

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL,	:	Civil Action 96-1285
et al.	:	
	:	
Plaintiffs	:	
	:	Washington, D.C.
v.	:	Thursday, October 25, 2007
	:	
DIRK KEMPTHORNE, Secretary	:	
of the Interior, et al.	:	
	:	
Defendants	:	AFTERNOON SESSION

TRANSCRIPT OF EVIDENTIARY HEARING
DAY 10
BEFORE THE HONORABLE JAMES ROBERTSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Official Court Reporter

Page 2102	<p>1 THE COURT: If the parties don't have any problem with</p> <p>2 it, then fine, make them part of the record.</p> <p>3 MR. KIRSCHMAN: Those designations?</p> <p>4 THE COURT: Yep.</p> <p>5 MR. KIRSCHMAN: Okay.</p> <p>6 MR. SMITH: Good afternoon, Your Honor. One of the</p> <p>7 witnesses we had on our witness list was a man named Don Buhler,</p> <p>8 he's with BLM. And when we indicated we would like to call him,</p> <p>9 they discovered he was in Cairo, Egypt. We went through the</p> <p>10 documents we were going to use for him, and all of them are in</p> <p>11 the administrative record except one, and the Defendants have</p> <p>12 agreed that Plaintiffs' Exhibit 488, which is their eighth</p> <p>13 status report, and includes a report from Mr. Buhler, can be</p> <p>14 admitted in lieu of his testimony.</p> <p>15 THE COURT: Can we consolidate this process,</p> <p>16 Mr. Harper? It's just on the list that Mr. Harper's going to</p> <p>17 provide me with, right?</p> <p>18 MR. SMITH: I'm not sure it is, but I'll make sure it</p> <p>19 is.</p> <p>20 THE COURT: All right.</p> <p>21 MR. SIEMIETKOWSKI: Good afternoon, Your Honor.</p> <p>22 THE COURT: Good afternoon, Mr. Siemietkowski.</p> <p>23 MR. SIEMIETKOWSKI: Sir, the Government would like to</p> <p>24 call Ms. Caren Dunne in rebuttal.</p> <p>25 (The witness takes the stand.)</p>
<p>For the Defendants: ROBERT E. KIRSCHMAN, JR., ESQUIRE JOHN WARSHAWSKY, ESQUIRE MICHAEL QUINN, ESQUIRE J. CHRISTOPHER KOHN, ESQUIRE JOHN KRESSE, ESQUIRE U.S. Department of Justice 1100 L Street, N.W. Washington, D.C. 20005 (202) 307-0010 JOHN STEMPLEWICZ, ESQUIRE Senior Trial Attorney U.S. Department of Justice Commercial Litigation Branch Civil Division Ben Franklin Station P.O. Box 975 Washington, D.C. 20044 (202) 307-1104</p> <p>Court Reporter: Bryan A. Wayne, RPR, CRR Official Court Reporter U.S. Courthouse, Room 6714 333 Constitution Avenue, NW Washington, D.C. 20001 (202) 354-3186</p> <p>Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.</p> <p>Bryan A. Wayne, RPR, CRR Official Court Reporter</p>	

Page 2103	<p>1 PROCEEDINGS</p> <p>2 MR. HARPER: Good afternoon, Your Honor.</p> <p>3 THE COURT: Mr. Harper.</p> <p>4 MR. HARPER: Your Honor, a couple of just housekeeping</p> <p>5 matters. We are prepared to close our case but for exhibits.</p> <p>6 We provided the Government over the lunch break, actually near</p> <p>7 the end of the lunch break to clarify, a list of those exhibits</p> <p>8 that we would like to move in. They would like to have more</p> <p>9 opportunity to review that list.</p> <p>10 THE COURT: Fine.</p> <p>11 MR. HARPER: With that caveat, we think we're prepared</p> <p>12 to close our case. One other -- we had designated a number of</p> <p>13 transcripts from prior proceedings -- in-court proceedings. We</p> <p>14 understand that the Government does not object to the trial 1.5</p> <p>15 designations, including those in the record, but we also have</p> <p>16 others that are not 1.5, and I guess, can we deal with those</p> <p>17 objections at the same time we deal with --</p> <p>18 THE COURT: Okay.</p> <p>19 MR. HARPER: Thank you, Your Honor.</p> <p>20 THE COURT: Thank you.</p> <p>21 MR. KIRSCHMAN: Your Honor, the parties had assumed</p> <p>22 related to the 1.5 designations that they were part of the</p> <p>23 record. Those are assumptions based on, I think it was the July</p> <p>24 status conference and discussion we had. Is that correct</p> <p>25 regarding the 1.5 for which there was agreement?</p>	Page 2105	<p>1 MR. SIEMIETKOWSKI: Your Honor, Ms. Dunne is here to</p> <p>2 rebut the expert report and expert testimony of Mr. Don Pallais,</p> <p>3 who testified yesterday. To develop a foundation for that</p> <p>4 testimony she will first discuss the development of the</p> <p>5 accounting standards manual, as well as her use of the ASM in</p> <p>6 the context of the historical accounting.</p> <p>7 CAREN DUNNE, WITNESS FOR THE DEFENDANTS, SWORN</p> <p>8 DIRECT EXAMINATION</p> <p>9 BY MR. SIEMIETKOWSKI:</p> <p>10 Q. Ms. Dunne, for the benefit of the record, would you please</p> <p>11 state your full name and spell both your first and last names</p> <p>12 for the court reporter?</p> <p>13 A. My full name is Caren Lynn Dunne. That's C-A-R-E-N,</p> <p>14 L-Y-N-N, D-U-N-N-E.</p> <p>15 Q. Ms. Dunne, where do you work?</p> <p>16 A. I work for Clifton Gunderson.</p> <p>17 Q. In what city and state, please?</p> <p>18 A. In Albuquerque, New Mexico.</p> <p>19 MR. SIEMIETKOWSKI: Your Honor, I'd like to call up on</p> <p>20 the computer screen Defense Exhibit 002, and specifically page 1</p> <p>21 of that, as well as part of page 2, and have the Court briefly</p> <p>22 review that, and at the conclusion of the Court's review of that</p> <p>23 also show the Court Exhibits A and B of DX 002, which were taken</p> <p>24 from Ms. Dunne's expert report.</p> <p>25 THE COURT: Okay. You can scroll down. Okay. All</p>
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1 right. Thank you. You may continue.
 2 MR. SIEMIETKOWSKI: I started to ask Matthew to show
 3 you Exhibits A and B from the same report.
 4 THE COURT: All right. Okay.
 5 (The Court reviewing document.)
 6 Safe to say Ms. Dunne's professional career has been pretty
 7 much tied up with this Indian project.
 8 MR. SIEMIETKOWSKI: Yes, sir.
 9 THE COURT: All right. I don't have to review the
 10 materials considered. You can go on.
 11 MR. SIEMIETKOWSKI: Your Honor, we'd like at this time
 12 to offer Ms. Dunne as an expert in public accounting and in
 13 information systems auditing.
 14 THE COURT: Without objection?
 15 MR. DORRIS: Your Honor, we're going to have some
 16 questions during her cross, but I'm sure you will treat those as
 17 going to weight as you have previously.
 18 THE COURT: Fair enough. Proceed. She may answer
 19 questions in her field.
 20 BY MR. SIEMIETKOWSKI:
 21 Q. Ms. Dunne, when did you first begin to work as a contractor
 22 for Interior?
 23 A. My first encounter on an engagement with Interior would
 24 have been when I was back at Arthur Andersen in 1993.
 25 Q. What type of work was that?

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1 A. I was working on the Arthur Andersen 20-year tribal record
 2 reconciliation that Mr. Joe Christie discussed in length in his
 3 testimony.
 4 Q. Did you at some point in time come to work on IIM work?
 5 A. Yes. Upon the completion of the Andersen tribal rec
 6 project, I actually left Andersen, created my own firm, and
 7 subsequent to that time we were engaged by Interior to assist
 8 with the design and oversight of the procedures used to apply
 9 the document production efforts related to paragraph 19 in the
 10 Cobell litigation. That would have been in approximately 1998,
 11 working again with Joe Christie.
 12 Q. What was the nature of your work with the tribal
 13 reconciliation?
 14 A. For our work -- my work related to the tribal
 15 reconciliation would have been or consisted of managing the
 16 databases used by Andersen throughout the processes of the
 17 reconciliation, certain data analyses related to the calculation
 18 of yields, and significant final reporting, the generation of
 19 statements and agreed-upon procedures and funding reports issued
 20 by Andersen to Interior.
 21 Q. In terms of the IIM work that you did, aside from paragraph
 22 19 or in conjunction with paragraph 19, describe briefly the
 23 nature of that work.
 24 A. That process involved a couple components. We designed,
 25 like I mentioned, the procedures to be followed by a separate

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1 contractor to actually search the boxes, but prior to that we
 2 facilitated and designed a database, a high-level index of the
 3 records Mr. Christie referred to as being consolidated in
 4 Albuquerque.
 5 Q. Ms. Dunne, is that the same as the Box Index Search System,
 6 also known as BISS?
 7 A. This high-level inventory would have been a precursor to
 8 BISS. It was not the BISS itself.
 9 Q. At this time were you doing work for OHTA?
 10 A. No. This was work for OST.
 11 Q. Let me talk to you about development of the ASM, accounting
 12 standards manual. What results, if any, from your paragraph 19
 13 work were useful in the development of the ASM?
 14 MR. DORRIS: Your Honor, I'm going to object. They've
 15 designated this witness as a witness to provide expert
 16 testimony. I think they're getting ready to provide her as a
 17 fact witness.
 18 THE COURT: I think they need permission to get
 19 opinions from her. They don't need permission to get facts from
 20 her.
 21 MR. DORRIS: Okay. Well, in the pretrial designations
 22 that they designated, they designated her as a witness to
 23 provide rebuttal expert testimony. To the extent that this is
 24 factual information, this was something they should have
 25 provided in their case in chief, because this was clearly an

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1 issue that everybody knew about going into the case.
 2 THE COURT: You may be right about that, but I'm going
 3 to hear it. Objection overruled. Go ahead.
 4 BY MR. SIEMIETKOWSKI:
 5 Q. What if anything from your paragraph 19 work helped you in
 6 your development of the ASM?
 7 A. OHTA used the output from our paragraph 19, the procedures
 8 that were developed in the sample documents, as the initial
 9 draft and the core basis in the development of the accounting
 10 standards manual.
 11 Q. Ms. Dunne, at this point I would like to see on the screen
 12 administrative record 008, specifically page 2 of that. Do you
 13 see that on your screen, Ms. Dunne?
 14 A. Yes, I do.
 15 Q. What does that represent?
 16 A. That represents a listing of the firms that had significant
 17 contribution to the content of the accounting standards manual.
 18 Q. And why, if you know, were there several firms that had
 19 input to the development of the ASM?
 20 A. The ASM was designed to be a collaborative effort, to draw
 21 on the expertise from all of the firms that were engaged by
 22 OHTA, and to ensure quality and consistency amongst the firms in
 23 terms of the final product, and to provide a standard which
 24 could be used as a QC mechanism by the QC contractor.
 25 Q. Did your firm actually provide input to the development of

