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THE COURT: All right, Mr. Dorris. You may continue.

MR. DORRIS: Thank you, Your Honor.

(The witness resumes the stand.)

CROSS-EXAMINATION CONTINUED

BY MR. DORRIS:

Q. So, Mr. Cason, to wrap up this kind of numbers that we've been looking at, from the 2003 plan to the 2007 plan, at least with respect to land-based accounts, the Department of the Interior's moving away from doing what was roughly 495,000 reconciliations of transactions, to now doing something approaching more 10 to 12,000 transaction reconciliations, correct?

A. It would be correct that we're planning to do fewer, yes.

Q. Okay. And the numbers that I just used are in the range of what those differences are?

A. Sounds like it's in the ballpark.

Q. Now, once you've done what you say the Interior is going to do in their 2007 plan, the beneficiary is going to get some type of statement, right?

A. Yes.

Q. And that statement is supposed to be something that is useful and meaningful to the beneficiary, correct?

A. Yes.

Q. And it's supposed to assure the beneficiary that the

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1 account balance shown on that statement is accurate. Right?  
2 A. Yes.

3 Q. I mean, that's part of the information that's provided is  
4 an accurate account balance, correct?

5 A. Yes.

6 Q. Now, let's look at the 2007 plan to see what the ultimate  
7 goal is for these statements.

8 And, Your Honor, if I might pause for a minute for an  
9 administrative matter, the administrative record, as we see the  
10 Bates on them, and they're very tiny, essentially have three  
11 numbers. For example, we're going to look at one that is  
12 33-2-1, the last digit being the page number of that particular  
13 document. So when I refer to an administrative record cite as  
14 33-2, that would be the first and second number in the Bates  
15 range. And then we'll do the page number with the last number  
16 in the Bates range.

17 THE COURT: All right. Good. Thank you.

18 BY MR. DORRIS:

19 Q. Now, I have on the screen here what is administrative  
20 record 33-2, and page 1 of it, which simply confirms this is --  
21 I'm getting ready to show you a document from part 1 of the 2007  
22 plan. Do you recognize this cover sheet?

23 A. Yes.

24 Q. Okay. Now, look with me to Bates page 6 of that plan,  
25 which would be 33-2-6. The page number in the bottom right is

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1 page 4, but the Bates number that you cannot read very well on  
2 the far bottom left would show it's Bates page 6.

3 And let's look at the highlighted portion, if you could

4 bring that up, please. And it indicates, "Upon completion of  
5 the historical accounting, Interior plans to provide each IIM  
6 account holder with an accurate and complete historical  
7 statement of account, detailing the account transaction  
8 history." Are you with me so far?

9 A. Yes.

10 Q. Now, I really want us to concentrate on this next  
11 statement. "In addition, Interior plans to provide each IIM  
12 account holder with Interior's conclusions about the accuracy of  
13 the account transaction history and the account balance as of  
14 December 31, 2000." Do you see that?

15 A. Yes.

16 Q. So in addition to providing the historical statement of  
17 account or as part of that, Interior's going to furnish some  
18 type of opinion as to the accuracy of the transaction history  
19 and the account balance.

20 A. Yes.

21 Q. And is it written anywhere as to what that statement's  
22 going to be?

23 A. No, not yet.

24 Q. So we don't even know yet what Interior's going to say when  
25 it gets to the end of the day for these accounts. Is that fair?

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1 A. For the land-based accounts, sure.

2 Q. And with respect to the land-based accounts, all of the  
3 accounting effort that's being undertaken is a part primarily of  
4 the sampling of the number of accounts that we talked about,  
5 correct?

6 A. That's one thing we've done, yes.

7 Q. How is it that the Department of the Interior is going to  
8 be able to make -- in a statement, to give Interior's  
9 conclusions about the accuracy of the account balance, when the  
10 statistician, NORC, has not even been asked to design a sample  
11 that will say anything about the account balances?

12 A. I guess I have a different view. The task that NORC had  
13 was to assist us in selecting a representative sample of the  
14 accounts in the land-based accounts, the 193,000 we've talked  
15 about, and from those select a statistically valid set of  
16 transactions to reconcile, and from those be able to draw  
17 conclusions about the relative accuracy of the electronic era  
18 transactions in the land-based accounts.

19 So from my standpoint, the issue was not drawing a  
20 conclusion about the accuracy of individual balances and  
21 individual IIM accounts, but to basically draw conclusions about  
22 the accuracy of the accounting system and its implication on  
23 ending balances on IIM accounts.

24 Q. Okay. Let's try to unpack it this way. When you first  
25 started to work on your second tour of duty with the Department

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1 of Interior in August of 2001, and then became involved with  
2 trust issues, the plan that the Department had at that time as  
3 reflected in the 2002 report to Congress was to do a  
4 transaction-by-transaction accounting for each account.  
5 Correct?

6 A. That's my understanding, yes.

7 Q. And in fact, you even testified at length to Congress about  
8 how that would be done.  
9 A. Uh-huh.  
10 Q. Correct?  
11 A. I believe so, yes.  
12 Q. And then in the 2003 plan, the decision was made to do some  
13 sampling, correct, among other decisions?  
14 A. Sampling for the purpose of reconciliation as opposed to  
15 sampling for the purpose of putting together historical  
16 statements of account.  
17 Q. And the decision was made to not do a reconciliation of a  
18 few selected accounts, but rather to do a sampling of one or two  
19 transactions in a few accounts, correct?  
20 A. I'm not sure I would characterize it that way.  
21 Q. Well, let me get the question a little clearer, then.  
22 A. Okay.  
23 Q. In other words, the sampling was going to do  
24 reconciliations of transactions and not doing reconciliation of  
25 specific accounts.

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1 A. Well, I guess I would characterize it a little differently,  
2 and it depends on temporally where you're talking about the  
3 decisions. The approach is basically a first assignment to  
4 assemble the transactions in the transaction history on an  
5 account-by-account basis. That's the accounting portion. Then  
6 in terms of reconciliation, the earliest view was a  
7 transaction-by-transaction assessment of the accuracy of those  
8 transactions, and that has evolved over time as we've learned

9 more about the availability of documents, the relative accuracy  
10 of past transactions, and what we've learned statistically from  
11 the efforts we've made so far.

12 Q. Let me try it this way.

13 A. Okay.

14 Q. There are a number of accounts out there.

15 A. Yes.

16 Q. And you could choose to say we're going to take a  
17 representative sample of a number of accounts and then go do a  
18 reconciliation of each of those selected accounts. That would  
19 be one approach, correct?

20 A. That would be an option, yes.

21 Q. That's not what is being done in the sampling  
22 reconciliation process under the 2003 or the 2007 plans, is it?

23 A. I would say partially, and what I mean by that is the  
24 beginning of the litigation support exercise was to take a  
25 random sample, drawn as close as we could to statistically valid

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1 for the population, of the accounts in the land-based accounts  
2 arena, and then from those accounts draw a population of  
3 transactions from those accounts for reconciliation.

4 Q. Okay. So there were accounts selected to be in the sample,  
5 and then transactions from across those accounts were taken as  
6 the ones that would be, quote, reconciled.

7 A. Yes.

8 Q. So no single account is having every transaction reconciled  
9 in it under this?



10 A. Not in the land-based accounting.  
11 Q. So the sampling is a sampling that tells you something  
12 about transactions; it does not tell you about accounts, right?  
13 A. I wouldn't characterize it that way.  
14 Q. Okay. We're going to pull up on the screen Defendants'  
15 Exhibit 4. Do you know who Susan Hinkins is?  
16 A. I don't. She's an individual that's involved in the  
17 process somewhere, but I don't think I know her personally.  
18 Q. Okay. But you know who Fritz Scheuren is?  
19 A. Yes, I know Fritz.  
20 Q. And she works at NORC with Mr. Scheuren, and you see the  
21 first page of Defendants' Exhibit 4.  
22 A. Mm-hmm.  
23 Q. Now, look over -- we'll flip over to page 36 of that  
24 document. And before we go into the highlighted provision, I  
25 just want to show you, you see about a third of the way down the

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1 page it's indicating that this is in response to something that  
2 Mr. Duncan has talked about, okay?  
3 A. Okay.  
4 Q. Now, let's go to the highlighted part. And let me ask you  
5 to look, this is the last paragraph on page 36 of Defendants'  
6 Exhibit 4, if you would read that to yourself.  
7 (Witness reviewing document.)  
8 A. Okay.  
9 Q. I want to concentrate on the one sentence there about  
10 halfway through that paragraph, that begins with the word  
11 "however." It says "However, NORC was never asked to design a  
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12 sample which would provide the individual with a statistical  
13 statement about his or her account balance." Do you see that?

14 A. Yes.

15 Q. So NORC's whole sampling design is not to end up with  
16 making a statement about what the account balance is; is that  
17 fair to say?

18 A. For an individual IIM account holder?

19 Q. Yes.

20 A. Yes, that's true.

21 Q. It's dealing only with selected transactions.

22 A. Well, the sample design is designed to give information  
23 about how accurate all of the transactions are across the board,  
24 as opposed to within any one individual IIM account statement.

25 Q. Okay. Now, one of the things of course that you have to do

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1 in order to get an accurate balance is you gotta verify the  
2 opening balance is correct on the statement, right?

3 A. Yes. That's one of the tasks.

4 Q. And nothing that NORC was doing was designed to show the  
5 accuracy of the opening balance. Right?

6 A. That's not their task.

7 Q. Now, let me go back to Defendants', or to the AR Exhibit  
8 33-2, page 21. Now, would you bring up the part there that  
9 deals with interest recalculation so we can see it.

10 we didn't really talk about this too much during your  
11 direct examination, but you talked about the plan and clearly  
12 the plan is, as part of these historical statements of account,

13 is for the Department of the Interior to provide an interest  
14 calculation, correct?

15 A. Correct.

16 Q. The Department of Interior is not going to provide to the  
17 beneficiaries a statement of what was earned on their specific  
18 account. Is that correct?

19 A. I guess I wouldn't characterize it that way. The approach  
20 used by the Department is to take balances that are in the IIM  
21 accounts, pull them into investments, and with the payment of  
22 interest on the investments, distribute that to IIM  
23 beneficiaries. So I think we do tell them what interest has  
24 been earned on their account.

25 Q. Okay. What investments are you talking about?

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1 A. Well, we take the pooled funds and they're invested in  
2 Treasuries, we have specific direction in statute as to what we  
3 can invest in, and the Office of Special Trustee manages that  
4 process with the Department of Treasury.

5 Q. Okay. It says that, this statement says about a third of  
6 all transactions in accounts during the electronic ledger period  
7 are postings of interest earned in the account. Do you see  
8 that?

9 A. Yes.

10 Q. But you're not going to use those postings, are you?

11 A. No, we aren't.

12 Q. You're going to go back and completely recalculate in some  
13 fashion that's not really explained here, interest. Is that  
14 right?

15 A. It's one of the tests of the accuracy of how the system  
16 performed. We go back and take a look at what was posted on the  
17 account in the ledgers, and then we're doing a separate  
18 independent recalculation of the interest to see if the posting  
19 was accurate.

20 Q. But you're going to use the recalculated amount.

21 A. No. No, what would be on the historical statement of  
22 account would be the interest actually posted on the ledger, and  
23 then as part of the assurance statement, it would say we did the  
24 recalculation of interest and here's what we found in a  
25 completely new, independent calculation of the interest, that

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1 either you got the right amount, should have been higher, should  
2 have been lower.

3 Q. Okay. And if it shows that it should have been higher, are  
4 you going to adjust the balance shown on the account statement?

5 A. Not at this time. The way that we're approaching the task  
6 is we are stating in the historical statements of accounts  
7 here's what the ledger shows. The statement of assurance  
8 basically says in doing all the reconciliation work, here's  
9 where we've identified differences and the inferences to your  
10 account.

11 And then at some point in the future, and I don't know when  
12 that is, at some point in the future a decision will be made by  
13 the parties as to how we treat identified differences. And it  
14 may be that we set up a pool to pay underpayments; it may be  
15 that we do nothing and it goes to the Court of Claims; it may be

16 some sort of legislative settlement. We don't know where that's  
17 going to go yet.

18 So we're perceiving our task at this point: This is what  
19 the ledger says, here's what the implications are and accuracy,  
20 and at some point in the future the parties will decide how we  
21 address differences.

22 Q. So, the Department is going to be providing a statement of  
23 account that shows the interest in the electronic record that  
24 was actually posted to the account; is that correct?

25 A. That's my understanding, yes.

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1 Q. And as a result of the work, you know of there being  
2 numerous instances where the interest that's posted is not  
3 correct?

4 A. We know that in some circumstances the interest was higher  
5 or lower. Generally, it's my understanding that the interest  
6 recalculation has been done on a bunch of the judgment and per  
7 capita accounts, and that in large part the interest per account  
8 was either a dollar over or two dollars under, so it was very  
9 close to what got posted, but there are minor errors.

10 Q. There are things other than minor errors too, correct?

11 A. Well, I guess that depends on your definition.

12 Q. Well, earlier your definition of chaff was anything under a  
13 hundred thousand. Is anything under a hundred thousand minor in  
14 this context?

15 A. No. I could probably state it better than using the word  
16 chaff. We divided our work into the part that was over a  
17 hundred thousand transactions, which represented a significant

18 portion of the receipts recorded in IIM accounts, and then there  
19 were many, many more transactions that were less than that, many  
20 of which, as the chart we showed earlier, many of which were  
21 between a dollar and 10 dollars.

22 Q. Okay. But regardless, there are going to be account  
23 statements, you know, that will be issued that will show a  
24 balance on that account that even the Department of the Interior  
25 does not believe is the accurate and correct balance that should

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1 be shown there. Right?

2 A. I think that's true, sure.

3 Q. And you are then trying to position it where the  
4 beneficiary that receives that document, that where even the  
5 Department of Interior recognizes it should be a higher balance  
6 amount, has got to follow an administrative appeals process in  
7 order to get the balance up to what even the Department of  
8 Interior says it is, correct?

9 A. I didn't say that. And the way I would phrase it is a  
10 decision has not been made by the government -- that's a quote  
11 on "government" -- as to how we would address that circumstance.  
12 The Department of Interior does not have an independent fund to  
13 address any errors that we identify. So to address them we need  
14 to have an understanding within government about how we go about  
15 that process.

16 Because we're finding both overpayments and underpayments,  
17 and so an issue that has not been resolved is where we find an  
18 overpayment and we actually paid an individual too much, do we

19 go try to collect the money back or not? At this point, we  
20 haven't made a decision on that. Where we've underpaid, do we  
21 somehow restore that money in a prospective transaction. So I  
22 arrived at the conclusion on your account you're two bucks  
23 short, do I add two dollars to your account in the future?

24 That decision hasn't been made either. It may end up,  
25 based on what we find in relative error rate, that Congress may

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1 be willing to do some sort of settlement to address it across  
2 the board at that point. We don't know yet.

3 So there's been no decision about how we address it other  
4 than we show what the facts are, we provide an assurance  
5 statement, and that at some point in the future when we know  
6 enough and we're close enough to the end of the process, the  
7 government will decide how to treat it.

8 Q. And when will that be?

9 A. I don't know.

10 Q. Sometime in 2011, or later?

11 A. I don't know.

12 Q. So at some point, then, after these historical statements  
13 of account are sent out, that decision will be made?

14 A. In some cases.

15 Q. All right. Now, we're going to come back to this a little  
16 bit later, but let's move on to some of the areas -- there are a  
17 number of areas where the Department 2007 plan does not  
18 anticipate doing any accounting work. And I want to ask you  
19 about some of these areas of exclusions, okay?

20 A. Okay.

21 Q. Now, one of the areas, as I understand it, that the  
22 Department will not be providing information on, is where the  
23 government, Interior, has through contract or compact with an  
24 Indian tribe contracted for that Indian tribe to perform certain  
25 of the trust functions with respect to the individual Indian

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1 trust funds.

2 Am I correct that the Department of Interior is not  
3 including in what is accounted for in the 2007 plan for any of  
4 the funds that then are, I'll use the phrase managed by the  
5 tribes pursuant to such contracts or compacts?

6 A. It's my understanding that we have three tribes who have  
7 that responsibility who actually participate in our systems. So  
8 they use the same systems we use to record cash and it comes  
9 through our systems. And then it's my understanding that we  
10 have two tribes that utilize their own systems to collect,  
11 process and distribute IIM beneficiary cash.

12 Q. Okay. And what are the three tribes that are on the  
13 system?

14 A. I don't know off the top of my head.

15 Q. What are the two tribes that use separate systems?

16 A. It's my understanding it's Salt River Pima, and I think  
17 there's one other one, Lower Colorado something, but I don't  
18 recall specifically.

19 Q. Are there only five tribes that perform this function  
20 pursuant to a contract or compact?

21 A. That's my understanding.



22 Q. Okay. Because in earlier proceedings we've been provided  
23 indications that there were over a hundred tribes that did this  
24 kind of work pursuant to contracts or compacts.

