

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, : Civil Action 96-1285
et al. :
Plaintiffs :
 : Washington, D.C.
V. : Thursday, June 12, 2008
 :
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 computer-aided transcription.

C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
MICHELLE HERMAN				
By Mr. Quinn	3	--	--	--
By Mr. Dorris				

E X H I B I T S

NUMBERADMITTED

(No Exhibits Moved into Evidence.)

P R O C E E D I N G S

1
2 COURTROOM DEPUTY: This is Civil Action 96-1285,
3 Elouise Cobell, et al. versus Dirk Kempthorne, et al.

4 THE COURT: Good morning, everybody. We're not ready
5 for Ms. Herman yet, Mr. Kirschman?

6 MR. KIRSCHMAN: Yes, we are, Your Honor. But I just
7 have a brief update, Your Honor. I informed you yesterday that
8 defendants plan to file a Rule 52(c) motion.

9 THE COURT: Yes.

10 MR. KIRSCHMAN: We did not file that because we did not
11 receive the transcript from Tuesday afternoon involving
12 Professor Cornell's testimony until this morning. Now that we
13 have that transcript, we will shortly be filing the motion in
14 the clerk's office, and I would request that we have an
15 opportunity to briefly argue that motion sometime Monday,
16 preferably Monday morning before we start.

17 THE COURT: Okay.

18 MR. KIRSCHMAN: Thank you, Your Honor.

19 THE COURT: Good morning, Mr. Quinn.

20 MR. QUINN: Good morning, Your Honor. Just before we
21 bring Ms. Herman back up to the stand, Your Honor had made some
22 reference to DX-365, which is the exhibit I had been asking some
23 questions about of the witness just at the end of the day.

24 THE COURT: Yes.

25 MR. QUINN: Essentially as far as my questioning goes,

1 I directed Ms. Herman, with respect to that exhibit, I'm
2 prepared to move on to another subject. The plaintiffs in their
3 case-in-chief in this part of the case have not used
4 Defendant's 365, and our questions yesterday were designed to
5 indicate the reasons why we're not relying on DX-365 in this
6 part of the case. And since neither party for this purpose is
7 relying on Defendant's Exhibit 365, I don't believe it's
8 relevant. The Court I don't think needs -- that it merits
9 further consideration.

10 THE COURT: Okay. All right.

11 **(MICHELLE HERMAN, DEFENDANT witness, having been previously duly**
12 **sworn, testified as follows:)**

13 **CONTINUED DIRECT EXAMINATION**

14 BY MR. QUINN:

15 Q. Good morning.

16 A. Good morning.

17 Q. When we left off yesterday, Ms. Herman, we were talking
18 about your historical flow of funds diagram. If I could, I
19 would like to move this for the Court's benefit.

20 THE COURT: Is there anything magic to the word
21 "historical" in that? It used to be that way, now it's not?

22 MR. QUINN: Well, with the reform efforts there have
23 been many changes in the last few years; for instance, getting
24 rid of SDA accounts. The efforts to disburse with the use of
25 TFAS today, the flow of funds in the system have changed.

1 BY MR. QUINN:

2 Q. Ms. Herman, are you aware of more recent changes to the
3 system in terms of what goes on presently in the accounting flow
4 of funds?

5 A. There's been a major effort to reduce the use of Special
6 Deposit Accounts and to ensure that tribal monies aren't within
7 the IIM system.

8 THE COURT: Okay. Go ahead.

9 MR. QUINN: For purpose of the historical accounting,
10 Your Honor, we thought it was appropriate to address the flow of
11 funds looking back in time.

12 THE COURT: Fine.

13 BY MR. QUINN:

14 Q. Ms. Herman, with reference to your diagram, Defendant's
15 Exhibit 370, does that diagram identify how non-individual money
16 is collected in the system and then is disbursed out of the
17 system?

18 A. That's correct.

19 Q. Are you aware that the Court had asked defendants to explain
20 the difference between total collections into this IIM system
21 and the amount posted to individual Indian accounts?

22 A. Yes, I am.

23 Q. And to answer that question, what were you required to do?

24 A. I evaluated monies that were moving out of the
25 non-individual accounts that were not crediting to an individual

1 account holder.

2 Q. Were you able to determine that by looking at just a few
3 records?

4 A. I did a study of the electronic data primarily, and then
5 also some of the historical documents gathered by Dr. Angel.

6 Q. Could you make the determination, based on the documents you
7 reviewed up to this point?

8 A. You can certainly identify where some of the monies are
9 disbursed to, but not where all of the monies are disbursed to.

10 Q. Why wasn't it possible to review just a select few documents
11 to respond to the Court's question about total collections into
12 the system and monies credited to individual Indian accounts?

13 A. These records aren't kept in an aggregate level that would
14 report on the entire trust. The closest reporting in the
15 current years at an aggregate level would be the audit reports,
16 and those reports don't break down disbursements in this way.

17 Q. Do you have an understanding, having studied the flow of
18 funds, why you had these dollar amounts of non-individual money
19 being collected into the system?

20 A. Some reasons why this money would have come into the system
21 include shared leases; so, for example, if the tribe and an
22 individual or many individuals shared in the same lease, the
23 monies needed to be distributed through the individual system.

24 Additionally, if the Bureau wasn't able to determine
25 exactly to whom the funds were due, they wanted to ensure that

1 the monies began to earn interest, and so they would deposit the
2 monies into the individual trust fund to do that.

3 Q. Based on your study of the accounts, are you able to isolate
4 all of the total collections that are just related to individual
5 Indian accounts?

6 A. It's very difficult to do, so in our analysis we considered
7 all of the collections into the system.

8 Q. Okay. So when you're studying the flows of funds through
9 the system, what did you wind up doing? What was the next best
10 approach?

11 A. We considered all of the collections into the system, not
12 only those collections that went to individual accounts.

13 Q. And how about on the disbursement side?

14 A. Again, we considered all of the disbursements from the
15 system.

16 Q. Have you brought some historical examples with you to show
17 the Court today about the flow of funds?

18 A. Yes, I have.

19 MR. QUINN: Your Honor, with the Court's indulgence, I
20 think Ms. Herman's direct examination walking through the
21 examples, it would be easier if she had a hard copy version. We
22 have screen copy to display and copies for plaintiffs, but if
23 it's all right with the Court, I would like to have her...

24 THE COURT: Fine. Whatever works.

25 MR. QUINN: If I may approach, Your Honor.

1 THE COURT: You may.

2 MR. QUINN: Could we put Defendant's Exhibit 474 on the
3 screen, please?

4 BY MR. QUINN:

5 Q. Let's have a look at your first example. The document has
6 been marked for identification as Defendant's Exhibit 474.

7 MR. QUINN: Can we zoom in on it, please?

8 BY MR. QUINN:

9 Q. Is this one of your examples, Ms. Herman?

10 A. Yes, it is.

11 Q. Can you describe what this first page of Exhibit 474 is
12 showing us?

13 A. This is a summary of the postings to the IRMS system, and a
14 brief description of how these postings interact with the
15 documents behind this summary.

16 Q. Are these funds being posted, then -- you say IRMS. Does
17 that mean it's money coming into the IIM system in your diagram?

18 A. This is actually an example of monies leaving the IRMS
19 system from an administrative account.

20 Q. Okay. How can we tell that from looking at this page?

21 A. If you look to the second column, the account column, the
22 fourth character in the account number is an "S," and that
23 indicates that this is a Special Deposit Account.

24 And if you continue to the right, the fifth column is
25 referred to as "type" on this schedule, and the 22 code

1 indicates that this is a disbursement.

2 Q. Okay.

3 A. And if you --

4 Q. If I could just interrupt for a second. In terms of your
5 diagram, where is this example starting?

6 A. This example is starting in the upper box, the bullet point
7 that says "SDA."

8 Q. In here (indicating)?

9 A. That's correct. And if you continue to scroll to the right,
10 further, please, you'll see that the "check number" field lists
11 several checks being issued from this account, all with the same
12 document reference.

13 Q. Okay. They're all for the same amount. Can you explain why
14 that is?

15 A. Yes. As you'll see further back in the documentation, there
16 was a limitation within the system as to the dollar amount that
17 you could issue on a singular check, so they had to issue
18 multiple checks in order to distribute the complete amount.

19 Q. And what's the complete amount of this transaction?

20 A. Approximately \$5.2 million.

21 Q. Okay. Now, your summary sheet on this page, the first page
22 of the exhibit, is that supported by a historical document?

23 MR. DORRIS: Your Honor, I'm going to object. He
24 refers to this as her summary sheet. There's not been any
25 foundation laid as to where this document came from, who

1 prepared it, or what it is.

2 THE COURT: Can you tell us what this document is, who
3 prepared it and where it came from?

4 THE WITNESS: Yes, Your Honor. I prepared it, and it's
5 an extract on the top section from the IRMS system. And the
6 explanation of the transaction section is a notation that I
7 wrote.

8 BY MR. QUINN:

9 Q. So at the bottom of the explanation, are those your notes?

10 A. Yes, they are.

11 THE COURT: So when you say you extracted it from the
12 system, you have access to the system, you just pulled out this
13 piece of data and printed it on this sheet. Is that right?

14 THE WITNESS: That's correct, Your Honor.

15 THE COURT: Okay. Go ahead.

16 MR. QUINN: Thank you, Your Honor.

17 BY MR. QUINN:

18 Q. With respect to looking at this transaction, were you able
19 to locate records concerning the transaction?

20 A. Yes, I was. But if I may point out one more field before we
21 move on to the documents.

22 Q. Sure. Do we need to zoom in?

23 A. Yes, please, the "account name" field.

24 So as you'll see, the account name for this transaction
25 says Colville CCT, and that stands for Colville Confederated

1 Tribe. As I mentioned, this was a Special Deposit Account, so
2 this would be one example of tribal monies that we weren't able
3 to differentiate within the system.

4 Q. So in terms of your flow of funds diagram, this money --
5 that starts from the SDA?

6 A. Yes, it does.

7 Q. And would that have been reflected in the columns where
8 you're totaling Tribal IIM money?

9 A. No, this would have been in the "other receipts" column.

10 Q. Okay.

11 A. So if you flip to the next page of this document, it's
12 referred to as a public voucher for refunds. And this document
13 was located in Lenexa at the American Indian Records
14 Repository - we refer to it as the AIRR - and you can see that
15 this is a check that's being made out to Colville Industrial
16 Insurance, and the authorization shows the total amount, not the
17 individual amounts of the various checks.

18 And as you scroll down the document, you'll see the
19 actual individual check numbers listed and the amount of each of
20 those checks.

21 Q. Okay. And in terms of this disbursement, where does that
22 show up -- would that show up on your diagram?

23 A. This would show up as a disbursement to a third party.

24 Q. And you're indicating it's a third party disbursement based
25 on what?

1 A. Based on the individual, or corporation, in this instance,
2 that's receiving that money.

3 Q. Do you have another example to show us?

4 A. Yes, I do.

5 Q. If we could go to Defendant's Exhibit 478 for
6 identification.

7 A. Mr. Quinn, I have 475.

8 Q. I'm sorry, 475. I apologize.

9 What's going on in this transaction?

10 A. The initial section of this transaction, as you see, refers
11 to collection into the IIM system.

12 Q. How can you tell that?

13 A. Again, if you look at the "type" field in this transaction,
14 you'll notice in this case the type says 01. Within the IRMS
15 system that indicates a collection.

16 Q. Okay.

17 A. And if you again look at the account name on this
18 transaction, it says "TM per capita, docket number S-113." This
19 is actually a transfer into the IIM system from the Tribal Trust
20 system, and so this is the tribe sending money into IIM.

