

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, : Civil Action 96-1285
et al. :
Plaintiffs :
 : Washington, D.C.
V. : Tuesday, October 16, 2007
 :
DIRK KEMPTHORNE, Secretary :
of the Interior, et al. :
 :
Defendants : MORNING SESSION

TRANSCRIPT OF EVIDENTIARY HEARING
DAY 4
BEFORE THE HONORABLE JAMES ROBERTSON
UNITED STATES DISTRICT JUDGE

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By Mr. Smith -- **718** -- --

EXHIBITS

NUMBER ADMITTED

(No Exhibits Moved into Evidence.)

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by computer-aided transcription.

PROCEEDINGS

1
2 MR. QUINN: Good morning, Your Honor. Michael Quinn
3 for the government. We thought it would aid the Court.
4 Plaintiffs had requested this. We put together another copy of
09:33:49 5 the administrative record with the legends of the indexing that
6 the defendants had indicated in their pretrial statement filing,
7 and have burned that to disk. The disk also contains an index,
8 so if you click on the link beside the document, it will take
9 you specifically to that document in the administrative record.
09:34:06 10 THE COURT: Good.
11 MR. QUINN: We've got two copies for the Court, for
12 your reference.
13 THE COURT: Hand them to Al. Thank you very much.
14 Mr. Harper, good morning.
09:34:19 15 MR. HARPER: Good morning, Your Honor. We just wanted
16 to say that we have finalized the glossary, and have it to
17 provide to you. So should I just hand up a couple of copies?
18 THE COURT: Yes, yes, and a copy for everybody in the
19 audience.
09:34:42 20 MR. HARPER: Good. Thank you, Your Honor.
21 THE COURT: Good grief. Do you have an index to this,
22 too?
23 All right. Ms. Herman?
24 THE WITNESS: Good morning, Your Honor.
09:35:01 25 THE COURT: Good morning.

1 MR. SMITH: Good morning, Your Honor.
 2 THE COURT: Mr. Smith, you may continue with your
 3 cross.
 4 MR. SMITH: Thank you.
 09:35:07 5 **CONTINUED CROSS-EXAMINATION**
 6 BY MR. SMITH:
 7 Q. Good morning, Ms. Herman.
 8 A. **Good morning.**
 9 Q. Ms. Herman, when we broke yesterday we were talking about
 09:35:13 10 the IRMS database that you were provided. Correct?
 11 A. **That's correct.**
 12 Q. And you acknowledged to us that in the copy you were
 13 provided, there were certain gaps in the data. Is that correct?
 14 A. **That's correct.**
 09:35:24 15 Q. And there were gaps that you yourself described as being
 16 significant gaps?
 17 A. **Yes, in that e-mail.**
 18 Q. I'm sorry?
 19 A. **In the e-mail we reviewed, yes.**
 09:35:34 20 Q. Okay. Now, yesterday you did not recall what percentages of
 21 the agencies had missing data. Do you recall that?
 22 A. **That's correct.**
 23 Q. Do you recall testifying in this case about three years ago
 24 that there were approximately 40 percent of the agencies that
 09:35:53 25 had missing months in their data?

1 A. **I don't recall, no.**
 2 Q. If we could look at the morning transcript, page 60, line 13
 3 to page 61, line 15.
 4 Ms. Herman, this is a section from your testimony back
 09:36:13 5 in Trial 1.5. And your answer to question was, "We were aware
 6 that there was electronic data missing from that database, yes."
 7 "Question" --
 8 A. **I'm sorry, sir. What line are we on?**
 9 Q. Looking at the top of the page, I'm sorry. "We were aware
 09:36:30 10 that there was electronic data missing from that database, yes."
 11 "Question: And what was the nature and scope of the
 12 missing data?"
 13 "Answer: The database that we received then was
 14 consistent with the database that I have available today."
 09:36:45 15 "Question: Describe some of the aspects that -- or to
 16 the extent that you know so far, that there is missing data."
 17 "Answer: There are numerous agencies that have months
 18 of missing information. One of the first steps that we are
 19 going through is to determine whether or not there were periods
 09:37:01 20 of time where agencies didn't post transactions, or in fact we
 21 need to turn to hard copy records.
 22 "So the first step we took was to identify the months
 23 where there were no transactions. And as I mentioned, we're now
 24 searching for the transaction registers for those agencies so
 09:37:19 25 that we can determine whether or not there is a record of

1 electronic postings."
 2 "Question: When you say transaction registers, you're
 3 talking about paper form records?"
 4 "Answer: Yes. It's a paper report that was printed
 09:37:33 5 out contemporaneously."
 6 "Question: And how many of those have you found to
 7 date?"
 8 "Answer: As I mentioned, we have not gone out to OTR
 9 yet. We're anticipated to go out there" --
 09:37:44 10 THE COURT: Is there a question today?
 11 MR. SMITH: Excuse me?
 12 THE COURT: Is there a question today?
 13 MR. SMITH: Yes, Your Honor.
 14 THE COURT: What's the question today?
 09:37:49 15 BY MR. SMITH:
 16 Q. Do you recall testifying to this Court -- and in fact, if
 17 you go to line 10, the Court asked, "How many are missing?" Do
 18 you see that, line 10 at the bottom of the page?
 19 A. **Yes, I do.**
 09:38:01 20 Q. And the answer, "I can only tell you the number that have no
 21 transactions, Your Honor. I believe there is approximately
 22 40 percent of the agencies have at least one month missing
 23 within the integrated records management system." Do you see
 24 that?
 09:38:18 25 THE COURT: Mr. Smith, you could have gotten to that --

1 since you're refreshing her recollection, you could have gotten
 2 to that by pointing at the bottom of the page instead of reading
 3 the whole page.
 4 MR. SMITH: You're right, Your Honor. I apologize.
 09:38:26 5 BY MR. SMITH:
 6 Q. Was that your testimony back in 2003?
 7 A. **Yes, that's what it reads.**
 8 Q. And on top of that, as you indicated yesterday --
 9 THE COURT: Well, and therefore what? Is it still
 09:38:46 10 missing? Have you done anything in the last three years to
 11 close the gaps? Have you fixed it, or is that still the case?
 12 That's the question I thought you were going to ask.
 13 BY MR. SMITH:
 14 Q. So when you were provided the database, 40 percent of the
 09:39:00 15 agencies had months of missing data, based on this testimony.
 16 MR. QUINN: Objection, Your Honor. Asked and answered.
 17 THE COURT: No, I don't think so. He's trying to ask
 18 the question I want him to ask.
 19 MR. SMITH: Okay.
 09:39:12 20 BY MR. SMITH:
 21 Q. Is that right?
 22 A. **As I mentioned, we've restored over 275,000 transactions to**
 23 **date. I don't know how many specific agency months still have**
 24 **no transactions within them.**
 09:39:21 25 Q. So at this point you can't tell us how many of those

- 1 40 percent you've been able to complete?
- 2 **A. As I mentioned, we worked through this on a regional basis,**
- 3 **and we've restored transactions in the regions we've been**
- 4 **working on to date. We've received many transactions registers**
- 09:39:36 5 **since our last trial, and have rekeyed those transactions.**
- 6 Q. Have you been able to identify registers for every agency
- 7 for which you had missing months?
- 8 **A. We've requested them all. We have not yet received them**
- 9 **all.**
- 09:39:49 10 Q. Is there any record that you have of what agencies you have
- 11 received those ledgers for, for which you had missing months?
- 12 **A. Not within our report, no. I have a database that tracks**
- 13 **our requests and the ones that we've received.**
- 14 Q. Do you have that with you?
- 09:40:05 15 **A. No, I do not.**
- 16 Q. Now, let's go a step further. Because you mentioned
- 17 yesterday that there were agencies for which you did not have
- 18 information on your database as of 1985, but were added some
- 19 time later. Do you recall that?
- 09:40:21 20 **A. I'm sorry, I'm not clear on the question.**
- 21 Q. There were agencies -- when you got that database, you had
- 22 some agencies that had information in 1985, and some agencies
- 23 had information that were added some time later.
- 24 **A. Not every agency was on IRMS in 1985, if that's your**
- 09:40:38 25 **question.**

- 1 Q. Right. But the database that you had, that you were
- 2 provided, did not have information for every agency as of 1985?
- 3 **A. That's because every agency hadn't yet converted to IRMS in**
- 4 **1985.**
- 09:40:49 5 Q. Have you been able to locate paper records for every agency
- 6 for which you did not have information as of 1985?
- 7 **A. I've been trying to fill in the gaps in the IRMS data, not**
- 8 **looking back to the paper data that would have come previous to**
- 9 **that.**
- 09:41:05 10 Q. So you can't tell us today how many of those agencies you've
- 11 located the paper records for?
- 12 **A. That wasn't the goal of my work in the past two years, no.**
- 13 Q. I'm sorry, it wasn't the goal of your work?
- 14 **A. I've been trying to fill in the gaps in the electronic data,**
- 09:41:20 15 **not in the paper data.**
- 16 Q. Okay. But you don't have the information today to tell us
- 17 how many of those agencies for which you have found that paper
- 18 data?
- 19 **A. I haven't been looking for paper data prior to February of**
- 09:41:32 20 **'85.**
- 21 Q. I'm sorry, paper data to fill in the gaps in the electronic
- 22 data?
- 23 **A. As I mentioned, we've requested transaction registers for**
- 24 **all of the gaps from February of '85 forward, to the extent that**
- 09:41:46 25 **the agency had already converted to IRMS.**

- 1 Q. But you have that information available, and you can at some
- 2 point in time provide that to us, is that correct, what agencies
- 3 for which you have found paper ledgers to fill in those gaps?
- 4 **A. I could provide that information, yes.**
- 09:41:59 5 Q. Okay. Thank you.
- 6 So you're certainly not telling us that the electronic
- 7 database that you received from -- is it from OHTA, you received
- 8 it from?
- 9 **A. We received it from OST.**
- 09:42:18 10 Q. OST, okay. The electronic database that you received from
- 11 OST in 2001 was certainly not a complete record of the
- 12 transactions after 1985. Is that correct?
- 13 **A. No, it was not.**
- 14 Q. Ms. Herman, yesterday we were looking at a document, it's
- 09:42:48 15 Bates stamp number 10-20-1, which is the IRMS database analysis
- 16 prepared by Arthur Andersen. Do you recall that document?
- 17 **A. Yes, I do.**
- 18 Q. And were you at Arthur Andersen when this was prepared?
- 19 **A. Yes, I was.**
- 09:43:09 20 Q. Okay. I want to just point to two sections of that. And I
- 21 apologize because we did not get the complete record.
- 22 So if you could look at page five of that document, and
- 23 focus in on the highlighted section under "Data availability."
- 24 It says, "Gaps in the data at the beginning of the system, as
- 09:43:40 25 well as within the lifetime of the system, have limited some of

- 1 the analyses Andersen has performed. See attachment 1, schedule
- 2 A-3."
- 3 Now, the document we were provided has no attachments.
- 4 Would you have a copy of this document?
- 09:43:58 5 **A. I don't know if we have a copy of that document. We weren't**
- 6 **able to take all of the documents we created while at Andersen**
- 7 **with us when we moved to KPMG.**
- 8 Q. But after you left Arthur Andersen, did you receive the
- 9 Arthur Andersen files? Were you provided those?
- 09:44:16 10 **A. As I mentioned, we did not receive all of the Andersen**
- 11 **files.**
- 12 Q. I understand you're willing to come back perhaps next week,
- 13 after we've had a chance to review the 1,500 pages that were
- 14 provided over the weekend. Is that your understanding?
- 09:44:30 15 **A. That's correct.**
- 16 Q. Can you look to see if you can find the attachments for this
- 17 document, as well?
- 18 **A. I will.**
- 19 Q. And if you could look at also on page seven of that
- 09:44:50 20 document, and focus in on the highlighted section on the top of
- 21 the page. It says, "Six regions, Albuquerque, Anadarko,
- 22 Eastern, Minneapolis, Navajo, and Sacramento, have at least one
- 23 month with no available transactional data. There are 75,734
- 24 accounts potentially affected by these gaps in information.
- 09:45:15 25 These accounts had one or more transactions before and after the

1 affected data period. See attachment 1, schedule A-4."
 2 So again, there's an attachment to this document that
 3 apparently describes what this transactional data is. Can you
 4 look to see if you can find that, as well?
 09:45:35 5 **A. And is this a part of the same report?**
 6 **Q.** Part of the same report.
 7 **A. Yes, I will.**
 8 **Q.** Ms. Herman, can you tell us how many account holders
 9 actually had complete electronic records on the IRMS system --
 09:46:02 10 or IRMS database that you were provided from OST?
 11 **A. No, I cannot.**
 12 **Q.** Do you know how many, based on the work you've done to date,
 13 have complete account records?
 14 **A. I would have to refer to one of the schedules in our report.**
 09:46:19 15 **Q.** Okay. And we'll get to that in just a little bit.
 16 Is it fair to say that it was discovered that the
 17 account balance information that was transferred over to IRMS
 18 from other systems, whether it be manual systems or other
 19 systems that were being used, the balance information was often
 09:46:52 20 incorrect?
 21 **A. I don't have a basis for saying that.**
 22 **Q.** Okay. If we could look at Exhibit 32-17-1.
 23 Ms. Herman, this is a report from Morgan Angel &
 24 Associates. And you referred to Morgan Angel yesterday as one
 09:47:15 25 of the companies that you relied on for your throughput

1 analysis. Do you recall that?
 2 **A. Yes, I do.**
 3 **Q.** And if we could look at page 70 of that document. That's
 4 actually the Bates stamp number 82, I'm sorry.
 09:47:55 5 And focus in on the highlighted section on the top of
 6 the page. It says, "Additionally, erroneous IIM balances were
 7 transferred from manual ledger cards and entered into the
 8 computer system, thereby making it very difficult to locate the
 9 errors." And there's a footnote reference to 239. And could
 09:48:18 10 you focus on the footnote reference? It's a reference to an
 11 Arthur Andersen report dated 1988.
 12 Are you familiar with that report?
 13 **A. No, I'm not.**
 14 **Q.** When you were working at Arthur Andersen, did you ever look
 09:48:38 15 at the reports prepared by Arthur Andersen regarding the IIM
 16 Trust?
 17 **A. I did see some reports while I was there, yes.**
 18 **Q.** If you could go back to the highlighted section, please.
 19 Based on your review of this database, did you discover that in
 09:48:56 20 fact there was erroneous IIM balances transferred from manual
 21 ledger cards and entered into the computer system?
 22 **A. I have discovered some, but I certainly couldn't tell you**
 23 **how many there were. We haven't gotten to that component of the**
 24 **test. But one of the examples that we reviewed in court**
 09:49:13 25 **demonstrated a balance being transferred incorrectly.**

1 **Q.** And you say you haven't gotten to that part of the test.
 2 What is that test that you're going to do?
 3 **A. Once we're looking from paper into electronic, that**
 4 **beginning balance will have to be evaluated.**
 09:49:27 5 **Q.** Okay. And have you determined yet whether you have paper
 6 records for all of those accounts that appear on the IIM system
 7 that existed prior to 1985?
 8 **A. As I mentioned, we've been focused on filling in the gaps in**
 9 **the electronic ledger, and are not going back to paper yet.**
 09:49:46 10 **Q.** Do you have any idea how long it would take to try to
 11 identify those paper records for all of those accounts?
 12 **A. Not as I sit here, no.**
 13 **Q.** Are we talking about a matter of probably years? Is that
 14 fair?
 09:49:59 15 **A. I can't answer that question today.**
 16 **Q.** Is it fair to say you can't answer it because you really at
 17 this point don't know how many of those paper records you have,
 18 or how long it's going to take to find them?
 19 **A. Sir, our firm isn't charged with searching for those**
 09:50:15 20 **records, and it's very dependent upon the number of people that**
 21 **you have searching as to how long it would take to locate**
 22 **records.**
 23 **Q.** So you're dependent on another contractor, over which you
 24 basically have no control. Is that correct?
 09:50:27 25 **A. I'm sorry?**

1 **Q.** You're dependent for those paper records on another
 2 contractor?
 3 **A. Yes, that's correct.**
 4 **Q.** Yesterday we looked at some historical account statements
 09:50:44 5 that I believe you had prepared.
 6 **A. That's correct.**
 7 **Q.** Okay. And on all of those historical account statements,
 8 had it been determined that there were in fact correct balances
 9 transferred to the electronic era?
 09:51:00 10 **A. I don't recall if the beginning of all of those statements**
 11 **were zero or not zero. But that's not a part of the test at the**
 12 **moment, as I mentioned.**
 13 **Q.** So that's down the road sometime?
 14 **A. I'm sorry?**
 09:51:13 15 **Q.** That's down the road sometime?
 16 **A. Yes, it is.**
 17 **Q.** If we could look at the May 31, 2007 plan, at page eight.
 18 That's Bates stamp number 33-2-1. And this actually would be
 19 Bates stamp page 10, I'm sorry.
 09:51:50 20 Ms. Herman, you testified that you were familiar with
 21 the historical accounting project, and testified yesterday as to
 22 pieces of it.
 23 **A. That's correct.**
 24 **Q.** Are you familiar with this language? And if we could focus
 09:52:04 25 on the highlighted language.