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<p>1 the ASM?</p> <p>2 A. Yes, it did.</p> <p>3 Q. I'd like to show you now, Ms. Dunne, AR-019, and</p> <p>4 specifically pages 1 through 3 of that document. I'll ask that</p> <p>5 you take a look at the second and third pages as well.</p> <p>6 Do you recognize this document, Ms. Dunne?</p> <p>7 A. Yes, I do.</p> <p>8 Q. What does it represent?</p> <p>9 A. This represents initial feedback comments that I provided</p> <p>10 on a draft version of the ASM to Grant Thornton, which had taken</p> <p>11 the lead on the compilation of that document in its early</p> <p>12 stages.</p> <p>13 Q. I'd like to move now to another document, Ms. Dunne, and</p> <p>14 that would be administrative record 191, specifically page 2.</p> <p>15 Do you recognize this document?</p> <p>16 A. Yes, I do.</p> <p>17 Q. And what does it represent?</p> <p>18 A. That represents the sign-in sheet for the list of</p> <p>19 participants from the various firms that participated in a cost</p> <p>20 estimating meeting back in June of 2002.</p> <p>21 Q. Thank you. And I'll ask that that be removed from the</p> <p>22 screen now. Ms. Dunne, let me ask you, is the ASM a static</p> <p>23 document?</p> <p>24 A. No. The ASM is a dynamic document. It is updated as</p> <p>25 necessary based on new information that comes to light, perhaps</p>	<p>1 recognize this document from yesterday, Ms. Dunne?</p> <p>2 A. Yes, I do.</p> <p>3 Q. And where do you recognize it from yesterday?</p> <p>4 A. It was used in the testimony of various individuals.</p> <p>5 Q. Was it used in the testimony of Mr. Pallais?</p> <p>6 A. Yes, it was.</p> <p>7 Q. Let me show you the next page, then, page 9. I may have</p> <p>8 misspoke. I may have said that it is AR-008. The other way</p> <p>9 around. It is AR-008, Your Honor, for the record, not AR-018.</p> <p>10 If we could expand that page a bit. Ms. Dunne, what does</p> <p>11 this page represent, this next page in the ASM?</p> <p>12 A. It provides some summary information on the use of level 1</p> <p>13 and level 2 documents.</p> <p>14 Q. What are levels, Ms. Dunne?</p> <p>15 A. Levels -- broadly classified, level 1 would be a</p> <p>16 categorization of documents that would be either generally</p> <p>17 utilized or created by the federal government in the normal</p> <p>18 operations of processing transactions of IIM beneficiaries to</p> <p>19 their IIM accounts.</p> <p>20 Q. What is a level 1 document?</p> <p>21 A. That was a level 1 document.</p> <p>22 Q. What about level 2?</p> <p>23 A. A level 2 document would be a document that would be</p> <p>24 created by the federal government in the processes of managing</p> <p>25 the trust, but perhaps not specific to the processing of a</p>
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<p>1 based on regional accounting differences or errors or omissions,</p> <p>2 or for clarification purposes.</p> <p>3 Q. Can you provide the Court with any examples based on your</p> <p>4 work?</p> <p>5 A. Yes. We had made some recommended updates to the per</p> <p>6 capita sections, specifically to enhance the wording, to be more</p> <p>7 clear. Additionally, we do receive the periodic updates from</p> <p>8 OHTA and replace the pages as appropriate.</p> <p>9 Q. Have you found the ASM to be useful for reconciliations</p> <p>10 involving the electronic era?</p> <p>11 A. Yes, I have.</p> <p>12 Q. Do you have an opinion about whether it would also be</p> <p>13 useful for the paper era?</p> <p>14 A. Yes. I believe it will be useful for the paper era, as the</p> <p>15 transactions, the processes and the documents are substantially</p> <p>16 similar for the prior time frame, and based on the fact that we</p> <p>17 have used the accounting standards manual to reconcile</p> <p>18 pre-electronic era transactions for judgment and per capita</p> <p>19 accounts.</p> <p>20 Q. Your Honor, I'm about to ask Ms. Dunne some questions about</p> <p>21 the ASM, and if it would perhaps be helpful, I have a hard copy</p> <p>22 of the entire document which I'll hand to your deputy at this</p> <p>23 time.</p> <p>24 And Ms. Dunne, I'd like to show you AR-018, which is the</p> <p>25 ASM, and specifically page 8 of that document, please. Do you</p>	<p>1 transaction to an individual Indian account.</p> <p>2 Q. Ms. Dunne, do you recall Mr. Pallais yesterday discussing</p> <p>3 the term "alternative procedures"?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Are you familiar with that term?</p> <p>6 A. Yes, I am.</p> <p>7 Q. What does it mean?</p> <p>8 A. Alternative procedures would be a reconciliation mechanism,</p> <p>9 and particularly in this instance where the reconciler would</p> <p>10 validate the transaction using either analyses or documents not</p> <p>11 contemplated by the accounting standards manual.</p> <p>12 Q. Are alternative procedures specifically mentioned in the</p> <p>13 ASM?</p> <p>14 A. They are mentioned in terms of their applicability, but</p> <p>15 they are not described in terms of what the alternative</p> <p>16 procedures may specifically be, because they need to be</p> <p>17 determined on a case-by-case basis.</p> <p>18 Q. How often, Ms. Dunne, have you used alternative procedures?</p> <p>19 A. In our reconciliation work related to the land-based</p> <p>20 accounts, we used alternative procedures in 12 instances out of</p> <p>21 a hundred -- no, excuse me, 1,140 transactions that we</p> <p>22 reconciled.</p> <p>23 Q. Of those 12 instances where you used alternative</p> <p>24 procedures, were those cases identical in nature?</p> <p>25 A. No. There was variability among those 12.</p>

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<p>1 Q. I'd like to next move within the ASM, Ms. Dunne, to pages 2 150 and 151. I'll ask that you take a look at the second page 3 as well, and then I'll ask that we return to the first page 4 there, 151. Do you recognize this, Ms. Dunne? 5 A. Yes, I do. 6 Q. What does this represent? 7 A. This section of the ASM describes the definition for the 8 various accounting codes a reconciler can attribute to a 9 transaction based on the procedures they performed. 10 Q. What is coding, Ms. Dunne? 11 A. Coded means documenting your conclusions based on the 12 procedures performed. 13 Q. In what sense? 14 A. In the sense that in, for instance, if I was able to -- I 15 or my staff were able to fully reconcile a specific transaction 16 using direct evidence, using level 1 or level 2 documents, then 17 I would assign it an accounting code of 1 to indicate to 18 Interior my conclusions and the nature of my reconciliation. 19 Q. What does it mean as the coding numbers increase in value 20 up to 7? 21 A. Well, there's no -- each code has a specific meaning. I'm 22 not sure I would say that there is a relevance to the 23 progression from 1 to 7. 24 Q. What is the lowest code that you've used in coding 25 documents?</p>	<p>1 small dollar transaction versus a large dollar transaction. 2 A. The level of effort required by the reconciler is no 3 different regardless of the transaction value. The same 4 documents and processes must be applied to reconcile a 1 cent 5 transaction as they would be to reconcile a \$1,000 transaction. 6 Q. Ms. Dunne, are you familiar with the Box Index Search 7 System known as BISS? 8 A. Yes, I am. 9 Q. Have you worked with it? 10 A. Yes. I've used it extensively. 11 Q. Please explain for the Court your view of how well or not 12 well it works? 13 A. We have been able to locate a significant number of the 14 requested documents utilizing the BISS tool out at the AIRR in a 15 relatively effective manner. 16 Q. Ms. Dunne, having gone through a foundation for your work 17 with the project, I'd like to now direct your attention more 18 specifically to Mr. Pallais's testimony of yesterday. Do you 19 recall, Ms. Dunne, Mr. Pallais's testimony regarding 20 availability of documents and the reliability for the 21 accounting? 22 A. Yes, I do. 23 Q. And what is your view of Mr. Pallais's opinion on that 24 topic? 25 A. My view is that he bases his opinion on an incorrect</p>
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<p>1 A. We use -- the majority were coded as No. 1. We have 12 2 instances where we coded transactions of No. 2, which means they 3 were reconciled using alternative procedures. 4 Q. And why nothing lower? 5 A. We were able to satisfy ourselves we had appropriate 6 documentation to perform the reconciliation for all instances. 7 Q. Ms. Dunne, have you worked with the accounting 8 reconciliation tool, known as ART? 9 A. Yes, I have. 10 Q. Do you have an opinion about how well or not well that 11 works? 12 A. Yes. I found it to be an effective means to analyze the 13 activity, view the documents and perform the reconciliation, and 14 use that as a mechanism to communicate the results to Interior. 15 Q. Have you worked in the LSA project? 16 A. Yes, I have. 17 Q. Within the LSA project, have you performed oil and gas 18 reconciliations? 19 A. Yes, we have. 20 Q. Have you performed any oil and gas reconciliations of a 21 small dollar value? 22 A. Yes. There was a significant number of oil and gas 23 transactions of low dollar value, less than \$1 in our sample. 24 Q. Please explain for the Court, Ms. Dunne, what if any 25 difference there is in terms of level of effort to reconcile a</p>	<p>1 hypothetical that the plan cannot be executed if the documents 2 are not available or reliable. Now, having worked with the 3 documents extensively, I believe that the records are largely 4 available and accessible, and can be used and are being used 5 currently in the reconciliation processes. 6 Q. Do you recall Mr. Pallais's testimony regarding lost or 7 destroyed original documents, and its impact on the ability to 8 conduct reconciliations? 9 A. I'm sorry, could you repeat that? 10 Q. Yes. Do you recall Mr. Pallais's testimony regarding the 11 difficulty in conducting reconciliations because so many 12 documents have been lost or destroyed? 13 A. I do not recall that Mr. Pallais specifically referred to 14 lost or destroyed records. 15 Q. Do you have a view, Ms. Dunne, on whether there are 16 insufficient records to conduct reconciliations? 17 MR. DORRIS: Your Honor, I think this is clear that 18 this is beyond the scope of Mr. Pallais's testimony. The 19 witness just indicated that this was not, from her memory, part 20 of his testimony dealing with missing documents. 21 THE COURT: I'm not quite sure what the witness is 22 saying. She says she thinks he bases his opinion on an 23 incorrect hypothetical that the plan can't be executed if the 24 documents are not available or reliable. And then she says she 25 doesn't recall that he specifically referred to lost or</p>

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<p>1 destroyed records. Is there some area in between here that --</p> <p>2 are we parsing words?</p> <p>3 BY MR. SIEMIETKOWSKI:</p> <p>4 Q. What is the area in between, Ms. Dunne? What part of</p> <p>5 Mr. Pallais's testimony regarding availability of records do you</p> <p>6 disagree with, if any?</p> <p>7 A. Well, I don't recall him saying that documents were lost or</p> <p>8 destroyed. He did clearly indicate that they may not be</p> <p>9 available, and the ones that were available may be internal and</p> <p>10 not reliable.</p> <p>11 Now, my position is the documents are sufficiently reliable</p> <p>12 and they are not lacking corroborating evidence. As being</p> <p>13 completely internal, I believe that he perhaps was</p> <p>14 overinterpreting the term "internal" as meaning any record in</p> <p>15 possession of the federal government.</p> <p>16 There are certain records currently in possession of the</p> <p>17 federal government that contain corroborating evidence that</p> <p>18 could be viewed as third-party documents, because a third party</p> <p>19 would maintain these same records, such as a lease or a check or</p> <p>20 documents of that nature.</p> <p>21 Q. In your experience, does the government refer to those as</p> <p>22 internal documents?</p> <p>23 A. Yes, I believe they would.</p> <p>24 Q. In your opinion, would it be likely that third parties</p> <p>25 would contain the same copies of those documents?</p>	<p>1 the documents that are generated by the entity as unreliable.</p> <p>2 Q. And why is that?</p> <p>3 A. For multiple reasons. One, the qualification was largely</p> <p>4 on the balances and not the activity. The activity was opined</p> <p>5 upon by the independent auditors, and the activity represents</p> <p>6 the money flowing into trust and the money flowing out of trust.</p> <p>7 The documents supporting those activities are the same documents</p> <p>8 contemplated by the ASM.</p> <p>9 Q. Are you denying that there were no internal control</p> <p>10 weaknesses ever in the accounting system?</p> <p>11 A. Absolutely not.</p> <p>12 Q. Does the ASM, in your opinion and experience, address</p> <p>13 those?</p> <p>14 A. Yes, they do.</p> <p>15 Q. And how so?</p> <p>16 A. They address it by seeking to apply corroborating evidence,</p> <p>17 expanding testing procedures, and in terms of effective</p> <p>18 procedures, substantive procedures, and increasing the sample</p> <p>19 size, which is consistent with the auditing guidance of audit</p> <p>20 sampling.</p> <p>21 Q. You mentioned some of the audits that Mr. Pallais had</p> <p>22 discussed yesterday. Do you specifically remember the Griffin</p> <p>23 report?</p> <p>24 A. Yes, I do.</p> <p>25 Q. Are you familiar with that audit?</p>
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<p>1 A. Yes, they would.</p> <p>2 Q. And some examples again are?</p> <p>3 A. Documents such as leases, checks maintained by Treasury,</p> <p>4 things like that.</p> <p>5 Q. Ms. Dunne, do you recall Mr. Pallais yesterday stating if</p> <p>6 this were an audit?</p> <p>7 A. Yes, I do.</p> <p>8 Q. What if anything in your opinion was the significance of</p> <p>9 that prefatory statement?</p> <p>10 A. The main point being this engagement is not a financial</p> <p>11 statement audit. This engagement is a consulting engagement,</p> <p>12 and therefore his reliance on specific statements on auditing</p> <p>13 standards are not applicable.</p> <p>14 Q. Now, having said that you think they're not applicable, are</p> <p>15 you saying that the ASM never mentions auditing standards?</p> <p>16 A. No. The ASM does mention specific auditing standards,</p> <p>17 statements on auditing standards, specifically SAS 31. It</p> <p>18 reaches to the SAS standards for guidance, but it is not bound</p> <p>19 by these standards.</p> <p>20 Q. Do you recall yesterday, Ms. Dunne, Mr. Pallais discussing</p> <p>21 weaknesses in internal controls?</p> <p>22 A. Yes, I do.</p> <p>23 Q. And what is your view on his testimony on that subject?</p> <p>24 A. In my opinion, the fact that there are qualified</p> <p>25 independent audit reports or opinions out there does not render</p>	<p>1 A. Yes, I am.</p> <p>2 Q. And how so?</p> <p>3 A. We actually would have done subcontract work for Griffin at</p> <p>4 that time.</p> <p>5 Q. What do you think, Ms. Dunne, of Mr. Pallais's view of that</p> <p>6 report as a qualified audit?</p> <p>7 A. Is or is not a qualified audit?</p> <p>8 Q. What do you think of his view of that report as being a</p> <p>9 qualified audit?</p> <p>10 A. It is a qualified audit. That is correct.</p> <p>11 Q. The 2007 Plan, Ms. Dunne, does that address in your opinion</p> <p>12 the completeness of ledger entries?</p> <p>13 A. Yes, it does. It has the component for the land-to-dollars</p> <p>14 test, which is intended to test for situations where revenue was</p> <p>15 collected but was not posted to the IIM accounts.</p> <p>16 Q. Now, what about the ASM, Ms. Dunne? Does that address in</p> <p>17 your opinion and experience supporting documentation for</p> <p>18 receipts, interest and disbursements?</p> <p>19 A. Yes, it does.</p> <p>20 Q. How does it address supporting documentation for receipts?</p> <p>21 A. Specifically for receipts it calls for obtaining and</p> <p>22 reviewing the terms of the contractual obligations, such as</p> <p>23 leases, which evidence is the expectation of collection.</p> <p>24 Regarding interest it provides for the procedures for the</p> <p>25 recalculation of interest based on balances and historical</p>