21 Q. And how much is the transaction?

22 A. \$43.5 million.

23 Q. And that's broken up into a number of deposit fields, number
24 of deposits above that?

25 A. Yes. Again, they chose to post this in several

1 transactions, but as you'll see in the documentation, it was one
2 actual financial document.

3 Q. So we're starting out -- in terms of your funds diagram,
4 this is a collection at the top?

5 A. Yes. This would go into the "other administrative" section,
6 the third bullet point in the top box.

7 Q. Starting over here and going into here (indicating)?

8 A. That's correct.

9 And as you continue down the page, you'll see that the
10 next section of this document says "transfer to individual
11 accounts." So of this 43.5 million, \$7.8 million was
12 transferred to individual account holders.

13 Q. In terms of your diagram, what does that indicate? Where is
14 that part of the --

15 A. This is the down arrow that indicates transfers.

16 Q. Transfers down, transfers into the individual accounts?

17 A. That's correct.

18 As you continue, the next section you'll see has a
19 number range reference. That number range represents the check
20 range that's being issued here. And there's actually a
21 typographical error in this. It says 1033, and that should
22 actually read 1022. But this is the check range that's being
23 issued for this transaction.

24 And as you continue down to page three, you'll see that
25 \$27.5 million of this initial collection was paid out via check

1 on the same day that it was collected into the IIM system.

2 Q. And where did that \$27 million go?

3 A. Those were payments -- we would have classified these as
4 stakeholders.

5 Q. So the 27, 27-and-a-half-million-dollar portion is being
6 disbursed this way in your diagram, out to stakeholders?

7 A. That's correct.

8 And you'll see on the explanation section here -- and
9 again, if we turn to page four of this document, this isn't the
10 disbursement document, this is actually the collection document.
11 And if you'll notice that this document is referred to as a
12 transfer document, this is money that's coming in from the
13 Tribal Trust. You'll see in the description section that these
14 are per capita payments. These are per capita payments being
15 made to eligible members.

16 And there's a small notation in handwriting, as you
17 continue down the page. It's difficult to read, but it says --

18 Q. You're talking about on the right-hand side?

19 A. That's correct.

20 Q. What does that indicate to you?

21 A. It says, "Amount being distributed, 27.2 million," which is
22 the check amount that we saw previously.

23 If you continue to the next page of the document, this
24 is indicating that this is monies being paid for various
25 documents to 15,976 payees, which agrees with the check range

1 that we saw earlier.

2 Q. And are those payments directly out of the system?

3 A. That's correct.

4 MR. QUINN: I have a few more examples, Your Honor. If
5 I may approach the witness.

6 BY MR. QUINN:

7 Q. Ms. Herman, could we look, as far as your next example, at
8 what's marked for identification as Defendant's Exhibit 478.

9 MR. QUINN: Can we put that up on the screen and could
10 we zoom in on it a little bit at the top? Well, get the columns
11 so we can see what's going on with the columns.

12 BY MR. QUINN:

13 Q. Ms. Herman, what is this an example of, Defendant's
14 Exhibit 478?

15 A. This is a disbursement from a Tribal IIM account.

16 Q. Okay. So in terms of your middle box in the system, where
17 is the money originating in this transaction?

18 A. In the non-individual account box at the top, it's an
19 example of a distribution from a Tribal IIM account.

20 Q. Okay. And what's being disbursed?

21 A. In this instance it's difficult to tell from the reference
22 why these monies are being disbursed. But when we received the
23 financial documents, if you turn to the second page of this
24 exhibit, you'll see that this says "Rosebud Sioux Tribe," and
25 that's the tribe that owns this account. And it says "voucher

1 for salaries."

2 In this particular instance this is actually monies
3 being paid to what I'm presuming are tribal employees, and it
4 shows Larry Marshall and Gerald Spotted Tail, and there are two
5 third party payments being made for Mr. Marshall.

6 And if you continue to the next --

7 Q. Could you describe, going through the chart, what third
8 party payments you're referring to that show up here?

9 A. Sorry. This would be the top right-hand box of the chart on
10 the disbursement section.

11 Q. But I mean in terms of the historical document on that
12 voucher for salaries document that's in the exhibit, could you
13 point out where the third party payments you just mentioned are?

14 A. Oh, I'm sorry. If you look on the left-hand column it says
15 name and address of the document, and it lists the individuals
16 and the companies, in this instance, that are receiving checks.

17 Q. The second entry there is a federal credit union. Is that
18 right?

19 A. Yes, that's correct.

20 Q. What does that indicate to you is going on with this part of
21 the transaction?

22 A. That's a check actually being issued to the credit union,
23 and the next is the check being issued to a Chevrolet dealer.
24 And you can see that it's being deducted from Mr. Marshall's
25 total pay.

1 And if you actually turn to the next page of the
2 document, this is Mr. Marshall's timecard and it indicates the
3 hours that he worked. And if you scroll down to the section
4 that reads "Finance Department Only," you can see the gross
5 number of his pay, the tax withholdings, and then the two
6 payments that were made on his behalf and then the net amount of
7 his payment.

8 Q. So the payments represented by this exhibit, what parts of
9 your diagram do they fall into?

10 A. These would be payments from Tribal IIM accounts to third
11 parties.

12 Q. Okay. Thank you.

13 Let's look at Defendant's Exhibit 477. Ms. Herman,
14 could you describe what is happening in this transaction?

15 A. This is somewhat similar to the first transaction we looked
16 at. In this case these monies are actually transferred in from
17 the Tribal Trust to a Tribal IIM account, in the total of
18 \$11.2 million.

19 Q. So in this example the money being collected is coming in
20 from where?

21 A. From the Tribal Trust system.

22 Q. And it's being put into what kind of account?

23 A. A Tribal IIM account.

24 Q. And the amount of this transaction?

25 A. This initial collection was approximately \$11.2 million.

1 Q. Okay. And then what did you find with respect to the money
2 that was collected?

3 A. So on the same day these funds were collected, almost six
4 million of the dollars were transferred to individual accounts.
5 And then again, one of the differences in this instance is you
6 can see the specific check numbers that were issued, which is
7 why this example is so much longer.

8 If you go to page 22 --

9 Q. So the next several pages are listing individual check
10 payments?

11 A. That's correct. Excuse me, page 21. So you'll see that
12 almost \$5.2 million of that initial collection was paid out via
13 check on the same day that it credited into the system.

14 Q. So this part, this 5.19 million, is a disbursement of the
15 tribal money?

16 A. That's correct.

17 Q. And this part, the 5.19 million in terms of your diagram of
18 it being disbursed from the IIM system, where does that fit in
19 your diagram?

20 A. This would be in the stakeholders box.

21 Q. The other disbursement you indicated transferred the
22 5.9 million that's on the first page of the exhibit, where does
23 that fit into your diagram?

24 A. Again, this would be the blue transfer arrow downward into
25 an IIM account or an individual account.

1 Q. So the 5.9 million is the amount gone into the individual
2 IIM accounts?

3 A. That's correct.

4 Q. And did you find records describing that transaction?

5 A. Yes, I did. If you turn to page 23, again, this is the
6 actual collection document into the system, not the disbursement
7 document. But when you scroll down to the detail section, it
8 refers to the judgment that's being paid, the amount that each
9 individual is to receive, how many of those individuals are
10 minors and how many are adults.

11 MR. QUINN: Could we scroll up the page a little bit?

12 BY MR. QUINN:

13 Q. I wanted to ask you about one -- there's a stamp I see on
14 the exhibit page there, it says "reconciliation tick marks."
15 What does that mean to you?

16 A. This indicates to me that this was a transaction that
17 Andersen evaluated during the Tribal Trust accounting.

18 MR. QUINN: If I may approach, Your Honor. If we could
19 look and put up on the screen the next exhibit, Defendant's
20 Exhibit 479 for identification.

21 BY MR. QUINN:

22 Q. Ms. Herman, describe for the Court what's going on in this
23 example that you've brought.

24 A. This is a disbursement from a Tribal IIM account to a third
25 party.

1 Q. Okay. And from looking at the data that you pulled out,
2 what indicates to you that it's Tribal IIM?

3 A. There's a T account -- excuse me, a "T" in the fourth
4 character of the account number.

5 Q. Where does that show up in your table?

6 A. In the second column.

7 Q. So the middle letter "T" in the midst of that account, is
8 that what you're referring to?

9 A. Yes, I am.

10 If you turn to the second page of this document, you'll
11 see that this is actually the purchase of land by the tribe, and
12 they're paying the individual who they're purchasing the land
13 from \$324.08.

14 Q. Where does that appear? Is that farther down?

15 A. It's in the middle section of the document. You'll see that
16 it says "check ordered" underneath the total.

17 Q. It says on there "purchase for 31 interests." What does
18 that mean, do your knowledge?

19 A. This would indicate a fractionated interest in these
20 particular allotments.

21 Q. And in terms of your flow of funds diagram, where is the
22 money beginning in this example?

23 A. In the Tribal IIM account.

24 Q. In the non-individual box of your diagram?

25 A. Yes.

1 Q. And then where is the disbursement occurring, fitting into
2 your diagram?

3 A. I misspoke earlier. I apologize. We classified this as a
4 disbursement to a stakeholder.

5 Q. To a stakeholder?

6 A. Yes.

7 Q. Why is that?

8 A. Because this is an individual Indian.

9 Q. But is it a stakeholder because -- what is the underlying
10 transaction?

11 A. It's the sale of land.

12 THE COURT: And what's the difference between an
13 individual Indian and an IIM beneficiary?

14 THE WITNESS: An IIM beneficiary, Your Honor, would be
15 someone with an account within the IIM system. I don't know if
16 this individual has an account within the system.

17 THE COURT: You don't know. Somebody must know because
18 it's been designated. But your assumption is that this person
19 does not have an account within the system?

20 THE WITNESS: No, Your Honor, that's not my assumption.
21 It's just that the tribe is paying this individual directly from
22 their Tribal IIM account. If he does have an account, they
23 chose not to transfer the money to him.

24 THE COURT: Okay.

25 MR. QUINN: Your Honor --

1 THE COURT: I think I get that.

2 MR. QUINN: -- in that regard also, the class
3 definition, the order of certification for the class, defines
4 the class as beneficiaries of individual Indian accounts.

5 THE COURT: Yes.

6 MR. QUINN: I have the last set of exhibits, if I may
7 approach.

8 THE COURT: This categorization of payees from the
9 non-individual accounts as third parties, Tribal Trusts, and
10 stakeholders, who invented that nomenclature and when?

11 THE WITNESS: This is something I began working on
12 several months ago, Your Honor.

13 THE COURT: So it's basically your construct of what
14 these records mean?

15 THE WITNESS: That's correct.

16 THE COURT: The records themselves don't speak in terms
17 of third parties, stakeholders, and Tribal Trust, this is your
18 attempt to overlay some organization on what the records
19 reflect?

20 THE WITNESS: That's correct. With the potential
21 exception of Tribal Trust, Your Honor. Because you can see
22 those actual transfers occurring.

23 THE COURT: Okay.

24 BY MR. QUINN:

25 Q. Ms. Herman, with regard to that, in terms of your box of

1 third parties, what types of transactions -- if you were to
2 break those all out by type, by their bucket that you would put
3 the transaction into, can you give us a sample list?

4 A. In the third party bucket, as you can see on the chart, it
5 would include refunds of bid deposits, bonds that have been
6 placed into the system, administrative fees that have been
7 collected by the government, potentially overpayments of lease
8 monies that had come into the system.

