

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al. .  
Plaintiffs, . Civil Action 96-1285  
v. .  
Washington, D.C.  
DIRK KEMPTHORNE, Secretary . Wednesday, June 18, 2008  
of the Interior, et al. . 1:32 p.m.  
Defendants. .  
.....

TRANSCRIPT OF TRIAL - AFTERNOON SESSION  
BEFORE THE HONORABLE JAMES ROBERTSON  
UNITED STATES DISTRICT JUDGE

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PROCEEDINGS

01:29:07PM 1  
01:29:07PM 2 COURTROOM DEPUTY: Please come to order and remain  
01:32:05PM 3 seated.  
01:32:19PM 4 MR. GILLET: Good afternoon, your Honor.  
01:32:20PM 5 THE COURT: Good afternoon.  
01:32:22PM 6 MR. GILLET: Government's next witness is Gary  
01:32:25PM 7 Grippo.  
01:32:25PM 8 THE COURT: All right.  
01:32:39PM 9 COURTROOM DEPUTY: Please raise your right hand. Do  
01:32:42PM 10 you solemnly swear that the testimony you should give the Court  
01:32:45PM 11 in the matter now on trial should be the truth, the whole truth,  
01:32:47PM 12 and nothing but the truth?  
01:32:48PM 13 THE WITNESS: Yes.  
01:32:49PM 14 COURTROOM DEPUTY: Thank you. Please be seated, Mr.  
01:32:49PM 15 Gillett.  
01:32:49PM 16 GARY GRIPPO, WITNESS FOR THE GOVERNMENT, SWORN  
01:32:49PM 17 DIRECT EXAMINATION  
01:32:51PM 18 BY MR. GILLET:  
01:32:51PM 19 Q. Good afternoon, Mr. Grippo.  
01:32:53PM 20 A. Good afternoon.  
01:32:54PM 21 Q. Would you please give your full name for the Court and  
01:32:57PM 22 spell your last name?  
01:32:57PM 23 A. Gary Grippo, G-r-i-p-p-o.  
01:33:00PM 24 Q. Thank you. Are you employed by the United States Treasury  
01:33:03PM 25 Department?

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

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01:33:03PM 1 A. Yes, I am.  
01:33:04PM 2 Q. And how long have you been employed with the Treasury  
01:33:07PM 3 Department?  
01:33:07PM 4 A. Sixteen years.  
01:33:08PM 5 Q. What position do you have currently hold?  
01:33:12PM 6 A. I'm currently the deputy assistant secretary for fiscal  
01:33:16PM 7 operations and policy.  
01:33:17PM 8 Q. And how long have you been in that job?  
01:33:20PM 9 A. Approximately one year.  
01:33:21PM 10 Q. Could you please provide the Court a brief description of  
01:33:26PM 11 the work you have done for Treasury up to the time of your  
01:33:30PM 12 current position?  
01:33:31PM 13 A. Prior to my current position for four years I was the  
01:33:36PM 14 assistant commissioner for federal finance at the Financial  
01:33:39PM 15 Management Service, the Bureau of the Treasury, where I was  
01:33:43PM 16 responsible for the government's depository banking relation-  
01:33:45PM 17 ships and also for the government's collection deposit systems.  
01:33:49PM 18 Prior to that for about four years I was the chief architect of  
01:33:54PM 19 electronic commerce at the Financial Management Service where I  
01:33:57PM 20 developed payment and collection and accounting systems for use  
01:34:01PM 21 government-wide.  
01:34:02PM 22 Q. Okay. And what do your current responsibilities involve?  
01:34:08PM 23 A. I help oversee the two fiscal service bureaus, the  
01:34:14PM 24 Financial Management Service and the Bureau of the Public Debt.  
01:34:17PM 25 I help establish and implement government-wide financial policy

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01:34:21PM **1** cash management, credit management, debt collection, and related  
 01:34:25PM **2** financial policies. And I have an office that reports to me  
 01:34:28PM **3** that manages the cash position of the U.S. government on a daily  
 01:34:32PM **4** basis.  
 01:34:32PM **5 Q.** And in regard to your oversight function with the two  
 01:34:39PM **6** bureaus, Financial Management Service and Bureau of Public Debt,  
 01:34:42PM **7** could you give us an idea of the framework, the organizational  
 01:34:46PM **8** framework where you fit in on that?  
 01:34:48PM **9 A.** Sure. The two fiscal service bureaus you mentioned report  
 01:34:53PM **10** to the fiscal assistant secretary. I work directly for the  
 01:34:57PM **11** fiscal assistant secretary and help him in that office in  
 01:35:01PM **12** overseeing the two bureaus. The fiscal assistant secretary  
 01:35:04PM **13** reports up to the undersecretary for domestic finance.  
 01:35:07PM **14 Q.** I believe --  
 01:35:09PM **15** THE COURT: Of what?  
 01:35:11PM **16** THE WITNESS: Domestic finance.  
 01:35:13PM **17** MR. GILLET: I'm sorry, your Honor.  
 01:35:15PM **18** BY MR. GILLET:  
 01:35:16PM **19 Q.** You indicated you have responsibilities relating to  
 01:35:18PM **20** management of the cash of the United States. Could you briefly  
 01:35:24PM **21** describe your responsibilities in that regard?  
 01:35:27PM **22 A.** My office manages the cash position of the government on a  
 01:35:32PM **23** day-to-day basis, as I said. So that means managing the amounts  
 01:35:37PM **24** in the TGA or Treasury general account, which would include  
 01:35:42PM **25** forecasting the revenues that will come into the TGA, the

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01:37:28PM **1** also serve as the investment vehicle for the Treasury's  
 01:37:32PM **2** operating cash, so they will take placements of cash from the  
 01:37:35PM **3** Treasury, basically on an overnight basis as a government  
 01:37:38PM **4** investment.  
 01:37:39PM **5 Q.** And you mentioned that the TGA is held in the Federal  
 01:37:46PM **6** Reserve Bank of New York. In that sense is the Federal Reserve  
 01:37:53PM **7** Bank of New York Treasury's banker?  
 01:37:57PM **8 A.** Yes.  
 01:37:57PM **9 Q.** Okay. And on the funds side, is it a fair statement that  
 01:38:00PM **10** Treasury performs banking functions for the various agencies of  
 01:38:04PM **11** the government?  
 01:38:05PM **12 A.** That's a fair statement.  
 01:38:08PM **13 Q.** Do you know in general what Individual Indian Monies is?  
 01:38:14PM **14 A.** I do in general.  
 01:38:15PM **15 Q.** What is your understanding?  
 01:38:17PM **16 A.** My understanding of Individual Indian Monies is there is an  
 01:38:22PM **17** I guess what I'll call a federal program or set of statutes  
 01:38:26PM **18** under which the federal government check revenues for individual  
 01:38:30PM **19** Indians, primarily from land use rights, and in turn disburses  
 01:38:36PM **20** those monies to individual Indian beneficiaries.  
 01:38:40PM **21 Q.** How would the term "cash" that you mentioned earlier relate  
 01:38:47PM **22** to IIM?  
 01:38:50PM **23 A.** Cash relates to IIM the same way that cash would relate to  
 01:38:56PM **24** any program or activity of the government. IIM cash would be  
 01:39:04PM **25** deposited in the TGA and withdrawn from the TGA.

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01:35:46PM **1** expenditures we will make out of it, as well as investing any  
 01:35:50PM **2** excess operating cash that may not be needed in TGA for a given  
 01:35:53PM **3** day.  
 01:35:54PM **4 Q.** In your particular position do the terms "cash" and "funds"  
 01:36:02PM **5** have different meanings?  
 01:36:03PM **6 A.** Yes.  
 01:36:04PM **7 Q.** Could you explain, please?  
 01:36:05PM **8 A.** Well, "cash" refers to operating cash in a bank account  
 01:36:12PM **9** that is available to fund transactions to fund clearing  
 01:36:16PM **10** settlement of transactions through the banking system. "Funds"  
 01:36:21PM **11** represent amounts in accounts in a general ledger system:  
 01:36:25PM **12** assets, liabilities, appropriations, and other such amounts.  
 01:36:30PM **13 Q.** Where does the U.S. Treasury keep its cash?  
 01:36:32PM **14 A.** We keep our cash in two basic places. One is in the  
 01:36:39PM **15** Treasury General Account or TGA, which is at the Federal Reserve  
 01:36:43PM **16** Bank of New York, and the other place we keep it is with  
 01:36:47PM **17** Treasury tax and loan banks, commercial depositories.  
 01:36:50PM **18 Q.** Now, we've heard New York testimony in this case about the  
 01:36:55PM **19** TGA. Could you give us a little bit more explanation about  
 01:36:59PM **20** Treasury tax and loan accounts?  
 01:37:04PM **21 A.** Treasury tax and loan accounts are at commercial financial  
 01:37:08PM **22** institutions. They serve two purposes. One is to receive  
 01:37:12PM **23** deposits of federal taxes from corporations, which amounts for  
 01:37:17PM **24** roughly \$60 to \$70 billion a year in collections flowing through  
 01:37:24PM **25** Treasury tax and loan banks, and Treasury tax and loan banks

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01:39:08PM **1 Q.** Generally what happens to cash deposited in the TGA?  
 01:39:13PM **2 A.** It is spent generally the same day to fund expenditures of  
 01:39:22PM **3** the government.  
 01:39:23PM **4 Q.** Approximately how much money goes through the TGA in a  
 01:39:29PM **5** given week?  
 01:39:33PM **6 A.** Well, in gross nominal terms, about \$300 billion a week  
 01:39:37PM **7** would flow through the TGA in actual cash.  
 01:39:39PM **8 Q.** What do you mean by "gross nominal terms"?  
 01:39:42PM **9 A.** That's the total amount of dollars that would actually be  
 01:39:47PM **10** credited to the TGA as deposits.  
 01:39:52PM **11 Q.** Does that include both receipts and disbursements?  
 01:39:56PM **12 A.** That would include both, yes, receipts and disbursements.  
 01:39:59PM **13 Q.** Does the TGA correlate to any particular fund on the funds  
 01:40:04PM **14** side?  
 01:40:05PM **15 A.** No, it does not.  
 01:40:08PM **16 Q.** Is cash ever set aside or frozen in the TGA?  
 01:40:13PM **17 A.** No.  
 01:40:13PM **18 Q.** If the TGA balance somehow went to zero and government  
 01:40:21PM **19** spending suddenly came to a stop, would that affect balances in  
 01:40:26PM **20** the funds accounted for in the central accounting system?  
 01:40:29PM **21 A.** It would have no impact on the balances in the general  
 01:40:33PM **22** ledger, no.  
 01:40:34PM **23 Q.** Now, do your responsibilities also relate in any way to  
 01:40:40PM **24** debt management for the United States?  
 01:40:43PM **25 A.** They do relate to debt management, yes.

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01:40:45PM **1 Q.** Are you familiar with how the United States government's  
 01:40:47PM **2** borrowing decisions are made?  
 01:40:49PM **3 A.** Yes, I am.  
 01:40:49PM **4 Q.** Who is involved in that process?  
 01:40:51PM **5 A.** Two offices primary: The Office of the Fiscal Assistant  
 01:40:57PM **6** Secretary and the Office of the Assistant Secretary For  
 01:41:00PM **7** Financial Markets, primarily through suboffices. In one case  
 01:41:04PM **8** there's an Office of Fiscal Projections and in the other case  
 01:41:08PM **9** there's an Office of Debt Management and those two organizations  
 01:41:12PM **10** together make the borrowing decisions.  
 01:41:14PM **11 Q.** Is there a particular organizational name for the entity or  
 01:41:21PM **12** the group that makes those borrowing decisions?  
 01:41:23PM **13 A.** We call it the financing group.  
 01:41:24PM **14 Q.** How many individuals are members of the financing group?  
 01:41:32PM **15 A.** Typically there would be eight people or eight individuals  
 01:41:35PM **16** who would sign-off on a borrowing decision.  
 01:41:38PM **17 Q.** What does it mean to sign off on a borrowing decision?  
 01:41:42PM **18 A.** Literally we would in a finance group meeting pass around a  
 01:41:46PM **19** document that everyone initials to validate the amount borrowed.  
 01:41:50PM **20 Q.** Are the individuals in the financing group picked on the  
 01:41:52PM **21** basis of the position they hold within the Treasury department?  
 01:41:55PM **22 A.** Yes. It's a function of their position within the Office  
 01:42:01PM **23** of the Fiscal Assistant Secretary and the Office of the  
 01:42:03PM **24** Assistant Secretary For Financial Markets.  
 01:42:05PM **25 Q.** Can you tell us when and how often decisions are made in

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01:43:56PM **1** BY MR. GILLETTE:  
 01:44:17PM **2 Q.** Do you see on the screen there, Mr. Grippo, what's been  
 01:44:20PM **3** marked as DX 502?  
 01:44:23PM **4 A.** Yes.  
 01:44:23PM **5 Q.** Are you familiar with that document?  
 01:44:24PM **6 A.** Yes, I am.  
 01:44:25PM **7 Q.** I'm not going to ask you to read from that, but if you  
 01:44:36PM **8** could just provide for the Court from your experience your  
 01:44:41PM **9** understanding of how this regular and predictable strategy works  
 01:44:45PM **10** day-to-day.  
 01:44:46PM **11 A.** Well, regular and predictable means that the timing and the  
 01:44:54PM **12** amount and the maturities of the securities we sell are stable,  
 01:44:59PM **13** they do not fluctuate up or down very much, they're transparent,  
 01:45:04PM **14** meaning the market knows exactly how much we would expect to  
 01:45:07PM **15** borrow and what securities over time. In order to provide the  
 01:45:11PM **16** market by which I mean organizations or individuals that are  
 01:45:16PM **17** buying these securities, we'll have an idea of exactly what we  
 01:45:19PM **18** intend to issue over time.  
 01:45:24PM **19** MR. GILLETTE: Your Honor, I want to take a moment  
 01:45:26PM **20** just to make sure everybody gets a hard copy of that exhibit.  
 01:45:26PM **21** BY MR. GILLETTE:  
 01:46:04PM **22 Q.** Does Treasury borrow even when substantial amounts of cash  
 01:46:10PM **23** are on hand, for example, April when tax receipts are high?  
 01:46:13PM **24 A.** Yes, we do.  
 01:46:14PM **25 Q.** And is that part of this strategy?

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01:42:10PM **1** regard to the sale of securities by the Treasury?  
 01:42:13PM **2 A.** There is essentially a two-step process. On a quarterly  
 01:42:22PM **3** basis we will project the cash and debt needs of the government  
 01:42:27PM **4** and prepare a financing plan for that quarter, so we may  
 01:42:33PM **5** conclude as an example we need in net marketable borrowing \$50  
 01:42:40PM **6** million over the next quarter to finance a deficit. We will,  
 01:42:44PM **7** based upon that amount, develop a specific financing plan with  
 01:42:48PM **8** specific securities and maturities. We will basically make that  
 01:42:53PM **9** known to the public through press releases and other public  
 01:42:58PM **10** statements, and once that quarterly plan, that baseline plan, is  
 01:43:02PM **11** in place, we will on a weekly basis meet, the financing group  
 01:43:06PM **12** will meet, to validate the securities that would be issued that  
 01:43:09PM **13** week. Primarily not to change the plan that we came up with for  
 01:43:14PM **14** the quarter, but to make sure that for any upcoming low point in  
 01:43:20PM **15** other cash balance financing is sufficient to make sure that  
 01:43:23PM **16** funding is available in the TGA.  
 01:43:26PM **17 Q.** Is there a phrase that generally describes Treasury's debt  
 01:43:31PM **18** management strategy?  
 01:43:32PM **19 A.** The phrase typically used to describe the strategy is  
 01:43:37PM **20** "regular and predictable."  
 01:43:38PM **21 Q.** And is that phrase well known in the government securities  
 01:43:45PM **22** market?  
 01:43:45PM **23 A.** I would say so, yes.  
 01:43:53PM **24** MR. GILLETTE: Could we see Defense Exhibit 502,  
 01:43:56PM **25** please?

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01:46:16PM **1 A.** It is absolutely a part of that strategy.  
 01:46:19PM **2 Q.** And in what sense?  
 01:46:23PM **3 A.** The markets are expecting what we call a certainty of  
 01:46:27PM **4** supply, and so even in a particular week when we have plenty of  
 01:46:32PM **5** operating cash we are still borrowing and still supplying the  
 01:46:36PM **6** market with regular and predictable debt issuance.  
 01:46:41PM **7 Q.** Approximately how long has that strategy been in place?  
 01:46:45PM **8 A.** About thirty years.  
 01:46:49PM **9 Q.** Are you at all familiar with the predecessor strategy?  
 01:46:52PM **10 A.** In general I'm familiar with it.  
 01:46:54PM **11 Q.** And in general how did that work?  
 01:46:56PM **12 A.** In general borrowing decisions would be made on a more  
 01:47:03PM **13** tactical basis when there was a specifically-forecasted deficit  
 01:47:09PM **14** or cash need in the short-term and securities would be sold  
 01:47:12PM **15** specifically to finance that short-term deficit or amount, as  
 01:47:17PM **16** opposed to regular and predictable borrowing where we are  
 01:47:22PM **17** borrowing not based on the day-to-day or week-to-week or even  
 01:47:28PM **18** month-to-month variances of our cash positions, but we are  
 01:47:31PM **19** borrowing stable amounts over time to reflect sort of the  
 01:47:35PM **20** long-term structural need to borrow.  
 01:47:37PM **21 Q.** Does every dollar in the government's hands represent a  
 01:47:40PM **22** dollar that the government does not have to borrow?  
 01:47:43PM **23 A.** Not every dollar, no.  
 01:47:45PM **24 Q.** In relatively simple terms, in a relatively static  
 01:47:51PM **25** environment, if the government outlays precisely equaled

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01:47:54PM **1** receipts, would it be fair to say that any reduction in  
01:47:59PM **2** receipts, no matter how small, would require some equivalent  
01:48:05PM **3** cash increase to cover outlays?  
01:48:08PM **4** **A.** Yes, that's how the equation would work.  
01:48:11PM **5** **Q.** Is the environment in which financial management for the  
01:48:16PM **6** United States takes place either simple or static?  
01:48:18PM **7** **A.** No, not at all.  
01:48:19PM **8** **Q.** For any given period of time, say, a fiscal year, how  
01:48:25PM **9** likely would it be for the U.S. government outlays and receipts  
01:48:31PM **10** to equal each other precisely?  
01:48:34PM **11** **A.** It would be extraordinarily unlikely for those two things  
01:48:39PM **12** to match precisely.  
01:48:41PM **13** **Q.** Can you give the Court a sense of total federal government  
01:48:44PM **14** receipts for fiscal year 2007?  
01:48:49PM **15** **A.** Our budgetary receipts last fiscal year were about \$2.6  
01:48:56PM **16** trillion.  
01:48:56PM **17** **Q.** Typically do outlays exceed receipts or receipts exceed  
01:49:00PM **18** outlays?  
01:49:00PM **19** **A.** Typically with outlays would be greater than receipts.  
01:49:04PM **20** **Q.** And that obviously creates a deficit situation, correct?  
01:49:07PM **21** **A.** Correct.  
01:49:08PM **22** **Q.** All right. Do deficits generally necessitate borrowing to  
01:49:14PM **23** cover outlays?  
01:49:15PM **24** **A.** Yes.  
01:49:15PM **25** **Q.** What was the approximately total of U.S. government

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01:51:02PM **1** **Q.** Okay. Now, that's gross receipts, correct, that's before  
01:51:07PM **2** disbursements are taken out in Column F?  
01:51:10PM **3** **A.** Yes, that's what it looks like.  
01:51:12PM **4** **Q.** And after Column F we have G, the net of 101 million?  
01:51:17PM **5** **A.** I see that.  
01:51:17PM **6** **Q.** Now, focusing just on the 336.68 million, would projected  
01:51:25PM **7** receipts at that level factor into the government's borrowing  
01:51:30PM **8** decisions?  
01:51:30PM **9** **A.** Receipts on the order of \$300 million would not really  
01:51:38PM **10** factor -- would not factor into our borrowing decisions.  
01:51:44PM **11** **Q.** Why not?  
01:51:45PM **12** **A.** Because the scale of the borrowing is such that marginal  
01:51:49PM **13** amounts, let's say on a given day \$500 million would not impact  
01:51:53PM **14** how much we borrow.  
01:51:57PM **15** **Q.** And this figure represents an annual receipts figure, that  
01:51:59PM **16** is your understanding?  
01:52:00PM **17** **A.** Annual for 2007, yes.  
01:52:03PM **18** MR. GILLETTE: Could we see Defense Exhibit 503,  
01:52:05PM **19** please?  
01:52:05PM **20** BY MR. GILLETTE:  
01:52:06PM **21** **Q.** Does this document look familiar to you?  
01:52:26PM **22** **A.** Yes.  
01:52:26PM **23** **Q.** Could you describe what it is, please?  
01:52:28PM **24** **A.** This is a document we use to track the daily cash position  
01:52:36PM **25** of the federal government, and this would be the primary

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01:49:19PM **1** borrowings in fiscal year 2007?  
01:49:22PM **2** **A.** The total nominal amount of borrowings was \$4.5 trillion.  
01:49:28PM **3** **Q.** What do you mean by "nominal"?  
01:49:29PM **4** **A.** I mean the total amount of securities issued nominally was  
01:49:35PM **5** four-and-a-half trillion dollars, which is different from the  
01:49:40PM **6** deficit, let's say.  
01:49:40PM **7** **Q.** How were most of the proceeds of the sales of securities  
01:49:44PM **8** used?  
01:49:47PM **9** **A.** The vast majority of the proceeds were used to refund  
01:49:51PM **10** existing maturing debt.  
01:49:53PM **11** **Q.** Mr. Grippo, I'm going to show you a table that has been  
01:50:07PM **12** referred to as Attachment A. And have you seen this before?  
01:50:11PM **13** **A.** Yes.  
01:50:12PM **14** **Q.** If we could go to the last page of this document, I think  
01:50:19PM **15** it's the fourth page, and to the line for year 2007. Do you see  
01:50:32PM **16** in the year 2007, which is right above the totals, a figure for  
01:50:37PM **17** total revenues?  
01:50:38PM **18** **A.** Yes.  
01:50:40PM **19** **Q.** And that's in Column E?  
01:50:41PM **20** **A.** Um-hmm.  
01:50:42PM **21** **Q.** Okay. What is that number there?  
01:50:46PM **22** **A.** It looks like it's B minus C. The column is B minus C plus  
01:50:57PM **23** D.  
01:50:57PM **24** **Q.** But I mean the actual number in 2007.  
01:50:59PM **25** **A.** Oh, 336 million.

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01:52:40PM **1** document we're looking at when the financing group meets to  
01:52:43PM **2** validate on a weekly basis the borrowing plan we have in place.  
01:52:46PM **3** **Q.** Okay. Who prepares this document?  
01:52:49PM **4** **A.** My office.  
01:52:51PM **5** **Q.** And when is it prepared in relation to when you're going to  
01:52:57PM **6** need it?  
01:52:57PM **7** **A.** Well, as I indicated earlier, on a quarterly basis this  
01:53:01PM **8** document would be prepared using a baseline forecast of our cash  
01:53:06PM **9** and debt of the government, and then each day as actual amounts  
01:53:13PM **10** are recorded it would be updated, and so if you can see under  
01:53:20PM **11** the box labeled Cash there toward the right there is a column  
01:53:25PM **12** headed ACT that refers to actual, and so this is from May 2008.  
01:53:31PM **13** It is showing all the actual cash balances from last month.  
01:53:36PM **14** **Q.** Why don't we go through this kind of from left to right, a  
01:53:41PM **15** column or so at a time, if we can do that, Matthew. Could take  
01:53:52PM **16** us through these various columns from left to right, Mr. Grippo?  
01:53:57PM **17** **A.** Well, the first column, Date, obviously is showing each day  
01:54:01PM **18** of the month of May. The next column entitled Mar 31st, March  
01:54:09PM **19** 31st, 2008, is showing the estimated cash balance to the  
01:54:15PM **20** hundred-million-dollar increment. That was developed in the  
01:54:20PM **21** quarterly forecast that was published on March 31st.  
01:54:24PM **22** **Q.** And let me just stop you there for a second. When you say  
01:54:28PM **23** the "estimated cash balance," the estimated cash balance where?  
01:54:33PM **24** **A.** I mean the operating cash of the government, so that would  
01:54:37PM **25** include amounts in the TGA as well as amounts that may be in the

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01:54:42PM **1** Treasury tax and loan system. The total operating cash at the  
01:54:45PM **2** disposal of the Treasury.  
01:54:47PM **3 Q.** And then moving over to the right.  
01:54:51PM **4 A.** So the next column marked Maturities is showing Treasury  
01:54:56PM **5** bills and notes and bonds in the case of the coupon column that  
01:55:00PM **6** will be maturing on those days.  
01:55:03PM **7 Q.** And how do you use those information?  
01:55:06PM **8 A.** Well, that represents, as I say, maturing debt, which means  
01:55:11PM **9** we must have enough cash on hand to pay for those maturing  
01:55:14PM **10** securities.  
01:55:16PM **11 Q.** And under the pro forma issues, could you explain what that  
01:55:22PM **12** information is?  
01:55:22PM **13 A.** Sure. Pro forma issues shows the borrowing plan that would  
01:55:27PM **14** have been put in place at the start of the quarter. You can see  
01:55:30PM **15** different types of securities there, a four-week bill, a  
01:55:34PM **16** thirteen-week bill, a 26-week bill, etcetera. This shows the  
01:55:37PM **17** amount in billions of dollars for each of those securities which  
01:55:41PM **18** we plan to sell to raise cash for the government.  
01:55:44PM **19 Q.** And again, who does this planning?  
01:55:49PM **20 A.** The Office of Fiscal Projections and the Office of Debt  
01:55:53PM **21** Management within the Treasury.  
01:55:57PM **22** MR. GILLETTE: And Matthew, could we slide over to the  
01:56:00PM **23** next column over, the New Cash? And actually we might as well  
01:56:05PM **24** take that whole group of columns, if we can. All right.  
01:56:05PM **25** BY MR. GILLETTE:

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01:58:03PM **1 Q.** And to complete this exhibit, if we could just quickly look  
01:58:06PM **2** at the set of columns on the far right under Debt.  
01:58:10PM **3 A.** The Debt box is basically there to track existing debt  
01:58:17PM **4** levels based upon the information you see on the left side of  
01:58:20PM **5** the chart against the statutory debt limit, and so you can see  
01:58:26PM **6** in adjusted debt the amount of debt we have accumulated that is  
01:58:31PM **7** subject to statutory limit. If you go a little further down on  
01:58:34PM **8** the chart you will see the actual debt limit, which is currently  
01:58:38PM **9** \$9.8 trillion.  
01:58:41PM **10 Q.** When the financing group makes the decisions of what to  
01:58:51PM **11** borrow and how much, does it borrow down to the penny?  
01:58:55PM **12 A.** No.  
01:58:56PM **13 Q.** How does that work?  
01:58:57PM **14 A.** We borrow in billion-dollar increments, and so as we are  
01:59:03PM **15** looking at these balances, we are making a determination whether  
01:59:08PM **16** to increase or decrease the borrowing by at least a billion  
01:59:13PM **17** dollars.  
01:59:13PM **18 Q.** And what is the target that you are looking at when you --  
01:59:19PM **19** what point in these projections is the point that you're looking  
01:59:23PM **20** to in deciding how much overall?  
01:59:26PM **21 A.** Well, the borrowing plan for the quarter basically  
01:59:31PM **22** establishes what we are going to issue. On a particular day the  
01:59:36PM **23** one thing we would be looking at is whether the adjusted cash  
01:59:39PM **24** balance is approaching five, \$5 billion, which is the minimum  
01:59:45PM **25** amount of cash we keep in the TGA to ensure there is a

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01:56:10PM **1 Q.** Could you please walk us through these next four columns,  
01:56:14PM **2** Mr. Grippo?  
01:56:15PM **3 A.** New Cash Finance is showing based upon what securities are  
01:56:23PM **4** maturing and what new securities we will issue whether the  
01:56:26PM **5** government will be generating new cash or whether it will be on  
01:56:30PM **6** that paying down debt, so if you see a negative number we are  
01:56:36PM **7** paying down debt. If you see a positive number, we are raising  
01:56:41PM **8** cash on that day. You'll note that all of these figures for new  
01:56:47PM **9** cash, well, there's one exception, but generally they occur on  
01:56:50PM **10** Thursdays, which is when all securities transactions settle, so  
01:56:56PM **11** New Cash Finance shows the amount of money we are raising or  
01:56:58PM **12** paying down based upon maturities versus new issues. New Other  
01:57:08PM **13** Cash just refers to the difference in the cash position from our  
01:57:11PM **14** original baseline, which would have been that first column we  
01:57:14PM **15** looked at. And the key column here on this chart that we look  
01:57:18PM **16** at when we are making borrowing decisions is that column  
01:57:25PM **17** Adjusted Cash Balance. That is showing the operating cash of  
01:57:28PM **18** the Treasury for each day.  
01:57:29PM **19 Q.** And then the remaining columns there?  
01:57:36PM **20 A.** The last two columns show a particular type of investment,  
01:57:42PM **21** term investments, with TT&L banks, so that shows what proportion  
01:57:48PM **22** of the operating cash we would expect to be in term investments  
01:57:52PM **23** with TT&L banks. It doesn't show everything that's in the TT&L  
01:57:57PM **24** system, but terms placements in the TT&L system. Something more  
01:58:01PM **25** than in one day basically.