1 It says, "Interior plans to mail separately HSA's
 2 covering the post-1985 electronic ledger era to all 268,000
 3 land-based account holders. Interior also plans to mail a
 4 second HSA covering the pre-1985 paper ledger era to those
 09:52:26 5 approximately 65,000 of the 268,000 account holders whose
 6 accounts began prior to 1985."
 7 Ms. Herman, have you done anything to verify that
 8 65,000 number figure?
 9 **A. We have identified some accounts that go back to paper at
 09:52:44 10 this point, but not all accounts that go back to paper.**
 11 **Q.** So you don't know whether the 65,000 number is an accurate
 12 number or not at this point?
 13 **A. I think it's, as it says, an approximate number.**
 14 **Q.** Is that a number that you were provided?
 09:52:59 15 **A. I'm sorry?**
 16 **Q.** I'm sorry, is that a number that you provided to OST?
 17 **A. That's a number that NORC and our firm worked on and
 18 provided to OHTA.**
 19 **Q.** Provided to OHTA. Okay.
 09:53:14 20 The cutoff date is 1985. And can you tell me if that
 21 65,000 number is based on accounts that existed in the
 22 electronic era on the database that you were provided as of
 23 1985?
 24 **A. 1985 here is used as a date to indicate the electronic
 09:53:36 25 ledger era. So if an agency didn't start until 1988, and there**

1 **were transactions in 1985, those would be considered paper
 2 ledger era. Is that your question?**
 3 **Q.** Right. Okay. And are those agencies included in that
 4 65,000 number?
 09:53:51 5 **A. For the agencies that converted later, yes.**
 6 **Q.** Right. Okay.
 7 Is it fair to say that when you were looking at the
 8 IRMS database, you're not just dealing with one system. You're
 9 dealing with 12 systems or 102 systems, based on the region or
 09:54:14 10 the agency. Is that fair?
 11 **A. Yes. At least 12.**
 12 **Q.** Because they deal with the IRMS database differently in each
 13 region?
 14 **A. That's correct.**
 09:54:22 15 **Q.** And sometimes in each agency?
 16 **A. Occasionally, yes.**
 17 **Q.** I asked you about some of the work done by your previous
 18 employer, Arthur Andersen. Is it fair to say that all of the
 19 Arthur Andersen documents have in fact been transferred to you,
 09:54:44 20 to your custody?
 21 **A. That's a correct statement.**
 22 **Q.** That is correct?
 23 **A. We do not have copies of everything that was created while
 24 at Andersen.**
 09:54:53 25 **Q.** If we could look at Exhibit 23-13-3.

1 Ms. Herman, this document begins with a letter dated
 2 June 20, 2002 to a Mr. Andy Kane from the Department of the
 3 Interior. And if we could look at page four, actually Bates
 4 stamp number three. And there's a letter to Mr. Kane that
 09:55:39 5 mentioned your name, if we could focus on that.
 6 It says, "This letter serves as a formal request by the
 7 Department of the Interior to transfer all client documents and
 8 data in connection with the Cobell versus Norton litigation to
 9 Robert L. Brunner at KPMG, at the address below." It has
 09:55:56 10 "Robert L. Brunner, care of Michelle Herman." Signed by Jeffrey
 11 Zippin. And Mr. Kane is with Arthur Andersen.
 12 Have you seen this document before?
 13 **A. Yes, I have.**
 14 **Q.** And in fact, were the Arthur Andersen records transferred to
 09:56:10 15 you?
 16 **A. Not all of them, no.**
 17 **Q.** Okay. Is there a list of what records that you did receive?
 18 **A. Sir, that was five years ago. I don't know if I have such a
 19 list, no.**
 09:56:22 20 **Q.** But the records that you did receive, are they with FTI now,
 21 or are they still at KPMG?
 22 **A. They're at FTI.**
 23 **Q.** Are we talking about a small box full of records, or a
 24 fairly large number of records?
 09:56:34 25 **A. I don't recall, as I sit here.**

1 **Q.** Is it fair to say that some agencies didn't use the IRMS
 2 database at all?
 3 **A. I'm not aware if every agency used the system. We have
 4 records for over 101 agencies within the database.**
 09:57:01 5 **Q.** Now, there are different components to that database. Do
 6 you know if every agency used every component?
 7 **A. As I mentioned, I don't believe every agency used every
 8 component.**
 9 **Q.** And as you've noted, some agencies would continue to use
 09:57:15 10 paper records even though the IRMS database was in existence?
 11 **A. I'm sorry?**
 12 **Q.** Some agencies continued to use paper records even though
 13 there was an IRMS database?
 14 **A. Yes, that's correct.**
 09:57:28 15 **Q.** Would you agree that when you're trying to do a historical
 16 accounting, IRMS is just the starting point?
 17 **A. IRMS is the best starting point for the '85 through '98
 18 period.**
 19 **Q.** But that's what it is; it's just a starting point. Is that
 09:57:42 20 fair?
 21 **A. Yes. As I mentioned, we have to restore records to that
 22 system.**
 23 **Q.** If we could look at Exhibit 4-2-1, please.
 24 Do you recall attending an accounting conference with
 09:58:06 25 the Department of the Interior on March 18 to 20, 2002?

1 A. I do.

2 Q. And if we could look at Bates stamp number 221, which is

3 actually page five of that document, and focus on the

4 highlighted section.

09:58:27 5 And in there you in fact state that, as you pointed

6 out, "IRMS provides the complete and readily available

7 electronic listing of transactions, but the information should

8 be used as a starting point." Is that correct?

9 A. Yes, as I recognized that there were gaps in the data.

09:58:44 10 Q. And if we could look to Bates stamp number 226 of that

11 section, and go to your conclusion at the bottom.

12 The second sentence it states, "While we cannot limit

13 our review of accounts or transactions to these systems, we can

14 use them as a starting point to identify similar groups of

09:59:11 15 accounts, revenue streams, regional level idiosyncrasies, et

16 cetera."

17 What other systems were you talking about?

18 A. This is referring to the fact that I realized at this point

19 that there were gaps in the data that would have to be restored,

09:59:29 20 that you simply couldn't use it as it stood.

21 Q. Did you also recognize that there were other electronic

22 systems that had data that you had to consider in trying to put

23 your information together?

24 A. Not from a transactional standpoint. I mean, different

09:59:42 25 systems were used historically.

1 Q. One of the systems at Interior is the MMS system. Is that

2 correct?

3 A. I believe MMS has a system, yes.

4 Q. And if we could look on 4-2-225 of that document. And focus

10:00:03 5 in on the highlighted language.

6 At that seminar -- and this is a seminar you gave. Is

7 that correct?

8 A. I was one of the participants in the seminar.

9 Q. And you describe Minerals Management Service as one of the

10:00:19 10 other relevant systems. Is that correct?

11 A. That's what the caption says, yes.

12 Q. And MMS is relevant because it's the system that actually

13 collects the revenue from oil and gas and minerals. Is that

14 correct?

10:00:35 15 A. That's my understanding, but I have not studied the system.

16 Q. Is it also your understanding that MMS reports those

17 collections to BIA?

18 A. That's my understanding.

19 Q. And those are in turn posted on the IRMS system?

10:00:52 20 A. I'm sorry, what's posted?

21 Q. What MMS tells BIA is supposed to be posted on the --

22 A. That's correct.

23 Q. I'm sorry?

24 A. That's correct.

10:01:01 25 Q. So it's supposed to be posted on the IRMS system?

1 A. In the IIM transactional data.

2 Q. So essentially, BIA relies on whatever MMS tells them. Is

3 that correct?

4 A. As I mentioned, that's my understanding, but I have not

10:01:17 5 tested the system.

6 Q. Okay. You have not been tasked with testing that system?

7 A. No, I have not.

8 Q. Is it fair to say that if you want to look at collections of

9 royalty and minerals, you've got to look at the MMS system? Is

10:01:34 10 that correct?

11 A. Sir, I haven't studied that system, so I don't feel

12 comfortable answering that question.

13 Q. But the IRMS system simply looks at what is posted, not what

14 is collected for royalty (sic) and gas. Is that correct?

10:01:49 15 A. It's my understanding that MMS transfers all of the funds

16 collected. But as I've said, I haven't studied that system.

17 Q. Has it ever been suggested to you that there's a

18 discrepancy -- I'm sorry.

19 A. Sorry.

10:02:02 20 Q. Has it ever been suggested to you that there may be a

21 discrepancy between what MMS has on their system and what is

22 reported to BIA?

23 A. I don't believe I've seen that.

24 Q. In your testimony three years ago, there's a reference to a

10:02:23 25 document called the Tiger Team. Do you recall that?

1 A. Yes, I do.

2 Q. If we could look at Plaintiffs' Exhibit 607, and page two.

3 What is the date on that document, August 1995?

4 A. That's correct.

10:02:47 5 Q. And if we could look at page two of that document, focus in

6 on the highlighted section. It says that "In 1994, the

7 Department of Interior developed a reform plan to improve

8 management of tribal and IIM Trust funds."

9 And let's go ahead and focus on page seven of that

10:03:27 10 document, bottom of the page. It states that "Conditions for

11 royalties collected by MMS on minerals leases are better in one

12 regard, but not in another. On the one hand, internal control

13 over the accounting for royalties collected is greatly enhanced

14 through the MMS's automated systems and centralized functions.

10:03:49 15 On the other hand, there's question as to whether sufficient

16 assurance that the full amount due is in fact collected.

17 "That assurance is dependent on MMS's automated review

18 and field audit functions, which have been criticized as being

19 less comprehensive than they should be, not completed within

10:04:07 20 reasonably acceptable times, in some cases three to six years.

21 "Further complaints", if we could go to the next page,

22 "have been registered over the accuracy of the data accompanying

23 payments that are passed on to BIA" --

24 THE COURT: What happened to the cover sheet of this

10:04:33 25 document Mr. Smith? What is it?

1 MR. SMITH: It's called the Tiger report --

2 THE COURT: I know it's Plaintiffs' Exhibit 607, but

3 what is it?

4 MR. SMITH: Tiger report is a report prepared by the

10:04:43 5 Department of Interior in 1995 regarding their accounting

6 systems.

7 BY MR. SMITH:

8 Q. And if we could look at page 34 of that document. It says

9 that "25 to 30 percent of data submitted to MMS is erroneous and

10:05:06 10 never corrected." Do you see that?

11 A. **I do.**

12 Q. Now, this is a document that you were examined on about

13 three years ago. Do you recall that?

14 A. **Yes, I do.**

10:05:15 15 Q. But you have at this point not been tasked to determine

16 whether the information provided by MMS is in fact correctly

17 reported on IRMS?

18 A. **I've only been tasked with evaluating IRMS and TFAS.**

19 Q. Are you familiar with something called the Wecker Report?

10:05:34 20 A. **I'm sorry?**

21 Q. Are you familiar with something called the Wecker Report?

22 A. **I'm familiar with Bill Wecker. I don't know if I'm familiar**

23 **with that report.**

24 Q. I ask you that because the only reference I found to

10:05:47 25 something called the Wecker Report was in a seminar you gave.

1 And was Mr. Wecker tasked with looking at the data comparing

2 what was on MMS systems to what was on IRMS?

3 A. **I don't recall what Mr. Wecker was tasked with. He didn't**

4 **work for our firm.**

10:06:06 5 Q. Have you ever seen a report prepared by Mr. Wecker?

6 A. **I've seen memos from Mr. Wecker. I don't recall. It was**

7 **many years ago.**

8 Q. And who is Mr. Wecker?

9 A. **Pardon me?**

10:06:17 10 Q. Who is Mr. Wecker?

11 A. **He is a statistician from California.**

12 Q. And do you know what his company name is?

13 A. **I don't recall, no.**

14 Q. And do you know what kind of work he did on the IIM project?

10:06:35 15 A. **I believe that he was working on a sampling plan, but I**

16 **don't recall what it was concerning.**

17 Q. If we could look at 4-2 -- document 4-2-1. And it's on page

18 nine of that document, which is Bates stamp number 225.

19 MR. SMITH: One second, Your Honor.

10:07:13 20 BY MR. SMITH:

21 Q. If you could focus on the last paragraph of that page.

22 You're talking about the MMS system, and it says, "Work has

23 already been performed by Wecker & Associates to verify that

24 collections into the MMS system can be traced through transfer

10:07:44 25 to individual accounts into the IRMS IIM system. Similar

1 testing has not been conducted on the current system of record,

2 TFAS."

3 So was it your understanding at least at that time that

4 that's what Wecker & Associates had been hired to do?

10:08:01 5 A. **Sir, this was many years ago. If I recorded that in the**

6 **report, I'm sure that was my understanding.**

7 Q. But nobody has discussed with you the conclusions from that

8 report?

9 A. **No. I haven't spoken with Mr. Wecker in many years.**

10:08:13 10 Q. And nobody at Interior has discussed with you the

11 conclusions of that report?

12 A. **I believe that the report was actually -- I don't know who**

13 **the report was prepared for, but I have not discussed it with**

14 **OHTA, no.**

10:08:24 15 Q. Now, you said you have received memos from Mr. Wecker. What

16 were those about?

17 A. **This, as I mentioned, was many years ago. Initially, we**

18 **were asked to explain to Mr. Wecker how the IIM component of the**

19 **database worked.**

10:08:38 20 Q. Was this about 2002?

21 A. **I don't recall if it was 2002 or earlier than that, but it**

22 **was while I was at Arthur Andersen.**

23 Q. So as of today, you can't tell us whether the information

24 received by BIA from MMS is accurate or not. Is that correct?

10:08:59 25 A. **No, I cannot.**

1 Q. How about Treasury? Have you ever been tasked with looking

2 at any discrepancy between what Treasury says should be in the

3 IIM Trust and what is posted on the IRMS system?

4 A. **No. My work with Treasury records has been limited to the**

10:09:25 5 **CP&R data and the Pacer data.**

6 Q. So are you aware of concerns raised about the fact that

7 there may be a discrepancy between what Treasury says they have

8 on the system and what IRMS says is on the system?

9 A. **It was my understanding that there was a difference between**

10:09:41 10 **the Interior record and the Treasury record, and that that has**

11 **been resolved.**

12 Q. Okay. And who indicated to you that that has been resolved?

13 A. **I believe I read that in a quarterly report.**

14 Q. Do you know whether historically, looking back over the term

10:10:08 15 of this Trust, whether that discrepancy between what may be on

16 the Treasury system and what may be on the Interior system has

17 been resolved?

18 A. **As I mentioned, I didn't analyze that discrepancy. My**

19 **analysis was limited to CP&R and Pacer.**

10:10:26 20 Q. So you can't today tell us whether the balances identified

21 by Treasury to be on that system, or the balances identified by

22 the IIM system, are correct?

23 A. **That was not something I studied.**

24 Q. Now, you talked a bit yesterday about SDAs, Special Deposit

10:10:55 25 Accounts?

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

2 Q. And is it your understanding that collections from IIM Trust

3 property would often be deposited into an SDA before being

4 disbursed to individual Indian accounts?

10:11:08 5 A. **Yes, in some cases.**

6 Q. You saw instances where, for example, you had multiple

7 owners of a particular piece of property, it would be put into a

8 special deposit account, you would determine who the owners

9 were, and it would be then divided among their various accounts?

10:11:26 10 A. **That's correct.**

11 Q. Did you also see occasions where Trust property was put into

12 an SDA, Interior charged a fee, they took their fee out of the

13 SDA, and then the money was deposited into an individual

14 Indian's account?

10:11:41 15 A. **I wouldn't categorize it as Trust money. There were fees**

16 **deposited into SDAs, though.**

17 Q. Fees that were charged by Interior?

18 A. **Yes, fees charged by Interior, typically to a lessee or**

19 **permittee.**

10:11:55 20 Q. In your analysis, have you ever tried to determine for

21 particular account holders what the fees charged by Interior

22 were with respect to their accounts?

23 A. **The fees weren't charged to the account holders. They were**

24 **charged to the lessees or the permittees.**

10:12:11 25 Q. So the collection came from the lessee into the SDA. And

1 from that collection, Interior took out its fee and paid the

2 balance?

3 A. **No, if you'll recall the range example that we evaluated**

4 **yesterday, the permit called for a specific payment to the**

10:12:27 5 **account holders. I believe it was 6234. And there was a**

6 **separate item on that permit that indicated the fee that was to**

7 **be collected.**

8 Q. But from that collection that was paid by the lessee,

9 Interior got a fee?

10:12:39 10 A. **Yes, there was a fee collected.**

11 Q. But currently, to your knowledge, the account holders don't

12 get an accounting of what that fee is that's charged. Is that

13 correct?

14 A. **That's correct.**

10:12:53 15 Q. And you haven't been tasked with identifying for the account

16 holders what that fee is?

17 A. **Because the fee isn't charged to the account holder. It's**

18 **charged to the permittee or the lessee.**

19 Q. Would you agree that, based on your examination, SDAs have

10:13:19 20 been used for a long time?