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1 stated interest rates.
 2 And for disbursements it calls for obtaining evidence that
 3 a check was issued, authorization in the case that it's a third
 4 party the check was issued to, and when available, evidence that
 5 payment was made from Treasury.
 6 Q. What about interest? What sort of supporting documentation
 7 does the ASM call for, if any?
 8 A. The ASM contemplates a procedure of recalculation using the
 9 historical method, which is applying the interest factor to the
 10 balances of the IIM account.
 11 Q. What about disbursements?
 12 A. The disbursements would be, again they would include
 13 obtaining evidence from Interior that a check was issued, such
 14 as a check register or a check carbon, if we're talking about
 15 the time frame actual manual checks were issued, authorization
 16 for disbursement in the event the check is written to a third
 17 party, and in the time frame where the data is available,
 18 evidence from Treasury that the check was presented for payment.
 19 Q. Ms. Dunne, what if anything would you and your firm do if
 20 you're not satisfied with the accessibility and reliability of
 21 records that you're working with?
 22 A. We would document that fact and communicate that to
 23 Interior.
 24 Q. At this point, Ms. Dunne, I'd like to show you
 25 administrative record 359, and specifically page 3. Do you

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1 recognize this document, Ms. Dunne?
 2 A. Yes, I do.
 3 Q. And what does it represent?
 4 A. It's an excerpt from one of the reports we provided to
 5 Interior on work we performed, specifically related to a pilot
 6 disbursement test that we did. Specifically it indicates
 7 instances where we could not complete our work because documents
 8 were not made available to us.
 9 Q. I'm sorry, say that last part again?
 10 A. It indicates four instances where we could not complete our
 11 work because documents were not made available to us.
 12 Q. And where are those four instances noted on this document?
 13 A. It's the bottom table of the screen we're viewing, the
 14 check numbers.
 15 Q. Does the document provide explanations for those
 16 exceptions?
 17 A. Yes, it does.
 18 Q. In your experience working with the ASM and the project in
 19 general, how common are these type of occurrences?
 20 A. In our reconciliation work for the land-based accounts,
 21 based on the sample we were provided we did not have any
 22 instances that we could not reconcile a transaction due to
 23 missing documents. In this case we had four instances out of
 24 150 checks tested.
 25 Q. I'm sorry?

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1 A. Four instances out of 150 checks tested.
 2 Q. Thank you. I want to move briefly, Ms. Dunne, back to
 3 discussion of the Griffin audit which Mr. Pallais mentioned
 4 yesterday. Just to follow up briefly on that, what's your
 5 definition of a qualified audit?
 6 A. It would be based on the reporting standards issued in the
 7 authoritative guidance, where the opinion is something other
 8 than an unqualified opinion, meaning there's some reason that
 9 the auditors could not complete the audit, such as the instance
 10 in the Griffin audit where it was qualified due to scope
 11 limitation. Or it could be qualified due to misstatement, if
 12 the accounting firm felt that there was a component that was not
 13 accurately stated of the financials.
 14 Q. Yesterday Mr. Pallais testified that he had reviewed many
 15 qualified audits. Do you recall that?
 16 A. Related to Interior, yes.
 17 Q. And in your opinion and experience, what is the impact of a
 18 qualified audit on your ability to perform a reconciliation?
 19 A. It will not inhibit the ability to do a reconciliation,
 20 specifically because the guidance we discussed previously on
 21 internal controls anticipates that you may have weaknesses in
 22 internal controls or qualified opinions, and regardless of that,
 23 you expand your testing procedures in the case of the
 24 reconciliation.
 25 Q. To conclude, then, Ms. Dunne, what is your opinion

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1 regarding the accessibility and usability of records for the
 2 accounting?
 3 A. I believe the records are sufficiently available,
 4 accessible, and are currently being used in the execution of the
 5 historical accounting plan.
 6 Q. At this point, Ms. Dunne, I'd like to briefly show you
 7 Defense Exhibit 002. That appears to be an 18-page document,
 8 Ms. Dunne. Do you recognize it?
 9 A. Yes, I do.
 10 Q. What is it?
 11 A. This would be my expert response report to Don Pallais's
 12 report.
 13 Q. Is everything in this report accurate to the best of your
 14 knowledge?
 15 A. Yes, it is.
 16 Q. Anything you wish to change today in that report?
 17 A. No, there is not.
 18 MR. SIEMIETKOWSKI: Your Honor, the Government moves
 19 the admission of Defense Exhibit 2 for ID into evidence as
 20 Defense Exhibit 2.
 21 THE COURT: No. 2 will be received.
 22 (Defendant Exhibit No. 2
 23 received into evidence.)
 24 MR. SIEMIETKOWSKI: No further questions, Your Honor.
 25 THE COURT: Ms. Dunne, Mr. Pallais said yesterday that

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1 reconciliation is not considered an accounting service but a
 2 consulting service. You agree with that?
 3 THE WITNESS: Yes, I do.
 4 MR. DORRIS: May I proceed, Your Honor?
 5 THE COURT: Yes, sir.
 6 CROSS-EXAMINATION
 7 BY MR. DORRIS:
 8 Q. Ms. Dunne, I'm Bill Dorris. We have not met yet. I have
 9 seen you here in the courtroom, but we have not had a chance to
 10 introduce ourselves. I do have some questions for you.
 11 Let me start with what you talked about, and then I do want
 12 to come back to your background toward the end of my questions.
 13 You at least agree with Mr. Pallais that all of the audits by
 14 independent CPA firms, from the late 1980s through 2006, have
 15 been qualified audits; is that correct?
 16 A. Yes, they are qualified, but specific qualifications are
 17 delineated in those reports.
 18 Q. So you can look at the reports themselves and they will
 19 tell you why the auditor is qualifying the audit, correct?
 20 A. Yes.
 21 Q. Now, let's step back for a second away from just those
 22 audits, so that we don't get into a disagreement about what a
 23 specific audit says, and I want to ask you some general
 24 questions, okay?
 25 A. Okay.

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1 Q. Now, where a CPA has been hired to do an audit, that CPA is
 2 to follow certain standards that are set out by particular
 3 organizations of CPAs, correct?
 4 A. That is correct.
 5 Q. And what is the primary governing body for CPAs?
 6 A. The AICPA, the American Institute of Certified Public
 7 Accountants.
 8 Q. And you're a member of that organization?
 9 A. Yes, I am.
 10 Q. Now, as that auditor begins the work to perform that audit
 11 and finds that there are material weaknesses on internal
 12 controls -- are you with me so far?
 13 A. Yes.
 14 Q. And that auditor then -- does the auditor have to test in
 15 order to try to see if there are weaknesses in the internal
 16 controls?
 17 A. No. As Mr. Pallais described yesterday, you do not need to
 18 do that. You do not need to test internal control.
 19 Q. But once you find them and you determine that they are
 20 material weaknesses, the auditor then attempts to do further
 21 tests to gauge how serious those internal control weaknesses
 22 are, correct?
 23 A. No, not necessarily. They can choose to disregard the
 24 reliance on the internal control for their test procedures and
 25 increase their substantive testing.

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1 Q. I did not understand the last part of your answer.
 2 Increase the?
 3 A. Substantive testing.
 4 Q. Okay. Now, what does substantive testing mean?
 5 A. Substantive testing is the validation of the numbers stated
 6 in the financial statements, the elements and components.
 7 Q. Okay. But are you saying that then the auditor finding
 8 weaknesses in the internal controls will issue a qualified
 9 opinion because of those weaknesses in the internal controls all
 10 the time?
 11 A. No, I'm not saying that.
 12 Q. Okay. But it's only when the auditor has satisfied him or
 13 herself that those internal control weaknesses are sufficiently
 14 pervasive as to bring in questions about their ability to make
 15 assurance statements, that they qualify the audit; is that
 16 correct?
 17 MR. SIEMIETKOWSKI: Objection, Your Honor. Compound
 18 question.
 19 THE COURT: No, I think it's -- as they say when
 20 you're listening to German, I was waiting for the verb. But I
 21 think it came in -- I think it was a complete cogent question.
 22 So if the witness can answer it, go ahead.
 23 THE WITNESS: The lack of internal controls or
 24 pervasive weaknesses in internal controls would not necessarily
 25 lead to a qualified opinion in and of itself. An auditor can

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1 increase the scope of their substantive testing to sufficiently
 2 satisfy themselves that the numbers stated in the financials
 3 represent or present fairly in all material respects the
 4 activity of the entity.
 5 BY MR. DORRIS:
 6 Q. And one way an auditor would do that would be to increase
 7 the testing by going and trying to get additional third-party
 8 documents to verify those numbers that are shown in the
 9 financial statements as opposed to relying on internally
 10 generated documents?
 11 A. That is one way, yes.
 12 Q. And where the auditor then is not, through this
 13 increased -- oh, I can't say the word -- substantive testing, is
 14 not able to gain that assurance, then the auditor issues a
 15 qualified opinion; is that correct?
 16 A. When an auditor cannot obtain sufficient assurance levels,
 17 then they will issue a qualified opinion, but they can limit
 18 their qualification to certain components of the financial
 19 statements for which the auditors for Interior, in this case
 20 OST, did. They're not qualifying on the entire financial
 21 statements.
 22 Q. They say what they're qualifying on, correct?
 23 A. Correct.
 24 Q. For example, we saw one yesterday, I think it was saying
 25 that they were qualifying on the cash and trust balances. Do

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1 you remember that coming up?
 2 A. Yes.
 3 Q. Those are fairly significant qualifications on OST's
 4 financial statements dealing with cash and trust balances,
 5 correct?
 6 A. Yes, they are.
 7 MR. DORRIS: I never was very good at foreign
 8 language, Your Honor, but German, I know I couldn't do it. This
 9 may be a compound question, so let's try to take it a step at a
 10 time, okay?
 11 BY MR. DORRIS:
 12 Q. Now, where an auditor determines that there are material
 13 weaknesses, pervasive material weaknesses let's say, in the
 14 accounting system of the audited entity -- are you with me so
 15 far?
 16 A. Yes.
 17 Q. In order to overcome those material weaknesses, can the
 18 auditor solely rely on internally generated documents from those
 19 same systems that it has a concern about?
 20 A. No. It is not likely they would do that.
 21 Q. Okay. Now, is it fair to say that in the -- that an
 22 auditor, in order to use the words "reasonable assurance," in
 23 giving reasonable assurance that something is the case, or a
 24 financial statement is fairly stated, has to follow the
 25 accounting standards for the organization you mentioned earlier,

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1 AICPA.
 2 A. They would follow the guidance, you mean the statement of
 3 auditing standards, in the execution of their procedures, as
 4 well as generally accepted accounting procedures in the
 5 presentation of financials, that is correct.
 6 Q. But without doing an audit and following those procedures
 7 and accounting standards, an accountant is not going to give
 8 reasonable assurance that something on a financial statement is
 9 fairly and accurately displayed; is that correct?
 10 A. They will not issue an audit opinion without performing
 11 audit procedures on a financial statement.
 12 Q. Right. And an audit opinion is an opinion -- one of the
 13 audit opinions that can be given is that the auditor has
 14 reasonable assurance that the statement is fair and accurate,
 15 correct?
 16 A. An audit opinion would read, yes, that they have reasonable
 17 assurance that the financial information is presented fairly in
 18 all material respects.
 19 Q. Okay. On a reconciliation, which is an engagement, a
 20 consulting engagement -- I think the Judge and you covered that
 21 already -- an auditor is not then going to make a representation
 22 that a statement is, in the auditor's opinion, that the auditor
 23 believes there's reasonable assurance that the statement fairly
 24 and accurately depicts the condition.
 25 MR. SIEMIETKOWSKI: Objection, Your Honor. Confusing

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1 the witness.
 2 THE COURT: Well, I'm going to sustain that on the
 3 ground that it confused the Judge.
 4 (Laughter)
 5 Bite that question off in little pieces again like you did
 6 the last one, please.
 7 MR. DORRIS: I'll give that a try.
 8 BY MR. DORRIS:
 9 Q. Now, in a consulting engagement, the auditor is simply
 10 doing what has been agreed to in the engagement contract,
 11 correct?
 12 A. No. In an audit engagement, an auditor is performing
 13 procedures it determined to be sufficient to obtain reasonable
 14 assurance to opine on financial statements.
 15 Q. I must have misspoken. I did not want to ask about an
 16 audit. In a consulting engagement, the accountant is doing what
 17 has been agreed upon with the client, correct?
 18 A. That is correct.
 19 Q. And where the auditor -- the accountant then in a
 20 consulting engagement then will say whether they were able to
 21 accomplish the procedures that the client asked them to
 22 accomplish in the consulting engagement agreement, correct?
 23 A. That is correct.
 24 Q. It is not a type of engagement where the auditor then is in
 25 a position to give reasonable assurance about the accuracy and

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1 completeness of a financial statement, is it?
 2 A. That is correct. That language that you used or some
 3 derivation is limited to audits of financial statements.
 4 Q. So as a result of this reconciliation process that you've
 5 been describing, the accounting staff or the accountants
 6 involved in the LSA are not providing a statement of reasonable
 7 assurance that the accounts of the beneficiaries are stated
 8 fairly and accurately, are they?
 9 A. No, they are not.
 10 Q. Now, you described how you go to -- in the reconciliation
 11 you go to a level 1 document, and there are a number of
 12 different level 1 documents for some things, correct?
 13 A. Correct.
 14 Q. And then if you can't find a level -- do you look for all
 15 the various level 1 documents before you go to level 2?
 16 A. That's one approach. You don't need all level 1 documents
 17 to accomplish a reconciliation as stated in the ASM.
 18 Q. Okay. This may help for the Court's sake, too. We looked
 19 at one yesterday that was a table of checking disbursements, and
 20 it had about five or six level 1 type of documents, that if you
 21 found any one of those, then you were set. Okay?
 22 And then it also had a category for a level 2 type
 23 documents that you could, if you found it, then you had met the
 24 agreed-upon procedures. Do you remember us looking at that
 25 table yesterday?

