

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, : Civil Action 96-1285
et al. :
 :
Plaintiffs :
 :
 : Washington, D.C.
V. : Thursday, June 19, 2008
 :
 :
DIRK KEMPTHORNE, Secretary :
of the Interior, et al. :
 :
 :
Defendants : MORNING SESSION

*TRANSCRIPT OF EVIDENTIARY HEARING
DAY 8
BEFORE THE HONORABLE JAMES ROBERTSON
UNITED STATES DISTRICT JUDGE*

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C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
JOSEPH ROSENBAUM				
By Mr. Kresse	1369	--	--	--
By Mr. Harper	--	1393	--	--
FREDERICK (FRITZ) SCHEUREN				
By Mr. Warshawsky	--	--	1432	--
By Mr. Dorris	--	1421	--	--

E X H I B I T S

NUMBERADMITTED

DEFENDANT EXHIBIT:

515

1393

P R O C E E D I N G S

1
2 COURTROOM DEPUTY: This is Civil Action --

3 THE COURT: Good morning, everybody.

4 MR. DORRIS: Good morning, Your Honor.

5 THE COURT: Who gets it first?

6 MR. DORRIS: I think she goes before me, Your Honor.

7 COURTROOM DEPUTY: Okay, I'll take it. This is Civil
8 Action 96-1285, Elouise Cobell, et al. versus Dirk Kempthorne,
9 et al. All yours.

10 MR. DORRIS: Thank you. Your Honor, I conferred with
11 Mr. Kirschman prior today and wanted to update the Court on the
12 schedule further. In terms of the plaintiffs' rebuttal case, we
13 do not expect to call Mr. Gregg or Mr. Hammond. Our rebuttal
14 witness will be Dr. Brian Palmer. I had indicated to the Court
15 yesterday that I expected to provide to the government by the
16 end of the day Friday Dr. Palmer's analysis and notebook; when
17 we got back to the office, my staff pointed out to me that I had
18 not taken into consideration the work they will need to do to
19 copy and scan that in once we receive it from him.

20 And I told Mr. Kirschman today that I expected to get
21 that to him on Saturday, and propose that instead of us calling
22 Mr. Palmer on Monday, that if the Court could schedule us in on
23 Tuesday, then Mr. Kirschman would have a little more humane
24 schedule to review Dr. Palmer's work.

25 THE COURT: So you want to take the day off on Monday?

1 MR. DORRIS: I would like to take the day off. I'm
2 sure Mr. Kirschman will be looking at the materials. I checked
3 with your clerk this morning and she indicated to me you have a
4 10:00 and possibly a 10:30 on Tuesday morning, though the 10:30
5 I think she said may be a 9:15, but if it's at 10:30, would
6 expect it to only last about a half-hour, maybe.

7 So I just wanted to let you know what we have discussed
8 and see what you prefer.

9 THE COURT: All right. Bottom line is, if I hear
10 testimony today and Tuesday, we'll be finished?

11 MR. DORRIS: That would be our expectation.

12 MR. KIRSCHMAN: The only question, Your Honor, is how
13 long the direct examination of Mr. Palmer will be. Because
14 we'll need cross.

15 THE COURT: So it could spill over into Wednesday.
16 This is all doable, counsel. We're on track. I don't want
17 to -- as I indicated at the beginning of this matter, it's a
18 bench trial, we can take time off as we need to to accommodate
19 people. So that schedule is fine. Let's proceed.

20 MR. DORRIS: Thank you, Your Honor.

21 MR. KIRSCHMAN: Your Honor, just to point out that we
22 understand that with the model, we'll also be receiving the
23 underlying data on Saturday.

24 MR. DORRIS: That is correct, Your Honor.

25 THE COURT: All right. Thank you.

1 MR. HARPER: Good morning, Your Honor.

2 THE COURT: Mr. Harper, good morning.

3 MR. HARPER: One other administrative matter, if we
4 could, prior to starting. We are interested in finding out the
5 Court's views with respect to material utilized in prior trials.
6 For example, in the last trial they had an administrative
7 record; we had been presuming that that would be part of the
8 record in this proceeding as well.

9 THE COURT: I think the record of this case is 12 years
10 old, and whatever is in the record is in the record. I will
11 consider whatever has been received in evidence in earlier
12 proceedings. I don't think any of these trials stands on its
13 own.

14 I'm kind of interested in the plaintiffs' decision not
15 to call Mr. Gregg. We've had a lot of references to Gregg's
16 testimony, which frankly I'm only familiar with because of the
17 sound bites that you've given me in this trial. And what do we
18 have from Gregg, a deposition or trial testimony? I've kind of
19 lost track of that.

20 MR. HARPER: No, Your Honor, it is trial testimony. It
21 was in a proceeding from 1999, I believe.

22 THE COURT: And it was cross examined at trial?

23 MR. HARPER: That is precisely correct.

24 THE COURT: All right. Okay.

25 MR. HARPER: Thank you, Your Honor. I think Mr. Smith

1 has a couple of other small items. Thank you.

2 THE COURT: Mr. Smith?

3 MR. SMITH: Your Honor, we would like to make sure that
4 our exhibits are into evidence, if you would like to do that at
5 this point or proceed with the testimony. Whatever you prefer.

6 THE COURT: Let's proceed with the testimony.

7 MR. SMITH: Okay. Thank you.

8 MR. KRESSE: Good morning, Your Honor, John Kresse for
9 the defendants. Defendants call Mr. Joseph Rosenbaum.

10 (Oath administered by Courtroom Deputy.)

11 MR. KRESSE: Our Honor, I'll just provide a brief
12 summary of Mr. Rosenbaum's testimony, what we expect him to
13 testify about. Mr. Rosenbaum will testify regarding some of the
14 results of the study by the accounting firm Ernst & Young of the
15 Paragraph 19 collection of documents related to the named party
16 plaintiffs and their stipulated predecessors in interest. He
17 previously testified as an expert in forensic accounting in the
18 Phase 1.5 trial on his report that addressed Ernst & Young's
19 Paragraph 19 work.

20 Today's testimony will focus on his opinions and
21 conclusions that are most relevant to this trial, specifically,
22 one, expected versus actual leased revenue credited to the named
23 plaintiffs and their predecessors; two, throughput, that is,
24 receipts and disbursements for those individuals; and three, any
25 receipts that should have been credited to the account of a

1 named plaintiff or predecessor in interest but were not.

2 (JOSEPH ROSENBAUM, DEFENDANT WITNESS, having been duly sworn,
3 testified as follows:)

4 DIRECT EXAMINATION

5 BY MR. KRESSE:

6 Q. Mr. Rosenbaum --

7 MR. HARPER: Your Honor, in light of the proffer made,
8 I would object to his testimony as both irrelevant and
9 cumulative. Mr. Rosenbaum has previously testified to three
10 trial dates. You just made a ruling that prior testimony is
11 part of the record; this is the stack of transcripts, and this
12 is precisely what he testified to before. I don't see why it
13 would be important to have that restated here again.

14 THE COURT: Well, I'm going to hear it because I didn't
15 hear it the last time, and because hearing it is more immediate
16 than reading it. Objection is overruled.

17 BY MR. KRESSE:

18 Q. Mr. Rosenbaum, state your name for the record, please.

19 A. Yes. It is Joseph R. Rosenbaum.

20 Q. Where do you live, Mr. Rosenbaum?

21 A. 12 Quail Crossing, Moraga, California.

22 Q. What do you do for a living?

23 A. I'm a partner at the accounting firm of Ernst & Young, LLP.

24 Q. What is your -- I'm sorry, you said you're a partner.

25 How long have you been at Ernst & Young?

1 A. About eight and a half to nine years.

2 Q. And before Ernst & Young, where did you work?

3 A. Before that I was at two other accounting firms,
4 PricewaterhouseCoopers and Arthur Andersen.

5 Q. And the extent of your professional career has been as an
6 accountant?

7 A. Yes.

8 Q. And when did you get your CPA?

9 A. I believe it was 1987.

10 Q. Mr. Rosenbaum, I've handed to you a document that's been
11 marked DX-516. Can you identify that document?

12 A. Yes. It's a copy of my bio, CV.

13 Q. Does this document accurately describe your educational and
14 professional background as a Certified Public Accountant?

15 A. Yes, it does.

16 MR. KRESSE: Your Honor, in light of the fact that
17 Mr. Rosenbaum has already testified at the 1.5 trial as an
18 expert in forensic accounting, defendants would offer him again
19 as an expert in that field.

20 THE COURT: Yeah, he may testify as an expert. The
21 word "forensic" in this context just means accounting connected
22 to the law?

23 BY MR. KRESSE:

24 Q. Mr. Rosenbaum, is that a fair description?

25 A. That's a fair description.

1 Q. Mr. Rosenbaum, I referenced the report about which you
2 testified at the 1.5 trial. Can you tell the Court briefly what
3 the purpose of that work was that was done by Ernst & Young and
4 that resulted in that report?

5 A. Yes. We were engaged initially to look at the IIM accounts
6 of the named plaintiffs. Subsequently that was extended to look
7 at the predecessors as well. But essentially it was to look at
8 the documents collected in the document -- in the Paragraph 19
9 document collection effort, and to try to link and find support
10 for the transactions in the IIM accounts.

11 Q. Mr. Rosenbaum, I've handed you two documents. They've been
12 marked DX-514 and DX-515. Looking at DX-514, can you identify
13 that document?

14 A. Yes, this is a copy of an expert report that I prepared
15 dated March 28, 2003.

16 Q. And is this the expert report about which you testified at
17 the 1.5 trial?

18 A. Yes, it is.

19 Q. And looking at the other document, DX-515, can you identify
20 that document?

21 A. Yes. These are specific exhibits that were attached to my
22 March 28, 2003 report.

23 Q. And they're also included at the back of DX-514. Correct?

24 A. That's correct.

25 Q. And these are just three of those tables, or exhibits.

1 Right?

2 A. Yes. Three of the exhibits that were attached to the
3 report.

4 Q. Mr. Rosenbaum, directing your attention to the first page of
5 DX-515, can you explain what that document is, or what that page
6 shows?

7 A. Yeah, this is a list of the individuals and accounts that we
8 either analyzed or set out to analyze. These represent
9 generally four of the named plaintiffs and the agreed upon
10 predecessors in interest.