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01:59:49PM **1** sufficient balance against an overdraft.  
01:59:51PM **2 Q.** And the projections you're looking at, what do they give  
01:59:55PM **3** you in terms of cash flow?  
01:59:56PM **4 A.** This adjusted cash balance is listed in hundred billion  
02:00:07PM **5** dollar increments.  
02:00:08PM **6 Q.** Now, we looked earlier at the \$336 million annual IIM  
02:00:14PM **7** receipts, gross receipts. Do you recall that?  
02:00:15PM **8 A.** Yes.  
02:00:16PM **9 Q.** What would that be in weekly terms?  
02:00:20PM **10 A.** It would be roughly six million. 330 by 52.  
02:00:27PM **11 Q.** Would the weekly \$6 million in gross IIM receipts impact  
02:00:32PM **12** the decisions about whether and how much to borrow?  
02:00:35PM **13 A.** It would not.  
02:00:36PM **14 Q.** And what are the major cash sources and uses that you look  
02:00:48PM **15** to in making your forecasts?  
02:00:51PM **16 A.** Well, on the receipt side it would be individual income  
02:00:58PM **17** taxes, in particular individual withheld income taxes and  
02:01:04PM **18** employment taxes. Also individual nonwithheld taxes, which  
02:01:09PM **19** would be quarterly estimated taxes or April 15th taxes from  
02:01:12PM **20** individuals. Corporate taxes, customs duties, estate taxes, and  
02:01:19PM **21** unemployment insurance taxes. Those categories I've just listed  
02:01:24PM **22** are more than 98 percent of the receipts of the government. And  
02:01:27PM **23** on the uses or the expenditures, of course there is Social  
02:01:33PM **24** Security payments, Medicare and Medicaid payments, defense  
02:01:38PM **25** spending, and the other one that sometimes we look at would be

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02:01:43PM **1** education spending, and those constitute the vast majority of

02:01:47PM **2** spending for the government.

02:01:48PM **3 Q.** Do you know whether the financing group members know

02:01:54PM **4** specifically the projected IIM receipts for any given period

02:01:59PM **5** when they make borrowing decisions?

02:02:01PM **6 A.** The financing group has no knowledge of IIM.

02:02:04PM **7 Q.** If that information were known, what, if any, difference

02:02:08PM **8** would it make?

02:02:09PM **9 A.** It would make no difference to borrowing decisions.

02:02:13PM **10 Q.** Is the IIM fund balance, the 14X6039, relevant to any

02:02:19PM **11** borrowing decision?

02:02:20PM **12 A.** No, it's not known to anyone making a borrowing decision.

02:02:24PM **13 Q.** If gross IIM receipts were eliminated entirely, would that

02:02:29PM **14** affect the decision about whether and how much to borrow?

02:02:32PM **15 A.** Those gross receipts of roughly \$330 million, I don't know

02:02:38PM **16** whether they occur or don't occur, would not impact the

02:02:41PM **17** borrowing decision. This chart shows that we don't even look to

02:02:47PM **18** a daily amount let alone an annual amount that's under a hundred

02:02:51PM **19** million dollars, and you can see from all the issues they are

02:02:54PM **20** all issued in billion-dollar increments, so borrowing decisions

02:03:02PM **21** are just not sensitive to amounts under, let's say, \$500 million

02:03:04PM **22** for a given day, which might impact a billion-dollar increment

02:03:07PM **23** up or down in a borrowing decision.

02:03:10PM **24 Q.** Now, you recall in looking at Attachment A the 2007 figures

02:03:15PM **25** for IIM receipts and disbursements. There was a net figure of

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02:04:40PM **1 Q.** What does that mean?

02:04:41PM **2 A.** It stands for Cash in Investments Held Outside Treasury.

02:04:47PM **3 Q.** What does that mean?

02:04:48PM **4 A.** That means that's a report or a description of cash in

02:04:52PM **5** accounts that are not part of the Treasury's operating balance,

02:04:54PM **6** which is to say cash that we are not controlling at Treasury and

02:04:58PM **7** thus do not impact borrowing decisions, and it reflects

02:05:02PM **8** investments held with commercial brokers and dealers outside of

02:05:09PM **9** the Treasury.

02:05:09PM **10 Q.** Is Keogh taken into consideration in debt management?

02:05:14PM **11 A.** It is not.

02:05:15PM **12 Q.** Is Keogh considered available to Treasury?

02:05:20PM **13 A.** No.

02:05:21PM **14 Q.** Are TT&L balances taken into consideration in borrowing

02:05:27PM **15** decisions?

02:05:27PM **16 A.** Yes, absolutely.

02:05:29PM **17 Q.** And are they available to Treasury?

02:05:31PM **18 A.** Yes, they are.

02:05:32PM **19 Q.** Is cash held by agencies in commercial banks held in TT&L

02:05:38PM **20** accounts?

02:05:39PM **21 A.** No. An agency would not hold cash in a TT&L account.

02:05:43PM **22 Q.** Okay. Now, does the fact that the amount of IIM coming

02:05:50PM **23** into the TGA, we're talking cash here, does the fact that that

02:05:54PM **24** amount is relatively small mean that Treasury ignores IIM all

02:05:59PM **25** together or that there is some risk of it getting lost in the

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02:03:19PM **1** approximately one hundred one million. Do you remember that?

02:03:23PM **2 A.** Yes.

02:03:23PM **3 Q.** If gross receipts would not affect borrowing, would it be

02:03:27PM **4** fair to say that the net amount of cash remaining after IIM

02:03:31PM **5** payments are subtracted would not?

02:03:33PM **6 A.** That's fair.

02:03:34PM **7 Q.** If Interior, the Department of Interior purchases

02:03:42PM **8** securities for individual Indians on the open market, would that

02:03:44PM **9** impact borrowing decisions?

02:03:47PM **10 A.** No, that would have no impact on our borrowing.

02:03:50PM **11 Q.** If the Department of Interior purchases securities for

02:03:53PM **12** individual Indians from Treasury, would that have any effect on

02:03:58PM **13** borrowing decision?

02:03:59PM **14 A.** No, that would not impact marketable borrowing.

02:04:03PM **15 Q.** If Interior deposits IIM receipts in commercial cash, would

02:04:13PM **16** that amount of cash even theoretically be considered in

02:04:16PM **17** borrowing decisions?

02:04:17PM **18 A.** I'm sorry, could you repeat that?

02:04:18PM **19 Q.** Yes. If the Department of Interior deposits IIM receipts

02:04:22PM **20** in commercial banks, could that amount of cash even

02:04:26PM **21** theoretically be considered in borrowing decisions?

02:04:32PM **22 A.** No, I don't believe there would be effect any borrowing

02:04:35PM **23** decisions.

02:04:36PM **24 Q.** Are you familiar with the acronym CIHO?

02:04:40PM **25 A.** Yes.

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02:06:03PM **1** system?

02:06:03PM **2 A.** No, that wouldn't mean that at all. Every cash dollar that

02:06:10PM **3** comes into the TGA is accounted for. The TGA is reconciled

02:06:16PM **4** every day so all the funds would be accounted for.

02:06:19PM **5 Q.** Isn't it fair to say that some circumstances exist where it

02:06:25PM **6** would be an error to disregard small incremental amounts where

02:06:30PM **7** small incremental amounts can add up to large amounts?

02:06:33PM **8 A.** If you could rephrase that.

02:06:39PM **9 Q.** In some circumstances you're looking at small incremental

02:06:44PM **10** amounts and it would be erroneous to ignore those if the

02:06:48PM **11** circumstances were such that those small amounts could add up to

02:06:52PM **12** large amounts.

02:06:54PM **13 A.** If you aggregated them and it added up to a material large

02:06:58PM **14** amount you'd want to pay attention to that.

02:07:01PM **15 Q.** Do those circumstances apply to what we've been discussing

02:07:03PM **16** so far?

02:07:04PM **17 A.** I don't believe so, no.

02:07:05PM **18 Q.** Why not?

02:07:07PM **19 A.** We've been talking about an annual marginal amount of IIM

02:07:16PM **20** funds and, you know, I've said that those marginal amounts are

02:07:21PM **21** too small, at least in this discussion, to impact our borrowing.

02:07:25PM **22 Q.** Now, what if we grossed up, assume that we grossed up all

02:07:31PM **23** of the IIM amounts over this 120-year period that's at issue in

02:07:38PM **24** this case. Would the results of this analysis be any different?

02:07:43PM **25** Would your answer be any different?

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02:07:45PM **1 A.** I don't think it would. If you gross up all the IIM  
 02:07:46PM **2** amounts and then on the other side of the ledger gross up all  
 02:07:51PM **3** the borrowing on balance, it would still not change the  
 02:07:56PM **4** analysis.  
 02:07:57PM **5 Q.** Now I'm going to ask you several questions where I'm going  
 02:08:02PM **6** to ask you to put aside the testimony you just gave and assume  
 02:08:07PM **7** for purposes of these questions that the theory that every  
 02:08:12PM **8** dollar in hand eliminates a dollar of borrowing. Do you  
 02:08:15PM **9** understand that?  
 02:08:15PM **10 A.** Um-hmm.  
 02:08:16PM **11 Q.** Okay. Now, let's go back to Attachment A, please. I want  
 02:08:29PM **12** to go to just the 1887 line all the way at the top. You see  
 02:08:40PM **13** there in Column G a dollar figure, Mr. Grippo?  
 02:08:45PM **14 A.** Yes.  
 02:08:46PM **15 Q.** What is your understanding of that dollar figure?  
 02:08:52PM **16 A.** That I guess \$179,000 is the difference between total  
 02:08:57PM **17** revenues and disbursements.  
 02:09:01PM **18 Q.** Let's assume that for present purposes all the government's  
 02:09:11PM **19** outlays and receipts are in sync. Are you following me?  
 02:09:13PM **20 A.** Sure.  
 02:09:13PM **21 Q.** Okay. But we pull out that \$179,000, creating an immediate  
 02:09:23PM **22** need for cash to fill that void. Do you understand that?  
 02:09:26PM **23 A.** Yes.  
 02:09:30PM **24 Q.** Would you expect under those circumstances that the  
 02:09:33PM **25** government would sell a note for that amount, based on, you

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02:10:56PM **1 A.** No.  
 02:10:58PM **2 Q.** When a government security is paid off, would the interest  
 02:11:06PM **3** on that security stop accruing?  
 02:11:08PM **4 A.** Yes.  
 02:11:14PM **5 Q.** Is that the interest that the government would save by not  
 02:11:19PM **6** having to borrow that amount of money?  
 02:11:21PM **7 A.** Yes.  
 02:11:25PM **8 Q.** And typically how are interest payments made on government  
 02:11:32PM **9** securities, how and when are they made?  
 02:11:35PM **10 A.** Well, on a bill which is sold on a discount basis from par,  
 02:11:44PM **11** interest would not be paid over time but would be factored into  
 02:11:50PM **12** the discounted amount at which it was sold. For a note or a  
 02:11:55PM **13** bond or another type of coupon security, interest would be paid  
 02:11:58PM **14** under current rules on a semi-annual basis.  
 02:12:03PM **15 Q.** Would that be simple interest or compound interest?  
 02:12:06PM **16 A.** Simple interest.  
 02:12:17PM **17** MR. GILLETTE: I have no further questions at this  
 02:12:19PM **18** time. I would move into evidence Defense Exhibits 502, the  
 02:12:25PM **19** Federal Reserve Board of New York article, and Exhibit 503, the  
 02:12:32PM **20** one-page in rejection of cash.  
 02:12:37PM **21** MR. GINGOLD: Objection, your Honor. There is no  
 02:12:40PM **22** discussion of cash and what it means.  
 02:12:42PM **23** THE COURT: If that were the rule, there would be an  
 02:12:46PM **24** awful lot of evidence in this case that would not be received.  
 02:12:48PM **25** I'm going to receive it for what it's worth. The exhibits will

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02:09:37PM **1** know, obviously you weren't here in 1887, but based on your  
 02:09:41PM **2** knowledge today?  
 02:09:42PM **3 A.** It would not sell a note.  
 02:09:45PM **4 Q.** But given the assumption that it would have to make up this  
 02:09:50PM **5** \$179,000 deficit given today's circumstances --  
 02:09:53PM **6 A.** Yes.  
 02:09:55PM **7 Q.** -- would that note have some maturity?  
 02:09:57PM **8 A.** I said it wouldn't sell a note. A note is sort of a medium  
 02:10:02PM **9** term instrument. To make up that deficit we'd sell probably a  
 02:10:07PM **10** bill, some short-term instrument, a year or less.  
 02:10:10PM **11 Q.** So what would the term be, the maturity of that instrument  
 02:10:16PM **12** be?  
 02:10:16PM **13 A.** It would most certainly be less than a year, and probably  
 02:10:19PM **14** would be the shortest instrument we have for an amount that  
 02:10:24PM **15** small.  
 02:10:24PM **16 Q.** I just want to be clear, we're not talking about 179,000  
 02:10:29PM **17** relative to the trillions that we have today?  
 02:10:31PM **18 A.** Right.  
 02:10:31PM **19 Q.** I'm just saying if it was you absolutely had to have an  
 02:10:38PM **20** amount of money, any amount of money, even the 336 million we're  
 02:10:42PM **21** talking about in 2007, the government would have to sell some  
 02:10:46PM **22** kind of securities to make up that deficit, correct?  
 02:10:49PM **23 A.** Correct.  
 02:10:50PM **24 Q.** Have you ever heard of the government security with 121  
 02:10:56PM **25** year maturity?

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02:12:52PM **1** be received.  
 02:12:53PM **2** Time for cross-examination.  
 02:12:53PM **3** (Defendants' Exhibit Nos. 502 and 503 received into  
 02:12:53PM **4** evidence at about 2:14 p.m.)  
 02:13:22PM **5** MR. GINGOLD: Good afternoon, your Honor.  
 02:13:23PM **6** THE COURT: Good afternoon.  
 02:13:23PM **7** CROSS-EXAMINATION  
 02:13:23PM **8** BY MR. GINGOLD:  
 02:13:24PM **9 Q.** Good afternoon, Mr. Grippo. My name is Dennis Gingold and  
 02:13:28PM **10** I represent plaintiffs.  
 02:13:34PM **11** Mr. Grippo, how long have you been a member of the  
 02:13:36PM **12** financing group?  
 02:13:37PM **13 A.** For about a year. Since last July.  
 02:13:41PM **14 Q.** Did you attend financing group meetings prior to that?  
 02:13:46PM **15 A.** No.  
 02:13:47PM **16 Q.** Sir, are you speaking then or testifying today based on  
 02:13:54PM **17** your experience as a member of the financing group?  
 02:13:56PM **18 A.** Based on that experience and other knowledge.  
 02:14:02PM **19 Q.** Other knowledge that you directly picked up in association  
 02:14:06PM **20** with the financing group?  
 02:14:07PM **21 A.** Other knowledge that I have as deputy assistant secretary.  
 02:14:11PM **22 Q.** Does your knowledge go back in time as deputy assistant  
 02:14:17PM **23** secretary beyond the year?  
 02:14:18PM **24 A.** Yes.  
 02:14:20PM **25 Q.** How far back?

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02:14:21PM **1 A.** Well, I have knowledge of various statutes that have been  
 02:14:32PM **2** passed in the past that are still in effect.  
 02:14:38PM **3 Q.** Are the decisions of the financing group determined by  
 02:14:42PM **4** statute?  
 02:14:43PM **5 A.** The specific amounts that the financing group decides on  
 02:14:53PM **6** are not laid out in a specific statute. The framework within  
 02:14:56PM **7** which we make those decisions are obviously laid out.  
 02:15:01PM **8** Everything we do is laid out on that basis and statute.  
 02:15:05PM **9 Q.** So with respect to the decisions that have been made since  
 02:15:09PM **10** you've been a member of the financing group, other than the  
 02:15:12PM **11** framework, the statutes don't have any relevance to the  
 02:15:16PM **12** decisions; is that correct?  
 02:15:17PM **13 A.** I don't know that I would agree with that.  
 02:15:20PM **14 Q.** Do the statutes provide specifically what funds held by the  
 02:15:27PM **15** United States government you are to consider in determining the  
 02:15:32PM **16** borrowing needs of the government?  
 02:15:33PM **17 A.** Yes, that's correct.  
 02:15:37PM **18 Q.** Okay. Which statute do you recall?  
 02:15:39PM **19 A.** Well, as an example, 31 USC 323, I believe, lays out what  
 02:15:53PM **20** amounts we can invest and where we can invest it.  
 02:15:58PM **21 Q.** I was unclear, I'm sorry. Do your decisions on the  
 02:16:04PM **22** financing group which are determined by statute, are they made  
 02:16:09PM **23** based on a statutory requirement that you consider funds,  
 02:16:17PM **24** certain funds that are held by the United States government?  
 02:16:22PM **25 A.** I think the answer is yes. I mean, if there are certain

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02:18:01PM **1 A.** Certainly.  
 02:18:01PM **2 Q.** And the funds are in the TGA, wherever those funds came  
 02:18:06PM **3** from, those funds are considered as part of the aggregate  
 02:18:10PM **4** balance in the TGA in your borrowing decisions; is that correct?  
 02:18:13PM **5 A.** Yes. The balance of the TGA is considered in the borrowing  
 02:18:16PM **6** decision.  
 02:18:16PM **7 Q.** And quite frankly, you don't care what the composition of  
 02:18:22PM **8** the TGA is, you care about the aggregate balance, don't you?  
 02:18:26PM **9 A.** We care about the balance, that's correct.  
 02:18:27PM **10 Q.** And if the balance is maintained to a certain level, it  
 02:18:31PM **11** affects what you need to borrow; is that correct?  
 02:18:33PM **12 A.** Yes.  
 02:18:33PM **13 Q.** And if a balance is at a certain level, it can affect your  
 02:18:38PM **14** decisions on which securities to redeem, correct?  
 02:18:41PM **15 A.** It really wouldn't affect which security we redeem. Those  
 02:18:46PM **16** would mature and we would refund those. The last time our  
 02:18:59PM **17** operating balances impacted a specific security to redeem would  
 02:19:05PM **18** have been six or seven years ago when we were running surpluses  
 02:19:10PM **19** and we bought back debt, but otherwise we wait for the debt to  
 02:19:14PM **20** mature and then refund it or pay for it.  
 02:19:17PM **21 Q.** And during the period of time where you were buying back  
 02:19:20PM **22** debt, was the government still borrowing money?  
 02:19:22PM **23 A.** Yes.  
 02:19:23PM **24 Q.** And when it was borrowing money and when you were having  
 02:19:27PM **25** your -- you weren't on the financing group at that time, were

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02:16:28PM **1** statutes which give us control over cash, those are factored  
 02:16:31PM **2** into our financing decisions. If an agency has authority to  
 02:16:37PM **3** hold cash some place else or that is not part of the Treasury  
 02:16:41PM **4** operating cash, then that authority constrains what we do in  
 02:16:46PM **5** making borrowing decision.  
 02:16:48PM **6 Q.** So for example, does the statute speak to the Treasury  
 02:16:51PM **7** general account, the 31 USC 323, I believe you stated?  
 02:16:56PM **8 A.** I don't know if the Treasury general account is mentioned  
 02:17:00PM **9** in that statute. That statute identifies Treasury tax and loan  
 02:17:04PM **10** accounts as banks, as banks in which we may invest excess  
 02:17:09PM **11** operating cash.  
 02:17:10PM **12 Q.** So that's a specific authorization?  
 02:17:12PM **13 A.** Yes.  
 02:17:13PM **14 Q.** Generally when you're making the borrowing decisions as a  
 02:17:16PM **15** member of the financing group, are those borrowing decisions  
 02:17:22PM **16** determined by other explicit statutory authorizations such as  
 02:17:27PM **17** Treasury tax and loan account, deposit fund accounts, or  
 02:17:31PM **18** anything of that sort?  
 02:17:32PM **19 A.** I don't think it would be based on specifically on statutes  
 02:17:37PM **20** that set up different funds in the general ledger.  
 02:17:39PM **21 Q.** That's within your discretion, isn't it?  
 02:17:42PM **22 A.** It is not within our discretion to disburse funds if  
 02:17:50PM **23** there's not a sufficient amount in the TGA.  
 02:17:53PM **24 Q.** Okay. Thank you. Sorry. So TGA is an important factor,  
 02:18:00PM **25** isn't it?

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02:19:30PM **1** you?  
 02:19:30PM **2 A.** I was not.  
 02:19:31PM **3 Q.** Do you know whether or not at the period of time the  
 02:19:36PM **4** government was showing surpluses and it was borrowing money at  
 02:19:41PM **5** the same time it was considering the aggregate balance in the  
 02:19:44PM **6** Treasury general account?  
 02:19:45PM **7 A.** Yes. It was considering the TGA balance, sure.  
 02:19:49PM **8 Q.** As a matter of fact, is that something that's standard from  
 02:19:52PM **9** as long as you know Treasury, the Treasury general account is an  
 02:19:59PM **10** important factor in determining borrowing decisions, correct?  
 02:20:01PM **11 A.** Yes.  
 02:20:02PM **12 Q.** Now, you were asked a question by government counsel about  
 02:20:08PM **13** what you thought about how transactions may have been handled in  
 02:20:13PM **14** 1887, correct, based on Schedule A?  
 02:20:17PM **15 A.** I recall a question on that amount and Schedule A.  
 02:20:23PM **16 Q.** I'm going to assume you know what happened in 1887.  
 02:20:25PM **17 A.** Okay.  
 02:20:26PM **18 Q.** In 1887 do you know how the borrowing decisions were made?  
 02:20:30PM **19 A.** Not specifically, no.  
 02:20:31PM **20 Q.** Through what period of time do you have confidence  
 02:20:35PM **21** testifying with regard to how the borrowing decisions were made?  
 02:20:37PM **22 A.** Roughly since 1978.  
 02:20:45PM **23 Q.** Why 1978?  
 02:20:46PM **24 A.** Well, that's roughly the time when the regular and  
 02:20:52PM **25** predictable borrowing strategy was codified or implemented, and

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02:20:59PM **1** it's also the time around which the statutes on investing excess  
 02:21:05PM **2** operating cash were put in place, and it also happens to be the  
 02:21:11PM **3** amount of time when individuals on my staff began working in the  
 02:21:16PM **4** Treasury, which provides me with information about how borrowing  
 02:21:23PM **5** decisions were made.  
 02:21:24PM **6** **Q.** How long have you been at the Treasury?  
 02:21:26PM **7** **A.** I've worked at the Treasury for sixteen years.  
 02:21:28PM **8** **Q.** So did you work with Mr. Gregg?  
 02:21:30PM **9** **A.** Yes.  
 02:21:30PM **10** **Q.** Did you work with Mr. Hammond?  
 02:21:33PM **11** **A.** Yes.  
 02:21:33PM **12** **Q.** Were you informed at all about Mr. Gregg's testimony in  
 02:21:42PM **13** this litigation?  
 02:21:42PM **14** **A.** Yes.  
 02:21:43PM **15** **Q.** What is your understanding of that?  
 02:21:47PM **16** MR. GILLETT: Objection; vague.  
 02:21:50PM **17** THE COURT: Sustained.  
 02:21:52PM **18** BY MR. GINGOLD:  
 02:21:52PM **19** **Q.** Do you know whether or not Mr. Gregg testified in this case  
 02:21:55PM **20** that the Treasury general -- that to the extent funds were in  
 02:22:04PM **21** the general Treasury account there would be a benefit to the  
 02:22:07PM **22** government?  
 02:22:07PM **23** **A.** I guess I recall in general a discussion and his testimony  
 02:22:12PM **24** about that.  
 02:22:14PM **25** **Q.** And do you recall whether or not in his testimony it would

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02:23:48PM **1** into those particular financial agent banks that you're talking  
 02:23:51PM **2** about are concentrated into the main TGA at the Federal Reserve  
 02:23:56PM **3** Bank of New York.  
 02:23:57PM **4** **Q.** And is the Federal Reserve Bank of New York, is that the  
 02:24:02PM **5** TGA or is that the government operating account or the Treasury  
 02:24:04PM **6** operating account?  
 02:24:05PM **7** **A.** The term "Treasury General Account," as I'm using it,  
 02:24:11PM **8** refers to the account at the Federal Reserve Bank of New York.  
 02:24:15PM **9** **Q.** Have you heard the term "operating account" before?  
 02:24:19PM **10** **A.** Colloquially, yes.  
 02:24:23PM **11** **Q.** Are the funds transferred on their way to the Treasury into  
 02:24:27PM **12** the federal reserve bank and are held by the federal reserve  
 02:24:30PM **13** bank before they're credited to the TGA, or does the credit to  
 02:24:35PM **14** the TGA occur simultaneously with posting to the Federal Reserve  
 02:24:39PM **15** Bank of New York?  
 02:24:40PM **16** **A.** The TGA is at the Federal Reserve Bank of New York when  
 02:24:52PM **17** there is a credit to the TGA that is functioned by the Federal  
 02:24:56PM **18** Reserve Bank of New York.  
 02:25:02PM **19** **Q.** When funds are deposited, or I guess it's not funds, when  
 02:25:07PM **20** credits are made to the TGA, how long are those credits held in  
 02:25:15PM **21** the TGA before a Statement of Transaction authorizes a  
 02:25:22PM **22** classification to a particular account like the 6039 account at  
 02:25:34PM **23** Treasury?  
 02:25:34PM **24** **A.** The statement of account or statement of transactions is an  
 02:25:38PM **25** end-of-the-month process, so that occurs on a monthly cycle.

