

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL,	:	Civil Action 96-1285
et al.	:	
Plaintiffs	:	
	:	Washington, D.C.
v.	:	Tuesday, October 16, 2007
	:	
DIRK KEMPTHORNE, Secretary	:	
of the Interior, et al.	:	
	:	
Defendants	:	AFTERNOON SESSION

TRANSCRIPT OF EVIDENTIARY HEARING
DAY 4
BEFORE THE HONORABLE JAMES ROBERTSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs:

DENNIS GINGOLD, ESQUIRE
LAW OFFICES OF DENNIS GINGOLD
607 14th Street, NW
Ninth Floor
Washington, DC 20005
(202) 824-1448

ELLIOTT H. LEVITAS, ESQUIRE
WILLIAM E. DORRIS, ESQUIRE
KILPATRICK STOCKTON, L.L.P.
1100 Peachtree Street
Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6450

KEITH HARPER, ESQUIRE
JUSTIN GUILDER, ESQUIRE
KILPATRICK STOCKTON, L.L.P.
607 14th Street, N.W.
Suite 900
Washington, D.C. 20005
(202) 585-0053

DAVID C. SMITH, ESQUIRE
KILPATRICK STOCKTON, L.L.P.
1001 West Fourth Street
Winston-Salem, North Carolina 27101
(336) 607-7392

Bryan A. Wayne, RPR, CRR
Official Court Reporter

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For the Defendants: ROBERT E. KIRSCHMAN, JR., ESQUIRE
 JOHN WARSHAWSKY, ESQUIRE
 MICHAEL QUINN, ESQUIRE
 J. CHRISTOPHER KOHN, ESQUIRE
 JOHN KRESSE, ESQUIRE
 U.S. Department of Justice
 1100 L Street, N.W.
 Washington, D.C. 20005
 (202) 307-0010
 JOHN STEMPLEWICZ, ESQUIRE
 Senior Trial Attorney
 U.S. Department of Justice
 Commercial Litigation Branch
 Civil Division
 Ben Franklin Station
 P.O. Box 975
 Washington, D.C. 20044
 (202) 307-1104
 GLENN D. GILLET, ESQUIRE
 U.S. Department of Justice
 Commercial Litigation Branch
 Civil Division
 P.O. Box 875
 Ben Franklin Station
 Washington, D.C. 20044
 (202) 514-7162

Court Reporter: Bryan A. Wayne, RPR, CRR
 Official Court Reporter
 U.S. Courthouse, Room 6714
 333 Constitution Avenue, NW
 Washington, D.C. 20001
 202-354-3186

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1 P R O C E E D I N G S
 2 THE COURT: Okay, Mr. Smith, you may continue.
 3 (The witness resumed the stand.)
 4 CROSS-EXAMINATION (Continued)
 5 BY MR. SMITH:
 6 Q. Ms. Herman, before the break, we were talking about your
 7 DCV, and we were talking about the balancing test. And I had
 8 asked you about when you balance those transactions before you
 9 started making changes to it, did you have that data, and you
 10 said you had probably that data back in California.
 11 A. I'm sorry, the number of accounts that were out of balance?
 12 Q. Exactly.
 13 A. I would have to compute that.
 14 Q. Okay.
 15 A. It's not a schedule that I have.
 16 Q. Looking at the documents that were provided, it seems I
 17 have at least some suggestion of that, and if we could look at
 18 document 3-2-11. And this was the seminar you spoke at on July
 19 23, 2003?
 20 A. Yes.
 21 Q. Okay. And I think this was a document that I was trying to
 22 find but I was having difficulty. If we could look at page
 23 3-2-156. And this is topic 12, which is actually the topic that
 24 you spoke on at that seminar; is that correct?
 25 A. I don't know if I spoke on more topics than this, but yes,

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1 this is one that I did.
 2 Q. And if we could focus on that top of the page there. It
 3 says "Identify and fill electronic data gaps. Accounts" -- it
 4 says "were"; I assume that's "where the system does not balance,
 5 not equal the transactional balance, estimated difference." It
 6 says "To date, KPMG," and I guess at this time you were working
 7 at KPMG?
 8 A. Yes.
 9 Q. -- "has performed this validation for accounts that have a
 10 balance file in IRMS, 374,443 of 569,927 accounts, and found
 11 that 120,812 accounts tested do not agree with the balance file
 12 at the first point of comparison. This represents approximately
 13 32 percent of the accounts tested." Is that correct?
 14 A. That's what this reads, yes.
 15 Q. That's what the data was at this point in time. I know
 16 they hadn't looked at all 569,000, but at this point in time
 17 roughly a third of the accounts had discrepancies?
 18 A. One of the things that we learned later is that we hadn't
 19 taken into account some of the account number changes, so this
 20 number would have been overstated at this point.
 21 Q. Okay. Good. When you say "does not agree at the first
 22 point of comparison," what does that mean?
 23 A. As I mentioned earlier, if we had multiple balances for a
 24 given account, we compare it at each balance point.
 25 Q. Okay. I'm going to move forward and talk briefly about

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1 your data completeness testing that you did. You talked about
 2 the Horton Agency and the testing you did there.
 3 A. That's the --
 4 Q. I'm sorry, the land-to-dollars testing.
 5 A. Correct.
 6 Q. Good. Had there been earlier land-to-dollars testing in
 7 which you had been involved at other agencies?
 8 A. This was the first land-to-dollar test for OHTA.
 9 Q. Okay. Had you been involved in a land-to-dollar test
 10 performed in Alaska in October 2003?
 11 A. I don't recall a land-to-dollar test in Alaska, but I did
 12 do work in Alaska.
 13 Q. Okay. So you don't have any knowledge about that test up
 14 in Alaska and what the results might be?
 15 A. As I said, I don't recall a test in Alaska.
 16 Q. Okay. Then I'll just focus on the Horton test. The Horton
 17 test was a very small sample; is that correct?
 18 A. Yes, it was.
 19 Q. And it was -- the agency that was picked was not picked
 20 randomly?
 21 A. That's what the report indicates.
 22 Q. And it was picked because -- tell me if this is correct --
 23 out of all the agencies that had -- at which sampling had been
 24 done, no sampling had been done at the Horton Agency; is that
 25 correct?

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<p>1 A. I'm not aware of that. I didn't select the Horton Agency.</p> <p>2 Q. Okay. By the way, we got a lot of your work papers on the</p> <p>3 DCV. Do you have work papers on the Horton Agency testing as</p> <p>4 well?</p> <p>5 A. We've not submitted our final work papers on Horton Agency.</p> <p>6 Q. Okay. But you do have some work papers in process?</p> <p>7 A. They're in draft, yes.</p> <p>8 Q. Do you have a report on Horton?</p> <p>9 A. I do not, no.</p> <p>10 Q. Has FTI prepared a report on the Horton Agency?</p> <p>11 A. No, we have not.</p> <p>12 Q. And the importance of that testing was because unless you</p> <p>13 look at the financial transactions, the leases or the land</p> <p>14 itself, you don't know whether the system is picking up all the</p> <p>15 transactions; is that correct?</p> <p>16 A. This test goes from the land in, not from the financial</p> <p>17 transactions.</p> <p>18 Q. Okay. It goes from the land in?</p> <p>19 A. Correct.</p> <p>20 Q. So you're looking at the land, determining what resources</p> <p>21 are being, or what money's being generated from that land, and</p> <p>22 making sure it's posted to the IRMS or the TFAS system.</p> <p>23 A. We weren't involved in the first step of the process that</p> <p>24 you mentioned. Our step started when the leases were provided</p> <p>25 to us. We confirmed that there was a posting in the system.</p>	<p>1 Q. So that the test could be based on either the documents,</p> <p>2 the leases, or the land; is that correct?</p> <p>3 A. It's my understanding that it's designed to select</p> <p>4 allotments, and from those allotments that you create revenue</p> <p>5 histories for each one of the allotments, and then you select a</p> <p>6 particular period that gets tested.</p> <p>7 Q. And in your testing you identified a number of -- you were</p> <p>8 particularly looking at farming and grazing, because this was a</p> <p>9 farming and grazing area.</p> <p>10 A. As I mentioned, I was provided leases to evaluate.</p> <p>11 Q. If we could look at page 3. Toward the middle of the page,</p> <p>12 if we could focus on that section. It says "Two allotments had</p> <p>13 only subsurface ownership in trust during the 1985-2005 time</p> <p>14 period, and therefore would not have farming and grazing</p> <p>15 income." Were you provided that documentation about the</p> <p>16 subsurface income?</p> <p>17 A. I was not involved in this component of the test.</p> <p>18 Q. So you don't know what determination was made as to revenue</p> <p>19 generated from the subsurface operations?</p> <p>20 A. I wasn't involved in this component of the test.</p> <p>21 Q. Okay. So all you did was look at, what was it, 33</p> <p>22 transactions?</p> <p>23 A. I believe it was 33 leases.</p> <p>24 Q. Okay. And during a -- what time period did those 33 leases</p> <p>25 cover?</p>
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<p>1 Q. Okay. Is it your understanding that based on the Horton</p> <p>2 study, it wasn't really large enough to draw any statistical</p> <p>3 conclusions at all?</p> <p>4 A. I'm not aware. I'm not a statistician.</p> <p>5 Q. Okay. If we could look at 38-1-1. And I believe this is</p> <p>6 the document you were shown yesterday, what is NORC's report of</p> <p>7 the land-to-dollar completeness test; is that correct?</p> <p>8 A. Yes, it is.</p> <p>9 Q. Okay. You're aware there was a choice between looking at</p> <p>10 leases or looking at actual title records in order to -- to be</p> <p>11 the focus of that test?</p> <p>12 A. No, I'm not aware of that.</p> <p>13 Q. Okay. If we could focus on the last paragraph, the</p> <p>14 highlighted language, it says, "In order to use documents</p> <p>15 associated with revenue generation (leases/contracts/permits) as</p> <p>16 the sampling frame, a complete and accurate inventory of listing</p> <p>17 of all such documents is required. Developing a comprehensive</p> <p>18 list of all leases or contracts or permits that have been issued</p> <p>19 for the electronic records era, however, is often intractable."</p> <p>20 Do you know what that means?</p> <p>21 A. That's not my document, but I can make a guess if you like.</p> <p>22 Q. What is your understanding of what that means? That</p> <p>23 they're hard to find?</p> <p>24 A. My understanding is that it would be difficult to complete</p> <p>25 a complete list, to create a complete list of leases.</p>	<p>1 A. It was meant to cover 1985 through 2000.</p> <p>2 Q. Okay. But you didn't look at that time period for every</p> <p>3 one of those leases, did you?</p> <p>4 A. I had specific periods within each one of those leases that</p> <p>5 I was evaluating.</p> <p>6 Q. How long were those periods?</p> <p>7 A. It was one year.</p> <p>8 Q. One year for each of the 33?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. For one year for each of those 33 you were able to</p> <p>11 trace the money to the IRMS account?</p> <p>12 A. That's correct.</p> <p>13 Q. And you have no knowledge as to what conclusions can be</p> <p>14 drawn from that; is that fair?</p> <p>15 A. That's correct.</p> <p>16 Q. Okay. Briefly, Ms. Herman, you discussed a through-put</p> <p>17 analysis yesterday. And is it fair to say that a lot of the</p> <p>18 information on the chart, the through-put chart that you put</p> <p>19 together was based on information from either Mr. Angel or NORC?</p> <p>20 A. Some of the information in the chart, yes.</p> <p>21 Q. Particularly prior to 1972?</p> <p>22 A. Yes, that's correct.</p> <p>23 Q. And is it fair to say that you're not attesting to the</p> <p>24 accuracy of that information?</p> <p>25 A. That's correct.</p>

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1 Q. If you could look at 56-2-1, this was a document you
 2 identified yesterday from Mr. Edwards; is that correct?
 3 A. That's correct.
 4 Q. And if you could go down and look at where it says
 5 Attachment A, the highlighted area in the center of the page.
 6 It says, "The objective of this study was to determine the
 7 larger slices of revenue. For example, interest, Osage head
 8 rights related to per capita distributions of that tribe's oil
 9 and gas royalties to its enrolled members. Sources of data
 10 collected are indicated in various colors." Do you know what
 11 Mr. Edwards means by "slices of revenue"?
 12 A. Different categories of revenue.
 13 Q. Okay. And what he means by "larger slices," are there some
 14 things excluded from this?
 15 A. All of the revenue's included in the estimate.
 16 Q. Let's go ahead and look at the chart, which I think is
 17 56-2-4. Now, the gray area on the left-hand side which appears
 18 to be 1988 to 1995, that is based on, is it IM500s?
 19 A. I would need to look at the legend, sir.
 20 Q. Let's look at the next page. It's based on IRMS IM500
 21 reports?
 22 A. Yes, that's what the legend indicates.
 23 Q. And these are the reports that you've indicated earlier
 24 today had inconsistencies and were more often inconsistent with
 25 themselves; is that correct?

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1 A. Some of the reports did have inconsistencies. These were
 2 balance numbers, not revenue numbers, though.
 3 Q. Let's go back to the other page. And the brown data, 1996
 4 to 2005, that is based on what?
 5 A. Again, I'd need to look at the legend.
 6 Q. Okay. Based on IIM trust fund balances?
 7 A. Audited reports, yes.
 8 Q. And specifically what are you referring to there?
 9 A. All of the reports that we relied on were included in our
 10 analysis.
 11 Q. Okay. It does not include, obviously, because you've not
 12 finished your DCV, it does not include your updated numbers,
 13 does it?
 14 A. These are balances, not transactions.
 15 Q. Okay.
 16 A. These are the audited balances as recorded.
 17 Q. As recorded by KPMG and the other --
 18 A. There were several different audit firms over time.
 19 Q. Okay. I believe it was Griffin and Arthur Andersen and
 20 KPMG; is that correct?
 21 A. I believe so. But as I mentioned, all of the reports are
 22 included in our report.
 23 Q. Okay. So those are based solely on the audits and not the
 24 DCV work you're doing; is that correct?
 25 A. That's correct. The balances are.

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1 Q. Okay. And let's go back. Category with interest.
 2 Interest begins in 1972. Can you tell us what is done with
 3 interest prior to that time?
 4 A. We did not try to break out interest prior to '72.
 5 Q. Okay. So right now there's no calculation for interest
 6 before that time period?
 7 A. That would be included in the other receipts number.
 8 Q. Okay. So interest should be over there in the blue ledger
 9 or purple ledger?
 10 A. Yes. In the 803, and it appears to be 1,901.1.
 11 Q. So it's your understanding that that includes an interest
 12 portion as well?
 13 A. That's my understanding.
 14 Q. Okay. Now, the Osage Annuity, did I understand that part
 15 of the Osage Annuity is in the tribal IIM and part in the --
 16 considered individual? How did you break that out?
 17 A. No. It's my understanding that it goes into the tribal
 18 trust initially, and some component of that is transferred into
 19 the IIM system.
 20 Q. Okay. So you were not involved in breaking out how much
 21 was tribal and how much was individual.
 22 A. No, I did do that computation.
 23 Q. Okay. Now, how much did you determine should go to the
 24 individual?
 25 A. The numbers that are reflected in this column are what we

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1 felt came into the IIM trust. This is IIM, not tribal.
 2 Q. Okay. The 83 and the 82 is what you determined came into
 3 the IIM trust?
 4 A. That's correct.
 5 Q. Did you determine what initially went into the tribal --
 6 Osage tribal accounts?
 7 A. This is an estimate, and if you'd like to provide the work
 8 papers, I can show you exactly how it's computed.
 9 Q. Do you know if money that was intended for individuals
 10 initially went into the tribal Osage accounts?
 11 A. It's tribal funds that are then distributed to the owners
 12 of the head rights.
 13 Q. Right. And are they distributed while they are in Treasury
 14 or are they distributed directly from the Osage accounts?
 15 A. There are checks from the Osage tribal trust accounts and
 16 there are transfers into the IIM trust account, and that's
 17 what's reflected in this column.
 18 Q. And the rest of the Osage money, where was that distributed
 19 to, to your understanding?
 20 A. The rest of the head rights?
 21 Q. Mm-hmm.
 22 A. I didn't confirm where the funds were distributed to. It's
 23 my understanding that it was via check from the tribal trust
 24 account.
 25 Q. And directly to the Osage tribe?

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1 A. To the owners of the head rights, which would most likely
 2 be members of the tribe.
 3 Q. Okay. So if I'm looking at 1909 to 1933, and I've got --
 4 I'm sorry, 1934 to 1971, and I've got, what, 350.1, is that
 5 million?
 6 A. I'm sorry, I don't know which number you're referring to.
 7 Q. Sure. If you look under 1934 to 1971, you've got 82.8 in
 8 the Osage Quarterly Annuity; is that correct?
 9 A. That's correct.
 10 Q. And now, is some of the Osage Annuity also included in the
 11 350.1 tribal?
 12 A. No, it's not. Those are mutually exclusive numbers.
 13 Q. Okay. The number you got for 82.8 for the Osage Quarterly
 14 Annuity came out of what account?
 15 A. As I mentioned, this is an estimate. If you would like to
 16 provide my work papers, I can explain to you exactly how it's
 17 computed. This is our estimate of how much Osage Quarterly
 18 Annuity came into the IIM trust.
 19 Q. Okay. Can you give me a rough guess as to how much was not
 20 included as going into the IIM trust?
 21 A. No, not as I sit here. But if you'd like to provide those
 22 work papers, yes, I can.
 23 Q. Okay. Do you have any understanding at all as to how much
 24 of the Osage Quarterly Annuity is supposed to go to individuals
 25 as opposed to the tribe?

