UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.	:	**Civil Action 96-1285**
Plaintiffs	:	
	:	**Washington, D.C.**
V.	:	**Wednesday, June 18, 2007**
	:	
DIRK KEMPTHORNE, Secretary of the Interior, et al.	:	
	:	
Defendants	:	**MORNING SESSION**

TRANSCRIPT OF EVIDENTIARY HEARING
DAY 7
BEFORE THE HONORABLE JAMES ROBERTSON
UNITED STATES DISTRICT JUDGE

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

C O N T E N T S

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
TERENCE KEHOE				
By Mr. Harper	--	1128	--	--
JEFFREY HOGE				
By Mr. Kirschman	1145	--	1218	--
By Mr. Gingold	--	1176	--	--

E X H I B I T S

NUMBER	ADMITTED

(No Exhibits Moved into Evidence.)

P R O C E E D I N G S

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

THE COURT: Let's see. We have a witness on the stand, Mr. Kehoe; we have a cross-examiner, Mr. Harper. Let's proceed.

MR. HARPER: Good morning, Your Honor.

THE COURT: Good morning.

(TERENCE KEHOE, DEFENDANT witness, having been previously duly sworn, testified as follows:)

CROSS-EXAMINATION

BY MR. HARPER:

Q. Good morning, Dr. Kehoe.

A. Good morning, Mr. Harper.

Q. Dr. Kehoe, I would like to start by turning back to your principal Exhibit DX-497. And just to clarify a couple of points, I will say prior to getting into this that this is from my notes and not from the transcript. I may have things not exactly right, but that's why I want to seek some clarification.

If we can turn to 003 of that document, and you have on the top "Available Reported Data," and you have that for each of those time periods. Is that --

A. That's correct.

Q. And I think you testified that when you have available reported data, the data there that you show is if you have complete end-of-fiscal-year data for -- that has all components

of where the IIM funds are kept as far as your research has determined. Is that a fair statement?
A. That's true.
Q. And so if you have partial data, say you have securities but not what's held in commercial banks, then you didn't include that?
A. That's correct.
Q. But you do have instances where you have that kind of data that you're aware of. Is that true?
A. You mean data for a particular year which doesn't offer a complete picture? The example I used may be a figure for securities but not for money in banks or money held at Treasury.
Q. Let me ask it this way: By in large, these documents -- and we can look at your sources in a moment, but by in large the sources for these figures are summary level data either in reports or investment reports or what have you. But they're summary level. Correct?
A. Correct.
Q. And there are some times when there's less than fully comprehensive data. Say for a number of agencies or area offices that talk about securities and where things are invested, you didn't use those if they weren't comprehensive and summary level of the entire system. Is that a fair statement?
A. All the data was taken from summary level reports. There is no data taken from, say, a particular agency or an area office.

Q. And you didn't go and, say, add up a number of different numbers from various to try to make up an aggregate total, you only used those summary aggregate numbers?
A. That's correct.
Q. Now, if we can turn back to DX-497-003, when you have on this document "in hands of disbursing officers," what does that mean, exactly?
A. I'm not sure what that means. I think it's possible that may refer to IIM --
Q. I don't mean to interrupt you, but if you don't know what it means, then that's a fine answer. I don't want you to speculate.
A. Okay. Okay.
Q. So you don't know what that means?
A. No, I do not.
Q. Do you know whether or not such funds are credited within the Department of Treasury?
A. I cannot say for certain.
Q. But certainly funds held in bonded banks would be first credited to a Treasury account. Correct?
A. Not in this period, sir. This money would have been deposited to the bank with the demand deposit account, the checking account.
Q. And so in your view -- when you say "this period," what period are you talking about?

A. Prior to 1933, when all of the IIM checking accounts were closed down, that money was transferred into the Treasury checking accounts of the disbursing agents.
Q. So when you say, "In bonded banks to credit of individual Indians," and then if we can turn in addition to page -- the following page, 004, where you say, "IIM system funds in banks," throughout that period, 1898 to 1933, those were not credited first to Treasury accounts and then moved into individual accounts. Is that correct?
A. I cannot say that never happened, but from reading the regulations, there's clearly the policy that the money would be deposited into these banks.
Q. So it would surprise you if there was a contrary policy to actually credit Treasury accounts first and then move the money to individual Indian accounts?
A. A general policy like that, yes, that would surprise me for this period.
Q. If it was anything other than very narrow instances, just a few instances, you would be surprised at that as well?
A. Well, it sounds like we're in kind of a hypothetical situation. I would prefer to see the actual documents showing this and then comment.
Q. Well, I'm just asking what your -- I mean, you've looked at this period, you're attesting to these numbers. I'm just asking your viewpoint whether or not you think that funds were first --

when they're held in commercial banks, IIM system funds in banks prior to 1933, they were first credited to Treasury or not.
A. Let me clarify, if I may. During this period IIM was deposited into banks both for disbursement and for investment purposes. Typically one bank would be selected to hold a demand deposit; IIM would be deposited to that bank and do a demand deposit, money would be disbursed from that account. In addition, funds were also held in time deposits, primarily for investment purposes, to earn interest.

It's possible that funds could have gone into those time deposits as an investment mechanism that first had been deposited into a Treasury account.
Q. So when you're saying IIM system funds in banks, you don't know how much of those funds from 1898 to 1933 first went to Treasury accounts, or went to Treasury accounts at all. Is that a fair statement?
A. Yes, I cannot say that.
Q. In fact, if we can turn to PX-91, page -- now, do you recognize this document, Dr. Kehoe?
A. Not from this title page, no.
Q. Okay. And if I can -- you can see here it is a report of the Department of Interior for the fiscal year ending June 3rd, 1915. You have not seen that, administrative reports? Does that refresh your recollection?
A. No, it does not.

Q. I would like to show you a passage of this and ask you a question about it. If you can turn to page five of the document, and you can see here the title of that section that is highlighted on the bottom is "Individual Funds." I'll read it into the record: "After the monies received have been passed (sic) the credit of the individual allottee as speedily as the amounts of the accounts will warrant in depository spaces available, they are transferred from a general account which is deposited with the Treasurer of the United States to individual Indian bank accounts in a bonded national bank designated and approved by the department."

And if you look a little bit further down, they're talking about very recent history, 1915 and so forth, this very time period that you're talking about.

So do you agree that that was generally what happened with these funds?

A. I would like to point out that this is referring to the agency for the Five Civilized Tribes specifically. I believe that's true. If we can pull back a minute so I can see the heading of the page, I see "Five Civilized Tribes" at the top of the page, so that leads me to believe it's talking specifically about the five tribes.

During this period, a tremendous amount of revenue was coming into this agency primarily from oil and gas, so it's quite possible that so much revenue was coming in that it was

simply too much to be easily placed into local banks, simply beyond their capacity.

So it seems to me quite possible that here we have an instance where money was first placed into the Treasury until it could be distributed among local banks. So this could possibly be an exception. And generally, with regards to BIA policies concerning Indians, the Five Civilized Tribes and the Osage were often outside of those general regulations because of their special circumstances.

Q. But isn't it true also that during this time period a very large percentage of the proceeds that were Individual Indian Monies were from the Five Civilized Tribes and Osage, in comparison to all funds?

A. For this period, that would be an accurate statement.

Q. In fact, for most of the period from 1898 to 1933. Correct?

A. It would be a significant percentage.

Q. So a significant percentage -- turning back, then, to DX-497-004, a significant percentage of the funds that you have listed here as IIM system funds in banks would likely have fallen into what you've called now an exception to the rule, and that is they did go through the Department of Treasury. Fair statement?

A. Could we go back to that document, please, the one discussing the Five Civilized Tribes? And if you could enlarge the highlighted section, please.

Well, this appears to be referring to the situation at the Five Civilized Tribes agency in 1915. I don't know that this was the case at the Five Civilized Tribes agency throughout this entire period.

Q. I'm not asking you to speculate what you -- I'm not asking you to speculate --

A. I'm not sure I'm speculating. If I'm asked to give a general statement, as you requested, I don't know that I can give a general statement based on this particular document.

Q. What I'm asking you is whether or not you know one way or the other what the percentage of funds that you have listed on DX-497-004 as IIM system fund in banks, do you know how many of those funds went through the Treasury during all these periods that you have listed?

A. No, I cannot say.

Q. But as you said, at least from this documentation, a significant percentage, as you put it, would have gone through the Department of Treasury?

MR. SIEMIETKOWSKI: Asked and answered, Your Honor.

THE COURT: I'll allow it.

A. If the situation which is described at the Five Civilized Tribes in 1915 was generally true throughout this period, then that would be an accurate statement.

BY MR. HARPER:

Q. Now turning back to your chart, if we could turn again to

003, and I just want to make sure that I have these numbers right here.

From periods prior to 1908, you don't have any of that summary level data. Is that a fair statement?

A. That's correct.

Q. Do you have any data from 1898 to 1908, prior to 1908?

A. I have no summary level data of this nature for that period.

Q. Do you have any data, reliable data or what you believe is reliable data, for that period?

A. I've collected correspondence, documents that refer to money being deposited in banks. It may refer to how much money from a particular agency is being kept at a bank, the amount of interest it's earning, that type of fragmentary information, but nothing beyond that.

Q. And then from there it goes -- we can look at the next page. So there it ends at 1911 and then the next page is 1928. This is DX 497-003. It goes to 1928. So from, then, 1912 to 1928, you would not have any of that summary level data there as well. Correct?

A. None that would allow me to offer a complete picture, as I attempted to do, as to where IIM was placed.

Q. Same would be true for 1929. Correct?

A. Yes. Wherever there are gaps in the data, it was because I was not able to locate that type of information.

Q. So basically, to summarize, this is the best end fiscal year

data that you would have for summary level that includes where you believe all the funds were kept?

A. That is correct.

Q. Now, we see in this time period, as you testified yesterday, that money was slowly being -- well, I shouldn't say slowly. Let me withdraw that question.

Funds in this time period were being moved from investments made by banks to the Department of Treasury. Is that a fair statement?

A. In 1933, the Glass-Steagall Act prohibited the payment of interest on demand deposits, so the BIA closed out all of the checking accounts they had been using for the disbursement of IIM. All that money moved to the checking accounts with the Treasury.

In addition, the money that was in bank time deposits, over about a 10-year period, that slowly declined to almost nothing by the late 1940's.

Q. When you say checking accounts at the Treasury, do you mean the normal disbursement account from the Treasury, what's now called the TGA?

A. Well, I'm referring to the fact that in this period, each BIA disbursing agent was assigned a disbursing agent symbol, and that meant that they had a checking account which they could use for disbursing money under their supervision.

Q. And just to clarify, these reflect balances, not revenues.

Correct?
A. That's right. These are, as you said yesterday, snapshots in time.
Q. And do you have any aggregate figures of how much funds were moved in this time period from the commercial banks into the Department of Treasury's accounts?
A. Well, if you look at the figures for IIM system funds held at Treasury in 1933, and then the figure in 1934, I think you see a significant increase. And that might give us a rough indication of that movement.
Q. Well, as you say, these are snapshots. So there's revenues in, there's disbursements out, there's movement into Treasury, there's a lot of different components of these things happening.

