	101 ATES DISTRICT COURT			103 DAVID C. SMITH, ESQ. DANIEL R. TAYLOR, JR., ESQ. Kilpatrick Stockton, LLP 1001 West Fourth Street
	ISTRICT OF COLUMBIA			Winston-Salem, North Carolina 27101 336-607-7392
ELOUISE PEPION COBELL, et al. Plaintiffs, v. DIRK KEMPTHORNE, Secretary of the Interior, et al.	. Civil Action 96-1285 . Washington, D.C. . Monday, June 9, 2008 . 1:37 p.m.			For the Defendants: ROBERT E. KIRSCHMAN, JR., ESQ. JOHN WARSHAWSKY, ESQ. J. CHRI STOPHER KOHN, ESQ. U.S. Department of Justice 1100 L Street, NW Washington, D.C. 20005 202-307-0010
Defendants. TRANSCRIPT OF T BEFORE THE HOJ	:			JOHN STEMPLEWICZ, ESQ. Senior Trial Attorney U.S. Department of Justice Commercial Litigation Branch Civil Division Ben Franklin Station P.O. Box 975
For the Plaintiffs:	DENNIS GINGOLD, ESQ. Law Offices of Dennis Gingold 607 14th Street, NW Ninth Floor Washington, D.C. 20005 202-824-1448 ELLIOTT H. LEVITAS, ESQ. WILLIAM E. DORRIS, ESQ. WILLIAM E. DORRIS, ESQ. Kilpatrick Stockton, LLP 1100 Peachtree Street Suite 2800 Atlanta, Georgia 30309-4530 404-815-6450			Washington, D.C. 20044 202-307-1104 Court Reporter: JACQUELINE M. SULLIVAN, RPR Official Court Reporter U.S. Courthouse, Room 6720 333 Constitution Avenue, NW Washington, D.C. 20001 202-354-3187
	KEITH HARPER, ESQ. JUSTIN GUILDER, ESQ. Kilpatrick Stockton, LLP 607 14th Street, NW Suite 900 Washington, D.C. 20005 202-585-0053			Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.
APPEARANCES con't. on next p	page.			
	ne M. Sullivan, RPR al Court Reporter			Jacqueline M. Sullivan, RPR Official Court Reporter
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APPEARANCES, con't.		01:32:18PM		PROCEEDINGS
		01:39:01PM	2	THE COURT: Mr. Dorris?
		01:39:03PM 01:39:03PM	3 4	MR. DORRIS: Good afternoon, your Honor. THE COURT: Good afternoon.
		01:39:03PM	5	MR. DORRIS: If we're ready to begin, the plaintiff
		01:39:07PM	6	would call Ray Ziler.
		01:39:09PM	7	THE COURT: All right.
		01:39:27PM	8	COURTROOM DEPUTY: Do you solemnly swear that the
		01:39:29PM	9	testimony you should give to the Court in this case now on trial
		01:39:31PM	10	should be the truth, the whole truth, and nothing but the truth
		01:39:34PM	11	so help you God?
		01:39:35PM	12	MR. ZILER: I do.
		01:39:35PM 01:39:35PM	13	COURTROOM DEPUTY: Thank you. Please be seated.
		01:39:35PM 01:39:35PM 01:39:38PM	13 14	COURTROOM DEPUTY: Thank you. Please be seated. MR. DORRIS: Your Honor, in keeping with the way we
		01:39:35PM 01:39:35PM 01:39:38PM 01:39:56PM	13 14 15	COURTROOM DEPUTY: Thank you. Please be seated. MR. DORRIS: Your Honor, in keeping with the way we conducted examinations in Phase 1.7, if I might take a moment to
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		01:39:35PM 01:39:35PM 01:39:38PM 01:39:56PM 01:40:01PM	13 14 15 16	COURTROOM DEPUTY: Thank you. Please be seated. MR. DORRIS: Your Honor, in keeping with the way we conducted examinations in Phase 1.7, if I might take a moment to briefly tell you about Mr. Ziler's background and give you an
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		01:39:35PM 01:39:35PM 01:39:35PM 01:40:01PM 01:40:05PM 01:40:05PM 01:40:05PM	13 14 15 16 17 18 19	COURTROOM DEPUTY: Thank you. Please be seated. MR. DORRIS: Your Honor, in keeping with the way we conducted examinations in Phase 1.7, if I might take a moment to briefly tell you about Mr. Ziler's background and give you an overview of the testimony that we hope to elicit from him. THE COURT: Thank you. That would be helpful. MR. DORRIS: Mr. Ziler was the lead partner for Arthur
		01:39:35PM 01:39:35PM 01:39:38PM 01:40:01PM 01:40:05PM 01:40:05PM 01:40:11PM 01:40:15PM	13 14 15 16 17 18 19 20 21 22	COURTROOM DEPUTY: Thank you. Please be seated. MR. DORRIS: Your Honor, in keeping with the way we conducted examinations in Phase 1.7, if I might take a moment to briefly tell you about Mr. Ziler's background and give you an overview of the testimony that we hope to elicit from him. THE COURT: Thank you. That would be helpful. MR. DORRIS: Mr. Ziler was the lead partner for Arthur Andersen on the first audit of BIA IIM trust operations in 1988 and then for two more years in 1989 and 1990. Mr. Ziler joined Arthur Andersen in 1969 in Los Angeles and moved to help Arthur
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		01:39:35PM 01:39:35PM 01:39:36PM 01:40:05PM 01:40:05PM 01:40:05PM 01:40:15PM 01:40:15PM 01:40:25PM 01:40:23PM 01:40:33PM	13 14 15 16 17 18 19 20 21 22 23 24	COURTROOM DEPUTY: Thank you. Please be seated. MR. DORRIS: Your Honor, in keeping with the way we conducted examinations in Phase 1.7, if I might take a moment to briefly tell you about Mr. Ziler's background and give you an overview of the testimony that we hope to elicit from him. THE COURT: Thank you. That would be helpful. MR. DORRIS: Mr. Ziler was the lead partner for Arthur Andersen on the first audit of BIA IIM trust operations in 1988 and then for two more years in 1989 and 1990. Mr. Ziler joined Arthur Andersen in 1969 in Los Angeles and moved to help Arthur Andersen's now office in Albuquerque in 1984 where he still resides. After overseeing BIA's audits, he became the managing
Jacoualin	e M. Sullivan. RPR	01:39:35PM 01:39:35PM 01:39:36PM 01:40:01PM 01:40:01PM 01:40:05PM 01:40:35PM 01:40:20PM 01:40:27PM 01:40:27PM	<ol> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> </ol>	COURTROOM DEPUTY: Thank you. Please be seated. MR. DORRIS: Your Honor, in keeping with the way we conducted examinations in Phase 1.7, if I might take a moment to briefly tell you about Mr. Ziler's background and give you an overview of the testimony that we hope to elicit from him. THE COURT: Thank you. That would be helpful. MR. DORRIS: Mr. Ziler was the lead partner for Arthur Andersen on the first audit of BIA IIM trust operations in 1988 and then for two more years in 1989 and 1990. Mr. Ziler joined Arthur Andersen in 1969 in Los Angeles and moved to help Arthur Andersen's now office in Albuquerque in 1984 where he still resides. After overseeing BIA's audits, he became the managing partner of Arthur Andersen's Albuquerque office, and at some
	e M. Sullivan, RPR Court Reporter	01:39:35PM 01:39:35PM 01:39:36PM 01:40:05PM 01:40:05PM 01:40:05PM 01:40:15PM 01:40:15PM 01:40:25PM 01:40:23PM 01:40:33PM	13 14 15 16 17 18 19 20 21 22 23 24	COURTROOM DEPUTY: Thank you. Please be seated. MR. DORRIS: Your Honor, in keeping with the way we conducted examinations in Phase 1.7, if I might take a moment to briefly tell you about Mr. Ziler's background and give you an overview of the testimony that we hope to elicit from him. THE COURT: Thank you. That would be helpful. MR. DORRIS: Mr. Ziler was the lead partner for Arthur Andersen on the first audit of BIA IIM trust operations in 1988 and then for two more years in 1989 and 1990. Mr. Ziler joined Arthur Andersen in 1969 in Los Angeles and moved to help Arthur Andersen's now office in Albuquerque in 1984 where he still resides. After overseeing BIA's audits, he became the managing

	105	1	107
01:40:48PM <b>1</b>	point in the early '90s he had less of a day-to-day involvement	01:43:33PM <b>1</b>	A. Yes, I am.
01:40:52PM <b>2</b>	with Arthur Andersen's work that continued on the tribal trust	01:43:34PM <b>2</b>	Q. And how long have you been a C.P.A.?
01:40:57PM <b>3</b>	reconciliation that you heard about, and we will not be going	01:43:36РМ 3	A. Since 1971.
01:41:00PM <b>4</b>	into that with him. He retired from Arthur Andersen in 1999 and	01:43:42PM <b>4</b>	$\ensuremath{\mathbf{Q}}\xspace$ . At our request have you recently reviewed the audits and
01:41:04РМ 5	he is now partner with a local Albuquerque accounting firm of	01:43:46РМ 5	various reports that Arthur Andersen issued to BIA in connection
01:41:09РМ 6	about 150 people where he heads up a fifty-person division of	01:43:51PM 6	with the audits for the years 1988, '89, and '90?
01:41:12PM 7	their audit and business consulting practice.	01:43:54PM 7	A. Yes, I am.
01:41:19PM 8	We are going to ask Mr. Ziler questions in connection	01:43:55PM 8	<b>Q.</b> And generally refreshed your memory regarding that work?
01:41:26PM 9	with the audit that had to do with the internal accounting	01:43:58PM 9	A. Yes, I have.
01:41:29PM 10	controls at BIA, focusing on three primary points: the lack of	01:44:02PM 10	<b>Q.</b> Have you also reviewed certain of the audit Arthur Andersen
01:41:35PM 11	reconciliation between treasury and BIA regarding the IIM funds,	01:44:06PM 11	work papers that were generated as part of those audits?
01:41:41PM 12	the lack of reconciliation between components of BIA's own	01:44:09PM 12	A. Yes. It's a very limited portion, but yes, I have.
01:41:47PM 13	accounting systems, and then third, BIA's weaknesses in	01:44:11PM 13	<b>Q.</b> Based on the work that Arthur Anderson did and as you have
01:41:53PM 14	accounting both for receipts and disbursements, including its	01:44:18PM 14	reviewed it recently, were the accounting systems then being
01:41:58PM 15	vulnerability to misappropriation and fraud.	01:44:23PM 15	used by BIA reliable?
01:42:02PM 16	And I would expect the direct examination of Mr. Ziler	01:44:27PM 16	A. No, they were not.
01:42:04PM 17	to last for approximately an hour, your Honor.	01:44:28PM 17	<b>Q.</b> And were BIA's internal controls over its accounting and
01:42:06PM 18	THE COURT: All right, sir.	01:44:34PM 18	financial systems adequate?
01:42:08PM 19 01:42:10PM 20	MR. KIRSCHMAN: Excuse me, your Honor. Plaintiffs in	01:44:35PM 19	A. No, they were not.
04	their witness list identified Mr. Ziler as an expert witness.	04	Q. Why not?
	I'm not clear whether he's a fact witness testifying on the events he recalls from his work with Arthur Andersen. That's	01:44:37PM <b>21</b> 01:44:45PM <b>22</b>	A. We knew going into the initial engagement just through
01:42:19PM <b>ZZ</b> 01:42:23PM <b>Z3</b>	all I heard so far. I see no grounds to qualify him as an	01:44:45PM 22 01:44:52PM 23	dialogue with bureau management that they exposed internal weaknesses and internal controls before we ever even started the
01:42:23PM 23	expert, and if he is, I don't know what it's on.	01:44:52PM 23	work. And what we generally found after engaging in the audits
01:42:30PM 25	MR. DORRIS: Your Honor, we did that in an abundance	01:44:59PM 25	was pretty much in the line with what we had been told, although
01.42.30FW	Jacqueline M. Sullivan, RPR	01.44.35FW	Jacqueline M. Sullivan, RPR
	Official Court Reporter		Official Court Reporter
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01:42:32PM 1	of caution because we found when you call a C.P.A. to talk about	01:45:03РМ 1	as we learned more, I think we realized that they were worse
01:42:35PM <b>2</b>	the audit, sometimes people view questions as being eliciting	01:45:08PM 2	than we had originally realized.
01:42:39PM 3	opinion, but it was asking them about opinions that they formed	01:45:10PM 3	<b>Q.</b> And how did BIA's internal controls compare to other
01:42:43PM <b>4</b>	at the time that they did the audit. I do not plan to tender	01:45:14PM <b>4</b>	systems you've seen in your almost forty years of public
01:42:47PM 5	Mr. Ziler as an expert, but there may be some points where he's	01:45:18PM 5	accounting?
01:42:53PM 6	talking about the opinions that he rendered on behalf of Arthur	01:45:18PM 6	MR. KIRSCHMAN: Objection; vague.
01:42:57PM 7	Andersen at this time.	01:45:21PM 7	THE COURT: I'll allow it.
01:43:01PM 8	THE COURT: Let's see how the Q and A goes and deal	01:45:23PM 8	THE WITNESS: I have never encountered anything quite
01:43:05PM 9	with it question by question.	01:45:30PM 9	like it. You know, the bureau was so decentralized. It had
01:43:06PM 10	MR. KIRSCHMAN: I appreciate the clarification, your	01:45:36PM 10	over a hundred operating locations with no consistency from one
01:43:08PM 11	Honor.	01:45:40PM 11	location to the next and systems that were out of sync with each
01:43:08PM 12	MR. DORRIS: Thank you, your Honor.	01:45:45PM 12	other. The remote sites, the agency sites were basically
01:43:08PM 13	RAY ZILER, WITNESS FOR THE PLAINTIFFS, SWORN DIRECT EXAMINATION	01:45:50PM 13	uncontrolled. BY MR. DORRIS:
45	BY MR. DORRIS:	45	
01:43:09PM 15	Q. If you'd please state your name.	01:45:53PM 15	<b>Q.</b> Okay. Now, as a result of the work that Arthur Andersen did, was it able to express an unqualified opinion regarding
01:43:09PM 10	<ul> <li>A. Raymond Ziler.</li> </ul>	01:46:01PM 10	BIA's financial statements of the IIM trust funds?
01:43:11PM 17	Q. Where do you live, Mr. Ziler?	01:46:05PM 17	A. No.
01:43:13PM 10	A. Albuquerque, New Mexico.	01:46:08PM 10	<ul><li>Q. And so when we talk about a qualified opinion, what does</li></ul>
	Q. Can you adjust the microphone to where	01:46:17PM 20	that mean?
01:43:17PM 20			
01:43:17PM 20 01:43:20PM 21	A. That is better?	01:46:18PM <b>21</b>	A. The original undertaking was to audit both the tribal and
	<ul><li>A. That is better?</li><li>Q. And you heard my brief description of your background. Was</li></ul>	01:46:18PM 21 01:46:23PM 22	A. The original undertaking was to audit both the tribal and the IIM accounts, and they were separate. They were within one
01:43:20PM <b>21</b>	_		
01:43:20PM 21 01:43:21PM 22	$\ensuremath{\mathbf{Q}}\xspace$ . And you heard my brief description of your background. Was	01:46:23PM <b>22</b>	the IIM accounts, and they were separate. They were within one
01:43:20PM 21 01:43:21PM 22 01:43:29PM 23	<b>Q.</b> And you heard my brief description of your background. Was that accurate?	01:46:23PM 22 01:46:28PM 23	the IIM accounts, and they were separate. They were within one financial statement, but they were separate trust funds, and
01:43:20PM         21           01:43:21PM         22           01:43:22PM         23           01:43:30PM         24	<ul> <li>Q. And you heard my brief description of your background. Was that accurate?</li> <li>A. It was accurate.</li> </ul>	01:46:23PM         22           01:46:28PM         23           01:46:30PM         24	the IIM accounts, and they were separate. They were within one financial statement, but they were separate trust funds, and they were the audit was for the entire trust assets and the

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01:46:42PM 1	109		1	111
01:46:42PM <b>1</b> 01:46:46PM <b>2</b>	attempted to perform an audit on the aggregate of the accounts and also on the individual accounts within the fund, and because	01:50:07PM 01:50:10PM	2	looking at the first full paragraph, about the second half of that paragraph. Do you see it, Mr. Ziler?
01:46:51PM 3	of the lack of controls over receipts or disbursements and the	01:50:10PM	3	A. Yes.
01:46:56PM 4	lack of agreement by anyone that we tried to confirm information	01:50:12PM	4	<b>Q.</b> And it refers to that the audits were conducted with the
01:47:00PM 5	with, we were unable to really establish that anything was	01:50:16PM	5	knowledge of both the bureau and of Arthur Andersen that
01:47:04PM 6	correct other than certain assets that we could either confirm,	01:50:21PM	6	material weaknesses in internal accounting controls existed and
01:47:09PM <b>7</b>	like securities, or that we could observe them. We actually saw	01:50:24PM	7	that it was likely that violations of certain regulations
01:47:14PM <b>8</b>	the documents, the original documents of a CD or something like	01:50:27PM	8	applicable to the management of the trust firms had occurred and
01:47:19PM 9	that, so that was the only area where we were able to really	01:50:30PM	9	were continuing to occur, and if you'll read the rest of that to
01:47:23PM <b>10</b>	opine. The rest of the audit was qualified.	01:50:34PM	10	yourself for a moment.
01:47:26PM <b>11</b>	Q. When you say that was the only area you were able to opine,	01:50:37PM	11	A. Okay.
01:47:30PM <b>12</b>	was on the assets that you physically saw?	01:50:39PM	12	Q. And going into the audit, then what was Arthur Andersen's
01:47:33PM 13	A. Yes.	01:50:46PM	13	understanding about the internal accounting controls at BIA?
01:47:33PM <b>14</b>	Q. And	01:50:49PM	14	A. They were very weak. I believe the purpose of the
01:47:34PM 15	A. And we could not, we could not give an opinion on the	01:50:56PM	15	financial statement audits were in line with discussions we had
01:47:37PM <b>16</b>	treasury cash account either because we could not get a	01:51:01PM	16	had with the bureau about when you have a problem with
01:47:41PM <b>17</b>	confirmation from Treasury as to the balance.	01:51:04PM	17	accounting records that's as long-standing as this had been, our
01:47:44PM <b>18</b>	Q. Okay. So there were certain of the assets that were you	01:51:09PM	18	suggestion was to try to get a snapshot on a current state of
01:47:47PM <b>19</b>	not able to opine about?	01:51:14PM	19	affairs and try to find out, you know, what the current
01:47:49РМ 20	A. Correct.	01:51:18PM	20	conditions of the control environment is, try to plug those
01:47:52PM <b>21</b>	$\ensuremath{\textbf{Q}}\xspace$ Now, in each of the three audit years, did Arthur Andersen	01:51:23PM	21	holes where weaknesses existed, focus on that first and then
01:47:55PM <b>22</b>	provide a report on compliance and internal accounting controls?	01:51:26PM	22	back on the historical data afterwards, because the idea was to
01:47:59PM <b>23</b>	A. Yes.	01:51:30PM	23	try to bring the controls into a stronger environment in the
01:48:00PM <b>24</b>	<b>Q.</b> And did the BIA accept those findings and recommendations	01:51:34PM	24	current period.
01:48:03РМ 25	in each of those years?	01:51:36PM	25	<b>Q.</b> Now, were there instances where BIA's various accounting
	Jacqueline M. Sullivan, RPR			Jacqueline M. Sullivan, RPR
	Official Court Reporter			Official Court Reporter
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01:48:04PM <b>1</b>	A. Yes, they did.	01:51:43PM	1	systems did not reconcile or agree with each other with respect
01:48:05PM <b>2</b>	<b>Q.</b> I want us to look at the first of these reports on internal	01:51:47PM	2	to the IIM trust?
01:48:11PM 3	controls, and we have marked it previously as Plaintiff's	01:51:50PM	3 4	A. Correct.
F	Exhibit 31. It's the report on compliance and internal controls	01:51:50PM	4 5	<b>Q.</b> And Mr. Ziler, today when I asked you about BIA's records,
<b>c</b>	for the year-ending September 30, 1988. This is the only time I'm faster than a computer your Honor. If you kind of blow up	01:51:54PM	6	I understand you audited both the tribal trust funds and the
01:48:43PM 0	the heading there so Mr. Ziler can confirm that this is the	01:51:59PM 01:52:01PM	7	individual Indian money trust, correct? A. Yes.
01:48:46PM 8	document that I just referred to.	01:52:01PM	8	<b>Q.</b> All my questions have to do with IIM, okay?
01:48:51PM 9	A. Correct.	01:52:05PM	9	A. Understood.
01:48:52PM 10	<b>Q.</b> Mr. Ziler, if at any point I show you documents there on	01:52:06PM		Q. Now, let's look over at page five, the next page. And down
01:48:56PM <b>11</b>	the screen that are not large enough, tell us and we'll blow up	01:52:21PM		toward the bottom of the page you'll see the heading Analyzed
01:49:00PM <b>12</b>	those sections, okay?	01:52:24PM		Amounts Recorded by the Bureau in the trust fund's financial
01:49:01PM <b>13</b>	A. Okay.	01:52:27PM	13	reporting systems, and if you will take a moment and read the
01:49:01PM <b>14</b>	Q. Now, if we might turn to page the document as it will be	01:52:34PM	14	first approximately eight lines of that paragraph to yourself.
01:49:12PM 15	submitted to the Court on electronic form has page numbers one	01:52:39PM	15	A. Okay.
01:49:17PM <b>16</b>	through the end branded in the bottom left-hand corner, as	01:52:49PM	16	Q. As used in this report where it talks about the bureau's
01:49:20PM <b>17</b>	you'll see here on page one, your Honor, and we'll turn to page	01:52:52PM	17	finance system, what is that?
01:49:25PM <b>18</b>	four of the exhibit as presented to the Court, please. And if	01:52:53PM	18	A. That's the equivalent of a general ledger and a corporation
01:49:36PM <b>19</b>	you will blow that up at the top where it says "executive	01:52:58PM	19	that would be the summary level in which account balances were
01:49:39РМ 20	summary" and the date, and this is an executive summary that you	01:53:04PM	20	kept, not to the individual beneficiary level, but just a
01:49:49PM <b>21</b>	and others at Arthur Andersen prepared and dated March 23rd,	01:53:09PM	21	summary account, financial accounting system.
01:49:54PM <b>22</b>	1989; is that correct?	01:53:12PM	22	<b>Q.</b> And do you see down a little bit, and I have it
01:49:55PM <b>23</b>	A. Correct.	01:53:16PM	23	highlighted, where it refers to then that the finance system is
01:49:57PM <b>24</b>	Q. I want to show you some highlighted language, if we can	01:53:21PM	24	not reconciled with some of the subsidiary systems, including
01:49:59РМ 25	bring that up here on page four of Exhibit 31. And we are now	01:53:25PM	25	the Integrated Resource Management System, or IRMS?
	Jacqueline M. Sullivan, RPR			Jacqueline M. Sullivan, RPR
	Official Court Reporter			Official Court Reporter

	113	1		115
1	A. Correct.		1	
01:53:30PM <b>2</b>	_	01:56:52PM	2	to the financial system.
