

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.
Plaintiffs,
v.
DIRK KEMPTHORNE, Secretary of the Interior, et al.
Defendants.

Civil Action 96-1285
Washington, D.C.
Monday, June 16, 2008
1:37 p.m.

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

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PROCEEDINGS

01:27:30PM 1 COURTROOM DEPUTY: Please come to order and remain seated.
01:27:30PM 2 THE COURT: Mr. Siemietkowski?
01:37:12PM 3 MR. SIEMIETKOWSKI: Good afternoon, your Honor.
01:37:19PM 4 THE COURT: Good afternoon.
01:37:22PM 5 MR. SIEMIETKOWSKI: The defense calls Ed Angel.
01:37:24PM 6 THE COURT: All right.
01:37:26PM 7 COURTROOM DEPUTY: Do you solemnly swear that the testimony you should give to the Court in this case now on trial will be the truth, the whole truth, and nothing but the truth so help you God?
01:37:29PM 8 DR. ANGEL: I do.
01:37:40PM 9 COURTROOM DEPUTY: Thank you. Please be seated.
01:37:41PM 10 MR. SIEMIETKOWSKI: A couple of preliminary matters, your Honor. Number one, we'd like to alert the Court that Dr. Angel will be testifying in three different areas. The three areas of his testimony are, number one, the availability of receipts and disbursement records; number two, government practices and system controls reflected in those records; and number three, a critique of Plaintiffs' calculation of alleged benefit to the government.
01:37:44PM 11 THE COURT: Fine. All right.
01:37:47PM 12 MR. SIEMIETKOWSKI: Next, your Honor, we'd like to remind the Court that the Court qualified Dr. Angel as an expert

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

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01:38:38PM 1 in October in the history of federal Indian relations and federal Indian records, and we would like the Court to again consider him as an expert in those same fields for his testimony today.
01:38:43PM 2 THE COURT: Without objection I will of course do that.
01:38:46PM 3 EDWARD ANGEL, Ph.D, WITNESS FOR THE DEFENDANTS, SWORN
01:38:49PM 4 DIRECT EXAMINATION
01:38:50PM 5 BY MR. SIEMIETKOWSKI:
01:38:53PM 6 Q. Dr. Angel, would you please state your full name for the record?
01:38:54PM 7 A. Yes. My name is Edward Angel.
01:38:54PM 8 Q. And what is your profession?
01:38:54PM 9 A. I'm a historian.
01:38:57PM 10 Q. Where do you work?
01:38:57PM 11 A. I work at Morgan, Angel & Associates.
01:39:00PM 12 Q. Is that here in Washington?
01:39:02PM 13 A. It's at 1601 Connecticut Avenue, Northwest in Washington, D.C.
01:39:03PM 14 Q. Dr. Angel, let's turn first to the topic of availability of receipts and disbursement records. Do you recall testifying about that in October?
01:39:06PM 15 A. Yes, I do.
01:39:07PM 16 Q. And what was your conclusion in October concerning the aggregate receipt and disbursement records for funds in the IIM

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01:39:33PM **1** system?

01:39:33PM **2 A.** We noted that while there are some aggregate receipt and

01:39:38PM **3** disbursement records going back as far as 1909, for the most

01:39:42PM **4** part aggregate receipt and disbursement records on IIM weren't

01:39:47PM **5** kept. For the most part these records are more at an individual

01:39:50PM **6** level then they are kept maintained at an aggregate level.

01:39:54PM **7 Q.** When were they first kept at the aggregate level?

01:39:59PM **8 A.** Consistently beginning in about 1998 with the Treasury

01:40:04PM **9** Department publication, the consolidated financial statements of

01:40:07PM **10** the United States.

01:40:08PM **11 Q.** Now, was the IIM system designed to track data more at the

01:40:12PM **12** aggregate level or more at the individual level?

01:40:15PM **13 A.** As we've done our research over the course of the years in

01:40:18PM **14** this case, what we found is that for the most part IIM records

01:40:23PM **15** were not kept at the aggregate level. When we were doing our

01:40:27PM **16** research if we were looking for issues related to appropriated

01:40:33PM **17** funds, for example, we might find voluminous records concerning

01:40:37PM **18** how the money came from Congress to Interior and then worked its

01:40:41PM **19** way down to the agency level. This truly is history from the

01:40:45PM **20** bottom up. These records literally begin at ground level and

01:40:50PM **21** work their way up to the individual, and there aren't a lot of

01:40:54PM **22** aggregate receipt and disbursement records.

01:40:58PM **23 Q.** And Dr. Angel, what have you learned since October about

01:41:02PM **24** the availability of aggregate receipt and disbursement

01:41:05PM **25** information?

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01:42:43PM **1** we've given information to both FTI, Ms. Herman, and to NORC,

01:42:53PM **2** Dr. Scheuren.

01:42:53PM **3 Q.** Now, Dr. Angel, you mentioned your total IIM chart. Do you

01:42:57PM **4** recall DX 94, your total IIM chart which was admitted into

01:43:00PM **5** evidence in October?

01:43:01PM **6 A.** I do.

01:43:01PM **7 Q.** And have you updated that since?

01:43:04PM **8 A.** Yes, we have subsequently updated it with the additional

01:43:07PM **9** information that we've located.

01:43:09PM **10 Q.** Dr. Angel, at this time I'd like to show you on your screen

01:43:12PM **11** what's been marked as DX 483. Do you recognize that, Dr. Angel?

01:43:35PM **12 A.** Yes. That's our updated version of our total value of IIM

01:43:40PM **13** system funds chart.

01:43:41PM **14 Q.** And what does this chart represent, Dr. Angel?

01:43:44PM **15 A.** This chart represents known data points between 1908 and

01:43:50PM **16** 1985, and it contains information about receipts, disbursements,

01:43:57PM **17** IIM system funds in banks, whatever component parts we can get,

01:44:01PM **18** and year-end account balance information.

01:44:05PM **19 Q.** I'll ask Matthew to slowly cursor through the different

01:44:08PM **20** pages of the chart and ask you, Dr. Angel, do any particular

01:44:11PM **21** portions of the chart reflect any historical trends?

01:44:14PM **22 A.** Matthew, would you slide back one, please?

01:44:21PM **23** Certainly one of the trends that we can see is the end

01:44:27PM **24** of the Depression on year-end account balances and on the

01:44:31PM **25** receipt and disbursement element of the IIM chart. We can

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01:41:05PM **1 A.** Generally speaking since October my opinion, as I

01:41:10PM **2** indicated, remains the same. There aren't many receipt and

01:41:14PM **3** disbursement aggregate records, so saying we did locate some

01:41:20PM **4** aggregate receipt and disbursement records, which have limits,

01:41:25PM **5** we have located certain documents that give us year-end account

01:41:30PM **6** balances and we've located forms, three forms in particular,

01:41:34PM **7** that show promise for giving us receipt and disbursement

01:41:37PM **8** records, though we couldn't get far in that research.

01:41:40PM **9 Q.** And where have you located this additional information?

01:41:42PM **10 A.** For the most part the additional information has been

01:41:46PM **11** located at the National Archives and they've been located in

01:41:51PM **12** different record groups: Interior, Treasury, congressional

01:41:55PM **13** record groups.

01:41:56PM **14 Q.** And would you please remind the Court of your testimony in

01:41:59PM **15** October regarding in which repositories you've located the data

01:42:07PM **16** on receipts and disbursements and year-end account balances?

01:42:10PM **17 A.** Over the course of the years we've located them in a number

01:42:13PM **18** of places, but for the most part we've located these at National

01:42:17PM **19** Archives, both locally and at regional branches, we've located

01:42:22PM **20** them at Department of Interior library, Treasury department

01:42:27PM **21** library, different repositories.

01:42:31PM **22 Q.** What have you done with the additional information you've

01:42:33PM **23** located since October, Dr. Angel?

01:42:35PM **24 A.** With the additional information that we've located we've

01:42:38PM **25** updated our IIM chart that we introduced back in October and

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01:44:39PM **1** see -- please, forward one, please. Thank you. We can

01:44:46PM **2** certainly see increases following World War II and better

01:44:53PM **3** economic times. And please, one more. We can see increases,

01:45:01PM **4** particularly during the energy crisis years when Indian oil and

01:45:06PM **5** gas revenues grew so greatly, and I'm talking about the period

01:45:10PM **6** particularly, and you can see it on the chart, 1977 forward, so

01:45:16PM **7** historical trends are reflected in the chart.

01:45:19PM **8 Q.** Now, Dr. Angel, the additional documents you've located to

01:45:22PM **9** use to update this chart, have you received any of those

01:45:25PM **10** documents from government attorneys?

01:45:26PM **11 A.** None.

01:45:27PM **12 Q.** All the other documents that went into the original genesis

01:45:31PM **13** of the chart, did you receive any of those documents from

01:45:34PM **14** government attorneys?

01:45:34PM **15 A.** None.

01:45:35PM **16 Q.** And Dr. Angel, again to refresh the Court's recollection

01:45:38PM **17** regarding what you said in October, why does the chart stop in

01:45:41PM **18** 1985?

01:45:42PM **19 A.** We were asked to stop the chart in 1985 because FTI would

01:45:46PM **20** pick up with the so-called electronic era beginning in 1985.

01:45:52PM **21 Q.** At this point, Dr. Angel, I'd like you to explain to the

01:45:55PM **22** Court, please, what is new on the chart since October.

01:45:58PM **23 A.** What's new on the chart since October are two particular

01:46:02PM **24** elements. One is we located some very limited receipt and

01:46:07PM **25** disbursement data for the period 1922 to 1949.

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01:46:13PM **1** Q. I'll ask Matthew to cursor back to that page, please.

01:46:17PM **2** I'm sorry to interrupt you, Dr. Angel.

01:46:20PM **3** A. We located receipt and disbursement information for the

01:46:23PM **4** period 1922 to 1949. There was no report for 1945. And we

01:46:28PM **5** located year-end account balance information for the period 1930

01:46:34PM **6** to 1944.

01:46:35PM **7** Q. Now, Dr. Angel, looking at the far right column, DX source

01:46:42PM **8** document number, what does that represent?

01:46:44PM **9** A. Those of course represent the exhibits that we've used.

01:46:48PM **10** Any exhibit in the 300 series to 400 represents a more complete

01:46:55PM **11** version of exhibits that we introduced back in October. That

01:47:00PM **12** would be such information as annual reports, the commissioner of

01:47:04PM **13** Indian Affairs congressional hearings and investment reports.

01:47:09PM **14** Any DX number beginning 402 or higher is a new document, and

01:47:15PM **15** those would be such documents as the receipt and disbursement

01:47:19PM **16** data and the Indian service, special disbursing agent year-end

01:47:25PM **17** account balance data.

01:47:26PM **18** Q. Now, at first glance, Dr. Angel, it doesn't seem like there

01:47:30PM **19** is a great deal of new information on the chart. Can you please

01:47:34PM **20** explain to the Court what you've been doing since October?

01:47:36PM **21** A. Well, of course like everyone, we didn't learn of the trial

01:47:41PM **22** schedule until March 5th. At that point we engaged heavily in

01:47:47PM **23** trying to locate archival records that might give us aggregate

01:47:54PM **24** receipt and disbursement records. At that time we located these

01:47:58PM **25** 1922 to 1949 receipt and disbursement records and the ISSDA

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01:49:40PM **1** compiled these ISSDA reports for the Treasury department.

01:49:45PM **2** Q. And you also mentioned a separate category, the receipts

01:49:49PM **3** and disbursements records, Dr. Angel?

01:49:51PM **4** A. That's correct.

01:49:52PM **5** Q. What were those?

01:49:53PM **6** A. In July of 1906 -- excuse me. On June 30th, 1906, Congress

01:50:01PM **7** passed a Sundry Civil Appropriations Act. Section five of this

01:50:06PM **8** act called on all branches of the federal government, all

01:50:10PM **9** executive departments, to send to the Treasury department any

01:50:15PM **10** receipt and disbursement information concerning money that did

01:50:19PM **11** not enter the general Treasury of the United States.

01:50:25PM **12** Q. How long do these reports last?

01:50:27PM **13** A. They began -- as near as we can tell they begin in 1922.

01:50:32PM **14** In 1921 the president issued an executive order that listed many

01:50:38PM **15** reports that should be submitted annually and these section five

01:50:43PM **16** of the act of June 30 of 1906 report were among the reports

01:50:49PM **17** listed and they end in 1950 as a result of the Budget and

01:50:54PM **18** Accounting Act of 1950.

01:50:56PM **19** Q. At this time, Dr. Angel, on your screen I'm going to show

01:50:59PM **20** you DX 27, which was admitted in October, specifically pages

01:51:06PM **21** seven through nine. Do you recognize this, Dr. Angel?

01:51:20PM **22** A. Yes. This is one of the receipt and disbursement reports

01:51:22PM **23** that we were able to locate prior to the October trial.

01:51:24PM **24** Q. All right. If you could, I'd ask Matthew to go to the

01:51:28PM **25** first page. And then if you would just talk your way and

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01:48:04PM **1** reports, the Indian service special disbursing agent annual

01:48:08PM **2** reports.

01:48:09PM **3** Q. And in your opinion, Dr. Angel, were you not able to locate

01:48:12PM **4** more between October and the current trial?

01:48:14PM **5** A. Well, once again, as I said at the beginning, is we've gone

01:48:18PM **6** through records at Archives, as we've gone through published

01:48:22PM **7** historical source what we're seeing is that typically if they're

01:48:26PM **8** going to be aggregate reports, full reports, they come from

01:48:36PM **9** appropriated funds and work their way down. Really there's very

01:48:38PM **10** little that starts at the lease level at the ground level and

01:48:41PM **11** works its way back up.

01:48:41PM **12** Q. Dr. Angel, can you describe by category the new source

01:48:47PM **13** documents you have discovered since October?

01:48:50PM **14** A. Sure. We located Indian service special disbursing agent

01:48:56PM **15** reports for the period 1930 to 1944 and receipt and disbursement

01:49:03PM **16** reports for the period 1922 to 1949, as I said, minus 1945.

01:49:09PM **17** Q. The Indian special, the ISSDA reports for 1930 and 1944,

01:49:16PM **18** what were they, Dr. Angel?

01:49:17PM **19** A. These were reports that were sent to the Treasury

01:49:20PM **20** department at the request of the Treasury department. They show

01:49:24PM **21** year-end account balances and these year-end account balances

01:49:29PM **22** are broken down into four distinct segments.

01:49:32PM **23** Q. And who do the special disbursing agents submit those year-

01:49:36PM **24** end account balances to?

01:49:37PM **25** A. They were submitted to the Interior department, which

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01:51:31PM **1** explain to the Court what's represented on these pages, Dr.

01:51:35PM **2** Angel.

01:51:35PM **3** A. Okay. The first page is from the secretary of the Treasury

01:51:39PM **4** to the speaker of the United States house of representatives.

01:51:44PM **5** It states, of course, that it's in compliance with the act of

01:51:47PM **6** June 30th, 1906, and he's transmitting -- and he's transmitting

01:51:54PM **7** reports relating to monies not paid into the general fund of the

01:51:58PM **8** United States Treasury. And also disbursements that were

01:52:04PM **9** made -- that were not disbursed from the general fund of the

01:52:07PM **10** United States Treasury.

01:52:08PM **11** Q. And looking on the subsequent pages, Dr. Angel, what do

01:52:13PM **12** they represent?

01:52:13PM **13** A. The subsequent page is a letter from the assistant

01:52:19PM **14** secretary of the Interior to the secretary of the Treasury

01:52:23PM **15** noting that in compliance with this act, Interior is

01:52:28PM **16** transmitting statements in accordance with the act of June 30th,

01:52:33PM **17** 1906.

01:52:35PM **18** Q. And then the third page in that series, Dr. Angel?

01:52:39PM **19** A. The third page highlighted, you can see individual Indian

01:52:43PM **20** monies received and disbursed for fiscal year 1933 without being

01:52:48PM **21** paid into the general Treasury of the United States.

01:52:51PM **22** Q. Thank you. And I'll ask that that be removed from your

01:52:55PM **23** screen at this time.

01:52:56PM **24** And Dr. Angel, knowing the relatively limited amount

01:52:59PM **25** of new information you've added since October, what then in your

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01:53:04PM **1** opinion is the relevance of your total IIM chart for this
 01:53:07PM **2** particular remedies trial?
 01:53:09PM **3 A.** Well, it's multiple. First of all, we were able to gather
 01:53:15PM **4** some receipt and disbursement information, but the receipt and
 01:53:18PM **5** disbursement information we were able to gather clearly is
 01:53:22PM **6** limited. It's limited in the number of years that it's
 01:53:25PM **7** presented and certainly it's limited in the scope of what's
 01:53:30PM **8** presented. This is not all receipts and all disbursements. It
 01:53:35PM **9** gave us an additional number to work with. I certainly hoped,
 01:53:40PM **10** as I added it to the IIM table, that it would be beneficial to
 01:53:46PM **11** statisticians and modlers as long as they understood the
 01:53:51PM **12** limitations of the data.
 01:53:53PM **13 Q.** Now, what if you had unlimited additional time and
 01:53:58PM **14** unlimited additional resources, Dr. Angel?
 01:54:01PM **15 A.** If we had unlimited additional time and unlimited
 01:54:07PM **16** additional resources, I think there is a chance, a good chance,
 01:54:10PM **17** that we could find additional receipt and disbursement data, but
 01:54:13PM **18** if we had additional time the one thing I would like very, very
 01:54:18PM **19** much to have done was to present the report with a more -- the
 01:54:20PM **20** Court, I should say, with a more full understanding of what
 01:54:23PM **21** exactly these receipt and disbursement reports from '22 to '49
 01:54:28PM **22** encompassed.
 01:54:29PM **23 Q.** Now, you just mentioned some of the limitations of the new
 01:54:32PM **24** data. Did you convey any of these limitations to anyone?
 01:54:36PM **25 A.** Oh, definitely. I conveyed them to both FTI and to NORC.

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01:56:27PM **1** have paid direct to Indians by disbursing officers and returned
 01:56:31PM **2** to unsuccessful bidders, checks drawn by Indians on bank
 01:56:35PM **3** accounts, and then, as I said, we've got a total balance figure.
 01:56:39PM **4 Q.** Are the 1910 and 1911 reports similar to this one, Dr.
 01:56:45PM **5** Angel?
 01:56:45PM **6 A.** That's correct, that's correct, they are.
 01:56:47PM **7 Q.** I'd like to now show you, Dr. Angel, DX 63. What is this,
 01:56:54PM **8** if you recognize it, please?
 01:56:55PM **9 A.** This is the report by the General Accounting Office to
 01:57:00PM **10** Congress. It's an audit report regarding the administration of
 01:57:04PM **11** the individual Indian monies by the BIA. The report date is
 01:57:10PM **12** November of '55 but it was submitted to Congress in 1956.
 01:57:15PM **13 Q.** I'll ask that you now be shown page six of it. And if
 01:57:22PM **14** Matthew could enlarge the highlighted portion, please.
 01:57:25PM **15** What is this, Dr. Angel? How did you use this for
 01:57:27PM **16** your chart?
 01:57:28PM **17 A.** The highlighted portion shows receipts and disbursements
 01:57:31PM **18** for IIM accounts for fiscal year 1955, and we added that to the
 01:57:38PM **19** report, and there are the receipt and disbursement categories,
 01:57:42PM **20** along with taking the year-end balance from this report.
 01:57:46PM **21 Q.** Now I ask that that be removed from your screen at this
 01:57:49PM **22** time. And let me ask you, Dr. Angel, of the sources we've
 01:57:52PM **23** discussed, how many came from publicly available repositories or
 01:57:57PM **24** publicly accessible repositories?
 01:58:00PM **25 A.** The information that comprises the total, the IIM chart,

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01:54:41PM **1** We had lengthy discussions about this and they certainly were
 01:54:49PM **2** clear in my mind about the limitations of the data that I
 01:54:51PM **3** presented, that this was not neither complete receipts nor did
 01:54:55PM **4** it represent complete disbursements.
 01:54:58PM **5 Q.** So just to be clear for the Court, then, Dr. Angel, all the
 01:55:02PM **6** research you've done, which are the only years that you have
 01:55:06PM **7** found complete aggregate receipt and disbursement data?
 01:55:10PM **8 A.** We found them in commissioner's report, commissioner of
 01:55:13PM **9** Indian Affairs reports for 1909, 1910, 1911, and we find a digg
 01:55:20PM **10** for 1955 in the GAO report of that year.
 01:55:23PM **11 Q.** Now I'll ask you be shown DX 32 at this point, page seven,
 01:55:28PM **12** on your screen. Do you recognize that cover page, Dr. Angel?
 01:55:37PM **13 A.** I do. It's the annual report for the commissioner of
 01:55:39PM **14** Indian Affairs, is contained within the reports of the
 01:55:42PM **15** Department of the Interior for a fiscal year-ended June 30th,
 01:55:46PM **16** 1909.
 01:55:47PM **17 Q.** And I'll ask Matthew to go to page seven, please, and to
 01:55:51PM **18** enlarge the highlighted section. Would you please explain to
 01:55:56PM **19** the Court, Dr. Angel, what this represents and how you used it
 01:55:59PM **20** for your chart?
 01:55:59PM **21 A.** This represents total receipts, total disbursements, and
 01:56:05PM **22** year-end account balances for the year, or the year-end account
 01:56:09PM **23** balance for the year. You'll notice that on receipts we have
 01:56:15PM **24** such information as interest, we have monies received from
 01:56:21PM **25** leasing in bonded banks; things like that. In disbursements we

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01:58:04PM **1** all but seven documents came from either National Archives, a
 01:58:09PM **2** library, a publicly-accessible report. Seven of the reports are
 01:58:15PM **3** Bureau of Indian Affairs annual investment reports, and we
 01:58:19PM **4** gathered those at the American Indian records repository.
 01:58:23PM **5 Q.** Is the ERR publicly accessible?
 01:58:27PM **6 A.** Yes.
 01:58:27PM **7 Q.** Do you know whether any attorneys ever visited the ERR?
 01:58:32PM **8 A.** Yes. We have worked with tribal attorneys. In fact, on
 01:58:38PM **9** one case, in a tribal trust case where we engaged in a
 01:58:41PM **10** collective document-gathering project. Now, so saying, I should
 01:58:46PM **11** add that you need permission to go to ERR. You have to request
 01:58:49PM **12** permission from the Office of Trust Records. But typically it's
 01:58:53PM **13** given and it's given without too much problem.
 01:58:56PM **14 Q.** Now, moving away a bit from the documents sourced for your
 01:59:01PM **15** total IIM chart, what other documents have you located that
 01:59:05PM **16** might bear on receipts, disbursements, and year-end account
 01:59:09PM **17** balances for the IIM system?
 01:59:11PM **18 A.** In the course of our research we located three forums that
 01:59:16PM **19** looked to us like potentially they could be of great value to
 01:59:19PM **20** determining receipts, disbursements, and year-end account
 01:59:23PM **21** balances. One of the documents is called the Statement of
 01:59:30PM **22** Funded Checking Accounts, and it's standard form 1189.
 01:59:32PM **23 Q.** Let me show you DX 488 at this time, Dr. Angel. And ask
 01:59:40PM **24** that that be enlarged a bit so it can be better seen by the
 01:59:44PM **25** Court and by the witness. What is this, Dr. Angel?