25 A. Well, I guess the difference perhaps in how we're

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1 addressing this is what functions in particular you're looking  
2 at in terms of compacts and contracts. Because we do have  
3 hundreds of tribes who participate in the management of their  
4 trust assets in one fashion or another, and we have a lot of  
5 tribes that get involved in things like probate or appraisal  
6 functions or other things.

7 So I guess depending on the population and the specifics  
8 that you would put on it, the number could be larger. It's my  
9 understanding based on what I've been told by staff that we just  
10 have five tribes who actually have the responsibility for  
11 collecting IIM cash, processing that cash, and managing  
12 distribution. So I guess it would depend on definitions.

13 Q. And so for three of those five, the funds are being  
14 included, some of those funds at least are being included in the  
15 2007 plan.

16 A. That's my understanding, yes.

17 Q. For two of the tribes, it would not be included; is that  
18 correct?

19 A. It's my understanding that there was no overt provision in  
20 the 2007 plan related to those two.

21 Q. I don't understand what you just told me, but I think you  
22 just told me that for those two tribes, Salt River and Lower  
23 Colorado something, the IIM funds they collect are not being

24 accounted for in any way in the 2007 plan.

25 A. I think that's accurate.

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1 Q. Now, with respect to the \$13 billion --

2 THE COURT: Mr. Dorris, can I just clarify that point?  
3 I'm not quite sure what the testimony was about the hundreds of  
4 other tribes you mentioned. Is it your testimony, sir, that  
5 only two tribes, the Salt River Pima and the Lower Colorado  
6 something, are not being included in the 2007 plan, and all the  
7 rest of them are?

8 THE WITNESS: Your Honor, the way I understand where  
9 we are is under law we have programs that are compacted or  
10 contracted to tribes, and that we have hundreds of tribes that  
11 participate in the management of our Department of Interior  
12 programs in a broad cross-section of ways, that if you narrow  
13 the issue down to the management of IIM cash, that it's my  
14 understanding based on what I've been told by the staff that we  
15 have just two tribes that actually have that responsibility  
16 under compacting and contracting, where they use their own  
17 systems as opposed to ours for collecting the cash, processing  
18 the cash, and distributing it.

19 And the issue for us is the 2007 plan doesn't really  
20 mention that, but it is an issue that's been brought to my  
21 attention, and we have the staff looking at how we can address  
22 that part too; I just don't have a good answer for that yet.

23 THE COURT: So all the other tribes should be covered  
24 by the 2000 plan?

25

THE WITNESS: That's my understanding, yes.

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1 THE COURT: Or the 2007 plan. All right. Thank you,  
2 Mr. Dorris.

3 BY MR. DORRIS:

4 Q. Let me follow up just a little bit more there. I'm a  
5 little bit interested in when you said these five tribes are the  
6 only five that manage IIM cash. Are there other tribes that  
7 collect IIM funds and pass them on to the Department of  
8 Interior?

9 A. I'm sorry, I don't know the answer to that. We utilize a  
10 lockbox process now, so we're moving in a direction of having  
11 lessees actually send their cash to an independent lockbox. So  
12 I'm not aware of across the board whether any tribes have any  
13 function in collecting cash from lessees or not, other than the  
14 ones we just talked about.

15 Q. Now, the answers you've given about there being these five  
16 tribes, and you differentiated between three of them and two of  
17 them, at some point in time before this were there more than  
18 five tribes that collected IIM funds and held the cash?

19 A. I'm sorry, I don't know.

20 Q. Now, with respect to the two tribes that are not on  
21 Interior's system that you recognize as having IIM cash or  
22 funds, those are funds that you recognize on behalf of the  
23 Department of the Interior that you have an obligation to  
24 account for, correct?

25 A. I would say that we have not developed a specific plan

1 about how to deal with those, but we're looking into how to deal  
2 with those two.

3 Q. I understand that, and you're saying we haven't really  
4 figured out exactly how we're going to do it, but we recognize  
5 we have an obligation to do it; is that correct?

6 A. I believe so, yes.

7 Q. Mr. Cason, who would we ask and how would we go about to  
8 determine these two things, whether, one, you are correct about  
9 there only being five tribes, and who those tribes are and what  
10 they're doing, and number two, if there were other tribes  
11 previously that performed these functions with IIM money? Who  
12 would know?

13 A. The best I could do is suggest a process and, within Indian  
14 Affairs there's two pathways to address the question, and I'm  
15 sorry it's difficult, but some tribes are called self-governance  
16 tribes, and the self-governance tribes are administered by the  
17 Office of Self-Governance, and that office would be in a  
18 position to determine what functions have been compacted or  
19 contracted to those tribes. And if I recall right, there's  
20 about 80 or so tribes that fit into that category.

21 The other category is the non-self-governance tribes, and  
22 they fall more in the arena of direct service as opposed to the  
23 self-governance tribes. And the remainder of the tribes sit on  
24 that side of the fence. And a different part of the Bureau of  
25 Indian Affairs manages those, and I think it falls under the

1 portion of Indian Services, because they have the contracting  
2 agent for it.

3 I believe that that part of the Bureau of Indian Affairs is  
4 now managed by a guy named Chris Chaney. So if I were going to  
5 start that project, that's the two places I would go first, and  
6 then probably coordinate that with the Office of Historical  
7 Trust Accounting.

8 Q. You mentioned two offices, the Office of Self-Governance.  
9 Who manages that office?

10 A. If I remember right, it's Sharee Freeman.

11 Q. Is that who you would contact to ask these questions?

12 A. Yes. That's right.

13 Q. Well, till we get more information on that, let me move on.

14 A. Okay.

15 Q. Direct pay. That's been a topic that you've talked about  
16 before. And suffice it to say that the 2007 plan addresses this  
17 specifically and says that where leases have been set up for the  
18 beneficiaries to receive payment directly from the lessees, that  
19 the Department of Interior is not going to provide an accounting  
20 on any of those funds. Correct?

21 A. Correct.

22 Q. And none of those funds have been included that are, we'll  
23 call it direct-pay funds have been included in the \$13 billion  
24 total that you testified to earlier, previously in this case.

25 A. That would be correct.

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1 Q. Were any of the funds from the compacting and contracting  
2 tribes that we've talked about included in the \$13 billion  
3 total, or do you know?

4 A. I don't know specifically.

5 Q. You would expect that at least those two tribes, none of  
6 the funds that were being managed by those two tribes were  
7 included in the \$13 billion total, right?

8 A. I would condition that with a temporal sense, in that I  
9 don't know when the tribes actually received the responsibility  
10 to do this work. And so depending on how long they've had the  
11 work, the proceeds going through those two tribes would probably  
12 not be in the number, but anything prior to them assuming the  
13 work probably would be.

14 Q. And since at least 1960, the solicitor for the Department  
15 of the Interior has been on the record as saying that the  
16 Department of the Interior still had trust responsibilities  
17 regarding all of the direct-pay amounts, correct?

18 MR. STEMPLEWICZ: Assumes facts not in evidence.

19 THE COURT: Overruled. Answer it if you can.

20 THE WITNESS: I don't know the answer to that  
21 specifically.

22 BY MR. DORRIS:

23 Q. Okay. I was trying to move things along, because you've  
24 been shown this letter before in prior testimony, but if we  
25 could pull up Plaintiffs' Exhibit 686. You see this is -- in

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1 looking at this document, you recognize it from when you  
2 testified in a prior proceeding in this case, correct?

3 A. I think I have seen it, yes.

4 Q. And it's a November 1, 1960, memo from the solicitor to two  
5 of the directors of the Department of Interior regarding  
6 regulation authorizing lessees of allotted Indian land to pay  
7 rental and royalty directly to the Indian owner. Do you see  
8 that?

9 A. Yes.

10 Q. And could we look at the second page so that we see who the  
11 solicitor was at that time? So it would be page 2 of  
12 Plaintiffs' Exhibit 686, and the solicitor at that time was  
13 Mr. Stevens, who subsequently became Senator Stevens. Do you  
14 see that?

15 A. Yes.

16 Q. Now, let's go back to the first page. And let's look at  
17 the first part that I've highlighted, which is the second part  
18 of -- second paragraph on page 1 of Plaintiffs' Exhibit 686, and  
19 he's confirming that the Secretary of Interior has a duty to  
20 verify the accuracy of the lessees' rental and royalty payments  
21 when administering oil and gas leases on allotted Indian lands.  
22 And he cites a number of statutes, correct?

23 A. Yes.

24 Q. And you would agree with that statement, correct?

25 A. I would agree that it's in this memo.

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1 Q. Well, I'm asking if you would agree that that's still the  
2 case.

3 A. I believe in the duty to verify, we have processes in  
4 place, where we actually are informed that there is an error of  
5 some sort, that we will work with beneficiaries to identify what  
6 the error is, what the expectations were, and try to remedy it.  
7 I'm not clear about whether this carries over to the historical  
8 accounting duty that we have and what its implications would be.

9 Q. I understand that, but you do recognize that there is still  
10 a duty to verify the accuracy of the lessees' rental and royalty  
11 payments even on direct-pay leases, correct?

12 A. Well, I recognize we have a working duty with beneficiaries  
13 if we have some idea that there's a problem, and in some  
14 circumstances we're informed that there's an issue and we act on  
15 those.

16 Q. So from your perspective, your duty is only if somebody  
17 raises a question and says there's an error or we haven't  
18 received a payment. Is that correct?

19 A. It's my understanding we do not have a regular program to  
20 look over the shoulder of lessees in making their payments  
21 directly to lease beneficiaries, and that rather the process is  
22 one where we're informed that there's a problem and we go  
23 investigate that, rather than looking at all of them.

24 Q. So to make sure we're clear, you view the Interior's duty  
25 to verify as only being triggered when somebody says we've got a

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1 problem?

2 A. It's my understanding that that's where we spend our  
3 resources, yes.



4 Q. Let's look at the third paragraph of Solicitor Stevens --  
5 let's go up a paragraph before that, if you can pull it up,  
6 please. Yes, perfect.

7 Now, do you see -- I'll let you read that to yourself  
8 before I ask a question.

9 (Witness reviewing document.)

10 Do you see that?

11 A. Yes.

12 Q. And this is what the solicitor was telling management and  
13 Department of Interior in 1960, correct?

14 A. Yes.

15 Q. And this is still what you would understand to be the case  
16 now?

17 A. I don't know that one way or the other.

18 Q. Okay. But here at least you would see the second sentence  
19 of this paragraph, it says, "In the event payment is inaccurate  
20 and the amount due is not paid by the lessee, then appropriate  
21 action must be taken to cancel the lease and/or take such other  
22 suitable action against the lessee and its bondsman as is  
23 provided for in the lease or in the applicable regulations." Do  
24 you see that?

25 A. Yes.

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1 Q. And that's action by the Department of the Interior?

2 A. Yes.

3 Q. And in the first part of this paragraph it talks about the  
4 lessee for direct-pay leases having to provide statements to the  
5 Department of the Interior as to what is being paid and is owed

6 on direct-pay leases, right?

7 A. Yes.

8 Q. So that's information the Department's getting or supposed  
9 to get on a regular basis from direct-pay lessees, correct?

10 A. It would appear that way, yes.

11 Q. But what I understand you saying is the Department of the  
12 Interior never does anything with those statements to check them  
13 or look at them unless somebody says, oops, there's a problem  
14 with one of them?

15 A. No. What I would say more accurately is I don't know  
16 exactly how this process works now. I don't know whether we  
17 actually receive statements from lessees now or it's handled in  
18 some different way. The operative part for us in constructing  
19 our plan for historical accounting is we never take the funds  
20 into trust with the United States, and therefore when we're  
21 trying to establish our historical accounting duties, this is an  
22 area in which we made an exclusion for the reason that we never  
23 had these monies in trust for the United States; they went  
24 directly to the lessee -- or to the lessor. So we had them put  
25 that as part of the plan.

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1 Q. So the reason it's excluded is based on the Department of  
2 the Interior's legal interpretation of the 1994 act; is that  
3 fair to say?

4 A. Yes.

5 Q. I understand that, and I'm just wanting to look and see how  
6 these leases are administered for what that may tell us, okay?

7 A. Okay.

8 Q. I'm not trying to say, talk about the accounting that is  
9 owed here yet. Okay?

10 A. Okay.

11 Q. Now, let's look at the last paragraph that begins on the  
12 bottom of page 1, that begins "from the record." If you read  
13 that and then we'll go over to the other.

14 (Witness reviewing document.)

15 A. Okay.

16 Q. And if you'll go to the next page, the continuation of that  
17 paragraph.

18 A. Okay.

19 Q. This is indicating that USGS, which is the U.S. Geological  
20 Survey part of Department of the Interior, and the Bureau of  
21 Indian Affairs were doing things differently with respect to  
22 such statements and direct-pay leases back in 1960, correct?

23 A. Yes.

24 Q. And before. Do you know what administrative decision, if  
25 any, was made in this regard?

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1 A. I don't.

2 Q. Do you know if those functions that are being performed are  
3 still being performed in different ways by different of the  
4 departments or eight bureaus within the Department of the  
5 Interior?

6 A. That's my understanding, yes.

7 Q. That they're still being done in different ways?

8 A. Yeah. I don't believe U.S. Geological Survey has any more

9 role in this way, and the inspection enforcement activity, which  
10 is the closest parallel I see here, is being done by the Bureau  
11 of Land Management for oil and gas and coal leases on the Indian  
12 property. That's my understanding.

13 Q. Now, to try to narrow the differences between us, your  
14 position is that funds that are being paid by a lessee to the  
15 individual Indian beneficiary, while they may be trust funds  
16 because they're coming from trust lands, they were never  
17 deposited into the U.S. Government's accounts; is that correct?

18 A. Yes.

19 Q. But you do recognize that they are trust funds, correct?

20 A. I believe they are funds generated from trust assets, yes.

21 Q. Now, and in fact the government in a whole variety of  
22 regulations still requires these type of statements that  
23 then-Solicitor Stevens referred to in the 1960 memo, correct?

24 A. I'm sorry, what kind of statements?

25 Q. The statements from the lessees as to what royalties they

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1 recognize as being due and what they're paying.

2 A. I guess the way I would comment on that is we do get on oil  
3 and gas leases statements from lessees that go to Minerals  
4 Management Service that record what the production was from the  
5 oil and gas lease, includes its royalty payment, and that's  
6 processed by the Department, yes.

7 Q. And when you say that's processed by the Department, what  
8 do you mean, processed?

9 A. It's a relatively complicated process, but we receive the

10 statement from the lessee regarding their production on a  
11 particular lease. It comes in to Minerals Management Service  
12 that processes oil and gas lease payments and other payments on  
13 behalf of the federal government. We generally are operating  
14 somewhere between 500 million and a billion dollars a month  
15 through that system, most of which, 98, 99 percent of it is  
16 federal government payments, about 1 to 2 percent belongs to oil  
17 and gas Indian lessees of one sort or another.

18 MMS does the initial review of the deposits made in the  
19 Department of Treasury, the cash deposit for royalties, and  
20 looks at the production report, and then they pass the  
21 information related to Indians on to the Bureau of Indian  
22 Affairs for a distribution of the proceeds from the lease to the  
23 appropriate parties. That information goes to the Office of  
24 Special Trustee, and the appropriate amount of cash is placed in  
25 the IIM accounts for those individuals and in the tribal

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1 accounts for the tribal proceeds. So that's the general process  
2 we go through.

3 Q. And what you've just described is where funds are coming  
4 into MMS -- what do the MMS initials stand for?

5 A. It's Minerals Management Service.

6 Q. And that's one of the bureaus of the Department of the  
7 Interior, correct?

8 A. Uh-huh.

9 Q. Where oil and gas revenues come in to them, correct?

10 A. Yes.

11 Q. My question was a little different. My question was

12 what -- who receives the statements from the lessees where it's  
13 a direct-pay lease?

14 A. Okay. I don't know the answer to that.

15 Q. And do you know if anything is done with those statements  
16 that are required by regulation?

17 A. I don't know that.

18 Q. Do you know if Department of the Interior is even requiring  
19 the lessees to provide those statements?

20 A. I don't know on the direct-pay.

21 Q. But you would acknowledge -- I've got some of the  
22 regulations, we can bring up to the screen. You would  
23 acknowledge that by regulation the Department of the Interior is  
24 required to make the lessees furnish those type of statements  
25 even on direct-pay leases, correct?

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1 A. Again, I don't know specifically what the regulations say  
2 about that specific item.

3 Q. Let's look at one, then.

4 A. All right.

5 Q. Let's look at 25 CFR 213.18. Now, you can see up in the  
6 upper left that that is, we're looking at, out of Chapter 25 of  
7 the Code of Federal Regulations, at 213, Section 213.18. Okay?

8 Pull up the first highlighted part that is Section B. And  
9 do you see there where it authorizes an area director to enter  
10 into direct leases for these properties?

11 A. Yes.

12 Q. And then if we'll pull up Section C of this provision, and

13 it says rents and royalties paid pursuant to paragraphs A and  
14 B -- and we've seen B is a direct-pay lease, so it's covering  
15 that -- that it indicates on producing leases they have to be  
16 supported by certain statements acceptable to the Secretary or  
17 the duly authorized representative. Do you see that?