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02:22:18PM **1** involve funds held in the Treasury account would affect  
 02:22:21PM **2** decisions on borrowing by the government?  
 02:22:23PM **3** **A.** I have a vague recollection of that.  
 02:22:27PM **4** **Q.** Do you agree with the statement to the extent there are  
 02:22:33PM **5** funds that come into the general Treasury account these are  
 02:22:36PM **6** considered in the borrowing decisions that are made by the  
 02:22:39PM **7** department?  
 02:22:39PM **8** **A.** The level of the TGA is considered in borrowing decisions.  
 02:22:43PM **9** **Q.** Do commercial banks that are agents of the Treasury and  
 02:22:55PM **10** sometimes they're referred to as financial agents, are you aware  
 02:22:57PM **11** of that term?  
 02:22:58PM **12** **A.** Yes.  
 02:22:59PM **13** **Q.** Do you agree that's a proper term to characterize banks  
 02:23:03PM **14** that are authorized to take deposits of government money?  
 02:23:08PM **15** **A.** Yes.  
 02:23:09PM **16** **Q.** Do financial agent banks have components or hold components  
 02:23:15PM **17** of the Treasury General Account?  
 02:23:17PM **18** **A.** No.  
 02:23:17PM **19** **Q.** They do not?  
 02:23:22PM **20** **A.** No, they don't.  
 02:23:24PM **21** **Q.** The funds that are deposited in a financial agent bank for  
 02:23:31PM **22** ultimate deposit in the Treasury, how are those funds viewed by  
 02:23:36PM **23** the Treasury today?  
 02:23:37PM **24** **A.** Oh, I see. There are certain financial agent banks which  
 02:23:42PM **25** take deposits over-the-counter from agencies and amounts that go

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02:25:42PM **1** **Q.** And until that time the funds continue to be held in the TG  
 02:25:46PM **2** -- or the credits continue to be posted to the TGA, correct?  
 02:25:50PM **3** **A.** I don't think that's accurate.  
 02:25:56PM **4** **Q.** Okay. What is the correct situation?  
 02:26:03PM **5** **A.** Well, the agency involved would have its own ledger,  
 02:26:07PM **6** subsidiary ledger, which is keeping track of the amounts that  
 02:26:15PM **7** should be credited to a fund in the general ledger. That  
 02:26:18PM **8** process is synchronized at the end of the month, but I don't  
 02:26:21PM **9** think it maps back directly to cash flowing through credits or  
 02:26:24PM **10** debits to the TGA. The two are very different concepts.  
 02:26:29PM **11** **Q.** The one individual Indian trust funds are collected and  
 02:26:33PM **12** deposited into the Treasury?  
 02:26:35PM **13** **A.** The cash is deposited into the Treasury.  
 02:26:38PM **14** **Q.** Could you describe the process?  
 02:26:39PM **15** **A.** Well, there are various collection mechanisms, but the  
 02:26:44PM **16** simplest one would have cash deposited, let's say, at a  
 02:26:50PM **17** financial agent bank, and that bank would report that money into  
 02:26:57PM **18** our collection and deposit system which would trigger the  
 02:27:01PM **19** concentration of the money, the cash, into the TGA. At the same  
 02:27:06PM **20** time the responsible agency would need to create credit and  
 02:27:12PM **21** debit fund account entries.  
 02:27:15PM **22** **Q.** During what period of time, before the end of the month or  
 02:27:19PM **23** at the end of the month?  
 02:27:21PM **24** **A.** I guess agencies do it differently, but the reconciliation  
 02:27:27PM **25** of their fund balance with Treasury would happen at the end of

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02:27:30PM **1** the month.

02:27:31PM **2 Q.** Are you aware of difficulties over the years with regard to

02:27:35PM **3** the accurate reporting of deposits from all agencies of the

02:27:38PM **4** government?

02:27:39PM **5 A.** I don't know specifically what you mean. I know that

02:27:44PM **6** obviously in the course of reconciliation there are statements

02:27:48PM **7** of differences that need to be reconciled.

02:27:49PM **8 Q.** You're not aware of a general problem that has occurred and

02:27:54PM **9** Treasury addressed it in 1985?

02:27:56PM **10 A.** No, not specifically.

02:27:58PM **11 Q.** Are you aware as to whether or not Interior itself had

02:28:03PM **12** out-of-balance ledger issues with respect to funds deposited in

02:28:08PM **13** the Treasury?

02:28:11PM **14 A.** I don't have any specific knowledge of it.

02:28:15PM **15 Q.** Would that affect Treasury's operation at all if Interior's

02:28:17PM **16** ledgers were out of balance?

02:28:18PM **17 A.** It would reflect in auditors' opinions of financial

02:28:33PM **18** statements.

02:28:38PM **19 Q.** For the Interior or for the Treasury?

02:28:41PM **20 A.** Well, certainly for Interior. It may not be material for

02:28:44PM **21** Treasury.

02:28:49PM **22** MR. GINGOLD: Plaintiffs would like to have marked for

02:28:51PM **23** identification Exhibit 136.

02:28:52PM **24** (Plaintiffs' Exhibit No. 136 was marked for

02:28:56PM **25** identification at about 2:29 p.m.)

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02:30:35PM **1 A.** I've not seen this report.

02:30:37PM **2 Q.** I'd like to also turn your attention to page seventeen of

02:30:43PM **3** this report. In the middle of the page this is a paragraph

02:30:53PM **4** dealing with agency reconciliations of deposits may not detect

02:30:58PM **5** all delays. It says, FMS instructions have centered on

02:31:03PM **6** reconciling total monthly deposits rather than detecting delays.

02:31:07PM **7** It is especially important that guidance be given because the

02:31:11PM **8** agencies have had primary responsibility for using the

02:31:15PM **9** reconciliation system to resolve deposit differences since

02:31:20PM **10** January 1983. It goes on, FMS was responsible for the

02:31:23PM **11** reconciliation prior to that time.

02:31:25PM **12** THE COURT: Mr. Gingold, this witness said his

02:31:29PM **13** knowledge goes back just barely to 1985, derivatively through

02:31:35PM **14** the people who work for him. He doesn't claim any knowledge

02:31:35PM **15** before that time. Do you really need this witness to really

02:31:39PM **16** bounce these things off, or could you just put them in evidence?

02:31:42PM **17** MR. GINGOLD: Well, no. I just thought it was opened

02:31:45PM **18** up when he was asked questions about what happened in 1887, so I

02:31:50PM **19** thought going back to 1985 wasn't going too far back.

02:31:56PM **20** THE COURT: Have at it, Mr. Gingold.

02:31:59PM **21** MR. GINGOLD: Never mind, your Honor.

02:32:08PM **22** Plaintiffs would like to identify again Exhibit 139.

02:32:08PM **23** BY MR. GINGOLD:

02:32:17PM **24 Q.** Mr. Grippo, were you in the courtroom when I was asking

02:32:21PM **25** your colleague about this particular exhibit?

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02:28:56PM **1** BY MR. GINGOLD:

02:28:58PM **2 Q.** This exhibit is entitled Improvements Needed in Controlling

02:29:01PM **3** and Accounting for Treasury Banking Arrangements. This is a GAO

02:29:06PM **4** report dated April 3rd, 1985. Have you ever seen this report?

02:29:10PM **5 A.** No.

02:29:11PM **6 Q.** I would like you to turn your attention to page seven of

02:29:23PM **7** this report. In the highlighted section of page seven there's a

02:29:36PM **8** statement, Past audit work is shown in some agencies. Do not

02:29:43PM **9** place a high priority on reconciling deposit information. It

02:29:46PM **10** goes on to say, Therefore, we continue to believe Treasury needs

02:29:49PM **11** to examine alternative control mechanisms for preventing and

02:29:53PM **12** detecting bank delays, including agency initiation of the

02:29:56PM **13** transfers. Treasury's primary objections to -- there is an

02:30:01PM **14** alternative mentioned -- are that agencies could not be

02:30:05PM **15** controlled to provide accurate deposit information to the banks

02:30:08PM **16** and that frequency with which agencies make deposit errors would

02:30:12PM **17** place an added burden on the banks. However, Treasury officials

02:30:16PM **18** said the data is not available on the extent to which agencies

02:30:19PM **19** made deposit errors.

02:30:21PM **20** THE COURT: What is the date of this letter?

02:30:23PM **21** MR. GINGOLD: This is a 1985 GAO report, your Honor.

02:30:26PM **22** It's April 3rd, 1985.

02:30:30PM **23** BY MR. GINGOLD:

02:30:30PM **24 Q.** Sir, you had not been aware of the concerns about the

02:30:32PM **25** accuracy of deposits in the Treasury?

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02:32:23PM **1 A.** I don't believe I was, no.

02:32:24PM **2 Q.** I would like to turn to page -- this is -- oh, by the way,

02:32:28PM **3** since you weren't here, I'll explain it. If you can go to the

02:32:32PM **4** first page, please. It's an item identified as a Fiscal Year

02:32:38PM **5** 2009 Budget of the United States Government Office of Management

02:32:43PM **6** and Budget. Have you seen this report?

02:32:46PM **7 A.** I'm generally aware of it. I probably know some basic

02:32:52PM **8** totals in it, but I've not read through the budget.

02:32:55PM **9 Q.** It's a big report, isn't it?

02:32:57PM **10 A.** Yes.

02:32:57PM **11 Q.** First I'd like to turn to page five of this report. And if

02:33:05PM **12** we can focus in on the headnote in the middle at the top portion

02:33:09PM **13** of the page. It states, Budget Deficit Or Surplus and Means of

02:33:15PM **14** Financing. So that is the subject matter of the item I'm going

02:33:21PM **15** to read to you. We can go to page six, please. In the middle

02:33:32PM **16** or the top of page six there's a highlighted section. I'm going

02:33:35PM **17** to read a portion of the highlighted section and ask you if it's

02:33:38PM **18** consistent with your testimony. Deposit fund balances may be

02:33:44PM **19** held in the form of either invested or uninvested balances. To

02:33:49PM **20** the extent they are not invested, changes in the balances are

02:33:52PM **21** available to finance expenditures and are recorded as a means of

02:33:56PM **22** financing other than borrowing from the public. I'll stop at

02:34:00PM **23** that point. Have you ever seen any statement like this before

02:34:06PM **24** from OMB?

02:34:07PM **25 A.** I have not read this statement before.

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02:34:10PM **1 Q.** And do you have any understanding of what this means based  
 02:34:17PM **2** on your experience as a member of the financing committee?  
 02:34:19PM **3 A.** I'd like to read it.  
 02:34:24PM **4 Q.** Okay. Go ahead.  
 02:34:51PM **5 A.** Okay.  
 02:34:51PM **6 Q.** First, do you have an understanding of what a deposit fund  
 02:34:54PM **7** balance is?  
 02:34:55PM **8 A.** Yes.  
 02:34:56PM **9 Q.** What is your understanding?  
 02:34:58PM **10 A.** Deposit fund balance would be the amount in a deposit fund  
 02:35:04PM **11** liability account in the general ledger of the U.S. government.  
 02:35:06PM **12 Q.** Do you know whether the individual Indian trust funds are  
 02:35:11PM **13** deposit funds held by the government?  
 02:35:13PM **14 A.** It's my understanding that the IIM fund is a deposit fund.  
 02:35:17PM **15 Q.** Do you see there is a distinction between invested and  
 02:35:22PM **16** uninvested balances?  
 02:35:23PM **17 A.** Yes.  
 02:35:23PM **18 Q.** What is your understanding of that?  
 02:35:25PM **19 A.** Well, certain amounts in the overall 6039 account may be  
 02:35:37PM **20** invested and others may be held uninvested in that fund balance.  
 02:35:44PM **21 Q.** And with regard to the uninvested balances, what is your  
 02:35:49PM **22** understanding of what they may be used for based on this  
 02:35:53PM **23** statement?  
 02:35:53PM **24 A.** Well, this says changes in the balances are available to  
 02:36:03PM **25** finance expenditures. I think changes in the amount of cash

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02:36:03PM **1 A.** I see it.  
 02:36:04PM **2 Q.** This one itself or subsequent ones?  
 02:36:06PM **3 A.** No, I've seen this.  
 02:36:07PM **4 Q.** I'd like to turn to page 134, please. If we can focus in  
 02:36:15PM **5** on the top paragraph. Do you know the fund balances?  
 02:36:24PM **6 A.** Yes.  
 02:36:24PM **7 Q.** What is it?  
 02:36:25PM **8 A.** I think of it as an amount that is in a general ledger  
 02:36:31PM **9** account in the U.S. central summary general ledger.  
 02:36:34PM **10 Q.** Is it considered resources of the government?  
 02:36:36PM **11 A.** Resources of the government? Yes. It could be.  
 02:36:42PM **12 Q.** Let me --  
 02:36:44PM **13 A.** Most of the accounts in the general ledger are liabilities.  
 02:36:48PM **14 Q.** But a liability can be a resource as well, correct, a  
 02:36:53PM **15** deposit liability, correct, because you relend the deposit,  
 02:36:58PM **16** right?  
 02:36:59PM **17 A.** Um-hmm. As with what?  
 02:36:02PM **18 Q.** You can relend a deposit, you use the funds, correct?  
 02:36:06PM **19 A.** I'm not following you there.  
 02:36:07PM **20 Q.** Well, let's go on.  
 02:36:09PM **21** Fund balance. Fund balance with Treasury is the  
 02:36:14PM **22** aggregate amount of the Treasury Department's accounts with the  
 02:36:17PM **23** U.S. government's central accounts from which the Treasury  
 02:36:19PM **24** Department is authorized to make expenditures and pay  
 02:36:22PM **25** liabilities. It is an asset because it represents the Treasury

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02:36:13PM **1** coming into or leaving the government in connection with a  
 02:36:18PM **2** deposit fund would impact financing and therefore balances may  
 02:36:23PM **3** be available to finance expenditures. I don't know that the  
 02:36:28PM **4** liability amount in the deposit fund represents any cash that  
 02:36:33PM **5** would impact a financing decision.  
 02:36:38PM **6 Q.** But it would seem to provide that it is available for  
 02:36:44PM **7** financing; is that correct?  
 02:36:45PM **8 A.** That's what it says. I don't believe that the fund balance  
 02:36:54PM **9** of the deposit fund is anything we look at in making a financing  
 02:37:00PM **10** decision, however.  
 02:37:01PM **11 Q.** At least that's not what you have looked at since you've  
 02:37:06PM **12** been a member of the financing committee or financing group for  
 02:37:08PM **13** the last year, correct?  
 02:37:09PM **14 A.** That's correct. We are not looking at all the general  
 02:37:14PM **15** ledger fund accounts, the assets and liabilities of the  
 02:37:17PM **16** government. We're looking at our operating cash.  
 02:37:20PM **17 Q.** And that's not to say you can speak for your predecessor  
 02:37:24PM **18** financing committees, correct?  
 02:37:26PM **19 A.** That's true.  
 02:37:30PM **20 Q.** You don't know.  
 02:37:35PM **21** Plaintiffs would like to again bring up Exhibit 140.  
 02:37:51PM **22** 140 is identified as an FTY 2006 Performance and Accountability  
 02:37:57PM **23** Report For Treasury. This is before you were in the position  
 02:37:59PM **24** you're in now, but have you seen this particular document  
 02:38:03PM **25** before?

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02:39:25PM **1** Department's claim to the U.S. government's resources. Is that  
 02:39:30PM **2** your understanding?  
 02:39:30PM **3 A.** Yes.  
 02:39:31PM **4 Q.** Now, do you see there are items -- if we can drop down to  
 02:39:35PM **5** the next -- thank you.  
 02:39:36PM **6** There are items that are identified for fund balances  
 02:39:40PM **7** with Treasury as of September 30, 2006 and September 30, 2005.  
 02:39:48PM **8** With regard to the column that we have in front of you now, do  
 02:39:54PM **9** you see the particular funds that are considered in the fund  
 02:39:57PM **10** balance?  
 02:39:59PM **11 A.** Yes.  
 02:40:02PM **12 Q.** And appropriated funds, revolving funds, trust funds,  
 02:40:08PM **13** clearing funds, deposit funds, special funds and others,  
 02:40:09PM **14** correct?  
 02:40:09PM **15 A.** Yes.  
 02:40:10PM **16 Q.** Does your committee consider the balances in these funds in  
 02:40:19PM **17** any way in making your borrowing decisions today?  
 02:40:22PM **18 A.** No.  
 02:40:24PM **19 Q.** Do you know if your predecessors did?  
 02:40:27PM **20 A.** I don't believe they would.  
 02:40:31PM **21 Q.** But do you know?  
 02:40:32PM **22 A.** But I wasn't in the room for borrowing decisions made a  
 02:40:35PM **23** century ago.  
 02:40:37PM **24 Q.** Well, your predecessors let's say ten years ago, do you  
 02:40:40PM **25** know if they did?

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02:40:40PM **1 A.** Ten years ago they would not have looked at this.

02:40:42PM **2 Q.** Beg your pardon?

02:40:43PM **3 A.** They would not have looked at this.

02:40:45PM **4 Q.** Prior to 1985?

02:40:46PM **5 A.** I don't believe they'd be looking at ledger balances in the

02:40:51PM **6 U.S.** standard general ledger. Borrowing decisions are derived

02:40:57PM **7 from** our cash position, not amounts in trust funds, deposit

02:41:02PM **8 funds,** special funds, but the operating cash we have on hand,

02:41:05PM **9 and** so, I mean, while I don't know how borrowing decisions were

02:41:10PM **10 made** a hundred years ago, we borrow in general whether now or in

02:41:19PM **11 the** past, to make sure we have enough cash on hand.

02:41:19PM **12 Q.** Right. And that's why you focus on the TGA, because that's

02:41:24PM **13 a** cash account, correct?

02:41:24PM **14 A.** Correct.

02:41:24PM **15 Q.** And to the extent individual trust funds have been retained

02:41:29PM **16 in** any way in the TGA, they would be considered as well,

02:41:33PM **17 correct?**

02:41:33PM **18 A.** I don't think they're retained in the TGA.

02:41:37PM **19 Q.** To the extent they are, how do they come in -- excuse me.

02:41:42PM **20 Go** ahead.

02:41:43PM **21 A.** Well, I mean, cash gets deposited to the TGA, but a credit

02:41:47PM **22 to** a trust fund or a deposit fund is an entirely different

02:41:50PM **23 balance.**

02:41:51PM **24 Q.** Do you know what happens --

02:41:54PM **25 A.** In the TGA.

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02:43:22PM **1 Q.** If the check isn't paid for a year where are the credits

02:43:27PM **2 for** --

02:43:27PM **3 A.** There's a liability for an outstanding check.

02:43:28PM **4 Q.** But where are the credits held, because the account is

02:43:32PM **5 debited,** correct?

02:43:33PM **6 A.** The fund balance is debited.

02:43:34PM **7 Q.** So where are the credits held?

02:43:37PM **8 A.** I don't think there's a credit held anywhere. There is a

02:43:42PM **9 corresponding** liability for the outstanding check.

02:43:47PM **10 Q.** But the funds haven't left the Treasury, have they?

02:43:49PM **11 A.** No funds have left -- no cash has left the TGA.

02:43:53PM **12 Q.** So is the cash still in the Treasury reflected in the

02:44:01PM **13 14X6039** account?

02:44:03PM **14 A.** I don't think any cash is reflected there. That's a

02:44:06PM **15 general** ledger account fund balance.

02:44:06PM **16 Q.** Are credits still reflected in the Treasury?

02:44:09PM **17 A.** I don't know what that means. What account, cash basis,

02:44:14PM **18 fund** basis?

02:44:15PM **19 Q.** Well, I'll keep it simple. A 10.00 check is cut on the

02:44:21PM **20 14X6039,** \$10.00 is debited.

02:44:23PM **21 A.** The fund balance for?

02:44:25PM **22 Q.** Is debited.

02:44:26PM **23 A.** It's decremented.

02:44:27PM **24 Q.** So it's now \$10.00 less than before it was cut?

02:44:31PM **25 A.** Right.

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02:41:55PM **1 Q.** I'm sorry, go ahead.

02:41:56PM **2 A.** No, I'm finished.

02:41:57PM **3 Q.** Do you know what happens when a check is cut on the 14X6039

02:42:03PM **4 account?**

02:42:03PM **5 A.** In general I would know, yes.

02:42:04PM **6 Q.** And what is that?

02:42:05PM **7 A.** Well, in general if a check -- if the Department of the

02:42:10PM **8 Interior** cut such a check it would need to make sure that the

02:42:15PM **9 fund** balance in that account is debited or decremented for that

02:42:21PM **10 amount** to reflect the expenditure.

02:42:23PM **11 Q.** At the time the check is cut, correct?

02:42:25PM **12 A.** Yes. On its own books it should reflect that at the time

02:42:29PM **13 the** check is cut. The agency would on a weekly or certainly on

02:42:36PM **14 at** least a monthly basis inform the Treasury of the checks that

02:42:39PM **15 it** has issued.

02:42:41PM **16 Q.** And what is credited if the 14X account is debited?

02:42:47PM **17 A.** I don't think anything is credited as such. The Treasury

02:42:52PM **18 records** a liability for outstanding checks.

02:42:55PM **19 Q.** So is it your view that the Treasury general account is not

02:43:00PM **20 credited?**

02:43:00PM **21 A.** Treasury general account is absolutely not credited. The

02:43:06PM **22 account** is credited with cash coming in from revenue collection

02:43:11PM **23 and** borrowing. When an agency cuts a check and decrements a

02:43:15PM **24 fund** account, that doesn't magically generate cash going into

02:43:20PM **25 the** TGA, so the TGA would not be impacted.

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02:44:32PM **1 Q.** So the check hasn't been paid?

02:44:34PM **2 A.** So there's an outstanding liability for a check.

02:44:36PM **3 Q.** But where is the money that has been debited from the

02:44:40PM **4 account?**

02:44:40PM **5 A.** The money?

02:44:41PM **6 Q.** Uninvested funds. Where are the uninvested funds?

02:44:50PM **7 A.** The fund balance of 6039 would be reduced. At the end of

02:45:06PM **8 the** month when the Treasury is reconciling that account with the

02:45:09PM **9 Department** of the Interior that reconciliation of the fund

02:45:17PM **10 balance** would need to show that the amount of checks issued and

02:45:20PM **11 possibly** paid can be reconciled to the amount that was debited

02:45:26PM **12 or** decremented from the fund balance.

02:45:28PM **13 Q.** But my question was: The check hasn't been paid?

02:45:31PM **14 A.** Right.

02:45:31PM **15 Q.** The check hasn't been paid for twelve months

02:45:35PM **16 hypothetically.** The account is debited that \$10.00 for the

02:45:39PM **17 twelve** months, and therefore there's \$10.00 left in uninvested

02:45:43PM **18 funds** in that account, correct?

02:45:44PM **19 A.** Yes.

02:45:44PM **20 Q.** And no funds have left the Treasury, correct?

02:45:48PM **21 A.** No cash has left the Treasury.

02:45:51PM **22 Q.** Where is the cash?

02:45:52PM **23 A.** Cash would not be needed until the check is presented for

02:45:56PM **24 payment.** There is no cash moved when a fund balance is dec-

02:46:04PM **25 remented** or a check is issued.

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02:46:06PM **1 Q.** Would the trust balance be invested -- would there be less  
 02:46:14PM **2** money available for investment for that twelve-month period  
 02:46:17PM **3** because the funds have been or the debit has been made to that  
 02:46:22PM **4** account?  
 02:46:22PM **5 A.** Yes, the fund balance would be lower.  
 02:46:26PM **6 Q.** So exactly where is that credit? I'm not sure I  
 02:46:32PM **7** understand. You're going to have to help me with this. What  
 02:46:36PM **8** reflects those funds and where are they held that have been  
 02:46:41PM **9** debited?  
 02:46:41PM **10** MR. GILLETT: Objection; asked and answered.  
 02:46:43PM **11** THE COURT: Well, no. I'll let him try again. I  
 02:46:47PM **12** think I understood the answer, but go ahead.  
 02:46:53PM **13** You said the money doesn't move anywhere.  
 02:46:57PM **14** THE WITNESS: It doesn't move any place. I mean, you  
 02:46:59PM **15** know, the fund balance is decremented. We know that in this  
 02:47:02PM **16** \$10.00 instance a \$10.00 check has been issued. The Treasury  
 02:47:05PM **17** has an account that shows outstanding checks for \$10.00 and that  
 02:47:10PM **18** is the extent of the direct entry as a result of that. Until  
 02:47:17PM **19** the check is cashed and presented for payment, I don't think  
 02:47:27PM **20** there's any other entries that are involved.  
 02:47:29PM **21** BY MR. GINGOLD:  
 02:47:29PM **22 Q.** If the security had to be redeemed to pay the check, the  
 02:47:33PM **23** funds -- what happens to the redeemed securities?  
 02:47:36PM **24 A.** Well, the cash from the redemption would flow into the TGA.  
 02:47:40PM **25** The fund balance for the IIM would be incremented by that

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02:49:12PM **1 Q.** It doesn't generate cash, but the redemption of the  
 02:49:16PM **2** security does, correct?  
 02:49:19PM **3 A.** The redemption of the security would generate cash, yes,  
 02:49:19PM **4** and a corresponding credit to the uninvested balance of the  
 02:49:19PM **5** deposit fund.  
 02:49:29PM **6 Q.** Right, but that's only part of the money. The other part  
 02:49:32PM **7** goes into the TGA, correct?  
 02:49:34PM **8 A.** No. They equal each other. The cash from a credit goes  
 02:49:38PM **9** into the TGA and a credit or increment from the fund balance  
 02:49:45PM **10** would be entered as well. Sell a million-dollar security, a  
 02:49:50PM **11** million dollars goes into the TGA, a million dollars is credited  
 02:49:53PM **12** to the deposit fund.  
 02:49:55PM **13 Q.** And whatever however the check was that was written is  
 02:50:00PM **14** still deducted from the amount in the deposit account, correct?  
 02:50:05PM **15 A.** Yes.  
 02:50:05PM **16 Q.** And no interest is being earned on that, correct?  
 02:50:08PM **17 A.** That's correct.  
 02:50:13PM **18 Q.** You talked about general ledgers, I think, or am I wrong?  
 02:50:16PM **19** In your direct testimony did you talk at all about general  
 02:50:21PM **20** ledgers?  
 02:50:21PM **21 A.** Yes, I did.  
 02:50:22PM **22 Q.** What is a general ledger?  
 02:50:23PM **23 A.** A general ledger is a basic dual-entry bookkeeping device  
 02:50:28PM **24** used to show the financial operations of an organization.  
 02:50:31PM **25 Q.** And is it important to have balanced general ledgers?

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02:47:44PM **1** amount.  
 02:47:45PM **2 Q.** But the redeemed securities would be the proceeds would be  
 02:47:50PM **3** going to the TGA, correct?  
 02:47:52PM **4 A.** The cash would.  
 02:47:53PM **5 Q.** The cash would?  
 02:47:53PM **6 A.** The cash would go to the TGA, just like any other cash  
 02:47:57PM **7** transaction, but the value of those securities would be credited  
 02:48:01PM **8** and incremented to the uninvested balance of that fund account.  
 02:48:06PM **9 Q.** Less \$10.00, the amount of the check, correct? Could you  
 02:48:14PM **10** please say yes or no?  
 02:48:14PM **11 A.** Yes. There would be a decrement to the fund balance for  
 02:48:21PM **12** \$10.00.  
 02:48:21PM **13** THE COURT: Are you saying decrement?  
 02:48:24PM **14** THE WITNESS: Decrement. I'm sorry. Debit. That  
 02:48:26PM **15** fund balance would be lowered, but that does not mean that there  
 02:48:32PM **16** would be cash moving somewhere or even that we move cash into  
 02:48:36PM **17** the TGA.  
 02:48:39PM **18** BY MR. GINGOLD:  
 02:48:39PM **19 Q.** But do you know whether that's the case, or you're not  
 02:48:44PM **20** sure? You said it doesn't --  
 02:48:46PM **21 A.** Well, I'm positive about that. In managing the TGA on a  
 02:48:49PM **22** day-to-day basis the cash that comes into it would be revenue  
 02:48:53PM **23** collections, sales of securities and other things that generate  
 02:48:57PM **24** cash, and issuance of a check or decrementing or debiting a  
 02:49:04PM **25** deposit fund account doesn't generate cash.