	, , , , , , , , , , , , , , , , , , , ,	01:56:54PM	∠ 3	Q. Okay. Now, I want to ask you about some of the specific
01:53:33PM 3	audit years that you were involved with?	01:56:58PM	-	weaknesses or problems that are noted on this page, and let's
01:53:34PM 4	A. First it should be understood that the reason they're out	01:57:03PM	4	start with paragraph number two here on page six of Plaintiffs'
	of balance is they're input from different sources, so it's not	01:57:08PM	5	Exhibit 31. If you would look at that.
01:53:43PM 6	an integrated system. That word, integrated, is a little bit	01:57:14PM	6 7	<b>A.</b> Yes. It's the one about the multiple accounting systems
01:53:46PM 7	misleading because it was not integrated with the general ledger	01:57:18PM	7	that had various data entry points that were not in agreement
01:53:50PM 8	system, so they had different sources of input and there were	01:57:22PM	8	with each other, nor was there really an attempt for the most
01:53:54PM 9	differences. I think the first year at the end of 1988 the two	01:57:27PM	9	part to reconcile the systems, and as a matter of fact, at one
01:53:59PM 10	systems were out of balance between \$2 million and \$3 million,	01:57:32PM		point we asked the Bureau of Management I think the first year
01:54:02PM 11	closer to \$3 million, and then over time, I think in '89, that	01:57:37PM		whether they'd be able to go back and compute the original \$3
01:54:10PM 12	number grew to something like \$11 million, and by 1990 I think	01:57:41PM		million issue and they declined to attempt at that time. They
01:54:17PM 13	the systems were out of balance between \$19 and \$20 million, so	01:57:44PM		said they didn't think it was possible.
01:54:20PM 14	the difference kept growing.	01:57:45PM		<b>Q.</b> Well, this is the problem you alluded to earlier where you
01:54:22PM 15	<b>Q.</b> Okay. And when we're talking about they're out of balance,	01:57:48PM	-	have multiple systems with multiple points of entry; is that
01:54:27PM 16	we're talking about two separate systems, both of them BIA	01:57:53PM		correct?
01:54:32PM 17	systems?	01:57:53PM		A. Correct.
01:54:32PM 18	A. Yes. In other words, if you added up all of the individual	01:57:54PM		<b>Q.</b> Item three, it refers in item three to accounting entries
01:54:35PM <b>19</b>	Indian monies accounts within the accounting system and ran a	01:58:06PM		being posted on a decentralized basis without adequate review.
01:54:41PM <b>20</b>	total of them, they would not agree to the general ledger	01:58:10PM		When you talk about decentralized basis, what did you mean?
01:54:43PM <b>21</b>	balance.	01:58:13PM		<b>A.</b> An entry being made at an area office or at an agency
01:54:44PM <b>22</b>	<b>Q.</b> Should those two totals agree?	01:58:21PM		office that was not subjected to any form of supervisory review,
01:54:46PM 23	A. Correct, yes.	01:58:31PM		either in the field or the centralized location.
01:54:47PM 24	<b>Q.</b> You just told us some amounts ranging from \$2 million to	01:58:34PM		Q. And that is a problem?
01:54:51PM <b>25</b>	\$19, million to \$20 million. Does that tell you what the true	01:58:35PM	25	<b>A.</b> Well, yes. When information gets into a system there
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01:54:54PM 1	scope of the issue is?	01:58:43PM	1	should be a review process. The document theory support should
01:54:55PM 2	<b>A.</b> No, because you don't know whether either one of them is	01:58:48PM	2	be reviewed just to make sure that there's evidence that it's an
01:54:59PM 3	correct. We were unable to establish that either balance was	01:58:52PM	3	appropriate entry, and some of the entries being made did not
01:55:07PM <b>4</b>	correct.	01:58:58PM	4	necessarily make sense, nor could we tell why they had been made
01:55:07PM 5	<b>Q.</b> Okay. Let's look, then, over at the next page at the top.	01:59:06PM	5	or whether anyone had ever reviewed their accuracy.
01:55:23PM 6	I don't have it highlighted here, but could you pull that up,	01:59:09PM	6 	<b>Q.</b> This comes up in a couple of these items. In some places
01:55:25PM 7	the first full paragraph, and highlight or blow it up for us?	01:59:15PM	1	in the report it talks about a lack of standardization
01:55:31PM 8	And Mr. Ziler, it says here that these errors and the	01:59:18PM	8	A. Yes.
01:55:38PM 9	related adjustments result from a wide variety of procedural	01:59:18PM	9	<b>Q.</b> between the various offices. Can you describe what you
01:55:41PM 10	weaknesses, some of which are material weaknesses in accounting	01:59:22PM		found when Arthur Andersen began this audit in terms of any
01:55:43PM 11	systems and internal control procedures utilized by the bureau,	01:59:26PM		standardization between the various agencies and area offices?
01:55:47PM 12	and other problems such as inadequate training and supervision	01:59:31PM		<b>A.</b> We didn't go to every single office. I think maybe around
01:55:51PM 13	of personnel and personnel shortages. It goes on in the next	01:59:35PM		somewhere around maybe a hundred plus, I believe we went to
01:55:55PM 14	sentence and says, Certain of these weaknesses are so pervasive	01:59:38PM		maybe 25 agency offices and maybe half the area offices.
01:56:00PM 15	and fundamental as to render the accounting systems unreliable.	01:59:45PM		Q. And there were twelve area offices?
01:56:05PM 16	What do you mean by "unreliable"?	01:59:49PM		<b>A.</b> Yes. And in that process we were looking for, you know, to
01:56:07PM 17	<b>A.</b> We concluded that the systems could not be relied upon to	01:59:53PM		try to develop a standard audit program. We said, well, this
01:56:12PM 18	capture the transactions they were supposed to capture or the	01:59:57PM		should be a program that we could use to audit every agency or
01:56:16PM 19	balances they were supposed to capture, and we knew of accounts	02:00:01PM		area office, and we went there. What we thought we understood
01:56:23PM 20	that were incorrect just by the fact that the trust liability	02:00:05PM		going in and what we could test, we either found we couldn't
01:56:29PM 21	was a debit balance versus a credit balance, and the related	02:00:09PM		test it because the procedure didn't exist or the documentation
01:56:32PM 22	assets in some cases were credit balances rather than debit	02:00:12PM		didn't exist, or that's not what they were doing at that
01:56:36PM 23	balances, which is impossible. We knew that there were missing	02:00:15PM		particular office, so the audit process broke down to a large
01:56:40PM 24	accounts. Just the fact that they did not balance with one	02:00:19PM		extent because there was anything used as a preconceived notion
01:56:46PM <b>25</b>	another, a variety of issues that just did not lend credibility	02:00:25PM	20	about what to expect it did not exist.
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02:00:28PM	Q. When you look at automated information in the accounting	02:03:21PM	Q. Tell us what's been addressed here to the extent you've not
02:00:34PM 2	system from one office and compare it to the other offices, did	02:03:26PM 2	already described this.
02:00:38PM 3	this lack of standardization mean that it was difficult to	02:03:29PM 3	A. Certain accounting systems were centrally managed, like the
02:00:43PM <b>4</b>	compare between offices at times?	02:03:33PM <b>4</b>	finance system. There were other subsystems that existed in the
02:00:45PM 5	A. Yes.	02:03:38PM 5	field locations that were modified on sort of an ad hoc basis,
02:00:45PM 6	Q. Let me ask you to look at item number five.	02:03:45PM 6	and so you could take different locations operating in the same
02:00:47PM <b>7</b>	MR. KIRSCHMAN: Your Honor, at this point I'm going to	02:03:49PM 7	system and modifications had been made to the system so they
02:00:49PM 8	raise an objection. We've listened to this line of inquiry for	02:03:52PM 8	weren't standard from one place to the other so they were not
02:00:52PM 9	a while and it is not relevant to the scope of this trial as you	02:03:55PM 9	using the same programs and they had the ability to change them
02:00:56PM 10	set it out related to the dollar signs, and so objection;	02:03:59PM 10	on site.
02:01:03PM <b>11</b>	relevance.	02:04:00PM <b>11</b>	Q. Now, looking then at the next one talking about record
02:01:03PM <b>12</b>	THE COURT: I'm going to hear it. Thank you.	02:04:05PM 12	retention and filing procedures, how is that related to a lack
02:01:09PM 13	Objection overruled.	02:04:11PM 13	of internal accounting controls?
02:01:09PM <b>14</b>	BY MR. DORRIS:	02:04:13PM <b>14</b>	A. When there are poor accounting records the accountability
02:01:09PM 15	Q. Looking at item five, if you will read that to yourself, it	02:04:23PM 15	requirement basically disappears because there is no way to
02:01:14PM 16	addresses inadequate segregation of duties?	02:04:26PM 16	determine whether a transaction was properly documented or
02:01:18PM 17	A. Yes.	02:04:28PM 17	whether it was appropriate in the first place, and when we
02:01:18PM <b>18</b>	Q. And it says, for example, in many locations the same	02:04:33PM 18	attempted to review records at the field locations often times
02:01:23PM <b>19</b>	employees transfer assets among accounts and open new accounts	02:04:39PM <b>19</b>	either it was evident that transactions were not originally
02:01:26PM <b>20</b>	resulting in the opportunity for intentional or unintentional	02:04:42PM <b>20</b>	documented or that for some reason the documentation had
02:01:31PM <b>21</b>	misuse of resources. What's the problem that you're talking	02:04:46PM <b>21</b>	disappeared.
02:01:34PM <b>22</b>	about there?	02:04:47PM <b>22</b>	Q. Okay. Now, let me ask you, we've been talking about issues
02:01:34PM <b>23</b>	A. Well, that kind of ties back to the journal entries that	02:04:52PM 23	just with inside BIA's own systems and in terms of lack of
02:01:38PM <b>24</b>	are unreviewed that we just discussed previously, and what	02:04:58PM 24	internal controls. Do those same problems that you talk about
02:01:43PM <b>25</b>	happens is if a beneficiary, a beneficiary's account well,	02:05:03PM 25	here in terms of lack of internal controls, how does that relate
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	Official Court Reporter		Official Court Reporter
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02:01:55PM <b>1</b>	118 let me just say this. A beneficiary's account could be changed	02:05:08PM <b>1</b>	120 to trying to ensure that a system is not subject to
02:01:55PM <b>1</b> 02:01:58PM <b>2</b>		02:05:08PM 1 02:05:13PM 2	
2	let me just say this. A beneficiary's account could be changed	-	to trying to ensure that a system is not subject to
02:01:58PM 2	let me just say this. A beneficiary's account could be changed in the field at a location without review, so if you were trying	02:05:13PM 2 02:05:16PM 3 02:05:21PM 4	to trying to ensure that a system is not subject to misappropriation or misuse or fraud?
02:01:58PM 2 02:02:02PM 3 02:02:05PM 4 02:02:05PM 5	let me just say this. A beneficiary's account could be changed in the field at a location without review, so if you were trying to get a beneficiary some money, you just made a journal entry to transfer a credit balance to their trust fund account and then you would write them a check, whether they really were	02:05:13PM 2 02:05:16PM 3 02:05:21PM 4 02:05:24PM 5	to trying to ensure that a system is not subject to misappropriation or misuse or fraud? A. I'm not sure I'm following the question.
02:01:58PM 2 02:02:02PM 3 02:02:05PM 4 02:02:05PM 5 02:02:12PM 6	let me just say this. A beneficiary's account could be changed in the field at a location without review, so if you were trying to get a beneficiary some money, you just made a journal entry to transfer a credit balance to their trust fund account and	02:05:13PM 2 02:05:16PM 3 02:05:21PM 4 02:05:24PM 5 02:05:26PM 6	to trying to ensure that a system is not subject to misappropriation or misuse or fraud? A. I'm not sure I'm following the question. Q. Okay. In other words, what is the purpose of having strong
02:01:58PM 2 02:02:02PM 3 02:02:05PM 4 02:02:05PM 5 02:02:12PM 6 02:02:12PM 7	let me just say this. A beneficiary's account could be changed in the field at a location without review, so if you were trying to get a beneficiary some money, you just made a journal entry to transfer a credit balance to their trust fund account and then you would write them a check, whether they really were entitled to it or not, and that lack of segregation of controls is very fundamental in like any business environment you try to	02-05:13PM 2 02-05:16PM 3 02-05:21PM 4 02:05:24PM 5 02:05:26PM 6 02:05:26PM 7	<ul> <li>to trying to ensure that a system is not subject to misappropriation or misuse or fraud?</li> <li>A. I'm not sure I'm following the question.</li> <li>Q. Okay. In other words, what is the purpose of having strong internal controls over the accounting system?</li> <li>A. Well, the internal controlled environment should be designed. It's typically designed to ensure that upper</li> </ul>
02.01.58PM         2           02.02.02PM         3           02.02.03PM         4           02.02.03PM         5           02.02.03PM         6           02.02.13PM         7           02.02.13PM         7           02.02.13PM         8	let me just say this. A beneficiary's account could be changed in the field at a location without review, so if you were trying to get a beneficiary some money, you just made a journal entry to transfer a credit balance to their trust fund account and then you would write them a check, whether they really were entitled to it or not, and that lack of segregation of controls is very fundamental in like any business environment you try to keep the accounting versus the handling of the actual cash	02.05.13PM         2           02.05.16PM         3           02.05.21PM         4           02.05.24PM         5           02.05.24PM         6           02.05.24PM         7           02.05.24PM         7           02.05.24PM         8	<ul> <li>to trying to ensure that a system is not subject to misappropriation or misuse or fraud?</li> <li>A. I'm not sure I'm following the question.</li> <li>Q. Okay. In other words, what is the purpose of having strong internal controls over the accounting system?</li> <li>A. Well, the internal controlled environment should be designed. It's typically designed to ensure that upper management can set parameters about how transactions should</li> </ul>
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	121			123
02:06:55PM	<b>Q.</b> And the first type of asset that's referred to there is	02:10:41PM	1	I think there was a quantification of the lost interest up in
02:07:00PM <b>2</b>	cash, and would you take a moment and read that paragraph to	02:10:46PM	2	the millions of dollars, and there was no so the treasury did
02:07:04PM 3	yourself?	02:10:52PM	3	not know they had a deposit because they weren't told they had a
02:07:05PM 4	A. Okay.	02:10:56PM	4	deposit.
02:07:30PM 5	<b>Q.</b> Mr. Ziler, this is talking about treasury functioning as a	02:10:57PM	5	<b>Q.</b> Okay. Because of this is it possible for money to be
02:07:37PM 6	bank and disbursing agent for the bureau. Describe that for us.	02:11:00PM	6	deposited into treasury from the IIM trust but to never be
02:07:40PM 7	A. Okay. U.S. treasury was the bureau's checking account. It	02:11:06PM	7	accounted for by BIA?
02:07:52PM 8	was where the bureau received deposits and the account from	02:11:08PM	8	MR. KIRSCHMAN: Objection; calls for speculation.
02:07:55PM 9	which it made disbursements, so all cash activity took place	02:11:11PM	9	He's a fact witness. We established that.
02:08:00PM 10	through treasury. The problem we had, as pointed out here, was	02:11:21PM	10	THE COURT: I'll sustain that. Can you give me a
02:08:07PM <b>11</b>	that initially going in we thought that the treasury was going	02:11:23PM	11	better foundation for that? Is it possible for money to be
02:08:10PM <b>12</b>	to be able to confirm the bank account like you would when you	02:11:27PM	12	deposited?
02:08:14PM <b>13</b>	get a monthly statement from your bank on your own personal	02:11:28PM	13	MR. DORRIS: Okay.
02:08:17PM <b>14</b>	account. You'd have a balance and you can reconcile your cash	02:11:28PM	14	BY MR. DORRIS:
02:08:21PM 15	account to it, but early into our work we came to the	02:11:30PM	15	Q. As part of Arthur Andersen's internal control process are
02:08:27PM 16	realization that treasury said they would not be able to provide	02:11:35PM	16	checks of BIA's internal accounting controls. You've indicated
02:08:29PM 17	a confirmation of the account, nor did they maintain that	02:11:40PM	17	that you communicated with treasury and grew to have an
02:08:33PM 18	information, nor had they previously maintained that	02:11:45PM	18	understanding of how treasury and BIA worked together with
02:08:38PM 19	information, so that is a severe constraint on the bureau's	02:11:49PM	19	respect to what you've referred to here as essentially the
02:08:45PM <b>20</b>	ability to determine that its cash balance was correct at any	02:11:56PM 2	20	banking relationship?
02:08:48PM <b>21</b>	point in time.	02:11:57PM 2	21	A. Well, within my, you know, I don't have a good view behind
02:08:49PM <b>22</b>	And what's more, when we talked to people at treasury	02:12:01PM 2	22	the curtain of what goes on at treasury, but from my
02:08:53PM 23	we were informed that all they knew of was the information that	02:12:05PM 2	23	understanding the only record of deposits into the bureau
02:08:56PM <b>24</b>	went in and out of the account, all the bureau's accounts,	02:12:12PM 2	24	account at treasury was from the bureau, and those the
02:09:00РМ 25	whether they were trust accounts or operating accounts or	02:12:19PM 2	25	treasury depended on the bureau to correctly code and enter that
	Jacqueline M. Sullivan, RPR			Jacqueline M. Sullivan, RPR
	Official Court Reporter			Official Court Reporter
	122			124
02:09:05PM	whatever they were. Based on the coding that the bureau	02:12:26PM	1	information to get it into the right accounts. If it was mis-
02:09:05PM 1 02:09:09PM 2	whatever they were. Based on the coding that the bureau provided, and they did not independently check that information,		1 2	
			-	information to get it into the right accounts. If it was mis-
02:09:09PM 2	provided, and they did not independently check that information,	02:12:30PM	2	information to get it into the right accounts. If it was mis- coded it could have gone into an account other than a trust
02:09:09PM 2 02:09:14PM 3 02:09:19PM 4 02:09:24PM 5	provided, and they did not independently check that information, so the treasury's information source even to confirm activity	02:12:30PM 02:12:34PM	2 3 4 5	information to get it into the right accounts. If it was mis- coded it could have gone into an account other than a trust account and, you know, that we know for one period of time I
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02:09:09PM         2           02:09:14PM         3           02:09:19PM         4           02:09:24PM         5           02:09:28PM         6           02:09:29PM         7	provided, and they did not independently check that information, so the treasury's information source even to confirm activity back to us was based on information that was provided by the bureau itself. The bureau could only reconcile with itself, not with any banker. <b>Q.</b> And could the bureau actually even reconcile within its own	02:12:30PM 02:12:34PM 02:12:39PM 02:12:42PM 02:12:48PM 02:12:53PM	2 3 4 5 6 7	information to get it into the right accounts. If it was mis- coded it could have gone into an account other than a trust account and, you know, that we know for one period of time I believe because the bureau found it itself. There was a substantial amount of money that was deposited with treasury and the treasury did not know about it until the bureau said, oops, we found it, so they happened to catch it in that instance. I
02:09:08PM         2           02:09:14PM         3           02:09:14PM         4           02:09:24PM         5           02:09:24PM         6           02:09:28PM         7           02:09:38PM         8	provided, and they did not independently check that information, so the treasury's information source even to confirm activity back to us was based on information that was provided by the bureau itself. The bureau could only reconcile with itself, not with any banker. Q. And could the bureau actually even reconcile within its own accounting systems?	02:12:30PM 02:12:34PM 02:12:39PM 02:12:42PM 02:12:48PM 02:12:53PM 02:12:56PM	2 3 4 5 6 7 8	information to get it into the right accounts. If it was mis- coded it could have gone into an account other than a trust account and, you know, that we know for one period of time I believe because the bureau found it itself. There was a substantial amount of money that was deposited with treasury and the treasury did not know about it until the bureau said, oops, we found it, so they happened to catch it in that instance. I would believe there's the potential certainly for it to happen
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evenance9sent both of those type of requests.excesser9that it was for the legitimate purpose it was supposed to be10Q. Okay. At the second paragraph under this heading indicates10Gr. okay. At the second paragraph under this heading indicates1011a significant portion of the confirmation requests were not10Gr. okay. At the second paragraph under this heading indicates1012returned to us, and in addition, the confirmation requests which11were returned to us indicated both disagreements in certain1213were returned to us indicated both disagreements in certain13Q. Okay. Let's look now toward the bottom of the page, and14instances and simply apply an inability to confirm cumulative13Q. Okay. Let's look now toward the bottom of the page, and14instances and/or activity in many instances. Describe for us, if111015balances and/or activity in many instances. Describe for us, if1216A. I guess I'd use the term "alarming." Out of, say, five1217C. P.A. when these confirmations, we received responses that1218A. I guess I'd use the term "alarming." Out of, say, five1217Was, and in '88, in 1988, so that was like one out of every six1218Yes. It's a little different situation. Here you have19A. Yes. It's a little different situation. Here you have19was, and in '88, in 1988, so that was like one out of every six1211was, and in '88, in 1988, so that was like one out of every six12 </th <th>02:16:26PM 8</th> <th></th> <th>02:20:00PM 8</th> <th></th>	02:16:26PM 8		02:20:00PM 8	
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19hundred positive confirmations, we received responses that indicated agreement of only about seventy accounts, I think it was, and in '88, in 1988, so that was like one out of every six or seven beneficiaries agreed with their account balance. The rest of them either didn't respond or in many cases provided confirmations that said that they really didn't agree with what was on the statement.19A. Yes. It's a little different situation. Here you have children and someone who are beneficiaries, that someone in their custody is supposed to be looking out for their best interest in making sure that they authorize the payments for the minor's benefit, and in a number of cases we saw disbursements custored was on the statement.21was on the statement.22110PM23relationship with the individual or their guardian.	02:17:10PM <b>18</b>		02:20:41PM <b>18</b>	, i i i i i i i i i i i i i i i i i i i
02:17:22PM20indicated agreement of only about seventy accounts, I think it was, and in '88, in 1988, so that was like one out of every six or seven beneficiaries agreed with their account balance. The rest of them either didn't respond or in many cases provided confirmations that said that they really didn't agree with what was on the statement.20children and someone who are beneficiaries, that someone in their custody is supposed to be looking out for their best interest in making sure that they authorize the payments for the minor's benefit, and in a number of cases we saw disbursements custody is supposed to the secounts that didn't have any identifiable relationship with the individual or their guardian.			02:20:47PM <b>19</b>	· · · · · · · · · · · · · · · · · · ·
02:17:39PM22or seven beneficiaries agreed with their account balance. The rest of them either didn't respond or in many cases provided02:17:39PM22interest in making sure that they authorize the payments for the minor's benefit, and in a number of cases we saw disbursements02:17:39PM24confirmations that said that they really didn't agree with what was on the statement.02:11:0PM24coming out of these accounts that didn't have any identifiable relationship with the individual or their guardian.	02:17:22PM <b>20</b>		02:20:51PM <b>20</b>	-
02:17:33PM22or seven beneficiaries agreed with their account balance. The rest of them either didn't respond or in many cases provided02:100PM22interest in making sure that they authorize the payments for the minor's benefit, and in a number of cases we saw disbursements02:17:33PM24confirmations that said that they really didn't agree with what was on the statement.02:11:00PM24coming out of these accounts that didn't have any identifiable relationship with the individual or their guardian.	02:17:27PM <b>21</b>		02:20:55PM <b>21</b>	
02.17.37PM23rest of them either didn't respond or in many cases provided02.17.46PM23minor's benefit, and in a number of cases we saw disbursements02.17.46PM24confirmations that said that they really didn't agree with what02.11.46PM24coming out of these accounts that didn't have any identifiable02.17.46PM25was on the statement.02.21.14PM25relationship with the individual or their guardian.	02:17:33PM <b>22</b>	-	02:21:00PM <b>22</b>	
2217.44PM 25 was on the statement. 25 relationship with the individual or their guardian.	02:17:37PM <b>23</b>		02:21:04PM <b>23</b>	
25 was on the statement. 25 relationship with the individual or their guardian.	02:17:43PM <b>24</b>	confirmations that said that they really didn't agree with what	02:21:10PM <b>24</b>	coming out of these accounts that didn't have any identifiable
	02:17:46PM 25		02:21:14PM <b>25</b>	
		Jacqueline M. Sullivan, RPR		Jacqueline M. Sullivan, RPR
Official Court Reporter Official Court Reporter				·

		129				131
02:21:17PM	1	Q. Okay. And so this is then where a disbursement was going	02:24:53PM	1	more	e likely than not from what we saw the money was taken and
02:21:22PM	2	to someone that wasn't even on the account?	02:24:57PM	2		ged to somebody's account or a special deposit account where
02:21:24PM	3	A. There could have been a legitimate purpose, but we weren't	02:25:00PM	3		is really difficult, there was no one person that could say,
02:21:28PM	4	able to establish it.	02:25:04PM	4		where did the money go, because it was sort of a commingled
02:21:29PM	5	Q. Okay. The last disbursement issue I want to ask you about	02:25:09PM	5		unt, so we saw more of that than we did that we had any
02:21:33PM	6	in terms of noncompliance is over on page 26, the bottom half of	02:25:14PM	6		reness of checks being taken and not being accounted for in
02:21:37PM	7	that page. As it comes up you'll see that it has to do with	02:25:18PM	7		system.