18 A. Yes.

19 Q. But to the best of your knowledge, the Department of  
20 Interior doesn't do anything with these statements unless  
21 somebody raises an issue that there's something in error.

22 A. To the best of my knowledge, I don't know exactly how this  
23 process works and how we deal with them.

24 Q. But you do know that only the Department of the Interior  
25 has the power pursuant to those leases to enforce the leases,

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1 correct?

2 A. Well, I'm aware that the Department of the Interior can't  
3 act as an agent on behalf of the beneficiary to enforce the  
4 lease terms. So that is part of our responsibility, yes.

5 Q. As the trustee, that is part of your responsibility. The  
6 beneficiary cannot enforce the lease terms, correct?

7 A. Yes.

8 Q. When you say yes, you're saying that that is, what I said  
9 was correct?

10 A. I believe that is correct.

11 Q. Now, does the Department of Interior have the power to  
12 enter into direct-pay leases without the consent of the  
13 beneficiaries?

14 A. I don't know over the history of time whether it's ever

15 been done. We have talked about this during my tenure here,  
16 that the approach that we prefer to have is that in a direct-pay  
17 situation, that all of the receiving beneficiaries have agreed  
18 to the direct-pay lease, and that in the absence of all of the  
19 involved beneficiaries agreeing to it, that we would not agree  
20 to direct pay.

21 I don't know over the course of the last hundred years how  
22 it's been done over time. That's just our view as a policy  
23 matter now how we'd like to go about it, and I don't know  
24 specifically how it's implemented in the field, but it's our  
25 desire as a policy matter that if you don't have the agreement

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1 of all the beneficiaries, that we wouldn't authorize direct pay.

2 Q. Okay. But it has been done in a different -- you don't  
3 even know if that's the policy that's being enforced now, right?

4 A. Well, we have lots and lots of people who are involved in  
5 this process, and it's been my experience so far in this case  
6 that if any one of them do something that's not part of the  
7 norm, then that's an issue, because I didn't know about it. I  
8 don't know what all the individuals do. I just know how we  
9 would like it to be done.

10 Q. Okay. So what you just described as how you would like it  
11 to be done, you're not saying that's the way it's been done in  
12 the past or that's the way it's being done now.

13 A. I don't know over the last hundred years how it's been  
14 done.

15 Q. Okay. Because when we just looked at the regulation, there



16 was nothing in the regulation that required the Department of  
17 Interior to get the consent of the beneficiaries in order to do  
18 a direct-pay lease. Do you remember that?

19 A. I don't think it was part of the regulation you showed.

20 Q. Okay. Now, do you remember -- are you aware of what has  
21 been referred to in this case as, quote, breach 1?

22 A. Yes.

23 Q. And that was essentially where in Cobell v one of the  
24 breaches was found that the Department of Interior was under an  
25 obligation to collect records from third parties that would be

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1 needed in order to do the accounting, correct? I'm not trying  
2 to state it precisely as much as I'm just trying to focus us on  
3 that topic for the moment.

4 A. I recall in earlier court decisions the issue of collecting  
5 third-party records was on the table, yes.

6 Q. And the Department of the Interior is not at this point  
7 doing anything further to try to cure breach 1, is it?

8 A. The Department is not engaged in a process broadly to go  
9 seek whatever records are available in the third-party arena.  
10 If there's some specific issue where we think that there's some  
11 third party who could be helpful, then we're certainly empowered  
12 to go ask. But as a broad matter, no.

13 Q. Does the Department of Interior have a written plan to  
14 gather this type of data from third parties that would be  
15 relevant for the individual Indian trust funds?

16 A. To this point, the Department has found that the record  
17 base we have right now is pretty sufficient, and we don't want

18 to go through a duplicating exercise. As I spoke earlier, we  
19 have a certain budget to get this job done, and we can go spend  
20 a lot of money on pursuing third-party records, but we have not  
21 found the need to do so so far.

22 Q. Okay. I wasn't asking a reason why. I was just asking  
23 does the Department of Interior have a written plan to go gather  
24 this type of information from third parties in response to  
25 breach 1.

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1 A. We haven't found it to be necessary yet.

2 Q. So the answer is no, we don't have a plan, and we don't  
3 have that plan because we've not found it to be necessary.

4 A. That would be correct.

5 Q. Now, let's look at Plaintiffs' Exhibit 4465. Do you see  
6 this is from the Department of the Interior departmental manual?  
7 The effective date is April 30, 2003, and it is "Collection of  
8 missing Indian trust related records." And the originating  
9 office, that's your office, correct?

10 A. Yes.

11 Q. Or the office that you're in. At this time was the deputy  
12 secretary Steven Griles?

13 A. Yes, I believe so.

14 Q. And you were the associate to Mr. Griles?

15 A. Yes.

16 Q. And you see what the purpose stated there is "This chapter  
17 provides departmental policy and procedures for collecting  
18 available relevant Indian trust related records from third

19 parties. Collections of such information will supplement  
20 existing federal records and assist in those instances where  
21 federal records are incomplete or missing." Do you see that?

22 A. Yes.

23 Q. Now, let's look down at, it will be on the next page,  
24 paragraph 5.8. And you see the procedure stated there, that  
25 "OHTA will collect and secure missing Indian trust related

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1 records from third parties as follows." And I'm not going to go  
2 through the whole procedure, but do you see that?

3 A. Yes.

4 Q. So there actually is a departmental policy and procedure  
5 for gathering this information.

6 A. Yes.

7 Q. But what you're indicating, it's not being implemented now  
8 because you don't think it's needed?

9 A. As a general rule, I think that's true. We do have other  
10 witnesses who will come to testify who may be able to give you  
11 more information. But it's my understanding that the degree of  
12 information we have right now is sufficient to do the accounting  
13 that we have in our plan.

14 Q. Okay. In terms of at least what's in your plan, your plan  
15 does not envision going and obtaining this information from  
16 third parties.

17 A. That's correct.

18 Q. Now, how familiar are you with the probate process that's  
19 followed by the Department of Interior?

20 A. I'm reasonably familiar.

21 Q. Okay. And as part of the probate process, does the probate  
22 of an individual Indian's estate involve an accounting by the  
23 Department of Interior for that individual Indian's trust funds?

24 A. It would be my understanding that it does not involve an  
25 accounting like what we're talking about here, that rather, the

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1 Bureau of Indian Affairs gathers information regarding the  
2 assets of the individual, and that information, along with a  
3 bunch of other stuff, is conveyed to OHA for a determination of  
4 distribution of assets to appropriate heirs.

5 Q. So it's essentially what does the Department of the  
6 Interior show are the assets and the balance in that deceased  
7 beneficiary's account, correct?

8 A. Correct.

9 Q. And whether that's the right and accurate balance as a  
10 result of somebody doing an accounting, that information is not  
11 part of the probate process.

12 A. Well, I think there is a role in the probate process that  
13 when the probating is done, all of the involved individuals  
14 associated with that probate have the opportunity to approach  
15 OHA and say, gee, we think there's a problem here, that we don't  
16 have -- we haven't identified the appropriate assets. So I  
17 think there is some role there, but we do not have a formal  
18 accounting like you're talking about.

19 Q. Right. And it is a formal accounting. One of the reasons  
20 a formal accounting is needed in this case is for the  
21 beneficiaries to then look at what has happened in their account

22 to determine if they think there is something improper that  
23 occurred there, correct?

24 A. I think that's a point of view, yeah.

25 Q. Well, I mean that's one of the reasons that accounting's

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1 helpful to beneficiaries, correct?

2 A. I think that is a potential source of information to  
3 beneficiaries, but it has not been done typically over the last  
4 few decades.

5 Q. Now, the position that the Department of Interior is taking  
6 in the 2003 and 2007 plans, which we think are plans 8 and 9, is  
7 that it is going to view the probate of an estate as being final  
8 and conclusive with respect to the particular IIM account that's  
9 involved there. Is that fair to say?

10 A. Yes.

11 Q. Okay. Now, has that always been the Department of  
12 Interior's position?

13 A. I don't know. I haven't been there.

14 Q. You got there in August 2001.

15 A. Yes, but always is a long time.

16 Q. Since 2001, has that been the Department of the Interior --

17 A. That's my understanding, yes.

18 Q. And so that it's clear, while you testified you got kind of  
19 ramped up into the Indian trust issues, at least by December of  
20 2001, you were deeply involved in the IT security issues. Fair?

21 A. Well, I was introduced into the IT security issues in  
22 December.

23 Q. Okay. And by the summer of 2002, you were testifying to

24 Congress about the overall plan, correct?

25 A. I seem to have inherited a lot of responsibility here, yes.

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1 Q. Okay. Let's look at then the administrative record  
2 document 61-37, and we'll pull up page 1 here. You will see  
3 this is a document dated April 3, 2002. It's to you, your  
4 superior, Mr. Griles, and then the secretary, Secretary Norton,  
5 and also to Bert Edwards. I guess this check mark means this  
6 probably came from Bert Edwards' files. And it has to do with a  
7 comprehensive plan and budget.

8 And if we'll look back at that entire page 1, do you see  
9 there are a number of questions there that are going to be  
10 answered. Can you pull up that list of questions in the middle?  
11 Here are the questions that are going to be addressed by  
12 Mr. Swimmer, who wrote this memo.

13 Now, question 2 is "To whom do we owe an accounting?"  
14 Let's look at page 2 in terms of how that is answered. Let's  
15 look at paragraph 2. "To whom do we owe an accounting? The  
16 most obvious answer is to the living beneficiaries of the trust.  
17 However, in order to establish an accurate beginning balance for  
18 these living account holders, we would have to go back in time  
19 to when the trust was first established with an ancestor of the  
20 living beneficiary and do an accounting for their transactions  
21 as well." Do you see that?

22 A. Yes.

23 Q. So at least at this point Mr. Swimmer is indicating that he  
24 thinks it's just for living beneficiaries, but you gotta go all

25 the way back to their ancestors, to the beginning of the

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1 account, in order to determine an accounting for the living  
2 beneficiaries. Correct?

3 A. That seems to be his opinion, yes.

4 Q. Right. And what was Mr. Swimmer's position at that time?

5 A. I'm not sure. He's the Special Trustee for Indians right  
6 now. I'm not exactly sure temporally what he was doing at that  
7 time.

8 Q. Now, this clearly, setting aside as to whether it should be  
9 living and past beneficiaries, this clearly is envisioning that  
10 the Department at this point was not anticipating treating the  
11 probate process as being final with respect to beneficiaries'  
12 accounts. Would you agree with that?

13 A. No. I don't think it clearly says anything other than  
14 Ross's view about how to attack the problem. I would doubt that  
15 he even thought about probate in this particular case.

16 Q. Okay. Well, let's pause for a minute, and remember, what  
17 was the plan called that you testified to Congress about at the  
18 end of June or July of 2002? Do you remember what plan that  
19 was?

20 A. No.

21 Q. There was a report that was presented to Congress in the  
22 summer of 2002, correct?

23 A. Mm-hmm. I believe so.

24 Q. And you testified about that plan.

25 A. I don't recall specifically, but I've been involved for a

1 long time, so it's possible, yes.

2 Q. And that plan was going back and providing a  
3 transaction-by-transaction reconciliation for every transaction  
4 and every account all the way back to 1938, correct?

5 A. I don't recall the specifics of where we started. As I've  
6 testified already, it's been a learning process, and that during  
7 the last five years we have learned a lot, we've made a lot of  
8 decisions about how to manage this process. I don't remember  
9 exactly what that plan said versus other various iterations.

10 we have learned over time, made decisions over time, and  
11 the last decision point was how we framed our 2007 plan and what  
12 we committed to do there.

13 Q. Okay. So you don't remember whether the 2002 plan that you  
14 testified to Congress about was going to look at closed accounts  
15 or looking at deceased beneficiaries; is that right?

16 A. I don't remember that specifically, no.

17 Q. Okay. Let's look at paragraph 5 on this same page. Do you  
18 see at least Mr. Swimmer, who's now the Special Trustee, is  
19 saying "Predecessor accounts should be included in the  
20 accounting in order to determine the correct beginning balance  
21 of current account holders. Closed accounts should be included  
22 as these were beneficiaries at one time and if money is owed it  
23 should be paid," is the next word I can read from my hard copy.

24 A. That's all right. I trust you.

25 Q. Can you answer this question: The 2003 plan was planning



1 to treat the probate process in the same fashion the 2007 plan  
2 does, correct?

3 A. As I recall, yes.

4 Q. As final and conclusive?

5 A. Yes.

6 Q. So you're not going back and looking at predecessor  
7 accounts, correct?

8 A. That's my understanding, yes.

9 Q. And was there some point in time between here, and what  
10 we're seeing being discussed in 2002, and the plan of January 6,  
11 2003, where that decision was made?

12 A. I would say generically yes. I don't know that there is a  
13 particular point in time with a particular meeting that said  
14 let's make this particular decision, get it recorded. As we  
15 were going through the process of trying to figure out how we do  
16 this project, there was consideration of the parameters of how  
17 we do it, and this issue in particular was an issue that was  
18 discussed, and the thinking process was one that how do we  
19 approach the job in a way that we can actually finish on an  
20 account-by-account basis the tasks that we have to do this  
21 historical accounting.

22 And approaching the job in this particular way, that you  
23 could never finish a current account until you did all the  
24 accounting of every predecessor account to 1887, appeared to be  
25 problematic. And so from our standpoint, we made a decision

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1 that said there is a legal, sufficient process for distributing  
2 predecessor in interest accounts through estate probate work and  
3 that, for our purposes in doing the accounting, that for the  
4 individuals who had an account open as of October 25, 1994, that  
5 we would do their account all the way back to the opening  
6 balance of their account, and if that opening balance was a  
7 result of a probate procedure, then we would accept whatever the  
8 probate said was entitled to them, and that would become the  
9 opening balance amount, but we would not go back further into  
10 the probate and try to do that.

11 Q. And so that the reason that that decision was made was not  
12 because the Department really felt like there had been an  
13 accounting as part of the probate process, but because the  
14 Department wanted to expedite furnishing an accounting to the  
15 living beneficiaries; is that correct?

16 A. Well, I think that's partially correct, and the other part  
17 of it was in looking at the process, it was our view that the  
18 probate process was another separate legal proceeding for  
19 distributing the assets of an estate, and that we would rely  
20 upon that legal process to determine how the proceeds would be  
21 distributed, and that it afforded the opportunity to raise  
22 questions if there were some about the assets in the estate. So  
23 we decided not to add another process on top of that legal  
24 process. So that was our decision.

25 Q. But that decision was made, as we're looking at these

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1 documents, sometime after April of 2002 and before the plan of  
2 January 6, 2003, was issued. Would that be fair to say?

3 A. I would say approximately. I don't know exactly when it  
4 was done.

5 Q. Right. But Cobell V was decided in 1999, correct?

6 A. If you're talking about Judge Lamberth's decision in '99,  
7 yeah.

8 Q. And Cobell VI, which was the Court of Appeals decision  
9 affirming it, was I think in early 2001.

10 A. That's my understanding, yes.

11 Q. And we're seeing this discussion even after those decisions  
12 ongoing where the Department is considering doing an accounting  
13 for predecessors, correct?

14 A. Well, there was lots of discussions about lots of aspects  
15 of the historical accounting. This was just one of them.

16 Q. Okay. Let me switch subjects. Now, one of the differences  
17 between the 2003 plan and the 2007 plan has to do with something  
18 you referred to as asset statements, correct?

19 A. Yes.

20 Q. Or that the plan does. And even as late as January 6,  
21 2003, the Department of Interior was anticipating, when it  
22 furnished the historical statement of account to the  
23 beneficiaries that it was going to give a statement to, that it  
24 was going to give a description of what the assets were in that  
25 person's account, correct?

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1 A. Yes.

2 Q. And that included a description of the property and the  
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3 interest in that property, real estate, that that particular  
4 beneficiary had, correct?

5 A. Yes.

6 Q. So that the beneficiary would have a statement then that  
7 said as of December 31, 2001, not only what funds were in the  
8 account but what the Department of the Interior was basing that  
9 on in terms of their interest in the trust assets, correct?

10 A. I believe it was slightly different than that. As I  
11 recall, the asset statement would be a current asset statement.  
12 So if we sent the asset statement in January 2004, whatever you  
13 owned approximately at that time, as opposed to December 31,  
14 2000. But I don't remember it clearly.

15 Q. Okay. But you don't -- your belief now sitting here is  
16 that it was not going to be a statement as to what that  
17 beneficiary's -- what interest it had had in the property  
18 throughout the whole time of the statement, but at least it was  
19 going to provide them with a statement of what property they had  
20 a beneficial interest in as of the end date of that statement,  
21 correct?

22 A. Yes, that's correct.

23 Q. And now that's not going to be provided, is it?

24 A. Not as part of the historical accounting process.

25 Q. Now, answer this to me. I heard you say words to this

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1 effect, and I tried to write them down as fast as I could. Mine  
2 is not the official record. You said something about, well,  
3 we've done away with that distraction with respect to this asset

4 statement. Were you talking about -- now, was that asset  
5 statement a distraction for the Department of Interior or for  
6 the beneficiaries?