9 Q. And I think one of your examples referred to payment by a
10 tribe to employees?

11 A. That was correct.

12 Q. So there are various types of transactions, in effect, that
13 involve -- that fall into your third party category?

14 A. That's correct.

15 Q. And you broke out the stakeholder box. That includes a
16 variety of different types of transactions as well. Is that
17 right?

18 A. That's correct.

19 Q. Can you give some examples of the kinds of buckets that
20 would fall into that category?

21 A. As we saw in two of our earlier examples, payment of
22 judgment or per capita monies would fall into that bucket,
23 payments of direct pay leases would fall into that bucket, the
24 example that we just saw of the land purchase, things of that
25 nature.

1 Q. We have a couple more exhibits, examples that you've brought
2 today to discuss. Why don't we look at Exhibit 480.

3 All right, Ms. Herman, we put up on the screen
4 Defendant's Exhibit 480 for identification. Could you describe
5 what this document is and identify it?

6 A. Again, the first six pages of this document are a summary
7 that I prepared of the actual transactions posting to, in this
8 case, the IRMS system. And the first section of this document
9 refers to monies leaving Special Deposit Accounts, and as you'll
10 see earlier where we saw the check code in the "type" field, a
11 type 21 typically indicates that a check is being issued. But
12 in this case, when you look at the reference field itself, the
13 first two letters in the reference field say BB.

14 MR. QUINN: Can we zoom in on the first line there?
15 It's hard to read. Yeah, thanks.

16 BY MR. QUINN:

17 Q. Okay. Let's make sure I understand, Ms. Herman. You said
18 code 21. Where does that show up in that table on the first
19 page of the exhibit?

20 A. That shows up in the "type" field. And so typically within
21 the IRMS system, a type 21 transaction would indicate a check
22 was being issued.

23 Q. So if you saw this, just this number, you would first think
24 it was a check?

25 A. That's correct.

1 Q. And you said, though, it's not a check?

2 A. No, it's not.

3 Q. How do you know that?

4 A. When you look to two fields later, the reference field, the
5 transaction says "BB." And a BB document is an intrabureau
6 transfer document, which tells me that this isn't a
7 disbursement, it's actually a transfer that's occurring.

8 Q. Do you know why it would have a check code if it's in fact a
9 transfer?

10 A. Some of this money is going to be moved to the Tribal Trust
11 system, and this was a way to reduce the cash in the IRMS
12 system. So you'll see the credits that post as new collections
13 or as new cash, in essence, to the system.

14 Q. I'm not quite sure I understand. Could you try that again?

15 A. Sorry.

16 Q. I'm trying to understand why if it has a type 21 code on it,
17 why -- if you know why it would do that, when in fact it's a BB
18 transfer.

19 A. Some of this money -- you'll see that the total here leaving
20 a Special Deposit Account is 5.6 million. Not all of this money
21 is going to be recredited within the IRMS system.

22 Q. Okay.

23 A. Some of this money is going to move out of the system to the
24 Tribal Trust system. And so this was a mechanism that was
25 utilized to indicate that some of that money is now going to

1 leave the system.

2 Q. Well, maybe it will become clear when we look at the rest of
3 the transaction in your example.

4 THE COURT: Was it correctly utilized, or did somebody
5 just cobble this up as a way of -- did somebody just code these
6 all as 21s because life is too short, they didn't want to figure
7 out which ones were actual transfers and which ones would be
8 paid out to somebody else?

9 THE WITNESS: There was actually only one code within
10 the IRMS system that could be used as a transfer, and it was
11 referred to as a type 13. And you couldn't use that type of
12 code for this transaction because the system would enforce that
13 the number of debits -- excuse me, the amount of debits and the
14 amount of credits equalled for a transfer document.

15 But in this case, since some of the money is leaving
16 and going to the Tribal Trust, the system couldn't process the
17 transaction with the transfer code.

18 THE COURT: So you're talking about a limitation on the
19 system?

20 THE WITNESS: That's correct, Your Honor.

21 BY MR. QUINN:

22 Q. Could you tell us what happened in the course of this
23 transaction, walk us through it?

24 A. So as you turn to the second page, if you can focus on the
25 top section. Thank you. The first three postings here are

1 actually the postings that were made to the Tribal Trust system,
2 and the total of that posting is just under \$4.5 million.

3 Q. Okay.

4 A. And if you look at the next section, it says, "Transfer to
5 an administrative account."

6 THE WITNESS: And the way that they in essence
7 corrected the system, Your Honor, for having used a check code
8 is that the credits back into the IRMS system post as new money
9 again, as collections. And you can see that by the 01 in the
10 type field.

11 And so this is actually -- we had discussed earlier
12 administrative-to-administrative transfers. This is a credit
13 into another Special Deposit Account.

14 THE COURT: Just as an item of interest, how is this
15 data entered into this system? What kind of key strokes have to
16 be made before you can enter a \$0.24 credit to Arthur L. Miller?

17 THE WITNESS: I would be guessing, Your Honor, but my
18 presumption is that they use the lease distribution program to
19 process this. And that program would tell you which owners had
20 how much of an interest in each one of these allotments, and so
21 the system would process it.

22 THE COURT: All right.

23 BY MR. QUINN:

24 Q. So in this example, the first part of the example has
25 5.63 million?

1 A. Yes. The total amount of monies being debited or reduced
2 from the Special Deposit Account is 5.6 million.

3 Q. And of that amount, 4.46 million is going to the
4 tribal system?

5 A. That's correct.

6 Q. So on your diagram, where is that?

7 A. That would move from the SDA bucket in the non-individual
8 section to the Tribal Trust bucket.

9 Q. Now, you say this SDA bucket money, the 5.6 million, would
10 that show up in the Tribal IIM money?

11 A. No. In this instance this would show up in the "other
12 receipts" category.

13 Q. You mentioned the administrative transfer, the 563,000.
14 Where is that indicated -- would that fit in your diagram?

15 A. That would be represented by the circular arrow in the
16 admin-to-admin transfer section.

17 Q. So it's a transfer between the accounts?

18 A. That's correct.

19 Q. All right.

20 A. And then, as you continue through the next several pages,
21 these are payments that are now being transferred down to the
22 individual accounts. And I only subtotaled them by the
23 allotments that are being paid, so as you reach page six, just
24 over \$609,000 is being transferred to the individual accounts.

25 Q. Okay. And did you locate records relating to the

1 transaction numbers you saw?

2 A. Yes. From the AIRR.

3 Q. Are those in the exhibit?

4 A. Yes, they are. If you turn to page seven, the top section
5 lists the Special Deposit Accounts that are being debited, and
6 these correspond with different logging units. And the first
7 transaction where you see a credit, if you'll notice on the
8 left-hand side in the reference column it says 20670. That
9 indicates that this money is being credited to a Special Deposit
10 Account, and it actually lists the Special Deposit Account which
11 is being credited.

12 And this is a forest management fee account, so it
13 lists the various logging units and the total of the 563,955,
14 which is 10 percent of this total distribution.

15 And if you turn to page eight. So you can see in this
16 section the first item says BIA 14X-7473. 7473 is the Tribal
17 Trust account that's being credited for \$3.5 million. And as
18 you continue to scroll down, the next account that's being
19 credited is 7068, which is another Tribal Trust account for
20 \$392,000.

21 Q. What to you indicates it's a Tribal Trust account out of
22 that number?

23 A. The numbering of the account and the second document that
24 we're going to look at.

25 Q. Okay.

1 A. And the third Tribal Trust account is the 14X-740, and then
2 the very last section on the page says 20611, and that indicates
3 IIM. And so this shows you the various allotments that are
4 being paid, the amount per allotment, and then the total amount
5 being paid to individual accounts.

6 And the very last page of the exhibit is now showing
7 you the BB document, which was the original reference that we
8 had seen, and it's showing you monies moving from the individual
9 trust of just under \$4.5 million to those three Tribal Trust
10 accounts that were indicated on the journal voucher.

11 Q. I'm sorry, the left-hand side is the money going out of the
12 IIM system?

13 A. Yes. In the column referred to as disbursements.

14 Q. Okay.

15 A. And that's the total that we had seen from my summary page.

16 And then in the collection column you see the three
17 Tribal Trust accounts that were indicated on the journal
18 voucher, and the total that we had seen previously of the
19 \$4.5 million.

20 Q. We'll look at another example, Exhibit 481. Did we cover
21 that? That's the one we just did.

22 A. No, that's the next one.

23 Q. Okay. Could you describe what's going on in this
24 transaction?

25 A. This is a disbursement from the Warm Springs Tribal IIM

1 account to the Warm Springs Tribal Trust account. And if you'll
2 see on the left, the Record ID column, the first number in the
3 record ID is a 3 in the debit transaction. That's a unique
4 identifier that our firm created that indicates that this is an
5 IRMS transaction.

6 And if you look at the credits that are following below
7 that, you'll see they begin with 5 --

8 THE COURT: I'm lost. What column am I looking at?

9 THE WITNESS: In the very first column, the Record ID
10 column. So the first record ID begins with a 3.

11 THE COURT: You say your firm created that digit?

12 THE WITNESS: Yes. This number itself. It's only a
13 unique identifier.

14 THE COURT: But did all this come from the IRMS system
15 itself or did it come from the IRMS system and then you added
16 the 3 to it?

17 THE WITNESS: The record ID is a field that we created.
18 It's within the OHTA version of the IRMS system, the ART system
19 that we demonstrated last October.

20 THE COURT: So you're just staking out credit for
21 inventing that digit?

22 THE WITNESS: I just didn't want you to think it was
23 within the system itself.

24 A. So this transaction is showing that there's money moving
25 from the IRMS system to the TFAS system --

1 THE COURT: Hold it, hold it. I've got a little
2 comprehension gap here. I thought all of these examples you
3 were showing me were data pulled directly from the system.

4 THE WITNESS: From the OHTA copy that was provided to
5 us, Your Honor. The IRMS system, the IIM system itself is no
6 longer up and running. This is the same system that we showed
7 you in October when we were going through the accounting
8 examples.

9 THE COURT: It's no longer up and running, so you've
10 got copies from them and then you added these digits to it to
11 help you understand it yourself?

12 THE WITNESS: It's just a unique identifier to avoid
13 confusion referring to transactions.

14 THE COURT: Okay.

15 THE WITNESS: Sorry I've confused you.

16 THE COURT: Go ahead.

17 A. So one of the things we discussed earlier that makes it more
18 complicated, as you get into the current time frame, to separate
19 Tribal IIM in the individual system and tribal monies in the
20 Tribal Trust system is because the Tribal Trust monies were
21 moved into the same system as the individual monies.

22 And so this is an example of monies moving from the
23 Warm Springs Tribe account in the individual system to the Warm
24 Springs Tribe's account in the Tribal Trust system.

25 THE COURT: I'm still picking up on Mr. Dorris'

1 question about the foundations for these documents. And I
2 thought, until you explained that unique identifier, that what
3 we were dealing with was data that was being pull unmodified
4 from the system, and you're telling me you're not modifying it,
5 but you're adding unique identifiers to help you analyze it. Is
6 that correct?

7 THE WITNESS: The data itself has not been modified,
8 Your Honor, it's only an identifier that's been added. And this
9 is the copy that is in the OHTA ART system that we reviewed in
10 October.

11 THE COURT: All right.

12 BY MR. QUINN:

13 Q. What data reflected on this particular page is taken
14 straight from the IRMS system?

15 A. The account column; the agency column within the IRMS system
16 is actually found in two separate fields, the area field and the
17 location field; the transaction date; the type; the code, the
18 reference; the amount; the check number; and the account name.