02:21:42PM	8	inadequate safeguarding of treasury checks. Would you read that	02:25:19PM	8	Q.	How many did you see? Was it ever processed?
02:21:46PM	9	paragraph to yourself?	02:25:22PM	9	A.	Some was.
02:21:48PM	0	A. Okay.	02:25:23PM	10	Q.	In what sorts of amounts?
02:21:59PM <b>1</b>	1	Q. This was talking about treasury checks at BIA. Can you	02:25:24PM	11	A.	I believe we are going to get
02:22:04PM	2	explain how that happens?	02:25:26PM	12	Q.	Go ahead.
02:22:06PM	3	A. Well, I believe every area office and agency had some	02:25:27PM	13	A.	into a discussion about that, but we had hearsay of a
02:22:13PM	4	ability to write checks on site using treasury check stock, and	02:25:32PM	14	num	ber of instances of fraud, but the only one that I had, have
02:22:19PM	5	they kept stacks of them sitting around. In some cases they	02:25:37PM	15	any	documentation on, was in the first quarter in '91. The
02:22:23PM	6	were unprotected, and we apparently noticed instances when we	02:25:42PM	16	-	wn Point area office had a complaint from an accountholder
02:22:30PM 1	7	went to one agency office here that's cited where they opened	02:25:49PM	17		we got engaged to go out and take a look to see what was
02:22:36PM 1	8	the vault, left it open. All the employees had the combination,	02:25:54PM	18	qoir	g on, and then that particular instance a lady there were
	9	but they left the safe open all day long unguarded and	02:26:01PM		-	ut 13,000 accounts at the Crown Point agency, so that's a lot
02:22:45PM 2	20	unprotected so that check stock, you can just pick up a stack of	02:26:07PM	20		M accounts. It's like four percent of the total, and there
02:22:49PM 2	21	it and take it.	02:26:11PM			apparently a lady there that had a lot of money flowing
	22	<b>Q.</b> Okay. And were there other safeguards in place regarding	02:26:15PM			ugh her account, but she lived in California. She came out
02:22:57PM 2	23	the treasury checks?	02:26:18PM	23		ne reservation periodically to pick up her money, and a
02:22:58PM 2		<b>A.</b> I think part of the problem is if you think about your own	02:26:22PM			ker there thought that as a matter of fact, when she saw
02:23:03PM 2	25	personal checking account you can say, well, last one I wrote	02:26:26PM	25		volume of money going through this lady's account the lady
		Jacqueline M. Sullivan, RPR				Jacqueline M. Sullivan, RPR
		Official Court Reporter				Official Court Reporter
		130				132
02:23:07PM	1		02:26:30PM	1	ever	
02:23:07PM 02:23:13PM	1 2	130 was 5641, so darn, I forgot to enter it, so you'll go back and you'll look to see where it was and you try to keep track of	02:26:30PM 02:26:33PM	1 2		132 n commented to her that, geez, I'm getting killed on income es for all this income I'm getting, and she says, I need a
		was 5641, so darn, I forgot to enter it, so you'll go back and			taxe	n commented to her that, geez, I 'm getting killed on income
02:23:13PM	2	was 5641, so darn, I forgot to enter it, so you'll go back and you'll look to see where it was and you try to keep track of	02:26:33PM	2	taxe char	n commented to her that, geez, I'm getting killed on income as for all this income I'm getting, and she says, I need a
02:23:13PM 02:23:16PM	2	was 5641, so darn, I forgot to enter it, so you'll go back and you'll look to see where it was and you try to keep track of them in sequence, and with a hundred different locations issuing checks, keeping track of the check stock and the used checks in	02:26:33PM 02:26:37PM	2 3	taxe char depe	n commented to her that, geez, I'm getting killed on income es for all this income I'm getting, and she says, I need a rity, so this lady decided in her deposition as her it's
02:23:13PM 02:23:16PM 02:23:20PM	2 3 4	was 5641, so darn, I forgot to enter it, so you'll go back and you'll look to see where it was and you try to keep track of them in sequence, and with a hundred different locations issuing	02:26:33PM 02:26:37PM 02:26:43PM	2 3	taxe char depe	n commented to her that, geez, I 'm getting killed on income as for all this income I 'm getting, and she says, I need a "ity, so this lady decided in her deposition as her it's osition, or what would you call that?
02:23:13PM 02:23:16PM 02:23:20PM 02:23:27PM	2 3 4 5	was 5641, so darn, I forgot to enter it, so you'll go back and you'll look to see where it was and you try to keep track of them in sequence, and with a hundred different locations issuing checks, keeping track of the check stock and the used checks in sequence was a virtual impossibility.	02:26:33PM 02:26:37PM 02:26:43PM 02:26:44PM	2 3 4 5	taxe char depe <b>Q.</b> <b>A.</b>	n commented to her that, geez, I'm getting killed on income es for all this income I'm getting, and she says, I need a rity, so this lady decided in her deposition as her it's osition, or what would you call that? You're correct.
02:23:13PM 02:23:16PM 02:23:20PM 02:23:27PM 02:23:29PM	2 3 4 5 6	was 5641, so darn, I forgot to enter it, so you'll go back and you'll look to see where it was and you try to keep track of them in sequence, and with a hundred different locations issuing checks, keeping track of the check stock and the used checks in sequence was a virtual impossibility. <b>Q.</b> Okay. Now, let me ask you, I want to look at an instance	02:26:33PM 02:26:37PM 02:26:43PM 02:26:44PM 02:26:46PM	2 3 4 5	taxe char depe Q. A. she'	n commented to her that, geez, I'm getting killed on income es for all this income I'm getting, and she says, I need a rity, so this lady decided in her deposition as her it's osition, or what would you call that? You're correct. Her interview. With the IG she said that she just thought
02:23:13PM 02:23:16PM 02:23:20PM 02:23:27PM 02:23:29PM 02:23:34PM	2 3 4 5 6 7	was 5641, so darn, I forgot to enter it, so you'll go back and you'll look to see where it was and you try to keep track of them in sequence, and with a hundred different locations issuing checks, keeping track of the check stock and the used checks in sequence was a virtual impossibility. <b>Q.</b> Okay. Now, let me ask you, I want to look at an instance of noncompliance that deals with	02:26:33PM 02:26:37PM 02:26:43PM 02:26:44PM 02:26:46PM 02:26:51PM	2 3 4 5 6 7	taxe char depo <b>Q.</b> <b>A.</b> she' acco	n commented to her that, geez, I'm getting killed on income es for all this income I'm getting, and she says, I need a rity, so this lady decided in her deposition as her it's osition, or what would you call that? You're correct. Her interview. With the IG she said that she just thought d take it upon herself to be that charity, and in her
0223:13PM 0223:16PM 0223:20PM 0223:27PM 0223:28PM 0223:34PM 0223:36PM 0223:36PM	2 3 4 5 6 7 8	<ul> <li>was 5641, so darn, I forgot to enter it, so you'll go back and you'll look to see where it was and you try to keep track of them in sequence, and with a hundred different locations issuing checks, keeping track of the check stock and the used checks in sequence was a virtual impossibility.</li> <li>Q. Okay. Now, let me ask you, I want to look at an instance of noncompliance that deals with THE COURT: Before you leave this check question, what</li> </ul>	02:26:33PM 02:26:37PM 02:26:43PM 02:26:44PM 02:26:54PM 02:26:56PM	2 3 4 5 6 7 8 9	taxe char depe Q. A. she' acco area	n commented to her that, geez, I'm getting killed on income es for all this income I'm getting, and she says, I need a rity, so this lady decided in her deposition as her it's osition, or what would you call that? You're correct. Her interview. With the IG she said that she just thought d take it upon herself to be that charity, and in her ount and her boyfriend's account, who was also an area IIM
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	100	1	405
02:28:21PM 1	133	1	135
-	have subpoenas or the IG didn't have subpoenas for their bank	02:32:03PM	A. Yes.
2	account records so we couldn't look at the other side of it, but	02:32:03PM 2	
	it was, I mean, there were hundreds of thousands of dollars that		weaknesses, this report identifies 59 specific findings. I want to ask you briefly about three.
02:28:31PM 4	were problems at that one location.	F	A. Okay.
6	<b>Q.</b> Thank you. In the one instance that you talked about, this		_
7	one employee, and I think you said about one hundred fifty-five	7	<b>Q.</b> If we'll turn to page 47 of Plaintiffs' Exhibit 31. This
	thousand, that she had a couple of different schemes, but did		is where it talks about inability to reconcile cash, including
0	all of them involve access to treasury checks and writing treasury checks?	02:32:25PM 8	balances of vested overnight in the U.S. Treasury.
02:28:49PM 9	A. Yes. And, you know, then when we received the information,	02:32:39PM 9	MR. DORRIS: Your Honor, the computer went down and he's rebooting so it may take just a moment.
44		02:32:42PM 10 02:32:42PM 11	BY MR. DORRIS:
02:28:55PM 11 02:29:00PM 12	the documentation justifying those disbursements, they had	02:32:42PM 11 02:32:45PM 12	
40	disappeared, none of them had existed, and the only track we	02:32:45PM 12	at it.
02:29:09PM 13	could get on them was to get cancelled checks from treasury and	02:32:49PM 13	A. Okay.
45	find out whose accounts that they were going to, so it was a	02:32:49PM 14	_
1	very long process. It took a long time to do it, but the two	02:32:49PM 13	
47	mechanisms were just to write the check out to herself but turn	02:32:51PM 10	
40	in the carbon papers as though they were written out to the	02:32:52PM 17	<b>Q.</b> And on page 47 where it talks about this inability of
10	correct beneficiary. That was done. And then in another case	02:32:56PM 10 02:33:01PM 19	treasury and BIA to reconcile, it says this condition represents
	they were made out to a vendor name that ultimately got	02:33:01PM 19	a material weakness in an internal control. You say this about
02:29:39PM 20 02:29:42PM 21	deposited into her account, so two schemes.	02:33:06PM 20 02:33:13PM 21	a couple of them, but was this in Arthur Andersen's material
02:29:42PM <b>21</b> 02:29:47PM <b>22</b>	<b>Q.</b> Let me ask you now to look at the bottom of page 25 of	02:33:13PM <b>21</b> 02:33:16PM <b>22</b>	weakness in connection with internal accounting controls?
02:29:47PM 22 02:29:53PM 23	Plaintiffs' Exhibit 31. And this is the one item, a	02:33:16PM <b>22</b> 02:33:19PM <b>23</b>	<ul> <li>A. Probably the largest concern before anything.</li> <li>A. Now, the part interpol control workpace that I want to ask</li> </ul>
02:29:53PM 23	noncompliance dealing with receipts that I wanted to ask you	02:33:19PM 23 02:33:27PM 24	<b>Q.</b> Now, the next internal control weakness that I want to ask
02:29:55PM 24	about. It's titled Proper Recording and Safeguarding of Cash	02:33:27PM 24	you about has to do with the IIM accounts, and it begins on page
02:30:05PM LJ	Receipts, and then you see it cites to a particular section. It	02:33:31PM LJ	61 when our system comes back up, and it's talking about IIM
	Jacqueline M. Sullivan, RPR		Jacqueline M. Sullivan, RPR
	Official Court Reporter 134		Official Court Reporter 136
	134		
1	talks about only authorized employees designated in writing by		
02:30:11PM <b>1</b>	talks about only authorized employees designated in writing by	02:33:40PM 1	reconciliations. And it talks about being IRMS and the finance
02:30:13PM 2	proper authority will receive, handle, or deposit monies.	02:33:46PM 2	reconciliations. And it talks about being IRMS and the finance system being out of balance, and it states specific, we
02:30:13PM 2 02:30:17PM 3	proper authority will receive, handle, or deposit monies. A. Correct.	02:33:46PM 2 02:33:51PM 3	reconciliations. And it talks about being IRMS and the finance system being out of balance, and it states specific, we recommend that IRMS be reconciled to the finance system with
02:30:13PM 2 02:30:17PM 3 02:30:17PM 4	<ul><li>proper authority will receive, handle, or deposit monies.</li><li>A. Correct.</li><li>Q. And then if you'll go to the top of the next page, please,</li></ul>	02:33:46PM 2 02:33:51PM 3 02:33:55PM 4	reconciliations. And it talks about being IRMS and the finance system being out of balance, and it states specific, we recommend that IRMS be reconciled to the finance system with emphasis placed on area and agency offices with large
02:30:13PM 2 02:30:17PM 3 02:30:17PM 4 02:30:20PM 5	<ul> <li>proper authority will receive, handle, or deposit monies.</li> <li>A. Correct.</li> <li>Q. And then if you'll go to the top of the next page, please, that first full paragraph. And it goes on to the quote from the</li> </ul>	02:33:56PM 2 02:33:51PM 3 02:33:55PM 4 02:33:59PM 5	reconciliations. And it talks about being IRMS and the finance system being out of balance, and it states specific, we recommend that IRMS be reconciled to the finance system with emphasis placed on area and agency offices with large discrepancies between the two systems. That was Arthur was
02:30:17PM 2 02:30:17PM 3 02:30:17PM 4 02:30:20PM 5 02:30:28PM 6	<ul> <li>proper authority will receive, handle, or deposit monies.</li> <li>A. Correct.</li> <li>Q. And then if you'll go to the top of the next page, please, that first full paragraph. And it goes on to the quote from the manual, but it says employees in the realty division. If you'll</li> </ul>	02:33:54PM 2 02:33:51PM 3 02:33:55PM 4 02:33:59PM 5 02:34:04PM 6	reconciliations. And it talks about being IRMS and the finance system being out of balance, and it states specific, we recommend that IRMS be reconciled to the finance system with emphasis placed on area and agency offices with large discrepancies between the two systems. That was Arthur was that Arthur Andersen's recommendation on that point?
02:30:17PM 2 02:30:17PM 3 02:30:17PM 4 02:30:20PM 5 02:30:20PM 6 02:30:23PM 7	<ul> <li>proper authority will receive, handle, or deposit monies.</li> <li>A. Correct.</li> <li>Q. And then if you'll go to the top of the next page, please, that first full paragraph. And it goes on to the quote from the manual, but it says employees in the realty division. If you'll read that to yourself I want to ask some questions to you.</li> </ul>	02:33:54PM 2 02:33:51PM 3 02:33:55PM 4 02:33:55PM 5 02:34:04PM 6 02:34:04PM 7	reconciliations. And it talks about being IRMS and the finance system being out of balance, and it states specific, we recommend that IRMS be reconciled to the finance system with emphasis placed on area and agency offices with large discrepancies between the two systems. That was Arthur was that Arthur Andersen's recommendation on that point? <b>A.</b> It sounds like it from what you're saying. I don't have it
02:30:17PM         2           02:30:17PM         3           02:30:17PM         4           02:30:20PM         5           02:30:23PM         6           02:30:33PM         7	<ul> <li>proper authority will receive, handle, or deposit monies.</li> <li>A. Correct.</li> <li>Q. And then if you'll go to the top of the next page, please, that first full paragraph. And it goes on to the quote from the manual, but it says employees in the realty division. If you'll read that to yourself I want to ask some questions to you.</li> <li>A. Okay.</li> </ul>	02:33:46PM         2           02:33:55PM         3           02:33:55PM         4           02:33:55PM         5           02:34:04PM         6           02:34:04PM         7           02:34:04PM         8	reconciliations. And it talks about being IRMS and the finance system being out of balance, and it states specific, we recommend that IRMS be reconciled to the finance system with emphasis placed on area and agency offices with large discrepancies between the two systems. That was Arthur was that Arthur Andersen's recommendation on that point? <b>A.</b> It sounds like it from what you're saying. I don't have it in front of me, but it sounds like something we would have said,
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<u> </u>		<u> </u>	
4	137	4	139
02:35:26PM <b>1</b> 02:35:35PM <b>2</b>	the next page it continues on and says, Management at one agency	02:38:47PM <b>1</b> 02:38:48PM <b>2</b>	5.5
2	office indicated that a signature is not required by current	2	
02:35:38PM 3	regulations. In many cases money will be released based on a telephone call with formal documentation to follow. Was this	02:38:53PM <b>3</b> 02:38:58PM <b>4</b>	first one is a concern about not receiving disbursements checks. Let's look at the next page. If you can highlight what's
02:35:42PM <b>5</b>	adequate internal accounting controls over disbursements?	02:38:58PM 5	
02:35:51PM 6	A. No.	02:39:10PM 6	
02:35:51PM <b>7</b>	Q. Why do you say that?	02:39:10PM <b>7</b>	
02:35:52PM 8	<ul> <li>A. Well, you have there's no hurdle there to make sure that</li> </ul>	02:39:12PM	· · · · · · · · · · · · · · · · · · ·
02:35:53PM 9	the disbursement went to an appropriate party. If you're making	02:39:21PM 9	5
02:36:07PM 10	disbursements using phone calls as your basis for that support	02:39:31PM 10	
02:36:09PM 10	and leaving documentation to follow as how you're going to	02:39:36PM 10	5
02:36:19PM 12	perfect that transaction, that's pretty much of a hit-and-miss	02:39:39PM 12	
02:36:23PM 13	proposition.	02:39:43PM 13	
02:36:24PM 14	<b>Q.</b> Mr. Ziler, I want to get you to identify three exhibits.	02:39:48PM 14	5
02:36:28PM 15	I'm not going to ask you other questions, but I just want you to	02:39:54PM 15	
02:36:31PM 16	identify them here. Plaintiffs' Exhibit 32, if we could bring	02:39:56PM 16	5
02:36:34PM 17	up the first page, and once that's brought up can you identify	02:39:59PM 13	
02:36:34PM 17	that and confirm that it's the report by Arthur Andersen on	02:39:59PM 17	
02:36:40PM 10	compliance and internal controls for the next audit year, which	02:40:02PM 10	
02:36:44PM 19	is the one that ended September 30th, 1989?	02:40:02PM 13	5
02:36:52PM 21	A. That's correct.	02:40:08PM 23	
02:36:52PM 22	Q. Okay. Now, if you'll look at Plaintiffs' Exhibit 33, and I	02:40:08PM 22	
02:37:00PM 23	want you to confirm that that's the report on compliance and	02:40:10PM 23	
02:37:05PM 24	internal controls for 1990.	02:40:10PM 24	5
02:37:09PM 25	A. Yes.	02:40:13PM 25	
	Jacqueline M. Sullivan, RPR		Jacqueline M. Sullivan, RPR
	Official Court Reporter		Official Court Reporter
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02:37:09PM	<b>Q.</b> Now, you've also described for the judge an issue there at	02:40:19PM 1	at about 2:40 p.m.)
02:37:16PM <b>2</b>	the Crown Point agency, and is that on the Navaho reservation?	02:40:19PM 2	
02:37:21PM 3	A. Yes, it is.	02:40:58PM 3	THE COURT: Go ahead, Mr. Kirschman.
02:37:22PM <b>4</b>	Q. Can you bring up Plaintiffs' Exhibit 34, and look at the	02:41:00PM 4	BY MR. KIRSCHMAN:
02:37:26PM 5	next page. And can you confirm that those are the work papers	02:41:00PM 5	Q. Good afternoon, Mr. Ziler.
02:37:34PM 6	of Arthur Andersen with respect to this issue at the Crown Point	02:41:03PM 6	A. Good afternoon.
02:37:38PM 7	agency that you've described to Judge Robertson?	02:41:03PM 7	Q. I have some follow questions based on what you just
02:37:41PM 8	A. Yes, they are.	02:41:06PM 8	testified to.
02:37:42PM 9	<b>Q.</b> And finally, would you pull up, please, Plaintiffs' Exhibit	02:41:06PM 9	A. Okay.
02:37:46PM 10	35? And is Plaintiffs' Exhibit 35 a sample of about ten or	02:41:07PM <b>10</b>	<b>Q.</b> Are you being paid to testify today?
02:38:00PM 11	fifteen of the responses that Arthur Andersen received back from	02:41:11PM <b>11</b>	A. Yes.
02:38:05PM 12	accountholders in connection with this confirmation that you	02:41:12PM <b>12</b>	Q. And who are you being paid by?
02:38:10PM 13	went through? Could you bring up the	02:41:16PM <b>13</b>	A. The contract was, let's see, I believe signed by Elouise
02:38:16PM <b>14</b>	A. I can read it. I'm sorry. I can read it fine. Yes,	02:41:24PM <b>14</b>	Cobell. I can't remember the exact payment mechanism, but she
02:38:20PM 15	that's one of the positive confirmations we sent out.	02:41:29PM <b>15</b>	signed the contract.
02:38:22PM 16	Q. Now, when you say "positive confirmation," that's where you	02:41:30PM 16	Q. Okay. Your knowledge regarding the individual Indian money
02:38:26PM 17	send the confirmation asking them whether they agree or disagree	02:41:38PM 17	trust fund is limited to your work with Arthur Andersen; is that
02:38:29PM <b>18</b>	to respond?	02:41:42PM <b>18</b>	correct?
02:38:30PM 19	A. Right. It would have accompanied the statement that they	02:41:42PM <b>19</b>	A. Correct.
02:38:32PM <b>20</b>	received.	02:41:42PM <b>20</b>	Q. And you're testifying today to this Court about what you
02:38:33PM <b>21</b>	Q. I was asking that because when you say it's a positive	02:41:46PM <b>21</b>	know based on that work?