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01:59:49PM **1** **A.** This is an example of one of the statement of funded
01:59:53PM **2** checking accounts that we located. This particular form is
01:59:58PM **3** dated in 1960, although we think the forms go back to the early
02:00:04PM **4** '50s. These forms were filled out by the Indian service special
02:00:09PM **5** disbursing agent and it contains information regarding beginning
02:00:15PM **6** balance of IIM, receipts into the system, disbursements from the
02:00:20PM **7** system, and then the ending balance for the month. At this
02:00:26PM **8** point in history there are about twelve Indian service special
02:00:33PM **9** disbursing agents. They were represented by the area offices,
02:00:37PM **10** so in other words, it's no longer agency-by-agency basis, no
02:00:41PM **11** longer talking about a hundred reports a month, but
02:00:45PM **12** approximately twelve. The number of area offices shifts over
02:00:49PM **13** the years.
02:00:50PM **14** **Q.** And so how often did the ISSDA submit these reports?
02:00:54PM **15** **A.** These reports were submitted monthly.
02:00:56PM **16** **Q.** And who were they submitted to?
02:00:58PM **17** **A.** They were submitted to the Treasury department.
02:01:01PM **18** **Q.** Dr. Angel, let me next show you DX 489 on your screen and
02:01:17PM **19** ask once again that it be enlarged, if you recognize this and
02:01:22PM **20** how so.
02:01:23PM **21** **A.** This is the standard form 1219, a so-called statement of
02:01:29PM **22** accountability. At some point during the 19 -- early 1960s
02:01:35PM **23** these forms appear to have replaced the statement of funded
02:01:38PM **24** checking accounts that I just discussed a moment ago. Like the
02:01:42PM **25** statement of funded checking accounts, these show receipts

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02:03:22PM **1** this is going back to the very first page -- that it was John
02:03:25PM **2** Veil who was the ISSDA during this period.
02:03:29PM **3** **Q.** And how often were they submitted?
02:03:32PM **4** **A.** Once a month.
02:03:32PM **5** **Q.** And again, to whom?
02:03:36PM **6** **A.** To the Treasury Department.
02:03:37PM **7** **Q.** Thank you. I'll ask that that be removed from your screen
02:03:39PM **8** now.
02:03:40PM **9** Though we've mentioned it briefly, Dr. Angel, let's
02:03:44PM **10** talk a little bit more about what assistance you provided to FTI
02:03:48PM **11** and to NORC. Could you please describe for the Court in general
02:03:51PM **12** terms what you've done with those two organizations?
02:03:53PM **13** **A.** We've worked with those two organizations to supply them
02:03:56PM **14** with two things. First of all, any documentation that they
02:03:59PM **15** wanted from our IIM table which might include annual investment
02:04:06PM **16** reports, General Accounting Office audit reports, the various
02:04:11PM **17** sources that go into making up the IIM table. We also tried to
02:04:15PM **18** work with them to make sure that they understood the limitations
02:04:19PM **19** of the data itself. For example, the limitation of the
02:04:24PM **20** limitations of those receipt and disbursement reports that we've
02:04:28PM **21** discussed.
02:04:29PM **22** **Q.** And for what years were those again, Dr. Angel?
02:04:32PM **23** **A.** 1922 to 1949.
02:04:34PM **24** **Q.** Now aside from providing historical documents and
02:04:40PM **25** historical context to FTI and NORC, did you provide those

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02:01:49PM **1** beginning balance for IIM, receipts and disbursements into and
02:01:53PM **2** out of the system, and then month-end balance for IIM.
02:01:57PM **3** **Q.** And was it the twelve ISSDAs that were submitting these,
02:02:03PM **4** Dr. Angel?
02:02:03PM **5** **A.** For a while it was the twelve ISSDAs who submitted these,
02:02:08PM **6** and then by 1966 or 1967 it was a single ISSDA located in
02:02:17PM **7** Albuquerque, and so these reports would go from twelve a month
02:02:21PM **8** to one a month.
02:02:21PM **9** **Q.** And again, how often, once a month?
02:02:24PM **10** **A.** Once a month.
02:02:25PM **11** **Q.** And submitted to whom?
02:02:26PM **12** **A.** Submitted to the Treasury department.
02:02:28PM **13** **Q.** Finally in this series, Dr. Angel, let me show you what's
02:02:33PM **14** been marked Defense Exhibit 490 and ask you to look specifically
02:02:41PM **15** at page nine, which is the last page in this particular series.
02:02:47PM **16** Once enlarged could you please identify that for the Court if
02:02:51PM **17** you recognize it?
02:02:51PM **18** **A.** Certainly. This is a standard form 1220, a statement of
02:02:55PM **19** transactions. And these forms contain supporting detail on
02:03:04PM **20** individual Indian monies, so it would have been submitted
02:03:07PM **21** traditionally with the statements of account balance and would
02:03:11PM **22** contain supporting detail.
02:03:12PM **23** **Q.** And who would have submitted them?
02:03:14PM **24** **A.** Oh, I'm sorry. The Indian service special disbursing agent
02:03:18PM **25** would have submitted them. At this point I believe I know --

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02:04:46PM **1** organizations anything in addition? Did you do any work with
02:04:53PM **2** FTI at all on any estimates?
02:04:56PM **3** **A.** Okay. With FTI we supplied estimates concerning tribal,
02:05:05PM **4** individual Indian monies, and we assisted them in locating Osage
02:05:10PM **5** records for their Osage chart.
02:05:14PM **6** **Q.** And for what years did you provide estimates of tribal IIM
02:05:18PM **7** to FTI?
02:05:18PM **8** **A.** Period 1934 to 1985.
02:05:20PM **9** **Q.** Now, Dr. Angel, are you familiar with FTI's concept of
02:05:25PM **10** buckets?
02:05:26PM **11** **A.** Yes, I am.
02:05:27PM **12** **Q.** And what does that refer to?
02:05:28PM **13** **A.** FTI's concept of buckets include money that entered the IIM
02:05:35PM **14** system but were not disbursed to or but did not go to IIM
02:05:40PM **15** accountholders.
02:05:41PM **16** **Q.** Now, let me show you now DX 32, Dr. Angel, something that
02:05:47PM **17** was admitted in October. Do you recognize the cover of that
02:05:52PM **18** document?
02:05:52PM **19** **A.** Yes. It's the Annual Report For the Commissioner of Indian
02:05:57PM **20** Affairs for the year ended June 30th, 1909.
02:06:01PM **21** **Q.** And I'll ask that you be shown page seven specifically, and
02:06:05PM **22** if we can highlight or I should say enlarge the highlighted
02:06:09PM **23** portion, and please explain for the Court if you can, Dr. Angel,
02:06:13PM **24** what buckets, if any, are evident in this particular
02:06:18PM **25** highlighting.

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02:06:19PM **1 A.** In this particular highlighting we notice on the

02:06:22PM **2** disbursement side monies paid direct to Indians by disbursing

02:06:27PM **3** officers and returned to unsuccessful bidders.

02:06:30PM **4 Q.** Now, under Receipts, Dr. Angel, do you see the line that

02:06:34PM **5** says "On hand July 1st, 1908"?

02:06:36PM **6 A.** I do.

02:06:37PM **7 Q.** Would you please read the second sentence out loud

02:06:40PM **8** underneath that?

02:06:41PM **9 A.** This concerns money in bonded banks to the credit of

02:06:45PM **10** individual Indians, and it's \$3,108,625.94.

02:06:52PM **11 Q.** Let me next show you, Dr. Angel, DX 33, another exhibit

02:06:57PM **12** admitted in October. Do you recognize this?

02:07:08PM **13 A.** Yes. This is the Annual Report of the Commissioner of

02:07:11PM **14** Indian Affairs for the fiscal year ended June 30, 1910.

02:07:16PM **15 Q.** I'll ask that we go to page two on this exhibit, please.

02:07:22PM **16** Can you see that or do you need that enlarged, Dr. Angel?

02:07:25PM **17 A.** It would be great to have it enlarged, please.

02:07:29PM **18 Q.** All right. Now, are you able to explain for the Court

02:07:37PM **19** what, if any, buckets are evident on this page of this

02:07:40PM **20** particular CIA report?

02:07:42PM **21 A.** On the receipt side we see bids on allotments, bid on

02:07:48PM **22** timber allotments, and those are two things that I think would

02:07:51PM **23** fit into Ms. Herman's buckets. Subsequently the winning bid --

02:07:58PM **24** some of the bids would be returned, some would remain in the

02:08:01PM **25** system.

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02:10:04PM **1** money.

02:10:05PM **2** Please continue down.

02:10:10PM **3** Next there is description of money in the revolving

02:10:15PM **4** credit funds that were on deposit as of December 30th, 1939.

02:10:20PM **5** You'll see that that totals \$12,644.40.

02:10:25PM **6 Q.** What's the sentence immediately following that \$12,000

02:10:28PM **7** figure?

02:10:29PM **8 A.** The revolving fund accounts were also handled through

02:10:33PM **9** individual Indian monies.

02:10:34PM **10 Q.** What about the bottom paragraph on that screen, Dr. Angel,

02:10:37PM **11** what does that refer to?

02:10:38PM **12 A.** Once again we see a third category. The rehabilitation

02:10:42PM **13** trust funds are handled through individual Indian money, and

02:10:46PM **14** this accounts for the balances in those particular funds for the

02:10:50PM **15** various agencies -- for the various reservations. Excuse me.

02:10:56PM **16** Pardon me.

02:10:59PM **17 Q.** While you're getting yourself a drink of water, Dr. Angel,

02:11:01PM **18** let me ask that you be now shown DX 487.

02:11:14PM **19** I'm sorry, your Honor. I meant to ask for DX 486.

02:11:23PM **20** Can you identify this for the Court, please, Dr.

02:11:25PM **21** Angel?

02:11:25PM **22 A.** Yes. This is another audit of individual Indian monies,

02:11:30PM **23** again for the Winnebago agency. It's dated August 16th, 1941,

02:11:34PM **24** and it's submitted to the commissioner of Indian Affairs.

02:11:37PM **25 Q.** And again I ask you, once enlarged, to cursor through this

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02:08:02PM **1 Q.** Now, I'll ask that Matthew now show the right side of that

02:08:05PM **2** screen at the top portion which was highlighted in yellow. What

02:08:09PM **3** does this show as opposed to what you just explained for the

02:08:13PM **4** Court?

02:08:13PM **5 A.** On the disbursement side you'll see return to unsuccessful

02:08:18PM **6** bidders, two million seven hundred twenty thousand plus.

02:08:22PM **7 Q.** Thank you, Dr. Angel. I now ask that you be shown DX 485.

02:08:36PM **8** What is this, if you recognize it, Dr. Angel?

02:08:38PM **9 A.** This is an audit report conducted by the Bureau of Indian

02:08:45PM **10** Affairs division of audits, or I should say the Department of

02:08:47PM **11** Interior division of investigations. We gathered this report

02:08:51PM **12** from the National Archives downtown from records of the Bureau

02:08:55PM **13** of Indian Affairs. The report is dated February 10, 1940, and

02:09:01PM **14** it's an audit of individual Indian monies at the Winnebago

02:09:05PM **15** agency.

02:09:05PM **16 Q.** Dr. Angel, as Matthew enlarges this and cursors through the

02:09:09PM **17** pages slowly, I'd like you to identify, if possible, any of

02:09:14PM **18** those buckets for the Court.

02:09:18PM **19 A.** Okay. Please go down. At the bottom of page two you'll

02:09:38PM **20** note the tribal funds with deposit with the superintendent

02:09:42PM **21** consisted of the following balances, and it gives the three

02:09:46PM **22** reservations under the Winnebago agency, the tribal funds for

02:09:50PM **23** each, and you'll notice that the last sentence at the bottom

02:09:53PM **24** begins all tribal funds are taken up on official receipts and

02:10:00PM **25** deposited to the credit of the tribes and individual Indian

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02:11:42PM **1** and please identify for the Court any of the buckets that may

02:11:45PM **2** not be pure IIM.

02:11:48PM **3 A.** This is, as we indicated, an audit of the individual Indian

02:11:53PM **4** money accounts, the Winnebago agency. You'll notice that at the

02:11:58PM **5** beginning of the third paragraph it states, The balance of

02:12:01PM **6** individual Indian money on hand as of May 30th, 1941 was

02:12:07PM **7** \$71,358.37. It's then further broken down to credit funds,

02:12:15PM **8** travel funds, cemetery funds, and you'll notice that the amount

02:12:20PM **9** to individual Indians, the amount to individual Indian account-

02:12:24PM **10** holders is \$40,069.43 of the total of \$71,358.37.

02:12:35PM **11 Q.** I'll ask that Matthew cursor down through that document,

02:12:39PM **12** please. Now, at the top of that page is something called

02:12:44PM **13** cemetery funds. Any idea what that refers to, Dr. Angel?

02:12:52PM **14 A.** Yes. I had read about these in the different documents,

02:12:56PM **15** but it was a tribal cemetery. This is a fund that's created to

02:13:05PM **16** care for an agency cemetery.

02:13:07PM **17 Q.** And again, where were those funds maintained?

02:13:10PM **18 A.** This were maintained in the individual Indian monies.

02:13:13PM **19 Q.** What about the last sentence on your screen beginning with

02:13:16PM **20** "the student activity"? What does that refer to, if you know?

02:13:20PM **21 A.** Could you cursor down, please?

02:13:34PM **22** This is a student activity fund, which was part of the

02:13:38PM **23** individual Indian monies.

02:13:40PM **24 Q.** And what does that sentence just after the 660 figure

02:13:44PM **25** state?

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02:13:47PM **1** **A.** The revenue is from picture shows, dances, school parties,
 02:13:51PM **2** etcetera. Payments from the fund are initiated by student
 02:13:55PM **3** officers of various groups, approved by group sponsors, and
 02:13:59PM **4** further approved by the school principal.
 02:14:00PM **5** **Q.** And again, where would these funds have been kept?
 02:14:05PM **6** **A.** Individual Indian monies.
 02:14:07PM **7** **Q.** Thank you.
 02:14:07PM **8** **A.** This is an audit of individual Indian monies at the agency.
 02:14:11PM **9** **Q.** I now ask that you be shown DX 487. What is this, if you
 02:14:21PM **10** recognize it?
 02:14:22PM **11** **A.** This is another audit of individual Indian monies. It's
 02:14:29PM **12** conducted by the Department of Interior director of
 02:14:32PM **13** investigations and it's submitted to the commissioner of Indian
 02:14:36PM **14** Affairs, dated May 16, 1940.
 02:14:39PM **15** **Q.** Again I will ask Matthew to cursor through this document
 02:14:42PM **16** and ask you, Dr. Angel, to please identify the buckets for the
 02:14:46PM **17** Court.
 02:14:47PM **18** **A.** This is a fairly interesting one. It shows IIM on hand
 02:15:02PM **19** March 31st, 1940, aggregated \$188,794.02, and it's spelled out,
 02:15:10PM **20** it's broken out into the various component parts.
 02:15:15PM **21** Please cursor down. Please go down just a bit more,
 02:15:28PM **22** Matthew. There we go.
 02:15:32PM **23** The semi-annual reports -- I'm reading now from the
 02:15:35PM **24** last paragraph, semi-annual reports for the calendar year 1939
 02:15:39PM **25** show receipts aggregating \$157,944 and disbursements amounting

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02:17:27PM **1** huh? They were trustee for their wages. That's quite
 02:17:31PM **2** interesting, actually. I don't know what bearing it has on
 02:17:34PM **3** here.
 02:17:36PM **4** THE WITNESS: Quite often of course the CCC workers
 02:17:39PM **5** were younger folks.
 02:17:41PM **6** THE COURT: Yes.
 02:17:42PM **7** THE WITNESS: So, you know, I cannot speak to this
 02:17:44PM **8** obviously directly, but it could be. It's possible that they
 02:17:47PM **9** were young -- they hadn't reached -- some of them hadn't reached
 02:17:51PM **10** their majority. I don't know that to be a fact, though.
 02:17:53PM **11** THE COURT: Okay.
 02:17:55PM **12** BY MR. SIEMIETKOWSKI:
 02:17:55PM **13** **Q.** Dr. Angel, having discussed the availability of receipts
 02:18:00PM **14** and disbursement data, let's now move to the second general area
 02:18:06PM **15** of your testimony, and that is, government practices and system
 02:18:10PM **16** controls reflected in the historical records. Do you recall
 02:18:14PM **17** testifying a bit in October about settlement packages?
 02:18:17PM **18** **A.** I do.
 02:18:18PM **19** **Q.** Briefly would you please refresh the Court in terms of what
 02:18:23PM **20** these were?
 02:18:23PM **21** **A.** These were packages that were submitted by Indian service
 02:18:28PM **22** special disbursing agents to the General Accounting Office for
 02:18:32PM **23** examination and review.
 02:18:33PM **24** **Q.** And was GAO the first organization to conduct this process?
 02:18:38PM **25** **A.** The process started for all disbursement agents, not simply

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02:15:46PM **1** to \$152,872.69. The principal sources of income were indicated
 02:15:54PM **2** as follows: Rehabilitation and revolving funds, and these are
 02:15:58PM **3** typically tribal enterprise funds.
 02:16:03PM **4** **Q.** Thank you, Dr. Angel. I'll ask that that be removed from
 02:16:06PM **5** your screen now. Now, Dr. Angel, having discussed these
 02:16:13PM **6** examples, as a historian what is your opinion regarding what
 02:16:16PM **7** these buckets show regarding the IIM system?
 02:16:19PM **8** **A.** In my opinion as a historian, I think it shows that monies
 02:16:23PM **9** went into the IIM system that did not go to the individual
 02:16:26PM **10** Indian account holder.
 02:16:29PM **11** THE COURT: Actually, would you put that last exhibit
 02:16:31PM **12** on the screen again?
 02:16:35PM **13** MR. SIEMIETKOWSKI: DX 487, Matthew. It was either
 02:16:38PM **14** the last page or next-to-last page.
 02:16:46PM **15** THE COURT: Dr. Angel, CCC wages deposit, is that what
 02:16:51PM **16** I think it means?
 02:16:52PM **17** THE WITNESS: There was a civilian conservation core
 02:16:56PM **18** Indian division that was separate from the regular CCC.
 02:17:02PM **19** THE COURT: And those were wages identified for
 02:17:05PM **20** individual Indians that were paid to the Indians and paid
 02:17:08PM **21** through the IIM accounts?
 02:17:13PM **22** THE WITNESS: Your Honor, I can't say that exactly.
 02:17:15PM **23** Whether they were -- it would appear to be that the CCC wages
 02:17:19PM **24** were deposited into the IIM accounts.
 02:17:24PM **25** THE COURT: Not even a new deal trusted the Indians,

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02:18:43PM **1** ISSDA, but all disbursing agents relatively early in the 19th
 02:18:50PM **2** century. It was conducted by the Treasury department. The
 02:18:53PM **3** Treasury handled this function until the creation of the General
 02:18:57PM **4** Accounting Office.
 02:18:57PM **5** **Q.** And when did the General Accounting Office take it over?
 02:19:01PM **6** **A.** The General Accounting Office took this function over
 02:19:05PM **7** subsequent to the Budget and Accounting Act of 1921, and in
 02:19:11PM **8** fact, that branch of Treasury that conducted the audits simply
 02:19:17PM **9** moved over to the General Accounting Office.
 02:19:19PM **10** **Q.** And how long did GAO perform this function?
 02:19:24PM **11** **A.** GAO performed this function from 1921 to 1951.
 02:19:28PM **12** **Q.** Dr. Angel, what kind of review had you conducted of the
 02:19:32PM **13** settlement packages?
 02:19:33PM **14** **A.** Well, my review of the settlement packages is more of a
 02:19:40PM **15** historian obviously. Obviously I'm not an auditor or an
 02:19:43PM **16** accountant. My primary interest was to see what kind of
 02:19:48PM **17** documentation was in those packages and maybe to make a
 02:19:52PM **18** historian's determination of what level of review was conducted
 02:19:57PM **19** by the GAO of the ISSDA packages.
 02:20:02PM **20** **Q.** Now, how thick are these packages?
 02:20:05PM **21** **A.** Well, they can vary. Some of them are fairly summary, but
 02:20:09PM **22** I've seen them well in excess of three thousand pages.
 02:20:14PM **23** THE COURT: Fourteen hundred feet, he told us the last
 02:20:16PM **24** time.
 02:20:17PM **25** THE WITNESS: That's correct. I'm sorry, your Honor.

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02:20:18PM **1** I was speaking to --

02:20:21PM **2** THE COURT: No, I understand.

02:20:24PM **3** BY MR. SIEMIETKOWSKI:

02:20:24PM **4** **Q.** Dr. Angel, before focusing on any government system

02:20:29PM **5** controls that may be evident in the settlement packages, do you

02:20:33PM **6** have an opinion about the packages' utility in terms of an

02:20:38PM **7** aggregation of receipts and disbursement data?

02:20:40PM **8** **A.** In my opinion, after looking at many of these settled

02:20:45PM **9** account packages, they would provide the basis for total

02:20:49PM **10** receipts and total disbursements on an agency-by-agency basis

02:20:57PM **11** and quarterly to semi-annual basis.

02:21:01PM **12** **Q.** By region?

02:21:03PM **13** **A.** By agency.

02:21:04PM **14** **Q.** By agency.

02:21:05PM **15** **A.** It's an agency by agency, yes.

02:21:08PM **16** **Q.** Dr. Angel, at this time I'm going to show you on your

02:21:12PM **17** screen DX 256, specifically page one. What is this, if you

02:21:18PM **18** recognize it, please?