21 A. **Yes, they have.**

22 Q. That a lot of money has gone through SDAs over decades?

23 A. **From the period that I've analyzed, yes, there's been quite**

24 **a bit of money.**

10:13:33 25 Q. And I guess you've only analyzed from 1985 forward?

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

2 Q. And at times, money in those SDAs has not been disbursed for

3 a very long period of time. Is that fair?

4 A. **In some instances.**

10:13:50 5 Q. At times there has been 70, 80, 90 million dollars held in

6 SDA accounts. Is that correct?

7 A. **I would have to evaluate that.**

8 Q. That's not something you've evaluated?

9 A. **We've evaluated Special Deposit Accounts, but I haven't**

10:14:07 10 **specifically added up what the balances were at different points**

11 **in time.**

12 Q. If we could look at 60-34-1. This is an audit report from

13 the OIG's office for 2001, for OST. Have you reviewed any of

14 the audit reports of OST?

10:14:32 15 A. **I've reviewed subsections of some of the audit reports, yes.**

16 Q. And this one was prepared by Griffin & Associates. Are you

17 familiar with Griffin & Associates?

18 A. **Yes. I'm aware that they audited the Trust for several**

19 **years.**

10:14:49 20 Q. In fact, I think on one of the documents you showed us

21 yesterday, you referenced one of the Griffin audits?

22 A. **Yes, I did.**

23 Q. If we could look at Bates page 44, and paragraph eight on

24 the bottom. I'm sorry, paragraph H. It says, "There is

10:15:19 25 approximately 81 million and 104 million held in approximately

1 18,000 and 24,000 Special Deposit Accounts in the IIM subsidiary

2 ledger as of September 30, 1999 and 1998 respectively.

3 Have you seen this reference before?

4 A. **I don't believe I have, no.**

10:15:43 5 Q. Are those numbers consistent with what you've seen with

6 respect to amounts held in Special Deposit Accounts?

7 A. **As I mentioned, I haven't summed those amounts at different**

8 **periods of time, but that wouldn't surprise me.**

9 MR. QUINN: Excuse me, Mr. Smith. Is this from the

10:15:58 10 same 2001 report, or are you referring to an earlier one?

11 MR. SMITH: No, this is from that same report. Yeah,

12 I'm sorry.

13 THE COURT: Is this from what you call the OIG report

14 for 2001?

10:16:18 15 MR. SMITH: That's correct. It's attached to it, yeah.

16 THE COURT: It's attached to it. All right. Would you

17 take a moment and clarify what 81 million and 104 million, and

18 18,000 and 24,000 SDA accounts and ledger means? I mean, why

19 are there two numbers?

10:16:38 20 MR. SMITH: My understanding is, Your Honor, that there

21 were 18,000 accounts in 1999, with \$81 million in it; and 24,000

22 accounts, with \$104 million in it, in 1998.

23 THE COURT: Oh, I see. I see. The rest of the

24 sentence refers to the respective two years. Okay. Understood,

10:16:58 25 thank you.

1 MR. SMITH: It took me a while to figure that out.
 2 Okay.
 3 BY MR. SMITH:
 4 Q. Now, you mentioned yesterday that you were looking at SDAs.
 10:17:06 5 And do I understand it correctly that if money came in to an IIM
 6 account from an SDA, you would look at the Special Deposit
 7 Account and track it?
 8 A. **We discussed Special Deposit Accounts in two different ways**
 9 **yesterday. One was in our transaction mapping, and the other**
 10:17:23 10 **was in the litigation support accounting examples that we**
 11 **covered.**
 12 Q. And in transaction mapping, you would look to see where
 13 money came in to an IIM account from an SDA?
 14 A. **Yes, we evaluate the transfers.**
 10:17:40 15 Q. And then, as part of your LSA, how would you look at the
 16 Special Deposit Accounts?
 17 A. **As we saw in the example yesterday, we trace back to the**
 18 **Special Deposit Account where the funds were collected, and then**
 19 **back to the initial collection into that account.**
 10:17:54 20 Q. So again, if money is in an IIM account, you would trace it
 21 back into the Special Deposit Account, and then possibly in to
 22 the collection as well?
 23 A. **If the money had transferred in, yes.**
 24 Q. Now, have you been tasked with the job of trying to
 10:18:11 25 determine whether all money that goes in to an SDA account that

1 is intended for an individual Indian makes its way in to an
 2 individual Indian's account on IRMS?
 3 A. **As I mentioned, we're mapping the transfers and reversals**
 4 **within those accounts, not necessarily every transaction within**
 10:18:33 5 **the account.**
 6 Q. Okay. So if there's money in the Special Deposit Accounts
 7 over the years that belongs to individual Indians, you're not
 8 charged with making sure that goes in to a specific individual
 9 Indian account?
 10:18:48 10 A. **I think we're discussing several different issues here. In**
 11 **the context of the accounting project, yes, we make sure that**
 12 **the funds get to the appropriate account.**
 13 **In the account of the transaction mapping, we're**
 14 **looking at flows of money.**
 10:19:01 15 **And then there's a separate project that OHTA has**
 16 **that's distributing remaining balances in Special Deposit**
 17 **Accounts. So I think we have three different topics that we're**
 18 **discussing.**
 19 Q. Maybe I'm discussing a fourth possibility. Is anybody
 10:19:14 20 tasked with looking at all the money that goes in to the SDAs,
 21 determining which belongs to individual Indians, and then making
 22 sure that goes in to the IRMS or TFAS database?
 23 A. **I don't believe I understand the question.**
 24 Q. Sure. As we've seen, there's a lot of money that flows
 10:19:29 25 through SDAs.

1 A. **That is correct.**
 2 Q. Okay. Now, has anybody taken -- has anybody been tasked
 3 with determining exactly how much of that money belongs to
 4 individual Indians?
 10:19:42 5 A. **You could compute that based on some of the work that we're**
 6 **doing, but it's not a specific task that's been assigned.**
 7 Q. You can compute what is actually being posted to the IIM
 8 or -- IRMS or TFAS database. Correct?
 9 A. **You can compute what's being transferred out of the**
 10:19:59 10 **accounts.**
 11 Q. Out of the SDA accounts, into the IRMS database?
 12 A. **The accounts exist within the IRMS database. It's funds**
 13 **that are transferring down to other accounts or potentially out**
 14 **to the Tribal Trust, et cetera.**
 10:20:11 15 Q. Okay. And is anybody making sure that all the money
 16 belonging to individual Indians in a Special Deposit Account
 17 actually makes its way into IRMS?
 18 A. **I think we're discussing again, sir, many different issues,**
 19 **because not all of the money in Special Deposit Accounts is due**
 10:20:31 20 **to individuals.**
 21 Q. That's exactly right. A lot of it is. Is that fair?
 22 A. **I don't want to say what percentage is.**
 23 Q. But has anybody gone through all those funds in SDA accounts
 24 over the years, and segregated which belong to individual Indian
 10:20:46 25 account holders?

1 A. **I don't believe that that's been a specific task. But as I**
 2 **mentioned through the transaction mapping that we're doing, you**
 3 **can compute how much money has been transferred out to which**
 4 **sources.**
 10:20:57 5 Q. You can compute what was actually posted to an IRMS account?
 6 A. **You can compute what was transferred from the Special**
 7 **Deposit Account. The Special Deposit Account exists within the**
 8 **IRMS system.**
 9 Q. But that doesn't mean that all the individual money, Indian
 10:21:12 10 money in the Special Deposit Account, made it into IRMS, does
 11 it?
 12 MR. QUINN: Objection, Your Honor. Vague. The Special
 13 Deposit Accounts aren't on IRMS. The witness just testified to
 14 that. He keeps asking questions suggesting that the Special
 10:21:28 15 Deposit Accounts somehow are outside the IRMS system.
 16 MR. SMITH: I'll rephrase the question.
 17 THE COURT: Now that that's been clarified, can the
 18 witness answer the question?
 19 THE WITNESS: I don't recall the question.
 10:21:41 20 MR. SMITH: Sure.
 21 THE COURT: He wants to know whether you can verify
 22 that everything in the SDAs were in fact posted to IIM accounts.
 23 THE WITNESS: Not all of the funds in SDAs are due to
 24 IIM accounts, Your Honor. Some of them, as we mentioned
 10:21:54 25 earlier, are big deposits which would be returned to a lessee,

1 some of them are tribal monies that would be distributed to the
 2 tribe. Some of them are individual monies. So you wouldn't
 3 transfer all of the money in an SDA to individuals, because it
 4 doesn't belong to them.

10:22:10 5 THE COURT: How about all that should be posted to IIM
 6 accounts? Can you verify that it has been?

7 THE WITNESS: No, Your Honor. Some of those accounts
 8 still have balances within them that are being distributed
 9 today.

10:22:19 10 THE COURT: Does that answer your question, Mr. Smith?
 11 MR. SMITH: I think it gets there.

12 BY MR. SMITH:
 13 Q. So if you want to look at the actual collections, you've got
 14 to look at the SDA accounts. Is that correct?

10:22:28 15 A. **Yes, you do.**
 16 Q. Because if you just look at IRMS, you're just looking at the
 17 postings?
 18 A. **I'm sorry, sir. SDAs are within the IRMS system.**
 19 Q. You're exactly right. If you're just looking at the IIM
 20 module, you're just looking at postings, not collections?
 21 A. **I'm sorry. Again, I don't understand. The SDAs are within
 22 the IIM module. Some funds are posted to SDAs, and some funds
 23 are posted to IIM accounts.**
 24 Q. You are just focusing on postings, not collections. Is that
 25 correct?

1 A. **As I mentioned, I think we're confusing many different
 2 issues again. Collections are being tested through the LSA
 3 work. We're looking at postings to the system in our DCV work.
 4 And postings that should have happened is being evaluated
 5 through the land to dollar work.**

10:23:17 6 **So again, we're talking about many different things.**
 7 Q. And let me try to be clear, because obviously we're going on
 8 different tracks here. As you indicated to Judge Robertson,
 9 there is money in the SDA accounts, has been over many years,
 10 that belongs to individual Indians. Correct?

10:23:34 11 A. **Yes. Some of the money in those accounts, yes.**
 12 Q. But you have not been specifically tasked with making sure
 13 that all of that money that is in those SDA accounts actually
 14 gets transferred to an account of an individual Indian?

10:23:49 15 A. **No. Well, first, you have to remember, again, not all of
 16 the money in those accounts is due to individuals. Two, there
 17 are some funds still sitting in those accounts that are being
 18 distributed --**
 19 THE COURT: We've got that, Ms. Herman.

10:24:05 20 THE WITNESS: I believe it's the same question again,
 21 Your Honor.
 22 THE COURT: "You have not been specifically tasked with
 23 making sure that all of that money that is in the SDA accounts
 24 actually gets transferred to an account of an individual
 25 Indian." That's sort of a yes or no question.

1 THE WITNESS: No, the funds are still sitting there, in
 2 some instances.

3 BY MR. SMITH:
 4 Q. Do you agree that it is imperative, as part of a complete
 5 accounting, to make sure that Indian monies in SDAs get
 6 disbursed properly to individual beneficiaries?

10:24:34 7 A. **The funds in the SDAs need to be disbursed. That's correct.**
 8 Q. If we could look at 4-2-216, at -- we've looked at this
 9 before. This is the seminar you gave. You were the presenter.
 10 And look at page 222 of that document. Actually, Bates stamp
 11 number 222. And focus in on the highlighted section.

10:25:04 12 It says, "While we cannot provide an account statement
 13 to an administrative account, it is imperative to include a
 14 review of these accounts in the historical accounting. This
 15 review must include, at a minimum, all nonzero balance accounts
 16 as well as zero balance accounts with direct disbursements. A
 17 review of the latter group will provide the requisite support
 18 for payments to non-individual Indian accounts."
 19 Is that what you're doing?

10:25:47 20 A. **I'm sorry, we're providing some of this work but not all of
 21 this work.**
 22 Q. Who is providing the rest of the work, do you know?
 23 A. **OHTA is working to distribute balances that were in Special
 24 Deposit Accounts as of 2002. Balances in those accounts after
 25 2002 are being distributed by BIA and OST.**

1 Q. Have you reviewed all nonzero balance accounts in SDAs?
 2 A. **As I mentioned, we're not doing that work right now. OHTA
 3 has been tasked with reviewing nonzero balance accounts at 2002,
 4 and OST and BIA are reviewing nonzero balance accounts after
 5 2002.**

10:26:22 6 Q. So they're reviewing it beginning in 2002, but not prior to
 7 that time?
 8 A. **If it had a nonzero balance at 2002, the funds haven't been
 9 distributed yet.**

10:26:33 10 Q. So is it fair to say that nobody is looking at the SDAs --
 11 let me strike that.
 12 Neither OST or OHTA are looking at the SDAs prior to
 13 2002?

10:26:49 14 A. **In terms of distributing balances, they would have had a
 15 zero balance. I thought that's what we were discussing.**
 16 Q. You have a lot of people working on SDAs, obviously. Who is
 17 verifying if a historical distribution from an SDA is accurate?
 18 A. **In terms of a transfer to another account within the system,
 19 that's being tested through the LSA project.**

10:27:14 20 Q. And that's limited to a transfer to an account in the
 21 system. Okay.
 22 How about all the other monies in SDAs? Who's
 23 verifying that the distributions from SDAs are accurate?
 24 A. **I'm sorry, are you discussing transfers or checks that were
 25 distributed from SDAs?**

1 Q. I'm talking about any transfers from SDAs. Who is verifying
2 that those transfers are accurate?
3 A. **As I mentioned, the transfers are being tested through the**
4 **LSA project.**
10:27:38 5 Q. To the extent they go into an individual Indian account?
6 A. **That's correct.**
7 Q. How about the money that doesn't go into individual Indian
8 accounts? Who is verifying that those accounts are accurate?
9 A. **We're verifying through our transaction mapping that all of**
10:27:51 10 **the funds that were taken out of the SDA were re-credited within**
11 **the system. We're not testing the accuracy through that test,**
12 **though.**
13 Q. You're not testing the accuracy of even the money that's
14 going into the account of an individual Indian, are you?
10:28:03 15 A. **Not in the data completeness test. But it is being tested**
16 **in the LSA project.**
17 Q. And you're not testing the accuracy of any money going from
18 an SDA into any other account that isn't going directly into the
19 account of an individual Indian, are you?
10:28:16 20 A. **Well, I think we need to be clear, because sometimes funds**
21 **transfer multiple times from SDAs. So the final transfer into**
22 **the individual account is being tested.**
23 Q. Now, if there's money in an SDA on a historical basis -- I'm
24 sorry. I'll slow down.
10:28:32 25 If there's money in an SDA that goes to Interior, not

1 to an IIM account holder but to Interior, are you verifying that
2 that money does not belong to an individual Indian?
3 A. **If monies are transferred out of an SDA to the Tribal Trust**
4 **or to another Interior account, we're requesting documentation**
10:28:51 5 **to determine why the funds were being transferred.**
6 Q. When did you request the documentation?
7 A. **I'm sorry?**
8 Q. When did you request the documentation?
9 A. **As a component of our data validation.**
10:29:02 10 Q. Have you got all the documentation you requested?
11 A. **We haven't completed our work yet, so no, we have not**
12 **received all the documents we've requested.**
13 Q. How much of the documentation have you received?
14 A. **I would have to look at our records to tell you that.**
10:29:16 15 Q. Are you telling me that -- let's limit it to the period 1985
16 to the present, the period you're looking at.
17 A. **Okay.**
18 Q. Are you telling me that, for every transfer out of an SDA
19 account that doesn't go to an IIM account holder, you're
10:29:34 20 verifying that the transfer did not contain individual Indian
21 money?
22 A. **No. What I said was transfers out of the IRMS system, that**
23 **we're requesting documentation for those.**
24 Q. Transfers out of the IRMS system?
10:29:47 25 A. **That's correct.**

1 Q. But you're not verifying that every transfer out of an SDA
2 account goes to the right place?
3 A. **No, we're not, through the data validation work. That's**
4 **only being tested through the LSA work.**
10:30:08 5 Q. So it's your understanding that the LSA work will verify
6 that every transfer out of an SDA account is going to the right
7 source?
8 A. **No, that's not what I -- if that's what I said, that's not**
9 **what I intended. What I'm saying is that transfers into**
10:30:25 10 **individual accounts from Special Deposit Accounts are being**
11 **tested through the LSA project.**
12 Q. But that has nothing to do with transfers out of the SDA to
13 any other account, not an individual Indian's account. Is that
14 correct?
10:30:39 15 A. **That's correct, to the extent that sometimes transfers**
16 **happen multiple times. So if you transfer from SDA 1 to SDA 2**
17 **to SDA 3 to the individual account, all of those transfers will**
18 **be evaluated.**
19 Q. Okay. So to your knowledge, nobody is verifying transfers
10:31:02 20 or withdrawals from an SDA account that doesn't go into an
21 individual Indian's account?
22 A. **I've described all of the ways that it's being tested.**
23 **That's all I can describe for you.**
24 Q. Okay. If we could look at Bates stamp number 3-2-1. This
10:31:45 25 appears to be a section from an OHTA accountants conference,

1 July 22 to 23, 2003 in Albuquerque, New Mexico. Did you attend
2 that conference?
3 A. **I believe I did.**
4 Q. And if we could go to Bates page seven, and focus on
10:32:07 5 block 30. It says, "Leakage tests of IIM funds have IIM fund
6 resources leaked to non-Indians inappropriately, direct
7 disbursement from admin account to non-IIM account."
8 And your name is there. It says, "Medium priority.
9 Michelle Herman will work with Susan Hinkins to define the issue
10:32:41 10 and determine next steps to resolve."
11 Do you see that?
12 A. **I do.**
13 Q. So, have you been tasked with the job of making sure that
14 IIM funds are not leaked to non-Indians inappropriately, and to
10:32:58 15 check direct disbursements from admin accounts to non-IIM
16 accounts?
17 A. **As I mentioned, currently what we're testing are the**
18 **transfers out of those accounts to outside of the IIM system.**
19 **We're not currently testing disbursements from those accounts.**
10:33:14 20 Q. So you are not currently doing what's described here?
21 A. **We're doing part of it, not all of it.**
22 Q. And do you know who is doing the rest of it?
23 A. **I don't believe the decision has been made as to whether or**
24 **not the rest of that test will be performed.**
10:33:28 25 Q. So it may not be performed at all?

