in the Arthur Andersen years of 1988 through 1990 for

7　the collection and disbursements, correct?

8　A.　I'd have to confirm which specific years, but yes.

9　Q.　Now, are you the person that actually went to the audit

10　reports and took the information from them?

11　A.　One of my staff or I, yes.

12　Q.　Okay.  And you understand that each one of those audited

13　statements, the auditors express a qualified opinion on that,

14　correct?

15　A.　Yes, I do.

16　Q.　And you're not a C.P.A., are you?

17　A.　No, I am not.

18　Q.　And so essentially what you have is you have management of

19　OST, prepares a financial statement, and then auditors come in

20　and look at it and look at the books, correct?

21　A.　That's correct.

22　Q.　And so actually the financial statement is a financial

23　statement that is management's financial statement, correct?

24　A.　As reviewed by the auditors.

25　Q.　As reviewed by the auditors, and the auditors said in each

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Official Court Reporter

1　of these cases, essentially said in layman's terms we can't

2　express an opinion on it?

3　A.　I believe in the audits they discussed risks and other

4　issues.  I'd have to review them to tell you the specific

5　concerns the auditors had.

6　Q.　Okay.  Let's look at Plaintiffs' Exhibit 120.  Can you go

7　back to the first page of this document, please?  Do you see

8　that this is the audit report for 1999?

9　A.　Yes, I do.

10　Q.　And then we'll look at page three of this document.  And

11　this is from the Department of Interior or writing to the

12　special trustee, and I'm just going to ask you to look at the

13　highlighted parts there.  It says Griffen & Associates issued

14　qualified opinions, and they describe something.  You're welcome

15　to read it to yourself.  And then the next highlighted part says

16　these conditions prevented the cash and trust fund balances and

17　the receipts and disbursements from being audited.  Do you see

18　that?

19　A.　I'm reading the paragraph.

20　　　　(Witness reviews document.)

21　　　　Yes, I do.

22　Q.　And that's consistent with your understanding, correct?

23　A.　Excuse me, my understanding of this audit in particular?

24　Q.　Yes.

25　A.　Yes, this is a page from this audit.

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1 Q. Okay. Well, this is actually a page where the Interior is

2 writing sending this audit on to the special trustee and

3 essentially reporting from what I just read that disbursements

4 and collections were not able to be audited, do you see that?

5 A. This is a summary that I believe the inspector general

6 prepared of the audit itself. I don't know specifically based

7 on this paragraph what Griffen & Associates said.

8 Q. Okay. Look down at what the inspector general, that would

9 be Interior's inspector general?

10 A. Yes, I believe so.

11 Q. Interfund and intrafund transfers. It says currently

12 interfund and intrafund transfers are not always recorded using

13 the CEI systems process. Do you see that?

14 A. I do.

15 Q. What's CEI?

16 A. That I believe this is referring to the TFAS system, but

17 I'm not certain.

18 Q. Okay. And it goes on to say, This results in substantial

19 manual efforts to identify and reclassify these efforts for

20 financial reporting purposes. Do you see that?

21 A. I do.

22 Q. Okay. Looking back at the chart that you have testified

23 about extensively, essentially what the inspector general is

24 saying is that it's real difficult to figure out what all these

25 transfers are that you're referring to here in the blue box. Is

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1 that it?

2 A. No. What I believe the inspector general's referring to

3 were transfers to and from the tribal and individual trusts and

4 to and from other trust funds managed by Interior.

5 Q. Okay. The tribal trust would then be interfund transfer,

6 correct?

7 A. That's correct.

8 Q. So that would be a transfer either going in or out of the

9 system?

10 A. IIM system, that's correct.

11 Q. And the intrafund system would be the transfers that are

12 moving up or down here with respect to inside the IIM system,

13 correct?

14 A. Yes, they would be.

15 Q. And so what even an inspector general is saying is it's

16 very hard to sort out these transfers?

17 A. I believe this is because this is the same time frame that

18 IMC and TFAS were being used, and there's the issue using this

19 duplication that we were discussing earlier.

20 Q. And you have in fact found that it's difficult to sort out

21 all those and what they were for?

22 A. It's time-consuming, yes.

23 Q. Not difficult, but time-consuming?

24 A. It is time-consuming, yes.

25 Q. And you today can't tell us in terms of receipts and

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1 disbursements what are the result of intrafund or interfund

2 transfers for the periods covered by your AR-171 and DX 371, can

3 you?

4 A. To the extent we've identified the transfers we've

5 eliminated them from the numbers. To the extent we haven't

6 identified the transfers the numbers would be overstated.

7 Q. You're assuming all the transfers that you're talking about

8 are transfers going out?

9 A. No. I'm assuming, as you saw, they're marked as

10 disbursements and collections, so you would be counting those

11 monies again.

12 Q. But you're looking at the IIM system on that, correct?

13 A. That's correct.

14 Q. Have you gone and looked at the other interfund, other

15 funds where funds are being transferred to and from and looked

16 at those to see what all they show about transfers to the IIM

17 system to determine whether all those transfers got properly

18 recorded in the IIM system?

19 A. I don't believe I understand your question.

20 Q. Oh, sure. In other words, in this chart you're showing

21 only transfers going out of the IIM system to the tribal trust?

22 A. That's correct.

23 Q. You don't show anything coming into the IIM system from the

24 tribal trust?

25 A. That's correct.

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Official Court Reporter

1 Q. But you've testified that that is inaccurate, that in fact

2 money does come from the tribal trust into the IIM system,

3 correct?

4 A. Money does come in to IIM from the tribal trust, that's

5 correct.

6 Q. And so I'm asking you, did you go through the tribal trust

7 and look at that system to see if all of the transfers recorded

8 in that system is going to the IIM system had in fact been

9 properly recorded in the IIM system?

10 A. I didn't evaluate every transfer out of the tribal trust.

11 I believe what the inspector general is referring to is the fact

12 that it's difficult to separate transfers from true collections.

13 Q. I understand. I want to ask you about what the inspector

14 general said. I was asking about what you've done and what you

15 have not done and confirmed that all of the transfers shown in

16 the tribal trust system is coming into the IIM system are

17 properly recorded in the IIM system as receipts.

18 A. I have not evaluated every transfer out of the tribal trust

19 system, no.

20 MR. DORRIS: Your Honor, if we might have an afternoon

21 break.

22 THE COURT: Sure.

23 MR. DORRIS: We've been going a while.

24 THE COURT: Is ten minutes enough?

25 MR. DORRIS: Thank you, your Honor.

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| | |
|---|---|
| 03:37:48PM | **1** |
| 03:50:56PM | **2** |
| 03:37:53PM | **3** |
| 03:50:58PM | **4** |
| 03:51:04PM | **5** |
| 03:51:07PM | **6** |
| 03:51:08PM | **7** |

**1**      COURTROOM DEPUTY: Court stands in recess until 3:45.

**2**      (Recess taken at about 3:37 p.m.)

**3**      COURTROOM DEPUTY: Please come to order and remain

**4** seated.

**5**      MR. DORRIS: Thank you, your Honor.

**6** BY MR. DORRIS:

**7**    **Q.** Ms. Herman, looking at your chart, Defendants' Exhibit 373,

**8** your chart, now, where would on the disbursement side Loretta

**9** Rose, where would she be on, which of those boxes would she be

**10** in?

**11**    **A.** I'm sorry. To whom are you referring?

**12**    **Q.** The woman who was at the Crown Point agency of Navajo

**13** descent whose account had checks written out of them, who's had

**14** checks written out of her account by one of the BIA employees

**15** and put into that BIA employee's own bank account.

**16**    **A.** I'm sorry. Are you suggesting she was an individual Indian

**17** accountholder?

**18**    **Q.** Yes.

**19**    **A.** And a check was disbursed from her account?

**20**    **Q.** And from her account and deposited by a BIA employee into

**21** the BIA employee's account.

**22**    **A.** Disbursements from individual accounts are only represented

**23** through the bottom arrow on the chart.

**24**    **Q.** Okay. So this would then be characterized by you as a

**25** payment to or for that beneficiary?

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Official Court Reporter

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**1**    **A.** That's correct.

**2**    **Q.** Okay. So your chart assumes, doesn't it, that all payments

**3** out of individual accounts are for or to IIM beneficiaries,

**4** correct?

**5**    **A.** It does not take into consideration fraud, if that's what

**6** you're asking me.

**7**    **Q.** Right. Or any other type of payment that may come out

**8** without the authorization of an IIM beneficiary, correct?

**9**    **A.** I'm sorry. It just refers to the fact that payment from

**10** individual accounts are for or on behalf of individual account-

**11** holders.

**12**    **Q.** Are you aware of any instances of fraud in all of the work

**13** that you've studied and done?

**14**    **A.** I have seen several reports that have referred to instances

**15** of fraud.

**16**    **Q.** Do you think those reports are right or not?

**17**    **A.** I haven't done a fraud study of the system, if that's your

**18** question.

**19**    **Q.** Okay. And you've seen other reports that refer to

**20** disbursements to some of these other four brown boxes, correct?

**21**    **A.** I've seen reports that talk about return of bid deposits

**22** and payments of judgment monies, if that's ...

**23**    **Q.** Now, for example, in the year 2007 you show a certain

**24** disbursement out of the IIM system, correct?

**25**    **A.** That's correct.

Jacqueline M. Sullivan, RPR

Official Court Reporter

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**1**    **Q.** Now, when you talk about the IIM system, where is that

**2** system, what department or agency is it housed at?

**3**    **A.** Today that would be, the transactional information would be

**4** contained within the TFAS system.

**5**    **Q.** Okay. The money actually is at Treasury, correct?

**6**    **A.** I'm sorry, I don't understand your question.

**7**    **Q.** In other words, the money that's being referred to in your

**8** IIM system, there's money in the system, correct?

**9**    **A.** That's correct.

**10**    **Q.** And that money is being held at Treasury?

**11**    **A.** The majority of that money is being held in investments.

**12**    **Q.** Okay. That are held by Treasury?

**13**    **A.** I don't know the name of the investment holder.

**14**    **Q.** Okay. Now, in terms of the cash, it's held by Treasury, is

**15** that fair to say?

**16**    MR. QUINN: Excuse me. Objection, your Honor; beyond

**17** the scope of direct.

**18**    THE COURT: I'm going to allow it. She may not know,

**19** but I'm going to allow him to inquire.

**20**    THE WITNESS: It's my understanding that uninvested

**21** cash is held by Treasury.

**22** BY MR. DORRIS:

**23**    **Q.** Okay. Now, can you tell us of the amounts that were

**24** disbursed in 2007 how much was disbursed to the third parties,

**25** tribal trust, stakeholders, and IIM beneficiaries?

Jacqueline M. Sullivan, RPR

Official Court Reporter

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**1**    **A.** Not as I sit here, no.

**2**    **Q.** Is that information available?

**3**    **A.** That's something that would have to be computed.

**4**    **Q.** How could you compute it?

**5**    **A.** Some of the information you could compute using the

**6** electronic data. Some of the information you would have to look

**7** at financial documents.

**8**    **Q.** So that information is not readily available?

**9**    **A.** No, it's not readily available.

**10**    **Q.** How long would it take to put that information together?

**11**    **A.** I can't tell you that as I sit here today.

**12**    **Q.** You've never tried to do that?

**13**    **A.** Some of that information, as I mentioned, you could do

**14** using the electronic data, but for those transactions that you'd

**15** have to identify a financial document I don't know how long it

**16** would take to review those documents.

**17**    **Q.** Okay. Now, let's go over, for example, in the third

**18** parties are you saying as third parties administrative fees are

**19** paid out of the IIM system to third parties?

**20**    **A.** I'm including the government in this instance as a third

**21** party, yes.

**22**    **Q.** So the government paying money from the IIM system to

**23** itself, you're referring to the government as a third party?

**24**    **A.** That's correct, in this instance.

**25**    **Q.** And you've got one of the things that the government is

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| | |
|---|---|
| 03:56:21PM | **1** paying to itself is administrative fees? |
| 03:56:24PM | **2** A. That's correct. |
| 03:56:24PM | **3** Q. And those administrative fees are for what? |
| 03:56:28PM | **4** A. Collected on preparations, for instance. |
| 03:56:34PM | **5** Q. Last time you were here and you testified I recall your |
| 03:56:38PM | **6** testimony, and I've read it recently, was that in fact the |
| 03:56:46PM | **7** administration fees never got into the IIM system, that they |
| 03:56:49PM | **8** were paid directly by the leasees to the government. Do you |
| 03:56:52PM | **9** recall that? |
| 03:56:52PM | **10** A. In the particular example we discussed I recall that, but |
| 03:56:56PM | **11** that's not a general statement about the system. |
| 03:56:59PM | **12** Q. And you didn't make that general statement last time? |
| 03:57:01PM | **13** A. Not that I recall. I haven't reread my testimony, though. |
| 03:57:04PM | **14** Q. So can you tell us the amount of administrative fees that |
| 03:57:08PM | **15** the government has paid to itself during any period of the |
| 03:57:13PM | **16** trust? |
| 03:57:14PM | **17** A. Not as I sit here today, no. |
| 03:57:18PM | **18** Q. How would you go about getting that information? |
| 03:57:18PM | **19** A. I'd have to analyze the disbursements from those accounts, |
| 03:57:24PM | **20** and in some instances I'd likely have to pull financial |
| 03:57:26PM | **21** documents to determine that. |
| 03:57:27PM | **22** Q. When you say "financial documents," similar to the |
| 03:57:29PM | **23** documents that you've gone through with us today? |
| 03:57:31PM | **24** A. That's correct. |
| 03:57:31PM | **25** Q. And those would be documents that would be at Lenexa? |

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|---|---|
| 03:57:35PM | **1** A. In some instances. |
| 03:57:37PM | **2** Q. What about the amount of the unsuccessful bid deposit, do |
| 03:57:42PM | **3** you know what that amount is? |
| 03:57:43PM | **4** A. Not as I sit here today, no. |
| 03:57:45PM | **5** Q. Okay. Now, what about the tribal trust, can you tell what |
| 03:57:50PM | **6** the amount that has gone to the tribal trust is for any |
| 03:57:54PM | **7** particular year? |
| 03:57:55PM | **8** A. To the extent that we've mapped those transactions, yes, |
| 03:57:58PM | **9** but I can't say that that's the number in its totality, as we |
| 03:58:03PM | **10** still have work remaining. |
| 03:58:05PM | **11** Q. And that would then only be for the mapping period that |
| 03:58:08PM | **12** you're doing? |
| 03:58:09PM | **13** A. For '86 through present, I think so. |
| 03:58:12PM | **14** Q. And so whatever went into the tribal trust before you you |
| 03:58:18PM | **15** couldn't do, you couldn't determine; is that correct? |
| 03:58:21PM | **16** A. I would have to look at a different set of information. |
| 03:58:23PM | **17** Q. What information would that be? |
| 03:58:25PM | **18** A. As I mentioned, we're beginning to rekey the IRMS |
| 03:58:28PM | **19** transaction registers, and prior to that you would have to look |
| 03:58:31PM | **20** at manual ledgers. |
| 03:58:32PM | **21** Q. Okay. Stakeholders -- let me ask this question. If from |
| 03:58:39PM | **22** an SBA account disbursement is made directly to an IIM |
| 03:58:44PM | **23** beneficiary, that would be then the beneficiary would be in a |
| 03:58:49PM | **24** stakeholder category; is that correct? |
| 03:58:51PM | **25** A. If your question is if that person is an individual |

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| | |
|---|---|
| 03:58:54PM | **1** accountholder as well? |
| 03:58:55PM | **2** Q. Yes. |
| 03:58:56PM | **3** A. Yes, that would still appear in the stakeholder box. |
| 03:58:59PM | **4** Q. Are you saying that in order to be an IIM beneficiary you |
| 03:59:03PM | **5** have to have an account? |
| 03:59:05PM | **6** A. I'm referring to IIM beneficiaries in this situation as |
| 03:59:09PM | **7** holders of the accounts in the system. |
| 03:59:10PM | **8** Q. Okay. So when you talk about an IIM beneficiary, that's |
| 03:59:15PM | **9** someone that has an account and account number in the system? |
| 03:59:19PM | **10** A. That's correct. |
| 03:59:19PM | **11** Q. And we recall that when you were here and testified in |
| 03:59:24PM | **12** October you had not done any effort to do an external validation |
| 03:59:29PM | **13** to determine that all IIM beneficiaries in fact had an account, |
| 03:59:34PM | **14** do you recall that? |
| 03:59:34PM | **15** A. I'm sorry, I don't believe I understand the question. |
| 03:59:38PM | **16** Q. Yes. In other words, you can't say that everybody that has |
| 03:59:41PM | **17** an account number in the IIM system, that that includes all IIM |
| 03:59:46PM | **18** beneficiaries? |
| 03:59:46PM | **19** A. In this instance, as I mentioned, I'm referring to IIM |
| 03:59:50PM | **20** beneficiaries as those who hold accounts. |
| 03:59:52PM | **21** Q. I understand that. I guess my question is, do you know |
| 03:59:56PM | **22** whether or not all people that are IIM beneficiaries have |
| 04:00:03PM | **23** accounts? |
| 04:00:03PM | **24** MR. QUINN: Objection, your Honor. It calls for a |
| 04:00:05PM | **25** legal conclusion. |

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|---|---|
| 04:00:07PM | **1** THE COURT: Overruled. |
| 04:00:09PM | **2** THE WITNESS: If you'll explain to me, sir, how you're |
| 04:00:11PM | **3** defining IIM beneficiaries I'll attempt to answer the question. |
| 04:00:15PM | **4** BY MR. DORRIS: |
| 04:00:15PM | **5** Q. A beneficiary that someone that has a beneficial interest |
| 04:00:20PM | **6** in any of the trust property. |
| 04:00:24PM | **7** A. I believe that if someone didn't prior to the |
| 04:00:27PM | **8** implementation of the TMS, it's my understanding that if someone |
| 04:00:30PM | **9** hadn't leased their land and wasn't expecting a collection on |
| 04:00:34PM | **10** that land an account number wasn't necessarily established in |
| 04:00:38PM | **11** the system. |
| 04:00:38PM | **12** Q. Okay. Have you done anything or FTI to your knowledge have |
| 04:00:43PM | **13** done anything to determine that all individual Indians that have |
| 04:00:50PM | **14** beneficial interest in any of the trust property have accounts, |
| 04:00:53PM | **15** in fact have account numbers? |
| 04:00:54PM | **16** A. It's my understanding now with the implementation of TMS |
| 04:00:59PM | **17** that everyone who has an interest in land as a TFAS account |
| 04:01:02PM | **18** number. |
| 04:01:03PM | **19** Q. I hear you say that. And my question to you was, has FTI |
| 04:01:07PM | **20** done anything to validate that and determine if that's accurate? |
| 04:01:10PM | **21** A. No, I have not. |
| 04:01:11PM | **22** Q. All right. Now, are there any sources of income other than |
| 04:01:16PM | **23** those that you have referred to here in the green box? |
| 04:01:20PM | **24** A. Yes. That would be included in the "etcetera" category. |
| 04:01:24PM | **25** Q. Under the Other Receipts, Etcetera? |

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04:01:27PM 1  A.   That's correct.