19 Q. So did you have an underlying document that related to this
20 transaction?

21 A. Yes, I do. The next page, page two. This is an intrabureau
22 cash transaction authorization. This is an intrabureau cash
23 transaction authorization document similar to the last one that
24 we looked at, and this is showing monies moving from the
25 individual system, from the Tribal IIM account 145-T, to the

1 Tribal Trust system, to the tribe's proceeds of labor account.

2 And the total value of this transaction is
3 approximately \$8.8 million.

4 MR. QUINN: Can we scroll down that page a little bit?

5 BY MR. QUINN:

6 Q. Could you describe what the notation means to you?

7 A. I'm sorry, in the information section?

8 Q. Yes. Yes.

9 A. This notation says that "Transfer of funds from Special
10 Deposit Account," and I'm sorry, the number is small.

11 Q. That's all right.

12 A. "To the tribe's proceeds of labor account, in accordance
13 with OTFM policy memo 97-013. Policy to prohibit the
14 establishment of tribal accounts in the IIM system."

15 Q. Did you also have a few examples to show coming out of the
16 paper era?

17 A. Yes.

18 Q. If we could go to Defendant's Exhibit 485. I'm sorry, yeah,
19 485. Do you have that in front of you?

20 A. Yes, I do. I have an extra copy, Mr. Quinn.

21 Q. No, we're all set. I just want to make sure plaintiffs had
22 a copy.

23 Okay. Exhibit 485, could you identify that document?

24 A. Yes. This is a document provided to me by Dr. Angel.

25 Q. And you've described what the document is?

1 A. This is an audit of the Individual Indian Monies accounts at
2 the Winnebago Agency for the period June 1st, 1938 through
3 December 31st, 1939.

4 Q. Could you tell us what you found of interest in reviewing
5 this document in terms of your study of historical flow of
6 funds?

7 A. This is one of the documents that was gathered in an effort
8 to determine the amount of money collected and distributed
9 during the paper time frame, but also to analyze the way monies
10 were moving through what I'll refer to as the paper system
11 during this time frame.

12 Q. Okay. And what did you note in looking through -- in your
13 review of the document?

14 A. One, you can see in the middle of the document it's
15 summarizing the amount of monies on deposit for the various
16 tribes serviced by this agency, then below that it lists the
17 monies in Special Deposit Accounts at this agency.

18 And as you turn to the second page of the document, you
19 can see in the second paragraph it discusses that numerous lease
20 fees, rentals, and other miscellaneous collections are being
21 held in special deposits, which indicates to me that these same
22 types of monies were being collected and posted into the IIM
23 system during this time frame.

24 And as you continue down towards the bottom of the page
25 to the paragraph that begins with the tribal funds on deposit,

1 if you could continue, scroll down, please, so it lists the
2 amount of monies on deposit for the various tribes, and if you
3 see the very last sentence, and it continues to the next page --

4 Q. Could you just read that into the record, we'll get this
5 sentence in on the screen?

6 A. Yes. It reads, "All tribal funds are taken up on official
7 receipts and deposited to the credit of the tribes in the
8 Individual Indian Money."

9 Q. What does that indicate to you was happening?

10 A. That monies being collected on behalf of the tribes are
11 actually being deposited into the Individual Indian Money
12 system.

13 And then it continues to list, as you move down the
14 page.

15 Q. To the next page?

16 A. Yes, I'm sorry, page three.

17 MR. DORRIS: Your Honor, I'm going to object. This
18 witness is testifying here about a document and what it means.
19 She's not been offered as an expert witness, she's not laid a
20 foundation that she has investigated extensively the paper
21 record era to be in a position to offer anything other than
22 speculation about what she thinks this document may mean.

23 And as a fact witness, I don't think that's
24 appropriate.

25 THE COURT: Well, she's a fact witness, but she's being

1 offered, as I understand it, for the principal purpose of
2 delivering the bottom line of an analysis she's made, and she's
3 explaining the analysis and how she did it. If that's what
4 she's doing, you can cross examine her all day long on these
5 things.

6 But the question that began this, I don't know if it's
7 an analysis or review of this document, is what did you find of
8 interest in it? And I'm interested in what she found of
9 interest, so your objection is overruled.

10 MR. DORRIS: Thank you, Your Honor.

11 BY MR. QUINN:

12 Q. So you were starting to talk about what you found -- noticed
13 on that second page.

14 A. The second page lists two different additional types of
15 funds that are being held within the IIM system, revolving
16 credit funds and the rehabilitation trust funds. The first is
17 approximately \$12,000, and the second approximately 2.

18 And this simply indicated to me that in prior years,
19 non-individual monies were also being collected into the
20 individual system.

21 Q. One other example. Do you have 486?

22 A. Yes, I do.

23 MR. QUINN: Could you put Defendant's Exhibit 486 on
24 the screen?

25 BY MR. QUINN:

1 Q. Ms. Herman, have you seen this document before?

2 A. Yes, I have.

3 Q. Could you identify what it is?

4 A. This is the subsequent audit at the Winnebago Agency for the
5 period January 1st, 1940 to the period May 30th, 1941.

6 Q. And did you review this document also in your study of the
7 historical flow of funds?

8 A. Yes, I did.

9 Q. Could you tell us what you found of interest in reviewing
10 this document in connection with your comparison to what you saw
11 in the electronic era?

12 A. If you move to the middle of the page, the paragraph that
13 begins, "The balance of Individual Indian Money on hand as of
14 May 30th, 1941 was \$71,358.37."

15 Q. That's in the first sentence of that paragraph?

16 A. That's correct. And then it continues to break down how
17 those funds are being held and what they're comprised of. And
18 you can see that similar to in the electronic time frame, you
19 have credit funds, tribal monies, I haven't seen cemetery funds
20 during the electronic time frame, and individual monies.

21 Q. Okay. So in your reading of this part of the document, are
22 you looking at that as summing to that \$71,000 figure at the
23 top?

24 A. Yes.

25 Q. If you were to compare the individual Indian's number,

1 \$40,069.43, against the total amount, have you done that math?

2 A. I believe it's roughly 55 or 56 percent.

3 Q. So that at least showing on the face of this document what's
4 represented, does it indicate to you that the balance at this
5 time of the individual Indian accounts was about that percentage
6 of the total?

7 A. That's correct.

8 Q. Was there anything else in this document that you found of
9 interest as you reviewed it?

10 A. It just shows the various types of disbursements being made.
11 So for instance, on the final page you can see that there are
12 similar to what we discussed in the electronic time frame,
13 disbursements being made to third parties.

14 Q. And in terms of your diagram, you're talking about the
15 disbursements out of the upper box?

16 A. That's correct.

17 Q. One more example I think you brought with you.

18 MR. QUINN: If I may approach, Your Honor.

19 THE COURT: Yes.

20 MR. QUINN: If we could put up on the screen a document
21 that's been marked for identification as Defendant's
22 Exhibit 491, and if we could zoom in on the top part there so we
23 can see it.

24 BY MR. QUINN:

25 Q. Ms. Herman, where does this example come from?

1 A. This is a disbursement from the TFAS system from a Special
2 Deposit Account.

3 Q. Okay. So is this a more recent transaction?

4 A. Yes, this is from September 2006.

5 Q. Could you describe what's going on here?

6 A. You'll see in the transaction reference it says "PV," which
7 is a public voucher, performance bond SBL-180 and SBL-182.

8 Q. And the dollar amount?

9 A. \$16,767.16.

10 Q. Okay. Can you tell us -- show us what's going on with the
11 transaction in terms of the underlying documents?

12 A. Yes. If you turn to page three, you'll see that this is a
13 bill for collection, and it says, "Place in Special Deposit
14 Account for bond deposit." And the total amount of that
15 transaction is \$3,000.

16 Q. And when was this deposit transaction?

17 A. It was made on April 4th, 1978.

18 Q. So in terms of your study of the data completeness
19 validation, electronic era versus paper era, where does this
20 transaction fall in that divide?

21 A. The collection would have been in the paper era.

22 Q. And what was being -- what was the purpose of the
23 collection?

24 A. It was a bond to be held until the lease expired, basically
25 to ensure that the lessee performed under the terms of the

1 lease.

2 Q. Did you find a lease?

3 A. Yes, I found one of the leases and two of the tribal
4 resolutions.

5 Q. And are they in the exhibit?

6 A. Yes. They follow the bill for collection as pages 4 through
7 page 9.

8 Q. So can you describe, based on these records from beginning
9 to end, where is the money coming into the system and where is
10 money going out?

11 A. The money came into the system into a Special Deposit
12 Account in the top section, and the money was eventually
13 returned to a third party.

14 Q. Did any of that go into any individual IIM account?

15 A. No. This was a bond.

16 Q. Is that your last example of this -- of the fund flows?

17 A. Yes, it is.

18 MR. QUINN: Your Honor, would this be a good place to
19 break for the morning?

20 THE COURT: If you want a break, we'll take a break.

21 MR. QUINN: Thank you, Your Honor.

22 THE COURT: 10 minutes.

23 (Recess taken at 11:01 a.m.)

24 BY MR. QUINN:

25 Q. Ms. Herman, in your study of flow of funds through the

1 system and your effort to look at documents to identify funds
2 that go directly or indirectly into an individual IIM account,
3 in studying collections through the system, what was the
4 approach that you have settled on to try to identify the
5 throughput of collections and disbursements in this system?

6 A. We've used all of the collections and disbursements into and
7 out of the system as it's challenging to separate monies leaving
8 from non-individual accounts.

9 Q. So in terms of your chart, have you prepared a table
10 calculating the total collections and disbursements?

11 A. Yes, I have.

12 MR. QUINN: If we can put Defendant's Exhibit 371 for
13 identification up on the screen.

14 BY MR. QUINN:

15 Q. Ms. Herman, is this the table you were just referring to,
16 Defendant's Exhibit 371?

17 A. Yes.

18 MR. QUINN: Could we zoom in on the upper part where
19 the titles are?

20 THE COURT: Do you have a hard copy of this?

21 MR. QUINN: Yes, sir, I do.

22 BY MR. QUINN:

23 Q. Ms. Herman, could you generally describe what this table,
24 Defendant's Exhibit 371, is?

25 A. Yes. This is an update to AR-171.

1 Q. And before discussing the specifics, if we could talk about
2 Defendant's Exhibit 371, your new table, and compare it to what
3 was done in AR-171. The AR-171, what are some of the major
4 differences in your update in Defendant's Exhibit 371 as it
5 relates back to the table that was testified about in October?

6 A. This table goes earlier in time. It begins in 1887 instead
7 of 1909. The table includes an estimate of disbursements for
8 the period 1887 through 1971, and it also includes two
9 additional years, 2006 and 2007.

10 Q. Did AR-171 include any disbursement information for the
11 earlier periods?

12 A. No, it did not.

13 Q. In terms of preparing this calculation, did you undertake
14 other tasks in connection with the revision to the calculations?

15 A. Yes. As I had mentioned, we've continued our work with the
16 data completeness validation, and we worked both with Dr. Angel
17 and NORC on gathering historical data and analyzing those
18 documents.

19 Q. How about your work on internal transfers? Have you been
20 able to filter out more internal transfers in this table
21 compared to AR-171?

22 A. Yes, we have.

23 Q. Let's describe if you could for the Court how the various
24 columns working across Defendant's Exhibit 371 relate to one
25 another.

1 If we could talk about -- we have the year on the first
2 column, but let's start with the collections group. What
3 columns does that consist of?