<p style="text-align: right;">Page 2134</p> <p>1 A. Yes, I do. 2 Q. Now, my question's a little different. Before you can use 3 a level 2 document to consider the agreed-upon procedure as 4 having been completed, do you have to look and see that every 5 different type of level 1 document is not available? 6 A. No. I wouldn't say that. 7 Q. Okay. So if you come in and you look at the file and you 8 find a level 2 document, even though you've seen no level 1 9 document, can the accounting staff as part of the reconciliation 10 process in the LSA consider that to be a reconciled transaction? 11 A. The general approach would be to look for level 1 documents 12 and attempt to obtain the level 1 documents prior to using level 13 2. So I do not think it would be consistent with the procedures 14 to utilize a level 2 document without first attempting to find a 15 level 1 document. 16 Q. Would you say that if one were to look at work papers for 17 someone that had done this, and you saw that they were 18 reconciling or saying that they had met the agreed-upon 19 procedure using a level 2 document, would you say that it would 20 be reasonable that in all likelihood that person could not find 21 any level 1 document to reconcile that transaction? 22 A. That is a possibility. It is also possible that the level 23 2 document, as indicated in the ASM, did contain all the 24 elements that would be contained on a level 1, and is sufficient 25 and appropriate to be used for the reconciliation, and no level</p>	<p style="text-align: right;">Page 2136</p> <p>1 reconciliation as well. 2 Q. Okay. Now, do you know how many of this -- oh, I wrote 3 down the number -- thousand -- do you remember the number that 4 you've looked at? 1,140? 5 A. Yes. 6 Q. And were there 12 of them that were done by alternative 7 procedures? 8 A. That's correct. 9 Q. How many of them were done by level 2 documents? 10 A. I don't know that number off the top of my head. There was 11 no distinction made, using an accounting code 1, using a level 1 12 document versus a level 2. It is not perceived as a lower 13 quality of evidence. It was just a mechanism to prioritize the 14 document retrieval and utilization process. 15 Q. Okay. Well, that's something different for me. You're 16 saying a level 2 document, if you use it, is just as good as a 17 level 1? 18 A. It can be, yes. 19 Q. Okay. In other words, it's viewed as being just as good as 20 part of these agreed-upon procedures? 21 A. There was no distinction between a reconciled transaction 22 using direct evidence using a level 1 document versus a level 2 23 document. 24 Q. Okay. Now, I did not follow your -- you heard Mr. Pallais 25 testify yesterday about completeness, and that at least in an</p>
<p style="text-align: right;">Page 2135</p> <p>1 document was used. 2 Q. Well, before we come back and I try to pin that down 3 exactly so I understand it better -- it may be moot anyway. 4 Does your -- your firm's not doing all of the LSA procedure, 5 correct? 6 A. Not all of them, no. 7 Q. It sounded like that you'd done a little bit over a 8 thousand. There must be four or five other firms involved in 9 that process; is that right? 10 A. Yes. That's true. 11 Q. And do you know to what extent there's uniformity between 12 each of the firms that's doing this? 13 A. The intent of the ASM is to kind of allow and facilitate 14 uniformity. But I did not review the work of other firms so I 15 can't say with certainty. 16 Q. Okay. Now, does your firm keep work papers that indicate 17 how a particular item has been -- has met the agreed-upon 18 procedures? 19 A. Yes, we do. 20 Q. Okay. Do those work papers just simply assign an 21 accounting code 1, 2, or the other ones that you were shown 22 during your direct? 23 A. No. Incorporated in the work papers would be any 24 underlying supporting documentation that was reviewed, as well 25 as any calculations that were used in the process of</p>	<p style="text-align: right;">Page 2137</p> <p>1 audit situation, where standards apply to it, as opposed to just 2 agreed-upon procedures, that the auditor's got to assure himself 3 of completeness in the accounting system. Correct? 4 A. Correct. 5 Q. And you agree with that? 6 A. Yes. 7 Q. Have you been involved with determining a testing procedure 8 to determine the completeness of the postings in the TFAS or 9 IRMS systems. 10 A. We did have some input in terms of -- 11 Q. Let me interrupt you. I'm asking about you. Just you. 12 A. Yeah. I had some high-level input into the design and 13 conceptual nature of the land-to-dollars test. I have not 14 specifically, nor has my firm, done any test work related to the 15 land-to-dollars test. 16 Q. Okay. That's fine. Now, let me ask you this question. 17 You heard Mr. Pallais testify yesterday that based on his 18 30-plus years of experience in the accounting field -- and I 19 understand you have 15 or 16 years, and I'm not trying to use 20 that as a scale -- but based on his experience, that without 21 being reasonably sure that you have a complete universe of the 22 leases, he could not come up with a reasonable way to test for 23 completeness. Do you remember his testimony essentially to that 24 effect? 25 A. Yes, I do.</p>

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<p>1 Q. Can you come up with one?</p> <p>2 A. Well, the tests that were contemplated in the 2000 plan is</p> <p>3 land to dollars, and it's -- part of the reason why is there is</p> <p>4 a limitation in terms of defining the sampling frame using</p> <p>5 leases.</p> <p>6 Q. Yes. And you remember we looked at the Horton report</p> <p>7 yesterday, or I think, is it Ms. Hinkins' report about the</p> <p>8 Horton completeness land-to-dollars testing. We looked at it</p> <p>9 yesterday, do you remember that?</p> <p>10 A. Yes, that's correct.</p> <p>11 Q. And there was a particular parcel there where they didn't</p> <p>12 have leases, they didn't see income coming in, and they didn't</p> <p>13 know whether that was a problem with them not having the leases</p> <p>14 or that it hadn't been leased out. Do you recall that?</p> <p>15 A. Yes, I do.</p> <p>16 Q. And there was a statement of we're going to have to come up</p> <p>17 with some way to figure out what to do there, right?</p> <p>18 A. Yes.</p> <p>19 Q. And you've not come up with a way to figure out what to do</p> <p>20 there, have you?</p> <p>21 A. I have not been asked to by Interior, to look into</p> <p>22 completing the pilot procedures.</p> <p>23 Q. Do you know who has been asked?</p> <p>24 A. No, I do not.</p> <p>25 Q. Do you know if anyone has been asked?</p>	<p>1 A. It was Chavarria, Dunne & Lamey.</p> <p>2 Q. When you were in that firm, you were one of the principals</p> <p>3 in the firm?</p> <p>4 A. Yes, I was.</p> <p>5 Q. Are you familiar with an investigation by the Inspector</p> <p>6 General about improper contacts and -- between principals of</p> <p>7 Chavarria, Dunne & Lamey and members of the OST there in</p> <p>8 Albuquerque?</p> <p>9 A. Yes, I am.</p> <p>10 Q. Have you reviewed that OIG report?</p> <p>11 A. Yes, I have.</p> <p>12 Q. And that OIG report indicated and showed that there were as</p> <p>13 many as 65 different instances where principals in your firm</p> <p>14 ended up going on golfing excursions and taking OST people on</p> <p>15 golfing excursions. Do you remember that?</p> <p>16 A. Yes.</p> <p>17 Q. And tied those, where then those same people from OST were</p> <p>18 days later asking people in Washington to issue no bid contracts</p> <p>19 to your firm. Do you recall that?</p> <p>20 A. That's what the report said, yes.</p> <p>21 Q. Now, how much of your time for what you do now is spent in</p> <p>22 connection with this LSA project or any other tribal or</p> <p>23 individual Indian trust issues?</p> <p>24 A. Irrespective of the client?</p> <p>25 Q. Oh, no, no. You said that over the course of your career</p>
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<p>1 A. I do not know for certain.</p> <p>2 Q. How many of the 12 times that alternative procedures were</p> <p>3 used included going out and getting confirmation from third</p> <p>4 parties regarding transactions?</p> <p>5 A. In our 12 instances there was no confirmation with third</p> <p>6 parties.</p> <p>7 Q. Now, let me ask a couple questions about your background.</p> <p>8 It does appear to me in looking at your resume that essentially</p> <p>9 you came out of school, I assume moved to Albuquerque or moved</p> <p>10 back to Albuquerque, and immediately got involved with the</p> <p>11 Arthur Andersen tribal reconciliation; is that correct?</p> <p>12 A. No, that's not correct.</p> <p>13 Q. Okay. How much of your professional time since you've</p> <p>14 gotten out of school has been spent in connection with the IIM</p> <p>15 trust issues or the tribal trust issues?</p> <p>16 A. A significant percentage, maybe as much as 70 percent.</p> <p>17 Q. Okay. Now, how many other significant audits have you been</p> <p>18 responsible for since you have been out practicing in the</p> <p>19 accounting field?</p> <p>20 A. My significant audit experience is limited to Interior</p> <p>21 audits for engagement responsibility. When I was employed by</p> <p>22 Arthur Andersen as a staff person, I worked on many large</p> <p>23 engagements.</p> <p>24 Q. Okay. Now, what was the name of your firm prior to its</p> <p>25 name presently?</p>	<p>1 you've spent about 70 percent of your entire professional career</p> <p>2 on this, and I was trying to get in terms of currently, what</p> <p>3 percentage of your time is on this work as opposed to doing work</p> <p>4 for other clients?</p> <p>5 A. A substantial proportion. Possibly 75 percent again.</p> <p>6 Q. And how much of the work for your particular office there</p> <p>7 in Albuquerque is spent working for the Department of Interior?</p> <p>8 A. The Albuquerque office or the firm?</p> <p>9 Q. The Albuquerque office.</p> <p>10 A. The Albuquerque office, a significant percentage, 75 to 80</p> <p>11 percent.</p> <p>12 Q. And do you also have an office near Lenexa?</p> <p>13 A. Yes, we do.</p> <p>14 Q. And how much of that office is working for the Department</p> <p>15 of Interior?</p> <p>16 A. I just want to clarify. It's not technically an office.</p> <p>17 It's individuals working on site, and so it's 100 percent.</p> <p>18 They're on-site at the AIRR, American Indians Records</p> <p>19 Repository.</p> <p>20 MR. DORRIS: Your Honor, if I might have a moment just</p> <p>21 to look at my notes.</p> <p>22 THE COURT: All right.</p> <p>23 (Pause)</p> <p>24 MR. DORRIS: Your Honor, I have nothing further.</p> <p>25 Thank you, Ms. Dunne.</p>

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1 THE COURT: Ms. Dunne, the ASM on the introductory
 2 page says that the historical accounting provided by the plan is
 3 defined as the presentation to each IIM account holder of
 4 account transaction history, a listing of all transactions in an
 5 IIM account, and a statement regarding the accuracy of those
 6 transactions.
 7 Mr. Cason testified, according to my notes, that what that
 8 meant was that IIM account holders will be given Interior's
 9 conclusions about the accuracy of their account balance. Will
 10 the statements that are given include any assurances or opinions
 11 by any accounting firm as to the accuracy of their account
 12 balances?
 13 THE WITNESS: No. The engagement is not structured
 14 that any accounting firm can offer an opinion. An opinion can
 15 only be offered, in the sense that it's being used there, in an
 16 audit engagement or in a test engagement, and this is a
 17 consulting engagement.
 18 THE COURT: Thank you.
 19 REDIRECT EXAMINATION
 20 BY MR. SIEMIETKOWSKI:
 21 Q. Ms. Dunne, Mr. Dorris asked you whether you, in those 12
 22 instances of alternative procedures, had ever gone to third
 23 parties for confirmation and you testified no. Why did you not
 24 go to third parties for confirmation on those 12 instances?
 25 A. We were directed -- well, you would have to get consent

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1 from the client, in this case being Interior, and Interior is
 2 barred from talking to individual Indians. So third-party
 3 confirmation of specific transactions would not be possible.
 4 Q. Do you believe it necessary to go to third parties such as
 5 oil and gas companies for confirmation?
 6 A. Not based on the transactions we all reconciled with
 7 alternative procedures, no.
 8 Q. Why was that?
 9 A. We didn't use any alternative procedures on oil and gas
 10 transactions relative to your specific question.
 11 Q. Mr. Dorris also asked you whether you reviewed any other
 12 firm's work and you answered no. Do you know, Ms. Dunne,
 13 whether there is any sort of quality control work done of the
 14 various firms' work?
 15 A. Yes. All work is reviewed by Grant Thornton, which is the
 16 QC contractor, to ensure quality and consistency across the
 17 firms.
 18 Q. Mr. Dorris also asked you about the OIG investigation.
 19 Were you named personally in that OIG report, Ms. Dunne?
 20 A. No, I was not.
 21 Q. And how if at all has that OIG investigation affected your
 22 expert report or your testimony?
 23 A. It has not affected it in any way.
 24 Q. In response to several of Mr. Dorris's questions,
 25 Ms. Dunne, you testified that this is a consulting engagement,

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1 not an audit, and yet some auditing standards are mentioned and
 2 referenced in the ASM. Have you ever worked on a comparable
 3 project to this particular accounting?
 4 A. The closest comparable project would be the Arthur Andersen
 5 20-year tribal rec, which was an agreed-upon procedures report,
 6 therefore would have been guided by a specific attestation
 7 standard.
 8 Q. In your opinion, Ms. Dunne, how unique is this particular
 9 engagement?
 10 A. This is an extremely unique engagement.
 11 Q. Thank you, Ms. Dunne.
 12 No further questions, Your Honor.
 13 THE COURT: Ms. Dunne, I think that completes your
 14 testimony. You're excused. Thank you.
 15 (The witness steps down.)
 16 THE COURT: Mr. Warshawsky, am I correct we have one
 17 more witness?
 18 MR. WARSHAWSKY: We have the last witness, Your Honor.
 19 THE COURT: Why don't we take a break before that
 20 momentous event occurs.
 21 (Recess from 2:53 p.m. to 3:05 p.m.)
 22 THE COURT: Mr. Warshawsky, since you're up, I will
 23 address this to you, although it goes to all of you. I keep
 24 forgetting to remind myself and you of this. I'm still waiting
 25 for that organizational flowchart I asked about.