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02:50:39PM **1 A.** Yes.  
 02:50:39PM **2 Q.** Why?  
 02:50:40PM **3 A.** It ensures basic controls over financial operations.  
 02:50:45PM **4 Q.** And then it would reflect, if the ledger is balanced it  
 02:50:50PM **5** would reflect good controls, wouldn't it?  
 02:50:51PM **6 A.** Certainly.  
 02:50:52PM **7 Q.** Are there any other consequences if you don't have ledgers  
 02:50:55PM **8** that balance, are you concerned about disbursements, the  
 02:51:01PM **9** accuracy of disbursements if that's the case?  
 02:51:03PM **10 A.** Well, certainly.  
 02:51:04PM **11 Q.** Are you concerned about the accuracy of collections if  
 02:51:06PM **12** that's the case?  
 02:51:07PM **13 A.** Yes, you would be concerned about the accuracy of any  
 02:51:15PM **14** supporting documentation.  
 02:51:17PM **15** BY MR. GINGOLD: Plaintiffs would like to call up  
 02:51:19PM **16** Exhibit 65, which has already been used in this proceeding.  
 02:51:24PM **17** BY MR. GINGOLD:  
 02:51:24PM **18 Q.** Now, I know you haven't been back in time so I'm going to  
 02:51:34PM **19** be asking you a question specifically about a 1954 report  
 02:51:42PM **20** dealing with an audit involving the funds on deposit, and I'm  
 02:51:50PM **21** going to ask you what your understanding of this problem is and  
 02:51:54PM **22** whether or not you believe the problem exists today.  
 02:51:58PM **23 A.** Okay.  
 02:51:58PM **24 Q.** If you can turn to page eleven of this. Just for your own  
 02:52:09PM **25** information, this is a compilation of a series of audit reports

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02:52:14PM **1** prepared by the comptroller general, the inspector general, and  
 02:52:19PM **2** others dealing with IIM trust-related issues. This is item 49.  
 02:52:27PM **3** Item 49 is up?  
 02:52:29PM **4** THE COURT: Are you suggesting the compilation was  
 02:52:33PM **5** prepared by the comptroller general?  
 02:52:38PM **6** MR. GINGOLD: No, no, no, no, no. These are experts.  
 02:52:39PM **7** These are linked to the particular reports where the information  
 02:52:41PM **8** was.  
 02:52:42PM **9** THE COURT: Okay. I just didn't want the witness to  
 02:52:44PM **10** get the wrong idea.  
 02:52:45PM **11** MR. GINGOLD: No. I wasn't trying to mislead the  
 02:52:47PM **12** witness, your Honor.  
 02:52:48PM **13** BY MR. GINGOLD:  
 02:52:48PM **14** **Q.** But in one of the excerpts that we pulled, the counsel for  
 02:52:52PM **15** plaintiffs did this. It states as follows: Arbitrary Cash  
 02:52:56PM **16** Adjustments: Our audit for the fiscal year ended June 30, 1952  
 02:53:03PM **17** disclosed numerous unreconciled differences between the balances  
 02:53:08PM **18** of the general ledger accounts for appropriated funds on  
 02:53:14PM **19** deposits with the Treasury department, regional disbursing  
 02:53:20PM **20** officer. I'll skip the parenthetical. As of June 30, 1952 and  
 02:53:24PM **21** as account current for June 1952.  
 02:53:28PM **22** I'd like to drop down a little bit to the portion of  
 02:53:32PM **23** this that says Arbitrary Adjustments. This is right after 1953.  
 02:53:36PM **24** Arbitrary adjustments in general ledger accounts for the purpose  
 02:53:39PM **25** of reaching agreement with amounts in allotment ledgers or

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02:55:03PM **1** **A.** 1991.  
 02:55:04PM **2** **Q.** There is testimony in this proceeding back in 1999 from the  
 02:55:14PM **3** former special trustee for American Indians. This is testimony  
 02:55:18PM **4** on June 11, 1999. This is also excerpted from -- I'm sorry.  
 02:55:27PM **5** May 2, 2003. This special trustee, former special trustee  
 02:55:34PM **6** testified on several occasions. These two excerpts are from the  
 02:55:39PM **7** trial transcripts where the special trustee testified in this  
 02:55:43PM **8** litigation, and I'd like you to look at the second paragraph  
 02:55:47PM **9** here. If you could just read it a moment to yourself and let me  
 02:55:53PM **10** know when I can ask you questions.  
 02:55:55PM **11** (Witness reviews document.)  
 02:56:30PM **12** As you can see, the special trustee testified about  
 02:56:33PM **13** out-of-balance conditions, correct?  
 02:56:34PM **14** **A.** I see.  
 02:56:35PM **15** **Q.** And he appears to have expressed concern about the effect  
 02:56:38PM **16** of those out-of-balance conditions, is that fair?  
 02:56:41PM **17** **A.** Yes.  
 02:56:42PM **18** **Q.** Now, do you know whether or not the out-of-balance  
 02:56:49PM **19** conditions between the Treasury and Interior ledgers have been  
 02:56:55PM **20** reconciled?  
 02:56:56PM **21** **A.** I have no knowledge of the differences between the Treasury  
 02:57:02PM **22** and Interior on any Interior-specific accounts.  
 02:57:05PM **23** **Q.** And if in fact there was a long-term out-of-balance  
 02:57:10PM **24** condition, would it affect the accuracy of disbursement data?  
 02:57:16PM **25** **A.** It could.

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02:53:44PM **1** accounts current rendered by a regional disbursing officer are  
 02:53:46PM **2** not acceptable accounting procedure. It should be noted that  
 02:53:51PM **3** because of the many deficiencies observed during the audit of  
 02:53:57PM **4** IIM accounts we have been able to settle the accounts of the  
 02:54:05PM **5** Indian disbursement agent. Now, is this something that -- this  
 02:54:06PM **6** was something that was reported 54 years ago and it deals with  
 02:54:09PM **7** an out-of-balance condition in ledgers. Were you aware of this  
 02:54:09PM **8** at all?  
 02:54:16PM **9** MR. GILLETT: Objection; lack of foundation.  
 02:54:19PM **10** THE COURT: The question is was he aware of it.  
 02:54:21PM **11** Overruled.  
 02:54:22PM **12** THE WITNESS: No.  
 02:54:23PM **13** BY MR. GINGOLD:  
 02:54:23PM **14** **Q.** Do you know if this condition persisted over a long period  
 02:54:26PM **15** of time?  
 02:54:27PM **16** MR. GILLETT: Objection.  
 02:54:28PM **17** THE COURT: Overruled.  
 02:54:30PM **18** THE WITNESS: No.  
 02:54:30PM **19** BY MR. GINGOLD:  
 02:54:30PM **20** **Q.** If it has, and I will -- as a matter of fact I will bring  
 02:54:35PM **21** up another exhibit so we can talk about it. I'd like to call up  
 02:54:47PM **22** Plaintiffs' 151. I'm not going to go through the compilation  
 02:54:53PM **23** because there are illustrations of things of this sort, but I  
 02:54:56PM **24** want to bring it to a fairly current era. You came into the  
 02:55:01PM **25** Treasury department at what time, what year?

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02:57:18PM **1** **Q.** And would it affect the accuracy of collection data?  
 02:57:21PM **2** **A.** It could.  
 02:57:23PM **3** **Q.** Would it affect the accuracy of interest earned on invested  
 02:57:28PM **4** funds?  
 02:57:33PM **5** **A.** Yes, it could.  
 02:57:35PM **6** **Q.** But you've never been informed about that, have you?  
 02:57:42PM **7** **A.** No.  
 02:57:43PM **8** **Q.** You were asked questions about, I think the 1887 questions,  
 02:57:54PM **9** or question, sorry, dealt with I guess what type of security, I  
 02:58:02PM **10** think you said T bill, funds should be invested, and I believe  
 02:58:06PM **11** you testified a one-year T bill, correct?  
 02:58:09PM **12** **A.** I don't recall the specific question, but I recall  
 02:58:11PM **13** discussing that, yes.  
 02:58:12PM **14** **Q.** I don't recall the specific question either, but it was  
 02:58:15PM **15** something involving a one-year T bill because you indicated it  
 02:58:18PM **16** should be a short-term, not a long-term, instrument, correct?  
 02:58:22PM **17** **A.** Yes.  
 02:58:22PM **18** **Q.** Are you aware of the fact that plaintiffs in their model  
 02:58:26PM **19** used a ten-year T bond rate as an estimate for savings to the  
 02:58:31PM **20** government?  
 02:58:31PM **21** **A.** I am aware of that.  
 02:58:33PM **22** **Q.** And I think, at least based on your testimony with regard  
 02:58:37PM **23** to 1887, you indicated that a ten-year might be too long a bill,  
 02:58:44PM **24** maturity, correct?  
 02:58:44PM **25** **A.** I believe that's the case, but not based upon the question

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02:58:47PM **1** that I was asked earlier.

02:58:49PM **2 Q.** What is your reason?

02:58:50PM **3 A.** Well, that attachment of that model purports to show what

02:58:57PM **4** the government saved in borrowing costs over time, over long

02:59:01PM **5** periods of time, and it picks -- it tries to pick a particular

02:59:06PM **6** security, a ten-year note to serve as a proxy for that borrowing

02:59:11PM **7** cost or avoided borrowing cost, but I think if you're going --

02:59:15PM **8** you know, that's an arbitrary choice of a particular security.

02:59:18PM **9** If you want to impute the borrowing costs over time you would

02:59:22PM **10** really want to look at the average maturity of the portfolio and

02:59:29PM **11** not one particular type of security in the portfolio.

02:59:32PM **12 Q.** Have you done any calculations yourself as to the average

02:59:37PM **13** maturity in an individual's portfolio?

02:59:41PM **14 A.** I am aware of the average maturity of the portfolio in

02:59:47PM **15** general.

02:59:47PM **16 Q.** From what period of time?

02:59:49PM **17 A.** Back to 1980.

02:59:50PM **18 Q.** From 1980 to the present what would be your understanding

02:59:56PM **19** of the average maturity of the portfolio?

02:59:56PM **20 A.** It was slightly less than five years and then slightly more

03:00:01PM **21** than five years, and now it's about four years eleven months.

03:00:04PM **22 Q.** So it's about five years?

03:00:05PM **23 A.** Right. It's oscillated around that basic number.

03:00:09PM **24 Q.** Is that something that is commonly understood?

03:00:13PM **25 A.** I don't know if it's commonly understood. I n debt

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03:01:29PM **1 Q.** How far back in time can you speak to in that regard?

03:01:32PM **2 A.** Based on personal knowledge, I don't know how far back I

03:01:44PM **3** can go. That's certainly the case now for securities that are

03:01:52PM **4** maturing, so on that level, thirty years.

03:01:55PM **5 Q.** So at least for the last thirty years you believe they're

03:02:00PM **6** simple interest?

03:02:01PM **7 A.** On a specific security, yes. Simple interest as opposed

03:02:05PM **8** to?

03:02:05PM **9 Q.** Compound interest.

03:02:06PM **10 A.** Yes. For a particular security it's simple interest.

03:02:10PM **11 Q.** So for the ten-year, for the ten-year T bond it's simple

03:02:14PM **12** interest, correct?

03:02:14PM **13 A.** Yes, for a particular ten-year note.

03:02:22PM **14 Q.** When you say "particular ten-year note," are there notes

03:02:25PM **15** that pay compound interest?

03:02:26PM **16 A.** No. I mean, if you looked at a ten-year note we would pay

03:02:34PM **17** simple interest on it.

03:02:35PM **18 Q.** And that's for all Treasury securities?

03:02:37PM **19 A.** Yes. We pay straightforward simple interest or discount.

03:02:42PM **20 Q.** And it's the same effect, same yield, correct?

03:02:45PM **21 A.** Yes, sir.

03:02:51PM **22** BY MR. GINGOLD: One moment, please.

03:02:52PM **23** (There was a pause in the proceedings.)

03:03:09PM **24** BY MR. GINGOLD:

03:03:09PM **25 Q.** When you refer to simple interest and compound, can you

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03:00:18PM **1** management it is well publicized. Every quarter we update and

03:00:24PM **2** tell the public what the average maturity of the debt is.

03:00:29PM **3 Q.** Are you an economist?

03:00:30PM **4 A.** I'm not.

03:00:31PM **5 Q.** Again, you can't speak to the average maturity of the

03:00:34PM **6** portfolio prior to 1980, can you?

03:00:37PM **7 A.** I've seen some data on that, but I'm not an expert in it.

03:00:41PM **8 Q.** Do you know the difference in the -- now, are these

03:00:43PM **9** discount notes or are they interest-bearing notes? Are they

03:00:43PM **10** yielding?

03:00:48PM **11 A.** It would reflect both.

03:00:51PM **12 Q.** Does it make a difference with regard to the income?

03:00:51PM **13 A.** With regard to the income?

03:00:56PM **14 Q.** If you were dealing with interest rate note or a discount

03:01:05PM **15** bond?

03:01:05PM **16 A.** No, I don't believe so.

03:01:06PM **17 Q.** You don't believe so. So a discount note would bear simple

03:01:10PM **18** interest or yield simple interest, is that your understanding?

03:01:14PM **19 A.** It would be amortized over time, but it's a simple issue,

03:01:18PM **20** yes.

03:01:18PM **21 Q.** And the interest that's paid on the Treasury notes or

03:01:21PM **22** Treasury bonds are simple interest?

03:01:23PM **23 A.** Yes.

03:01:24PM **24 Q.** That's historical currently?

03:01:28PM **25 A.** Currently, yes.

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03:03:12PM **1** define what you mean by "simple interest"?

03:03:14PM **2 A.** I mean there is an interest rate that is applied to a

03:03:22PM **3** principal amount over a maturity period.

03:03:29PM **4 Q.** And when the payment is made, if the payment is made on the

03:03:35PM **5** note that matures, the payment, if the payment is deposited in

03:03:44PM **6** an account, that's what the simple interest would reflect,

03:03:48PM **7** correct?

03:03:51PM **8 A.** I don't understand.

03:03:52PM **9 Q.** You're redeeming the note?

03:03:52PM **10 A.** So we're redeeming the principal?

03:03:55PM **11 Q.** That's right. The proceeds go into the account, correct,

03:03:58PM **12** the proceeds at redemption?

03:04:01PM **13 A.** Are paid to ultimately the owner of the bond, yes.

03:04:04PM **14 Q.** Right. If the funds haven't been paid out, however, but

03:04:08PM **15** they're retained and there is a reinvestment of those funds,

03:04:13PM **16** would the reinvestment of those funds effectively compound the

03:04:18PM **17** interest?

03:04:19PM **18 A.** I don't believe it would. I think it would be simple

03:04:24PM **19** interest on a new security.

03:04:26PM **20 Q.** But the new security would be X plus the interest that was

03:04:34PM **21** earned on the previous security, correct?

03:04:35PM **22 A.** Yes. You're talking about multiple securities over time.

03:04:39PM **23 Q.** Yes, yes.

03:04:43PM **24 A.** That's why I kept saying for a particular bond it is simple

03:04:48PM **25** interest.

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03:04:49PM **1 Q.** When you have the multiple securities over time, it's

03:04:49PM **2** effectively compound, isn't it?

03:04:54PM **3 A.** If you're an investor and you're reinvesting principal and

03:04:58PM **4** interest, that is compounded, yes.

03:05:00PM **5** MR. GINGOLD: No further questions, your Honor.

03:05:05PM **6** THE COURT: All right, Mr. Grippo, thank you. You're

03:05:07PM **7** excused. You may step down.

03:05:09PM **8** (Witness excused at about 3:05 p.m.)

03:05:34PM **9** MR. KIRSCHMAN: One moment, your Honor.

03:05:39PM **10** THE COURT: Is this a good time for a short break?

03:05:43PM **11** MR. KIRSCHMAN: That would be fine, your Honor.

03:05:46PM **12** (Recess taken at about 3:06 p.m.)

03:19:19PM **13** COURTROOM DEPUTY: Please remain seated and come to

03:19:23PM **14** order.

03:19:24PM **15** THE COURT: What's the meaning of this?

03:19:40PM **16** MR. KIRSCHMAN: This is an exhibit we will be going

03:19:43PM **17** through with Mr. Mushtaq, our next witness.

03:19:46PM **18** THE COURT: Go ahead.

03:19:48PM **19** MR. KIRSCHMAN: Your Honor, before I present the

03:19:49PM **20** government's next witness, I would like to take care of an

03:19:52PM **21** administrative matter I overlooked when presenting Mr. Hoak. We

03:19:57PM **22** presented two exhibits, DX 466, and 466 is the only circular,

03:20:05PM **23** the excerpt of section two. We would move that admission.

03:20:10PM **24** THE COURT: Received.

03:20:12PM **25** MR. KIRSCHMAN: And the second is DX 499, which was

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03:21:29PM **1 Q.** When did you begin working for NORC?

03:21:32PM **2 A.** A little over five years ago.

03:21:34PM **3 Q.** In your work for NORC what position do you now hold?

03:21:38PM **4 A.** I'm a statistical contractor.

03:21:40PM **5 Q.** Okay. Has your work involved NORC's review and analysis of

03:21:45PM **6** the IIM accounts generally?

03:21:47PM **7 A.** Yes, and the tribal accounts.

03:21:51PM **8 Q.** Could you please describe for the Court your

03:21:54PM **9** responsibilities with NORC today?

03:21:55PM **10 A.** I help with sample design and analysis. I perform data

03:22:03PM **11** analysis and conduct research.

03:22:06PM **12 Q.** Okay. During the course of your work for NORC did you have

03:22:10PM **13** occasion to review summon packages from the Department of the

03:22:14PM **14** Treasury and GAO that cover the period 1890 through 1951?

03:22:19PM **15 A.** Yes.

03:22:19PM **16 Q.** And when did you first review these packages?

03:22:22PM **17 A.** In early 2006.

03:22:25PM **18 Q.** Okay. Could you please describe generally to the Court

03:22:29PM **19** what these packages are?

03:22:30PM **20 A.** The settlement packages are reviewed accounts of the ISSDA,

03:22:37PM **21** Indian Services Special Disbursing Agent.

03:22:39PM **22 Q.** Okay. So these accounts being settled the accounts of the

03:22:43PM **23** disbursing agents?

03:22:46PM **24 A.** Yes.

03:22:46PM **25 Q.** What was the purpose of your review in early 2006?

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03:20:16PM **1** Mr. Hoak's two pages of charts. We move that into admission.

03:20:23PM **2** THE COURT: Received.

03:20:23PM **3** (Defendants' Exhibit Nos. DX 466 and DX 499 received

03:20:28PM **4** into evidence at about 3:20 p.m.)

03:20:29PM **5** MR. KIRSCHMAN: The government would now like to call

03:20:30PM **6** as its next witness Ali Mushtaq, and your Honor, we are

03:20:36PM **7** presenting Mr. Mushtaq as a fact witness.

03:20:49PM **8** COURTROOM DEPUTY: Please raise your right hand. Do

03:20:51PM **9** you solemnly swear that the testimony you should give the Court

03:20:55PM **10** in this case now on trial will be the truth, the whole truth and

03:20:59PM **11** nothing but the truth?

03:20:59PM **12** MR. MUSHTAQ: I do.

03:21:00PM **13** COURTROOM DEPUTY: Thank you, sir.

03:21:00PM **14** ALI MUSHTAQ, WITNESS FOR THE DEFENDANTS, SWORN

03:21:00PM **15** DIRECT EXAMINATION

03:21:03PM **16** BY MR. KIRSCHMAN:

03:21:03PM **17 Q.** Please state your name for the record.

03:21:04PM **18 A.** Ali Mushtaq.

03:21:06PM **19** THE COURT: How do you spell that last name?

03:21:06PM **20** THE WITNESS: M-u-s-h-t-a-q.

03:21:16PM **21** BY MR. KIRSCHMAN:

03:21:16PM **22 Q.** And Mr. Mushtaq, where are you employed?

03:21:18PM **23 A.** I'm a statistical contractor with NORC.

03:21:21PM **24 Q.** And as a contractor with NORC who do you report to?

03:21:25PM **25 A.** I report to Dr. Scheuren and Dr. Hinkins.

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03:22:49PM **1 A.** It was to determine if there was a regular consistent

03:22:55PM **2** review process in place.

03:22:57PM **3 Q.** Since that initial review have you had occasion to review

03:23:03PM **4** summon packages again?

03:23:04PM **5 A.** Yes, I have.

03:23:05PM **6 Q.** And when did you do that?

03:23:06PM **7 A.** I went back to Archives to review those packages for a few

03:23:11PM **8** days in the summer of 2007 and again last week.

03:23:15PM **9 Q.** Can you explain to the Court why you reviewed again some of

03:23:19PM **10** the settlement packages back in 2007?

03:23:21PM **11 A.** After the initial review I had some questions I wanted to

03:23:27PM **12** investigate. One was in some packages it appeared as if GAO was

03:23:35PM **13** reviewing the accounts on an individual account level and in

03:23:38PM **14** some other packages it looked like they were not, and so I took

03:23:42PM **15** a small sample from each to investigate those packages at the

03:23:47PM **16** Archives.

03:23:48PM **17 Q.** Why did you perform that investigation, who told you to

03:23:53PM **18** perform that investigation?

03:23:54PM **19 A.** I did that myself.

03:23:56PM **20 Q.** Okay. You stated that you also reviewed packages just a

03:24:01PM **21** week ago, correct?

03:24:02PM **22 A.** Yes.

03:24:02PM **23 Q.** And generally why did you do that?

03:24:05PM **24 A.** This was after I was warned that I might be testifying so I

03:24:12PM **25** wanted to round out my presentation with some pictures of

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03:24:15PM **1** checks.

03:24:16PM **2** THE COURT: Warned?

03:24:18PM **3** THE WITNESS: Warned.

03:24:19PM **4** MR. KIRSCHMAN: It is Cobell, your Honor.

03:24:33PM **5** THE COURT: Threatened maybe.

03:24:34PM **6** MR. KIRSCHMAN: Never, your Honor.

03:24:37PM **7** BY MR. KIRSCHMAN:

03:24:37PM **8** **Q.** Why did you have an idea that you would see checks if you

03:24:42PM **9** went back to review the settlement packages last week?

03:24:46PM **10** **A.** The initial review in 2006 I remember seeing checks in the

03:24:52PM **11** settlement packages. I generally saw checks separate from the

03:24:57PM **12** packages themselves. They'd be bundled in the box with the

03:25:00PM **13** packages but separate from the packages.

03:25:02PM **14** **Q.** Okay. And when you went back recently to review the

03:25:10PM **15** settlement packages what did it reveal about the existence of

03:25:14PM **16** checks?

03:25:15PM **17** **A.** I was able to find checks from earlier periods. I wasn't

03:25:19PM **18** able to find again those checks that I had seen before.

03:25:25PM **19** **Q.** Why was it that you weren't able to find the checks that

03:25:29PM **20** you had seen before back in early 2006?

03:25:32PM **21** **A.** I think it's time constraints at the Archives. You're only

03:25:36PM **22** allowed to pull so many packages and look at them, and I was

03:25:39PM **23** only back for one day.

03:25:40PM **24** **Q.** Now, when you reviewed these GAO settlement packages in

03:25:47PM **25** early 2007 and last week, did you photograph some of the

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03:27:14PM **1** sorry -- of the GAO settlement packages, and that consisted

03:27:16PM **2** almost of almost 45,000 records, and further analysis we were

03:27:24PM **3** able to determine that about seven percent of the packages there

03:27:28PM **4** weren't in that index, so the estimate is that there's between

03:27:33PM **5** 45,000 and 50,000.

03:27:34PM **6** **Q.** Okay. I'd like to turn your attention to the next page of

03:27:37PM **7** DX 504. And can you describe what this document is?

03:27:45PM **8** **A.** This is a settlement package and this is settlement package

03:27:52PM **9** H54365. It's a December account of the special disbursing agent

03:27:57PM **10** A.G. Wilson. This is a package with IIM ledgers in it.

03:28:02PM **11** **Q.** How do you know that the settlement packages has IIM

03:28:12PM **12** ledgers in it?

03:28:13PM **13** **A.** I have gone through this package. At the bottom, the red

03:28:18PM **14** tape there, that's binding for the ledgers.

03:28:20PM **15** **Q.** Okay. Turning your attention to the next photo, can you

03:28:26PM **16** explain what this document is?

03:28:27PM **17** **A.** This is a certificate of settlement. It's the document

03:28:31PM **18** issued by GAO certifying the balance of the ISSDA.

03:28:36PM **19** **Q.** What information generally is contained in the certificate

03:28:39PM **20** of settlement?

03:28:40PM **21** **A.** They have the settlement number listed, the special

03:28:45PM **22** disbursing agent's name listed, the period being certified, the

03:28:49PM **23** language "I certify that I have examined and settled the

03:28:53PM **24** account," and the balances.

03:28:54PM **25** **Q.** Now, generally based on your observations, what period of

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03:25:51PM **1** material that you reviewed?

03:25:52PM **2** **A.** Yes, I did.

03:25:53PM **3** **Q.** Okay. And what we'd like to do now is work through a

03:26:00PM **4** sample of those photographs. With that I'd like to draw your

03:26:04PM **5** attention to the image that I'm going to ask be put on the

03:26:08PM **6** screen. It has been marked as DX 504. The collection of

03:26:14PM **7** photographs is marked as DX 504, and I'm going to ask you to

03:26:18PM **8** turn your attention to the first page. Is this the photo you

03:26:22PM **9** took?

03:26:24PM **10** **A.** Yes, it is.

03:26:24PM **11** **Q.** And are all of the photos that we are going to be reviewing

03:26:30PM **12** today ones that you have taken personally?

03:26:31PM **13** **A.** Yes.

03:26:31PM **14** **Q.** Could you please describe for the Court what this first

03:26:36PM **15** photo pictures?

03:26:37PM **16** **A.** This is a picture of a box at Archives containing

03:26:43PM **17** settlement packages, and you can see packages of varying size.

03:26:47PM **18** **Q.** To the best of your understanding how many GAO settlement

03:26:51PM **19** packages are there in the Archives?

03:26:54PM **20** **A.** Between 45,000 and 50,000.

03:26:57PM **21** **Q.** And what is your understanding based on?

03:27:00PM **22** **A.** I'm sorry?

03:27:01PM **23** **Q.** What is your understanding of the number of settlement

03:27:04PM **24** packages in the Archives based on?

03:27:07PM **25** **A.** Anderson had keyed in an index of the GAO ledgers -- I'm

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03:28:59PM **1** time do these certificates of settlement usually cover?

03:29:03PM **2** **A.** For the most part I have seen the certificates cover a

03:29:08PM **3** three-month period, a quarterly period, although they can cover

03:29:12PM **4** just a month and later on, as more often, they'll cover a semi-

03:29:17PM **5** annual period, but they can cover any period, even a two-month

03:29:21PM **6** period.

03:29:21PM **7** **Q.** Okay. So where based on your experience would you find a

03:29:28PM **8** certificate, where would it usually appear for the period

03:29:31PM **9** covered by that certificate?

03:29:32PM **10** **A.** The certificate would be found generally in the last month

03:29:36PM **11** of the certification period, so this one was found in the March

03:29:40PM **12** settlement package.

03:29:42PM **13** **Q.** Okay. I'd like us to focus, if we can, on the middle of

03:29:47PM **14** the page. There's a box marked "balance to the United States as

03:30:05PM **15** per account rendered" and in that there's an indication of

03:30:10PM **16** \$231.68 in the category marked REG period. Do you see that?

03:30:19PM **17** **A.** Um-hmm.