So based on reviewing this information, you can't tell what the aggregate figure is of how much funds have been moved to Treasury. Isn't that a fair statement?
A. I would agree with that.
Q. Now, prior to this period, during, again -- not prior to this period, but during this period of 1898 to 1933, by in large, as you just testified before, funds were invested in these banks. Correct?
A. Well, there are also significant amounts of IIM invested in securities, as the table shows.
Q. Fair enough. They were invested one way or the other, by and large?

A. Most of it was, certainly.
Q. But to the extent that they were held in banks, they were invested and earned interest?
A. Yes. All money held in banks during this period would have earned some interest.
Q. And then ultimately, whatever funds were held in the banks, to the extent that the principal and interest remained, they were ultimately moved to Treasury. Correct?
A. The reason I'm hesitating -- well, I'm thinking about the fact that ultimately a lot of the money that was being invested in banks was being invested in securities. But of course that money would have first had to have gone into the Treasury before it was used to purchase securities.
Q. So I'm just talking about the monies -- just so we're clear, because the monies that had already gone to Treasury to purchase securities, I'm not talking about those funds because those are already there.
A. You're talking about the --
Q. I'm talking about the funds that are at the banks, what you're listing under here as IIM system funds in banks. Those funds were ultimately moved into Treasury, and indeed by your chart notes, by 1955 all of them had gone there. There was nothing in banks. Correct?
A. That's correct.
Q. So I'm talking about that movement of funds moved the

principal but also any interest that had been earned. Correct?
A. Yes.
Q. Dr. Kehoe, I would like to talk with you a moment about your final page of this exhibit, which is DX-497-0012. And you had spoken a little bit about this during your direct examination, as you'll recall. And this basically lists the sources of your information?
A. Correct.
Q. And all these are basically, as you've already testified to, summary level information?
A. That's true.
Q. Did you review any documentation to determine the accuracy, the reliability, background documentation, back-up documentation as to, say, from 1972 to 1985, the BIA investment reports?
A. No, I did not.
Q. And that would be true for all these periods. Is that a fair statement?
A. That would be a fair statement.
Q. Now, before we left yesterday we began to speak about PX-134. Do you recall that?
A. Yes, I have the document in front of me.
Q. And that is a Comptroller General letter from 1928?
A. That's right.
Q. And you had testified that you don't recall -- at least from yesterday you had not recalled seeing this letter prior to me

showing it to you yesterday?
A. I don't believe I had ever seen this letter before, no.
Q. And have you had an opportunity to review the letter?
A. I have.
Q. Have you discussed the letter with anybody overnight?
A. I did discuss it briefly with a couple of staff members from Morgan Angel.
Q. Anybody else?
A. No.
Q. And what was the substance of that conversation?
MR. SIEMIETKOWSKI: Objection, Your Honor. Relevance and hearsay.
THE COURT: I'll sustain as to relevance.
BY MR. HARPER:
Q. If we can turn on this document to the first highlighted section, and having reviewed this now, are you familiar with this act or this law that they're quoting in this document?
A. I'm studying the document closely. I'm not sure if I'm familiar with the law that's referred to in the letter in this opening set of paragraphs. They're referring to Section -- the number is not clear, but it's in the revised statutes.
Q. And did you look this law up overnight?
A. No, I did not.
Q. Then let's go to the second paragraph. So this paragraph basically sets out what the issue is. Is that a fair statement?

A. Yes, it does.
Q. And we read it yesterday into the record, but let me just read part of it. It is: "The question arises whether or not the term public monies, as contained in the above statute, applies to funds of Indian people and other individual Indian funds held in Trust by disbursing officers of the Indian Service." Do you see that?
A. Yes, I do.
Q. And we had talked a little bit about that issue, and it was your view that public monies held by disbursing officers and the Indian agent were not public monies.
A. When I made that statement, I had in mind some correspondence from the Treasury Department from an earlier period in which I stated that in their view, IIM were not public monies.

However, after reading this document closely, it appears that this is a conclusive opinion by the Comptroller General that they should be treated as public funds.

Q. If we can turn to the second page of this document.

Now, I would like to turn your attention, because we talked about one term yesterday that I just want to clarify whether you've -- other than here, whether you've ever heard this term used. If we can go down to the final paragraph beginning, "There monies are held."
A. I'm looking at the paper copy. Oh, I found it right at the

bottom of page two.
Q. It's a little difficult to read.
A. Yeah, it's not the greatest copy.
Q. It took me awhile to figure out what it says.
THE COURT: "Where monies are held."
MR. HARPER: You're correct, Your Honor.
BY MR. HARPER:
Q. "Where monies are held in trust, the legal title is in the trustee. Hence, where the United States is the trustee, the monies to be held in trust may be said to be public money."
And as you can see, they're talking about the legal title, who holds legal title of the funds. Other than in this, have you ever heard that term used in reference to individual Indian funds?
A. No, I have not.
Q. But this certainly changes your mind that the conclusive view of the Department of Treasury is that these funds are public money. Is that a fair statement?
A. Well, this is the view of the Comptroller General. It is his opinion.
Q. And the Comptroller General is --
A. Well, he's the head of the General Accounting Office, and I believe on these types of matters his opinion would be the final say.
MR. HARPER: Could I have a moment, Your Honor?

THE COURT: You may have a moment. Then I want somebody to explain to me what it means to have title to money. We have title to land, we have title to cars. "Title" is a word used by somebody in the Comptroller General's office who didn't know what title was.

MR. HARPER: Well, Your Honor, I think in this context they mean legal title as opposed to beneficial title. And any time you hold trust property, a corpus, it is an asset of the trust and the legal title is held by the trustee. And I think that would go for any fund.

THE COURT: I'm just quibbling with you in a very pedantic way, Mr. Harper.

MR. HARPER: Fair enough.

THE COURT: I think title was and is a misnomer, but I think I understand what they meant and I certainly understand what you mean.

MR. HARPER: Thank you, Your Honor. One moment, Your Honor.

Thank you, Dr. Kehoe. Thank you, Your Honor.

THE COURT: Anything further of Mr. Kehoe?

MR. SIEMIETKOWSKI: Your Honor, may I ask plaintiffs to please show the full page of the document that was just on the screen?

THE COURT: You mean you want it on the screen or do you want to see it?

MR. SIEMIETKOWSKI: Either way, Your Honor.
THE COURT: Well, you've got it now, so that's fine.
MR. SIEMIETKOWSKI: Now if I can find it.
MR. KIRSCHMAN: What page of the document was that from?
MR. HARPER: Page three. Page two, I'm sorry. You're talking about the "where money"?
MR. SIEMIETKOWSKI: Thank you, sir. We have no redirect.
THE COURT: Mr. Kehoe, thank you. That completes your testimony. You're excused.
MR. KIRSCHMAN: Good morning, Your Honor.
THE COURT: Good morning.
MR. KIRSCHMAN: The defendants call as their next witness Mr. Jeffrey Hoge.
(Oath administered by Courtroom Deputy.)

(JEFFREY HOGE, DEFENDANT witness, having been duly sworn, testified as follows:)

DIRECT EXAMINATION

BY MR. KIRSCHMAN:
Q. Good morning, Mr. Hoge.
A. Good morning.
Q. Could you please state your full name for the record?
A. Yes. Jeffrey Allen Hoge.
Q. And could you please tell us what academic degrees you have

received?
A. I have a BS in business administration from George Mason and an MBA in finance from George Mason.
Q. And sir, are you an accountant?
A. I am.
Q. And where are you currently employed?
A. I work for the Treasury Department.
Q. And where within the Treasury Department are you working?
A. I'm the director of the Accounting Systems Division in the Government-Wide Accounting Area of the Financial Management Service.
Q. And when did you begin your employment with the Department of the Treasury?
A. 1985.
Q. And how long have you worked within the Financial Management Service?
A. Same amount of time.
Q. And you said you were the director of the Accounting Systems Division. Correct?
A. Correct.
Q. How long have you held that position?
A. About 10 years.
Q. Sir, could you please describe for us generally the mission of the Accounting Systems Division?
A. Yes. Our division builds and maintains systems that collect

financial and budgetary data from federal agencies to support our primary mission of collecting data from agencies, consolidating it, reporting it to the Congress, the President, and the citizens. And --

Q. Go ahead, I'm sorry.

A. We have operating areas that do that, so our systems are in support of those areas.

Q. And what is the size of the staff that reports to you?

A. I have 24 people right now.

Q. And could you describe who those people are, what positions they hold, generally?

A. Yes. About half of them are accountants and the other half are IT specialists, information technology specialists.

Q. And why is it that in this division there are both accountants and IT specialists reporting to you?

A. Well, it's difficult for strict IT specialists to communicate with accountants. We have different jargon. So Financial Management Service created a division where we would have both kinds of people within the same organization with one boss to help communicate and hopefully build better systems which had the accounting goals incorporated in the systems.

Q. And as --

THE COURT: Are you bilingual, then, Mr. Hoge?

THE WITNESS: I'm semibilingual, yes, Your Honor.

BY MR. KIRSCHMAN:
Q. And as the director, what is your role regarding the functioning of the staff?
A. Well, I do the normal supervisory things, hiring, evaluating performance, those kinds of things. But I have -- depending on the particular system and the personnel involved, I have close oversight on some things and a little more from a distance on others. But I have a pretty good idea what's going on there.
Q. In your work, are you familiar with the Treasury General Account?
A. Yes, I am.
Q. And could you please explain to the Court generally what the Treasury General Account, or the TGA, is?
A. Yes. It's basically a central checking account for the federal government. We have a decentralized government, where management decisions can be made out in the organizations, but we practice centralized cash management and so we make disbursements out of that one checking account.
Q. Speaking generally, Mr. Hoge, what is the average balance of cash in the TGA at one time?
A. It's approximately $5 billion.
Q. Now, Mr. Hoge, does Treasury know where the cash in the TGA comes from generally?
A. Yeah. We know the sources of collections, yes.
Q. Mr. Hoge, I would now like to turn your attention to what we

have previously marked as DX-499. It will appear on your screen. This is a two-page exhibit. And I would like to turn your attention at this time just to the first page. Let me know when it's up on your screen.

A. I have it.

Q. Who created this chart, Mr. Hoge?

A. I created it with the help of one of my employees.

Q. Generally could you please explain to the Court what this document is?

A. It's a general picture, without detail, but a level of description in a visual format to try to explain on this page how our Cash Concentration System works.

Q. And generally can you define what that Cash Concentration System is?

A. Yes. We have collections that come into the government from many sources and many locations, and we need to get control of that and manage it and move it so that we can use it.

In this case the end goal is to have enough funds in that TGA so that we can pay our bills each day.

Q. Now, turning to the left side of the chart, what do the three boxes with the ALC numbers in them represent?

A. ALC is short for Agency Location Code, and the three that are listed here are three ALC's that have deposited funds that impacted 14X-6039 in the period from October 1st, 2006 until last month.

Q. Okay. And how does an agency gain an ALC, an Agency Location Code?
A. Well, the ALC, it's a physical location; it has people's names and addresses, responsible parties. And they have to ask the Treasury Department to set up an ALC, provide all that information, and then, if warranted, the Treasury will create an ALC.
Q. So what information -- you have a green arrow depicting deposits into the Cash Concentration System. So just so we're clear, what information is forwarded with the deposits, then?
A. Each deposit into this system has to have the ALC number associated with it before it can move through the system.
Q. And how is this information used when it is received?
A. Well, several things would happen. The amount of the deposit in the ALC would be provided in a report that comes out the bottom there to the next system, but --
Q. And let me just stop you. When you say "a report down there at the bottom," you're referring to the bottom of that first page of DX-499 that shows reports by ALC moving into the Central Accounting System?
A. Correct.
Q. Okay. Go ahead.
A. Then the ALC data would be dropped after that report is made, and then the movement -- the concentration movement would begin.