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1 A. As I mentioned, it's distributed to holders of the shares,
 2 and those are most likely tribal members. The tribe may own
 3 some of those shares as well. I'm not aware.
 4 Q. So is it your understanding that all of the Osage Quarterly
 5 Annuity is supposed to eventually go to individual members?
 6 MR. QUINN: Objection. Asked and answered,
 7 Your Honor.
 8 THE COURT: Yeah, I think you've about exhausted her
 9 knowledge on this subject, counsel.
 10 MR. SMITH: Okay.
 11 THE COURT: She's asked you a number of times for her
 12 work papers.
 13 MR. SMITH: Yeah, that would be great if you could
 14 provide those.
 15 THE WITNESS: You have them.
 16 THE COURT: No, you provide them, you've got them.
 17 THE WITNESS: They've been produced.
 18 MR. SMITH: Your Honor, I haven't seen them, but I'll
 19 look for them.
 20 THE WITNESS: They're a component of the
 21 administrative record.
 22 BY MR. SMITH:
 23 Q. Your analysis begins in 1909, but obviously the trust
 24 process began prior to 1909; is that correct?
 25 A. It's my understanding that the allotment process began

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1 before 1909, yes.
 2 Q. And has any estimate been made of revenue prior to 1909?
 3 A. Not of which I'm aware.
 4 Q. Do you know if anybody has been tasked with that job of
 5 determining that?
 6 A. As I mentioned, not that I'm aware.
 7 Q. Now, you've broken out between tribal IIM and other
 8 receipts, and basically you've just taken a 15 percent number;
 9 is that correct?
 10 A. That's my recollection, yes.
 11 Q. And can you tell me -- so if I'm looking down at tribal
 12 IIM, I'm just looking at 15 percent of the total.
 13 A. As I mentioned, I can give you the math behind that if you
 14 have the work papers. It's my understanding that it's 15
 15 percent.
 16 Q. Okay. And can you tell me how that number was arrived at?
 17 A. As I mentioned, and if you look on the legend, that was an
 18 estimate provided by Morgan Angel.
 19 Q. So Morgan Angel would have a better understanding as to how
 20 they arrived at 15 percent than you, I take it?
 21 A. That's correct.
 22 MR. SMITH: Your Honor, I have no further questions.
 23 THE COURT: Okay.
 24 MR. QUINN: Your Honor, we have no further questions
 25 for this witness at this time. As Your Honor knows, there's

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1 been an arrangement agreed to bring Ms. Herman back to conclude
 2 cross-examination as to some of the data completeness validation
 3 report issues. We've agreed with plaintiffs to bring Ms. Herman
 4 back on Tuesday of next week.
 5 THE COURT: Well, wait a minute. Hold it. I know
 6 Ms. Herman's going to come back on Tuesday of next week. I
 7 don't want all of Ms. Herman's testimony to be rehashed on
 8 Tuesday of next week. She's spent 24 hours, or seems like 24
 9 hours on the witness stand. She's been on the witness stand all
 10 of the time in the last 24 hours that we've been here.
 11 MR. QUINN: I don't mean to suggest that, Your Honor.
 12 THE COURT: Well, but my point is plaintiffs are not
 13 going to start all over again with Ms. Herman. The questions
 14 they're going to ask next week are going to be confined to
 15 whatever is different and new in the material they've just
 16 received, which may turn out to be nothing. In fact, I hope it
 17 does turn out to be nothing. I think you've about exhausted
 18 most of the subjects you have to deal with, Mr. Smith. So if
 19 you've got any redirect, I'll have it now.
 20 MR. QUINN: That's what I'm saying, Your Honor. We
 21 have nothing based on -- if we were concluding today, I have
 22 nothing further of this witness.
 23 THE COURT: Fine. Okay. Understood.
 24 MR. SMITH: Your Honor, what he said is exactly right.
 25 There's nothing further --

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1 THE COURT: Ms. Herman, you may step down subject to
 2 recall. Thank you, ma'am.
 3 THE WITNESS: Thank you very much, Your Honor.
 4 (The witness steps down.)
 5 MR. KRESSE: Good afternoon, Your Honor. John Kresse
 6 again for the defendants. We call Robert Winter.
 7 ROBERT J. WINTER, WITNESS FOR THE DEFENDANTS, SWORN
 8 DIRECT EXAMINATION
 9 BY MR. KRESSE:
 10 Q. Mr. Winter, would you spell your name for the Court?
 11 A. W-I-N-T-E-R.
 12 Q. And it's Robert J. Winter, correct?
 13 A. Correct.
 14 MR. KRESSE: Your Honor, I'll give you a brief
 15 overview of what Mr. Winter's expected testimony will be.
 16 THE COURT: Thank you.
 17 MR. KRESSE: Mr. Winter is the director of the Office
 18 of Trust Reporting and Reconciliation within the Office of the
 19 Special Trustee. He will testify regarding OST's practices and
 20 procedures for categorizing, tracking, and verifying IIM
 21 transactions, including check issuance and payment, primarily
 22 during his tenure from 1998 through the present.
 23 The reports he will discuss show the exchange of receipt
 24 and disbursement information between Interior and Treasury,
 25 which facilitates, among other things, Interior's ability to

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1 calculate through-put. Mr. Winter will also testify regarding
 2 the balance in the IIM trust fund, as well as the status of
 3 Interior's mass cancellation fund.
 4 BY MR. KRESSE:
 5 Q. Mr. Winter, I understand you are an accountant by training
 6 as well as a CPA, correct?
 7 A. Yes, sir.
 8 Q. And you've worked at Interior since 1992 to the present,
 9 correct?
 10 A. Correct.
 11 Q. And during that entire period, you've essentially done
 12 accounting work?
 13 A. Yes.
 14 Q. You've been with the Office of Special Trustee since July
 15 of 1998?
 16 A. Yes.
 17 Q. Did I correctly state your current position with the Office
 18 of the Special Trustee?
 19 A. Yes. Director of the Office of Trust Reporting and
 20 Reconciliation.
 21 Q. Mr. Winter, just to touch on an issue that was the subject
 22 of earlier testimony, the mass cancellation project, are you
 23 familiar with that project?
 24 A. I know about it, but I was not involved in it.
 25 Q. Have you had an opportunity to look at an account set aside

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1 for mass canceled checks?
 2 A. Yes.
 3 Q. And when did you do that?
 4 A. I actually took a look at the balance last Friday.
 5 Q. And what was the balance approximately?
 6 A. Around \$480 million.
 7 Q. 80 million?
 8 A. Sorry, 480,000.
 9 Q. Did you also look at recent activity in the account?
 10 A. There has been no recent activity in the last few years,
 11 no. Other than interest earnings.
 12 Q. Directing your attention to exhibit which is AR-619. Let's
 13 go to the second page of the document. All right. Mr. Winter,
 14 are you familiar with the accounting discrepancies information
 15 binder?
 16 A. Yes, I am.
 17 Q. Is that something that you're in charge of?
 18 A. It is something I do have managerial responsibility over.
 19 Q. Let's go to the fourth page of this exhibit, and this is --
 20 the last four digits of the Bates number are 0211, and then
 21 there's a second page to this document.
 22 Are you familiar with this document, these last two pages?
 23 A. Yes. It's an issue paper on the mass cancel account.
 24 Q. And is this document consistent with your understanding of
 25 the mass cancellation -- of the status of mass cancellation?

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1 A. Yes, it is.
 2 Q. And the individual -- on the second page of the memorandum
 3 here it says "Prepared by John Driskill." Do you know who John
 4 Driskill is?
 5 A. Yeah. At the time he was the shadow division chief for the
 6 division of trust funds accounting.
 7 Q. Did you work with Mr. Driskill?
 8 A. Yes, I did.
 9 Q. What's Mr. Driskill doing now?
 10 A. He has since retired, and he's doing some subcontracting
 11 work.
 12 Q. Mr. Winter, with regard to the cancellation of Treasury
 13 checks issued by the Department of the Interior for individual
 14 Indians, what is the current process with regard to checks that
 15 are canceled due to limited payability? Do you know what the
 16 process is now?
 17 A. Yes. Basically after 13 months, if a check is not cashed
 18 by an individual, Treasury will place a limited payability
 19 cancellation on the check. They will send us the monies via the
 20 IPAC system. That's the intragovernmental payment and
 21 collections system. That's how agencies pay each other. They
 22 will send us the monies back on a monthly basis, along with
 23 information regarding each check that was canceled, basically
 24 the account number, the check number, the amount.
 25 At that point we place those monies in bulk into a suspense

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1 account, if you will, so they can immediately start earning
 2 interest, and then very shortly thereafter, usually within the
 3 next thirty days, we will move those monies out of the suspense
 4 account into the correct individual's account, as a recredit to
 5 their account.
 6 Q. And do you know which office at OST is involved with
 7 performing that work?
 8 A. Yeah. It's primarily the Office of Trust Funds Management.
 9 Q. Now, Mr. Winter, as your title states, you're involved in
 10 reporting and reconciliation. Can you explain generally what
 11 that involves?
 12 A. Certainly. As is very clear in the title, our office is
 13 comprised of two primary branches, the branch of reconciliation
 14 and the branch of reporting. Our reconciliation group, the
 15 primary duties are to perform a myriad of cash and investment
 16 reconciliations on a daily, weekly, and monthly basis.
 17 Then our group of reporting, their primary functions are
 18 financial statement reporting, all of our regulatory reporting,
 19 internal managerial reports, and tax reporting.
 20 Q. I believe you said regulatory reporting?
 21 A. Correct. Those are reports such as the 224 and the 1219,
 22 1220 which we submit to Treasury. Those are simply a statement
 23 of cash transactions.
 24 Q. And those reports are required by, you said regulation.
 25 A. By regulation, by Treasury regulation, correct.

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1 Q. Mr. Winter, I'd like you to turn your attention to
 2 Defendants' Exhibit 233. And first of all, this document, the
 3 print obviously is very small if you're looking at it on the
 4 screen, correct?
 5 A. Yes.
 6 Q. Let's blow up the top portion of the document so we can
 7 read the title. Mr. Winter, do you recognize this document?
 8 A. Yes. This is our daily cash reconciliation report we put
 9 out every morning.
 10 Q. And this is referred to as the DCR?
 11 A. Correct. Daily cash reconciliation.
 12 Q. Now, this DX 233, it contains another report or document at
 13 page 4; is that correct?
 14 A. Yes. I don't see it on the screen yet, but I do believe
 15 that's the daily cash statement we refer to.
 16 Q. And then let's also look at DX 235. What is Defendants'
 17 Exhibit 235, Mr. Winter?
 18 A. This is a transactional download from our Trust Funds
 19 Accounting System, better known as TFAS.
 20 Q. All right. So we can refer to this document as a TFAS
 21 download; is that all right?
 22 A. Yes.
 23 Q. And the first document again was the DCR?
 24 A. Correct.
 25 Q. And the second one, the daily cash statement, you also

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1 refer to as the DCS, correct?
 2 A. Yes.
 3 Q. All right. Now, do these -- how do these three documents
 4 work with regard to reconciling balances?
 5 A. Well, the DCR is the report that combines what is
 6 reconciled between the DCS and the TFAS transactional download.
 7 Basically, that's what we're comparing. We're comparing all the
 8 cash that either came in or went out of Treasury on a daily
 9 basis, for the trust, to every transaction that happened, that
 10 has happened up through yesterday in TFAS, to ensure that we're
 11 accounting for the cash properly.
 12 It's sort of like reconciling your checkbook. We're
 13 getting information from Treasury, like a bank statement, and
 14 we're comparing it to our checkbook and we're doing, like you
 15 can see on this document here, we're doing a tick and tie
 16 between the numbers so that we can see what came into Treasury
 17 was also posted to our TFAS system, and those we know are
 18 classified correctly, they drop off the reconciliation.
 19 It is -- any items where we see either there was a receipt
 20 or disbursement in Treasury that wasn't posted in TFAS or vice
 21 versa, something that was posted in TFAS that was not received
 22 yet in Treasury, those items will show up on the daily cash
 23 reconciliation, which was the first document we looked at. And
 24 we provide that to our accounting group on a daily basis in the
 25 morning so that any discrepancies or reconciliation items can be

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1 addressed immediately.
 2 Q. Now, let's look at DX 235, the TFAS download. And this
 3 is -- I just want to be clear, this is information from the TFAS
 4 system, correct?
 5 A. Correct.
 6 Q. And this is just for one day, right?
 7 A. Correct.
 8 Q. And this is just IIM transactions?
 9 A. No. This is all transactions.
 10 Q. All right. And when you say all --
 11 A. All tribal IIM trust. Anything to do with trust that came
 12 into our ALC, which is our agency location code, for trust, gets
 13 reconciled. Of course, those reconciliation items are then
 14 grouped by whether they're IIM or trust so that they can be
 15 easily researched and taken care of.
 16 Q. And so then looking at the daily cash statement, the DCS,
 17 which is DX 233 at page 4, and that's also on page 5, and the
 18 last item or entry appears -- or entries are on page 6. If we
 19 can go through that document. And go back to page 4, please.
 20 MR. HARPER: Your Honor, I'm going to object to this
 21 line of questioning on materiality grounds. As Your Honor's
 22 made clear, this is not a trust reform trial. We can certainly
 23 also put on extensive evidence as to what they are or are not
 24 doing as far as trust forms. Everything in here is in 2007.
 25 The government's own historical accounting plan ends in the year

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1 2000, so how this is material to the issues before the Court
 2 presently it's not exactly clear to us.
 3 THE COURT: Want to respond to that, Mr. Kresse?
 4 MR. KRESSE: Well, Your Honor, first of all, although
 5 we are using current documents, the Court has suggested that the
 6 historical accounting may need to go up through the year 2006.
 7 These are processes -- and I'll certainly ask Mr. Winter to
 8 discuss how far back these reconciliation processes go, but this
 9 goes to the accuracy and reliability of the information that
 10 could be part of a historical accounting.
 11 THE COURT: But Mr. Harper makes a good point. You're
 12 talking 2007 numbers. Why don't you lay a foundation for the
 13 proposition that this has been done this way going back as far
 14 as he knows or not.
 15 MR. KRESSE: All right.
 16 BY MR. KRESSE:
 17 Q. Mr. Winter, the reconciliation process that we've been
 18 discussing, how long has your office been conducting it in this
 19 manner?
 20 A. In this manner it's been back to approximately 1992, where
 21 they've done the cash reconciliation process.
 22 Q. And Mr. Winter, as far as the type of documentation that
 23 we're looking at today, do you know how -- has this been, for
 24 instance, looking at DX 233, the DCR, is that a -- how long has
 25 that type of document been in use, to your knowledge?

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1 A. Well, certainly not necessarily in its current format, but
 2 the substance of it basically, a reconciliation between Treasury
 3 and our books, has been in place since 1992.
 4 THE COURT: Why do you say 1992? Is that as far back
 5 as your own experience goes?
 6 THE WITNESS: Yeah. As far as this particular type of
 7 a document is concerned, yes. My experience only goes back to
 8 '98, though, sir.
 9 THE COURT: Okay. So how do you know it goes back to
 10 '92?
 11 THE WITNESS: From looking at past documents and
 12 knowing what my cohorts have done.
 13 THE COURT: All right. I'll allow that. Go ahead,
 14 Mr. Kresse.
 15 MR. KRESSE: Thank you, Your Honor.
 16 BY MR. KRESSE:
 17 Q. And the information on DX 233, starting on page 4, the
 18 daily cash statement, where does this information come from?
 19 A. Information on the data cash statement comes directly from
 20 Treasury, information that they download on our stead and fax it
 21 over to us, because we cannot access the information via
 22 Cash-Link ourselves because of the Internet restriction.
 23 Q. So there's a Cash-Link account for your office?
 24 A. Yes.
 25 Q. But you can't access it, correct?

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1 A. Correct.
 2 Q. So what has to be done to get this information into your
 3 system?
 4 A. They fax us information regarding this on a daily basis.
 5 We then manually take from those reports, enter it into an Excel
 6 spreadsheet, which is what this is, so that we have a
 7 comprehensive report that we can then start comparing to our
 8 TFAS information.
 9 Q. And by what time of the day is this report done, looking at
 10 the DX 233, the DCR?
 11 A. Usually by 10 or 11 a.m. in the morning. We have people
 12 come in very early. It's a manually intensive process. So they
 13 start receiving the information, compiling this at 6 a.m.
 14 Q. And the information that Treasury gets, that information
 15 comes from where?
 16 A. They go in and access our Cash-Link account and our IPAC
 17 account, and they do either print screens or reports.
 18 Q. Do you know how the information gets into the Cash-Link
 19 account, where that information comes from?
 20 A. Regarding deposits, like right here you can see in SF-215,
 21 that's a deposit ticket, that gets put into the system by the
 22 bank via the lockbox process. All the checks come into the
 23 lockbox on a daily basis, a deposit is prepared by the lockbox
 24 contractor, they deposit it at our Treasury general account.
 25 That information gets entered into Cash-Link, and we will see

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1 that the next morning.
 2 Q. What entity actually puts the information into the
 3 Cash-Link?
 4 A. The Treasury general account at the bank.
 5 Q. At the bank.
 6 A. Yes.
 7 Q. Now, you mentioned the lockbox?
 8 THE COURT: Mr. Kresse, this may be a little more
 9 granular perhaps than I need.
 10 BY MR. KRESSE:
 11 Q. Mr. Winter, before the lockbox, how would deposits or
 12 receipts be taken in?
 13 A. Generally at the agency. Checks were sent in o the agency.
 14 They would prepare a bill for collection, and a deposit ticket
 15 and deposit that at their local bank that has a Treasury general
 16 account.
 17 MR. HARPER: Your Honor, if I could interpose another
 18 objection. There's a lack of foundation here as well. There's
 19 not been a determination of when this lockbox was put into
 20 place. And so it's not clear that it's material.
 21 BY MR. KRESSE:
 22 Q. Mr. Winter, when was the lockbox process initiated at OST?
 23 A. June of 2005.
 24 Q. And is the lockbox --
 25 THE COURT: I'll sustain the objection.

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1 MR. KRESSE: All right.
 2 BY MR. KRESSE:
 3 Q. Mr. Winter, directing your attention to DX 240, can you
 4 identify that document?
 5 A. Yes. That is the SF-224 statement of transactions that we
 6 transmit to Treasury every month.
 7 Q. All right. And for how long, to your knowledge, has this
 8 document been transmitted to Treasury?
 9 A. I can't give you a year, but I know it's Treasury
 10 regulation, so they've been doing it as a -- I know BIA did it
 11 before OST did it. As far as -- I've been in charge of it since
 12 1998.
 13 Q. And Mr. Winter, as part of this document, there are two
 14 other forms attached; is that correct? You have the 224?
 15 A. And the SF-1219 and 1220, which are a statement of
 16 accountability and statement of transactions as well.
 17 Q. And Mr. Winter, with regard to initially the SF-224, is
 18 that a document that is helpful to determining receipts to the
 19 IIM trust fund?
 20 A. If you're looking at like through-put numbers, trying to
 21 determine receipts, accurate receipts of disbursements, no, it's
 22 not.
 23 Q. It does have -- looking at page 1 of DX-240, it does have
 24 columns there for receipts and collections, correct?
 25 A. It does, yes.