03:30:19PM **18** **Q.** And there is identified \$36,932.24 and an S slash D

03:30:30PM **19** category. Do you see that?

03:30:31PM **20** **A.** Yes, I do.

03:30:32PM **21** **Q.** And can you explain to the Court what your understanding is

03:30:36PM **22** as to what these categories represent?

03:30:37PM **23** **A.** SD stands for special deposits.

03:30:42PM **24** **Q.** What is in that, do you know?

03:30:43PM **25** **A.** The IIM balance is in there, along with the special

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03:30:47PM **1** deposits balance.

03:30:48PM **2 Q.** And now how do you know that the term SD includes both

03:30:54PM **3** special deposits and Individual Indian Monies?

03:30:58PM **4 A.** You can look at the account current in the package and see

03:31:00PM **5** that the Indian money balance with the special deposits adds

03:31:05PM **6** together with the SD balance on that certificate.

03:31:08PM **7 Q.** Let's turn to the next page then of this exhibit. And at

03:31:11PM **8** the top of this you can see that it is an account current,

03:31:16PM **9** correct?

03:31:16PM **10 A.** Yes.

03:31:17PM **11 Q.** Generally if you could explain to the Court what

03:31:23PM **12** information is within an account current.

03:31:26PM **13 A.** From what I've seen, an account current provides the

03:31:30PM **14** opening balance, closing balance, receipts and payments on an

03:31:34PM **15** aggregate level of funds in the ISSDA account.

03:31:38PM **16 Q.** Okay. Now, how does this particular account current

03:31:43PM **17** indicate what is in the S slash D category we saw on the related

03:31:47PM **18** certificate of service? I'm sorry. Certificate of settlement,

03:31:52PM **19** what part of the document should we look towards?

03:31:55PM **20 A.** If you look at the right side of the document, the final

03:31:59PM **21** balance, the three funds listed under Individual Monies, those

03:32:04PM **22** three numbers add up to give you the SD balance shown on the

03:32:09PM **23** certificate.

03:32:10PM **24 Q.** Do you see the stamp at the bottom left-hand side of the

03:32:22PM **25** account current?

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03:34:29PM **1** documents related, these two particular documents, in this

03:34:32PM **2** image?

03:34:33PM **3 A.** The schedule of collections is a listing of collections and

03:34:38PM **4** that listing is supported by the official receipts.

03:34:41PM **5 Q.** Okay. By the way, we have a two-dimensional picture here,

03:34:46PM **6** but how many official receipts to the best of your recollection

03:34:51PM **7** are contained in this file?

03:34:53PM **8 A.** You can kind of see the thickness in the middle of the

03:34:58PM **9** page. Those are all the official receipts there for that

03:34:59PM **10** particular month.

03:35:01PM **11 Q.** Now, just looking at the official receipt, we talked about

03:35:08PM **12** the fact it addresses receipts for Glen MacIntosh, correct?

03:35:12PM **13 A.** Yes.

03:35:13PM **14 Q.** And the official receipt has a number associated with it?

03:35:17PM **15 A.** Yes.

03:35:20PM **16 Q.** And can you highlight to the Court where we would find that

03:35:23PM **17** in the schedule of collections?

03:35:25PM **18 A.** The receipt number is listed as a first column in the

03:35:28PM **19** schedule of collections there.

03:35:29PM **20 Q.** Okay. Moving on throughout this settlement package to

03:35:42PM **21** photo six, DX 504, this document is identified as a

03:35:54PM **22** recapitulation of individual Indian accounts. Do you see that?

03:35:58PM **23 A.** Yes. And this is from a different settlement package

03:36:02PM **24** actually.

03:36:02PM **25 Q.** Oh, is it? Okay. And what generally is a recapitulation?

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03:32:23PM **1 A.** Yes.

03:32:24PM **2 Q.** And can you read what it says?

03:32:30PM **3 A.** It says, All pencil changes were made by the General

03:32:38PM **4** Accounting Office, and it's initialed and dated.

03:32:41PM **5 Q.** To the best of your understanding based on what you saw,

03:32:48PM **6** how often are account currents prepared and what part of BIA did

03:32:53PM **7** they cover?

03:32:55PM **8 A.** The accounts current, there's generally an accounts current

03:33:00PM **9** prepared for each month at the agencies.

03:33:03PM **10 Q.** Turning to page five of this exhibit, there is a depiction

03:33:09PM **11** of two documents. Do you see those?

03:33:14PM **12 A.** Yes.

03:33:15PM **13 Q.** The first on the left is an official receipt. Can you

03:33:21PM **14** describe what an official receipt is to the best of your

03:33:23PM **15** understanding and what it shows?

03:33:25PM **16 A.** The official receipt is a supporting document for a

03:33:30PM **17** collection.

03:33:35PM **18 Q.** Looking at this specific official receipt, can you

03:33:55PM **19** explain -- it references a Glen MacIntosh. Can you explain what

03:34:00PM **20** information this tells us regarding Glen MacIntosh?

03:34:04PM **21 A.** I believe this is money collected from Glen MacIntosh

03:34:10PM **22** that's collected on two contracts that's to be deposited into

03:34:16PM **23** three individual Indian accounts.

03:34:19PM **24 Q.** Okay. Now, let's broaden our scope to include the official

03:34:23PM **25** receipts and also the schedule of collections. How are these

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03:36:09PM **1 A.** A recapitulation is a summary here of the individual Indian

03:36:14PM **2** accounts at an aggregate level. This recapitulation is giving

03:36:19PM **3** summary level information of the individual volumes that

03:36:23PM **4** comprise the IIM ledger.

03:36:25PM **5 Q.** Generally when did you see separate recapitulation

03:36:33PM **6** documents like this one in a settlement package?

03:36:35PM **7 A.** Generally when I see a ledger in a settlement package I

03:36:40PM **8** will see a prepared recapitulation as well.

03:36:44PM **9 Q.** And looking at this document, it's true to say that it

03:36:49PM **10** provides information on the disbursement and receipts within the

03:36:53PM **11** individual Indian accounts?

03:36:58PM **12** MR. GUILDER: Objection. That calls for speculation.

03:36:59PM **13** There's been no evidence that this shows actual disbursements or

03:37:02PM **14** receipts. It's a summary level, as he just testified.

03:37:06PM **15** THE COURT: Sustained.

03:37:10PM **16** MR. KIRSCHMAN: Could we highlight the document,

03:37:17PM **17** please?

03:37:18PM **18** BY MR. KIRSCHMAN:

03:37:18PM **19 Q.** Let's go through this from left to right, if we could, Mr.

03:37:22PM **20** Mushtaq. On the left-hand column there's a heading Volume. Do

03:37:26PM **21** you have an understanding as to what that is?

03:37:27PM **22 A.** Yes. These refer to the specific volumes that make up the

03:37:31PM **23** IIM ledger, so A9 to B354 are individual accounts within one

03:37:35PM **24** booklet. That's one booklet of the ledger. Each one of these

03:37:39PM **25** lines is a different booklet in the ledgers, so there are

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03:37:42PM **1** several booklets making up all the IIM ledgers in this account.

03:37:46PM **2 Q.** And all these volumes would be in one settlement package,

03:37:53PM **3** is that what you witnessed?

03:37:54PM **4 A.** In this case, yes, although if there are too many ledgers

03:37:57PM **5** they'll be in a separate settlement package, but they'll be

03:38:02PM **6** together.

03:38:02PM **7 Q.** The next column is marked DISV period. Do you see that?

03:38:07PM **8 A.** Yes.

03:38:07PM **9 Q.** And the next one is marked Receipts. Do you see that?

03:38:10PM **10 A.** Yes.

03:38:10PM **11 Q.** And to the best of your understanding, based on your review

03:38:13PM **12** of these settlement packages, what do those two columns

03:38:17PM **13** reference?

03:38:18PM **14 A.** The total number of -- the total amount of disbursements in

03:38:24PM **15** each particular volume and the total amount of receipts in each

03:38:27PM **16** particular volume.

03:38:28PM **17 Q.** And to be clear, each line is just referencing that

03:38:31PM **18** particular volume, correct?

03:38:32PM **19 A.** Yes.

03:38:32PM **20 Q.** Okay. Now, you testified that the recapitulation follows

03:38:51PM **21** IIM ledgers, correct, generally?

03:38:53PM **22 A.** Generally I'll find a recapitulation in the same package as

03:38:58PM **23** I'll find a ledger.

03:39:00PM **24 Q.** If we could turn to the eighth photo of DX 504. Well,

03:39:07PM **25** let's stop here just generally. Looking at this photo, what is

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03:40:41PM **1 A.** The ledger shows the listing of transactions in the account

03:40:47PM **2** and the balances as well. Here we can see the date, amounts,

03:40:54PM **3** official receipt number with some tic marks by it, and the,

03:41:01PM **4** yeah, right, the balances.

03:41:02PM **5 Q.** Okay. These tic marks or check marks, it's hard to tell

03:41:06PM **6** from the paper copy I have, but if we look at the screen we can

03:41:10PM **7** see they are both red and blue, correct?

03:41:13PM **8 A.** Yes.

03:41:14PM **9 Q.** And those were in pencil?

03:41:15PM **10 A.** Yes.

03:41:16PM **11 Q.** And that's what you observed?

03:41:18PM **12 A.** Right.

03:41:19PM **13 Q.** Okay. Turning to page ten of the exhibit, real briefly

03:41:33PM **14** what do we see here?

03:41:34PM **15 A.** This is just another sample page from the same volume.

03:41:37PM **16 Q.** Okay. Now turning to the next page, photo eleven or page

03:41:43PM **17** eleven in this exhibit, what is this?

03:41:48PM **18 A.** This is the last page from that same booklet, so this is

03:41:52PM **19** the last page from the last volume in the IIM ledger.

03:41:57PM **20 Q.** Okay. And in the middle of the last page is an audited by,

03:42:03PM **21** quote, audited by in quotes, stamped, correct?

03:42:07PM **22 A.** Right.

03:42:07PM **23 Q.** And that is initialed how?

03:42:10PM **24 A.** It's initialed by someone in blue pencil.

03:42:15PM **25 Q.** And the initials are IWM?

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03:39:12PM **1** that on DX 504 at page seven?

03:39:20PM **2 A.** This is just the second page of the same recapitulation.

03:39:23PM **3 Q.** This second page of the same capitulation specifically

03:39:29PM **4** states summary receipts, correct?

03:39:31PM **5 A.** Summary of disbursements, yes.

03:39:34PM **6 Q.** And that's spelled out, summary of disbursements?

03:39:36PM **7 A.** Right.

03:39:37PM **8 Q.** Okay. Now, turning to the next page which I had referred

03:39:44PM **9** to earlier as page eight of this exhibit, can you explain to the

03:39:48PM **10** Court what this is?

03:39:49PM **11 A.** This is the last volume that was just mentioned in that

03:39:55PM **12** recapitulation. This is the ledgers of the accounts W522 to

03:40:01PM **13** Z15.

03:40:02PM **14 Q.** And this is the first page of that last volume?

03:40:04PM **15 A.** This is the cover of that volume, yes.

03:40:07PM **16 Q.** Okay. Can you describe generally for the Court what is

03:40:10PM **17** contained in an IIM ledger?

03:40:12PM **18 A.** The individual ledger sheets of accounts.

03:40:18PM **19 Q.** Turning to the next page, ninth page of this exhibit, is

03:40:26PM **20** this a page from the ledger?

03:40:27PM **21 A.** This is the first page of the ledger whose cover we were

03:40:31PM **22** just looking at.

03:40:32PM **23 Q.** Okay. And what information is on it?

03:40:36PM **24 A.** Excuse me?

03:40:38PM **25 Q.** Can you just describe briefly what information is on it?

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03:42:18PM **1 A.** Yes.

03:42:18PM **2 Q.** Okay. Now, do you see ledgers similar to this one we just

03:42:24PM **3** reviewed in every settlement package?

03:42:27PM **4 A.** No. I won't see a ledger in every settlement package.

03:42:31PM **5** Generally when I see a ledger it's going to fall in the

03:42:35PM **6** semi-annual period and it's going to cover six months, so I'll

03:42:38PM **7** generally see ledgers -- when I see ledgers I'll generally see

03:42:42PM **8** them in a June account or a December account.

03:42:45PM **9 Q.** Okay. I'd like to turn to the next page of this exhibit.

03:42:52PM **10** And this document is obviously correspondence, correct?

03:42:56PM **11 A.** Right. This is a letter from GAO to the superintendent,

03:43:00PM **12** and this goes with the ledger we just saw. It's in the same

03:43:04PM **13** settlement package.

03:43:06PM **14 Q.** I'm sorry, it's in the same what?

03:43:07PM **15 A.** This is in the same settlement package as the ledger we

03:43:11PM **16** just saw.

03:43:12PM **17 Q.** Okay. And this letter is dated January 19th, 1948?

03:43:17PM **18 A.** Yes.

03:43:17PM **19 Q.** Based on your review of the settlement packages, is

03:43:30PM **20** correspondence like this something that you would see routinely?

03:43:34PM **21 A.** Generally in a package where I will see IIM ledgers I'll

03:43:40PM **22** see correspondence like this from GAO to the superintendent, and

03:43:45PM **23** it uses very similar language. It states, Audit of your

03:43:49PM **24** Individual Indian Monies voucher reveals the following

03:43:52PM **25** discrepancies.

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03:43:53PM **1 Q.** But not necessarily in every settlement package?

03:43:56PM **2 A.** Ledgers won't be in every settlement package, no.

03:43:59PM **3 Q.** So the correspondence usually follows the ledgers?

03:44:01PM **4 A.** Correspondence of this type will follow those ledgers.

03:44:05PM **5** There's also correspondence of other types in all the settlement

03:44:12PM **6** packages.

03:44:12PM **7 Q.** Okay. The document speaks for itself.

03:44:21PM **8** The GAO representative is noting that -- noting

03:44:30PM **9** discrepancies, and on this page the letter states at the

03:44:32PM **10** following listed journal vouchers are missing and copies are

03:44:36PM **11** requested. Correct?

03:44:37PM **12 A.** Right. GAO is raising the exception that they haven't --

03:44:43PM **13** that they don't have the journal vouchers listed and they're

03:44:50PM **14** asking the superintendent to provide them.

03:44:53PM **15 Q.** And these listed vouchers are all boxed in by blue pencil,

03:44:59PM **16** correct?

03:44:59PM **17 A.** Right.

03:45:00PM **18 Q.** And if we looked at the color version of this that's up on

03:45:04PM **19** the screen, we see that there's a handwritten note in blue

03:45:10PM **20** pencil. Could you read that, please?

03:45:11PM **21 A.** The note says "received and sent to files."

03:45:14PM **22 Q.** Okay. Turning to the next page, is it correct to say that

03:45:21PM **23** this is the second page of the same correspondence?

03:45:21PM **24 A.** Yes, it is.

03:45:28PM **25 Q.** Again here each of the paragraphs on the second page are

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03:47:18PM **1** have a response?

03:47:19PM **2 A.** Yes. In the second paragraph to the bottom the

03:47:22PM **3** superintendent responds that the two accounts are the same

03:47:27PM **4** Indian.

03:47:28PM **5 Q.** And that's explained in the paragraph?

03:47:30PM **6 A.** Yes.

03:47:35PM **7 Q.** And next to that again in blue pencil is an "okay"

03:47:40PM **8** indicated, right?

03:47:41PM **9 A.** Right.

03:47:41PM **10 Q.** Okay. Turning to --

03:47:44PM **11** THE COURT: Mr. Kirschman, as interesting as this is,

03:47:47PM **12** and I love looking at old documents, I wonder if you'd give me a

03:47:51PM **13** proffer as to the overall meaning of all this. What's the

03:47:54PM **14** point?

03:47:54PM **15** MR. KIRSCHMAN: The point of these exhibits, your

03:47:56PM **16** Honor, and this is just a sample, is it relates to and is a

03:48:00PM **17** response to Plaintiffs' argument that the documentation during

03:48:07PM **18** certain time periods is unreliable, and it also goes to the

03:48:11PM **19** issue as to whether, as plaintiffs have alleged, money could

03:48:17PM **20** have been taken out of accounts without being known, without

03:48:24PM **21** being recorded by those in charge of the accounts. This shows,

03:48:30PM **22** we believe, as Dr. Angel testified briefly, a careful close

03:48:39PM **23** review of the transactions.

03:48:43PM **24** MR. GUILDER: Your Honor, I have to object to this

03:48:44PM **25** point here. I don't understand how the witness is going to

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03:45:31PM **1** contained within handwritten blue boxes, right?

03:45:34PM **2 A.** Yes.

03:45:35PM **3 Q.** And turning your attention to the middle of those three

03:45:39PM **4** boxes, can you describe to the Court just generally what are

03:45:44PM **5** being addressed in each?

03:45:45PM **6 A.** These are three different exceptions being raised by GAO.

03:45:52PM **7** The first two deal with the transfer that GAO says is being made

03:45:59PM **8** to the wrong account. The third one is a check that GAO was

03:46:04PM **9** stating was drawn from the wrong account.

03:46:07PM **10 Q.** Okay. Looking at the middle one of those three, the amount

03:46:11PM **11** in question here is for \$13.75, correct?

03:46:15PM **12 A.** Yes.

03:46:16PM **13 Q.** And within that blue box there is a notation in blue

03:46:22PM **14** pencil, and could you please read that into the record?

03:46:25PM **15 A.** It states: Same Indian per agent's letter of 4/14/48.

03:46:31PM **16 Q.** Could we please turn to the next page of this exhibit? And

03:46:40PM **17** what is this document, this correspondence?

03:46:45PM **18 A.** This is a response from the superintendent to the GAO

03:46:48PM **19** concerning those exceptions.

03:46:50PM **20 Q.** And what is the date of that response?

03:46:52PM **21 A.** April 14th, 1948.

03:46:56PM **22 Q.** And it also shows with a stamp that it was received by GAO,

03:47:01PM **23** correct?

03:47:03PM **24 A.** Yes.

03:47:03PM **25 Q.** Regarding the \$13.75 apparent discrepancy, did Interior

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03:48:47PM **1** proffer this. I understand Dr. Angel testified to that, but

03:48:50PM **2** this Court has already decided that these settlement of accounts

03:48:53PM **3** don't constitute an account, and so I don't understand how Dr.

03:48:56PM **4** Angel can override that.

03:48:57PM **5** THE COURT: Well, I'm going to take this, I'm going to

03:49:01PM **6** ask you to move through these materials. Basically as I said

03:49:06PM **7** they are interesting but they are at best anecdotal, of course.

03:49:11PM **8** We don't have any idea how these were selected. You might

03:49:16PM **9** clarify that point for the record, how these particular

03:49:19PM **10** settlement packages were selected or these documents were

03:49:23PM **11** selected, because they, at the most they prove that two or three

03:49:31PM **12** superintendents at two or three agencies on two or three

03:49:37PM **13** settlement packages had a lot of check marks on them and people

03:49:40PM **14** worked over them very carefully, but they don't negate the

03:49:46PM **15** implication that plaintiffs are trying to bring, and counsel is

03:49:50PM **16** right, they're not accountings, but I get the point. I think

03:49:54PM **17** you can get through them pretty quickly.

03:49:57PM **18** MR. KIRSCHMAN: Thank you, your Honor.

03:50:02PM **19** BY MR. KIRSCHMAN:

03:50:02PM **20 Q.** Let's turn to the next page. And could you explain

03:50:17PM **21** briefly, please, Mr. Mushtaq, what this document is?

03:50:21PM **22 A.** This is an abstract of Individual Indian Monies. Sometimes

03:50:25PM **23** in the June or December account instead of seeing a ledger I'll

03:50:28PM **24** see an abstract, and it appears to be a substitution for a

03:50:32PM **25** ledger.

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03:50:32PM **1 Q.** And the image we're looking at, how big was this particular  
 03:50:37PM **2** page?  
 03:50:37PM **3 A.** This is about the size of a standard, 8-and-a-half-by-11,  
 03:50:43PM **4** sheet of paper.  
 03:50:44PM **5 Q.** Okay. Turning to the next image, this is the third sheet  
 03:50:50PM **6** of the same abstract, correct?  
 03:50:51PM **7 A.** Yes, it is.  
 03:50:52PM **8 Q.** And now looking at this abstract it's filled with blue  
 03:51:00PM **9** checks, blue Xs, and some comments, correct?  
 03:51:04PM **10 A.** Yes.  
 03:51:05PM **11 Q.** If we look at the bottom right-hand portion of the page we  
 03:51:11PM **12** see that there is reference to a journal voucher, 127A, that is  
 03:51:17PM **13** listed several times. Do you see that?  
 03:51:20PM **14 A.** On the left side of the screen it's a bit cut off right  
 03:51:22PM **15** here, but yes, it's 127A.  
 03:51:25PM **16 Q.** And looking at the notations, what do we know about journal  
 03:51:30PM **17** voucher 127A?  
 03:51:32PM **18** MR. GUILDER: Objection; lack of foundation. I don't  
 03:51:34PM **19** believe we've shown or seen 127A.  
 03:51:36PM **20** THE COURT: Well, I think he's about to show it to us.  
 03:51:41PM **21** Go ahead.  
 03:51:41PM **22** THE WITNESS: Well, I'm just going to state that the  
 03:51:47PM **23** page here says that it says the word "missing."  
 03:51:49PM **24** THE COURT: Well, maybe he's not going to show it to  
 03:51:51PM **25** us.

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03:53:40PM **1 Q.** And there's a notation, as there was in the previous  
 03:53:44PM **2** document, on this document that indicates to see the reverse,  
 03:53:50PM **3** right?  
 03:53:50PM **4 A.** Right. Under IIM it says See Reverse, and also under extra  
 03:53:57PM **5** checks in the top middle of the page, yes.  
 03:54:00PM **6 Q.** Okay. So let's turn to the next image. And we see another  
 03:54:08PM **7** column for missing journal vouchers, correct?  
 03:54:11PM **8 A.** Yes. This is the reverse of that same page, and there are  
 03:54:14PM **9** additional missing journal vouchers listed.  
 03:54:18PM **10 Q.** And is 127A again identified?  
 03:54:20PM **11 A.** Yes.  
 03:54:23PM **12 Q.** Where is that?  
 03:54:24PM **13 A.** On the middle right of the page it shows the missing  
 03:54:27PM **14** journal voucher 127A and the various accounts for which  
 03:54:31PM **15** disbursements are being made from -- with that journal voucher.  
 03:54:35PM **16 Q.** And you mentioned three types of documents that you saw.  
 03:54:38PM **17** The next image is the third of those reports of Individual  
 03:54:43PM **18** Indian Monies balance, correct?  
 03:54:46PM **19 A.** Correct.  
 03:54:47PM **20 Q.** Turning to the next page in the exhibit, this is  
 03:54:56PM **21** correspondence, and again it is from GAO, correct?  
 03:54:58PM **22 A.** Right. This is correspondence from the GAO to the  
 03:55:02PM **23** superintendent again describing the exceptions they've raised in  
 03:55:08PM **24** the account.  
 03:55:08PM **25 Q.** And on the first page one of the exceptions are again

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03:51:57PM **1** MR. KIRSCHMAN: And your Honor, we will not be showing  
 03:52:00PM **2** specifically the journal voucher.  
 03:52:00PM **3** BY MR. KIRSCHMAN:  
 03:52:03PM **4 Q.** But if we could continue quickly, you also saw in your  
 03:52:06PM **5** review, Mr. Mushtaq, certain types of documents that GAO used in  
 03:52:12PM **6** reviewing the settlement packages. Let's turn to the next image  
 03:52:21PM **7** of this exhibit. Let's move on. There we go. And this is page  
 03:52:27PM **8** eighteen, I believe, of the exhibit. And what is this document?  
 03:52:35PM **9 A.** This is one of three forms that I've seen in packages with  
 03:52:40PM **10** reviewed ledgers or abstracts prepared by the GAO. This one is  
 03:52:45PM **11** the report of Individual Indian Monies receipts. I've also seen  
 03:52:49PM **12** a report of Individual Indian Monies disbursements and balances.  
 03:52:54PM **13 Q.** Okay. Now, the next image in this collection is what?  
 03:53:00PM **14 A.** This is the reverse of that same page.  
 03:53:05PM **15 Q.** The back of the page?  
 03:53:06PM **16 A.** Right. This is the back of the page. We've reviewed the  
 03:53:10PM **17** Individual Indian Monies receipts.  
 03:53:12PM **18 Q.** And looking at the document, it obviously addresses missing  
 03:53:16PM **19** journal vouchers, correct?  
 03:53:17PM **20 A.** Yes.  
 03:53:18PM **21 Q.** Okay. And do we see reference to journal voucher 127A?  
 03:53:25PM **22 A.** That is one of the listed missing journal vouchers, yes.  
 03:53:30PM **23 Q.** Turning to the next image, this is the report of Individual  
 03:53:38PM **24** Indian Monies disbursements you made reference to, correct?  
 03:53:40PM **25 A.** Correct.

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03:55:11PM **1** missing journal vouchers?  
 03:55:13PM **2 A.** That's correct.  
 03:55:14PM **3 Q.** And do we see reference to 127A that we've been following?  
 03:55:18PM **4 A.** Yes.  
 03:55:19PM **5 Q.** Okay. Turning to DX 504 at 25, what is this?  
 03:55:31PM **6 A.** This is a response from the superintendent back to GAO  
 03:55:36PM **7** concerning those exceptions.  
 03:55:38PM **8 Q.** And what does the response indicate?  
 03:55:41PM **9 A.** The response indicates that missing journal vouchers are  
 03:55:44PM **10** included.  
 03:55:44PM **11 Q.** Okay. And that includes 127A?  
 03:55:47PM **12 A.** Yes.  
 03:55:48PM **13 Q.** Okay. Now, you testified earlier that one of the reasons  
 03:55:53PM **14** you went back recently to review settlement packages was to look  
 03:56:00PM **15** for checks?  
 03:56:00PM **16 A.** That's correct.  
 03:56:01PM **17 Q.** And did you find any?  
 03:56:02PM **18 A.** I did.  
 03:56:03PM **19 Q.** Okay. Could we turn to DX 504 at 26? And can you describe  
 03:56:11PM **20** generally what this is?  
 03:56:12PM **21 A.** This is a bundle of checks included in one settlement  
 03:56:16PM **22** package for a three-month period.  
 03:56:18PM **23 Q.** Now, how did you find it located within the settlement  
 03:56:22PM **24** package?  
 03:56:22PM **25 A.** The check was -- the checks were bundled as you see here

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03:56:28PM **1** with all the other documents in the settlement package at  
 03:56:32PM **2** Archives.  
 03:56:32PM **3 Q.** So is it fair to describe it as these checks were pancaked  
 03:56:37PM **4** in the documents?  
 03:56:37PM **5 A.** These were, yes.  
 03:56:39PM **6 Q.** Turning to the next image, and this is?  
 03:56:43PM **7 A.** This is a bundle of checks from another settlement package.  
 03:56:48PM **8 Q.** And these checks state specifically in the left-hand side  
 03:56:52PM **9** Individual Indian Money, correct?  
 03:56:54PM **10 A.** Yes.  
 03:56:55PM **11 Q.** Okay. Turning to the next image of Exhibit DX 504, you  
 03:57:06PM **12** have laid on top of an abstract one of the checks you saw,  
 03:57:10PM **13** correct?  
 03:57:10PM **14 A.** Right.  
 03:57:11PM **15 Q.** What does this photo depict?  
 03:57:15PM **16 A.** In the background you have the abstract which we just  
 03:57:20PM **17** described. This check is a sample check from the first bundle  
 03:57:23PM **18** we looked at. This check is made out to account A9 as written  
 03:57:28PM **19** in the top left of the check, and on the abstract you can look  
 03:57:32PM **20** at account A9 and you can see the -- you can link together the  
 03:57:38PM **21** check number and the amount and you can see that there is a blue  
 03:57:44PM **22** check mark being made on both the check and the abstract.  
 03:57:45PM **23 Q.** Turning to the next page of DX 504, which is 29, what does  
 03:57:51PM **24** this show?  
 03:57:52PM **25 A.** This is the back of that check with the endorsement from

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03:59:39PM **1** correspondence from the GAO to the superintendent. This is in  
 03:59:43PM **2** the same package as the previous image we just saw and this is  
 03:59:47PM **3** the listing of those differences on an individual account level,  
 03:59:51PM **4** as I described before.  
 03:59:52PM **5 Q.** And as we run through these pages within the statement of  
 03:59:58PM **6** differences, generally could you explain to the Court what they  
 04:00:01PM **7** show?  
 04:00:02PM **8 A.** There's a column called Excess and a column called Short  
 04:00:07PM **9** and there are several exceptions being raised and various IIM  
 04:00:13PM **10** accounts are GAO-calculated. They were in excess or short by a  
 04:00:19PM **11** certain amount. You can also see some blue notes written within  
 04:00:23PM **12** the exceptions. Some of them say "adjusted" and they give a  
 04:00:26PM **13** date, and some of them say "received," or this one says "reply."  
 04:00:31PM **14 Q.** Now, during your trips how many photographs did you take?  
 04:00:38PM **15 A.** I've taken about 550 photographs.  
 04:00:42PM **16 Q.** Okay. Are these documents that we just discussed and  
 04:00:48PM **17** viewed with the Court similar to the documents you saw  
 04:00:50PM **18** throughout the GAO settlement packages you reviewed?  
 04:00:53PM **19 A.** These pictures are similar to the other, the rest of the  
 04:00:58PM **20** pictures I've taken, yes.  
 04:00:59PM **21 Q.** Okay.  
 04:01:00PM **22** MR. KIRSCHMAN: No further questions at this time.  
 04:01:04PM **23** THE COURT: Thank you.  
 04:01:27PM **24** MR. GUILDER: Justin Guilder for the record. I  
 04:01:29PM **25** represent the plaintiffs in this action.