02:38:36PM <b>22</b>	confirmation, that wasn't coming back and saying everything was	02:41:47PM <b>22</b>	A. Correct.
02:38:40PM 23	okay?	02:41:48PM 23	Q. Is it correct to say that your work related to IIM trust
02:38:40PM <b>24</b>	A. No. It was that's a definition I used previously, and a	02:42:00PM <b>24</b>	accounts ended in 1992?
02:38:44PM <b>25</b>	positive confirmation is one where we ask for a response whether	02:42:04PM <b>25</b>	A. Possibly not. That was, let's see, '88, '89. We finished
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1	Official Court Banartar	1	Official Court Reporter
	Official Court Reporter		

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02:42:10PM <b>1</b>	the last audit probably in '91 and I continued on as managing	02:45:54PM	information, yes.
02:42:17PM <b>2</b>	partner of the office where the work was being performed on up	02:45:55PM <b>2</b>	Q. Did you review it?
02:42:23PM 3	to '99. At some point prior to '99 we stopped doing the work in	02:45:56PM 3	A. I skimmed it.
02:42:28PM <b>4</b>	the office.	02:45:58PM <b>4</b>	Q. For what purpose?
02:42:28PM 5	Q. I'm sorry. Some?	02:45:59PM 5	A. Just to get a general sense of what the status of the
02:42:29PM 6	A. At some point prior to '99 I don't believe we were doing	02:46:04PM 6	process was.
02:42:33PM 7	any more work in the office on the IIM accounts.	02:46:05PM <b>7</b>	Q. Now, you stated regarding the first audit for the period
02:42:37PM <b>8</b>	Q. At some point, Mr. Ziler, you became Andersen's assurance	02:46:22PM 8	ending September 30th, 1988 that you were requested to perform
02:42:49PM <b>9</b>	and business advisory services head, the head of Andersen's	02:46:28PM 9	that audit by the BIA, correct?
02:42:55PM 10	assurance and business advisory services prior to 1994?	02:46:31PM <b>10</b>	A. Correct.
02:43:02PM <b>11</b>	A. When I came to the Albuquerque office from the L.A. office	02:46:31PM <b>11</b>	Q. And in fact, I believe you testified that the BIA was aware
02:43:06PM <b>12</b>	that was what I became. That would have been like in 1984, so I	02:46:39PM 12	of its weaknesses, correct?
02:43:13PM 13	ran the audit and business advisory services practice out of the	02:46:41PM <b>13</b>	A. Correct.
02:43:19PM <b>14</b>	Albuquerque office for those years until I became managing	02:46:41PM <b>14</b>	Q. And did the BIA make it aware to you that they wanted to
02:43:23PM 15	partner probably in '91, '92; something like that.	02:46:46PM 15	correct those weaknesses?
02:43:27PM 16	Q. Okay. And when you became managing partner did you have	02:46:47PM 16	A. Well, I believe the whole process was designed to help
02:43:31PM 17	any direct involvement in the IIM trust accounts?	02:46:52PM 17	guard their weaknesses and get a better inventory of them. I'm
02:43:35PM 18	A. Not as the point person, but probably had some continuing	02:46:57PM <b>18</b>	not sure they were fully known, so I think the audit process
02:43:39PM 19	general awareness of what was going on.	02:47:03PM 19	illuminated some things.
02:43:41PM <b>20</b>	Q. Continuing what?	02:47:04PM 20	Q. Do you have any firsthand knowledge as to what BIA and the
02:43:42PM <b>21</b>	A. General awareness of what was going on. Other partners in	02:47:08PM <b>21</b>	Department of the Interior in general did subsequent to 1990 to
02:43:46PM <b>22</b>	the office were working on it.	02:47:12PM <b>22</b>	improve those processes?
02:43:47PM 23	<b>Q.</b> But you did not perform any work related to those accounts?	02:47:13PM 23	A. I haven't kept track of that.
02:43:50PM 24	<ul> <li>A. Not directly.</li> </ul>	02:47:16PM 24	Q. Have you ever seen or heard of the record depository in
02:43:51PM 25	Q. So it's fair to say that you did not do any work on these	02:47:24PM <b>25</b>	Lenexa, Kansas that houses documents?
01.000 mm	Jacqueline M. Sullivan, RPR	01.01.24 10	Jacqueline M. Sullivan, RPR
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02:43:58PM	accounts prior to 1994?	02:47:26PM	A. Something I saw referred to that.
02:43:56PM <b>2</b>		02:47:20PW	A Something I saw referred to that.
	Δ Subsequent to '94 or?	2	But that's the extent of your knowledge?
2	<ul> <li>A. Subsequent to '94 or?</li> <li>D. Prior to 1994 subsequent to 1994</li> </ul>	02:47:34PM 2	<ul><li>Q. But that's the extent of your knowledge?</li><li>A Yos</li></ul>
02:44:03PM 3	Q. Prior to 1994, subsequent to 1994.	02:47:35PM 3	A. Yes.
02:44:03PM 3 02:44:07PM 4	<ul> <li>Q. Prior to 1994, subsequent to 1994.</li> <li>A. No.</li> </ul>	02:47:35PM 3 02:47:35PM 4	<ul><li>A. Yes.</li><li>Q. So your testimony today is limited to what Arthur Andersen</li></ul>
02:44:03PM 3 02:44:07PM 4 02:44:07PM 5	<ul> <li>Q. Prior to 1994, subsequent to 1994.</li> <li>A. No.</li> <li>Q. When was the last time you saw Plaintiffs' Exhibits 31</li> </ul>	02:47:35PM 3 02:47:35PM 4 02:47:39PM 5	<ul> <li>A. Yes.</li> <li>Q. So your testimony today is limited to what Arthur Andersen saw or reported up to 1999 I'm sorry. Up to September 1990?</li> </ul>
02:44.03PM 3 02:44.07PM 4 02:44.07PM 5 02:44:35PM 6	<ul> <li>Q. Prior to 1994, subsequent to 1994.</li> <li>A. No.</li> <li>Q. When was the last time you saw Plaintiffs' Exhibits 31 through I believe it's 35 prior to preparing for this trial?</li> </ul>	02:47:35PM 3 02:47:35PM 4 02:47:39PM 5 02:47:39PM 6 02:47:47PM 6	<ul> <li>A. Yes.</li> <li>Q. So your testimony today is limited to what Arthur Andersen saw or reported up to 1999 I'm sorry. Up to September 1990?</li> <li>A. Correct.</li> </ul>
02:44:03PM 3 02:44:07PM 4 02:44:07PM 5 02:44:35PM 6 02:44:40PM 7	<ul> <li>Q. Prior to 1994, subsequent to 1994.</li> <li>A. No.</li> <li>Q. When was the last time you saw Plaintiffs' Exhibits 31 through I believe it's 35 prior to preparing for this trial?</li> <li>A. Were those the confirmations?</li> </ul>	02-47.35PM 3 02-47.35PM 4 02-47.35PM 5 02-47.35PM 6 02-47.50PM 7	<ul> <li>A. Yes.</li> <li>Q. So your testimony today is limited to what Arthur Andersen saw or reported up to 1999 I'm sorry. Up to September 1990?</li> <li>A. Correct.</li> <li>Q. For these audits what role did you personally play in</li> </ul>
02-44-03PM 3 02-44-07PM 4 02-44-07PM 5 02-44-07PM 6 02-44-3PM 7 02-44-43PM 8	<ul> <li>Q. Prior to 1994, subsequent to 1994.</li> <li>A. No.</li> <li>Q. When was the last time you saw Plaintiffs' Exhibits 31 through I believe it's 35 prior to preparing for this trial?</li> <li>A. Were those the confirmations?</li> <li>Q. I'm sorry?</li> </ul>	02-47-35PM 3 02-47-35PM 4 02-47-39PM 5 02-47-39PM 6 02-47-50PM 7 02-47-50PM 8	<ul> <li>A. Yes.</li> <li>Q. So your testimony today is limited to what Arthur Andersen saw or reported up to 1999 I'm sorry. Up to September 1990?</li> <li>A. Correct.</li> <li>Q. For these audits what role did you personally play in performance of the audit?</li> </ul>
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02-44.059M 3 02-44.05PM 4 02-44.05PM 5 02-44.35PM 6 02-44.35PM 6 02-44.45PM 7 02-44.45PM 9 02-44.44PM 9 02-44.44PM 10	<ul> <li>Q. Prior to 1994, subsequent to 1994.</li> <li>A. No.</li> <li>Q. When was the last time you saw Plaintiffs' Exhibits 31 through I believe it's 35 prior to preparing for this trial?</li> <li>A. Were those the confirmations?</li> <li>Q. I'm sorry?</li> <li>A. Were those the confirmation exhibits? I don't know what they are.</li> </ul>	02-47-35PM 3 02-47-35PM 4 02-47-35PM 5 02-47-35PM 6 02-47-50PM 7 02-47-50PM 8 02-47-50PM 8 02-48-01PM 9 02-48-06PM 10	<ul> <li>A. Yes.</li> <li>Q. So your testimony today is limited to what Arthur Andersen saw or reported up to 1999 I'm sorry. Up to September 1990?</li> <li>A. Correct.</li> <li>Q. For these audits what role did you personally play in performance of the audit?</li> <li>A. Well, I was the engagement partner, so I oversaw it, I coordinated it, I reviewed the work papers, I conferred with</li> </ul>
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	145	1	147
02:49:37PM <b>1</b>	A. Correct.	02:52:58PM	Whether or not all trust accounts are audited and reconciled, we
02:49:37PM <b>2</b>	Q. And that's because in that time frame there was enough	02:53:02PM <b>2</b>	believe that unidentified and unallocated balances exceeding a
02:49:41PM 3	information and paperwork for judgment accounts, correct?	02:53:07PM 3	specific dollar amount should be analyzed to the extent
02:49:44PM <b>4</b>	A. Well, there were a couple of factors. A judgment account	02:53:09РМ 4	reasonably possible in significant accounts for which account-
02:49:49PM 5	usually doesn't have a long history, so it has a defined start	02:53:13PM 5	holders indicate disagreement or misunderstanding should be
02:49:54PM 6	date that's within the recent enough past to where, you know,	02:53:15PM 6	analyzed and researched and discussed with the beneficiaries.
02:50:01PM 7	the trust period is over a limited number of years versus	02:53:18PM 7	Do you see that?
02:50:08PM 8	decades or centuries. So that was one factor. And another	02:53:18PM 8	A. Yes.
02:50:13PM 9	factor was judgment accounts are usually from a single source	02:53:19PM <b>9</b>	<b>Q.</b> Do you have any knowledge today whether in fact that work
02:50:15PM <b>10</b>	that makes the	02:53:23PM 10	has been done?
02:50:16PM <b>11</b>	Q. I'm sorry. I could not hear you.	02:53:24PM <b>11</b>	A. Well, this was written in 1989, and I believe before the
02:50:19PM <b>12</b>	A. Judgment accounts are usually from a single source so that	02:53:31PM <b>12</b>	end of the '90 audit, somewhere along that timeline, some of the
02:50:23PM 13	the money, you can kind of anticipate what should be going into	02:53:37PM <b>13</b>	unallocated balances that had been hung up in the special
02:50:26PM <b>14</b>	the account. It makes it easier to tackle, and it did cover a	02:53:41PM <b>14</b>	deposit accounts for years were analyzed and to the extent
02:50:32PM 15	fairly large number of dollars, so we did recommend that this be	02:53:45PM 15	possible the bureau made an effort to distribute some of those
02:50:38PM 16	undertaken. I don't know what subsequently happened, if that	02:53:48PM 16	funds, so to some extent I knew that part of the problem had
02:50:41PM <b>17</b>	was done or not.	02:53:55PM 17	been resolved prior to the completion of our three-year
02:50:42PM 18	<b>Q.</b> Do you recall in your communication with the Congressman	02:54:00PM 18	engagement. After that I lost track on it.
02:50:48PM 19	that you also suggested that, although there were issues	02:54:02PM <b>19</b>	Q. Okay. And for the record, this is an October 2nd, 1989
02:50:54PM <b>20</b>	regarding the documentation, that nonjudgment award account-	02:54:07PM <b>20</b>	letter from Arthur Andersen to representative Mike Cynar,
02:51:00PM 21	holders should not be ignored?	02:54:12PM <b>21</b>	Chairman of Environment, Energy and Natural Resource
02:51:02PM 22	<b>A.</b> Oh, I'm sure we did say that.	02:54:22PM <b>22</b>	Subcommittee.
02:51:08PM 23	Q. And do you recall suggesting that account balances	02:54:23PM 23	You testified, Mr. Ziler, regarding the confirmation
02:51:14PM 24	exceeding a specific dollar amount should be analyzed to the	02:54:46PM 24	requests.
02:51:18PM <b>25</b>	extent reasonably possible?	02:54:48PM <b>25</b>	A. Yes.
	Jacqueline M. Sullivan, RPR		Jacqueline M. Sullivan, RPR
	Official Court Reporter		Official Court Reporter
1	146	1	148 O Correct?
02:51:19PM <b>1</b>	A. I imagine. I don't remember that specifically, but that	02:54:48PM 1	Q. Correct?
02:51:23PM <b>2</b>	<b>A.</b> I imagine. I don't remember that specifically, but that seems like a suggestion we would have made. Going after the	02:54:49PM 2	<ul><li>Q. Correct?</li><li>A. Um-hmm.</li></ul>
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	149		151
02:56:35PM <b>1</b>	Q. There were five hundred accounts over \$50,000?	03:00:05PM 1	Q. \$70 million for that one year?
02:56:37PM 2	A. Right.	03:00:07РМ 2	A. Um-hmm.
02:56:37PM 3	<b>Q.</b> And these positive confirmation letters went out?	03:00:08РМ 3	<b>Q.</b> And just so I'm clear, that was money that was in the
02:56:41PM <b>4</b>	A. To them.	03:00:12PM <b>4</b>	tribal trust funds and then it was transferred to the IIM
02:56:42PM 5	<b>Q.</b> And of those do you recall how many were returned?	03:00:16РМ 5	accounts?
02:56:46PM <b>6</b>	A. It's in the work papers that I've reviewed, but I don't	03:00:16РМ 6	A. Yes.
02:56:53PM 7	have that in my head right here. I think the response rate was	03:00:17РМ 7	<b>Q.</b> And do you recall if it was in fact transferred by the
02:56:59PM <b>8</b>	poor, but I can't tell you what the mix was. It might have been	03:00:20РМ 8	tribes?
02:57:06PM 9	50/50; something like that.	03:00:20РМ 9	A. By the tribes?
02:57:09PM 10	<b>Q.</b> You said the response rate was poor?	03:00:23РМ 10	<b>Q.</b> For the tribes.
02:57:11PM <b>11</b>	A. Yeah. The response rate was probably around 50/50.	03:00:24PM <b>11</b>	A. For the tribes? I don't have the detail information on
02:57:20PM 12	Q. Do you know that or is that a guess?	03:00:32РМ 12	that, but I assume that if it went from the tribal trust funds
02:57:20PM 13	A. I'm just going by memory right now. Okay. The thing is,	03:00:37РМ 13	to the IIM accounts what that meant is that the tribes were the
02:57:25PM <b>14</b>	we didn't take a whole lot of comfort in that because we knew	03:00:42PM <b>14</b>	initial recipient of the money and they knew that it needed to
02:57:28PM 15	that there were a lot of problems with the address system that	03:00:46PM 15	be distributed down to the individual level so it was
02:57:31PM 16	the bureau was using. They had one system that had the	03:00:49РМ 16	transferred to the IIM accounts.
02:57:34PM 17	addresses in it and that didn't necessarily mesh with the system	03:00:51PM 17	Q. Was that a practice you saw in 1988, 1989, and 1990?
02:57:38PM 18	that the confirmations were sent from so we had a low confidence	03:00:57РМ 18	A. Primarily 1988 I think.
02:57:42PM <b>19</b>	rate that the correct addresses were being used.	03:00:59РМ 19	Q. In the earlier year?
02:57:44PM <b>20</b>	<b>Q.</b> So even though this letter states if you're not returning	03:01:01PM <b>20</b>	A. Yes.
02:57:48PM 21	this page to the auditors, they will consider this statement to	03:01:01PM <b>21</b>	<b>Q.</b> Mr. Dorris showed you Plaintiffs' Exhibit 34, a work paper.
02:57:51PM 22	be correct, you didn't put much stock in the fact that the	03:01:16PM <b>22</b>	Had you seen that before this week?
02:57:55PM 23	letters weren't returned?	03:01:18PM 23	A. I'm not sure what No. 34 was.
02:57:57PM 24	<b>A.</b> That didn't give us a lot of comfort, but because I think	03:01:22PM <b>24</b>	Q. Could you please put that up?
02:58:01PM <b>25</b>	that wording was used to encourage people to send the response.	03:01:35PM <b>25</b>	A. Is that the Crown Point? Okay.
	Jacqueline M. Sullivan, RPR		Jacqueline M. Sullivan, RPR
	Official Court Reporter		Official Court Reporter
			150
1	150	1	152
02:58:05PM 1	$\ensuremath{\textbf{Q}}\xspace$ . So if you received a response it was bad news, and if you	03:01:45PM <b>1</b>	Q. I cannot tell you standing here, Mr. Ziler.
02:58:09PM 2	<b>Q.</b> So if you received a response it was bad news, and if you didn't receive a response you didn't give it much weight?	03:01:48PM 2	<ul><li>Q. I cannot tell you standing here, Mr. Ziler.</li><li>A. I t is.</li></ul>
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02:58.09PM         2           02:58:13PM         3           02:58:13PM         4           02:58:13PM         5           02:58:13PM         6           02:58:13PM         7           02:58:33PM         7           02:58:33PM         8           02:58:33PM         9           02:58:34PM         10	<ul> <li>Q. So if you received a response it was bad news, and if you didn't receive a response you didn't give it much weight?</li> <li>A. Probably not a lot. I'll tell you why. Because</li> <li>Q. No, that's okay.</li> <li>A. Okay.</li> <li>Q. Is it a normal form of audit work to send out confirmation letters?</li> <li>A. Yes.</li> <li>Q. So this wasn't an extraordinary step that Arthur Andersen took because you were working with the BIA?</li> </ul>	03.01.48PM         2           03.01.48PM         3           03.01.52PM         4           03.02.52PM         5           03.02.02PM         5           03.02.02PM         6           03.02.12PM         8           03.02.13PM         9           03.02.13PM         10	<ul> <li>Q. I cannot tell you standing here, Mr. Ziler.</li> <li>A. It is. <ul> <li>MR. DORRIS: It is, your Honor. 34 was with Crown</li> </ul> </li> <li>Point Navaho issue with the checks. <ul> <li>THE COURT: The question is, had you seen it before a few days ago?</li> <li>THE WITNESS: Saturday or Sunday. I don't remember.</li> </ul> </li> <li>BY MR. KIRSCHMAN: <ul> <li>Q. I'm sorry?</li> </ul> </li> <li>A. I saw them Saturday or Sunday.</li> </ul>
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	153		155
03:02:48PM <b>1</b>	<b>Q.</b> And they provided you that pack of documents?	03:06:12PM <b>1</b>	staff itself?
03:02:51PM 2	A. Correct.	03:06:13РМ 2	A. Yes.
03:02:52PM 3	<b>Q.</b> And why did they do that?	03:06:13РМ 3	Q. And did they tell you that upon discovering that that the
03:02:54PM <b>4</b>	<b>A.</b> To refresh my memory about that incident.	03:06:17РМ 4	\$2 million in interest was then credited to the accounts?
03:02:58PM 5	<b>Q.</b> I see. Did you ask them to refresh your memory with those	03:06:22PM 5	A. No, it was not.
03:03:02PM 6	documents?	03:06:24PM 6	Q. It was not?
03:03:03PM 7	<b>A.</b> We talked in general about how many instances of fraud we	03:06:24PM 7	A. That's my understanding.
03:03:06PM 8	could remember, and I said, you know, twenty years ago? I	03:06:26PM 8	Q. And what's that based on?
03:03:10PM 9	didn't remember that much, and they showed me this set of	03:06:28PM 9	<b>A.</b> It is based on a twenty-year recollection and reading the
03:03:16PM 10	documents because I think it was the only information that they	03:06:37РМ 10	financial statement footnote saying there was \$2 million of
03:03:19PM 11	had specifically they could use to refresh my memory.	03:06:40PM 11	foregone interest that was gone and lost forever because it was
03:03:24PM 12	Q. Related to fraud generally?	03:06:43PM 12	not invested and there was no way to recover interest on money
03:03:26PM 13	<ul> <li>A. To specific fraud work that Arthur Andersen performed.</li> <li>A. To specific fraud work that Arthur Andersen performed.</li> </ul>	03:06:48PM 13	that was not invested.
03:03:31PM 14	Q. Okay. I believe you said that the woman who had written	03:06:49PM 14 03:07:32PM 15	
03:03:46PM 15	these checks was caught by the IG?	40	MR. KIRSCHMAN: One moment, your Honor.
	<ul> <li>A. She was interviewed by the IG.</li> <li>Decomposition of the sector provided that is how the sector provided that</li></ul>	47	(There was a pause in the proceedings.)
03:03:52PM 17	<b>Q.</b> Do you recall how this matter resolved itself, how it was	40	MR. KIRSCHMAN: Your Honor, I have no other questions
03:03:59PM 18	resolved?	03:07:48PM 18	for Mr. Ziler.
20	A. No.	03:07:49PM 19	I would like to mark if I could and introduce the
04	<ul><li>Q. Do you know if the woman was required to repay the money?</li><li>A. I don't.</li></ul>	04	letter to Congressman Cynar as DX 465 and move that into evidence.
03:04:02PM <b>21</b> 03:04:02PM <b>22</b>	<ul><li>Q. Do you know if she was required to serve any prison time?</li></ul>	03:07:57PM <b>21</b> 03:07:58PM <b>22</b>	THE COURT: DX 465 will be received.
03:04:02PM <b>22</b> 03:04:07PM <b>23</b>	A. I don't.	03:07:58PM 22	MR. KIRSCHMAN: Thank you, Mr. Ziler.
03:04:07PM 23	<ul><li>Q. Did I understand you correctly that a worker first noticed</li></ul>	03:08:03PM 23	THE WITNESS: Thank you.
03:04:10PM 25	a high volume of dollars and reported this to the IG?	03:08:05PM 25	(Exhibit No. DX 465 received into evidence at about
	Jacqueline M. Sullivan, RPR		Jacqueline M. Sullivan, RPR
	Official Court Reporter		Official Court Reporter
			156
03:04:20PM 1	<b>A.</b> No.	03:08:08PM 1	3:08 p.m.)
03:04:20PM <b>2</b>	Q. Okay. Could you refresh my memory?	03:08:08РМ 2	THE COURT: Anything further, Mr. Dorris?
03:04:23PM 3	A. Just from reading those documents it appeared what happened	03:08:10РМ 3	MR. DORRIS: I have no further questions for Mr.
03:04:26PM <b>4</b>	was the account beneficiary made an inquiry because it didn't	03:08:12PM <b>4</b>	Ziler.