11 Q. And it's your understanding that this list was agreed upon
12 by the parties to this lawsuit?

13 A. Yes, that's why I used the term "agreed upon," because
14 that's my understanding, that there was some discussion and
15 these were the ones that were finally decided.

16 Q. And what is the earliest transaction -- based on page one of
17 DX-515, what is the earliest transaction that Ernst & Young
18 examined?

19 A. It looks like a transaction in 1914. Or maybe two
20 transactions.

21 Q. There were several of those, right, from 1914? You can look
22 in the first three lines there.

23 A. Yeah, 1914, 1915.

24 Q. And then the end date of the transactions, or the last
25 transactions you examined, were what date?

1 A. I think they were at the very end of December 2000. If I
2 look through here, it looks like there's December 28, 2000,
3 which may be the last one.

4 Q. Now, I note that in this lawsuit there's five named
5 plaintiffs, and one of them is not on this list, page one of
6 DX-515. Do you know who that named plaintiff is?

7 A. The other named plaintiff I recall is Thomas Maulson.

8 Q. Do you know why he's not on the list?

9 A. He did not have an IIM account at least as of 1999, and when
10 we had first started our work, the indication was that there
11 needed to be an account, an IIM account, open at least as of
12 that date for us to do any work on it.

13 Q. Mr. Rosenbaum, turning to your report, the second page -- or
14 at page two of the exhibit, DX-514, there's a background section
15 there. What was the -- toward the bottom of the page.

16 A. Yes.

17 Q. What was the approximate total number of documents that
18 Ernst & Young's study was reviewing?

19 A. Well, we had access to 165,631 documents.

20 Q. Now, in addition to the -- how were the documents stored, or
21 how were you able to reference the documents?

22 A. They were all electronically scanned in and coded with some
23 bibliographic information. So there was a document database
24 created.

25 Q. And along with the document database, what other tool, if I

1 may, did you have available to you while you were working?

2 A. We had something called the Virtual Ledger, which was
3 essentially a database software tool that was created by the
4 Department of Interior, but it allowed us to link transactions,
5 create a listing of the transactions that appeared in each of
6 the IIM accounts and to then link those to the documents.

7 Q. Now, the Virtual Ledger, is that a precursor to what OHTA
8 now uses called the ART system?

9 A. Yes. I believe it was the ART system -- the ART system
10 that's used has some refinements, but the Virtual Ledger was
11 sort of the first -- the first go at it, if you will.

12 Q. Mr. Rosenbaum, when did Ernst & Young perform this work or
13 this study of the Paragraph 19 documents and related
14 transactions?

15 A. I think I was hired somewhere around February, I don't know
16 the exact date. But February of 2001. So it would have been
17 all the way up through 2003.

18 Q. Through the time of your testimony at the trial --

19 A. Yes.

20 Q. -- the 1.5 trial?

21 And how much manpower did Ernst & Young devote to that
22 work over that time period?

23 A. Well, we had a team, various individuals working under me,
24 probably some 10 to 15 people.

25 Q. And what kind of -- were they professionals?

1 A. Yes, these were all professionals.

2 Q. Were they CPA's?

3 A. I think many of them were CPAs, but I think if they weren't
4 CPAs they were in the process of qualifying for their CPA. Part
5 of the CPA license requires some work experience.

6 Q. And in any event, those who didn't have their CPAs, were
7 they accountants?

8 A. Yes, they were accountants.

9 Q. And you're saying those individuals were devoted, what,
10 full-time to that job, basically?

11 A. I think some of them were probably full-time throughout that
12 entire time frame.

13 Q. What about yourself? How much of your time during that
14 three-year period did you devote to the Paragraph 19 work?

15 A. I estimated I spent a fairly significant amount of time as
16 well, maybe as much as 25 percent of my time.

17 Q. Mr. Rosenbaum, I would like to -- because the Court has not
18 heard your testimony before, I would like to briefly go through
19 the opinions and conclusions that start on page three of DX-514,
20 your expert report. And looking at Roman III, "Summary of
21 Opinions and Conclusions," are those your opinions and
22 conclusions?

23 A. Yes, they are.

24 Q. And were you the leader of the team that did this work?

25 A. Yes.

1 Q. Mr. Rosenbaum, first -- the first paragraph, numbered
2 paragraph one, states that there were 37 accounts for 25 named
3 plaintiffs and predecessors. Why were there -- do you know why
4 there were 37 accounts?

5 A. Yes. Several of the individuals had more than one IIM
6 account.

7 Q. And is that fact shown on one of your exhibits to the
8 report?

9 A. Yes. On Exhibit A is a complete listing of the individuals
10 and the accounts that we analyzed, as well as the number of
11 accounts that each individual had.

12 Q. So DX-515, the first page. Correct?

13 A. That's correct.

14 Q. Now, it also shows that there were several individuals who
15 had no account information on Exhibit A, or page one of DX-515?

16 A. Yes.

17 Q. Do you know what the explanation is for that?

18 A. Only that we couldn't find in the document database any
19 information, any transaction or ledger information or anything
20 to indicate that they had an account. So we just didn't have
21 any information on them.

22 Q. And you stated before that there was -- when the documents
23 were imaged, they were also coded. Correct?

24 A. Yes.

25 Q. And do you know what kind of information was coded for the

1 documents themselves?

2 A. Right. I think the way -- you know, we weren't involved in
3 the coding effort, but I think the way it worked was when the
4 documents were scanned in, certain bibliographic information
5 like the date or the agency were coded in. If there was some
6 other specific information related to one of the named
7 plaintiffs, that was listed; lease numbers, that sort of thing.

8 Q. And if you look at page seven of your report, the seventh
9 page of the exhibit at the bottom of the page, under the heading
10 "Link Transactions to Supporting Documents," there's a bullet,
11 list of bullets there?

12 A. Right.

13 Q. Is that the kind of information that you were talking about?

14 A. Yeah, that's the kind of information, although I don't know
15 that all of these would have necessarily been listed in the
16 coding. These are the kinds of information we used to match up
17 the information that would have been in the transaction ledger
18 itself, the Virtual Ledger, to link that with the specific
19 documents.

20 Q. Looking at the second paragraph of your summary of opinions
21 and conclusions, what is the essential finding that's set forth
22 in that second numbered paragraph?

23 A. Essentially that we were able to find contemporaneous
24 support for 86 percent of the transactions that we had
25 identified in these 37 accounts, representing 93 percent of the

1 dollar value of those transactions.

2 Q. And do you know or recall how many transactions you reviewed
3 to get to those percentages?

4 A. Well, that's also going to appear on one of the exhibits.

5 Q. Is that B-2?

6 A. It is, yes.

7 Q. B-2, and that would be page 14 of your report?

8 A. Yes. So it shows --

9 Q. Bottom right-hand corner?

10 A. Right. 12,617 transactions.

11 Q. Mr. Rosenbaum, turning to the third numbered paragraph - and
12 we'll discuss this item in a little more detail later - I would
13 just like you to read the first sentence of that paragraph
14 three.

15 A. "With the exception noted below, I found no evidence of
16 transactions that were not recorded in the available IIM account
17 ledgers."

18 Q. And then paragraph four addresses what might be called the
19 lease analysis. Correct?

20 A. Yes, that's correct.

21 Q. And that continues over onto the next page, page four of the
22 exhibit. Right?

23 A. Yes.

24 Q. And again, we'll talk about the lease analysis a little
25 more -- in more detail a little later.

1 Then moving to the fifth numbered paragraph on page
2 four of the exhibit, it states, "There is no indication that the
3 listing of transactions of the IIM accounts are not
4 substantially accurate, nor that the transactions recorded are
5 not substantially supported by contemporaneous documentation."

6 What does that mean, I guess in a little more layman's
7 terms?

8 A. Well, it's really an overall conclusion with respect to the
9 totality of the work that we had performed. And it's basically
10 saying that for the most part, we were able to determine a
11 complete listing of the transactions in the IIM accounts that we
12 looked at, and were able to document that they had some
13 contemporaneous support for those transactions.

14 Q. Is there any pattern that you detected of inaccuracy in the
15 documentation?

16 A. No.

17 Q. And what about -- I mean, other than the fact that you
18 couldn't support every transaction, which is in your -- shows in
19 your table, was there any pattern of lack of supporting
20 documentation?

21 A. No.

22 Q. You also studied interest that was credited to IIM accounts.
23 Correct?

24 A. Yes.

25 Q. And that's reflected in paragraph number six on the fourth

1 page of the exhibit. Correct?

2 A. Yes.

3 Q. What was your -- I know this is a summary already on item
4 number six, but what's the bottom line on the interest as you
5 examined it, interest transactions?

6 A. On the interest, over time the interest was calculated and
7 credited to the accounts in different ways. We used the
8 methodology that existed at the time; we recalculated it using
9 the information that we had, found that it was essentially the
10 same, and we also then compared the interest factors that were
11 used to contemporaneous T-Bill rates to sort of more or less
12 verify the amount of the interest rate used, or the interest
13 factor, as it was called.

14 Q. And Mr. Rosenbaum, as I stated, this is your summary of
15 conclusions and opinions. Further in the report there's
16 additional discussion of the interest analysis you performed.
17 Correct?

18 A. Yes.

19 Q. And that's at pages 10 and 11 of the exhibit, the report?

20 A. Yes.

21 Q. Moving back to the summary, the seventh numbered paragraph
22 on page four of DX-514, now, this paragraph addresses
23 essentially the size of the transactions that you examined.

24 Correct?

25 A. Yes.

1 Q. And what was your finding with regard to that?

2 A. Well, I really just wanted to point out here that many of
3 the transactions that were in the analysis were very small
4 dollar amounts. So this says 60 percent of the transactions
5 were less than \$10. And I wanted to point out the reason for
6 this, and the reason is that over time, many of the ownership
7 interests, because of inheritance and passing them down to
8 multiple heirs, has been fractionated, if you will.

9 Q. And then the last item in your summary of opinions and
10 conclusions, number eight, you state, "There were no uncorrected
11 clerical errors such as transposition errors affecting
12 transaction amounts noted in the IIM accounts."

13 Why did you put that conclusion or opinion into your
14 report?

15 A. Well, this was five years ago, understand. But I think the
16 point there was that we did find that there were, on occasion,
17 clerical errors, transposition errors, but that those would be
18 either later corrected, caught, and rectified. And I think I
19 was pointing it out there to really show the care at which some
20 of these accounts were maintained.