04:01:28PM 2  Q.   And what does that include?

04:01:30PM 3  A.   It includes numerous things, so range income for instance,

04:01:36PM 4  stock sales, bid deposits, bonds, school fees.  There's many

04:01:41PM 5  different types of monies that actually come into the IIM

04:01:44PM 6  system.

04:01:45PM 7  Q.   Okay.  When you talk about a disbursement, you're talking

04:01:50PM 8  about something that would be reflected by a red arrow going to

04:01:56PM 9  the right of your chart, correct?

04:01:57PM 10  A.   That's correct.

04:01:57PM 11  Q.   So in other words, when you talk about a disbursement

04:02:00PM 12  you're talking about something that goes outside the IIM system?

04:02:04PM 13  A.   That's correct.

04:02:05PM 14  Q.   You would not view a transfer from an SBA to an individual

04:02:13PM 15  account as a disbursement?

04:02:14PM 16  A.   No.  I'd consider that a transfer.

04:02:16PM 17  Q.   And now you were asked a question by Judge Robertson about

04:02:25PM 18  this chart, and I think the word was this was really your

04:02:29PM 19  construct of the way you'd gotten where you viewed the

04:02:35PM 20  historical flow of funds in the IIM system, correct?

04:02:39PM 21  A.   That's correct.

04:02:39PM 22  Q.   Did you prepare this chart?

04:02:41PM 23  A.   Yes, I did.

04:02:42PM 24  Q.   All right.  And when we say that it's your construct, for

04:02:49PM 25  example, there are nonlabels that go on this account as

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04:02:55PM 1  nonindividual accounts and individual accounts?

04:02:57PM 2  A.   No, there's not such a label in the system.

04:02:59PM 3  Q.   Or a break down between nonindividual accounts, a group of

04:03:02PM 4  those and individual accounts?

04:03:03PM 5  A.   Only to the extent that you consider that, for instance,

04:03:07PM 6  within the IIM system individual accounts are typically referred

04:03:10PM 7  to as GL-230611.

04:03:13PM 8  Q.   Now, in terms of this, when we look at AR-171 and then the

04:03:19PM 9  revisions that you've given us in May and June, do those

04:03:26PM 10  always -- are those always consistent with what you've described

04:03:29PM 11  as disbursements here?

04:03:30PM 12  A.   I'm sorry.  Could you repeat the question?

04:03:32PM 13  Q.   Yes.  When I look at Defendants' Exhibit 371 and I look

04:03:39PM 14  under the disbursements column there --

04:03:41PM 15  A.   Yes.

04:03:41PM 16  Q.   -- that's the amount of these red arrows, correct?

04:03:43PM 17  A.   That's correct.

04:03:44PM 18  Q.   It's not a transfer inside?

04:03:47PM 19  A.   I would only include transfers to the extent we hadn't yet

04:03:50PM 20  identified them.

04:03:52PM 21  Q.   Okay.  But if there were transfers included in the

04:03:54PM 22  disbursement category, then they should be taken out through

04:03:57PM 23  this chart, correct?

04:03:58PM 24  A.   They would be overstating collections and disbursements.

04:04:01PM 25  Q.   Well, I was just asking about disbursements now, Ms.

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04:04:05PM 1  Herman.  I was asking you if there were disbursements shown in

04:04:09PM 2  this column that were transfers in the system and not red arrows

04:04:13PM 3  going out.

04:04:14PM 4  A.   It's possible, yes.

04:04:14PM 5  Q.   Then that would have been an overstatement of

04:04:16PM 6  disbursements, correct?

04:04:17PM 7  A.   And an equal overstatement of receipts, yes.

04:04:21PM 8  Q.   So that if there was a -- if the receipts included the

04:04:26PM 9  transfers too, then you would view that as an overstatement of

04:04:30PM 10  receipts?

04:04:30PM 11  A.   That's correct.

04:04:31PM 12  Q.   But to the best of your knowledge, there are no such

04:04:35PM 13  transfers in your disbursement category, are there?

04:04:38PM 14  A.   Yes.  As I mentioned, our data validation work is still

04:04:42PM 15  continuing.  We still have transfers that we're mapping.

04:04:45PM 16  Q.   What about your data validation study is a limited part of

04:04:50PM 17  time?  What about before 1985, what are you doing to try to take

04:04:55PM 18  out disbursements, internal disbursements that are being treated

04:04:59PM 19  as disbursements, internal transfers that are being treated as

04:05:03PM 20  disbursements?

04:05:03PM 21  A.   Our study right now is focused on the '86, or excuse me,

04:05:08PM 22  '85 forward period.

04:05:09PM 23  Q.   So you're not looking at that at this point?

04:05:12PM 24  A.   Not at this point, no.

04:05:14PM 25  Q.   You said something in response to one of Mr. Quinn's

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04:05:30PM 1  questions yesterday that was -- that I thought I heard, I've not

04:05:37PM 2  read the transcript from your earlier testimony, but he said

04:05:42PM 3  that you characterized certain things by their destination?  Do

04:05:49PM 4  you remember something to that effect?

04:05:49PM 5  A.   Yes, I do.

04:05:50PM 6  Q.   What do you mean by that?

04:05:53PM 7  A.   For instance, a movement from the nonindividual section to

04:05:58PM 8  the tribal trust, it's identified as tribal trust based on

04:06:02PM 9  identifying the posting in the tribal trust system.

04:06:06PM 10  Q.   Okay.  So that you are characterizing what's in the IIM

04:06:12PM 11  system by who it got disbursed to?

04:06:15PM 12  A.   I'm sorry.  I think perhaps I'm not explaining clearly.

04:06:20PM 13  There are particular types of accounts, special deposit

04:06:23PM 14  accounts, tribal IIM accounts, and other administrative

04:06:26PM 15  accounts, that are included in this nonindividual section.  What

04:06:31PM 16  I was referring to earlier was how you would define which box

04:06:35PM 17  that the monies fall into in disbursements.

04:06:38PM 18  Q.   So if the disbursement went there then you consider that to

04:06:42PM 19  be tribal trust money?

04:06:43PM 20  A.   That's correct.

04:06:43PM 21  Q.   Because you are assuming that if the disbursement was made

04:06:47PM 22  there it was correctly made to the person who shouldn't receive

04:06:50PM 23  it?

04:06:50PM 24  A.   This chart is not attempting to demonstrate whether or not

04:06:53PM 25  the money should have gone there, only where the money did go.

Jacqueline M. Sullivan, RPR

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| | |
|---|---|
| 04:06:57PM 1 | Q. Okay. Because in fact as a part of all of your studies, |
| 04:07:01PM 2 | you really have done very little to determine if the funds are |
| 04:07:06PM 3 | flowing to the correct one of these brown boxes, correct? |
| 04:07:12PM 4 | A. Only through our LSA study, and in some regards through our |
| 04:07:17PM 5 | data validation study. |
| 04:07:18PM 6 | Q. Now, you testified also today about this DX371, and you |
| 04:07:32PM 7 | were asked by the plaintiff using for some period of time on |
| 04:07:38PM 8 | their similar calculation a disbursement rate of approximately |
| 04:07:43PM 9 | seventy percent? |
| 04:07:44PM 10 | A. That's correct. |
| 04:07:44PM 11 | Q. And you testified something to the effect that one of the |
| 04:07:49PM 12 | problems you had with that is that the thirty percent factor |
| 04:07:54PM 13 | that was then being viewed as not having been disbursed would |
| 04:07:58PM 14 | never view any of the balance as being disbursed. Do you |
| 04:08:03PM 15 | remember testifying something to that effect? |
| 04:08:04PM 16 | A. I believe what I said, that it wasn't taken into |
| 04:08:08PM 17 | consideration until the final deduction of the current trust |
| 04:08:11PM 18 | fund balance. |
| 04:08:12PM 19 | Q. Okay. Now, if the seventy percent factor, though, as you |
| 04:08:18PM 20 | have studied it, was taken over a period of time, correct? |
| 04:08:24PM 21 | A. I'm sorry? |
| 04:08:24PM 22 | Q. The thirty percent or seventy percent disbursement rate was |
| 04:08:30PM 23 | calculated over a period of time from roughly 1988 to 2002 based |
| 04:08:35PM 24 | on CPNR data? |
| 04:08:38PM 25 | A. Based on CPNR date and the plaintiffs' revenue number? |

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|---|---|
| 04:08:42PM 1 | Q. Right. And that then during those years there was |
| 04:08:47PM 2 | disbursement of beginning balances in each of those years |
| 04:08:51PM 3 | perhaps in the seventy percent, correct? |
| 04:08:53PM 4 | A. The way the seventy percent was being calculated was based |
| 04:08:56PM 5 | on revenues in a particular year, not based on the balance and |
| 04:08:59PM 6 | the revenues. |
| 04:09:00PM 7 | Q. Okay. So you don't think that it includes the payment of |
| 04:09:03PM 8 | any of the balance? |
| 04:09:05PM 9 | A. It doesn't appear based on the calculation that that's |
| 04:09:08PM 10 | being taken into consideration. |
| 04:09:10PM 11 | Q. Now, would you explain to me when we get to the second |
| 04:09:14PM 12 | chart, second page of Defendants' Exhibit 371 -- can you bring |
| 04:09:21PM 13 | that up, please -- the column that says Balance Difference, and |
| 04:09:30PM 14 | there's a total of $158.7 million. Do you see that? |
| 04:09:36PM 15 | A. I do. |
| 04:09:37PM 16 | Q. Now, I noticed that for the first several years above that |
| 04:09:42PM 17 | there is no balance difference. Do you see that? |
| 04:09:45PM 18 | A. I do. |
| 04:09:46PM 19 | Q. What is this saying, this balance difference of 158.7 |
| 04:09:52PM 20 | million? |
| 04:09:54PM 21 | A. This is the difference between the calculated ending |
| 04:09:57PM 22 | balance and the reported ending balance. |
| 04:10:00PM 23 | Q. Okay. So what does that mean? |
| 04:10:02PM 24 | A. That there is a difference between the receipts and |
| 04:10:05PM 25 | disbursements as calculated in this schedule and the balances as |

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|---|---|
| 04:10:10PM 1 | reported in the reports I relied on. |
| 04:10:12PM 2 | Q. So that somebody to the right of this blue box on your |
| 04:10:22PM 3 | chart, one of these people, the IIM beneficiary, stakeholders, |
| 04:10:27PM 4 | tribal trust third parties, are entitled to that money; is that |
| 04:10:31PM 5 | correct? |
| 04:10:31PM 6 | A. That simply taking into consideration the fact that the |
| 04:10:35PM 7 | calculation we made is different from the balances as reported. |
| 04:10:38PM 8 | Q. Okay. So that's just a number? |
| 04:10:44PM 9 | A. That's the difference between the receipts and the |
| 04:10:46PM 10 | disbursements that we were able to identify through our analysis |
| 04:10:50PM 11 | and the balances as reported. |
| 04:10:51PM 12 | Q. So is it fair to say it this way: That even on your chart |
| 04:10:58PM 13 | as you calculated it up, you believe that $158.7 million more is |
| 04:11:06PM 14 | in the IIM system than the present stated balance of the system? |
| 04:11:11PM 15 | A. It depends on which calculation is more accurate. What I'm |
| 04:11:16PM 16 | trying to say is that there's $158 million difference that I |
| 04:11:21PM 17 | can't explain. |
| 04:11:22PM 18 | Q. Is $158 million more? In other words, it's more money, not |
| 04:11:29PM 19 | less money, than what's reported to currently being in the |
| 04:11:33PM 20 | system, correct? |
| 04:11:33PM 21 | A. I've calculated more than what's currently in the system, |
| 04:11:36PM 22 | that's correct. |
| 04:11:36PM 23 | Q. Now, what significance at all is it that you show that for |
| 04:11:40PM 24 | a particular years or periods? |
| 04:11:42PM 25 | A. It was just a computation I did on each and every line item |

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|---|---|
| 04:11:52PM 1 | to show the difference in that particular year. |
| 04:11:56PM 2 | Q. So if we want to know when that $158.7 million difference |
| 04:12:03PM 3 | occurs, you show us in different years and periods, correct? |
| 04:12:07PM 4 | A. That's correct. |
| 04:12:08PM 5 | Q. So that, for example, between 1887 and 1920 you would find |
| 04:12:16PM 6 | that there was $11.1 million more received into the system and |
| 04:12:24PM 7 | not disbursed than the reported ending balance, correct? |
| 04:12:28PM 8 | A. No. What that's saying is that based on the receipts and |
| 04:12:33PM 9 | disbursements calculated that my number is $11.1 million less |
| 04:12:37PM 10 | than the reported balance. |
| 04:12:38PM 11 | Q. Okay. So that what you're saying is, is the reported |
| 04:12:42PM 12 | balance back then you've now gone back and redone it such that |
| 04:12:46PM 13 | you actually think there's less money that's come into the |
| 04:12:50PM 14 | system than what they thought meant? |
| 04:12:56PM 15 | A. This is a calculation based on this time frame. The |
| 04:12:59PM 16 | receipt and disbursements that have been estimated were less |
| 04:13:02PM 17 | than the balance as reported in the historical report. |
| 04:13:06PM 18 | Q. So if you go to the historical report it would show that |
| 04:13:09PM 19 | there's more money there than what you're calculating on this |
| 04:13:13PM 20 | chart? |
| 04:13:13PM 21 | A. For that particular line item, yes. |
| 04:13:15PM 22 | Q. And for the next line item, correct? |
| 04:13:17PM 23 | A. Yes. |
| 04:13:17PM 24 | Q. Would you say then that you believe those historical |
| 04:13:21PM 25 | reports are inaccurate? |

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|---|---|
| 04:13:22PM 1 | A. No. I'm suggesting that I don't know which of the two is |
| 04:13:25PM 2 | more accurate. |
| 04:13:25PM 3 | Q. So you're just putting information here and not indicating |
| 04:13:33PM 4 | whether it's accurate or not? |
| 04:13:34PM 5 | A. This is the best historical information that I was able to |
| 04:13:38PM 6 | find and I'm reporting it as such. |
| 04:13:40PM 7 | Q. And then from 1952 to 1971 it's showing a balance |
| 04:13:46PM 8 | difference of 156.8 million. That would be indicating that |
| 04:13:51PM 9 | there's $156.8 million more in the system than what the balance |
| 04:13:58PM 10 | being shown at that time is, correct? |
| 04:14:00PM 11 | A. No. That means that I calculated more money than was |
| 04:14:05PM 12 | reflected in the historical balance. |
| 04:14:08PM 13 | Q. Understood. And if your calculations are correct, that |
| 04:14:10PM 14 | would then indicate that there's $156.8 million more in the |
| 04:14:14PM 15 | system than was then being carried as a balance reported in the |
| 04:14:19PM 16 | system, correct? |
| 04:14:20PM 17 | A. I'm sorry. I believe that I don't understand your |
| 04:14:23PM 18 | question. |
| 04:14:24PM 19 | Q. Yes. In other words, if the calculations that you've set |
| 04:14:27PM 20 | forth out here are correct, then as of 1971 there's $156.8 |
| 04:14:36PM 21 | million more in the IIM system than the reported balance at that |
| 04:14:41PM 22 | time? |
| 04:14:41PM 23 | A. That's correct. |
| 04:14:42PM 24 | Q. None of your interest figures in Column B take into account |
| 04:14:53PM 25 | anything in Column L, do they? |