- 1 **A. I can't speak for Interior.**
- 2 **Q.** Has anybody suggested to you that now it's not going to be
- 3 performed?
- 4 **A. No, they have not.**
- 10:33:37 5 **Q.** It just hasn't been done yet?
- 6 **A. We're focused on many things in order to complete the**
- 7 **historical record. We can't do them all concurrently.**
- 8 **Q.** And it looks like the date of this conference, I believe if
- 9 we could go back to the first page, was it 2002 or 2003?
- 10:33:55 10 **A. I don't recall.**
- 11 **Q.** July 2003. So over four years later, the work hasn't even
- 12 started yet on that aspect. Is that fair?
- 13 **A. As I mentioned, half of it has, the other half has not.**
- 14 **Q.** If we could look at Exhibit 47-5-1, it's Bates stamp number
- 10:34:30 15 47-5-1. This is a copy of a NORC report, "Alaska region,
- 16 Special Deposit Account, SDA, debit sample design report."
- 17 Are you familiar with this document at all?
- 18 **A. I don't recall if I've seen this document or not.**
- 19 **Q.** The document we just looked at previously indicated that you
- 10:35:09 20 would be working with Ms. Hinkins. And you understand
- 21 Ms. Hinkins is from NORC. Is that correct?
- 22 **A. That's correct.**
- 23 **Q.** And have you been working with Ms. Hinkins on SDA accounts?
- 24 **A. I work with Ms. Hinkins in all kinds of different ways, on**
- 10:35:24 25 **all of the sampling issues.**

- 1 **Q.** Have you been working with her specifically on SDA accounts?
- 2 **A. We may have at some point in time, but not recently.**
- 3 **Q.** If we could look please at Bates stamp five. It states,
- 4 "OHTA recently proposed a series of effort (sic) to reconcile
- 10:35:53 5 receipts in debits in IIM accounts in the Alaska region. Debits
- 6 from Special Deposit Account, SDA, are beyond these efforts and
- 7 are regarded as a potential gap."
- 8 Do you know what is meant by that?
- 9 **A. I do not.**
- 10:36:16 10 **Q.** Do you know if there actually has been sampling involving
- 11 debits from SDA accounts?
- 12 **A. Debits just mean a reduction from the SDA. So transfers**
- 13 **have been evaluated, as I mentioned.**
- 14 **Q.** But nothing specifically with respect to sampling within an
- 10:36:34 15 SDA account?
- 16 **A. Of which I'm aware, no.**
- 17 **Q.** Do you know how many SDA accounts are currently on the
- 18 electronic system?
- 19 **A. No, but I believe it's included in our report.**
- 10:37:01 20 **Q.** Another system that I believe you have not looked at yet --
- 21 well, actually, you did. You talked about land systems
- 22 yesterday, LRIS. Is that correct?
- 23 **A. Yes, that's correct.**
- 24 **Q.** That's the Land Record Information System?
- 10:37:14 25 **A. Yes, that's correct.**

- 1 **Q.** And I believe you testified yesterday that you would look at
- 2 that system in order to get ownership information for your
- 3 historical account statements?
- 4 **A. No, that information was being used in the LSA project, not**
- 10:37:32 5 **for the HSAs themselves.**
- 6 **Q.** So for your LSA project, you would be looking toward
- 7 information that is on the LRIS system?
- 8 **A. That's correct.**
- 9 **Q.** Has anybody -- are you aware of any problems with the LRIS
- 10:37:53 10 system?
- 11 **A. Yes, I am.**
- 12 **Q.** And what types of problems are you aware of?
- 13 **A. I saw instances in the work that we were performing where**
- 14 **the total ownership didn't sum to one, for instance.**
- 10:38:07 15 **Q.** Okay. So there are missing pieces of the ownership records?
- 16 **A. That it was incorrectly recorded.**
- 17 **Q.** Okay. What other problems did you notice?
- 18 **A. I noticed a situation where it appeared that the land was**
- 19 **distributed -- I'm sorry, given to the next heir, where the**
- 10:38:26 20 **report didn't indicate that the person had inherited the land.**
- 21 **Q.** Anything else?
- 22 **A. Not that I can recall.**
- 23 **Q.** Is it fair to say that not all regions or agencies have
- 24 consistently used the LRIS system?
- 10:38:38 25 **A. That's correct.**

- 1 **Q.** I believe you noticed, in Alaska they didn't use it at all,
- 2 did they?
- 3 **A. That's correct.**
- 4 **Q.** So you can't go just to the LRIS system to get an accurate
- 10:38:47 5 record of ownership for the entire 12 regions, can you?
- 6 **A. That's correct.**
- 7 **Q.** If we could look at 21-4-1. Ms. Herman, this is a document
- 8 that was provided us in the administrative record. It's
- 9 entitled, "Office of the Special Trustee for American Indians,
- 10:39:17 10 Office of Trust Funds Management, Special Deposit Accounts
- 11 project work plan."
- 12 Have you ever seen this document before?
- 13 **A. I don't believe so.**
- 14 **Q.** Let me ask you if you're familiar with some of the
- 10:39:30 15 information that's referenced in it. If we could look at page
- 16 seven of that document, and focus in on the highlighted
- 17 language. It says, "BIA utilizes the land records information
- 18 system, LRIS, to maintain the official source of ownership for
- 19 the purposes of verifying and certifying title to Trust land,
- 10:39:52 20 but does not maintain the system used for distribution of Trust
- 21 funds. Instead, BIA utilizes various systems, IRMS, MAD,
- 22 et cetera, to determine the distribution of Trust funds."
- 23 Have you looked at -- I take it you have not looked at
- 24 the IRMS ownership database?
- 10:40:14 25 **A. No, we have not.**

- 1 Q. And what is MAD, do you know?
- 2 A. **Yes, MAD was a system used by the Great Plains region to do**
- 3 **its distributions.**
- 4 Q. Okay. Were there other systems that BIA had that were used
- 10:40:27 5 to determine distribution?
- 6 A. **These are the two with which I am familiar, but I believe**
- 7 **there were others.**
- 8 Q. Were these systems consistent?
- 9 A. **I didn't test the systems, sir.**
- 10:40:40 10 Q. Do you know if anybody has tested the LRIS, IRMS, and MAD
- 11 systems to determine whether the information on there is
- 12 consistent?
- 13 A. **There's one -- there was a study done of the LRIS system**
- 14 **done by NORC; and two, they were tested through the sample.**
- 10:40:57 15 **Because the initial distribution would have been made through**
- 16 **the monetary system, and we were using LRIS to check the**
- 17 **ownership.**
- 18 **So in that regard they were cross-checked, but only**
- 19 **through the sample in the NORC study.**
- 10:41:09 20 Q. And that was a very limited sample. Is that correct?
- 21 A. **I'm not familiar with the total size of the sample.**
- 22 Q. But FTI has not been tasked with either determining the
- 23 accuracy of the information on the LRIS system, or whether it is
- 24 consistent with other systems within BIA's records. Is that
- 10:41:27 25 fair?

- 1 A. **Only to the extent we evaluated it through the LSA project.**
- 2 Q. So when you received information from the LRIS system
- 3 regarding ownership, did you simply assume that information was
- 4 correct?
- 10:41:42 5 A. **To the extent that there was any inconsistency within the**
- 6 **information, we went to outside sources to verify it.**
- 7 Q. But did you actually have anybody test the information you
- 8 got, to make sure it was accurate?
- 9 A. **No. The information was -- the LTROs and the LRIS system**
- 10:41:59 10 **was tested by NORC, as I mentioned, not by us.**
- 11 Q. And I take it the folks at NORC would be the people who
- 12 would have the best information regarding the testing they did
- 13 on the LRIS system. Is that fair?
- 14 A. **That's fair.**
- 10:42:16 15 Q. Would you agree, Ms. Herman, that just as important as
- 16 determining whether postings on LRIS and TFAS are correct, it's
- 17 equally important that the postings, the money that is posted on
- 18 there gets to the right person?
- 19 A. **I'm sorry, LRIS and TFAS are different systems.**
- 10:42:35 20 Q. I'm sorry. Yeah, I misspoke.
- 21 **Just as important as determining whether the postings**
- 22 **on IRMS and TFAS are correct, it's just as important to**
- 23 **determine whether the money posted gets to the right person. Is**
- 24 **that correct?**
- 10:42:48 25 A. **Well, that would define a correct posing. That's what we**

- 1 **were testing through the LSA work.**
- 2 Q. In your work, did you go and verify and check with the land
- 3 records, to make sure that the money got to the person who was
- 4 the correct owner?
- 10:43:02 5 A. **Through the LSA project, we were testing that the funds were**
- 6 **distributed to the correct owner.**
- 7 Q. You were testing that the funds were in fact distributed to
- 8 someone. Did you verify it with land records to make sure it
- 9 went to the correct owner in every instance?
- 10:43:15 10 A. **As I mentioned, we used the LRIS data to determine whether**
- 11 **or not it went to the correct and land owner.**
- 12 Q. And that's dependent on whether the LRIS data is correct or
- 13 not. Is that correct?
- 14 A. **Yes. But it's a cross-check between the distribution**
- 10:43:29 15 **program that was used, as well as the LRIS records. And in some**
- 16 **instances we had other probate records and things of that nature**
- 17 **that were made available.**
- 18 Q. You would agree, would you not, that it's important for that
- 19 ownership information to be correct?
- 10:43:40 20 A. **Yes, it is.**
- 21 Q. Have you heard of anything called the TIME study?
- 22 A. **I'm sorry?**
- 23 Q. TIME, T-I-M-E. Have you heard of anything called the TIME
- 24 study?
- 10:43:49 25 A. **I don't believe so.**

- 1 Q. Has anybody suggested to you that studies have been done
- 2 showing that 20, 25 percent of the information in LRIS may be
- 3 inaccurate?
- 4 A. **I don't recall hearing that, no.**
- 10:44:04 5 Q. If we could look at 50-2-1, which is another report from
- 6 NORC entitled, "NORC analysis of LRIS tract history reports."
- 7 Have you seen this document before?
- 8 A. **I don't recall if I've seen this document.**
- 9 Q. And if we could look at page eight of that document, and
- 10:44:43 10 focus on the highlighted language. "We particularly emphasize
- 11 our positive results in view of the report on the findings of
- 12 the TIME project carried out by Datacom in 2000. Datacom
- 13 asserts an error rate of about 30 percent in the postings."
- 14 **THE COURT: Mr. Smith, is this the best witness to be**
- 10:45:02 15 **asking these questions? She just said she doesn't know anything**
- 16 **about this.**
- 17 **MR. SMITH: Okay. I'll move on, Your Honor.**
- 18 **BY MR. SMITH:**
- 19 Q. Is it fair to say that that information is not something you
- 10:45:19 20 are familiar with?
- 21 A. **No, I was not familiar with the TIME report.**
- 22 Q. Were you actually provided a copy of the LTRO database?
- 23 A. **No. We received a subset of the LRIS database for the**
- 24 **particular account holders that had been sampled.**
- 10:45:41 25 Q. But you've never received an actual copy of the LTRO

1 database?

2 **A. Not our firm, no.**

3 **Q.** If we could look at 15-2-1. And you have not been copied on

4 this e-mail, but it references you. Let me ask if you're

10:46:07 5 familiar with it. It's an e-mail from Joseph Walker to Crucita

6 Grover, copy to Harold Corley, Fritz Scheuren, and Bert Edwards.

7 It says at the top, "Rob, Ryan, and Michelle came by after a

8 meeting with Bert."

9 Do you see that in the first sentence?

10:46:30 10 **A. I do.**

11 **Q.** And then in the next paragraph, the highlighted language, it

12 says, "They also asked about procedures on LTRO data. I gave

13 them a copy of the e-mail whereby I responded to Bud on that

14 same question."

10:46:44 15 And then if you go down further - I don't want to read

16 all of this - it says, "Rob, Ryan, and Michelle are asking for a

17 copy CD of the LTRO's database, rather than access, which was

18 the subject of the message to Bud. However, the process would

19 be very similar."

10:47:02 20 Did you ever get a copy of that LTRO database?

21 **A. I didn't have a chance to read the entire e-mail, but I**

22 **believe this was referring to our trip to Alaska. And once we**

23 **arrived in Alaska, we learned that Alaska didn't use LRIS. I**

24 **believe that that's what this is specifically referring to.**

10:47:21 25 **Q.** So to the best of your knowledge, you never got a copy of

1 the LTRO database that you requested here?

2 **A. As I mentioned, I believe this is referring to Alaska, and**

3 **they didn't use the LRIS system.**

4 THE COURT: So the answer is no?

10:47:35 5 THE WITNESS: Correct. There was no copy to be

6 provided.

7 THE COURT: If you could just say no, we would save a

8 lot of time.

9 BY MR. SMITH:

10:47:41 10 **Q.** Is it fair to say that you ran into certain transactions on

11 the IRMS database that posed more problems than others?

12 **A. I'm sorry, in what sense?**

13 **Q.** Let's take, for instance, range leases and grazing. Was

14 that a particularly difficult problem in investigating?

10:48:02 15 **A. It depends on the type of transaction. In earlier years the**

16 **description references were less clear, and so it made them more**

17 **difficult to reconcile.**

18 **Q.** When we're talking earlier years, what period are we talking

19 about? The '80s, the '70s, how early are we getting?

10:48:18 20 **A. Again, it varies by region depending on the system they were**

21 **using. For instance, in Great Plains in the early '80s, the**

22 **descriptions were less clear than they were in the**

23 **late '80s.**

10:48:33 24 **Q.** And that made it very difficult for you to get the back

25 information on range and grazing leases. Is that correct?

1 **A. It made it more difficult, yes.**

2 **Q.** In fact, if we could look at 54-5-1. This appears to be an

3 e-mail from you to Steve Alcorn dated December 30, 2002, copy to

4 Mr. Brunner. Mr. Brunner is your partner. Is that correct?

10:48:55 5 **A. He's my boss.**

6 **Q.** Okay. It says, "Comments on Draft 4." Do you recall you

7 were making comments on the plan that was being proposed at that

8 point in time?

9 **A. Yes, I did.**

10:49:10 10 **Q.** And if we could look at -- it says -- let's see, go to the

11 next page.

12 Here we go. Under 19 of 46, you state, last paragraph,

13 "We should choose a different revenue type for our example.

14 Grazing funds are very difficult to prove out through a review

10:49:43 15 of ownership records."

16 What do you mean by that?

17 **A. I don't recall, sir. I would need to look at page 19 of 46.**

18 **This was in 2002.**

19 **Q.** Is it fair to say that because of problems with ownership

10:49:58 20 records for grazing and range, that those had to be excluded --

21 **A. I believe what this was referring to is a picture that they**

22 **were trying to draw. And what I was referring to as to why**

23 **range is more challenging wasn't because of the ownership**

24 **records. It was because of the transaction description.**

10:50:17 25 **Q.** So what do you mean by "grazing funds are very difficult to

1 prove out through a review of ownership records"?

2 **A. As I mentioned, I would have to see what this is referring**

3 **to on page 19. But the challenge that we had in reconciling the**

4 **range transactions was in the description as posted. So the**

10:50:32 5 **description that we looked at in court the other day indicated**

6 **specifically what range unit and what tract the funds were for;**

7 **in earlier years the descriptions didn't include that**

8 **information, which made it more challenging.**

9 **Q.** And because of some of those challenges that were

10:50:48 10 experienced with ranging and grazing, at some point those

11 transactions had to be excluded from the statistical sampling.

12 Is that correct?

13 **A. Not the transactions I worked on. I'm not aware if there**

14 **were other transactions that were excluded.**

10:51:04 15 **Q.** Let's look at 51-9-1. This is a NORC report entitled,

16 "Reconciliation of the high-dollar and national sample

17 transactions from land-based IIM accounts," dated December 28,

18 2004.

19 And you testified yesterday, you actually worked on the

10:51:28 20 reconciliation of the high-dollar accounts. Is that correct?

21 **A. That's correct.**

22 **Q.** Have you seen this report before?