21 Q. Now, Mr. Rosenbaum, I apologize to the Court if I'm
22 repeating what we've already talked about here, but could you
23 just summarize basically what your role was in preparing this
24 report, and in -- frankly, just preparing the report?

25 A. Well, I oversaw the entire project and directed the team

1 that was performing this. And although I didn't look at each
2 and every transaction, I did look at quite a number of them, and
3 I prepared the report based upon the summary of the work that
4 the team prepared -- or that the team performed.

5 Q. Were you involved in actually writing this report?

6 A. Yes.

7 Q. And to the extent the information is in there, did you
8 review the information? If it was information that you didn't
9 provide firsthand, did you review all the information in the
10 report?

11 A. In the report, yes.

12 Q. Do you agree with the information that are in the tables,
13 Exhibits A through E of your report?

14 A. Yes, I do.

15 Q. And are you aware of any changes in information that would
16 affect the information that's in the report since you testified
17 in Trial 1.5?

18 A. No, I'm not.

19 Q. Do you stand behind the opinions and conclusions stated in
20 this report?

21 A. Yes.

22 Q. Mr. Rosenbaum, as we discussed a few minutes ago, the lease
23 analysis was one of the sort of separate tasks that
24 Ernst & Young performed. Correct?

25 A. Yes.

1 Q. Could you first look at -- go back to page three, bottom of
2 page three of the report, DX-514, and at the bottom of the page
3 basically you're saying the analysis that you did of these
4 leases shows that, quote, "substantially all expected collection
5 amounts were properly recorded and reflected in the listing of
6 transactions of the IIM accounts." Is that correct?

7 A. Yes.

8 Q. And then that information that you gathered is summarized in
9 Exhibit D. Correct?

10 A. Yes, it is.

11 Q. And Exhibit D is page three of Defendant's exhibit DX-515.
12 Right?

13 A. Yes.

14 Q. And looking at Exhibit D, page three of 516, DX-516 --
15 excuse me, 515, what were the conclusions in numbers for your
16 analysis?

17 A. Well, for the lease amounts that we looked at for farm
18 leases and oil and gas, we looked at a total expected payment
19 amount - and this was based upon a reading and understanding of
20 the lease documents - of \$289,910.91. When we compared that to
21 the amounts that were listed in the transaction ledgers, the IIM
22 accounts, the Virtual Ledger, we found in total \$289,942.95.

23 So we had an unexplained difference between the two,
24 currently unexplained, the net number of \$32.04.

25 Q. Which represents what percent of the total value of the

1 transactions?

2 A. .01 percent.

3 Q. Mr. Rosenbaum, can you explain in a little more detail how
4 Ernst & Young conducted the expected versus actual lease revenue
5 analysis?

6 A. Yeah, what we would do, we searched for as many of these
7 leases that we could find. We obviously were looking for them
8 as part of the transaction linking and document support that we
9 were doing anyway, but we specifically gathered the leases that
10 we could find. Again, we were focused on really those leases
11 that had future contracted payments that were set out within the
12 lease. Those would be primarily farm leases, where you were
13 leasing land, or oil and gas leases, which had several parts.
14 One of them was a bonus payment paid up front or partly up
15 front; there would be an annual rental or periodic rental and
16 then there would be a production.

17 Well, we didn't look at the production part of this
18 expected versus actual because the production couldn't be
19 predicted, so we really were focusing only on those that we
20 could find leases for, read the leases, understand what the
21 payments should be under those leases, and then compare that to
22 the individual amounts that showed up in the IIM accounts.

23 The one thing that I probably should add to that is
24 that in most cases, the amounts on the lease weren't exactly the
25 amounts that would be in the IIM accounts because of the

1 fractionation, the ownership interest that I referred to
2 earlier.

3 Q. And how did you deal with that issue?

4 A. Well, we would have to determine under the lease what the
5 payment -- what the expected payment would be, and then multiply
6 that times the relevant ownership interest of the account holder
7 in order to understand what the number would be, and then
8 compared that expected number to what was actually in the
9 transaction ledger.

10 Q. And what resources or documentation was available to you to
11 determine the appropriate ownership interest?

12 A. There was something called LRIS, L-R-I-S, which I believe
13 stands for the Land Record Information System or something like
14 that. But it was essentially -- and it was also looked at
15 specifically by contractors for Department of Interior to make
16 sure that that was updated for at least the named plaintiffs and
17 the predecessors in interest, but we used that information to
18 understand and use the ownership interest.

19 Q. And was there other documentation related to land interest
20 besides just the LRIS data?

21 A. Well, there were various probate documents, and in many
22 cases we were linking probate documents to transactions, because
23 when a probate was closed and interests were transferred, we
24 would see the balance of monies going into one or more of the
25 IIM accounts. We would also then compare those to the

1 information that was listed in the ownership listing that we had
2 to make sure that it matched.

3 Q. All right. And when you say the actual -- the actual side
4 of expected versus actual, the actual was determined by looking
5 at what?

6 A. The actual would have been a transaction listed in the IIM
7 account ledger, the Virtual Ledger that we had prepared.

8 Q. And the Virtual Ledger in some cases came from electronic
9 data. Correct?

10 A. Yes.

11 Q. And that would have been what systems?

12 A. I don't recall the name of the systems, but I know it
13 occurred in what we've understood and referred to as the
14 electronic era. I don't remember the name of the system.

15 Q. Would one of them have been IRMS?

16 A. IRMS, that sounds familiar.

17 Q. And then also TFAS?

18 A. TFAS, yes. I don't know what those initials stand for but I
19 have heard the names -- or I know the names.

20 Q. So then other than the electronic ledger information, you
21 had, what, paper ledgers?

22 A. Yes, there were paper ledgers collected as part of the
23 Paragraph 19 document collection effort, and so those would have
24 been contained within the document database.

25 Q. Now, the types of leases, I note that on your lease analysis

1 summary it shows two lease types in the left-hand side, farm
2 lease and oil and gas lease. And then there's also a footnote
3 above oil and gas, which you already talked about the issue of
4 not having the ability to expect royalty amounts. Correct?

5 A. Correct.

6 Q. But you have farm lease, oil and gas lease. Are you aware
7 there are other types of leases that are handled in the IIM
8 accounts, or that provide revenue to IIM account holders?

9 A. Generally speaking, I know from other work that there are
10 timber leases, for example. But we didn't have any of those in
11 this analysis. And in any event, those would have again been
12 based on production as well.

13 Q. And would that hold true of other mineral leases other than
14 oil and gas?

15 A. I think that's probably right, yeah.

16 Q. In any event, this was the universe that you looked at?

17 A. Yes.

18 Q. Turning to what we've come to know during this case as
19 throughput, Mr. Rosenbaum, I would like to direct your attention
20 to Exhibit B-1, which is page two of DX-515. Do you understand,
21 Mr. Rosenbaum, what I mean by throughput?

22 A. Yes.

23 Q. And it would be what?

24 A. It would be the -- essentially the amounts collected and the
25 amounts disbursed.

1 Q. And is that what this Exhibit B-1 is essentially showing?

2 A. Yes. What this schedule is, it's broken down into three
3 different time periods down the left-hand side, down the rows,
4 with the total at the bottom from beginning to December 31st,
5 2000.

6 But it consists of -- the columns would have been in --
7 the collections column would have been anything credited to an
8 account. So it could have been a collection on a lease, it
9 could have been amounts received from a probate, anything coming
10 into the account, into the IIM accounts. The disbursements,
11 similarly would be anything going out of the accounts. And we
12 had a subtotal there. Interest was put in a separate column,
13 but that is essentially monies coming into the account as well.

14 And the numbers at the bottom I should point out are
15 absolute; in other words, for this purpose here we didn't
16 subtract disbursements from collections and interest, rather we
17 laid out all the transaction gross, if you will, to come up with
18 a total absolute number value of the transactions.

19 Q. So that total in the bottom right corner of \$1,117,236.16,
20 that's the number you're saying is an absolute value?

21 A. Yes.

22 Q. And Mr. Rosenbaum --

23 THE COURT: By which I gather you mean it's collections
24 plus disbursements?

25 THE WITNESS: That's correct.

1 BY MR. KRESSE:

2 Q. To show the total amount of transactions that you actually
3 analyzed?

4 A. This was intended to show, yes, the total value of the
5 transactions, whether it was a positive number or negative
6 number, in the accounts.

7 Q. And you mentioned the various sources of collections, you
8 know, lease payments, et cetera, and this number at the bottom
9 of the first column of collections, \$549,857.03, does that
10 include the actual revenue that you studied for the lease
11 analysis?

12 A. Yes.

13 Q. So that, which was roughly \$290,000 for the lease analysis,
14 is included within the almost \$550,000 here. Correct?

15 A. Yeah, all the lease payments would be in there.

16 Q. And again, the lease analysis was just a collection
17 analysis, correct, not a disbursement analysis?

18 A. Yes.

19 Q. Now looking to the second -- or let's go to the fourth
20 column, "interest," on that table, and then go to the bottom.
21 And you have the total of \$10,160.05. Right?

22 A. Yes.

23 Q. So I think you said before that interest is essentially a
24 collection, or a credit. Right?

25 A. Yes.

1 Q. So putting those two together, you come up with roughly
2 \$560,000. Is that fair to say?

3 A. Yes, that's right.

4 Q. And so then you have the disbursement number, out of that
5 total receipts for the transactions that you analyzed, of what?

6 A. That would be the 557,000 at the bottom of that column.

7 Q. Right. So the difference between your total receipts and
8 disbursements is approximately what?

9 A. I did the math. I think it's probably \$2,800, somewhere
10 around there.

11 Q. And Mr. Rosenbaum, you don't show here in the report the
12 balances for the accounts that you analyzed, do you?

13 A. No.

14 Q. Nonetheless, your report did address the issue of balances.
15 If you would look at the bottom of page six of your report,
16 DX-514 , the very last two lines, and it carries over onto the
17 next page, you did look at account balances. Correct?

18 A. Yes, we did.

19 Q. And what was it that you did with account balances?

20 A. Well, we wanted to make sure that the transaction summaries,
21 if you will, the Virtual Ledger, had a running balance, had an
22 ending balance. And we wanted to make sure that the ending
23 balance in the accounts that we were looking at matched those
24 within the TFAS system.