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|---|---|
| 04:16:23PM 1 | the notebook. |
| 04:16:24PM 2 | A. That's correct. |
| 04:16:24PM 3 | Q. Can you tell us the correct tab that would provide the best |
| 04:16:30PM 4 | overview of how you come up with this Osage calculation? |
| 04:16:33PM 5 | A. Depends on the time frame you'd like to discuss. |
| 04:16:37PM 6 | Q. Okay. I guess your answer makes me ask this question: I |
| 04:16:42PM 7 | take it it's calculated differently for different time frames? |
| 04:16:47PM 8 | A. No. What I meant by that statement was we have electronic |
| 04:16:50PM 9 | data from '72 forward so we have actual numbers from the system. |
| 04:16:56PM 10 | In earlier years we have some, but not all, of the data. |
| 04:16:59PM 11 | Q. Okay. So from '72 forward you have what you say is actual |
| 04:17:06PM 12 | data for the Osage? |
| 04:17:07PM 13 | A. Yes. I believe there may be one gap or two in 1972, but |
| 04:17:13PM 14 | I'd have to look to confirm that. |
| 04:17:15PM 15 | Q. Where did you get that information? |
| 04:17:16PM 16 | A. From some of the data that has been rekeyed from the GL |
| 04:17:21PM 17 | system for the tribal reconciliation. |
| 04:17:24PM 18 | Q. But where did you get the Osage data generally? |
| 04:17:27PM 19 | A. The headright information, is that the question? |
| 04:17:30PM 20 | Q. Yes. |
| 04:17:31PM 21 | A. We have two sources for the total headright payment. One |
| 04:17:37PM 22 | is from the Osage website, and one is I believe a 1975 annual |
| 04:17:41PM 23 | report published by the tribe. |
| 04:17:43PM 24 | Q. Okay. Now, would you go and show me the information you |
| 04:17:46PM 25 | used for the Osage from 1972 forward? |

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|---|---|
| 04:14:55PM 1 | A. No. The interest column takes into consideration interest |
| 04:14:59PM 2 | earned on the money sitting in the IIM system. |
| 04:15:02PM 3 | Q. Is that interest that was actually earned or is that |
| 04:15:05PM 4 | interest that someone has gone back and calculated as having |
| 04:15:12PM 5 | should have been earned? |
| 04:15:13PM 6 | A. These are based on investment reports and audits and other |
| 04:15:17PM 7 | documents. It's not a should have been earned calculation. |
| 04:15:20PM 8 | Q. So this is a calculation that that much interest was |
| 04:15:24PM 9 | actually earned before 1972. Is there no information on what |
| 04:15:30PM 10 | interest was earned in the system? |
| 04:15:32PM 11 | A. There are some reports that include interest but not |
| 04:15:35PM 12 | covering that entire time frame. |
| 04:15:37PM 13 | Q. In light of that, how could you be certain that the |
| 04:15:41PM 14 | interest is included in the collections? |
| 04:15:43PM 15 | A. I'm sorry. The total collections is an estimate provided |
| 04:15:48PM 16 | by NORC, as I mentioned. |
| 04:15:49PM 17 | Q. So you wouldn't -- you'd think that's where it should be |
| 04:15:53PM 18 | included, correct? |
| 04:15:54PM 19 | A. That's correct. |
| 04:15:55PM 20 | Q. Did you provide NORC with any information regarding |
| 04:16:00PM 21 | interest rights for purposes of that calculation? |
| 04:16:03PM 22 | A. As I mentioned, Dr. Angel provided NORC reports. Some of |
| 04:16:07PM 23 | those historical reports did list interest earnings. |
| 04:16:12PM 24 | Q. Now I want to understand the Osage annuity calculation that |
| 04:16:18PM 25 | you've made here, and I take it we probably need to go back to |

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|---|---|
| 04:17:49PM 1 | A. Would you like summary information, sir, or detailed |
| 04:18:14PM 2 | information? |
| 04:18:14PM 3 | Q. Let's start off with the summary and see if that won't do |
| 04:18:17PM 4 | the trick. If you turn to page 150 behind tab Osage A. Okay. |
| 04:18:36PM 5 | And we're in Defendants' Exhibit 372. |
| 04:18:39PM 6 | A. That's correct. So you'll see beginning in 1972 the total |
| 04:18:45PM 7 | annuity payment, and it lists the annuity payment amount. |
| 04:18:51PM 8 | Q. Okay. And then the next column? Let's just stop right |
| 04:18:55PM 9 | there for a second, okay? |
| 04:18:56PM 10 | A. Okay. |
| 04:18:56PM 11 | Q. I'm at 1972, and it shows a total amount of $6,100,000? |
| 04:19:03PM 12 | A. That's correct. |
| 04:19:04PM 13 | Q. Okay. And then go ahead. |
| 04:19:06PM 14 | A. The next column lists the percentage of documents located |
| 04:19:11PM 15 | relative to the number of payments that were made in that |
| 04:19:14PM 16 | particular year. |
| 04:19:16PM 17 | Q. What do you mean, percentage of documents located? |
| 04:19:18PM 18 | A. So if I had four payments I'd expect to find four documents |
| 04:19:23PM 19 | so if I found all four that would be a hundred percent. |
| 04:19:26PM 20 | Q. Okay. Okay. And then the next one? |
| 04:19:29PM 21 | A. The next column lists the payments that were made directly |
| 04:19:33PM 22 | from the tribal trust system. |
| 04:19:35PM 23 | Q. And that would be by way of a Treasury check? |
| 04:19:38PM 24 | A. I believe so. |
| 04:19:39PM 25 | Q. Okay. |

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04:19:41PM 1    **A.**    And the next column lists the funds that were transferred

04:19:45PM 2    into the IIM system.

04:19:46PM 3    **Q.**    Okay. Now, the column that had the $4,600,000, and I'm

04:19:54PM 4    approximating under Column D on this, is that right, those then

04:19:59PM 5    are largely going to individual Indians who have a headright

04:20:06PM 6    interest, correct?

04:20:06PM 7    **A.**    There are also corporations and nonIndians that hold head-

04:20:14PM 8    right interest.

04:20:14PM 9    **Q.**    There are a few, but most of them and still even today are

04:20:18PM 10    individual Indians, correct?

04:20:20PM 11    **A.**    I haven't studied that.

04:20:20PM 12    **Q.**    So then you're showing a-million-one-fifty or

04:20:24PM 13    a-million-five-hundred-four-thirty coming into the IIM system?

04:20:30PM 14    **A.**    That's correct.

04:20:31PM 15    **Q.**    That is a number that then goes on to your chart?

04:20:34PM 16    **A.**    That's correct.

04:20:34PM 17    **Q.**    So that when we go to DX371 for 1972, we see $1.5 million,

04:20:42PM 18    correct?

04:20:43PM 19    **A.**    I'm sorry. I'm flipping pages. Yes, you do.

04:20:49PM 20    **Q.**    Okay. And so that none of the $4.6 million that was paid

04:20:56PM 21    directly to individual Indians, whatever part of that was paid

04:21:01PM 22    to individual Indians, is included in your chart?

04:21:04PM 23    **A.**    I did not include payment from the tribal trust system, no.

04:21:07PM 24    **Q.**    Right. And your understanding of the Osage is based on

04:21:12PM 25    what?

04:21:12PM 1    **A.**    I'm sorry, my understanding of what component of the Osage?

04:21:17PM 2    **Q.**    That it's in the tribal trust and being paid out of the

04:21:22PM 3    tribal trust?

04:21:23PM 4    **A.**    That's correct.

04:21:25PM 5    **Q.**    Yes. And how did you get that understanding?

04:21:27PM 6    **A.**    Because I watched -- I traced the transactions crediting

04:21:32PM 7    into the IIM system, and then I began reviewing financial

04:21:35PM 8    documents.

04:21:36PM 9    **Q.**    Okay. And so in your calculation you're treating all of

04:21:39PM 10    that money as being tribal money; is that correct?

04:21:43PM 11    **A.**    I'm not making an assessment of that other money, only that

04:21:46PM 12    it doesn't come into the IIM system.

04:21:48PM 13    **Q.**    Okay. So that even if it was paid to individual Indians

04:21:53PM 14    from the Treasury, you're not viewing that as being coming into

04:21:57PM 15    the IIM system?

04:21:58PM 16    **A.**    No, I am not.

04:21:59PM 17    **Q.**    And that's a part -- that is what then drives what you said

04:22:05PM 18    was roughly a $10 billion difference between your calculations

04:22:09PM 19    and the plaintiffs' calculations?

04:22:11PM 20    **A.**    Including interest, yes.

04:22:13PM 21    **Q.**    Now, for prior periods does this chart help us at all in

04:22:18PM 22    terms of explaining how you calculated Osage?

04:22:21PM 23    **A.**    This is the summary chart, so you could continue back

04:22:25PM 24    through to the chart to see all of the different historical

04:22:28PM 25    documents that we had available and those that we did not.

04:22:30PM 1    **Q.**    Okay. Now, look forward to the next page of this, which

04:22:37PM 2    would be Bates page 151. And I notice that there are a whole

04:22:45PM 3    range of percentages that are being used there. How were those

04:22:52PM 4    -- toward the bottom. Are you with me?

04:22:53PM 5    **A.**    I am.

04:22:54PM 6    **Q.**    I see five different percentages and averages. How are

04:22:58PM 7    those then used in any of your calculations?

04:23:01PM 8    **A.**    As you turn to the page previous you can see where we're

04:23:07PM 9    utilizing percentages in our calculation, so for years where we

04:23:11PM 10    weren't able to locate a hundred percent of the documentation we

04:23:14PM 11    had to estimate what the payment was that came into the IIM

04:23:17PM 12    system.

04:23:17PM 13    **Q.**    Can you just take me from showing me where one of these

04:23:22PM 14    percentages is used somewhere so that I can follow what you're

04:23:25PM 15    saying?

04:23:25PM 16    **A.**    Certainly. For instance, in 1930 we only were able to

04:23:30PM 17    identify 75 percent. I apologize, if you flip back to the first

04:23:38PM 18    page.

04:23:43PM 19    **Q.**    What year again?

04:23:45PM 20    **A.**    To 1880, or excuse me, 1887, you'll see that the estimated

04:23:51PM 21    IIM payment column is color-coded and you'll see that the first

04:23:55PM 22    section is in blue and the next section is in yellow in that

04:24:00PM 23    column.

04:24:03PM 24    **Q.**    Oh, down toward the bottom of the page?

04:24:05PM 25    **A.**    It's the column that says H. The first half is blue and

04:24:09PM 1    then at the very bottom it's yellow, and as you continue to page

04:24:13PM 2    150 it's yellow at the top.

04:24:15PM 3    **Q.**    Yes.

04:24:15PM 4    **A.**    So those correspond with the percentages with the similar

04:24:19PM 5    colors on page 151.

04:24:23PM 6    **Q.**    Oh, okay. So if I go to page 151 and I see a blue, that

04:24:28PM 7    means that it's 31.2 percent was used between 1880 and 1925?

04:24:38PM 8    **A.**    No. Only for the years that are in the blue coloring, so

04:24:41PM 9    it would be 1887 is the first year we carry forward through to

04:24:50PM 10    1925.

04:24:51PM 11    **Q.**    Well, I'll need to study this some more obviously and ask

04:24:55PM 12    you more questions about it, but what we have, we got all

04:25:00PM 13    different percentage, is primarily what I'm wanting to ask you.

04:25:04PM 14    **A.**    Over time a different amount of the Osage annuity came into

04:25:08PM 15    the IIM system, and as you --

04:25:12PM 16    **Q.**    Maybe let me get at it this way. There are times where you

04:25:16PM 17    don't know actually how much came in, you don't have any

04:25:21PM 18    documentary evidence as to how much actually came in in your

04:25:25PM 19    opinion to the IIM system so you have calculated percentages

04:25:30PM 20    based on other years where you do have information to apply

04:25:33PM 21    against the total in those years?

04:25:35PM 22    **A.**    That's correct, for certain time frames.

04:25:38PM 23    **Q.**    So for certain of the Osage time frames these are estimated

04:25:43PM 24    amounts that have come into the IIM system?

04:25:45PM 25    **A.**    Yes, based on the other years and documents that we

**04:25:48PM 1** located.

**04:25:49PM 2** **Q.** Now, let me ask you this question. Look at on Bates page

**04:25:55PM 3** 151, 1985, '86, and '87. In those years you show that there

**04:26:06PM 4** was -- that you've located a hundred percent of the documents.

**04:26:09PM 5** Do you see that?

**04:26:10PM 6** **A.** I do.

**04:26:11PM 7** **Q.** So you found everything?

**04:26:12PM 8** **A.** I did.

**04:26:13PM 9** **Q.** And very few checks, correct?

**04:26:18PM 10** **A.** That's correct.

**04:26:19PM 11** **Q.** And virtually all of the money in those three years you

**04:26:24PM 12** show is coming into the IIM system?

**04:26:27PM 13** **A.** That's correct.

**04:26:27PM 14** **Q.** Now, were each of those Osage headright owners, did they

**04:26:34PM 15** have IIM accounts?

**04:26:37PM 16** **A.** In this year, these three years -- excuse me -- were a bit

**04:26:40PM 17** of an anomaly. This was right as Osage was converting into IRMS

**04:26:45PM 18** in 1988. It's my understanding that these payments were made

**04:26:49PM 19** similar fashion but from the special deposit accounts. The

**04:26:53PM 20** direct pay component was paid and the balances was transferred

**04:26:57PM 21** down to individual accounts.

**04:26:58PM 22** **Q.** Let me ask my question again. My question was: Did each

**04:27:02PM 23** one of those Osage headright owners have an IIM account?

**04:27:09PM 24** **A.** I'm sorry, I thought I had answered that. These funds were

**04:27:13PM 25** credited into a special deposit account. Some of the money was

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Official Court Reporter

**04:27:17PM 1** transferred to individual accounts and some was paid via check

**04:27:20PM 2** from the special deposit account.

**04:27:23PM 3** **Q.** You obviously think you're answering my question, and it's

**04:27:27PM 4** late in the day and I've looked at a lot of new material today.

**04:27:31PM 5** I thought it was kind of a yes-or-no deal. Do all of the Osage

**04:27:36PM 6** headright owners other than the corporate ones have individual

**04:27:40PM 7** Indian IIM accounts?

**04:27:42PM 8** **A.** I don't know if all of the Osage headright owners have

**04:27:46PM 9** individual accounts.

**04:27:46PM 10** **Q.** Okay. But you show that and then you use the numbers that

**04:27:50PM 11** are in the column O over on your DX371, correct?

**04:27:53PM 12** **A.** Because all of those monies came into the IIM system

**04:27:57PM 13** itself.

**04:27:57PM 14** **Q.** And so you've included all of those here under Osage

**04:28:03PM 15** Annuity, correct?

**04:28:04PM 16** **A.** That's correct.

**04:28:05PM 17** **Q.** And then do you use, do you back those years out at all

**04:28:09PM 18** when you calculate your percentages below?

**04:28:13PM 19** **A.** I'm sorry, there's no need to calculate a percentage during

**04:28:16PM 20** this period because we have all of the documents.

**04:28:19PM 21** **Q.** Okay. So the fact that you see that kind of unusual

**04:28:25PM 22** situation for those three years, that does not affect in any way

**04:28:28PM 23** your calculations for other years?

**04:28:30PM 24** **A.** During this time frame, as I mentioned, we have all of the

**04:28:33PM 25** documentation so there's no need to estimate.

Jacqueline M. Sullivan, RPR

Official Court Reporter

**04:28:36PM 1** **Q.** Right. So that has not affected any of the percentage

**04:28:43PM 2** below, correct?

**04:28:44PM 3** **A.** That's correct.

**04:28:45PM 4** **Q.** Because previously when you had calculated AR-171 you had

**04:28:52PM 5** used, you had calculated the Osage a little differently,

**04:28:56PM 6** correct?

**04:28:56PM 7** **A.** We've been able to locate additional documents since the

**04:29:00PM 8** last time we prepared an RS-71.

**04:29:03PM 9** **Q.** So much of what is in this notebook that we were given

**04:29:07PM 10** today for Osage is now in terms of your analysis of DX371?

**04:29:13PM 11** **A.** Information prior to 1972. I believe that after 1972 this

**04:29:21PM 12** information is consistent.

**04:29:23PM 13** MR. DORRIS: Your Honor, I got through as much of this

**04:29:25PM 14** notebook as I could over the long lunch break we had today and I

**04:29:31PM 15** really almost had no time to review other stacks of exhibits

**04:29:35PM 16** that we got. I'd be more than happy to proceed on with the

**04:29:40PM 17** examination, but I will tell you I think it would be much more

**04:29:45PM 18** efficient and we will use less time if I will be permitted to

**04:29:48PM 19** have a chance to study this and understand it a little better

**04:29:51PM 20** and continue the examination on Monday.

**04:29:54PM 21** MR. QUINN: We have no objection to that, your Honor,

**04:29:59PM 22** as long as it continues on Monday.

**04:30:02PM 23** MR. DORRIS: It will continue on Monday.

**04:30:03PM 24** THE COURT: That's reasonable to me.

**04:30:06PM 25** MR. DORRIS: I'm sorry. I felt like I interrupted

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**04:30:11PM 1** you.