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1 Q. And also gross disbursements, correct?
 2 A. Yes.
 3 Q. And then down the left-hand side there's various account
 4 numbers, correct?
 5 A. Yes.
 6 Q. And if you look down the page toward the middle, there's a
 7 series of -- there's about five lines there that reference
 8 account 14X6039?
 9 A. Correct.
 10 Q. And that's the IIM trust code, correct?
 11 A. Yeah. That's the Treasury account symbol for IIM trust
 12 fund.
 13 Q. And then there's, the first three lines that include the
 14 14X6039 reference, those have numbers in parentheses there.
 15 What do those numbers mean?
 16 A. Those indicate investment activity.
 17 Q. And then you have the fourth and the fifth line of just
 18 14X6039, correct?
 19 A. Yeah. That would be noninvestment activity related to any
 20 receipts and disbursements.
 21 Q. And looking at the line that indicates gross disbursements
 22 of 6 million plus dollars?
 23 A. Yes.
 24 Q. Is that in your mind an accurate representation of the
 25 disbursements from the IIM trust fund for the month that's

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1 represented by this report?
 2 A. Not when you're talking traditional disbursements, say
 3 disbursements to IIM account holders, when you see it's only \$6
 4 million, because that column itself includes a lot of other
 5 figures in there, as required by Treasury to report on. So
 6 anything coming through IPAC, whether it's a receipt or
 7 disbursement, actually gets also reported in that column. So if
 8 you have IPAC type receipts that exceed disbursements by a vast
 9 amount, it will definitely skew that disbursement number.
 10 So I know for a fact that in this month we had
 11 disbursements in the 20 million to \$30 million range that's
 12 reported on our financial statements, and yet on the 224 you
 13 only see \$6 million worth of disbursements, because a lot of
 14 other numbers are netted into that amount.
 15 Q. And what about the receipt number on the following line,
 16 the 11 million plus?
 17 A. Similar story. That amount also includes investment
 18 activity as an offset to the line above -- the third line above,
 19 with number 43 in parentheses, as a negative number in that
 20 column. So that number is actually a higher dollar amount, I
 21 think in the 20 to \$30 million range as well.
 22 Q. Now, the other -- you've referenced the first, the fourth
 23 and fifth line there, and then you have the two lines that are
 24 preceded by the 88 and the 98 code, correct?
 25 A. Mm-hmm.

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1 Q. What does the number in the second line represent, the 1.4,
 2 looks like 1.4 billion?
 3 A. That represents almost exclusively our overnighter
 4 investments, meaning that's our purchase of our overnighter
 5 investments, which is shown as a disbursement. And you can see
 6 it's \$1.4 billion, because it's an aggregate of the overnighter
 7 investment that we make every single day.
 8 So when we purchase the overnighter, say tonight we'll show
 9 a disbursement in that column. I think in this case the average
 10 dollar amount per day was around 50 or \$60 million in
 11 overnighter investments, and upwards to \$80 million. So that'll
 12 show -- if we invest \$80 million in the overnighter every single
 13 day, you will show that aggregated over the entire month
 14 process, thus building it up to \$1.4 billion, when there were
 15 never any really through-put, if you would, disbursements of
 16 \$1.5 billion. It's just purely investment activity.
 17 Q. Right. So this number, even if you had no new receipts
 18 into the 14X6039 account, it could still be \$1.4 billion?
 19 A. Exactly.
 20 Q. If you extrapolate that out to a year, the number would be
 21 approximately what in this category?
 22 A. It's around \$17 billion.
 23 Q. And then the same for the next line down, you have the
 24 receipts and collections with the symbol 98 in front of the 14X?
 25 A. And that's the redemptions. So each day we have a purchase

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1 and then a subsequent, or I should say we have a redemption that
 2 morning and a subsequent purchase around 1:00 of the
 3 overnighter. And so every single day you'll see an in and an
 4 out, an in and an out, an in and an out, and those are
 5 collectively reported on this report as an aggregate amount.
 6 THE COURT: So if you subtract one from another, you
 7 should figure out how much was earned by overnighters.
 8 THE WITNESS: Not necessarily, because our overnighter
 9 investments will vary, but we do have a report that we will show
 10 you the amount that was earned on the overnighter. Yes, Your
 11 Honor.
 12 THE COURT: Okay.
 13 BY MR. KRESSE:
 14 Q. And we can turn to that report, which is DX 277. Is that
 15 the document you were referencing, Mr. Winter?
 16 A. Yes, it is.
 17 Q. And is this a document printed by OST?
 18 A. No. I believe this was a screen print from Treasury.
 19 Q. And the date --
 20 THE COURT: Screen print from what?
 21 THE WITNESS: The Treasury. That Treasury produced.
 22 MR. KRESSE: And Your Honor, we'll represent this was
 23 a document that was provided to us by Treasury.
 24 BY MR. KRESSE:
 25 Q. The date is July 31, correct?

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1 A. Correct.
 2 Q. And at just about 5 p.m.?
 3 A. Right. When this report was pulled.
 4 Q. And this document also shows numbers for the code 88 and --
 5 98, excuse me.
 6 A. As you can see, those numbers are extremely similar to what
 7 we reported on the 224. As a matter of fact, the redemption
 8 line in parens 98 of the \$1.477 billion is exactly the amount of
 9 redemptions or the activity that we showed on our 224. The
 10 investment amount is very similar as well. That's the
 11 purchases. It is slightly different because of par value
 12 adjustments we make on our 224 that is not represented in this
 13 report.
 14 Q. So there's some additional investment money that's not
 15 shown in this investment number on the 88 number?
 16 A. Yes. Because this report was pulled as of the last day of
 17 July. Our 224 reporting is not done until the third business
 18 day of the following month. So Treasury doesn't -- pulling this
 19 report on that date won't accurately reflect all of the activity
 20 that we report on the 224. But this report is here to
 21 illustrate the overall investment in the overnighter on a daily
 22 basis, along with the interest earnings that you can see there
 23 as \$317,000 for that particular month in interest earnings, just
 24 on the overnighter.
 25 Q. Right. And can you focus on that. That's on the sort of

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1 bottom left to the middle on the screen, correct?
 2 A. Correct.
 3 Q. And then lower down, toward the bottom of the first page,
 4 transaction detail. And that continues on for the next page and
 5 a half. What does that show there, Mr. Winter?
 6 A. That shows the detail of our purchase and redemption every
 7 single day of the Treasury overnighter. You can see there at
 8 the bottom of the first page that our initial -- on 7/2 you see
 9 the negative amount. That is actually a redemption amount of
 10 the overnighter security that happened the morning of the 2nd.
 11 Later that afternoon we purchased \$86.8 million worth of
 12 overnighter security, which then gets redeemed the following
 13 day.
 14 You can see it's the exact same amount as the amount
 15 purchased the night before. And then over to the right you can
 16 see the investment earnings for that particular day. You'll see
 17 varying amounts, primarily because of the amount of days that it
 18 was invested for. So if we invest on a Friday, you'll see
 19 triple the amount of earnings as you probably did the day
 20 before, because it's invested over the weekend.
 21 Q. And for instance, on July 5, you had the 4th of July to get
 22 an extra day?
 23 A. Right.
 24 Q. And in looking at the next page of DX-277, about a quarter
 25 of the way down, there's a decrease in the left-hand column on

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1 7/11, the first number is minus 87 million and the next number
 2 is just a little over 70 million. And do you know why that
 3 number would change so significantly?
 4 A. Yeah. In this case I don't know exactly why it changed,
 5 but most likely that's due to the fact that we purchased a large
 6 security that would be longer term.
 7 Q. And the large security is purchased outside of Treasury?
 8 A. It can be purchased either at Treasury as a Treasury
 9 security or it can be purchased outside of Treasury. Either as
 10 a Treasury on the open market or via a different governmental
 11 entity, government-sponsored entity or a government agency
 12 security. Or of course that could have been a lot of
 13 disbursements that were made that particular day.
 14 Q. Mr. Winter, turning your attention to Defendants' Exhibit
 15 279, are you familiar with that document, which states at the
 16 top "GWA Account Statement"?
 17 A. Yes.
 18 Q. What is the purpose or use of this document?
 19 A. That's another report we get faxed from Treasury that shows
 20 ending balances that we use to reconcile all of our Treasury
 21 accounts that are divided between IIM and different tribal
 22 Treasury accounts.
 23 MR. HARPER: Your Honor, again, same objection. This
 24 is July 2007. No foundation for why it's applicable for the
 25 terms of the period that we're talking about in this trial.

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1 BY MR. KRESSE:
 2 Q. Mr. Winter, do you know how long the GWA account statement
 3 has been used in your office?
 4 A. A statement in this form has been certainly in use since
 5 I've been there. GWA is relatively -- that's the government
 6 wide accounting initiative. This is simply a statement of
 7 account for the particular month that we receive the download
 8 for.
 9 THE COURT: The objection is overruled.
 10 BY MR. KRESSE:
 11 Q. Mr. Winter, turn your attention to what's marked as
 12 Defendants' Exhibit 282. Do you recognize that document,
 13 Mr. Winter?
 14 A. That's a document that shows any statement of differences.
 15 Q. And with regard to this type of document or this type of a
 16 printout, how long has this particular type of document been in
 17 use in your office?
 18 A. Certainly as long as I've been there. I know this is a
 19 document -- this is once again another Treasury printout. We
 20 utilize the information, not necessarily in this particular
 21 format, but we get the same information.
 22 Q. And in this particular example, the document has in table
 23 form, the first item on the left is audit date. Do you see
 24 that?
 25 A. Uh-huh.

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1 Q. And then statement of -- what is that, transaction?
 2 A. Yeah. A debit.
 3 Q. All right. And then the next column, what is that?
 4 A. Is your credit. It's basically the agency. Control
 5 account at Treasury.
 6 Q. What does this information next to the audit date 7/07 --
 7 is that July '07?
 8 A. Yeah. That's July of '07. That represents during the
 9 month of July primarily all the canceled checks that were
 10 returned.
 11 Q. And when you say returned, returned to where?
 12 A. The money's returned back to us. Most of those canceled
 13 checks are for returned checks that come back because bad
 14 address or whatever. We then will redeposit those back into
 15 Treasury.
 16 Q. Does Treasury return -- I mean does Treasury essentially
 17 return the money into the Interior account?
 18 A. Yeah. As soon as we deposit it right back in there, it's
 19 available for our use. We'll go back immediately and recredit
 20 that check to the individual's account.
 21 Q. Now, looking at the second line, that audit date is August
 22 '07, correct?
 23 A. Yes.
 24 Q. And then there's -- the first column there's a zero and the
 25 second column \$84,037.73 cents, correct?

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1 A. Yes.
 2 Q. And the fourth column under difference, there's a negative
 3 number, of 84,000 plus. What does that mean when there's that
 4 negative number there for the difference?
 5 A. That's the statement of difference, meaning there's a
 6 difference between what we reported to Treasury and what
 7 Treasury is saying that they received as deposits to that
 8 particular disbursing symbol. In this particular case this
 9 report was pulled in the middle of August, specifically up there
 10 on the right-hand side, August 17, and at that point they had
 11 received deposits from returned checks of around \$84,000.
 12 However, our reporting doesn't occur until the third
 13 business day following the month, so if you pulled this report
 14 from Treasury you'd see a statement of difference, no matter
 15 when you look at it during the month for that particular month.
 16 It's not until the next month would roll around, if you pulled
 17 this report on August 4, you would see that we would have no
 18 statement of difference because we would have reported to them
 19 all of our activity by then.
 20 Q. And on the upper left-hand corner --
 21 A. Sorry. I should say September 4, excuse me, because this
 22 is an August 17th report.
 23 Q. Looking at the upper left-hand, there's the letters ALC and
 24 then to the right of that the number ending in 4844. What does
 25 that mean?

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1 A. ALC stands for agency location code. It specifically
 2 identifies, it's sort of like your employer identification
 3 number with Treasury. In this case, 4844 is actually a
 4 disbursing symbol. The Treasury tends to sort of use those
 5 interchangeably, they'll just show it on the ALC line, but that
 6 is our IIM disbursing symbol. That's what allows us to print
 7 and mail checks directly from our office in Albuquerque.
 8 Q. And those are just IIM checks, correct?
 9 A. Correct. That is checks going to individuals, yes.
 10 Q. Mr. Winter, the TFAS system, how long has the TFAS system
 11 been in operation?
 12 A. TFAS, we started conversion in August of 1998, essentially
 13 when I first got there, and I believe it was completed in March
 14 of 2000.
 15 Q. And one of the aspects of the conversion is the ability to
 16 produce account statements; is that correct?
 17 A. Correct.
 18 Q. And are you familiar with the production of account
 19 statements for IIM account holders?
 20 A. Yes. Our office is responsible for the coordination of the
 21 production and mailing of quarterly statements to beneficiaries.
 22 Q. And how long have those quarterly account statements been
 23 going out?
 24 A. Certainly since March of 2000. At point of final
 25 conversion, everyone was receiving a statement of transactions.

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1 That included both their beginning balance, all the transactions
 2 that happened in their account, with a description of those
 3 transactions, and an ending balance. And they do receive those
 4 statements on a quarterly basis.
 5 Q. And that's a rolling basis. You don't send them all out on
 6 the same day, right?
 7 A. Correct. We split it up into approximately thirds. A
 8 third of them will receive it on a January, April, July basis, a
 9 third, February, May, so forth.
 10 Q. Mr. Winter, I direct your attention to Defendants' Exhibit
 11 239. Can you identify this document, Mr. Winter?
 12 A. Pardon me. Please repeat. I didn't hear that.
 13 Q. I'm sorry. Can you identify this document?
 14 A. Yes, I can.
 15 Q. What is it?
 16 A. This is basically a flowchart, if you will, of the trust
 17 funds processing, from the point that we receive the collection
 18 until it is disbursed from our office. Would you like me to
 19 explain a little bit more?
 20 Q. Well, first of all, let's address the issue of how long
 21 this process essentially, as it's represented here, has been in
 22 place, and you can indicate exceptions, such as the lockbox, for
 23 example.
 24 A. Well, the lockbox, of course, very recently the lockbox was
 25 implemented for all agencies. I believe October of 2005. At

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1 that point everyone was going -- sending their documents to the
 2 lockbox, whether the agencies were converted to TAAMS, which is
 3 the Trust Asset and Accounting Management System, or not. We
 4 were trying to get the checks going away from the agencies and
 5 into the lockbox as that process.
 6 Now, as each agency has converted over to the Trust Asset
 7 and Accounting Management System, TAAMS, which I think final
 8 conversion occurred here at the end of September, for those
 9 agencies, all of the encumbrances will produce invoices, which
 10 are sent out to the lease holders, to then turn around and send
 11 their monies back with the invoice to the lockbox.
 12 MR. HARPER: Your Honor, again, similar objection.
 13 TAAMS is, as the witness just testified, they're still rolling
 14 out this year aspects of it. We know the lockboxes were of
 15 recent vintage. The fact that this is the trust fund processing
 16 flow in 2007 really has nothing to do with the four issues
 17 before you.
 18 THE COURT: Well, I'm going to -- I think I agree with
 19 that, Mr. Harper, but I want to take a quick run through this.
 20 Maybe it will be useful to compare what's being done now to what
 21 was being done at some other time. So let's see what the
 22 current status is.
 23 BY MR. KRESSE:
 24 Q. So, Mr. Winter, basically just -- and I would appreciate
 25 just the brief discussion, which you've already talked about the

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1 invoice now, the money going into the lockbox. Could you
 2 explain briefly what, when you say lockbox, what does that
 3 really mean? Physically what's going on there?
 4 A. Just a centralized facility for the processing of payments,
 5 similar to where you might send your credit card payment. As
 6 opposed to the leaseholders carrying in or sending their
 7 payments in to each of the agencies, that has happened in the
 8 past, we implemented a centralized lockbox so that all the
 9 monies were coming into a centralized place, deposited every
 10 single day, and reported back to us.
 11 So this just shows the process of controls that are in
 12 place to ensure we're accounting for the dollars coming in and
 13 the dollars going out.
 14 Q. Then to the right of the lockbox box, there is a little
 15 arrow, and it indicates receipt data and shows it going into a
 16 cylinder, TFR. What's TFR?
 17 A. That's trust funds receivable system. These are -- it's
 18 just basically an accounts receivable system, if you will, that
 19 receives information from TAAMS as to when a payment is due. It
 20 is stored in trust funds receivable system, and produces an
 21 invoice 45 days prior to the payment being due, in order to mail
 22 out to the leaseholder, and they will then turn around and make
 23 their payment with the invoice back to the lockbox.
 24 And when that occurs, we now have an automated allocation
 25 process where that check is matched up with the invoice and is

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1 automatically allocated to all the beneficiaries on that lease.
 2 That wasn't previously the case, of course, because we didn't
 3 have the ownership data in TFAS for that to occur.
 4 Q. I apologize if I already asked this. When did the TAAMS
 5 conversion start, do you know?
 6 A. I believe that also started, I think the pilot was Southern
 7 Plains, and that was in June of 2005.
 8 Q. So the TFR system, is that tied in with the conversion to
 9 TAAMS as well?
 10 A. Yes. That was developed independently in order to maintain
 11 information on invoices and accounts receivable.
 12 Q. All right. Was that -- so that was coincidental with the
 13 TAAMS conversion, is that fair to say?
 14 A. It was developed shortly after the first pilot.
 15 Q. Now, going down the left-hand side, you have a box on the
 16 left-hand corner for Treasury, and then an arrow into
 17 reconciliation of cash receipts and disbursements. Is that what
 18 we've been talking about already today?
 19 A. Yes. That just basically shows monies flowing into
 20 lockbox, gets deposited into Treasury, which is the arrow down
 21 to Treasury. That information then gets reconciled to the
 22 information that's coming out of TFAS for all of the postings
 23 that happen in TFAS.
 24 Q. So the arrow going into the right-hand side of the
 25 reconciliation box, the pink box, that's what you refer to as

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1 the TFAS download information?
 2 A. Correct.
 3 Q. And then within the TFAS -- it's okay to call it the
 4 barrel?
 5 A. Sure.
 6 Q. Within the TFAS barrel, you have a number of boxes and then
 7 you have an elliptical symbol. It says IIM pool. What does the
 8 IIM pool represent?
 9 A. That represents the pool of assets which is invested.
 10 Q. Which are --
 11 A. Instead of investing each and every single IIM account on
 12 an individual basis, where most of the accounts are fairly small
 13 dollars, as a balance going, it would -- there's no way you
 14 could amass the amounts of dollars in order to purchase the
 15 longer-term type securities and whatever needed to get a higher
 16 interest rate. So we pool all those monies together, and it's
 17 that asset pool that's referred to here, the IIM pool.
 18 Q. To your knowledge, how long has the process of pooling the
 19 IIM funds and investing them, how long has that process been in
 20 place?
 21 A. Since way before I got there. Certainly into the early
 22 '90s.
 23 Q. And then from the IIM pool, you have an arrow into a box,
 24 investments, correct?
 25 A. Correct.