25 Q. And what was your conclusion?

1 A. We found that they did match.

2 Q. And if you look at the next page, page seven of your report,
3 at the very top, the last sentence says what?

4 A. "No differences were noted."

5 Q. Between what you --

6 THE COURT: Mr. Kresse, excuse me. Can I see that
7 table you were showing me?

8 MR. KRESSE: Back to B-1?

9 THE COURT: Yeah.

10 MR. KRESSE: Defendant's 515, second page.

11 THE COURT: Yeah, okay. Thank you.

12 BY MR. KRESSE:

13 Q. And the last sentence at the top of page -- the paragraph
14 that continues on to page seven of the exhibit of your report,
15 "no differences were noted," that's between your calculated
16 balance and the actual balance shown in TFAS?

17 A. Yes, that's right.

18 Q. And lastly, Mr. Rosenbaum, I would like to discuss what we
19 passed over fairly quickly before, which was the issue of
20 receipts that may have been posted to the wrong party or
21 possibly even to the government; but in other words, not to the
22 correct IIM beneficiary.

23 Are you aware of plaintiffs' contention at this trial
24 that throughout the history of the IIM Trust, over 31 percent of
25 receipts intended for IIM beneficiaries were never credited to

1 their accounts?

2 A. I now understand that, yes.

3 Q. And out of the over 12,000 transactions you and your team
4 analyzed for the Paragraph 19 document database and
5 Virtual Ledger, are you aware of any examples of that happening?

6 A. The one example that I have, and I talked about this in some
7 detail in the previous testimony, was an amount that we located
8 doing our expected versus actual lease amounts. And we found an
9 amount of, I think it was \$60.94 that we expected to find in one
10 of the IIM accounts we were analyzing, and we found that it was
11 posted to a different IIM account.

12 Q. And how did you come to that conclusion?

13 A. Through looking at the documents.

14 Q. Ledgers, leases, what?

15 A. There were ledgers. In this particular instance there was a
16 form that detailed how things were to be distributed among the
17 various accounts, and I think we saw some very clear indication
18 that the account number that was handwritten in there matched a
19 different account number than the one that it should have gone
20 into.

21 Q. Are you aware of plaintiffs' contention that the government
22 received the benefit of billions of dollars of receipts intended
23 for IIM beneficiaries?

24 A. I am.

25 Q. Was there any evidence of collections being disbursed or

1 credited to the government in your study of the Paragraph 19
2 documents and Virtual Ledger information?

3 A. No.

4 MR. KRESSE: Your Honor, I would like to move into
5 admission Defendant's Exhibit 515, which is the three tables
6 from Mr. Rosenbaum's expert report.

7 THE COURT: All right.

8 (DEFENDANT EXHIBIT Number 515 was moved into evidence.)

9 MR. KRESSE: Thank you, Mr. Rosenbaum.

10 THE COURT: Mr. Harper?

11 MR. HARPER: Good morning, Your Honor.

12 **CROSS-EXAMINATION**

13 **BY MR. HARPER:**

14 Q. Good morning, Mr. Rosenbaum. I'm Keith Harper for the
15 plaintiffs.

16 MR. HARPER: Could we put up the B-1 chart again?

17 BY MR. HARPER:

18 Q. Mr. Rosenbaum, you just testified regarding this chart.
19 Correct?

20 A. Correct.

21 Q. My first question is, is that in your findings, if we called
22 something without documentation an error rate, if we said that
23 that was an error rate, so that for example in the first row
24 under disbursements, two percent would be the error rate. Okay?
25 Do you follow me on that? For purposes of this question, let's

1 presume that that's called an error rate.

2 A. Where do you get the two percent?

3 Q. You look under disbursements --

4 A. Yes.

5 Q. -- on the first row.

6 A. Oh, sorry, sorry.

7 Q. And there it says 98 percent had supported transactions and
8 two percent had no supported transactions -- or excuse me,
9 insufficient documentation. That really meant no documentation,
10 not even a check registry. Fair statement?

11 A. That's what that would have meant. But again - and I know
12 this is your question - but I wouldn't refer to it as an error
13 rate.

14 Q. I understand that.

15 A. Only because that would imply that there was something wrong
16 with it. In this situation we didn't and couldn't find the
17 documentation.

18 Q. I understand your contention. I'm saying that let's call it
19 an error rate for purposes of these questions.

20 If that were an error rate, wouldn't it be true that as
21 you went back further in time, the error rate would be greater,
22 in general, looking at your chart?

23 A. In looking at this chart, that number does get larger going
24 back in time.

25 Q. So if that were an error rate, then as you go back in time,

1 you would have a greater error rate. Fair statement?

2 A. I don't think it necessarily follows that -- I mean, that
3 does happen to be here on the -- maybe I don't understand the
4 question.

5 Q. You're making contentions about your study, right, about how
6 that has global implications for how the trust was managed. Is
7 that a fair statement?

8 A. I don't know that I testified to that.

9 Q. So you're not testifying to that?

10 A. It may very well, but I don't know that.

11 Q. But that's not your opinion?

12 A. What I would say --

13 Q. Is it or is it not? It's a simple yes or no answer. Is it
14 your opinion or is it not your opinion?

15 MR. KRESSE: Excuse me, Your Honor, I'm not sure what
16 opinion he's getting him to say is or is not.

17 BY MR. HARPER:

18 Q. Well, is it your opinion that based on your analysis, that
19 you can draw conclusions about how the IIM Trust was managed?

20 A. I did not state that opinion.

21 Q. I didn't ask you if you stated that opinion, I asked you if
22 that was your opinion.

23 A. I guess that would have to hinge on the question of whether
24 or not these accounts are in fact representative.

25 Q. And you don't know that?

1 A. Well, if these are representative --

2 Q. But you don't know that --

3 A. -- of the class --

4 MR. KRESSE: Your Honor, counsel is arguing with the
5 witness.

6 MR. HARPER: Your Honor, he's not answering my
7 questions.

8 THE COURT: What you are doing is interrupting him.
9 Let him try to answer before you start.

10 MR. HARPER: Your Honor, can I ask that he answer yes
11 or no to a yes or no question?

12 THE COURT: No, I think he's trying to answer a very
13 difficult question you put to him. I mean, you asked him if it
14 is his opinion, and he said he didn't give that as an opinion,
15 and now you want to elicit his opinion on something he hasn't
16 testified to. You're putting him in a difficult spot. I want
17 to give him a chance to answer it.

18 MR. HARPER: Fair enough.

19 BY MR. HARPER:

20 Q. To the extent that you're going back in time, at least in
21 your analysis you found, to the extent that these percentages
22 represent an error rate, a greater error rate as you went back
23 in time. Is that a fair statement?

24 MR. KRESSE: Your Honor, I object. They're not error
25 rates. He's testified they're not error rates. For Mr. Harper

1 to continue to characterize them as error rates is simply going
2 to mislead and misinform the record. It seems improper.

3 THE COURT: Yeah, Mr. Harper has asked the witness to
4 accept the word "error rate." The witness doesn't like the term
5 "error rate." I will allow the -- I will overrule the
6 objection, but I and the witness and Mr. Harper all know that
7 the witness doesn't like the word "error rate," and is answering
8 the question that way only because that's the language
9 Mr. Harper has put in the question. Go ahead.

10 BY MR. HARPER:

11 Q. Mr. Rosenbaum, to the extent that the two percent figure in
12 the first row and the nine percent figure on the second row for
13 disbursements, and the 46 percent figure on the third row, isn't
14 it true that as you go back further in time, to the extent that
15 that represents an error rate, that the error rate is greater?

16 A. I will tell you that those numbers are -- they get larger as
17 you go back in time on this schedule.

18 Q. And so your answer would be yes?

19 A. All I'm saying is I know what these numbers say. These
20 numbers are large, yes. Nine percent is larger than two, and
21 46 percent is larger than nine.

22 Q. And that's true for any of the transactions, collections,
23 disbursements, all of them. Correct?

24 A. That's correct.

25 Q. And so would it be fair to say that if you found a certain

1 amount of transactions that could be documented for one period
2 of time, in the later period of time, that you could then
3 extrapolate from that that transactions were similarly
4 documented in previous time periods? Do you think that is a
5 fair extrapolation?

6 A. I'm sorry, could you repeat that?

7 Q. Let me ask it this way: To the extent that -- to the extent
8 that this does reflect an error rate, as you go further -- to
9 the extent that this does reflect --

10 A. Again, you're saying it reflects an error rate.

11 THE WITNESS: I apologize, Your Honor, but if we're
12 going to term it an error rate, that's fine, but it doesn't
13 necessarily reflect an error rate.

14 BY MR. HARPER:

15 Q. Okay. Let me ask you some other questions. I'll move on
16 from that line of questioning.

17 When you have here listed as disbursements, and it says
18 "supported transactions." Do you see?

19 A. Yes.

20 Q. For example, in the 1938 and before period, supported
21 transactions, you have \$10 million. And those are nominal
22 dollars. Right? Those are dollars at the time. Is that a fair
23 statement?

24 A. Right. Those are --

25 Q. Sorry, \$10,000. Excuse me. My apologies. \$10,000, but

1 that's a dollar in 1938 or before that time period.

2 A. That's correct.

3 Q. Now, that 54 percent number for supported transactions, that
4 means that you found some piece of documentation that you
5 thought was sufficient to support that transaction. Fair
6 statement?

7 A. That's correct.

8 Q. And for disbursements, what did you believe and what did you
9 utilize as sufficient evidence?

10 A. We used checks, we used check registers, we used
11 disbursement requests. There were in some situations monies
12 that were paid to pay off loans, so there's a document there. I
13 don't really remember the kind of document, but it would have
14 been monies that went by agreement from an account to pay off a
15 previous loan.

16 Q. So is it fair to say that -- and let me ask you this: So
17 any of these single pieces of paper would have been what you
18 considered sufficient to support the transaction. Is that a
19 fair statement?

20 A. I think that's right, yes.

21 Q. So an entry on a long check register at the Bureau of Indian
22 Affairs was sufficient to be a supporting transaction for a
23 disbursement?

24 A. Yes.

25 Q. And similarly, if there was no check with an endorsement on

1 it, it still could be a supported transaction?

2 A. Yes, a check register would be sufficient.

3 Q. And you also talked about a disbursement request would be
4 sufficient. Correct?

5 A. Yes, I think that's right. Yes.

6 Q. And a global disbursement -- how about a global disbursement
7 request, something that says any time my account hits \$15, you
8 disburse me the funds. Sufficient?