4 A. Columns B through G.

5 Q. And what is in Column B, labeled "interest"?

6 A. Interest earned on both individual and non-individual
7 accounts within the system.

8 Q. Does this interest calculation now -- you testified
9 yesterday about some interest in AR-171 that wasn't identified
10 as interest. In AR-171, where did the undifferentiated interest
11 show up?

12 A. In AR-171, that would have appeared in "other receipts."

13 Q. Have you now been able to identify all interest
14 transactions?

15 A. I believe we've identified a majority of the interest
16 transactions from '72 forward, but not all of them, no.

17 Q. Does that mean that there would still be some interest
18 number amounts in other receipts?

19 A. Yes. Particularly for the period prior to 1972.

20 Q. Column C is labeled "Osage Annuity." Could you describe
21 what that is?

22 A. This represents the portion of the Osage Annuity that
23 entered the IIM system.

24 Q. And I think when we were talking about your flow of funds
25 chart diagram yesterday, you talked about that Osage Annuity

1 collections. Could you just review that again for us, and how
2 Osage Annuity money comes into the IIM system, where it goes?

3 A. Some component of the Osage Annuity is transferred into the
4 IIM system from the Tribal Trust system.

5 Q. And the Osage Annuity that's in the Tribal Trust system,
6 where does that go?

7 A. The component that's not transferred into IIM is paid out
8 directly from the Tribal Trust via checks.

9 Q. So those monies that paid out through the Tribal Trust
10 system, do those dollars show up anywhere in Exhibit 371?

11 A. No, they do not.

12 Q. So what then is in the Osage Annuity column, Column C?

13 A. Only those monies that actually enter into the IIM system.

14 Q. Does Column C include any non-individual money, any tribal
15 money?

16 A. Column C may include non-individual money to the extent that
17 there's a non-Indian owner; so, for instance, in some cases
18 someone may give a life estate to a church, for instance, who is
19 now the owner of that headright.

20 Q. Column D in your collections group on the table, could you
21 describe what that is?

22 A. These are judgment and per capita monies that have been
23 collected into the IIM system.

24 Q. And that information -- the numbering begins in 1986. Is
25 there judgment/per capita money, are you aware of, in the system

1 prior to that date?

2 A. Yes. But we didn't have sufficient detail to identify the
3 component that was judgment or per capita.

4 Q. So collection monies of the judgment/per capita type from
5 those earlier years before 1986, where would they be included on
6 your table?

7 A. In Column F, "other receipts."

8 Q. Column G is a total column. Can you describe what that is?

9 A. It sums Columns B through F.

10 Q. So you're just doing the math across?

11 A. That's correct.

12 Q. Let's look at disbursements column, Column H. Could you
13 describe what that column identifies?

14 A. It includes all disbursements from the IIM system for the
15 particular period or fiscal year.

16 Q. And you have a footnote there. Before we go to the
17 footnote, does the disbursement column include non-individual
18 money?

19 A. Yes, it would.

20 Q. Does it include third party disbursements?

21 A. Yes, it does.

22 Q. So in terms of your diagram, what boxes are covered -- when
23 you're talking about this disbursements number in H, what boxes
24 are covered in terms of your diagram?

25 A. All four of the boxes; third parties, Tribal Trust,

1 stakeholders, and IIM beneficiaries.

2 Q. So the disbursements number, then, does that reflect all
3 money going out of the IIM system?

4 A. Yes, it does.

5 Q. And the footnote, if we could flip down to that footnote 5,
6 could you just read that into the record, please, Ms. Herman?

7 A. "Disbursements represent all outflows from the Individual
8 Indian Money system (IIM). These outflows include but are not
9 limited to transfers to the Tribal Trust, checks, and electronic
10 funds transfers."

11 Q. When you -- why did you include transfers to Tribal Trust?

12 A. Because those are monies leaving the IIM trust fund.

13 Q. You mean out of the IIM system?

14 A. That's correct.

15 Q. And if you were to look into your diagram, those monies fall
16 into what section of your diagram?

17 A. The top section, monies transferring to the Tribal Trust,
18 the non-individual accounts to the Tribal Trust.

19 Q. We can go back to the main part of the table and look at
20 Column I. Could you describe what's going on in Column I?

21 A. This is the total change for the given year, so if you were
22 to take Column G, total revenues for that year or period, and
23 less the disbursements for that period is Column I. So the
24 increase or the decrease in the balance.

25 Q. The Column G is the total of all collections?

1 A. That's correct.

2 Q. And I represents if you take all disbursements into account?

3 A. That's correct.

4 Q. In that Column I, as I look down it, I see some negative
5 entries with a parentheses around it. That's what that means?

6 A. That's correct.

7 Q. Could you describe what that indicates to you?

8 A. That part of the balance of the trust fund was being
9 distributed that year, in addition to revenues that have been
10 earned.

11 Q. Does that mean that collections were -- rather that
12 disbursements that year were larger than collections into the
13 system?

14 A. That's correct.

15 Q. Column J, describe what that column reflects.

16 A. Excuse me?

17 Q. I'm sorry, describe what the Column J reflects.

18 A. That reflects the reported beginning balance, plus Column I,
19 which is the change for that particular year, is the calculated
20 ending balance.

21 Q. Why do you call it a calculated ending balance?

22 A. Because that indicates the change in the balance, based on
23 our research.

24 Q. And the next column over is Column K. Can you explain what
25 that column is?

1 A. Column K we refer to as the reported ending balance. That
2 would have been a balance that we obtained from a historical
3 report or a system balance report.

4 Q. If I wanted to understand where the reported balance number
5 comes from, is there a place to find that indicated on the
6 table?

7 A. The final page of the table.

8 MR. QUINN: If we could just flip that and zoom in on
9 it. We were looking at Column K.

10 A. So this page of the schedule will tell you for each
11 particular column and each particular time frame what the source
12 of the information was.

13 MR. QUINN: We can go back to the main. All right.

14 BY MR. QUINN:

15 Q. We've talked about the calculated ending balance, Column J,
16 and the reported ending balance, Column K. What's Column L?

17 A. Column L represents the difference between Columns J and K.

18 Q. So that a comparison of the two balance figures?

19 A. That's correct.

20 Q. And can you describe what the results are of that balance
21 comparison over the years?

22 A. The total balance difference I believe was \$158 million.

23 Q. And where is that on your table?

24 A. It would -- I believe it's page three. I'm sorry, I don't
25 have a hard copy.

1 Q. What number is that you're referring to? Could you point
2 that out?

3 A. It's the total number under Column L, 158.7 million.

4 Q. And there's a footnote next to that. Could you read that?

5 A. "The total calculated balance difference is 1.11 percent of
6 total collections for the entire period."

7 Q. Now, in terms of that balance comparison number,
8 \$158 million, are tribal dollars in that? Would they be
9 represented in that number?

10 A. Likely.

11 Q. What IIM accounts would likely be represented in that
12 number, do you know?

13 A. It's possible that all of the various accounts within the
14 system would be represented in that number.

15 Q. This represents a comparison based on the reported balances
16 and the calculated balance. What were you attempting to sum in
17 the calculated balances?

18 A. The calculated balances show -- the calculated balance is
19 reflective of the beginning balance at the beginning of the
20 period, plus the research we performed on receipts and
21 disbursements for that time frame.

22 Q. And in doing these calculations, is this all based on new
23 information since AR-171, or have you relied on some of the same
24 sources?

25 A. Some of the information is new information, but I have

1 relied on some of the same sources.

2 Q. Did you prepare an illustration to show how much of the
3 information on Exhibit 371 is based on the same type of
4 information that was used for AR-171?

5 A. Yes, I have.

6 MR. QUINN: Could we put that up?

7 BY MR. QUINN:

8 Q. Could you describe what Defendant's Exhibit 492 is?

9 A. This is a portion of Defendant's Exhibit 371, color coded.

10 Q. And what does the shading indicate?

11 A. The dark yellow indicates that the same source has been used
12 that was utilized in AR-171.

13 Q. Okay. And there's some lighter highlighting. What does
14 that show?

15 A. That indicates that a different source is being used in this
16 exhibit, but it's a source that was produced previously in
17 earlier trials.

18 Q. And while we're looking at that, Column G is all white, but
19 is that based on a new source?

20 A. No. All of the fields that are calculated fields are --
21 don't have shading.

22 Q. Because they're based on what the table -- other numbers in
23 the table have?

24 A. That's correct.

25 Q. So if we could review what -- the original estimates on

1 AR-171 have been updated and refined.

2 MR. QUINN: We can go back to the original 371, please.

3 BY MR. QUINN:

4 Q. Now, you summarized beginning here some of the types of
5 information on 371 that have been revised. Could you
6 describe -- go through those and describe how you performed
7 those revised calculations?

8 A. The period 1887 through 1971 is an estimate that's provided
9 by NORC. The period 1972 -- excuse me, are we just discussing
10 the numbers that have changed?

11 Q. Yes, for right now. The NORC numbers, do you know who will
12 be testifying about that estimation?

13 A. Yes. Dr. Scheuren.

14 Q. And for now, what is your understanding of what NORC did and
15 the estimates that you used?

16 A. NORC relied upon historical reports that were gathered by
17 Morgan, Angel & Associates and Dr. Angel, and electronic
18 information that we provided to them for the period 1972 through
19 2007.

20 Q. So am I correct in understanding that NORC received data
21 from FTI and record information from Morgan Angel?

22 A. That's correct.

23 Q. If there's historical information that Morgan Angel had, did
24 you use it in your calculations as reflected on 371?

25 A. To the extent that NORC relied upon Dr. Angel's reports for

1 the earlier periods, yes. And we utilized some of the
2 investment reports and balance reports that Dr. Angel gathered.

3 Q. What other refinements did you make in your calculation in
4 371 versus what was in AR-171?

5 A. We changed the source for some of our balances from the GLDL
6 data, which was the finance system, to investment reports
7 gathered by Dr. Angel.

8 Q. And why did you do that?

9 A. To be consistent with the source of the interest figures in
10 our chart.

11 We identified additional audits from 1988, '89, and '90
12 from Arthur Andersen, as well as current period audits. And
13 those are the primary changes in this table.

14 Q. All right. In terms of the calculations presented in
15 Exhibit 371, I kind of feel like a math teacher. Did you show
16 your work? Did you show your math work?

17 A. Yes, we provided the underlying documents that we relied
18 upon.

19 MR. QUINN: Your Honor, at this time we would like to
20 discuss what's been marked for identification as Defendant's
21 Exhibit 372. The entire exhibit, just for the Court's and
22 plaintiffs' information, contains -- it's a five-binder set, but
23 we only need to discuss the first binder today. The other four
24 are historical records relating to the Osage Annuity.
25 Essentially they're compilations, I understand, of historical

1 record information for every year going back in time.

2 The first volume, though, has the supporting schedules
3 to the Exhibit 371, as well as the indication of the documents
4 that Ms. Herman relied upon in doing the calculations. And I
5 think for purposes of this part of the testimony, it would be
6 useful for the Court and your clerk, as well as plaintiffs, to
7 follow Ms. Herman through the binder so you understand how the
8 calculations work.

9 MR. DORRIS: Your Honor, I do want to just clarify so
10 it's clear for the record that when the witness just testified
11 that these documents had been produced, I think she was saying
12 they had been produced to government counsel. This will be the
13 first time we've received these documents.

14 THE WITNESS: That's correct, Your Honor.

15 MR. DORRIS: And Your Honor, I would also ask that
16 instead of waiting until they're going to introduce the other
17 four, that perhaps they will produce the other four for us today
18 so that we might have some time to look at them before we are
19 hearing about them in court.

20 MR. QUINN: I don't intend to elicit any testimony
21 concerning the other four, but we will be providing those to
22 plaintiffs today, Your Honor.