Q. And these are cash deposits from Interior. Correct?
A. Yes, these are.
Q. And looking at this chart, it appears that the cash first arrives in certain banks. Correct?
A. That's correct.
Q. And what are these banks? Are these any banks throughout the country?
A. These are Treasury depository banks.
Q. And what does that mean? What does the designation as Treasury depository bank imply, or what does it mean?
A. The bank has to make application to the Treasury Department if they would like to become a Treasury depository, and there are certain requirements to be a depository. They would have to make those, and then the Treasury would designate them as Treasury depositories.
Q. Are all banks selected to serve as TGA depositories?
A. No.
Q. Why not?
A. Well, firstly, it would be up to them.
Q. I'm sorry?
A. It would be up to the bank to decide whether they wanted to be one. Some banks probably couldn't make the requirements that the Treasury has.
Q. Okay. After the cash arrives at these various TGA depository banks, your chart, your diagram indicates that they

move to the Federal Reserve branches. Correct?
A. Yes, in general that's correct. I mean, this is a simplified chart, but most of those funds would move to the Federal Reserve bank very quickly from the time they were deposited, yes.
Q. I'm sorry, what was the last part?
A. Most of those funds would move to the Federal Reserve bank very quickly once they were received in the Treasury depository bank.
Q. Okay. As the cash moves from the depository banks into the -- as it moves from the depository banks into the Federal Reserve branches, what if any reporting occurs?
A. The Treasury Department would begin to get reporting from the Federal Reserve banks as soon as they received that first deposit from the Treasury depository bank, and then this chart doesn't depict it, but the funds may have more stops at different Federal Reserve branches on their way to the TGA.

And as the money moves, the sending Federal Reserve branch would generate a report and the receiving Federal Reserve branch would generate a report. We would get those reports in our Central Accounting System at Treasury, and we make debit and credit type entries at that point that tell us where the funds are as they move through the system.
Q. And what information is provided in these reports?
A. It's a total amount for each transmission. All this is done

electronically.
Q. What is the purpose of this reporting?
A. It's beyond what the -- in the commercial world they probably would not keep track as funds moved through various stages in the banking system, but we do. It's just something that the Treasury Department does because we have responsibility for the funds.
Q. Is it true to say it's important for Treasury to have this information?
A. Yes.
Q. Why?
A. I think the primary reason -- I think there's one real touchable reason and then there's one that's impressions. We need to have enough money in that Treasury checking account to pay our bills each day. That's the tangible thing. And the secondary thing is that the public has to have faith that we're going to have money in that. We don't bounce checks, and we don't ever want to, and these are ways that we make sure that that doesn't happen.
Q. Mr. Hoge, what are bank transcripts?
A. They're those reports that I mentioned that come from the Federal Reserve banks to the Central Accounting System.
Q. So that's the name of what you've just been talking about, the type of reporting?
A. Uh-huh.

Q. Yes?
A. Yes. Uh-huh.
Q. When are the bank transcripts delivered to Treasury?
A. Well, most of them come in overnight batch mode. We would load them into our Central Accounting System overnight.
Q. Now, in the end, cash moves from the Federal Reserve branches into the TGA at the New York Federal Reserve bank. Is that correct?
A. That's correct.
Q. And is there any reporting that takes place when the cash moves from the reserve branches to the TGA?
A. Yes.
Q. And can you describe that for the Court, please?
A. We actually have two ways that we would understand that. The New York Federal Reserve would send us a similar report to the previous reports, and then we produce something called the Daily Treasury Statement each day, and it would show the beginning balance in the TGA from the previous day and then the ending balance, so you would be able to see the final result of this movement. In between the beginning and end it shows you inflows and disbursements.
Q. Mr. Hoge, with such reporting taking place as you've described, can cash be leaked out of the banking system at some point?
A. Leaked out?

Q. Can cash disappear from this Cash Concentration System?
A. Once we have the ALC number on the original deposit, it can't leak out.
Q. Why not?
A. We have -- well, several reasons. We partner with the Federal Reserve bank in this system. They are a very security conscious organization. We use all the best modern technology tools to make sure that what starts in movement from one location is what is received at the following location in the banking system. We do sophisticated error checking and we have the most modern security controls in those systems, and we have people who know the importance of this.
Q. Are these modern technology tools and the use of people to monitor the cash sometimes referred to as edits?
A. The error checking would be called edits, yes.
Q. And can you describe some of the means you check for errors?
A. Yeah, I can describe the simple ones. I'm afraid the modern, high tech ones are beyond me.

But a simple type of error checking would be if I sent you a file and at the end of that file I told you how many records were in the file, you would receive the file and count the records and see if it matched. That would be the simplest type.

A second way is to divide that - some of these are very large files - into pieces, and add the total amounts in each

piece. So if we had $1 million in one record and 2,000 in the next record, we would add all those up and we would have a record at the end of that that would say what the total was, and we would check that.

In the more sophisticated modern technologies, you actually use tools, software tools that you purchase. They encrypt the data and they have very sophisticated checks in them that make sure that what started down the path is what's received. And in the most modern tools they can even tell if someone other than the recipient, intended recipient, has read the file.

Q. Has read the file?

A. Right.

Q. You also mentioned that there's still a place for human beings to monitor and check for errors. Correct?

A. That's correct.

Q. And who within Treasury, what division or which component, performs that work?

A. That's the Cash Accounting Division, which is in our Government-Wide Accounting Area, and they check the reports that come in overnight for what I would call reasonableness. They have an idea about what the normal movement would be from, for example, the Atlanta Federal Reserve bank to the Richmond Federal Reserve bank, and if there's an anomaly, they would investigate that.

Q. Does Treasury require these edits or this monitoring?
A. Yes, we do.
Q. Why?
A. Well, this is probably the most important job that we do. As I said earlier, we need to make sure we can pay the bills that come due, but here, just as importantly, people have to have faith that the Treasury Department is taking care of their money.
Q. These reporting requirements that you've discussed and the safeguards that are checked to look for anomalies or problems, generally speaking, how long have these been in place within Treasury, to the best of your understanding?
A. I can only speak to my time there, and 1985 is when I started. These checks have changed in the way that they're done, in that they use modern technology to do them, but the nature of the checks that we do hasn't changed. We don't need as many people to do them as we once did, but the checks are still the same and I would say that they're probably done better because of the systems that we use.
Q. With the procedures you've just described, Mr. Hoge, is it possible that the cash from one particular source could be leaked out of the TGA to build up somewhere, or again to be moved out of the TGA to build up somewhere?
A. No.
Q. With the reporting and safeguards that take place within

this Cash Concentration System within the banking system, is it possible that the cash in the TGA could be building up from some unknown source; for example, if an agency would deposit cash without an ALC indicated?

A. No. We wouldn't start cash without the ALC number through this concentration system. That ALC is the beginning of our accounting responsibility, so we have to have that before we can start.

Q. Does Treasury keep detailed records of the amounts that are actually in the TGA?

A. Yes.

Q. And who does that, generally?

A. Well, it's a joint effort. The Office of the Fiscal Assistant Secretary of the Treasury, the Federal Reserve Bank of New York, and then our Cash Forecasting Division in Government-Wide Accounting actually supplies the data for decision-making each day.

But yeah, we have to have detailed records to be able to do this job.

Q. And how precise is this tracking system that monitors the amount of cash in the TGA?

A. To the penny.

Q. And how do you know that?

A. Well, as I said earlier, this box has been simplified. There are actually about 150 different sources to data about

this TGA. And we have a system called Cash Track, which I'm responsible for, and I have a team lead in charge who handles all the details, but I do participate and have oversight for it, and it's to the penny.

Q. Is there any possibility that there's cash hiding somewhere in a corner within the TGA that's not accounted for?

A. No.

Q. The reporting processes you describe and the monitoring of the flow of cash you've described, are they the same for all cash coming into the Cash Concentration System?

A. Yes, they are.

Q. You've mentioned this briefly. Below the box that demonstrates the banking system generally, there's an arrow at the bottom leading to the Central Accounting System. Do you see that?

A. Yes, I do.

Q. And the arrow -- on the arrow there's a phrase, "Reports By Alc."

A. Right.

Q. Can you explain to the Court what that means, "reports by ALC"?

A. Well, that's the initial classification that's done. In this screen we're showing deposits. And that initial classification is just the first step of our accounting process, and yet you have to have the ALC on those reports to do that.

So we are constantly, on a daily basis, receiving reports about deposits which show the ALC number and the amount of the deposit.

Q. Okay. Could you explain for the Court what the Central Accounting System is?

A. Yes. Basically it has approximately 12,000 Treasury accounts in it where we maintain information about each account, balances, disbursements, collections, transfers, things like that. And its primary purpose is to help the Congress. In our Constitution, the Congress has the power of the purse, and that means that in the executive branch we can't obligate or spend more than the Congress has authorized to obligate.

So you need a tool to make sure that doesn't happen, that we do follow the rules that are set down by the Congress appropriation law. And that's the basic job of the Central Accounting System, to keep track of that activity.

Q. Are Indians' individual funds handled within the Central Accounting System, reported in the Central Accounting System?

A. Individual funds, no.

Q. No, IIM funds.

A. IIM funds have records in Central Accounting, yes.

Q. Are they handled any differently than other funds recorded by the government within the Central Accounting System?

A. They're not handled differently in this Cash Concentration System, but they are handled differently in the Central

Accounting System, yes.
Q. And why is that?
A. Well, they're what we call a deposit fund, and deposit funds are treated differently than other fund types.
Q. Before we leave the first page of DX-499, do you know how many Federal Reserve branches there are?
A. 35.
Q. I would like to turn your attention to the second page of DX-499, if I could. And just to be clear, are you familiar with the account number for the IIM accounts I just mentioned?
A. Yes, I am.
Q. And what is that number, do you know?
A. 14X-6039.
Q. The heading of this chart is "Reports to Central Accounting System, STAR, from ALC's," and then in parens, "monthly." Do you see that?
A. Yes, I do.
Q. First off, is STAR another name or another reference to the Central Accounting System?
A. It is.
Q. And is it one used within Treasury?
A. Yes.
Q. Okay. This second page of DX-499 shows reports moving by ALC number down into the Central Accounting System. Correct?
A. Correct.

Q. And who reports the information that is within these reports?
A. These monthly reports come to Central Accounting System from each ALC, so it would be someone at the ALC who prepares the report.
Q. So someone within the particular agency who has that ALC?
A. Right.
Q. And looking at the chart, is it fair to say that the reports are referred to as Statements of Transaction?
A. That's correct.
Q. Mr. Hoge, if Interior wanted to determine the amounts that could be paid to individual Indians from the 14X-6039 account, where would it look, the TGA or the fund (sic) accounting system depicted on this chart?
A. It would look in the Central Accounting System for that information.
Q. Why?
A. Well, in the TGA there's no identity for the dollars in that checking account. They're just dollars in a checking account. They basically represent what we need to cover our payments for the day, no matter what the purpose.