03:04:30PM 5	look like the money was getting into her account that she had	03:08:12PM 5	I would just note for the record, your Honor, the work
03:04:34РМ 6	expected. I think she started the whole investigation off.	03:08:15РМ 6	papers of Plaintiffs' Exhibit 34 was previously admitted in
03:04:36PM <b>7</b>	Q. I see. And do you recall if that account beneficiary then	03:08:20РМ 7	trial 1.5 as Plaintiffs' Exhibit 102 there, and would I just
03:04:40PM <b>8</b>	received the balance that she was owed?	03:08:24PM <b>8</b>	note that for the record, but I have no further questions for
03:04:43PM 9	A. I don't know that.	03:08:28РМ 9	Mr. Ziler.
03:04:44PM 10	Q. You don't know?	03:08:30РМ 10	THE COURT: Mr. Ziler, you're excused. Thank you,
03:04:45PM <b>11</b>	<b>A.</b> We weren't involved in any restitution process.	03:08:33PM 11	sir.
03:05:14PM <b>12</b>	MR. KIRSCHMAN: One second, your Honor, please.	03:08:33РМ 12	THE WITNESS: Thank you.
03:05:20PM 13	(There was a pause in the proceedings.)	03:08:35РМ 13	(Witness excused at about 3:09 p.m.)
03:05:30PM 14	BY MR. KIRSCHMAN:	03:08:36РМ 14	THE COURT: Now, before we go any further, I'm going
03:05:31PM 15	Q. You testified about the fact that for a six-month period, I	03:08:38PM 15	to ask counsel to convene a little seminar here. I wish we
03:05:39РМ 16	believe in, I believe, 1988, that no notification deposits were	03:08:46РМ 16	could do this in jury cases. I want to know what the testimony
03:05:43PM 17	transmitted to treasury from the Department of the Interior; is	03:08:55PM 17	we've just heard adds to the Plaintiffs' case and where it fits
03:05:49PM 18	that correct?	03:08:59PM 18	the Plaintiffs' case. I mean, it was previously noted in my
03:05:49PM 19	A. I believe it was 1986.	03:09:05РМ 19	opinion back in January about the Arthur Andersen audit in 1988
03:05:51PM 20	<b>Q.</b> 1986?	03:09:10РМ 20	and 1989. We knew that. We knew about the unreliability. I
03:05:53PM 21	A. The specific facts are in the financial statements, and I	03:09:15PM 21	don't know what the testimony was about or how it advances the
03:05:57PM 22	don't know the specific amount. All I know is that the	03:09:18РМ 22	
~~	quantification of estimated lost interest was \$2 million for	03:09:21PM <b>23</b>	cross-examination was about, so teach me, guys.
03:06:02PM 23			
03:06:05PM 24	that period.	03:09:24PM 24	5
	that period. Q. And you were informed of that by the Department of Interior	03:09:24PM 24 03:09:26PM 25	Really in two ways that it's significant to our case that is at
03:06:05PM 24	that period.		5

	157	1	159
03:09:32PM <b>1</b>	issue here in this hearing. The first goes to a very funda-	03:13:09РМ 1	quantification, but we hope that it puts some of the numbers
03:09:36РМ 2	mental part of our case, which is that money can be in the	03:13:12PM <b>2</b>	you'll hear into the proper context and will be important for
03:09:40PM 3	treasury without being accounted for by BIA and that there are	03:13:17PM <b>3</b>	you we believe as you begin to try to judge the burdens and who
03:09:44PM <b>4</b>	no reconciliation processes that go on between the two of them.	03:13:20PM <b>4</b>	has met their burden and who has not.
03:09:50PM 5	For example, there is the instance that he testified about where	03:13:24PM 5	THE COURT: All right.
03:09:53PM 6	money came in to treasury, was not was deposited into	03:13:26РМ 6	Do you want to add or subtract anything from that, Mr.
03:09:58PM 7	treasury from IIM funds and was not accounted for by BIA and	03:13:30PM 7	Kirschman?
03:10:06PM 8	that treasury didn't even know that had to do with the IIM	03:13:30PM 8	MR. KIRSCHMAN: Well, your Honor, I would just note
03:10:09РМ 9	trust, so that's point number one.	03:13:32РМ 9	that I only objected once but it was to a line of questioning
03:10:11PM <b>10</b>	The second point is that well, really three points.	03:13:35PM 10	that we did not believe were relevant that was relevant to this
03:10:15PM <b>11</b>	The second	03:13:40PM <b>11</b>	trial. So we did not see the relevance of Mr. Ziler's
03:10:16PM <b>12</b>	THE COURT: How am I supposed to make use of that?	03:13:47PM <b>12</b>	testimony. The basis of the cross-examination once you allowed
03:10:19PM <b>13</b>	What we have on that point is one man's recollection of what	03:13:50РМ 13	the testimony was to demonstrate that he was testifying from a
03:10:22PM <b>14</b>	happened twenty years ago. We've got no documentation, we've	03:13:54РМ 14	twenty-year old memory and that his knowledge was limited to
03:10:25PM 15	got no quantification. What am I supposed to do with it?	03:14:02РМ 15	events well before the passage of the '94 act, and that to the
03:10:30PM 16	Remember we're trying to put a number together here. How does	03:14:05PM 16	extent he spoke with specificity he was doing so based on a
03:10:33PM 17	it help me put a number together?	03:14:08PM 17	document that plaintiffs had sent him which they had in their
03:10:35PM <b>18</b>	MR. DORRIS: Well, first of all, that it's not just	03:14:11PM <b>18</b>	possession to help establish I guess one singular case of fraud,
03:10:38PM <b>19</b>	that one incident that's important. What's also important is	03:14:17PM <b>19</b>	so that was the purpose of the cross, and we agree, we do not
03:10:44PM <b>20</b>	that you have we will be looking at BIA records, and	03:14:22PM <b>20</b>	see the relevance of that testimony.
03:10:49PM <b>21</b>	essentially treasury was their bank, and there's no	03:14:24PM <b>21</b>	THE COURT: All right.
03:10:53PM <b>22</b>	reconciliation between BIA records and what cash was actually	03:14:25PM <b>22</b>	MR. KIRSCHMAN: Regarding the government's burden, I
03:10:58PM 23	deposited in the treasury throughout the course of that this	03:14:27PM <b>23</b>	think plaintiffs' counsel has it backwards but they have to
03:11:03PM 24	time, so that doesn't help you actually quantify the number, but	03:14:30PM 24	present a case and that has not been done yet.
03:11:07PM <b>25</b>	it is an underlying premise for part of what we hope to prove	03:14:38PM 25	THE COURT: Okay. Look, there are only two people in
	Jacqueline M. Sullivan, RPR		Jacqueline M. Sullivan, RPR
	Official Court Reporter		Official Court Reporter
	158		160
03:11:11PM 1	when we do get around to proving a number, which is that there's	03:14:40PM <b>1</b>	this room whose continued presence is mandatory, and I'm one of
03:11:15PM 2	when we do get around to proving a number, which is that there's more money in treasury that has come in than has been paid out.	03:14:47PM 2	this room whose continued presence is mandatory, and I'm one of them and the court reporter is the other one, and till and
03:11:15PM 2 03:11:22PM 3	when we do get around to proving a number, which is that there's more money in treasury that has come in than has been paid out. THE COURT: All right.	03:14:47PM 2 03:14:52PM 3	this room whose continued presence is mandatory, and I'm one of them and the court reporter is the other one, and till and unless the court reporter or myself think it's time for a break,
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	161		163
03:16:34PM <b>1</b>	DIRECT EXAMINATION	03:19:29PM	<ol> <li>invested and subsequently disbursed to the annuitants, Osage</li> </ol>
03:16:34PM 2	BY MR. HARPER:		<ul> <li>estate, and there are at the Osage allotment there were 2,229</li> </ul>
03:16:36PM 3	Q. Good afternoon, Ms. Infield.	03:19:43PM	<b>3</b> allotted Osages that received their surface ownership of land
03:16:38PM <b>4</b>	A. Good afternoon.	03:19:48PM	4 and their one head right share of the mineral estate.
03:16:39РМ 5	Q. Could you please state your name and spell your last name	03:19:52PM	<b>5 Q.</b> And when you say the annuitants, are you familiar with the
03:16:42PM 6	for the record?	03:19:58PM	6 term the Osage Annuity Account?
03:16:42PM 7	A. Mona B. Infield, I-n-f-i-e-I-d.	03:20:01PM	7 A. Yes. That's generally how the treasury account that all
03:16:48PM 8	Q. And could you tell me where you reside?	03:20:05PM	8 these funds are collected into as they come in or is referred
03:16:52РМ 9	A. I reside in Chorales, New Mexico, just outside of	03:20:09PM	<b>9</b> to.
03:16:59РМ 10	Albuquerque.	03:20:10PM <b>1</b>	<b>10 Q.</b> And the annuitants in that annuity account, who are they?
03:16:59PM <b>11</b>	<b>Q.</b> Where are you currently employed?	03:20:14PM <b>1</b>	<b>11 A.</b> The annuitants are the shareholders, the people who own the
03:17:00РМ 12	A. I'm currently with the Bureau of Indian Affairs at the	03:20:18PM <b>1</b>	12 head right shares.
03:17:06РМ 13	Albuquerque data center in the Office of Operations.	03:20:19PM <b>1</b>	<b>13 Q.</b> Are they exclusively individual Indians?
03:17:10PM <b>14</b>	Q. Have you been how long have you been a government	03:20:22PM 1	<b>14</b> A. Well, no. Mostly individual Indians. You do have some
03:17:15PM 15	employee?		nonIndians, you have some charity organizations, some faith-
03:17:15PM 16	A. I started my government career 26 years and one week ago		based organizations that have inherited shares of the head right
03:17:18PM 17	today.		17 over the years.
03:17:18PM 18	<b>Q.</b> And I just would like to start by outlining a little bit of		<b>18 Q.</b> And what was your personal involvement in the management of
03:17:24PM 19	your experience with the government for the Court. Could you		19 the Osage annuity account?
03:17:29PM 20	tell me what your first position was and where it was at?		<b>20 A.</b> Well, I worked closely with the people that were
03:17:32PM 21	A. My first position was as a clerk-typist with the appraisals		distributing the money to the annuitants at each quarter.
03:17:36PM 22	office in the Osage agency in Pahos, Oklahoma. I also did some		22 Quarterly payments are made from that annuity account to those
03:17:43PM 23	clerk work for the adult vocational education program and the	-	<ul> <li>head right shareholders. Now, realizing an allotment time they</li> <li>where elliptical 2,220 shares each to an include of the day of</li></ul>
03:17:47PM 24	Social Services program at that time. I then moved into the	03:20:59PM Z	24 were allotted 2,229 shares each to an individual Osage Indian on 25 the role at that time. When I want to work for the again in
03:17:51PM <b>25</b>	realty shop as a realty clerk. And then I left government	03:21:05PM	0,00
	Jacqueline M. Sullivan, RPR Official Court Reporter		Jacqueline M. Sullivan, RPR Official Court Reporter
			Official Oddit Reporter
	162		164
03:17:55PM <b>1</b>	162 service and went to work for the Osage tribe on a 638 contract	03:21:08PM	164 1 1982 there had been some error made over the years in estate
03:17:55PM <b>1</b> 03:17:59PM <b>2</b>	162 service and went to work for the Osage tribe on a 638 contract where they were performing minerals function for the Bureau of		
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	165		167
03:22:57PM 1	information management center.	03:26:16PM <b>1</b>	THE COURT: All right, go ahead.
03:22:57PM <b>2</b>	Q. For the court reporter I'm going to restate, you mentioned	03:26:18PM <b>2</b>	MR. HARPER: Thank you.
03:23:00PM 3	an acronym, and that's IRMS, correct?	03:26:18PM 3	BY MR. HARPER:
03:23:04PM <b>4</b>	A. The integrated records management system.	03:26:20PM <b>4</b>	Q. We'll talk more about the IRMS system and some of the
03:23:07PM 5	Q. And what is IRMS and how is IRMS related to individual	03:26:26РМ 5	importance for this particular trial, Ms. Infield, but moving
03:23:15PM 6	Indian trusts?	03:26:29РМ 6	from the Muskogee area office, what was your next position at
03:23:17PM 7	A. Well, at its conception IRMS was a set of subsystems that	03:26:34PM 7	the Department of Interior?
03:23:24PM 8	were interrelated by ID number where you would have the account,	03:26:35PM 8	A. In August of 1991 I took a position in the data center in
03:23:27PM <b>9</b>	the individual Indian money account for an individual. You	03:26:41PM 9	Albuquerque, New Mexico as a programmer.
03:23:32PM 10	would have their people record and the people subsystem which	03:26:43PM 10	<b>Q.</b> And what is the data center?
03:23:37PM <b>11</b>	would show their heritage and their blood quantum and their	03:26:44PM <b>11</b>	A. The data center at that time was where we housed all of the
03:23:41PM <b>12</b>	decadency and their education and other things about their	03:26:51PM <b>12</b>	computer systems used nationwide by the Bureau of Indian Affairs
03:23:46PM 13	background and demographics, and you would also have ownership	03:26:57РМ 13	with the exception of those IRMS and auto systems. They were
03:23:49PM 14	records that showed by that ID number what piece of which	03:27:02PM <b>14</b>	out of six information management systems at the time. Those
03:23:54PM 15	trust property was owned by that person, and those ownership	03:27:06РМ 15	IRMS or information management centers, those systems were
03:23:58PM 16	records were also retrievable by track number so that you could	03:27:09РМ 16	brought into the data center in the '90s so that now it's all
03:24:03PM 17	get to a specific piece of land, and then you have the lease	03:27:14PM <b>17</b>	operated centrally in a data center.
03:24:06PM <b>18</b>	subsystem which held all of the lease instruments that had been	03:27:18PM <b>18</b>	<b>Q.</b> And what additional positions have you had since that time
03:24:11PM <b>19</b>	approved and were being operated under for trust income to be	03:27:22РМ 19	in Albuquerque?
03:24:17PM <b>20</b>	received on those on the trust property.	03:27:23PM 20	<b>A.</b> I was first my first job was as a programmer for the
03:24:20PM 21	<b>Q.</b> And we'll get a little bit more into the IRMS system after	03:27:27PM <b>21</b>	royalty distribution and reporting system. I was then the team
03:24:24PM 22	we get through your history here and experience.	03:27:31PM 22	leader for the IRMS programmers. I became a section chief for
03:24:27PM 23	As a computer specialist at the Muskogee area office,	03:27:36РМ 23	data management and scheduling. I was acting as the branch
03:24:31PM 24	did you then become familiar with the integrated resource	03:27:41PM 24	chief for the applications support branch, which was all of the
03:24:37PM <b>25</b>	management system?	03:27:47PM <b>25</b>	programmers for all of the applications used.
	Jacqueline M. Sullivan, RPR		Jacqueline M. Sullivan, RPR
	Official Court Reporter		Official Court Reporter
	166		160
03:24:38DM 1	166	02:27:50PM 1	<b>Q</b> And in the mid_1990s when there started to be the Office of
03:24:38PM <b>1</b>	A. I actually got my first training in IRMS when I was at	03:27:50PM <b>1</b>	Q. And in the mid-1990s when there started to be the Office of
03:24:42PM 2	<b>A.</b> I actually got my first training in IRMS when I was at Osage, and in probably late '82 or early '83 because no one in	03:27:56PM <b>2</b>	<b>Q.</b> And in the mid-1990s when there started to be the Office of Special Trustee offices was created pursuant to the '94 act, did
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03.24.42PM       2         03.24.52PM       3         03.24.55PM       4         03.24.55PM       5         03.24.55PM       6         03.24.55PM       6         03.24.55PM       7         03.25.0FM       6         03.25.0FM       7         03.25.16PM       8         03.25.16PM       10         03.25.18PM       10         03.25.23PM       12         03.25.30PM       13         03.25.30PM       14         03.25.30PM       16         03.25.44PM       16         03.25.52PM       19         03.25.52PM       20         03.25.52PM       20         03.25.52PM       21         03.25.52PM       22         03.26.02PM       23         03.26.04PM       23         03.26.04PM       23	A I actually got my first training in IRMS when I was at Osage, and in probably late '82 or early '83 because no one in the Muskogee regional area was using IRMS at the time and computers were fairly new to the bureau. As a matter of fact, the personal computers were pretty much nonexistent at that point in time so we used we were trained to use IRMS, and it was such an antiquated system at that time that we didn't even have data entry screens. We would take information from, for instance, an IIM jacket folder and put the information off of that on to a code sheet, and then you would take the code sheet to the computer and sit down and in code an 80-character stream of letters and/or numbers across the screen and that's how you got data into the system. MR. KIRSCHMAN: Your Honor, continuing objection to the relevance of this testimony, and we'd also point out that this is very much repetitive of testimony Ms. Infield supplied tisc Court in October of last year. THE COURT: Yes. I'm looking at my notes of her testimony when she was here before me, and I really don't have to have that repeated, but I'll allow some leeway here, Mr. Harper. MR. HARPER: Thank you, your Honor. I won't spend too much time on the background. I think the basis of some of the much time on the background. I think the basis of some of the much time on the background. I think the basis of some of the much time some substantive questions, I wanted to give the Court a little	032756PM         2           032802PM         3           032805PM         4           032805PM         5           032805PM         5           032805PM         7           032811PM         6           032813PM         7           032813PM         10           032813PM         10           032813PM         10           032813PM         11           032813PM         12           032814PM         12           032856PM         14           032856PM         14           032850PM         16           032915PM         16           032915PM         18           032915PM         18           032915PM         20           0329229M         21           0329229M         23           0329229PM         23           032923PM         24	<ul> <li>Q. And in the mid-1990s when there started to be the Office of Special Trustee offices was created pursuant to the '94 act, did you have any particular role with respect to the OST and the trust reform effort?</li> <li>A. I took a detail and then applied for a permanent position in the Office of Trust Funds Management. About the same time or maybe right before I was removed from the Bureau of Indiana Affairs and put in the Office of the Special Trustee.</li> <li>Q. Were you involved in any projects that allowed you to review the systems and procedures used within the Bureau of Indiana Affairs for the management of trust assets and funds?</li> <li>A. I was in charge of the Whereabouts Unknown project where we tried to locate accountholders that we did not have a good address for. I also worked on several IIM reform projects, or trust reform projects as they later became known. I was also the coordinator for the federal tribal task force that went around the country and took did tribal and individual consultation on the problems with the trust systems and we gathered all the problems together. The task force came back together. We prioritized the problems and that subsequently became the basis for Paul Homeman's first strategic plan for Office of the Special Trustee.</li> <li>Q. I'd like to step back now and discuss one of your earlier</li> </ul>

		169			171
03:29:42PM 1	W	ere those funds derived that were placed in the Osage annuity	03:32:38PM	1	Q. Ms. Infield, just a final question on that. Would it
03:29:46РМ 2	ac	count?	03:32:41PM	2	surprise you to hear that there is an assertion that those are
03:29:46PM <b>3</b>	Α	Those were royalties on oil and gas production. Sand,	03:32:47PM	3	actually tribal trust funds?
03:29:52РМ 4	gı	ravel, limestone, salt water disposal easements and things like	03:32:49PM	4	MR. STEMPLEWICZ: Same objection; relevance.
03:29:56РМ 5	th	hat for the mineral estate.	03:32:51PM	5	THE COURT: Overruled.
03:29:58PM 6	Q	And you said at one point you were working for BIA and then	03:32:52PM	6	THE WITNESS: Yes, it would be very surprising to me
03:30:01PM <b>7</b>	yo	ou were also working for the tribe under a 638 contract?	03:32:54PM	7	to hear that those were actually tribal trust funds.
03:30:06PM <b>8</b>	Α	• Yes.	03:32:57PM	8	BY MR. HARPER:
03:30:06РМ 9	Q	In both those roles you had you worked with	03:33:01PM	9	<b>Q.</b> I'd like to now turn your attention to some of the efforts
03:30:12PM <b>10</b>	Α	I worked on the annuity system, yes.	03:33:04PM	10	that you made when you were working on trust reform projects and
03:30:14PM <b>11</b>	Q	The funds in the annuity system, did you at the time who	03:33:11PM	11	some of your observations there. Did you have any involvement
03:30:19PM <b>12</b>	di	d you think those funds belonged to?	03:33:16PM	12	in the Tiger Team report?
03:30:21PM <b>13</b>	Α	• The annuitants, the head right shareholders.	03:33:18PM	13	A. I did. I was a member of the Tiger Team, yes.
03:30:24PM <b>14</b>	Q	And who were they?	03:33:24PM 1	14	MR. HARPER: And, your Honor, we have marked for
03:30:25PM 15	Α	. They belonged to the head right shareholders at allotment	03:33:27PM	15	Plaintiffs' Exhibit 30 the Tiger Team report.
03:30:29PM 16	tii	me.	03:33:27PM	16	BY MR. HARPER:
03:30:29PM 17	Q	When you described earlier is mostly individual Indians?	03:33:33PM	17	<b>Q.</b> And I just want to show you a couple of items on the second
03:30:32PM 18	Α	Yes.	03:33:37PM	18	page of the report. You can see that, Ms. Infield, that that is
03:30:33PM 19	Q	. At the time did you ever hear anybody suggest that those	03:33:42PM		the executive summary. If we can go down to the section called
03:30:39PM <b>20</b>	fu	nds belonged actually to the tribe by and large?	03:33:49РМ 2		Problems in the third heading. So you were involved in the
03:30:41PM <b>21</b>	Α	No. No, and that's the general understanding, and the	03:33:58PM 2		investigations and the evaluation that led to these conclusions,
03:30:47PM <b>22</b>	CL	ulture at Osage was that those funds belonged to the head right	03:34:01PM 2	22	is that true?
03:30:51PM <b>23</b>	sł	nareholders and the counsel was allowed to use a certain	03:34:02PM 2		A. That's correct.
03:30:55PM 24	pe	ercentage of the interest earned on those funds to operate the	03:34:02PM 2		<b>Q.</b> I'd like to look at two of them. Number one, excuse me.
03:31:00PM <b>25</b>	m	inerals counsel from, but other than that, the shareholders	03:34:10PM 2	25	I'm sorry. Number two. Data records are outdated and/or
		Jacqueline M. Sullivan, RPR			Jacqueline M. Sullivan, RPR
		Official Court Reporter			Official Court Reporter
1		170		1	172
03:31:04РМ 1	_	ere the owners of the money.	03:34:15PM	1	inaccurate?
03:31:06PM 2	Q	ere the owners of the money. Did the tribe have any head rights of their own?	03:34:15PM	1 2 3	inaccurate? A. That's correct.