23 THE COURT: Okay.

24 MR. QUINN: If I may approach, Your Honor.

25 THE COURT: You may.

1 BY MR. QUINN:

2 Q. Ms. Herman, I've placed before you documents that have been
3 marked for identification as Defendant's Exhibit 372. And if
4 you would, could you describe what that document consists of?

5 A. This document consists of our summary schedule that has been
6 referred to as DX-371, plus excerpts from the historical
7 documents that we relied upon and the underlying schedules where
8 we performed our calculations.

9 Q. I had mentioned to the Court the entire exhibit consists of
10 five binders. But what's in this first binder that we're going
11 to walk through this morning?

12 A. The summary schedule, the schedules underlying that summary,
13 and the majority of the documents that we've relied upon.

14 Q. How will that help us understand the calculations in 371?
15 Can you describe just in layman's terms how this will help us?

16 A. I think we'll have a small lesson on referencing.
17 Basically, if you turn to the first schedule, you'll see there
18 are red notations on the schedule, and essentially these
19 documents will help you go back through our binder to find the
20 source of various calculations in addition to documents that
21 we've relied upon.

22 Q. Okay. So could I consider this in a sense a road map to the
23 work that you've done to create Defendant's Exhibit -- the table
24 in 371?

25 A. Yes. We would refer to these as our workpapers.

1 Q. Could we walk through a couple of examples to show the Court
2 and plaintiffs how this binder works in terms of referencing?
3 Perhaps take interest, maybe the interest for 1985 as one
4 example, looking at page four. Could you describe what page
5 four is of the exhibit?

6 A. Page four is a notated version of AR-171 -- excuse me,
7 DX-371.

8 Q. Is this page identical to DX-371?

9 A. The numbers on the page are identical, it just includes our
10 notations on it, our referencing marks.

11 THE COURT: Hold it, counsel. Hold it. I don't even
12 know where page four is. My book opens with something called
13 Tab A. Behind Tab A is a blank page, then I've got three pages
14 that are all marked up. Is that what you're referring to as
15 page four?

16 MR. QUINN: I apologize, Your Honor, I would have to
17 look at your copy.

18 THE COURT: It looks like A.

19 MR. QUINN: There should be a stamp in the lower
20 corner, it says DX-372 and 000 --

21 THE COURT: Okay. There's the pagination. Okay.
22 Thank you.

23 MR. QUINN: For purposes of this walk-through, Your
24 Honor, we'll be referring to, for lack of a better term, the
25 Bates stamp that's at the bottom of the corner.

1 THE COURT: All right.

2 BY MR. QUINN:

3 Q. What's at page DX-372, stamped page four? Again, what is
4 this table?

5 A. This is a replica of DX-371, with our notations on it.

6 Q. Okay. And I see red markings on there. Describe what those
7 are.

8 A. These are referred to as referencing marks, and essentially
9 it tells you where the numbers on this particular page are
10 coming from.

11 Q. Can you describe how the referencing marks work?

12 A. For instance, I believe you asked me about the interest
13 number for 1985. And so if you look at the interest column,
14 which is Column B, at the top of that column you'll see a
15 notation that says "A-2, 1 of."

16 Q. Is that the handwritten red marking?

17 A. That's correct.

18 Q. I see that at the top of the page.

19 A. And you'll see a line below that that ends at 1985. So that
20 means that the source of all of those numbers between the A-2,
21 1 of, and the bottom of the line is found on Schedule A-2.

22 Q. And the red mark in this particular column, Column B, for
23 interest ends at 1985?

24 A. That's correct.

25 Q. So what does that tell us?

1 A. That there's another source beginning with 1986, which is
2 found on A-3.

3 Q. Okay. So that's what the red marking indicates after that?

4 A. That's correct.

5 Q. On the left-hand side of the number?

6 A. That's correct.

7 Q. So if I wanted to find the source for interest reported in
8 Column B for 1985, the 51.7 million, where would I then go in
9 your binder?

10 A. You would flip to Tab A-2.

11 Q. Is that what the marking at the top indicates?

12 A. That's correct. And to the first page following that tab.

13 Q. Is that what the 1 indicates?

14 A. That's correct.

15 Q. So if I find that in here, okay.

16 MR. QUINN: Can we put that next page up on the screen?
17 I think on the Bates stamp numbering system it's page 28 of the
18 exhibit.

19 BY MR. QUINN:

20 Q. Could you describe, then -- if I turn back to the page
21 that's referenced on the table for interest, then what am I
22 looking at here?

23 A. This is a more detailed look at the period 1972 through
24 1985. And if you look to the interest column, you'll actually
25 see a new notation on that column. And it's likely difficult to

1 read on the screen, but it says "invest."

2 Q. So we're one, two, three, four, the fifth column over on
3 this next table?

4 A. That's correct.

5 Q. All right. It says "interest." And I'm sorry, you're
6 looking now at a number that says 5.8?

7 A. That's correct.

8 Q. And what notation are you describing here?

9 A. Right next to the number 5.8, to its left it says "invest,
10 1 of."

11 Q. Invest. Okay. There's also a notation to the right of
12 that. What is that?

13 A. That basically means that that number is going to
14 Schedule A, so meaning that that number is leaving this schedule
15 and is also going to appear on Schedule A.

16 Q. So if the line markings in here are on the right-hand side
17 of the number that's printed, what does the red marking indicate
18 if it's on the right-hand side?

19 A. That the number is going forward to a different schedule.

20 Q. Is it indicating where the data is moving?

21 A. That's correct.

22 Q. And so if the red line marking is on the left of a number in
23 this binder, what does that tell you?

24 A. That the number is coming from somewhere else.

25 Q. And then it indicates somewhere along that line where it's

1 coming from?

2 A. Yes. In this case the Investment tab.

3 Q. Okay. So there's a tab in the binder that says "Invest," or
4 "Investment"?

5 A. That's correct.

6 Q. So if we flip to that tab, that's 1 of? Is that what the
7 marking was?

8 A. That's correct.

9 Q. Do you have a page reference?

10 A. 60, I believe.

11 MR. QUINN: Can you put that on the screen?

12 BY MR. QUINN:

13 Q. Okay. If we zoom in on the table, so the reference of
14 interest we were looking at refers us back to this table. And
15 what is it referring us to?

16 A. This is a summary that we've prepared, again for 1972, in
17 this case through 1990, for the various funds that were being
18 held. And it includes the interest rate, the average amount
19 invested, and the per annum earnings or the interest earnings.

20 And so you'll see in this column next to 1985, the
21 interest earnings were \$51,712,463.

22 Q. So you're looking for the year we're just using as an
23 example, 1985, and which column are you referring to?

24 A. The column under ISSDA, referred to as per annum earnings.

25 Q. And the dollar amount is what?

1 A. 51,712,463.

2 Q. So does that then indicate the source for the information
3 you're using that's reflected in the calculation for that year?

4 A. Yes. Again it's somewhat small on this screen, but it says
5 "Invest A."

6 Q. Where is that?

7 A. If you look above the 10.74 number, it says "Invest A,
8 18 of."

9 Q. Those are horizontal lines going across.

10 A. That means that all of those numbers on that line come from
11 that particular page.

12 Q. So you have to look then back again to the Invest A tab and
13 the correct page?

14 A. Which I believe is page 81.

15 Q. And if we get to page 81 of the document, what do we see?

16 A. This is an excerpt. If you scroll down just a little bit
17 from DX-22.

18 Q. Okay. What page are we on now?

19 A. Page 81.

20 Q. And you were describing this document, what it is.

21 A. This is one page that has been taken from DX-22. And if
22 you'll see by the title --

23 MR. QUINN: Can we scroll down the page so we can all
24 follow along? I want to see the exhibit number.

25 BY MR. QUINN:

1 Q. That's what you're referring to, the DX-22?

2 A. That's correct.

3 Q. And what does that indicate?

4 A. This document has been produced as Defendant's Exhibit 22.
5 We've only included in our binder the one particular page that
6 we've relied upon.

7 Q. So if I wanted to find the entire document, where would I
8 go?

9 A. You would have to retrieve DX-22.

10 Q. And did you attempt to do that in terms of indicating your
11 original sources throughout this binder?

12 A. Yes, I have.

13 Q. Can we take another example and walk through it?

14 A. Just to finish this one briefly --

15 Q. Sure. I missed something, I guess.

16 A. Sorry.

17 Q. That's all right.

18 A. If you scroll to the top of the page, you'll see that these
19 are the various funds that we were looking at on the previous
20 schedule. And next to ISSDA you'll see the interest rate, the
21 average total invested, and the per annum earnings, the
22 \$51,712,463.

23 Q. And then that's just for that particular period?

24 A. That's correct.

25 Q. Could we walk through one other --

1 THE COURT: I have a question here.

2 MR. QUINN: Certainly, Your Honor.

3 THE COURT: Back on page 60, you stopped taking your
4 interest numbers from this column in 1985, and go to some other
5 source for 1986, '87, '88, '89, and '90. Why did you do that?

6 THE WITNESS: Your Honor, I believe the '88 and '89
7 numbers come from the Andersen audit, but I would have to
8 confirm that. And the other numbers are coming from this
9 investment report. They're just broken out on a different
10 schedule. We tried to keep the time frames separated between
11 the finance system and the IRMS system.

12 THE COURT: Well, if you go back to --

13 THE WITNESS: Yes, we've pulled the '86 and '87 numbers
14 from the investment reports, and the '88, '89, and '90 numbers
15 from the Andersen audit reports.

16 THE COURT: So you decided that the Andersen audit
17 numbers are just better numbers than these internally reported
18 numbers? Is that your point?

19 THE WITNESS: As the Andersen audit numbers were
20 reviewed by a third party, we felt those would be more reliable.

21 THE COURT: And indeed some of these numbers are
22 different from the numbers that the Andersen numbers yielded. I
23 mean, I'm not sure I can reconstruct this now, but I just went
24 back through these numbers and found that several of the numbers
25 on one of these sheets are different from the numbers you have

1 used in your 372. So you decided you had better numbers from
2 Arthur Andersen, which I suppose just means that different folks
3 can come up with different numbers?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: Go ahead, math teacher.

6 MR. QUINN: I don't think I'm the teacher here,
7 Your Honor.

8 BY MR. QUINN:

9 Q. Could we take one other walk-through example in terms of
10 finding your sources, going back and looking at the work that
11 makes up Defendant's Exhibit 371? Perhaps we could take
12 disbursements from 2007.

13 A. Okay. We would begin on page five.

14 Q. And describe for the record what page five in the binder is.

15 A. It's the second of three pages of DX-371. And if you look
16 in Column H, which is the disbursement column, at the top of
17 that column it says, "A-3, 1 of." And so that tells us that we
18 need to flip to Schedule A-3, to the first page.

19 Q. So that would be a tab in the binder?

20 A. That's correct.

21 Q. And I think that on the Bates stamping system comes out to
22 page 30.

23 A. And if you go to the bottom of that schedule you'll see
24 2007.

25 Q. I'm sorry, I got the wrong page.

1 A. And if you scroll a little bit further to the right, to the
2 disbursements.

3 Q. Is it page 30? I need to make sure I'm on the right page
4 here with you.

5 A. That's correct.

6 Q. And then what are you looking at on page 30 in that table?

7 A. The disbursement column.

8 Q. Where is that on the page, just so we can find it later?

9 A. The second to last column.

10 Q. Okay. Thank you. And so in this example we're looking at
11 2007, so that's the last number. Is that correct?

12 A. That's correct. And it says "Audit IIM, 3 of."

13 Q. Does that mean we have to look for another page, then?

14 A. That's correct. So if you switch to the audit tab, to the
15 third page of that tab, which I believe is page 90.

16 Q. Okay. And when you get to page 90, what is this table?

17 A. This is summarizing information found in the 2005, 2006, and
18 2007 audit reports.

19 Q. Okay.

20 A. And so we were looking for 2007 disbursements, and if you'll
21 see the disbursement number is referring to audit page 27, which
22 is found at the top of the 2007 column.