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1 Q. And then there's an arrow going up into a box on the upper
 2 right called custodian. Can you explain what that is all about?
 3 A. Yeah. The long-term investments, we actually hold it in
 4 custodian. At this point it's SEI Investments. This basically
 5 shows that we hold the monies at an outside custodian. We
 6 perform a monthly reconciliation, that's that pinkish box called
 7 reconciliation, of interest and securities, that we do to ensure
 8 that we know all of our investments that we're showing in TFAS
 9 are also physically at our custodian.
 10 Q. So TFAS not only keeps track of the individual accounts, it
 11 also keeps track of the larger numbers.
 12 A. Of all the investments.
 13 Q. And then you also have a box -- a pink box stating
 14 unrestricted IIM accounts. Can you explain what those are?
 15 A. Yeah. That's basically all of the accounts where there's
 16 not a restriction on it, such as a minor or an estate account or
 17 a whereabouts unknown account, where the balance is being held,
 18 because either we don't know -- don't have a valid address or
 19 they're a minor and cannot legally receive the funds yet.
 20 Those are accounts where, when the monies come in and the
 21 balance gets to \$15, those amounts are automatically disbursed
 22 to the account holder.
 23 Q. And that can be disbursed how?
 24 A. Via check, ACH, direct deposit.
 25 Q. And ACH means what?

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1 A. Automated clearinghouse, and it's just, that and EFT,
 2 electronic funds transfer, they're just different methods of
 3 transferring money electronically to a specified account.
 4 Q. And that's indicated in the light green box, correct?
 5 A. Yes.
 6 Q. The arrow from the unrestricted accounts?
 7 A. Correct.
 8 Q. Then there's also a -- and I'm sorry. The restricted
 9 accounts, there's a line going down, and there's a little text
 10 still in the bottom of the barrel there, stating "upon
 11 request/approval," with an arrow to "disbursement to guardian,
 12 parent, et cetera." Can you explain what goes on there?
 13 A. The restricted accounts, primarily the ones I just
 14 mentioned. You also have voluntary holds, where someone has
 15 called us up and said, hey, I don't want a check every single
 16 time it gets to 15 bucks, just hold the monies in my account
 17 until I call you back up and ask for a disbursement. That's
 18 what it means by, of course, upon request or approval, can be
 19 for like a managed account, where the person may be under BIA
 20 social services and we'll pay for their electricity bill, other
 21 types of bills for them. That's when those requests come in.
 22 And also in the case of minors or whatever, where there is
 23 actually disbursements to the guardian or parent.
 24 Q. And you've mentioned several times that certain accounts,
 25 if the balance is at least \$15, then the check is -- a check or

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1 direct deposit automatically takes place?
 2 A. Yes. That is an unrestricted IIM account. If it's
 3 restricted, a disbursement will not go out until a manual entry
 4 is put into TFAS to make that disbursement.
 5 Q. And with the \$15 balance, how does that work where, let's
 6 say you have, there's a balance of \$14 and if \$2 comes in, does
 7 that automatically disburse the check for \$16?
 8 A. Correct. It doesn't just disburse it for 15. It disburses
 9 it for the whole 16.
 10 Q. And are there other dollar limits that apply to IIM
 11 accounts?
 12 A. The only other one is oil and gas. Those monies, that's
 13 the oil and gas process, where the oil and gas money's coming
 14 through MMS as royalty payments. Those get processed on a \$5
 15 limit as specified in the FOGRMA, F-O-G-R-M-A, Federal Oil and
 16 Gas --
 17 Q. Royalties Management Act.
 18 A. Yeah, I'm not sure exactly what it is. But it specifies
 19 our duties to supply a detailed account statement for all oil
 20 and gas funds flowing to a beneficiary, along with a payment
 21 when the threshold reaches \$5.
 22 Q. And do you know how long the FOGRMA has been in effect?
 23 A. I don't know.
 24 Q. Before your time?
 25 A. Yeah. It's definitely the '90s.

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1 Q. And is there any problem per se with the \$5 limit as far as
 2 OST is concerned?
 3 A. No.
 4 Q. We've already discussed the account statement which is the
 5 blue box on the far lower right corner, correct?
 6 A. Correct.
 7 Q. Now, Mr. Winter, you have kind of a pea-green box right
 8 underneath the title to the flowchart. Do you see that?
 9 A. Yes.
 10 Q. Can you explain what that manual batch is, and other
 11 interface files refers to?
 12 A. That's for like our oil and gas interfaces, and certainly
 13 any batches that need to be entered manually, say where a check
 14 comes in and it's not automatically allocated via -- for those
 15 agencies are converted. Those are just manual batches that
 16 are -- where the information is entered directly into TFAS.
 17 Q. And is there an audit control process in place for those
 18 entries?
 19 A. Yeah. We have a pre-QA and post-QA, 100 percent of all
 20 transactions that are getting entered into TFAS. I don't know
 21 of really any other entities that do a 100 percent pre-quality
 22 assurance and post-quality assurance. So we check and verify
 23 every single work ticket that is produced by the field
 24 operations to enter information into TFAS, to ensure that all
 25 the figures are correct and that there is supporting

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1 documentation. It then goes to our encoding.
 2 After encoding we do a 100 percent post-quality assurance
 3 review to ensure that what was on the work ticket was encoded
 4 properly and there were no fat-finger mistakes, if you will.
 5 Basically --
 6 Q. "Fat-finger" being hit the wrong key --
 7 A. Correct.
 8 Q. And how long has that quality control process been in
 9 place?
 10 A. That was in place prior to my arrival. Definitely in the
 11 mid-'90s I think, mid to late '90s.
 12 Q. Mr. Winter, direct your attention to what's marked as
 13 DX-281. Have you seen this document before?
 14 A. Yes, I have.
 15 Q. And you didn't produce this document, did you?
 16 A. No. That's a Treasury document.
 17 Q. And it's safe to say it's a flowchart?
 18 A. Yes.
 19 Q. All right. Have you reviewed --
 20 A. Yes, I have.
 21 Q. You have reviewed the flowchart, right. This flowchart is
 22 titled "Central Accounting Process, Interior as non-Treasury
 23 disbursing officer." What does that mean, "Interior as
 24 non-Treasury disbursing officer"?
 25 A. Well, usually Treasury is the disbursing officer for most

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1 payments to go out there, but there are select agencies that are
 2 the disbursing officer for disbursements that they produce. We
 3 happen to be the disbursing officer for all IIM payments. So
 4 this just represents the fact that Interior is the disbursing
 5 officer. This is just the flow of information from OST into
 6 Treasury.
 7 Q. So essentially, like for instance in the upper right-hand
 8 corner, you have the heading "payments," right?
 9 A. Correct.
 10 Q. And there's a box there references to Department of the
 11 Interior disbursing officers.
 12 A. Mm-hmm. And then you have a line item that just shows you
 13 statement of transactions 12/20 and statement of accountability
 14 12/19. Those are the reports we send to Treasury. Goes into
 15 their STAR, which is their centralized accounting system.
 16 THE COURT: Mr. Kresse, I think it's time for a little
 17 discussion about how much Treasury involvement we're going to
 18 have here. This is the second Treasury flowchart, and the first
 19 one I thought was interesting. This one I think looks like
 20 tough going.
 21 MR. KRESSE: Your Honor, I actually -- I'm sorry.
 22 THE COURT: I mean, the major premise of this trial
 23 was we're not going to talk about Treasury except as we have to
 24 talk about it to answer the basic questions. I'm not sure what
 25 this has to do with the basic questions. So I'd like some sort

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1 of a proffer from you as to where we're going with this.
 2 MR. KRESSE: Your Honor, with regard to this chart, I
 3 think we're finished with that chart to -- making just the point
 4 that Mr. Winter made. With regard to the next chart, which is a
 5 similar chart, also produced by Treasury, Mr. Winter has about a
 6 couple of sentences to offer on that, and then we'll move on
 7 from there.
 8 There are other Treasury witnesses scheduled, but
 9 essentially we're trying to show that the disbursements by the
 10 Department of Interior are accounted for and reconciled, and
 11 this is -- Treasury is a part of the process, and that's what
 12 we're trying to show here.
 13 THE COURT: Do you have any objection to this,
 14 Mr. Harper?
 15 MR. HARPER: Yes, Your Honor. Actually, we do.
 16 That's the first time I've heard that the Department of Treasury
 17 is part of the process for this kind of accounting. The proffer
 18 has been heretofore that Treasury does work on sums of funds,
 19 aggregate figures. And now it seems to have some suggestion
 20 that's fundamentally different, and that's not our
 21 understanding, one. And two, certainly not our understanding in
 22 the time periods relevant to this trial.
 23 MR. KRESSE: Your Honor, I think all we're showing
 24 here is that there is a flow of information that goes through
 25 Treasury, and the dollars obviously have to be deposited into

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1 Treasury. It's not an active role by Treasury. The data that
 2 goes in comes in from banks, comes in from Interior. Interior
 3 reports to Treasury, as required, as Mr. Winter has testified.
 4 That's basically -- we're not talking about an active role here
 5 by Treasury.
 6 THE WITNESS: Would you like me to give a general
 7 overview of...
 8 THE COURT: Keep it general, will you, please?
 9 THE WITNESS: Certainly. Generally, when deposits are
 10 made, they're only made to our agency location code. That's
 11 just saying trust overall. They have no idea as to whether
 12 that's supposed to be for tribal trust, for IIM trust, and the
 13 like. So it is the Department of Interior that actually reports
 14 that data to them. It basically says here's what buckets each
 15 of those receipts go into.
 16 Until we report that, Treasury only has information at the
 17 aggregate overall trust level. They don't know whether it's
 18 tribal or IIM or other monies until we tell them what Treasury
 19 account symbol it goes into that distinguishes between IIM and
 20 tribal.
 21 MR. KRESSE: And then, Your Honor, just to finish up
 22 the next, or with regard to Treasury here, the next exhibit,
 23 DX-283 -- all right.
 24 BY MR. KRESSE:
 25 Q. And Mr. Winter, this is a similar flowchart, correct, to

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1 the one we just looked at?
 2 A. Yes.
 3 Q. And what's the difference between this one -- very
 4 generally, what's the difference between this one and the
 5 previous one?
 6 A. This is where Treasury is the disbursing office. We still
 7 supply the overall disbursement information to Treasury via the
 8 224, the statement of cash transactions that we discussed
 9 previously. That's really the only difference between these two
 10 charts.
 11 Q. And you use Treasury as a disbursing officer for what types
 12 of disbursements?
 13 A. For all tribal disbursements and electronic disbursements
 14 for the IIM.
 15 MR. KRESSE: Your Honor, we have four exhibits that
 16 are simply copies of portions of the Treasury financial manual.
 17 I'll identify them as a group. Defendants' Exhibit 284, 285,
 18 286, and 287. And to save time, if I just ask a few questions
 19 of Mr. Winter about the use of the Treasury financial manual,
 20 that would speed things up.
 21 THE COURT: If you say so.
 22 BY MR. KRESSE:
 23 Q. Mr. Winter, the Treasury financial manual, are you familiar
 24 with it?
 25 A. Yes, I am.

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1 Q. And let's put up 284.
 2 THE COURT: I thought we were just going to talk about
 3 it.
 4 MR. KRESSE: Just as an exemplar, Your Honor.
 5 BY MR. KRESSE:
 6 Q. In any event, Mr. Winter, you are familiar with the
 7 Treasury financial manual, right?
 8 A. Yes.
 9 Q. Also known as TFM?
 10 A. Correct.
 11 Q. And what is the use in your office of the TFM?
 12 A. We certainly have the TFM in our office to know what
 13 Treasury rules and regulations we need to follow regarding our
 14 financial reporting. And they're basically the basis for our
 15 desk operating procedures relating to our regulatory reporting.
 16 Q. And that's, we've discussed already, the 224, 1219 and
 17 1220?
 18 A. Right.
 19 Q. That's what these exhibits address, correct?
 20 A. Correct.
 21 Q. Mr. Winter, we've discussed the overnighter and the
 22 reporting on the SF-224, correct, regarding how much money goes
 23 in and out of the overnight?
 24 A. Right.
 25 Q. At Treasury, right?

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1 A. Yes.
 2 Q. And as you pointed out, you had what would effectively be
 3 through-put of about \$17 billion a year -- I'm sorry. You had
 4 an amount of about \$17 billion a year in and out of the
 5 overnighter if you took the monthly information that we had,
 6 right, and you extrapolated --
 7 A. If you extrapolated that, yes.
 8 Q. I'd like to show you what's AR-120. Mr. Winter, are you
 9 familiar with this document, AR-120?
 10 A. Yes. I've seen this.
 11 Q. And do you know Mr. Edwards, Bert Edwards?
 12 A. Can't say I know him personally, but I know he's the
 13 director for the Office of Historical Trust Accounting.
 14 Q. And you've read this document, correct?
 15 A. Yes.
 16 Q. Looking at the first paragraph, have you reviewed that
 17 portion of the document?
 18 A. Yes.
 19 Q. And do you understand what's being talked about there?
 20 MR. HARPER: Objection, Your Honor. There's
 21 absolutely no foundation. This is pure speculation. He's read
 22 an e-mail. We're perfectly willing to have Mr. Edwards come up
 23 and testify at this point.
 24 THE COURT: I don't know what the question is. Let's
 25 hear what the question is.

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1 BY MR. KRESSE:
 2 Q. Mr. Winter, the e-mail's dated August 22, 2001, correct?
 3 A. Correct.
 4 Q. And what was your position in August of 2001?
 5 THE COURT: First, why don't you tell me what this is
 6 about. What's the point of this?
 7 MR. KRESSE: Well, Your Honor, counsel for the
 8 plaintiffs had raised this issue in the opening statement as to
 9 Mr. Edwards' e-mail, this particular e-mail, and that the \$15
 10 billion discussed in here actually should be part of
 11 through-put, as we've been discussing through-put in this case.
 12 So Mr. Winter has familiarity through his position at the time
 13 with that information.
 14 THE COURT: Can't you ask him the questions you need
 15 to ask him without reference to this e-mail? This e-mail is not
 16 from him or to him or about him.
 17 MR. KRESSE: Well, at the time he was involved with
 18 the creation of this information.
 19 THE COURT: The point is, I think I already get the
 20 point. The point is that the grossing up thing has no --
 21 MR. KRESSE: Relevance.
 22 THE COURT: Relation to reality; is that your point?
 23 MR. KRESSE: Fair enough.
 24 THE COURT: I think I've got that. Why don't you move
 25 on to the next exhibit.

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1 MR. KRESSE: Thank you, Your Honor.
 2 THE COURT: Just shows that the word "through-put"
 3 means different things to different people.
 4 BY MR. KRESSE:
 5 Q. Mr. Winter, directing your attention to Defendants' Exhibit
 6 242, and this document is a Study of Check Negotiation Practices
 7 for Office of Trust Funds Management-Issued Checks. It's dated
 8 May 31, 2000. Mr. Winter, are you familiar with this document?
 9 A. Somewhat familiar, yes.
 10 Q. And how is it that you became familiar with this document,
 11 Mr. Winter?
 12 A. We were requested in August of 2004 to perform a
 13 reconciliation between the check disbursement number that was in
 14 this report, I think of around \$177 million, and the
 15 disbursement figure that was on the financial statements for
 16 fiscal year 1999, of approximately \$336 million, obviously a
 17 very large difference between, quote, disbursement numbers.
 18 So we were asked to reconcile why is there that difference.
 19 And that's basically the whole reason why I even had any
 20 familiarity with this report, was taking that number and going
 21 forth and reconciling the \$336 million disbursement number.
 22 Q. And you referenced the amount of checks in this study --
 23 and we'll call it the check study, okay?
 24 A. Mm-hmm.
 25 Q. On page 13 of the study, which is the 16th page of Exhibit

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1 DX-242, in the middle of the page there's a table. Do you see
 2 that?
 3 A. Yes.
 4 Q. It states "total amount of checks," and the first number is
 5 177 million plus. Is that the number you were referring to?
 6 A. Correct.
 7 Q. And in the study is it your understanding that this is a
 8 representation that this is the total number of checks issued
 9 by, or IIM checks issued for a year period?
 10 A. Correct. Yeah, it's for a year that's not a fiscal year.
 11 It's from September 1, I think, of 1998 through August 31 of
 12 1999, which is one month off of our governmental fiscal year,
 13 which is what we report the financial statements on.
 14 Q. And Mr. Winter, when you -- how was it that you were asked
 15 to try to reconcile this \$177 million number?
 16 A. Well, we were actually asked to reconcile the \$336 million
 17 number.
 18 Q. I'm sorry.
 19 A. In relationship to this 177. This is what Treasury says
 20 was the total amount of checks for that particular time period.
 21 And the question arose as to why is that so different from the
 22 \$336 million number that you have in your financial statements.
 23 So we set about to say, here's what comprises that \$336 million
 24 worth of disbursements on the financial statements.
 25 Q. And let's look at Defendants' Exhibit 238. Do you

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1 recognize this document, Mr. Winter?
 2 A. Yes.
 3 Q. What is it?
 4 A. It's just an analysis document produced by our office in
 5 relationship to what I was just speaking to as far as the
 6 reconciliation of the financial statement disbursement amount.
 7 Q. And do you recall when your office prepared this document?
 8 A. August of 2004.
 9 Q. Now, the number you spoke of, the \$336 million, and that's
 10 shown where on this document?
 11 A. It's toward the lower left-hand corner. That's the second
 12 line from the bottom, with the description "FIN STMT," financial
 13 statement is the abbreviation. That's \$336.6 million that was
 14 on the audited financial statements that year.
 15 And so this document basically shows our reconciliation of
 16 that number, what went into that number. And it's basically the
 17 line items above it. The key figure is that we know for a fact
 18 that checks, actual physical checks, as referenced in the check
 19 study, for this time period, from October 1 to September 30, was
 20 \$175.5 million. That's extremely close to the \$177 million they
 21 had for their time period, which was one month off. That's
 22 perfectly reasonable. Basically the rest of the amount is
 23 accounted for by either electronic payments or transfers.
 24 MR. HARPER: Objection, Your Honor, and move to
 25 strike. This is not an expert witness and he's giving these

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1 opinions about what's reasonable and what's not.
 2 THE COURT: I'll strike the word "reasonable," but the
 3 rest of it I'll leave in. He's describing some studies he did
 4 and numbers he received. Whether they're reasonable or not
 5 we'll leave to somebody else.
 6 BY MR. KRESSE:
 7 Q. Mr. Winter, you indicated that these other numbers that you
 8 investigated, correct, the other numbers that lead to the total
 9 number of 336 million; is that correct?
 10 A. Yes.
 11 Q. What work was done to arrive at these other numbers that
 12 are listed between the checks 4844 and the bottom total? Could
 13 you just explain briefly what your office did --
 14 A. Yeah. We had to go back. The financial statements for
 15 that year, for fiscal year 1999, were produced by an outside
 16 accounting firm. OST personnel did not produce the financial
 17 statements at that time. So we went back, we had to pull all
 18 the data from that year that would have went into the financial
 19 statements, and categorized it as such. So this is the
 20 categorization of the information available to us for that time
 21 period.
 22 Q. All right. And the second line underneath the checks, ACH
 23 EFT, what does that represent?
 24 A. That's just the electronic payments made to beneficiaries.
 25 Direct deposits.