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1 MR. WARSHAWSKY: Yes, Your Honor. I know it's being
 2 worked on.
 3 THE COURT: I'm waiting for it, okay?
 4 MR. WARSHAWSKY: Okay.
 5 THE COURT: Call your witness.
 6 MR. WARSHAWSKY: Your Honor, The government calls
 7 Dr. Susan Hinkins.
 8 (The witness takes the stand.)
 9 MR. WARSHAWSKY: Your Honor, Dr. Susan Hinkins is a
 10 senior statistician with the National Opinion Research Center,
 11 or NORC as it's known. She's also a fellow of the American
 12 Statistical Association. She's going to be offered to provide
 13 expert rebuttal testimony in response to Dwight Duncan.
 14 THE COURT: All right.
 15 SUSAN HINKINS, WITNESS FOR THE DEFENDANTS, SWORN
 16 DIRECT EXAMINATION
 17 BY MR. WARSHAWSKY:
 18 Q. Dr. Hinkins, would you give your full name for the record?
 19 A. Susan Marie Hinkins.
 20 Q. Dr. Hinkins, where do you reside?
 21 A. Bozeman, Montana.
 22 Q. And what do you do for a living?
 23 A. I'm a statistician employed by the National Opinion
 24 Research Center at the University of Chicago.
 25 Q. Dr. Hinkins, I'm having put on the screen the first page of

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1 Defendants' Exhibit 4. Would you identify what this document
 2 is, please?
 3 A. Yes. This is the report that I wrote in response to
 4 Mr. Duncan's report.
 5 Q. Referring in Defendants' Exhibit 4 to pages 44 to 47, we'll
 6 just go through those real quickly. I think you've seen this
 7 before, Dr. Hinkins, page 45, 46.
 8 Dr. Hinkins, what do these three pages set forth?
 9 A. This is the resume that I submitted.
 10 Q. And Dr. Hinkins, does this accurately summarize your
 11 educational background, your professional experience, your
 12 publications since 1980, and your professional activities as a
 13 statistician?
 14 A. Yes, it does.
 15 MR. WARSHAWSKY: Judge Robertson, the Government
 16 offers Dr. Hinkins as an expert to provide opinions on subjects
 17 such as statistics and statistical sampling.
 18 MR. GINGOLD: Your Honor, Plaintiffs object and would
 19 like to do voir dire as part of the cross-examination.
 20 THE COURT: All right. Proceed. You can give your
 21 opinions.
 22 BY MR. WARSHAWSKY:
 23 Q. Dr. Hinkins, were you present during Mr. Duncan's testimony
 24 earlier this week?
 25 A. Yes, I was.

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1 Q. And I put up on the screen now, these are two pages because
 2 it actually carries over, this testimony from Mr. Duncan, in
 3 which he identified four major areas or what he identified as
 4 problems with the statistical sampling plan. If you'll read
 5 this. Starts on page 1352 and continuing on to 1353. Do you
 6 recall that testimony?
 7 A. Yes, I do.
 8 Q. And Dr. Hinkins, I'm also going to ask that Mr. Duncan's
 9 expert report, Plaintiffs' Exhibit 4284, the fifth page be put
 10 up, please. And this was the executive summary from
 11 Mr. Duncan's report. Do you recall his testimony about the
 12 executive summary?
 13 A. Yes, I do.
 14 Q. I'd like to organize your testimony today around the bullet
 15 points on the executive summary. So if we could focus on the
 16 first two bullet points. Now, in these two bullet points,
 17 Mr. Duncan was talking about issues regarding missing or
 18 destroyed data. Do you remember that testimony generally?
 19 A. Yes, I do.
 20 Q. And in reviewing the two bullet points there in the
 21 executive summary, has Mr. Duncan summarized his issues in what
 22 you would consider to be standard statistical terminology?
 23 A. Well, "missing data" is a very general term, but my
 24 understanding of his testimony, if you wanted to look it up in a
 25 statistical textbook to find this particular issue, I would call

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1 it a coverage issue, that is does the sample frame cover the
 2 population of interest.
 3 Q. Okay. So you understood he was talking about a coverage
 4 problem.
 5 A. Yes.
 6 Q. And why is coverage an important issue for a statistician?
 7 A. It is a key issue, and it's critical to the entire project.
 8 The statistician is asked to draw a sample in order to draw
 9 inference, to make estimates, to give information about a
 10 particular population. So it's very important that when we draw
 11 the sample we are drawing from what we call a sampling frame,
 12 but it's a list, it's some quantification or other way of saying
 13 every element in that population had a chance of being selected.
 14 Q. Well, how does a statistician go about addressing coverage
 15 issues?
 16 A. Well, very generally, the most important issue is first
 17 that you communicate with your client. So you have to
 18 understand what the client wants to do at the end of the
 19 project, what their population of interest is. I'm sorry, now
 20 we're into statistical semantics and terminology, but what group
 21 that they want to derive some information about, make an
 22 estimate about. And then we need to see, well, what's
 23 available, how do I identify all the members of that population.
 24 Usually involves a fair amount of data analysis and
 25 back-and-forth communication with the client.

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1 Q. In your opinion, does Interior's 2007 Plan address coverage
 2 issues?
 3 A. Yes, it does.
 4 Q. And would you describe generally how it does that.
 5 A. One of the semantics difficulties is the phrase "target
 6 population." And I believe that the ultimate target population
 7 of the 2007 Plan is a very large population. The LSA sample is
 8 just one piece of it.
 9 Q. Let me just interrupt you there for a moment. Maybe you
 10 should define your understanding of what the target population
 11 for the plan is as distinguished from the LSA population.
 12 A. Yes. My understanding of the entire target population that
 13 the 2007 Plan covers is, first they defined the population of
 14 accounts, and it's a little -- I'll make sure I get all the
 15 details, but it's IIM land-based accounts that were open on
 16 December 31, 2000, or were open after October 25, 1994 but
 17 closed subsequently. So that's the accounts.
 18 Q. And you're talking about for sampling purposes.
 19 A. Pardon?
 20 Q. For sampling purposes?
 21 A. Well, for inference, for estimation, yes. Then the
 22 transactions within the accounts, it's my understanding that the
 23 final target population is all transactions in those accounts
 24 back to the opening of the account, or I believe 1938 if it
 25 opened prior to that.

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1 Q. Well, let me ask you to refer within your report now. This
 2 is Defendants' Exhibit 4. Let's go to page 10, please. And in
 3 your report there's a table that you prepared --
 4 A. Thank you.
 5 THE COURT: This is her rebuttal report, right?
 6 MR. WARSHAWSKY: That's right.
 7 BY MR. WARSHAWSKY:
 8 Q. Dr. Hinkins, what information were you intending to convey
 9 by this table?
 10 A. As I said, the ultimate, entire target population, it's not
 11 unusual for that to be divided up into different partitions and
 12 tested separately for various reasons. In this table I'm only
 13 looking at that part of the target population that has been
 14 referred to as in the electronic ledger era. So that's one
 15 piece of the population.
 16 And here was my understanding and the way I think about the
 17 different pieces of that population, and then that's the
 18 left-hand column. And then on the right-hand column my
 19 understanding of how that will be tested in the 2007 Plan.
 20 Q. And so the LSA project's only one of the items on the
 21 right-hand side?
 22 A. That's right.
 23 Q. Let's look at Mr. Duncan's PowerPoint slide. This was --
 24 I'm sorry Plaintiffs' Exhibit 4485. And specifically we're on
 25 the third page. Do you remember Mr. Duncan's testimony

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1 regarding this?
 2 A. Yes, I do.
 3 Q. And when you heard his testimony and reviewed his
 4 PowerPoint slide here, the third page, did you form any
 5 opinions?
 6 A. Yes, I did.
 7 Q. And would you describe those, please?
 8 A. This I believe is, if not the same, is very similar to the
 9 one that was in his report. And it's technically correct in
 10 that there is this large target population. I believe that the
 11 box that he's titled "recorded transactions" represents the LSA
 12 population from which we sampled.
 13 Q. And you're referring to that second --
 14 A. The second -- a piece of the total, the first box has been
 15 separated out. We drew a sample, we make estimates, those
 16 estimates do refer only back to that piece of the population
 17 from which the sample was drawn. We do not make inference from
 18 that sample back to the remaining parts of the population.
 19 Q. And you're referring to what he's called here missing or
 20 omitted transactions?
 21 A. Yes.
 22 Q. Based on your understanding of the 2007 Plan, are there any
 23 other elements that address the missing or omitted transactions
 24 box?
 25 A. Yes. The table that was in my rebuttal report was an

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1 attempt to describe how the missing transaction box actually
 2 should be partitioned up into other pieces of the population.
 3 And it's my understanding that the 2007 Plan attempts to address
 4 those additional pieces so that -- there are other parts of the
 5 population and the 2007 Plan is addressing them.
 6 Q. Now, did you personally participate in drawing the
 7 inferences and conclusions about the LSA project work?
 8 A. Yes, I did.
 9 Q. And when you set out those conclusions, were those with
 10 respect to the entire target population depicted in the first
 11 box on Mr. Duncan's chart, or something else?
 12 A. No, they weren't. Statisticians are typically very careful
 13 to delineate exactly what the population of inference is for a
 14 particular sample, and I believe in our report we were very
 15 careful to say that it was only that part of the population that
 16 had been sampled.
 17 Q. Okay. Let's go to the next page within Mr. Duncan's
 18 PowerPoint slide. There's a fourth page, where he refers to the
 19 NORC solution, redefining the target population. Did you have
 20 any opinions regarding that slide?
 21 A. Yes. That's not how I would characterize our solution,
 22 though. Again, there's a certain semantics problem. The LSA
 23 project itself had a target population, but I would characterize
 24 the 2007 Plan as having a much larger target population, of
 25 which we've only done one piece. So I would not have crossed

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1 out target population in the first box.
 2 Q. Has NORC in fact redefined the target population?
 3 A. I don't believe so.
 4 Q. Let's go back to your -- I'm sorry, actually Mr. Duncan's
 5 report. This was again on page 5. The executive summary,
 6 Plaintiff's Exhibit 4284. Let's focus on the third bullet
 7 point, please, the one that begins "the statistical sampling
 8 procedures." Can you see that?
 9 A. Yes, I can. Thank you.
 10 Q. Do you recall Mr. Duncan's testimony regarding this item?
 11 A. Yes, I do.
 12 Q. And do you recall that in his opinion he concluded that
 13 NORC had netted overpayments and underpayments to limit
 14 litigation exposure?
 15 A. Actually, I believe that in his testimony he said that he
 16 realized we had not done that, but in his original report, that
 17 is what he had said.
 18 Q. Okay. And in fact --
 19 A. We did not net any of the variance transactions. If in an
 20 account there were two errors on two transactions, one was a
 21 \$100 overpayment, one was a \$100 underpayment, those would have
 22 been counted as two errors; the total error would have been
 23 \$200.
 24 Q. Let's go to the fourth bullet point, in which he discusses
 25 the propriety of sampling transactions rather than account

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1 balances. Do you see that?
 2 A. Yes.
 3 Q. And you remember him testifying about that?
 4 A. Yes.
 5 Q. Do you have any opinions about his conclusions?
 6 MR. GINGOLD: Objection, Your Honor. That was in the
 7 2007 Plan and that should have been in the opening expert
 8 report. None was filed. Ms. Hinkins only filed a rebuttal
 9 report.
 10 THE COURT: Overruled.
 11 BY MR. WARSHAWSKY:
 12 Q. You can testify.
 13 A. Well, it is true that the task we were given was to draw a
 14 sample of transactions in order to gather information, estimates
 15 on the overall soundness of the system in terms of error rates,
 16 both numbers of errors and the dollar error rate.
 17 Q. If an account was created, opened because of a transaction
 18 such as, for example, a transfer through probate, is that
 19 transaction also one that would have been subject to sampling?
 20 A. Yes, it would.
 21 Q. And do you have any understanding as to whether account
 22 balances are simply the addition, subtraction of transactions?
 23 A. That's my understanding.
 24 Q. Okay. Let's look at the fifth bullet point, please, where
 25 Mr. Duncan criticized the plan's use of attribute sampling. Do

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1 you recall Mr. Duncan's testimony about that?
 2 A. Yes, I do.
 3 Q. And what do you remember about his testimony?
 4 A. My understanding is that he now understood that we did not
 5 use attribute sampling.
 6 Q. The sixth bullet point, Mr. Duncan discussed what he termed
 7 a meaningless error rate. There's a lot of stuff in this bullet
 8 point. Are you in a position to address any elements of it?
 9 A. I believe only the element regarding how the estimation was
 10 done with respect to the transactions that we sampled but they
 11 were not reconciled. And there was some confusion about what we
 12 did with those in the estimation. And when we draw a sample and
 13 if a sampled transaction doesn't come back with information,
 14 then we don't know whether that transaction was an error or not.
 15 There are a variety of ways that the statistician can deal
 16 with this. One thing that is not a sound statistical procedure
 17 is to say that no information means there was no error. We did
 18 not do that. Moreover, we took a very conservative, and I do
 19 believe that's the correct word, approach, which was to say that
 20 if a transaction was not returned or was returned with an
 21 accounting code 4, anyway, it was not reconciled, we counted it
 22 as an error in our estimation.
 23 Q. Okay. And very quickly, if we can pull up AR --
 24 administrative record 438, this is Bates 40-2. Do you recognize
 25 this document, Dr. Hinkins?