02:21:19PM **19** **A.** This is the annual report from comptroller general for the

02:21:23PM **20** United States, fiscal year ended June 30th, 1939.

02:21:27PM **21** **Q.** I'll ask Matthew to show you now page two on the screen and

02:21:31PM **22** to enlarge the highlighted portion, please.

02:21:35PM **23** **A.** This is forwarded. It's written by the comptroller

02:21:38PM **24** general, and he explains one of the purposes of this report. He

02:21:41PM **25** knows that the preceding year, 1939, the annual report was not

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02:23:09PM **1** of individual Indians received and disbursed. The audit

02:23:12PM **2** consists after determination as to compliance with the laws,

02:23:17PM **3** regulations, and decisions governing the expenditure of Indian

02:23:21PM **4** monies. The complete accounting embraces both collections and

02:23:25PM **5** disbursements for the account of the individual Indian, the

02:23:30PM **6** decisions for application. Those are the former comptroller of

02:23:35PM **7** the Treasury, the comptroller general, the Secretary of the

02:23:37PM **8** Interior, and the courts.

02:23:39PM **9** **Q.** Let's move next, Dr. Angel, to DX 246. Well, before we

02:23:50PM **10** move, specifically do you recognize this document from your

02:23:52PM **11** collection?

02:23:52PM **12** **A.** Yes. This is one of the settled account packages that I

02:23:57PM **13** introduced during my testimony in the October trial.

02:24:00PM **14** **Q.** And how thick was this one?

02:24:01PM **15** **A.** This one actually was over three thousand pages. It's

02:24:06PM **16** divided into two PDFs, 246 and 247.

02:24:11PM **17** **Q.** Let's look then at pages 57 through 63 initially, and once

02:24:17PM **18** enlarged, as Matthew enlarges these and cursors through them

02:24:22PM **19** slowly, I'd like you to please explain what significance, if

02:24:26PM **20** any, from a historical viewpoint these pages show.

02:24:29PM **21** **A.** Sure. May I go to the last page that you mentioned? I

02:24:32PM **22** believe it's 63.

02:24:33PM **23** **Q.** 63.

02:24:43PM **24** **A.** This is a letter from J.E. Fisner, chief clerk accounting

02:24:47PM **25** section.

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02:21:48PM **1** published, but one of the things it showed was the work of audit

02:21:52PM **2** and settlement of accounts and claims, including showing in some

02:21:57PM **3** detail of the many questions and probably which arise from in

02:22:01PM **4** connection with these because --

02:22:05PM **5** MR. SMITH: If I may raise an objection at this point.

02:22:07PM **6** We have a summary judgment decision saying GAO did not audit

02:22:12PM **7** these settlement of accounts. I would object to the testimony

02:22:15PM **8** that contradicts the existing opinion from Judge Lamberth on

02:22:20PM **9** that point.

02:22:20PM **10** THE COURT: We're not going to contradict Judge

02:22:25PM **11** Lamberth, but I'll hear the testimony. The objection is

02:22:25PM **12** overruled.

02:22:26PM **13** BY MR. SIEMIETKOWSKI:

02:22:26PM **14** **Q.** Before we move on to the next page, let me ask you next,

02:22:30PM **15** Dr. Angel, whether this limited process was limited to Indian

02:22:35PM **16** funds.

02:22:35PM **17** **A.** No, it was not limited simply to Indian funds. It was all

02:22:39PM **18** disbursing agents of the United States government.

02:22:41PM **19** **Q.** Looking next to page 14 of DX 256, once enlarged, what does

02:22:48PM **20** this highlighted portion show?

02:22:49PM **21** **A.** A portion of the comptroller general's report. It goes

02:22:53PM **22** through the audit process generally, and a portion of it then

02:22:57PM **23** goes to the issue of individual Indian monies. And regarding

02:23:01PM **24** individual Indian monies, it says these accounts embrace an

02:23:05PM **25** accounting by agents of the Indian service for providing funds

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02:24:47PM **1** Please, Matthew, back to the first now.

02:24:50PM **2** And it's to W.O. Roberts, superintendent and special

02:24:54PM **3** disbursing agent of the Pineridge Agency.

02:24:58PM **4** **Q.** What does this indicate, what's the letter about, if you

02:25:00PM **5** can tell?

02:25:01PM **6** **A.** In this letter the GAO official says audit of individual

02:25:08PM **7** Indian monies, vouchers, number 21 and 22, discovered some

02:25:15PM **8** problems and the GAO official. Goes on to note what the

02:25:21PM **9** problems were.

02:25:23PM **10** For example, in the first part he talks about checks

02:25:27PM **11** to individual Indians, listing check number, date of the check,

02:25:32PM **12** the account of the individual Indian, and the amount, that

02:25:35PM **13** lacked specific authorities for disbursing.

02:25:40PM **14** Could you scroll down, please? Thanks.

02:25:43PM **15** And these are the checks that he's questioning

02:25:46PM **16** specifically.

02:25:47PM **17** **Q.** Let me turn your attention next then to page four of the

02:25:53PM **18** document, Dr. Angel. What does this page represent?

02:25:58PM **19** **A.** This is Superintendent Roberts' response to the General

02:26:04PM **20** Accounting Office. He states, This is in reply to your letter

02:26:07PM **21** of May 17, 1945 relative to the audit of my individual Indian

02:26:12PM **22** monies, voucher 21 and voucher 22. Here you see he's added the

02:26:19PM **23** citations of authority that the GAO official requested, and he

02:26:24PM **24** goes on later in this letter to address other issues that the

02:26:31PM **25** GAO raised by his individual Indian monies accounts.

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02:26:34PM **1** Q. I'll ask Matthew next to show you pages 51 through 56,
 02:26:38PM **2** please. Please explain for Court as Matthew cursors slowly
 02:26:47PM **3** there what these pages represent.
 02:26:49PM **4** A. These are specific issues that were related to the GAO's
 02:26:56PM **5** question about -- excuse me. Could we go to the first page of
 02:27:02PM **6** that document, please? I'm sorry.
 02:27:04PM **7** Q. Page 351?
 02:27:05PM **8** A. Please.
 02:27:06PM **9** Q. Can you enlarge it please, Matthew?
 02:27:18PM **10** A. No, I'm sorry. I'm talking about the very first page of
 02:27:21PM **11** the letter.
 02:27:21PM **12** Q. Okay. Page 57, would that be?
 02:27:24PM **13** A. I believe so.
 02:27:31PM **14** Okay. This is part of the GAO's letter to
 02:27:35PM **15** Superintendent Roberts. I'm sorry. I got confused for a moment
 02:27:38PM **16** about whether this was the response from Roberts to the GAO.
 02:27:42PM **17** But this is the letter from GAO to Roberts. Now please go
 02:27:46PM **18** ahead. I'm sorry.
 02:27:47PM **19** Q. Now, if we go back, Matthew, to 51 through 56, and again,
 02:27:53PM **20** what does this represent, Dr. Angel?
 02:27:54PM **21** A. These are issues that the GAO had with the settled account
 02:28:10PM **22** package involving individual Indian monies.
 02:28:12PM **23** Q. What does the first paragraph describe?
 02:28:16PM **24** A. In regard to the cancelled official receipts, or official
 02:28:24PM **25** receipt number? These effectively address the complaints of the

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02:30:10PM **1** examination of individual Indian monies on a very check-oriented
 02:30:17PM **2** basis. In other words, down at the check level they're
 02:30:23PM **3** examining receipts and disbursements, and there's a lengthy
 02:30:26PM **4** exchange between the Indian agent, the ISSDA, and the case of
 02:30:33PM **5** what we just saw Superintendent Roberts and the GAO official
 02:30:37PM **6** actually doing the audit.
 02:30:38PM **7** Q. So what does that tell you about government practices at
 02:30:41PM **8** that time regarding collections into and disbursements from the
 02:30:45PM **9** IIM system?
 02:30:45PM **10** A. As a historian looking at these packages it tells me that
 02:30:51PM **11** there was government oversight.
 02:30:53PM **12** Q. Now, as a historian, what do these records tell you
 02:30:58PM **13** regarding the reliability of the data in them?
 02:31:00PM **14** A. As a historian I feel a lot more comfortable knowing that
 02:31:04PM **15** one agency has produced records and another agency has reviewed
 02:31:10PM **16** those records at a very high level.
 02:31:12PM **17** Q. As a historian, what do the system controls lead to
 02:31:21PM **18** conclude, if anything, regarding the possibility of funds
 02:31:23PM **19** leaking out of the IIM system undetected?
 02:31:26PM **20** A. Again, all I can say is that there's a good level of
 02:31:29PM **21** oversight involved in this process, and I think it's shown as
 02:31:35PM **22** you look at the various settled account packages.
 02:31:37PM **23** Q. And likewise, Dr. Angel, as a historian what do the system
 02:31:43PM **24** controls tell you, if anything, regarding the positive funds
 02:31:45PM **25** accumulating unnoticed in the IIM system?

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02:28:37PM **1** GAO on a point-by-point basis and explain what's been done. For
 02:28:45PM **2** example, with the first one there was a question about a dollar.
 02:28:48PM **3** This amount was redeposited by currency, one dollar, March 9,
 02:28:55PM **4** 1942. It gives a receipt number, and there's a tick mark by it.
 02:29:01PM **5** Q. Thank you, Dr. Angel. I'll ask that that be removed from
 02:29:04PM **6** your screen, and ask you generally how many agencies produce
 02:29:07PM **7** these settlement packages?
 02:29:09PM **8** A. Roughly speaking, at this time there were a hundred
 02:29:12PM **9** agencies in the Bureau of Indian Affairs.
 02:29:14PM **10** Q. And how often did these agencies produce these packages?
 02:29:19PM **11** A. It varied by time period. Quarterly to semi-annual, at
 02:29:24PM **12** least for the settled account packages. They submitted other
 02:29:27PM **13** financial records more routinely, but by the GAO period, I
 02:29:32PM **14** believe after 1927 for the most part the GAO addresses IIM semi-
 02:29:43PM **15** annually.
 02:29:44PM **16** Q. Can you evaluate this information as an accountant?
 02:29:48PM **17** A. No certainly.
 02:29:48PM **18** Q. Can you evaluate as a stacionian?
 02:29:52PM **19** A. No.
 02:29:52PM **20** Q. What about as an attorney?
 02:29:53PM **21** A. Definitely not.
 02:29:54PM **22** Q. So what do these packages tell you, if anything, Dr. Angel,
 02:29:58PM **23** as a historian?
 02:29:59PM **24** A. These packages tell me as a historian that a second agency,
 02:30:04PM **25** the General Accounting Office, was conducting a fairly extensive

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02:31:49PM **1** MR. SMITH: Objection. I'm not sure a historian is
 02:31:52PM **2** qualified to make that determination. He's not an accountant.
 02:31:56PM **3** THE COURT: That one I'm going to sustain.
 02:32:00PM **4** BY MR. SIEMIETKOWSKI:
 02:32:00PM **5** Q. Dr. Angel, aside from the settlement packages, are there
 02:32:04PM **6** other examples of oversight in Interior administration of IIM?
 02:32:07PM **7** A. Yes, there are. The ISSDA reports, those year-end account
 02:32:12PM **8** balance reports that we discussed earlier, were submitted to the
 02:32:15PM **9** Treasury department for review, and of course the receipt and
 02:32:18PM **10** disbursement reports that we discussed under the act of June
 02:32:22PM **11** 30th, 1906 were submitted first to Treasury for review and then
 02:32:27PM **12** to the United States Congress.
 02:32:30PM **13** Q. Now, having discussed, Dr. Angel, the availability of
 02:32:39PM **14** receipts and disbursement data, and having discussed any
 02:32:43PM **15** government system controls reflected in that data, let's move
 02:32:47PM **16** now to discussion of Plaintiffs' calculation of alleged benefit
 02:32:53PM **17** to the government. First of all, have you reviewed and analyzed
 02:32:56PM **18** Plaintiffs' March 19 remedies brief, including its attachments?
 02:33:01PM **19** A. I have.
 02:33:01PM **20** Q. Have you reviewed and analyzed Plaintiffs' April 22 reply
 02:33:04PM **21** brief?
 02:33:05PM **22** A. I have.
 02:33:05PM **23** Q. Generally speaking, what can you tell us about historical
 02:33:11PM **24** factors that would impact any calculation of alleged benefit to
 02:33:15PM **25** the government?

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02:33:16PM **1** **A.** There are several things that struck me as I went through
02:33:23PM **2** those reports, as I went through Plaintiffs' calculations. One
02:33:28PM **3** thing concerned the very slow process of allotment. For
02:33:35PM **4** example, allotment began actually about at the time of the Dos
02:33:42PM **5** Act. There were over five hundred thousand acres already
02:33:45PM **6** allotted, but by 1910 there were only about 14,600,000 acres
02:33:50PM **7** allotted under the Dos Act, so a total of a little more than 15
02:33:56PM **8** million acres had been allotted by that time.
02:33:59PM **9** **Q.** Out of how many that were ultimately allotted?
02:34:01PM **10** **A.** Ultimately 42 million acres were allotted.
02:34:07PM **11** **Q.** How can that calculation prior to 1910 --
02:34:11PM **12** **A.** What that means, there is a gradual process of allotment
02:34:14PM **13** involved in this, and I don't know how a linear interpolation
02:34:19PM **14** going backward would account for the gradual process of
02:34:23PM **15** allotment.
02:34:24PM **16** **Q.** Dr. Angel, did you review Plaintiffs' handling of the Osage
02:34:29PM **17** payments?
02:34:30PM **18** **A.** I did.
02:34:31PM **19** **Q.** What is your opinion regarding their analysis?
02:34:33PM **20** **A.** One of the problems I saw with their analysis of the Osage
02:34:39PM **21** payment is that as they looked at annuity payments to the Osage
02:34:47PM **22** Indian prior to 1908 they used the multiplier of 2,229 Osage
02:34:53PM **23** Indians. That figure was established in April of 1908. Prior
02:34:56PM **24** to that, annuity payments were actually made on the number of
02:35:01PM **25** Indians registered at the agency, and quite often that number

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02:37:05PM **1** **Q.** Did you review Plaintiffs' analysis of tribal IIM as part
02:37:10PM **2** of total IIM?
02:37:11PM **3** **A.** I did.
02:37:11PM **4** **Q.** And as a historian do you have a view as to how plaintiffs
02:37:16PM **5** handled tribal IIM?
02:37:18PM **6** **A.** My impression was that prior to 1972 they did not include
02:37:24PM **7** tribal IIM as a part of IIM system monies.
02:37:28PM **8** **Q.** Now let me show you, Dr. Angel, DX 26 at this time. What
02:37:36PM **9** is that, if you can recognize it, please?
02:37:38PM **10** **A.** This is a report to Congress concerning an investigation of
02:37:43PM **11** the Bureau of Indian Affairs.
02:37:45PM **12** **Q.** And if you would, take a look at --
02:37:49PM **13** **A.** I'm sorry. It's dated 1952.
02:37:51PM **14** **Q.** I'm sorry, 19?
02:37:53PM **15** **A.** 52.
02:37:54PM **16** **Q.** Thank you. If Matthew could show you page one, please, and
02:38:00PM **17** if you can enlarge the highlighted portion. What does this
02:38:10PM **18** reflect?
02:38:10PM **19** **A.** Table entitled Data on Reservation, Individual Money
02:38:15PM **20** Accounts, and you can see reading across the top it encompasses
02:38:20PM **21** reservations by state, and then at the very top you see grand
02:38:27PM **22** total all states and Alaska. The top row across is total dollar
02:38:33PM **23** amount and it includes individual funds, \$39,040,000. It
02:38:41PM **24** involves tribal funds, \$13,126,000, and special deposit funds.
02:38:48PM **25** **Q.** Now look at this chart, Dr. Angel. How can you tell those

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02:35:06PM **1** was significantly less than 2,229. Also prior to 1908 we know
02:35:14PM **2** from criticisms in the commissioner of Indian Affairs reports
02:35:20PM **3** that at times much of the money was paid directly to individual
02:35:26PM **4** Osage Indians rather than going through the individual Indian
02:35:30PM **5** money account system.
02:35:31PM **6** **Q.** Let me show you, Dr. Angel, DX 484. Do you recognize that?
02:35:38PM **7** **A.** Yes, I do. It's the annual report of the commissioner of
02:35:41PM **8** Indian affairs for 1889.
02:35:44PM **9** **Q.** And I'll ask that you be shown page two on that document,
02:35:49PM **10** please, and if Matthew could enlarge the highlighted portion,
02:35:54PM **11** please. This section is cash payments to Indians, and it talks
02:35:57PM **12** about payments made during the fiscal year to fulfill treaty
02:36:01PM **13** stipulations and the like. And page three, please. Enlarge the
02:36:11PM **14** highlighted portion, please.
02:36:13PM **15** **A.** This shows on page three there were at this time almost
02:36:21PM **16** 1,500 Osage Indians, 1,496 Indians at the Osage agency. Under
02:36:27PM **17** the Osage agency, I should say.
02:36:29PM **18** **Q.** Thank you. Let move from Osage and talk about tribal IIM.
02:36:39PM **19** **A.** I'm sorry. I think there was a page that may have been
02:36:41PM **20** overlooked. The page shows the amount of the payment.
02:36:49PM **21** **Q.** We don't have that handy right now, so perhaps we'll take
02:36:52PM **22** that up later if appropriate. What I'd like to do now, next,
02:36:58PM **23** Dr. Angel, is show you if I could or ask you more generally
02:37:04PM **24** about tribal IIM.
02:37:05PM **25** **A.** Uh-huh.

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02:38:52PM **1** references to tribal funds fit within the IIM system?
02:38:55PM **2** **A.** Well, this is the table itself is entitled Data on
02:39:00PM **3** Reservation, Individual Indian Money Accounts.
02:39:03PM **4** **Q.** Next Dr. Angel let me show you DX 76, please. Do you
02:39:15PM **5** recognize this?
02:39:16PM **6** **A.** Yes, I do. It's an audit report by the United States
02:39:19PM **7** Department of the Interior, Office of Survey and Review. It's
02:39:23PM **8** dated August 1972.
02:39:24PM **9** **Q.** And I'll ask that you be shown page two of this document,
02:39:30PM **10** and enlarge the highlighted portions, please.
02:39:35PM **11** **A.** Okay.
02:39:35PM **12** **Q.** Now, vis-a-vis tribal IIM, how was this relevant, Dr.
02:39:42PM **13** Angel?
02:39:42PM **14** **A.** This report examines, among other things, tribal accounts
02:39:47PM **15** that these particular agencies, and as you see, the very first
02:39:52PM **16** point is that it's not specifically authorized using the system
02:39:59PM **17** as a permanent depository for tribal funds. It's not
02:40:03PM **18** specifically authorized.
02:40:04PM **19** **Q.** Let's take a look next at page three of this document. Now
02:40:14PM **20** we've got highlighting within the highlighting. Please explain
02:40:19PM **21** to the Court what this means, Dr. Angel.
02:40:21PM **22** **A.** This audit involved funds belonging to tribes, or I should
02:40:24PM **23** say included funds belonging to tribes or tribal groups, and
02:40:29PM **24** they say it's seven of the locations say visited. They
02:40:32PM **25** identified 110 accounts maintained for the benefit of tribes or

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02:40:36PM **1** tribal organizations. You'll see that to continue on within the

02:40:44PM **2** category of liabilities applicable to individual tribes and

02:40:47PM **3** other groups these accounts represented only about one percent

02:40:51PM **4** of the total number of accounts but their balances totaled

02:40:56PM **5** approximately 4.6 billion -- 4.6 million as of December 31st,

02:41:04PM **6** 1971. This 4.6 million constituted about 40 percent of the 11.4

02:41:11PM **7** million total balance under this individual account category.

02:41:16PM **8** **Q.** In light of this document and the one we just showed you,

02:41:20PM **9** as a historian what is your opinion then of Plaintiffs'

02:41:24PM **10** treatment of tribal IIM?

02:41:25PM **11** **A.** Tribal IIM is part of monies that entered the IIM system.

02:41:31PM **12** **Q.** Is it distinguishable from IIM identified for individual

02:41:35PM **13** Indians?

02:41:36PM **14** **A.** It would take an accounting to segregate those funds. The

02:41:49PM **15** 1952 report, for example, broke it out, but tribal IIM does

02:41:55PM **16** represent money in the IIM system that is separate from monies

02:42:00PM **17** that are paid to individual Indian accountholders.

02:42:04PM **18** **Q.** So how then would Plaintiffs' inclusion of tribal IIM

02:42:12PM **19** affect their calculation of alleged benefit to the government?

02:42:15PM **20** **A.** Well, it would make the total amount received and disbursed

02:42:18PM **21** higher.

02:42:18PM **22** **Q.** Thank you. I'll ask that that be removed from your screen

02:42:23PM **23** now.

02:42:23PM **24** Dr. Angel, earlier today you testified about four

02:42:27PM **25** specific years, I believe, where actual receipt and disbursement

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02:43:53PM **1** expertise that he quite properly claims.

02:43:57PM **2** BY MR. SIEMIETKOWSKI:

02:43:57PM **3** **Q.** Let me show you then, Dr. Angel, Plaintiffs' exhibits,

02:44:01PM **4** which we have, 45 through 50. I'll ask that this be enlarged

02:44:09PM **5** enough so that you can see those. Now I'd ask Matthew to cursor

02:44:16PM **6** through those, please, and if you see anything, Dr. Angel,

02:44:30PM **7** regarding tribal IIM or unallotted lands, would you please bring

02:44:39PM **8** those to the Court's attention?

02:44:40PM **9** **A.** Certainly. In reviewing Plaintiffs' calculations, what we

02:44:47PM **10** attempted to do, your Honor, was to look at the source materials

02:44:53PM **11** that they used and make sure that looking at the source

02:44:57PM **12** materials they used that we could replicate their figures, okay.

02:45:01PM **13** That is, by looking at such issues as what's on the screen right

02:45:06PM **14** now, land lease for mining purposes. Could we show the other

02:45:11PM **15** pages as well, please? Use of glazing lands belonging to

02:45:19PM **16** Indians.

02:45:20PM **17** Please go back.