03:31:06PM 2 03:31:11PM 3	Q A	<ul><li>Prere the owners of the money.</li><li>Did the tribe have any head rights of their own?</li><li>They have a few, I think. They did have then or a piece of</li></ul>	03:34:15PM 03:34:15PM	3	<ul><li>inaccurate?</li><li>A. That's correct.</li><li>Q. And did you see that as isolated problems with the systems</li></ul>
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03.31:06PM         2           03.31:11PM         3           03.31:17PM         4           03.31:19PM         5           03.31:22PM         6           03.31:27PM         7           03.31:27PM         8	Q Or Q at Q	<ul> <li>bid the tribe have any head rights of their own?</li> <li>Did the tribe have any head rights of their own?</li> <li>They have a few, I think. They did have then or a piece of the or a piece of two. A handful maybe.</li> <li>And you said that they also had in addition to that the oblity to use a certain percentage of the earnings?</li> <li>The interest earned on those deposits, yes.</li> <li>And do you know about what percent that was?</li> </ul>	03:34:15PM 03:34:15PM 03:34:21PM 03:34:24PM 03:34:28PM 03:34:31PM 03:34:36PM	3 4 5 6 7 8	<ul> <li>inaccurate?</li> <li>A. That's correct.</li> <li>Q. And did you see that as isolated problems with the systems related to individual Indian monies or</li> <li>A. No. At this point in time we had been trying to combine all of the work that was being done at the information management centers across the country into one operational IRMS system, and what we discovered was IRMS was a different system</li> </ul>
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1		1	
	173		175
03:35:41PM <b>1</b>	management system information?	03:39:33PM <b>1</b>	files and functions for realty and the title plants, which would
03:35:42РМ 2	A. Yes, it was.	03:39:39РМ 2	be Ellris and the lease and owner's subsystems of IRMS.
03:35:43PM 3	<b>Q.</b> And then the third numbered three is Poor Internal Controls	03:39:44PM 3	Q. Have you heard the phrase "dirty data" used in this
03:35:51PM <b>4</b>	and Inconsistent Practices Exist. Can you give me an example of	03:39:49PM <b>4</b>	project?
03:35:55PM 5	what that entails?	03:39:49PM 5	A. Yes.
03:35:56PM 6	<b>A.</b> Well, one of the problems that we faced was being able	03:39:50PM 6	Q. And what does that word mean to you?
03:35:59PM	to as a programmer you could alter code in the system and you	03:39:52PM 7	A. That means that you have data that's not consistent with
03:36:06PM 8	could put that code into what we call production where it could	03:39:55PM 8	the paper documentation that was used in encoding the data in
03:36:09PM 9	be run by yourself or anyone else without any check or balances	03:39:58PM 9	the first place.
03:36:15PM 10	being put in place, so you didn't have a separation of duties so	03:39:58PM 10 03:40:00PM 11	<b>Q.</b> So you're presuming that the paper document is correct
03:36:20PM 11 03:36:25PM 12	to speak. You could alter the code. You could put the code in product and you could run the code without anybody ever knowing	03:40:00PM 11 03:40:05PM 12	then, would that information wouldn't necessarily be incorrect a fair statement?
03:36:25PM 12	that you were doing that.	03:40:05PM 12	A. Right.
03:36:27PM 13	MR. HARPER: Can I have a moment, your Honor?	03:40:05PM 13	MR. HARPER: Your Honor, we move Plaintiffs' Exhibit
03:37:05PM 15	THE COURT: You may.	03:40:12PM 15	29, the high level implementation plan from 1998.
03:37:06PM 16	(There was pause in the proceedings.)	03:40:19PM 16	THE COURT: 29?
03:37:34PM 17	BY MR. HARPER:	03:40:20PM 17	MR. HARPER: Yes, your Honor.
03:37:35PM 18	Q. Ms. Infield, were you involved in any other you had	03:40:21PM 18	THE COURT: Received.
03:37:40PM 19	mentioned a couple of the other projects you were involved in.	03:40:22PM <b>19</b>	(Plaintiffs' Exhibit No. 29 received into evidence at
03:37:43PM <b>20</b>	Do you recall a project called BIA Data Clean-Up?	03:40:22PM <b>20</b>	about 3:40 p.m.)
03:37:46PM <b>21</b>	A. Yes.	03:40:25PM <b>21</b>	BY MR. HARPER:
03:37:46PM <b>22</b>	<b>Q.</b> And what did that project entail?	03:40:25PM <b>22</b>	Q. If we can turn to page seventeen of that document. And
03:37:49PM 23	A. The first BIA data clean-up project that I worked on was	03:40:46PM <b>23</b>	focusing on the bottom, do you see there that you were basically
03:37:52PM <b>24</b>	actually the information, I mean the individual Indian monies	03:40:53PM <b>24</b>	one of the co-heads of that data clean-up project, right, Ms.
03:37:57PM <b>25</b>	accounts system or subsystem of IRMS, and what we did was we	03:40:58PM 25	Infield?
	Jacqueline M. Sullivan, RPR		Jacqueline M. Sullivan, RPR
	Official Court Reporter		Official Court Reporter
	174		176
03:38:02PM <b>1</b>	went, we went out and looked at the jacket files for an account	03:40:58PM	A. Yes, I was at that point in time.
03:38:07PM 2		-	
	and tried to reconcile the data in the system against the paper	03:41:01PM <b>2</b>	Q. Now, did the data clean-up subproject go to change
03:38:10PM 3	records in the jacket folder. Sometimes we got a hit, sometimes	03:41:10PM 3	<b>Q.</b> Now, did the data clean-up subproject go to change historical information or present information that was utilized
03:38:10PM 3 03:38:14PM 4	records in the jacket folder. Sometimes we got a hit, sometimes we got a miss. Sometimes we didn't have the documentation to	03:41:10PM 3 03:41:16PM 4	<b>Q.</b> Now, did the data clean-up subproject go to change historical information or present information that was utilized for transactions going forward?
03:38:10PM 3 03:38:14PM 4 03:38:18PM 5	records in the jacket folder. Sometimes we got a hit, sometimes we got a miss. Sometimes we didn't have the documentation to prove that the data in the system was correct. Sometimes the	03:41:10PM 3 03:41:16PM 4 03:41:18PM 5	<ul> <li>Q. Now, did the data clean-up subproject go to change historical information or present information that was utilized for transactions going forward?</li> <li>A. If an account was closed we did not do a data clean-up on</li> </ul>
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03:42:15PM	<b>Q.</b> And sometimes information was changed. Would it be true	03:46:03PM 1	center that now resides in Herndon, Virginia, so our alternate
03:42:25PM 2	that information was changed to match the paper records?	03:46:10PM 2	site is Albuquerque, New Mexico. If something happened here we
03:42:28PM 3	A. Yes.	03:46:14PM 3	would have to bring systems up in Albuquerque. In order to do
03:42:29PM <b>4</b>	MR. STEMPLEWICZ: Objection; leading.	03:46:17PM <b>4</b>	that we need to have the current documentation for that system.
03:42:30PM 5	THE COURT: Sustained.	03:46:21PM 5	We need to have the current run sheets and operational
03:42:31PM 6	BY MR. HARPER:	03:46:24PM 6	procedures for those systems.
03:42:41PM 7	Q. How was information changed?	03:46:26PM 7	MR. STEMPLEWICZ: Objection. We've had a 59-day trial
03:42:44PM 8	A. What we did was we took the paper records and verified that	03:46:30PM 8	in 2005 dealing with this very same issue and it's just not
03:42:47PM 9	the information or the data in the system was correct. If the	03:46:34PM 9	relevant to the issues.
03:42:50PM 10	system was incorrect based on a birth certificate for instance	03:46:37PM 10	THE COURT: I'm having a little trouble with it
03:42:53PM 11	that we found in the paper records then the date of birth would	03:46:38PM 11 03:46:42PM 12	myself, but I'll let Mr. Harper continue.
40	be corrected in the system. The paper records were the ones	40	MR. HARPER: Thank you, your Honor. I mean, I can
	that we considered to be accurate.	03:46:44PM 13 03:46:45PM 14	make a proffer on it.
03:43:04PM 14	<b>Q.</b> Were there ever occasions where there were names that were in error?	45	THE COURT: I just don't know where it's all going. I mean, the Plaintiffs' case so far is you can't trust anything
40		03:46:47PM 15 03:46:50PM 16	5 5 5
03:43:09PM 16	<b>A.</b> Yes, there were, because sometimes you would have a	03:46:50PM 10	the government is going to put in. That's basically what your case is.
03:43:11PM 17 03:43:14PM 18	different name on the system than what you could even find in	03:46:52PM 17	case is. MR. HARPER: Well, your Honor, we do believe that it
03:43:14PM 10	the paper records because sometimes people were married or divorced and last names changed and their name would be	03:46:53PM 10	is a relevant consideration that the information on IRMS in
03:43:19PM 19 03:43:21PM 20	different in the paper records than what was on the system, and	03:46:55PM 19	particular is in our estimation, based on the evidence that Ms.
03:43:21PM 20 03:43:25PM 21	there were some of those even that we couldn't resolve at all	03:47:02PM 20 03:47:07PM 21	Infield and others will be providing, is unreliable.
03:43:25PM <b>21</b> 03:43:29PM <b>22</b>	because we just didn't have the documentation to support the	03:47:07PM <b>21</b> 03:47:11PM <b>22</b>	THE COURT: I know, but where does that take us? We
03:43:29PM 22	current name in the system.	03:47:13PM 23	need a number at the end of this case. How are we going to get
03:43:35PM 20	<b>Q.</b> How significant of a problem was the lack of documentation?	03:47:13PM 20	it? Are you going to ask me to add the twenty percent that she
03:43:38PM 25	<ul> <li>A. Well, there were missing documentation in a good number of</li> </ul>	03:47:20PM 25	thinks it was off?
	Jacqueline M. Sullivan, RPR	00.4120 111 20	Jacqueline M. Sullivan, RPR
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03:43:43PM <b>1</b>	the files that we looked at. And it was important enough that	03:47:21PM <b>1</b>	180 MR. HARPER: No, your Honor. What we're attempting to
03:43:43PM <b>1</b> 03:43:47PM <b>2</b>		03:47:21PM <b>1</b> 03:47:22PM <b>2</b>	
	the files that we looked at. And it was important enough that		MR. HARPER: No, your Honor. What we're attempting to
03:43:47PM <b>2</b>	the files that we looked at. And it was important enough that there was a missing document or a document retrieval subproject	03:47:22PM 2	MR. HARPER: No, your Honor. What we're attempting to demonstrate, if I may, is that we are making what we believe is
03:43:47PM 2 03:43:51PM 3	the files that we looked at. And it was important enough that there was a missing document or a document retrieval subproject that had been started later on in the trust reform effort.	03:47:22PM 2 03:47:28PM 3	MR. HARPER: No, your Honor. What we're attempting to demonstrate, if I may, is that we are making what we believe is a reasonable approximation. The government's counter, as we
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	181		183
03:48:41PM <b>1</b>	indication of reasonable approximation. It is then on the	03:51:42PM <b>1</b>	Q. I'd like to bring up Plaintiffs' Exhibit 24. Ms. Infield,
03:48:43PM 2	government to establish why with specific evidence why that is	03:51:54PM 2	as you can see, this is an e-mail from Yolanda a person named
03:48:48PM 3	not so.	03:52:01PM 3	Yolanda Montoya on November 16, 2006, to you. Do you recognize
03:48:49PM <b>4</b>	THE COURT: All right.	03:52:06PM <b>4</b>	this document?
03:48:50PM 5	MR. HARPER: Your Honor	03:52:06PM 5	A. Yes.
03:48:50PM 6	THE COURT: Ms. Infield came all the way up here from	03:52:07PM 6	<b>Q.</b> And could you tell the Court what this document is?
03:48:55PM 7	Albuquerque to testify. I'm going to let her finish testifying,	03:52:09PM 7	A. Well, it's an e-mail from Yolanda Montoya, who works for
03:48:57PM 8	but let's make it as clear as we can, Mr. Harper, because	03:52:14PM 8	the Office of Trust Records, sending me a copy of a spreadsheet
03:49:00PM 9	frankly the thrust of what she has to say she has said twice	03:52:18PM 9	that identifies all of our systems that have an approved record
03:49:04PM 10	before.	03:52:22PM 10	schedule by NARA, the schedules that are being drafted and then
03:49:04PM 11	MR. HARPER: Your Honor, I think the material in Osage	03:52:25PM 11	the schedules that need to be drafted yet, so we have a whole
03:49:12PM <b>12</b>	we think was different and went to one of the issues that your	03:52:28PM 12	list of our systems and where they are at in the record schedule
03:49:17PM 13	Honor put in his order and I'm hoping to get into some	03:52:32PM 13	process.
03:49:20PM 14	information that I hope would be helpful to the Court.	03:52:33PM 14	<b>Q.</b> If we can bring up Plaintiffs' Exhibit 25. And is this the
03:49:23PM 15	THE COURT: All right. Let's go. Thank you.	03:52:43PM 15	schedule that you're talking about?
03:49:24PM 16	BY MR. HARPER:	03:52:45PM 16	A. Yes. That's the spreadsheet that was attached to that
03:49:25PM 17	Q. Ms. Infield, if I can bring up Plaintiffs' Exhibit 22. Ms.	03:52:48PM 17	e-mail showing me which record schedules for which systems have
03:49:39PM 18	Infield, this is part I'm sorry. 23. Do you recognize this	03:52:54PM 18	been drafted, developed, and approved by NARA and ready for
03:49:52PM 19	part of the code of federal regulations?	03:52:59PM 19	implementation.
03:49:54PM 20	A. This appears to be 36 CFR part 1234 dealing with electronic	03:53:00PM 20	Q. Now, have these actually been implemented?
03:50:02PM <b>21</b>	recordkeeping.	03:53:03PM 21	A. No, they have not been implemented at this time.
03:50:03PM 22	<b>Q.</b> And are you familiar with this regulation?	03:53:05PM 22	<b>Q.</b> So the process required under the regulations has not come
03:50:08PM 23	A. Yes, I am. There are certain requirements that the	03:53:09PM 23	to completion?
03:50:10PM 24	government has to meet in order to preserve and protect records,	03:53:10PM 24	A. Has not been completed, that's correct.
03:50:16PM 25	federal records, and in	03:53:12PM 25	Q. I mean, as of today had they been completed?
	Jacqueline M. Sullivan, RPR		Jacqueline M. Sullivan, RPR
	Official Court Reporter		Official Court Reporter
	182		184
03:50:19PM <b>1</b>	182 MR. STEMPLEWICZ: Objection; legal opinion being	03:53:15PM	A. No, they have not.
03:50:19PM <b>1</b> 03:50:21PM <b>2</b>		03:53:15PM 1 03:53:16PM 2	
00.00.101 m	MR. STEMPLEWICZ: Objection; legal opinion being		A. No, they have not.
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03:50:21PM 2 03:50:25PM 3	MR. STEMPLEWICZ: Objection; legal opinion being rendered here be the witness. The regulation speaks for itself. MR. HARPER: She's just testifying	03:53:16PM 2 03:53:29PM 3	<ul><li>A. No, they have not.</li><li>Q. And so as you sit here today, I mean, do you know whether or not the process by which trustworthiness of the systems has</li></ul>
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	185		187
03:54:48PM 1	THE COURT: I think it goes without saying, counsel,	03:57:42PM	<b>Q.</b> And with associations?
03:54:50РМ 2	but it is not necessary to engage in lengthy cross-examination	03:57:45РМ 2	A. Yes.
03:54:54PM 3	of that which you claim is irrelevant.	03:57:45PM 3	<b>Q.</b> Do you remember which associations?
03:54:57PM <b>4</b>	MR. STEMPLEWICZ: Well, if it had been admitted, your	03:57:45PM <b>4</b>	A. The Navajo Shivakay (ph) Association, and the Anadarko.
03:55:00РМ 5	Honor, I have to deal with it, I suppose.	03:57:50РМ 5	There is an oil and gas allottee association out of Anadarko and
03:55:03РМ 6	BY MR. STEMPLEWICZ:	03:57:56РМ 6	we had members from each one of those associations were part of
03:55:04PM 7	Q. In terms of this 20 percent error rate	03:57:59PM 7	that federal tribal task force.
03:55:07РМ 8	THE COURT: Hint, hint.	03:58:02PM 8	<b>Q.</b> Were there any from any other parts of the country as well?
03:55:09РМ 9	MR. STEMPLEWICZ: Yes, your Honor.	03:58:04PM 9	A. Not that I can recall.
03:55:11PM <b>10</b>	THE COURT: Go ahead.	03:58:06РМ 10	<b>Q.</b> What do these associations to your understanding do for
03:55:12PM <b>11</b>	BY MR. STEMPLEWICZ:	03:58:09PM 11	their members?
03:55:12PM 12	<b>Q.</b> I do have a few questions just for clarification, Ms.	03:58:09PM 12	<b>A.</b> Well, they tend to have a common goal in that they try to
03:55:16PM 13	Infield. In terms of the 20 percent error rate you talked about	03:58:14PM 13	keep track of what is produced on their property as far as oil
03:55:20PM 14	in the data clean-up, you mentioned that some of these errors	03:58:19PM <b>14</b>	and gas is concerned and try to follow the collection of that
03:55:24PM 15	were date of birth, names were wrong because marriages had taken	03:58:22PM 15	money and make they're trying to make sure that they actually
03:55:30PM 16	place, divorces and that sort of thing. Were those the majority	03:58:26PM 16	receive their money.
03:55:33PM 17	of errors or do you have any kind of a breakdown or what those	03:58:27PM 17	<b>Q.</b> And there have been some lawsuits where the associations
03:55:37PM 18	errors are?	03:58:30PM 18	have sued the United States?
03:55:38PM 19	A. I don't have a breakdown of what each category of the	03:58:31PM 19	A. Yes.
03:55:41PM 20	errors were, no.	03:58:31PM 20	<b>Q.</b> Do you know of anywhere they've sued third parties like oil
03:55:42PM 21	Q. Were any of them financial errors?	03:58:35PM 21	refineries and that sort of thing?
03:55:45PM 22	A. We did not look at the financial transactions.	03:58:36PM 22	A. I'm not sure about that.
03:55:47PM 23	<b>Q.</b> Okay. Now, you testified in October about what you said	03:58:38PM 23	MR. STEMPLEWICZ: No further questions, your Honor.
03:56:00РМ 24 03:56:05РМ 25	today. You referred I think to your work with OST and Mr.	03:58:39PM 24	THE COURT: Thank you. There's nothing further for
03:56:05PM <b>Z</b> J	Homan?	03:58:45PM <b>25</b>	Ms. Infield.
	Jacqueline M. Sullivan, RPR		Jacqueline M. Sullivan, RPR
	Official Court Reporter		Official Court Reporter 188
03:56:05PM	186 <b>A.</b> Um-hmm.	03:58:46PM <b>1</b>	Thank you, ma'am. You're excused. You may step down.
03:56:06РМ 2	Q. And I recall you saying something back then about meetings	03:58:46PM 2	(Witness excused at about the 3:59 p.m.)
03:56:11PM 3	that you had with allottees and allottees associations and	2	
03:56:17PM 4			MR LEVITAS: Plaintiffs call Dr. James Miller
		04:00:25PM 3	MR. LEVITAS: Plaintiffs call Dr. James Miller. MR. KIRSCHMAN: Your Honor, I'm going to object to
5	feedback that this project was trying to obtain from the	04:00:25PM <b>4</b>	MR. KIRSCHMAN: Your Honor, I'm going to object to
03:56:23PM 5	feedback that this project was trying to obtain from the individual Indians and tribes, and I think you noted that the	04:00:25PM 4 04:00:27PM 5	MR. KIRSCHMAN: Your Honor, I'm going to object to this. I believe they're out of order.
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	189		191
04:01:20PM <b>1</b>	COURTROOM DEPUTY: Thank you. Please be seated.	04:05:45PM <b>1</b>	OMB also evaluates various programs that agencies have, tries to
04:01:22PM <b>2</b>	MR. LEVITAS: Your Honor, if I may, I will identify	04:05:52PM <b>2</b>	establish priorities. That's all in the budget side. On the
04:01:24PM 3	Dr. Miller and give a brief summary of what I expect him to	04:05:55PM <b>3</b>	management side, OMB tries to increase the effectiveness and
04:01:28PM <b>4</b>	testify to.	04:05:58PM <b>4</b>	efficiency of government agencies. It also works with treasury
04:01:29РМ 5	THE COURT: Thank you.	04:06:03PM 5	and financial management. It has an office of procurement
04:01:33РМ 6	MR. LEVITAS: Dr. James C. Miller is an economist by	04:06:09РМ 6	policy to make sure that the procurement policy is effectual and
04:01:36PM <b>7</b>	training and professional practice who has had vast experience	04:06:15PM 7	efficient. It also has a regulatory function and information
04:01:42PM 8	in our government. He will testify about why and how the United	04:06:18PM 8	function, and those are to make sure that the regulatory
04:01:50PM <b>9</b>	States government benefits from holding IIM funds, and he will	04:06:21PM 9	activities of the agencies are consistent with law, but also
04:01:57PM <b>10</b>	also testify about the use of restitution as an effective remedy	04:06:24PM 10	consistent with benefit costs analysis and the President's
04:02:07РМ 11	to deter misconduct as well as to discourage improper profits,	04:06:28PM <b>11</b>	programs.
04:02:17PM <b>12</b>	and after he is sworn I'll give a little bit of background of	04:06:29PM 12	<b>Q.</b> In connection with the budget function, does the Office of
04:02:24PM 13	his professional educational and other experience.	04:06:34PM 13	Management and Budget address the budget of the entire
04:02:28PM <b>14</b>	THE COURT: Has the witness not been sworn, Tina?	04:06:39PM 14	government or some portion thereof?
04:02:31PM 15	COURTROOM DEPUTY: No, he's been sworn.	04:06:41PM 15	<b>A.</b> Well, it addresses the budget of the entire government and
04:02:33PM 16	THE COURT: He has been sworn.	04:06:45PM 16	in that regard it has to work with treasury and special counsel
04:02:35PM 17	Proceed.	04:06:49PM 17	of economic advisors as well too, and in fact, there's a name
04:02:36PM <b>18</b>	MR. LEVITAS: Okay. Dr. Miller was educated and has	04:06:55PM 18	coined for it. It's called the troika. Those three agency
04:02:48PM <b>19</b>	two degrees, three degrees, and is a practicing economist. He	04:06:59PM 19	heads and their staffs meet and discuss and forecast the outlays
04:03:00РМ 20	has taught at two universities and has served in the government	04:07:06РМ 20	of the federal government, the income of the federal government,
04:03:13PM <b>21</b>	in various capacities. He served in the Council and Wage and	04:07:09PM 21	and the borrowing needs, if any, of the federal government.
04:03:22PM <b>22</b>	Price Stability. He was a chairman of the Federal Trade	04:07:13PM 22	<b>Q.</b> And how frequently does this troika meet?
04:03:30PM 23	Commission, and he was director of the Office of Management and	04:07:17PM 23	A. Well, it meets, especially budget times it meets very
04:03:35PM <b>24</b>	Budget. And he has authored I think it's nine books and over a	04:07:22PM <b>24</b>	frequently. When I was budget director the secretary of
04:03:45PM <b>25</b>	hundred articles variously dealing with economic matters, the	04:07:26PM 25	treasury and the chairman of the counsel of economic advisors
	Jacqueline M. Sullivan, RPR		Jacqueline M. Sullivan, RPR
	Official Court Reporter		Official Court Reporter
	190		192
04:03:51PM 1	budget, and other matters relating to government. Dr. Miller	04:07:29PM 1	and I had practically weekly breakfast.