The Central Accounting System, you can see, in the case of a federal fund, what the Congress had authorized us to pay, not necessarily today or tomorrow, but at any point. In the case of a deposit fund, they show the fund balance in that fund

and our liability.
Q. And what do you mean by that? You said "our liability." What did you mean?
A. Right. When deposit funds come into Central Accounting System, the fund balance goes up. That's the debit. On the other side of the ledger there's a credit, and it's a liability to the public. And deposit funds are always not the government's money, they belong to the public.
Q. Okay. What information is included in the Statement of Transactions?
A. Basically it's a three-column report. In the left-hand column, the ALC would report the fund symbol, and some ALC's would on a normal basis report multiple fund symbols.

On the center column the ALC would report the amount collected for the monthly period that they're reporting on, and in the third column they would report the amount disbursed for that month.
Q. And who uses this information?
A. Treasury is the primary user.
Q. And how is it used?
A. Well, that Statement of Transactions represents the second step in our two-step classification process. So we would get the Statement of Transactions in, we would look at the total amounts classified for the month for that ALC, and then we would compare it to the reports we got on the previous page that

showed the deposits in this case by ALC.

We would do a similar job with disbursements, and we would look to see that the amount classified on the Statement of Transactions for deposits was equal to the banking reports that we got for deposits for the month.

Q. Okay. And is that described in the bottom box of this second page? I'm looking at the second descriptive phrase. It says, "Compares Statement of Transaction deposit amounts to bank system deposit amounts."

A. Correct.

Q. Mr. Hoge, is it possible for an agency to hide funds within the Central Accounting System by, for example, not submitting a Statement of Transactions at the end of the month, someone decides not to provide a Statement of Transaction for a particular ALC?

A. No, it's not possible.

Q. Why not?

A. Well, I mean, receiving those Statements of Transactions is a critical part of what we do. So if we don't have the Statement of Transactions by the end of the third work day of the following month, we go after it. We start bugging at the working level the persons who are supposed to report it, and we elevate that very quickly up through our chain of command. And in fact, we do performance measures that go to the Fiscal Assistant Secretary each month. So we get them.

Q. Approximately how many ALC's are within the Central Accounting System in total?
A. I think we got 1,522 at the end of May, so...
Q. And where are they from?
A. Everywhere. They're scattered throughout the federal government.
Q. Looking at the second page of DX-499, we addressed the second descriptive phrase. The first states, "Classifies deposits to 14X-6039 and updates fund balance." Do you see that?
A. Yes.
Q. Could you explain that? What do you mean that it classifies deposits to 14X-6039?
A. Well, this is the first information that the Treasury Department receives about what fund symbol is impacted, so in this case it's a deposit. So when we get that classification, we would increase the balance, what we call the fund balance with Treasury, and as I said earlier, we would also increase liability in the case of a deposit fund.

So that tells us basically what the 6039 has on deposit in the Treasury.

Q. Okay. The last blurb on the far right of DX-499, second page, states that "Statements of Difference are generated when Statement of Transactions deposits amounts do not equal banking deposit amounts."

A. Right.
Q. Correct?
A. Yes.
Q. And generally, what is the purpose of that Statement of Difference?
A. It's to notify agencies that they haven't done a very good job of classifying all of their deposits in this case. And it also puts them on notice that there are rules that they have to follow to clear those differences, and they have a fixed period of time to do that, and how well they do that is also included on performance measures that go to the Assistant Fiscal Secretary.
Q. Now, regarding how Treasury and the Department of Interior addressed Statement of Differences, are you familiar personally with that?
A. No, I'm not.
Q. Why not?
A. We have an operating division whose responsibility that is. My job is to give them the tools to work on it, but I haven't actually worked on these.
Q. Now, Mr. Hoge, when the government spends cash in the TGA, in the Treasury General Account, for, say, a Navy aircraft or to make a Social Security payment or to pay any other non-Indian expenditure, is the level of the funds in 14X-6039 affected by that?

A. No.
Q. Why not?
A. Well, in the case of the naval aircraft, the fund that would be affected would be the fund that the Navy has for military equipment. And just as we got this report at the end of the month on deposits, at the end of the month in which we made that disbursement we would get a report from the Navy and they would tell us which fund symbol was charged. It wouldn't have any impact on 6039.
Q. Mr. Hoge, does the United States benefit from a greater IIM fund balance; in other words, a greater fund balance within 14X-6039?
A. No.
Q. Again, why not?
A. Well, 14X-6039, it's an internal bookkeeping entry in the Central Accounting System. But in this case, if the balance of 14X-6039 goes up, then the liability that the Treasury Department has or the United States government has goes up also.
Q. Based on the reports you've discussed and the systems you've discussed related to the Central Accounting System, or the STAR system, if an amount of cash deposited in an ALC was subsequently reported as a different amount in the Statement of Transactions that we're looking for here, could cash be inappropriately moved to a different ALC without being noticed within Treasury?

A. I think temporarily, until the end of the month, when we got these Statements of Transactions. Because what would happen is that the persons doing the Statement of Transactions wouldn't know that something had been misclassified according to ALC, so it would generate a Statement of Difference, probably two of them, one for each ALC that was involved. And when they noticed that the amount was the same, that would give them a clue as to what happened.

But even if the amounts weren't the same, they would have to do research to settle those Statements of Difference, and I'm relatively certain that it would show up at that point.

Q. Do you have any personal knowledge, Mr. Hoge, of misclassification of cash happening on a regular basis?

A. No.

Q. Could that happen on a regular basis over an extended period of time?

A. I don't believe so. I think the safeguards that we have in the system would pop them up.

Q. What safeguards are you talking about?

A. Well, they're built throughout these systems. On the first page we talked about the error checking and security and all that stuff. Central Accounting System gets tested regularly with penetration testing as far as security goes. It's not on the Internet, it's easier to protect, and it's got process-type safeguards in them with the Statement of Transactions and the

Statements of Difference.

So I don't think it could. I haven't seen that over any extended period of time. I've seen mistakes that were corrected fairly quickly.

Q. Could payments between ALC's lead to the improper moving of funds without detection?

A. I'm not quite sure I understand. Payments between ALC's would be subject to the same kinds of things we just talked about.

Q. Do you have any personal knowledge of the theft of IIM funds within the Central Accounting System?

A. Theft within the Central Accounting System?

Q. Yes.

A. No, I don't. And I don't know how you would steal fund balance. It's not a tangible thing, it's a bookkeeping entry.

Q. Now, I believe you've already testified that 14X-6039 is a deposit fund account. Correct?

A. Correct.

Q. Could you describe for the Court how a deposit fund account is described within Treasury, to the best of your recollection?

A. Yes. A deposit fund is a fund where the money does not belong to the federal government. An example might be a case where the government confiscates money in a drug investigation or something like that. We don't know at that point what's going to happen in that case; it may eventually belong to the

government, but it might go back to whoever had the money to start with.

So a typical use for a deposit fund would be where we don't yet know where it goes, and we have to assume that it still belongs to someone outside the government.

Another use would be where the government is holding funds as agent. And I think that would be the case for the 6039. It's not the government's money.

Q. Is this explanation or this definition you just provided us consistent with your understanding of how a deposit fund account has been defined over the course of your 22-year career at Treasury?

A. Yes.

Q. Mr. Hoge, I'm going to ask that DX-466 be put up on the screen. This is a rather large document and we're going to look at some excerpts from.

MR. KIRSCHMAN: The Court by now has seen this document a few times.

BY MR. KIRSCHMAN:

Q. Do you recognize this document, Mr. Hoge?

A. Yes, I do.

Q. And can you describe for the Court generally what it is?

A. Yes. Circular A-11 is issued by the budget side of OMB, and basically it explains to federal agencies what the rules are for what are called budget formulation and budget execution.

Q. And how does Treasury use this OMB circular, if at all?
A. Well, our Government-Wide Accounting Area is responsible for providing accounting guidance to federal agencies. We have something called the U.S. Standard General Ledger, and it's a very detailed document that has accounting debits and credits in it, accounting transactions. Those transactions, at least on the budgetary side, are based on this circular.

So these are the rules, and from the rules the Treasury Department determines the debits and credits in the accounting systems.

Q. I would like to turn your attention to page five of the exhibit. That is DX-466 at five. It is also page four of Section 20 within this circular. Do you see that?
A. Yes.
Q. I would like to further draw your attention to the bottom half of the page where a definition of deposit fund is located. Do you see that definition?
A. Yes, I do.
Q. And could you please read that into the record?
A. "Deposit fund means an account established to record amounts held temporarily by the government until ownership is determined (for example, earnest money paid by bidders for mineral leases) or held by the government as an agent for others (for example, state and local income taxes withheld from federal employees' salaries) and not yet paid to the state or local government."

Q. Is that consistent with your understanding of how deposit funds are defined, or have been defined within Treasury?
A. Yes.
Q. Okay. I would like to turn your attention now further into the exhibit at page 38. That is DX-466 at 38, and it's also page 37 of Section 20. And I would like to draw your attention first to the top of the page, and you see the column where it lists fund type or account and Treasury account symbol, and then there are columns related to the purpose of the account and whether receipt accounts and expenditure accounts are linked, and whether the funds are included in the budget. Okay?
A. All right.
Q. With that, I would like to move down that page to the area related to deposit funds. Do you see that?
A. Yes, I do.
Q. Okay. Now, the deposit funds state a range of Treasury account symbols. Correct?
A. Correct.
Q. And does the account symbol for the IIM funds fall within that range?
A. Yes.
Q. And how is that, just so we're clear?
A. Well, 6039, this range is looking at the main part -- what we call the main of the fund symbol. So 6039 is within this range.

Q. So this section then applies to the IIM funds?
A. Yes, it does.
Q. And this section, as I noted, has a column related to the purpose of the account. Could you please read that stated purpose into the record?
A. Yes. "Record deposits and disbursements of monies not owned by the government or not donated to the government (amounts donated to the government are deposited in a special or trust fund account)."
Q. And you recall that at the top of the far right, the top of the page, the last column stated the question, "Are these funds included in the budget." Do you see that?
A. Yes.
Q. And going now to the bottom of the page, related to deposit funds, what is the answer stated?
A. No.
Q. Now, Mr. Hoge, based on your experience and your work at Treasury and the document we just reviewed, is it correct to say that Treasury treats IIM funds as government funds?
A. No.
Q. And aside from this page and the last column I just pointed out to you, do you have an understanding as to whether funds in the IIM account are in the budget of the United States as an asset?
A. No deposit fund is in the budget.

Q. Why not?
A. Because the rules we just read about are followed by both Treasury and OMB. We work together on the budget.
Q. Do you have any personal knowledge or any indication in your work as to why -- as to how these funds are not within the budget?
A. Yes. The first thing is that one of the systems that is my responsibility --
Q. What system is that?
A. It's called FACTS II, Federal Agencies' Centralized Trial-Balance System, 2.
THE WITNESS: Sorry, Your Honor.
A. It collects budget execution data and it collects records for about 6,500 fund symbols, all federal expenditure accounts. 6039 is not collected in that system.
The data from that system flows over to OMB's MAX system. I don't know what that stands for. But the reports that come from MAX and go in the budget are in columnar format. The first column is the prior year actuals, so that they start the budget process with what just happened, and that column is populated by FACTS II. So if FACTS II is not sending data to the budget for 6039, then it's not in the budget.
The second thing is that the Standard General Ledger Accounting Guidance that I talked about doesn't provide budgetary accounting transactions for deposit funds. The

accounts that we collect in detail in FACTS II are not used by a deposit fund.