9 A. That one is harder to remember, but I would guess that we
10 would consider that to be sufficient as well.

11 Q. And are you aware that --

12 THE COURT: Hold on, I'm not sure I understand that
13 answer. I would guess, it's harder to remember? You mean you
14 don't remember how you evaluated this in 2003?

15 THE WITNESS: Right.

16 THE COURT: But you're guessing that you probably
17 thought that was good enough?

18 THE WITNESS: I would, yes.

19 THE COURT: Can we get a little more precise than that?
20 Can somebody go back and nail that down? I mean, he doesn't
21 remember but he guesses doesn't do it for me.

22 MR. HARPER: All I can say, Your Honor, is that the
23 record says "disbursement request," and in the vast majority of
24 disbursement requests after the 1980's, it was the policy of the
25 Department of Interior to have global disbursement requests such

1 that if your account hit a certain level, it would automatically
2 be disbursed.

3 THE COURT: Is your memory the same as his, that five
4 years ago he said that a global request is good enough to be
5 evidence of a disbursement?

6 MR. HARPER: When he testified before, he did not talk
7 about the difference between an individual disbursement
8 request --

9 THE COURT: I still need it to be nailed down.

10 MR. HARPER: -- and a global disbursement request.

11 THE COURT: Go ahead.

12 BY MR. HARPER:

13 Q. So fair to say, you don't remember one way or the other
14 right now as you sit here today whether global disbursement
15 requests would have been sufficient to say that the transaction
16 was supported?

17 A. I don't specifically remember, but I would -- again, my best
18 guess would be that it would be sufficient and would have been
19 sufficient.

20 Q. In and of itself?

21 A. Well, together with the -- because these things did occur,
22 and I would probably say now I would consider it sufficient, if
23 we had that request form together with the pattern, it would
24 appear such that the account hit \$15 and was disbursed.

25 Q. Okay. So as long as the Virtual Ledger that the Department

1 of Interior gave to you -- and that was accurate. Right? You
2 didn't create the Virtual Ledger?

3 A. What are you speaking of, the software?

4 Q. No, I'm talking about they gave you information, they gave
5 you data that was entered into the Virtual Ledger. Correct?

6 A. They actually -- to be precise, there was some information
7 already pre-populated into the Virtual Ledger, but we did go
8 back and look at all of -- and find within the document database
9 the hard copy ledger pages to verify that what was entered in
10 was correct. And in some cases, because I think we went to the
11 predecessors, we had to enter that in ourselves.

12 Q. So some they entered and some you entered?

13 A. Or some we entered and all we verified. So essentially the
14 transactions that appeared there were from the ledger pages, to
15 the extent we had ledger pages.

16 Q. When you say verified, what do you mean verified?

17 A. Checked them.

18 Q. Against what?

19 A. The hard copy -- you know, the ledger pages that were in the
20 document collection.

21 Q. Okay. So you took ledger pages and you manually entered
22 them in, and then you checked the manual entries against the
23 ledger pages?

24 A. Right. The point was to create an electronic ledger start
25 to finish as best we could.

1 Q. And what percentage of periods did you not have ledgers for,
2 paper ledgers? Let's say from the period prior to 1938, what
3 percentage did you not have any ledgers for?

4 A. You know, I really don't recall that. I don't know the
5 answer to that.

6 Q. So how did you create the transaction history if you didn't
7 have ledgers?

8 A. Well, we did it in a couple of ways. First of all, we
9 would -- and I did talk about it in the report. It's called the
10 recreated transactions and how we verified those.

11 So if we found that there were missing ledger pages,
12 and we would understand that they're missing because the balance
13 of the one we ended with didn't match the opening balance of the
14 one we next had, we would, in the electronic Virtual Ledger, add
15 a number to help balance. Because we were checking the balances
16 all along the way, and we wanted to make sure that we had a
17 complete and accurate listing. These recreated transactions
18 were noted as such, and we spent a great deal of time trying to
19 figure out what could have been in those missing ledger page
20 periods.

21 And so, for example, if we had in the document database
22 collection or disbursement information during a time period for
23 which we didn't have a ledger, but for which we had this
24 recreated number, we would sort of work that down, if you will.
25 And that's one of the schedules in the report, how we went about

1 doing that.

2 So we did find a number of them. I don't have the
3 precise time periods.

4 Q. So to summarize that so I think I understand it, but I'm not
5 confident I do, you had a ledger, say, for a two-year period in
6 1938 and '39, but you didn't have one from '40 to '41, and then
7 you did have another one from '42 to '43; you would then
8 recreate information and post it on the Virtual Ledger as
9 transaction history for the period that you missed. Did I get
10 that right?

11 A. Usually it would be a single number, but yes.

12 Q. Oh, just a single number? You didn't have to --

13 A. At the beginning.

14 Q. You didn't have complete missing -- so is it your testimony
15 that prior to 1938 you had almost all the ledgers, paper
16 ledgers?

17 A. I don't think that was my testimony.

18 Q. I'm asking you, is that your testimony?

19 A. I told you I don't know when we had -- I don't know the
20 exact ledgers we have or don't have.

21 Q. Do you know what percentage of ledgers you don't have?

22 A. No.

23 Q. Is it more than 50 percent?

24 A. I don't know.

25 Q. So you didn't do any of that analysis at that time?

1 A. I don't remember that we looked at that in any -- I mean,
2 the one thing that I do remember, and it was from some earlier
3 work, that when we were first analyzing the named plaintiffs, we
4 did not have any missing ledger pages. Except for there were, I
5 think, four periods in the time -- for one of the individuals,
6 and it was Earl Oldperson, and I think it was between 1958 and
7 1963, there were four separate periods of some months where we
8 didn't have the appropriate page.

9 But I believe we had complete ledgers for the other
10 three named plaintiffs, and some of those go back quite a long
11 ways.

12 Q. I'm asking for your global analysis here, whether or not you
13 have an understanding as to what percentage of ledgers you did
14 not have in the pre-'38 period.

15 A. And I think I told you, I don't know.

16 (Phone rings.)

17 THE COURT: Let the record reflect that the judge
18 glared at the courtroom.

19 BY MR. HARPER:

20 Q. Now, getting back to your chart here, we talked for a moment
21 there about disbursements, and what constituted, in your terms
22 here, a supported transaction. And you mentioned a check
23 register would be sufficient in and of itself, you said as well
24 a disbursement request would be sufficient in and of itself.

25 Correct?

1 A. Yes.

2 Q. Is there anything else that would be sufficient in and of
3 itself to say that the disbursement is a supported transaction?

4 A. I think it was just the documents that we had talked about
5 before.

6 Q. A loan document or something of that nature?

7 A. Yeah, anything that would evidence, for example, a check --
8 you didn't mention a check, but yes, a check would be
9 sufficient, for example, to show documentation. But the things
10 that we had talked about earlier.

11 Q. Now, you would agree that an endorsed -- a check that has an
12 endorsement on the back that you could check to a signature card
13 is the best evidence of a supported disbursement. Is that a
14 fair statement?

15 A. Well, I don't know that -- for purposes of what we were
16 doing -- I mean, our work wasn't to ensure that -- I mean, what
17 our work really did, and let me phrase it that way, our work
18 really was meant to determine whether or not there was any
19 contemporaneous evidence that could support the transactions
20 that appeared in the ledgers.

21 When we first started this project, we were going
22 through the document database, I know that we were trying to
23 link any and all, so we would search through the document
24 database for documents that would support a transaction and we
25 would link any that we found. In one case I remember we had

1 more than 100 documents. That turned out to be a fairly
2 inefficient to go about doing it, because there were a number of
3 duplicates that were contained within the document database.

4 So what we did is we found the ones -- we determined
5 the ones that would be contemporaneous evidence that a
6 transaction did occur in the way that it should have occurred,
7 and so if we see the amount and are certain of the information
8 on a check register, that would be sufficient to show that the
9 disbursement occurred.

10 Q. So if you have a line entry in a check register that says a
11 check was sent to one of these individuals, beneficiaries, how
12 did you know that the beneficiary received that, cashed it,
13 actually received the funds?

14 A. That was not part of what we were doing.

15 Q. So you were not -- your determination was not about whether
16 or not a beneficiary actually obtained funds. Fair statement?

17 A. I think that's a fair statement, yes.

18 Q. Do you know what percentage of the transactions in the
19 period 1985 to 2000 for disbursements were supported by checks
20 with endorsements on the back?

21 A. I don't know.

22 Q. Was it a large percentage?

23 A. I can't remember.

24 Q. You have no recollection whatsoever?

25 A. No. No.

1 Q. So if that were the standard for supported transactions,
2 that you had to have a check with a signature on the back
3 matched to a signature card, you couldn't say today what
4 percentage of those disbursements were supported. Fair
5 statement?

6 A. That's fair.

7 Q. Now if we can turn to what I think has been -- we it
8 identified differently, DX-515, which we have as Plaintiffs'
9 Exhibit 177.

10 MR. HARPER: We'll call it for the record, Your Honor,
11 DX-515, and this is again Dr. Rosenbaum's report --

12 THE WITNESS: Mister.

13 MR. HARPER: Oh, Mr. Rosenbaum. Excuse me. I've been
14 examining doctors all week, so... Mr. Rosenbaum's report.

15 BY MR. HARPER:

16 Q. And this is the report you just testified with respect to,
17 your report of March 28th, 2003?

18 MR. HARPER: Can we show the front cover, please,
19 Antonio? Thank you.

20 A. Yes.

21 BY MR. HARPER:

22 Q. Now if I can turn to the discussion you spent a considerable
23 amount of time on under Roman numeral III. First, you testified
24 in discussing some of these conclusions that there were a number
25 of the individuals that you were to search for that did not --

1 that you had no record of them having an IIM account. Is that a
2 fair statement?

3 A. Yes. There were three.

4 Q. There were three. And that conclusion was reached based on
5 the information you were provided from the Department of
6 Interior. Fair statement?

7 A. Yes.

8 Q. And you didn't go and do your own research to determine
9 whether or not there was an IIM account out there for these
10 individuals?

11 A. Other than asking Department of Interior personnel and
12 contractors, no.

13 Q. And indeed, that's true for virtually all the information
14 here, right, is that it was provided to you by the Department of
15 Interior; you did not go and make any independent search for
16 these records?