23 **A. NORC has published many reports. I've seen some of them,**

24 **but not all of them.**

10:51:39 25 **Q.** If we could look at page 25 to 26. Let's go on to the next

1 page. It says, "In addition, several classes of national sample
 2 credit transactions were deferred until a later time, for
 3 operational reasons. They arose when it became clear that the
 4 document search and collection was taking more resources and
 10:52:10 5 time than expected. OHTA decided that two classes of
 6 transactions, for which alternative methods may facilitate the
 7 document collection and reconciliation process, would be
 8 deferred: Transactions associated with payments from certain
 9 types of range or grazing leases, and particular types of
 10:52:28 10 transfer transactions."
 11 Was this information ever provided to you?
 12 **A. I believe that this is referring to grazing transactions in**
 13 **the Rocky Mountain region, which is not a region that I worked**
 14 **on reconciling.**
 10:52:43 15 **Q.** So you do not know at this point in time whether this
 16 particular issue has been resolved. It says it's been deferred;
 17 you don't know if it's been resolved?
 18 **A. I do not know, no.**
 19 **Q.** Okay. Thank you.
 10:53:23 20 Let's turn directly to your DCV. You've had to look at
 21 your DCV by region. Is that correct?
 22 **A. As I mentioned, we have some tests that we performed**
 23 **overall, and some that we evaluate on a region basis.**
 24 **Q.** And one of the reasons you've had to look at things on a
 10:53:41 25 regional basis is because the regions operated so much

1 differently. Is that correct?
 2 **A. Yes, in some instances.**
 3 **Q.** And having to look at things on a regional basis makes,
 4 obviously, it more time-consuming?
 10:53:53 5 **A. That's correct.**
 6 **Q.** Do you know how much FTI has been paid so far for the DCV
 7 project?
 8 **A. No, not in total.**
 9 **Q.** Do you have an approximate number?
 10:54:07 10 **A. I would guess it's in excess of 15 million, but I can't give**
 11 **you an accurate number.**
 12 **Q.** In excess of \$15 million over a four-year period?
 13 **A. Sir, I would have to look at our billing records to give you**
 14 **a precise number.**
 10:54:25 15 **Q.** Importantly, in performing your DCV, you are not performing
 16 any external validations of the IRMS or TFAS system, are you?
 17 **A. No, we are not.**
 18 **Q.** And after the DCV is completed, you will still not be able
 19 to tell us whether all account holders who should be on IRMS or
 10:54:55 20 TFAS are actually on those systems. Is that correct?
 21 **A. That's not a goal of the test, no.**
 22 **Q.** It's not a goal, which means you won't be able to tell us.
 23 Is that correct?
 24 **A. I can't tell you who should have had an account. That's not**
 10:55:06 25 **a part of our test.**

1 **Q.** If we could look at Defendant's Exhibit 152-14. Do you
 2 recognize this as part of your DCV?
 3 **A. Yes, I do.**
 4 **Q.** And it says, "As FTI's scope of work was limited to analysis
 10:55:31 5 of the IRMS and TFAS and electronic data, no external
 6 validations were performed to determine if all individual
 7 account holders have IRMS or TFAS accounts." Is that correct?
 8 **A. Yes, that's what I stated.**
 9 **Q.** Do you know if anybody has been tasked with the job of
 10:55:50 10 determining whether all account holders have IRMS or TFAS
 11 accounts?
 12 **A. I'm not aware, no.**
 13 **Q.** Now, in your review, your DCV, you have added a number of
 14 account holders whose accounts were not originally on the
 10:56:14 15 electronic system that you were given of IRMS or TFAS. Is that
 16 correct?
 17 **A. That's correct.**
 18 **Q.** Do you have an idea of how many have been added?
 19 **A. No, but I believe it's included in our report.**
 10:56:25 20 **Q.** It's thousands. Is that fair?
 21 **A. I believe so, yes.**
 22 **Q.** And your DCV does not include a recollection (sic) of some
 23 of the things we discussed earlier. It does not reconcile MMS
 24 to IRMS?
 10:56:43 25 **A. No, it does not.**

1 **Q.** Or Treasury to IRMS?
 2 **A. No, it does not.**
 3 **Q.** So at the completion of your DCV, you will not be able to
 4 tell us what individual Indian money may have been withheld in
 10:56:56 5 the MMS system and didn't get posted to IRMS. Is that correct?
 6 **A. No, I will not.**
 7 **Q.** Even today, you can't tell us what the population of
 8 accounts or transactions is for the historical accounting, even
 9 in the electronic era, can you?
 10:57:15 10 **A. Not until we complete restoring the data, no.**
 11 **Q.** Do you have any idea when you will be completed with your
 12 project for restoring the data?
 13 **A. We're scheduled to be completed in two years.**
 14 **Q.** In two years?
 10:57:26 15 **A. That's correct.**
 16 **Q.** Has that schedule been postponed?
 17 **A. Not of which I'm aware.**
 18 **Q.** Had there originally been a schedule that it would be
 19 completed by this year?
 10:57:37 20 **A. I don't know if there was such a schedule.**
 21 **Q.** I mentioned yesterday, we've only been provided two of your
 22 reports. And one was the one you did in June 2007; and then the
 23 one you provided us dated September 30th. And then we provided
 24 the information this weekend.
 10:58:00 25 And you've indicated you've had some other reports or

- 1 status reports on your study over the years. Is that correct?
- 2 **A. That's correct.**
- 3 **Q.** But a lot of the information that is in the June report is
- 4 duplicated in the September 30 report. Is that correct?
- 10:58:13 5 **A. I'm sorry, which June report?**
- 6 **Q.** The June 12, 2007 report.
- 7 **A. Yes, it is.**
- 8 **Q.** I wanted to just point to one section of that report. If we
- 9 could look at 34-1-1. Is this a copy of your June 12 report?
- 10:58:35 10 **A. Yes, it is.**
- 11 **Q.** And if we could look at Bates page 11, and focus on the
- 12 highlighted language. It says, "Including transactions restored
- 13 as of the date of this report, the combined IRMS and TFAS
- 14 transaction data contains roughly 94 million credit
- 10:59:03 15 transactions, totaling approximately 68.2 billion in credit
- 16 throughput; and over 17 million debit transactions, totaling
- 17 68.1 billion in debit throughput, for a total of 112,142,496
- 18 transactions, and a total, absolute value, throughput of
- 19 \$136.3 billion." Is that correct?
- 10:59:27 20 **A. That's correct.**
- 21 **Q.** And did that number increase from your June report to your
- 22 September report?
- 23 **A. Yes, it would have.**
- 24 **Q.** And if we could look at Defendant's Exhibit 152, Bates
- 10:59:41 25 number 152-20. And in this report that number has been

- 1 increased to \$139 billion. Is that right?
- 2 **A. It appears so, yes.**
- 3 **Q.** So it's gone up significantly in that period of time?
- 4 **A. Well, we would have loaded probably two additional months of**
- 11:00:09 5 **TFAS data. And as you'll recall, the TFAS system includes**
- 6 **investment transactions. And these, again, are absolute**
- 7 **dollars. So, all flows of money.**
- 8 **Q.** I understand.
- 9 When you testified in 2003, you told us about the
- 10 master files.
- 11:00:23 10 **A. Correct.**
- 11 **Q.** Do you recall that?
- 12 And you had just begun your analysis as part of your
- 13 DCV project of these master files at that time?
- 11:00:35 14 **A. I don't recall. But yes, we've had master files for some**
- 15 **time.**
- 16 **Q.** And just for clarification, when you got that IRMS database,
- 17 you had something called a hisTran file something called an
- 18 I-Tran file. Is that correct, hisTran and I-Tran?
- 11:00:53 19 **A. In the initial file we received, yes.**
- 20 **Q.** And the I-Tran file had six months of transactional history?
- 21 **A. That's correct.**
- 22 **Q.** And hisTran files had transactional data prior to that?
- 23 **A. That's correct.**
- 11:01:07 24 **Q.** So it had a more complete summary of the transactional data?

- 1 **A. They didn't overlap. They were separate.**
- 2 **Q.** Okay. And you were also provided something called master
- 3 files. Is that correct?
- 4 **A. That's correct.**
- 11:01:21 5 **Q.** And you were provided 10 of those files?
- 6 **A. That's correct.**
- 7 **Q.** And basically, those master files give you a snapshot at a
- 8 point in time as to what the balances were for all open
- 9 accounts. Is that correct?
- 11:01:35 10 **A. That's correct.**
- 11 **Q.** It wouldn't show accounts that have been closed immediately
- 12 prior to that particular snapshot?
- 13 **A. It does include closed accounts, just not all closed**
- 14 **accounts.**
- 11:01:49 15 **Q.** So some closed accounts, it includes?
- 16 **A. It does.**
- 17 **Q.** Do you know why it includes some and doesn't include others?
- 18 **A. I believe that the master file included the same accounts as**
- 19 **the I-Tran file, but I haven't performed that comparison.**
- 11:02:03 20 **Q.** Now, all the balance files you had were 1996 or later?
- 21 **A. Electronically, yes.**
- 22 **Q.** Electronic balance files. And when you went back -- when
- 23 you testified in 2003, you said you were going to go look for
- 24 hard copies of master files. Is that correct?
- 11:02:20 25 **A. Yes, that's correct.**

- 1 **Q.** And can you tell me how many hard copies of master files
- 2 you've now located?
- 3 **A. I cannot. But you can look to our workpapers to see that.**
- 4 **We have received some, but not all.**
- 11:02:33 5 **Q.** Okay. So somewhere in your workpapers, I'll be able to find
- 6 how many you actually got?
- 7 **A. You'll see the references to different types of reports:**
- 8 **Master files, trial balance reports, IIM statements. We used**
- 9 **several different types of reports to find the balance**
- 10 **information.**
- 11:02:53 10 **Q.** I was talking specifically about master files. Were you
- 11 able to find -- will I be able to determine how many master
- 12 files you located?
- 13 **A. No. The report refers to balance reports that we**
- 14 **identified.**
- 11:03:03 15 **Q.** Okay. So when you refer to the term "balance reports,"
- 16 you're referring to not just master files?
- 17 **A. That's correct.**
- 18 **Q.** What else are you referring to?
- 11:03:13 19 **A. As I mentioned, trial balance reports. We've used account**
- 20 **statements, we've used IM-600 reports, and master files.**
- 21 **Q.** What are IM-600 reports?
- 22 **A. They list account numbers, account names, and balances.**
- 23 **Q.** Is it fair to say that the balance files post-1996 that you
- 11:03:42 24 received were incomplete? Excuse me, the master files that you

1 received?

2 **A. They represented the accounts on the system at that point in**

3 **time.**

4 **Q.** Okay. But the ones you received -- of those 10 you received

11:03:55 5 after 1996 that were in the electronic format, those were

6 incomplete?

7 **A. The files were meant to represent the accounts on the system**

8 **at that point in time, which they do. But it doesn't list every**

9 **account that ever existed.**

11:04:08 10 **Q.** If we could look at Defendant's Exhibit 152-42.

11 THE COURT: Mr. Smith, how are you doing on time? How

12 much longer?

13 MR. SMITH: I've got at least through lunch, Your

14 Honor.

11:04:28 15 THE COURT: At least through lunch?

16 MR. SMITH: Yeah.

17 THE COURT: I underestimated you. I thought I heard

18 you winding up, but I was wrong. So we're going to take the

19 mid-morning break.

11:04:39 20 MR. SMITH: Okay. Thank you, Your Honor.

21 THE COURT: Try to keep it to 10 minutes.

22 (Recess taken at 11:04 a.m.)

23 THE COURT: All right. Go ahead, Mr. Smith.

24 MR. SMITH: Thank you, Your Honor.

11:04:41 25 BY MR. SMITH:

1 **Q.** Ms. Herman, before we broke we were talking about your

2 master files, or balance files. And I asked you whether the

3 master files you received electronically were after 1996 and I

4 asked you whether there were gaps in those files.

11:19:42 5 MR. SMITH: And if we could look at 152-66?

6 BY MR. SMITH:

7 **Q.** Is this a copy of your DCV, or a portion of it?

8 **A. Yes, this is an excerpt from the table report that we**

9 **provided.**

11:19:53 10 **Q.** If we could focus on the highlighted language toward the

11 top. It says, "Master tables also contain account balance

12 information for the current month end, and, in many cases,

13 balance information for the previous six months. For the months

14 February 1996 through March 2000, balance information is

11:20:16 15 available for all but five months. Currently, no electronic

16 information is available prior to February 1996."

17 Then if you go down to the bottom of the page in the

18 footnote seven and eight, it identifies specifically which time

19 periods and areas for which you do not have balance information.

11:20:41 20 Is that correct?

21 **A. That's correct.**

22 **Q.** And did you find that, in fact, even within the data within

23 the master files, what you did get was sometimes inconsistent?

24 **A. There were different fields provided in different files.**

11:21:01 25 **Q.** And what do you mean by that?

1 **A. Within -- this information's provided in a table structure,**

2 **and there were a different number of fields within that table,**

3 **different amounts of information.**

4 **Q.** And sometimes the information within those fields was not

11:21:13 5 consistent?

6 **A. I'm not sure that I'm understanding. The fields had**

7 **different names.**

8 **Q.** The fields had different names?

9 **A. Yes, they did.**

11:21:23 10 **Q.** Between balance files?

11 **A. Yes, they did.**

12 **Q.** Was the information in those different fields, other than

13 the name, was it consistent between balance files?

14 **A. Yes, for the most part it was.**

11:21:34 15 **Q.** You say "for the most part."

16 **A. Well, there were different numbers -- different fields were**

17 **available in different files, so we didn't have the same exact**

18 **fields in all the files. There's a chart in our report that**

19 **shows exactly what was available per file.**

11:21:50 20 MR. SMITH: If we could look at 152-101?

21 BY MR. SMITH:

22 **Q.** Is this a portion of your report as well?

23 **A. Yes, it is.**

24 **Q.** And if we could focus on page 104, footnote one, and this

11:22:11 25 may be what you just said, but tell me if it is: "These fields

1 have been included in MASTER_ALL." What is MASTER_ALL?

2 **A. We aggregated all of the tables into one table.**

3 **Q.** "Fields received in the 10 master files were inconsistent,

4 MASTER_ALL reflects the most common name across the 10 master

11:22:29 5 files. When data was not available for one of these field, it

6 was updated to null."

7 What does that mean?

8 **A. We left it blank so that there could be a difference between**

9 **a zero and not available.**

11:22:40 10 **Q.** Okay. I understand.

11 And you went through the process of comparing the

12 master files to the data in the transactional files. Is that

13 correct?

14 **A. The balances in those files, yes.**

11:22:55 15 **Q.** Now, the master file actually has individual account

16 information. Is that correct?

17 **A. It contains the account number, the area, the management**

18 **that the account was receiving, address data, lots of different**

19 **information.**

11:23:08 20 **Q.** Now, does the master file contain balance information as of

21 the time that master file took that picture?

22 **A. Yes. Sometimes it includes more than one month's worth of**

23 **balances.**

24 **Q.** Okay. And you went through the process of comparing those

11:23:24 25 master files to the information on the transactional files?

- 1 A. **Yes, we did. The balances.**
- 2 Q. Just the balances, not the individual transactions for
- 3 account holders?
- 4 A. **The master file only has one record per account; it doesn't**
- 11:23:38 5 **include transactions.**
- 6 Q. So did you check the balances for individual accounts?
- 7 A. **For all accounts in the system that were in the file.**
- 8 Q. And basically, you're comparing one file in IRMS, or in the
- 9 IIM module of IRMS, to another file in the IIM module. Is that
- 11:24:00 10 correct?
- 11 A. **That's correct.**
- 12 Q. And you found that there were inconsistencies between those
- 13 two files within IRMS itself. Is that correct?
- 14 A. **That's how we identified the missing data, yes.**
- 11:24:09 15 Q. So there were inconsistencies between the master file and
- 16 the transactional file?
- 17 A. **I'd refer to it not as an inconsistency. That was how I was**
- 18 **identifying missing data.**
- 19 Q. Well, but they were inconsistent, weren't they?
- 11:24:23 20 A. **The balance was different, yes, than the transactional**
- 21 **balance.**
- 22 Q. And at times, those differences were fairly significant,
- 23 weren't they?
- 24 A. **Yes, they were.**
- 11:24:31 25 Q. I mean, they were supposed to be the same. Is that correct?

- 1 A. **That's correct.**
- 2 MR. SMITH: If we could look at Exhibit 152-25, and
- 3 focus on the chart at the top of the page.
- 4 By MR. SMITH:
- 11:24:57 5 Q. Now, this comes out of your overall report. Is that
- 6 correct?
- 7 A. **Yes, it does.**
- 8 Q. And it lists those accounts for which you had balance files
- 9 and those for which you had no balance file. Is that correct?
- 11:25:10 10 A. **That's correct.**
- 11 Q. Now, in here where we're talking about balance files, are we
- 12 just talking about master files or are we talking about those
- 13 other files that you looked for in the paper era?
- 14 A. **I believe this includes all of the balance information that**
- 11:25:24 15 **we gathered.**
- 16 Q. And roughly 20 percent had no balance file information?
- 17 A. **Yes, that's what's in the middle section of this chart.**
- 18 Q. That's the 92 plus the 48?
- 19 A. **That's correct.**
- 11:25:45 20 MR. SMITH: If we could look at Exhibit 152-271. Can
- 21 we make that a little bit bigger?
- 22 BY MR. SMITH:
- 23 Q. I believe this is a chart, perhaps you looked at yesterday,
- 24 where you compared the information in the balance files to the
- 11:26:13 25 transactional files. Is that correct?