7 A. No, it was neither of those. It was basically a  
8 recognition of what is it we're trying to focus on in doing this  
9 job, to provide a historical statement of account regarding the  
10 funds that we've had in trust on behalf of Indian beneficiaries,  
11 individual Indian money account holders, and that when we took a  
12 look at how the Department of Interior was addressing this  
13 issue, that when we did the 2003 plan, we said we would provide  
14 a statement of what the individual owns as of the date that we  
15 provide them a statement.

16 And when we did the 2007 plan, what had occurred during  
17 that period of time is that we had converted from LRIS, the old  
18 system, to TAAMS. We were in the process of updating all of our  
19 realty records, and that it appeared to be more prudent to keep  
20 the project of historical accounting clearly focused on cash,  
21 and that separately the Department of the Interior, through OST  
22 and BIA, would be embarking on a process to provide individual  
23 Indians with asset statements as well as cash statements as part  
24 of our current accounting process.

25 Q. Okay. So the asset statements are not going to be included

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1 on the historical statement of accounts that are being furnished  
2 pursuant to the 2007 plan?

3 A. Yes, correct.

4 Q. And so that the beneficiary at the time they receive that  
5 will not have an accounting that sets forth what their interest

6 in the land -- their beneficial interest in the land was.

7 A. Not as part of the HSA.

8 Q. Now, let me ask you to look at the administrative record  
9 63-13. I may have called it the wrong one. Look over at page  
10 6. Can you bring up what's in the upper right-hand corner so we  
11 can read it?

12 This then is a transcription from Jeffrey Zippin's  
13 contemporaneous notes. Do you see that?

14 A. Yes.

15 Q. And this is in the administrative record as document 63-13.  
16 And we're looking at page 6 of that document. And it indicates  
17 that it's a meeting on May 30, 2007, which is the day that the  
18 2007 plan was issued, correct?

19 A. Okay. I don't recall that specifically, but it's in that  
20 ballpark.

21 Q. I can't remember if it's the 30th or the 31st, but it's in  
22 the ballpark.

23 A. Okay.

24 Q. And you're in a meeting with Abe Haspel, Burt Edwards and  
25 Jeff Zippin, correct?

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1 A. Yes.

2 Q. I guess he goes by "Zip"?

3 A. Yeah, nickname.

4 Q. I want to ask you about a couple of things there. If we'll  
5 look down the page, do you see the first part I've highlighted  
6 that we'll pull up is talking about jettisoning the asset

7 statement. So is it at this point in time, just on the eve of  
8 this being filed, that you made the decision to jettison the  
9 asset statement?

10 A. I don't know exactly the time line of doing it. It was  
11 discussed as a topic in preparing the 2007 plan, and at some  
12 point in time before we actually published the plan we ended up  
13 making a decision that we would have OST take this function as  
14 opposed to OHTA.

15 Q. Well, it's clear from Mr. Zippin's notes here that that was  
16 being discussed as late as May 30, 2007, correct?

17 A. Okay. It looks that way, yes.

18 Q. I mean I assume, since this was put by the Department of  
19 Interior into the administrative record, it is -- you're  
20 agreeing that this is an accurate account of this meeting,  
21 correct?

22 A. I would expect so, yes.

23 Q. All right. Look at the last line of that same paragraph.  
24 It says, "Original idea of 12/31/2000 asset statement is no  
25 longer viable." Do you see that?

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1 A. Yes.

2 Q. Why is it no longer viable?

3 A. I'm not sure what the original idea of the 2000 asset  
4 statement was.

5 Q. Oh. That was going to be the asset statement from the 2003  
6 plan that was going to say what the assets were as of December  
7 31, 2000.

8 MR. STEMPLEWICZ: Objection, Your Honor. The question  
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9 has to do with the opinion or notes of some other individual and  
10 he's asking Mr. Cason to testify as to its meaning.

11 THE COURT: well, that's a fair point. If the witness  
12 doesn't know what it means, he can certainly say that.

13 BY MR. DORRIS:

14 Q. Mr. Cason, let me try it this way. You'll recall the 2003  
15 plan was going to have an end date for the accountings as of  
16 December 31, 2000.

17 A. Yes.

18 Q. And that part of that plan was going to be an asset  
19 statement as to what land the beneficiary had a beneficial  
20 interest in as of the end date of the accounting.

21 A. Yes.

22 Q. which would be December 31, 2000.

23 A. Okay. I understand.

24 Q. Do you know why, based on Mr. Zippin's notes of a meeting  
25 he was in with you on May 30, 2007, why it's written here that

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1 this asset statement was no longer viable?

2 A. well, as I've explained before, during our consideration of  
3 the decisions that we were making for the 2007 plan, we thought  
4 that it would be cleaner and more direct for the Office of  
5 Historical Accounting to focus on funds, which was what their  
6 charge is, and that we would have OST and BIA as part of their  
7 functions deal with the asset statements.

8 OHTA was never in a position to actually produce the  
9 land-based information. They were always in a position of



10 receiving that information from BIA and OST, and then just  
11 communicating it as part of the statement. So to basically  
12 streamline the process and make it clearer, we said, OHTA, you  
13 focus on the funds, and OST and BIA, you're responsible for the  
14 asset statements, and when you get all the data loaded for the  
15 land information, then you need to include that as part of your  
16 quarterly statements as opposed to having OHTA do it. So it was  
17 just a management decision.

18 Q. Because the Department of the Interior could not provide  
19 statements as to what the beneficial interests were as of  
20 December 31, 2000, correct?

21 A. Well, I don't see that as the point. The point, counselor,  
22 is, as we were managing the work that needed to be done, that we  
23 were trying to make a determination who would be responsible for  
24 what parts of this, and we thought we had a better way of  
25 addressing this issue than what we had adopted in the 2003 plan.

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1 So we made a change of course. The intent is still to  
2 provide individual Indian money account holders who own land  
3 that generates cash with a statement regarding their land  
4 assets. They just do it in a different way.

5 Q. Okay. Because you did view that as part of the  
6 responsibility and obligation of the Department of Interior in  
7 providing an accounting, to provide that information in terms of  
8 the assets to the beneficiaries, correct?

9 A. We saw that as part of the commitment that we had made to  
10 the Court to do that, yes.

11 Q. Okay. And it's just being done in a different fashion and  
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12 not as part of the accounting plan.

13 A. That's my view, yes.

14 Q. Now, look on the next page. I want to look at the second  
15 highlighted item there, "'collections' versus 'receipt,' use  
16 'receipts'"?

17 A. Mm-hmm.

18 Q. Is this an indication that you had a discussion at this  
19 point as to what to call things as you wrote up the plan,  
20 whether to call them collections or receipts?

21 A. Yes.

22 Q. And was it your decision to use the word "receipts" as  
23 opposed to "collections"?

24 A. I would say it's a collective decision or understanding.

25 Q. Okay. And why did you make a decision to call it receipts

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1 rather than collections?

2 A. One of the things that we've experienced in this litigation  
3 is that all of us end up parsing words carefully, and that there  
4 is a difference in meanings between collections and receipts,  
5 and if I can illustrate, I'm going to do a timber sale, and I  
6 have five timber companies who bid on the timber sale. And I  
7 collect a hundred dollars from each one. So I have collections  
8 of \$500, but only one of those companies win the bid. So in the  
9 end I have a receipt of \$100 that goes to the IIM beneficiary,  
10 because that timber company won the bid and that's what they  
11 bid, and then we have a responsibility to return the other \$400  
12 to the unsuccessful bidders.

13           So in working our way through this process, we thought we  
14 needed to be as clear as we could be in using common terminology  
15 for the differences between collections and receipts.

16 Q.   And what you've just described is just one example of many  
17 that you would talk about in terms of the difference between  
18 collections and receipts, correct?

19 A.   Yes.  It's one example.

20 Q.   Because you wanted to use "receipts" as meaning funds that  
21 were posted to a beneficiary's account, correct?

22 A.   They were entitled to and posted, yes.

23 Q.   What did you just say?

24 A.   That the IIM beneficiary was entitled to the funds and that  
25 it was posted to their account.

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1 Q.   That's what receipts is, correct?

2 A.   Yes.

3 Q.   For you.  So that money could be collected by the  
4 Department of Interior and it be admittedly individual Indian  
5 trust monies.  That would be collected, correct?

6 A.   When I receive the money, you could call it a collection,  
7 and then when I post it it becomes a receipt, but I can also  
8 collect money that we end up having to return, so we've  
9 collected the money but it didn't end up being a receipt,  
10 because we have to return it to somebody.

11 Q.   Exactly.  And you can collect money that is individual  
12 Indian trust monies that never get posted to an individual's  
13 account, right?

14 A.   I suppose that's a theoretical possibility, sure.

15 Q. Well, that's what's all the money that's in the special  
16 deposit accounts, right?

17 A. No. No, special deposit accounts are basically temporary  
18 accounts that are used where we're not clear who has the  
19 rightful interest in the money, and a special deposit account  
20 may be used for the very example I gave. I received the \$500, I  
21 posted it to the special deposit account till it's clear that  
22 the timber sale's been completed, who the winning bidder is, the  
23 bid from the winning bidder goes to the IIM account holder and  
24 the rest gets refunded.

25 Q. But there have been instances where I've looked at with

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1 audits from the past where the funds that are in special deposit  
2 accounts well exceed a hundred million dollars at the end of a  
3 particular year. You're aware of that, right?

4 A. Actually, no. That sounds pretty high.

5 Q. But there are times that it's well in excess of \$50  
6 million, right? I think that's even what's referenced in the  
7 plan.

8 A. I think there has been a time when we started in 2003 that  
9 the, I'll say balance of the special deposit accounts were in  
10 the 50 to 60 million-dollar range, and that OHTA assumed  
11 responsibility for distributing those funds and has made good  
12 progress on it.

13 Q. But what I want to make sure is clear here, what you were  
14 trying to be careful in this discussion and then in writing the  
15 plan was that you were going to do accountings for what was

16 collected and posted to a beneficiary's account. You were not  
17 going to be accounting for all the money that was collected by  
18 the Department of Interior as individual Indian monies.

19 Correct?

20 A. Well, I guess following the same line of parsing our words  
21 carefully, if I use the same example and I get five bids at a  
22 hundred dollars and one of them is successful, I don't perceive  
23 that the four losing bids are IIM money, because in this case it  
24 was never the property of the IIM beneficiary to have all the  
25 unsuccessful bidders' cash. So I don't see that as something I

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1 need to account for for an IIM statement.

2 Q. Okay, good. And in your one example, there's a hundred  
3 dollars -- we'll use that example though we know in special  
4 deposit accounts it's millions of dollars.

5 A. Well, it can be.

6 Q. There's a hundred dollars sitting there that is IIM money,  
7 correct?

8 A. Yes.

9 Q. And as long as it's not been posted, it's been collected  
10 but it's not been posted to an individual's account, the 2007  
11 plan is not going to account for it, is it?

12 A. No. That's not what it says. In the 2007 plan we are  
13 working on special deposit accounts, that if you begin at the  
14 2003 plan, we've done about 75 percent of the special deposit  
15 accounts in terms of dollar volume that have already been  
16 researched, determinations made, proceeds distributed, and we  
17 have about 25 percent of that. I think the number is like 16,

18 17 million dollars that are still in special deposit accounts  
19 that OHTA has responsibility for.

20 we're still working on those accounts. We work them  
21 generally from largest account to smallest account, so there is  
22 still work ongoing. And when we take an individual account we  
23 look at the circumstances involved in that, determine who is the  
24 appropriate owner of the funds in the special deposit account,  
25 and then make a distribution of it. When that distribution

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1 occurs, if an IIM beneficiary is the rightful owner of the cash,  
2 then it gets posted to their account.

3 Q. So are you saying, so that I'm clear, that part of the 2007  
4 plan is then to make an allocation of all the funds in the  
5 special deposit accounts?

6 A. I would say over time, yeah.

7 Q. Over the next four years or longer?

8 A. Well, what I've been told is the schedule that we're  
9 working on is one that will take place over time. There's no  
10 specific end point for finishing all of the IIM accounts -- I'm  
11 sorry -- for finishing all the SDA accounts. We are looking at  
12 prioritizing how we do SDAs, because we're approaching a point  
13 now where the cost of assessing, reconciling, and distributing  
14 the cost of an IIM account -- sorry -- that the cost associated  
15 with reconciling an SDA is approaching the point where it's more  
16 to reconcile and distribute than the proceeds actually in the  
17 SDA.

18 So when we reach that point, we may make some pacing

19 decisions regarding can we place this money in other places to  
20 move the historical accounting process along more rapidly, more  
21 productively, but we still recognize that we have a  
22 responsibility for the residual SDAs.

23 Q. But there's not a present schedule at this point of the  
24 SDAs.

25 A. There is not a present schedule to be finished

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1 definitively, yes, that's correct.

2 Q. Whether it's a year, four years, or six years?

3 A. Yes.

4 THE COURT: Good time for a break?

5 MR. DORRIS: Yes, sir.

6 THE COURT: Mid-afternoon break. 15 minutes.

7 (Recess from 3:00 p.m. to 3:15 p.m.)

8 THE COURT: Mr. Dorris?

9 BY MR. DORRIS:

10 Q. Mr. Cason, on this collections versus receipts, let me get  
11 to one of the main areas on that issue that I wanted to get to,  
12 which is you described in response to one of my questions about  
13 the oil and gas revenues that come in off the IIM lands. Do you  
14 remember that?

15 A. Yes.

16 Q. And that that money is deposited by -- collected by MMS,  
17 correct?

18 A. Yes.

19 Q. And we're not talking about direct-pay leases there; we're  
20 talking about other leases. Correct?

21 A. As a technical matter, the money is paid in to the  
22 Department of Treasury and we get production reports at MMS.

23 Q. So money that is individual Indian trust funds are paid in  
24 to the Treasury Department, correct?

25 A. Yes.

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1 Q. And at that point, they are not yet posted to an  
2 individual's account.

3 A. Correct.

4 Q. But they are collected by the government and invested by  
5 Treasury pursuant to the 1938 act, correct?

6 A. I believe so, yes.

7 Q. So they are trust funds and those trust funds are then --  
8 MMS provides information as to how much of those funds are the  
9 government's money, tribe's money, or individual Indian funds,  
10 correct?

11 A. Well, so to speak, yes. It divides the money up and sends  
12 reports regarding the Indian stuff to BIA and OST.

13 Q. And then are those funds shifted to a different account at  
14 that point, or do they remain in the pooled account?

15 A. I don't know that.

16 Q. Okay. Then how does it go from there to an individual  
17 Indian's account, or posted to an individual Indian's account?

18 A. As I understand the process, we receive a report,  
19 production report, from MMS regarding what got paid on a  
20 particular lease after MMS has verified that the production  
21 report says this, we verify that the cash associated with that



22 has been paid to Treasury. They ship a data file to BIA and OST  
23 to say we received X number of dollars for this lease, and MMS's  
24 information is basically just lease level information, and they  
25 don't know who the owners are.

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1 And then it's the job for BIA to say, well, this lease is  
2 owned by the following parties, and so distribute those assets  
3 into the IIM accounts of these individuals, and that's a job OST  
4 does.

5 Q. Okay. I think I got it. In the most simple terms, the  
6 money is deposited in the Treasury, correct?

7 A. Mm-hmm.

8 Q. MMS then indicates how much of those funds are individual  
9 Indian trust funds and what leases generated those funds,  
10 correct?

11 A. Yes.

12 Q. Then BIA through a manual calculation determines whose  
13 funds those should be posted to, correct?

14 A. I think it's a combination of looking at electronic files  
15 and possibly manual files if there's a question.

16 Q. But there's no question but that MMS has very important  
17 trust -- IIM trust information on its systems, right?

18 A. I think that is clear. Lease payments associated with IIM  
19 properties at the lease level is provided to MMS, yes.

20 Q. And those are individual Indian trust funds that are  
21 collected by Treasury and deposited and invested pursuant to the  
22 1938 act, correct?

23 A. Yes.

24 Q. And the question is, as part of the 2007 plan, there will  
25 be no accounting of MMS's systems, correct?

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1 A. Well, for our task of providing IIM account statements, MMS  
2 doesn't know who is the proper recipients of the royalty  
3 payments made. MMS just has information related to the lease  
4 level information, so this lease generated x number of dollars,  
5 and then when they transfer the lease information to BIA, BIA  
6 has a responsibility of saying who owns the lease or who has the  
7 leasehold interest.

8 So in terms of doing an accounting for MMS in the sense  
9 that we're talking about here in historical accounting, no,  
10 there's no way you could do that.

11 Q. Well, not to argue with you if there's no way to do it.  
12 Let's just be clear. That is something that the Department of  
13 Interior is not doing pursuant to the 2007 plan, correct?

14 A. That would be correct, yes.

15 Q. All right. Because really the Department of Interior  
16 pursuant to the 2007 plan is really only looking at two systems,  
17 right? Two computerized systems?

18 A. Well, no.

19 Q. For the electronic records era.

20 A. Well, we principally are looking at TFAS, which inherited  
21 information from IRMS, and we look at a land-based system so we  
22 can backtrack the selected transactions back to their lease  
23 back, back to the underlying land or lease, back to the  
24 ownership of that. So we do look principally at two systems,

25 but we also look at manual information as well, or paper

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1 information.