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1 Q. And IPAC, why is there an IPAC number there and what does
 2 that mean?
 3 A. Because there are monies that are disbursed at other
 4 agencies. That's -- IPAC simply refers to monies flowing to and
 5 from other governmental agencies.
 6 Q. To and from, but into and out of OST?
 7 A. Correct.
 8 Q. Why would that happen?
 9 A. There could have been monies when we received checks, it
 10 might have some other monies in there that are non-trust that we
 11 will go ahead and transfer over to BIA, for instance.
 12 Q. Then you have a line of \$73 million plus for BB transfers.
 13 What do those represent?
 14 A. That's basically transfers out of the IIM trust fund to
 15 tribal trusts.
 16 Q. And then debit memos is the next line down, \$619,000?
 17 A. Yeah, that's -- debit memo is simply where a check has
 18 bounced.
 19 Q. And the following one, canceled checks?
 20 A. Yeah. That's basically -- yeah, canceled checks where we
 21 sent out a check as a disbursement but it came back, we canceled
 22 it, therefore it's a negative disbursement. It shows up as a
 23 negative number.
 24 Q. Would this include limited payability checks?
 25 A. Yes, it would.

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1 Q. Then the transfer ADJ. What does that represent, \$5.5
 2 million?
 3 A. Just a known transfer adjustment.
 4 Q. Now you've got to a total of \$282 million plus, correct?
 5 A. Correct.
 6 Q. And there's still a difference with the financial statement
 7 number, right?
 8 A. Correct.
 9 Q. How was that then reconciled, those two numbers, the
 10 difference?
 11 A. Well, the difference between those two numbers is the
 12 amount at the very bottom, the \$54.4 million, which represents
 13 intrafund transfers, basically transfers that were made between
 14 IIM accounts, either between a special deposit account sitting
 15 on the IIM account, where it was eventually transferred to an
 16 IIM account, or transfers between estate accounts and heirs'
 17 accounts, the like. Intrafund transfers.
 18 Q. So those don't represent new money into the IIM --
 19 A. Correct.
 20 Q. Looking at the second page of Defendants' Exhibit 238,
 21 Mr. Winter, what was the purpose of creating that table?
 22 A. To show the relationship of the intrafund transfers. This
 23 is simply a table showing the different types of receipt
 24 activity that went into the financial statement number that year
 25 as well. So we have the similar type of lineup. You've got

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1 your deposits, your BBs, your other MMS deposits, that's your
 2 oil and gas monies, so on and so forth, coming up to a total of
 3 \$202 million in really actual receipts.
 4 The financial statement number for that year was \$257
 5 million, leaving a difference of \$54.5 million, which is
 6 categorized as an intrafund transfer. That matches up very
 7 closely to the disbursement intrafund transfer.
 8 Q. And this table was prepared when?
 9 A. August of 2004. It's just showing sort of at the time that
 10 there was a little bit of a gross-up in the numbers of the
 11 receipts and the disbursements on the financial statements for
 12 that year.
 13 Q. And Mr. Winter, looking at the first two columns of the
 14 upper portion of the table next to the date, just to the right
 15 of the date, you have 4844 deposit and 0651 deposit. And noting
 16 that there are no numbers showing through March of 1999 in the
 17 0651 column. Can you explain that?
 18 A. Prior to my arrival at OST, all of the deposits made for
 19 individual Indian monies were made through the disbursing symbol
 20 4844. Now, they did that probably as a carry-over from prior
 21 systems where that was the only way that they had to
 22 differentiate between tribal and IIM, so all tribal deposits
 23 were made to the ALC 14210651, all IIM deposits were made to the
 24 disbursing symbol 4844.
 25 When I got there I asked the question, why are we doing

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1 this. It was basically because that's the way we've done it.
 2 And I said I don't see a need for that to occur anymore. Our
 3 systems have the information that we need to differentiate
 4 between IIM and tribal, and we shouldn't be depositing to a
 5 disbursing symbol. So we went forth and were changing that
 6 process.
 7 Of course, this was where monies were going -- being
 8 received out to the 80 agencies, so we had to go and replace all
 9 the deposit tickets out there that had basically prestamped on
 10 there the 4844 disbursing symbol, with the 0651 ALC number. And
 11 so it was a gradual process. So that's where you see it
 12 gradually increasing in that column toward the end of the year,
 13 and decreasing in the 4844 deposits. And of course if you look
 14 at subsequent years it eventually all pretty much rolls over to
 15 the proper ALC that it should be recorded in.
 16 Q. And Mr. Winter, you generated additional tables related to
 17 fiscal year 2003 at that time; isn't that correct?
 18 A. Yes.
 19 Q. Looking at Defendants' Exhibit 237, and looking at the
 20 first page of that exhibit, that was generated in August of
 21 2004?
 22 A. Correct.
 23 Q. And what was the purpose of preparing that table for 2003?
 24 A. That was just, I believe, for comparative purposes. So we
 25 had -- never before had we broken out our disbursements by

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1 disbursement type. So we also did it, at the same time we did
 2 it for that '98-'99 time period, we also did it for the fiscal
 3 year 2003 time period, just for comparative purposes. Sort of
 4 as an analysis of what was included in the total disbursement
 5 number in the financial statements.
 6 Now, just to make sure you understand that by this time, in
 7 2003, we, OST had started preparing its own monthly and
 8 quarterly financial statements. We began that process in fiscal
 9 year 2002. Prior to that it was done by an outside accounting
 10 firm before we took it over. We felt we could take that over at
 11 that time as we were staffing up, and we've been doing it ever
 12 since, and doing a very good job at it.
 13 Q. Mr. Winter, your financial statements were still audited,
 14 though, correct?
 15 A. Oh, of course. All of these financial statements roll into
 16 our annual compilation, which is still audited by an outside
 17 accounting firm.
 18 Q. The first page of this exhibit, DX-237, what is the total
 19 number of disbursements by check shown on this table?
 20 A. Approximately \$132 million.
 21 Q. And then the electronic disbursements?
 22 A. \$63 million.
 23 Q. And these are all disbursements to IIM account holders?
 24 A. IIM beneficiaries.
 25 Q. IIM beneficiaries, excuse me. Second page of this exhibit,

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1 what does this table show?
 2 A. This just shows the sort of different breakdown of the
 3 miscellaneous disbursement type activity that nets out into the
 4 disbursement lines. So you see we have returned EFTs, we have
 5 stop payments, we have checks not cashed, you have returned
 6 checks, so on and so forth, that just figure into the net
 7 amount.
 8 Q. And you've mentioned the ACH return and checks not cashed,
 9 checks returned. What happens to these amounts when these
 10 checks are not --
 11 A. They're automatically recredited to the IIM beneficiary's
 12 account.
 13 Q. And the last -- I believe the last exhibit that we have
 14 that was generated in August of 2004 is Defendants' Exhibit 236.
 15 Do you see that, Mr. Winter? It's again a two-page exhibit.
 16 A. Yes.
 17 Q. What does the first page of that exhibit show, in the
 18 column titled audit 1999 disbursements?
 19 A. This shows our comparison between 1999 and 2003 of the
 20 major categories of disbursements that you'll find in the
 21 financial statements.
 22 So in this case, the 1999 financial statements had a
 23 disbursement total of \$336 million. That's really made up of,
 24 if you will, around \$192 million of really actual disbursements.
 25 The rest of it -- I shouldn't say 192. It's about 202, excuse

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1 me -- of the actual disbursements to beneficiaries. The rest is
 2 made up of inter- and intrafund transfers. Basically transfer
 3 activity.
 4 And then you compare that to the 2003 number, where you can
 5 see that \$192 million disbursement number is -- it's virtually
 6 all only actual disbursement activity. The transfers have
 7 pretty much been weeded out of it.
 8 Q. So it's not that these transfers didn't occur, is it?
 9 A. No.
 10 Q. It's just that they're not shown on the financial statement
 11 as disbursements.
 12 A. Right. They were shown as basically transfers, when
 13 they're in the disbursement number, also gross up the receipt
 14 number. So you're getting a gross-up of receipts and
 15 disbursements, as opposed to really getting down to the true
 16 number of receipts and disbursements. And this is to show
 17 certainly by 2003 we have pretty much weeded out all the
 18 transfer activity that was grossing up some of the receipt and
 19 disbursement numbers.
 20 Q. So whereas if you were trying to calculate through-put for
 21 purposes of this case, the year 1999, according to the financial
 22 statement, shows almost \$337 million, correct?
 23 A. Right.
 24 Q. But in actuality it was close to \$200 million?
 25 A. It was very close. It was only \$10 million different than

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1 the disbursements made in 2003 to IIM beneficiaries. However,
 2 the number looks a lot larger. It looks like there was a lot
 3 more actual disbursements than there were in reality to account
 4 holders.
 5 Q. Mr. Winter, has OST performed a study going back before
 6 1999 to determine the amount of transfers that might have been
 7 excised from the total disbursement number?
 8 A. No. We haven't done any formal study.
 9 Q. All right. Would you expect to find a substantial amount
 10 of transfers that could be --
 11 A. I would. I mean, based on looking at the numbers from
 12 prior years, I know that there were certain transfers that we
 13 found in this study that were definitely included in prior
 14 years, although I can't substantiate with firm numbers.
 15 Q. You can't quantify it, right?
 16 A. Right. I haven't done the actual reconciliation like I did
 17 for 1999, but I know that similar type of information was
 18 included in the financial statements.
 19 Q. Based on your experience working on the 1999 numbers in
 20 your office, the amount of work that was done, do you know how
 21 much time and effort that would take at this point? Just to do
 22 another year, let's say go back and do '98.
 23 A. To do '98, that would probably take about a month.
 24 Q. In looking at the second page of Defendants' Exhibit 236,
 25 why was that table created, Mr. Winter?

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1 A. That's basically simply just a further detailed breakdown
 2 of the first page, just to show a little bit more detail. But
 3 the total numbers are as you will find on the first page.
 4 MR. KRESSE: Is this a good time for a break,
 5 Your Honor?
 6 THE COURT: Very good time. We'll be in recess for 10
 7 minutes.
 8 (Recess from 3:35 p.m. to 3:46 p.m.)
 9 MR. KRESSE: Your Honor, I'm done with the direct
 10 examination of Mr. Winter, but I did want to move certain
 11 exhibits into evidence.
 12 THE COURT: All right.
 13 MR. KRESSE: Defendants' Exhibit 233, Defendants'
 14 Exhibit 235, 241, 240, 279, 282, 277, 239, 242, 238, 237, 236.
 15 THE COURT: All right. Without objection, they'll be
 16 received.
 17 MR. HARPER: Your Honor, I did have objections on a
 18 couple of these.
 19 THE COURT: All right. What are the objections?
 20 MR. HARPER: It's a little bit difficult because our
 21 copies are very --
 22 MR. KRESSE: Small?
 23 MR. HARPER: There's real small print on what was
 24 produced.
 25 MR. GINGOLD: Which numbers?

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1 MR. HARPER: 233. Your Honor, again, 233, this is a
 2 very recent report for a very recent time period. I don't
 3 believe there was any establishment that this has been something
 4 that's gone on for a long period of time.
 5 THE COURT: Counsel, let's let these exhibits in and
 6 argue later about what they mean.
 7 MR. HARPER: Thank you, Your Honor.
 8 THE COURT: Okay?
 9 MR. HARPER: Yes.
 10 THE COURT: They'll be received.
 11 MR. KRESSE: Thank you, Your Honor.
 12 (Defendant Exhibit Nos. 233,
 13 235-242, 277, 279, 282
 14 received into evidence.)
 15 THE COURT: When I looked at that document just now on
 16 the screen, it was so small, I didn't have my glasses on, I
 17 thought it said Cleveland 6, Boston 4.
 18 (Laughter)
 19 CROSS-EXAMINATION
 20 BY MR. HARPER:
 21 Q. Good afternoon, Mr. Winter. I'm Keith Harper. I'm going
 22 to ask you a few questions --
 23 A. Good afternoon.
 24 Q. -- regarding your direct testimony. First could we put up
 25 Defense Exhibit 239, please. Now, we have a black and white

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1 copy, but you recall testifying to this when it was on the color
 2 copy. With respect to this flowchart, has there been any actual
 3 auditing of the systems pursuant to general standards such as
 4 the COSO standard for internal controls of this system that
 5 you've discussed?
 6 A. There's actually three systems involved in here. Are you
 7 talking -- you want me to break it down to each one?
 8 Q. Let me start from a different -- do you know what the COSO
 9 standard is for internal controls?
 10 A. I'm unfamiliar with COSO.
 11 Q. And that's generally considered the standard to meet for
 12 any company, correct, for internal controls?
 13 A. Yes. I'm definitely well informed on the internal
 14 controls, certainly how they relate to financial operations.
 15 Q. Has any of these systems been internally audited and the
 16 controls examined?
 17 A. Yes.
 18 Q. And determined to be in conformity with COSO?
 19 A. I know that as part of the financial statement audit, TFAS
 20 has certainly been audited for internal controls, for generally
 21 accepted -- through generally accepted auditing standards for
 22 financial statement control. I'm not sure if that's
 23 specifically for COSO.
 24 Q. So as you sit here today, you do not know if this system
 25 has ever been audited pursuant to the generally applicable COSO

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1 standard for internal controls; is that a fair statement? It's
 2 a yes or no question.
 3 A. What does that stand for?
 4 Q. It stands for the Committee of Specialized Organizations of
 5 the Treadwell Commission. And as you said, that is the general
 6 internal control standard?
 7 A. All I said is they have been certainly audited as part of
 8 the financial statement audit for internal controls.
 9 Q. But as you sit here today, you do not know if this system
 10 has been deemed to be sufficient to meet the COSO standard; is
 11 that a fair statement?
 12 A. No. I believe they most likely have from what you just
 13 said.
 14 Q. So your testimony is that you know that it has met the COSO
 15 standard or you don't know?
 16 A. Let me just say I'm unsure.
 17 Q. So you don't know.
 18 A. Correct.
 19 Q. Thank you. If we can turn back to DX-236. Can you try
 20 DX-238, please. Mr. Winter, do you recall testifying regarding
 21 DX-238?
 22 A. Yes, I do.
 23 Q. And if we could focus down on the bottom end of that. And
 24 you talked a little bit about the differences between the
 25 financial statement here regarding disbursements and the \$336

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1 million. Do you recall that?
 2 A. Yes, I do.
 3 Q. Is this consistent with the general reports of the auditors
 4 for this time period? Which number do the auditors use as far
 5 as disbursements?
 6 A. Which number do the auditors use?
 7 Q. Yes.
 8 A. This one is actually regarding receipts.
 9 Q. Okay. Well, what numbers did the auditors use regarding
 10 receipts?
 11 A. Regarding receipts they use the \$257 million number when
 12 preparing the financial statements at the time.
 13 Q. And so the financial statement would say \$257 million as
 14 far as receipts, but \$336 million regarding disbursements?
 15 A. Correct.
 16 Q. And you're suggesting that -- okay. Could we pull up
 17 6034-40, please. So here, this is what's commonly referred to
 18 as the Griffin report. Do you recognize that document?
 19 A. It's financial statements prepared by Griffin & Associates,
 20 yes.
 21 Q. And for 1999, the disbursements are shown as \$336 million.
 22 Do you see that?
 23 A. Correct.
 24 Q. And it says "payments to and on behalf of account holders."
 25 Do you see that?