17 A. That's correct.

18 Q. Your first conclusion here is that --

19 MR. HARPER: We can just focus in on number one.

20 BY MR. HARPER:

21 Q. I'll let you read that, and let me know when I can...

22 A. Okay.

23 Q. And this says, "The information that was collected as a
24 result of the Paragraph 19 search efforts, supplemented by
25 electronic transaction data, is sufficient to allow for the

1 creation of a listing of transactions."

2 Now let me ask you a question about that. How did you
3 determine its sufficiency?

4 A. We determined its sufficiency by, as I said before,
5 creating -- again, the Virtual Ledger had a listing of all the
6 transactions in the accounts that would have either come from
7 the documents in the Paragraph 19 search - in other words, the
8 paper ledgers - or the electronic era information, such that we
9 could roll forward the transactions, you know, adding the
10 collections, subtracting disbursements, coming up with a
11 balance, all the way to the end, so that when we compared those
12 balances to the TFAS information, we saw that that was the
13 appropriate transaction listing.

14 Q. So your goal was to determine whether or not the balances
15 listed in TFAS, you could follow a transaction history to reach
16 that amount?

17 A. Well, that was a check. I don't know if it was the goal,
18 but it was a check.

19 Q. So how do you know that there's not an entire -- let me ask
20 it this way: If there were, say, a -- you did not have a lease
21 document and you did not have the records for -- you didn't have
22 any ledger entries because there was no ledger for that
23 particular area, then how would you know what was missing?

24 A. Well, we would have searched through the document database
25 to see if there were any documents or any other information

1 related to these account holders.

2 Q. But what if there wasn't? How would you know what wasn't
3 there?

4 A. Well, if it wasn't there, we wouldn't have it.

5 Q. And that's because they've just provided you -- whatever
6 extant information they had, they provided to you. Correct?

7 A. I believe that's correct.

8 Q. So when you say "sufficient," you do not mean by saying
9 sufficient that you -- that -- it is not conceivable that there
10 was missing information out there that you were just not
11 provided?

12 MR. KRESSE: Objection, Your Honor. I'm not sure what
13 the question is.

14 THE COURT: There are a lot of negatives in that. Do
15 you want to rephrase that one, Mr. Harper?

16 MR. HARPER: Yes.

17 BY MR. HARPER:

18 Q. Mr. Rosenbaum, is it conceivable to you that there is
19 information regarding transactions and back-up supporting
20 documentation that you were just not provided for an individual,
21 and therefore it is not included -- when you say that this is
22 sufficient, that it is not included in that?

23 A. I'm sure there is information. I mean, in terms of what I
24 had talked about earlier when we were doing the recreated
25 transactions, we still have -- we still have situations where we

1 don't have a transaction ledger and we don't have any
2 documentation during that period.

3 Q. And if you don't have the documentation and you don't have
4 the ledger, how can you verify that transaction?

5 A. What we did was to -- we didn't verify that transaction,
6 obviously. That's what I said, it's noted as a recreated
7 transaction. And there were some of those.

8 But what we did to sort of test the transaction ledger
9 was to look at the balances that were also shown on the paper
10 ledgers all the way through. So we had a lot of different check
11 points throughout the process that we could ensure that the
12 Virtual Ledger and the transactions were flowing properly all
13 the way to the end, as I said.

14 Q. Now let's talk about the Virtual Ledger a little bit more.
15 You testified, I think, that it came from at least in the
16 electronic -- what the government has called the electronic era,
17 1985 forward, that the information principally came from
18 Integrated Resource Management System, IRMS, and the TFAS
19 system. Is that accurate?

20 A. I think that's correct, yes.

21 Q. Have you ever heard of a system called REM?

22 A. I don't believe so.

23 Q. So you're unaware that since -- are you aware of the fact
24 that since 1990, REM has been the -- has listed the transaction
25 history for the Anadarko area?

1 A. I don't know that, no.

2 Q. And so if you didn't have that history from that system, how
3 would you have created the transactions for the Anadarko area?

4 A. Again, I don't know where all the information came from. It
5 could have come from a system that I'm not aware of. The only
6 ones I remembered were the IRMS and the TFAS that we talked
7 about earlier. Those are the only acronyms that I'm familiar
8 with.

9 Q. If we could turn to page six of your report, and focus in on
10 the top, the second and third bullet point, and it says,
11 "Transactions were obtained from Integrated Resource Management
12 System" and then "Transactions were obtained electronically from
13 the Trust Fund Accounting System, TFAS."

14 So if there were transactions on the REM system, does
15 this refresh your recollection that that would not have been
16 included?

17 A. It does. Well, again, I don't know anything about the REM
18 system, so I really don't know the answer to that.

19 Q. So if there were accounts managed in a place where the
20 transaction history was not included, then that would have not
21 been part of your analysis. Fair statement?

22 A. I guess that's a fair statement.

23 Q. Do you know whether Mildred Cleghorn had some accounts in
24 the Anadarko agency office?

25 A. To tell you the truth, I can't remember the different

1 agencies by the different individuals. So I apologize, I don't
2 know the answer to that specifically.

3 Q. So you wouldn't know if she also had an account in the
4 Concho agency, which is also in the Anadarko agency office. Is
5 that a fair statement?

6 A. I don't know the answer, yes.

7 Q. So that is fair, that you don't recall that right now?

8 A. It's fair that I don't recall, yes.

9 Q. Now let's talk a moment about the Integrated Resource
10 Management System. Are you aware of the testimony before this
11 court on numerous occasions that the information on the IRMS is
12 not reliable?

13 A. I am not.

14 Q. Would that have entered your analysis if you knew that?

15 A. I guess it could depend on whether the reliability extended
16 to these particular accounts, but also I think we did try to
17 verify all the accounts that were there. I mean -- so anyway,
18 it may or may not, depending on what the testimony is.

19 Q. So to the extent that information on Integrated Resource
20 Management System is considered unreliable, then that may have
21 affected your assessment and what you considered sufficient and
22 necessary to support a transaction. Is that a fair statement?

23 A. No, that's not a fair statement.

24 Q. Okay. So even if it were unreliable, then you still would
25 rely on it. Is that a fair statement?

1 A. Your question I think was talking about the supporting of
2 transactions and documents. What we did -- whether the system
3 is reliable or not, that was the starting point for our
4 transaction histories. But we did in fact go from there to
5 documents in the document database to find support for them. We
6 did not find any indication that any of the information was not
7 correct.

8 Q. And what time period did you do this analysis, again?

9 A. Between 2001 and 2003.

10 Q. Have you ever heard of the High Level Implementation Plan?

11 A. I'm not sure.

12 Q. Have you ever heard of the BIA Data Clean-Up Subproject?

13 A. No.

14 Q. Now, if I told you that the data -- BIA Data Clean-Up
15 Subproject took the IRMS system, and data on the IRMS system,
16 and compared it to the paper --

17 MR. KRESSE: Your Honor, Mr. Harper is now testifying
18 about the data clean-up project.

19 MR. HARPER: Your Honor, it's just the basis of my
20 question.

21 THE COURT: This is cross-examination. I'll allow it.
22 Go ahead, Mr. Harper.

23 MR. HARPER: Thank you, Your Honor.

24 BY MR. HARPER:

25 Q. Now, if the BIA Data Clean-Up -- the BIA Data Clean-Up

1 Subproject was a project of the Department of Interior where
2 they compared information on the Integrated Resource Management
3 System, and they compared that to the paper era or the paper
4 records -- which is similar to what you did. Fair statement?

5 A. I don't know.

6 Q. But you did compare what was on the IRMS system with the
7 paper record?

8 THE COURT: He's telling you he doesn't know what the
9 clean-up system is all about, Mr. Harper.

10 BY MR. HARPER:

11 Q. As part of that project, they "corrected," quote, unquote,
12 information that was on the IRMS system to be consistent with
13 the paper, whatever they found in the supporting documentation.

14 If that were the case, would that change your view as
15 to whether or not you can then look at the IRMS system, compare
16 it with the paper records after that point, and determine that
17 that was sufficient to support the transactions?

18 A. Again, I think the question is maybe not the right one, but
19 I'll answer what I think you're asking, which is I would have to
20 know a little bit more about what the problems were; did they
21 affect these accounts that I looked at or not, what was the
22 nature of the issue, what was the nature of the things that
23 needed to be cleaned up.

24 But I will also tell you that there was nothing in the
25 work that we did, that I did, that would indicate that there

1 were any problems at all.

2 Q. But if the data was already changed in the IRMS system to be
3 consistent with the paper record, of course wouldn't it -- of
4 course there wouldn't be problems. Isn't that right? You
5 wouldn't identify an error if it has already been changed to
6 match the paper records. Correct?

7 A. I suppose that's right.

8 Q. Now let's talk for a moment about your interest
9 calculations.

10 MR. HARPER: If we can bring up page 004 of Defendant's
11 Exhibit 514. If we can focus in on the paragraph number six.

12 BY MR. HARPER:

13 Q. And I'm going to read the last sentence. "The interest
14 rates earned and paid to the IIM accounts are reasonable when
15 compared to contemporaneous Treasury Bill rates." Do you see
16 that statement?

17 A. Yes.

18 Q. Which Treasury Bill rates did you compare them to?

19 A. I believe it was a six-month T-Bill.

20 Q. And why did you choose a six-month T-Bill?

21 A. I was trying to remember. And I don't really remember
22 exactly why we did that, but it may very well be because of the
23 way the interest factor was calculated, you know, when we were
24 first looking at this work. But we thought that was a
25 representative interest that we would use. We didn't use that

1 rate for calculating interest, we simply used it to compare.

2 Q. You used it as basically a way to determine whether -- as a
3 comparison to determine whether whatever interest rate you found
4 was reasonable?

5 A. Exactly.

6 Q. And you used a T-Bill to do that, a T-Bill rate. And you
7 think it was six months, but you're not sure which T-Bill
8 period?

9 A. I think it was -- yes, exactly. I think it was six months,
10 but I'm not sure.

11 Q. But that would be a reasonable approximation for the time
12 period going back in time, a T-Bill rate?

13 A. That's what we looked at, yes.

14 Q. And you think --

15 A. As a matter of comparison.

16 Q. And you think that that would be a reasonable approach?

17 A. Yes.

18 Q. One question I neglected to ask you when you were talking
19 about disbursements, and I don't think you need to see any
20 documentation, but were there any instances in which the other
21 ledger entries were utilized for purposes of saying you had
22 sufficient documentation for another disbursement transaction?
23 Do you understand my question?