**04:30:12PM 2** THE COURT: I was closing up my papers.

**04:30:14PM 3** MR. DORRIS: I would say that clearly with the

**04:30:18PM 4** information it's clear that there's information from Dr.

**04:30:23PM 5** Scheuren that is extensive that we are going to need to review

**04:30:26PM 6** and we're going to run into the same thing next week.

**04:30:29PM 7** THE COURT: Yes, we are. What's the story on

**04:30:32PM 8** Scheuren's data?

**04:30:37PM 9** MR. WARSHAWSKY: Your Honor, we can certainly make

**04:30:38PM 10** available Dr. Scheuren's data. It consists of basically a

**04:30:42PM 11** computer application which we will provide to the plaintiffs.

**04:30:45PM 12** It's a SAS application and a data set which I understand

**04:30:49PM 13** includes about twelve million values. We can make it available.

**04:30:56PM 14** THE COURT: You got to give them what you can give

**04:30:59PM 15** them and give it to them as soon as possible.

**04:31:02PM 16** MR. WARSHAWSKY: And I have asked NORC to start

**04:31:05PM 17** compiling it because I anticipated we would get to that point.

**04:31:08PM 18** THE COURT: Who is the next witness?

**04:31:10PM 19** MR. WARSHAWSKY: That would be Dr. Edward Angel.

**04:31:13PM 20** MR. DORRIS: It's the same sort of deal, your Honor.

**04:31:15PM 21** I know there's a large collection of documents and analysis that

**04:31:19PM 22** he's going to have because it's clear when you look at this that

**04:31:21PM 23** that is based in part on that too.

**04:31:25PM 24** THE COURT: Well, let me make it clear to the

**04:31:34PM 25** government here. You got to turn over what you can turn over as

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667

04:31:34PM 1  soon as you can turn it over.  If they don't have time, if he
04:31:42PM 2  has to prepare cross-examination on this kind of stuff over a
04:31:46PM 3  lunch hour that means he's going to get several days.  We're
04:31:49PM 4  just going to have to adjourn and come back.  I don't want to do
04:31:53PM 5  that.  I want to get this data in their hands, so come on, get
04:31:57PM 6  them in the plaintiffs' hands.
04:31:59PM 7          MR. WARSHAWSKY:  To the extent the plaintiffs are
04:32:00PM 8  compiling any analyses.
04:32:02PM 9          THE COURT:  Of course.
04:32:04PM 10         MR. WARSHAWSKY:  Thank you.
04:32:05PM 11         MR. DORRIS:  Thank you, your Honor.
04:32:07PM 12         THE COURT:  I think that's it for the week, is it?
04:32:12PM 13  All right, Ms. Herman, you'll be back here on Monday.
04:32:14PM 14         THE WITNESS:  Yes, your Honor.
04:32:15PM 15         THE COURT:  I guess you will.
04:32:17PM 16  All right.  Have a pleasant weekend everybody.
04:32:20PM 17         MR. DORRIS:  Thank you, your Honor.
04:32:21PM 18         (Proceedings adjourned at about 4:32 p.m.)
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668

1              I N D E X.
2
3  WITNESSES:
4
5     MICHELLE HERMAN
6        Cross-examination by Mr. Dorris          586
7
8
9
10
11
12           E X H I B I T S
13
14  Plaintiffs'
    Exhibit
15  No.      Identification      Marked      Admitted

16  117                  599
17
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669

1              CERTIFICATE
2        I, JACQUELINE M. SULLIVAN, Official Court Reporter,
3  certify that the foregoing pages are a correct transcript from
4  the record of proceedings in the above-entitled matter.
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      JACQUELINE M. SULLIVAN
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24
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## $

**$10** [1] - 660:18
**$105** [1] - 599:16
**$158** [2] - 653:16, 653:18
**$20** [1] - 626:5
**$243** [1] - 628:15
**$250** [1] - 628:10
**$3.198** [1] - 620:25
**$4,600,000** [1] - 659:3
**$550** [1] - 603:4
**$565** [1] - 599:23
**$580** [1] - 621:11
**$6,100,000** [1] - 658:11
**$600** [2] - 617:15, 617:19

## '

**'21** [1] - 602:1
**'51** [2] - 589:7, 602:1
**'72** [7] - 592:12, 614:24, 618:23, 623:2, 623:22, 657:9, 657:11
**'75** [1] - 621:16
**'83** [1] - 621:5
**'84** [1] - 621:6
**'85** [2] - 623:22, 649:22
**'86** [3] - 644:13, 649:21, 663:3
**'87** [1] - 663:3

## 1

**1.5** [1] - 659:17
**1.8** [2] - 611:12, 611:13
**1001** [1] - 584:4
**11.1** [2] - 654:6, 654:9
**1100** [2] - 583:19, 584:8
**115** [2] - 627:7, 627:9
**116** [2] - 612:15, 614:20
**117** [3] - 599:6, 599:7, 668:16
**118** [4] - 617:7, 623:23, 624:22
**119** [1] - 628:15
**12** [2] - 583:7, 630:4
**120** [3] - 607:10, 618:7, 634:6
**121** [1] - 607:11

**123** [1] - 613:22
**132.5** [1] - 617:7
**14th** [2] - 583:15, 583:23
**150** [3] - 602:7, 658:4, 662:2
**151** [4] - 661:2, 662:5, 662:6, 663:3
**156.8** [4] - 655:8, 655:9, 655:14, 655:20
**158.7** [4] - 652:14, 652:19, 653:13, 654:2
**171** [1] - 585:20
**1880** [2] - 661:20, 662:7
**1887** [4] - 599:20, 654:5, 661:20, 662:9
**1908** [1] - 599:20
**1920** [1] - 654:5
**1921** [4] - 592:15, 600:12, 600:25, 601:24
**1925** [2] - 662:7, 662:10
**1930** [1] - 661:16
**1934** [10] - 588:24, 589:4, 590:12, 590:17, 592:13, 592:16, 600:22, 601:3, 601:18, 602:12
**1945** [2] - 589:4, 590:12
**1946** [3] - 589:6, 591:3, 591:9
**1950** [1] - 589:7
**1951** [9] - 588:25, 591:13, 592:16, 600:12, 601:1, 601:4, 601:18, 601:24, 602:12
**1952** [3] - 595:7, 595:9, 655:7
**1971** [3] - 595:9, 655:7, 655:20
**1972** [23] - 595:7, 598:13, 603:21, 604:8, 604:19, 613:22, 616:24, 617:2, 618:18, 619:9, 622:3, 622:23, 623:4, 624:12, 624:19, 656:9, 657:13, 657:25, 658:6, 658:11, 659:17, 665:11
**1973** [12] - 611:21,

612:1, 612:12, 612:17, 612:19, 612:20, 613:22, 614:10, 615:4, 615:14, 618:19, 619:10
**1974** [2] - 620:7, 621:16
**1975** [2] - 620:7, 657:22
**1978** [1] - 617:10
**1982** [2] - 617:14, 617:18
**1983** [3] - 620:24, 621:3, 624:19
**1984** [3] - 591:9, 620:24, 621:3
**1985** [10] - 591:11, 604:9, 604:19, 622:3, 623:4, 624:12, 625:17, 626:16, 649:17, 663:3
**1986** [2] - 591:8, 629:5
**1988** [3] - 633:6, 651:23, 663:18
**1990** [1] - 633:6
**1995** [1] - 631:8
**1996** [3] - 631:9, 631:14, 631:16
**1997** [1] - 626:23
**1999** [1] - 634:8
**1:57** [1] - 583:7

## 2

**2.6** [1] - 614:24
**2.8** [1] - 615:10
**2000** [1] - 607:21
**20001** [1] - 584:17
**20005** [3] - 583:16, 583:24, 584:9
**2002** [1] - 651:23
**20044** [1] - 584:14
**2007** [8] - 587:1, 597:6, 628:3, 628:23, 628:24, 631:17, 640:23, 641:24
**2008** [12] - 583:7, 596:8, 596:25, 597:1, 597:10, 597:16, 597:25, 598:6, 599:15, 599:22, 600:25, 601:25
**202-307-0010** [1] - 584:9
**202-307-1104** [1] -

584:14
**202-354-3187** [1] - 584:18
**202-585-0053** [1] - 583:24
**202-824-1448** [1] - 583:16
**20th** [5] - 596:13, 596:14, 598:6, 598:9, 598:11
**21** [2] - 607:18, 621:13
**26** [1] - 617:6
**27101** [1] - 584:5
**28** [3] - 604:20, 604:21, 626:3
**2800** [1] - 583:19
**2:37** [1] - 599:8

## 3

**3.6** [3] - 612:5, 612:7, 612:9
**30** [10] - 596:25, 597:10, 597:16, 597:25, 599:15, 599:22, 600:8, 600:25, 601:25, 603:5
**300** [2] - 614:8, 614:9
**30309-4530** [1] - 583:20
**30th** [2] - 596:12, 597:18
**31.2** [1] - 662:7
**333** [1] - 584:17
**336-607-7392** [1] - 584:5
**342** [2] - 585:13, 614:20
**370** [1] - 585:9
**371** [10] - 585:12, 585:19, 585:25, 586:6, 596:8, 624:4, 624:25, 637:2, 648:13, 652:12
**372** [7] - 589:12, 593:14, 601:20, 604:21, 607:19, 624:22, 658:5
**373** [1] - 639:7
**38** [1] - 602:7
**38.2** [3] - 601:21, 602:1, 602:7
**380** [1] - 586:2
**381** [1] - 586:2
**385** [1] - 586:2
**386** [1] - 586:2
**387** [1] - 586:2
**391** [1] - 586:3

**395** [1] - 586:3
**3:37** [1] - 639:2
**3:45** [1] - 639:1

## 4

**4** [7] - 596:8, 597:1, 597:10, 600:8, 601:25, 603:5, 625:25
**4.6** [1] - 659:20
**404-815-6450** [1] - 583:20
**413** [1] - 586:3
**419** [1] - 617:12
**42** [1] - 621:7
**423** [1] - 586:3
**424** [1] - 586:3
**425** [1] - 586:3
**426** [1] - 586:3
**426.6** [1] - 625:25
**427** [1] - 586:3
**428** [1] - 586:3
**429** [1] - 586:3
**43.7** [1] - 629:6
**430** [1] - 586:3
**431** [1] - 586:3
**432** [1] - 586:4
**433** [1] - 586:4
**44** [1] - 616:21
**445.8** [1] - 626:1
**46** [1] - 621:7
**462** [1] - 621:7
**474** [1] - 585:17
**475** [1] - 585:17
**477** [1] - 585:17
**478** [1] - 585:18
**479** [1] - 585:18
**480** [1] - 585:18
**481** [1] - 585:18
**485** [1] - 585:18
**486** [1] - 585:18
**49** [1] - 617:11
**491** [1] - 585:19
**492** [1] - 585:21
**495** [1] - 585:22
**496** [1] - 585:23
**4:32** [1] - 667:18
**4th** [3] - 596:11, 598:2, 628:14

## 5

**50** [1] - 614:9
**57** [1] - 617:14
**586** [1] - 668:6
**599** [1] - 668:16

634:25, 635:2, 635:6
**audited** [7] - 631:9, 631:11, 631:13, 632:21, 633:12, 634:17, 635:4
**auditors** [6] - 633:13, 633:19, 633:24, 633:25, 634:5
**audits** [3] - 595:12, 634:3, 656:6
**authorization** [1] - 640:8
**available** [14] - 589:7, 591:8, 595:10, 596:1, 604:16, 613:15, 616:9, 628:5, 642:2, 642:8, 642:9, 660:25, 666:10, 666:13
**Avenue** [1] - 584:17
**averages** [1] - 661:6
**averaging** [1] - 620:21
**aware** [3] - 595:15, 596:2, 640:12

## B

**backup** [1] - 603:8
**Balance** [1] - 652:13
**balance** [24] - 613:16, 613:21, 626:7, 630:1, 631:21, 631:24, 651:14, 651:18, 652:5, 652:8, 652:17, 652:19, 652:22, 653:14, 654:7, 654:10, 654:12, 654:17, 655:7, 655:9, 655:12, 655:15, 655:21
**balances** [13] - 607:5, 613:23, 613:25, 624:3, 625:3, 626:13, 626:14, 634:16, 652:2, 652:25, 653:7, 653:11, 663:20
**bank** [1] - 639:15
**Based** [1] - 651:25
**based** [22] - 591:9, 593:24, 596:4, 598:5, 598:25, 602:15, 603:17, 604:5, 606:13, 635:6, 650:8, 651:23, 652:4, 652:5, 652:9, 654:8, 654:15, 656:6,

659:24, 662:20, 662:25, 666:23
**basing** [1] - 603:21
**basis** [2] - 603:15, 603:16
**Bates** [13] - 589:15, 589:22, 590:2, 601:20, 607:6, 607:10, 607:11, 607:18, 612:15, 613:22, 623:23, 661:2, 663:2
**beautifully** [1] - 619:8
**becomes** [1] - 591:8
**BEFORE** [1] - 583:11
**began** [2] - 631:14, 660:7
**begin** [3] - 585:6, 604:23
**Beginning** [2] - 626:14, 631:9
**beginning** [10] - 587:9, 599:19, 624:3, 625:3, 625:17, 626:7, 626:13, 644:18, 652:2, 658:6
**behalf** [1] - 640:10
**behind** [2] - 591:16, 658:4
**below** [2] - 664:18, 665:2
**Ben** [1] - 584:13
**beneficial** [2] - 646:5, 646:14
**beneficiaries** [10] - 629:6, 630:11, 640:3, 641:25, 645:6, 645:13, 645:18, 645:20, 645:22, 646:3
**beneficiary** [8] - 639:25, 640:8, 644:23, 645:4, 645:8, 646:5, 653:3
**benefit** [1] - 624:14
**best** [4] - 629:13, 649:12, 655:5, 657:3
**better** [5] - 592:6, 592:9, 598:20, 632:23, 665:19
**between** [15] - 594:20, 600:8, 601:3, 602:1, 602:12, 603:5, 626:25, 628:11, 648:3, 652:21, 652:24, 653:9, 654:5, 660:18, 662:7
**beyond** [1] - 641:16
**BIA** [7] - 595:1,

595:12, 595:13, 639:14, 639:15, 639:20, 639:21
**bid** [3] - 640:21, 644:2, 647:4
**Billings** [3] - 620:9, 620:10
**billion** [1] - 660:18
**binder** [8] - 585:13, 585:25, 588:25, 589:2, 589:9, 590:4, 590:6, 606:11
**bit** [5] - 592:11, 600:21, 610:21, 629:23, 663:16
**blank** [3] - 610:2, 610:4, 610:5
**blanks** [1] - 616:25
**blow** [3] - 598:19, 599:1, 611:5
**blue** [6] - 635:25, 653:2, 661:22, 661:25, 662:6, 662:8
**blurry** [1] - 598:21
**bonds** [1] - 647:4
**books** [1] - 633:20
**bottom** [12] - 589:17, 602:6, 607:20, 611:5, 611:16, 621:5, 621:6, 624:1, 639:23, 661:4, 661:24, 662:1
**box** [5] - 635:25, 645:3, 646:23, 650:16, 653:2
**Box** [1] - 584:13
**boxes** [3] - 639:9, 640:20, 651:3
**Branch** [1] - 584:12
**break** [3] - 638:21, 648:3, 665:14
**breakout** [2] - 601:15, 601:18
**bring** [3] - 628:9, 629:7, 652:12
**brown** [2] - 640:20, 651:3
**business** [1] - 593:19
**BY** [11] - 586:23, 590:1, 590:10, 599:9, 607:9, 612:10, 614:16, 624:18, 639:6, 641:22, 646:4

## C

**C.P.A** [1] - 633:16
**C50** [1] - 620:11

**C59** [1] - 620:11
**calculate** [7] - 591:18, 593:13, 602:11, 602:12, 628:7, 664:18, 664:19
**calculated** [18] - 588:10, 622:21, 632:5, 632:24, 651:23, 652:4, 652:21, 652:25, 653:13, 653:21, 654:9, 655:11, 656:4, 657:7, 660:22, 662:19, 665:4, 665:5
**calculating** [1] - 654:19
**calculation** [15] - 586:5, 591:22, 621:12, 651:8, 652:9, 653:7, 653:15, 654:15, 656:7, 656:8, 656:21, 656:24, 657:4, 660:9, 661:9
**calculations** [11] - 588:13, 593:24, 603:8, 603:11, 625:23, 655:13, 655:19, 660:18, 660:19, 661:7, 664:23
**California** [1] - 620:5
**cannot** [1] - 612:3
**Caren** [2] - 623:12, 623:19
**Carolina** [1] - 584:5
**carried** [1] - 655:15
**carry** [1] - 662:9
**cases** [1] - 634:1
**cash** [5] - 626:14, 630:20, 634:16, 641:14, 641:21
**category** [4] - 644:24, 646:24, 648:22, 649:13
**caused** [1] - 598:16
**causes** [1] - 629:1
**CEI** [2] - 635:13, 635:15
**certain** [8] - 618:3, 629:25, 635:17, 640:23, 650:3, 656:13, 662:22, 662:23
**Certainly** [1] - 661:16
**certainly** [1] - 666:9
**CERTIFICATE** [1] - 669:1
**certify** [1] - 669:3