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03:57:57PM **1** the individual. This endorsement is by thumbprint, and there  
 03:58:00PM **2** are witnesses signing witnesses to the thumbprint.  
 03:58:04PM **3 Q.** Okay. The next image on page 30 of DX 504 is another set  
 03:58:11PM **4** of correspondence between the GAO and the superintendent?  
 03:58:20PM **5 A.** Correct. This is from the GAO to the superintendent  
 03:58:26PM **6** raising exceptions in the account.  
 03:58:28PM **7 Q.** Okay. I'd like to turn your attention now to page 32. And  
 03:58:35PM **8** can you describe what this document is?  
 03:58:37PM **9 A.** We've seen this. This is again the report of Individual  
 03:58:45PM **10** Indian Monies receipts. It's one of the forms I'd see again in  
 03:58:48PM **11** a settlement package with the reviewed ledger or abstract.  
 03:58:54PM **12 Q.** The bottom of this page has a notation "See Attached  
 03:58:58PM **13** Pages." Do you see that?  
 03:58:59PM **14 A.** Yes.  
 03:58:59PM **15 Q.** We have not included those here, but did you review those  
 03:59:02PM **16** attached pages?  
 03:59:03PM **17 A.** Yes. I've reviewed those and taken pictures of them.  
 03:59:07PM **18 Q.** And can you describe to the Court just generally what was  
 03:59:10PM **19** attached to this document?  
 03:59:11PM **20 A.** There were several pages of handwritten notes where GAO was  
 03:59:18PM **21** pointing out overpayments and underpayments on an individual  
 03:59:24PM **22** account level.  
 03:59:25PM **23 Q.** Okay. Turning to the next image in DX 504 at page 33, can  
 03:59:33PM **24** you describe to the Court what this is?  
 03:59:34PM **25 A.** This is a statement of differences. It's included in

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04:01:29PM **1** CROSS-EXAMINATION.  
 04:01:29PM **2** BY MR. GUILDER:  
 04:01:30PM **3 Q.** Good afternoon, your Honor, good afternoon, Mr. Mushtaq.  
 04:01:33PM **4** I'm going to start off and ask you about this collection of  
 04:01:35PM **5** pictures first. I have some other questions about the report  
 04:01:38PM **6** you produced in March of 2007. And that report was about  
 04:01:43PM **7** essentially the same thing, the settlement of accounts; is that  
 04:01:46PM **8** correct?  
 04:01:46PM **9 A.** Yes.  
 04:01:46PM **10 Q.** So you went through a few many pictures and one of them  
 04:01:54PM **11** talked about the recapitulation, I believe?  
 04:01:57PM **12 A.** That's true.  
 04:01:58PM **13 Q.** Okay. And what's your understanding of that document?  
 04:02:01PM **14 A.** My understanding of the recapitulation is that it is an  
 04:02:05PM **15** aggregate level summary of the IIM accounts, the ledger or the  
 04:02:10PM **16** abstract.  
 04:02:12PM **17 Q.** Are you an accountant?  
 04:02:14PM **18 A.** No.  
 04:02:15PM **19 Q.** Were you assisted by an accounting firm when you produced  
 04:02:18PM **20** your report dated March 31, 2007?  
 04:02:22PM **21** MR. KIRSCHMAN: Objection, your Honor. We did not  
 04:02:24PM **22** address the report at all during his direct testimony.  
 04:02:27PM **23** THE COURT: That's right.  
 04:02:29PM **24** MR. GUILDER: Your Honor, this report bears directly  
 04:02:30PM **25** on this same evidence. He said that he only investigated this

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04:02:33PM **1** because he had originally written the report.

04:02:35PM **2** THE COURT: What does the report have to do with any

04:02:37PM **3** issue that we're dealing with today? I don't even know what

04:02:40PM **4** report you're talking about.

04:02:42PM **5** MR. GUILDER: If we could pull up the document and you

04:02:44PM **6** get a chance to look at it.

04:02:45PM **7** THE COURT: Who's offering the record in evidence?

04:02:47PM **8** MR. KIRSCHMAN: We are not, your Honor.

04:02:49PM **9** MR. GUILDER: This was introduced in the last trial.

04:02:51PM **10** It's a document in the administrative record.

04:02:53PM **11** THE COURT: I know that, but what does it have to do

04:02:56PM **12** with the issues we're dealing with?

04:02:58PM **13** MR. GUILDER: Report of the government monitoring of

04:03:01PM **14** the Indian special disbursing agents, which is the exact same

04:03:03PM **15** testimony he just gave, Mr. Mushtaq just presented to this

04:03:06PM **16** Court.

04:03:07PM **17** THE COURT: All he did was to show me a bunch of

04:03:09PM **18** documents as to which I expressed considerable doubt as to their

04:03:14PM **19** importance.

04:03:14PM **20** MR. GUILDER: If there are some moments in the report

04:03:16PM **21** that generally that may discuss his credibility about these, is

04:03:22PM **22** that okay if I go into that area?

04:03:24PM **23** THE COURT: Yes. If you want to go into credibility

04:03:27PM **24** about these reports you may, but I'm not going to -- that 207,

04:03:30PM **25** that 2007 report would be beyond the scope.

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04:04:52PM **1** Q. Could you give us an idea of the percentage of the checks

04:04:55PM **2** you saw in relation to the total number of checks that were

04:04:57PM **3** disbursed during this time period, 1890 to 1950?

04:05:01PM **4** A. I would not be able to tell you that.

04:05:02PM **5** Q. Okay. And how about the same thing for collections, you

04:05:11PM **6** saw collections in your review of these settlement accounts?

04:05:14PM **7** A. There are collection totals listed in the account current,

04:05:18PM **8** yes.

04:05:18PM **9** Q. Could you give us an aggregate total of the collections

04:05:20PM **10** during this period, 1890 to 1950?

04:05:22PM **11** A. No.

04:05:23PM **12** Q. So you similarly would not be able to say what percentage

04:05:26PM **13** you saw in relation to the total?

04:05:28PM **14** A. Percentage of what?

04:05:29PM **15** Q. Similarly, you would not be able to explain the collections

04:05:33PM **16** you saw as a percentage as it relates to the total collections?

04:05:37PM **17** A. True.

04:05:39PM **18** Q. There were some checks that you did see, though. If we

04:05:45PM **19** could look at photo number 28, please. And if we could zoom in

04:06:24PM **20** on the actual check. And do you see that that is on the

04:06:38PM **21** official credit of the superintendent of the particular Indian

04:06:42PM **22** agency? It's difficult to read, but do you see that, Mr.

04:06:46PM **23** Mushtaq?

04:06:46PM **24** A. That's what it says at the top of the check, yes.

04:06:48PM **25** Q. Okay. And do you know who controlled that account?

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04:03:33PM **1** MR. KIRSCHMAN: Credibility regarding the photos.

04:03:37PM **2** THE COURT: I don't know quite what he means by that,

04:03:41PM **3** but I am ready to be educated.

04:03:44PM **4** MR. GUILDER: Thank you, your Honor. Some of these

04:03:52PM **5** exact documents that he talked about the recapitulation, there

04:03:55PM **6** are references in that report, which is why.

04:03:57PM **7** THE COURT: It still doesn't open up that report to

04:04:00PM **8** cross-examination today. I'm not reading that report. I don't

04:04:02PM **9** know what that report has to do with this decision.

04:04:07PM **10** MR. GUILDER: I'll move on.

04:04:09PM **11** THE COURT: You can move on. This trial is still

04:04:16PM **12** about dollar numbers.

04:04:19PM **13** MR. GUILDER: Okay.

04:04:20PM **14** BY MR. GUILDER:

04:04:20PM **15** Q. Through your review are you able to establish a total

04:04:22PM **16** disbursement figure for Individual Indian Monies?

04:04:26PM **17** A. No.

04:04:27PM **18** Q. Did you see evidence of disbursements that would give a

04:04:33PM **19** total for the entire period of time that this review was in

04:04:36PM **20** process?

04:04:36PM **21** A. No.

04:04:37PM **22** Q. How many checks did you see?

04:04:40PM **23** A. I saw checks from three settlement packages last week and

04:04:46PM **24** I've seen bundles of checks. I wouldn't be able to tell you how

04:04:51PM **25** many from 2006.

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04:06:52PM **1** A. I wouldn't be able to say for sure. I believe it would be

04:06:57PM **2** the superintendent, as listed on the check.

04:06:59PM **3** Q. Okay. And so you assume that because this represents a

04:07:03PM **4** disbursement of Individual Indian Money, do you assume that,

04:07:07PM **5** that this represents a disbursement of Individual Indian Money?

04:07:11PM **6** A. I assume that's an account A9 as I am.

04:07:14PM **7** Q. Do you have any support for that statement?

04:07:17PM **8** A. Other than the fact that the account A9 is listed on the

04:07:20PM **9** abstract of Individual Indian Monies, no.

04:07:23PM **10** Q. So it's listed on this abstract. But you're not sure who

04:07:28PM **11** this check was paid to?

04:07:29PM **12** A. It says "Paid to the order of Apache," which is the name of

04:07:33PM **13** the individual Indian account on the abstract.

04:07:37PM **14** Q. So this is actually paid to an account?

04:07:39PM **15** A. This is paid to an individual. Apache is the individual

04:07:45PM **16** whose account number is A9.

04:07:46PM **17** Q. And do we see Apache's signature anywhere on this check?

04:07:51PM **18** A. No. This was endorsed by thumb print.

04:07:54PM **19** Q. By thumb print.

04:07:56PM **20** A. The next picture shows that.

04:07:58PM **21** Q. Oh, the next picture shows that. Could we see the next

04:08:02PM **22** picture? Was there supporting documentation in this settlement

04:08:16PM **23** of accounts that track the thumb prints so that the GAO could

04:08:20PM **24** determine the accurate disbursements?

04:08:22PM **25** A. There are two witnesses to the check. Beyond that I can't

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04:08:26PM **1** tell you. There are two witnesses.

04:08:29PM **2 Q.** Do you know who the witnesses to the checks are?

04:08:31PM **3 A.** I can't read that, no.

04:08:32PM **4 Q.** Have you ever seen instances where the superintendent

04:08:35PM **5** himself or herself witnessed this disbursement?

04:08:39PM **6 A.** I can't say that I did, no.

04:08:43PM **7 Q.** Okay. Let me move back to -- I understand you couldn't

04:08:50PM **8** establish a total based on what you saw, but do you understand

04:08:53PM **9** that there are totals from this period being used, presented by

04:08:59PM **10** the government?

04:09:00PM **11 A.** I think so, yes.

04:09:05PM **12 Q.** Have you read, have you seen any of the documentation that

04:09:09PM **13** essentially gives us a through-put number so to speak, the

04:09:13PM **14** Defendants' Exhibit 371 or Attachment A of the plaintiffs?

04:09:17PM **15 A.** I've seen it presented in court, but I'm not familiar with

04:09:22PM **16** them.

04:09:22PM **17 Q.** You're not familiar with it. Could we pull up DX 372? And

04:09:35PM **18** if we could go to page ten, if we could zoom in on the upper

04:09:45PM **19** box. Okay. And that shows a listing of fiscal year-end

04:09:49PM **20** receipts; is that correct, Mr. Mushtaq, do you see that?

04:09:54PM **21 A.** That's what it looks like.

04:09:54PM **22 Q.** And these years, these fiscal years, are they at the same

04:09:57PM **23** time period of the settlement accounts?

04:10:00PM **24 A.** They 1934 to 1951 would correspond with the GAO settlement

04:10:07PM **25** period, yes.

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04:11:32PM **1** condition of these settlement of accounts?

04:11:35PM **2** MR. KIRSCHMAN: Same objection, your Honor.

04:11:37PM **3** THE COURT: Response?

04:11:39PM **4** MR. GUILDER: Your Honor, he said they're in

04:11:40PM **5** relatively good condition. I would just like to understand how

04:11:43PM **6** he came to that. I believe if we looked at a document we have

04:11:48PM **7** contradictory evidence, if I understand.

04:11:55PM **8** THE COURT: Not to be too blunt about it, but so what?

04:12:00PM **9** MR. GUILDER: Well, I believe that -- unless the

04:12:01PM **10** exercise was simply to say there are pictures and there can be

04:12:05PM **11** no total from these documents, I mean, if there's suggestion

04:12:08PM **12** that there can be a total found from these settlement of

04:12:11PM **13** accounts, perhaps given time, as other witnesses have testified

04:12:14PM **14** to, I think it bears directly on that point, about whether an

04:12:17PM **15** actual total can be found.

04:12:19PM **16** THE COURT: Counsel, I think you're making much more,

04:12:21PM **17** trying to read much more into this evidence than there was.

04:12:27PM **18** I've already tried to make it pretty clear that I don't know why

04:12:31PM **19** we even saw these today, so you're kind of kicking in an open

04:12:36PM **20** door.

04:12:36PM **21** MR. GUILDER: Well, then, no further questions, your

04:12:38PM **22** Honor.

04:12:38PM **23** THE COURT: Okay.

04:12:39PM **24** MR. KIRSCHMAN: No redirect.

04:12:40PM **25** THE COURT: All right.

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04:10:08PM **1 Q.** Okay. And it's my understanding that you said that these

04:10:10PM **2** settlement of account packages that you reviewed, you couldn't

04:10:13PM **3** establish an aggregate total from those; is that correct?

04:10:16PM **4 A.** From what I looked at, no.

04:10:19PM **5 Q.** Do you believe that you could get an aggregate total from

04:10:25PM **6** all of these settlement packages?

04:10:27PM **7** MR. KIRSCHMAN: Objection; beyond direct.

04:10:29PM **8** THE COURT: Sustained.

04:10:34PM **9** BY MR. GUILDER:

04:10:34PM **10 Q.** Well, let's move on to another topic. You showed on one of

04:10:39PM **11** the checks -- well, actually, what's your understanding of the

04:10:44PM **12** condition of these settlement of packages?

04:10:46PM **13 A.** What do you mean by "condition"?

04:10:49PM **14 Q.** The physical condition, how well preserved they are.

04:10:53PM **15 A.** They are maintained at Archives. It's my understanding

04:10:59PM **16** Archives maintains the records very well.

04:11:02PM **17 Q.** Very well. And did you know where these settlement of

04:11:05PM **18** accounts were before you engaged on this project?

04:11:09PM **19 A.** Before I started with OHTA I was not aware of the

04:11:13PM **20** settlement of accounts, no.

04:11:15PM **21 Q.** And did Dr. Angel of Morgan Angel explain to you or your

04:11:19PM **22** supervisors where these settlement of accounts could be found?

04:11:24PM **23 A.** Morgan Angel assisted us in finding settlement packages,

04:11:28PM **24** yes.

04:11:29PM **25 Q.** Did you ever have an understanding from Dr. Angel about the

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04:12:52PM **1** Thank you, Mr. Mushtaq. You're excused.

04:13:01PM **2** (Witness excused at about 4:13 p.m.)

04:13:01PM **3** MR. WARSHAWSKY: Good afternoon, your Honor.

04:13:03PM **4** THE COURT: Good afternoon.

04:13:05PM **5** MR. WARSHAWSKY: The government's next witness is

04:13:07PM **6** Frank Banda.

04:13:08PM **7** COURTROOM DEPUTY: Do you solemnly swear that the

04:13:10PM **8** testimony you should give to the Court in this case now on trial

04:13:13PM **9** will be the truth, the whole truth and nothing but the truth so

04:13:15PM **10** help you God?

04:13:16PM **11** MR. BANDA: Yes.

04:13:16PM **12** COURTROOM DEPUTY: Thank you. Please be seated.

04:13:16PM **13** FRANK BANDA, WITNESS FOR THE DEFENDANTS, SWORN

04:13:16PM **14** DIRECT EXAMINATION.

04:13:16PM **15** BY MR. WARSHAWSKY:

04:13:47PM **16 Q.** Good afternoon, Mr. Banda.

04:13:48PM **17 A.** Good afternoon.

04:13:49PM **18 Q.** State your full name for the record, please.

04:13:51PM **19 A.** Frank Banda.

04:13:51PM **20 Q.** Where do you reside?

04:13:53PM **21 A.** In Brookville, Maryland.

04:13:56PM **22 Q.** What do you do for a living?

04:13:57PM **23 A.** I'm an accountant.

04:13:59PM **24 Q.** Are you affiliated with a particular organization?

04:14:00PM **25 A.** Yes. I am a principal with Resnick Group. It's a national

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04:14:05PM **1** C.P.A. firm. I'm a certified public accountant.

04:14:08PM **2 Q.** Would you pull up Defendants' Exhibit 508, please? Mr.

04:14:22PM **3** Banda, are you familiar with DX 508?

04:14:25PM **4 A.** Yes, I am.

04:14:26PM **5 Q.** And what is it, please?

04:14:27PM **6 A.** It's my resume.

04:14:28PM **7 Q.** Does this accurately describe your educational and

04:14:32PM **8** professional background as a certified public accountant?

04:14:35PM **9 A.** Yes, it does.

04:14:36PM **10** MR. WARSHAWSKY: Your Honor, we're going to offer Mr.

04:14:39PM **11** Banda to provide expert opinions on the subjects of accounting,

04:14:42PM **12** auditing, and financial review procedures, mindful of the

04:14:47PM **13** Judge's comments, your comments earlier with regard to Mr.

04:14:51PM **14** Mushtaq. We'll make this as quickly as we can. Mr. Banda will

04:14:55PM **15** be testifying regarding reviews conducted by Resnick Group

04:15:01PM **16** resulting in two reports in 2006 and subsequent reviews that

04:15:05PM **17** he's done with respect to the settlement packages for the

04:15:08PM **18** Treasury and GAO settlement packages, and his opinions will go

04:15:15PM **19** to the subject of the regularity of reviews of disbursing

04:15:22PM **20** agents, the oversight by first Treasury and GAO, and this is

04:15:27PM **21** important with respect to the expressed views that money coming

04:15:31PM **22** into the system somehow could leak out. That's not what the

04:15:35PM **23** reviews indicate, so that is why we'll offer Mr. Banda.

04:15:41PM **24** MR. SMITH: Your Honor, we have no objection to his

04:15:42PM **25** qualifications as an accountant. We do have an objection to

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04:17:07PM **1** THE COURT: I want him to describe it. You ask the

04:17:09PM **2** questions.

04:17:10PM **3** MR. WARSHAWSKY: Okay. Very good.

04:17:12PM **4** BY MR. WARSHAWSKY:

04:17:12PM **5 Q.** Mr. Banda, would you provide a general overview of

04:17:17PM **6** Resnick's engagement with OHTA?

04:17:19PM **7 A.** Sure. In April of 2005 Resnick was asked to perform a

04:17:24PM **8** pilot review of GAO settlement packages by OHTA, and in that

04:17:31PM **9** review gained an understanding of what the settlement packages

04:17:36PM **10** were, the contents of those settlement packages, and what we put

04:17:40PM **11** together was a work program so that we could review more of

04:17:43PM **12** those settlement packages in much more detail, which occurred

04:17:47PM **13** later in that summer. We reviewed -- I'm sorry.

04:17:52PM **14 Q.** Yes. Did Resnick subsequently conduct a review of the

04:17:56PM **15** settlement packages for the GAO and Treasury?

04:17:58PM **16 A.** Yes.

04:17:59PM **17 Q.** And how were those settlement packages selected?

04:18:03PM **18 A.** We were provided a sample from NORC.

04:18:07PM **19 Q.** And did you have discussions with NORC as to how that

04:18:13PM **20** sample was?

04:18:14PM **21 A.** It was a random sample that they selected from a population

04:18:17PM **22** that they had obtained.

04:18:20PM **23 Q.** And do you recall how many settlement packages were

04:18:24PM **24** selected by NORC for review?

04:18:26PM **25 A.** 90 GAO and 90 Treasury.

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04:15:46PM **1** continuing testimony on settlement packages. I think it's

04:15:49PM **2** irrelevant. It's cumulative. Judge Lamberth has already ruled

04:15:53PM **3** on this issue. Basically we're having cumulative, irrelevant

04:15:55PM **4** evidence.

04:16:00PM **5** MR. WARSHAWSKY: Judge Lamberth ruled on whether the

04:16:02PM **6** process conducted by the Treasury and GAO constituted the type

04:16:06PM **7** of accounting or audits contemplated by the 1994 Act with

04:16:10PM **8** respect to Individual Indian Money accounts and whether or not

04:16:14PM **9** that would discharge the government's duty under the '94 Act.

04:16:18PM **10** What we're dealing with now in this case is a question of

04:16:21PM **11** whether money coming into the system is accounted for, and to

04:16:25PM **12** the extent, and particularly when we're dealing with a period

04:16:28PM **13** from 1890 to 1951, the fact that there was a regular review

04:16:34PM **14** process --

04:16:36PM **15** THE COURT: I'll hear a little bit of it, but first I

04:16:39PM **16** want to know how much of this Mr. Banda has covered. If he's

04:16:43PM **17** dipped into a few settlement packages and is prepared to talk

04:16:46PM **18** about what those few settlement packages look like, well, that

04:16:50PM **19** will have whatever weight it has.

04:16:52PM **20** MR. WARSHAWSKY: Very good, your Honor, and I can

04:16:55PM **21** summarize that right now.

04:16:56PM **22** THE COURT: You better give me a foundation right now.

04:16:58PM **23** You might wind up calling Mr. Mushtaq back to the stand.

04:17:04PM **24** MR. WARSHAWSKY: I'm sorry. Do you want me to

04:17:06PM **25** describe it?

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04:18:29PM **1 Q.** And so did Resnick Group subsequently conduct its review of

04:18:35PM **2** the 180 randomly-sampled packages?

04:18:37PM **3 A.** Yes.

04:18:44PM **4** MR. SMITH: I want to know how many he reviewed. I

04:18:46PM **5** think that was the question to this gentleman, not how many

04:18:52PM **6** Resnick reviewed.

04:18:53PM **7** THE COURT: Why don't you kind of store up those

04:18:56PM **8** objections until he's finished what he thinks is laying a

04:19:02PM **9** foundation and then you can chip in and tell me where it's not

04:19:04PM **10** good enough.

04:19:06PM **11** MR. WARSHAWSKY: Will you put up Defendants' Exhibit

04:19:10PM **12** 510, please?

04:19:10PM **13** BY MR. WARSHAWSKY:

04:19:10PM **14 Q.** Mr. Banda, do you recognize Defendants' Exhibit 510?

04:19:14PM **15 A.** Yes.

04:19:14PM **16 Q.** And what is it, please?

04:19:15PM **17 A.** This is a report that we prepared from our work talking

04:19:22PM **18** about the work that we did for the review of the GAO settlement

04:19:27PM **19** packages.

04:19:28PM **20 Q.** And it's dated June 6, 2006, correct?

04:19:31PM **21 A.** Yes.

04:19:32PM **22 Q.** And why is your name indicated under the From column, From

04:19:38PM **23** section?

04:19:38PM **24 A.** This is work that was performed by Resnick Group. As the

04:19:43PM **25** engagement principal I am responsible for all work product that

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04:19:46PM **1** goes to our client, so I review the work papers that are  
 04:19:51PM **2** prepared by my staff and review the reports that are prepared by  
 04:19:56PM **3** my staff and make comments on those.  
 04:19:58PM **4** **Q.** As the engagement principal are you ultimately responsible  
 04:20:01PM **5** for the Resnick report?  
 04:20:02PM **6** **A.** Yes.  
 04:20:02PM **7** **Q.** And similarly, if you would put up Defendants' Exhibit 511.  
 04:20:17PM **8** And maybe blow it up so we can actually read it. What is  
 04:20:23PM **9** Defendants' Exhibit 511?  
 04:20:24PM **10** **A.** It's similar to the last report, but it covers the period  
 04:20:28PM **11** from 1890 to 1920 for when Treasury was responsible for  
 04:20:34PM **12** reviewing the providing the settlement for the account currents.  
 04:20:42PM **13** **Q.** This is October, October 31, 2006 report, correct?  
 04:20:47PM **14** **A.** Yes.  
 04:20:47PM **15** **Q.** As the engagement principal were you also ultimately  
 04:20:51PM **16** responsible for this report?  
 04:20:52PM **17** **A.** Yes.  
 04:20:52PM **18** **Q.** What did you do before signing this report?  
 04:20:53PM **19** **A.** I reviewed all of the work papers that were prepared by our  
 04:20:57PM **20** staff and reviewed this report in detail and compared that, the  
 04:21:02PM **21** report to the work papers that were prepared by our staff.  
 04:21:05PM **22** **Q.** You've talked about --  
 04:21:07PM **23** THE COURT: Mr. Banda, both this document and the one  
 04:21:10PM **24** previous talk about nonrandom samples.  
 04:21:13PM **25** THE WITNESS: Your Honor, this is a little background

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04:22:38PM **1** Treasury packages.  
 04:22:40PM **2** **A.** Well, we had developed a work plan from our pilot. The  
 04:22:45PM **3** purpose of our work was to look through these packages to see  
 04:22:50PM **4** whether or not they were complete, meaning that they contained  
 04:22:54PM **5** the certificate of settlement, the account currents, and  
 04:22:58PM **6** supporting information. We looked to the condition of these  
 04:23:02PM **7** records. We wanted to look at correspondence to gain an  
 04:23:06PM **8** understanding of the type of -- correspondence that took place  
 04:23:12PM **9** in the reviews of the account currents and the settlement and  
 04:23:18PM **10** when the settlements were issued, and we tied in the data, the  
 04:23:23PM **11** underlying data throughout those packages and made copies of  
 04:23:27PM **12** that information so our work papers contained copies of certain  
 04:23:31PM **13** of these items: the certificates of settlement, the account  
 04:23:36PM **14** currents, and certain of the supporting informations.  
 04:23:39PM **15** **Q.** And when you reviewed work papers in connection with your  
 04:23:43PM **16** review as engagement principal, did that include reviewing  
 04:23:47PM **17** excerpts from the settlement packages?  
 04:23:48PM **18** **A.** Yes.  
 04:23:48PM **19** **Q.** And let's go to the conclusion of this on page five,  
 04:23:55PM **20** Defendants' Exhibit 511. Would you summarize your conclusion  
 04:23:59PM **21** with respect to the Treasury packages?  
 04:24:01PM **22** **A.** Our conclusion is that the -- that the Treasury certified  
 04:24:07PM **23** and examined the settlement pages for those that we reviewed.  
 04:24:12PM **24** **Q.** And when you talked about Treasury certifying the packages  
 04:24:17PM **25** what did you mean?