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1 A. Yes, I do.
 2 Q. What is this?
 3 A. This is our 2005 report on the results at that time.
 4 Q. And you participated in its preparation, correct?
 5 A. Yes, I did.
 6 Q. Would you just show pages 12 through 17. We've looked at
 7 this before in the hearing, but I just want you to look at it
 8 real quickly. Dr. Hinkins, does this section of administrative
 9 record 438 address what you were just describing with respect to
 10 the treatment of unreconciled transactions?
 11 A. Yes, it does.
 12 Q. Let's go back to Mr. Duncan's executive summary. The
 13 seventh bullet point -- you don't have to move it anymore. The
 14 next to last one before we get to that caret, where Mr. Duncan's
 15 talking about -- finishes with a statement about DOI's date
 16 restrictions. Do you see that?
 17 A. Yes.
 18 Q. And do you have any understanding about what he's referring
 19 to with respect to the date restrictions?
 20 A. Well, it's my understanding that the definition, the
 21 population definition of what accounts were considered in the
 22 population.
 23 Q. Is that, for example, you talked about 1994, whether to use
 24 accounts as of 1994?
 25 A. Yes.

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1 Q. And do you have any statistics opinions that are relevant
 2 to this?
 3 A. No, I don't.
 4 Q. The final bullet point regarding meta-analysis, do you
 5 recall Dr. Hinkins' -- do you recall Mr. Duncan's testimony
 6 regarding the meta-analysis?
 7 A. Yes, I do.
 8 Q. And do you have any understanding as to whether Mr. Duncan
 9 has apparently modified his views?
 10 A. It was my understanding that he has modified his views that
 11 the meta-analysis report was in fact a very minor part of the
 12 2007 Plan.
 13 Q. And in fact, is that correct?
 14 A. That's correct.
 15 MR. WARSHAWSKY: Thank you, Dr. Hinkins. That
 16 concludes my direct, Your Honor.
 17 MR. GINGOLD: Good afternoon, Your Honor.
 18 THE COURT: Good afternoon.
 19 CROSS-EXAMINATION
 20 BY MR. GINGOLD:
 21 Q. Good afternoon, Dr. Hinkins.
 22 A. Good afternoon.
 23 Q. My name is Gingold, I represent the Plaintiffs. I would
 24 like to ask you a few questions before I ask you about your
 25 report and your testimony. Have you ever testified as an expert

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1 before?
 2 A. Once before.
 3 Q. And in what proceeding was that?
 4 A. I was a pro bono expert witness on a Title IX case.
 5 Q. A Title IX case?
 6 A. I believe that's the right -- it's providing equal
 7 opportunity to women in athletics. I hope I got the right
 8 title.
 9 Q. And when was that, Doctor?
 10 A. Oh, it was in the '90s sometime. 1997, maybe. I don't
 11 remember.
 12 Q. Did you provide that information in your expert report?
 13 A. I was only asked to provide back -- some number of years.
 14 I did provide that information to the lawyer, but I was told I
 15 only needed to provide back so many years, and I thought it
 16 was --
 17 Q. You thought it was okay.
 18 A. Yeah.
 19 Q. When were you asked to provide your rebuttal report?
 20 A. Pardon?
 21 Q. When were you asked to provide your rebuttal report?
 22 A. Approximately two weeks before it was filed, and I don't
 23 remember the date, I'm sorry.
 24 Q. Was it following the submission of Mr. Duncan's report?
 25 A. Oh, yes. Well -- yes. Of his first report.

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1 Q. He filed a report and then you filed a rebuttal report?
 2 A. Right. So it was a rebuttal on his first report.
 3 Q. Are you aware of or familiar with the concept of
 4 independence for an expert witness?
 5 A. I'm not sure what you mean. I guess I'm not.
 6 Q. Do you know how much NORC has been paid for the work that
 7 it has done on the historical accounting project?
 8 A. I could probably figure out how much we've been paid in
 9 total. To break it up on the historical accounting statement, I
 10 couldn't do that right off my head.
 11 Q. I wasn't clear. For the historical accounting project, not
 12 for a statement.
 13 A. Well, we do work other than -- for Interior other than on
 14 the historical accounting.
 15 Q. So your firm does a substantial amount of work for the --
 16 A. Well, it's all part of the same project, but it's not all
 17 IIM. Let me put it that way.
 18 Q. Do you know how much NORC has been paid to date for its
 19 work at the Department of Interior?
 20 A. I believe that our contract is running about 1.2 million
 21 per year.
 22 Q. And for how many years has this been going on?
 23 A. Well, not at that level, but I believe that Dr. Scheuren
 24 began on the project in 2001.
 25 Q. Do you know how many more years you anticipate working on

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1 the project?
 2 A. I believe we have two more years under this contract. I'm
 3 not sure.
 4 Q. Do you know what the anticipated fees are for the next two
 5 years?
 6 A. It'd be the same.
 7 Q. About 1.2 a year? Do you know what aspect, if any, NORC's
 8 historical and prospective relationship with DOI would have on
 9 your independence as an expert witness?
 10 A. Could you say that again?
 11 Q. Yes. Do you have any understanding as to whether or not
 12 NORC's historical and prospective relationship with the
 13 Department of the Interior, whether or not there would be any
 14 effect on your independence as an expert witness?
 15 A. Well, first of all, to my understanding this is -- to my
 16 knowledge, this is the only NORC contract with Department of
 17 Interior, historically or prospectively, and it has no effect on
 18 my independence.
 19 THE COURT: Mr. Gingold, can I see you at side-bar for
 20 a minute.
 21 (Off-the-record bench conference.)
 22 BY MR. GINGOLD:
 23 Q. Dr. Hinkins, I would like you to look at page 36 of your
 24 rebuttal report, which is Defendants' 4.
 25 A. I'm sorry, but I will have to have that blown up for me to

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1 see it.
 2 Q. I would like to turn to the last paragraph. Let's go to
 3 the last paragraph and make it clear. You see the statement in
 4 the last paragraph, Dr. Hinkins, that says "The 2007 Plan
 5 clearly states that an accuracy and completeness statement will
 6 be provided with respect to transactions, not with respect to
 7 account balances"?
 8 A. I'm sorry. That wasn't what was there. Okay.
 9 Q. Excuse me. I'm sorry. If you could ignore -- if we could
 10 eliminate the highlight. Thank you.
 11 In the first sentence of your paragraph, it says "The 2007
 12 Plan clearly states that an accuracy and completeness statement
 13 will be provided with respect to transactions, not with respect
 14 to account balances."
 15 A. Yes.
 16 Q. Is that your understanding of what the 2007 Plan states?
 17 A. That's my understanding.
 18 Q. And is that why you have an understanding that you're not
 19 tasked -- you at NORC were not tasked with establishing accurate
 20 account balances for trust beneficiaries?
 21 A. No, actually. When we did -- so far, the LSA plan, we're
 22 tasked very specifically. It wasn't until I saw the 2007
 23 written plan that I knew what we were tasked with. We were
 24 tasked in the LSA project with drawing a sample of transactions.
 25 Q. But my question was different.

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1 A. I'm sorry.
 2 Q. I'm sorry, but it is your understanding that the 2007 Plan
 3 doesn't provide for a statement with respect to account
 4 balances, correct?
 5 A. A statistical statement with respect to account balances.
 6 Q. Do you know if anyone involved in the historical accounting
 7 project is working on a statement of account balances?
 8 A. I don't know.
 9 Q. I would like you to turn to the 2007 Plan, and it would be
 10 on Section 1, page 9. I can't read the Bates stamp number. If
 11 we could just drop. The Bates number is 33-2, and we're now on
 12 11. I would like to read to you on page 9 the -- could you blow
 13 this up a little bit so it can be read?
 14 Let me read a direct quote. I think my eyes are strained
 15 because I can't read it.
 16 At Section 1, page 9, it states in part, "In addition,
 17 Interior plans to provide each IIM account holder with
 18 Interior's conclusions about the accuracy of the account
 19 transaction history and the account balance as of December 31,
 20 2000." That is different from your understanding, isn't it?
 21 A. I'm not sure. This is getting -- as I said, I know what we
 22 were tasked to do. That's a statement from the Department of
 23 Interior. Because of the meetings that I've been in and the
 24 tasks that I've been given, I read that as applying the accuracy
 25 and completeness to just the transaction history and not to the

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1 balances. But it's not my sentence. I'm basing this on my
 2 history of what I have been tasked to do.
 3 Q. I understand that now. As a result, you are not providing
 4 information for Interior to make statements about the accuracy
 5 of trust beneficiaries' account balances. Is that correct?
 6 A. I'm not sure. I'm providing information. I am not
 7 providing statistical statements about the account balances per
 8 se.
 9 Q. So all statements with regard to accuracy relate solely to
 10 the transactions, correct?
 11 A. That's correct. Well, in my task, yes. This isn't my
 12 sentence.
 13 Q. Again, I'm sorry if I was confusing you. You are not
 14 providing information from your task for anything but the
 15 accuracy of transactions, correct?
 16 A. That's correct.
 17 Q. Do you recall when Mr. Warshawsky was examining you that, I
 18 think he asked you basically if there was a difference between
 19 transactions and balances or something like that? Or how you
 20 came to balances in accounts, and I think you said something
 21 like if you add them up you'll reach the balance. Do you recall
 22 that?
 23 A. He made a statement of is this how you think account
 24 balances are come to, and I agreed with him.
 25 Q. Don't you have to start with the opening balance?

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1 A. Yes.
 2 Q. So transactions without the opening balance will not allow
 3 you to come to a conclusion about the closing balance, will it?
 4 A. That's true.
 5 Q. And what about the interest earned for the funds that are
 6 in the account during the period of time? Would that also add
 7 to what the balance is?
 8 A. Of course.
 9 Q. And you're not tasked with assessing that type of
 10 information, are you?
 11 A. We are for some interest transactions.
 12 Q. Now, with regard to the transactions, the opening balance,
 13 the interest in a particular account, you're not tasked with
 14 providing a statistical frame for that, are you?
 15 Well, strike that. We'll move on. Are you tasked with
 16 sampling accounts?
 17 A. Not directly.
 18 Q. And what is the difference between sampling an account and
 19 sampling a transaction in an account?
 20 A. Well, actually what we did was to first draw a sample of
 21 accounts, but then we drew a sample of transactions from within
 22 that account so that not every sampled account had all the
 23 transactions selected into the sample.
 24 So technically the difference is -- I'll see if I can avoid
 25 the jargon. Our sampling unit was a transaction. That is, that

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1 was the final sampling unit. If you were drawing an account
 2 sample, then your sampling unit would be the accounts.
 3 Q. Do you know why you were tasked with sampling transactions
 4 and not accounts?
 5 A. I assume it's because that's what the client wanted a
 6 result on, the error rate, the reliability of the process as it
 7 related to account -- I'm sorry, to transactions.
 8 Q. Were you involved in any discussions with the client in
 9 that regard?
 10 A. Very early on we had discussions, yes.
 11 Q. So do you know why the client wanted you to sample
 12 transactions and not accounts?
 13 A. One of the roles of the statistician is when you start
 14 working with a client, they quite often give a very general idea
 15 of what they want to do. And so you have dialogue to decide,
 16 well, you could do this or you could do that. And we did have
 17 discussions about one option is you can draw a sample of
 18 accounts and then reconcile every transaction in an account.
 19 And we provided the pros and the cons of doing that versus
 20 drawing a sample of transactions. And they made a decision.
 21 Q. What were the cons against doing that?
 22 A. The account sample?
 23 Q. That's correct.
 24 A. One of the difficulties is that in order to give a
 25 statistical result for the accounts, you will have to have a