02:45:21PM **18** Agricultural lands belonging to Indians, and the first

02:45:25PM **19** one I believe involved land sales. I'm sorry. It's toward the

02:45:32PM **20** bottom of the page. This involves totals for land sales, so

02:45:37PM **21** what we did was we took the total from each of these categories,

02:45:45PM **22** so, for example, for 1915 we took proceeds for noncompetent

02:45:50PM **23** sales, proceeds for inherited land sales. We took the totals

02:45:55PM **24** all the way throughout and we add them up and by so doing we

02:45:59PM **25** were able to get the same figure that Plaintiffs give on their

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02:42:33PM **1** numbers exist. Do you recall that?

02:42:34PM **2** **A.** I do.

02:42:34PM **3** **Q.** And again what were those years, please?

02:42:36PM **4** **A.** 1909, 1910, 1911, and 1955.

02:42:40PM **5** **Q.** Dr. Angel, are you aware of how Plaintiffs used numbers for

02:42:44PM **6** those four years?

02:42:45PM **7** **A.** My understanding, well, my review is that they included the

02:42:49PM **8** receipts figures for those years but not the disbursement

02:42:53PM **9** figures.

02:42:53PM **10** **Q.** What is your view as a historian on that approach?

02:42:57PM **11** **A.** Essentially if you're going to use one you've got to use

02:43:00PM **12** both. Youve at least got to show what the second number was,

02:43:05PM **13** the disbursement figure in this case.

02:43:09PM **14** **Q.** Now, what about the years 1915 to 1920, are you familiar

02:43:13PM **15** with Plaintiffs' use of data for those particular years?

02:43:15PM **16** **A.** I am. I reviewed that.

02:43:17PM **17** **Q.** And what is your view regarding their calculations for that

02:43:20PM **18** time period?

02:43:20PM **19** **A.** My view --

02:43:23PM **20** THE COURT: Counsel, I know history is a very broad

02:43:27PM **21** discipline, but you've got this man as a historian basically

02:43:33PM **22** answering what sound to me more like accounting questions. I

02:43:39PM **23** mean, what does he think as a historian of adding receipts but

02:43:44PM **24** not disbursements? Well, what do all of us think of that?

02:43:48PM **25** Let's keep him channeled to his own discipline and to the

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02:46:02PM **1** Schedule A. We then went back through their chart and their

02:46:10PM **2** supporting exhibits and we came to some conclusions concerning

02:46:15PM **3** the way they had used these. First of all, it appears that

02:46:21PM **4** they've used revenues as synonymous with receipts, which they

02:46:27PM **5** aren't because in certain instances we know monies are paid

02:46:31PM **6** directly to individual Indians rather than hitting the system.

02:46:35PM **7** **Q.** What is that sometimes referred to as, Dr. Angel?

02:46:38PM **8** **A.** Direct payments.

02:46:40PM **9** Another area that we questioned would probably be best

02:46:45PM **10** shown in the glazing table.

02:46:54PM **11** **Q.** What's significant about this page, Dr. Angel?

02:46:58PM **12** **A.** You'll notice that on this page there are -- the table is

02:47:02PM **13** broken into revenues for allotted lands and unallotted lands and

02:47:07PM **14** then totaled, and what Plaintiffs have done is they've taken the

02:47:11PM **15** total, the 1,346,000 figure, and they've used that as opposed to

02:47:21PM **16** the allotted income. Now, many Indian reservations were never

02:47:27PM **17** allotted. In fact, by 1935 the end of the allotment period

02:47:35PM **18** which ended actually in 1934, of the 213 reservations only 118

02:47:42PM **19** had been allotted.

02:47:43PM **20** **Q.** Dr. Angel, what's the difference then between allotted and

02:47:47PM **21** unallotted?

02:47:48PM **22** **A.** Well, allotted lands are, generally speaking, what generate

02:47:51PM **23** revenues to allottees. Unallotted lands typically are travel

02:47:57PM **24** lands.

02:47:57PM **25** **Q.** I'll ask that that be removed from your screen at this

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02:48:01PM **1** time, unless the Court is still looking at it.

02:48:04PM **2** Dr. Angel, you testified earlier that you had reviewed

02:48:13PM **3** Plaintiffs' filings. Are you familiar with their 73-page

02:48:16PM **4** historical compilation of comments from various reports

02:48:20PM **5** regarding the reliability of government data?

02:48:22PM **6** **A.** Yes, I am.

02:48:22PM **7** **Q.** And from your research what is your view of the reliability

02:48:25PM **8** of government data?

02:48:27PM **9** **A.** First of all, let me --

02:48:31PM **10** MR. SMITH: Objection again. I'm not sure a historian

02:48:34PM **11** can testify about the reliability of government data.

02:48:37PM **12** MR. SIEMIETKOWSKI: If he can't talk about how

02:48:39PM **13** reliable one source is, your Honor, what can a historian testify

02:48:42PM **14** to?

02:48:43PM **15** THE COURT: Well, let's see. You can talk about the

02:48:46PM **16** civilian conservation core. He can talk about -- let me go back

02:48:52PM **17** and review this question.

02:49:03PM **18** What is your view of the reliability of government

02:49:05PM **19** data? That's a huge question.

02:49:09PM **20** MR. SIEMIETKOWSKI: Limit it to what he's looked at so

02:49:12PM **21** far, your Honor, with regard to these records. Isn't that what

02:49:15PM **22** he testified?

02:49:16PM **23** THE COURT: I'll hear his huge answer to that huge

02:49:18PM **24** question and deny the objection and accord the answer such

02:49:24PM **25** weight as I think it deserves.

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02:51:17PM **1** disbursement information. And third, there are problems with

02:51:22PM **2** Plaintiffs' calculations.

02:51:24PM **3** **Q.** Thank you, Dr. Angel.

02:51:25PM **4** Your Honor, I have no further questions.

02:51:28PM **5** I would like to move the admission of several

02:51:30PM **6** exhibits. Although we have several from October previously

02:51:34PM **7** admitted, we do have some additional ones.

02:51:36PM **8** THE COURT: Go ahead.

02:51:40PM **9** MR. SIEMIETKOWSKI: They are DX 483, Dr. Angel's total

02:51:44PM **10** IIM chart, DX 484, the 1889 commissioner's report containing the

02:51:49PM **11** Osage number, DX 485, 486, and 487, the examples of the buckets

02:52:04PM **12** that Dr. Angel had testified regarding. DXs 488, 489, and 490.

02:52:16PM **13** Those are respectively the statement of funded checking account,

02:52:20PM **14** the statement of accountability, and the statement of

02:52:23PM **15** transactions. Finally, your Honor, we would like to move the

02:52:28PM **16** admission of all of the DX 300s and 400s on Dr. Angel's total

02:52:34PM **17** IIM chart. As he testified, these are the new or complete

02:52:40PM **18** source documents which form the basis of his total IIM chart. I

02:52:46PM **19** have them by number if you'd like, but they are the 300s and

02:52:50PM **20** 400s contained on his chart, which is DX 483. We ask that they

02:52:57PM **21** be received in evidence at this time.

02:52:59PM **22** THE COURT: All right. Any objection? Hearing none,

02:53:06PM **23** it will be received.

02:53:07PM **24** (Defendants' Exhibit Nos. DX 483-DX 490, and

02:53:07PM **25** all DX 300s and DX 400s received into evidence at

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02:49:26PM **1** Go ahead.

02:49:29PM **2** BY MR. SIEMIETKOWSKI:

02:49:30PM **3** **Q.** Did you need the question repeated, Dr. Angel?

02:49:32PM **4** **A.** Yes.

02:49:32PM **5** **Q.** What's your view based on your review of these Indian

02:49:36PM **6** records of the reliability of the data contained in them?

02:49:38PM **7** **A.** Generally speaking, we know that -- first of all, let me

02:49:44PM **8** preface my question, if I may. Many of the documents that are

02:49:49PM **9** cited to in the 73-page compendium I believe came from my

02:49:54PM **10** records collection, so I'm very well aware of the audit reports,

02:49:59PM **11** the problems that were found with IIM over the course of the

02:50:03PM **12** years. Generally speaking, despite this, I think that the

02:50:11PM **13** records are reliable, that they do present us with our best data

02:50:17PM **14** to understanding individual Indian monies.

02:50:22PM **15** **Q.** If we were to conclude your testimony in summary fashion

02:50:26PM **16** then, Dr. Angel, what points would you leave the Court with?

02:50:30PM **17** **A.** One point that I'd leave the Court with is that there isn't

02:50:35PM **18** a great deal of receipt and disbursement documentation

02:50:43PM **19** concerning monies into and out of the IIM system. We've looked

02:50:48PM **20** and I think we've given it a good shot and I think that

02:50:52PM **21** aggregated material is very, very hard to find. Secondly, there

02:50:58PM **22** are definitely problems with the IIM system. There are problems

02:51:02PM **23** that are revealed by the audit reports themselves, but generally

02:51:07PM **24** speaking, as we've looked at, as we've conducted projects

02:51:12PM **25** reviewing the IIM system we've been able to show receipt and

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02:53:09PM **1** about 2:53 p.m.)

02:53:09PM **2** MR. SMITH: Good afternoon, your Honor.

02:53:09PM **3** CROSS-EXAMINATION

02:53:15PM **4** BY MR. SMITH:

02:53:15PM **5** **Q.** Dr. Angel, you have been personally involved in matters

02:53:19PM **6** relating to this case since I believe 1999; is that correct?

02:53:22PM **7** **A.** That's correct, Mr. Smith.

02:53:23PM **8** **Q.** And your company, Morgan Angel, has been involved since I

02:53:29PM **9** believe 1997?

02:53:30PM **10** **A.** That's correct.

02:53:30PM **11** **Q.** So for over ten years you or your company has been doing

02:53:35PM **12** historical work for Interior or the justice department; is that

02:53:37PM **13** true?

02:53:37PM **14** **A.** Yes.

02:53:38PM **15** **Q.** You mentioned a number of forms that you said you would

02:53:42PM **16** like to look at, and the first one was form 1189, which was in

02:53:47PM **17** the ISSDA monthly report. Do you recall that? Did I get the

02:53:51PM **18** form number right?

02:53:52PM **19** **A.** Could you tell me the name? Is it the statement of funded

02:53:57PM **20** checking account?

02:53:58PM **21** **Q.** Checking accounts, exactly.

02:53:59PM **22** **A.** Yes, uh-huh, yeah, that was one. You know, just to fill

02:54:04PM **23** that answer out, we would have liked to have turned those over

02:54:07PM **24** to people, you know, more qualified than we are to put them

02:54:11PM **25** together, but yes, I think they gave us an opportunity at

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02:54:14PM **1** receipt and disbursement information.

02:54:16PM **2 Q.** And when did you first become aware that there was a form

02:54:20PM **3** 1189 or a monthly checking report?

02:54:23PM **4 A.** As we reviewed our document collection, looking for

02:54:28PM **5** anything that we might have already related to receipt and

02:54:31PM **6** disbursement information, subsequent to March 5.

02:54:34PM **7 Q.** Okay. So after March 5 you learned of the existence of

02:54:38PM **8** this particular form?

02:54:39PM **9 A.** We had already collected it but we had not looked at it in

02:54:42PM **10** that -- in relation to receipt and disbursement. We selected it

02:54:47PM **11** as an example.

02:54:48PM **12 Q.** And about what time would you have collected it, how many

02:54:52PM **13** years ago?

02:54:54PM **14 A.** I could not say offhand. I could perhaps tell if I looked

02:54:58PM **15** at the document, but I couldn't say offhand.

02:55:00PM **16 Q.** Okay. And would that be true of the other forms you

02:55:03PM **17** mentioned, the statement of accountability and the statement of

02:55:05PM **18** transactions, that you had them in your possession but weren't

02:55:08PM **19** particularly aware of them until more recently?

02:55:10PM **20 A.** That's correct.

02:55:11PM **21 Q.** Okay. Are you familiar with a form, standard form 224,

02:55:16PM **22** regarding transfers from the 14X6039 account to other accounts,

02:55:22PM **23** have you ever heard of that form?

02:55:23PM **24 A.** I've heard of a standard form 224, yes.

02:55:26PM **25 Q.** And have you seen copies of that particular form?

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02:56:44PM **1 Q.** Is it customary for you to prepare a written report in

02:56:49PM **2** advance of testimony during litigation?

02:56:51PM **3 A.** Yes.

02:56:55PM **4 Q.** And have you prepared a written report in advance of your

02:56:59PM **5** testimony today?

02:57:00PM **6 A.** No. Just the table.

02:57:04PM **7** MR. SIEMIETKOWSKI: Relevance, your Honor. Objection.

02:57:06PM **8** THE COURT: Overruled.

02:57:08PM **9** BY MR. SMITH:

02:57:08PM **10 Q.** We've heard some discussions, your testimony about meetings

02:57:11PM **11** you've had with FTI or meetings with Dr. Scheuren. Are any of

02:57:20PM **12** those set forth in any documents that you prepared, any written

02:57:25PM **13** materials other than the source documents themselves?

02:57:27PM **14 A.** No. At least not on my part, is what I'm saying, of

02:57:35PM **15** course.

02:57:35PM **16 Q.** Okay. And the discussions you've had, you've mentioned

02:57:40PM **17** discussions with Ms. Herman and Dr. Scheuren. Have you had

02:57:45PM **18** discussions regarding your own investigation in preparation for

02:57:47PM **19** testimony today?

02:57:48PM **20 A.** Please repeat. I'm sorry.

02:57:49PM **21 Q.** You've talked about discussions you've had with Ms. Herman

02:57:53PM **22** or Dr. Scheuren. Have you discussed your investigation with

02:57:56PM **23** anybody else outside counsel regarding your conclusions?

02:58:00PM **24 A.** In the course of our conversations there were other people

02:58:08PM **25** present at Interior department, for example. As I discussed my

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02:55:34PM **1 A.** I don't think offhand.

02:55:35PM **2 Q.** Do you know where those forms would be located?

02:55:37PM **3 A.** I can't say offhand.

02:55:45PM **4 Q.** Okay. GAO settlement packages, how long have you been

02:55:49PM **5** aware of those particular packages?

02:55:51PM **6 A.** Probably, I knew of them before the Cobell case.

02:55:56PM **7 Q.** Okay. And particularly how many have you reviewed

02:56:01PM **8** personally?

02:56:01PM **9 A.** Personally, at least fifty.

02:56:08PM **10 Q.** At least fifty?

02:56:09PM **11 A.** At least fifty.

02:56:11PM **12 Q.** Okay. Going forward you or your company has prepared a

02:56:15PM **13** large number of historical reports relating to this particular

02:56:22PM **14** case, that is fair?

02:56:23PM **15 A.** Yes.

02:56:23PM **16 Q.** And while you may not have personally authored all those

02:56:26PM **17** reports, were you involved in some aspect of their preparation?

02:56:29PM **18 A.** Yes.

02:56:29PM **19 Q.** And you have certainly reviewed all of the Morgan Angel

02:56:35PM **20** reports prepared in preparation for this litigation; is that

02:56:37PM **21** correct?

02:56:37PM **22 A.** Yes.

02:56:38PM **23 Q.** And you've testified about many of them in the past; is

02:56:42PM **24** that fair?

02:56:42PM **25 A.** Yes.

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02:58:14PM **1** findings?

02:58:15PM **2 Q.** Exactly.

02:58:15PM **3 A.** So Dr. Scheuren was present, Ms. Herman.

02:58:25PM **4 Q.** Anybody else that you recall other than attorneys?

02:58:27PM **5 A.** Interior department officials at OHTA, for example, at the

02:58:31PM **6** Office of Historical Trust Accounting. Certainly when I say Ms.

02:58:35PM **7** Herman and Dr. Scheuren I should say there were other members of

02:58:38PM **8** their firms there as well.

02:58:40PM **9 Q.** Okay. Let's turn to your testimony about collections and

02:58:44PM **10** disbursements. I think you stated pretty clearly that receipt

02:58:49PM **11** and disbursement data on the IIM trust is not easy to find, is

02:58:53PM **12** that fair?

02:58:53PM **13 A.** That's correct.

02:58:53PM **14 Q.** And for the period from about 1909 to 1920, the Department

02:59:03PM **15** of Interior prepared some pretty detailed annual reports that

02:59:07PM **16** discussed IIM activities; is that correct?

02:59:09PM **17 A.** Yes.

02:59:09PM **18 Q.** And sometimes they would break it down between tribal and

02:59:14PM **19** IIM and sometimes they wouldn't and they'd mix it all together;

02:59:18PM **20** is that correct? They'd have tribal and IIM as one group, is

02:59:22PM **21** that fair?

02:59:23PM **22 A.** I think that would depend on which particular chart you're

02:59:29PM **23** talking about, Mr. Smith.

02:59:31PM **24 Q.** Okay.

02:59:31PM **25 A.** May I ask which particular chart you're talking about?

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02:59:34PM **1** Q. Sure. Let's ask generally. Sometimes they would break it
 02:59:37PM **2** down between tribal and IIM and sometimes they wouldn't; is that
 02:59:41PM **3** correct, on particular charts?
 02:59:43PM **4** A. On some charts, for many of the charts they had it divided
 02:59:52PM **5** between tribal and individual.
 02:59:55PM **6** Q. Um-hmm.
 02:59:56PM **7** A. Or allotted and unallotted, and that's what I'm kind of
 03:00:01PM **8** struggling with right now, and at other times they did not.
 03:00:03PM **9** They would show reservations statistics or something like that.
 03:00:07PM **10** Q. And that was my point. Sometimes they would, sometimes
 03:00:09PM **11** they wouldn't. Now, is it fair to say that after 1920 that
 03:00:13PM **12** level of statistical details started to decrease?
 03:00:16PM **13** A. That's correct.
 03:00:16PM **14** Q. The reports sometimes may be two or three volumes and then
 03:00:20PM **15** you get to a little pamphlet?
 03:00:23PM **16** A. That's correct.
 03:00:24PM **17** Q. I recall one of the Morgan Angel reports saying there was
 03:00:27PM **18** an inverse relationship between the size of the reports and the
 03:00:29PM **19** IIM problem itself. Do you recall that statement?
 03:00:32PM **20** A. I don't.
 03:00:33PM **21** Q. Okay. Is it fair to say that the commissioner of Indian
 03:00:37PM **22** Affairs made an expressed determination not to publicly provide
 03:00:41PM **23** that level of detail in about 19 -- I believe it was about 1921.
 03:00:46PM **24** Do you recall that?
 03:00:47PM **25** A. As I understand the situation, Mr. Smith, this was true of

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03:02:50PM **1** to his speech.
 03:02:51PM **2** Q. Okay. And he indicated that about half the total estimate
 03:02:56PM **3** was a mere guess unsupported by statistical facts; is that
 03:03:00PM **4** correct?
 03:03:00PM **5** A. That's what Mr. King is saying.
 03:03:02PM **6** Q. So based on your own investigation, as you've testified,
 03:03:07PM **7** there is no publicly available data that would precisely
 03:03:12PM **8** identify what the collections and disbursements were from the
 03:03:14PM **9** IIM trust for each year of the trust, is that fair?
 03:03:17PM **10** A. Insofar as -- are we excluding the settled account packages
 03:03:23PM **11** from this discussion, because I do believe the settled account
 03:03:26PM **12** packages would indeed give receipt and disbursement -- would
 03:03:32PM **13** indeed give receipt and disbursement information.
 03:03:34PM **14** Q. But today you've only looked at fifty of those and you
 03:03:37PM **15** don't know what that receipt and disbursement information would
 03:03:40PM **16** show, is that fair?
 03:03:40PM **17** A. Well, I've seen receipt and disbursement information in
 03:03:45PM **18** those packages.
 03:03:45PM **19** Q. But can you give us aggregate numbers?
 03:03:47PM **20** A. No. I'm sorry. I didn't mean to imply that, that could I.
 03:03:50PM **21** Q. Let's talk about aggregate numbers. Is it fair to say you
 03:03:54PM **22** can't come up with aggregate numbers on receipts and
 03:03:56PM **23** disbursements for every year of the IIM trust based on the
 03:03:58PM **24** review of the historical records?
 03:04:06PM **25** A. Not come up with them, but I do believe if the settlement

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03:00:50PM **1** all government agencies, that the level of detail begins to
 03:00:56PM **2** diminish after 1921. That's my understanding of the situation.
 03:01:02PM **3** There wasn't something unique to the Bureau of Indian Affairs.
 03:01:05PM **4** Q. Okay. And that's something Congress was complaining about,
 03:01:09PM **5** is that fair, that we want to find more information on the IIM
 03:01:13PM **6** trust and we're not getting it from Interior. Do you recall
 03:01:16PM **7** that?
 03:01:17PM **8** A. Please tell me which period you're talking about, Mr.
 03:01:24PM **9** Smith. I'm sorry.
 03:01:25PM **10** Q. Let's look at Exhibit 74.
 03:01:26PM **11** A. Okay.
 03:01:27PM **12** Q. Do you recall this document, speech by William King in
 03:01:42PM **13** 1933?
 03:01:42PM **14** A. I do.
 03:01:43PM **15** Q. I believe you've referred to that document in some of your
 03:01:46PM **16** reports.
 03:01:46PM **17** A. I have indeed.
 03:01:47PM **18** Q. And if we could turn to page 33 to 34.
 03:01:50PM **19** A. Um-hmm.
 03:01:50PM **20** Q. And if we could focus in on the highlighted section at the
 03:02:29PM **21** bottom of the page. If you could just look at that. And does
 03:02:36PM **22** that reflect your recollection there were complaints from
 03:02:40PM **23** Congress about Interior ceasing to publish estimates regarding
 03:02:44PM **24** Interior data at least at that point in time?
 03:02:47PM **25** A. Certainly Mr. King was very upset about it. I have cited

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03:04:09PM **1** packages were reviewed in totality we could have fairly good
 03:04:13PM **2** receipt and disbursement numbers. I can't say complete because
 03:04:16PM **3** those records are old.
 03:04:17PM **4** Q. Okay.
 03:04:19PM **5** A. But I think they would provide a gateway into receipt and
 03:04:25PM **6** disbursement numbers.
 03:04:27PM **7** Q. In subsequent years do you recall that the annual reports
 03:04:33PM **8** do provide aggregate tribal and IIM documentation combined?
 03:04:41PM **9** A. Subsequent to the 1933, Mr. King's speech?
 03:04:45PM **10** Q. Yes.
 03:04:45PM **11** A. Yes.
 03:04:46PM **12** Q. So some of the annual reports do have combined tribal and
 03:04:49PM **13** IIM information, it's all lumped together in aggregate numbers,
 03:04:55PM **14** do you recall that?
 03:04:55PM **15** A. I do not. I do not.
 03:04:59PM **16** Q. Let's move on then.
 03:05:01PM **17** I noticed in the designation of your testimony you
 03:05:03PM **18** were specifically identified to testify regarding collections of
 03:05:07PM **19** money into the IIM system, is that fair?
 03:05:10PM **20** A. I did research on collections into the system, yes.
 03:05:14PM **21** Q. And what are you talking about when you say the IIM system,
 03:05:20PM **22** collections into the IIM system, what are you talking about?
 03:05:22PM **23** A. When I'm talking about the IIM system I mean the twofold
 03:05:29PM **24** individual Indian money accounts as well as such items as money
 03:05:35PM **25** that does not -- that enters the system, like tribal IIM, but

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03:05:40PM **1** does not get necessarily down to the individual Indian.