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04:21:17PM **1** about the pilot that was done to gain an understanding of the  
 04:21:26PM **2** settlement packages. It was just a little bit of background  
 04:21:26PM **3** offered in these reports. The rest of the report describes our  
 04:21:26PM **4** work done on the '90 random samples for both, in this case,  
 04:21:30PM **5** Treasury, and in the previous report the GAO settlement  
 04:21:34PM **6** packages.  
 04:21:35PM **7** THE COURT: Yes.  
 04:21:36PM **8** MR. WARSHAWSKY: Your Honor, if I can assist here.  
 04:21:38PM **9** We're looking right now at Defendants' Exhibit 511.  
 04:21:38PM **10** BY MR. WARSHAWSKY:  
 04:21:41PM **11** **Q.** The background section describing the nonrandom sample, is  
 04:21:46PM **12** that the pilot study that you talked about earlier?  
 04:21:49PM **13** **A.** Yes.  
 04:21:50PM **14** **Q.** And then referring further down in the Scope of Work  
 04:21:53PM **15** section, there's a reference to reviewing a random sample. Is  
 04:21:59PM **16** that the 90 packages that you subsequently talked about?  
 04:22:02PM **17** **A.** Yes.  
 04:22:02PM **18** **Q.** And the report that you've issued here and similarly  
 04:22:08PM **19** Defendants' Exhibit 510, is that the report based on the random  
 04:22:14PM **20** sample?  
 04:22:14PM **21** **A.** Yes.  
 04:22:14PM **22** **Q.** Let's go back -- we'll keep it up here, 511. Can you  
 04:22:25PM **23** describe the procedures -- why don't you go to the second page  
 04:22:30PM **24** here of this document? Describe the procedures that you  
 04:22:35PM **25** undertook referring to Resnick in performing your review of the

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04:24:18PM **1** **A.** Our understanding of their certification is that they  
 04:24:22PM **2** examined the account current that was prepared and their  
 04:24:26PM **3** underlying data to ensure that it was correct and accurate, and  
 04:24:33PM **4** if there were differences they were brought to the attention of  
 04:24:36PM **5** the Office of Indian Affairs and the Indian disbursing agent.  
 04:24:41PM **6** **Q.** In the course of reviewing these packages and the work  
 04:24:44PM **7** papers, how small a difference did they look at?  
 04:24:49PM **8** **A.** The one that comes to mind is there was a 90-cent  
 04:24:55PM **9** difference that I recall.  
 04:24:56PM **10** **Q.** Okay. The process that you've described for the Treasury,  
 04:25:01PM **11** did that also apply with respect to your GAO review?  
 04:25:04PM **12** **A.** Yes, that's correct.  
 04:25:05PM **13** **Q.** And were your conclusions similar for the GAO review?  
 04:25:09PM **14** **A.** Yes.  
 04:25:09PM **15** **Q.** Mr. Banda, since the 2006 reports were issued by Resnick  
 04:25:15PM **16** have you conducted any additional work with regard to the  
 04:25:17PM **17** settlement packages?  
 04:25:18PM **18** **A.** Yes, I have.  
 04:25:20PM **19** **Q.** Describe what that is, please.  
 04:25:22PM **20** **A.** I have back in April I went back to the National Archives  
 04:25:27PM **21** and reviewed four settlement packages. I reviewed six  
 04:25:36PM **22** electronic packages that were provided by Morgan Angel who had  
 04:25:40PM **23** taken photocopies of all those, of approximately thirteen  
 04:25:44PM **24** packages, and then I went back through and we reviewed the work  
 04:25:50PM **25** papers, 48 GAO settlement package work papers and 45 Treasury

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04:25:59PM **1** settlement package work papers.

04:25:59PM **2 Q.** So you reviewed slightly over half of your original work

04:26:02PM **3** papers from the 2006 work, correct?

04:26:04PM **4 A.** That's correct.

04:26:05PM **5 Q.** As well as the Morgan Angel materials?

04:26:08PM **6 A.** Yes.

04:26:08PM **7 Q.** And materials that you more recently reviewed out of

04:26:12PM **8** College Park?

04:26:12PM **9 A.** That's correct.

04:26:14PM **10 Q.** Did you review any document to gain an understanding as to

04:26:18PM **11** the nature of the work that GAO and Treasury auditors were

04:26:21PM **12** performing?

04:26:21PM **13 A.** Yes. These documents, we did not have these document at

04:26:26PM **14** the time that we were performing our work back in 2005 and 2006.

04:26:30PM **15** The one was the bookkeeping and accounting regulations from the

04:26:35PM **16** Office of Indian Affairs.

04:26:37PM **17 Q.** Let me go ahead and put up Defendants' Exhibit 509. Is

04:26:51PM **18** this the document that you were just referring to, sir?

04:26:54PM **19 A.** Yes. We reviewed the excerpts from this document.

04:26:59PM **20 Q.** And I don't want to go through the whole thing, but a

04:27:01PM **21** couple things I want to ask you about. Would you go to page

04:27:04PM **22** four, please? And highlight paragraph 280 down at the bottom,

04:27:10PM **23** please. First of all, before you highlight that, there's a

04:27:13PM **24** section captioned Individual Monies. How did you utilize this

04:27:17PM **25** section in gaining an understanding of what was done?

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04:28:54PM **1 Q.** If they couldn't account for it, they had to pay for it?

04:28:57PM **2 A.** That's correct. That was our understanding.

04:29:00PM **3 Q.** Would you turn to the last page of this document, please,

04:29:02PM **4** and focus on the section at the bottom captioned "Traveling

04:29:05PM **5** Auditors"? Was there anything -- first of all, let me ask you,

04:29:14PM **6** what is your understanding of what was meant by a "traveling

04:29:17PM **7** auditor"?

04:29:17PM **8 A.** This is someone from the Office of Indian Affairs who

04:29:22PM **9** would -- this is what our understanding was -- that would come

04:29:25PM **10** out and audit and inspect the records, and as they stated here,

04:29:31PM **11** the safe vaults and cash boxes of the Indian disbursing agent,

04:29:36PM **12** and what this section, what we thought was very important is

04:29:39PM **13** that these Indian disbursing agents must give free and

04:29:45PM **14** unhampered access to all this information to traveling auditors.

04:29:49PM **15** Again another stated policy and procedure hopefully, what we

04:29:53PM **16** refer to as holding people accountable, and, you know, it

04:30:01PM **17** tells -- it describes what an Indian disbursing agent has to do

04:30:05PM **18** with respect to opening its books to an auditor.

04:30:09PM **19 Q.** Let me ask you to refer to Defendants' Exhibit 256. Mr.

04:30:24PM **20** Banda, was this another document that you reviewed in gaining an

04:30:27PM **21** understanding of the audit work procedures?

04:30:29PM **22 A.** Yes. We reviewed this document.

04:30:34PM **23 Q.** What is it, by the way?

04:30:35PM **24 A.** This is the annual report that was prepared by the GAO for

04:30:38PM **25** the fiscal year ending June 30th, 1939, and in the report it

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04:27:20PM **1 A.** Section 271, is that what you're referring to?

04:27:25PM **2 Q.** No, the whole section, Individual Monies.

04:27:27PM **3 A.** We just wanted to see that these are the type of activities

04:27:30PM **4** that were taking place in the accounts. We had a general

04:27:33PM **5** understanding that this was the type of activity taking place.

04:27:37PM **6** This just spelled out each of those activities.

04:27:40PM **7 Q.** Okay. And why don't we go down to 280 at the bottom. Was

04:27:54PM **8** this paragraph one that you found particularly important in your

04:27:58PM **9** analysis?

04:27:59PM **10 A.** Well, I thought it was important. One of the things that I

04:28:02PM **11** thought was interesting in reviewing the settlement packages on

04:28:06PM **12** the account currents, there was always a certification by the

04:28:10PM **13** Indian disbursing agent, and we felt like seeing this paragraph,

04:28:16PM **14** it was -- there was a stated control in place holding the Indian

04:28:20PM **15** disbursing agent personally responsible for the funds that they

04:28:24PM **16** were accounting for.

04:28:25PM **17 Q.** Is that something you see typically in your work as an

04:28:28PM **18** accountant?

04:28:29PM **19 A.** Well, we look for internal controls, we look for -- when we

04:28:33PM **20** perform audits we review the system of internal controls of a

04:28:37PM **21** company, how many times the policies and procedures will guide

04:28:40PM **22** us as to what those controls are, and as part of our work we

04:28:44PM **23** test our controls, but this appeared to be a very strong control

04:28:49PM **24** that at the Office of Indian Affairs put in place to hold these

04:28:51PM **25** Indian disbursing agents accountable.

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04:30:43PM **1** describes processes that we observed in reviewing the settlement

04:30:49PM **2** packages with respect to what GAO -- the process that the Office

04:30:57PM **3** of the Indian Affairs had to go through in submitting its

04:31:01PM **4** information to the GAO for examination and settlement.

04:31:05PM **5 Q.** And I want to scale back what I was going to cover with you

04:31:11PM **6** just to hit a couple of points, if I may. Would you go to page

04:31:15PM **7** seven, please, and in the middle of the first column there's a

04:31:23PM **8** paragraph that begins, Disbursing agents -- no, it's not that

04:31:28PM **9** big. A little bit further down. No. Yes. That's good enough.

04:31:33PM **10** The paragraph, Disbursing agents are held strictly

04:31:36PM **11** accountable under their bonds. Do you see that?

04:31:38PM **12 A.** Yes.

04:31:39PM **13 Q.** Again, was that something you considered?

04:31:42PM **14 A.** Again, it's consistent with the policy in tribal, to hold

04:31:48PM **15** the people, the Indian disbursing agents personally accountable

04:31:53PM **16** for all the funds that come into their possession.

04:31:55PM **17 Q.** By the way, do you have an understanding as to whether this

04:31:58PM **18** policy applied simply to Indian disbursing agents or other

04:32:02PM **19** disbursing agents?

04:32:04PM **20 A.** I don't know if it applied to other than Indian disbursing

04:32:07PM **21** agents.

04:32:07PM **22 Q.** I'll take that as a no. And would you turn to page

04:32:20PM **23** fourteen, please, and highlight the section on the left-hand

04:32:33PM **24** side regarding Individual Indian Monies. Did you consider this

04:32:39PM **25** section in gaining an understanding of the work performed?

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04:32:42PM **1** **A.** Yes. In the section we could not verify any evidence as to  
 04:32:51PM **2** the second sentence when it talks about the audit consists of a  
 04:32:56PM **3** termination as to compliance of laws, regulations and decisions  
 04:32:59PM **4** governing the expenditure of Indian monies. But we saw evidence  
 04:33:02PM **5** of an accounting of collections and disbursements for the  
 04:33:05PM **6** account of the individual Indian.  
 04:33:09PM **7** MR. SMITH: Objection, your Honor, motion to strike.  
 04:33:11PM **8** We've already had a ruling on that issue that there has been no  
 04:33:14PM **9** accounting of individual Indian funds during this process.  
 04:33:17PM **10** THE COURT: I think I understand that, Mr. Smith, but  
 04:33:27PM **11** we saw evidence of an accounting of collections and  
 04:33:30PM **12** disbursements for the account of the individual Indian. We're  
 04:33:37PM **13** not talking about accounting of all the IIM fund. We're talking  
 04:33:41PM **14** about review of one single account, are we not, Mr. Warshawsky?  
 04:33:45PM **15** MR. WARSHAWSKY: We're talking about the review of the  
 04:33:48PM **16** accounts of disbursing agents. In this case as we'll go through  
 04:33:53PM **17** very quickly papers related to the review of one of the  
 04:33:58PM **18** disbursing agents.  
 04:34:01PM **19** THE COURT: Let's not quibble about whether a  
 04:34:05PM **20** settlement package equals an accounting, okay. Let's just find  
 04:34:08PM **21** out what happened, and I will edit the word "accounting" in  
 04:34:11PM **22** accordance with the law of the case.  
 04:34:14PM **23** MR. WARSHAWSKY: Thank you, your Honor.  
 04:34:16PM **24** BY MR. WARSHAWSKY:  
 04:34:16PM **25** **Q.** Why don't we move on to Defendants' Exhibit 243 and show

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04:35:50PM **1** **A.** A person who is signing this is pretty much saying that  
 04:35:54PM **2** this is, this information is complete and accurate to the best  
 04:35:57PM **3** of their knowledge.  
 04:35:58PM **4** **Q.** Is that the disbursing agent's certification?  
 04:36:02PM **5** **A.** Yes.  
 04:36:02PM **6** **Q.** And the disbursing agent and the superintendent were the  
 04:36:05PM **7** same; is that right?  
 04:36:06PM **8** **A.** Yes.  
 04:36:06PM **9** **Q.** And on this document did you notice any marks such as  
 04:36:15PM **10** you've heard the reference during Mr. Mushtaq's testimony to tic  
 04:36:20PM **11** marks?  
 04:36:20PM **12** **A.** Yes. It appears that balances were checked against  
 04:36:24PM **13** something. We don't know exactly what they were checked  
 04:36:27PM **14** against, but it appears someone was checking the information and  
 04:36:29PM **15** then there was a stamp that said "all pencil changes were made  
 04:36:32PM **16** by the General Accounting Office," and it was signed off on by  
 04:36:35PM **17** one of their auditors.  
 04:36:36PM **18** **Q.** As an auditor are tic marks something you see in your work?  
 04:36:41PM **19** **A.** Yes.  
 04:36:41PM **20** **Q.** Why do you make or utilize tic marks?  
 04:36:44PM **21** **A.** Tic marks are an indication of the audit procedure are the  
 04:36:48PM **22** evidence that was found to support the information on the work  
 04:36:50PM **23** paper.  
 04:36:51PM **24** **Q.** Okay. And you are referring to the box near the bottom  
 04:36:56PM **25** about, all pencil changes made by the GAO. What, if any,

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04:34:23PM **1** the first page, please. Now, you were sitting in court during  
 04:34:29PM **2** Mr. Mushtaq's testimony, right?  
 04:34:32PM **3** **A.** Yes.  
 04:34:32PM **4** **Q.** So you probably have seen this very recently. This is the  
 04:34:36PM **5** settlement package for an A.G. Wilson?  
 04:34:39PM **6** **A.** Yes.  
 04:34:40PM **7** **Q.** And is this one of the packages that you reviewed in  
 04:34:43PM **8** connection with your analysis here?  
 04:34:44PM **9** **A.** Yes.  
 04:34:45PM **10** **Q.** And I'd like to ask you about a few of the pages in here.  
 04:34:49PM **11** Let's go to pages 44 and 45. 45 you can just show very briefly  
 04:35:04PM **12** and then we'll jump back to 44. It looks like it's all part of  
 04:35:07PM **13** the same document.  
 04:35:07PM **14** **A.** Yes. It's part of the account current.  
 04:35:11PM **15** **Q.** And what is an account current?  
 04:35:13PM **16** **A.** The account current is a summary prepared by the Indian  
 04:35:19PM **17** disbursing agent of the balance from the previous period plus  
 04:35:25PM **18** the receipts less the payments in their control for that period  
 04:35:29PM **19** of time.  
 04:35:30PM **20** **Q.** Okay. And down near the bottom right-hand corner, or  
 04:35:36PM **21** actually it's the bottom section that says "I certify." Do you  
 04:35:39PM **22** see that?  
 04:35:40PM **23** **A.** Yes.  
 04:35:41PM **24** **Q.** What is your understanding of what that certification  
 04:35:50PM **25** represents?

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04:37:00PM **1** significance did you attribute to that?  
 04:37:03PM **2** **A.** We couldn't determine for sure, but the tic marks seem to  
 04:37:10PM **3** be a check that may have been done by the GAO.  
 04:37:15PM **4** MR. SMITH: Objection, your Honor.  
 04:37:16PM **5** THE COURT: I'm going to take judicial notice of what  
 04:37:18PM **6** a tic mark means. Move on.  
 04:37:21PM **7** MR. WARSHAWSKY: Thank you.  
 04:37:22PM **8** BY MR. WARSHAWSKY:  
 04:37:22PM **9** **Q.** If you can go to page 45, please, lower right-hand corner.  
 04:37:29PM **10** There's a signature under a box that says Commissioner of Indian  
 04:37:34PM **11** Affairs. Do you have an understanding as to what's indicated  
 04:37:37PM **12** there?  
 04:37:37PM **13** **A.** Yes. What we observed is that the account current is  
 04:37:41PM **14** prepared by the Indian disbursing agent. It is then submitted  
 04:37:45PM **15** to the Office of Indian Affairs, who then examines it and that  
 04:37:50PM **16** examination, once it's complete, is signed off on this schedule,  
 04:37:57PM **17** excuse me, on this page, 45, in this case the Commissioner of  
 04:38:00PM **18** Indian Affairs.  
 04:38:01PM **19** **Q.** Okay. Let's move through these quickly here. Page 52, Mr.  
 04:38:13PM **20** Banda, we're walking through this particular package. Now what  
 04:38:16PM **21** is page 352?  
 04:38:17PM **22** **A.** This is our correspondence from the Office of Indian  
 04:38:20PM **23** Affairs to the superintendent, the Indian disbursing agent,  
 04:38:26PM **24** letting them know that their account has been administratively  
 04:38:29PM **25** examined and transmitted to the GAO. However, there were two

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04:38:34PM **1** exceptions noted in their review.

04:38:35PM **2 Q.** Now, in the course of your review did you gain an

04:38:39PM **3** understanding as to whether there were two layers of review, in

04:38:45PM **4** other words, Indian Affairs before GAO?

04:38:45PM **5 A.** Yes.

04:38:45PM **6 Q.** And what did Indian Affairs do?

04:38:47PM **7 A.** Indian Affairs reviewed the underlying information

04:38:51PM **8** supporting the account current, and they, if they found

04:38:57PM **9** discrepancies they would communicate those to the Indian

04:39:01PM **10** disbursing agent.

04:39:01PM **11 Q.** And is our discrepancies noted on this particular page?

04:39:06PM **12 A.** They're discrepancies or problems that they came across.

04:39:09PM **13 Q.** And let's move to page six. Mr. Banda, what is page six?

04:39:22PM **14 A.** Page six is the communication from the Indian disbursing

04:39:25PM **15** agent to the Office of Indian Affairs of how they cleared the

04:39:30PM **16** exception or the problem that was noted.

04:39:32PM **17 Q.** So this is the response to the Indian Affairs?

04:39:35PM **18 A.** Yes.

04:39:36PM **19 Q.** Then let's move to page five. What does page five

04:39:49PM **20** represent?

04:39:49PM **21 A.** Page five is a correspondence to the GAO from the Office of

04:39:55PM **22** Indian Affairs letting them -- notifying them that the

04:40:01PM **23** exceptions that were noted have been properly cleared by

04:40:06PM **24** explanations and accompanying work papers.

04:40:09PM **25 Q.** Okay. So layer one of review is done, correct?

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04:41:52PM **1 A.** It's the form that GAO reported the statement of

04:41:55PM **2** differences, the difference that they found of \$11.69.

04:42:01PM **3 Q.** Okay. And so that ties to the difference that we were

04:42:05PM **4** talking about earlier?

04:42:06PM **5 A.** Yes.

04:42:06PM **6 Q.** And go back to page four, please. And down at the

04:42:19PM **7** bottom -- well, not the bottom. There's a signature. It says

04:42:23PM **8** Fred H. Brown, Comptroller General of the United States. What

04:42:31PM **9** was the significance of the comptroller general's signature on

04:42:34PM **10** that page?

04:42:34PM **11 A.** It's our understanding that that person is the person who

04:42:38PM **12** has taken responsibility for this settlement of this account.

04:42:44PM **13 Q.** Let's move to page 67. And Mr. Banda, did you see this

04:42:57PM **14** document when you were doing your review?

04:42:59PM **15 A.** Yes, I did.

04:42:59PM **16 Q.** And what is it, please?

04:43:00PM **17 A.** It's a summary of the Individual Indian Money transactions

04:43:04PM **18** for the period July 1st, 1938 to December 31st, 1938. It

04:43:10PM **19** includes the opening balances, the receipts and disbursements,

04:43:13PM **20** and the closing balances.

04:43:15PM **21 Q.** And just to move it along, is it fair to say each line

04:43:18PM **22** represents the gross value for each group of sur names beginning

04:43:25PM **23** with a letter?

04:43:25PM **24 A.** Yes, that's correct.

04:43:29PM **25 Q.** Let's take one where there's just one person with a surname

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04:40:12PM **1 A.** Yes.

04:40:13PM **2 Q.** Now let's move on to page four. What is the certificate of

04:40:18PM **3** settlement of account?

04:40:20PM **4 A.** The certificate of settlement is prepared by the GAO when

04:40:25PM **5** it reviews the account current and the underlying work papers

04:40:31PM **6** and examines that information. They are certifying that they've

04:40:36PM **7** examined the account for the period of time, and in this case

04:40:39PM **8** October 1st, 1938 to December 31st, 1938, and these are the

04:40:45PM **9** balances due as of December 31st, as rendered from the account

04:40:51PM **10** current, and what they came up with during their audit, and they

04:40:55PM **11** identified a difference of \$11.69.

04:40:59PM **12 Q.** Now, when Mr. Mushtaq was covering a similar document there

04:41:03PM **13** was no difference noted. You mentioned here an \$11.69

04:41:08PM **14** difference in the middle column?

04:41:10PM **15 A.** Yes.

04:41:10PM **16 Q.** And what does that mean?

04:41:13PM **17 A.** When GAO reviewed the underlying document -- it's our

04:41:17PM **18** understanding that when GAO reviewed the underlying information

04:41:20PM **19** they came up with a different account balance due than what was

04:41:27PM **20** reported on the account current from the Office of Indian

04:41:32PM **21** Affairs.

04:41:33PM **22 Q.** Okay. And let's go to page 58, please. Mr. Banda, have

04:41:50PM **23** you seen this document in your review?

04:41:51PM **24 A.** Yes.

04:41:51PM **25 Q.** And what is it?

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04:43:33PM **1** in the group. Letter Q indicates one account, correct?

04:43:36PM **2 A.** Yes.

04:43:37PM **3 Q.** And why don't you pull up, please, we're going to go into

04:43:41PM **4** Exhibit 244, page 329. Have you seen this document before, sir?

04:43:59PM **5 A.** Yes.

04:44:00PM **6 Q.** And what is it?

04:44:00PM **7 A.** It's an Individual Indian Money statement for a particular

04:44:05PM **8** individual whose last name begins with Q.

04:44:07PM **9 Q.** And blow it up a little bit so we can see it. And if you

04:44:13PM **10** scroll up to the top, please. There is the Q name is there,

04:44:16PM **11** Mary Sophia Quinimosay?

04:44:19PM **12 A.** Yes.

04:44:19PM **13 Q.** It's Q-u-i-n-i-m-o-s-a-y.

04:44:26PM **14** And did you, just make it very quickly, were you able

04:44:31PM **15** to tie the numbers shown in this ledger to that lead schedule

04:44:39PM **16** that we just reviewed in 245, page 67?

04:44:42PM **17 A.** Yes. We were able to tie in the old balance. The Gingold

04:44:46PM **18** balance was the previous balance on the other schedule. And

04:44:53PM **19** summarizing adding the payments and the receipts together, those

04:44:57PM **20** amounts agreed with that previous schedule as well, and then the

04:45:01PM **21** last balance on this page agreed with the closing balance on the

04:45:05PM **22** previous page.

04:45:06PM **23 Q.** If you go back to 243, page 67, and focus in on the line

04:45:23PM **24** for Q, please, preferably the whole line, okay, so you're

04:45:32PM **25** talking about tying in these entries along the line for Q?

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04:45:33PM **1** **A.** Yes.

04:45:33PM **2** **Q.** And was there similar detail for all of the other

04:45:38PM **3** individual Indians summarized in this schedule?

04:45:41PM **4** **A.** We did not see anything for X, Y, and Z in the settlement

04:45:48PM **5** package. It went through W.

04:45:49PM **6** **Q.** Very good. And I apologize we don't have this in the

04:45:57PM **7** excerpts we gave you. Would you pull up page 20 from 243?

04:46:07PM **8** We'll get you a copy.

04:46:08PM **9** And this is another account current for that package;

04:46:13PM **10** is that correct?

04:46:13PM **11** **A.** Yes. It's for the month of December 1938.

04:46:16PM **12** **Q.** Can you block the section that begins Individual Indian

04:46:21PM **13** Monies and take it across all the way? Excellent. Yes. And

04:46:25PM **14** what if anything did you find significant about this particular

04:46:29PM **15** document?

04:46:29PM **16** **A.** We were able to tie in the line that is labeled Indian

04:46:33PM **17** Balance to the United States of 149,000. I think it's 860.

04:46:38PM **18** **Q.** Why don't you blow that up, please, the 149? Over on the

04:46:43PM **19** right-hand side. Good enough. Yes. The 14986049.

04:46:50PM **20** **A.** Yes, we were able to tie that in to the summary of

04:46:54PM **21** transactions.

04:46:55PM **22** **Q.** Go to page 67 real quickly again. And down at the bottom

04:46:59PM **23** the totals. Is that where you tied in the 14986049?

04:47:05PM **24** **A.** Yes.

04:47:05PM **25** **Q.** And were the types of documents that you reviewed typical,

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04:47:09PM **1** that we've reviewed just now, typical of what you saw during

04:47:12PM **2** your review of all the GAO and Treasury packages?

04:47:16PM **3** **A.** When there was in the individual Indian money present in

04:47:22PM **4** those packages, but they did not all contain this type of

04:47:25PM **5** activity.

04:47:29PM **6** **Q.** When did you see individual Indian money in packages?

04:47:30PM **7** **A.** When?

04:47:31PM **8** **Q.** Yes.

04:47:32PM **9** **A.** Well, when it was there, I mean.

04:47:36PM **10** **Q.** I mean, was it periodic or --

04:47:37PM **11** **A.** It was periodic, yes.

04:47:38PM **12** **Q.** As a result of your review, have you formed any opinions

04:47:42PM **13** about the work performed by GAO and Treasury?

04:47:45PM **14** **A.** It appears that there was a regular, an orderly

04:47:50PM **15** examination.

04:47:53PM **16** **MR. SMITH:** To establish the foundation for that

04:47:54PM **17** opinion, he's looking --

04:47:55PM **18** **THE COURT:** I'm going to hear it. You can cross-

04:47:57PM **19** examine it.

04:47:57PM **20** **BY MR. WARSHAWSKY:**

04:48:00PM **21** **Q.** I'm sorry, your opinion again?

04:48:04PM **22** **A.** From the packages that were reviewed and the work done by

04:48:06PM **23** our staff, it appears that there was a regular and orderly

04:48:10PM **24** examination process and settlement process conducted by GAO and

04:48:15PM **25** Treasury based on the settlement packages reviewed.

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04:48:18PM **1** **Q.** Okay. And what if any opinions did you conclude from

04:48:22PM **2** seeing certifications of the disbursing agents, the sign-offs by

04:48:26PM **3** the commissioner, and the issuance of a certificate of

04:48:28PM **4** settlement?