**chance** [4] - 586:12, 586:16, 599:11, 665:19
**change** [5] - 596:18, 598:1, 600:5, 608:8, 629:1
**changed** [2] - 596:16, 600:15
**changes** [7] - 617:25, 626:25, 627:3, 627:4, 627:20, 627:21, 628:8
**characterize** [1] - 623:5
**characterized** [2] - 639:24, 650:3
**characterizing** [1] - 650:10
**chart** [56] - 588:9, 591:12, 591:13, 591:16, 592:12, 593:1, 593:11, 593:12, 593:16, 594:12, 596:8, 596:13, 598:1, 598:12, 598:16, 598:23, 598:25, 601:6, 602:3, 602:5, 602:6, 602:8, 604:18, 605:18, 613:2, 616:16, 617:10, 617:21, 618:14, 622:11, 622:15, 625:25, 627:2, 628:9, 628:10, 628:11, 635:22, 637:20, 639:7, 639:8, 639:23, 640:2, 647:9, 647:18, 647:22, 648:23, 650:24, 652:12, 653:3, 653:12, 654:20, 659:15, 659:22, 660:21, 660:23, 660:24
**check** [7] - 599:12, 608:11, 621:20, 629:16, 639:19, 658:23, 664:1
**checked** [1] - 616:8
**checks** [3] - 639:13, 639:14, 663:9
**CHRISTOPHER** [1] - 584:7
**chronologically** [1] - 587:25
**Civil** [2] - 583:5, 584:12
**clear** [6] - 599:13,

Jacqueline Sullivan, RPR
Official Court Reporter

06/16/2008 08:09:52 AM

603:7, 603:19, 666:4, 666:22, 666:24

**clearly** [2] - 650:12, 666:3

**Clifton** [4] - 605:21, 607:17, 608:13, 609:12

**closing** [1] - 666:2

**COBELL** [1] - 583:3

**code** [6] - 629:16, 629:25, 630:3, 630:4, 630:5, 630:17

**coded** [1] - 661:21

**coding** [1] - 629:21

**collect** [1] - 604:2

**Collected** [1] - 643:4

**collected** [5] - 614:24, 614:25, 615:4, 615:5, 615:14

**collection** [13] - 588:4, 593:8, 593:19, 601:14, 606:15, 606:17, 606:18, 625:5, 629:18, 632:5, 633:7, 646:9, 666:21

**collections** [23] - 588:23, 593:20, 599:15, 600:25, 601:3, 603:23, 604:1, 608:24, 617:22, 617:25, 623:1, 628:1, 628:12, 629:17, 629:19, 631:12, 632:3, 635:4, 637:10, 638:12, 648:24, 656:14, 656:15

**collects** [2] - 615:10, 615:11

**color** [2] - 585:20, 661:21

**color-coded** [1] - 661:21

**coloring** [1] - 662:8

**colors** [1] - 662:5

**COLUMBIA** [1] - 583:1

**column** [25] - 588:8, 593:16, 593:23, 599:14, 600:7, 609:4, 611:14, 611:21, 616:24, 617:6, 624:24, 648:14, 649:2, 652:13, 656:1, 658:8, 658:14, 658:21, 659:1, 659:3, 661:21,

661:23, 661:25, 664:11

**Column** [4] - 624:12, 655:24, 655:25, 659:4

**columns** [4] - 600:6, 608:5, 610:19, 621:5

**coming** [6] - 612:24, 637:23, 638:16, 659:13, 660:14, 663:12

**Commercial** [1] - 584:12

**common** [1] - 614:2

**comparison** [1] - 628:9

**compiled** [1] - 608:14

**compiling** [2] - 666:17, 667:8

**complete** [3] - 615:20, 616:10, 622:24

**completely** [1] - 604:16

**completeness** [2] - 587:16, 627:10

**component** [2] - 660:1, 663:20

**computation** [1] - 653:25

**computations** [1] - 603:25

**compute** [2] - 642:4, 642:5

**computed** [1] - 642:3

**computer** [2] - 584:22, 666:11

**computer-aided** [1] - 584:22

**con't** [2] - 583:25, 584:1

**concentrate** [1] - 611:2

**concerned** [1] - 632:24

**concerns** [1] - 634:5

**conclusion** [1] - 645:25

**conditions** [1] - 634:16

**confirm** [3] - 589:2, 633:8, 657:14

**confirmed** [1] - 638:15

**confused** [1] - 625:8

**conjunction** [1] - 630:19

**connection** [1] - 586:5

**consecutive** [1] - 618:11

**conservative** [1] - 633:1

**consider** [4] - 586:16, 647:16, 648:5, 650:18

**consideration** [5] - 640:5, 651:17, 652:10, 653:6, 656:1

**consistent** [6] - 600:1, 602:16, 613:16, 634:22, 648:10, 665:12

**consists** [1] - 666:10

**Constitution** [1] - 584:17

**construct** [2] - 647:19, 647:24

**consuming** [3] - 636:22, 636:23, 636:24

**contained** [2] - 593:2, 641:4

**containing** [1] - 607:25

**context** [1] - 629:11

**continue** [4] - 660:23, 662:1, 665:20, 665:23

**continued** [1] - 627:14

**continues** [1] - 665:22

**continuing** [1] - 649:15

**conversation** [1] - 629:8

**conversations** [9] - 608:13, 608:15, 608:18, 608:19, 608:21, 619:15, 619:25, 623:14, 623:18

**converting** [1] - 663:17

**copies** [4] - 616:5, 616:9, 616:10, 625:18

**copy** [10] - 589:23, 596:23, 597:4, 599:4, 599:5, 612:8, 615:25, 616:3, 624:5, 624:14

**corporate** [1] - 664:6

**corporations** [1] - 659:7

**Correct** [1] - 624:23

**correct** [212] - 587:22, 588:11, 589:14, 590:13, 590:14, 590:16, 591:2, 591:4, 591:5, 591:15, 591:23, 592:14, 592:17, 592:20, 592:24,

593:11, 593:23, 594:3, 594:10, 594:17, 595:1, 595:5, 595:6, 596:5, 596:9, 596:11, 596:12, 596:14, 596:15, 596:17, 597:7, 597:14, 597:17, 597:24, 598:4, 598:13, 598:14, 598:17, 599:20, 599:21, 599:24, 600:10, 600:13, 600:23, 601:1, 601:2, 601:5, 601:13, 601:16, 601:17, 601:18, 601:19, 602:2, 603:18, 603:22, 604:3, 604:5, 604:22, 605:2, 605:11, 605:17, 605:23, 606:7, 606:20, 607:11, 607:12, 607:14, 608:10, 609:3, 609:14, 609:23, 610:8, 610:15, 611:8, 611:11, 611:17, 612:17, 612:18, 612:24, 612:25, 613:7, 614:1, 615:1, 615:2, 615:8, 615:19, 616:7, 616:13, 616:14, 616:25, 617:4, 617:5, 617:19, 617:20, 618:3, 618:4, 618:21, 618:22, 620:18, 622:4, 622:5, 622:7, 622:11, 622:19, 622:20, 622:22, 623:2, 623:3, 623:5, 626:2, 626:3, 626:6, 626:17, 626:24, 627:2, 627:18, 627:19, 627:24, 628:17, 628:23, 630:2, 630:9, 630:11, 630:16, 631:18, 631:20, 631:25, 632:1, 633:7, 633:14, 633:20, 633:21, 633:23, 634:22, 636:6, 636:7, 636:10, 636:13, 637:12, 637:13, 637:22, 637:25,

638:3, 638:5, 640:1, 640:4, 640:8, 640:20, 640:24, 640:25, 641:5, 641:8, 641:9, 642:24, 643:2, 643:24, 644:15, 644:24, 645:10, 647:1, 647:9, 647:10, 647:13, 647:20, 647:21, 648:16, 648:17, 648:23, 649:6, 649:11, 650:20, 651:3, 651:10, 651:20, 652:3, 653:5, 653:20, 653:22, 654:3, 654:4, 654:7, 654:22, 655:10, 655:13, 655:16, 655:20, 655:23, 656:18, 656:19, 657:2, 657:3, 658:6, 658:12, 659:6, 659:10, 659:14, 659:16, 659:18, 660:4, 660:10, 662:22, 663:9, 663:10, 663:13, 664:11, 664:15, 664:16, 665:2, 665:3, 665:6, 669:3

**correctly** [1] - 650:22

**correspond** [1] - 662:4

**count** [1] - 616:22

**counted** [3] - 616:20, 617:11, 629:19

**counting** [2] - 629:20, 637:10

**couple** [2] - 587:21, 618:18

**course** [1] - 667:9

**COURT** [27] - 583:1, 585:5, 585:11, 586:10, 586:15, 586:20, 590:9, 607:8, 612:5, 612:7, 614:5, 614:10, 614:15, 624:16, 638:22, 638:24, 641:18, 646:1, 665:24, 666:2, 666:7, 666:14, 666:18, 666:24, 667:9, 667:12, 667:15

**Court** [7] - 584:15, 584:16, 586:1,

586:6, 624:15, 639:1, 669:2
**court** [1] - 621:22
**Courthouse** [1] - 584:16
**COURTROOM** [3] - 585:2, 639:1, 639:3
**cover** [1] - 586:4
**covered** [1] - 637:2
**covering** [1] - 656:12
**CPNR** [2] - 651:24, 651:25
**created** [1] - 628:24
**credited** [1] - 663:25
**crediting** [1] - 660:6
**credits** [1] - 630:20
**Cross** [1] - 668:6
**cross** [3] - 585:6, 608:1, 667:2
**cross-examination** [1] - 667:2
**Cross-examination** [1] - 668:6
**cross-tab** [1] - 608:1
**Crown** [1] - 639:12
**current** [1] - 651:17

## D

**D-00** [1] - 618:19
**D.C** [6] - 583:6, 583:16, 583:24, 584:9, 584:14, 584:17
**DANIEL** [1] - 584:3
**dash** [3] - 610:1, 610:3, 610:6
**data** [44] - 587:16, 588:25, 589:7, 591:8, 594:21, 595:10, 602:15, 602:16, 603:9, 604:11, 604:12, 604:13, 605:20, 609:23, 610:5, 610:6, 610:9, 610:10, 610:24, 613:16, 616:3, 620:2, 622:23, 623:10, 626:10, 626:11, 626:12, 627:10, 642:6, 642:14, 649:14, 649:16, 651:5, 651:24, 657:9, 657:10, 657:12, 657:16, 657:18, 666:8, 666:10, 666:12, 667:5

**database** [11] - 607:21, 607:25, 608:7, 608:8, 608:12, 608:16, 616:6, 616:16, 627:12, 627:15, 627:17
**date** [3] - 598:8, 598:10, 651:25
**dated** [3] - 596:14, 596:25, 597:9
**DAVID** [1] - 584:3
**days** [6] - 596:16, 598:3, 598:15, 599:23, 667:3
**deal** [3] - 586:17, 664:5, 666:20
**debit** [1] - 630:18
**decided** [1] - 590:21
**decision** [2] - 594:11, 594:13
**decreases** [1] - 617:24
**deduction** [1] - 651:17
**Defendants** [2] - 583:8, 584:6
**defendants** [1] - 585:7
**Defendants'** [22] - 585:9, 585:13, 585:17, 585:18, 585:22, 585:23, 585:25, 586:2, 586:6, 589:12, 596:7, 604:21, 607:19, 624:4, 624:22, 624:25, 639:7, 648:13, 652:12, 658:5
**Defense** [2] - 585:21, 601:20
**define** [1] - 650:16
**defining** [1] - 646:3
**demonstrate** [1] - 650:24
**DENNIS** [1] - 583:14
**Dennis** [1] - 583:14
**Department** [5] - 584:8, 584:11, 606:4, 606:9, 634:11
**department** [1] - 641:2
**deposit** [5] - 644:2, 650:13, 663:19, 663:25, 664:2
**deposited** [1] - 639:20
**deposits** [2] - 640:21, 647:4
**DEPUTY** [3] - 585:2, 639:1, 639:3
**derived** [1] - 592:22
**descent** [1] - 639:13
**describe** [4] - 629:9,

629:11, 629:13, 634:14
**described** [1] - 648:10
**destination** [1] - 650:3
**detailed** [3] - 604:25, 627:4, 658:1
**determine** [10] - 586:16, 601:4, 613:13, 637:17, 643:21, 644:15, 645:13, 646:13, 646:20, 651:2
**determined** [1] - 588:5
**developed** [1] - 587:20
**devoted** [1] - 587:2
**dies** [1] - 591:13
**difference** [12] - 630:23, 632:9, 652:17, 652:19, 652:21, 652:24, 653:9, 653:16, 654:1, 654:2, 655:8, 660:18
**Difference** [1] - 652:13
**differences** [1] - 631:2
**different** [14] - 587:21, 590:15, 605:3, 605:6, 615:2, 644:16, 647:5, 653:7, 654:3, 657:7, 660:24, 661:6, 662:13, 662:14
**differential** [1] - 593:25
**differently** [2] - 657:7, 665:5
**difficult** [5] - 620:25, 635:24, 636:20, 636:23, 638:12
**direct** [3] - 628:18, 641:17, 663:20
**directly** [4] - 643:8, 644:22, 658:21, 659:21
**DIRK** [1] - 583:7
**disappeared** [1] - 603:5
**disbursed** [7] - 639:19, 641:24, 650:11, 651:13, 651:14, 654:7
**disbursement** [27] - 588:4, 593:8, 593:19, 603:14, 606:16, 606:19, 611:10, 611:15, 611:16, 615:17, 618:5, 626:12, 628:1, 631:22,

639:8, 640:24, 644:22, 647:7, 647:11, 647:15, 648:22, 649:13, 650:18, 650:21, 651:8, 651:22, 652:2
**disbursements** [40] - 592:19, 593:21, 598:20, 603:23, 607:4, 607:13, 608:24, 610:10, 612:1, 612:23, 614:1, 621:10, 623:1, 626:15, 629:20, 631:13, 631:24, 632:4, 633:7, 634:17, 635:3, 637:1, 637:10, 640:20, 643:19, 648:11, 648:14, 648:24, 648:25, 649:1, 649:6, 649:18, 649:19, 649:20, 650:17, 652:25, 653:10, 654:9, 654:16
**Disbursements** [1] - 639:22
**disclosed** [1] - 633:4
**discovered** [2] - 595:18, 621:22
**discuss** [2] - 592:9, 657:5
**discussed** [10] - 585:16, 592:2, 592:8, 594:8, 600:16, 621:25, 629:8, 629:16, 634:3, 643:10
**discussing** [3] - 594:9, 614:9, 636:19
**display** [1] - 602:9
**distribution** [2] - 630:6, 630:19
**DISTRICT** [3] - 583:1, 583:1, 583:12
**Division** [1] - 584:12
**document** [10] - 586:5, 589:5, 604:24, 606:1, 606:8, 607:15, 634:7, 634:10, 634:20, 642:15
**documentary** [1] - 662:18
**documentation** [2] - 661:10, 664:25
**documents** [21] - 585:15, 585:24,

591:19, 591:24, 642:7, 642:16, 643:21, 643:22, 643:23, 643:25, 656:7, 658:14, 658:17, 658:18, 660:8, 660:25, 662:25, 663:4, 664:20, 665:7, 666:21
**dollar** [5] - 618:11, 618:21, 624:20, 628:2
**dollars** [1] - 590:24
**done** [13] - 592:7, 596:1, 628:9, 633:3, 638:14, 638:15, 640:13, 640:17, 645:12, 646:12, 646:13, 646:20, 651:2
**Dorris** [1] - 668:6
**DORRIS** [32] - 583:18, 586:8, 586:11, 586:18, 586:21, 586:23, 589:25, 590:1, 590:8, 590:10, 599:9, 607:9, 612:6, 612:9, 612:10, 614:16, 624:13, 624:18, 638:20, 638:23, 638:25, 639:5, 639:6, 641:22, 646:4, 665:13, 665:23, 665:25, 666:3, 666:20, 667:11, 667:17
**down** [21] - 588:19, 599:12, 607:19, 609:4, 611:14, 615:8, 616:15, 616:24, 617:2, 620:25, 621:5, 627:21, 627:24, 628:10, 629:10, 635:8, 636:12, 648:3, 661:24, 663:21
**Dr** [40] - 588:17, 588:18, 588:20, 588:25, 589:5, 590:21, 590:25, 591:10, 591:19, 592:1, 592:6, 592:8, 592:19, 594:2, 594:8, 595:18, 595:24, 596:22, 598:7, 598:11, 599:22, 600:17,