- 1 A. **That's correct.**
- 2 Q. And it says at the top, IRMS estimated difference. What do
- 3 you mean by estimated difference?
- 4 A. **That's the difference that we've computed between the first**
- 11:26:25 5 **balance file and the transaction file at that point in time.**
- 6 Q. Okay. And if you look at the totals on the bottom where
- 7 we've highlighted that, for the accounts for which you actually
- 8 had balance files, you found no difference on 327,222?
- 9 A. **That would have been after restoring transactions, yes.**
- 11:26:50 10 Q. After restoring transactions, at that point in time, you
- 11 found there was no difference on that number?
- 12 A. **That's correct.**
- 13 Q. Is there a different place I can go to find out what the
- 14 discrepancy was before you restored transactions?
- 11:27:08 15 A. **I don't know if that's included in this report or not.**
- 16 Q. Do you know what the difference was?
- 17 A. **Not off the top of my head, no.**
- 18 Q. Do you have a file back in - you work in Los Angeles - that
- 19 would show what the differences were between the balance file
- 11:27:23 20 and the transactional file prior to you making those changes?
- 21 A. **In terms of the number of accounts, I don't know. But I**
- 22 **could compute it.**
- 23 Q. I take it there were obviously more than one here that had a
- 24 difference?
- 11:27:39 25 A. **Correct.**

- 1 Q. And then it looks like you have a category that says, "no
- 2 difference with calculated beginning balance." What does that
- 3 mean?
- 4 A. **As some of the agencies came online prior to February of**
- 11:27:53 5 **'85, we don't have a balance as of February of '85 available for**
- 6 **those accounts, so we've had to compute a beginning balance**
- 7 **based on an early balance file.**
- 8 Q. So 35,945 had no difference with the beginning balance. Can
- 9 you tell from here how many had a difference with the beginning
- 11:28:14 10 balance?
- 11 A. **I'm sorry, a difference without that beginning balance**
- 12 **computed?**
- 13 Q. Yeah.
- 14 A. **These 35,945.**
- 11:28:23 15 Q. These are the ones where the balance was consistent -- the
- 16 beginning balance was consistent with the balance file?
- 17 A. **These, we had to compute a beginning balance using a hard**
- 18 **copy balance file.**
- 19 Q. Okay. I understand.
- 11:28:35 20 And then the next column is the ones where you had one
- 21 or more differences, and you found 55,436 accounts where you
- 22 actually had one or more differences?
- 23 A. **That's correct.**
- 24 Q. And that's roughly, what, 13 percent of the total?
- 11:28:55 25 A. **I haven't done that math, but yes, it looks approximately.**

- 1 Q. And then in footnote one, you have something called the
2 total number of unresolved accounts is 104,130. What does that
3 refer to?
4 A. **That's the sum of the column we were just discussing, the**
11:29:18 5 **55,436, plus the nonzero balance column, the 48,694.**
6 Q. Okay. So if we go over to the NAANs with no balance file,
7 transactions balances, unresolved is that number, 48,694 plus
8 35,945?
9 A. **No. It's the 48,694 plus the 55,436.**
11:29:39 10 Q. I'm sorry, 55,436. Okay, thank you.
11 THE COURT: Mr. Smith, I'm sure you and the witness are
12 communicating perfectly, but I have completely lost you.
13 MR. SMITH: All right. Let me try it again.
14 BY MR. SMITH:
11:29:52 15 Q. You had certain accounts that had a balance file and certain
16 that didn't?
17 A. **That's correct.**
18 Q. And the first on the left side, you compare accounts that
19 have a balance file with the balance file?
11:30:02 20 A. **That's correct.**
21 Q. And you found 55,436 accounts that had a discrepancy between
22 the balance file and the actual transactional file?
23 A. **That's correct.**
24 Q. And then, the second category on the right-hand side is
11:30:23 25 accounts where you do not have any balance file at all?

- 1 A. **That's correct.**
2 Q. So you have nothing to compare it with?
3 A. **That's correct.**
4 Q. And that's where the 104,130 number comes, the accounts
11:30:38 5 where you've compared it to the balance file and found a
6 discrepancy, and the other accounts where you have nothing to
7 compare it to?
8 A. **If you'll look on the chart, in the column headings, "one or**
9 **more difference" has a footnote of one, and the nonzero balance**
11:30:57 10 **also has a footnote of one. That's the column that we're**
11 **summing to get to that 104,000 number.**
12 Q. And of those 55,436 accounts for which you had a balance
13 file, how many of those differences have been resolved today?
14 A. **This is as of September 30.**
11:31:18 15 Q. So there remains today 55,436 for which you have a balance
16 file which you haven't resolved yet?
17 A. **That's correct.**
18 Q. And are you going to resolve the 48,694 for which you do not
19 have a balance file?
11:31:34 20 A. **We're searching for balance files for those accounts.**
21 Q. So is it fair to say, looking at this chart, that at least
22 55,436 accounts have some missing data based on the balance
23 file?
24 A. **In some of these instances, I believe that we're simply**
11:32:03 25 **missing the beginning balance. I don't believe we're**

- 1 **necessarily missing transactions within.**
2 Q. Have you made that determination yet, how many are beginning
3 balance errors?
4 A. **No, I didn't say beginning balance errors, I said beginning**
11:32:16 5 **balances that weren't available.**
6 Q. Do you know how many of the 55,000 are beginning balances
7 that are not available?
8 A. **I would have to guess at that number. No, I don't know it**
9 **specifically.**
11:32:30 10 Q. And you do not know how many errors are in the 48,694, which
11 is on the right-hand side?
12 A. **Not errors, missing data. No, I do not.**
13 Q. Missing data. Okay.
14 And so are you going to go back and look through each
11:32:46 15 of those transactions individually to determine whether there is
16 missing data?
17 A. **The first step will be to find a balance file so we can**
18 **narrow down the time frame that we need to evaluate.**
19 Q. Do you know how long you've been looking for balance files
11:33:00 20 for those particular accounts?
21 A. **Which specific accounts, sir?**
22 Q. 48,694.
23 A. **As I mentioned, we worked through this on a regional basis,**
24 **and as I mentioned the other day, we just recently found the**
11:33:14 25 **Great Plains balance files approximately two weeks ago.**

- 1 Q. Okay.
2 THE COURT: Where did you find them?
3 THE WITNESS: There was microfiche available at the
4 Great Plains regional office, so it wasn't stored in Lenexa.
11:33:32 5 THE COURT: So what are you going to do with
6 microfiche?
7 THE WITNESS: They'll be converted to images so that we
8 can review those images.
9 THE COURT: You don't look at a microfiche machine
11:33:51 10 anymore?
11 THE WITNESS: No, I don't prefer to.
12 BY MR. SMITH:
13 Q. Do you treat missing data as not an error?
14 A. **I don't understand the question.**
11:33:58 15 Q. You made a distinction between -- when I said there was an
16 error, you said, no, it was missing data. If you have missing
17 data, do you consider that an error?
18 A. **I consider an error a transaction that wasn't posted**
19 **correctly, not transactions that are missing from the record**
11:34:19 20 **set.**
21 Q. Okay. Good.
22 And in some of these regions, the -- I'm not going to
23 use the word error. These missing data were fairly significant.
24 Is that fair?
11:34:39 25 A. **Yes.**

1 Q. For example, if you go to Navajo, it looks like over half of
 2 the accounts had missing data?
 3 A. **Yes, it does.**
 4 Q. And if you go to Eastern, it looks like -- I calculated
 11:35:00 5 87 percent. Does that look to be about right?
 6 A. **Yes, it does.**
 7 Q. You go to Southern Plains, Anadarko, it's roughly a third?
 8 A. **That's correct.**
 9 Q. Were you able to determine why there were so many
 11:35:15 10 inconsistencies between the balance file and the transactional
 11 records?
 12 A. **Those are three regions that we had not yet evaluated.**
 13 Q. Okay. I understand.
 14 So you don't know what those regions hold yet?
 11:35:29 15 A. **No, I do not.**
 16 Q. Okay. So let me clarify. Those three regions you have not
 17 evaluated; the rest are ones where you determined -- you
 18 basically cleaned up some of the errors or cleaned up some of
 19 the missing data?
 11:35:52 20 A. **As I mentioned, we've restored 275,000 transactions. The**
 21 **majority of those were in Great Plains.**
 22 Q. Were there other regions where there was a greater than
 23 50 percent difference between the balance file and the
 24 transactional information?
 11:36:09 25 A. **I don't recall.**

1 Q. But you would have that data available on your system in
 2 Los Angeles?
 3 A. **I would have to compute that number. It's not a schedule**
 4 **that I have prepared.**
 11:36:27 5 Q. Ms. Herman, in the work you've done, you've been looking at
 6 handling electronic data for over a decade now, a lot of it on
 7 this particular case. But you work on other matters as well.
 8 Is that correct?
 9 A. **That's correct.**
 11:36:39 10 Q. Have you ever seen an electronic system that had so many
 11 inconsistencies between the balance file and the transactional
 12 file?
 13 A. **I don't know that I've made that same comparison in other**
 14 **systems. Some of the other work that I've dealt with are, for**
 11:36:54 15 **instance, a bank that had multiple accounting systems that it**
 16 **had used over time, so the challenge in that situation was**
 17 **mapping those systems together.**
 18 Q. In that situation, did you see differences, or this large
 19 amount of missing data?
 11:37:14 20 A. **I don't recall in that specific scenario we had to go**
 21 **back --**
 22 THE COURT: I think you can move on to something else.
 23 MR. SMITH: Okay.
 24 THE COURT: We don't know what she's comparing them
 11:37:22 25 with. That's not helpful.

1 MR. SMITH: I'll move on.
 2 If we could look on 152-272. And if we could make it a
 3 little larger?
 4 BY MR. SMITH:
 11:37:51 5 Q. And Ms. Herman, is this basically the same information, but
 6 you're breaking it down by population?
 7 A. **These would be accounts that were opened between**
 8 **October 25th, 1994 and December 31st, 2000.**
 9 Q. And that's because Interior has defined the accounting as
 11:38:11 10 being within that time period. Is that correct?
 11 A. **Yes, it has.**
 12 Q. And so if that, in fact, was the time period --
 13 A. **This does include more than land-based and judgment per**
 14 **capita accounts, though. This includes special deposit accounts**
 11:38:30 15 **and all other accounts that would have been open at that time.**
 16 Q. So the total accounts within that time period, post 1994, is
 17 355,320. Is that correct?
 18 A. **That's correct.**
 19 Q. And as I recall in the prior chart, it was roughly 100,000
 11:38:52 20 more. Is that correct?
 21 A. **I believe so.**
 22 Q. So that's the number of accounts that would be excluded in
 23 the post 1985 period if you employ this accounting beginning in
 24 1994?
 11:39:07 25 A. **Yes. But as I mentioned, this isn't land-based and judgment**

1 **per capita accounts, these are all accounts in the system.**
 2 Q. I understand.
 3 And even in that short time period, you still have some
 4 54,000 unresolved accounts?
 11:39:26 5 A. **Yes, that's correct.**
 6 MR. SMITH: If we could look at 3-2-11?
 7 BY MR. SMITH:
 8 Q. Ms. Herman, this is a document received in the AR regarding
 9 a seminar that looks like you spoke at in July 2003. And the
 11:40:02 10 topic is system level reconciliation, non sample testing. Do
 11 you see that?
 12 A. **I do.**
 13 Q. Do you recall speaking at that seminar?
 14 A. **I believe this is the Albuquerque seminar that we spoke**
 11:40:11 15 **about earlier.**
 16 Q. Okay. Okay. Good.
 17 MR. SMITH: If we could go to 3-2-11 and 12. I can
 18 move on. It looks like our page numbers are different. I'm
 19 going to go ahead and move on.
 11:40:40 20 BY MR. SMITH:
 21 Q. Now, the master files are different than the IM500 files you
 22 talked about yesterday?
 23 A. **Yes, they are.**
 24 Q. And one of the first things you did when you began working
 11:40:54 25 on the DCV was to look at work that CD&L had done on the IM500

- 1 files?
- 2 **A. That's correct.**
- 3 **Q.** And they had done that work back in 2001. Is that correct?
- 4 **A. I don't recall specifically.**
- 11:41:05 5 **Q.** And the IM500 is just one more document that is generated by
- 6 IRMS?
- 7 **A. That's correct.**
- 8 **Q.** And on that file, you're just looking at total cash balances
- 9 for a fiscal year. Is that correct?
- 11:41:21 10 **A. By agency, by general ledger account.**
- 11 **Q.** So you're not looking at individual account balances, you're
- 12 just looking at total balances by agency?
- 13 **A. That's correct.**
- 14 **Q.** And CD&L began to compare those cash balances on the IM500
- 11:41:45 15 to again the transactional data on IRMS itself?
- 16 **A. That's correct.**
- 17 **Q.** And so once again, sort of like the master file, you're just
- 18 comparing one folder or one file in IRMS to another file in
- 19 IRMS. Is that correct?
- 11:41:59 20 **A. This was actually a hard copy printout, not an electronic**
- 21 **report.**
- 22 **Q.** It was generated from the IRMS system?
- 23 **A. That's correct.**
- 24 **Q.** And once again, those files should balance. Is that
- 11:42:11 25 correct?

- 1 **A. Yes, they were balances.**
- 2 **Q.** Excuse me?
- 3 **A. I said, yes, they were balances.**
- 4 **Q.** Yeah. And those files are supposed to balance. Is that
- 11:42:24 5 correct? The IM500 should balance with the transactional data.
- 6 Is that correct?
- 7 **A. Yes, it should.**
- 8 **Q.** And again, you noted significant discrepancies?
- 9 **A. Yes, we did.**
- 11:42:35 10 **MR. SMITH:** If we could look at Defendant's
- 11 Exhibit 152-221.
- 12 **BY MR. SMITH:**
- 13 **Q.** And is this a copy of the CD&L report you reviewed?
- 14 **A. This is a summary that we prepared of the CD&L report.**
- 11:42:54 15 **Q.** Okay. Okay. Thank you.
- 16 **And CD&L is an accounting firm in Albuquerque, or was.**
- 17 Is that correct?
- 18 **A. Yes, they are.**
- 19 **Q.** And if you focus on the highlighted section at the bottom of
- 11:43:14 20 the page, does this reflect the years where the electronic data
- 21 on the system was inconsistent with the IM500 report?
- 22 **A. Yes. Prior to the restoration of data.**
- 23 **Q.** So this was done prior to your beginning to fill in the
- 24 gaps?
- 11:43:36 25 **A. That's correct.**

- 1 **Q.** You can't tell us today how many of these years you've
- 2 filled in, have you?
- 3 **A. That's reported in the schedules that follow this report.**
- 4 **Q.** And so is it fair to say that you had a number of years
- 11:43:52 5 where there were significant discrepancies?
- 6 **A. Yes, that's correct.**
- 7 **Q.** Now, once again, you were not able to locate IM500 reports
- 8 for every agency for every year post-1985. Is that correct?
- 9 **A. We started with the reports that CD&L gathered for this**
- 11:44:10 10 **report that they had prepared, and we've subsequently requested**
- 11 **additional balance files but have not yet received them all.**
- 12 **Q.** Do you know how many of the ones you requested you've
- 13 received?
- 14 **A. I do not recall.**
- 11:44:23 15 **Q.** When was that request made?
- 16 **A. My best estimate is six months ago.**
- 17 **MR. SMITH:** If we could look at 152-224?
- 18 **BY MR. SMITH:**
- 19 **Q.** And at the bottom of that page, does CD&L list the actual
- 11:44:52 20 IM500 reports that they could not locate?
- 21 **A. I'm sorry, I can't read it.**
- 22 **MR. SMITH:** If we could focus on the bottom section?
- 23 **BY MR. SMITH:**
- 24 **Q.** Control account reconciliation, IM500 reports could not be
- 11:45:06 25 located for the following, and it begins to break it down by

- 1 region. Is that correct?
- 2 **A. I don't know if they're referring to the region in total or**
- 3 **the area office. Because in the data that we received, it was**
- 4 **broken out by agency.**
- 11:45:18 5 **Q.** Okay. So you can't tell whether this is just the area
- 6 office within a region or the region itself?
- 7 **A. Not based on these four lines, no.**
- 8 **Q.** If you could look to the next page as well. Does it appear
- 9 to be broken down by region?
- 11:45:39 10 **A. Yes, it does.**
- 11 **Q.** But as you noted, within the IM 500s you had, you confirmed
- 12 CD&L's research. Is that correct?
- 13 **A. Yes, we did.**
- 14 **Q.** And when did you start doing that, within the past year?
- 11:45:55 15 **A. I believe that we received that information approximately a**
- 16 **your and a half ago. It may have been longer.**
- 17 **Q.** And for those IM 500s you had, you agreed with the
- 18 discrepancies found by CD&L?
- 19 **A. Yes, we did.**
- 11:46:09 20 **Q.** For example --
- 21 **MR. SMITH:** If we could look at 152-228.
- 22 **BY MR. SMITH:**
- 23 **Q.** This is the Anadarko area. Is that correct?
- 24 **A. It appears to be, yes.**
- 11:46:24 25 **Q.** And for 1989 and 1990, there were discrepancies of over

1 \$300,000 and over \$800,000. Is that correct?