Then the third piece of evidence would be the federal surplus or deficit calculations. We produce something called the monthly Treasury statement each month --

Q. Who is "we"?

A. The Treasury Department. And that shows year-to-date collection and outlay activity in table one. The monthly Treasury statement for September, which is issued about October 8th or 9th, somewhere in that region, is the one that generates the annual federal, today it's deficit. And the deposit fund activity doesn't flow to table one in the Central Accounting System.

So those three, those are significant systems that we do, and 6039 is not part of those.

Q. Okay. Returning to DX-466, I would like to turn your attention to page 40 of the exhibit. It is also page 39 of Section 20 within the circular. And you'll see at the bottom of the page, Mr. Hoge, a reference to deposit funds. Do you see that?

A. Yes, I do.

Q. And the first sentence in that section, Section F, related to deposit funds, states that you use deposit funds to account for monies that do not belong to the government. Do you see that?

A. Yes.
Q. And is that consistent, again, with your understanding over the years?
A. Yes.
Q. Further down, I believe it's the third sentence in the middle of the paragraph, there's a statement that states -- that reads, "We exclude deposit fund transactions as such from the budget totals because the funds are not owned by the government." Do you see that?
A. Yes.
Q. And again, is that consistent with your understanding and your work experience over the last 20 years?
A. Yes.
Q. Okay.

MR. KIRSCHMAN: Your Honor, I have no more questions for Mr. Hoge at this time.

THE COURT: All right. Cross examine, Mr. Gingold?

MR. GINGOLD: Good morning, Your Honor.

THE COURT: Good morning.

CROSS-EXAMINATION

BY MR. GINGOLD:
Q. Good morning, Mr. Hoge.
A. Good morning.
Q. My name is Dennis Gingold and I represent the plaintiffs. Your testimony was very interesting this morning, and if you

don't mind, before we go into specifics, I would like some clarifications.

I believe you stated -- and we'll start with the most recent testimony. I believe you stated that the IIM funds are deposit funds. Is that correct?

A. That's correct.

Q. And did you also state that IIM funds are not available for borrowing or financial transactions that the government depends on or uses?

A. That's correct.

Q. Do you know whether or not these rules have changed over time?

A. I don't know previous to 1985, no.

Q. I believe Defendant's Exhibit 466 is Circular Number A-11, and it's an OMB circular. Correct?

A. Correct.

MR. GINGOLD: Plaintiffs would like to mark for identification Exhibit 139.

BY MR. GINGOLD:

Q. Exhibit 139 is identified as Fiscal Year 2009 Budget of the United States, Office of Management and Budget. Have you ever seen this document or one similar to it before?

A. Yes, I have.

Q. And what is your understanding of this document?

THE COURT: Well, how much time do we have for that?

BY MR. GINGOLD:
Q. What is your understanding of this document relative to your testimony, if you have an understanding?
A. The part that I know about and how I use this document is that the President submits this to the Congress, and when he does so, each budget fund is presented in a three-column format.
One of the systems that I work on supplies data for the first column in that format, which is the prior year actual, and I think in this document that would be for fiscal year 2007.
Q. Does this document to your knowledge discuss means of financing for the government?
A. I'm not certain.
MR. GINGOLD: Antonio, if you can first turn to page five of the document, if we could just focus on the headnote in the middle of the page.
BY MR. GINGOLD:
Q. This reads "Budget Deficit Or Surplus and Means of Financing." Do you see that, Mr. Hoge?
A. Yes, I do.
MR. GINGOLD: And if you could just drop to the bottom of this page first, and focusing on the headnote in the bottom of the right column, please. Thank you.
BY MR. GINGOLD:
Q. This reads, "Deposit Fund Account Balances." Do you see that?

A. Yes, I do.
Q. I would like to turn to the next page, page six. And I would like to focus on the highlighted portion of this.
First of all, before I ask you questions, have you read the FY 2009 budget at this point in time?
A. I have not.
Q. So you have not read this document before?
A. No.
Q. Have you read prior documents of this -- the FY 2008 budget of the United States government, have you read that?
A. I have not read the entire budget document for any year.
Q. Have you read the document with regard to deposit funds?
A. I haven't.
Q. Okay. I would like to read a portion of this to you and ask you how this was consistent with your earlier testimony: "Deposit fund balances may be held in the form of either invested or uninvested balances. To the extent that they are not invested, changes in the balances are available to finance expenditures, and are recorded as a means of financing other than borrowing from the public."
Have you ever seen any statement like this before?
A. No.
Q. And again, you've testified that the Individual Indian Trust funds, at least to the extent they're held in the 14X-6039 account, are deposit funds. Correct?

A. Uh-huh.
Q. Are they deposit funds until they get to the account as well?
A. We would not be able to determine that.
Q. So just as an aside, before we go to PX-140, you described in the early part of your testimony today essentially, as you characterized it, I think, a simple description of how the funds or credits are placed in the Treasury. Correct?
A. Uh-huh. Yes.
Q. And I think you -- I'm sorry?
A. Yes.
Q. And I think you said it started with financial agent banks, but you didn't use that term, did you?
A. I did not.
Q. Do the funds begin with the financial agent banks?
A. Well, they begin with a deposit that has to get an ALC associated with it.
Q. And are those banks financial agents?
A. They're Treasury depositories. I'm not familiar with the "financial agent" term.
Q. Are you familiar with the term "fiscal agent"?
A. Yes.
Q. And is the Federal Reserve the fiscal agent of the Treasury?
A. Yes, it is.
Q. The authorized depositories, are they considered the

financial agents of the Treasury?
A. I don't know that term.
Q. Do these banks that accept the original deposit, do they have accounts that are considered components of the TGA?
A. I'm not certain.
Q. Would it surprise you if they do?
A. No.
Q. And when the deposits are placed in these agent banks - and I won't characterize them as financial agents at this point in time - what happens to them after that?
A. I'm not sure I understand.
Q. A deposit is placed. The Interior Department places a deposit in Bank of America in one of its branch offices in New Mexico. Okay? And those are IIM funds, at least as it would identify them for purposes of this discussion. Are those deposit funds at that point in time when it's deposited in that agent bank?
A. I don't know. I don't know until they get classified at the end of the month.
Q. Treasury's systems are dependent upon the accuracy and completeness of the information from the agency depositing the money, aren't they?
A. Correct.
Q. And you do not prepare any of the forms related to the deposit. Correct?

A. Correct.
Q. So if a -- what is the deposit form, an SF-215?
A. That's the form that goes with the deposit, yeah.
Q. So an SF-215 accompanies the deposit in the bank for payment to the Federal Reserve in the first instance?
A. I don't know if it's for payment to the Federal Reserve. It's a deposit ticket.
Q. And it's a deposit accepted on behalf of the government, do you know? Just to the extent if you know. That's okay.
A. If that deposit is to the account at the bank that is designated as the Treasury account, then yes.
Q. So there's a Treasury account in the bank. Correct?
A. Uh-huh. Yeah.
Q. What type of account is that? What type of Treasury account is that? It's not a 14X-6039 account, is it?
A. It is not.
Q. What type of account is it?
A. I don't understand. I don't -- what are my choices?
Q. I think you mentioned over 1,500 different choices within the Treasury generally with regard to various accounts, but is this again a component of the Treasury General Account? Is that logical?
A. It could be. I don't know.
Q. And assuming the money is then transferred for ultimate deposit in the Treasury, does it next go to the Federal Reserve?

A. It may go to the Federal Reserve. That would be a decision made at the daily conference call, it happens at 9:00 a.m. every day, about how much the Treasury Department needs in the Treasury General Account.
Q. So the funds could stay on deposit at that local bank indefinitely?
A. They could stay on deposit at the local bank. I don't know about indefinitely.
Q. Is it subject to Treasury's call or is it the agency's call?
A. It would be Treasury's call.
Q. But it has control over the funds from the moment the deposit is made into the local bank, correct, Treasury does?
A. Treasury has control from the time when we get the ALC.
Q. When you get the ALC?
A. Uh-huh.
Q. And the ALC is divorced from the money?
A. When we receive a report that has the amount of the deposit with an ALC, then I would say that we have control of the money.
Q. And when would you receive that report, again just to make sure I understand your earlier testimony?
A. Overnight.
Q. So overnight you would receive the report, and at that point in time Treasury has control of the money?
A. Uh-huh. Yes.
Q. But it wouldn't necessarily pull the money into the Treasury

unless it decides it needs the money?
A. Again, that would be a decision made in the daily conference call.
Q. All right. But all I'm trying to say is, this is a decision made by you or others at Treasury. Correct?
A. Treasury in conjunction with the Federal Reserve Bank of New York.
Q. And then assuming the decision is made you would like the money deposited in the Treasury, would the funds then be transferred to one of the Federal Reserve banks or branches?
A. Yes.
Q. And would the funds be placed in the operating account for the Treasury at the Federal Reserve bank?
A. It would depend. We would have to decide about the TGA or TT&L. Those are all decisions that would be made in that daily conference call.
Q. Doesn't the TT&L deal with tax money?
A. Generally speaking.
Q. We're talking about Individual Indian Trust money. All the other forms of revenue going into the Treasury right now I'm not asking you questions about.
So we're talking about Individual Indian Trust funds deposited in the local bank, Treasury makes a decision it wants the funds in Treasury. My question then is, do the funds go from the local bank into the Treasury operating account at the

Fed?
A. I don't know.
Q. Do you know what the operating account is?
A. I'm not prepared to speak about it, no.
Q. What other account would it go into at the Federal Reserve?
A. I don't know what the composition of the operating account is.
Q. No, if it's not the operating account, what other account, if it's Individual Indian Trust money, would the funds be deposited in at the Federal Reserve?
A. I don't know.
Q. Okay. Then after it hits the Federal Reserve in whatever account it's in -- is it the 14X-6039 account at the Fed?
A. There's no such thing at the Federal Reserve.
Q. These are just Treasury accounts at the Fed, correct, with respect to funds going into the Treasury?
A. Uh-huh. Yes.
Q. And then in whatever account the funds are being held, what happens next when the funds are first deposited in the Treasury, the general Treasury itself?
A. I'm not sure I understand the question.
Q. Would the funds be immediately transferred from whatever account the funds are held at the Federal Reserve directly into the 14X-6039?
A. The 14X-6039 would only be impacted at the end of the month

when we received the Statement of Transactions from the ALC.
Q. So where would the funds be deposited if the funds were transferred to the Treasury before the end of the month?
A. Well, we'll just talk about the normal case. They would hit the TGA --
Q. So the first step is to hit the TGA. Correct?
A. Once they flow through the concentration system, they would go to the TGA, yes.
Q. Are funds that are held in the TGA available for borrowing by the United States government?
A. I don't know.
Q. Are funds that are held in the TGA used to reduce the national debt?
A. I don't know.
Q. Are funds held in the TGA used to make decisions on whether or not the government needs to borrow more money?
A. I don't know anything about the borrowing decisions.
Q. Fair. Do you know what the funds in the TGA are used for, other than just liquidity for the government on its check-writing processes?
A. I know what the primary purpose of the TGA is, and that's to make payments.
Q. To make payments -- to have funds available for the checks to be paid. Is that correct?
A. Uh-huh. Yes.