600:24, 601:9,
601:10, 601:14,
602:11, 602:13,
602:16, 602:18,
603:6, 603:8,
603:13, 603:22,
604:4, 656:22,
666:4, 666:10,
666:19
**draft** [3] - 597:17,
597:19, 597:20
**drafts** [2] - 597:11,
597:13
**drives** [1] - 660:17
**Dunne** [14] - 605:25,
606:14, 607:20,
609:12, 609:22,
616:5, 618:24,
619:12, 619:16,
623:12, 623:18,
623:19, 626:1
**Dunne's** [1] - 625:23
**duplication** [1] -
636:19
**during** [9] - 594:5,
613:15, 617:22,
623:11, 627:1,
631:19, 643:15,
652:1, 664:19
**During** [1] - 664:24
**DX** [2] - 589:10, 637:2
**DX371** [4] - 651:6,
659:17, 664:11,
665:10

## E

**e-mail** [5] - 593:2,
593:4, 593:5, 593:6,
593:10
**earlier-year** [1] -
619:17
**early** [4] - 587:11,
587:12, 587:14,
590:23
**earned** [6] - 656:2,
656:3, 656:5, 656:7,
656:9, 656:10
**earnings** [1] - 656:23
**easier** [2] - 590:5,
590:6
**Edward** [1] - 666:19
**effect** [4] - 619:23,
650:4, 651:11,
651:15
**effectively** [1] - 619:7
**efficient** [1] - 665:18
**effort** [1] - 645:12
**efforts** [3] - 587:9,

635:19
**eight** [2] - 593:14,
611:11
**either** [1] - 636:8
**electronic** [11] -
585:22, 594:21,
595:10, 604:13,
604:15, 608:7,
616:1, 616:4, 642:6,
642:14, 657:8
**eliminated** [1] - 637:5
**ELLIOTT** [1] - 583:17
**ELOUISE** [1] - 583:3
**employed** [1] - 605:21
**employee** [1] - 639:20
**employee's** [2] -
639:15, 639:21
**employees** [1] -
639:14
**end** [2] - 612:22,
632:15
**ending** [3] - 652:21,
652:22, 654:7
**ends** [1] - 614:9
**enlightened** [1] -
614:15
**entered** [2] - 616:3,
616:6
**entire** [4] - 585:24,
586:4, 600:19,
656:12
**entirety** [2] - 588:9,
626:10
**entitled** [2] - 653:4,
669:4
**equal** [1] - 649:7
**era** [1] - 585:22
**ESQ** [11] - 583:14,
583:17, 583:18,
583:21, 583:22,
584:3, 584:3, 584:6,
584:7, 584:7, 584:10
**essence** [1] - 609:20
**essentially** [4] -
633:18, 634:1,
635:3, 635:23
**established** [1] -
646:10
**estimate** [14] - 588:6,
588:20, 589:1,
589:4, 591:18,
592:10, 600:18,
601:9, 622:16,
622:18, 623:5,
656:15, 661:11,
664:25
**estimated** [12] -
593:18, 622:20,
622:22, 623:2,
623:6, 623:7,

623:11, 623:22,
654:16, 661:20,
662:23
**et** [2] - 583:3, 583:7
**etcetera** [1] - 646:24
**Etcetera** [1] - 646:25
**evaluate** [1] - 638:10
**evaluated** [1] - 638:18
**evidence** [4] - 585:7,
585:24, 586:7,
662:18
**exact** [2] - 618:10,
618:21
**exactly** [3] - 587:14,
621:10, 623:7
**examination** [4] -
665:17, 665:20,
667:2, 668:6
**example** [12] - 619:9,
620:7, 629:5,
629:11, 629:14,
629:23, 630:24,
640:23, 642:17,
643:10, 647:25,
654:5
**examples** [3] - 585:17,
629:7, 630:23
**excerpted** [1] - 585:24
**Excuse** [4] - 594:25,
611:12, 634:23,
641:16
**excuse** [4] - 606:15,
649:21, 661:20,
663:16
**Exhibit** [24] - 585:9,
585:13, 585:18,
585:21, 585:25,
586:2, 586:6,
589:12, 596:8,
599:6, 599:7,
601:20, 604:21,
607:19, 614:20,
624:4, 624:22,
624:25, 634:6,
639:7, 648:13,
652:12, 658:5,
668:14
**exhibit** [2] - 586:1,
592:5
**exhibits** [5] - 585:7,
586:11, 586:13,
628:11, 665:15
**Exhibits** [1] - 585:17
**expect** [2] - 586:13,
658:18
**expecting** [1] - 646:9
**Explain** [1] - 594:14
**explain** [10] - 608:3,
609:17, 618:25,
619:6, 628:18,

629:4, 629:22,
646:2, 652:11,
653:17
**explained** [3] - 603:4,
609:15, 619:8
**explaining** [2] -
650:12, 660:22
**express** [2] - 633:13,
634:2
**extensive** [1] - 666:5
**extensively** [2] -
605:9, 635:23
**extent** [7] - 603:9,
637:4, 637:5, 644:8,
648:5, 648:19, 667:7
**external** [1] - 645:12

## F

**facilitate** [1] - 629:8
**fact** [15] - 605:11,
610:20, 618:2,
629:16, 636:20,
638:1, 638:8,
638:11, 640:9,
643:6, 645:13,
646:15, 651:1,
653:6, 664:21
**factor** [2] - 651:12,
651:19
**fair** [7] - 592:4,
605:13, 605:15,
606:12, 626:21,
641:15, 653:12
**fairness** [2] - 590:25,
599:18
**faithfully** [1] - 599:10
**fall** [1] - 650:17
**familiar** [1] - 626:20
**familiarity** [1] - 595:23
**fashion** [2] - 630:15,
663:19
**favorable** [3] - 632:10,
632:15
**FDI** [2] - 606:6, 606:10
**February** [1] - 625:17
**fees** [6] - 642:18,
643:1, 643:3, 643:7,
643:14, 647:4
**fell** [1] - 599:24
**felt** [3] - 590:24,
632:25, 665:25
**few** [6] - 596:16,
598:3, 599:18,
626:17, 659:9, 663:9
**fewer** [1] - 590:24
**fifteen** [7] - 588:21,
589:6, 590:20,
591:3, 591:6, 591:9,

608:23
**Fifteen** [1] - 590:17
**fifteen-year** [1] -
608:23
**fifty** [1] - 659:12
**figure** [3] - 601:21,
618:21, 635:24
**figures** [3] - 598:24,
621:19, 655:24
**fill** [2] - 609:9, 627:13
**final** [3] - 597:22,
625:25, 651:17
**finance** [3] - 604:11,
604:14, 605:5
**financial** [10] - 633:19,
633:22, 633:23,
635:20, 642:7,
642:15, 643:20,
643:22, 660:7
**fine** [2] - 590:4, 590:7
**Fine** [1] - 596:23
**firm** [4] - 588:6,
588:12, 605:21,
606:3
**first** [21] - 585:13,
593:12, 594:17,
596:24, 598:6,
599:14, 607:6,
610:19, 616:24,
624:11, 631:19,
632:9, 632:12,
632:17, 632:25,
634:7, 652:16,
661:17, 661:21,
661:25, 662:9
**five** [5] - 585:14,
598:15, 620:25,
659:13, 661:6
**flag** [3] - 618:12,
618:23, 622:9
**flags** [1] - 620:18
**flip** [1] - 661:17
**flipping** [1] - 659:19
**Floor** [1] - 583:15
**flow** [3] - 585:16,
594:1, 647:20
**flowchart** [1] - 585:10
**flowing** [1] - 651:3
**flows** [1] - 594:1
**focus** [1] - 610:18
**focused** [2] - 587:9,
649:21
**follow** [1] - 661:14
**FOR** [2] - 583:1,
586:22
**foregoing** [1] - 669:3
**forestry** [1] - 629:14
**form** [3] - 585:24,
609:1, 609:2
**forth** [2] - 610:25,

655:20
**forward** [11] - 587:25, 589:3, 590:17, 591:4, 626:16, 649:22, 657:9, 657:11, 657:25, 661:1, 662:9
**four** [7] - 608:19, 608:21, 640:20, 658:18, 658:19, 659:13
**fourteen** [1] - 608:23
**Fourth** [1] - 584:4
**frame** [15] - 590:22, 594:18, 594:19, 594:20, 599:19, 600:19, 600:20, 613:15, 625:13, 626:17, 636:17, 654:15, 656:12, 657:5, 664:24
**frames** [3] - 657:7, 662:22, 662:23
**Franklin** [1] - 584:13
**fraud** [4] - 640:5, 640:12, 640:15, 640:17
**FTI** [2] - 646:12, 646:19
**fund** [2] - 634:16, 651:18
**funds** [9] - 585:9, 625:5, 636:4, 637:15, 647:20, 651:2, 659:1, 663:24

## G

**GAO** [5] - 594:19, 594:20, 595:5, 595:20, 596:2
**gap** [1] - 657:13
**gaps** [8] - 609:8, 609:9, 609:13, 609:18, 609:20, 609:23, 609:24, 627:13
**gathered** [3] - 589:1, 600:18, 601:11
**general** [11] - 604:12, 604:25, 635:5, 635:8, 635:9, 635:23, 636:15, 638:11, 638:14, 643:11, 643:12
**general's** [1] - 636:2
**generally** [1] - 657:18
**Georgia** [1] - 583:20
**GINGOLD** [1] - 583:14

**Gingold** [1] - 583:14
**given** [9] - 587:8, 594:2, 596:10, 600:24, 608:7, 627:12, 630:24, 648:9, 665:9
**GL** [1] - 657:16
**GL-230611** [1] - 648:7
**GLDL** [5] - 604:25, 605:20, 613:17, 625:9, 625:12
**GLDLB** [2] - 607:5, 613:21
**GLDLD** [2] - 607:6
**GLDLD-1** [1] - 610:22
**GLDLR** [2] - 607:3, 623:25
**GLGLD** [1] - 607:4
**GLGLDC** [1] - 594:22
**government** [8] - 632:15, 642:20, 642:22, 642:23, 642:25, 643:8, 643:15, 666:25
**green** [1] - 646:23
**Greg** [1] - 623:16
**Griffen** [2] - 634:13, 635:7
**group** [1] - 648:3
**guess** [4] - 604:8, 645:21, 657:6, 667:15
**GUILDER** [1] - 583:22
**Gunnerson** [4] - 605:21, 607:17, 608:14, 609:12

## H

**half** [1] - 661:25
**halfway** [1] - 617:10
**hand** [2] - 587:17
**hand-in-hand** [1] - 587:17
**handed** [2] - 624:13, 624:15
**hands** [2] - 667:5, 667:6
**handwriting** [1] - 589:17
**happy** [1] - 665:16
**hard** [9] - 612:8, 615:25, 616:3, 616:5, 616:9, 616:10, 624:14, 625:18, 636:16
**HARPER** [1] - 583:21
**head** [1] - 659:7
**headed** [1] - 587:19

**headright** [7] - 657:19, 657:21, 659:5, 663:14, 663:23, 664:6, 664:8
**hear** [1] - 646:19
**heard** [2] - 586:8, 650:1
**held** [5] - 641:10, 641:11, 641:12, 641:14, 641:21
**help** [3] - 611:4, 629:9, 660:21
**Herman** [8] - 585:15, 586:5, 586:24, 610:19, 614:17, 639:7, 649:1, 667:13
**HERMAN** [2] - 586:22, 668:5
**Herman's** [1] - 585:8
**high** [1] - 626:12
**higher** [4] - 632:6, 632:17, 632:25, 633:1
**highlighted** [5] - 585:19, 585:21, 611:3, 634:13, 634:15
**Historical** [2] - 606:5, 606:9
**historical** [14] - 585:16, 586:4, 589:5, 590:19, 600:17, 601:10, 647:20, 654:17, 654:18, 654:24, 655:5, 655:12, 656:23, 660:24
**hold** [2] - 645:20, 659:7
**holder** [1] - 641:13
**holders** [2] - 640:11, 645:7
**Honor** [21] - 585:4, 586:8, 586:21, 590:8, 607:7, 612:6, 614:7, 624:13, 629:15, 638:20, 638:25, 639:5, 641:16, 645:24, 665:13, 665:21, 666:9, 666:20, 667:11, 667:14, 667:17
**HONORABLE** [1] - 583:11
**hour** [3] - 607:1, 608:20, 667:3
**hours** [1] - 608:21
**housed** [1] - 641:2
**hundred** [4] - 658:19,

659:13, 661:10, 663:4

## I

**Identification** [1] - 668:15
**identification** [1] - 599:8
**identified** [5] - 599:4, 637:4, 637:6, 648:20, 650:8
**identify** [5] - 586:1, 635:19, 642:15, 653:10, 661:17
**identifying** [1] - 650:9
**IIM** [79] - 587:2, 588:6, 588:15, 588:19, 588:23, 590:12, 590:24, 592:11, 592:12, 592:15, 593:13, 600:7, 600:11, 600:19, 600:22, 601:4, 601:7, 601:24, 602:15, 603:20, 625:19, 629:6, 636:10, 636:12, 637:12, 637:16, 637:18, 637:21, 637:23, 638:2, 638:4, 638:8, 638:9, 638:16, 638:17, 640:3, 640:8, 640:24, 641:1, 641:8, 641:25, 642:19, 642:22, 643:7, 644:22, 645:4, 645:6, 645:8, 645:13, 645:17, 645:19, 645:22, 646:3, 647:5, 647:12, 647:20, 648:6, 650:10, 650:14, 653:3, 653:14, 655:21, 656:2, 659:2, 659:13, 660:7, 660:12, 660:15, 661:11, 661:21, 662:15, 662:19, 662:24, 663:12, 663:15, 663:23, 664:7, 664:12
**IMC** [1] - 636:18
**impacted** [1] - 602:24
**implementation** [2] - 646:8, 646:16
**inaccurate** [2] - 638:1,

654:25
**include** [6] - 585:9, 593:5, 647:2, 648:19, 656:11, 659:23
**included** [12] - 591:21, 593:6, 593:8, 599:19, 646:24, 648:21, 649:8, 650:15, 656:14, 656:18, 659:22, 664:14
**includes** [4] - 645:17, 647:3, 652:7, 666:13
**Including** [1] - 660:20
**including** [3] - 587:7, 587:15, 642:20
**income** [2] - 646:22, 647:3
**incomplete** [4] - 622:5, 622:7, 622:8, 627:12
**inconsistent** [1] - 622:12
**incorporated** [1] - 602:14
**increases** [1] - 617:24
**Indian** [3] - 590:23, 639:16, 664:7
**Indians** [6] - 646:13, 659:5, 659:10, 659:21, 659:22, 660:13
**indicate** [1] - 655:14
**indicated** [2] - 620:1, 622:18
**indicates** [3] - 610:3, 610:4, 610:5
**indicating** [3] - 585:19, 655:3, 655:8
**individual** [22] - 608:6, 636:3, 639:16, 639:22, 640:3, 640:10, 644:25, 646:13, 647:14, 648:1, 648:4, 648:6, 659:5, 659:10, 659:21, 659:22, 660:13, 663:21, 664:1, 664:6, 664:9
**individuals** [3] - 588:14, 608:13, 609:15
**Information** [1] - 665:11
**information** [69] - 588:3, 592:18, 598:3, 598:5, 598:7, 598:12, 598:13, 598:16, 599:2,

Jacqueline Sullivan, RPR
Official Court Reporter

599:11, 600:4, 604:4, 604:14, 604:17, 605:18, 607:16, 608:1, 608:14, 608:22, 609:8, 609:13, 609:16, 609:19, 613:16, 615:19, 616:1, 617:4, 617:7, 619:10, 622:2, 622:10, 622:15, 622:24, 625:9, 625:11, 625:17, 626:19, 627:23, 631:11, 631:16, 631:19, 631:24, 632:3, 632:22, 633:10, 641:3, 642:2, 642:5, 642:6, 642:8, 642:10, 642:13, 643:18, 644:16, 644:17, 655:3, 655:5, 656:9, 656:20, 657:15, 657:19, 657:24, 658:1, 658:2, 662:20, 665:12, 666:4

**informed** [1] - 616:1
**initial** [1] - 605:20
**inquire** [1] - 641:19
**inside** [2] - 636:12, 648:18
**inspector** [8] - 635:5, 635:8, 635:9, 635:23, 636:2, 636:15, 638:11, 638:13
**instance** [15] - 610:11, 613:1, 613:9, 613:14, 617:25, 630:5, 630:18, 642:20, 642:24, 643:4, 645:19, 647:3, 648:5, 650:7, 661:16
**instances** [8] - 609:18, 612:23, 618:24, 621:24, 640:12, 640:14, 643:20, 644:1
**instead** [3] - 608:5, 609:17, 629:20
**intended** [1] - 630:15
**interest** [20] - 631:12, 631:21, 631:24, 646:5, 646:14, 646:17, 655:24, 656:1, 656:3, 656:4, 656:8, 656:10,