2 **A. That's correct.**

3 MR. SMITH: And let's go to 152-232.

4 BY MR. SMITH:

11:46:49 5 **Q.** Muskogee discrepancies of between four and five hundred
6 thousand dollars?

7 **A. These could potentially be offsetting differences. As you**
8 **see, the first number is negative and the next number is**
9 **positive.**

11:47:03 10 **Q.** With a year in between. Is that correct?

11 **A. Yes, that's correct.**

12 MR. SMITH: 152-232 -- I'm sorry, 233.

13 BY MR. SMITH:

14 **Q.** And in some of these areas, the discrepancies may be for
11:47:36 15 half or more of the years in which you made that comparison. Is
16 that correct?

17 **A. Yes. And this was relative to the initial data set.**

18 **Q.** So again, anywhere from 73 dollars up to 500 plus thousand
19 dollars. Is that correct?

11:47:54 20 **A. Yes, relative to the initial data set.**

21 MR. SMITH: Let's look at 152-234.

22 BY MR. SMITH:

23 **Q.** And some of those discrepancies were over \$1.5 million?

24 **A. Yes, you'll see that on our report we were able to restore**
11:48:23 25 **that information.**

1 **Q.** Okay.

2 **A. It was the beginning balances for one of the agencies in**
3 **that region.**

4 MR. SMITH: How about 152-236?

11:48:29 5 BY MR. SMITH:

6 **Q.** This is the Navajo region; again, variations of anywhere
7 from over 100,000 to over 300,000 dollars?

8 **A. That's correct.**

9 MR. SMITH: And 152-237.

11:48:48 10 BY MR. SMITH:

11 **Q.** I'm sorry, we're looking at the Portland area, and the
12 variances range 2.9 million, 1.8 million, 1.4 million; 1999 it
13 looks like 6.2 million, although that may be an overlap between
14 1988 and 1989. Is that correct?

11:49:21 15 **A. Yes. That's most likely a timing difference, not a data**
16 **problem.**

17 **Q.** And I take it you're still working on trying to reconcile
18 these discrepancies?

19 **A. The results of our work are contained in that same section**
11:49:31 20 **of the report.**

21 **Q.** Right. It hasn't been completed as of this point in time.
22 Is that correct?

23 **A. No, it is not.**

24 **Q.** Now, you also found inconsistencies in the balances between
11:49:41 25 the IM500s themselves. Is that correct?

1 **A. I'm sorry, between the -- I don't understand.**

2 MR. SMITH: Let's look at 152-224.

3 BY MR. SMITH:

4 **Q.** Focus on number four. It says, "during our work, we noticed
11:50:10 5 certain discrepancies in the IM500 reports between the cash
6 104XX accounts balances and the liability, 206XX accounts,
7 balances." And then they say they prepared a comparison of the
8 account balances?

9 **A. This is an excerpt from CD&L's work. We didn't compare the**
11:50:27 10 **104 accounts to cash accounts.**

11 **Q.** So you didn't do that comparison?

12 **A. No, that was work done by CD&L.**

13 **Q.** So you only verified the IM500, comparing the IM500 to the
14 transactional information?

11:50:39 15 **A. To the accounts in the IIM system, which are not the cash**
16 **accounts.**

17 **Q.** And why did you not verify this part of their report?

18 **A. Because my concern was in filling in the gaps in the IRMS**
19 **IIM system data, not in reconciling the general ledger and the**
11:50:55 20 **detail ledger.**

21 **Q.** Okay. But you have used the general ledger in your work on
22 the DCV as well. Is that correct?

23 **A. We've mapped transactions into the Tribal Trust accounts and**
24 **used that work in the throughput analysis.**

11:51:12 25 **Q.** Okay. But you haven't reconciled the differences in the

1 IM500 reports?

2 **A. We have not evaluated the cash accounts, no.**

3 MR. SMITH: Let's look at 152-239.

4 BY MR. SMITH:

11:51:33 5 **Q.** 1989, CD&L identified a \$22 million variance in the IM500s.

6 **A. This is between the -- yes, in the cash account. Most of**
7 **December '89 was missing from the initial IRMS data. That could**
8 **account for some of this variance.**

9 **Q.** But you have not been tasked with reconciling that
11:51:58 10 difference?

11 **A. I don't know if this difference still exists today after**
12 **we've restored the transactions. As I mentioned, it's not**
13 **something that I checked.**

14 MR. SMITH: How about 152-241?

11:52:05 15 BY MR. SMITH:

16 **Q.** It looks like there's some minor differences, and then a
17 \$300,000 difference in 1993.

18 **A. As I mentioned, I did not check the difference between the**
19 **104 accounts and the 206 accounts.**

11:52:25 20 MR. SMITH: How about 152-244?

21 BY MR. SMITH:

22 **Q.** It looks like in 1987 there was a \$1.9 million difference in
23 the IM500 in the Muskogee area. You haven't been tasked with
24 reconciling that difference either?

11:52:51 25 **A. Sir, as I stated, I did not evaluate the 104 cash accounts.**

1 Q. Has anybody suggested to you why there are discrepancies
 2 within the IM500's themselves?
 3 A. **I have not asked that question.**
 4 Q. But you're using these same IM500's for the throughput
 11:53:11 5 analysis?
 6 A. **For the balance files, yes, for some of the years.**
 7 MR. SMITH: How about 152-246?
 8 BY MR. SMITH:
 9 Q. It looks like we've got discrepancies of -- in the
 11:53:26 10 Sacramento area of over \$600,000 in 1987 and \$2 million in 1990?
 11 A. **Again, I did not look at the difference between the 104**
 12 **accounts and the 206 accounts.**
 13 Q. But you did use this data in your throughput analysis?
 14 A. **We used the IM500 balance file numbers, yes, for some of the**
 11:53:50 15 **years.**
 16 THE COURT: It's getting a little redundant, Mr. Smith.
 17 MR. SMITH: I'll move on.
 18 THE COURT: In fact, it's getting very redundant.
 19 MR. SMITH: I can take a hint, Your Honor.
 11:53:58 20 BY MR. SMITH:
 21 Q. How about comparing the IM500's to the actual audits? Did
 22 you do that?
 23 A. **In the audited years in our throughput numbers, we would**
 24 **have used the audited numbers.**
 11:54:12 25 Q. But were there differences between what was on the IM500's

1 and what was in the audits?
 2 A. **I don't recall. But that is a schedule in the June 2006**
 3 **binder that was provided.**
 4 MR. SMITH: Let's look at 56-2-1.
 11:54:21 5 BY MR. SMITH:
 6 Q. And this is a document that you referred to yesterday in
 7 your throughput analysis. Is that correct?
 8 A. **Yes, it is.**
 9 MR. SMITH: And if we could look at page five of that
 11:54:46 10 document, and focus in on note four?
 11 BY MR. SMITH:
 12 Q. And did you, in fact, identify a \$14 million difference
 13 between what Griffin & Associates reported for 1995 and what was
 14 reported on the IM500?
 11:55:07 15 A. **It looks like approximately a \$20 million difference, yes.**
 16 Q. Approximately a \$20 million difference?
 17 A. **I'm sorry, these are very small numbers. It looks like 503**
 18 **versus 488, the number I'm looking at.**
 19 Q. It says resulting in a difference of 14.6?
 11:55:24 20 A. **There we go.**
 21 Q. Okay.
 22 A. **As I mentioned, there's a schedule in the June 2006 report**
 23 **that was prepared that listed all of the differences, if there**
 24 **were any.**
 11:55:36 25 Q. Have you been tasked with trying to find why there are

1 differences between the audit and the IM500?
 2 A. **No, I have not.**
 3 Q. Or comparing the audit to the actual transactional records?
 4 A. **No, I did not.**
 11:55:53 5 Q. So there may be differences in the transactional records
 6 that you have not looked at yet. Is that fair?
 7 A. **I'm sorry, I don't understand the question. But I did not**
 8 **compare the audit to the transactional data.**
 9 Q. So you haven't determined what information might be missing
 11:56:07 10 to arrive at that \$14 million figure?
 11 A. **I'd have to understand how the auditors compiled their**
 12 **number to determine the result -- how that difference was**
 13 **counted.**
 14 Q. Have you suggested to Interior that that's something that
 11:56:21 15 needs to be done?
 16 A. **I have not, no.**
 17 Q. And do you know if anybody's doing it?
 18 A. **I do not.**
 19 Q. Is it fair to say that there are questions about the
 11:56:33 20 accuracy of the information in the IM500's?
 21 A. **Yes, there are differences.**
 22 Q. And so there's questions about their accuracy?
 23 A. **Yes, there could be differences between the reports. You**
 24 **would want to understand why those differences exist.**
 11:57:00 25 Q. Given the problems you found, the missing data, some of the

1 inconsistencies in the IRMS database that you were provided by
 2 OST, is it fair to say that information you were provided was
 3 not complete?
 4 A. **No, it was not complete.**
 11:57:21 5 Q. It was not accurate?
 6 A. **I didn't say accurate, I said complete.**
 7 Q. Was the information you provided in the IRMS database
 8 accurate?
 9 A. **The data validation tests aren't going to tell you accurate.**
 11:57:33 10 **The litigation support accounting tests shows you accurate. And**
 11 **we did find some discrepancies in the transactions we evaluated.**
 12 Q. There's two parts of that. First, you say the data
 13 completion test that you're doing doesn't show you accuracy?
 14 A. **That's not the goal. We have discovered some posting errors**
 11:57:47 15 **as a result of that test, but it's not the goal of the test.**
 16 Q. Because you're not determining the accuracy of the money
 17 coming in and the accuracy of the money going out. Is that
 18 correct?
 19 A. **Not as a component of that test, no.**
 11:58:01 20 Q. Once again, it's fair to say that the database that you were
 21 provided by OST, the IRMS database, was not accurate?
 22 A. **Was not complete.**
 23 Q. Was it reliable?
 24 A. **It wasn't complete. I don't understand. What exactly do**
 11:58:22 25 **you mean by reliable?**

1 Q. If it's not complete, could it be used for the purposes for
 2 which it was intended?
 3 A. **We have to fill in the data gaps before we can issue**
 4 **statements, if that's the question.**
 11:58:35 5 Q. Okay. So the database that you were provided was not
 6 complete, and affected the ability to issue account statements?
 7 A. **Yes, we have to fill in the gaps before we can issue**
 8 **statements.**
 9 Q. Have you been tasked with trying to find out why there are
 11:59:06 10 this degree of missing data or inaccuracies in the IRMS system?
 11 A. **I have not been tasked with discovering why the data is**
 12 **missing.**
 13 Q. So you can't tell us whether it was because of a clerical
 14 error, an intentional error, fraud?
 11:59:24 15 A. **I cannot, no.**
 16 Q. That's not something that is within your scope of
 17 responsibilities. Is that fair?
 18 A. **Not to determine why the data is missing, no.**
 19 MR. SMITH: If we could look at Defendant's
 12:00:04 20 Exhibit 152-69?
 21 BY MR. SMITH:
 22 Q. I believe this is a document you looked at yesterday. It
 23 comes from your report. Is that correct?
 24 A. **I don't believe we looked at it yesterday, but it is from my**
 12:00:23 25 **report, yes.**

1 Q. They all start to look the same after a while. I apologize.
 2 You have a column in there that talks about the ledger
 3 period. Do you see that?
 4 A. **Yes, I do.**
 12:00:31 5 Q. And are there certain accounts for which you're looking back
 6 into the ledger period?
 7 A. **Some of that work has started, in particular in Alaska.**
 8 Q. And are you looking at accounts that are on the existing
 9 electronic system in trying to do a paper trail for those
 12:00:51 10 accounts?
 11 A. **Yes, that's how this work started.**
 12 Q. So far you've looked at 353 accounts? Or let me say --
 13 A. **Excuse me, in part. It doesn't mean that we looked at the**
 14 **account in its total.**
 12:01:06 15 Q. You've identified 353?
 16 A. **Those are accounts that have had transactions rekeyed, not**
 17 **all accounts that exist in the paper time frame.**
 18 Q. And when did you start that process?
 19 A. **The Alaska work was done, I believe, approximately**
 12:01:23 20 **six months ago. Some of these other transactions were most**
 21 **likely a result of other projects within Interior -- excuse me,**
 22 **within OHTA.**
 23 Q. And if you could look under the section marked IRMS, the
 24 center section, it talks about accounts. And down in the total
 12:01:43 25 we have 160,206 --

1 A. **Yes.**
 2 Q. -- accounts. Is that correct?
 3 A. **Yes.**
 4 Q. And does that represent the number of accounts in which data
 12:01:55 5 has been changed or affected in some way by your work?
 6 A. **Has been restored.**
 7 Q. Has been restored?
 8 A. **Yes.**
 9 Q. And then you have -- above that, you have 152,825 original
 12:02:08 10 accounts, and then for a total of 160. So the extra 7,300 is
 11 what?
 12 A. **Accounts that were not in the initial electronic data set.**
 13 Q. So you've identified an additional 7,300 accounts that were
 14 not originally in the electronic era?
 12:02:25 15 A. **Yes, that's correct.**
 16 Q. And so it looks like you've identified an additional 7,400
 17 transactions?
 18 A. **Yes, I did.**
 19 Q. And so far, if I'm reading this correct, you have at this
 12:02:41 20 point in time corrected 451,875 transactions?
 21 A. **That we've restored that many transactions.**
 22 Q. So either the data was incorrect and you fixed it, or it
 23 wasn't on the system and you put it on the system?
 24 A. **No, I didn't say that we corrected data, I said that we**
 12:02:59 25 **restored transactions that were not there.**

1 Q. So this is just -- the 451,875 is the ones you've identified
 2 so far that should have been on the system but weren't?
 3 A. **That's correct.**
 4 Q. And so, so far you've identified \$30 million that wasn't on
 12:03:13 5 the system that should have been?
 6 A. **That's correct.**
 7 MR. SMITH: How about 152-276?
 8 BY MR. SMITH:
 9 Q. I believe you did look at this exhibit yesterday as part of
 12:03:33 10 your study?
 11 A. **Yes, we did.**
 12 Q. Regarding reused accounts?
 13 A. **That's correct.**
 14 Q. And so at this point in time, you still have about half of
 12:03:45 15 those accounts to review?
 16 A. **No, we reviewed over 600,000 accounts already. We only have**
 17 **786 remaining.**
 18 Q. Okay. I got you.
 19 In your review of reused accounts, would it be common
 12:04:00 20 that an account would be closed and then within just a few
 21 months it would be opened again under someone else's name?
 22 A. **In some instances, yes.**
 23 Q. Have you looked at reused accounts yet in the paper era?
 24 A. **No, I have not.**
 12:04:14 25 Q. So that's not something you've been tasked to do?

- 1 A. **Not yet, no.**
- 2 Q. And so you don't know how the process would be to identify
- 3 reused accounts in the paper era?
- 4 A. **I would presume we would use a similar process, but that**
- 12:04:26 5 **work has not yet begun.**
- 6 Q. But of course you do not have an electronic database to
- 7 start with. Is that fair?
- 8 A. **That's correct.**
- 9 MR. SMITH: If we could look at Defendant's
- 12:04:44 10 Exhibit 152-292?
- 11 BY MR. SMITH:
- 12 Q. Is this, again, a section from your DCV?
- 13 A. **Yes, it is.**
- 14 Q. And you have a section at the bottom entitled, "Accounts Not
- 12:05:04 15 Receiving Historical Accounting." Are these those accounts that
- 16 would be excluded from the post '94 period?
- 17 A. **Accounts that were not opened between that time frame, yes.**
- 18 Q. So under the Interior's definition of an accounting, whether
- 19 accounting is required, these particular accounts would not be
- 12:05:24 20 encompassed. Is that your understanding?
- 21 A. **That's my understanding.**
- 22 Q. So it would be just between what you've defined as the
- 23 beginning of the electronic era in 1994, you would be excluding
- 24 578,821 NAANs?
- 12:05:41 25 A. **No, that's the total number of accounts. So if you're**

- 1 **talking about accounts that wouldn't get a statement, it's the**
- 2 **judgment per cap accounts, the 68,000, and the land-based**
- 3 **accounts, the 51,767. The 578 is the total of the entire**
- 4 **column.**
- 12:05:59 5 Q. The subtotal is 159,249?
- 6 A. **That's correct.**
- 7 Q. So it's a total of 159,249 accounts that would be excluded?
- 8 A. **Yes. But not all of those accounts would be issued a**
- 9 **statement, regardless of when they were opened.**
- 12:06:14 10 Q. Because?
- 11 A. **For instance, we're not issuing statements to special**
- 12 **deposit accounts.**
- 13 Q. And the total throughput of those accounts during that
- 14 period 1985 to 1994 was 3.1 billion?
- 12:06:33 15 A. **Yes. But the more appropriate number to look at is the 367**
- 16 **and the 435, which pertains to the judgment per cap and the**
- 17 **land-based.**
- 18 Q. Let me ask you about judgment and per capita. Have you
- 19 looked at judgment accounts prior to 1985?
- 12:06:49 20 A. **I have not, no.**
- 21 Q. Do you know if anybody is looking at judgment accounts prior
- 22 to 1985?
- 23 A. **I do not.**
- 24 Q. Have you seen any of the judgment account summaries that
- 12:07:08 25 have been prepared by Interior?