24 A. I don't.

25 Q. Was there any point in time when you looked at a series of

1 disbursement transactions and said that they were supported
2 if -- say there was no evidence for one transaction, but a
3 number of others did have supporting transactions that were
4 right around that time period, so there was a pattern. Would
5 you consider that supported?

6 A. I think we would have put that in our reconstructed
7 category, and I don't think we would have considered that
8 supported.

9 Q. So when we looked at your chart and you had, I think,
10 nine percent for the period prior to 1985, but after 18 -- that
11 would have been in the nine percent category?

12 A. I think it probably would have been excluded from that
13 calculation, because it wouldn't have been a transaction, it
14 would have been a recreated transaction.

15 Q. So that wasn't even part of that analysis?

16 A. Right.

17 Q. Okay. So your recreated transactions were not even
18 reflected in that chart?

19 A. I think that's right, yes.

20 Q. Okay.

21 MR. HARPER: If we can turn back to Defendant's
22 Exhibit 514, which is Plaintiffs' 177, and turn to page 11. If
23 we can focus down on the last paragraph. Actually, can you also
24 include the signature? Thanks.

25 BY MR. HARPER:

1 Q. Mr. Rosenbaum, that's your signature. Correct?

2 A. Yes.

3 Q. And could you read into the record the paragraph before your
4 signature?

5 A. "All information provided by Interior and Justice was
6 accepted as accurate, and was not independently verified, except
7 where noted. This includes contents of the document collection,
8 the IIM account ledgers and statements, the ownership
9 information, and all other data provided as part of this
10 engagement."

11 Q. Thank you, Mr. Rosenbaum.

12 MR. HARPER: Thank you, Your Honor.

13 THE COURT: Thank you. Any redirect of Mr. Rosenbaum?

14 MR. KRESSE: No redirect, Your Honor.

15 THE COURT: Thank you. Mr. Rosenbaum, you're excused,
16 sir.

17 Mr. Warshawsky, Mr. Dorris, are we going to proceed now
18 with Dr. Scheuren?

19 MR. WARSHAWSKY: Right. For the cross with respect to
20 the Cornell model.

21 THE COURT: Understood.

22 MR. DORRIS: I thought he was here.

23 THE COURT: He is here, just making a dramatic
24 entrance, that's all.

25 You're still under oath, Dr. Scheuren.

1 THE WITNESS: Thank you, Your Honor.

2 (FREDERICK SCHEUREN, DEFENDANT witness, having been previously
3 duly sworn, testified as follows:)

4 CROSS-EXAMINATION

5 BY MR. DORRIS:

6 Q. Dr. Scheuren, you'll recall during the time we spent
7 together before you made a reference to an analysis that you had
8 asked your staff to do, and we reserved for a limited purpose to
9 call you back to ask you about that analysis once we had been
10 provided the results of it. And that's why you're here today.
11 Okay?

12 A. Yes, sir. Thank you.

13 Q. And I appreciate you gave to the Department of Justice or
14 someone on your staff, and I was provided with information about
15 that analysis.

16 A. Correct.

17 Q. And I want to ask you some questions about that today.

18 Now, to set the background, what you had described for
19 us last time was that you had done kind of an analysis of CRA's
20 model - or Dr. Cornell's model, I think as you referred to it -
21 where you had taken the check amounts from the CP&R data and
22 added the electronic fund transfer information, or EFTs, from
23 the PACER data. Do you recall that, that that's what you said
24 you had done?

25 A. Yes. May I? I was trying to move from what he had done to

1 what we had done. And I didn't really finish all of the steps.

2 Effectively what we did do --

3 Q. Let's take it step by step, if we can. Okay?

4 A. Go ahead.

5 Q. Because I'm just wanting to set that I had understood that
6 that's what you asked your staff to do; the intent was to take
7 the EFTs, add them on to the checks to establish a revised
8 disbursement rate. That was what you described to us the other
9 day. Correct?

10 A. Effectively we did do that.

11 Q. Okay. But you did it in a different way, and we're going to
12 get to that in a second. Okay?

13 A. Thank you.

14 Q. So is this analysis that was provided to me since you
15 testified last, is that an analysis that you personally did, or
16 did someone on your staff make those runs?

17 A. What I believe I told you was we do everything twice, and so
18 that that analysis has been done twice. You got one of the
19 analyses from one of the people who did it when I gave it to
20 you. The other analysis -- but you get the same answer. That's
21 why we do it twice, to make sure we get the same answer.

22 Q. So when it was done twice, that was just a check to make
23 sure that you gave me the right -- or you had the right
24 information the first time?

25 A. We always do it twice.

1 Q. Okay. And I want to be real clear. Part of the reason that
2 I wanted you to come back today was so that the record is very
3 clear on what was done. Because I think part of your testimony
4 last time was that after you had done this analysis of taking
5 the checks and the EFTs and adding them together and comparing
6 them to disbursements for a period of time, you came up with
7 approximately a 96 percent disbursement rate. Do you recall
8 that?

9 A. 96.8 percent. But you haven't let me answer the question
10 yet.

11 Q. We're getting there.

12 A. Thank you.

13 Q. I want us now to walk through your analysis so we can lay
14 out for Judge Robertson exactly what was done and how that
15 disbursement rate was arrived at.

16 Now, before we walk through it, it was not arrived at,
17 was it, by taking the checks and adding the EFTs to them as you
18 had intended for it to, was it?

19 A. Conceptually we did do that with more, but that is not what
20 we did actually literally.

21 Q. Okay.

22 MR. DORRIS: So let's pull up Plaintiffs' Exhibit 178.

23 BY MR. DORRIS:

24 Q. Mr. Scheuren, what was provided to me was a disk that had
25 two files on it. One had some SAS information, or from running

1 the SAS program, and one was an Excel program that had two
2 spreadsheets in it. I want to show you those two spreadsheets
3 because I think we can walk through it that way.

4 The first spreadsheet that was in the Excel format that
5 was given to me is what is here now as Plaintiffs' Exhibit 178.
6 I will tell you that I compared that to Defendant's Exhibit 461,
7 which is the document you testified extensively about that
8 showed the reported and missing information. Are these two the
9 same spreadsheets?

10 A. They were supposed to be.

11 Q. Okay. Well, I will tell you, in my looking at them, I think
12 that they are.

13 And what this would then show is the same information
14 that the Court has already looked at before. Correct?

15 A. That was the intention.

16 Q. Okay.

17 MR. DORRIS: Now let's bring up Plaintiffs'
18 Exhibit 175. And I tell you what, let's just go up to the top
19 and bring up a section there so that we can see it.

20 BY MR. DORRIS:

21 Q. And we have a spreadsheet now that has three columns on it,
22 with one being the year and then the other two; one, I take it,
23 would be to represent collections and the third column would be
24 to represent disbursements. Is that correct?

25 A. Yes.

1 Q. Now, after studying this, it appears to me that a
2 disbursement rate was calculated and then applied to the second
3 column, the collections column, in order to get the disbursement
4 column, which is the third column. Is that correct?

5 A. That is correct.

6 Q. And by my calculation --

7 MR. DORRIS: I tell you what, if we might go to the
8 third page of this document.

9 BY MR. DORRIS:

10 Q. And you will see, we get to the bottom of this Excel
11 spreadsheet and there are no totals on it. Okay? But Excel
12 works very easily. If I just point to the cell below that
13 second column and hit "sum," it will add all that up for me.
14 Right? And that's the same for the third column. Correct?

15 A. Uh-huh. Right.

16 Q. Let's go to Plaintiffs' Exhibit 176, where I will represent
17 to you that I did that. I think you will recognize the numbers.
18 And you see on the third page of what we will mark as
19 Plaintiffs' Exhibit 176, I have totaled those columns for you?

20 A. Thank you.

21 Q. Now, when I then divide the third column, which is
22 \$13 billion, 971.4 million, by the second column, which is
23 14 billion, 426.58 million, I get a disbursement rate of
24 96.84 percent. Does that sound right?

25 A. It is, and I just told you that a few minutes ago.

1 Q. Okay. But you got ahead of me. You've got to go slow for
2 me. Okay?

3 Now, when I look at any one of the rows above that and
4 do that same mathematical calculation, I get that same exact
5 percentage. Right?

6 A. You should.

7 Q. So what we have here -- and let's talk about the collections
8 column then. Okay? The collections column then reflects the
9 collections that are shown on Defendant's Exhibit 461 that are
10 reported values, plus then some values that have been added to
11 that. Correct? I said Defendant's 461. The spreadsheet that
12 was actually in what you gave me was Plaintiffs' 178 that we saw
13 today.

14 A. They were added using Professor Cornell's approach.

15 Q. Okay. So to be --

16 A. It would be nice to call him Professor Cornell. He would
17 like it, even though he's not here.

18 Q. And so what you did is you took the collection information
19 that you had used as reported value, and used straight line
20 interpolation, as Professor Cornell had done, to establish the
21 missing values, and you did that to establish the missing values
22 in the collections column. Correct?

23 A. What we did, as I said, we replicated his approach using our
24 data, which was to -- I interrupted you a couple of times before
25 and I apologize to you. Let me finish, though.

1 We did that in order to see what we would get using
2 that extrapolation technique.

3 Q. Correct. So when you did it that way, you came up with --
4 using your data, you came up with a total collections that then
5 were estimated to be the number I just read, the \$14.4 billion
6 number. Correct?

7 A. Correct.

8 Q. You did not use the information that has been used by
9 Professor Cornell and CRA when they had arrived at their
10 collections number. Correct?

11 A. They used a different approach to calculate the collection
12 rate.

13 Q. Oh, I understand that. But they actually had some different
14 data points than you had, also. Correct?

15 A. They had less data.

16 Q. Right.

17 A. Considerably less.

18 Q. Okay. There were some times that they had data points they
19 used for a year and you did not have data points for those
20 years. Correct?

21 A. We used all the data that we could find in the system from
22 Dr. Angel.

23 Q. I understand. I'm wanting to see if you agree with this
24 point. When you put this back in, you did not go in and add
25 data for the years where Professor Cornell had used data and you

1 had not previously used it; in other words, you didn't combine
2 both data sets, did you?

3 A. That's correct.

4 Q. Now let's talk about the disbursement rate. Okay? The
5 disbursement rate, it is apparent after studying this that the
6 disbursement rate was calculated by you from

7 Plaintiffs' Exhibit --

8 (Phone rings.)