03:05:43PM **2 Q.** Okay. So would you agree with me that the individual

03:05:50PM **3** Indian monies include not only those that may go into an

03:05:53PM **4** individual account but may go elsewhere in the system?

03:05:56PM **5 A.** That's correct.

03:05:56PM **6 Q.** In fact, is it fair to say that the term "individual Indian

03:06:03PM **7** monies" was never really used until, I believe, 1904, is that

03:06:06PM **8** fair?

03:06:06PM **9 A.** That's my memory.

03:06:07PM **10 Q.** Based on a regulation by Interior?

03:06:10PM **11 A.** That's my memory.

03:06:11PM **12 Q.** And by 1913 the Department of Interior specifically

03:06:18PM **13** prepared a definition of individual Indian money. Do you recall

03:06:23PM **14** that?

03:06:23PM **15 A.** I do.

03:06:23PM **16 Q.** Do you recall what that definition was?

03:06:25PM **17 A.** Monies belonging to individual Indians is basically the way

03:06:29PM **18** it was. I don't have -- I cited in one of my reports and I've

03:06:33PM **19** reviewed the regulations, but I can't remember it verbatim of

03:06:37PM **20** course.

03:06:38PM **21 Q.** If we could look at Exhibit 75, you've seen these before,

03:06:52PM **22** the regulations for Indian money in 1913?

03:06:55PM **23 A.** I do.

03:06:55PM **24 Q.** And if we could look at page three of that document. And

03:07:04PM **25** at the top of that page the first paragraph is highlighted. Is

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03:08:15PM **1 A.** That's the distinction I've been trying to make, which I

03:08:20PM **2** hope I've made at least, is money, individual money system and

03:08:24PM **3** individual money accounts.

03:08:26PM **4 Q.** Okay. When you were talking about collections of IIM

03:08:33PM **5** money, do you include individual Indian money that may be placed

03:08:40PM **6** into a tribal account?

03:08:40PM **7 A.** Could you please give me an example of that, please?

03:08:46PM **8 Q.** Sure. Is it fair to say that prior to 1908 it was fairly

03:08:50PM **9** common to put individual Indian money into tribal accounts?

03:08:53PM **10 A.** My understanding of it is that prior to the establishment

03:09:04PM **11** of individual Indian money regulations prior to the 1904

03:09:10PM **12** definition that we discussed, that these monies went into

03:09:15PM **13** miscellaneous receipts of the Indian agent.

03:09:19PM **14 Q.** Let me show you Exhibit 76. Are you familiar with this

03:09:32PM **15** report by Historical Research Associates?

03:09:34PM **16 A.** I believe I've seen this, yes.

03:09:35PM **17 Q.** And HRA is another one of the government's contractors in

03:09:38PM **18** this case, is that true?

03:09:39PM **19 A.** That's correct.

03:09:40PM **20 Q.** If we could turn to page sixteen of that report. And I

03:09:52PM **21** think we're looking at page fourteen. Two more pages. And we

03:10:04PM **22** could focus in on the highlighted language. Does it indicate

03:10:18PM **23** that at that time in the early 1900s monies, IIM monies were

03:10:25PM **24** collected into class three tribal accounts and then were

03:10:28PM **25** disbursed to individuals by the local Indian agent?

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03:07:07PM **1** that the definition that was provided at that time of what

03:07:10PM **2** individual Indian monies is?

03:07:12PM **3 A.** That's correct.

03:07:12PM **4 Q.** Okay. Regardless of their deviationnn, which belonged to

03:07:17PM **5** individual Indians and which come into the individual of

03:07:21PM **6** disbursing officer?

03:07:22PM **7 A.** That's correct.

03:07:22PM **8 Q.** And that same definition was carried down for deviations;

03:07:26PM **9** is that correct?

03:07:26PM **10 A.** That's correct.

03:07:35PM **11 Q.** It didn't make a difference where the government agent put

03:07:38PM **12** that money, whether they put it into a bank, Treasury, or

03:07:41PM **13** cardboard box, it was still considered Indian money; is that

03:07:44PM **14** correct?

03:07:44PM **15 A.** That's the definition here, but we do know that money is

03:07:47PM **16** coming into the system, is being collected in the system that

03:07:50PM **17** does not go to individual Indian account holders.

03:07:53PM **18 Q.** And we're going to talk about that. You're talking about

03:07:56PM **19** tribal IIM, correct?

03:07:57PM **20 A.** Well, tribal IIM, the bid money that entered the system and

03:08:01PM **21** subsequently left the system, some of the administrative fees;

03:08:05PM **22** issues like that.

03:08:06PM **23 Q.** Okay. So when we are talking about individual Indian

03:08:09PM **24** money, you're not limiting yourself to money that's specifically

03:08:13PM **25** put into an individual Indian account, is that fair?

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03:10:58PM **1** (Witness reads document.)

03:10:59PM **2 A.** It does.

03:11:00PM **3 Q.** Okay. In doing your research did you make any attempt to

03:11:09PM **4** make any determination as to what individual Indian trust

03:11:14PM **5** collections there might have been prior to 1909 that went into

03:11:18PM **6** tribal accounts?

03:11:19PM **7 A.** I do not recall seeing any in the course of our research.

03:11:25PM **8 Q.** Okay. Now, talking about tribal accounts, is it true that,

03:11:30PM **9** I believe it was 1907, Theodore Roosevelt took the tribal money

03:11:35PM **10** and basically divided it up among individual Indians; is that

03:11:38PM **11** correct?

03:11:38PM **12 A.** He provided the mechanism for it to be done, but my

03:11:42PM **13** understanding is that it wasn't, you know, simply turning it all

03:11:47PM **14** over. Indians has to be considered, as we've said the term of

03:11:51PM **15** the day, competent. They had to make the request; things of

03:11:56PM **16** that nature.

03:11:57PM **17 Q.** Okay. But he provided in 1907 for the apportionment of

03:12:01PM **18** tribal trust funds to individual Indians; is that correct?

03:12:04PM **19 A.** He provided the mechanism, yes.

03:12:07PM **20 Q.** And that was money in tribal accounts that was intended for

03:12:10PM **21** individual Indians?

03:12:11PM **22 A.** It was money, it was like annuity payments, for example.

03:12:16PM **23** An individual Indian could request and receive a pro rata share

03:12:21PM **24** of an annuity payment.

03:12:23PM **25 Q.** And the same thing happened again I believe in 1918; is

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03:12:27PM **1** that correct, the President said we're going to divide up the

03:12:30PM **2** tribal money in the tribal accounts and a portion among

03:12:34PM **3** individual Indians, is that fair?

03:12:36PM **4** **A.** I don't recall the 1918 example that you're talking about.

03:12:41PM **5** **Q.** If we could look at Exhibit 102. Are you familiar with

03:12:57PM **6** this report entitled the Historical Development of Individual

03:13:03PM **7** Monies, Policies and Problems?

03:13:04PM **8** **A.** Yes.

03:13:05PM **9** **Q.** Who prepared that report?

03:13:06PM **10** **A.** I did.

03:13:06PM **11** **Q.** And if we can could look at page 53 of that report. Does

03:13:33PM **12** it say -- if we could focus in on the second paragraph.

03:13:38PM **13** **A.** Oh, yes.

03:13:39PM **14** **Q.** Okay?

03:13:40PM **15** **A.** Yes.

03:13:40PM **16** **Q.** Does it indicate in fact in May 1918 that the bureau had a

03:13:45PM **17** policy of individualizing tribal trust funds and admitted the

03:13:51PM **18** 1907 act?

03:13:51PM **19** **A.** Yes.

03:13:52PM **20** **Q.** So does that refresh your recollection whether in fact in

03:13:55PM **21** 1918 the money held in the tribal accounts was to be divided

03:14:00PM **22** among individual Indians; is that correct?

03:14:02PM **23** **A.** Yes. It could be divided into subject to withdrawal for

03:14:05PM **24** payment to individual loaners or expenditures for their benefit

03:14:09PM **25** under regulations governing the use of other individual Indian

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03:15:56PM **1** 1985 there was an estimate made of tribal IIM money from ten to

03:16:02PM **2** fifteen percent based on the data that you provided.

03:16:05PM **3** **A.** Correct.

03:16:05PM **4** **Q.** Now, can you tell us how you calculated that ten to fifteen

03:16:11PM **5** percent?

03:16:11PM **6** **A.** Certainly. What we did was we looked at documents we had

03:16:15PM **7** collected over the years. These included such documents as

03:16:20PM **8** audit reports which have been referred to in here already.

03:16:24PM **9** These included such documents as Indian trust accounting

03:16:27PM **10** division accountings of tribal individual Indian monies. These

03:16:33PM **11** included a review of my review of settled account packages,

03:16:37PM **12** along with the review of others in my office. These included

03:16:42PM **13** the 1951 report to Congress, the 1952 report to Congress, the

03:16:48PM **14** 1972 OSR audit. These included a review of correspondence. Our

03:16:58PM **15** audit was also based on -- or excuse me, our estimate was also

03:17:04PM **16** based on a review of reports that showed how much money the

03:17:12PM **17** United States government lent to tribal enterprises from the

03:17:19PM **18** period 1934 to 1949. It was something like \$13 billion, a

03:17:25PM **19** little over \$13 billion. We took these estimates, we took this

03:17:30PM **20** data and I made an estimate and that's what it is, an estimate,

03:17:39PM **21** and my estimate was also based on historical circumstances.

03:17:43PM **22** 1934 it would have just started up. I took the first part of

03:17:48PM **23** that estimate at ten percent to 1945 figuring that World War 2

03:17:55PM **24** drew many Native Americans away from the reservation, both to

03:18:00PM **25** fight in the war obviously and to participate in wartime

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03:14:15PM **1** monies.

03:14:15PM **2** **Q.** Let's turn to tribal IIM because you've testified about

03:14:19PM **3** that. And that's basically income that may be tribal but for

03:14:24PM **4** whatever reason shows up in an IIM account, is that true, or in

03:14:29PM **5** the IIM system?

03:14:30PM **6** **A.** For the most part those are tribal enterprises that had

03:14:35PM **7** been created in accordance with the Indian reorganization of

03:14:40PM **8** October of 1934 or the Oklahoma Indian Welfare Act of 1936.

03:14:47PM **9** Tribal funds, as I understand it, normally have to be or at that

03:14:52PM **10** point in history had to be appropriated by Congress. so these

03:14:58PM **11** tribal enterprises are on a different plain. They're using IIM

03:15:03PM **12** as a way to fund these enterprises as a way to allow an Indian

03:15:10PM **13** tribal enterprise like a stock racing association to have

03:15:15PM **14** immediate access to its own money, so these really aren't tribal

03:15:19PM **15** funds, per se, as I understand tribal funds.

03:15:21PM **16** **Q.** Okay. So your testimony is the only tribal money in IIM

03:15:26PM **17** accounts was associated with these business organizations;

03:15:29PM **18** things of that nature?

03:15:30PM **19** **A.** Well, some tribal money of course would come in by special

03:15:34PM **20** deposit accounts.

03:15:39PM **21** **Q.** What about per capita funds, do those go in a tribal IIM

03:15:43PM **22** account?

03:15:45PM **23** **A.** Would they go -- I don't know. I don't know the answer to

03:15:50PM **24** that.

03:15:51PM **25** **Q.** Now, Ms. Herman has testified that for the period 1934 to

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03:18:04PM **1** activities, and the second part from 1945 to 1985 based largely

03:18:11PM **2** on the various reports that I had seen.

03:18:15PM **3** **Q.** Okay. Now, Dr. Angel, I'm a little bit at a disadvantage

03:18:21PM **4** because I have not seen all those documents that you just

03:18:23PM **5** mentioned. Did you provide them to Justice?

03:18:25PM **6** **A.** These are part of Morgan Angel's.

03:18:30PM **7** MR. SIEMIETKOWSKI: Objection, your Honor; relevance.

03:18:31PM **8** THE COURT: Overruled.

03:18:32PM **9** THE WITNESS: These are part of Morgan Angel's

03:18:34PM **10** document collection.

03:18:36PM **11** BY MR. SMITH:

03:18:36PM **12** **Q.** Did you compile those documents?

03:18:37PM **13** **A.** No, I did not.

03:18:38PM **14** **Q.** You didn't provide them to Interior or provide them to the

03:18:42PM **15** justice department?

03:18:42PM **16** **A.** I simply provided an estimate as requested to FDI. I cited

03:18:50PM **17** some of the document that I used, but I provided the estimate.

03:18:53PM **18** **Q.** So you have not provided the backup documentation for your

03:18:56PM **19** ten to fifteen percent estimate?

03:18:58PM **20** **A.** No.

03:18:58PM **21** **Q.** Can you tell us how many documents did you review on 1934

03:19:09PM **22** that showed the percentage of tribal IIM in the account, in the

03:19:13PM **23** IIM system?

03:19:14PM **24** **A.** Off the top of my head, no, I don't know that I could tell

03:19:18PM **25** you for any specific year the percentage. I could say that

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03:19:21PM **1** we've looked at audit reports. I could say that we've looked at

03:19:25PM **2** reports that indicate how much money was loaned to tribal

03:19:31PM **3** enterprises, to, excuse me, to help them get started.

03:19:35PM **4** **Q.** You can't tell me for any particular year what report you

03:19:38PM **5** looked at and what the percentage was you found?

03:19:40PM **6** **A.** No. I'd have to go back through the documentation to do

03:19:43PM **7** that.

03:19:43PM **8** **Q.** Dr. Angel, do you have a degree in statistics or

03:19:55PM **9** mathematics?

03:19:56PM **10** **A.** I've already testified I'm a historian.

03:19:59PM **11** **Q.** Did you have anybody assist in you making that calculation

03:20:03PM **12** of ten to fifteen percent?

03:20:04PM **13** **A.** Several people in my office.

03:20:05PM **14** **Q.** And you?

03:20:07PM **15** **A.** This had the same documentation and reviewed it together.

03:20:10PM **16** **Q.** And do any of them have degrees in accounting or

03:20:13PM **17** mathematics or statistics?

03:20:15PM **18** **A.** No.

03:20:15PM **19** **Q.** You would agree with me, would you not, that since at least

03:20:21PM **20** the 1950s if there was tribal money in the IIM system it was not

03:20:28PM **21** supposed to be there, is that fair?

03:20:29PM **22** **A.** No. There would have been tribal money that would have

03:20:32PM **23** come into special deposit accounts.

03:20:35PM **24** **Q.** And I'm talking specifically about tribal IIM accounts, the

03:20:39PM **25** money was not supposed to be in the IIM system; is that correct?

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03:22:23PM **1** reports, that this is part of the system.

03:22:26PM **2** **Q.** But the audit reports say it's in there but it shouldn't

03:22:30PM **3** be, correct?

03:22:31PM **4** **A.** Many of them do. The 1972 report does, but they're looking

03:22:38PM **5** for a way to get it out of the system, but there is no

03:22:42PM **6** indication to me of illegality.

03:22:45PM **7** **Q.** Okay. Let's look at Exhibit 78.

03:22:50PM **8** THE COURT: How much more cross do you have, Mr.

03:22:52PM **9** Smith?

03:22:53PM **10** MR. SMITH: I have a fair amount. Do you want to take

03:22:56PM **11** a break?

03:22:56PM **12** THE COURT: Let's take a break. We'll be in recess

03:22:59PM **13** for about ten minutes.

03:23:01PM **14** COURTROOM DEPUTY: This Honorable Court stands in

03:23:03PM **15** recess until 3:35.

03:23:06PM **16** (Recess taken at about 3:35 p.m.)

03:34:37PM **17** COURTROOM DEPUTY: Please come to order and remain

03:34:39PM **18** seated.

03:34:43PM **19** MR. DORRIS: Your Honor, I was to report back to you

03:34:48PM **20** about our discussions about the exhibits that Mr. Quinn tendered

03:34:53PM **21** with respect to Michelle Herman's testimony.

03:34:55PM **22** THE COURT: Yes.

03:34:56PM **23** MR. DORRIS: In light of the way we've handled

03:34:58PM **24** exhibits here, and her Exhibits DX 372, the five-volume set, as

03:35:05PM **25** I appreciate it being offered to show what's supporting

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03:20:42PM **1** **A.** No, that's not correct. We've got documentation that

03:20:47PM **2** states that there is no specific authorization; however, the

03:20:53PM **3** Bureau of Indian affairs recognized what was going on and

03:20:57PM **4** approved the use of.

03:20:59PM **5** **Q.** Let's look at Exhibit 77. Dr. Angel, this is a copy of the

03:21:17PM **6** Interior regulations from 1951, and do you see the section there

03:21:22PM **7** on Voluntary Deposits?

03:21:24PM **8** **A.** I do.

03:21:25PM **9** **Q.** And you're familiar with voluntary deposits?

03:21:29PM **10** **A.** I am.

03:21:29PM **11** **Q.** And does it indicate that those voluntary deposits will not

03:21:34PM **12** be accepted except under cases of substantial hardship?

03:21:37PM **13** **A.** I'm aware of that but I'm also aware that the Bureau of

03:21:41PM **14** Indian Affairs at the same time as producing this report to

03:21:45PM **15** Congress showing that tribal IIM is part of individual Indian

03:21:50PM **16** monies.

03:21:50PM **17** **Q.** Okay. Now, you've looked at a lot of the audits from the

03:21:54PM **18** '40s, the '50s, the '60s on?

03:21:59PM **19** **A.** Correct.

03:21:59PM **20** **Q.** Is it fair to say that many of these audits criticized

03:22:03PM **21** these agencies, were having tribal IIM money in the tribal IIM

03:22:07PM **22** system?

03:22:07PM **23** **A.** There is, particularly by the '70s and '80s, an effort to

03:22:11PM **24** move tribal IIM out of the IIM system. However, it's recognized

03:22:16PM **25** in the audit reports, it's recognized in the annual investment

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03:35:10PM **1** information she used for her calculations more so than the truth

03:35:15PM **2** of the matter stated in it, we don't have any objections to the

03:35:18PM **3** exhibits Mr. Quinn called out last Thursday that were offered

03:35:24PM **4** for Ms. Herman.

03:35:25PM **5** THE COURT: All right. Thank you.

03:35:28PM **6** MR. QUINN: Yes, your Honor. One note: Looking over

03:35:30PM **7** the transcript from last Thursday I'm not sure if I misspoke or

03:35:34PM **8** if there was a typographical error, but Defendants' Exhibit 327,

03:35:38PM **9** which is a binder set which we used the first binder with Ms.

03:35:42PM **10** Herman and there were five numbered binders supporting of Sage,

03:35:46PM **11** supporting records, we were intending to include that in our

03:35:49PM **12** set. As Mr. Dorris commented, I'm sure he understood that was

03:35:53PM **13** part of our set, but in one area of the transcript it's referred

03:35:57PM **14** to as Exhibit 342. Thank you.

03:36:00PM **15** THE COURT: What I have to report to all of you is

03:36:02PM **16** that Tiger Woods is up two strokes.

03:36:07PM **17** BY MR. SMITH:

03:36:37PM **18** **Q.** Dr. Angel, before we were talking about tribal IIM, and

03:36:47PM **19** Plaintiffs' Exhibit 78, which is an audit report for Anadrako,

03:36:53PM **20** indicated March 1985. Do you see that?

03:36:56PM **21** **A.** I do.

03:37:00PM **22** **Q.** And do you recall reviewing this document as part of your

03:37:02PM **23** work for Interior?

03:37:03PM **24** **A.** I may have, Mr. Smith. I can't say specifically.

03:37:08PM **25** **Q.** Okay. If we could look at page two of that document.

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03:37:12PM **1** **A.** Um-hmm.

03:37:14PM **2** **Q.** And focus in on the highlighted area, the top half of the

03:37:18PM **3** page. And does it indicate the number of accounts and the

03:37:24PM **4** balance of those accounts, about \$34.5 million?

03:37:27PM **5** **A.** That's correct.

03:37:30PM **6** **Q.** Okay. And if we can now turn to page twelve of that

03:37:35PM **7** document. And do you see a section in the middle highlighted on

03:37:44PM **8** tribal IIM accounts?

03:37:45PM **9** **A.** I do.

03:37:45PM **10** **Q.** And if you read that, does it indicate that the tribal IIM

03:37:51PM **11** was roughly \$670,000?

03:38:04PM **12** **A.** In February -- the very first sentence?

03:38:08PM **13** **Q.** Yes.

03:38:08PM **14** **A.** Yes.

03:38:09PM **15** **Q.** Which would be roughly two percent of \$34.5 million. I'll

03:38:21PM **16** tell you, Dr. Angel, that's how I calculate it. Does it appear

03:38:24PM **17** to be significantly less than fifteen percent?

03:38:30PM **18** **A.** Yes.

03:38:31PM **19** **Q.** Okay. Let's look at Exhibit 79. This is an audit report

03:38:43PM **20** for the Pauny Agency, July 1985. Do you recall reviewing this

03:38:48PM **21** document?

03:38:48PM **22** **A.** Again, I may have. I can't say that I would remember every

03:38:56PM **23** audit report that I read.

03:38:57PM **24** **Q.** Okay. Let's look at page two of that document. Focus in

03:39:04PM **25** on the top half. Do you see there's roughly just under five

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03:40:50PM **1** be an audit report for the -- you may be able to pronounce this

03:40:54PM **2** better than me. Is that the Concho agency or Concho?

03:40:58PM **3** **A.** Concho agency.

03:40:59PM **4** **Q.** July of 1985?

03:41:00PM **5** **A.** Yes.

03:41:01PM **6** **Q.** And if we could look at page two of that document. And

03:41:06PM **7** does it indicate there is roughly 5,700 accounts with \$7.7

03:41:12PM **8** million in them?

03:41:13PM **9** **A.** It does.