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1 A. I do.
 2 Q. And your testimony is that the auditors are incorrect with
 3 respect to the \$336 million that went to IIM account holders?
 4 A. Certainly what you have to also do is examine the footnote
 5 that accompanied this particular disbursement line. If you go
 6 to note 9, which I believe we also have in our exhibit, note 9
 7 states that \$45 million worth of transfer activity is included
 8 in this \$336 million. So right there you know that that number
 9 contains \$45 million worth of transfers and is not exclusively
 10 payments to and on behalf of account holders.
 11 Q. Okay. So your suggestion is when your auditors say payment
 12 to and on behalf of account holders, 336 million, they were
 13 erroneous, as far as this statement right here?
 14 A. It has to deal with how things are termed. That is a line
 15 item that is entitled to payments to and on behalf of account
 16 holders. However, you do have to refer to the notes that are
 17 accompanying these financial statements to see a little bit
 18 further behind these particular numbers. In our analysis, we do
 19 see that there was more transfer activity that they probably did
 20 not include at the time.
 21 Q. So again, just to clarify, your view is that your
 22 analysis -- and let me ask you a question, that analysis, did
 23 you say that you prepared that analysis yourself or was it other
 24 people at your office?
 25 A. It was done by my staff.

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1 Q. So you --
 2 A. I did review it.
 3 Q. You just did it in review capacity?
 4 A. Well, very detailed review capacity. I take a look at the
 5 supporting documentation, ensure that everything ticks and ties
 6 and is reconciled.
 7 Q. But you did not -- other than that review capacity, you
 8 didn't actually do the --
 9 A. I did not physically prepare the information.
 10 Q. And you're saying that based on the work of your staff --
 11 by the way, is that staff all CPAs?
 12 A. No, they're not all CPAs, but they are accountants.
 13 Q. Based on the work of that staff, you're concluding that the
 14 transfer numbers that Griffin reflects are erroneous; is that
 15 correct?
 16 A. Yes. That is correct.
 17 THE COURT: What's this exhibit number, Mr. Harper?
 18 MR. HARPER: Your Honor, this exhibit number is --
 19 MR. KRESSE: AR-375, Your Honor.
 20 MR. HARPER: That's correct.
 21 THE COURT: Thank you.
 22 BY MR. HARPER:
 23 Q. Mr. Winter, on direct you talked a little bit about a
 24 couple of new systems in place. You talked about one that was
 25 basically an accounts receivable system. Is that a fair

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1 statement?
 2 A. Correct.
 3 Q. When will that be fully implemented?
 4 A. Well, it is fully implemented at this time.
 5 Q. When was it first rolled out?
 6 A. I believe in early -- it was either late 2005 or early
 7 2006.
 8 Q. And so it's your testimony that the trust now has a fully
 9 implemented accounts receivable system for all agency offices?
 10 A. Well, the accounts receivable system will only operate for
 11 those agencies where they were converted over to TAAMS. So
 12 while the trust funds receivable system was in operation, it was
 13 only applicable to those agencies that converted over to TAAMS,
 14 because that's where the TFR received its encumbrance data from.
 15 Q. When you're speaking of TAAMS you're not speaking of TAAMS
 16 title roll-out, but the TAAMS realty roll-out. Correct?
 17 There's two different TAAMS systems, right?
 18 A. Well, it's TAAMS title and real ownership is what I'm
 19 familiar with, TAAMS title and ownership.
 20 Q. Okay.
 21 A. It's been what's been rolling out over the last couple of
 22 years.
 23 Q. And you understand that there is a TAAMS realty and a TAAMS
 24 title?
 25 A. I believe the TAAMS realty has already been implemented and

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1 the TAAMS title is what has been rolling out since -- Southern
 2 Plains I think was the first pilot agency back in June of 2005.
 3 Q. And so for those agencies that have TAAMS title, then
 4 you're suggesting that they have an accounts receivables system.
 5 A. Correct.
 6 Q. And so in any case, prior thereto, prior to 2005, they did
 7 not have an automated accounts receivable system, correct?
 8 A. Correct.
 9 Q. For the entirety of the time period under discussion for
 10 this trial, which includes up to 2005, there was no accounts
 11 receivable system, as far as you know?
 12 A. Not that I know, correct.
 13 Q. You talked a little bit about certain reconciliation
 14 efforts. Do you recall that testimony?
 15 A. Yes.
 16 Q. And you talked a little bit about the reconciliation that
 17 goes on between -- or that there are certain numbers at the
 18 Department of Treasury regarding the IIM trust, right?
 19 A. Right.
 20 Q. And then there are also numbers at the Department of the
 21 Interior. Do you recall that testimony?
 22 A. Yes.
 23 Q. And isn't it true that for the life of this trust, for the
 24 times in which they have done analysis, that those two balances
 25 have almost always been out of balance? Is that a fair

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1 statement?
 2 MR. KRESSE: Object to form, Your Honor. "They." Who
 3 "they" are.
 4 MR. HARPER: The two accounts have been out of balance
 5 with one another, meaning that they don't agree for the majority
 6 of the life of the trust, as far as you know.
 7 THE WITNESS: As far as I know, yes.
 8 BY MR. HARPER:
 9 Q. And when you testified that in 1992 you changed over to
 10 this system where you're doing these -- taking certain actions
 11 for reconciliation, first of all, that is not fully what you're
 12 doing today because the TFAS wasn't even implemented at that
 13 time, correct?
 14 A. Yes. It's not precisely TFAS. It was whatever was in the
 15 system, the particular accounting system. They were reconciling
 16 Treasury to the accounting system at the time.
 17 Q. And so --
 18 A. Not necessarily TFAS, no.
 19 Q. So what you're doing now today is different from, say, any
 20 period in which TFAS wasn't implemented. That would be prior to
 21 2000.
 22 A. Certainly, yes.
 23 Q. And TFAS is a system that is essentially run by SEI, an
 24 outside contractor, correct?
 25 A. Yes.

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1 Q. And you understand for the other periods of the trust
 2 there's been this out-of-balance condition for the entire
 3 period, as you just testified, and that has been significant, in
 4 the 10s of millions of dollars; is that a fair statement?
 5 A. For IIM, the difference at the time that we resolved the
 6 difference in 2004 was about \$4 million. It was \$35 million on
 7 the tribal side, but there was a \$4 million difference between
 8 what Treasury said we had and what we said we had.
 9 Q. And when you said you resolved the difference, let's talk a
 10 little bit about an out-of-balance condition. An out-of-balance
 11 condition could very well mean that you have \$4 million of
 12 difference in two accounts, if it's a \$4 million out-of-balance
 13 condition, correct?
 14 A. Sure.
 15 Q. But it could also mean that one is \$24 million wrong and
 16 one is \$20 million wrong. That could equally be an
 17 out-of-balance condition in what is reflected as \$4 million
 18 between the two systems, correct?
 19 A. That's plausible, yes.
 20 Q. So out-of-balance condition is really a demonstration that
 21 you have a problem, but it doesn't really tell you about the
 22 nature and scope of the problem. Is that a fair statement?
 23 A. Yeah. You could also have a zero balance, but in actuality
 24 we'd be off 20 million and they'd be off 20 million the other
 25 way. So you can have differences no matter whether you balance

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1 or not.
 2 Q. But the relevance of having an out-of-balance condition is
 3 it demonstrates that there is a problem that should be regularly
 4 investigated. Is that a fair statement?
 5 A. Certainly.
 6 Q. It's an important control to have on the systems.
 7 A. I completely agree. That's why at the time we did resolve
 8 that \$4 million, because we found out it was basically just a
 9 reporting difference.
 10 Q. But whatever the present difference was for that period of
 11 time, you didn't go back and investigate the differences that
 12 occurred back in time, correct?
 13 A. No.
 14 Q. And so to the extent that there was an out-of-balance
 15 condition for whatever reason back in say 1982 or '83, you did
 16 not go back and investigate that, you have no reason -- it is
 17 what it is, and you have taken no action to address those.
 18 A. No, I have not.
 19 Q. I'd like to turn to Plaintiffs' Exhibit 4174. Mr. Winter,
 20 this is a report from the comptroller general, report to
 21 Congress. It's called Major Improvements Needed at the Bureau
 22 of Indian Affairs Accounting System. As you can see at the top,
 23 it does relate specifically to the trust, "The Bureau of Indian
 24 Affairs has lost accountability over hundreds of millions of
 25 dollars in grants, contracts and trust funds, because its

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1 automated accounting and finance produces unreliable
 2 information. Also system operating deficiencies, including
 3 inadequate controls over cash receipts and disbursements,
 4 prevent the Bureau from properly discharging its fiduciary
 5 duties as trustee for the Indian trust funds."
 6 I'd like to turn your attention, if I could, to a couple of
 7 items.
 8 THE COURT: What's the date of this, counsel?
 9 MR. HARPER: This is a 1982 report, Your Honor.
 10 BY MR. HARPER:
 11 Q. If you could turn your attention -- well, if we can have
 12 page 4, I'm going to talk about one other item before we get
 13 into the out-of-balance condition regarding Treasury, because
 14 there's two different out-of-balance conditions historically,
 15 right? There's the out-of-balance condition between --
 16 MR. KRESSE: Your Honor, I object. This is out of the
 17 scope. Mr. Winter has not testified as to the condition of the
 18 trust fund back in 1982.
 19 MR. HARPER: Your Honor, he's testified regarding
 20 their reconciliations and what they have done with respect to
 21 their reconciliations. We can show here that they haven't done
 22 anything with respect to the most important items to be
 23 reconciled, which is those that had historically occurred, that
 24 caused, for example, here \$25 million --
 25 THE COURT: I'll give you some latitude, but he's

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1 right. It's way outside the scope.
 2 MR. HARPER: Thank you, Your Honor. I'll just touch
 3 upon a couple of items, then.
 4 BY MR. HARPER:
 5 Q. Mr. Winter, if you could look on page 4 in the highlighted
 6 area, you can see here that it talks about a -- there's an
 7 out-of-balance condition of millions of dollars. "Detailed
 8 subsidiary ledger trust fund accounts differed from summary
 9 general ledger trust fund accounts over a two-year period by
 10 more than \$25 million." Do you see that?
 11 A. I do.
 12 Q. And that means that the subsidiary ledgers at the
 13 Department of the Interior, the aggregate total of those do not
 14 equal the control account numbers by \$25 million. Is that a
 15 fair statement?
 16 A. That is.
 17 Q. And again, that could mean that one system is off by 26
 18 million and the other system is off by 1 million; that can mean
 19 that one system is correct and the other system is -- it could
 20 be anything that adds up in aggregate to \$25 million, correct?
 21 A. Yes.
 22 Q. So the problem could be much greater than is reflected in
 23 that statement? Possibly, right?
 24 A. Possibly.
 25 Q. If we can turn to page 26. Again, we're not going to go

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1 over the top part, but as you can see, it says "information on
 2 financial status of trust funds is unreliable," and then it
 3 talks about the subsidiary ledger issue. If we go down to the
 4 bottom of the page, starting with the last sentence that goes
 5 into the next page. It talks about the importance of this
 6 issue.
 7 Let me read it and then I want to ask you a question about
 8 it. "In a decentralized system such as the Bureau uses, whereby
 9 detailed trust accounts are maintained by local offices and
 10 summary control accounts are maintained by the central
 11 accounting office, it is vitally important that the accounts are
 12 periodically reconciled to ensure that transactions recorded in
 13 individual Indian trusts are accurately and completely
 14 summarized and recorded in general ledger summary controls."
 15 And then the second part: "They are to reconcile monthly
 16 the information in their detailed subsidiary ledger accounts
 17 with related information on the summary ledgers' control
 18 accounts maintained by the automated accounting and finance
 19 systems. All differences disclosed by the reconciliation are to
 20 be investigated and appropriate correcting entries made in both
 21 the subsidiary and general ledger." Do you see that?
 22 A. Mm-hmm.
 23 Q. And the important thing is that to your knowledge, since
 24 you've been there, none of these conditions in this
 25 demonstration of errors have ever been addressed as far as you

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1 know by the Office of Trust Fund Management or the Bureau of
 2 Indian Affairs. Is that correct?
 3 A. No, I wouldn't say that's correct.
 4 Q. To your personal knowledge, what has been done about this
 5 condition back in -- this out-of-balance condition back in 1982?
 6 A. Well, I do know there has been special deposit account
 7 cleanup, if you will, where they have looked at -- it's been
 8 ongoing for some time, where they're cleaning up certain
 9 balances on special deposit accounts. I know as a matter of
 10 fact just a few years ago they did clean up several deposit
 11 accounts related to the Siletz tribe that revealed basically
 12 what we called phantom balances. They contained a balance in
 13 them when in reality they should not have.
 14 That's where monies came into these special deposit
 15 accounts, and when those monies were identified, to whom the
 16 beneficiaries should get those monies, you know, say a hundred
 17 dollars come into a special deposit account. 50 beneficiaries
 18 are to be the recipients of that \$100. Those monies are then
 19 basically receipted into the beneficiary, proper beneficiary
 20 account. But in these cases the balance in the special deposit
 21 account was not dissolved. So that hundred dollar balance
 22 remained in the special deposit account.
 23 We have found those type of instances in many other special
 24 deposit accounts as well. And that would relate to differences
 25 in the subsidiary ledger in comparison with the control account

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1 or the general ledger, from back in the '80s certainly.
 2 Q. So the subsidiary ledgers -- they would add up -- the money
 3 in the special deposit accounts have always been very high, in
 4 tens of millions of dollars, correct?
 5 A. Right.
 6 Q. So they would have added those as part of this process --
 7 if they're going to add up the subsidiary ledgers to compare
 8 them to the general, they would have included SDA accounts?
 9 A. Oh, of course.
 10 Q. So if they included them, the fact that you know where the
 11 money in the SDA account goes doesn't really address the issue
 12 of a major \$25 million difference --
 13 A. Well, it's part of the \$25 million difference back then.
 14 If you're talking about a difference between the subsidiary
 15 ledger and the general ledger, those improper balances on the
 16 subsidiary ledger would certainly be a part of that \$25 million.
 17 We have subsequently cleaned up some of those differences, and
 18 we have at this point -- back in June of 1998, we isolated the
 19 difference between the subsidiary and the control account to
 20 around \$6 million.
 21 It's been roughly that amount since that point. It has
 22 come down for our cleanup of these special deposit accounts. At
 23 this point there's only a difference of about \$5.2 million
 24 between the subsidiary ledger and the control account. We
 25 happen to know what a major portion of that 5.2 million, 2.5

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1 million is contributed to an overdistribution of amortization
 2 back in the early '90s, where basically account holders received
 3 more in interest than they should have because of improper
 4 amortization calculations.
 5 The remaining 2.7 million, we don't know exactly where
 6 that's at, but it's down to -- that would take tens of millions
 7 of dollars of course to go back and try to find those
 8 differences. But I think it's fair to say that we have located
 9 and cleared up discrepancies from the past.
 10 Q. If I can turn back to the exhibit on page 27. If we could
 11 just -- one question on this and then I want to go back to a
 12 statement you made. If you can look down to the paragraph
 13 beginning "although." As you can see here, it says, "Although
 14 reconciliations completed by local office highlighted millions
 15 of dollars in differences between the accounts, these
 16 differences are generally described by local offices as failures
 17 to post transactions to general ledger accounts or simply 'net
 18 errors with no further explanation'." Do you see that?
 19 A. Mm-hmm.
 20 Q. So at least some of the errors, a substantial amount, at
 21 least they thought at the time, were not related to SDA
 22 accounts. Is that a fair statement?
 23 MR. KRESSE: Your Honor, objection. Lack of
 24 foundation.
 25 THE COURT: It's cross-examination. I'll allow him to

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1 ask the question. If the witness doesn't know the answer, he
 2 doesn't have to answer.
 3 THE WITNESS: Can you restate the question, please?
 4 BY MR. HARPER:
 5 Q. I won't reread that section there, but you testified
 6 regarding special deposit accounts. This reflects a different
 7 reason for why there's this -- explaining the difference between
 8 these two accounts. Do you see that here?
 9 A. Uh-huh.
 10 Q. So there are a number of reasons why these are out of
 11 balance.
 12 A. Certainly. Yes.
 13 Q. Indeed, they reflect errors at times, correct?
 14 A. Yes.
 15 Q. And now you say that there's 2 million, or how many
 16 million, \$5 million?
 17 A. Right now there's a difference between the IIM pool of
 18 assets and the IIM liability balances of approximately \$5.2
 19 million.
 20 THE COURT: In whose favor?
 21 THE WITNESS: In the beneficiaries' favor, meaning
 22 that the balance of their accounts in aggregate are \$5.2 million
 23 greater than what we hold in the asset pool.
 24 BY MR. HARPER:
 25 Q. When you're talking about asset pool, you're talking about

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1 the general control ledger, correct?
 2 A. In essence. I mean, it's basically our pool of assets,
 3 because our real accounting is done in the individuals'
 4 accounts. All that activity rolls up as a part of our nightly
 5 balancing into our control account, if you will, that then gets
 6 invested.
 7 Q. And you say there's at least a few million dollars there
 8 that you can't really -- there's no -- as far as you know,
 9 there's no plan to go back and reconcile; is that fair?
 10 A. Correct. These are all discrepancies from the past, yes.
 11 Q. When you say there's a difference between that number that
 12 is in the subsidiary, added up in aggregate, and there's a
 13 difference with the general, how is that in the beneficiaries'
 14 favor?
 15 A. It's how you interpret what's in their favor or not. I
 16 mean --
 17 Q. So when you say it's in the beneficiaries' favor?
 18 MR. KRESSE: Objection, Your Honor. He didn't let the
 19 witness finish his answer.
 20 BY MR. HARPER:
 21 Q. I'm sorry. Did you have more to say?
 22 A. Certainly. I'd like to go ahead and explain that. How do
 23 you interpret what's in their favor? If for some reason we had
 24 more in the pool and less in the liability accounts, you could
 25 say, hey, why do you have excess assets? Shouldn't the

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1 beneficiaries have had some of that posted to their accounts?
 2 They've been the beneficiary, that we know of for sure, of \$2.5
 3 million of overamortization calculations that really they
 4 weren't entitled to at the time because we never earned it. So
 5 that created a \$2.5 million imbalance right there.
 6 Q. You're saying there's an additional 2 million --
 7 A. No, that's embedded in the 5.2.
 8 Q. I understand that. There's an additional 2.5, \$2.7 million
 9 that you're saying is in the beneficiaries' favor. And what I
 10 was just asking is how is that exactly -- I don't understand how
 11 that is in their favor.
 12 A. It's all interpretation. I don't understand what you're
 13 trying to get -- what do you want me to answer to that? I'm not
 14 sure.
 15 Q. Okay. So you don't know what you meant --
 16 MR. KRESSE: Objection.
 17 THE COURT: Let's put it this way. If BIA said we
 18 want the money back, it would not be in the favor of the
 19 beneficiaries. I think what he's saying is that \$2-1/2 million
 20 has been paid out or distributed or at least is recorded as
 21 liabilities to beneficiaries which they're not entitled to.
 22 BY MR. HARPER:
 23 Q. Is that your testimony, that they're not entitled to that
 24 2.5, because the general ledger is -- the general ledger says a
 25 number that is lower than the aggregate sums? Is it your

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1 testimony --
 2 A. By not entitled, I mean it wasn't earned.
 3 Q. Couldn't it be --
 4 A. It's like saying, okay, hey, I'm going to distribute to you
 5 this month \$3 million worth of interest across all the IIM
 6 accounts, when in reality I only earned 2 million. I
 7 distributed to those accounts a million dollars too much, that
 8 then creates a discrepancy in the pool.
 9 Q. Let me ask the question a little bit differently so we can
 10 sort of get down to the issue I'm interested in. The investment
 11 decisions about how much is in the IIM trust are made based on
 12 the control account number, correct?
 13 A. The investment decisions, yes, are made based --
 14 Q. So if that number --
 15 MR. KRESSE: Your Honor, again, he's not allowing the
 16 witness to finish his answer.
 17 BY MR. HARPER:
 18 Q. Mr. Winter, if that number is significantly lower than what
 19 is actually in the accounts, doesn't that affect the
 20 beneficiaries negatively?
 21 A. Well, it does result in lower interest earning power, yes,
 22 it does.
 23 Q. Thank you. So at least to that extent it wouldn't be in
 24 their favor ; it would be to their detriment?
 25 A. I agree with that.