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1 relatively large sample of accounts, just as we had a relatively
 2 large sample of transactions.
 3 One of the things early on is, in determining pros and
 4 cons, is how do I control the cost, the resources for a sample?
 5 And when you draw a sample of accounts, many accounts in our
 6 experience have very few transactions. Many accounts have very
 7 many transactions. And when you say I'm going to draw a sample
 8 of, say, 300 accounts, it's very hard to put a cost estimate on
 9 what that will cost, because it depends on how large the
 10 accounts are. So that was one of the cons, or one of the
 11 difficulties.
 12 Q. What were the others?
 13 A. Well, it only -- if you want a transaction error rate, you
 14 won't be able to do that -- you will be giving a statistical
 15 statement just about accounts.
 16 Q. So the statistical statement would be about the accuracy of
 17 the accounts themselves, correct? If you were to sample the
 18 accounts.
 19 A. Yes.
 20 Q. And if you sample the accounts, what would you sample in
 21 the accounts? For example, transactions, correct?
 22 A. If you want to make a statistical statement about accounts
 23 by drawing a sample of accounts, then you would have to -- I
 24 believe -- I haven't thought about this for several years, but
 25 the most direct way would be then to reconcile every transaction

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1 in that account. I'm not sure if that was your question.
 2 Q. You are answering my question, and that will lead to
 3 another question. And if you're sampling accounts, you would
 4 have to sample or reconcile all the transactions in the account.
 5 That's correct, that's what you said, right?
 6 A. You would have to test them in some way, yes.
 7 Q. Again, you're not doing the transaction, you're doing the
 8 account, correct?
 9 A. Yes.
 10 Q. And you'd have to be able to reconcile the opening balance
 11 as well, wouldn't you? If you're doing an account.
 12 A. If the object of the account sample was to say the account
 13 balance is accurate plus or minus so many dollars, yes, you
 14 would.
 15 Q. And you're not doing that, are you?
 16 A. No, we're not.
 17 Q. Do you know why, other than cost and difficulty? Is that
 18 the principal reason, the principal two reasons?
 19 A. I don't know. I did not make that decision.
 20 Q. Was there any discussion about the likelihood of increased
 21 error rates if you were sampling accounts?
 22 A. You'd be measuring a totally different error rate. So I
 23 don't know that you can talk about increased error rate -- the
 24 error rate for a -- the transaction error rate may have
 25 applicability to estimating the accounts, but it's a different

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1 error rate.
 2 But, yes, if you wanted to say -- if you were also looking
 3 at the attribute. Before we were talking about a variable, the
 4 dollar balance. If you also were going to report the percentage
 5 of accounts that have at least one error, yes, that might be
 6 quite high.
 7 Q. Quite high, correct?
 8 A. Might be. I don't know.
 9 Q. Because you haven't taken that sample, correct?
 10 A. That's right.
 11 Q. Now, in your sampling of transactions, will that in any way
 12 result in a statement about the accuracy of all funds that were
 13 received by trust beneficiaries in the individual Indian trust?
 14 MR. WARSHAWSKY: Object to the form of the question.
 15 It's vague and confusing.
 16 BY MR. GINGOLD:
 17 Q. Do you understand the question, Doctor?
 18 A. Well, being a statistician, I'd like it a little more
 19 closely defined.
 20 Q. Will a sampling of transactions enable you to make a
 21 statement with any assurance -- let's say with substantial
 22 assurance about all the funds that have been received by a trust
 23 beneficiary?
 24 MR. WARSHAWSKY: Objection, Your Honor, to the extent
 25 Mr. Gingold's using terminology from the 2001 Court of Appeals

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1 decision. If he's asking this witness for a legal opinion,
 2 obviously it's beyond the scope.
 3 MR. GINGOLD: Your Honor, I'm not asking for a legal
 4 opinion.
 5 THE COURT: Objection's overruled.
 6 THE WITNESS: Well, I guess I'm not sure of the
 7 definition of "all funds," so -- I have a sense of what funds
 8 are being tested, but I guess, I'm being a little careful about
 9 the use of "all funds."
 10 BY MR. GINGOLD:
 11 Q. And no one has ever asked you to provide a statistical
 12 sampling frame to test all funds, have they?
 13 A. They have not used that terminology.
 14 Q. Just as they hadn't used that terminology for you to
 15 determine the accuracy of account balances, correct?
 16 A. Well, that's a terminology I understand.
 17 Q. But they haven't asked you to do that?
 18 A. We have not been asked to do that.
 19 Q. Is it your understanding that the LSA project has been used
 20 as a basis to substantiate statements for the entire electronic
 21 ledger era?
 22 A. That was never the intent.
 23 Q. It was never the intent.
 24 A. I will say that the terminology "electronic ledger era" is
 25 sometimes hard to define, but no, I don't believe -- NORC has

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1 never done that, and I don't believe the 2007 Plan has done
 2 that.
 3 Q. Is it your understanding that the target population in the
 4 LSA does not include all transactions in the electronic ledger
 5 era?
 6 A. It does not.
 7 Q. Do you know why it does not include all transactions in the
 8 electronic ledger era?
 9 A. Well, if I could go back to my table in the rebuttal
 10 report, that lists the ones that are not included in the LSA.
 11 Q. I'm just asking if you know why.
 12 A. Oh, sure. I know some of the reasons.
 13 Q. What are they?
 14 A. Well, one of the reasons is that when we started this, the
 15 LSA project, the data completeness validation process was not
 16 complete, and we knew going into it that the, what I call the
 17 sample frame, the data that we provided was not -- would first
 18 of all, in some cases it may include transactions that we really
 19 shouldn't have included in the population, and that there were
 20 transactions, possibly accounts that were not included, that
 21 were not -- either they were not identified yet from the data
 22 completeness validation project.
 23 We knew that the interest recalculation very possibly would
 24 identify transactions that we should have included in the
 25 population but we didn't at that time. Those are some examples.

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1 Q. But didn't -- let's turn to your report, your rebuttal
 2 report at page 8. I'd like to go to the last paragraph of page
 3 8. Are you able to read that, Dr. Hinkins?
 4 A. Yes, thank you.
 5 Q. And the question I want to ask you about is this statement:
 6 "NORC's reports and the 2007 Plan clearly recognize that the
 7 target population for the LSA project does not include all
 8 transactions in the electronic ledger era." So the plan itself
 9 wasn't designed to include all transactions in the electronic
 10 ledger era; is that correct?
 11 A. I don't make that connection.
 12 Q. Okay. Let me read it again. "NORC's reports and the 2007
 13 Plan clearly recognize that the target population for the LSA
 14 project does not include all transactions in the electronic
 15 ledger era."
 16 A. But the 2007 Plan addresses additional tests beyond the LSA
 17 that will test transactions in the electronic ledger era. The
 18 LSA project is not the only test of the electronic ledger era.
 19 Q. Have those tests been taken yet?
 20 A. No, they haven't.
 21 Q. Have they been designed?
 22 A. They're designed in the sense that we have to wait for the
 23 data to be available.
 24 Q. So the answer is they haven't been designed yet.
 25 A. No, we have not done a sample design.

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1 Q. And are you waiting for, among other things, the data
 2 completeness validation test results?
 3 A. Yes.
 4 Q. And the land-to-dollar test results.
 5 A. Yes.
 6 Q. And other things?
 7 A. This is where I find trouble with the electronic ledger era
 8 is --
 9 Q. Maybe you can help me understand what your concern is,
 10 because then -- we may not have very many questions after that.
 11 What is the issue you have with the electronic ledger era?
 12 A. Well, for example, the transactions that Mr. Duncan
 13 discussed, which are the transactions that were -- the six-year
 14 purge, so that at one point they were in Interior's electronic
 15 data. They're currently not in Interior's electronic data.
 16 Those are these sort of fuzzy issues of should we call that
 17 electronic, should we call that paper. And I think that's where
 18 there can be some confusion, is at the boundary of the
 19 electronic and the paper, you have to be very careful.
 20 And so I believe that it has been understood that those are
 21 electronic ledger era, and I have no problem with that. I will
 22 just say that those are being tested as part of the paper era
 23 tests.
 24 Q. Okay. So when I'm talking about the electronic ledger era,
 25 I'm using the term as it's been used by the Defendants and by

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1 the Defendants' consultants and experts such as yourself. So I
 2 apologize if somehow I confused you with that. But with regard
 3 to how the Government has defined the electronic ledger era --
 4 which is 1985 forward, correct?
 5 A. I think we're a little more careful than that.
 6 Q. Okay. Then help me with this.
 7 MR. WARSHAWSKY: Your Honor, I'm going to object.
 8 This is beyond the scope of direct.
 9 THE COURT: I'll allow it. Overruled.
 10 THE WITNESS: As I said, we have this target
 11 population, which is to encompass all transactions regardless of
 12 what form they were originally, and what form they are at this
 13 point. And in order to make partitions, certain terminology was
 14 used. And I think it is actually very confusing. We're
 15 actually fairly careful in our reports to not say 1985 to 2000.
 16 We say mid-1980s to 2000, because "electronic era" really means
 17 that the electronic data were available in IRMS and TFAS, and
 18 they didn't all roll in at the same time is my understanding.
 19 So it's technically not correct to say that for every
 20 agency and every place January 1, 1985 is the beginning of the
 21 electronic ledger era. That's why I said it's a messy
 22 definition.
 23 BY MR. GINGOLD:
 24 Q. Okay. Then help me with this, because I'm going to be --
 25 the questions I might have been prepared to ask you were based

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1 on the definitions that you have been wrestling with, and we
 2 were provided those definitions.
 3 So when you're referring to target population, you're not
 4 limiting it to -- and let me be imprecise, 1985 forward with
 5 regard to the electronic ledger era, correct?
 6 A. That's correct.
 7 Q. And, for example, were you here this morning during the
 8 testimony of Joe Christie?
 9 A. No, I wasn't.
 10 Q. If a witness testified that the electronic era and IRMS as
 11 an example actually began and was implemented in an area office
 12 and agency offices beginning in the 1970s, that's the type of
 13 information that you would need to define the target population,
 14 isn't it?
 15 A. For -- well --
 16 Q. For the electronic ledger era.
 17 A. I'm not sure. My focus is, if I look at the entire target
 18 population, I want to make sure that somewhere we have covered
 19 it. And whether I've called it electronic era or what, that it
 20 is covered by some test. Some of the tests we call electronic
 21 ledger era tests, and some of them we call paper era tests, but
 22 that they're covered by some test.
 23 And what I have -- I have been given a definition by other
 24 contractors and by the government of this is what we're testing
 25 in what we will call the electronic ledger era. It's

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1 transactions that are available electronically, in the IRMS and
 2 TFAS, and I have no other information.
 3 Q. So this is what you've been tasked to do. This is
 4 consistent with what Dr. Scheuren said. You are being brought
 5 in to accomplish a task that was determined by your client. You
 6 didn't make the decision on limiting it to 1985, did you?
 7 A. No, I didn't.
 8 Q. And you brought out just a moment ago, in relation to I
 9 think Mr. Duncan's testimony, he referred to purges in one of
 10 the electronic systems, correct?
 11 A. That's right.
 12 Q. And did that give you some concern? You mentioned that
 13 uniquely during your testimony.
 14 A. Yes.
 15 Q. Why does that give you concern?
 16 A. Well, it gives me concern that we include it in another
 17 test, so that I have a test -- that we identify that, and as I
 18 said, what we do is we take the entire target population, we say
 19 here's one group. Oh, this group doesn't include the purged
 20 data. Are we going to test that now or are we going to test
 21 that later? And it's my understanding that those transactions,
 22 that part of that account will be tested during the paper era
 23 tests.
 24 Q. Do you know how you're going to test purged transactions?
 25 A. I believe it's exactly the same way we're going to test

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1 paper era transactions, that it is my understanding, we will
 2 find out when they do the test, that will be considered part of
 3 the paper era, because currently the only information about
 4 those transactions is on paper records.
 5 Q. To the extent the paper records exist, correct?
 6 A. That's always true.
 7 Q. Do you have an idea of what the target population size is
 8 today?
 9 A. No, I don't.
 10 Q. Is the sample in any way dependent on the size of the
 11 target population?
 12 A. Of course.
 13 Q. So at this point in time what you've tested doesn't allow
 14 you to reach any conclusions, because you don't know the sample
 15 size -- or you don't know the population size, correct?
 16 A. Not knowing the population size.
 17 Q. The target population. You don't know the target
 18 population size, do you, Dr. Hinkins?
 19 A. No, I don't.
 20 Q. Therefore, you don't know whether the sample size is
 21 sufficient for the target population, do you?
 22 A. Part of the sample design is to ensure that the sample size
 23 will be sufficient.
 24 Q. But as of right now you don't know, do you?
 25 A. No, I don't have that data at this moment.