Q. And the money is commingled with all funds that are in the TGA. Correct?
A. That's correct.
Q. So if a check is written as a tax refund, the funds come out of the TGA. Correct?
A. Correct.
Q. And you yourself, no matter how extraordinary an accountant you are, couldn't identify which funds might belong to which deposits. Correct?
A. That's correct.
Q. So all the funds that are held in the TGA are at least available for the government's current liquidity needs. Fair statement?
A. Fair.
Q. And then we're at the end of the month. You receive a transaction statement. Correct?
A. That's correct.
Q. And the transaction statement is prepared by the Department of Interior if we're talking about Individual Indian Trust funds. Is that correct?
A. That's correct.
Q. And whatever information is contained in that, you execute the instructions to the letter, don't you? For example, if it says 14X-6039, you credit the 14X-6039 account. Correct?
A. If it's a deposit. I mean, the Statement of Transactions

would include deposit information and disbursement information related to 6039.

Q. But again, all we're doing right now before we get to the disbursement side is tracing the deposit from Interior into the local bank. After the Treasury says it wants the money, it then goes to the Federal Reserve, and then from the Federal Reserve it's going into the TGA, and now we reach the end of the month. The hypothetical is just one transaction.

A. Okay.

Q. And then it's the end of the month, and the transaction statement would provide you the information for Treasury to execute the transaction on behalf of the agency. Correct?

A. That's correct.

Q. And in that transaction, it could, for example, in this situation, identify the funds as appropriate to be credited to the 14X-6039 account?

A. That's correct.

Q. And if those same funds are identified to be credited to other accounts, you would do that as well. Correct?

A. If those same funds?

Q. For example, the transaction -- a transaction statement could incur funds deposited from multiple sources from the same agency. Correct?

Let me give you an example. Minerals Management Service. Let's assume Minerals Management Service on a monthly

basis collects revenue from U.S. government offshore and onshore oil production, revenue from tribal oil and gas production, and revenue from individual Indian oil and gas production. And let's assume in order for the funds to go into the correct account, there has to be specific instructions provided to Treasury to make sure they are credited to the correct account. Is that true?

A. Correct.

Q. And the agency makes those allocations and provides you the instruction. Correct?

A. That's correct.

Q. So in the MMS situation, you could have the funds that Treasury called deposited in the TGA; the end of the month is here, and you could conceivably have multiple accounts that are credited as a result of that particular deposit. Correct?

A. You can have multiple ALC's reporting to the same Treasury account, 14X-6039. One of the reasons why it's so important for us to get all the ALC's reporting is that if we were missing one, it might be one that affected, in this case, 14X-6039.

So you have to have them all so you can tell for sure what the impact is on 6039.

Q. Just for clarification, did you say that there are more than one ALC that is reporting to the 14X-6039 account? How many ALC's does the 14X-6039 account contain or relate to?

A. Well, I said earlier that we had looked back to the

beginning of the fiscal year 2006, and I found four ALC's that had reported to 14X-6039 from that period through May.

Q. Do you recall what they are?

A. I think three of them are on the exhibit that we had earlier, and I don't recall the fourth, no.

THE COURT: By "reporting to," I assume you mean that deposits from those ALC's are linked to that account number?

THE WITNESS: Right. When the Statement of Transactions comes in at the end of the month, what we would see was four Statements of Transactions, one from each of four ALC's, that did something that impacted the 6039.

BY MR. GINGOLD:

Q. Do other accounts -- I think you said there were approximately 1,500 accounts as of today, or a little more than 1,500 accounts similar to 14X-6039?

A. No, I said there are about 1,500 ALC's, Agency Location Codes.

Q. How many accounts are held at Treasury?

A. We keep records on about 12,000. About 6,000 of those have budget authority; they're federal accounts that can obligate and spend.

Q. What are the other 6,000 accounts?

A. Receipt accounts, clearing accounts, deposit funds.

Q. Have you ever heard the term "communitized lease"?

A. I haven't.

Q. You know, I asked you a specific question about the Minerals Management Service and how the allocations and payments would be made. I have another question similar to that.

If in fact you have revenue generated from a lease that contains -- or that covers both individual and tribal land both, and the revenue from that lease is deposited in the local bank, that remains commingled, the revenue from the tribe and the revenue from the individual Indian wells, at the time it's on deposit at the local bank. Correct?

A. If you say so. I don't know.

Q. You don't know. If you don't know, just tell me you don't know.

A. I don't know.

Q. Okay. Is it fair to say at the point in time it finally hits the Treasury General Account at main Treasury, that it's that time, based on the instructions for the transaction -- the Statement of Transactions, that the funds would be allocated among the accounts that Interior instructs you to credit?

A. No. It would be at the end of the month on the Statement of Transactions when that happened.

Q. In any case?

A. Yes.

Q. And then whichever accounts you credit would be based solely on the information provided to you by the Interior Department. Correct?

A. That's correct. With the check that's done against the deposits that came through the banking system. So there could be a Statement of Difference.
Q. Right. As long as -- if it was a $10 deposit, as long as that $10 was still identified for allocation, then it matches to the penny exactly what you were talking about in your earlier testimony. Correct?
A. Okay. Yeah.
Q. But you don't verify whether or not the allocation is correct, do you?
A. We don't.
Q. What happens in the situation if $9 is allocated to the 14X-6039 account and you have a dollar left over and it wasn't allocated? Is that one of the -- that's one of the points that you would see as a problem that would have an abnormality you would have to correct?
A. That would generate the Statement of Difference, and then Interior, the ALC, would have the responsibility for correcting that.
Q. Now, once the funds are actually credited to the 14X-6039 account, if funds are then in that account used to purchase government securities, do you know how that's recorded?
A. Yeah. I know what reporting we would get on the purchase of government securities, yes.
Q. What is that?

A. Well, in the agency accounting they would debit an investment account and credit their fund balance account. So their fund balance would go down and the invested balance would go up.

On the -- let's say that happened in the following month after that initial deposit. At the end of that month we would get a Statement of Transactions that would reflect all of that type of activity for that month, so it would have the net effect of all the investments that were made and any redemptions of those investments that were made.

Q. Does Treasury make the decision to invest the funds?

A. No.

Q. Who makes the decision to invest the funds?

A. In the case we're talking about, the special trustee would make those decisions at Interior.

Q. And how are those decisions communicated to Treasury?

A. On a daily basis, for the Treasury securities, he would contact the Bureau of Public Debt and they would execute whatever orders were made. FMS would get the sum of that activity at the end of the month.

Q. And the information is provided to you by Interior as to how much money to invest?

A. Yes.

Q. Now, you're talking about the current environment, the current modern day era of investment. Correct?

A. Correct.
Q. And would you be able to frame what is the modern day era for investment for purposes of your testimony? Is it since 1985, for example, when you were...
A. Yeah, approximately '85.
Q. Did you know there was no special trustee in 1985?
A. I do know that.
Q. What happened before the special trustee was appointed?
A. I don't know.
Q. Here's another part of this scenario: You have funds invested, the funds are just a total fund account; no Individual Indian Trust beneficiary is identified in the 14X-6039 account, is it? Is there one, to your knowledge?
A. There are no individual names associated in the Treasury systems.
Q. At all?
A. Correct.
Q. Now, would you call the 14X-6039 account the IIM system at Treasury? Have you ever heard that term before?
A. I heard it today for the first time.
Q. In fact, there is no IIM system at Treasury, is there?
A. There is 6039 at Treasury.
Q. That's it?
A. Correct.
Q. Now, the funds are invested from whatever the sources are

that allow the Interior Department to make the original deposit. Now there's a redemption on a security. What happens when the security is redeemed?

A. The Treasury security --

Q. Correct.

A. -- that we were talking about?

Q. Yes.

A. The fund balance goes up and the invested balance goes down, and we would get that report at the end of the month.

Q. Do you identify the particular security that was redeemed?

A. FMS does not. I believe that Public Debt does.

Q. Were bearer bonds ever used for purposes of investments?

A. I don't know.

Q. Do you know anything about bearer bonds?

A. I don't. I know what they are, but I have no details.

Q. And I believe you said in your testimony that virtually every transaction is tracked once the funds are inside the Treasury. Correct?

A. What type of transaction?

Q. Let's say investment transactions.

A. FMS doesn't do it, so I don't have detailed knowledge. But I do have regular connections with the Bureau of Public Debt.

Q. And so to your knowledge, general knowledge, does Bureau of Public Debt track all the investment transactions?

A. Yeah, they identify the particular debt instrument.

Q. They also identify the maturity date?
A. Yeah. I think I've seen that on their records, yes.
Q. They identify the payment provisions, whether it's quarterly, monthly, or otherwise?
A. I don't know for sure on that.
Q. And they identify when the security has been redeemed. Correct?
A. Yes.
Q. Do they identify to what account that security relates?
A. I don't know that part.
Q. Do you know how, if the investment was in a bearer bond, how that would be tracked?
A. No.
Q. Do you know anyone who does know that?
A. Do I know anyone who does?
Q. At Treasury, to your knowledge.
A. Probably someone at the Bureau of Public Debt.
MR. GINGOLD: Plaintiffs would like to mark for identification Exhibit 140. This is called a Performance and Accountability Report. It is also a report that is identified as FY 2006.
BY MR. GINGOLD:
Q. Have you ever seen this document before, or this type of document before?
A. Yes, I have.

Q. What is it?
A. It's a set of financial statements for the Treasury Department. It's the result of several laws, beginning with the CFO Act of 1990, that require individual federal agencies, 24 of them, I believe, to produce financial statements each year.
Q. And do the financial statements include a description of the fund balance of the Treasury?
A. The?
Q. Or the fund balance with the Treasury. Are you aware of that term?
A. Yes, I am. And they do. Those are considered assets at the agency level.
Q. When you say "assets at the agency level," what does that mean?
A. Well, it means that it's an internal bookkeeping entry for the federal government. You won't find fund balance with Treasury in the financial report of the United States.
Q. So when you say "agency," in this case you're talking about the Treasury Department?
A. The Treasury Department, sorry.
Q. That's the clarification I was hoping for.
I would like to turn to page 122. Now, have you ever read the description of fund balance before in either this document or a similar one?
A. The -- I mean, I know from our Standard General Ledger

Accounting Guidance what the fund balance represents, yes.
Q. And it includes deposit funds, doesn't it?
A. Fund balance as reported in an agency financial statement? I mean, the 6039 would have a fund balance, yes, and the Department of Treasury reports at a consolidated level a fund balance on the balance sheet.
Q. Let me just read the first paragraph and ask you what your understanding of this is: "Fund balance with Treasury is the aggregate amount of the Treasury Department's accounts with the U.S. Government's central accounts, from which the Treasury Department is authorized to make expenditures and pay liabilities. It is an asset because it represents the Treasury Department's claim to the U.S. Government's resources. Fund balance with the Treasury is not equivalent to unexpended appropriations, because it also includes nonappropriated, revolving, and enterprise funds, suspense accounts, and custodial funds such as deposit funds, special funds, and trust funds." Correct?
A. Correct.
Q. Now, do you know what this report means when it says, "The fund balance is an asset because it represents the Treasury Department's claim to the U.S. Government's resources"?
A. Yes.
Q. And what is it?
A. At a very high level it represents the spending authority

that that agency has. It's not of very much value when you're talking about actual disbursements, because those have to come from an individual fund.

Q. And that's notwithstanding what the Plaintiffs' Exhibit 139, FY 2009 Budget of the United States Government, says with regard to uninvested deposit fund balances. Do you recall that?