656:11, 656:14, 656:21, 656:23, 659:6, 659:8, 660:20
**Interfund** [1] - 635:11
**interfund** [4] - 635:12, 636:5, 637:1, 637:14
**Interior** [6] - 583:7, 606:5, 606:9, 634:11, 635:1, 636:4
**Interior's** [1] - 635:9
**internal** [4] - 585:9, 595:12, 649:18, 649:19
**interrupted** [1] - 665:25
**intrafund** [4] - 635:11, 635:12, 636:11, 637:1
**investigate** [1] - 613:19
**investigation** [1] - 613:12
**investment** [3] - 613:14, 641:13, 656:6
**investments** [1] - 641:11
**involved** [2] - 594:9, 595:1
**IRMS** [10] - 591:8, 625:4, 625:7, 625:13, 625:16, 626:17, 626:18, 632:23, 644:18, 663:17
**issue** [4] - 602:9, 626:13, 626:15, 636:18
**issued** [1] - 634:13
**issues** [4] - 587:2, 613:18, 613:19, 634:4
**item** [3] - 653:25, 654:21, 654:22
**items** [1] - 608:6
**itself** [8] - 605:7, 629:21, 632:18, 635:6, 642:23, 643:1, 643:15, 664:13

---

**J**

**JACQUELINE** [3] - 584:15, 669:2, 669:5
**JAMES** [1] - 583:11
**January** [1] - 587:11
**JOHN** [2] - 584:7, 584:10

**JR** [2] - 584:3, 584:6
**Judge** [2] - 629:24, 647:17
**JUDGE** [1] - 583:12
**judgment** [2] - 596:20, 640:22
**judgments** [1] - 596:21
**June** [13] - 583:7, 587:12, 596:8, 596:11, 597:1, 597:10, 598:2, 600:8, 601:25, 603:5, 625:25, 628:13, 648:9
**Justice** [2] - 584:8, 584:11
**JUSTIN** [1] - 583:22

---

**K**

**KEITH** [1] - 583:21
**KEMPTHORNE** [1] - 583:7
**keying** [1] - 625:19
**Kilpatrick** [3] - 583:18, 583:22, 584:4
**kind** [9] - 587:19, 587:21, 598:19, 598:21, 619:22, 664:5, 664:21, 667:2
**KIRSCHMAN** [1] - 584:6
**knowledge** [3] - 595:13, 646:12, 649:12
**KOHN** [1] - 584:7

---

**L**

**label** [1] - 648:2
**Lamey** [11] - 605:25, 606:14, 607:20, 609:12, 609:22, 616:5, 618:25, 619:12, 619:16, 623:13, 623:18
**Lamey's** [1] - 626:1
**land** [3] - 646:9, 646:10, 646:17
**language** [1] - 607:21
**large** [2] - 632:9, 666:21
**largely** [2] - 606:13, 659:5
**larger** [1] - 612:4
**last** [6] - 601:25, 608:18, 610:14,

629:2, 643:12, 665:8
**Last** [1] - 643:5
**late** [1] - 664:4
**Law** [1] - 583:14
**layman's** [1] - 634:1
**leased** [1] - 646:9
**leasees** [1] - 643:8
**leasing** [1] - 618:1
**least** [6] - 587:21, 594:9, 613:25, 615:4, 632:12, 632:17
**ledger** [3] - 604:12, 604:25, 605:1
**ledgers** [3] - 605:3, 605:6, 644:20
**left** [3] - 606:4, 610:2, 610:21
**legal** [4] - 607:7, 607:10, 607:13, 645:25
**legal-size** [2] - 607:7, 607:10
**Lenexa** [1] - 643:25
**less** [7] - 603:1, 628:15, 653:19, 654:9, 654:13, 654:16, 665:18
**level** [8] - 609:16, 609:17, 613:6, 613:25, 614:3, 614:5, 625:9, 625:11
**LEVITAS** [1] - 583:17
**light** [1] - 656:13
**likely** [2] - 590:5, 643:20
**limited** [4] - 605:11, 605:12, 605:16, 649:16
**line** [9] - 608:6, 610:1, 610:3, 610:4, 610:5, 610:6, 653:25, 654:21, 654:22
**lines** [1] - 596:24
**list** [1] - 656:23
**lists** [4] - 658:7, 658:14, 658:21, 659:1
**Litigation** [1] - 584:12
**LLP** [3] - 583:18, 583:22, 584:4
**locate** [2] - 661:10, 665:7
**located** [6] - 592:2, 613:17, 658:14, 658:17, 663:1, 663:4
**Look** [8] - 613:21, 614:22, 618:18, 621:5, 621:13, 628:11, 635:8, 663:2

**look** [62] - 586:12, 588:2, 588:24, 589:2, 590:11, 593:14, 597:3, 598:18, 598:24, 599:13, 601:20, 601:24, 606:12, 609:4, 609:25, 610:13, 610:20, 610:25, 611:16, 611:25, 612:11, 612:12, 614:17, 616:15, 616:20, 616:24, 617:2, 617:10, 618:5, 618:14, 618:18, 619:24, 620:7, 620:10, 620:24, 621:16, 623:22, 623:23, 624:1, 624:4, 624:11, 626:11, 627:11, 632:13, 632:18, 632:19, 633:20, 634:6, 634:10, 634:12, 638:7, 642:6, 644:16, 644:19, 648:8, 648:13, 657:14, 661:1, 666:22
**looked** [11] - 587:22, 596:7, 600:2, 601:12, 613:14, 617:14, 626:8, 637:14, 637:15, 664:4
**Looking** [2] - 607:18, 635:22
**looking** [24] - 589:8, 589:12, 589:13, 589:18, 591:13, 591:14, 592:5, 600:16, 601:6, 606:1, 612:7, 612:22, 613:2, 613:11, 613:18, 615:15, 617:21, 618:9, 624:19, 624:22, 624:24, 637:12, 639:7, 649:23
**looks** [1] - 599:23
**Loretta** [1] - 639:8
**lose** [1] - 629:6
**lost** [3] - 600:21, 617:17, 625:16
**LSA** [1] - 651:4
**lunch** [5] - 587:8, 592:21, 607:1, 665:14, 667:3

---

## M

**machine** [1] - 584:21
**mail** [5] - 593:2, 593:4, 593:5, 593:6, 593:10
**major** [1] - 630:5
**majority** [2] - 626:22, 641:11
**manage** [1] - 595:3
**managed** [4] - 594:18, 594:19, 594:23, 636:4
**management** [1] - 633:18
**management 's** [1] - 633:23
**managing** [1] - 594:21
**manual** [2] - 635:19, 644:20
**manually** [1] - 604:14
**mapped** [1] - 644:8
**mapping** [11] - 627:22, 628:22, 629:1, 629:5, 629:10, 629:18, 630:25, 631:1, 631:4, 644:11, 649:15
**march** [1] - 587:20
**March** [1] - 628:24
**marked** [4] - 597:19, 599:6, 599:7, 637:9
**Marked** [1] - 668:15
**material** [1] - 664:4
**materials** [2] - 585:20, 586:4
**math** [2] - 599:11, 628:14
**matter** [1] - 669:4
**mean** [8] - 594:24, 595:1, 622:14, 625:3, 627:25, 650:6, 652:23, 658:17
**means** [5] - 608:4, 610:6, 655:11, 662:7, 667:3
**meant** [2] - 654:14, 657:8
**memo** [1] - 630:18
**mentioned** [10] - 586:14, 619:15, 631:5, 642:13, 644:18, 645:19, 649:14, 656:16, 656:22, 664:24
**MICHELLE** [2] - 586:22, 668:5
**Microsoft** [2] - 607:20, 607:25

**middle** [3] - 585:14, 598:19, 598:21
**might** [6] - 598:18, 613:7, 614:11, 624:14, 629:8, 638:20
**million** [46] - 599:16, 599:24, 601:21, 602:1, 603:5, 611:11, 611:12, 611:13, 611:17, 612:5, 612:7, 612:9, 614:11, 614:24, 615:10, 617:7, 617:12, 617:15, 617:19, 620:25, 621:11, 625:25, 626:2, 626:5, 627:7, 627:9, 628:11, 628:15, 629:6, 652:14, 652:20, 653:13, 653:16, 653:18, 654:2, 654:6, 654:9, 655:8, 655:9, 655:14, 655:21, 659:12, 659:13, 659:17, 659:20, 666:13
**minute** [1] - 616:15
**minutes** [3] - 608:20, 626:17, 638:24
**Miss** [1] - 614:17
**missed** [2] - 613:7, 628:20
**missing** [4] - 616:11, 616:12, 616:25, 621:18
**misspoke** [1] - 619:11
**misunderstood** [1] - 606:21
**model** [4] - 602:14, 602:23, 602:24, 602:25
**moment** [2] - 586:9, 589:8
**Monday** [5] - 586:18, 665:20, 665:22, 665:23, 667:13
**Money** [1] - 638:4
**money** [26] - 585:16, 588:18, 626:14, 630:20, 638:2, 641:5, 641:7, 641:8, 641:10, 641:11, 642:22, 650:19, 650:25, 653:4, 653:18, 653:19, 654:13, 654:19, 655:11, 656:2, 660:10, 660:11,

663:11, 663:25
**monies** [5] - 637:11, 640:22, 647:5, 650:17, 664:12
**month** [1] - 619:19
**Moore** [1] - 603:10
**Morgan** [2] - 588:6, 588:15
**morning** [2] - 586:19, 624:15
**most** [4] - 586:11, 587:12, 632:10, 659:9
**motion** [1] - 586:16
**move** [5] - 585:7, 585:23, 587:25, 589:3, 611:1
**movement** [1] - 650:7
**moving** [1] - 636:12
**MR** [43] - 585:4, 585:6, 585:12, 586:8, 586:11, 586:18, 586:21, 586:23, 589:23, 589:25, 590:1, 590:8, 590:10, 599:9, 607:9, 612:6, 612:9, 612:10, 614:16, 624:13, 624:18, 638:20, 638:23, 638:25, 639:5, 639:6, 641:16, 641:22, 645:24, 646:4, 665:13, 665:21, 665:23, 665:25, 666:3, 666:9, 666:16, 666:19, 666:20, 667:7, 667:10, 667:11, 667:17
**mutual** [1] - 594:13

## N

**name** [3] - 605:8, 605:24, 641:13
**named** [1] - 605:22
**national** [2] - 595:21, 596:2
**nature** [1] - 618:1
**Navajo** [1] - 639:12
**necessarily** [2] - 630:17, 646:10
**need** [5] - 656:25, 662:11, 664:19, 664:25, 666:5
**net** [1] - 625:5
**never** [3] - 642:12, 643:7, 651:14

**new** [8] - 588:3, 598:3, 625:4, 626:14, 630:20, 631:1, 664:4
**next** [19] - 583:25, 604:7, 611:25, 612:19, 615:10, 621:13, 621:19, 631:7, 634:15, 654:22, 658:8, 658:14, 658:20, 658:21, 659:1, 661:1, 661:22, 666:6, 666:18
**ninety** [1] - 610:18
**Ninth** [1] - 583:15
**nobody** [2] - 595:11, 595:13
**none** [1] - 659:20
**None** [1] - 655:24
**nonIndians** [1] - 659:7
**nonindividual** [4] - 648:1, 648:3, 650:7, 650:15
**nonlabels** [1] - 647:25
**NORC** [6] - 588:5, 593:17, 656:16, 656:20, 656:22, 666:16
**NORF** [1] - 600:18
**North** [1] - 584:5
**notebook** [13] - 587:7, 592:22, 593:4, 593:5, 606:24, 607:3, 610:23, 612:11, 627:4, 627:6, 657:1, 665:9, 665:14
**notes** [4] - 619:24, 619:25, 620:1, 620:3
**nothing** [4] - 610:1, 610:2, 615:4, 622:17
**notice** [3] - 609:25, 621:25, 661:2
**noticed** [2] - 600:11, 652:16
**number** [48] - 588:4, 588:5, 589:5, 589:6, 589:10, 592:10, 593:8, 593:13, 594:6, 600:24, 601:14, 602:6, 604:5, 604:6, 604:24, 609:7, 611:19, 612:2, 615:14, 615:16, 617:2, 621:1, 624:3, 625:25, 627:20, 627:21, 628:4, 628:5, 628:7, 631:5, 632:5, 632:10,

632:14, 632:17, 633:1, 644:9, 645:9, 645:17, 646:10, 646:18, 651:25, 653:8, 654:9, 658:15, 659:15
**numbered** [1] - 589:23
**numbering** [1] - 589:24
**numbers** [44] - 586:1, 588:5, 588:21, 590:2, 593:1, 593:2, 593:7, 593:19, 594:1, 594:4, 603:14, 603:22, 603:24, 604:18, 606:15, 606:16, 606:17, 606:19, 613:1, 615:2, 617:11, 621:6, 621:25, 622:13, 622:21, 623:6, 623:23, 627:1, 627:6, 628:22, 631:21, 631:22, 632:13, 632:24, 633:5, 637:5, 637:6, 646:15, 657:9, 664:10
**numerous** [2] - 595:20, 647:3
**NW** [4] - 583:15, 583:23, 584:8, 584:17

## O

**object** [1] - 586:17
**Objection** [2] - 641:16, 645:24
**objection** [1] - 665:21
**objections** [2] - 586:13, 586:17
**obviously** [2] - 662:11, 664:3
**occurred** [2] - 590:15, 629:1
**occurs** [1] - 654:3
**October** [12] - 587:1, 590:16, 596:7, 597:4, 597:6, 627:1, 627:17, 628:3, 628:13, 628:22, 629:2, 645:12
**OF** [2] - 583:1, 583:11
**office** [13] - 609:16, 613:1, 614:3, 614:5, 614:11, 614:13, 614:24, 615:5,

Jacqueline Sullivan, RPR
Official Court Reporter

633:24, 633:25
**reviewing** [4] - 595:11, 595:14, 595:17, 660:7
**reviews** [1] - 634:20
**revise** [1] - 598:16
**revised** [1] - 628:22
**revising** [2] - 587:13, 587:15
**revision** [4] - 596:24, 597:16, 598:6, 599:14
**revisions** [5] - 587:7, 597:3, 597:8, 597:12, 648:9
**rights** [2] - 593:25, 656:21
**risks** [1] - 634:3
**ROBERT** [1] - 584:6
**Robertson** [1] - 647:17
**ROBERTSON** [1] - 583:11
**Robertson 's** [1] - 629:24
**Rock** [1] - 611:9
**Room** [1] - 584:16
**Rose** [1] - 639:9
**roughly** [5] - 587:4, 594:17, 628:15, 651:23, 660:18
**rounding** [1] - 611:17
**rounds** [1] - 602:9
**rows** [1] - 608:5
**RPR** [1] - 584:15
**RS-71** [1] - 665:8
**run** [3] - 616:2, 625:19, 666:6

## S

**Salem** [1] - 584:5
**sales** [1] - 647:4
**SAS** [1] - 666:12
**saw** [3] - 607:1, 618:10, 637:9
**SBA** [2] - 644:22, 647:14
**schedule** [1] - 652:25
**schedules** [2] - 613:11, 613:12
**Scheuren** [16] - 592:19, 594:8, 598:7, 598:11, 599:22, 600:24, 601:9, 601:14, 602:12, 602:13, 602:17, 602:18, 603:6, 603:13,

603:22, 666:5
**Scheuren 's** [5] - 596:22, 603:8, 604:4, 666:8, 666:10
**school** [1] - 647:4
**scope** [1] - 641:17
**screen** [1] - 597:2
**searched** [1] - 595:20
**seated** [2] - 585:3, 639:4
**second** [6] - 594:18, 607:18, 631:15, 652:11, 652:12, 658:9
**Secretary** [1] - 583:7
**section** [5] - 598:21, 650:7, 650:15, 661:22
**see** [61] - 591:12, 593:18, 598:20, 599:12, 599:16, 602:1, 606:8, 607:19, 607:22, 609:4, 610:21, 610:22, 611:7, 611:15, 611:17, 611:19, 612:13, 612:20, 613:22, 614:22, 615:5, 615:11, 615:17, 616:8, 616:24, 617:8, 617:9, 617:12, 617:16, 618:14, 620:15, 620:25, 621:3, 621:6, 626:3, 626:8, 626:12, 627:9, 628:14, 634:7, 634:17, 635:4, 635:13, 635:20, 637:16, 638:7, 652:14, 652:17, 658:3, 658:6, 659:17, 660:24, 661:6, 661:8, 661:20, 661:21, 662:6, 663:5, 664:21
**selected** [2] - 594:7, 594:14
**sending** [1] - 635:2
**Senior** [1] - 584:11
**sent** [1] - 593:6
**separate** [1] - 638:12
**SESSION** [1] - 583:11
**set** [6] - 585:13, 602:15, 628:1, 644:16, 655:19, 666:12
**settled** [1] - 595:20
**seven** [1] - 615:11