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1 Q. When do you expect to get that information?
 2 A. Actually I expect to get the -- we are expecting to get the
 3 paper era initial population as soon as FTI has time to put it
 4 together. I believe it's almost ready to go is my understanding
 5 for the initial sample. The initial sample will be accounts.
 6 Q. Is it your understanding that the -- is this part of the
 7 DCV?
 8 A. Part of the DCV is the determination of which accounts have
 9 transactions going back earlier than the electronic era.
 10 Q. So DCV is not limited to what is defined as the electronic
 11 ledger era, is it?
 12 A. I'm not sure. I mean, I know that as part of their work
 13 they are going to be able to tell us which accounts started in
 14 the electronic era. That is, they started with an electronic
 15 transaction that we now have in the electronic data, and which
 16 accounts they believe started -- have transactions prior to the
 17 electronic data.
 18 Q. I'm sorry. I was confused. I thought when you were
 19 referring to the target population, ultimately you aren't
 20 defining it by either electronic or paper; that it was the
 21 entire population you were looking at. Is that fair? When
 22 you're sampling the target population?
 23 MR. WARSHAWSKY: Your Honor, once again, it's been a
 24 long time since I've heard Mr. Duncan's name mentioned.
 25 Dr. Hinkins has been offered as a rebuttal to Mr. Duncan's

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1 testimony. Beyond the scope.
 2 MR. GINGOLD: Your Honor, the question that was raised
 3 with regard to the sampling was --
 4 THE COURT: The objection's overruled. Proceed.
 5 BY MR. GINGOLD:
 6 Q. Are you aware that the name of the litigation support
 7 project is litigation support accounting project for the
 8 electronic era 1985-2000, that this is one of your documents
 9 that you yourself apparently authored? Are you aware of that?
 10 A. That's probably true. I hope there was a footnote in there
 11 making the qualifier that it's really mid-1980s.
 12 Q. The name of this is 1985-2000.
 13 A. Okay. I'm sorry, that was misleading.
 14 MR. GINGOLD: Your Honor, I don't think there's a need
 15 to further question this witness. We're dealing with an
 16 electronic era situation that is now undefined and there's no
 17 sample.
 18 THE COURT: All right. Never mind the argument.
 19 You're finished with your cross?
 20 MR. GINGOLD: Yes.
 21 THE COURT: Mr. Warshawsky. Thank you.
 22 REDIRECT EXAMINATION
 23 BY MR. WARSHAWSKY:
 24 Q. Dr. Hinkins, I just have two questions. I will try to keep
 25 it to two. Mr. Gingold asked you about sample testing and

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1 talked about starting with an opening balance. Do you have an
 2 understanding as to whether transactions that established the
 3 opening balance are to be subject to testing under the 2007
 4 Plan?
 5 A. Yes, they are.
 6 Q. And in what way?
 7 A. Well, let's see if I can remember all the ways. But
 8 certainly in the LSA project, which has been completed, as you
 9 discussed earlier, an opening balance that was the result of a
 10 probate opening the balance with a transaction, that transaction
 11 was subject to sampling.
 12 It's my understanding that the -- when it moves from the
 13 paper era, from transactions that were recorded on paper and
 14 then that final balance was moved to an electronic database,
 15 that that opening balance will be tested during the paper era
 16 testing.
 17 Q. Okay. And I violated my rule. Third question.
 18 Dr. Hinkins, Mr. Gingold asked you about testing of interest and
 19 whether you were testing interest. You indicated you're testing
 20 some of it. Is anybody else testing other interest
 21 transactions?
 22 A. Yes. One of the contractors is doing specifically an
 23 interest test.
 24 Q. Thank you, Dr. Hinkins. No more questions.
 25 MR. WARSHAWSKY: Thank you, Your Honor.

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1 MR. GINGOLD: Your Honor, one question?
 2 THE COURT: Yes.
 3 RECROSS-EXAMINATION
 4 BY MR. GINGOLD:
 5 Q. Who's doing the -- is this a statistical testing of
 6 interest earned on the individual Indian trust funds?
 7 A. I believe it's described in the 2007 Plan, and it's my
 8 understanding that it is a -- it's not statistical. It's not
 9 done on a sampling basis. It's a complete test, but I'm not
 10 doing that. I believe it's described.
 11 Q. Do you know who's doing it?
 12 A. It's my understanding that it's -- I can't remember --
 13 Caren Dunne's group. But I believe it's described in the 2007
 14 Plan.
 15 Q. You don't know the nature and scope of that, do you, of the
 16 testing of interest?
 17 A. It's my understanding that they are going to test -- this
 18 is why, as I said, we're very careful about defining terms,
 19 because there's different kinds of interest. But it's my
 20 understanding that they are going to test the interest that
 21 should have been applied to money sitting in that IIM account.
 22 But I'm not the one doing it, I'm not the one tasked with it.
 23 Q. And have you seen the plan?
 24 A. Yes.
 25 Q. Oh, the plan has been prepared --

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1 A. Oh, I'm sorry. I thought you were talking about -- no, I
 2 have not seen that plan.
 3 Q. Do you know if a plan has been prepared?
 4 A. I believe they've already done this calculation. They're
 5 doing it region by region.
 6 Q. Are you saying the calculation or are you saying a test of
 7 the interest that was earned?
 8 A. I'm not sure whether to call it a test or a recalculation.
 9 I'm not part of that project.
 10 MR. GINGOLD: No further questions, Your Honor.
 11 THE COURT: All right. Dr. Hinkins, thank you.
 12 MR. WARSHAWSKY: Your Honor, just to confirm, we had
 13 offered --
 14 THE COURT: This is re-redirect.
 15 MR. WARSHAWSKY: No, no, no. I'm not going to ask her
 16 anything.
 17 THE COURT: May I excuse her before we start talking
 18 to each other?
 19 MR. WARSHAWSKY: Absolutely.
 20 THE COURT: That would be rude for us to talk to each
 21 other and leave her sitting there on the witness stand.
 22 Dr. Hinkins, you're excused.
 23 THE WITNESS: Thank you, Your Honor.
 24 (The witness steps down.)
 25 THE COURT: And nobody is rude in this courtroom. I

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1 was about to compliment everybody about that. Go ahead.
 2 MR. WARSHAWSKY: Just to clear the record, we had
 3 offered Dr. Hinkins as an expert. I wasn't sure if she had been
 4 accepted or if it was qualified subject to voir dire on cross.
 5 THE COURT: She asked the questions. The questions
 6 were answered. She was cross-examined. There's not been any
 7 further objection made. Her opinions are part of the record.
 8 MR. GINGOLD: No objections.
 9 MR. WARSHAWSKY: Very good, Your Honor. And we needed
 10 to move the admission of Defendants' Exhibit 4, which is
 11 Dr. Hinkins' rebuttal report, as well.
 12 THE COURT: It will be received.
 13 (Defendant Exhibit No. 4
 14 received into evidence.)
 15 THE COURT: And what else from the Government?
 16 Mr. Kirschman?
 17 MR. KIRSCHMAN: What else from the Government? We
 18 addressed the use of Dr. Langbein's report -- I'm sorry, his
 19 prior testimony as responsive. We addressed that yesterday.
 20 THE COURT: I think there was no objection to that, so
 21 his prior testimony will be part of the record and will be
 22 considered part of the record.
 23 MR. KIRSCHMAN: And with that, we have completed our
 24 responsive testimony.
 25 THE COURT: All right. Mr. Harper, surrebuttal?

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1 MR. HARPER: No, Your Honor. For clarification of the
 2 record, I think the part we did not object to was things other
 3 than to cost, and I believe to the cost of Dr. Langbein, that
 4 part of the objection was sustained yesterday. So I wanted to
 5 clarify that for the record.
 6 THE COURT: Yes. Understood.
 7 MR. KIRSCHMAN: Your Honor, we have not yet done it,
 8 but we will review that testimony and make a determination as to
 9 where he addressed cost.
 10 THE COURT: All right.
 11 Well, first thing I want to do is to congratulate counsel
 12 on an efficient, highly professional and civil 10 days of trial.
 13 I was given to expect or believe that this case could take weeks
 14 and weeks and weeks to try. It has not. I'm very glad to hear
 15 that. But we are not finished, of course.
 16 It will fall upon me now to try to reduce this record to
 17 findings of fact and conclusions of law that will address the
 18 questions that I put to you all at the beginning of this case.
 19 And for that purpose I will offer the parties the opportunity,
 20 which I do not think they will turn down, to submit proposed
 21 findings of fact and conclusions of law.
 22 It seems to me -- well, first of all, let me say I'm going
 23 to try something out in this case, because there has always been
 24 I believe some element of ships passing in the night when we're
 25 talking about the various sides of this case.

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1 I don't want to restrict the proposed findings of
 2 conclusions that you're going to submit, but I am going to try
 3 to direct them in some way. Early next week, perhaps Monday,
 4 perhaps not, but early next week, I will disseminate to both
 5 sides what I will call a template for the findings and
 6 conclusions, and I'll call it an outline, if you will. Call it
 7 the questions I expect to be dealt with in the findings and
 8 conclusions.
 9 You're not restricted or confined to that. You can put in
 10 anything you want to that's based on the record in this case.
 11 But I do hope that both sides will provide the proposed findings
 12 and conclusions that they want me to adopt on the issues and
 13 subissues that we'll identify in this template.
 14 The question is how long do you think it's going to take
 15 you. Is 30 days enough?
 16 MR. GINGOLD: Yes, it is, Your Honor.
 17 MR. KIRSCHMAN: Yes, Your Honor.
 18 THE COURT: All right. You understand 30 days is
 19 right after Thanksgiving.
 20 MR. KIRSCHMAN: Your Honor, may we suggest November
 21 30? That would be the second Friday after Thanksgiving.
 22 THE COURT: That's reasonable, because it'll be a
 23 hassle to get it in right around Thanksgiving. November 30 will
 24 be the due date. Now, I am not going to -- thank you, I just
 25 don't want to deal with oppositions to those proposed findings

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1 and conclusions. If I want them, I'll ask for them. This is a
 2 one-shot thing. So give me what you've got, and I will then
 3 issue my findings and conclusions as soon as I can after I've
 4 gotten yours and reviewed them.
 5 Now, I believe there are also a number of pending, other
 6 kind of outlier pending motions in this case. I don't have a
 7 list of them in front of me today. I certainly don't want them
 8 rebriefed, but if either side wants to file, any time in the
 9 next 30 days, or any time between now and November 30, a motion
 10 to resolve motions or something that you think needs -- a list
 11 of things you think need my attention before I get around to
 12 ruling on the merits of this, let me have it, and I'll do that
 13 as best I can.
 14 I think we've ruled out the Lenexa trip. And I can't think
 15 of anything else we need to accomplish today, unless there's
 16 anything further from the parties.
 17 MR. KIRSCHMAN: Your Honor, regarding the posttrial
 18 briefing, I'd like to bring this to the Court's attention. We
 19 would propose to provide with the brief filed in the routine
 20 manner also a brief for the Court's convenience on CD, with
 21 hyperlinks to the exhibits and transcript. I'm not sure if
 22 there's a local rule that covers that. It would be for the
 23 Court's convenience, to the extent the Court would be able to
 24 use something like that.
 25 THE COURT: You're a smooth talker, Mr. Kirschman. I

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1 would be delighted to have that, in two copies.
 2 MR. KIRSCHMAN: Okay. Also, Your Honor, it's not
 3 related to the motion to consider the motions, but I would like
 4 to make the Court aware, you'll remember, it seems like a long
 5 time ago, we had filed a motion to vacate the 2001 consent order
 6 that has kept some agencies off-line. At the time I believe you
 7 denied that motion without prejudice, saying we could provide
 8 further information to the Court.
 9 In the coming weeks, before the end of this calendar year
 10 certainly, we will likely be presenting you with that further
 11 information with regard to the Office of the Solicitor.
 12 Unrelated to this trial, but I wanted to make you aware of that
 13 while we're before you.
 14 THE COURT: I wasn't ready to rule on that motion when
 15 you filed it. I think we're getting to the time when I can
 16 contemplate a ruling on that motion in a more informed fashion
 17 than I could have before. Anything from the Plaintiffs?
 18 MR. GINGOLD: Yes, Your Honor. As this Court
 19 understands, Plaintiffs do oppose that motion for all the
 20 reasons we have said before.
 21 THE COURT: You'll have a chance to oppose what he's
 22 going to file.
 23 MR. GINGOLD: Thank you, Your Honor. Your Honor, are
 24 we going to have closing arguments in this?
 25 THE COURT: You ready?

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1 MR. GINGOLD: Yes, we are. I suppose we can begin
 2 now.
 3 THE COURT: Counsel, it's 20 after 4:00 on Thursday
 4 afternoon. We've been at this for 10 days. I think the answer
 5 is no. I'm assuming that I will get eloquent presentations in
 6 the materials you're going to file by November 30. And as much
 7 as I would enjoy listening to accomplished counsel summarize and
 8 argue what I've heard for the last 10 days, I think I'll pass
 9 today.
 10 (Laughter)
 11 MR. GINGOLD: Thank you, Your Honor.
 12 THE COURT: Thank you.
 13 MR. HARPER: Your Honor, with respect to the exhibits
 14 we discussed earlier, Plaintiffs' exhibits that the Defendants
 15 have not had an opportunity to review to determine if they
 16 object. And in addition, transcripts from prior in-court
 17 proceedings, other than trial 1.5, should we do those in writing
 18 for those that we dispute, and notify you on those that we
 19 don't.
 20 THE COURT: I'll tell you what I'd really appreciate.
 21 I'd really appreciate if you could just get together and
 22 submit -- and agree on what you can agree on about what's in
 23 evidence, and what you can't agree on, and give me some kind of
 24 a report about what you agree and disagree on. And I suspect
 25 that will get us down to a very few disputed exhibits and I can

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1 rule on them.
 2 MR. HARPER: Thank you, Your Honor.
 3 MR. KIRSCHMAN: Yes, Your Honor. Once we have a
 4 chance to review the exhibits.
 5 THE COURT: The fact that they're going to give me a
 6 brief that is hot-linked does not require you to do the same,
 7 Mr. Gingold.
 8 MR. GINGOLD: Your Honor, we will do the same if the
 9 Court prefers it.
 10 THE COURT: Well, I thought that was a pretty broad
 11 hint, but thank you for picking it up.
 12 (Laughter)
 13 MR. GINGOLD: Can't fool us, Your Honor.
 14 THE COURT: Thank you, Counsel, for a well-trying case.
 15 (Proceedings adjourned at 4:17 p.m.)
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