- 1 A. **The statements?**
- 2 Q. Statements.
- 3 A. **Yes, I have seen some of them.**
- 4 Q. You have seen some. Have you reviewed any of those
- 12:07:16 5 statements?
- 6 A. **Just the format of the statements.**
- 7 Q. Do you know if any of those statements involved transactions
- 8 prior to 1985?
- 9 A. **I do not know if they did or not.**
- 12:07:25 10 Q. And you haven't been tasked with determining how many
- 11 judgment accounts existed prior to 1985?
- 12 A. **No, I have not.**
- 13 Q. Let me ask you about some of your testing that was done.
- 14 You described some tests yesterday. One was called a mapping
- 12:08:03 15 test, and that's where you're trying to identify -- actually,
- 16 you had three types of mapping. Right? One was a reversal
- 17 mapping. Is that correct?
- 18 A. **That's correct.**
- 19 Q. And that's where you tried to identify a reversal and try to
- 12:08:14 20 find the corresponding transaction?
- 21 A. **That's correct.**
- 22 Q. And then you had what you just defined as transaction
- 23 mapping?
- 24 A. **Transfers? Is that what we're referring to?**
- 12:08:25 25 Q. Right. Transfer mapping?

- 1 A. **Yes. That's correct.**
- 2 Q. That's where you're following the transactions from account
- 3 to account?
- 4 A. **That's correct.**
- 12:08:30 5 Q. But you're not verifying the information coming in?
- 6 A. **Not as a component of that test, no.**
- 7 Q. And as a component of that test, you're not verifying the
- 8 information going out?
- 9 A. **Not in that test, no.**
- 12:08:42 10 Q. And is it fair that based on that analysis you've done so
- 11 far on mapping, you've identified 378,843 potential posting
- 12 errors?
- 13 A. **No, that's groups of transactions that have errors. I**
- 14 **believe the number is approximately 1,800 or 1,900.**
- 12:09:01 15 Q. Okay. What do you mean by groups of errors?
- 16 A. **So for instance, if you have an interest distribution and**
- 17 **there are 100,000 postings in that interest distribution and two**
- 18 **are wrong, there are two that were in error, but the group had**
- 19 **102,000 transactions.**
- 12:09:22 20 Q. And then you identified something called mapping to
- 21 Treasury. And that's where you're taking transactions and
- 22 comparing it to the CP&R. Is that correct?
- 23 A. **That's correct.**
- 24 Q. And what is a CP&R?
- 12:09:34 25 A. **The CP&R file records the status of a check.**

- 1 Q. And who generates the CP&R?
- 2 A. **Treasury does.**
- 3 Q. Is it based on information provided by Interior?
- 4 A. **I believe the initial check information is provided by**
- 12:09:46 5 **Interior, and the status of the check is provided by Treasury.**
- 6 Q. And you are not mapping typically to the individual check
- 7 itself. Is that correct?
- 8 A. **No, we are.**
- 9 Q. In some instances, you're looking at the individual check?
- 12:10:00 10 A. **Yes.**
- 11 Q. Okay. And you only have CP&R data post 1998?
- 12 A. **No, CP&R starts in 1987.**
- 13 Q. So you only have it post 1987?
- 14 A. **Yes, from March of 1987 through December of 2002.**
- 12:10:19 15 Q. Do you know if anybody has been tasked with the job of
- 16 determining the accuracy of the CP&Rs?
- 17 A. **I believe NORC conducted a sample of that test.**
- 18 Q. In your experience, have you found discrepancies between
- 19 CP&Rs and actual check data?
- 12:10:34 20 A. **Between the physical check and CP&R?**
- 21 Q. Uh-huh.
- 22 A. **I don't recall if I have.**
- 23 Q. Has anybody suggested to you that there might be
- 24 discrepancies between what's on the CP&R and the actual check
- 12:10:45 25 data?

- 1 A. **No one has suggested that to me, but there was a test done.**
- 2 Q. Yesterday you described a roll forward test. And that's
- 3 using the balance files. Is that correct?
- 4 A. **That's correct.**
- 12:11:02 5 MR. SMITH: And if we could look at DX 152-279?
- 6 BY MR. SMITH:
- 7 Q. And this is the roll-forward -- the results of your
- 8 roll-forward test for those accounts which had balance files.
- 9 Is that correct?
- 12:11:25 10 A. **That's correct.**
- 11 Q. And this is limited to in the population. Is that correct?
- 12 A. **No, the out-of-population accounts are here as well.**
- 13 Q. Okay. I see. Okay.
- 14 And again, in-the-population is post-1994?
- 12:11:41 15 A. **That's correct.**
- 16 Q. Now, are you reconciling discrepancies whether they're in
- 17 the population or not?
- 18 A. **I'm sorry, reconciling in the LSA work or the data**
- 19 **validation work?**
- 12:11:54 20 Q. How about the data validation work?
- 21 A. **The data validation work looks at all of the electronic**
- 22 **transactions regardless of whether or not the account was open**
- 23 **as of '94.**
- 24 Q. So if you find discrepancies that are outside the
- 12:12:06 25 population, you're correcting those as well?

- 1 A. **We're reporting those to OHTA.**
- 2 Q. You're reporting those, not necessarily correcting them?
- 3 A. **We're not in a position to post transactions to the system.**
- 4 Q. Do you know if OHTA then corrects the transactions?
- 12:12:20 5 A. **OHTA reports the transactions to OST. I don't know what**
- 6 **happens as that point.**
- 7 Q. How about in the LSA? Are you just looking within the
- 8 population or are you just looking at inside the population as
- 9 well?
- 12:12:30 10 A. **Within the population.**
- 11 Q. So you're only looking at post-1994?
- 12 A. **Not post-1994 transactions only, but accounts that were open**
- 13 **then.**
- 14 Q. And just an example, for the land-based accounts you found
- 12:12:45 15 42,361; is that transactions that did not roll forward, or
- 16 accounts?
- 17 A. **I believe that's accounts.**
- 18 Q. Okay. So roughly what is that, 10 percent, nine percent?
- 19 A. **Roughly, yes.**
- 12:13:03 20 MR. SMITH: If we could look at 154-44?
- 21 BY MR. SMITH:
- 22 Q. Which is an exhibit you looked at yesterday regarding
- 23 Mr. Andersen. Do you remember this?
- 24 A. **Yes, I do.**
- 12:13:16 25 Q. And Mr. Anderson's account was one that popped up as part of

- 1 the roll-forward test?
- 2 A. **Yes, it is.**
- 3 Q. And there was a discrepancy of roughly \$1,100?
- 4 A. **That's correct.**
- 12:13:29 5 Q. And then you did some research on that.
- 6 MR. SMITH: And if we could look at 154-58?
- 7 BY MR. SMITH:
- 8 Q. And based on that, you've made an adjusting entry of \$1,100.
- 9 Is that correct?
- 12:13:49 10 A. **That record has not been added to the data set. That's**
- 11 **where I believe the transaction is missing.**
- 12 Q. Okay. And this should have been a check to this gentleman
- 13 for \$1,100?
- 14 A. **It should have been a check from his account. I can't tell**
- 12:14:07 15 **you if it would have been made out to him or someone else.**
- 16 Q. But you couldn't find the check?
- 17 A. **We don't have a check number. This is my presumption of**
- 18 **where the data is missing.**
- 19 Q. So you found -- so you're not representing that this check
- 12:14:24 20 was actually received by this gentleman. Is that correct?
- 21 A. **No. What I'm saying in this schedule is that I believe that**
- 22 **there's a check missing on July 1st, 1986 in that dollar amount.**
- 23 Q. But you've done nothing to verify whether that check was
- 24 actually issued or received?
- 12:14:40 25 A. **I'm still researching this account. That's why it's**

1 reported here.

2 Q. Okay. How long have you been researching this particular

3 account?

4 A. **Probably two years.**

12:14:49 5 Q. So in two years you've not been able to find -- determine

6 whether the check was issued or he received a check?

7 A. **As I mentioned, this is my presumption as to what happened,**

8 **that a check was issued. I don't know, in fact, that a check**

9 **was issued.**

12:15:05 10 Q. Do you know if anybody in addition to yourself is going to

11 try to verify that?

12 A. **I'm not aware, no.**

13 MR. SMITH: Let's look at 152-35, the corrected

14 version.

12:15:19 15 BY MR. SMITH:

16 Q. Ms. Herman, this is one of the documents we received over

17 the weekend. And this is the corrected version of your overall

18 report. Is that correct?

19 A. **Certain pages in the report were corrected, yes.**

12:15:53 20 THE COURT: Is that what that "C-O-R" in the bottom

21 right-hand corner means?

22 THE WITNESS: That's correct.

23 BY MR. SMITH:

24 Q. And one of the changes I noted was under the section marked

12:16:02 25 unresolved transactions. Do you see that toward the top of the

1 page?

2 A. **Yes, I do.**

3 Q. It says, "As of the date of this report, 2,597,306

4 transactions, or 2.7 percent of the total transactions analyzed,

12:16:19 5 remain in the population for review."

6 Okay. This was a change from roughly 700,000 before?

7 A. **I don't recall what it said previously. This is the number**

8 **that was reported in all of the supporting schedules.**

9 Q. So this is the correct number as to the number of

12:16:33 10 transactions that remain?

11 A. **That's correct.**

12 Q. And you talked about in the population for review. Is that

13 the post-1994 period?

14 A. **No. As I mentioned, we review all transactions in the**

12:16:43 15 **electronic data.**

16 Q. So the population here means something different than

17 post-1994?

18 A. **Yes, it does.**

19 Q. If you could look at Defendant's Exhibit 146, the one you

12:16:58 20 looked at yesterday. 146-1, do you remember this as a grazing

21 permit?

22 A. **Yes, I do.**

23 Q. And it's a permit that's supposed to end November 30, 2002.

24 Is that correct?

12:17:34 25 A. **Yes, based on this page.**

1 Q. In the amount of \$6,234?

2 A. **I believe so. The number is pretty small. Yes.**

3 Q. And then toward the bottom of the page it says, "payment."

4 It's got \$6,234, and then a prep fee of \$117.34. Is that

12:17:55 5 correct?

6 A. **That's correct.**

7 Q. And what is a prep fee?

8 A. **That's a fee that the Bureau was charging for preparing the**

9 **lease.**

12:18:08 10 MR. SMITH: And if we could look at Defendant's

11 Exhibit 144?

12 BY MR. SMITH:

13 Q. Is this the bill for collection for that same transaction?

14 A. **Yes, it is.**

12:18:27 15 Q. And it reflects under miscellaneous receipts where Interior

16 has taken out their portion of that fee?

17 A. **Yes.**

18 THE WITNESS: If you could blow up that section a

19 little bit, please?

12:18:39 20 A. **The 6,234 is what's deposited into the IIM Trust, which is**

21 **an agreement with the terms of the permit. The 117 is deposited**

22 **into the BIA account.**

23 BY MR. SMITH:

24 Q. Are they both deposited into the SDA?

12:18:56 25 A. **No, they are not.**

1 MR. SMITH: If we could look at Defendant's Exhibit 143

2 on page two.

3 BY MR. SMITH:

4 Q. And does that reflect the fractionalization information you

12:19:36 5 obtained from LRIS?

6 A. **That's correct.**

7 Q. And you're relying on what BIA told you about that

8 information?

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

12:19:45 10 Q. And what this came down to was trying to track ultimately

11 what this gentleman received, which was \$0.58. Is that correct?

12 A. **I'm sorry?**

13 Q. Ultimately, this particular gentleman on this transaction

14 received \$0.58?

12:19:59 15 A. **That's correct.**

16 Q. And you tried to track that to make sure he got it?

17 A. **That he should have received \$0.58 and not another dollar**

18 **amount.**

19 Q. Okay. And this was a lease, as we noted, that went through

12:20:13 20 2002. Is that correct?

21 A. **Yes, it did.**

22 MR. SMITH: If we can look at Defendant's Exhibit 115?

23 BY MR. SMITH:

24 Q. And if you could look on page five of that document, and if

12:20:56 25 you could look, I believe it's the ninth transaction from the

1 bottom, it's dated December 9, 1998, "Range Lease Income," and
 2 that's where you identified the \$0.58?
 3 **A. Yes, that's correct.**
 4 **Q.** So you identified it for 1998?
 12:21:20 5 **A. I'm sorry, I don't recall. Was the transaction we were**
 6 **reconciling in '97 or '98?**
 7 **Q.** I'm not sure. Do you recall if it was '97 or '98?
 8 **A. I don't. We would have to flip back to the work papers.**
 9 **I'm sorry.**
 12:21:40 10 **Q.** Regardless of that fact, this gentleman should be receiving
 11 \$0.58 in 1997, 1998, 1999, 2000?
 12 **A. Only if he still maintained his ownership of that allotment**
 13 **and the terms of the permit didn't change.**
 14 **Q.** Okay.
 12:21:54 15 **MR. SMITH:** If we could go to page six of that
 16 document?
 17 **BY MR. SMITH:**
 18 **Q.** And do you see where the year 2000 starts, January 24, 2000,
 19 monthly income earned?
 12:22:18 20 **A. Yes, I do.**
 21 **Q.** And it doesn't appear that he received his \$0.58 during the
 22 year 2000. Is that correct?
 23 **A. It does not appear based on this, no.**
 24 **Q.** Does your test go to determine whether something like that
 12:22:34 25 missing and why?

1 **A. This could have posted in 2001, he could have sold his**
 2 **interest in this tract. There's lots of reasons why that may**
 3 **not be there.**
 4 **Q.** But your investigation would not determine why a transaction
 12:22:48 5 like that may be missing from an account?
 6 **A. I don't believe I understand your question. As a component**
 7 **of the LSA work?**
 8 **Q.** Right. Or -- yeah , as a component of your LSA work.
 9 **A. No, we only reconciled the component that was selected.**
 12:23:06 10 **Q.** So on your last document, which you have called the
 11 statement of known differences, something like that, a missing
 12 transaction like that would not necessarily be reported?
 13 **A. We haven't established that it is a missing transaction.**
 14 **Q.** Do you know anybody that's going to work to establish
 12:23:24 15 whether there's a missing transaction or not?
 16 **A. Not as a result of what we've discussed, no.**
 17 **THE COURT:** Mr. Smith, we have a criminal matter that
 18 going to be teed up in this courtroom in about five minutes,
 19 and I think it -- is it a sealed matter, AI?
 12:23:47 20 **COURTROOM DEPUTY:** Yes, sir, it is.
 21 **THE COURT:** It's a sealed matter, which means you're
 22 going to have to get out of here. And looking at the number of
 23 people involved, I don't want to turn this into a fire drill. I
 24 think it's time for us to recess for lunch.
 12:24:01 25 **MR. SMITH:** That would be great, Your Honor.

1 **THE COURT:** But before we go to lunch, I want to ask
 2 the witness, and if you can't answer this question, feel free to
 3 say "I don't know."
 4 **We've been talking a lot yesterday and today about the**
 12:24:16 5 **search for \$0.58. Do you have a guesstimate of how many**
 6 **billable hours your firm expended looking for that \$0.58?**
 7 **THE WITNESS:** My best guess, Your Honor, would be at
 8 minimum 10, and that doesn't include the search time.
 9 **THE COURT:** And an average billable rate of a couple
 12:24:40 10 hundred dollars?
 11 **THE WITNESS:** That's correct.
 12 **THE COURT:** So we're talking about \$2,000 looking for
 13 \$0.58. Did anybody, to your knowledge, question whether there
 14 should be cutoffs in this effort, or were your instructions to
 12:25:03 15 run everything down to the last penny?
 16 **THE WITNESS:** We were to run it down to the last penny,
 17 Your Honor.
 18 **THE COURT:** I won't ask you to comment on that, I'll
 19 just ponder it.
 12:25:20 20 **Thank you, Mr. Smith.**
 21 **MR. SMITH:** Thank you.
 22 **THE COURT:** See you after lunch.
 23 **(Recess taken at 12:25 p.m.)**
 24
 25

1 **CERTIFICATE OF OFFICIAL COURT REPORTER**
 2
 3 **I, Rebecca Stonestreet, certify that the foregoing is a**
 4 **correct transcript from the record of proceedings in the**
 5 **above-entitled matter.**
 6
 7
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 9 _____
 10 **SIGNATURE OF COURT REPORTER** **DATE**
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