04:03:59PM <b>2</b>	budget, and other matters relating to government. Dr. Miller has expertise in the overall functioning of the government and	04:07:32PM <b>2</b>	and I had practically weekly breakfast. Q. And in those meetings one of the subjects that you
04:03:59PM 2 04:04:07PM 3	budget, and other matters relating to government. Dr. Miller has expertise in the overall functioning of the government and the budget and how the government may benefit from holding IIM	04:07:32PM 2 04:07:37PM 3	<ul><li>and I had practically weekly breakfast.</li><li>Q. And in those meetings one of the subjects that you addressed was the borrowing needs of the government in order to</li></ul>
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	193		195
04:09:18PM <b>1</b>	THE WITNESS: I also read the wikipedia entry about	04:12:49PM <b>1</b>	about the benefit to the government from the
04:09:22РМ 2	this case that you've cited. I haven't read Bleakhouse yet but	04:12:55PM <b>2</b>	A. Could I just amplify a little bit, what I mean going in the
04:09:28РМ 3	I'm planning to do that. And I read	04:12:58PM 3	treasury?
04:09:31PM <b>4</b>	THE COURT: Do it on their nickel.	04:13:00РМ 4	Q. Please, Dr. Miller.
04:09:33РМ 5	THE WITNESS: That's a thought.	04:13:01PM 5	A. When you think about it's very much like I have in mind the
04:09:34РМ 6	THE COURT: That's a thought?	04:13:05РМ 6	old Rigs National Bank which is now PNC across from treasury.
04:09:35РМ 7	THE WITNESS: Your Honor, then I read the Plaintiffs'	04:13:09PM 7	You go up there and you got these tellers and when you deposit
04:09:40PM 8	memorandum in praying for restitution, and I read the	04:13:14PM 8	money it all goes in the back, right, but they don't put a
04:09:47РМ 9	department's response excuse me reply, and then I read the	04:13:18PM 9	little note sticky on it saying this, you know, today was from
04:09:53РМ 10	Plaintiffs' response. I read Mr. Richard Greg's transcript of	04:13:22PM <b>10</b>	Jim Miller and this today was from Harry Smith or Lucille Jones.
04:10:00РМ 11	his appearance before the Court in 1999, I read a number of	04:13:27PM <b>11</b>	It's all commingled together, that's what I mean. I mean, I
04:10:09РМ 12	reports by GAO by inspector general of the treasury. There was	04:13:31PM <b>12</b>	still have an account and for the bank it's got a liability and
04:10:15PM 13	a couple of reports that I think that I understand that the	04:13:36РМ 13	asset. Their money from me is in the bank but it's a liability
04:10:19PM <b>14</b>	defendants had offered in previous iterations of this case. I	04:13:40РМ 14	because they owe it back to me, so that's what I mean by the
04:10:25PM 15	did some Googling and research on the Internet myself. I read	04:13:43РМ 15	money is being all commingled. That's basically the way it
04:10:32PM 16	portions of I think what were attached to Defendant's reply,	04:13:46PM 16	works in the federal government.
04:10:39РМ 17	response, excuse me, response from OMB circular A-11, and I said	04:13:47PM <b>17</b>	Q. Now, with reference to this general treasury account, if
04:10:47РМ 18	I'd like to see the whole thing, and of course then it arrived	04:13:54PM <b>18</b>	the United States government holds funds say of IIM trust in
04:10:51PM <b>19</b>	and I forgot it was about a thousand pages long. I just read	04:14:02PM <b>19</b>	that account which otherwise should have been distributed, how,
04:10:54PM <b>20</b>	relevant portions of it, but that's among the major documents	04:14:09PM <b>20</b>	if it does in any way, benefit the federal government?
04:11:00PM <b>21</b>	that I read or reviewed in this case.	04:14:12PM <b>21</b>	A. It benefits the federal government because the federal
04:11:04PM <b>22</b>	Q. Now, you made specific reference to Richard Greg. Who was	04:14:15PM <b>22</b>	government does not need then to borrow the funds that they have
04:11:08PM 23	Richard Greg?	04:14:20PM 23	there. They don't have to pay the interest on the funds that
04:11:09PM 24	A. He was commissioner of the FMS, Financial Management	04:14:24PM <b>24</b>	they borrowed, and that carries over from year to year.
04:11:13PM <b>25</b>	Service, back in 1999 when he did his testimony.	04:14:28PM <b>25</b>	<b>Q.</b> Is this a significant benefit to the government?
	Jacqueline M. Sullivan, RPR		Jacqueline M. Sullivan, RPR
	Official Court Reporter		Official Court Reporter
1	194	4	196
04:11:17PM <b>1</b>	<b>Q.</b> And you've identified that as one of the key agencies in	04:14:32PM <b>1</b>	A. Yes. I mean, from the analysis prepared by CRA that will
04:11:22PM <b>2</b>	<b>Q.</b> And you've identified that as one of the key agencies in the treasury department addressing the amount of borrowing	04:14:39PM <b>2</b>	<b>A.</b> Yes. I mean, from the analysis prepared by CRA that will be sponsored by others the numbers are quite significant.
04:11:22PM 2 04:11:25PM 3	<b>Q.</b> And you've identified that as one of the key agencies in the treasury department addressing the amount of borrowing needed by the government?	04:14:39PM 2 04:14:43PM 3	<ul><li>A. Yes. I mean, from the analysis prepared by CRA that will be sponsored by others the numbers are quite significant.</li><li>Q. And that is a financial value to the United States?</li></ul>
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		1	
	197		199
04:16:14PM	what we're looking at is the longer term that is the deficit	04:20:18PM	attention when it comes up, to lines 4 through 24. First of
04:16:19РМ 2	that you have to in most of our history we've had a deficit,	04:20:34PM	all, let me ask you if you disagree with the analysis or the
04:16:25PM <b>3</b>	but even when we run a surplus you have to role over the debt so	04:20:37PM	statements made by Commissioner Greg.
04:16:30PM <b>4</b>	you have to issue new debt, and if you have this extra amount of	04:20:40PM	A. No, I don't disagree. In fact, that's just basically what
04:16:34PM 5	money, that's money that you don't have to borrow and so that is	04:20:44PM	I was saying about you put money in an account that goes into
04:16:38PM 6	a benefit to the government, and also the interest that you	04:20:47PM	the general account and that belongs it's an asset just like
04:16:41PM 7	don't have to pay on money that you're obviously not borrowing.	04:20:52PM	my money becomes an asset of the bank. This money becomes an
04:16:44PM 8	Q. That was the other aspect that I wanted to inquire about.	04:20:56PM	asset of the federal government's.
04:16:48PM <b>9</b>	The impact of having these funds reduces the interest being paid	04:20:57PM	Q. When you said the federal government, you mean the United
04:16:55PM 10	by the federal government for borrowing?	04:21:00PM 10	States of America?
04:16:57PM <b>11</b>	A. Yes.	04:21:00PM <b>1</b> 1	A. United States of America.
04:16:58PM 12	Q. Now, you identified that as a significant benefit to the	04:21:02PM 12	Q. And that United States of America is, based on what you
04:17:04PM 13	government. Is there any way to quantify that benefit?	04:21:08PM 13	have read, is that the trustee of the IIM trust that you've
04:17:08PM <b>14</b>	A. Yes, yes. And the methodology is rather straightforward	04:21:13PM <b>1</b> 4	talked about?
04:17:12PM 15	and it's the methodology from all that I've understood about the	04:21:13PM 1	A. Well, I think you're asking me for a legal opinion. I
04:17:17PM 16	analyses prepared by CRA. They have followed that methodology.	04:21:18PM 10	wouldn't proffer that.
04:17:22PM <b>17</b>	<b>Q.</b> CRA is the expert witness that the plaintiffs intend to	04:21:21PM <b>1</b> 7	<b>Q.</b> Well, I wouldn't dare ask you for a legal opinion, Dr.
04:17:27PM <b>18</b>	call later to discuss your testimony about how you can quantify?	04:21:25PM <b>18</b>	Miller.
04:17:34PM <b>19</b>	A. That's correct.	04:21:26PM 1	Now, so you as former director of OMB, former chairman
04:17:36PM 20	Q. Please proceed.	04:21:38PM 20	of the FTC, experienced in government, and Commissioner Greg who
04:17:37PM <b>21</b>	A. Well, you basically take the amount of money that you don't	04:21:44PM <b>2</b> 1	
04:17:40PM 22	have to borrow and you take the interest on the money that you	04:21:51PM 22	-
04:17:45PM 23	would have had to pay and then for the following year you have	04:21:59PM 23	
04:17:51PM <b>24</b>	the same amount of money that you don't have to borrow and you	04:22:02PM 24	
04:17:57PM 25	have the interest on that money that you don't have to borrow,	04:22:06PM 2	
	Jacqueline M. Sullivan, RPR		Jacqueline M. Sullivan, RPR
	Official Court Reporter		Official Court Reporter
	198		200
04:18:01PM <b>1</b>	198 which includes not only the basic principal plus the interest	04:22:08PM	
04:18:01PM <b>1</b> 04:18:05PM <b>2</b>		04:22:08PM 04:22:17PM	Q. Now, Commissioner Greg testified in 1999, and let me try to
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<ul> <li>a standpart there each the reach the reach the product status product the transfer the status product the transfer the status the major of the status the status</li></ul>	04:24:15PM	$\ensuremath{\textbf{Q}}\xspace.$ Now let me just ask you to look at one more portion of this	04:28:06PM 1	MR. LEVITAS: The reason, your Honor, I think this is
<ul> <li>and a bit of the spectra of the conclusion in program of the concentration is an entropy. In the spectra of the concentration is an entropy of the concentration is an entropy of the concentration is an entropy. It is a public concentration is an entropy of the concentration is an entropy of the concentration is an entropy. It is a public concentration is an entropy of the concentration is an entropy of the concentration is an entropy. It is a public concentration is an entropy of the concentration is an entropy of the concentration is an entropy. It is a public concentration is an entropy of the concentration is an entrophysical is and the concentration is an entropy of the concentration is an entrophysic is an entrophysic is an entrophysic is an entrophysic is an en</li></ul>	04:24:18PM <b>2</b>	recent GAO report on page ten. Now, this statement that you're	04:28:08PM 2	relevant
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<ul> <li>G. A. Aright: hency yau: there your my hour allusted in the open from the second second</li></ul>	04:24:43PM <b>4</b>	to in terms of the benefit to the government?	04:28:14PM <b>4</b>	as a remedy, but it's a punitive remedy.
<ul> <li>The series but if he government - if he government is a specialized particle series of the statistic is a specialized particle series of the special series of the specialized particle series of the</li></ul>	04:24:46РМ 5	A. It says basically the same thing in different words.	04:28:18PM 5	MR. LEVITAS: Well, the point that I want to make is
<ul> <li>a specific al a sample, due that advance from read for a determent in this particular matter is a sampling that way functional that have a way</li></ul>	04:24:51PM 6	Q. All right. Thank you. I think you may have alluded to	04:28:21PM 6	that, and I have an exhibit I can display to that effect, is
sum       9       generate boroking?       sum       9       the plettifts that is very ingoting. There is not going to         1       A. No. no. Seep in mines that there is not going to my own mines controls that the amount you own. That's the amount south there is not going to my own mines controls. But there is not going to many power later to the power method to the power method. But there is not going to many power later to the power method. But there is not going to many power later to the power method. But there is not going to many power later to the power method. But there is not going to the power method. But there is not going to many power later to the power method. But there is not going to the power method. But there is not going to many power later to the power method. But the power met	04:24:55PM 7	this earlier, but if the government if the government is	04:28:27PM 7	that it's not just a punitive remedy. It's a deterrent, and the
<ul> <li>A. No, no. Keep Inmedia that there are several terms have, if the several problem is the several prob</li></ul>	04:25:02PM 8	operating at a surplus, does that obviate the need for	04:28:33PM 8	need for a deterrent in this particular matter is something that
<ul> <li>and 1 and 1</li></ul>	04:25:07PM <b>9</b>	government borrowing?	04:28:39PM 9	the plaintiffs think is very important. There is not going to
<ul> <li>area 12 dot. That's the arrea up you case. That's the arreaunt has fedder at the formation of the part in estimate the formation of the formation of the formation of the part in the formation of the formation</li></ul>	04:25:08PM 10	A. No, no. Keep in mind that there are several terms here	04:28:44PM 10	be apparently any injunctive ability to bring about trust
<ul> <li>and that's the network Transmit take and second resonance recommends with the second resonance recommends of the second determines the hast been in the second method with the network of the second determines the hast been in the second method with the second method determines the hast been in the second method with the second method determines the hast been in the second method with the second method with the second method with the second method determines the hast been in the second method with second method with</li></ul>	04:25:14PM <b>11</b>	that I've found confusing in my own mind sometimes, but there's	04:28:48PM <b>11</b>	reform, and in order to deter the government from continuing the
<ul> <li>sear 14 and that's the amount that outlays exceed revenues or revenues failed in the of outlays, and hat's been in our Nistory the usual state in the outlays and hat's been in our Nistory the usual state in the outlays and hat's been in our Nistory the usual state in the outlays and hat's been in our Nistory the usual state in the outlays and hat's been in our Nistory the usual state in the outlays and hat's been in our Nistory the usual state in the outlay outlay the interval outlays and hat's been in our Nistory the usual the outlays and hat's been in our Nistory the usual the outlays and hat's been in our Nistory the usual state in the outlay outlass on the outlay outlass on the outlass of the outlass of the outlass on the outlass of the outlass outlass on the outlass on the outlass on the outlass on the outlass of the outlass outlass on the outlass of the outlass outlass on the outlass of the outlass outlass on the outlass outlass on the outlass outlass of the outlass outlass</li></ul>	04:25:21PM <b>12</b>	debt. That's the amount you owe. That's the amount the federal	04:28:54PM <b>12</b>	same type of conduct that has got us to this point, restitution
<ul> <li>Factor 15 fail short or outlays, and that's been in our history the usual different function of elements the products of the elements of the products of the elements of the products of the elements of the products the elements of the products of the elements of the products of the elements of the products of the elements of the product of the product of the elements of the elements of the product of the elements of thelements of the elements of the element of the elements of th</li></ul>	04:25:25PM 13	government owes. That's a stock concept. And there's deficit	04:28:59PM 13	or discourgement is an appropriate remedy. That's the point
<ul> <li>ament 16 all curumstance. There have been times when we've run a surplus, ament 16 all curumstance. There have been times when we've run a surplus, and the curumstance. There have been times of augment that is description to a contengrate that is description.</li> <li>ament 20 to base move don't train the dd dd. to if you're training a start of the contend of the training the curumstance.</li> <li>ament 20 to base move don't training the curves or you have to the training and turning over a sour you have to base to the over the contend of the difference.</li> <li>ament 21 that the curumstance that a base to the over the curves or you have to base to the over the contend of the difference.</li> <li>ament 25 0. And at leads that while you have to the new of the maximum that do be add off?</li> <li>ament 2 to and they have to be paid off?</li> <li>ament 3 A Yes.</li> <li>ament 4 A difference to the dest of a draft frame in the curve of the curves of the base of a draft in the curve.</li> <li>ament 3 A Yes.</li> <li>A Y</li></ul>	04:25:28PM <b>14</b>	and that's the amount that outlays exceed revenues or revenues	04:29:04PM <b>14</b>	that we will argue to your Honor.
<ul> <li>amount 17 but even in times of surpluses the faderal government has family of this contemption. But low why is that? The reasons is that so much of this contemption. But low why is that? The reasons is that so much of this contemption. But low contemptis low contemption. But low contemptie</li></ul>	04:25:33PM 15	fall short of outlays, and that's been in our history the usual	04:29:06PM 15	THE COURT: I think I'll pass on that one, counsel.
<ul> <li>Here the borrow. Now why is hart? The reason is that so much of this way is actively year that you still have to some now debt to thring and turning over every year that you still have to some now debt to thring over every year that you still have to some now debt to thring over every year that you still have to some now debt to thring over the debt is churning over a still have to keep turning over to turn over but you have to bur over to you have to bur over the debt is churing and the debt is shown and the debt is have and pa</li></ul>	04:25:38PM 16	circumstance. There have been times when we've run a surplus,	04:29:08PM 16	You can move on. I think the notion of deterring the federal
<ul> <li>statew 19</li> <li>debt is churning and turning over every year that you still have</li> <li>to issue near debt is churning and turning over every year that you still have</li> <li>to issue near debt is churning over severy year that you still have</li> <li>to issue near debt is churning over severy year that you still have</li> <li>to issue near debt is churning over severy year that you still have</li> <li>to issue near debt is churning over severy year that you still have</li> <li>to issue near debt is churning over severy year debt have dest to that over or you have to borrow</li> <li>to issue near debt is churning over severy year that you still have</li> <li>to issue near debt is churning over severy year that you still have</li> <li>to issue near debt is churning over severy year that you still have</li> <li>to issue near debt is churning over severy year in times of Jacquelie M. Sulfwan, RPR</li> <li>to indiget surplus. These debt instruments that had been issued at onfor times mature?</li> <li>thadget surplus. These debt instruments that had been issued at onfor times mature?</li> <li>thadget surplus. These debt instruments that had been issued at onfor times mature?</li> <li>the debt is chart, it mere is not current turns?</li> <li>a calable, the government neek is borrow funds to do it?</li> <li>a salable is the government neek to borrow funds to do it?</li> <li>a salable is the government neek to borrow funds to do it?</li> <li>a salable is the federal fraction commission starting tomorrow.</li> <li>a salable is the debra it government to have an eactrate that weak an apartmet obrea.</li> <li>a salable is the debra it government to have an eactrate that weak an apartmet here.</li> <li>a salable is the debra it government to have an eactrate that weak an eactrate that weak an eactrate that weak it a mature?</li> <li>a salable is the government to have an eactrate that weak it a salable?</li> <li>a calable is the fore it mere debra in debra in the debt is sub informating and it mink at that i</li></ul>	04:25:42PM <b>17</b>	but even in times of surpluses the federal government has to	04:29:13PM 17	government with a discourgement claim is delightful to
<ul> <li>taisen env debt to retire the old debt, so if you're running at surplus, your Honor, you'rentity have less to turn over but you are up extra money. that means that you have to turn over but you are to turn over you have to borrow are to the them as that you have to turn over you have to borrow are to the trans. THE COURT: Thank you, sir. THE COURT: Faithout and the subtaint at the target surplus, these debt instruments that had been issued at a sufficient runn over to you have any extra mature?</li> <li>take you have any article to the sufficient thank to be paid off?</li> <li>take you have to the paid off?</li> <li>take you have to the paid off?</li> <li>take you have to the paid off?</li> <li>take you have any artifue the paid off?</li> <li>take you have any artifue to the paid off?</li> <li>take you have any artifue to the paid off?</li> <li>take you have any artifue the paid off?</li> <li>take you have any artifue to the paid off?</li> <li>take you have any artifue to the paid off?</li> <li>take you have any artifue the paid off?</li> <li>ta</li></ul>	04:25:45PM 18	borrow. Now why is that? The reason is that so much of this	04:29:21PM 18	contemplate, but I don't think Dr. Miller's experience deterring
<ul> <li>surplus, your Henor, you really have less to furn over but you</li> <li>surplus, your Henor, you really have less to furn over but you</li> <li>surplus, your Henor, you really have less to furn over or you have to borrow</li> <li>that means that you have to turn over or you have to borrow</li> <li>that means that you have to turn over or you have to borrow</li> <li>that means that you have to turn over or you have to borrow</li> <li>Jacqueline M. Sullwan, RPR</li> <li>Official Court Reporter</li> <li>Court official Court Reporter</li> <li>Court offi</li></ul>	04:25:48PM <b>19</b>	debt is churning and turning over every year that you still have	04:29:27PM 19	corporate defendants in the FTC is particularly relevant, so
<ul> <li>states</li> <li>states</li> <li>states</li> <li>states</li> <li>states</li> <li>according</li> <li></li></ul>	04:25:53PM <b>20</b>	to issue new debt to retire the old debt, so if you're running a	04:29:31PM <b>20</b>	I'll sustain the objection.
<ul> <li>answer 23</li> <li>that means that you have to turn over or you have to borrow</li> <li>that means that you have to turn over or you have to borrow</li> <li>that means that you have to turn over or you have to borrow</li> <li>answer 25</li> <li>A. And as 1 understand what you're saying, even in times of Jacqueline M. Sullwan, RPR</li> <li>Official Court Reporter</li> <li>202</li> <li>answer 2</li> <li>the court over or you have to be paid off?</li> <li>answer 3</li> <li>A. Yos.</li> <li>answer 4</li> <li>The COURT: Flatfooted, right.</li> <li>answer 5</li> <li>A. Yos.</li> <li>answer 4</li> <li>The COURT: Court Reporter</li> <li>202</li> <li>answer 5</li> <li>A. Yos.</li> <li>answer 6</li> <li>G. And in order to do that, if there is not current funds</li> <li>answer 7</li> <li>answer 1</li> <li>the government and refer you to you?</li> <li>answer 1</li> <li>the probab ly singlive shorts to the order to have an extra</li> <li>answer 11</li> <li>there are an array of different remedies that can be used. Is</li> <li>answer 13</li> <li>responsibilities as chairman of the federal Trade Commission has certain endorse when it down that with a violation or something else. And</li> <li>answer 14</li> <li>there are an array of different remedies that can be used. Is</li> <li>answer 13</li> <li>responsibilities as chairman of the federal Trade Commission has certain endorse when it down to rest that in your planning.</li> <li>answer 13</li> <li>responsibilities as chairman of the federal Trade Commission has certain endorse when it down to rest. Is ware for that correct?</li> <li>answer 14</li> <li>there are an array of different remedies that can be used. Is</li> <li>answer 15</li> <li>there are an array of different remedies that can be used. Is</li> <li>answer 14</li> <li>there are an array of different remedies that can be used. Is</li> <li>answer 14</li> <li>there are an array of different remedies that can be used. Is</li> <li>answer 15</li> <li>there are an array of different remedies that can be used. Is&lt;</li></ul>	04:25:57PM <b>21</b>	surplus, your Honor, you really have less to turn over but you	04:29:33PM <b>21</b>	MR. LEVITAS: All right. Your Honor, I have no
water       24       less.       water       25       Q. And as I understand why you're saying, over in times of Jacqueline M. Sullivan, RPR       Jacqueline M. Sullivan, RPR       Jacqueline M. Sullivan, RPR         0       Official Court Reporter       202       Cataget I       THE COURT: Flatfooder, right.       Water       24         0       A. Yes.       Control to the pair of the pair pair of the pair of the pair pair pair of the pair pai	04:26:02PM <b>22</b>	still have to keep turning over, so if you have any extra money,	04:29:34PM <b>22</b>	further questions.
stature       25       Q. And as Lunderstand what you're saying, even in times of Jacqueline M. Sullivan, RPR.       stature       26       stature       10       Jacqueline M. Sullivan, RPR         Official Court Reporter       00       Official Court Reporter       Official Court Reporter       00         stature       1       budget surplus, these debt Instruments that had been issued at earlier times mature?       maxwe       2       THE COURT: Flatfooted, right:       200       continue of oo our cross-oxamination stafting formorrow.         stature       2       and they have to be paid off?       watew       3       continue of oo our cross-oxamination stafting formorrow.         stature       3       A. Yos.       watew       4       THE COURT: Dr. Miler, you live In form, don't you?         stature       4       A. A tractity. It has to borrow to retire that debt and issue       watew       6       out in Repfire County, but we have an apartment downtown. I live         stature       1       increment of revenue there.       11       increment of revenue there.       watew       9       0.3         stature       1       increment of revenue there.       12       out the Shift gears for a moment and refer you to you       watew       14       have a criminal matter that live got to take care of that         state or an anaryof different remedies that can	04:26:06РМ 23	that means that you have to turn over or you have to borrow	04:29:35PM 23	THE COURT: Thank you, sir.