A. I recall that. I don't understand the connection you're attempting.

Q. Well, help me with this. We'll go back to Plaintiffs' 139, and it states, "Deposit fund balances may be held in the form of either invested or uninvested balances. To the extent they are not invested, changes in the balances are available to finance expenditures, and are recorded as a means of financing other than borrowing from the public." Do you recall that?

A. I do.

Q. Now, if we can please go back to 140.

Now, is there any relationship between the uninvested -- for purposes of this discussion right now, the uninvested fund balances, and the statement in Plaintiffs' 140, which is the performance and accountability report for FY 2006, that the fund balance is an asset because it represents Treasury Department's claim to the U.S. Government resources? Is there any relationship between the two?

A. I don't know.

Q. So you've never discussed this issue with anyone, have you?

A. Well, I haven't. I do know that this deposit fund balance, as it says, is the aggregate of however many deposit funds the Treasury Department reports. So from this document I don't know how much of this is related to 6039. I do know that there's a whole section of that, this report that you're referring to, that's about custodial activity, where the Treasury Department is doing things on behalf of others. And I think you have to look at all those pieces to know exactly what's happening here.

Q. That's one of the reasons we're having this trial. So we're trying to put the pieces together.

Did you notice anything -- at least that I read, and I'm not telling you most of the pages are included because the budget of the United States is quite a lengthy document, but are you aware of anything that excludes Individual Indian Trust funds from the term "fund balance," "deposit fund balance"?

A. I'm not. But I do know that fund balance can and in many places does have restrictions on spending. Fund balance can be available for obligation only, it can be available for expenditure.

Q. Well, let's talk about that. Under "Fund Balance" on Plaintiffs' 140 are several different funds. Correct?

A. Would you ask that again, please?

Q. Yes. Plaintiffs' 140 is the 2006 Performance and Accountability Report that is -- one page of which is on the screen.

A. Okay.
Q. And there are a number of funds that are identified that we have understood to be comprising the fund balance with the Treasury. Do you see that?
A. That's correct.
Q. Now, that includes appropriated funds. Correct?
A. Right.
Q. And what are appropriated funds?
A. Appropriated funds are the type where the Congress actually passes an appropriations act, and then the Treasury Department issues a warrant based on what the Congress says, and it authorizes a particular fund to obligate up to this amount.
Q. So is that one of the funds that have restrictions that you alluded to a moment ago?
A. I'm not certain in that case. Probably not, because generally speaking, appropriated funds are not authorized to invest. You could have investments in trust funds or in deposit funds, and there are some restrictions where OMB circulars will say, this is an authorization to invest but not to obligate or spend.

So fund balance by itself doesn't tell you everything you need to know about whether those funds can be spent or not.
Q. It certainly would be difficult to say that from one page, in any event, wouldn't it?
A. Right.

Q. Is a fund balance taken into consideration when the government decides its borrowing needs?
A. I don't know anything about borrowing.
Q. Well, but for the brief excerpt I read to you from the FY 2009 budget of the United States. Correct? So you don't know whether or not the fund balance with the Treasury is considered in the borrowing needs of the United States. Correct?
A. I don't know.
Q. And do you know whether or not the fund balance is used to pay down outstanding debt of the United States?
A. I don't know.
Q. Do you know what -- or if there are any general restrictions on the use of the fund balance other than with regard to this specific fund, like an appropriated fund?
A. I think we already went through restrictions on the use of deposit funds. They have fund balance with Treasury, but there are restrictions on their uses.

The government can't decide to spend that money that's in a deposit fund. It's not part of the budget, there are no outlays. That's a budgetary term. There can be disbursements, but the disbursed amounts are not based on decisions made by the government. In the case of the 6039, they're decisions made by the special trustee.

Q. But with respect to uninvested funds, and the availability.

A. Well, that person decides what to invest.
Q. And notwithstanding what is provided in FY 2009 budget of the United States that we discussed briefly?
A. I haven't read that part before today, so I don't know.
Q. Okay. Fair enough.

Let's go back to the example that we were talking about where we had the funds deposited, and we had IIM funds deposited in a local bank that was an agent of Treasury, the funds were transferred to the Fed; the Fed then transferred the money to general Treasury, and from there, at the end of the month, the funds were allocated according to the ALC, correct, and deposited in the proper account. Correct?
A. I wouldn't use the term "allocation." I would say classified.
Q. Why is classified important to use?
A. Allocation implies that in the way you just used it, that you're taking money from the Treasury General Account and moving it somewhere else. This Statement of Transactions simply gives us a book entry in our Central Accounting System that tells us what in this case our liability is to the 6039.
Q. As a matter of fact, there are no separate accounts, are there? There is no 14X-6039 account, is there? It's a bookkeeping entry?
A. There's an account. I mean, my checking account balance is a book entry also. But there's no cash behind the 6039 today.

Q. Everything is a credit or a debit. Correct?
A. It is. That's correct.
Q. And that's really what we're talking about here.
A. Right.
Q. So when we're talking about funds, we're talking about the credit reflecting the funds in the TGA. Correct?
A. Correct.
Q. And then you would have classified -- if in fact there has to be an allocation, part of the funds are classified to the 14X-6039. Correct?
A. That's right.
Q. In accordance with Interior's instructions. Correct?
A. That's right.
Q. Okay. Now we have the funds security purchased, the security is redeemed; the uninvested component of the 14X-6039 is increased in value and the investment portion is decreased. Correct?
A. Correct.
Q. Okay. A check is cut, a Treasury cut is written against the 14X-6039 account. What happens?
A. Well, we wouldn't -- once again, we wouldn't know if it was against the 6039 until the end of the month in which the check was cut, so --
Q. Did -- I'm sorry.
A. -- the first thing that would happen is the Treasury

Department, following the instructions of the special trustee in this case, would cut the check and would issue it. The special trustee could see a record of that the following day showing the payee and the amount. And in the case of a check, that would get mailed.

Q. What happens to the 14X-6039 account? Is the account debited at the time Treasury is informed that the check is cut?

A. No.

Q. It is not?

A. Nothing happens to 6039 at that time.

Q. Are you sure about that?

A. I am.

Q. When does something happen to the -- when is a change made to the 14X-6039 account?

A. When we get the Statement of Transactions at the end of that month.

Q. What if the check is paid before the end of the month?

A. No difference as far as what happens in the 6039.

Q. Okay. You get the Statement of Transaction at the end of the month. Where do the funds -- where are the credits, where are they transferred? Are they transferred out of the 14X-6039?

A. They are.

Q. Where do they go?

A. I'm not sure I understand.

Q. Do you deduct the amount of the check at the time you

receive a Statement of Transaction from Interior?
A. We deduct from the 6039, yes.
Q. Where does the money go?
A. The money part of it would be related to the TGA. If the check was presented for payment, the TGA would go down. If it was not, then the Treasury Department actually takes over the accounting once the check is issued, and we would have a liability that said we have a check outstanding until it was presented for payment.
Q. And how long is that period of time, if the check isn't negotiated?
A. How long?
Q. How long do the credits remain in the TGA that were effectively transferred from the 14X-6039 account, do you know?
A. We have a limited liability law. I think it's a year, I believe, is the current period.
Q. And that's part of the Competitive Equality Banking Act?
A. I don't know.
Q. Do you know how long the TGA held those credits prior to that legislation?
A. I think the legislation occurred early '90s, I believe. Before that there was no limitation.
Q. So until the check was paid or the Department of Interior instructed you that the check wasn't paid, the funds would remain in the TGA. Is that correct? Or the credit would remain

in the TGA reflecting that check?
A. That's not in the TGA, that's in the Treasury's central summary general ledger. There are accounts in there that would indicate that we had a check outstanding, and what the amounts were, and that would have stayed there indefinitely before the legislation occurred.
Q. And let's assume legislation was in the '90s, which you think that's the case, or the '80s?
A. Whatever, yeah.
Q. Let's say after you joined the department, you think the legislation was enacted?
A. Yes.
Q. So sometime between '85 and '95, is that fair?
A. Uh-huh.
Q. Do you know how old this trust is?
A. I don't.
Q. Let's assume it was established in 1887, so conceivably the funds could remain in the Treasury -- could be reflected in the general ledger for that entire period of time.
A. I don't know exactly when we and Treasury established that central summary general ledger, but to my knowledge every check that was issued up until the legislation was changed would have an entry, and that entry would be made when the check was issued and it would be there until the check was paid. So if it was never paid, then it would still be there.

Q. Thank you. Now, have there ever, to your knowledge, been any concerns about the balances of the summary general ledger?

MR. KIRSCHMAN: Objection. Vague, beyond the scope of direct.

BY MR. GINGOLD:

Q. You mentioned general ledger, didn't you, in responding to my question about the check? It wasn't in the TGA, it was reflected in the general ledger. Correct?

A. Central summary general ledger.

Q. Now, what is that?

A. That's where Treasury has accounting responsibilities for payment -- checks issued but not yet presented for payment. Basically I think we've kind of implied all along that both agencies and the Treasury have accounting responsibilities. In the agency system, once they --

Q. If I may interrupt, when you talk about agencies in this text, you're not talking about the Treasury Department?

A. Well, Treasury Department in its role as a federal agency has the same responsibilities, but different from FMS' role for central summary general ledger.

So an agency tells the Treasury to make a payment; the next day they see that the Treasury has indeed made that payment. Their role in that accounting process as far as outbound payments is complete.

If it's the case of a check, now the Treasury has some

accounting responsibilities. We've issued the check, but that doesn't mean that payment was made yet. And in some cases that can take a long time. It's also very expensive. That's why the Treasury Department likes electronic funds payment, because they happen immediately.

So yes, we have accounting responsibilities there. That's done in that central summary general ledger, as was the accounting for the movement between the Federal Reserve banks. Federal program agencies wouldn't know anything about that. That's a Treasury responsibility.

Q. And is that one of the responsibilities that you have?

A. I have the systems piece, but Government-Wide Accounting has that responsibility, yes.

Q. Now, do you know what the term "out-of-balance condition" means?

A. Generally speaking?

Q. Generally speaking.

A. It means your debits don't equal your credits.

Q. Is that something to be concerned about?

A. I think all accountants are concerned about that, yes.

Q. So you would be concerned about it. Is that true?

A. That's true.

Q. Are there consequences to having -- generally to having an out-of-balance condition?

MR. KIRSCHMAN: Objection. Vague, beyond the scope of

direct.

THE COURT: Well, I'll sustain as to "are there consequences to generally having an out-of-balance condition." Can you sharpen that question a little bit?

BY MR. GINGOLD:

Q. I think you stated that the out-of-balance condition could be as a result of the debits not equalling the credits in the ledger. Correct? Is that fair?

A. I said that, yes.

Q. Now, is there any other reason that it would be out of balance, to your knowledge?

MR. KIRSCHMAN: Same objection.

THE COURT: I'm going to allow it.

BY MR. GINGOLD:

Q. Mr. Kirschman asked you about leakage or missing or fluff or other things of that sort with regard to fund activities or transfers - and this is my characterization - within the Treasury. Correct? Something like that? Or if you have a better way of putting it, go ahead.

A. I think the nature of the question he asked was, are there unaccounted for funds in that Cash Concentration System. And I answered no.