9 MR. DORRIS: Do you want to make a notation for the
10 record, Your Honor? I would say that's a glare.

11 THE COURT: I would, but the bearer of that cell phone
12 ran out of the courtroom so fast that I think I would be glaring
13 at innocent parties.

14 BY MR. DORRIS:

15 Q. Okay. What it appears to me that you did is that you took
16 the total from Plaintiffs' Exhibit 178 of the data that you used
17 and added up all of the collections and all of the disbursements
18 where you had data for both years, and then got a disbursement
19 rate based on what you were using as the reported value for
20 those years?

21 A. That is correct.

22 Q. So that actually, when you add it up, looking at Plaintiffs'
23 Exhibit 178, if we'll go to the second page of that and you pull
24 up 1945, kind of in that area, as I looked at it, you did not
25 use the collection information from 1945 in that total because

1 you didn't have disbursement information for that year.

2 Correct?

3 A. We could not calculate the rate because some of the
4 information was missing.

5 Q. All right. So you took that one number off this
6 calculation, and then added up both of those columns and then
7 compared them to get a 96.84 disbursement rate. Correct?

8 A. If you mean by what you say "that one number" as an example,
9 I will agree with that. But we did exactly what you said
10 earlier, we took all of the pairs where we had both collections
11 and disbursements both, no missing data, added them all up, and
12 calculated the rate.

13 Q. And when you took that -- you then took that disbursement
14 rate and then applied that to the collections that you had
15 calculated in the way that you've just described using the
16 straight line interpolation method?

17 A. We calculated the collections in the way that
18 Professor Cornell had -- would have calculated them if he had
19 this data and he used his method.

20 Q. Correct. And then you applied this disbursement rate, that
21 we just talked about how you established it, to those
22 collections --

23 A. And we would have -- what Professor Cornell did was he
24 calculated a disbursement rate for a different period and
25 applied it to all his data points. Okay? So that in fact,

1 effectively we were using the same methodology. If you
2 remember, Professor Cornell talked a great deal about the
3 quality of what he considered the methodology, and less so about
4 the data issues. And we liked his methodology, given the data
5 problems that he had, so we used it. It made sense for us, and
6 we have done this.

7 Q. Okay. And you went in to this that you were originally
8 going to do it by adding the electronic fund transfers to the
9 checks during the time period that Professor Cornell had
10 calculated the disbursement rate. Correct?

11 A. No. Let me -- what I was trying to do was to walk you
12 through the data set that Professor Cornell had used to the data
13 approach we had used. And I did not get all the way through
14 that - my fault - when I last testified, and I'm awfully glad,
15 and thank you, that you've allowed me to clarify it.

16 Conceptually, we could have done that but we would have
17 had to bring in other information, tribal and other matters, in
18 order to prove -- but why do that? And we didn't do it. What
19 we did was we simply took the data that was reported, which has
20 everything in it. The collections that we're using are all
21 collections from all sources, and the disbursements as well.

22 So we are -- and that's just what he didn't do. He did
23 not use the rest of the disbursements, even though they were
24 available for those very years. For whatever reason, he didn't
25 have them.

1 Q. Okay.

2 THE COURT: Just so that I don't get lost here, I think
3 I understand that you have made two points that I need to bear
4 in mind. The first is that you and Professor Cornell used
5 essentially the same method, except you used all the pairs that
6 have receipts and disbursements and he only used the last 10 or
7 15 years.

8 And the second point is that you added electronic fund
9 transfers to the disbursements and he didn't. Is that -- am I
10 oversimplifying this?

11 THE WITNESS: Your first point is exactly right. The
12 second point is the simplification that I gave when I testified
13 the last time, you add -- we looked at the total disbursements;
14 he only looked at CP&R. But in order to get from CP&R to the
15 total disbursements, you have to bring in not only electronic
16 funds transfers, but tribal, transfers in from tribal. And I
17 didn't mention that.

18 THE COURT: Okay. Thank you.

19 MR. DORRIS: Your Honor, as I understand it, he's
20 saying that the electronic fund transfers were not added into
21 disbursements.

22 BY MR. DORRIS:

23 Q. Is that correct?

24 A. The electronic transfers were not added into disbursements
25 by Professor Cornell.

1 Q. Okay. But they would be reflected in the figures that you
2 have here for disbursements. Correct?

3 A. Exactly.

4 Q. Now, with respect to the way you have calculated collections
5 in this analysis, is that a reasonable way, based on the data
6 that you were using, to come up with a reasonable approximation
7 of what the total collections were for the period of time from
8 1887 through 2007?

9 A. It was one of the set of possible reasonable methods. The
10 problem with this approach is it doesn't immediately lend itself
11 to measuring the uncertainty that is created by the
12 interpolations and extrapolations.

13 Q. Okay.

14 MR. DORRIS: I have no further questions, Your Honor.

15 THE COURT: Mr. Warshawsky?

16 MR. WARSHAWSKY: Your Honor, I have just one point to
17 clarify.

18 **REDIRECT EXAMINATION**

19 BY MR. WARSHAWSKY:

20 Q. Good morning, Dr. Scheuren.

21 MR. WARSHAWSKY: Can you pull up PX-178 again, please?

22 BY MR. WARSHAWSKY:

23 Q. Dr. Scheuren, in 1945 -- you'll recall Mr. Dorris asked you
24 about 1945 and clarified why you didn't include that in your
25 analysis of Dr. Cornell's model. You remember that?

1 A. Yes, I do.

2 Q. If you go to the previous page, to 1922, just to clarify, on
3 Defendant's Exhibit 461, which we don't need pull up, you
4 actually had values for 1922. Is that not correct?

5 A. Yes. But we left it out here.

6 Q. And would you just explain to the judge why?

7 A. Because it was an outlier. We had done the outlier
8 analysis -- thank you. I had neglected to say that. We had
9 done the outlier analysis earlier and we left out the data
10 points, the outliers. And this is the only case where this had
11 a bearing. The other two outliers that we had were not party to
12 this issue.

13 Q. So in your analysis you basically took the data from DX-461,
14 excluding 1922, the outliers, and 1945, because you didn't have
15 disbursements?

16 A. Correct.

17 MR. WARSHAWSKY: I have no more questions, Your Honor.

18 THE COURT: Well, that was not too bad, Dr. Scheuren.
19 You're excused. Thank you very much.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: Mr. Kirschman?

22 MR. KIRSCHMAN: Your Honor, we are checking to make
23 sure that we have included and presented to the Court all
24 exhibits we meant to introduce into evidence. We would like to
25 do that, if we could, on Tuesday when we meet and have a chance

1 to do that.

2 But with that, with the conclusion of Dr. Scheuren's
3 testimony, the government rests with its responsive portion of
4 its case.

5 THE COURT: And we're just going to hear one witness on
6 Tuesday. Is that correct?

7 MR. DORRIS: That is correct, Your Honor. I must say
8 that the witness stopped to mention something to me at counsel
9 table and I didn't get to hear what Mr. Kirschman just said.

10 THE COURT: All he said was he wants to talk about
11 exhibits on Tuesday.

12 MR. DORRIS: Okay. Then there is just the one --

13 THE COURT: And he said they rest.

14 MR. DORRIS: And then there is the one additional
15 witness, all on Tuesday.

16 THE COURT: All right. Let's talk for just a minute
17 about -- since we have all this time now, what we're going to do
18 with respect to proposed findings and conclusions. I suspect
19 both sides want to submit them; the question is how quickly can
20 you submit them.

21 We have internal chambers time pressures that we have
22 to deal with here, and I want to get this matter resolved --
23 written up and resolved by, if possible, the middle or latter
24 part of July. So I'm in a hurry to get cracking here.

25 MR. DORRIS: Your Honor, we're prepared to meet

1 whatever time frame you set and work to do that, recognizing the
2 pressures that you have in your chambers. So really, you tell
3 us when you need them by and we will comply.

4 THE COURT: Let me ask both sides. Is a couple of
5 weeks after next Tuesday too little time for the parties to
6 collect and submit proposed findings and conclusions?

7 MR. DORRIS: We're prepared to do that, Your Honor.

8 MR. KIRSCHMAN: Your Honor, can I check the calendar,
9 please? One concern I have is the July 4th weekend. Can I
10 check the calendar?

11 THE COURT: Yeah. I said a couple of weeks. It's a
12 pretty open-ended suggestion.

13 MR. DORRIS: Nobody pulls out notebooks anymore for
14 their calendars, do they, Judge?

15 MR. KIRSCHMAN: Well, a couple of weeks would be the
16 week after July 4th, and we can meet that if that's the date
17 you're requesting.

18 THE COURT: All right. Let's start focusing on that
19 timetable and we'll come up with exact dates next Tuesday.

20 MR. DORRIS: What is your pleasure in terms of any
21 closing arguments at the end of the evidence or not?

22 THE COURT: I think actually it might be quite useful
23 to hear closing arguments, and I expect we'll have time for that
24 on Tuesday. Just summaries. I mean, I'm not looking for
25 rhetoric, I'm looking for summaries.

1 MR. KIRSCHMAN: And might that be at the conclusion of
2 testimony?

3 THE COURT: Yes, at the conclusion of all testimony.

4 MR. KIRSCHMAN: Tuesday, I'm sorry?

5 THE COURT: Yes. Assuming that we don't take all day
6 on Tuesday with examination and cross-examination of the last
7 witness. If we do, we'll do it on Wednesday.

8 MR. DORRIS: And do you want to go ahead and tell us a
9 start time on Tuesday, or would you like just to have your
10 chambers tell us?

11 THE COURT: Well, you're right, there are a couple of
12 matters set for Tuesday. One of them is just a very short
13 criminal status which I think is set for 10:30. Let's start at
14 9:30 anyway, and we'll just simply suspend for five minutes and
15 take care of the criminal matter when it comes in.

16 MR. DORRIS: Thank you, Your Honor.

17 THE COURT: All right.

18 MR. KIRSCHMAN: Thank you, Your Honor.

19 THE COURT: All right, counsel. I guess have a nice
20 weekend is easier for me to say than for you to do. But have a
21 nice weekend anyway.

22 (Proceedings adjourned at 11:41 a.m.)

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CERTIFICATE OF OFFICIAL COURT REPORTER

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

SIGNATURE OF COURT REPORTER

DATE

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