23 Q. Okay. I think I need a refresher. The disbursement number
24 is where -- the 2007 disbursement number is coming from where in
25 this table?

1 A. About three-quarters of the way down you see
2 "disbursements," comma, "decreases."

3 Q. Okay. And it says under that, "disbursements on behalf of
4 account holders"?

5 A. And it says 319,519,000.

6 Q. And that's under the 2007 year?

7 A. That's correct.

8 Q. And now there's marking to the left, a line to the left --

9 A. That's sending us to page 27.

10 Q. And audit page 27. So are we in the same tab, then?

11 A. That's correct. I believe that's page 114.

12 Q. Of the exhibit marking?

13 A. That's correct.

14 Q. When you get to this page at 114, it has another exhibit
15 number on it. Can you describe what that indicates?

16 A. That indicates that the complete audit would be available at
17 DX-452.

18 Q. And so this page is a page from that?

19 A. That's correct.

20 Q. And what number from this table is referring forward to the
21 number, the disbursement figure we were looking at?

22 A. Again, if you see "decreases," and the first line under
23 decreases say "disbursements to and on behalf of," and next to
24 this, as this chart is in thousands, is our 319,519,000.

25 Q. So if I were to take this binder for any of the numbers that

1 are in your calculation at the table that's marked as
2 Defendant's Exhibit 371, would I be able to go back to find,
3 following your referencing method, the supporting source for
4 your figure?

5 A. The page from that source that we utilized. If you wanted
6 to see the whole source, you would have to pull up that exhibit
7 number.

8 Q. The material that is in the Defendant's Exhibit 372 and the
9 excerpts from the supporting documents, are there other
10 historical documents -- were you able to consider all historical
11 records that are available in preparing Defendant's Exhibit 371?

12 A. No. There simply wasn't time to consider all of the
13 documents that might be found.

14 Q. Are there other records that you're aware of that might have
15 aided your calculation had you had time, additional time?

16 A. Yes. Dr. Angel located several forms, some of which are
17 referred to as SF-1219, which is a statement of transactions,
18 and SF-1220 -- excuse me. The 1219 is a statement of
19 accountability and the SF-1220 is a statement of transactions.

20 Q. Is there something called an 1178 or something like that?

21 A. Yes, I believe that's the statement of funded checking.

22 Q. And you said you haven't had time to consider those for
23 purposes of these calculations. But being aware of those
24 records, how might they be of assistance, if you know?

25 A. Those records back through approximately 1967 were prepared

1 for each agency for each month -- excuse me, for each region for
2 each month. Prior to 1967 they were prepared for each agency
3 for each month, and they list collections and disbursements for
4 the time frame of the report.

5 Q. But as of this point, you haven't been able to determine
6 whether they -- consider them enough to determine how they would
7 fit into your calculation?

8 A. That's correct.

9 Q. Would you have considered any other historical records,
10 possibly, as part of your calculation, had you had more time?

11 A. Yes. For instance, within the GAO settled account packages,
12 there are items referred to as Account Currents. And within
13 those Account Currents it lists for the particular time frame of
14 the package collections and disbursements.

15 MR. QUINN: Could we talk about one as an example for
16 the Court? Could you put Defendant's Exhibit 245 up on the
17 screen?

18 This is in evidence from last October, Your Honor,
19 Defendant's Exhibit 245.

20 BY MR. QUINN:

21 Q. Could you describe -- while we're waiting for this document
22 to come up, could you describe what kind of information you
23 would be interested to look at in terms of what is in the
24 settlement packages you've seen?

25 A. These documents oftentimes were prepared quarterly,

1 sometimes monthly for the particular agent, so you would have to
2 gather all of the documents for the relevant time frame.

3 But on the Account Current it lists the collections and
4 disbursements that were made for the relevant period.

5 Q. Was there one page from this exhibit that you --

6 A. I believe it was around page 95 or 96.

7 Q. It's a table of Account Current?

8 A. Yes, this is it.

9 MR. QUINN: Could we zoom in on that top part so we can
10 get a sense of the document?

11 BY MR. QUINN:

12 Q. Just briefly, what kind of information in there is of
13 interest to you in terms of the calculations you've been making?

14 A. So for this particular agent, and I believe it says Newman
15 or Newton --

16 Q. It's Newman, I think.

17 A. From October 1st, 1940 through October 31st, 1940, it shows
18 the balance at the beginning of the period, the collections or
19 receipts and the disbursements during that period, and then the
20 ending balance.

21 And so if you were to aggregate all of these various
22 packages and each one of the months within these packages, you
23 could compute the total collections and disbursements.

24 Q. Why haven't these been examined already?

25 A. We examined them through the course of the Paragraph 19

1 effort, but in terms of further examination, that wouldn't have
2 been done until we got into -- further into the paper era
3 accounting.

4 Q. So this is a matter of the priorities of looking at the
5 electronic era first and then going into the paper era?

6 A. That's correct.

7 Q. Had you had an opportunity to look at plaintiffs'
8 calculations of IIM collections and disbursements and compare it
9 to your calculations?

10 A. Yes, I did.

11 MR. QUINN: Could we put up Defendant's -- rather,
12 Plaintiffs' Exhibit 41? Could we zoom in on the top part?

13 BY MR. QUINN:

14 Q. Ms. Herman, have you had an opportunity to review this
15 document marked as Plaintiffs' Exhibit 41?

16 A. I believe I reviewed a predecessor to this document, but it
17 looks substantially similar.

18 Q. Can you describe for us how plaintiffs' calculation
19 reflected in that exhibit differs from your calculation in
20 DX-371?

21 A. The first difference is plaintiffs have included all Osage
22 headright monies, not only those monies that came into the IIM
23 system.

24 Q. Can you describe what you mean by that? What do you mean by
25 including all Osage money?

1 A. The Osage Annuity is paid from the Tribal Trust system, and
2 some of those monies are transferred into the IIM system but
3 some are paid directly from the Tribal Trust system.

4 Q. Okay. So when you look at the Column C in plaintiffs'
5 schedule, what do you understand that to represent?

6 A. At least beginning in 1909 through 2005, it's my
7 understanding that plaintiffs used the numbers we presented on
8 AR-171.

9 Q. In effect the amount your table shows going into the
10 individual IIM system?

11 A. That's correct.

12 Q. And so Column D compares how to your chart?

13 A. Column D includes monies that were paid from the Tribal
14 Trust system directly out to headright owners, monies that never
15 entered into the IIM system.

16 Q. And do those additional figures show up anywhere in the
17 table that's 371?

18 A. No, they do not.

19 Q. And why not?

20 A. Because those monies never entered into the IIM system in
21 any way.

22 Q. Did you figure out how much of an impact including the
23 Tribal Trust money -- calculated how much of a difference it
24 makes if you were to use just your number for the Osage Annuity,
25 what you say indicated went directly only into the IIM system as

1 opposed to all the headrights figures?

2 A. When you include the interest impact, I believe it's roughly
3 \$10.5 billion.

4 Q. 10.5 billion can be explained by that difference between
5 your calculation and plaintiffs' exhibit?

6 A. Yes, roughly.

7 Q. What other differences are there between your calculation as
8 represented by DX-371 and plaintiffs' attachment, what we've
9 called Attachment A, Plaintiffs' Exhibit 41?

10 A. The disbursement column.

11 Q. Okay. What's different about that compared to yours?

12 A. For a large period of time plaintiffs used a constant
13 disbursement rate, and during I believe it was 1988 through
14 2002, they used a calculation based on CP&R data.

15 Q. And is that calculation shown on this schedule, or is it on
16 a different exhibit?

17 A. That's shown on what was referred to as Attachment C.

18 MR. QUINN: Could we put Attachment C up? I think
19 that's been marked as Plaintiffs' Exhibit 56.

20 BY MR. QUINN:

21 Q. Ms. Herman, as far as Plaintiffs' Attachment C, what's
22 marked as PX-56, have you had an opportunity to review that
23 calculation?

24 A. Yes, I have.

25 Q. And have you compared it to your calculation of total

1 disbursements in DX-371?

2 A. Yes. Our disbursement rate, at least from 1972 through
3 2007, ranges from approximately 83 percent to 120 percent in any
4 given year.

5 Q. Can you describe -- you're talking about on your table
6 disbursements, total disbursements, and what are you measuring
7 it against as a percentage?

8 A. Revenues in that year.

9 Q. Total collections?

10 A. That's correct.

11 Q. And could you give that range again? I missed it.

12 A. I'm sorry, it ranged from 83 percent to 120 percent.

13 Q. What does that indicate in terms of the total collections
14 versus total disbursements, based on your calculations in 371,
15 Exhibit 371?

16 A. That indicates in some years that the balance of the trust
17 fund would be growing, but in other years the balance of the
18 trust fund would decrease.

19 Q. Is that those years where it's over 100 percent?

20 A. That's correct.

21 Q. Did you observe in those years where you had actual annual
22 disbursements collection information, any disbursement rate that
23 matches the rate that plaintiffs calculated?

24 A. No, I did not.

25 Q. Plaintiffs, you testified, looked at CP&R information in

1 computing their disbursement rate. How does that compare with
2 the disbursement figures that you came up with for your
3 calculation?

4 A. That would not include electronic payments.

5 Q. What would not include electronic payments?

6 A. CP&R. CP&R only includes checks, at least this subset of
7 CP&R, which was -- I believe these numbers were extracted from a
8 memo provided by Treasury to OHTA as a component of the
9 historical accounting, and Treasury for that purpose only
10 provided symbol 4844 data, which relates to the IIM system. So
11 these would only be checks found in symbol 4844.

12 Q. You had some examples earlier this morning of transfers from
13 the IIM system to Tribal Trust that you indicated had a BB
14 notation. Would a check show up in a CP&R with respect to those
15 types of transactions that you found?

16 A. No, it would not.

17 Q. And based on your study of this system, how much of those
18 transactions are flowing through the IIM system overall?

19 A. There's quite a few transfers both to and from the Tribal
20 Trust.

21 Q. And would the CP&R pick up those disbursements?

22 A. No, it would not.

23 Q. Is that why when you look at footnote on disbursements in
24 Exhibit 371, you mentioned disbursements to the Tribal Trust?

25 A. That's correct.

1 Q. So your calculation of total disbursements includes all
2 disbursements?

3 A. That's correct.

4 Q. And it includes things that are bookkeeping transfers as
5 well as checks and other electronic transfers?

6 A. That's correct.

7 Q. Are there any other differences you noted in plaintiffs'
8 calculations --

9 MR. QUINN: If we can go back to the first schedule,
10 Attachment A.

11 BY MR. QUINN:

12 Q. As compares to the calculations that are in Exhibit 371?

13 A. Plaintiffs' disbursement number is, as we discussed, a
14 constant percentage, but that percentage is only applied to
15 revenues in a given year.

16 And so this model doesn't allow for disbursement of
17 balances from a previous year.

18 Q. So what does that mean? You say it only allows for
19 disbursements in the current year. Can you describe what's
20 happening as they calculate the disbursement numbers?