04:48:29PM **5** **A.** It appeared that there was a process in place where the

04:48:33PM **6** Indian disbursing agents prepared these account currents on a

04:48:38PM **7** monthly basis and submitted them to their -- to the Office of

04:48:42PM **8** Indian Affairs, and what we saw was a lot of scrutiny when there

04:48:46PM **9** was information that did not agree in the correspondence between

04:48:51PM **10** the Office of the Indian Affairs and the Indian disbursing

04:48:55PM **11** agents, so we felt like there was a thorough review done at the

04:48:58PM **12** Office of Indian Affairs level, and then since there was --

04:49:03PM **13** since we saw the certificates of settlement and there was

04:49:06PM **14** certification and examination on those certificates of

04:49:09PM **15** settlement it appears that GAO --

04:49:12PM **16** **THE COURT:** Do you want to back off that mike just a

04:49:15PM **17** little bit? It's percussive.

04:49:17PM **18** **THE WITNESS:** I apologize.

04:49:20PM **19** It appears that there was a regular examination

04:49:22PM **20** conducted by GAO and Treasury based on the settlement packages

04:49:26PM **21** that we reviewed. And based also on the reports that we

04:49:30PM **22** reviewed from the comptroller.

04:49:33PM **23** **BY MR. WARSHAWSKY:**

04:49:33PM **24** **Q.** And as part of your review did you form any opinions as to

04:49:36PM **25** whether Individual Indian Money transactions were regularly a

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04:49:39PM **1** part of that review?

04:49:40PM **2** **A.** When we saw it. I can't say for sure.

04:49:46PM **3** **MR. WARSHAWSKY:** Your Honor, I have no more questions.

04:49:47PM **4** Thank you, Mr. Banda.

04:49:48PM **5** **THE WITNESS:** You're welcome.

04:49:54PM **6** **MR. WARSHAWSKY:** Oh, your Honor, I would move the

04:49:55PM **7** admission of DX 509, 510, and 511. DX 243, 244, and 256 were

04:50:03PM **8** exhibits from the October hearing. We've referenced those as

04:50:07PM **9** well, and I would ask that they also be introduced.

04:50:10PM **10** **THE COURT:** All right. They're all received.

04:50:12PM **11** **MR. WARSHAWSKY:** And your Honor, if we could also move

04:50:15PM **12** from Mr. Mushtaq's testimony Defendants' Exhibit 504, the

04:50:19PM **13** compilation of photographs.

04:50:20PM **14** **THE COURT:** Received.

04:50:22PM **15** **MR. WARSHAWSKY:** Thank you, your Honor.

04:50:23PM **16** (Defendant Exhibit Nos. DX 509, DX 510, DX 511,

04:50:23PM **17** DX 243, DX 244, and DX 256 received into evidence

04:50:23PM **18** at about 4:50 p.m.)

04:50:28PM **19** **MR. SMITH:** Good afternoon, your Honor.

04:50:28PM **20** **CROSS-EXAMINATION**

04:50:36PM **21** **BY MR. SMITH:**

04:50:36PM **22** **Q.** Mr. Banda, you talked about regulations and processes that

04:50:41PM **23** you observed and some comptroller opinions that you were

04:50:46PM **24** provided. Who provided those to you?

04:50:49PM **25** **A.** I'm sorry. Can you say that again?

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04:50:49PM **1 Q.** Sure. You indicated you were provided some regulations and  
 04:50:52PM **2** some other procedural rules that you reviewed, and also I  
 04:50:56PM **3** believe a comptroller's opinion. Can you tell us who provided  
 04:51:00PM **4** that to you?  
 04:51:00PM **5 A.** The regulations and the comptroller report?  
 04:51:03PM **6 Q.** Um-hmm.  
 04:51:03PM **7 A.** It was provided by Department of Justice.  
 04:51:05PM **8 Q.** Okay. And did they provide you any of the audits of the  
 04:51:09PM **9** disbursing agents over the years?  
 04:51:11PM **10 A.** No.  
 04:51:12PM **11 Q.** Okay. Do you have any knowledge whether those regulations  
 04:51:16PM **12** and procedures were in fact followed on a regular basis, other  
 04:51:19PM **13** than what you reviewed in individual settlement packages?  
 04:51:23PM **14 A.** No.  
 04:51:24PM **15 Q.** Now, you were first employed by Resnick in 2004; is that  
 04:51:31PM **16** correct?  
 04:51:31PM **17 A.** Yes.  
 04:51:32PM **18 Q.** And it was sometime after that that you first had an  
 04:51:36PM **19** introduction to any of the documents related to this case, is  
 04:51:42PM **20** that fair?  
 04:51:42PM **21 A.** That's correct.  
 04:51:42PM **22 Q.** You hadn't heard of an Indian settlement package prior to  
 04:51:46PM **23** that time?  
 04:51:47PM **24 A.** No.  
 04:51:47PM **25 Q.** When is the first time that you actually started reviewing

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04:53:08PM **1 A.** 1921 to 1951.  
 04:53:11PM **2 Q.** Thank you.  
 04:53:11PM **3 A.** You're welcome.  
 04:53:13PM **4 Q.** Now, of those Treasury settlement packages, how many did  
 04:53:18PM **5** you personally review?  
 04:53:19PM **6 A.** I reviewed two complete packages personally.  
 04:53:25PM **7 Q.** You personally reviewed two complete packages?  
 04:53:27PM **8 A.** Yes.  
 04:53:28PM **9 Q.** Okay. And you reviewed work papers from your team for  
 04:53:34PM **10** another ninety or so?  
 04:53:35PM **11 A.** Yes.  
 04:53:36PM **12 Q.** Now, can you tell us how many settlement, Treasury  
 04:53:41PM **13** settlement packages there are out there?  
 04:53:43PM **14 A.** No, I do not know that.  
 04:53:44PM **15 Q.** If we could look at Exhibit 154 at 60-8-5. Okay. Let's  
 04:54:12PM **16** see the full document, please. And are you familiar with this  
 04:54:17PM **17** document from the Resnick Group? I believe your name is on it.  
 04:54:21PM **18 A.** Yes.  
 04:54:21PM **19 Q.** Dated September 7, 2005?  
 04:54:24PM **20 A.** Yes.  
 04:54:25PM **21 Q.** And is that regarding your review of Treasury settlement  
 04:54:30PM **22** packages?  
 04:54:30PM **23 A.** Yes.  
 04:54:31PM **24 Q.** And if we could look at 60-8-12, please. And does it  
 04:54:40PM **25** appear that there are 20,676 Treasury settlement packages for

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04:51:54PM **1** what you've referred to as a settlement package?  
 04:51:57PM **2 A.** I believe it was April of 2005.  
 04:51:59PM **3 Q.** To your knowledge had Resnick been employed to review a  
 04:52:05PM **4** settlement package prior to that time?  
 04:52:06PM **5 A.** No, it had not been.  
 04:52:09PM **6 Q.** And other than in preparation for this litigation, when is  
 04:52:13PM **7** the last time that you reviewed a settlement package?  
 04:52:15PM **8 A.** Other than preparation for this litigation, I believe  
 04:52:23PM **9** August of 2005.  
 04:52:24PM **10 Q.** August 2005?  
 04:52:25PM **11 A.** Yes.  
 04:52:26PM **12 Q.** Okay. So since that time you have not been tasked to  
 04:52:36PM **13** review any additional settlement packages?  
 04:52:38PM **14 A.** No. I reviewed the work papers for the reports, but I did  
 04:52:41PM **15** not review any additional settlement packages.  
 04:52:43PM **16 Q.** There were some discussions of some reports that were  
 04:52:46PM **17** prepared by your company, and as I understand it, you've  
 04:52:50PM **18** reviewed or your company has reviewed two sets of packages. One  
 04:52:53PM **19** is Treasury and one is GAO; is that correct?  
 04:52:56PM **20 A.** That's correct.  
 04:52:56PM **21 Q.** And the Treasury packages are from a period 1880 to 1920?  
 04:53:02PM **22 A.** 1890.  
 04:53:03PM **23 Q.** I'm sorry, 1890?  
 04:53:05PM **24 A.** Yes.  
 04:53:05PM **25 Q.** And the GAO settlement packages from?

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04:54:46PM **1** the period 1890 to 1920?  
 04:54:48PM **2 A.** Yes.  
 04:54:49PM **3 Q.** So you have reviewed two of 20,676 packages; is that  
 04:54:55PM **4** correct?  
 04:54:55PM **5 A.** That's correct.  
 04:54:56PM **6 Q.** Now, tell me how many GAO settlement packages you  
 04:55:05PM **7** personally reviewed.  
 04:55:06PM **8 A.** I reviewed four recently, and during the -- and I don't  
 04:55:15PM **9** recall how many I reviewed when we did the pilot back in 2005.  
 04:55:19PM **10 Q.** So until recently the only ones you reviewed were during  
 04:55:24PM **11** the pilot?  
 04:55:24PM **12 A.** The complete packages, but I reviewed the work papers since  
 04:55:28PM **13** then.  
 04:55:28PM **14 Q.** Okay. Let's look at Exhibit 154 at 60-8-33. Are you  
 04:55:48PM **15** familiar with this document General Accounting Office Settled  
 04:55:54PM **16** Indian Agent Account packages at National Archives?  
 04:55:58PM **17 A.** I may have seen it, I just don't recall.  
 04:56:01PM **18 Q.** Okay. Let's look at 60-8-75. It indicates what GAO  
 04:56:15PM **19** settlement packages were reviewed and who reviewed them and you  
 04:56:20PM **20** personally were listed as reviewing five. Does that sound about  
 04:56:23PM **21** right?  
 04:56:23PM **22 A.** Yeah. These are the packages I couldn't recall that I  
 04:56:27PM **23** reviewed during the pilot.  
 04:56:29PM **24 Q.** And two are at the Ponty Agency in 1927, two at the  
 04:56:34PM **25** Cherokee Agency in 1930, and one in the Pineridge Agency in

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04:56:38PM **1** 1948; is that correct?

04:56:40PM **2 A.** I'm sure it is.

04:56:41PM **3 Q.** So you reviewed on this occasion packages from basically

04:56:48PM **4** three agencies over three separate years, correct?

04:56:53PM **5 A.** Yes.

04:56:54PM **6 Q.** And can you tell me how many settlement packages, GAO

04:56:59PM **7** settlement packages, there are of GAO settlement packages there

04:57:07PM **8** are during this period?

04:57:07PM **9 A.** I don't know.

04:57:07PM **10 Q.** If we could look at Exhibit 153 at 60-5-1. It's a document

04:57:21PM **11** entitled from Burt Edwards to Fitz Scheuren reviewed by Resnick

04:57:26PM **12** Group of settlement packages. Have you seen that document

04:57:29PM **13** before?

04:57:29PM **14 A.** Yes.

04:57:29PM **15 Q.** If we could look at 60-5-3. See if you could focus in on

04:57:38PM **16** the highlighted section.

04:57:39PM **17 A.** Yes.

04:57:40PM **18 Q.** Does it indicate the search information was collected so

04:57:43PM **19** that NORC could develop statistical analysis of the completeness

04:57:47PM **20** of the GAO population of 31,418 settlement packages?

04:57:53PM **21 A.** Yes.

04:57:54PM **22 Q.** So you initially reviewed five of 31,418 packages. Since

04:58:01PM **23** that time have you reviewed how many more?

04:58:04PM **24 A.** Four.

04:58:05PM **25 Q.** So a total of 8 of 31,418?

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04:59:44PM **1 A.** That I don't know.

04:59:47PM **2 Q.** Well, isn't it true, Mr. Banda, that they could not answer

04:59:52PM **3** the question whether based on that statistical sample there was

04:59:58PM **4** a systematic check of any individual Indian account, isn't that

05:00:02PM **5** correct?

05:00:04PM **6** MR. WARSHAWSKY: Beyond the scope of direct.

05:00:05PM **7** THE COURT: Oh, I don't think so.

05:00:07PM **8** THE WITNESS: I don't know the answer to that

05:00:08PM **9** question.

05:00:11PM **10** BY MR. SMITH:

05:00:11PM **11 Q.** Okay. If we could see this document, please.

05:00:19PM **12** THE COURT: I'll make a deal with you, Mr. Warshawsky.

05:00:22PM **13** You withdraw the direct and I'll sustain your objection.

05:00:26PM **14** MR. WARSHAWSKY: No deal, your Honor.

05:00:34PM **15** BY MR. SMITH:

05:00:34PM **16 Q.** I'm showing you what's entitled Government Monitoring of

05:00:41PM **17** the Indian Service Special Disbursing Agent's accounts, March

05:00:46PM **18** 31, 2007. Have you seen this document before?

05:00:48PM **19 A.** I've seen it, I've not read it.

05:00:50PM **20 Q.** You've seen it but not read it?

05:00:53PM **21 A.** I've seen the front of it but not reviewed it in detail.

05:00:56PM **22 Q.** If we could look at page six, please, and focus in on the

05:01:05PM **23** the second paragraph. In the fourth line down toward the middle

05:01:20PM **24** do you see it starts the question of whether, do you see that?

05:01:22PM **25 A.** Yes.

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04:58:08PM **1 A.** Or nine. Five and the four, so ...

04:58:12PM **2 Q.** I'm sorry, nine. You're correct. You're the accountant.

04:58:17PM **3 A.** Thank you.

04:58:17PM **4 Q.** Is it your testimony that you can make judgments regarding

04:58:29PM **5** what were the regular practices regarding reviewing these

04:58:32PM **6** packages by reviewing nine of 31,418 settlement packages?

04:58:39PM **7 A.** No. It was based on the work done by our firm. I formed

04:58:48PM **8** an opinion that what we observed, it was based on the sample

04:58:52PM **9** that we reviewed.

04:58:54PM **10 Q.** Okay. And your firm reviewed ninety GAO settlements?

04:58:59PM **11 A.** Ninety GAO, yes.

04:59:01PM **12 Q.** So is it your testimony that based on your personal review

04:59:05PM **13** of nine in your firm's review of ninety that you can make a

04:59:09PM **14** judgment regarding regular practices when there's a total of

04:59:14PM **15** 31,418 settlement packages?

04:59:16PM **16 A.** The reason why we can make this statement is that we really

04:59:25PM **17** saw no exceptions to that in the sample that we reviewed.

04:59:28PM **18 Q.** Okay. Now, you provided this information to NORC for a

04:59:31PM **19** reason, didn't you?

04:59:32PM **20 A.** Yes.

04:59:33PM **21 Q.** And what was the reason you provided this information to

04:59:36PM **22** NORC?

04:59:37PM **23 A.** It was our outstanding that they were going to use it in a

04:59:39PM **24** statistical analysis.

04:59:41PM **25 Q.** And did they use it in a statistical analysis?

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05:01:22PM **1 Q.** It says, The question of whether account balances were

05:01:24PM **2** systematically checked at an individual Indian account level has

05:01:28PM **3** not been answered conclusively. Is that correct?

05:01:31PM **4 A.** That's what it says.

05:01:32PM **5 Q.** Has anybody ever discussed that conclusion with you?

05:01:35PM **6 A.** Yes.

05:01:38PM **7 Q.** And who is that?

05:01:39PM **8 A.** We have talked about it internally with Resnick in

05:01:47PM **9** preparation for this trial.

05:01:50PM **10 Q.** So you were aware of the conclusion?

05:01:51PM **11 A.** I was aware that there was a conclusion, not that I wasn't

05:01:55PM **12** aware that it was in this report.

05:01:57PM **13 Q.** So you were aware that there was a conclusion that they

05:02:00PM **14** could not come to any conclusions from the statistical sampling;

05:02:05PM **15** is that right?

05:02:05PM **16 A.** No. What I was aware of is that there was a desire to come

05:02:09PM **17** to that conclusion.

05:02:10PM **18 Q.** If we could look at the next paragraph, focus in on that,

05:02:17PM **19** the last sentence. Starting third to last line, do you see

05:02:22PM **20** where it says "the relative"?

05:02:23PM **21 A.** Yes, I see it.

05:02:24PM **22 Q.** It says, The relative frequency which with individual

05:02:27PM **23** Indian accounts were audited cannot be ascertained, however,

05:02:31PM **24** because of the varied way the settlement packages were

05:02:34PM **25** maintained. Were you not aware of that conclusion before today?

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05:02:36PM **1** **A.** I was not.

05:02:50PM **2** MR. SMITH: Your Honor, one second.

05:02:50PM **3** BY MR. SMITH:

05:03:18PM **4** **Q.** If we could look at Exhibit 152, please. And look at

05:03:38PM **5** 152-60. I'm sorry. 60-3-16.

05:03:47PM **6** THE COURT: You don't have much more with this

05:03:49PM **7** witness, do you, Mr. Smith?

05:03:51PM **8** MR. SMITH: You know, I really don't. I'll be

05:03:53PM **9** finished in about two minutes.

05:03:55PM **10** THE COURT: Good.

05:03:59PM **11** BY MR. SMITH:

05:03:59PM **12** **Q.** Is this a summary of the ninety Treasury settlement

05:04:02PM **13** packages have you seen this before?

05:04:05PM **14** **A.** Yes, I believe so. Yep.

05:04:09PM **15** **Q.** And can you tell the Court of the ninety that were reviewed

05:04:11PM **16** how many didn't have Individual Indian Money in them?

05:04:15PM **17** **A.** I'd have to go through. There were many, but I'd have to

05:04:21PM **18** go through and count them.

05:04:22PM **19** **Q.** I'll tell you, I counted them. It was roughly 42.

05:04:25PM **20** **A.** Okay.

05:04:25PM **21** **Q.** 42 out of the 90. That's sound about right?

05:04:29PM **22** **A.** That sounds about right.

05:04:30PM **23** **Q.** I mean, for example, the first two are the Keyawah agency,

05:04:36PM **24** and it indicates that there's no IIM money in those packages; is

05:04:41PM **25** that correct?

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05:05:51PM **1** MR. SMITH: Your Honor, I have no further questions.

05:05:52PM **2** THE COURT: Mr. Warshawsky?

05:05:56PM **3** MR. WARSHAWSKY: I'll be very quick.

05:05:56PM **4** REDIRECT EXAMINATION

05:06:08PM **5** BY MR. WARSHAWSKY:

05:06:08PM **6** **Q.** Mr. Banda, Mr. Smith asked you questions about reviewing

05:06:14PM **7** samples from tens of thousands of packages. Is it a normal

05:06:19PM **8** audit procedure to use random sampling?

05:06:23PM **9** **A.** Yes.

05:06:23PM **10** **Q.** And if you use a statistically valid random sample, can you

05:06:28PM **11** draw inferences about a large population by reviewing a small

05:06:28PM **12** number?

05:06:34PM **13** MR. SMITH: He's not an expert in that field.

05:06:36PM **14** MR. WARSHAWSKY: I'll qualify him, your Honor, if you

05:06:39PM **15** wish.

05:06:39PM **16** THE COURT: Well, you're going to have a hard time

05:06:41PM **17** qualifying him against what NORC has already concluded about

05:06:45PM **18** this sample.

05:06:46PM **19** MR. WARSHAWSKY: Well, your Honor, I'll be happy to go

05:06:49PM **20** to that NORC report as well.

05:06:50PM **21** THE COURT: Go to the validity of the sample size and

05:06:54PM **22** all that. Maybe we better bring him back tomorrow morning if

05:06:57PM **23** that's what you're going to do.

05:06:59PM **24** MR. WARSHAWSKY: No. What I was going to do, your

05:07:01PM **25** Honor, is simply establish that auditors rely on random samples.

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05:04:41PM **1** **A.** Yes.

05:04:41PM **2** **Q.** Was there supposed to be IIM money in those packages?

05:04:44PM **3** **A.** That I can't tell you. I don't know.

05:04:46PM **4** **Q.** So you can't tell us whether on any of these reviews

05:04:52PM **5** whether there was money, there should have been money where

05:04:55PM **6** there wasn't, is that fair, any of these packages?

05:04:58PM **7** **A.** I can't tell you where it says there's no IIM money whether

05:05:02PM **8** or not there should have been IIM money.

05:05:04PM **9** **Q.** On any of these reviews was any effort made to determine

05:05:09PM **10** whether money was actually disbursed to the proper beneficiary?

05:05:11PM **11** **A.** No.

05:05:14PM **12** **Q.** It wasn't done by you or by the auditors originally, is

05:05:18PM **13** that fair?

05:05:18PM **14** **A.** It wasn't done by us.

05:05:20PM **15** **Q.** And you couldn't tell whether the original auditors had

05:05:23PM **16** done it either, had you?

05:05:24PM **17** **A.** We did not look for that in our work.

05:05:26PM **18** **Q.** All they're doing here is balancing accounts of the Indian

05:05:30PM **19** agent; is that correct?

05:05:35PM **20** **A.** They were balancing the accounts and providing support for

05:05:37PM **21** those balances.

05:05:38PM **22** **Q.** But they are not auditing or balancing the individual

05:05:41PM **23** Indian accounts themselves, are they?

05:05:43PM **24** **A.** We did not see evidence of an audit of an individual Indian

05:05:46PM **25** account.

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05:07:05PM **1** THE COURT: I'll take judicial notice of that. The

05:07:07PM **2** question is whether this was an adequate sample and whether the

05:07:11PM **3** conclusions drawn from this sample are adequate, and if he's

05:07:15PM **4** prepared to testify about that let me hear his qualifications

05:07:18PM **5** for it.

05:07:19PM **6** MR. WARSHAWSKY: He certainly didn't design the sample

05:07:21PM **7** so I'll move on.

05:07:21PM **8** BY MR. WARSHAWSKY:

05:07:23PM **9** **Q.** And I'm sorry, I didn't get the exhibit number, but the

05:07:26PM **10** NORC 2007 report that you reviewed, if you could pull that back

05:07:32PM **11** up. AR436, do you mind pulling that up and go to page six. You

05:07:39PM **12** remember when Mr. Smith reviewed this with you?

05:07:42PM **13** **A.** Yes.

05:07:42PM **14** **Q.** And would you highlight that whole paragraph that begins

05:07:49PM **15** Evidence in some? Well, I mean just blow it up. Evidence in

05:07:52PM **16** some.

05:07:52PM **17** **A.** Right.

05:07:53PM **18** **Q.** Do you remember Mr. Smith asked you about a section of

05:08:00PM **19** that. Did you consider the first sentence when you were

05:08:05PM **20** answering that question, Evidence in some settlement packages

05:08:08PM **21** indicate the GAO did at least sometimes examine all individual

05:08:12PM **22** Indian accounts at a BIA agency?

05:08:15PM **23** **A.** I did not review that.

05:08:16PM **24** **Q.** Okay.

05:08:17PM **25** THE COURT: "At least sometimes," that's the

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05:08:22PM **1** proposition you want to offer this for?

05:08:24PM **2** MR. WARSHAWSKY: Well, I was going to move a little

05:08:26PM **3** bit further into this.

05:08:29PM **4** BY MR. WARSHAWSKY:

05:08:29PM **5** **Q.** Let's move on to page seven real quickly. Let's get passed

05:08:42PM **6** that. Last question. Mr. Smith offered his calculations that

05:08:46PM **7** half of the settlement packages had IIM accounts reviewed in

05:08:50PM **8** them. Do you remember that?

05:08:52PM **9** **A.** Yes.

05:08:52PM **10** **Q.** And do you remember ever learning that IIM was reviewed on

05:08:57PM **11** a six-month basis?

05:08:59PM **12** **A.** Yes.

05:09:00PM **13** **Q.** And would that explain why some packages did have IIM and

05:09:06PM **14** some did not?

05:09:06PM **15** **A.** It could. I'd have to go back and look.

05:09:08PM **16** MR. WARSHAWSKY: Your Honor, I have no more questions.

05:09:10PM **17** Thank you.

05:09:11PM **18** MR. SMITH: Nothing further, your Honor.

05:09:12PM **19** THE COURT: Thank you, Mr. Banda. You're excused.

05:09:15PM **20** You may step down.

05:09:17PM **21** What's left here? Where's Mr. Kirschman? What's

05:09:20PM **22** going to happen tomorrow? Scheuren is coming back for more

05:09:26PM **23** cross, I assume.

05:09:28PM **24** MR. KIRSCHMAN: The government has one more witness to

05:09:31PM **25** present tomorrow morning, and then we have the unfinished

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05:11:02PM **1** in recess until 9:30 tomorrow morning. Thank you.

05:11:06PM **2** COURTROOM DEPUTY: This Honorable Court now stands

05:11:08PM **3** adjourned.

**4** (Proceedings adjourned at about 5:11 p.m.)

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05:09:34PM **1** cross-examination of Dr. Scheuren that is part of the

05:09:37PM **2** government's case.

05:09:37PM **3** THE COURT: Fine. All right.

05:09:38PM **4** MR. KIRSCHMAN: And the government will then rest in

05:09:42PM **5** our responsive case.

05:09:43PM **6** THE COURT: What's your witness tomorrow?

05:09:45PM **7** MR. KIRSCHMAN: Joseph Rosenbaum.

05:09:47PM **8** THE COURT: What's he going to say?

05:09:48PM **9** MR. KIRSCHMAN: He will be addressing his work on

05:09:51PM **10** paragraph nineteen and how it relates to his findings related to

05:09:56PM **11** the named plaintiffs and related --

05:10:02PM **12** THE COURT: Okay. And are the plaintiffs going to put

05:10:05PM **13** a rebuttal case on?

05:10:06PM **14** MR. DORRIS: A short one, yes, your Honor.

05:10:10PM **15** THE COURT: And what will that consist of?

05:10:12PM **16** MR. DORRIS: Three witnesses, your Honor. Mr. Gregg,

05:10:17PM **17** Mr. Hammond, and then Brian Palmer from CRA who is Mr. Cornell's

05:10:24PM **18** colleague. Mr. Cornell will not be able to come back, but I

05:10:29PM **19** told Mr. Kirschman at the lunch break that what I proposed was

05:10:33PM **20** this: That we go as far as we can with all the other witnesses.

05:10:39PM **21** Mr. Palmer's analysis is not going to be complete until sometime

05:10:43PM **22** on Friday where he's gone through, weighed what he's heard, and

05:10:47PM **23** prepared a new calculation, and that we could provide that to

05:10:52PM **24** the government then, and would propose to put him on on Monday.

05:10:57PM **25** THE COURT: That sounds about right. Okay. We'll be

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**1** I N D E X

**2**

**3** WITNESSES:

**4** GARY GRIPPO

**5** Direct Examination by Mr. Gillett 1226

**6** Cross-examination by Mr. Gingold 1251

**7** ALI MUSHTAQ

**8** Direct Examination by Mr. Kirschman 1285

**9** Cross-examination by Mr. Guilder 1311

**9** FRANK BANDA

**10** Direct Examination by Mr. Warshawsky 1319

**11** Cross-examination by Mr. Smith 1343

**11** Redirect Examination by Mr. Warshawsky 1354

**12**

**13**

**14**

**15** E X H I B I T S

**16**

**17** Plaintiffs' Exhibit

No.	Identification	Marked	Received
<b>18</b>	No. 136	1260	

**19**

**20**

**21**

**22** EXHIBITS con't. on next page.

**23**

**24**

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1 EXHIBITS, con't.

2

3

4 Defendants' Exhibit No.	Identification	Marked	Received
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5

6 DX 497 & DX 498			1094
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7

DX 466 & DX 499			1285
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9 DX 509, DX 510, DX 511, 10 DX 243, DX 244, 11 & DX 256			1342
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1 CERTIFICATE

2 I, JACQUELINE M. SULLIVAN, Official Court Reporter,  
3 certify that the foregoing pages are a correct transcript from  
4 the record of proceedings in the above-entitled matter.

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JACQUELINE M. SULLIVAN

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