Jacqueline M. Sullivan, RPR Official Court Reporter     Jacqueline M. Sullivan, RPR Official Court Reporter       202       204       205       A Yes.       206       20       20       20       20       20       21       21       21       21       21       21       21       21       21	04:26:11PM <b>24</b>	less.	04:29:40PM <b>24</b>	MR. STEMPLEWICZ: Your Honor, as we indicated, we were
Official Court Reporter       Deficial Court Reporter         202       202         41       budget surplus, these debt Instruments that had been issued at a surger of a su	04:26:11PM <b>25</b>	Q. And as I understand what you're saying, even in times of	04:29:42PM <b>25</b>	expecting Mr
202       scarw       1       budget surplus, these debt instruments that had been issued at carlier times mature?       scarw       1       THE COURT: Flatfooted, right.       MR. STEMPLEWIC2: Exactly. We request the ability to scarw       scarw       1       MR. STEMPLEWIC2: Exactly. We request the ability to continue or do our cross-scarnination starting tomorrow.       scarw       2       MR. STEMPLEWIC2: Exactly. We request the ability to continue or do our cross-scarnination starting tomorrow.       scarw       4       THE COURT: Filleoted, right.       MR. STEMPLEWIC2: Exactly. We request the ability to continue or do our cross-scarnination starting tomorrow.         scarw       6       A. And they have to be paid off?       scarw       7       THE COURT: Well, the intown, don't you?         scarw       7       available, the government needs to borrow funds to do it?       scarw       7       THE COURT: Well, the traffic on the way out there         scarw       9       new instruments in order to keep the government going, and that scarw       10       Is again a benefit to the foderal government to have an extra       scarw       11       have a criminal matter that I've got to take care of that         scarw       11       increment of revenue there.       scarw       11       have a criminal matter that I've got to take care of that         scarw       13       responsibilities as chairman of the Foderal Trade Commission.       scarw       11       have		Jacqueline M. Sullivan, RPR		Jacqueline M. Sullivan, RPR
server       1       budget surplus, these debt instruments that had been issued at       server       1       THE COURT: Flatfooted, right.         server       3       A.       Yes.       Server       3         server       4       0. And hay have to be paid off?       server       3       THE COURT: Flatfooted, right.         server       6       0. And in order to do that, if there is not current funds       server       6       THE COURT: Well, the value an apartment downtown. How out is no dread to be borrow funds to do it?       server       7         server       7       available, the government needs to borrow funds to do it?       server       7       THE COURT: Well, the traffic on the way out there!         server       1       increment of revenue there.       server       1       server       1         server       1       increment of revenue there.       server       1       server       1         server       1       increment of revenue there.       server       1       server       1         server       1       increment of revenue there.       server       1       server       1         server       1       increment of revenue there.       server       1       server       1         server		Official Court Reporter		Official Court Reporter
asser       2       earlier times mature?       searer       2       MR. STEMPLEWIC2: Eact, We request the ability to continue or do our cross-examination starting tomorrow.         asser       4       Q. And they have to be paid off?       searer       4       THE CURT: Dr. Miller, you live in town, don't you?         asser       5       A. Yes.       searer       5       THE CURT: Dr. Miller, you live in town, don't you?         asser       6       Q. And in order to do that, if there is not current funds       searer       7       THE CURT: Well he traffic on the way out there         asser       7       available, the government needs to borrow funds to do 1?       searer       7       THE CURT: Well he traffic on the way out there         asser       10       is again a benefit to the federal government to have an extra       searer       10       By the way, counsel, Wednesday morning of this week I         asser       11       increment of revenue there.       searer       10       Mave a criminal matter that I've go to take care of that       searer       11       would be sensible for us to convene after lunch on Wednesday         array       14       And the Federal Trade Commission       searer       15       MR. DORRIS: There's one more matter I need to make         array       14       Inter current?       avaitaftent ha violation or something dese. And		202		
autor       3       A. Yes.       autor       3       continue or do our cross-examination starting from row.         autor       4       Q. And they have to be paid off?       autor       5       THE COURT: Dr. Miller, you live in town, don't you?         autor       5       A. Yes.       autor       6       Q. And in order to do that, if there is not current funds       autor       5       THE WITNESS: We have an apartment downtown. Live out in Raphy County, but we have an apartment downtown. Live out in Raphy County, but we have an apartment downtown. Live out in Raphy County. Dut we have an apartment downtown. Live out in Raphy Co				204
accord       Q. And they have to be paid off?       Accord       THE COURT: Dr. Miller, you live in town, don't you?         accord       G. And in order to do that, if there is not current funds       Accord       THE COURT: Dr. Miller, you live in town, don't you?         accord       G. And in order to do that, if there is not current funds       Accord       THE COURT: Well, the traffic on the way out there         accord       G. Accord       Accord       THE COURT: Well, the traffic on the way out there         accord       G. Accord       Decord       THE COURT: Well, the traffic on the way out there         accord       G. Scalin a benefit to the federal government poing, and that       Accord       G.       By the way, counsel, Wednesday morning of this week I         accord       G. Let me shift gears for a moment and refer you to your       Box       By the way, counsel, Wednesday morning and I think It         accord       G. Cardin remedies when it acts to deal with a violation of the       Box       Hour aware of, your Houro. As indicated when we called Mr.         accord       G. All right. Now, in the course of your chairmanship, are       Box       Hiler, sometimes things in this courd wead for would be aga before Mr.         accord       M. K: STEMLEWICZ: Objection: relevance.       Box       Hilers are anitary of Weinstrat.       Box         accord       M. R: Steweinsthit. 1 don't know what the       Box </th <th>04:26:16PM <b>1</b></th> <th></th> <th>04:29:44PM <b>1</b></th> <th></th>	04:26:16PM <b>1</b>		04:29:44PM <b>1</b>	
A. Yes.       Source 1       The WINESS: We have an apartment downtown. I live out in RapiNy County, but we have an apartment downtown. I live out in RapiNy County, but we have an apartment downtown. I live out in RapiNy County, but we have an apartment there.         Source 7       available, the government needs to borrow funds to do it?       Source 7       THE COURT: Well, the traffic on the way out there         Source 7       available, the government needs to borrow to retire that debt and issue       Source 7       THE COURT: Well, the traffic on the way out there         Source 7       is again a benefit to the federal government to have an extra       Source 7       THE COURT: Well, the traffic on the way out there         Source 7       Q. Let me shift gears for a moment and refer you to your       Source 7       By the way, counsel, Wednesday morning of this week I         Source 7       And the Federal Trade Commission.       Source 7       Source 7       Source 7         Source 7       Increment for when th tacts to deal with a violation of the ease in array of different remedies that can be used. Is       Source 7       Source 7       Source 7         Source 7       Q. All right. Now, in the course of your chairmanship, are       Source 7	2	budget surplus, these debt instruments that had been issued at		THE COURT: Flatfooted, right.
access       6       Q. And in order to do that, if there is not current funds       access       6       out in Raphy County, but we have an apartment here.         access       7       available, the government needs to borrow funds to do it?       THE COURT: Well, the traffic on the way out there         access       8       A. Exactly. It has to borrow to retire that debt and issue       access       7       THE COURT: Well, the traffic on the way out there         access       10       is again a benefit to the federal government to have an extra       access       10       By the way, counsel, Wednedady morning and this it         access       11       increment of revenue there.       access       10       By the way, counsel, Wednedady morning and I think it         access       12       Q. Let me shift gears for a moment and refer you to your       access       11       would be sensible for us to convene after lund on Wednesdagy         access       14       And the Federal Trade Commission       access       15       MR. DORRIS: There's one more matter I need to make         access       15       certain remedies when I tacts to deal with a violation of the       access       16       would be sensible for us to convene after lund to make         access       14       the corrects       and the forter or an array of different remedies that are bused. Is       access       16	04:26:23PM 2	budget surplus, these debt instruments that had been issued at earlier times mature?	04:29:48PM 2	THE COURT: Flatfooted, right. MR. STEMPLEWICZ: Exactly. We request the ability to
available, the government needs to borrow funds to do it?       THE COURT: Well, the fraffic on the way out there         available, the government needs to borrow to retire that debt and issue       THE COURT: Well, the fraffic on the way out there         available, the government is in order to keep the government going, and that       the sagain a benefit to the federal government to have an extra         available       is again a benefit to the federal government to have an extra       the sagain a benefit to the federal government and refer you to your       By the way, counsel, Wednesday morning of this week I         available       A. Exactly. It has to borrow to retire that debt and refer you to your       thave a criminal matter that I've got to take care of that         available       And the Federal Trade Commission.       would be sensible for us to convene after lunch on Wednesday         available       there are an array of different remedies that can be used. Is       the court aware of, your Honor. As indicated when we called Mr.         available       that correct?       wawe whether or not restitution and discouragement was one       the is only available to come in late Tuesday night and be         available       M.R. STEMPLEWIGZ: Objection: relevance.       things are going, we could be available. We could certainly let the         available       M.R. StEMPLEWIGZ: Objection: relevance.       witherses to morrow and that there would he age before Mr.         available       M.R. StempLine M. Sullivan, RPR       th	04:26:23PM 2 04:26:25PM 3	budget surplus, these debt instruments that had been issued at earlier times mature? A. Yes.	04:29:48PM 2 04:29:50PM 3	THE COURT: Flatfooted, right. MR. STEMPLEWICZ: Exactly. We request the ability to continue or do our cross-examination starting tomorrow.
a. Exactly. It has to borrow to refire that debt and issue       outside       for individual is again a benefit to the federal government going, and that       is again a benefit to the federal government to have an extra       outside       for individual is again a benefit to the federal government to have an extra       is again a benefit to the federal government to have an extra       outside       for individual is terrible anyway. We'll reconvene tomorrow morning at         increment of revenue there.       increment of revenue there.       for individual is terrible anyway. We'll reconvene tomorrow morning at       for individual is the federal matter that I've got to take care of that         increment 1       increment of revenue there.       for individual is the federal frade Commission.       for individual is the federal frade Commission.       for individual is the federal frade Commission has certain enforcement powers,       for individual is the federal frade Commission has certain enforcement powers,       for individual is the court aware of, your Honor. As indicated when we called Mr.         for int correct?       for the rear an array of different remedies that can be used. Is       for individual is that we were planning to call after         for int correct?       gou aware whether on not restitution and discouragement was one       for the remedies used by the FTC?       for the remedies used by the FTC?         for int ermedies used by the FTC?       gou aware whether or not restitution and discouragement was one       for the remedies used by the fTC?       for the remedies used by the FTC? <t< th=""><th>04:26:23PM 2 04:26:25PM 3 04:26:25PM 4</th><th><ul><li>budget surplus, these debt instruments that had been issued at earlier times mature?</li><li>A. Yes.</li><li>Q. And they have to be paid off?</li></ul></th><th>04:29:48PM 2 04:29:50PM 3 04:29:54PM 4</th><th>THE COURT: Flatfooted, right. MR. STEMPLEWICZ: Exactly. We request the ability to continue or do our cross-examination starting tomorrow. THE COURT: Dr. Miller, you live in town, don't you?</th></t<>	04:26:23PM 2 04:26:25PM 3 04:26:25PM 4	<ul><li>budget surplus, these debt instruments that had been issued at earlier times mature?</li><li>A. Yes.</li><li>Q. And they have to be paid off?</li></ul>	04:29:48PM 2 04:29:50PM 3 04:29:54PM 4	THE COURT: Flatfooted, right. MR. STEMPLEWICZ: Exactly. We request the ability to continue or do our cross-examination starting tomorrow. THE COURT: Dr. Miller, you live in town, don't you?
excesser       9       new instruments in order to keep the government going, and that       excesser       9       9:30.         excesser       10       is again a benefit to the federal government to have an extra       for the remedies are shift gears for a moment and refer you to your       10       By the way, counsel, Wednesday morning of this week I         excesser       12       Q. Let me shift gears for a moment and refer you to your       10       By the way, counsel, Wednesday morning and I think it         excesser       13       responsibilities as chairman of the Federal Trade Commission.       excesser       13         excesser       16       law, whether it's an antitrust violation or something else. And       excesser       16       more anaray of different remedies that can be used. Is       excesser       18       that correct?       excesser       18       expected. Our final witness that we were planning to call after         excesser       19       A. Yes.       excesser       10       excesser       16       have a criminal matter that I've got to take care of that       more and think it         excesser       10       a. M the F	04/26/25PM 2 04/26/25PM 3 04/26/25PM 4 04/26/27PM 5	<ul> <li>budget surplus, these debt instruments that had been issued at earlier times mature?</li> <li>A. Yes.</li> <li>Q. And they have to be paid off?</li> <li>A. Yes.</li> </ul>	04-29-48PM 2 04-29-50PM 3 04-29-54PM 4 04-29-57PM 5	THE COURT: Flatfooted, right. MR. STEMPLEWICZ: Exactly. We request the ability to continue or do our cross-examination starting tomorrow. THE COURT: Dr. Miller, you live in town, don't you? THE WITNESS: We have an apartment downtown. I live
10       is again a benefit to the federal government to have an extra       000000000000000000000000000000000000	04:26:25PM 2 04:26:25PM 3 04:26:25PM 4 04:26:27PM 5 04:26:27PM 6	<ul> <li>budget surplus, these debt instruments that had been issued at earlier times mature?</li> <li>A. Yes.</li> <li>Q. And they have to be paid off?</li> <li>A. Yes.</li> <li>Q. And in order to do that, if there is not current funds</li> </ul>	04-29-48PM 2 04-29-50PM 3 04-29-50PM 4 04-29-57PM 5 04-29-58PM 6	THE COURT: Flatfooted, right. MR. STEMPLEWICZ: Exactly. We request the ability to continue or do our cross-examination starting tomorrow. THE COURT: Dr. Miller, you live in town, don't you? THE WITNESS: We have an apartment downtown. I live out in Rapihy County, but we have an apartment here.
11       increment of revenue there.       outside increment of revenue there.       outside increment of revenue there.         000000000000000000000000000000000000	04/26/23PM         2           04/26/25PM         3           04/26/25PM         4           04/26/25PM         5           04/26/27PM         6           04/26/27PM         7	<ul> <li>budget surplus, these debt instruments that had been issued at earlier times mature?</li> <li>A. Yes.</li> <li>Q. And they have to be paid off?</li> <li>A. Yes.</li> <li>Q. And in order to do that, if there is not current funds available, the government needs to borrow funds to do it?</li> </ul>	042948PM 2 042950PM 3 042954PM 4 042954PM 5 042955PM 6 043003PM 7 043005PM 8	THE COURT: Flatfooted, right. MR. STEMPLEWICZ: Exactly. We request the ability to continue or do our cross-examination starting tomorrow. THE COURT: Dr. Miller, you live in town, don't you? THE WITNESS: We have an apartment downtown. I live out in Rapihy County, but we have an apartment here. THE COURT: Well, the traffic on the way out there
12       Q. Let me shift gears for a moment and refer you to your       probably is going to take most of the morning and I think it         12       Probably is going to take most of the morning and I think it       would be sensible for us to convene after lunch on Wednesday         12       And the Federal Trade Commission has certain enforcement powers,       mousser       13         13       certain remedies when it acts to deal with a violation of the       mousser       15       MR. DORRIS: There's one more matter I need to make         14       there are an array of different remedies that can be used. Is       mousser       16       the court aware of, your Honor. As indicated when we called Mr.         12       Yees.       mousser       18       that correct?       mousser       18       expected. Our final witness that we were planning to call after         12       you aware whether or not restitution and discouragement was one       mousser       19       A. Yes.       mousser       19       we have some other witnesses after Mr. Miller was Mr. Palace,       mousser       12       we have some other witnesses after Mr. Miller was Mr. Palace,         12       you aware whether or not restitution and discouragement was one       mousser       12       we have some other witnesses tomorning or Wednesday at one. With the pace         12       MR. STEMPLEWICZ: Objection; relevance.       mousser       21       witne	042823PM 2 042823PM 3 042823PM 4 042823PM 5 042827PM 6 04283PM 7 04283PM 8	<ul> <li>budget surplus, these debt instruments that had been issued at earlier times mature?</li> <li>A. Yes.</li> <li>Q. And they have to be paid off?</li> <li>A. Yes.</li> <li>Q. And in order to do that, if there is not current funds available, the government needs to borrow funds to do it?</li> <li>A. Exactly. It has to borrow to retire that debt and issue</li> </ul>	042848PM         2           042848PM         3           042856PM         4           042856PM         5           042856PM         6           043005PM         7           043005PM         8           043005PM         9	THE COURT: Flatfooted, right. MR. STEMPLEWICZ: Exactly. We request the ability to continue or do our cross-examination starting tomorrow. THE COURT: Dr. Miller, you live in town, don't you? THE WITNESS: We have an apartment downtown. I live out in Rapihy County, but we have an apartment here. THE COURT: Well, the traffic on the way out there tonight is terrible anyway. We'll reconvene tomorrow morning at
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04280394     25     FTC's discourgement     04311394     25     government begin and call Mr. Palace in our rebuttal case.       Jacqueline M. Sullivan, RPR	04/28/23PM         2           04/28/23PM         3           04/28/23PM         3           04/28/23PM         5           04/28/23PM         5           04/28/23PM         5           04/28/23PM         6           04/28/23PM         7           04/28/23PM         7           04/28/23PM         8           04/28/23PM         10           04/28/23PM         11           04/28/23PM         12           04/28/23PM         13           04/27/38PM         14           04/27/38PM         16           04/27/38PM         18           04/27/38PM         20           04/27/38PM         20           04/27/38PM         21	<ul> <li>budget surplus, these debt instruments that had been issued at earlier times mature?</li> <li>A. Yes.</li> <li>Q. And they have to be paid off?</li> <li>A. Yes.</li> <li>Q. And in order to do that, if there is not current funds available, the government needs to borrow funds to do it?</li> <li>A. Exactly. It has to borrow to retire that debt and issue new instruments in order to keep the government going, and that is again a benefit to the federal government to have an extra increment of revenue there.</li> <li>Q. Let me shift gears for a moment and refer you to your responsibilities as chairman of the Federal Trade Commission. And the Federal Trade Commission has certain enforcement powers, certain remedies when it acts to deal with a violation of the law, whether it's an antitrust violation or something else. And there are an array of different remedies that can be used. Is that correct?</li> <li>A. Yes.</li> <li>Q. All right. Now, in the course of your chairmanship, are you aware whether or not restitution and discouragement was one</li> </ul>	0429.489M         2           0429.489M         3           0429.589M         4           0429.589M         5           0429.589M         6           0430.589M         7           0430.589M         9           0430.589M         9           0430.589M         10           0430.589M         10           0430.589M         11           0430.589M         12           0430.589M         13           0430.589M         14           0430.589M         16           0430.589M         18           0430.559M         20           0430.559M         21	THE COURT: Flatfooted, right. MR. STEMPLEWICZ: Exactly. We request the ability to continue or do our cross-examination starting tomorrow. THE COURT: Dr. Miller, you live in town, don't you? THE WITNESS: We have an apartment downtown. I live out in Rapihy County, but we have an apartment here. THE COURT: Well, the traffic on the way out there tonight is terrible anyway. We'll reconvene tomorrow morning at 9:30. By the way, counsel, Wednesday morning of this week I have a criminal matter that I've got to take care of that probably is going to take most of the morning and I think it would be sensible for us to convene after lunch on Wednesday instead of the morning, so consider that in your planning. MR. DORRIS: There's one more matter I need to make the Court aware of, your Honor. As indicated when we called Mr. Miller, sometimes things in this court move faster than expected. Our final witness that we were planning to call after we have some other witnesses after Mr. Miller was Mr. Palace, and he is only available to come in late Tuesday night and be available Wednesday morning or Wednesday at one. With the pace
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	205	1	I N D E X	207
04:31:17PM <b>1</b>	THE COURT: Don't shake your head. You've got lots of	2 3		
04:31:20PM <b>2</b>	witnesses. See if you can get ready a witness for tomorrow.	3 4	WITNESSES:	
04:31:23PM 3	MR. KIRSCHMAN: Your Honor, we would like to put on	5	RAY ZILER	
04:31:24PM <b>4</b>	our witnesses after we've heard Plaintiffs' case. We're	6	Direct Examination by Mr. Dorris 106	
04:31:27PM 5	responding to Plaintiffs' case.	7	Cross-Examination by Mr. Kirschman 140	
04:31:29PM 6	THE COURT: I know. I understand that, but we can			
04:31:34PM 7	handle that. You've got to have a couple of witnesses that we	8	MONA INFIELD	
04:31:39PM 8	can hear. Do your best. Okay. Make a good faith effort. I	9	Direct Examination by Mr. Harper 161	
04:31:43PM 9	hate to quit early all the time.	10	Cross-Examination by Mr. Stemplewicz 184	
04:31:47PM 10	MR. KIRSCHMAN: Your Honor, if I may, I don't want to		DR. JAMES C. MILLER	
04:31:50PM <b>11</b>	object frequently, but when we have a witness list that says	11	Direct Examination by Mr. Levitas 190	
04:31:54PM <b>12</b>	four hours for each of these witnesses and they run 45 minutes	12		
04:31:57PM 13	and 30 minutes, that's trial by ambush. That's not a good faith	13		
04:32:02PM <b>14</b>	estimate. Thirty minutes or an hour for a witness who was			
04:32:05PM 15	supposed to testify for four? It's hard to prepare a case.	14	EXHIBITS	
04:32:09PM 16	THE COURT: I'm terribly disappointed that this	15		
04:32:11PM <b>17</b>	witness, this four-hour witness took an hour-and-a-half, but	16	Plaintiffs' Exhibit	
04:32:20PM 18	you've been before me before. You know how things move. Let's	17	No. Identification Marked Received	
04:32:24PM <b>19</b>	adjust. See if you can bring a witness in tomorrow. If you		PX 31-35 140	
04:32:28PM <b>20</b>	can't, if you make a good faith effort and can't think of a	18		
04:32:31PM <b>21</b>	single witness to plug the gap tomorrow I'll let you off, but	19	DX 465 155	
04:32:35PM <b>22</b>	I'm counting on you, Mr. Kirschman.	20	PX 29 175	
04:32:38PM 23	MR. KIRSCHMAN: We will have a witness for you, your	21		
04:32:40PM <b>24</b>	Honor.	22 23		
04:32:40PM <b>25</b>	THE COURT: All right. Good. Thank you. See you	24		
	Jacqueline M. Sullivan, RPR	25	Jacqueline M. Sullivan, RPR	
	Official Court Reporter		Official Court Reporter	
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04:32:42PM 1	tomorrow morning at 9:30.	1	CERTIFICATE	
2	(Proceedings adjourned at about 4:33 p.m.)	2	I, JACQUELINE M. SULLIVAN, Official Court Report	
3		3	certify that the foregoing pages are a correct transcript fro	m
4		4	the record of proceedings in the above-entitled matter.	
5		5		
6		6	JACQUELINE M. SULLIVAN	
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	Jacqueline M. Sullivan, RPR		Jacqueline M. Sullivan, RPR	
1	Official Court Reporter	1	Official Court Reporter	

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