21 A. So, for instance, if you had a balance of \$100 dollars at
22 the beginning of the year and you had \$100 in revenue for that
23 year, the disbursement percentage would have only been applied
24 to the new \$100 in revenue. So you would have reflected
25 disbursements of \$69.82, and the difference would be carried

1 into the next year.

2 So the model never allows the balance in the trust fund
3 at the beginning of the period to be disbursed.

4 Q. So when you're looking at the calculation, the \$30 that
5 isn't disbursed, roughly, in that current year's revenue, does
6 that, by their calculation as you've looked at it, ever get
7 disbursed out of the system?

8 A. At the end of the model plaintiffs do deduct the current
9 balance in the trust fund, but that doesn't take into
10 consideration the interest impact over time.

11 Q. In the course of your work over the years and looking at the
12 electronic era data, last year you testified about the data
13 completeness validation reports. In the course of your work on
14 that, have you undertaken any analysis yourself to assess the
15 dollar value of any potential gaps in the historical accounting?

16 A. Yes. We reported on some of those last year.

17 Q. What analysis have you done?

18 A. We have identified gaps both through the accounting work
19 that we've performed and also the data completeness validation
20 work we've performed.

21 Q. Can you describe in the process of doing that work what kind
22 of gaps you're referring to that you've identified?

23 A. So, for instance, through the course of the accounting work
24 we may have identified where monies were not allocated
25 appropriately among landowners. Through the course of the data

1 validation work we've performed -- I believe last year we
2 discussed a transfer example where monies were credited but the
3 corresponding debit or negative entry was not made. That I
4 would consider a gap in the accounting.

5 Q. Did you report on those that you identified in the course of
6 your work?

7 A. As it stood last year, yes.

8 Q. If you were to look back to the DCV reports that were
9 admitted into evidence last October, you would be able to find
10 tables summarizing your findings as of September 30, 2007?

11 A. That's correct.

12 Q. Have you continued to work on those accounting problems that
13 were reported on in September 2007?

14 A. Yes. Primarily on the section where we had unresolved
15 transactions.

16 Q. Could you describe again what that category includes,
17 unresolved transactions?

18 A. Those would be transactions that we felt were transfers or
19 reversals, but where we hadn't identified the offsetting
20 transaction as of the date of that report.

21 MR. QUINN: Could we put up on the screen what's been
22 marked for identification as Defendant's Exhibit 495? Can we
23 enlarge that so we can see the table?

24 BY MR. QUINN:

25 Q. Ms. Herman, have you -- is this something you prepared?

1 A. Yes, this summarizes information found in our Pacific region
2 report from 2007.

3 Q. So this is your summary notations from -- and if we look at
4 the notes of the bottom of that page, are those the references
5 to the exhibit binders?

6 A. That's correct.

7 Q. From the data completeness validation reports entered last
8 fall?

9 A. That's correct.

10 Q. So this is a compilation of the information contained in
11 those pages?

12 A. Yes, it is.

13 Q. And you mentioned this is for the Pacific region?

14 A. That's correct.

15 Q. And how many regions did you report on last fall?

16 A. Six regions.

17 Q. So the information reflected here is just for that one
18 subset of the regions you've been looking at?

19 A. Yes, it is.

20 Q. Can you describe what you're summarizing here out of the
21 evidence that -- the exhibits that are in evidence?

22 A. The top section just summarizes the number of transactions
23 for the Pacific region between February of '85 and December of
24 2000, and the absolute dollar amount of those transactions.

25 The bottom section references the number of

1 transactions as of 2007 that were unresolved for Pacific region,
2 the number of potential mispostings that we had identified, and
3 then we've separately identified potential mispostings of
4 canceled checks.

5 Q. Could you describe what each type of category you're
6 summarizing there? Unresolved transactions includes what?

7 A. Those would include items that we felt were either likely
8 transfers or reversals that we hadn't yet been able to find
9 either the offsetting transaction or documentation that
10 indicated to us that it was not a transfer or reversal.

11 Q. And the potential mispostings category refers to what type
12 of issue?

13 A. This refers to, I believe, an example we actually showed
14 from Pacific where -- cases of transfers where the debits and
15 the credits didn't sum to zero.

16 Q. And this number here, you have 10 transactions. Does that
17 refer to the only misposting issues you found or the ones that
18 are unresolved?

19 A. These are the ones that would be found, in addition to the
20 canceled checks listed below.

21 Q. Describe what that category refers to, the "Potential
22 mispostings canceled checks."

23 A. For periods where the CP&R data was available, if CP&R
24 indicated that a check has been canceled, we evaluated whether
25 or not we could find the recredit of that check to the IIM

1 system.

2 If we couldn't identify the recredit or the check, we
3 considered that a posting error.

4 Q. And for this region at this period of time at the date of
5 the report, what's the dollar amount at issue with respect to
6 the potential mispostings due to canceled checks?

7 A. \$20,966.

8 Q. And in terms of these three categories that you've
9 identified, summarized on this table, how many transactions were
10 in this category overall of transactions you had not resolved?

11 A. 187.

12 Q. And that's as against how many overall transactions for that
13 period?

14 A. 961,829.

15 Q. And in terms of the dollar value, absolute dollar value
16 relating to those categories, it's approximately how much?

17 A. \$153,207.

18 Q. And since the date of the report in September that this
19 table summarizes and that which is in evidence, has FTI
20 continued to work to resolve these outstanding issues?

21 A. Yes, we have.

22 Q. Do you know sitting here today whether you've been able to
23 resolve any of these that are reported here?

24 A. I do not.

25 Q. It's possible that some have been?

1 A. Yes, it is.

2 THE COURT: Mr. Quinn, how much longer are we going to
3 go on direct with Ms. Herman?

4 MR. QUINN: 15 minutes, maybe, Your Honor.

5 THE COURT: So we'll get it done before lunch?

6 MR. QUINN: If you want to wait for lunch, I can be
7 done probably in about 15 minutes. Or you can break and we can
8 come back and finish up.

9 THE COURT: I would rather have you finish it in
10 15 minutes.

11 MR. QUINN: Okay. I will see how I can do that.

12 THE COURT: All right. Let's do it.

13 BY MR. QUINN:

14 Q. With respect to the other regions in the reports from
15 September 2007, you would be able to go back and find similar
16 reports on similar -- the corresponding categories for the other
17 regions?

18 A. Yes, you could.

19 Q. And in terms of your ongoing work in the DCV analysis, are
20 you preparing to provide reports updating that information for
21 those regions this coming September?

22 A. Yes, we are.

23 Q. Are you planning to provide reports now, a full report on
24 additional regions?

25 A. Yes. We'll reissue the initial six reports to reflect the

1 new work that we've done this year, in addition to two new
2 reports.

3 Q. Does your work over the past 11 years working with IIM data,
4 and your studies of the IIM records indicate, from everything
5 you've seen, that billions of dollars of individual IIM money
6 was disappearing from the IIM system?

7 A. Not that I've seen, no.

8 Q. Of all the things you've looked at, has anything suggested
9 to you that billions of dollars were being improperly withheld
10 by the government, based on what you could see?

11 A. Not based on what I've seen.

12 Q. Based on all the information you've looked at in the records
13 over time, has anything suggested to you that billions in funds
14 have been lost?

15 A. Not that I've seen no, .

16 Q. Does your data completeness validation testing indicate
17 that?

18 A. Not of that magnitude, no.

19 Q. And the magnitude it does indicate are along the lines of
20 what?

21 A. Probably across all of the regions, hundreds of thousands of
22 dollars.

23 Q. Do you have an understanding that the Court's ruling in
24 January of this year has certain requirements the historical
25 accounting was determined to be as a matter of law impossible to

1 complete?

2 A. That's my understanding, yes.

3 Q. Could you describe what your understanding is of that?

4 MR. DORRIS: Your Honor, I object. I don't think it's
5 relevant what this witness' understanding of your order is.

6 THE COURT: Sustained.

7 BY MR. QUINN:

8 Q. Ms. Herman, have you undertaken to look through the
9 individual Indian data that you've been using and referring to
10 and studying over the years to identify accounts in the
11 electronic era that were opened for the first time after
12 February 4, 1997?

13 A. I have.

14 Q. Have you also undertaken examination of electronic era
15 records to identify electronic -- or accounts in the electronic
16 era that have no probate credits to those accounts?

17 A. Yes, I have.

18 Q. And those accounts being IIM accounts that opened only in
19 the electronic era?

20 A. That's correct.

21 Q. And looking back at the records, did you prepare a summary
22 of the number of accounts that fit those criteria?

23 A. Yes, I have.

24 MR. QUINN: Can we put up Exhibit 496.

25 BY MR. QUINN:

1 Q. Ms. Herman, did you prepare this table?

2 A. Yes, I did.

3 Q. And with respect to the first line, "Electronic era only
4 class members with no probate receipts," describe when you were
5 searching the database what you were attempting to find in
6 coming up with these numbers.

7 A. I was attempting to identify accounts that opened during the
8 electronic time frame that never received a credit from another
9 individual account.

10 Q. And you identified -- am I right to understand that you
11 identified 193,435 accounts that meet that criteria?

12 A. That's correct.

13 Q. And the collections number refers to what?

14 A. The total collection dollars into those accounts.

15 Q. The second line which is labeled "Account holders whose only
16 IIM accounts opened after February 4, 1997," can you describe
17 what criteria you're using to come up with the numbers
18 summarized on this line?

19 A. Utilizing our account holder analysis, we looked for
20 accounts where every account for the account holder opened after
21 that date. And so it would have been fully contained within the
22 electronic system, and again never received a credit from
23 another individual account.

24 Q. And the dollar value relating to those accounts?

25 A. Approximately 218,000.

1 Q. 218,000, or is that --

2 A. Excuse me, million.

3 Q. 218 million?

4 A. Yes.

5 Q. And if I were to sum those two numbers of collections, you
6 come to that bottom line of 1.1 billion?

7 A. That's correct.

8 MR. QUINN: Your Honor, I think all I have at this time
9 is to move exhibits into evidence. We can do that now or after
10 the lunch break.

11 THE COURT: Let's do that after lunch. We're going to
12 be in recess for an hour and a half today for lunch, until
13 2:00 o'clock.

14 MR. DORRIS: Can I ask one question?

15 THE COURT: Mr. Dorris.

16 MR. DORRIS: It may save me some time over the lunch
17 break.

18 **CROSS-EXAMINATION**

19 BY MR. DORRIS:

20 Q. I'm Bill Dorris, by the way.

21 You've testified that the information pre-1972 from
22 your summary exhibit was based on a NORC estimate?

23 A. That's correct.

24 Q. Can you tell me where that is in the notebook? Because I
25 just looked through it and I can't find it.

1 A. I don't have the workpapers provided by NORC. They provided
2 me the estimate, but not their underlying analysis.

3 Q. Okay. Where is the estimate, then, in the notebook?

4 A. It's on the summary schedule, the total collection numbers
5 and the disbursement numbers.

6 Q. So there is no backup in this notebook for the collections
7 and disbursements pre-1972 that I can check over the lunch hour?

8 A. That's correct.

9 MR. DORRIS: Thank you, Your Honor.

10 MR. QUINN: Were you provided any workpapers?

11 THE WITNESS: No, I was not.

12 MR. DORRIS: I did not mean to imply that that was the
13 extent of my cross, Your Honor.

14 THE COURT: I didn't take it that way, Mr. Dorris.
15 We'll see you back here at 2:00 o'clock.

16 (Recess taken at 12:25 p.m.)

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CERTIFICATE OF OFFICIAL COURT REPORTER

I, Rebecca Stonestreet, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

SIGNATURE OF COURT REPORTER

DATE

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