2 Q. So the principal systems you're looking at are TFAS, which  
3 you're saying inherited some of the IRMS system, correct?

4 A. Yes.

5 Q. And then also LRIS, as it is now in, what did you say,  
6 TAAMS?

7 A. Yes.

8 Q. So it's primarily TFAS, T-F-A-S, and TAAMS, T-A-A-M-S,  
9 correct?

10 A. That deals with cash, mm-hmm.

11 Q. But there is no looking at the MMS systems that they have,  
12 to look at that at all, correct?

13 A. Not for the purposes of doing the historical accounting  
14 we're doing here.

15 Q. Because all you're looking at there, and you're considering  
16 as part of the electronic era, are postings to individuals'  
17 accounts that are still reflected on the electronic records,  
18 correct?

19 A. Yeah. Yes.

20 Q. And that is definitely not all of the individual Indian  
21 trust funds that have been collected by the government and  
22 deposited pursuant to the 1938 act during the electronic era, is  
23 it?

24 A. As I understand the question, there is a temporal aspect to  
25 that, that when a royalty lessee pays their cash in to Treasury,

1 there may be a few days between the time the Treasury sees the  
2 money and when money is posted to an IIM account holder. So  
3 there is a few days where your statement would be true.

4 But as far as I understand the process, we don't have cash  
5 rattling around the Department of Treasury in the form of oil  
6 and gas payments that are not being distributed to IIM  
7 beneficiaries or to tribal accounts. It goes through the  
8 process on a lease-by-lease basis. There may be delays to find  
9 information, but generally the process works pretty  
10 expeditiously.

11 Q. You told us that on a monthly basis MMS is bringing in 500  
12 million to a billion dollars.

13 A. Yes.

14 Q. And some portion of that in individual Indian trust funds,  
15 correct?

16 A. Yeah, about 1 to 2 percent.

17 Q. And that those are all pooled together with the  
18 government's money and tribal money, correct?

19 A. Yes. At least insofar as deposits in Treasury, but it  
20 comes with lease-level information so you can separate out this  
21 is the Indian portion, this belongs to somebody else.

22 Q. And part of your 2007 plan assumes that MMS got it all  
23 right in those allocations, correct?

24 A. No. It doesn't address the issue one way or the other in  
25 the 2007 plan, because the focus of our job was to do historical

1 statements of account on an account-by-account basis, as opposed  
2 to auditing the entire process, including MMS.

3 Q. Okay. I understand that you're saying that you focused on  
4 the accounts and transactions posted to accounts, but what's  
5 clear is that by doing it that way you are assuming that MMS got  
6 everything right, correct?

7 A. I guess so.

8 Q. And that BIA got everything right in this whole allocation  
9 process, correct?

10 A. No. There's no operative assumption that everybody got  
11 everything right, because in the reconciliation process, what  
12 we're doing is taking specific transactions and saying, this  
13 transaction got posted, let me back up to the check that came  
14 with this, can I identify the check, let me back up to the  
15 underlying lease, can I identify that, back up to who owns the  
16 land upon which the lease was issued, and have we distributed  
17 this money to the right parties in the right proportions.

18 So we do utilize other information to make that correct and  
19 we're looking in other places to make sure that that's correct.  
20 So it's not a matter of just assuming everybody in the process  
21 does everything right. We are actually checking along that  
22 process.

23 Q. You're starting with a posted amount and you're working  
24 backwards from it, correct?

25 A. And that is one of the things that we do in the

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1 reconciliation process. We also have other tests that we make  
2 of the system, where we're getting away from the transaction and  
3 looking independently, like one of the tests is the land to  
4 dollars test where we just --

5 THE COURT: Is a what, sir?

6 THE WITNESS: Land to dollars test.

7 THE COURT: Land to dollars?

8 THE WITNESS: Uh-huh.

9 THE COURT: All right.

10 THE WITNESS: And basically what that means is we take  
11 a selection of allotments, without regard to any transactions in  
12 our system, we take the allotments, make a determination whether  
13 that allotment had been leased, and then trail it from the front  
14 end of the process, without regard to the transactions, and see  
15 if we anticipated income from a lease on that land, did we  
16 collect the right amount, did it get posted to the right people.

17 So there are several tests that the historical accounting  
18 group is making to look at it from a variety of angles instead  
19 of just one. Again, this is part of our reconciliation process.  
20 So we have some assurance about the relative accuracy of the  
21 system.

22 Q. Have you attempted to examine whether funds, IIM funds have  
23 erroneously been deposited into agency accounts or tribal  
24 accounts?

25 A. Me personally, no. I --

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1 Q. I said you. When I refer to you, often I'm referring to  
2 you as the Department of Interior's spokesperson here today.  
3 Okay?

4 A. Okay.

5 Q. Has the Department of Interior done that as part of this  
6 accounting?

7 A. I'm sorry. Can you repeat the question?

8 Q. Has the Department of Interior, as part of the accounting  
9 that you've been testifying about today, looked into and  
10 examined whether or not individual Indian funds have been  
11 deposited into agency accounts or into tribal accounts?

12 A. I'm not aware whether that's been done or not. We have  
13 other witnesses coming up that may know that.

14 Q. Okay, good. But at least to the extent that they're  
15 deposited in those accounts and are not posted to an  
16 individual's account, those are not -- there are no transactions  
17 on those that are being reconciled. That would be fair to say,  
18 right?

19 A. As far as I know.

20 Q. Now, let me see if we can go to the last highlighted part  
21 of this document in the Bates 63-13 administrative record  
22 document. And this, Mr. Cason, is going back to the May 30,  
23 2007, meeting that you were in with Mr. Haspel, Edwards, and  
24 Zippin. Okay?

25 A. Yes.

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1 Q. And it says, "Look at references to post LSA electronic-era  
2 testing. Test integrity and completeness of underlying data

3 rather than testing system." Do you remember what the  
4 discussion was that day?

5 MR. STEMPLEWICZ: Your Honor --

6 THE WITNESS: No.

7 MR. STEMPLEWICZ: If the witness could be shown the  
8 whole exhibit, that may help with his answer.

9 MR. DORRIS: Would you show that whole page?

10 THE WITNESS: I'm not sure what it means.

11 BY MR. DORRIS:

12 Q. Okay. Now, was the integrity of the underlying reliability  
13 of the underlying systems tested or going to be tested as part  
14 of the 2007 plan?

15 A. I think a conclusion about the reliability of the systems  
16 is part of the result of doing the historical accounting work.  
17 When we go through the process of doing the accounting, looking  
18 at transactions, doing the reconciliation, I think we become  
19 informed to draw conclusions about how well the system worked.  
20 And so I could see some conclusion related to system, but I'm  
21 not sure exactly what this reference points to.

22 Q. I think I understand what you just said, but if I did, I  
23 understood you to say that the only -- that you may be able to  
24 draw some conclusions about the reliability of the systems based  
25 on the testing of the data in those systems.

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1 A. Yes.

2 Q. But that otherwise there was not testing being done on the  
3 systems itself -- themselves.



4 A. I think that's probably accurate, yes.

5 Q. Now, I think we got started on this document talking about  
6 the asset statements, and I want to return to that notion now  
7 dealing with the land itself and descriptions of the land.  
8 Okay?

9 A. Uh-huh.

10 Q. Do I understand your testimony to be, now not only are we  
11 not providing these asset statements, but we're not actually  
12 looking at to determine in this accounting to determine whether  
13 the beneficial interest that the individual Indians,  
14 beneficiaries had in the land was recorded correctly on  
15 Department of Interior systems?

16 A. I wouldn't say that. It's not accurate. As part of the  
17 historical accounting process that we're talking about here,  
18 that would be accurate. As a separate matter, the Department of  
19 the Interior through BIA and with the help of OST is going  
20 through a detailed process to take a look at all of our past  
21 realty transactions, getting them loaded into TAAMS.

22 And part of that process is to reconcile the ownership on  
23 an allotment-by-allotment basis. Because one of the things that  
24 we do as a test on that side of the house is to reconcile down  
25 to a hundred percent ownership, and if we find that our records

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1 suggest that there's 102 percent ownership or 98 percent  
2 ownership, then that flags us that we need to go do some other  
3 looking.

4 So I would not agree that we're not doing anything on that  
5 as a department. We are looking at those issues, but not as

6 part of the historical accounting process.

7 Q. So that is something that you think the Department needs to  
8 look at, correct?

9 A. Yes. We have responsibility for that.

10 Q. Because there have been instances where what's recorded in  
11 BIA's systems as to a beneficiary's interest in a piece of  
12 property, that in fact that beneficiary has an interest in a  
13 piece of property that is larger than what is recorded there by  
14 BIA, correct?

15 A. I suppose that's possible, sure.

16 Q. So that we're very clear, this whole process that you're  
17 talking about the Department recognizes it needs to do with  
18 respect to determining the amount of land that a beneficiary has  
19 an interest in, is not being done as part of this historical  
20 accounting project.

21 A. That's correct.

22 Q. And what is being done now is only with respect to current  
23 information. Right? Let me restate that so it's clear for the  
24 record.

25 A. Okay.

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1 Q. In other words, you're now looking at what present  
2 beneficiaries, what interest they have in specific pieces of  
3 property and the correct survey for those properties, correct?

4 A. The way I would state it is that the work that we are doing  
5 within BIA and OST is to complete the conversion from LRIS to  
6 TAAMS, to make sure that we have all the land realty information

7 available, and to look at the backlog of realty actions that  
8 have taken place and get them loaded into the system as well, so  
9 that we can depend on the TAAMS system to be a current,  
10 contemporary, complete system for land-title ownership, and that  
11 some of those transactions are more dated than others, and that  
12 we're trying to get all of that information in so you can rely  
13 upon one system.

14 Q. Okay. Is it fair to say, Mr. Cason, that at some point in  
15 time, this whole view of looking at the correct surveys for the  
16 land of the individual Indian beneficiaries was something that  
17 was going to be part of the historical accounting?

18 A. Can you just clarify what you mean by surveys?

19 Q. Well, what I've been asking you about is what interest a  
20 beneficiary has in a particular piece of land or acres of land,  
21 correct?

22 A. Mm-hmm.

23 Q. And part of the process you described is to determine that  
24 you determine what that beneficiary's interest in and what land  
25 they have an interest in, correct?

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1 A. Correct.

2 Q. Okay. Let's look at a document that will I think help us  
3 communicate better.

4 A. Okay.

5 Q. Let's look at administrative record Bates 60-25, and let's  
6 start with page 1. This is a September 26, 2002, memo to Bert  
7 Edwards from Kathleen Clarke. She's the director of the Bureau  
8 of Land Management, correct?

- 9 A. She was.
- 10 Q. She was. What's her position now?
- 11 A. She left the Department of the Interior maybe a year ago,  
12 and as I understand it, she lives back in Utah again.
- 13 Q. And was she the assistant secretary when she left?
- 14 A. No. She was the director of BLM.
- 15 Q. And BLM is essentially the bureau that handles the land  
16 management functions for, primarily for Department of Interior,  
17 correct?
- 18 A. No. The Department of Interior overall has several land  
19 managing organizations. BLM is one of them. Park Services is  
20 one, Fish is one. BLM has its own set of land, about 280  
21 million acres of land that it's responsible for.
- 22 Q. Okay. Now, and this says "First Report of the Office of  
23 Historical Trust Accounting, Cadastral Survey Pilot." Do you  
24 see that?
- 25 A. Yes.

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- 1 Q. What's a cadastral survey?
- 2 A. A cadastral survey is a land survey that's done under the  
3 particular rules established by BLM. BLM is the official  
4 government surveyor for land interest of the federal government.  
5 And I don't know all the particulars about what they think is  
6 important about cadastral survey versus others, but they  
7 establish the standards for survey for federal government  
8 property, and they conduct many of them.
- 9 Q. Okay. Now, you see the memo starts there, just so we know

10 what it's about, I'm not going to ask you to look at the whole  
11 thing. If it becomes necessary we'll do that. But it says  
12 "Attached is the first report of OHTA cadastral survey pilot.  
13 The OHTA point of contact is Fritz Scheuren." Do you see that?

14 A. Yes.

15 Q. Now Mr. Scheuren actually works for NORC?

16 A. NORC.

17 Q. And never was actually employed by OHTA?

18 A. Yes. That's my understanding.

19 Q. And let's look at the rest of that paragraph, please. I  
20 want you to focus in on about halfway down, all the way to the  
21 right is a sentence that begins, "This report." Are you with  
22 me?

23 A. Mm-hmm.

24 Q. It says "This report addresses the extent to which such  
25 concern has weight. A second report will address the concerns

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1 that allotment boundary markers may have shifted or been lost or  
2 obliterated, and that any such uncertainty in the true allotment  
3 location could have resulted in errors in the IIM accounts." Do  
4 you see that?

5 A. Yes.

6 Q. And what is that -- the first of that paragraph, will you  
7 read that to yourself for a second?

8 (Witness reviewing document.)

9 A. Yes.

10 Q. So it's talking about how inaccuracies in prior surveys  
11 could be contributing to inaccurate accounting in the IIM

12 accounts. Correct?

13 A. Yes.

14 Q. Now, let's look over on page 2 of this document. You'll  
15 see at the top it says report summary, and let's look at the  
16 first paragraph. If you'll get the whole paragraph there for  
17 us.

18 And you see it's talking about "an inaccurate accounting in  
19 an IIM can result from the use of an erroneous, unofficial  
20 acreage to calculate income." And I'll let you read the rest of  
21 that paragraph.

22 (Witness reviewing document.)

23 A. Okay.

24 Q. You would agree with what's stated here, correct?

25 A. Yes.

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1 Q. And at least with respect to the time periods covered by  
2 the 2007 plan, nothing is being done by the Department of  
3 Interior as part of that accounting to determine whether the  
4 correct lands were included in the allocations made to  
5 individual Indian trust beneficiaries' accounts?

6 MR. STEMPLEWICZ: Objection. This line of questioning  
7 goes to the issue of asset management, not to the IIM  
8 accounting.

9 THE COURT: Overruled.

10 THE WITNESS: I guess the way I would describe this is  
11 the way we approach the task today is that in our records we  
12 have allotments. As I recall, it's somewhere on the order of

13 just short of 130,000 individual Indian allotments. And those  
14 allotments were generally provided from 1887 through about 1930,  
15 that when they were granted there was some kind of survey work  
16 that established where they were, that in our system it records  
17 the allotment, it records a legal description of the allotment,  
18 and that we use technology that was a hundred years old to lay  
19 them out.

20 what we recognize today, more than 130 years later, is that  
21 we have improved techniques to lay out very specifically where  
22 these allotments are. We can use GPS that didn't occur before.  
23 When the allotments were done 130 years ago, they had very crude  
24 methodologies to lay them out.

25 So the way we've tried to bridge that issue is to treat the

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1 two issues separately. We have put a considerable amount of  
2 effort into how can we improve over time the accuracy of laying  
3 corners on all of these allotments, and as a separate matter,  
4 just recognize that this chunk of land, with the legal  
5 description it has, is owned by these individuals, and if this  
6 chunk of land is leased and it generates lease proceeds, then  
7 we're distributing the lease proceeds to the individuals who own  
8 that chunk of land.

9 So what this is all recognizing is that we have an issue  
10 that our capability for making very specific measurements on the  
11 ground and laying very specific corners with GPS is much better  
12 than it was 130 years ago. So we're working on that part to  
13 make sure that we improve survey results and we restore corners.  
14 At the same time, we think we can go forward with a historical

15 accounting, under the general guise of these people own this  
16 chunk of land that is leased to somebody.

17 Q. Okay. Let me ask this. There are instances, aren't there,  
18 where what's in BIA's records are not consistent with what even  
19 the surveys were in years past, correct?

20 A. Well, I don't know that the way you've framed it. We have  
21 130 years of history here. So there is transition, as we do new  
22 surveys and get more accurate information, that the information  
23 in our records gets updated, so it has changed in some instances  
24 over time, and in some instances there's been no new surveys.

25 Underlying that, the original surveys may end up being

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1 reasonably accurate or they may have some errors. At this  
2 point, we don't know till we go redo the work.

3 Q. And there have been areas where they have new surveys and  
4 where that information has not been correctly incorporated into  
5 BIA's records. Correct?

6 A. I don't know that.

7 Q. Okay. That would be something you'd want to know if you  
8 were going to give an accurate accounting to people, correct, of  
9 what money has been generated by their lands?

10 A. Well, that could be a data point.

11 Q. Well, let's look then down at the fourth paragraph on this  
12 page. This is dealing with 15 tracts or allotments that were  
13 not owned by the Cobell plaintiffs. And in the context of this  
14 document, that's talking about the named Cobell plaintiffs,  
15 okay?



16 A. Mm-hmm.

17 Q. "But adjacent to or similar to Cobell plaintiff tracts were  
18 examined. The resultant erroneous acreage value per allotment  
19 ranged from plus 20.7 percent to negative 8.9 percent. Stated  
20 in acres per allotment, this range is from plus 9.5 acres to  
21 negative 3.57 acres. This spread is more typical of the  
22 accuracy of 19th century surveys of the PLSS." Do you see that?