Q. Now, if you had an out-of-balance condition, would that still be your answer?

A. An out-of-balance condition in what?

Q. Debits and credits, in the general ledger.
A. We don't have that in the Treasury ledgers.
Q. And you've never had that?
A. I can't speak for never. Not in my period.
Q. Not since 1985. Is that your understanding?
A. That's my understanding, yes.
Q. Has the general ledger -- or has the 14X-6039 account ever been audited?
A. I think the Department of Interior audit, which Interior prepares financial statements similar to the ones you showed from Treasury, and they're audited, and I believe that audit covers the IIM.
Q. Would you be surprised if former Assistant Secretary Hammond said it was never audited, the 14X-6039 account?
MR. KIRSCHMAN: Objection. Beyond the scope of direct.
THE COURT: I don't think whether he would be surprised or not is relevant. Sustained.
BY MR. GINGOLD:
Q. So you have an understanding it's been audited. Correct?
A. Just the fact that the report in the Treasury Department records has a corresponding piece in Interior's records. So I believe that it was supposed to have been audited, but I don't know that for a fact.
Q. So you mentioned that Interior has its own general ledgers. Correct?

A. I said that Interior has to produce audited financial statements, just as that Treasury report is produced.
Q. Do you know if the general ledger or summary general ledger at Treasury is reconciled with the ledger at Interior with regard to Individual Indian Trust funds?
A. I was talking about the central summary general ledger. That's exclusively a Treasury responsibility. No agency has similar activity, because it's related to our central cash management function.
Q. But you're not aware of a summary general ledger at Treasury that deals with Individual Indian Trust funds?
A. I'm not.
Q. When the funds are disbursed -- are funds disbursed from Treasury only by check?
A. You're speaking in general?
Q. Yes.
A. No.
Q. How else are they disbursed?
A. Electronic funds transfer - direct deposit, as it's known - is the preferred method. I believe the latest stats show that about 60 percent of the dollars that we disburse are disbursed through EFT.
Q. Do you know if the trust funds or the deposit funds for the Individual Indian Trust beneficiaries are disbursed by electronic fund transfers?

A. I don't.
Q. Do you know if they're disbursed by check?
A. I don't know for certain. I have heard testimony in the court about checks, but I don't know today. That was in a historical context.
Q. Was there a technique prior to checks for disbursing funds from the Treasury?
A. Could you say that again?
Q. Yes. Was there another way to disburse funds from the Treasury prior to the electronic era other than check?
A. I don't know.
Q. If funds or credits are transferred to other accounts at Treasury, does Treasury keep a record of where those funds are going, let's say from the 14X-6039 account to any other account to Treasury?
A. I mean, we have a transfer mechanism, and we call that nonexpenditure transfers. Those can only be between government accounts, and they can only be done if they're authorized in law.

So if an agency wants to do a nonexpenditure transfer, which would be not the kind of a payment where one agency does work for another, but the kind where the law says to GSA, for example, you have the federal building funds, but you are authorized to transfer up to such and such amount to the Treasury Department for them to build some building, then

Treasury would send a request to FMS and say, I would like to transfer this amount of money. We would do the research to see if that were in the appropriations law, and if it were, then we would do a transfer.

That has the effect of moving fund balance in the Central Accounting System from one fund to another. You can't do nonexpenditure transfers with deposit funds because they don't have budget authority, and this is the transfer of budget authority. So the only way one fund symbol can move funds into or out of another fund symbol which is a deposit fund is through a Statement of Transactions type of methodology that we've already discussed.

So the one fund would actually make a disbursement to the other fund; both would be recorded on the Statement of Transactions that we get at the end of the month.

Q. But the funds -- the transfer stays within the Treasury. Correct? From one fund to the other, the funds aren't leaving the Treasury, are they?

A. They would not leave the Treasury, no.

Q. And Treasury doesn't verify whether or not the transfer is proper, does it? It executes the instructions of the agency to transfer the funds?

A. Well, first of all, could we not call it a transfer? I mean, it would be a disbursement from one fund and a receipt in the other fund.

Q. You're uncomfortable with transfer. Is there a reason?
A. Yeah.
Q. Okay. What is it?
A. They have a specific meaning to me. A transfer is a budgetary thing, and we distinguish -- a transfer wouldn't necessarily involve any kind of disbursement. It can be a transfer of budget authority. That would move fund balance from one fund symbol to another in central accounting, but it would have no impact in that first chart I showed, the whole cash process.
Q. So because I'm using an improper term, whether I meant interfund or intrafund transfer, there's no such thing at Treasury, is there?
A. Well, you can't do that between a budgetary account and a deposit fund.
Q. And you can't do it from a deposit fund?
A. Right.
Q. So you could not -- and again, help me, because I'm not familiar with these terms and I'm not trying to trick you, either.

So you could not transfer funds, for example, from the 14X-6039 account to another account within Treasury. Is that correct?
A. Right. You would have to have a disbursement from the 6039 and a receipt in whichever other fund you were sending the funds

to.
Q. So basically there's no such thing as an interfund transfer. Correct?
A. I don't use that term either. There's no such thing as a nonexpenditure transfer where a deposit fund is involved.
Q. Thank you. I think I understand.
But even with a disbursement, if the funds were disbursed to another account and nobody used the term "transfer" like I've done right now, the funds are still in the Treasury, aren't they?
A. They are.
Q. So the funds -- so to the extent money was collected, it remains in the Treasury at that point in time unless another event occurs, correct; for example, if the other account disbursed the funds out of the Treasury?
A. You said -- how does the collection piece relate, again?
Q. Well, the funds originally were collected, deposited through the mechanism we talked about into the general Treasury, the funds were classified to 14X-6039. And what I asked you is, with the funds held or identified to 14X-6039, you explained, I believe, that the funds can't be transferred, they would have to be disbursed to another account. Correct?
A. Right. They would be disbursed from 6039 to wherever it was going.
Q. Right. The transfer is off the table, so we're dealing with

that disbursement. And I think you also said those funds remain in Treasury. Correct?

A. They do.

Q. And the only way those funds would leave Treasury is either by electronic -- from the other account, now, by electronic funds transaction, check, direct payment, correct, and that's it?

A. Correct.

Q. So there is another event that's required before the funds leave the Treasury. Correct?

A. That's right.

Q. And Treasury doesn't verify whether or not that disbursement to the other account was a valid disbursement, does it?

A. Generally speaking, we don't, no. I mean, there are some -- I mean, some limitations on what a particular ALC can do in some cases, but generally speaking, that's correct.

MR. GINGOLD: Your Honor, I'm going to have another half hour or so. Would you like me to finish after lunch?

THE COURT: I want you to finish before lunch. We're just going to go until you're tired of it, Mr. Gingold. I frankly don't know where we have been for the last half hour, but I want you to keep going until you're done.

MR. GINGOLD: Your Honor, in Michelle Herman's testimony --

THE COURT: I don't require an answer to that, I just

require you to continue until you're finished with this witness.

MR. GINGOLD: Okay. No further questions, Your Honor.

THE COURT: All right.

MR. KIRSCHMAN: May I have one moment, Your Honor?

THE COURT: Yes, sir.

MR. KIRSCHMAN: Your Honor, just a couple of quick questions.

THE COURT: All right.

MR. KIRSCHMAN: Could I please see Plaintiffs' Exhibit 129? Do you have a hard copy of that, Mr. Gingold?

Could turn to the page that Mr. Gingold addressed?

REDIRECT EXAMINATION

BY MR. KIRSCHMAN:

Q. Do you remember, Mr. Hoge, that on your cross-examination you were asked to look at the highlighted portion of this document?

A. Yes.

Q. And the last sentence states that to the extent that they are invested in federal debt -- well, let me back up.

The highlighted portion talks about "Deposit fund balances may be held in the form of either invested or uninvested balances." Do you see that?

A. Yes, I do.

Q. Do you have an understanding as to what balances are being referred to there? Do you know?

A. I think they're talking about the fund balance with Treasury, but I haven't read the whole section.

Q. Okay. The last sentence says, "To the extent that they are invested in federal debt, changes in the balances are reflected as borrowing from the public."

That phrase "changes in the balances," do you have an understanding as to what changes in the balances are being referred to? Do you know?

A. Yeah, I think what this is getting to, if I could use an example, the Social Security trust fund invests in public debt securities. And they invest a lot; about $600 billion, I believe, is the current amount. So the Bureau of Public Debt has the other side of that equation, so they would show a liability for that amount of debt and the Social Security trust fund would show an asset. But you would never see either of those amounts on the consolidated balance sheet of the United States. In this case, what this is talking about is the liability of the Treasury.

But for a deposit fund, because we would treat that as the public's money, that particular piece of the liability would be shown on the balance sheet of the United States. And if you look at that balance sheet, you would see today about $5 trillion of liability with the public, and this deposit fund liability would be included in there.

What you would not see on that balance sheet is about

$4 trillion of liability to other federal agencies, Social Security, Medicare, those kinds of federal funds that are allowed to invest. There are about 14 major trust funds that invest, the Airport and Airway Trust Fund, the Highway Trust Fund, Black Lung, 14 or 15. And you don't want to show those as a liability of the federal government, because it's all a wash. They're one pocket to the other pocket.

But in this case the liability to the deposit fund is a liability to the public and it should be included. And I think that's what they're trying to get to here.

Q. If we could turn to Plaintiffs' Exhibit 140, please, the first page. And you remember that Mr. Gingold showed you this Department of the Treasury Performance and Accountability Report?

A. Yes.

Q. And this document relates to the performance within the Department of Treasury. Correct?

A. Correct.

Q. Would these reports exist for each federal agency?

A. They exist for 20 -- I think they've added the Department of Homeland Security, so I think there's 25 major federal agencies that incorporate 99 and a half percent of the activity of the federal government who have to prepare these.

Q. So to the best of your understanding, would there be a performance and accountability report for the Department of

Interior?
A. Yes. I've seen it.
Q. Now, during your cross-examination, the word "fund" was used several times. Regarding the TGA, what flows through the TGA?
A. Cash.
Q. Okay. And as it relates to the Cash Concentration System and the STAR system, is there a difference between funds and cash?
A. Yeah, we think of them differently.
Q. And can you explain that difference to the Court?
A. Yeah. Well, I suspect that most people have an idea of what cash is; the funds, though, that's basically an authority to spend. It's a measure of what the federal agency is authorized to obligate and spend based on law, what the Congress has appropriated, or, in the case of things like Social Security, what they've authorized. You don't get an appropriation each year for that. And it means that in our records, we are keeping track of what we might some day spend from the TGA.

And they're different, because the TGA, it's to everyone's benefit to make the most efficient use of cash while still maintaining records about what each fund has to spend. And that mix is the way we do it. There are connections between the two, but they accomplish one job very efficiently without losing track of what the obligations are in the Treasury Central Accounting System.

MR. KIRSCHMAN: One moment, Your Honor.

Thank you, Mr. Hoge. No more questions, Your Honor.

THE COURT: I just have one question, Mr. Hoge. You've been at Treasury since, you said, 1985?

THE WITNESS: Yes.

THE COURT: And your knowledge of all the subjects you've testified to begins in 1985. You haven't testified about, nor are you prepared to testify about any of the historical treatment of any of these questions. Am I right about that?

THE WITNESS: That's correct, Your Honor.

THE COURT: Thank you, sir. You're excused, and we will now go to lunch. Be back here at 1:30, please.

(Recess taken at 12:26 p.m.)

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.

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