**seventy** [5] - 651:9, 651:19, 651:22, 652:3, 652:4
**several** [6] - 597:11, 616:11, 619:15, 640:14, 652:16, 667:3
**sheet** [10] - 607:7, 607:10, 609:25, 610:22, 610:23, 614:18, 615:5, 615:15, 616:21, 623:23
**sheets** [1] - 607:13
**Sherod** [1] - 594:2
**Sheveria** [15] - 605:25, 606:14, 607:19, 607:20, 609:11, 609:22, 616:5, 618:24, 619:12, 619:16, 623:12, 623:16, 623:18, 625:23, 626:1
**shorthand** [1] - 584:21
**shortly** [1] - 587:8
**show** [17] - 592:22, 601:7, 601:21, 602:5, 626:5, 627:7, 637:16, 637:23, 640:23, 653:23, 654:1, 654:3, 654:18, 657:24, 663:3, 663:12, 664:10
**showing** [5] - 627:2, 637:20, 655:7, 659:12, 661:13
**shown** [8] - 594:11, 603:1, 613:23, 614:5, 628:16, 638:15, 649:1, 655:10
**shows** [14] - 590:11, 592:15, 611:10, 612:1, 612:13, 612:17, 612:19, 612:20, 612:23, 615:10, 615:17, 626:1, 628:10, 658:11
**side** [3] - 612:12, 629:17, 639:8
**significance** [1] - 653:23
**significantly** [3] - 596:16, 596:19, 622:9
**similar** [5] - 626:8, 643:22, 651:8,

662:4, 663:19
**simple** [1] - 629:4
**simply** [2] - 632:23, 653:6
**sit** [8] - 609:4, 623:9, 628:4, 629:3, 642:1, 642:11, 643:17, 644:4
**sitting** [2] - 623:8, 656:2
**situation** [2] - 645:6, 664:22
**situations** [1] - 619:21
**six** [2] - 598:15, 599:23
**size** [2] - 607:7, 607:10
**slower** [1] - 600:21
**SMITH** [1] - 584:3
**someone** [5] - 645:9, 646:5, 646:7, 646:8, 656:4
**sometime** [1] - 596:11
**somewhat** [1] - 587:17
**somewhere** [3] - 601:22, 627:5, 661:14
**soon** [3] - 597:25, 666:15, 667:1
**sorry** [36] - 597:5, 601:23, 603:6, 605:4, 605:7, 612:3, 612:6, 612:14, 613:8, 616:17, 616:19, 617:1, 617:17, 618:6, 619:2, 619:4, 619:6, 619:18, 619:20, 621:2, 624:21, 639:11, 639:16, 640:9, 641:6, 645:15, 648:12, 650:12, 651:21, 655:17, 656:15, 659:19, 660:1, 663:24, 664:19, 665:25
**sort** [3] - 636:16, 636:20, 666:20
**source** [1] - 607:19
**sources** [3] - 587:22, 646:22, 657:21
**special** [6] - 634:12, 635:2, 650:13, 663:19, 663:25, 664:2
**specific** [5] - 604:17, 613:18, 613:19, 633:8, 634:4

**specifically** [2] - 598:8, 635:6
**spent** [4] - 587:6, 587:12, 587:15, 626:22
**spreadsheet** [6] - 602:9, 606:13, 606:23, 610:14, 610:20, 614:6
**spreadsheets** [1] - 626:1
**stacks** [1] - 665:15
**staff** [1] - 633:11
**stakeholder** [2] - 644:24, 645:3
**stakeholders** [2] - 641:25, 653:3
**Stakeholders** [1] - 644:21
**stamps** [1] - 589:15
**Standing** [1] - 611:9
**stands** [2] - 620:7, 639:1
**start** [5] - 587:24, 592:16, 618:9, 658:3, 666:16
**starting** [1] - 604:11
**starts** [2] - 600:22, 607:10
**statement** [7] - 633:19, 633:22, 633:23, 643:11, 643:12, 657:8
**statements** [1] - 633:13
**STATES** [2] - 583:1, 583:12
**Station** [1] - 584:13
**stayed** [3] - 600:8, 600:11, 600:15
**STEMPLEWICZ** [1] - 584:10
**still** [5] - 644:10, 645:3, 649:14, 649:15, 659:9
**stock** [1] - 647:4
**Stockton** [3] - 583:18, 583:22, 584:4
**stop** [2] - 591:6, 658:8
**stopped** [1] - 594:21
**story** [1] - 666:7
**Street** [5] - 583:15, 583:19, 583:23, 584:4, 584:8
**studied** [6] - 591:24, 592:1, 596:3, 640:13, 651:20, 659:11
**studies** [1] - 651:1
**study** [11] - 593:11,

596:1, 608:11,
608:16, 640:17,
649:16, 649:21,
651:4, 651:5,
662:11, 665:19
**studying** [1] - 626:22
**stuff** [1] - 667:2
**subset** [1] - 600:20
**substantial** [2] -
626:25, 635:18
**suggesting** [2] -
639:16, 655:1
**Suite** [2] - 583:19,
583:23
**SULLIVAN** [3] -
584:15, 669:2, 669:5
**sum** [3] - 593:16,
602:19, 609:4
**summarize** [1] - 608:2
**summary** [10] -
585:21, 602:6,
607:16, 618:5,
625:9, 625:11,
635:5, 658:1, 658:3,
660:23
**summary-level** [1] -
625:11
**support** [1] - 590:19
**surprise** [1] - 621:9
**switch** [1] - 604:20
**SWORN** [1] - 586:22
**system** [101] - 594:22,
603:21, 604:11,
604:14, 604:15,
605:4, 605:5, 605:7,
605:9, 605:13,
605:20, 615:23,
615:24, 616:4,
625:4, 625:7,
625:10, 625:13,
625:16, 625:19,
626:14, 627:23,
629:18, 629:21,
629:25, 630:7,
630:9, 630:12,
630:14, 630:17,
632:23, 635:16,
636:9, 636:10,
636:11, 636:12,
637:12, 637:17,
637:18, 637:21,
637:23, 638:2,
638:7, 638:8, 638:9,
638:16, 638:17,
638:19, 640:17,
640:24, 641:1,
641:2, 641:4, 641:8,
642:19, 642:22,
643:7, 643:11,
645:7, 645:9,

645:17, 646:11,
647:6, 647:12,
647:20, 648:2,
648:6, 649:2, 650:9,
650:11, 653:14,
653:20, 653:21,
654:6, 654:14,
655:9, 655:15,
655:16, 655:21,
656:2, 656:10,
657:9, 657:17,
658:22, 659:2,
659:13, 659:23,
660:7, 660:12,
660:15, 661:12,
662:15, 662:19,
662:24, 663:12,
664:12
**systems** [1] - 635:13

## T

**tab** [5] - 589:13, 608:1,
623:24, 657:3, 658:4
**Tab** [1] - 592:5
**table** [5] - 585:12,
585:19, 585:20,
585:21, 585:22
**tabs** [2] - 590:4, 590:6
**TAYLOR** [1] - 584:3
**ten** [14] - 588:20,
588:22, 589:1,
589:4, 589:22,
590:11, 590:12,
590:20, 590:21,
601:21, 602:4,
611:7, 611:15,
638:24
**terms** [20] - 585:16,
592:4, 592:18,
594:4, 595:16,
603:10, 603:19,
603:23, 603:24,
606:15, 613:15,
615:22, 629:4,
630:22, 634:1,
636:25, 641:14,
648:8, 660:22,
665:10
**testified** [11] - 585:16,
587:2, 597:6, 627:1,
629:2, 635:22,
638:1, 643:5,
645:11, 651:6,
651:11
**testifying** [1] - 651:15
**testimony** [5] - 585:8,
585:15, 643:6,
643:13, 650:2

**TFAS** [6] - 626:18,
626:19, 635:16,
636:18, 641:4,
646:17
**THE** [35] - 583:1,
583:11, 585:5,
585:11, 586:10,
586:15, 586:20,
586:22, 590:9,
607:8, 612:5, 612:7,
614:5, 614:7,
614:10, 614:12,
614:15, 624:16,
624:17, 638:22,
638:24, 641:18,
641:20, 646:1,
646:2, 665:24,
666:2, 666:7,
666:14, 666:18,
666:24, 667:9,
667:12, 667:14,
667:15
**themselves** [1] - 592:8
**third** [12] - 594:20,
595:7, 596:25,
632:21, 633:2,
641:24, 642:17,
642:18, 642:19,
642:20, 642:23,
653:4
**thirty** [4] - 608:20,
651:12, 651:22,
659:13
**three** [15] - 593:7,
593:9, 594:14,
599:3, 608:19,
608:21, 610:19,
612:23, 621:6,
625:1, 632:12,
634:10, 663:11,
663:16, 664:22
**Thursday** [1] - 583:7
**time-consuming** [3] -
636:22, 636:23,
636:24
**titles** [1] - 593:18
**TMS** [2] - 646:8,
646:16
**today** [21] - 585:8,
585:14, 587:3,
591:25, 596:6,
604:16, 621:23,
623:8, 623:9, 629:3,
629:8, 636:25,
642:11, 643:17,
643:23, 644:4,
651:6, 659:9, 664:4,
665:10, 665:14
**Today** [1] - 641:3
**together** [2] - 596:23,

642:10
**took** [4] - 592:25,
593:10, 599:12,
633:10
**top** [5] - 596:24,
611:5, 611:7, 662:2
**Total** [3] - 599:14,
624:11, 624:24
**total** [38] - 585:14,
588:4, 592:10,
592:18, 593:16,
593:18, 593:19,
593:20, 599:15,
600:25, 601:14,
602:19, 603:20,
604:5, 604:6,
606:15, 606:18,
606:19, 608:24,
611:10, 617:7,
617:9, 617:11,
621:10, 623:1,
624:2, 627:6,
628:12, 631:12,
631:13, 652:14,
656:15, 657:21,
658:6, 658:11,
662:21
**totality** [3] - 603:23,
627:21, 644:9
**totally** [2] - 606:13,
625:7
**totals** [3] - 599:24,
624:1, 624:20
**toward** [2] - 661:4,
661:24
**traced** [1] - 660:6
**track** [1] - 624:20
**tracking** [2] - 613:25,
614:1
**transaction** [12] -
625:21, 626:7,
627:22, 628:21,
629:1, 629:5,
629:10, 629:19,
630:25, 631:1,
644:19
**transactional** [1] -
641:3
**transactions** [14] -
627:7, 627:9,
627:14, 627:17,
627:25, 628:1,
628:2, 630:4, 631:1,
631:3, 631:6,
642:14, 644:8, 660:6
**TRANSCRIPT** [1] -
583:11
**transcript** [3] - 584:21,
650:2, 669:3
**transcription** [1] -

584:22
**transfer** [8] - 629:16,
636:5, 636:8,
638:10, 638:18,
647:14, 647:16,
648:18
**transferred** [4] -
637:15, 659:1,
663:20, 664:1
**transfers** [25] -
629:20, 635:11,
635:12, 635:25,
636:3, 636:11,
636:16, 637:2,
637:4, 637:6, 637:7,
637:8, 637:16,
637:17, 637:21,
638:7, 638:12,
638:15, 648:19,
648:21, 649:2,
649:9, 649:13,
649:15, 649:19
**Treasury** [10] - 594:18,
595:4, 595:22,
641:5, 641:10,
641:12, 641:14,
641:21, 658:23,
660:14
**treated** [2] - 649:18,
649:19
**treating** [1] - 660:9
**TRIAL** [1] - 583:11
**Trial** [1] - 584:11
**Tribal** [1] - 600:7
**tribal** [44] - 588:6,
588:15, 588:19,
588:22, 588:23,
590:12, 590:24,
592:11, 592:12,
592:15, 593:13,
600:11, 600:19,
600:22, 601:4,
601:7, 601:24,
602:15, 636:3,
636:5, 637:21,
637:24, 638:2,
638:4, 638:6,
638:10, 638:16,
638:18, 641:25,
644:5, 644:6,
644:14, 650:8,
650:9, 650:14,
650:19, 653:4,
657:17, 658:22,
659:23, 660:2,
660:3, 660:10
**tribe** [1] - 657:23
**trick** [1] - 658:4
**tried** [3] - 599:10,
628:12, 642:12

Jacqueline Sullivan, RPR
Official Court Reporter

**true** [1] - 638:12

**trust** [29] - 587:2,
634:16, 636:4,
636:5, 637:21,
637:24, 638:2,
638:4, 638:6,
638:10, 638:16,
638:18, 641:25,
643:16, 644:5,
644:6, 644:14,
646:6, 646:14,
650:8, 650:9,
650:19, 651:17,
653:4, 658:22,
659:23, 660:2, 660:3

**Trust** [2] - 606:5,
606:9

**trustee** [2] - 634:12,
635:2

**trusts** [1] - 636:3

**try** [5] - 603:19,
627:13, 630:9,
630:11, 649:17

**trying** [2] - 610:25,
653:16

**turn** [6] - 626:3, 658:4,
661:8, 666:25, 667:1

**twelve** [1] - 666:13

**twice** [1] - 621:1

**two** [19] - 587:5,
587:17, 593:6,
597:9, 601:25,
605:3, 605:6,
607:13, 613:11,
615:2, 618:11,
620:15, 620:16,
621:5, 628:11,
632:2, 655:1,
657:13, 657:21

**type** [4] - 630:23,
630:24, 640:7

**types** [3] - 630:4,
647:5, 650:13

**typically** [1] - 648:6

**Typically** [1] - 614:9

## U

**U.S** [3] - 584:8,
584:11, 584:16

**under** [13] - 586:15,
589:13, 592:5,
593:17, 613:21,
618:18, 620:7,
621:16, 623:25,
624:11, 648:14,
659:4, 664:14

**Under** [1] - 646:25

**underreporting** [2] -

613:10, 617:22

**understood** [1] -
627:10

**Understood** [1] -
655:13

**uninvested** [1] -
641:20

**unique** [2] - 626:13,
629:19

**UNITED** [2] - 583:1,
583:12

**unsuccessful** [1] -
644:2

**unusual** [1] - 664:21

**up** [27] - 591:1,
593:22, 597:1,
598:19, 598:25,
599:1, 599:16,
604:17, 606:4,
610:7, 610:10,
610:17, 611:5,
611:17, 612:22,
616:20, 624:5,
624:11, 624:15,
628:9, 629:7,
632:15, 636:12,
652:13, 653:13,
657:4, 666:2

**updated** [1] - 585:12

**upper** [1] - 606:4

**utilize** [1] - 601:10

**utilized** [6] - 588:25,
589:6, 591:17,
592:9, 600:17, 605:8

**utilizing** [1] - 661:9

## V

**validate** [1] - 646:20

**validation** [6] -
587:16, 627:11,
645:12, 649:14,
649:16, 651:5

**value** [2] - 593:18,
628:3

**values** [2] - 593:17,
666:13

**varies** [1] - 614:8

**various** [1] - 592:2

**verify** [2] - 608:11,
608:16

**version** [8] - 588:3,
590:16, 590:18,
594:15, 596:11,
597:1, 597:23, 600:9

**versions** [3] - 597:8,
599:3, 601:25

**via** [1] - 664:1

**view** [4] - 604:1,

647:14, 649:9,
651:14

**viewed** [2] - 647:19,
651:13

**viewing** [1] - 660:14

**virtually** [1] - 663:11

## W

**wait** [1] - 614:15

**WARSHAWSKY** [6] -
584:7, 666:9,
666:16, 666:19,
667:7, 667:10

**Washington** [6] -
583:6, 583:16,
583:24, 584:9,
584:14, 584:17

**watched** [1] - 660:6

**website** [1] - 657:22

**week** [3] - 603:5,
666:6, 667:12

**weekend** [1] - 667:16

**welcome** [1] - 634:14

**West** [1] - 584:4

**whole** [1] - 661:2

**WILLIAM** [1] - 583:18

**Winston** [1] - 584:5

**Winston-Salem** [1] -
584:5

**WITNESS** [7] - 586:22,
614:7, 614:12,
624:17, 641:20,
646:2, 667:14

**Witness** [1] - 634:20

**witness** [4] - 585:7,
590:8, 624:14,
666:18

**WITNESSES** [1] -
668:3

**woman** [1] - 639:12

**word** [3] - 596:19,
596:20, 647:18

**words** [8] - 613:9,
630:1, 637:20,
641:7, 645:16,
647:11, 653:18,
655:19

**writing** [2] - 634:11,
635:2

**written** [2] - 639:13,
639:14

**wrote** [1] - 608:1

## Y

**year** [36] - 587:10,
587:14, 594:5,

601:7, 601:8,
601:15, 603:14,
608:23, 611:10,
611:19, 612:22,
615:10, 616:18,
619:14, 619:17,
619:20, 620:2,
620:20, 621:2,
621:11, 621:19,
632:9, 632:12,
632:17, 632:25,
640:23, 644:7,
652:5, 654:1,
658:16, 661:19,
662:9, 663:16

**year-by-year** [1] -
603:14

**years** [36] - 590:23,
595:21, 599:18,
609:16, 618:11,
618:15, 618:16,
618:25, 620:15,
621:18, 622:23,
625:1, 625:11,
625:12, 632:7,
632:8, 632:13,
633:6, 633:8, 652:1,
652:2, 652:16,
653:24, 654:3,
657:10, 661:9,
662:8, 662:20,
662:21, 662:25,
663:3, 663:11,
663:16, 664:17,
664:22, 664:23

**yellow** [3] - 661:22,
662:1, 662:2

**yes-or-no** [1] - 664:5

**yesterday** [1] - 650:1

**yourself** [2] - 619:8,
634:15

## Z

**zero** [4] - 610:3, 610:4,
610:7, 610:10

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