03:41:14PM **10** **Q.** If we could turn to page 24 of that document. And look at

03:41:21PM **11** the top of the page. It says, as of March 1984 the agency was

03:41:27PM **12** maintaining 21 tribal accounts with balances totaling about

03:41:32PM **13** \$85,000, eight of those accounts with balances of about \$36,000

03:41:36PM **14** related to tribal operations; is that correct?

03:41:40PM **15** **A.** Correct.

03:41:40PM **16** **Q.** So by my calculations that is roughly one percent, but

03:41:44PM **17** again significantly less than your calculation of about fifteen

03:41:47PM **18** percent, is that fair?

03:41:48PM **19** **A.** Please let me --

03:41:49PM **20** **Q.** Sure. Take your time. Go ahead and look at it.

03:42:09PM **21** **A.** Would you scroll down, please?

03:42:10PM **22** **Q.** Sure.

03:42:11PM **23** **A.** Thank you.

03:42:28PM **24** Okay. Thank you.

03:42:29PM **25** **Q.** Okay. My question was whether it's obviously significantly

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03:39:09PM **1** thousand accounts with \$2.3 million in them?

03:39:12PM **2** **A.** Yes.

03:39:12PM **3** **Q.** And if we could turn to page nineteen, please, and focus in

03:39:24PM **4** on the first paragraph under Tribal Accounts. Does it indicate

03:39:25PM **5** that the tribal IIM accounts had a balance of \$45,000?

03:39:29PM **6** **A.** Could we go back to the very first page, please?

03:39:32PM **7** **Q.** The first one we looked at?

03:39:34PM **8** **A.** Yes, please.

03:39:35PM **9** **Q.** Which was page two.

03:39:38PM **10** **A.** Okay. Please now go back to the --

03:39:45PM **11** **Q.** Page nineteen?

03:39:46PM **12** **A.** Please.

03:39:48PM **13** **Q.** My question was: Does it indicate there were only about

03:39:52PM **14** approximately \$45,000 in the tribal IIM accounts?

03:39:55PM **15** **A.** Might I see the whole page?

03:39:57PM **16** **Q.** You sure can.

03:39:58PM **17** **A.** Thank you. Please, the next page, if I may.

03:40:17PM **18** **Q.** Sure.

03:40:17PM **19** **A.** Thank you.

03:40:29PM **20** Yes. Thank you.

03:40:30PM **21** **Q.** Okay. And again, by my calculations it's somewhat less

03:40:34PM **22** than two percent but significantly less than your fifteen

03:40:37PM **23** percent calculation, is that fair?

03:40:39PM **24** **A.** Yes.

03:40:40PM **25** **Q.** If we could look at Exhibit 80, please. Does this appear to

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03:42:33PM **1** less than your calculation of fifteen percent.

03:42:34PM **2** **A.** It is.

03:42:35PM **3** **Q.** Okay. And if you could focus in on the highlighted

03:42:38PM **4** language toward the middle of the page, it says the remaining 13

03:42:42PM **5** tribal IIM accounts with total balances of about \$34,000 contain

03:42:47PM **6** per capita funds for tribal members who cannot be located or

03:42:52PM **7** whose eligibility is being questioned for various reasons. Do

03:42:55PM **8** you see that?

03:42:55PM **9** **A.** I do.

03:42:55PM **10** **Q.** So does it appear that per capita funds are in fact

03:42:59PM **11** contained in tribal IIM accounts?

03:43:01PM **12** **A.** In this instance it does.

03:43:04PM **13** **Q.** In this instance it's over half of the tribal IIM money?

03:43:08PM **14** **A.** Yes.

03:43:09PM **15** **Q.** Did you do anything in calculating your ten to fifteen

03:43:16PM **16** percent to figure out how much of the money was in the tribal

03:43:20PM **17** IIM accounts as tribal and how much was actually IIM money?

03:43:24PM **18** **A.** No.

03:43:25PM **19** **Q.** Are you aware of anybody who's attempted to make that

03:43:29PM **20** calculation?

03:43:30PM **21** **A.** I'm not aware.

03:43:31PM **22** **Q.** If we could look at Exhibit 81. Let's move ahead. If we

03:44:47PM **23** could look at Exhibit 82, please. Dr. Angel, this is a report

03:44:57PM **24** dated May 1996 from GAO regarding BIA's tribal trust account

03:45:03PM **25** reconciliation results. Do you recall reviewing this document

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03:45:06PM **1** at any time?

03:45:06PM **2 A.** I have seen this one before. It's been a while.

03:45:10PM **3 Q.** If we could focus in on page 21 of that document. I think

03:45:24PM **4** we're on page 20. Look at the highlighted language in the

03:45:32PM **5** center of that page.

03:45:54PM **6 A.** I see it.

03:45:55PM **7 Q.** Okay. And essentially is it fair to say that GAO was

03:46:00PM **8** talking about the problems with tribal IIM accounts and the fact

03:46:04PM **9** that they couldn't separate individual transactions from tribal

03:46:07PM **10** accounts, is that fair?

03:46:08PM **11 A.** That's a fair statement, but this is after the period that

03:46:13PM **12** I, you know, was reviewing.

03:46:14PM **13 Q.** Okay. Do you know what kind of review GAO was attempting

03:46:18PM **14** to do?

03:46:19PM **15 A.** I don't recall at this moment. I don't recall this report,

03:46:23PM **16** this specific report.

03:46:24PM **17 Q.** Are you familiar with the special procedures pilot work

03:46:31PM **18** that was done for the five tribes that is mentioned in this

03:46:35PM **19** paragraph?

03:46:35PM **20 A.** No.

03:46:36PM **21 Q.** How far back in history it went?

03:46:39PM **22 A.** No.

03:46:39PM **23 Q.** Suffice it to say that you have not attempted to separate

03:46:45PM **24** tribal IIM or tribal money from individual money that may be in

03:46:50PM **25** the tribal IIM accounts, is that fair?

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03:46:17PM **1** Your Honor, if it would be helpful I'm going to be

03:46:19PM **2** referring to this document. I have a hard copy. If I could

03:46:22PM **3** hand that up.

03:46:25PM **4** THE COURT: All right.

03:46:25PM **5** BY MR. SMITH:

03:46:35PM **6 Q.** Now, Dr. Angel, did you prepare this entire document?

03:46:38PM **7 A.** Yes, I did.

03:46:39PM **8 Q.** Did anybody outside of your company assist you in putting

03:46:44PM **9** together this information?

03:46:45PM **10 A.** No one outside of Morgan Angel.

03:46:49PM **11 Q.** Did you personally compile all the information in here?

03:46:51PM **12 A.** With the assistance of other Morgan Angel staff.

03:46:57PM **13 Q.** And it's fair to say, as you've already testified, looking

03:49:01PM **14** on the left-hand first two columns, there's a number of years

03:49:05PM **15** you found no receipt and disbursement information, is that fair?

03:49:08PM **16 A.** That's correct.

03:49:09PM **17 Q.** Particularly up to 1908 and then 1913 to I believe 1921; is

03:49:20PM **18** that correct?

03:49:20PM **19 A.** Please? I'm sorry.

03:49:22PM **20 Q.** You don't have receipt and disbursement information up to

03:49:26PM **21** 1909 and then 1912 through I believe it was 1921?

03:49:30PM **22 A.** That's correct.

03:49:31PM **23 Q.** Now, you do have over on the right-hand side balance

03:49:36PM **24** information or what you call total IIM system funds?

03:49:40PM **25 A.** Yes.

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03:46:52PM **1 A.** That's fair.

03:46:52PM **2 Q.** And you are not aware of anybody who's been authorized to

03:46:55PM **3** try to do that, is that fair?

03:46:56PM **4 A.** I don't know if it was done during the electronic period or

03:46:59PM **5** not.

03:46:59PM **6 Q.** So today you can't tell us how much of that ten to fifteen

03:47:03PM **7** percent you've calculated is actually individual money in those

03:47:06PM **8** tribal accounts?

03:47:07PM **9 A.** No.

03:47:07PM **10 Q.** You talked about, I believe it was DX 32, and you probably

03:47:19PM **11** recall it's a 1909 report that mentioned money being returned to

03:47:25PM **12** unsuccessful bidders. Do you recall that?

03:47:27PM **13 A.** Okay.

03:47:30PM **14 Q.** I believe you showed us a 1909 report and a 1910 report

03:47:32PM **15** that has a similar figure.

03:47:34PM **16 A.** That's correct, yes. I don't remember whether it was 1910,

03:47:39PM **17** 1911, but yes, you're right, I did show two of those reports.

03:47:42PM **18 Q.** Can you tell me another year where it's contained in an

03:47:45PM **19** annual report that where collection information includes money

03:47:49PM **20** to be returned to bidders?

03:47:51PM **21 A.** I did not see.

03:47:54PM **22 Q.** So you're aware of those two years and those two years

03:47:58PM **23** alone?

03:47:59PM **24 A.** That's correct.

03:48:00PM **25 Q.** Let's talk about DX 483.

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03:49:40PM **1 Q.** And is it your understanding that this balance information

03:49:48PM **2** was information NORC was going to use in some way in their

03:49:53PM **3** calculations?

03:49:53PM **4 A.** Yes.

03:49:53PM **5 Q.** And do you know how they intended to use that work, that

03:49:58PM **6** information, did you discuss that with them?

03:49:59PM **7 A.** No. I don't know exactly how they were. I am not quite

03:50:06PM **8** aware of their methodology.

03:50:08PM **9 Q.** Okay. You're not a statistician?

03:50:11PM **10 A.** Yes.

03:50:11PM **11 Q.** And neither am I. We're on even terms.

03:50:15PM **12** But you understood that NORC was going to be relying

03:50:19PM **13** on the information that you provided in these figures?

03:50:21PM **14 A.** Yes.

03:50:23PM **15 Q.** For example, if we look at the balance information on

03:50:32PM **16** the -- let's go down to 1919.

03:50:34PM **17 A.** Um-hmm.

03:50:35PM **18 Q.** I'm sorry. I'm sorry. If we could go to the prior page.

03:50:57PM **19 A.** I apologize.

03:51:02PM **20 Q.** And if you look on the far right column, it says

03:51:05PM **21** specifically what exhibit your balance numbers come from, is

03:51:09PM **22** that fair?

03:51:09PM **23 A.** Correct.

03:51:10PM **24 Q.** So for example, 1912 through 1917, it will come from?

03:51:16PM **25** DX 4-25 for DX 74-2, is that fair?

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03:51:23PM **1 A.** I wonder if I might ask everybody's indulgence and just get
 03:51:28PM **2** a paper copy of this. May I get a paper copy of this rather
 03:51:32PM **3** than --
 03:51:33PM **4** MR. SMITH: If I may approach, your Honor.
 03:51:37PM **5** THE WITNESS: This one is just a little bit easier for
 03:51:40PM **6** me to read. Thanks. Oh, not greatly easier.
 03:51:43PM **7** (Witness reviews document.)
 03:52:14PM **8 Q.** Okay?
 03:52:15PM **9 A.** Uh-huh.
 03:52:15PM **10 Q.** If you look at the right-hand column, those balance numbers
 03:52:18PM **11** for those earlier years beginning in 1912 come from a document
 03:52:22PM **12** DX 374102, at least the complete version, is that fair?
 03:52:27PM **13 A.** Uh-huh, yes.
 03:52:28PM **14 Q.** And if we could look at DX 374. And is this a copy of that
 03:52:44PM **15** particular document?
 03:52:45PM **16 A.** Yes. That's a copy of the report of the commissioner of
 03:52:47PM **17** Indian Affairs for the fiscal year ended June 30th, 1919.
 03:52:51PM **18 Q.** And if we could look at page 102 of that document. And
 03:53:07PM **19** does this appear to be the column where that information came
 03:53:10PM **20** from for those early years?
 03:53:13PM **21 A.** Yes.
 03:53:13PM **22 Q.** And if you focus in, it says funds in banks and in hands of
 03:53:17PM **23** superintendents and then has a list, 1919, 30 million 9 hundred
 03:53:24PM **24** 30-some thousand, 1918, 23. And that corresponds to the balance
 03:53:31PM **25** information in your report?

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03:54:37PM **1 A.** Yes.
 03:54:37PM **2 Q.** When you prepared DX 483, did you note on there that for
 03:54:47PM **3** those years the data was incomplete?
 03:54:48PM **4 A.** We did not.
 03:54:49PM **5 Q.** You did have a footnote on that particular column; is that
 03:54:54PM **6** correct, if you could go back to DX 483?
 03:54:59PM **7 A.** Yes.
 03:55:07PM **8 Q.** I believe it's footnote three, under total IIM system
 03:55:12PM **9** funds. Do you see that?
 03:55:13PM **10 A.** Right.
 03:55:15PM **11 Q.** And if you look at footnote three, which is on the last
 03:55:20PM **12** page, page four, it says, total IIM may include tribal funds and
 03:55:29PM **13** other funds temporarily placed in special deposit accounts. Do
 03:55:33PM **14** you see that?
 03:55:33PM **15 A.** That's correct, yes.
 03:55:34PM **16 Q.** And can you tell us why you also did not mention that the
 03:55:36PM **17** data was incomplete?
 03:55:37PM **18 A.** No.
 03:55:42PM **19 Q.** If you go to the first page again, who came up with the
 03:55:51PM **20** title Total IIM System Funds, is that something you came up
 03:55:55PM **21** with?
 03:55:56PM **22 A.** That's something we discussed in our office.
 03:55:58PM **23 Q.** Did you discuss it with anybody at Interior or Justice?
 03:56:03PM **24 A.** We talked about IIM system funds with Justice, certainly.
 03:56:10PM **25 Q.** And did you --

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03:53:32PM **1 A.** Yes.
 03:53:32PM **2 Q.** Now, it was mentioned earlier today that at least on some
 03:53:41PM **3** of the later reports like this there is a footnote there at the
 03:53:44PM **4** top, is that fair?
 03:53:45PM **5 A.** Yes.
 03:53:45PM **6 Q.** And I believe Mr. Dorris was asking Ms. Herman about some
 03:53:50PM **7** subsequent to 1920 and they say data incomplete, special
 03:53:54PM **8** deposits are not included?
 03:53:56PM **9 A.** Yes.
 03:53:57PM **10 Q.** And in the early years has that same footnote, is that
 03:53:59PM **11** fair, or a similar footnote?
 03:54:01PM **12 A.** My understanding is the first one that appears is the 1916
 03:54:05PM **13** report.
 03:54:05PM **14 Q.** Okay.
 03:54:06PM **15 A.** And the last one that appears is the 1921 report.
 03:54:08PM **16 Q.** Okay. And if we could focus in on footnote number one,
 03:54:12PM **17** which is at the bottom of the page. This time it simply says
 03:54:18PM **18** data incomplete. It doesn't refer to special deposit accounts,
 03:54:22PM **19** is that fair?
 03:54:22PM **20 A.** Correct.
 03:54:23PM **21 Q.** And if you look at the columns, if you go back to the full
 03:54:27PM **22** page, there's a lot of blanks?
 03:54:36PM **23 A.** Yes.
 03:54:36PM **24 Q.** And as you mentioned, if you go back to 1916, 17, 18,
 03:54:36PM **25** you'll see similar issues; is that correct?

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03:56:12PM **1 A.** Or please.
 03:56:13PM **2 Q.** I'm sorry. Go ahead. I don't mean to interrupt you.
 03:56:16PM **3 A.** No, I interrupted you and I apologize.
 03:56:20PM **4** Justice Department or Interior did not come up with
 03:56:22PM **5** this title. Is that, or is that your question?
 03:56:24PM **6 Q.** My question was who came up with it, that is something you
 03:56:28PM **7** came up with?
 03:56:28PM **8 A.** I would have come up with it or, you know, it would have
 03:56:31PM **9** been discussed in my office, but I would certainly if it was
 03:56:33PM **10** discussed in my office it would be me.
 03:56:35PM **11 Q.** Okay. Now, that's different phraseology than what's on the
 03:56:40PM **12** actual reports. The reports actually say Funds in Banks and In
 03:56:44PM **13** Hands of Superintendents; is that correct?
 03:56:45PM **14 A.** That's correct.
 03:56:46PM **15 Q.** Okay. So it's somewhat different than how you've labeled
 03:56:50PM **16** that particular column?
 03:56:51PM **17 A.** Yes.
 03:56:52PM **18 Q.** Now, when you were looking at these charts, did you try to
 03:57:00PM **19** go back and verify whether the information in the charts was
 03:57:02PM **20** accurate?
 03:57:03PM **21 A.** To the degree that we could we did. But for the most part
 03:57:06PM **22** by looking at individual agencies, for example, which are often,
 03:57:12PM **23** you know, shown in these charts, but, no, we could not do a
 03:57:17PM **24** specific agency-by-agency review.
 03:57:21PM **25 Q.** So some of the agencies actually do their own reports and

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03:57:24PM **1** have some receipt data in there; is that correct?

03:57:28PM **2 A.** Please say that again. I'm sorry.

03:57:32PM **3 Q.** Sure. Some of the, for example, in 1919 there may be some

03:57:36PM **4** agencies that did their own individual reports and you can

03:57:40PM **5** compare it to the full set of data contained on that chart; is

03:57:45PM **6** that correct?

03:57:45PM **7 A.** No, I'm sorry, that's not what I'm saying. I was just

03:57:50PM **8** going through the chart itself comparing it to previous and post

03:57:55PM **9** years, taking whatever historical context I could have in

03:58:02PM **10** putting it in that, but I couldn't actually do an

03:58:04PM **11** agency-by-agency review.

03:58:05PM **12 Q.** Okay. Have you ever seen annual reports by the Union

03:58:11PM **13** Agency for the five civilized tribes?

03:58:13PM **14 A.** I have. Well, no. I've seen annual reports of various

03:58:16PM **15** agencies from National Archives materials.

03:58:20PM **16 Q.** Okay. And one of those would be the Union Agency for the

03:58:26PM **17** five civilized tribes. Have you seen that?

03:58:27PM **18 A.** It could be. I don't recall specifically seeing it.

03:58:30PM **19 Q.** Let's look at Exhibit 121. Does this appear to be an

03:58:54PM **20** annual report for 1913?

03:58:55PM **21 A.** It does.

03:58:58PM **22 Q.** And if you can to page 259 of that particular report. I

04:00:06PM **23** apologize, your Honor. If we could look at page 259. I'm

04:00:44PM **24** sorry. 262, I apologize. And do you see the similar table to

04:00:52PM **25** the ones we've looked at before at the top of the page, Value of

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04:03:29PM **1 Q.** But do you have anything for 1913?

04:03:31PM **2 A.** I don't.

04:03:32PM **3 Q.** Okay. So if you went back and you saw this document you

04:03:37PM **4** would realize that there should be some money in Treasury for

04:03:40PM **5** 1913; is that correct?

04:03:40PM **6 A.** I'd have to look at this a little bit more closely, Mr.

04:03:50PM **7** Smith. I've got to admit that this one has kind of got me a

04:03:54PM **8** little bit confused. I don't know if we're talking strictly

04:03:57PM **9** individual Indian monies or individual Indian monies and tribal

04:04:01PM **10** funds in this particular paragraph. That's what I'm saying,

04:04:04PM **11** trying to determine right now.

04:04:05PM **12 Q.** Okay. Let's go on and look at another one. Let's look at

04:04:10PM **13** Exhibit 91. Does this appear to be the annual report for 1915?

04:04:24PM **14 A.** Yes.

04:04:25PM **15 Q.** And if we could look at page 198. And again, you have the

04:04:34PM **16** same chart as we've seen in prior years' funds in hands of

04:04:39PM **17** superintendents, correct? And actually, once again we have the

04:04:44PM **18** footnotes at least it was there in 1915 as well, correct?

04:04:47PM **19 A.** Yes.

04:04:47PM **20 Q.** And if we could turn to page 201. And once again if we

04:04:58PM **21** could focus in on the five civilized tribes you see an entry

04:05:02PM **22** there for \$2.8 million?

04:05:03PM **23 A.** Correct.

04:05:04PM **24 Q.** And if we could look at page 376 and focus in on the

04:05:17PM **25** section individual funds. If you could take a look at that.

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04:00:55PM **1** Indians Individual Property, June 30, 1913?

04:01:01PM **2 A.** It's the same. In other words, if we scrolled up a couple

04:01:05PM **3** of pages we'd have the same heading.

04:01:08PM **4 Q.** Yeah. And do you see the column, third one, Funds in

04:01:12PM **5** Banks, etcetera?

04:01:13PM **6 A.** Uh-huh, yes.

04:01:14PM **7 Q.** And do you see an entry for the five civilized tribes of

04:01:22PM **8** \$1,441,918?

04:01:22PM **9 A.** I do.

04:01:23PM **10 Q.** If we could look at page 461 of the same document. And

04:01:29PM **11** does it appear that there's a discussion from the Union Agency

04:01:32PM **12** of how much money they had for the five civilized tribes?

04:02:04PM **13 A.** \$1,651,000 on June 30th, 1913.

04:02:17PM **14 Q.** Approximately two hundred thousand more than was in the

04:02:19PM **15** chart that you used; is that fair?

04:02:22PM **16 A.** That's correct.

04:02:24PM **17 Q.** Okay. Now, it also mentioned another fact. It says they

04:02:28PM **18** deposited \$328,596.18 with the Treasury. Do you see that?

04:02:35PM **19 A.** Um-hmm.

04:02:37PM **20 Q.** Can you tell us where your chart accounts for money

04:02:39PM **21** actually deposited in the Treasury? And Doctor, I don't mean to

04:03:19PM **22** confuse you. Is it fair to say that if individual Indian money

04:03:23PM **23** was placed into the Treasury it wouldn't be reflected in your

04:03:26PM **24** chart; is that correct?

04:03:26PM **25 A.** We do have a column for that.

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04:05:49PM **1** Does it indicate once again that individual money is being

04:05:52PM **2** deposited with Treasury, and in this case, approximately

04:05:56PM **3** \$210,000?

04:05:57PM **4 A.** I understand what you're saying, and I think what's

04:06:00PM **5** throwing me on this, Mr. Smith, is there something called

04:06:04PM **6** Treasury Checking Accounts that I don't know that I'm not that

04:06:09PM **7** familiar with, and that's why I don't know what this means.

04:06:14PM **8** It's going into the general fund of the United States Treasury,

04:06:17PM **9** the Treasury general account, or whether this indicates that

04:06:23PM **10** it's going into a Treasury checking account which was used for

04:06:29PM **11** disbursements. I don't know.