23 A. Yes.

24 Q. And so we have situations here where what BIA is tracking  
25 as the land owned by the beneficiaries is different from what

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1 land they actually owned, correct?

2 A. It suggests a margin of error, yes.

3 Q. Right. And here we've got, for example, oil and gas, where  
4 a reservation was allotted, and some of the allotments went to  
5 individuals, correct?

6 A. Yes.

7 Q. Some of the allotments went to tribe, correct, or land --

8 A. Residual land.

9 Q. Residual land left with the tribes, and then the government  
10 took some of the land both to itself or to others. Correct?

11 A. That's my understanding, yes.

12 Q. And so what you have at times are individual allotments  
13 sitting side by side with government property. Correct?

14 A. Well, I suppose that's theoretically possible. As I  
15 understand it, generally the government did not end up taking  
16 land that wasn't end up being destined to be sold to  
17 individuals. So I don't think there's a lot of BIA land, for

18 example, that we hold. But anyway. Doesn't matter.

19 Q. But it's fair to say it's recognized that there are errors  
20 in the system that are not being corrected as part of this  
21 accounting, correct?

22 A. Yes.

23 Q. And would the asset statement that's being left out of  
24 the -- from the 2003 to the 2007 plan, would that have solved  
25 this problem?

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1 A. No.

2 Q. Look on page 6 of this document. Look down at the heading,  
3 "How acreage error can adversely affect an IIM account." It  
4 says "Accounting and environmental issues can be significantly  
5 affected by inaccuracies of acreage in land records." Do you  
6 see that?

7 A. Yes.

8 Q. Do you agree with that?

9 A. I think it depends on how you approach the job, but it's  
10 possible.

11 Q. Okay. How can you approach the job where you've got --  
12 where BIA's got inaccurate information in the system regarding  
13 the acreage that a group of beneficiaries own?

14 A. Well, as I had said before, the way we're treating the  
15 issue is I have an allotment, the allotment has a legal  
16 description, the allotment has a set of owners that range  
17 anywhere between one and a thousand, and that when we lease that  
18 allotment we lease it based on the legal description in the

19 database, and we collect proceeds based on that, and then we  
20 distribute the proceeds we receive to the identified owners.

21 So it is possible that because there has been improvement  
22 in survey techniques, that the specific boundary of that  
23 allotment can be in different places. We're not accounting for  
24 that now. We're not attempting to solve that problem now.  
25 Rather, we say here's what's in our database, here's where we

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1 think it is, here's who owns it. You get any money associated  
2 with this tract of land.

3 Q. Even if we have the wrong title description in our system.  
4 That's what you're saying?

5 A. Well, we go through the process, when we find a better  
6 title description, we go through the process of updating the  
7 title. But this is a 130-year-old trust, and the techniques 130  
8 years ago weren't as good as they are today. So we use what we  
9 have in the system to both do the leasing and collect the  
10 proceeds and distribute them.

11 Q. Are you saying that all of the titles have been updated for  
12 the most current information?

13 A. I didn't say that.

14 Q. Okay. Are they timely updated for the most current  
15 information?

16 A. I don't know how you define timely. It is a thing that  
17 once we complete a survey and we have better information, we try  
18 to get that information into the system.

19 Q. Okay. Now, let me go back and explore with you a second  
20 the definition of the electronic era. The electronic era, as I

21 see references to it frequently in the plan, says it's between  
22 1985 and 2000.

23 A. Yes.

24 Q. Now, I assume the Department of Interior has continued in  
25 the electronic era after 2000.

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1 A. Yes.

2 Q. But you're cutting off the work that you're doing now as of  
3 December 31, 2000.

4 A. Yes.

5 Q. And that is because you wanted to set an end date for the  
6 accounting, correct?

7 A. One of the reasons, yes.

8 Q. And so that the accounting that is being provided does not  
9 provide information past from January 1, 2001, forward, does it?

10 A. Not as part of the historical accounting process.

11 Q. Now, with respect to what is included in the electronic  
12 era, it includes only accounts that were still open on the  
13 computers of the Department of Interior as of October 25, 1994,  
14 correct?

15 A. Yes.

16 Q. Does it include all of those?

17 A. Well, I don't know personally. That has been our desire,  
18 to include all of those that were open, whether they had a  
19 balance or not.

20 Q. Okay. And if an account is open after December 31, 2000,  
21 it's not included in the accounting, is it?

22 A. Not in the historical accounting, and the reason for that  
23 is that we --

24 Q. Mr. Cason, I didn't ask the reason for it. I'm trying  
25 to -- like I can, to move it along. And if your counsel wants

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1 to ask the reason for it, he can, okay?

2 A. All right. I'll rephrase how I do the answers.

3 Q. Thank you, sir. Now, in terms of what is being then  
4 provided, what happens if an account is closed after October 25,  
5 1994, and before December 31, 2000? Is there still an  
6 accounting for that account?

7 A. Yes.

8 Q. What happens if an account reaches a zero balance at some  
9 time during that period?

10 A. Most of the accounts do.

11 Q. Is there still going to be an accounting for that account?

12 A. Yes.

13 Q. Okay. Because it's unclear at times when you look back at  
14 the records whether that's the case, but you can say  
15 affirmatively here that every account that was still on the --  
16 would it be the TFAS system as of October 25, 1994, is going to  
17 receive an accounting as y'all have described it?

18 A. The intention is to provide a historical statement of  
19 account for every account that was in our electronic systems. I  
20 believe at that point in time, it was IRMS, and that we were  
21 transitioning to TFAS. But basically that was the electronic  
22 era, between those two, and that it's our intent that if we had  
23 any account that was open as of October 25, 1994, that we would

24 provide an account for it, in HSA for it.

25 Q. Okay. And if there was not an account on IRMS or

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1 subsequently in TFAS for an individual, that individual is not  
2 getting an accounting, correct?

3 A. At the beginning I would say yes, unless in doing the  
4 accounting work that we're going through, if we discover that  
5 there's any account holder who had an account that was open as  
6 of that time and for whatever reason was not on electronic  
7 system, we would do those as well.

8 Q. Okay. Because there are references in the documents to the  
9 fact that some beneficiaries have never had an account opened on  
10 the electronic records. You're aware of that?

11 A. I don't know that to be the case one way or the other.

12 Q. Okay. But if you find out that, you would open an account  
13 for them and do an accounting for them, correct?

14 A. No. What I said is if they had an account that was open  
15 and the account actually was not reflected in our electronic  
16 system, then we would go ahead and do an account for those  
17 individuals, if they had an account open in the same time frame  
18 that we're talking about.

19 Q. Okay. But if there was somebody that should have had an  
20 account opened that was never opened, you're not going to do an  
21 accounting for them. Is that right?

22 A. I believe -- I think that would depend on the  
23 circumstances. I don't know that there's one blanket statement  
24 you could make about that.

25 Q. And have you done an investigation to determine that all of

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1 the beneficiaries that have -- people that have beneficial  
2 interests in individual Indian allotments were included on the  
3 electronic records?

4 A. No.

5 Q. And the only -- the real core of the electronic records  
6 that we're talking about are IRMS into TFAS and LRIS into TAAMS,  
7 correct?

8 A. Those are the principal systems for distributing and  
9 managing trust assets.

10 Q. Okay. But there are trust -- there's trust information on  
11 at least 60 other computer systems there at Interior, correct?

12 A. There are a number of systems that have trust information,  
13 depending on your definition.

14 Q. Okay. Now, let's talk about the records. You talked about  
15 earlier that you were, despite concerns that a lot of records  
16 had been destroyed, you really are finding that, gosh, on the  
17 6500 transactions that are being reconciled, you found most of  
18 the documents you needed to reconcile those, or someone else did  
19 working for Interior, correct?

20 A. I agree with the second part.

21 Q. But those weren't always documents that directly related to  
22 the particular payment at issue, were they?

23 A. I don't understand your question.

24 Q. Okay. Would it be fair to say that you would not be the  
25 right witness to ask what it really means to say that a

1 transaction is, quote, reconciled?

2 A. Not in specifics, no.

3 Q. But you are aware that by saying a transaction has been  
4 reconciled, that is not to say that somebody went back and found  
5 the source document that showed that that was a correct  
6 transaction, would that be fair to say?

7 A. No.

8 Q. Would it be fair to say that there are some records, or  
9 some transactions are considered reconciled where you have seen  
10 other documents that lead the accountant to believe that it's an  
11 accurate transaction?

12 A. I think that's true.

13 Q. But does not necessarily show that it in fact was an  
14 accurate transaction?

15 A. If the point is, is there any opportunity for judgment that  
16 I have sufficient documentation, I imagine the accountants do  
17 that, but you'd have to ask them.

18 Q. Okay. Now, the records that we -- the issue about  
19 destroyed or missing documents, there have been many, many  
20 reports that have been issued talking about how documents have  
21 been destroyed and records are missing, correct?

22 A. There's been lots of rhetoric about that over time, yes.

23 Q. And this isn't rhetoric just from the plaintiffs, right?  
24 These are internal Interior documents, documents from GAO, from  
25 Congress, and from really every independent CPA firm that has



- 1 ever tried to audit these accounts, correct?
- 2 A. I don't know that to be the case.
- 3 Q. Well, you do know that most -- have you ever looked at any  
4 of the audits before?
- 5 A. Sure.
- 6 Q. And have you ever seen an audit that did not note that  
7 there were missing documents and records?
- 8 A. I don't know that to be the case one way or the other.
- 9 Q. That's not something you looked at?
- 10 A. Not for that point.
- 11 Q. Okay. Now, one of the things that developed in this  
12 litigation -- what's LSA stand for?
- 13 A. Litigation support accounting.
- 14 Q. I drew a blank on the S there for a second. In this  
15 litigation support accounting system, was that you had to figure  
16 out a way to define things such that missing records would not  
17 end up being considered to be an error. Isn't that right?
- 18 A. Well, in terms of defining things, I don't know that I  
19 would characterize it that way. We did arrive at a conclusion  
20 that if we sought to get particular information or documents and  
21 they were not available, that we did not consider that  
22 automatically to be an error.
- 23 Q. Correct. So that the only time you're going to consider it  
24 to be an error is if you find a document that is directly  
25 contrary to it, that shows it's wrong, correct?

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1 A. Yes.

2 Q. So if you go and you don't find anything that contradicts  
3 it, you assume it's correct. Right?

4 A. No. We assume it's neither correct nor incorrect. We  
5 don't have information to draw a different conclusion.

6 Q. But you don't consider it to be an error, an erroneous  
7 transaction.

8 A. No, we don't.

9 Q. And it ends up being considered to be a reconciled  
10 transaction if it's not erroneous, correct?

11 A. No.

12 Q. Okay. Let's go to document 57-30 in the AR. This is a  
13 document -- there are a lot in the AR this way, that it has no  
14 date on it, no indication who prepared it. Do you know who  
15 prepared this document?

16 A. No. I don't know what it is.

17 Q. Okay. Well, I will represent to you it's in the  
18 administrative record. Have you looked at the administrative  
19 record?

20 A. I've looked at parts of the administrative record.

21 Q. Well, I take it during the course of your job you saw some  
22 of the documents that made their way to the administrative  
23 record. That's fair?

24 A. I have.

25 Q. Have you ever sat down and looked at the administrative

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1 record as a collection itself to determine if that included  
2 everything that you relied on in making the decision that's  
3 reflected there in the 2007 plan?

4 A. No.

5 Q. Okay. You relied on Mr. Zippin to do that?

6 A. There's a lot of people that participated in constructing  
7 the record.

8 Q. But you relied on them to get everything in that you had  
9 relied on in making your decision, correct?

10 A. Yes.

11 Q. Okay. This is talking about managing historical accounting  
12 records. "The task of managing records will be daunting. By  
13 one estimate, there are approximately blank cubic feet of paper  
14 records." And you can see what it's addressing there.

15 Now go over to page 3 and look at the paragraph just above  
16 the -- it's just above "controlling the paper records  
17 gathering." That paragraph. It says, "In the 1972 to 1992  
18 tribal reconciliation, the income sources were virtually all  
19 found and when checked indicated a very low error rate. There  
20 was also a small error rate on the disbursement side, although  
21 there were problems in locating all the support documents."

22 So that's indicating that in a tribal reconciliation over a  
23 20-year period, there was problem locating documents to support  
24 the disbursements. Do you see that?

25 A. Yes.

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1 Q. And it says, "This warns us that we need to have a strategy  
2 that resolves the missing record problem for disbursements in a

3 way that does not treat the failure to find the supporting  
4 documentation as an error in the account. Do you see that?

5 A. Yes.

6 Q. Now, were you ever in discussions to that effect?

7 A. Generically, yes.

8 Q. Okay. And the decision was made that because there would  
9 be and there were missing records for the disbursements, that  
10 you had to develop a strategy so that those missing records  
11 would not then be considered to be an error in the account,  
12 correct?

13 A. I wouldn't characterize it that way.

14 Q. Okay. Let me ask it to you this way. With respect at  
15 least to disbursements, the mere fact that you cannot find a  
16 record, and records are missing that support that disbursement,  
17 that is not considered to be an error in this accounting plan,  
18 is it?

19 A. I wouldn't characterize it that way either.

20 Q. Okay. Well, let me ask it as specifically as I can. If  
21 there is a disbursement that indicates it has been made from an  
22 individual Indian beneficiary's account, and you cannot find any  
23 supporting documents to show that disbursement, other than just  
24 that it's shown there on the account, is that considered to be  
25 an erroneous disbursement?

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1 A. No.

2 Q. Now, we've heard a lot about Lenexa over the course of the  
3 day. We saw pictures of it and we've heard more in some of the

4 hearings, and I'm not sure you were at all of those. And there  
5 have been a lot of indications of how many records there are at  
6 Lenexa. Are you familiar with that?

7 A. Yes.

8 Q. Have you been to Lenexa?

9 A. I have.

10 Q. Have you ever searched for documents at Lenexa?

11 A. Not personally.

12 Q. How long does it take to find a document at Lenexa dealing  
13 with a particular individual's account?

14 A. I don't know.

15 Q. I'm going to ask you to take a look with me, because  
16 sometimes when you're talking about how many records are  
17 someplace, it's always helpful to know how many records are  
18 missing from that place, right? In other words, if you're  
19 talking about how many records at Lenexa, a fair question is,  
20 well, how many records have been destroyed and never got to  
21 Lenexa, right?

22 A. No. I think that's a prove the negative.

23 Q. Okay. Well, bear with me then, because I think I'll prove  
24 it for you, from your own administrative record. Administrative  
25 record document 54-21, page 31, if you'll pull up the very top,

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1 just so we see the date, this is the way it was produced, but  
2 it's clearly a June 2002 document. I can't tell what the day  
3 is. It may be the 21st, the 11th or the 1st. Fair?

4 A. Yes.

5 Q. And you see it's talking about the rationale for document  
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6 production estimates relevant to real estate services or trust  
7 property management. Do you see that?

8 A. Yes.

9 Q. Let's look on the next page, which would then be page 32 of  
10 administrative record 54-21, at the last paragraph. I'm going  
11 to ask you to read that to yourself.

12 (Witness reviewing document.)

13 A. Okay.

14 Q. As you see, it's talking about in '98 BIA was saying, we  
15 think that, in preparation for the Cobell case, the estimated  
16 volume of records based upon transactions per year, that you'd  
17 end up with about a billion 400 million pages. That's what this  
18 document's indicating, from the administrative record.

19 A. That's what it says.

20 Q. But it says, but, you know, they used 2500 pages per box  
21 and we think it really ought to be more like 2000 pages a box.  
22 Do you see that?

23 A. Yes, that's what it says.

24 Q. So that's a 20 percent reduction in the number of pages  
25 that would be in the estimate. Right?

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1 A. Yes.

2 Q. So that would get us from a billion 425 million down to  
3 about a billion 200 million, if you took 20 percent off, in  
4 approximate terms?

5 A. Yes.

6 Q. And it's turning out now that it says -- it said first of

7 all, we think it had too many pages per box in their estimate,  
8 and then it says "we also believe they failed to consider the  
9 destruction of records pursuant to record retention schedules.  
10 Our total estimate based upon the above rationale is 205,000  
11 sheets." I've rounded the number off. Do you see that?

12 A. Yes.

13 Q. So is that not telling us that there are almost a billion  
14 sheets of paper that have been destroyed, at least, if you use  
15 BIA's own estimates?

16 MR. STEMPLEWICZ: Objection, Your Honor. Lack of  
17 foundation here. He's not established this witness is familiar  
18 with this document or the contents of it.

19 THE COURT: Well, I'll sustain that. I still don't  
20 know what that this document is or where it came from. And by  
21 the way, counsel, I think you misspoke. You said 205,000. I  
22 think you meant 205 million.

23 MR. DORRIS: I absolutely did mean million, and I  
24 apologize for misspeaking.

25 BY MR. DORRIS:

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1 Q. Have you ever seen this document before?