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1 Q. Couple of points with respect to the TFAS system and some
 2 other systems that you testified with respect to. Do you recall
 3 who initiated the effort to establish the TFAS system?
 4 A. No. I wasn't here at the time when that decision was made.
 5 Q. But it was in the late 1990s, correct, that the decision
 6 was made to implement a TFAS type system.
 7 A. I assume, since first conversion happened in August of '98,
 8 basically right after I got there, I assumed the decision would
 9 have been made before --
 10 Q. Have you heard of a gentleman by the name of Paul Homan who
 11 was the special trustee?
 12 A. Yes, I have.
 13 Q. And you're not aware one way or the other if he was the one
 14 that implemented the TFAS system?
 15 A. No, I am not.
 16 Q. And what about the lockbox system that you testified that
 17 was ultimately put in place in 2005? That was accurate, right,
 18 2005 is when the lockbox was put in place?
 19 A. Right, for the pilot agencies, yes.
 20 Q. And so when you say for the pilot agencies, that's not even
 21 across the -- for all agencies?
 22 A. When it first came in in June of 2005 it was only for the
 23 pilot agencies, yes.
 24 Q. Okay. And so from that point out, it's been rolling out to
 25 other agencies; is that a fair statement?

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1 A. Correct.
 2 Q. So for some agencies it's considerably after 2005 that the
 3 lockbox system was put in place.
 4 A. Well, we implemented it for all agencies, even though they
 5 weren't yet converted to TAAMS, October 1 of 2005.
 6 Q. You also testified with respect to how the TFAS system is
 7 interfacing with the MMS system. Do you recall that testimony
 8 as part of the chart?
 9 A. Yeah. Basically the information from MMS gets interfaced
 10 into TFAS. There is not a direct interface between MMS and
 11 TFAS.
 12 Q. There's not a direct interface between the two?
 13 A. Correct.
 14 Q. So how does it interface?
 15 A. Okay. When oil and gas monies are received by MMS, they
 16 collect the data, they on a daily basis send us a facsimile,
 17 because we don't of course have e-mail or that type of
 18 capability with them. They send us a facsimile saying here's
 19 how much we collected to date. We post that to a general
 20 holding account.
 21 Then on a bimonthly basis MMS sends data to BIA, which gets
 22 processed through their RDRS system, that's their royalty
 23 distribution and reporting system, which then breaks it down by
 24 ownership. BIA then interfaces that information to us into
 25 TFAS, where the disbursements are made to the account holders

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1 from the holding account.
 2 Q. And you mentioned that there's no Internet or e-mail access
 3 is what you said, so they have to fax it over, correct?
 4 A. Correct.
 5 Q. But even well before, when you did have e-mail and you did
 6 have Internet, there was never any electronic interface,
 7 correct?
 8 A. Correct.
 9 Q. So there's never been an electronic interface as far as you
 10 know ever in this trust.
 11 A. Not directly from MMS. We don't have to have an electronic
 12 interface in order for us to enter that information. That
 13 information is a very bulk, high level. It's usually on a
 14 one-page fax that they give to us. The real information is the
 15 electronic information we receive from BIA via RDRS, to tell us
 16 what beneficiaries have received funds.
 17 Q. And that's an important issue. With respect to the
 18 information that you receive from BIA, whatever that information
 19 is, you base your decisions on that information. You don't
 20 check the veracity of that information, correct?
 21 A. Correct.
 22 Q. So if that -- if whatever ownership data you're utilizing
 23 from BIA is incorrect, then you would be making an incorrect
 24 payment, correct?
 25 A. That is true.

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1 Q. And indeed, the same thing would be true for information
 2 that you're getting for MMS. There's no verification process as
 3 to the accuracy of that information as well.
 4 A. There ultimately is verification through their audit. They
 5 get audited as well. And those type of transactions are audited
 6 and verified by their external auditors. So we may not know
 7 that very day, but we would know if there was a problem later
 8 on.
 9 Q. Okay. But there's nothing in your -- within your ambit of
 10 control to tell you whether or not the information you're
 11 getting from MMS is accurate or not accurate.
 12 A. True. We don't have a way to verify the veracity of that
 13 information.
 14 Q. You're relying on their audit systems, whatever they are?
 15 A. Yes.
 16 Q. If they're reliable or if they're not reliable. It's just
 17 whatever was within MMS itself, correct?
 18 A. Yes, sir.
 19 MR. HARPER: That's all I have, Your Honor. Thank
 20 you.
 21 THE COURT: All right. Anything further?
 22 MR. KRESSE: One moment, Your Honor.
 23 REDIRECT EXAMINATION
 24 BY MR. KRESSE:
 25 Q. Mr. Winter, I'm showing you AR-375, which is the audit

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1 report that Mr. Harper earlier discussed with you, correct?
 2 A. Yes.
 3 Q. And I'd like to direct your attention to what is the 40th
 4 page by the Bates numbering. Do you recall discussing that page
 5 with Mr. Harper?
 6 A. Yes.
 7 Q. And when Mr. Harper was asking you about those numbers, you
 8 referred to note 9; is that correct?
 9 A. Correct.
 10 Q. And if we could go to the next page. And this is the, I
 11 believe the 50th page by Bates numbering. Go to the bottom of
 12 the page. Yes. And that's page 39 of the audit report. Do you
 13 see that?
 14 A. Mm-hmm.
 15 Q. And is this note 9 that you were referring to?
 16 A. Yes, it is.
 17 Q. And this discusses the amount of the transfers, correct?
 18 A. Correct.
 19 Q. Thank you, Mr. Winter.
 20 MR. KRESSE: That's all I have.
 21 MR. HARPER: Just a couple questions on that,
 22 Mr. Winter.
 23 RECROSS-EXAMINATION
 24 BY MR. HARPER:
 25 Q. Again, the difference that you found was -- what was the

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1 difference between -- it was 336 to about 200?
 2 A. About 201, 202 million.
 3 Q. So this doesn't come near to explain that sizeable
 4 difference, correct?
 5 A. Correct.
 6 MR. KRESSE: Beyond the scope of redirect. I simply
 7 asked --
 8 THE COURT: No, it's not.
 9 THE WITNESS: Yes. I mean, we found that there were
 10 more transfers -- this is, just for the record, this 45 million
 11 is actually a net transfer amount, meaning between tribal and
 12 IIM. So there could have been a hundred million dollars worth
 13 of transfers to tribal, and tribal having \$55 million of
 14 transfers to IIM, netting out to this \$45 million number.
 15 So even though our numbers show a greater transfer amount,
 16 ultimately the difference being about \$54 million worth of
 17 intrafund transfer, it's not to say that that is an incorrect
 18 number.
 19 BY MR. HARPER:
 20 Q. So it could be correct or it may not be -- it may be
 21 consistent with your numbers, but it may not be consistent with
 22 your numbers?
 23 A. Correct.
 24 MR. HARPER: Thank you.
 25 MR. KRESSE: Nothing further, Your Honor.

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1 THE COURT: All right. Mr. Winter, you're excused.
 2 Thank you. You may step down.
 3 (The witness steps down.)
 4 MR. WARSHAWSKY: Your Honor, the government's next
 5 witness is Dr. Frederick "Fritz" Scheuren. If I may,
 6 Your Honor, Dr. Scheuren has requested that he have copies of
 7 the exhibits at the table so he can review them.
 8 THE COURT: All right.
 9 MR. WARSHAWSKY: Your Honor, Dr. Scheuren is the first
 10 expert that the government is going to be offering in its case
 11 in chief. I'll say this because Dr. Scheuren won't. He is
 12 among the leading statisticians in the country. Certainly when
 13 the court reviews his CV, you will recognize that his peers have
 14 so distinguished him over the years. Dr. Scheuren was the
 15 first, I believe --
 16 THE COURT: I'd actually rather do that in Q&A form
 17 than have you stand up there and flog him like that. Why don't
 18 you just give me the CV.
 19 MR. WARSHAWSKY: Okay. At this point, Your Honor, I
 20 was simply giving you the overview of his testimony.
 21 THE COURT: I'm sure Dr. Scheuren is a distinguished
 22 expert and won't have any problem, but we haven't quite put his
 23 name up in lights yet.
 24 MR. WARSHAWSKY: Okay. I would simply give you the
 25 overview. Dr. Scheuren was the first contractor engaged by the

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1 Office of Historical Trust Accounting, OHTA, within the
 2 Department of the Interior. Dr. Scheuren will discuss in brief
 3 top-level fashion some of the work that NORC, his organization,
 4 the National Opinion Research Center, what NORC has done as a
 5 contractor for OHTA. That is, Dr. Scheuren -- projects co-led
 6 by Dr. Susan Hinkins, also a distinguished statistician working
 7 on the project.
 8 From there, Dr. Scheuren, will talk about the design for
 9 the sample in the 2003 plan, which reflected, among other
 10 things, as Dr. Scheuren will explain, a high level of doubt,
 11 questioning about the ability to find data and the ability to
 12 reconcile records, reconcile transactions. He will testify that
 13 as the project went along, leading to ultimately the LSA
 14 project, the results of the reconciliation activities led him
 15 and his colleagues to come to new conclusions about the
 16 necessity for the level of sampling in the 2003 plan.
 17 This led to Dr. Scheuren's recommendations, which
 18 ultimately are embodied in the 2007 Interior plan with respect
 19 to sampling for the electronic ledger era. And Dr. Scheuren
 20 will talk about his recommendations for proceeding with regard
 21 to the paper ledger era.
 22 THE COURT: All right.
 23 FREDERICK J. SCHEUREN, WITNESS FOR THE DEFENDANTS, SWORN
 24 DIRECT EXAMINATION
 25 BY MR. WARSHAWSKY:

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1 Q. Dr. Scheuren, would you state and spell your full name for
 2 the record.
 3 A. Frederick John Scheuren, S-C-H-E-U-R-E-N.
 4 Q. And are you generally known as "Fritz"?
 5 A. Yes, I am.
 6 Q. Dr. Scheuren, where do you reside?
 7 A. I live in Alexandria, Virginia.
 8 Q. And what do you do for a living?
 9 A. I'm a consultant statistician, and I do some teaching as
 10 well.
 11 Q. Dr. Scheuren, the first exhibit I'd like to hold up has
 12 been previously marked Defendants' Exhibit 6. This will be up
 13 on the screen.
 14 MR. WARSHAWSKY: Your Honor, this is a 53-page
 15 document. I'm simply going to have Dr. Scheuren identify it for
 16 the record, and you can look at the hard copy in front of you.
 17 BY MR. WARSHAWSKY:
 18 Q. Sir, what is Defendants' Exhibit 6?
 19 A. It's my expert report for this trial.
 20 Q. And similarly, if you could refer to Defendants' Exhibit 7.
 21 Could you identify that?
 22 A. That is my expert rebuttal report also for this trial.
 23 Q. Referring back to Defendants' Exhibit 6 now, your expert
 24 report, I'd like to refer you to attachment 3.
 25 A. Would you help me with a page there?

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<p>1 Q. 40. This is I believe a three-page attachment. 2 A. Okay. 3 Q. Yes. It's three pages. 4 A. Okay. I see it. 5 Q. Dr. Scheuren, what is set forth on attachment 3? 6 A. That's my CV. 7 Q. Does this accurately describe your educational background? 8 A. Yes, it does. 9 Q. And does it accurately describe your professional 10 experience -- 11 A. Yes, it does. 12 Q. -- with regard to statistics. I'm sorry. 13 A. My fault. Yes, it does describe my opinion -- in my 14 opinion it does describe it adequately, at a certain level of 15 generality. After all, I've been around for a while, so I could 16 say a lot more. 17 Q. At the bottom of page 41, there's a section, "Recent 18 professional service activities." What's described in that 19 area? 20 A. It's the work that I do mostly pro bono for the profession. 21 Q. The next page, page 42, contains a section, about the 22 middle of the page, "Honors." What's set forth in this section? 23 A. Well, that indicates the kind of recognition that you 24 mentioned earlier in your opening remarks that the profession 25 has given me.</p>	<p>1 records and surveys and sampling, and a good friend of mine, 2 Dr. Kirk Wolter, at NORC, called me up and said this is ideal 3 for you. And I looked at it, agreed with him, wrote the 4 proposal, that was ultimately accepted by Department of the 5 Interior. 6 Q. And what time frame are we talking about? 7 A. This was the summer of 2001. 8 Q. Why was this an ideal project for you in the summer of 9 2001? 10 A. Well, I'm very interested in human rights issues, and I 11 have a personal need to deal with this issue because one of my 12 relatives is Native American. 13 Q. Did you have any discussions with the Interior Department 14 before undertaking this project? 15 A. No. 16 Q. And who are the key members of your team on this project? 17 A. Well, I was the only member to begin with. The engagement 18 called for another senior person. That turned out to be 19 Dr. Susan Hinkins. And then intermittently since then there 20 have been more individuals added, depending on the nature of the 21 work, which has grown in scope. 22 Q. And who is Dr. Susan Hinkins? 23 A. She's a colleague of mine who has worked with me for about 24 20 years, who lives in Bozeman, Montana, and who has a similar 25 background to mine and a similar interest to mine in these</p>
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<p>1 Q. And referring you to pages 43 to the end of the document. 2 It's roughly 11 pages. Attachment 4, what's set forth on 3 attachment 4? 4 A. Those are the publications and reports that I've been 5 producing in the last, I guess the last 12 years. 6 MR. WARSHAWSKY: Your Honor, the government offers 7 Dr. Fritz Scheuren as an expert to testify on the subjects of 8 statistics and statistical sampling. 9 THE COURT: Without objection, that'll be granted. He 10 can give his expert opinion in those fields. 11 THE WITNESS: Thank you, Your Honor. 12 BY MR. WARSHAWSKY: 13 Q. Dr. Scheuren, what is NORC? 14 A. NORC's an acronym for the National Opinion Research Center, 15 a research arm of the University of Chicago. 16 Q. How long have you been affiliated with NORC? 17 A. Since 2001. 18 Q. Would you describe NORC's relationship with the Interior 19 Department. 20 A. It's a contractor. I was involved in a competitive 21 procurement where an RC was selected to do the statistical work 22 for this project. 23 Q. What led to your becoming involved in this competitive 24 procurement? 25 A. Well, I actually have a lot of background in administrative</p>	<p>1 issues. 2 Q. Okay. She's also a Ph.D. in statistics? 3 A. Oh, yes. Also a fellow of the American Statistical 4 Association, as am I. 5 Q. Now, tell me, have you ever talked to someone like Bert 6 Edwards or Jeff Zippin about how you were going to approach this 7 role? 8 A. When the competitive process took place, I was brought in 9 and asked to give a presentation of what I would have done, 10 which is actually described in one of the attachments to my 11 original expert report. And I talked about two things. I 12 talked about the -- of course the details of this were 13 described, and also made two points which I would like to 14 repeat. 15 One of them is that I was really not going to be working -- 16 I'll put it this way. I was going to follow the data. My goal 17 was to let the data speak. And that's what we've done, at least 18 as far as I can tell, in this engagement ever since then. 19 Q. What does that mean, to let the data speak? 20 A. Well, sometimes you have a relationship with a client and 21 the client is very tight with that client, and you're really 22 speaking for the client, and not for the data. And I didn't 23 want to have that kind of relationship. If that was the kind of 24 relationship that we would have been asked to take, we would 25 have turned this down. We had to have independence.</p>

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1 Q. Now, I'd like you to refer to page 1 of Defendants' Exhibit
 2 6. Are you at Defendants' 6? It's the first page.
 3 A. Thank you.
 4 Q. And just in very top-level fashion, I want to go through
 5 the five bullet items that you referred to in this as being the
 6 five major OHTA deliverables. Do you see that, sir?
 7 A. Yes, I do.
 8 Q. This is in the sentence right above the bullets. It says,
 9 "Over that period, there have been five major OHTA report
 10 deliverables." Would you generally describe the first item
 11 you've listed, the blueprint?
 12 A. The blueprint was a required report for the office, and I
 13 came just at the time it was being produced, and helped in a
 14 very minor way in its production.
 15 Q. Okay. So this was a 2001 project?
 16 A. That's right. It was completed in the weekend just before
 17 September 11.
 18 Q. Okay. And you said you had a minor role; is that correct?
 19 A. I read the report. I was still learning what was going on,
 20 I was reading the files. I made some minor suggestions to bring
 21 it in conformance with what someone like me who cares about
 22 measurement would want to see in there.
 23 Q. What's the second bullet item, the 120-day report?
 24 A. The second was an effort to do something early, without
 25 having a comprehensive plan, that would make a beginning on this

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1 tough problem. And I worked on that quite extensively. A lot
 2 of the projects that are mentioned are ones that I helped craft
 3 and were included in the report.
 4 Q. Okay. Would you describe in a little greater specificity
 5 what kinds of things you did on the 120-day report?
 6 A. Well, you listen to a lot of people. That's one of the key
 7 activities you do. You listen to data, you listen to people,
 8 and you listen to ideas and needs. And among the things that we
 9 worked on was the land title record projects, which were
 10 mentioned, and others. We worked on several of those. Other
 11 people were given other assignments at that point to do things.
 12 Q. Okay. The third item that's listed, the July 2, 2002
 13 report to Congress. I think the Court is probably familiar with
 14 that. We've had some testimony already about that report. What
 15 was NORC's role with respect to that report?
 16 A. We were again engaged in the measurement issues, quality
 17 issues. We talked about adaptive methods in that report,
 18 because the idea of sampling was something we weren't really
 19 talking about at that point. But of course in my head at least,
 20 one of those methods would be sampling.
 21 Q. You used a term there, adaptive methods. What does that
 22 mean?
 23 A. That means when you have done some work and you learn
 24 something, you may change what you're going to do after that, do
 25 more, do less, do something different. That's a very broad

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1 definition of adaptive. In the sampling literature, there are
 2 actually books on adaptive sampling methods as well, and one of
 3 the things that we ultimately did was to hire a student of Steve
 4 Thompson -- Steve is the world expert on adaptive methods, and
 5 we hired one of his students, a recent Ph.D., to help us.
 6 Q. So aside from the lay understanding of adaptive methods or
 7 the term adaptive, it's actually a term of art?
 8 A. Yes, it is. It's a quite well-developed technique.
 9 Q. And have you utilized adaptive methods in the course of
 10 your work at OHTA?
 11 A. Only to a small degree, given the way we approached the
 12 project. Some methods you can argue are adaptive, but some fit
 13 within other types of sampling that could have been labeled as
 14 another kind of sampling. Like subsampling, for example, which
 15 we extensively used for the LSA project.
 16 Q. Okay. We're going to talk a little bit more about sampling
 17 in a few moments. But let's get through these deliverables. By
 18 the way, on the July 2002 report, I believe you indicated you
 19 were not contemplating sampling for that; is that correct?
 20 A. We weren't talking about it in the report. I was
 21 contemplating it -- it seemed such a natural thing to do, but it
 22 wasn't something we were talking about at that point.
 23 Q. Okay. Maybe, to be clear then, it wasn't something
 24 Interior was reporting to Congress; is that correct?
 25 A. That's correct.