04:06:30PM **12 Q.** Regardless of that, it says the \$210,000 was deposited with

04:06:34PM **13** the treasurer of the United States; is that correct?

04:06:37PM **14 A.** Correct.

04:06:38PM **15 Q.** And that number is \$2.8 million is roughly \$210,000 more

04:06:43PM **16** than the number on your chart?

04:06:44PM **17 A.** Yes.

04:06:45PM **18 Q.** So to the extent money was deposited with the treasurer of

04:06:53PM **19** the United States, apparently it was not included on that column

04:06:55PM **20** that we've been looking at, is that fair?

04:06:57PM **21 A.** The column on the chart, you know, reflects what was in

04:07:00PM **22** funds held in the top of the chart, the top line of the chart.

04:07:04PM **23 Q.** Okay. So funds held in banks and in the hands of

04:07:08PM **24** superintendents?

04:07:08PM **25 A.** Correct.

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04:07:06PM **1 Q.** And to the extent Treasury had money, it's not on your
 04:07:11PM **2** chart?
 04:07:11PM **3 A.** That's correct.
 04:07:12PM **4 Q.** How about Osage, did you include Osage money in your chart?
 04:07:18PM **5 A.** I did.
 04:07:18PM **6 Q.** Let's look at Exhibit 123. Does this appear to be a report
 04:07:29PM **7** of the Department of Interior, 1917 annual report?
 04:07:32PM **8 A.** It does.
 04:07:33PM **9 Q.** And if we could look at page 194. And once again we have
 04:07:43PM **10** the same chart with the same footnote at the top?
 04:07:46PM **11 A.** Correct.
 04:07:46PM **12 Q.** And individual funds in banks and in hands of
 04:07:49PM **13** superintendents?
 04:07:50PM **14 A.** Um-hmm.
 04:07:50PM **15 Q.** And if we could turn to page 197. Actually let's turn to
 04:08:16PM **16** page 339. And do you see the section starting the problem
 04:08:32PM **17** with ...?
 04:08:33PM **18 A.** Um-hmm.
 04:08:33PM **19 Q.** If you read that, does it indicate there are nearly \$5.7
 04:08:39PM **20** million of trust funds in the United States Treasury belonging
 04:08:43PM **21** the Osage Indians?
 04:08:45PM **22 A.** Yes, but that doesn't say whether they're tribal funds or
 04:08:48PM **23** not, and if they're tribal funds they'd be earning interest, and
 04:08:51PM **24** that's what again is kind of throwing me about this.
 04:08:54PM **25 Q.** Does it say it is estimated that the per capita portion of

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04:10:33PM **1 A.** Yes.
 04:10:33PM **2 Q.** And if we could focus in on the highlighted language. It
 04:10:38PM **3** says, Probably the most noteworthy showing was the subscription
 04:10:41PM **4** of seven Indians, including incompetents and minors aggregating
 04:10:46PM **5** roughly \$3.9 million. Individual amounts range from 50 to
 04:10:52PM **6** \$640,000?
 04:10:52PM **7 A.** Yes, I see it.
 04:10:53PM **8 Q.** And then the largest subscription it says was by someone
 04:10:57PM **9** through his guardian, is that fair?
 04:10:59PM **10 A.** Um-hmm.
 04:11:00PM **11 Q.** If you look at page 194 of this document.
 04:11:12PM **12** MR. SIEMIETKOWSKI: I'm going to object, your Honor,
 04:11:14PM **13** as to relevance. I'm not sure how liberty loan bonds are
 04:11:18PM **14** pertinent to IIM.
 04:11:20PM **15** THE COURT: We may find out. Overruled.
 04:11:24PM **16** BY MR. SMITH:
 04:11:24PM **17 Q.** Were individual monies invested in liberty loan bonds?
 04:11:28PM **18 A.** Yes, they were.
 04:11:29PM **19 Q.** And looking at this chart, if you look down at the
 04:11:33PM **20** footnotes, second page, try third page here, are you aware of
 04:11:46PM **21** anywhere in these charts that talks about these charts including
 04:11:50PM **22** liberty loan bonds? That's my question to you.
 04:11:59PM **23** MR. SIEMIETKOWSKI: Same objection, your Honor.
 04:12:01PM **24** THE WITNESS: My guess is they were included in
 04:12:03PM **25** individual Indian monies.

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04:08:59PM **1** the Juno wealth is over \$10,000? When you're talking about per
 04:09:02PM **2** capita, is that individual or tribal?
 04:09:03PM **3 A.** Individual.
 04:09:04PM **4 Q.** Okay.
 04:09:07PM **5 A.** But again, I can't say that this, because the trust funds
 04:09:12PM **6** are in the Treasury and that's what's really throwing me about
 04:09:15PM **7** this whole line of questioning, I can't say whether that's in
 04:09:20PM **8** the Treasury general fund or whether that's in a tribal account
 04:09:24PM **9** which would be interest-earning.
 04:09:27PM **10 Q.** So whatever you can say today you don't know?
 04:09:31PM **11 A.** I can say I don't know.
 04:09:32PM **12 Q.** And whatever it is, those amounts of money are not included
 04:09:35PM **13** on your chart?
 04:09:36PM **14 A.** That's correct.
 04:09:37PM **15 Q.** Wherever they are?
 04:09:38PM **16 A.** Yes.
 04:09:38PM **17 Q.** What about liberty loan bonds, what are liberty loan bonds?
 04:09:47PM **18 A.** Those were bonds that were issued during World War 1 and
 04:09:50PM **19** they formed a fairly significant amount of IIM purchases.
 04:09:53PM **20 Q.** Okay. And are liberty loan bonds included in your chart?
 04:10:00PM **21 A.** My understanding is that they are, just from reviewing the
 04:10:04PM **22** information in the commissioner's reports.
 04:10:06PM **23 Q.** Let's look at Exhibit 123. This is the one we just had.
 04:10:18PM **24** Do we have page seven of that document? Do you see a section
 04:10:30PM **25** entitled Liberty Loan Bonds?

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04:12:05PM **1** BY MR. SMITH:
 04:12:05PM **2 Q.** But they didn't separate it on the particular charts?
 04:12:08PM **3 A.** No. My understanding on liberty loan bonds is they would
 04:12:12PM **4** be included in total IIM.
 04:12:13PM **5 Q.** Would they be included in bonds in the hands of
 04:12:17PM **6** superintendents and in banks?
 04:12:17PM **7 A.** Yes.
 04:12:18PM **8 Q.** Let's move on to the 1920s. Now, is it fair to say that
 04:12:27PM **9** beginning in the 1920s you began to rely on similar charts?
 04:12:46PM **10** Let's look at DX 395. And look at page 31, and I believe we
 04:13:08PM **11** looked at this earlier with Ms. Herman, but beginning in 1921
 04:13:15PM **12** for your balance information you looked at similar charts that
 04:13:18PM **13** were in the annual reports; is that correct?
 04:13:20PM **14 A.** That's correct.
 04:13:20PM **15 Q.** And these are the ones that indicated that the data was
 04:13:23PM **16** incomplete and special deposits were not included, is that fair?
 04:13:27PM **17 A.** That's fair.
 04:13:28PM **18 Q.** Okay. And once again, the column is Funds in Banks and In
 04:13:32PM **19** Hands of Superintendents, so once again, it would not include
 04:13:36PM **20** money in Treasury, is that fair?
 04:13:37PM **21 A.** That's fair.
 04:13:40PM **22 Q.** Okay. And if you go back and look at DX 483, for that
 04:13:52PM **23** period beginning until 1928, you have no funds in Treasury, no
 04:14:01PM **24** funds in government securities, no funds in banks; is that
 04:14:04PM **25** correct?

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04:14:04PM **1 A.** That's correct. I believe 1921 was the last year that had
 04:14:09PM **2** that footnote.
 04:14:10PM **3 Q.** Okay. If you look at this chart again, 1924, 1924 to 1925,
 04:14:30PM **4** does it appear that the revenue actually drops by roughly \$3
 04:14:38PM **5** million, 28.634 to 25.485?
 04:14:47PM **6 A.** Please tell me where.
 04:14:48PM **7 Q.** If you look at the Receipts column.
 04:14:50PM **8 A.** Uh-huh.
 04:14:50PM **9 Q.** 1924 to 1925 revenue drops by roughly \$3 million, is that
 04:14:56PM **10** fair?
 04:14:56PM **11 A.** That's correct.
 04:14:57PM **12 Q.** And in 1925 disbursements exceed revenues by roughly \$3
 04:15:03PM **13** million, a little over \$3 million?
 04:15:05PM **14 A.** And just so we're correct about this, Mr. Smith, this is
 04:15:10PM **15** these receipt and disbursement figures are from the 1906 act
 04:15:14PM **16** with the limitations I tendered.
 04:15:16PM **17 Q.** Right, and we're going to talk about those in a second.
 04:15:18PM **18 A.** All right.
 04:15:19PM **19 Q.** But if you go over to the column for total IIM system
 04:15:25PM **20** funds, 1924, 35.6 million, and in 1925, 56.8.
 04:15:33PM **21 A.** That's correct.
 04:15:33PM **22 Q.** Now, would the receipts dropping and disbursements
 04:15:40PM **23** increasing, were you able to determine how the total IIM system
 04:15:44PM **24** funds increased by \$20 million?
 04:15:46PM **25 A.** I know that they increased largely because of oil and gas

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04:17:14PM **1 A.** I believe my understanding is that funds held in the hands
 04:17:21PM **2** of Indian agents does include liberty loan bonds and securities.
 04:17:26PM **3 Q.** Okay. Does it include liberty loan bonds as well as
 04:17:30PM **4** securities?
 04:17:30PM **5 A.** Well, my understanding is that it includes securities and
 04:17:34PM **6** liberty loan bonds.
 04:17:36PM **7 Q.** That it includes?
 04:17:37PM **8 A.** That the agent was -- I'm sorry.
 04:17:39PM **9 Q.** I'm sorry, go ahead. Your understanding is? I apologize
 04:17:43PM **10** again.
 04:17:43PM **11 A.** Please.
 04:17:43PM **12 Q.** Your understanding includes Treasury securities?
 04:17:46PM **13 A.** Yes.
 04:17:46PM **14 Q.** Okay. If we could look at Exhibit 124. Do you recall this
 04:18:09PM **15** report prepared by Mr. Kehoe?
 04:18:11PM **16 A.** I do.
 04:18:12PM **17 Q.** And in fact, I think he's going to testify later this week.
 04:18:16PM **18 A.** I believe so.
 04:18:39PM **19 Q.** And you've reviewed this report prior to today?
 04:18:45PM **20 A.** I have.
 04:18:46PM **21 Q.** Okay. And if we could look at this report beginning at
 04:18:52PM **22** page fifteen, page fifteen of the document. Do you see in the
 04:19:10PM **23** last paragraph it says -- if we could focus in on the last
 04:19:15PM **24** paragraph. Despite such costs such attitudes the BIA did begin
 04:19:21PM **25** to invest significant amounts of IIM in federal government

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04:15:49PM **1** revenues, but no, that was one of the things that troubled me
 04:15:54PM **2** about these receipt and disbursement figures. I could not link
 04:15:58PM **3** them to year-end account balances.
 04:16:00PM **4 Q.** Okay. So the receipt and disbursement information appears
 04:16:04PM **5** low in comparison to the \$20 million increase in the balance?
 04:16:06PM **6 A.** That's correct.
 04:16:07PM **7 Q.** And in fact, in 1926 it suddenly drops to -- the total IIM
 04:16:21PM **8** system funds drop by \$12 million and then increase by \$30
 04:16:26PM **9** million?
 04:16:26PM **10 A.** We attempted to explain that. In fact, using the Bureau of
 04:16:32PM **11** Indian Affairs report for 1926 you may notice that their figure
 04:16:38PM **12** was \$22 million. What we did is we went back to that report, we
 04:16:46PM **13** took all the figures from the various columns, Funds Held
 04:16:49PM **14** column. We retotaled it to get that \$44 million figure, and
 04:16:53PM **15** yes, it still seemed low to me.
 04:16:55PM **16 Q.** So like me when I looked at it and raised a red flag, it
 04:17:00PM **17** raised a red flag with you as well?
 04:17:01PM **18 A.** It did indeed.
 04:17:03PM **19 Q.** The numbers just didn't seem to make sense?
 04:17:05PM **20 A.** That's correct.
 04:17:05PM **21 Q.** Now, did you consider when looking at that that in fact
 04:17:08PM **22** perhaps there was money invested in government securities during
 04:17:11PM **23** that period?
 04:17:11PM **24 A.** Yes, there was.
 04:17:12PM **25 Q.** That is not reflected on your chart?

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04:19:24PM **1** securities during the 1920s. By 1926 Assistant Commissioner
 04:19:29PM **2** Merit could report that \$27 million of monies held in trust for
 04:19:34PM **3** individual Indians are invested at the present time in United
 04:19:38PM **4** States government bonds and notes, and it goes most of which
 04:19:42PM **5** bear interest at four-and-a-quarter percent. Do you recall
 04:19:44PM **6** that?
 04:19:44PM **7 A.** Yes.
 04:19:45PM **8 Q.** Now, you do not have the \$27 million entry under Government
 04:19:52PM **9** Bonds on your chart for that year, is that fair?
 04:19:54PM **10 A.** Well, as I'm reading this I believe, I think that's a
 04:20:01PM **11** cumulative figure. So Merit is saying in 1926 \$27 million is
 04:20:07PM **12** held, but I don't think he means that 27 -- that's a cumulative
 04:20:12PM **13** figure as I'm reading that.
 04:20:13PM **14 Q.** Cumulative for that year?
 04:20:15PM **15 A.** No, no, no. Cumulative. Total figure.
 04:20:19PM **16 Q.** For?
 04:20:20PM **17 A.** For years -- I'm sorry. As Merit is saying it, if I'm
 04:20:25PM **18** reading this correctly, and I certainly would like to see the
 04:20:29PM **19** document involved with this, but I think that what he's saying
 04:20:32PM **20** is that during the 1920s they're investing money in federal
 04:20:40PM **21** government securities. By 1926 he could report that this total
 04:20:45PM **22** number, \$27 million as opposed to the number in 1926. Have I
 04:20:53PM **23** lost you, Mr. Smith? That's not my intention.
 04:20:56PM **24 Q.** You have, but perhaps we ought to look at the original
 04:20:58PM **25** report and we can check on that.

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04:21:00PM **1 A.** Okay.

04:21:00PM **2 Q.** Is it fair to say that prior to 1928 your chart doesn't

04:21:04PM **3** reflect any funds invested in government securities, except to

04:21:10PM **4** the extent they may be included in some other column?

04:21:12PM **5 A.** Oh, correct. Okay.

04:21:14PM **6 Q.** Now let's talk about who is responsible for reporting

04:21:21PM **7** government securities. If you could look at Defendants' Exhibit

04:21:27PM **8** 42, DX 42. And this is the government document that the

04:21:50PM **9** government produced to you. If we could see the entire

04:21:53PM **10** document. Is this one that you've looked at before?

04:21:55PM **11 A.** It is.

04:21:55PM **12 Q.** Okay. And it's entitled Indian Funds From the Comptroller

04:22:00PM **13** General of the United States back in, I believe it was published

04:22:03PM **14** in 1929?

04:22:09PM **15 A.** Correct.

04:22:09PM **16 Q.** If we could look at 42-15 and focus in on the highlighted

04:22:18PM **17** language. If you could take a second and read that.

04:22:27PM **18** (Witness reviews document.)

04:23:18PM **19** Have you had a chance to read it?

04:23:19PM **20 A.** I have.

04:23:20PM **21 Q.** And does it indicate that accounts for monies in the

04:23:25PM **22** depository banks are kept with a local agency?

04:23:28PM **23 A.** That's correct.

04:23:29PM **24 Q.** But the treasurer keeps the records for funds invested

04:23:36PM **25** represented by coupon bonds in the custody of a superintendent

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04:24:43PM **1 A.** That's correct.

04:24:44PM **2 Q.** Now, let's look at --

04:24:49PM **3 A.** May I just see, scroll up just a bit on that same page?

04:24:52PM **4 Q.** Sure.

04:24:52PM **5 A.** It appears to me that they're using, the comptroller

04:25:18PM **6** general's figures and ours are the same, total amount of

04:25:22PM **7** individual Indian monies since June 30th, 1928.

04:25:25PM **8 Q.** 1928. And in 1928 you actually have a figure for funds

04:25:29PM **9** invested in government securities; is that correct?

04:25:31PM **10 A.** Yes.

04:25:31PM **11 Q.** Which you didn't have for prior years?

04:25:33PM **12 A.** That's correct.

04:25:34PM **13 Q.** Okay. Let's look at DX 426. If you could look at the last

04:25:51PM **14** paragraph and take a look at that and read that, please?

04:26:17PM **15 A.** I see it.

04:26:17PM **16 Q.** Does it in fact indicate that at some point in time they're

04:26:23PM **17** actually accounting for Treasury's as property rather than

04:26:25PM **18** funds?

04:26:25PM **19 A.** It does.

04:26:26PM **20 Q.** Okay. So if you're looking at at least in some years

04:26:29PM **21** looking at funds, it's not going to be reflecting what may be

04:26:32PM **22** invested in Treasuries, is that fair?

04:26:33PM **23 A.** I don't know if that's the case with the rendering of IIM

04:26:39PM **24** for settlement in the semi-annual period.

04:26:43PM **25 Q.** Have you been able to come up to any extent to figure out

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04:23:39PM **1** for funds invested in bonds registered in the name of the

04:23:42PM **2** superintendent as trustees or guardian for a minor or

04:23:46PM **3** incompetent Indian; is that correct?

04:23:48PM **4 A.** That's correct. And in fact, Mr. Smith, I've always

04:23:51PM **5** wondered about the relationship of that to the receipt and

04:23:54PM **6** disbursement figures that I collected.

04:23:59PM **7 Q.** Okay. So that raises some concern for you as well; is that

04:24:02PM **8** correct?

04:24:02PM **9 A.** No. I was just hoping it would be a way to explain the

04:24:06PM **10** receipt and disbursement figures.

04:24:08PM **11 Q.** Your receipt and disbursement figures for those years are

04:24:13PM **12** as reported by the ISSDA, the Act; is that correct?

04:24:16PM **13 A.** Yes.

04:24:16PM **14 Q.** And that's for funds not invested or not placed in

04:24:19PM **15** Treasury; is that correct?

04:24:19PM **16 A.** The receipt and disbursement?

04:24:22PM **17 Q.** Right.

04:24:23PM **18 A.** Well, the general Treasury of the United States, correct.

04:24:27PM **19 Q.** And in fact, the last sentence says, No accounts are

04:24:30PM **20** required to be kept at the agencies for securities purchased by

04:24:34PM **21** a superintendent; is that correct?

04:24:35PM **22 A.** Um-hmm.

04:24:35PM **23 Q.** So to get that kind of information the agent isn't going to

04:24:39PM **24** have it, or the agency -- it's going to be at the Treasury

04:24:42PM **25** level, is that fair?

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04:26:48PM **1** how much was actually invested in Treasury securities prior to

04:26:52PM **2** 1928?

04:26:53PM **3 A.** Prior to 1928 I don't believe so. Please let me look.

04:27:04PM **4** (Witness reviews document.)

04:27:06PM **5** No.

04:27:06PM **6 Q.** There's no doubt in your mind that money was invested in

04:27:09PM **7** Treasuries prior to 1928, but you don't know how much?

04:27:11PM **8 A.** That's correct. In 1917 we know that money was being

04:27:14PM **9** invested in liberty loan bonds.

04:27:22PM **10** MR. SIEMIETKOWSKI: Your Honor, may I ask the Court to

04:27:23PM **11** remind the witness to please speak into the microphone. I've

04:27:27PM **12** having a little trouble hearing him.

04:27:30PM **13** THE WITNESS: I'm sorry. Will do.

04:27:31PM **14** THE COURT: I don't think I have to. I think he just

04:27:33PM **15** did.

04:27:34PM **16** THE WITNESS: Thank you.

04:27:35PM **17** BY MR. SMITH:

04:27:35PM **18 Q.** Let's look at your receipt and disbursement information for

04:27:38PM **19** the same period. You've testified that that came from something

04:27:40PM **20** called the Sundry Civil Appropriations Act; is that correct?

04:27:45PM **21 A.** That's correct. Active June 30, 1906.

04:27:49PM **22 Q.** Right. And essentially all of your information from 1922

04:27:55PM **23** to 1949 comes from reports made pursuant to that particular Act;

04:27:59PM **24** is that correct.

04:27:59PM **25 A.** Yes.