2 A. Not that I recall, no.

3 Q. Did you rely on this document in any way in connection with  
4 making your decision in the 2007 plan?

5 A. No.

6 Q. Who did put the administrative record together?

7 A. I think it was a collection of people. We have lots of  
8 staff that are involved in preparing all the documents and

9 collecting all the documents. So it was the Department of  
10 Interior's staff principally.

11 Q. Now, let me ask you, were you involved in discussions about  
12 how the litigation support accounting program would be set up?

13 A. Yes.

14 Q. And did you have those -- principally from NORC, were you  
15 talking to Mr. Scheuren?

16 A. I did speak to him several times, yes.

17 Q. Was Mr. Zippin also involved in those discussions?

18 A. I believe so, yes.

19 Q. Let me ask you to look at what we'll pull up as AR 42-1.  
20 Now, if you look at the top of this document, it shows it's a  
21 January 29, 2007, document, and it is from Mr. Scheuren to Jeff  
22 Zippin. Do you see that?

23 A. Yes.

24 Q. And you're not shown at least as being -- getting this in  
25 the address, and you're not shown as being a copy holder, okay?

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1 A. Okay.

2 Q. I want to ask you, because it's talking about assurance  
3 level options, I want to ask you if you were involved in any of  
4 the discussions about what's reflected here. Looking over on  
5 page 2 of this document, look at the first full paragraph. It  
6 says "what to recommend." And if you would take a moment to  
7 read that.

8 (Witness reviewing document.)

9 A. Yes.



10 Q. That talks about what has been called an adaptive strategy  
11 for the sampling program. Are you familiar with it?

12 A. The concept, yes.

13 Q. Okay. And the concept, at least as described here, is that  
14 through this adaptive sampling process you'd start with a  
15 smaller sample, and if you got the results that were favorable  
16 for the government for that sample, you wouldn't broaden the  
17 sample any more. Do you see that?

18 A. I think it was actually the opposite. We started with a  
19 larger sample, and depending on the results we could make it  
20 smaller.

21 Q. Wait a second. In 2003 plan you planned to do a much  
22 bigger sample, correct?

23 A. Yes.

24 Q. But then in the LSA you were going to do a very small  
25 sample?

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1 A. That's what we did in the LSA, right.

2 Q. So much smaller than the 2003 plan.

3 A. Yes.

4 Q. Okay. Did you then make it even smaller?

5 A. Well, we couldn't make it smaller from what we've already  
6 done.

7 Q. So you did a small sample, and if that supported the  
8 government's position, you were going to stop there, correct?

9 A. That wasn't a preplan as this suggests. We took the LSA  
10 sample, we did the reconciliation on the LSA sample, and that  
11 the results showed an error rate that was very small, and as a

12 result of that, we were advised by NORC that they thought any  
13 further work for reconciliation would not be cost-effective.

14 Q. Okay. But if it had shown a larger error rate, more work  
15 would have been done.

16 A. Yes, that's correct.

17 Q. Until the error rate got smaller again?

18 A. No.

19 Q. Okay. Well, let me ask this. Right now with respect to  
20 the paper records era, you can't tell us how many transactions  
21 are going to be sampled, correct?

22 A. I don't know in the end. My crystal ball's not that clear.

23 Q. But the whole concept is you do a small sample, and if that  
24 shows a low error rate, you'll stop there, correct?

25 A. No, we will start with the sample based on the experience

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1 we've had so far, and if we end up with results that are similar  
2 to what we have now, then you would stop there. And if we  
3 don't, you have to just sample size.

4 Q. Go and sample more.

5 A. Yeah.

6 Q. So the whole notion is to set the sample that if you can  
7 reach it where the results are beneficial for limiting the  
8 government's liability, we'll stop there, but if they're not  
9 good, we'll make the sample bigger. Is that the essence of the  
10 adaptive strategy approach?

11 A. No.

12 Q. Were you ever in discussions with Mr. Scheuren about this

13 point?

14 A. I was generally -- I've been briefed on this concept. I've  
15 been involved in discussions about the concept. I don't know  
16 that I had the particular discussion with Fritz Scheuren that  
17 led to this particular memo.

18 Q. Okay. Let's look at the next paragraph, just the first  
19 part of it. So this would be the second full paragraph on page  
20 2 of administrative record Exhibit 42-1. And you see he's  
21 talking about the 2003 plan and going to be examining all  
22 transactions over \$5,000. Do you see that?

23 A. Yes.

24 Q. Okay. Then go down to the second paragraph under the  
25 heading, "what has been learned in the four years," where

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1 Mr. Scheuren writes, "Of course, we never got to implement the  
2 2003 plan. Instead, the litigation support accounting project  
3 was designed and implemented." Do you see this?

4 A. Yes.

5 Q. So is Mr. Scheuren right, that at least with respect to  
6 NORC, they never set about to implement the 2003 plan?

7 A. Well, NORC doesn't have any responsibility for implementing  
8 anything.

9 Q. Okay. So NORC, would it be fair to say that NORC never did  
10 any work pursuant to the 2003 plan?

11 A. No. I wouldn't say that.

12 Q. Okay. So did NORC help the Department of the Interior  
13 implement the 2003 plan?

14 A. No. The key word is "implement." NORC assisted us in  
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15 designing sample sizes and distribution of samples. They don't  
16 have any responsibility for implementing the plan.

17 Q. Okay. In other words, they were going to be doing work  
18 that was part of the plan.

19 A. Yes.

20 Q. The word "implement" was the one where we were not  
21 communicating.

22 A. Yes.

23 Q. I understand. Now, essentially, as I understood what you  
24 said, is that once the 2003 plan was there, at some point the  
25 litigation support accounting proceeded. And that began when?

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1 A. I don't know exactly. It was around 2004.

2 Q. And is that as a result of what's sometimes referred to as  
3 the midnight rider?

4 A. Can you characterize what was in the midnight rider?

5 Q. There was a rider that was put in kind of at the last  
6 minute, or what some people refer to as midnight, into an  
7 appropriations bill, that essentially said that Interior wanted  
8 to spend money doing the historical accounting, but it could  
9 spend money doing work to support the litigation effort in  
10 defending the Cobell case, and obviously I'm paraphrasing.

11 A. I don't know about the reference to midnight rider. We did  
12 receive at one point appropriations language that gave us  
13 direction that utilizing this appropriation, we could spend it  
14 on gathering documents, indexing documents, imaging documents,  
15 doing judgment and per capita accounts. And it was

16 conspicuously absent in doing work involving land-based  
17 accounts.

18 It did have specific reference in the congressional  
19 appropriation language to litigation support accounting. And  
20 we, the Interior team, believed that it would be helpful to at  
21 least get a good understanding about what's involved in the  
22 land-based accounts, and under the guise of litigation support  
23 accounting we were able to do some of that work.

24 Q. Let me ask you, did the Department of Interior or any  
25 representatives of the Department of Interior to the best of

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1 your knowledge suggest this language and provision to the  
2 appropriations committee?

3 A. I don't know that.

4 Q. You personally did not suggest limiting -- any language  
5 that would limit the ability of the Department of Interior to do  
6 the historical accounting?

7 A. I think that depends on your phrasing of the question. We  
8 certainly discussed with the appropriations committee what we  
9 had been tasked to do by the Court in the structural injunction.  
10 And the appropriations committee was not willing to provide the  
11 number of dollars that would be necessary to implement that  
12 structural injunction, and we received the language.

13 I did not draft the language. I did not proffer it to  
14 them. I did not suggest particular phraseology in it. We did  
15 brief them about what the expectations were and what money would  
16 be required to implement it.

17 Q. Okay. But you did not request that Congress either

18 expressly or by omitting funds stop Interior from doing  
19 land-based accounting during the year 2004?

20 A. Not in that way. I did suggest to Congress in the  
21 conversations with the appropriations committee that they had a  
22 choice, and the choice was if we had the structural injunction  
23 with its requirements, that Congress would have to choose  
24 whether they would fund us, and if they were going to fund us,  
25 it would be about \$3 billion to do that in that fiscal year, or

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1 they could give us other direction. And they chose what other  
2 direction they were going to pursue.

3 Q. Okay. Now, the LSA then took place from starting in about  
4 December of 2003 through July of 2004. Do you recall that?

5 A. It sounds about right.

6 Q. And at some point you were provided with a PowerPoint  
7 presentation of essentially the results and lessons learned from  
8 the LSA. Do you remember?

9 A. I have seen lots of stuff, so I don't recall that  
10 specifically.

11 Q. Well, let's look at this one. It's from the administrative  
12 record 54-4, and it says "Executive Summary." It's a PowerPoint  
13 presentation of November 23, 2004, "OHTA litigation support  
14 accounting, after action review." Do you recall being part  
15 of -- having this presentation made to you?

16 A. No.

17 Q. All right. Let's look at it and see if it refreshes your  
18 recollection. Let me ask you to look, this is administrative

19 record 54-4. For example, look over on page 3. And pull the  
20 heading up there so we can see it. And the litigation support  
21 effort was to support the Cobell v. Norton settlement  
22 negotiations, correct?

23 A. That was a purpose.

24 Q. That was the initial purpose of them, correct?

25 A. That was a purpose of it, yes.

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1 Q. Oh, was there more than -- that was not the sole purpose at  
2 the time it started?

3 A. No.

4 Q. Okay.

5 A. No.

6 Q. And through this effort, the government thought that it  
7 would obtain information that could help drive down any numbers  
8 that were discussed in the settlement negotiations, correct?

9 A. I would characterize it differently.

10 Q. Now, look at the next page, please. Just to confirm, it  
11 says, the first arrow, it says "the LSA effort was conducted  
12 over an eight-month period, December 2003 to July 2004." would  
13 that comport with your recollection?

14 A. Generally, yes.

15 Q. Now, I just want to find out if you had seen or these items  
16 had been discussed with you. Look on Bates page No. 7 of this  
17 document. And look at the first under "findings." If you would  
18 blow that up for us. It says "LSA strategy was developed and  
19 driven by DOI senior management with limited input from OHTA  
20 staff and contractors."

21           Now, I have two questions. The first is, in looking at  
22 this now, do you recall being part of or ever seeing this  
23 presentation where it's an after the fact review of what  
24 happened during the LSA?  
25 A. I don't recall this specific presentation, no.

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1 Q. Okay. So you may have been there, but sitting here today  
2 you don't recall it?  
3 A. Yes, that's correct.  
4 Q. Would you agree with that statement?  
5 A. No. Not the way I recall things. The way we generally do  
6 our business is we involve the parties within the Department of  
7 the Interior to make decisions, and I don't know what's meant  
8 here by "limited input by OHTA staff and contractors."  
9 Certainly somebody wrote that and had that view. But as we were  
10 designing the litigation support strategy, it seemed to me that  
11 there were a number of people that were involved in the  
12 evaluation of how we would go about doing that.  
13 Q. Go back and look under the first impact, over on the right.  
14 It says "overly ambitious LSA goals and objectives were  
15 established which resulted in significant cost and the inability  
16 to achieve goals." Do you see that?  
17 A. Yes.  
18 Q. Do you agree with that?  
19 A. No.  
20 Q. But as we've looked at a couple of things in this document,  
21 it would be fair to say to the best of your recollection you've



22 not seen this presentation before?

23 A. I don't recall seeing it.

24 Q. And who from OHTA would have been involved in putting this  
25 together, to the best of your knowledge?

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1 A. I don't know. I would start with the leadership of OHTA,  
2 Bert and Jeff.

3 Q. Okay. Now, I want you to look, because I'm trying to find  
4 out exactly what the goal of LSA was and what the intent was in  
5 driving it. Let's look at what's in the AR. It's document  
6 63-13.

7 This is page 2 of AR 63-13 that we're looking at. It's  
8 Mr. Zippin's contemporaneous notes, appears to be of a meeting  
9 with you on paper era accounts, July 21, 2006. Do you see that?

10 A. Yes.

11 Q. And you had a number of meetings with Mr. Zippin over the  
12 course of time, correct?

13 A. I have.

14 Q. Because he -- I think you testified earlier he's the deputy  
15 in the Office of Historical Trust Accounting.

16 A. That's correct.

17 Q. And the first line says, "Paper era accounts needed if 200  
18 yield 75. Is that enough?" Do you have any recollection of  
19 that discussion and what that meant?

20 A. No.

21 Q. Look at the next line. It says, "Find best of remaining  
22 accounts and do minimis." Do you see that?

23 A. Yes.

24 Q. And do you remember that discussion with Mr. Zippin?  
25 A. No.

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1 Q. Now, do you see the next line, it's talking about  
2 identifying underpayment errors and dead side bar to pay  
3 correction for underpayment and payout at the time of HSA and  
4 make good on statement." Do you remember that discussion?

5 A. I remember having discussions about the topical area. I  
6 don't remember this particular conversation. And I had  
7 testified earlier to this issue, that we have not resolved where  
8 the government would go on how we would treat underpayment  
9 errors that were identified. So I would guess, based on what's  
10 said here, that that's a reflection of one of those  
11 conversations.

12 Q. Okay. Now, but the reference to trying to only do minimis,  
13 you don't know what that reference in these notes refers to; is  
14 that right?

15 A. I'm not sure what that means.

16 Q. Now, was one of the ideas behind the LSA an effort to --  
17 that this approach would reduce the government's potential  
18 liability?

19 A. That was one of the elements, yes.

20 Q. Okay. Now, let's look at administrative record document  
21 57-29, page 1. And it's labeled "Adaptive testing approach for  
22 phase 1 straw man design." Do you see that?

23 A. Yes.

24 Q. Have you ever seen this document before or heard references

25 to "straw man design"?

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1 A. It's a curious term, but not that I recall.

2 Q. Okay. Well, let me ask you -- we're going to look over, or  
3 the very last line of this first page talks about partitions  
4 work as being one of the benefits?

5 A. Can I ask you, do you have any idea who prepared this?

6 Q. There's nothing in the -- all we have on the administrative  
7 record, so you'll understand is, the only times things were  
8 signed was you signed a document that was in the administrative  
9 record, and then Mr. Zippin a few months later signed some type  
10 of certification of it, but otherwise, we end up with this  
11 document without anybody's name on it. Do you have any idea who  
12 prepared it?

13 A. I'm not sure. That's why I was asking. But go ahead.

14 Q. Okay. I understand you may never have seen this document  
15 before, but I do want to ask you about two statements that are  
16 in it to see if you agree with them or if that refreshes your  
17 recollection. Okay?

18 A. Mm-hmm.

19 Q. One of the benefits described there has to do with a  
20 partition of the LSA as it partitions work. It says "Partitions  
21 the efforts into agencies and accounting firms so that  
22 results" -- and if you go to the top of the next page -- "may be  
23 grouped and reported as a series of successes." Do you ever  
24 recall discussions of that with respect to this adaptive  
25 sampling strategy of the LSA?

1 A. Generally, yes.

2 Q. And that was an effort to then end up with a series of  
3 reports that could be viewed as having been successful, correct?

4 A. I would characterize this differently. To me, in providing  
5 direction to the program, I think the Department of Interior  
6 gets no credit for effort. We can do tons and tons of effort,  
7 but until we actually cross the goal line and have an HSA that's  
8 ready to go and we can get that mailed to a beneficiary, we  
9 don't get credit. So we can do tons of work and we get the "you  
10 haven't done any accounting at all."

11 So part of our strategy was to try to segment the work that  
12 needed to be done in a way that we could finish here, finish  
13 here, finish here, and actually be in a position to mail HSAs as  
14 soon as possible, rather than trying to do all of the work for  
15 all things before we had anything completed. So that was the  
16 general area, as I understand this particular reference, to what  
17 we were trying to do.

18 Q. In your answer, you talked about how the Department of  
19 Interior doesn't get credit for things that it's doing. Let me  
20 ask this. You've referenced several times during your direct  
21 testimony that you were having to kind of go with this without  
22 there having been any road map or something like this having  
23 been done before. Do you remember testimony to that effect?

24 A. Yes.

25 Q. And the reason for that is that the Department of the

1 Interior has never provided an accounting to the individual  
2 Indian beneficiaries over the hundred-plus years of the trust,  
3 right?

4 MR. STEMPLEWICZ: Objection. Facts not in evidence,  
5 Your Honor.

6 THE COURT: well, I'll sustain the objection because  
7 it's sort of -- it's almost argumentative.

8 BY MR. DORRIS:

9 Q. Okay. Has the -- let me move on. Let me ask you to go  
10 back to this document that we're looking at, 57-29. At the  
11 paragraph just below there, it talks about "these valuable  
12 outcomes." And I want to read this sentence to you that's in  
13 this paragraph. It starts on the second line. "The use of an  
14 adaptive strategy links up nicely with the legitimate payment of  
15 a cash settlement, since inherently an adaptive approach admits  
16 its error, even though it may well manage to keep it less than  
17 would have been in the case of a full accounting." Do you see  
18 that?

19 A. Yes.

20 Q. And did you have discussions like that in connection with  
21 adopting an adaptive sampling strategy?

22 A. Well, again, I don't know who wrote this or what their  
23 perspective was. As we designed the work, we were attempting to  
24 address an issue where, at the beginning of this process we did  
25 not know what we would find, and any settlement discussions that

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1 we had, whether they be through Congress or directly with the  
2 plaintiffs, were ones that were being governed in ignorance.