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1 Q. What's the purple plan?
 2 A. Aside from being color blind, the purple plan was the first
 3 attempt to do an historical accounting plan. Comprehensive
 4 historical accounting.
 5 Q. And was that the January 2003 plan?
 6 A. Yes, it was.
 7 Q. Did that include sampling?
 8 A. Oh, yes, it did.
 9 Q. And you were involved in that?
 10 A. Heavily involved, yes.
 11 Q. And generally -- we'll get into greater detail, but
 12 generally what was NORC's role in --
 13 A. The role was to design and propose a sampling approach to
 14 that, and indeed it's included in one of the appendices in that
 15 report.
 16 Q. And finally, the last bullet point, the revised historical
 17 accounting plan, that's the 2007 plan?
 18 A. Yes, it is.
 19 Q. And obviously we'll spend some time talking about that, so
 20 I'll move on.
 21 MR. WARSHAWSKY: Your Honor, since, as I indicated,
 22 Dr. Scheuren's our first expert, can't help but have a white
 23 board for him. We're going to -- I wanted to spend a few
 24 minutes talking about some basic statistical sampling concepts
 25 for the Court's benefit.

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1 And Dr. Scheuren, we've got your markers and eraser if you
 2 need them to illustrate any points.
 3 THE WITNESS: Will I have a microphone over here?
 4 MR. WARSHAWSKY: No.
 5 THE COURT: Yes, you will. We'll give you a hand mic.
 6 THE WITNESS: I'd like that. Thank you, Your Honor.
 7 MR. GINGOLD: Your Honor, perhaps after the day is
 8 over, plaintiffs would like a copy of what Mr. Scheuren has so
 9 we can see what Mr. Scheuren has, whether handwritten notes or
 10 otherwise.
 11 MR. WARSHAWSKY: Yeah. And I'll represent, and you
 12 can certainly look at it, those are simply copies of the
 13 exhibits that he's going to review. What I'd request,
 14 Your Honor, is that we only show the plaintiffs at this time the
 15 specific exhibits that Dr. Scheuren reviewed, since of course we
 16 may not get to all those exhibits, they do reflect work product.
 17 THE COURT: Okay.
 18 MR. GINGOLD: Your Honor, to the extent the witness
 19 has documents in front of him, plaintiffs would like to see
 20 those exhibits.
 21 THE COURT: Well, we'll talk about that later.
 22 THE WITNESS: I would like to indicate I have a single
 23 blank piece of paper here, because I do take notes, and I will
 24 let you see that when I'm finished.
 25 THE COURT: All right. You've got your microphone.

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1 Let's go.
 2 BY MR. WARSHAWSKY:
 3 Q. All right. Dr. Scheuren, you can probably put the mic
 4 down, because I think right now we're just going to talk about
 5 some basic concepts. What is statistical sampling?
 6 A. Well, sampling is a well-known idea. Everyone has an
 7 intuitive sense of it. Statistical adds a dimension of
 8 systematic, systematic being thorough, scientific it's sometimes
 9 characterized. And most importantly, in my use of it, it's
 10 probability based, that each observation of population have a
 11 positive known, knowable probability of selection, so you can
 12 make an inference from the sample.
 13 Q. Okay. And among the considerations in sampling is the size
 14 of the sample; is that correct?
 15 A. Absolutely.
 16 Q. How do you determine the size of the sample?
 17 A. Well, usually it's a dialogue, and there are three parties.
 18 There's the sampler, there's the client, and there's the data.
 19 And it can evolve over time. You end up going to a client, the
 20 client tells you what they want to do. They may also tell you
 21 how much money they have to spend, how much time they want to
 22 take.
 23 They may tell you something about the population that
 24 you're going to sample. It would be great if they told you a
 25 lot about the population. Sometimes they do, when they know it

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1 themselves. Often they don't. One of the things you do
 2 ordinarily is you check what the client tells you about the
 3 population, maybe by doing a small-scale study of some kind.
 4 Q. Okay. Why do you need to know about the population when
 5 you're setting a sample size?
 6 A. Because the uncertainty in the estimate that you're going
 7 to make depends on the nature of the population. Populations
 8 that -- in our context, populations that have high error rates
 9 would have a greater degree of inherent uncertainty and
 10 therefore require larger samples.
 11 Q. How do you know at the start whether your population is
 12 going to have a high error rate or not?
 13 A. You don't.
 14 Q. How do you approach the problem?
 15 A. Well, you listen to people, and we did that. And then you
 16 come up with what you think is a reasonable hypothesis about
 17 that, and that hypothesis leads you to a provisional sample
 18 design and a provisional sample size.
 19 Q. And the term provisional sample size, is that a term of art
 20 as well?
 21 A. I would argue that it is, yeah.
 22 Q. And what's provisional about it?
 23 A. Well, you need to do some checking before you actually
 24 implement it. One of the things that you would do is you would
 25 bring it back to the client and say, listen, we think based on

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1 what you told us this is what you need, and this is how much it
 2 will cost, and this is how long it will take. Or you might say
 3 we need you to help us by giving us access to the data, so we
 4 can actually do some small studies so we can in fact guess
 5 better than we have as to what that sample needs to be.
 6 Q. So there's some guesswork involved then?
 7 A. Absolutely.
 8 Q. And what do you do if you start with a hypothesis and it
 9 proves not to be borne out by your actual testing?
 10 A. Well, if you're building this sample in a way that you --
 11 in a modern way, you're getting quick feedback from the actual
 12 operation that tells you that you're wrong or tells you that
 13 you're right, or tells you you were mostly right, but over here
 14 you were wrong, and given -- based on that kind of feedback, you
 15 change the design.
 16 Q. How might your design differ if you assumed high error
 17 rates as opposed to low error rates?
 18 A. If you assume high error rates, you'll need a larger sample
 19 to achieve the same level of precision that the client wants.
 20 The client tells you what the level of precision is going to be.
 21 You give the client alternatives to give him information as to
 22 what he should think about there, but they have to choose that.
 23 Q. Are there any -- can you define any goals when you set the
 24 sample size?
 25 A. Well, the client will tell you that I want to achieve an

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<p>1 estimate within 1 percent of its value, or 2 percent. That 2 would be a goal the client might give you. Or I want to get it 3 done with less than X dollars or X time. Those are goals. 4 Q. Now, one term we often hear in sampling is the word random. 5 A. Yes. 6 Q. What does random mean? 7 A. Random sampling, or approximately random sampling, because 8 you really can't achieve it -- roughly right is the phrase in 9 statistics -- is a way to separate the observer, the sampler, 10 the client, from the data and from selection of the sample, so 11 that the sample has an objectivity to it, that in this context 12 both the plaintiff and the government can use that objectivity. 13 They may have different views of the world, but the sample's 14 obtained objectively. 15 Q. Okay. And was randomness something you contemplated in 16 your -- 17 A. Yes indeed. It's crucial to the design. 18 Q. Okay. And just so we're clear, I mean -- we can't talk 19 over each other, for the benefit of the reporter, especially at 20 4:45. 21 I'm sorry. You were saying randomness was something you 22 contemplated in your work with OHTA? 23 A. Yes indeed. It was built into what we did. 24 Q. Could you define the term probability sample? 25 A. I've already mentioned that one kind of statistical</p>	<p>1 arguably you can consider it a pilot of the original sampling 2 plan. That's not the way it was characterized but it could be 3 argued to be that. And now we've learned from that, and that's 4 led to the 2007 plan. 5 Q. Okay. Dr. Scheuren, when you use probability sampling, 6 what types of estimates can you make? And if you would like, 7 this may be -- feel free to use your white board for this. 8 A. Let me partially try to do it without that. You can 9 estimate a proportion. You can estimate a mean or a total. 10 Those are commonly done in this context. Labels in the 11 accounting world, the kinds of samples are often called 12 attribute sample and variable samples. Both of those are 13 available to you. 14 I might add a note here. That's not the kind of sample we 15 drew. We drew a sample that allowed you to do both attribute 16 estimation, which is what the error rate is, and variable 17 estimation, which is how many dollars there were in error. 18 Q. Okay. And you're talking about the work that was done for 19 OHTA. 20 A. Yes. 21 Q. Okay. Let me ask you about concepts like precision and 22 confidence, or maybe you have other terms. Are those also 23 concepts in sampling? 24 A. Yes, they are, in basic statistics as well. 25 Q. Okay. And I know there's, I guess, a bell chart or bell</p>
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<p>1 sampling is probability sampling. It's what we are using here. 2 It's a sample where the selections of the units in the 3 population are done with known probability, known positive 4 probability. 5 Q. Was that again a concept that you utilized in your OHTA 6 work? 7 A. Yes indeed. 8 Q. Are there other types of sampling besides probability 9 sampling? 10 A. There are a lot of other kinds of sampling. Some of them 11 have been discredited historically, and there are some new ones 12 which have value. In this context where we're dealing with 13 controversial issues, we don't recommend any of these other 14 methods. 15 Q. Okay. Let me just ask you, going real quickly back, when 16 you set the sample size and you do some testing, are there 17 periods where you reassess your work? 18 A. Yes. You can think of sampling as consisting of four 19 periods: a planning step, an operational step, an estimation 20 step or an inference step or an analysis step -- that's the 21 third piece, you can label it differently -- and a fourth step, 22 which is maybe not so obvious to all of you, but in fact we are 23 in that fourth step right now, where you learn from a previous 24 sample how to design a new sample. 25 And that's exactly what we're doing. We use the LSA, and</p>	<p>1 graph that you sometimes do? 2 A. Let me use the board. 3 Q. Yes. Thank you. 4 A. One small point. Let's start with the normal curve or 5 bell-shaped curve, even though it doesn't actually apply rigidly 6 or rigorously to this setting, because of the nature of this 7 sampling. But we'll start with that because it gives -- you all 8 have a sense of familiarity with this, I think. 9 Can this be seen by all of you? I'm going to do it over 10 here. This is a classical bell-shaped or normal curve. Can you 11 see this? 12 Q. Yeah. 13 A. And let me talk about this in terms of confidence 14 intervals. I have something I want to estimate. It's an 15 unknown quantity from a population that I'm going to be sampling 16 from, as in this case. Let's say it's an attribute error rate; 17 it's a proportion between zero and one. So I'm going to just 18 count an error as a 1, count something that's not an error as a 19 zero, and I'm going to tally them up, suitably dealing with the 20 nature of the sampling design we're talking about. 21 And I want to calculate a 95 percent confidence level, 22 which is to say in the normal parlance of those of you who read 23 about polls in newspapers -- I'm sure you all do, or you all 24 wish you didn't -- the margin of error in the newspapers is a 95 25 percent confidence level. Upper bound.</p>

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1 95 percent confidence level, there's 2-1/2 percent on this
 2 side and another 2-1/2 percent on this side. And these bounds
 3 are the bounds for the 95 percent confidence interval. And why
 4 is that? Of course, in between there is 95 percent. And that's
 5 why we call it a 95 percent confidence level.
 6 Q. Could you explain to Judge Robertson what is being depicted
 7 by that bell?
 8 A. The way to think about this is now, in modern times, we
 9 don't just draw a single sample. We collect data from only a
 10 single sample because you can't afford to do it for more than
 11 once. We simulate samples, thousands and thousands of samples.
 12 Indeed, we did that here. So we would simulate samples. And of
 13 course we don't know what the actual population is, so we
 14 simulate them under some assumptions about what the nature of
 15 the population is.
 16 That's where the hypothesis comes in. If I think I have a
 17 1 percent error rate, then I'll simulate a sample from a
 18 population with a 1 percent error rate. And I'll do that many
 19 thousands of times. And each one of these samples then,
 20 usually -- we're all familiar with this -- I then create a
 21 histogram.
 22 Q. And what's a histogram?
 23 A. It's a count of the number of samples. Say I drew 10,000
 24 of them. It's a count of the number of samples that fell
 25 between this interval here and this interval and so forth. And

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1 then naturally what you do is you draw that smooth curve through
 2 it. And if your sample is big enough, that will behave like a
 3 normal distribution.
 4 In the samples that we're using here, which we assume a
 5 very low error rate, the sample has to be very large for us to
 6 get this normal shape. And so when we do the actual
 7 calculations for the work we're doing, we'll use a reference
 8 distribution -- this is called a reference distribution. We use
 9 a different reference distribution that allows us to deal with
 10 the fact that the sample may be too small to achieve normality.
 11 In the actual work we did on debits, for example, where we
 12 found no errors at all, we didn't make -- our reference
 13 distribution was not a normal distribution. And we had to use
 14 something else, and that's in the weeds, since I won't go into
 15 details. But it is possible to do that, and we did do that.
 16 Q. Let me just get back to some basic concepts. Margin of
 17 error, precision, what does that mean?
 18 A. Margin of error in the newspaper sense is a 95 percent
 19 confidence interval.
 20 Q. What does that mean?
 21 A. 95 percent of the time, when I've drawn a sample from this
 22 population and calculated a quantity, say it's an average, say
 23 it's a polling number, say it's an error rate, I'll get close to
 24 the right value 95 percent of the time. I'll be within that --
 25 this margin of error, this interval will be wide enough so that

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1 95 percent of the time when I do that calculation, the true
 2 value will fall within that interval.
 3 Q. Okay. So if I'm clear -- I'm not a statistician, but what
 4 you're saying is that the sample result is going to be within
 5 that range --
 6 A. Correct.
 7 Q. -- 95 percent of the time?
 8 A. Correct. So it's going to -- the value will fall within
 9 that range 95 percent of the time. And if I draw a bigger
 10 sample, then I'll narrow this range, and eventually -- and this
 11 is a client decision -- the range will be narrow enough so the
 12 client will be satisfied with the result.
 13 Q. Okay. In the case of the 2003 plan, for example, you
 14 didn't use a 95 percent assurance level, right?
 15 A. We used a 99 percent, that's correct.
 16 Q. So that meant what in this case?
 17 A. It meant that this would have been wider. Quite a bit
 18 wider, in fact.
 19 Q. Okay. So what, you'd have .5 percent on each end, instead
 20 of --
 21 A. That's correct, yes. Close to 0.5, yes.
 22 Q. Let me ask you one thing -- and you can sit down. You
 23 talked about the size of the sample affecting your
 24 determinations regarding precision and confidence, right?
 25 A. Repeat that, please?

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1 Q. The size of the sample, you said if you drew a bigger
 2 sample that that would --
 3 A. You draw a bigger sample, you will improve the precision of
 4 your estimates. You can also improve the precision of your
 5 estimates by designing it differently. And that's why it's so
 6 important to know a lot about the population. The more you know
 7 about the population, perhaps the better design you can do, and
 8 you may be able to save the client money by a better design.
 9 Q. What I'd like you to do is refer to table 1 within
 10 Defendants' Exhibit 6. This is on the fifth page.
 11 THE COURT: Well, we're getting into the actual
 12 numbers. Maybe it's time we called it a night and start again
 13 tomorrow morning.
 14 MR. WARSHAWSKY: Okay. Very good, Your Honor.
 15 THE COURT: Dr. Scheuren, I assume, is going to be on
 16 the stand more than about another half hour.
 17 MR. WARSHAWSKY: Oh, he will. This one point simply
 18 relates to the notion of sample size. We can certainly pick it
 19 up tomorrow morning.
 20 THE COURT: All right. We'll be in recess.
 21 MR. WARSHAWSKY: With respect to the request from the
 22 plaintiff s to review what he's looking at.
 23 THE COURT: No, this isn't a criminal case. He's
 24 brought up a notebook full of exhibits. He can look at that and
 25 the plaintiffs aren't entitled to look at it. May I see you at

1 the bench, Mr. Warshawsky?
 2 (Off-the-record discussion.)
 3 We're in recess until tomorrow morning.
 4 (Proceedings adjourned at 5:06 p.m.)
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