3 And that rather than being in a position of ignorance,  
4 where assertions and lack of facts were driving the discussion,  
5 we wanted to be able to have more facts at our disposal about  
6 what really occurred in these accounts. And that we designed  
7 the LSA approach to become informed about what we should expect  
8 to find in the land-based accounts for the electronic era, so  
9 that we would understand better what the relative degree of  
10 information availability was and what the relative degree of  
11 error would be, so that we would be in a position to be informed  
12 about both project design and how we would go about doing the  
13 work that was involved, and be informed for any discussion we  
14 would have related to settlement.

15 Q. Was it anticipated at the time that the adaptive sampling  
16 strategy was picked that it would end up with an error rate that  
17 would be lower or less than what would have been shown by way of  
18 a full accounting?

19 A. Well, at the time the strategy was picked, we didn't know.  
20 We didn't know whether it would be higher or lower than the way  
21 we designed the project to begin with. And that's one of the  
22 issues that's important to us in running this program, is until  
23 we actually go look, we don't know what to conclude, and that  
24 rather than being in a position of ignorance, that we feel it's  
25 incumbent on us to go learn, and then based upon what we find,

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1 adapt.

2 And the adaptive strategy is basically one that reflects  
3 that, that we start with initial project design, we try to make  
4 it cost-effective and timely, we go do some work, and then we  
5 reassess. And if what we find is there's a greater problem, we  
6 have to amend the project design. And if there's a lesser  
7 problem, then you also amend the project design.

8 Q. Okay. I'm not sure I followed all that, but let me move  
9 on. One of the -- you became involved in December, we've seen,  
10 in 2001 with IT security.

11 A. Yes.

12 Q. And one of the first things that you became involved with  
13 was looking at and entering into a consent order in connection  
14 with disconnection of certain of Interior's computers from the  
15 Internet.

16 A. Like pretty much all of them.

17 Q. Okay. Now, I want to pull up Plaintiffs' Exhibit 1051,  
18 which is that consent order. And there are two paragraphs in it  
19 I want to look at with you. And this was a consent order that  
20 the Department of the Interior prepared and proposed and that  
21 the plaintiffs actually opposed. Do you recall that?

22 A. Yes.

23 Q. Okay. And if you'll pull up the top of that so we can just  
24 see the heading. And it indicates consent order regarding  
25 information technology security is entered or filed on December

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1 17, 2001, in this case. Now, let's look over at page 5 of the  
2 document. It may be page 4, excuse me. Page 4.

3           And this is in the order that was presented by the  
4 Department of the Interior. It says, "whereas information  
5 technology systems provide important or critical services for  
6 individual Indian trust beneficiaries" -- and you would agree  
7 with that statement, right?

8           A. Yes.

9           Q. Then and now, correct?

10          A. Yes.

11          Q. And that would be true for the entire period of the  
12 electronic era, correct?

13          A. Yes.

14          Q. And it goes on and says, "whereas Interior defendants  
15 recognize significant deficiencies in the security of  
16 information technology systems protecting individual Indian  
17 trust data, and correcting these deficiencies merits Interior  
18 defendants' immediate attention." Do you see that?

19          A. Yes.

20          Q. So at least as of this time frame, of December 2001,  
21 Interior was acknowledging significant deficiencies in its IT  
22 security, correct?

23          A. Yes.

24          Q. And this particular order addressed what has been referred  
25 to sometimes as external security, dealing with the Internet,

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1           right?

2           A. Yes.

3           Q. But there were also significant deficiencies with respect



4 to internal security, with respect to people inside the  
5 Department that were working on these computer systems, correct?  
6 A. Our system shares security weaknesses, like every other  
7 computer system in the world.  
8 Q. Okay. And at this point of time, there were significant  
9 deficiencies, both with respect to external and internal  
10 security, correct?  
11 A. Yes.  
12 Q. All right. And since that point in time, there's been a  
13 lot of water under the bridge in this case about IT security?  
14 A. There has been.  
15 Q. We can agree on that?  
16 A. Yes.  
17 Q. But what I'm wanting to focus in right now is that the  
18 information that the Department of Interior's relying on, the  
19 electronic information it's relying on was housed in systems  
20 through at least December 2001 that had significant internal and  
21 external security deficiencies, correct?  
22 A. Yes.  
23 Q. And what -- I did not see anything in the 2007 plan that  
24 indicated how the Department of Interior was addressing the fact  
25 that its computer systems from a security standpoint had been

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1 opened during much of the electronic era.  
2 A. Is there a question there?  
3 Q. Yes. Let me ask it again, then, or a different way. I may  
4 not have gotten a question mark in there.  
5 A. Okay.

6 Q. Does the 2007 plan attempt to analyze in any meaningful way  
7 how these significant deficiencies in IT security, both  
8 internally and externally, may have affected the reliability of  
9 the data that were in the electronic databases on which much of  
10 the Department of Interior's accounting is based?

11 A. No, it does not.

12 Q. And my first statement, that apparently wasn't a question  
13 to you, I referred to it as open systems or words to that  
14 effect. And that's an indication, where there are deficiencies  
15 in the security of the computers, someone either internally or  
16 externally that should not have access to them could actually  
17 come in and change information in the computer systems, correct?  
18 I mean, that's one of the problems that we talk about when we  
19 talk about deficiencies in IT security, correct?

20 A. There's a difference between the risk that we have in  
21 systems which gets quoted as deficiencies, and the realization  
22 of the risk.

23 When I drive, I have a risk that I'll have a car accident,  
24 but I've managed to do it for a long time without having one.  
25 And we have the same sort of situation with our IT systems at

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1 Department of Interior. We are always at risk, both externally  
2 and internally, that someone may hack our systems. We don't  
3 have very much actual experience that that has happened.

4 In the context of historical accounting, I have asked the  
5 question of the staff dealing with historical accounting whether  
6 they've seen any evidence that our information systems have been

7 hacked and resulted in alteration of our historical accounting  
8 data. I've been told, no, that we haven't seen any evidence of  
9 that. Does it mean that absolutely didn't happen? No, but we  
10 haven't seen any evidence of that, and we've been looking.

11 Q. Okay. To use your example, have you ever been driving and  
12 been hit by another car?

13 A. Yes.

14 Q. And you knew it when that car hit you, right?

15 A. Yes.

16 THE COURT: Mr. Dorris, I thought this subject was  
17 sort of passe.

18 MR. DORRIS: Your Honor, I won't be much longer on it.

19 THE COURT: Good. Move on. And let's not be much  
20 longer on it.

21 MR. DORRIS: Can I have about one minute?

22 THE COURT: Yeah.

23 MR. DORRIS: All right.

24 BY MR. DORRIS:

25 Q. Do you view that it's part of the Department of Interior's

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1 plan as part of this accounting to show that the documents and  
2 systems on which the Department of Interior is relying in the  
3 accounting to be reliable systems that have integrity and  
4 contain complete information?

5 A. Yes.

6 Q. Okay. From your perspective, the fact that there were  
7 significant deficiencies in IT security to these systems, does  
8 that affect your ability to show that the systems on which

9 you're relying for the accounting have integrity and are  
10 reliable?

11 A. It is an issue that we have looked at as part of our  
12 efforts on historical accounting, and it's my understanding  
13 based on how we've structured our historical accounting that we  
14 don't have any evidence that our systems have been hacked, that  
15 data has been changed, and that everything we have at this point  
16 suggests that the data is reliable.

17 And that's based on comparisons in the transaction  
18 reconciliation between the underlying paper records and the  
19 electronic records. We haven't examined every transaction, but  
20 from what we've done so far, it appears that it's reliable.

21 Q. Okay. Let me move on, Mr. Cason, and ask you, in terms  
22 of -- we've touched on this before, and let's see if I've got it  
23 right. You understand from your review -- you do not recall in  
24 your review of the independent CPA's audits of the individual  
25 Indian trust funds, you do not recall having seen them cite the

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1 material weaknesses with respect to certain aspects of the  
2 Department of Interior's handling of those funds. Is that fair  
3 to say?

4 A. No. You didn't talk about that before.

5 Q. Okay. You are aware that independent accountants have  
6 found weaknesses and material weaknesses in the handling of  
7 those funds by the Department of Interior, correct?

8 A. I'm aware of that. KPMG, who is the auditor for the  
9 Department of Interior, has found in their review that the

10 handling of IIM funds represents a material weakness. I have  
11 had discussions with KPMG and the Inspector General's Office  
12 about the material weakness finding and how it could be  
13 remedied.

14 I was offered a suggestion that it could not be remedied  
15 until we had actually polled all of the IIM beneficiaries and  
16 had their agreement that the statements were accurate or that  
17 their accounts were accurate, which seemed sort of strange in  
18 this environment where we're in litigation.

19 So it has been noted as a material weakness. I have  
20 pressed upon KPMG and the IG's office that they need to do an  
21 independent evaluation rather than just doing a cursory  
22 recognition of it as a material weakness; actually look at the  
23 accounting that we've done, the data we've collected and make an  
24 independent review. I expect that as part of this year's audit.

25 Q. By KPMG?

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1 A. Yes.

2 Q. And that's not been done in the past?

3 A. KPMG has taken a look at the Indian accounts, but they  
4 haven't really looked at the issue of should I treat the Indian  
5 accounting over time as a material weakness other than doing a  
6 very cursory recognition of it.

7 Q. Mr. Cason, were you here during the opening statements this  
8 morning?

9 A. Yes.

10 Q. I have read where you've previously testified about the  
11 through-put, as that term has been used, of roughly \$13 billion

12 in money that was receipts into the IIM accounts over the course  
13 of time, correct?

14 A. Correct.

15 Q. And when you testified to that, you indicated that was from  
16 1909 to 2001; is that correct?

17 A. Yes.

18 Q. Or was it 2001, was that the correct end date?

19 A. Yes.

20 Q. And that 13 billion that you testified to did not include  
21 any interest, right?

22 A. I don't know that.

23 Q. Okay. It didn't include any direct pay amounts?

24 A. I would venture to guess that's correct.

25 Q. And it didn't include any amounts for the compacting,

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1 contracting tribes that were not on Interior's systems?

2 A. The two tribes, yes.

3 Q. Okay. Now --

4 A. Well, hang on just a second. Before I say yes to that, as  
5 I mentioned earlier, for the two it would depend on when they  
6 took that responsibility and actually started using their  
7 systems. So if that was reasonably recent, there would be some  
8 small part of the overall payments into the trust that they  
9 would have, and then we would have had the predecessor stuff  
10 until they actually took the compact or contract.

11 Q. Have you ever heard referred to overnight investments of  
12 the IIM funds or other funds?

13 A. I've heard the term.  
14 Q. Okay. And did you hear Mr. Gingold describe that in his  
15 opening statement?  
16 A. I did.  
17 Q. And is that generally consistent with your understanding of  
18 what an overnight investment is?  
19 A. I didn't know the point that he was making.  
20 Q. Okay.  
21 A. I'm not familiar with it.  
22 Q. I want to show you a document from the AR and ask you if  
23 you have any knowledge about it, although it does not show you  
24 as having received a copy. I'm skipping ahead to 55-21. If  
25 you'll pull up the top in the first paragraph.

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1 You see this is an e-mail from Bert Edwards to Roger  
2 LaRouche. I'm not sure I'm pronouncing his name correctly, but  
3 you know that he is head of audits for the IG's office for  
4 Interior, correct?  
5 A. I know he works there. I'm not sure his position.  
6 Q. And it's a copy to a number of people, including  
7 Mr. Zippin. I don't see that you're copied on this e-mail, do  
8 you?  
9 A. No. Probably would not have been.  
10 Q. I want to ask you if you have any knowledge about this, but  
11 it's written to Roger. And I'm not going to read the whole  
12 thing. I'll let you read it for a second.

13 (Witness reviewing document.)

14 You see about halfway down it says, "For example, based on  
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15 the discussion Jeff Zippin and I had with Doug Lords, director  
16 of the OST Office of Trust Fund Management in Albuquerque, I  
17 sat" -- I think he may mean "said," but it says "I sat that the  
18 overnighter" -- and that's in quotes -- "investments of the fund  
19 are treated as receipts and disbursements, grossing up the data  
20 by about 15 billion" -- and then in parentheses, exclamation  
21 point -- "due to the daily overnighter investments made." Do  
22 you see that?

23 A. Yes.

24 Q. Have you ever seen this document before?

25 A. Not that I'm aware of, no.

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1 Q. Did you ever have discussions as to what the appropriate  
2 amount would be to reflect in the accounts as a result of the  
3 overnight investments that were made of the IIM funds?

4 A. No.

5 Q. So this topic that's addressed in this e-mail is something  
6 that you've never dealt with or considered in connection with  
7 the accounting?

8 A. Not in this way, no.

9 Q. Now, was there a systemic problem with the way interest was  
10 calculated during the course of time in these accounts?

11 A. I'm not sure what you mean by "systemic."

12 Q. Well, you're indicating that you're doing a whole new  
13 recalculation, and I'm trying to find out if there was some  
14 systematic problem with correctly calculating and posting  
15 interest to the IIM accounts.



16 A. To the best of my knowledge, the answer would be no, and  
17 the knowledge is basically premised on the finding of  
18 recalculating interest on the completed judgment and per capita  
19 accounts, and in that area, on an account-by-account basis, on  
20 average one of the categories, and I don't remember which of the  
21 two, we had found that we had paid about an average of one  
22 dollar more than we should have paid. On the other category it  
23 was on average two dollars less than we should have paid on an  
24 account-by-account basis.

25 so there's certainly some error there. I don't know that I

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1 would characterize it as systemic, because I don't know the  
2 underlying data.

3 Q. Okay. Let me move on. You've talked today about wanting  
4 to set out by way of regulations an administrative process by  
5 which individual Indians, after they had received their  
6 statements of account, could -- and this is my word, challenge  
7 those accounts.

8 A. Yes.

9 Q. And is this a process that Interior is suggesting as the  
10 trustee for the beneficiaries?

11 A. Yes.

12 Q. And this is something you think is in the best interest of  
13 the beneficiaries?

14 A. Yes. I think it's in the best interest of everybody  
15 involved.

16 Q. Okay. And that administrative process has a number of  
17 steps in it where, if the beneficiary does not take certain

18 steps in fairly short periods of time, then the historical  
19 statement of account will become final and binding on the  
20 beneficiary; is that correct?

21 A. That was part of an earlier version. I'm not sure exactly  
22 what it says right now, because it's gone through several  
23 iterations. I haven't seen the latest version.

24 Q. So when you testified today that Department of Interior  
25 wanted this Court to permit it to issue those regulations and

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1 change the class communication order, you're not even really  
2 familiar with the present status of what's being proposed by  
3 those regulations; is that correct?

4 A. I'm not familiar with the explicit language that's  
5 contained in the regulations. What we're attempting to do is to  
6 issue a Federal Register notice to take comments so that we can  
7 actually do the regulations. And we're concerned about doing  
8 that because there is a potential that some individual Indian  
9 may actually want to comment on the rules that pertain to them.  
10 And so we need to be thoughtful and careful about that and like  
11 to make sure we're all on the same page.

12 Q. Well, let me ask it to you this way. If the regulations  
13 that are being proposed have a system by which the beneficiary,  
14 after it gets the historical statement of account, if it doesn't  
15 take affirmative steps within a 30 to 90-day period, that the  
16 historical statement of account becomes final and binding on the  
17 beneficiary, are you testifying that you believe that that's in  
18 the best interest of the beneficiary?

19 A. I'm testify --

20 THE COURT: I'm a little bit lost. These are  
21 regulations that are under consideration, haven't been issued,  
22 haven't been proposed. I don't quite know where they fit in to  
23 what the issues are that we're supposed to be trying here. Help  
24 me out.

25 MR. DORRIS: well, it is a situation where the trustee

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1 is trying, in the framework of saying it's for the benefit of  
2 the beneficiaries, it's trying to have regulations that would in  
3 essence divest this court of jurisdiction over many people in  
4 the class. Admittedly, they've not been passed, but it is  
5 something that is in their 2007 plan that they're proceeding to  
6 try to implement. And I think that does go to certainly what  
7 they're trying to do in the 2007 plan and whether they're trying  
8 to provide a full accounting to our clients.

9 Mr. Cason has indicated that the statements may indicate  
10 that there should be more money on certain balances that they're  
11 not even including there, but that they're still proposing to  
12 cut off rights notwithstanding that. So I'll move on, and I  
13 admit it's late in the day. I don't know if you want me to --

14 THE COURT: well, on that subject, how much longer are  
15 you going to keep beating on Mr. Cason there?

16 MR. DORRIS: I've got four other areas to ask him  
17 about that I think --

18 THE COURT: we're not going to get done this  
19 afternoon?

20 MR. DORRIS: No, sir.  
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21 THE COURT: Let's quit, then. It's 5:00.  
 22 MR. DORRIS: Okay.  
 23 THE COURT: we'll see you tomorrow morning at 9:30.  
 24 Thank you.  
 25 (Proceedings adjourned at 4:56 p.m.)

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CERTIFICATE

I, BRYAN A. WAYNE, Official Court Reporter, certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

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BRYAN A. WAYNE

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