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04:28:02PM **1 Q.** Let's give an example of that. If we could look at DX
 04:28:12PM **2** 414-1. Is this one of the documents that you pulled and
 04:28:25PM **3** provided to Interior?
 04:28:26PM **4 A.** Yes.
 04:28:29PM **5 Q.** And it says it's being prepared in connection with the act
 04:28:37PM **6** of June 30, 1906 which you mentioned, is that fair?
 04:28:40PM **7 A.** Yes.
 04:28:41PM **8 Q.** If we could then turn to the second page. And this is the
 04:28:46PM **9** actual report that's been prepared, is that fair?
 04:28:48PM **10 A.** That's correct.
 04:28:50PM **11 Q.** And the only reference to individual money is on the bottom
 04:28:54PM **12** of the page, and it says, In addition to the foregoing,
 04:28:58PM **13** disbursing agents collected and paid out approximately \$5.5
 04:29:01PM **14** million of individual Indian money?
 04:29:03PM **15 A.** That's correct. That was --
 04:29:05PM **16 Q.** I'm sorry. Go ahead.
 04:29:07PM **17 A.** That was actually one of the documents that struck me like
 04:29:12PM **18** the 1926 number for total IIM as being out of bounds with
 04:29:20PM **19** everything else, and in fact, I had mentioned it to NORC that
 04:29:25PM **20** this number did not strike me as a realistic number based on
 04:29:30PM **21** everything else we saw.
 04:29:31PM **22 Q.** So you put it on your chart, but you told --
 04:29:34PM **23 A.** I felt obligated to put it on our chart rather than ignore
 04:29:39PM **24** its existence. It seemed to me that that was my only options:
 04:29:42PM **25** I would either put it on or say that, well, you know, try to

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04:31:01PM **1 Q.** Is it fair to say that it's supposed to be public money
 04:31:03PM **2** that's not paid into the general Treasury, correct?
 04:31:06PM **3 A.** Yes.
 04:31:06PM **4 Q.** And it's they're required to provide a detailed accounting,
 04:31:11PM **5** is that fair?
 04:31:12PM **6 A.** Detailed account of all the payments, yes.
 04:31:16PM **7 Q.** Okay. So if we take that \$35.5 million number, did you
 04:31:20PM **8** ever see a detailed account supporting it?
 04:31:22PM **9 A.** No.
 04:31:23PM **10 Q.** On any of the receipt and disbursement figures that you
 04:31:27PM **11** have in your report for 1922 through 1949, did you ever see that
 04:31:35PM **12** detailed account information?
 04:31:37PM **13 A.** What I was able to get, most of these are from House of
 04:31:41PM **14** Representatives. I believe we located most of these documents
 04:31:46PM **15** and records of the House of Representatives were just the
 04:31:51PM **16** summary reports, but I can't say that a detailed accounting did
 04:31:55PM **17** not serve as the basis for the report.
 04:32:00PM **18 Q.** Okay.
 04:32:00PM **19 A.** I did not locate detailed accounting, but that's not to say
 04:32:04PM **20** that one did not exist.
 04:32:05PM **21 Q.** And that was my question, did you ever see in all your
 04:32:07PM **22** research did you ever see the detailed account statement
 04:32:10PM **23** supporting your figures?
 04:32:10PM **24 A.** I did not.
 04:32:11PM **25 Q.** Let's look at DX 414-1. And looking again at page two, the

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04:29:46PM **1** hide it.
 04:29:46PM **2 Q.** So any number, even if it was unrealistic to you, was
 04:29:50PM **3** included on this chart?
 04:29:50PM **4 A.** And it was reported to NORC in particular as what they call
 04:29:54PM **5** an outlier as something that does not make sense.
 04:29:58PM **6 Q.** Okay. Have you ever looked at that particular statute, the
 04:30:02PM **7** one you've referenced as the Sundry Civil Appropriations Act?
 04:30:09PM **8 A.** Yes, I have.
 04:30:09PM **9 Q.** If we could look at Exhibit 125. Focus in on the
 04:30:26PM **10** highlighted language. If you could look at that. Is that your
 04:30:30PM **11** understanding of what you read?
 04:30:31PM **12 A.** Yes, it is.
 04:30:33PM **13 Q.** And basically as I understand it there's three
 04:30:37PM **14** requirements: Number one, it's got to be public money, right?
 04:30:45PM **15 A.** Um-hmm.
 04:30:45PM **16 Q.** Does it reference public money in there?
 04:30:47PM **17 A.** I'm sorry. Were you asking something? I wasn't aware that
 04:30:50PM **18** was a question.
 04:30:51PM **19 Q.** Proceeds are public property?
 04:30:53PM **20 A.** Correct.
 04:30:53PM **21** THE COURT: Are you asking him about the meaning of a
 04:30:55PM **22** statute, counsel? Why don't you just assert what the meaning is
 04:30:58PM **23** and move on.
 04:30:59PM **24** MR. SMITH: Okay, sure. I'll do that.
 04:31:01PM **25** BY MR. SMITH:

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04:32:38PM **1** \$5.5 million figure.
 04:32:41PM **2 A.** Yes.
 04:32:42PM **3 Q.** And that's the number you adopted in your report because
 04:32:46PM **4** you felt you had to tell everything: is that correct?
 04:32:48PM **5 A.** That's correct.
 04:32:49PM **6 Q.** You didn't include a footnote on your report that says this
 04:32:52PM **7** doesn't look right, it looks low?
 04:32:53PM **8 A.** No. I mentioned that to NORC and FTI. I mentioned it as
 04:32:58PM **9** something that didn't strike me as right in the same manner that
 04:33:02PM **10** I mentioned the 1926 total figure.
 04:33:07PM **11 Q.** If we could look at Exhibit 126, please. Does this appear
 04:33:19PM **12** to be an annual report for 1922?
 04:33:22PM **13 A.** It does.
 04:33:22PM **14 Q.** The same year you have that \$5.5 million figure?
 04:33:25PM **15 A.** It does.
 04:33:26PM **16 Q.** I'm sorry?
 04:33:29PM **17 A.** It is, yes.
 04:33:30PM **18 Q.** And if we could look at pages 21 to 22. Do you see a
 04:33:47PM **19** section starting oil and gas in the five civilized tribes?
 04:33:50PM **20 A.** Yes.
 04:33:50PM **21 Q.** If you could turn to the next page. And is there a number
 04:33:56PM **22** there for oil and gas for 1922 for restricted Indians?
 04:34:03PM **23 A.** Yes.
 04:34:04PM **24 Q.** That's almost 3.9 million?
 04:34:08PM **25 A.** Correct.

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04:34:08PM **1 Q.** So roughly \$3.9 million of the 5.5 would come from one
 04:34:12PM **2** tribe, is that fair?
 04:34:13PM **3 A.** Yes. And I'm sure adding Osage would push it over.
 04:34:18PM **4 Q.** And how many allotted Indian tribes were there at that
 04:34:23PM **5** time?
 04:34:23PM **6 A.** At that time how many allotted? There would be a total of
 04:34:27PM **7** 118. But by that point it would be some number less than 118.
 04:34:33PM **8 Q.** Okay. And if you look at page 24, in fact, is there a
 04:34:40PM **9** number there for Osage of 22.1 million?
 04:34:44PM **10 A.** Yes, there is, but that's of course not all allotted I
 04:34:57PM **11** don't believe, but I don't.
 04:34:58PM **12 Q.** But don't know?
 04:34:59PM **13 A.** No.
 04:34:59PM **14 Q.** So is it fair to say that the numbers that are reported by
 04:35:02PM **15** the disbursing agents may or may not be accurate, is that fair?
 04:35:05PM **16 A.** In the case of 5.5 million, you know, I did believe it was
 04:35:11PM **17** accurate but also I didn't feel that I could withhold it just
 04:35:14PM **18** because I felt it was inaccurate. I didn't think that would
 04:35:17PM **19** be -- I just didn't feel that would be right, to withhold a
 04:35:20PM **20** number just because it was inaccurate.
 04:35:23PM **21 Q.** On that point -- can we look at DX 483? The figure for
 04:35:41PM **22** 1969, and you have a figure if we could focus in on 1969 would
 04:35:58PM **23** be the next page, and do you see it says IIM system funds and
 04:36:10PM **24** banks, \$40.8 million?
 04:36:17PM **25 A.** Yes.

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04:38:01PM **1 A.** I can only think that I missed it.
 04:38:08PM **2 Q.** So you didn't tell Dr. Scheuren that there were \$121
 04:38:13PM **3** million of receipts in 1969?
 04:38:14PM **4 A.** No.
 04:38:18PM **5 Q.** Certainly that would be important information you would
 04:38:25PM **6** want to convey to him to get accurate information?
 04:38:27PM **7 A.** Yes.
 04:38:28PM **8 Q.** Is that correct?
 04:38:31PM **9 A.** Yes.
 04:38:31PM **10 Q.** When we're looking at these receipt and disbursement
 04:38:50PM **11** information that you've taken from these reports, these 1906
 04:38:56PM **12** statutory reports, do you consider the fact that Interior
 04:39:05PM **13** commonly used the phrase "disbursement" to mean not only money
 04:39:10PM **14** disbursed to individual Indians but also put into banks on their
 04:39:14PM **15** behalf?
 04:39:14PM **16 A.** Please say that again. Where are you looking, at the 1906
 04:39:27PM **17** act reports?
 04:39:27PM **18 Q.** Right. You've referred to these 1906 reports, that all
 04:39:31PM **19** they have are receipts and disbursements?
 04:39:32PM **20 A.** Correct.
 04:39:32PM **21 Q.** No backup documentation, correct?
 04:39:34PM **22 A.** That's right.
 04:39:35PM **23 Q.** And did you consider that perhaps Interior commonly used
 04:39:40PM **24** the word "disbursements" to be not only money given to the
 04:39:44PM **25** individual Indians but also put into banks or invested on their

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04:36:17PM **1 Q.** And go ahead to the right. IIM system funds invested in
 04:36:27PM **2** government securities, \$29 million roughly?
 04:36:30PM **3 A.** Um-hmm.
 04:36:30PM **4 Q.** And total IIM funds, \$69.8 million.
 04:36:35PM **5 A.** Correct.
 04:36:35PM **6 Q.** And if we could look at DX 72. This is an Office of Survey
 04:36:57PM **7** and Review Audit Operations dated 1969. Do you see that?
 04:37:02PM **8 A.** Yes, I do.
 04:37:05PM **9 Q.** And that's one of the documents you've used in your
 04:37:08PM **10** calculations, is that fair?
 04:37:08PM **11 A.** That's correct.
 04:37:09PM **12 Q.** If we could look at 72-4. Focus in on the highlighted
 04:37:18PM **13** language. It says the individual Indian money account system
 04:37:25PM **14** has many attributes of a commercial banking operation. Some
 04:37:29PM **15** pertinent statistics are cash receipts are running at the rate
 04:37:32PM **16** of \$121 million per year. Do you see that?
 04:37:38PM **17 A.** Yes.
 04:37:38PM **18 Q.** That's roughly twice your balance number; is that correct?
 04:37:41PM **19 A.** Yes, but money is being disbursed. I guess I don't see the
 04:37:51PM **20** ...
 04:37:52PM **21 Q.** Did you include that under Receipts under 1969?
 04:37:57PM **22 A.** The \$121 million?
 04:37:58PM **23 Q.** Yes.
 04:38:00PM **24 A.** No.
 04:38:00PM **25 Q.** Can you tell us why you didn't?

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04:39:48PM **1** behalf?
 04:39:48PM **2 A.** I can only go by what the report itself said.
 04:39:51PM **3 Q.** Okay. Have you seen instances where the phrase
 04:39:55PM **4** "disbursements" doesn't mean actually disbursed to an individual
 04:39:58PM **5** Indian?
 04:39:58PM **6 A.** Yes.
 04:40:00PM **7 Q.** If we can look at Exhibit 87. And this is a 1918 annual
 04:40:16PM **8** report; is that fair?
 04:40:18PM **9 A.** Yes.
 04:40:18PM **10 Q.** If we could look at page 459. And do you see this is a
 04:40:33PM **11** part of the report dealing with the five civilized tribes, do
 04:40:38PM **12** you see that at the top of the page?
 04:40:39PM **13 A.** I do.
 04:40:39PM **14 Q.** And go ahead and scroll down. And there's a section
 04:40:45PM **15** beginning "disbursements" on that page. Do you see that?
 04:40:47PM **16 A.** I do.
 04:40:47PM **17 Q.** And if we could go to page 460. And do you see toward the
 04:40:57PM **18** bottom of the page highlighted it's talking about disbursements
 04:41:01PM **19** for individual Indian and miscellaneous monies?
 04:41:08PM **20 A.** Yes.
 04:41:09PM **21 Q.** And it has \$1.7 million paid to Indians, and then \$5.5
 04:41:16PM **22** million for the purchase of liberty loan bonds, and \$294,000 for
 04:41:20PM **23** the purchase of war savings stamps. Do you see that?
 04:41:24PM **24 A.** I do.
 04:41:24PM **25 Q.** If we could go on to the next page. And look at the top

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04:41:29PM **1** half of the page. And then it talks about other Indian monies

04:41:33PM **2** paid to Indians, 631,000, again the purchase of liberty loan

04:41:40PM **3** bonds, five thousand, purchase of war savings stamps, \$208,000,

04:41:44PM **4** and they total it up for total disbursements. Do you see that?

04:41:48PM **5** MR. SIEMIETKOWSKI: Your Honor, same objection as

04:41:50PM **6** before. Again, we fail to see the relevance of an examination

04:41:53PM **7** regarding liberty loans and war savings stamps.

04:41:56PM **8** MR. SMITH: Your Honor, these are investments of IIM

04:41:58PM **9** money and they're characterized in the investments as

04:42:02PM **10** disbursements.

04:42:03PM **11** THE COURT: Overruled.

04:42:09PM **12** BY MR. SMITH:

04:42:09PM **13** **Q.** And my question is, they use the term "disbursements" but

04:42:13PM **14** sometimes when they're talking about disbursements they're

04:42:16PM **15** simply talking about money used to invest IIM funds, is that

04:42:20PM **16** fair?

04:42:20PM **17** **A.** But you're also relating to the 1906 act.

04:42:24PM **18** **Q.** Let's talk about this first.

04:42:25PM **19** **A.** Okay.

04:42:26PM **20** **Q.** In this context the disbursements include investments on

04:42:30PM **21** behalf of the Indians?

04:42:32PM **22** **A.** Yes.

04:42:32PM **23** **Q.** Do you know how they use the term "disbursements" under the

04:42:37PM **24** 1906 act, whether they're talking about money actually disbursed

04:42:41PM **25** to an individual Indian or simply disbursed on their behalf?

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04:44:37PM **1** \$29 million?

04:44:37PM **2** **A.** I do.

04:44:37PM **3** **Q.** And then total IIM system funds, \$66 million. Do you see

04:44:44PM **4** that?

04:44:44PM **5** **A.** I do.

04:44:44PM **6** **Q.** Can you tell me how \$41 million plus \$29 million totaled

04:44:50PM **7** \$66 million?

04:44:50PM **8** **A.** We took that figure from two different documents. One was

04:44:55PM **9** the GAO report, I believe, and the other was a congressional

04:45:01PM **10** report, and they are for two different time periods. The GAO

04:45:06PM **11** report, if I remember it correctly, was September, and I could

04:45:11PM **12** be wrong. I could have these reversed, but the report to the

04:45:15PM **13** House of Representatives was from an earlier period. I felt the

04:45:19PM **14** most accurate way to represent that was by doing it this way,

04:45:23PM **15** but the two figures come from two different documents.

04:45:26PM **16** **Q.** Okay. Both documents come from 1968?

04:45:30PM **17** **A.** Correct.

04:45:30PM **18** **Q.** And one document, whatever it is, shows a total IIM system

04:45:36PM **19** funds of \$66 million?

04:45:37PM **20** **A.** That's correct. I believe that's a General Accounting

04:45:40PM **21** Office report.

04:45:40PM **22** **Q.** And then the other two documents show closer to \$71

04:45:47PM **23** million?

04:45:48PM **24** **A.** Yes. I believe that's the House of Representatives report.

04:45:50PM **25** **Q.** So you elected to make sure you put the lower amount under

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04:42:44PM **1** **A.** My understanding of the 1906 act is what it says, and that

04:42:48PM **2** is, the general monies that were not paid into the general

04:42:51PM **3** Treasury of the United States or disbursed from it.

04:42:53PM **4** **Q.** Right, and that could include money simply placed into a

04:42:56PM **5** bank; is that correct?

04:42:58PM **6** **A.** I don't know. I couldn't answer that.

04:43:03PM **7** **Q.** You don't know?

04:43:03PM **8** **A.** I don't know.

04:43:04PM **9** **Q.** Because you've never seen any documentation at all to

04:43:07PM **10** support those disbursement numbers, correct?

04:43:09PM **11** **A.** That's correct.

04:43:10PM **12** **Q.** If we could look at, moving ahead, 1968. I'm sorry. On DX

04:43:40PM **13** 483, the bottom of the page 1968. Can you focus on the bottom

04:44:05PM **14** line? Maybe you can't. Okay. 1968, it begins \$41 million,

04:44:13PM **15** \$41.8 million?

04:44:15PM **16** **A.** Yes.

04:44:16PM **17** THE COURT: What's the heading on that column?

04:44:18PM **18** MR. SMITH: Yes, if we could get that.

04:44:18PM **19** BY MR. SMITH:

04:44:23PM **20** **Q.** \$41.8 million is --

04:44:27PM **21** THE COURT: System funds in banks, isn't it?

04:44:27PM **22** BY MR. SMITH:

04:44:30PM **23** **Q.** Do you see that, Dr. Angel?

04:44:34PM **24** **A.** I do.

04:44:34PM **25** **Q.** And then the next item, Invested in Government Securities,

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04:45:57PM **1** total IIM system funds; is that correct?

04:45:59PM **2** **A.** Well, it comes from different time periods, and I believe

04:46:01PM **3** that the GAO report, and it was correct to the fiscal year,

04:46:07PM **4** which is what we were using, but I also felt that in fairness I

04:46:11PM **5** had to include everything. Again, that's why we have those, the

04:46:16PM **6** three different figures in there.

04:46:18PM **7** **Q.** And now did you tell Dr. Scheuren that actually at one

04:46:21PM **8** point in time during the year the total IIM system funds were

04:46:25PM **9** \$71 million?

04:46:25PM **10** **A.** We did talk about that, yes. Again, I don't know if it was

04:46:30PM **11** specific may I say NORC?

04:46:33PM **12** **Q.** Okay. We've talked a little bit about things you excluded

04:46:38PM **13** from your data. And one was that 1969 report, the one we talked

04:46:44PM **14** about, the \$120 million plus on receipts, correct?

04:46:49PM **15** **A.** Correct.

04:46:49PM **16** **Q.** Okay. Now you've talked this afternoon a little bit about

04:46:55PM **17** some of the reports that came out in 1914, '15, '16, that had

04:47:01PM **18** some statistical data on individual Indian money; is that

04:47:06PM **19** correct?

04:47:06PM **20** **A.** The commissioner's reports.

04:47:07PM **21** **Q.** That's correct?

04:47:08PM **22** **A.** Yes.

04:47:09PM **23** **Q.** If we could look at Exhibit 130. Is that the 1916

04:47:20PM **24** commissioner's report?

04:47:21PM **25** **A.** It is.

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04:47:22PM **1 Q.** And look at page 169. If you focus in up at the top you
 04:47:37PM **2** actually have a chart for sales of Indians allotted lands during
 04:47:41PM **3** fiscal year ended June 30, 1916. Do you see that?
 04:47:45PM **4 A.** I see it.
 04:47:46PM **5 Q.** And for noncompetence and inherited land sales?
 04:47:50PM **6 A.** Yes.
 04:47:50PM **7 Q.** And as totaled by year. You can figure out what was sold
 04:47:53PM **8** and what the proceeds were; is that correct?
 04:47:56PM **9 A.** Yes.
 04:47:56PM **10 Q.** Is this information that you could use in determining IIM
 04:48:00PM **11** funds for that particular year?
 04:48:01PM **12 A.** Not if we don't know what's paid directly to an individual
 04:48:06PM **13** and what is not.
 04:48:07PM **14 Q.** Okay. Noncompetent sales, are you dealing with
 04:48:12PM **15** individuals?
 04:48:12PM **16 A.** We are, yes.
 04:48:13PM **17 Q.** How about page 112. And here we're looking at least
 04:48:30PM **18** agricultural land, and you see there's a section there for
 04:48:35PM **19** allotted?
 04:48:35PM **20 A.** I do.
 04:48:36PM **21 Q.** And shows what the income was?
 04:48:37PM **22 A.** I do.
 04:48:37PM **23 Q.** Does that income reflect individual beneficiary income for
 04:48:40PM **24** that particular year?
 04:48:41PM **25 A.** I don't know. I don't know what's paid directly to an

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04:50:08PM **1 A.** No. And I don't, you know, if I cannot distinguish what's
 04:50:16PM **2** paid directly and what's not paid directly, no, I can't. It's
 04:50:19PM **3** not, that's my point, is that I can simply include revenue and
 04:50:27PM **4** equate it to receipts into the IIM system.
 04:50:35PM **5 Q.** Now tell us where in this report this money is being paid
 04:50:37PM **6** directly rather than into the system.
 04:50:40PM **7 A.** I don't know.
 04:50:40PM **8 Q.** Can you tell me where in this report or any other report it
 04:50:41PM **9** says they're keeping records, Interior is keeping records of
 04:50:45PM **10** direct pay transactions?
 04:50:46PM **11 A.** I know Interior has kept records earlier regarding the
 04:50:55PM **12** number of allotments that receive direct pay, but I can't in
 04:50:58PM **13** this report, no, but these are revenue figures, not receipt
 04:51:04PM **14** figures.
 04:51:06PM **15 Q.** Let's talk a little bit about the history of the
 04:51:18PM **16** disbursements. Isn't it fair it was quite common during the
 04:51:23PM **17** early periods of this trust to withhold money from
 04:51:25PM **18** beneficiaries?
 04:51:26PM **19 A.** Please explain that.
 04:51:28PM **20 Q.** Sure. If you are a minor you didn't get your money,
 04:51:32PM **21** correct?
 04:51:32PM **22 A.** If you're a minor --
 04:51:36PM **23 Q.** The government kept your money in trust?
 04:51:38PM **24 A.** There were provisions for making some disbursements, but,
 04:51:41PM **25** yes, it was kept in trust.

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04:48:46PM **1** allottee and what -- there were direct pay provisions, so I
 04:48:51PM **2** accept the \$2,600,000 figure as revenue for allotted lands, but
 04:48:58PM **3** I can't say how much of that was paid directly and didn't hit
 04:49:03PM **4** the IIM system.
 04:49:04PM **5 Q.** Now, are you telling me that Interior actually kept records
 04:49:07PM **6** of direct pay transactions?
 04:49:09PM **7 A.** What I'm saying is that this is a total figure.
 04:49:15PM **8 Q.** Well, that's my question: Did Interior keep records of
 04:49:19PM **9** direct pay transactions?
 04:49:20PM **10 A.** I do not know.
 04:49:21PM **11 Q.** Let's go to page 117. Same thing for glazing lands, you
 04:49:34PM **12** can figure out what was leased, what was allotted, and what the
 04:49:36PM **13** income was, is that fair?
 04:49:37PM **14 A.** That's correct.
 04:49:38PM **15 Q.** Okay. Go to page 174. And you have the same table for
 04:49:50PM **16** mining; is that correct?
 04:49:51PM **17 A.** Yes.
 04:49:52PM **18 Q.** And it shows what the revenue was, advanced royalties,
 04:49:56PM **19** royalty on production, bonuses; is that correct?
 04:49:58PM **20 A.** That's correct.
 04:49:59PM **21 Q.** If you look down at footnote two at the bottom, it tells
 04:50:02PM **22** you whether it's unallotted or allotted land?
 04:50:04PM **23 A.** Yes.
 04:50:05PM **24 Q.** Now, all of this information you don't include in your
 04:50:08PM **25** chart, do you?

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04:51:44PM **1 Q.** If you were incompetent the money was kept in trust except
 04:51:51PM **2** for certain disbursements; is that correct?
 04:51:52PM **3 A.** Correct.
 04:51:52PM **4 Q.** They didn't hand over the money to people they considered
 04:51:55PM **5** incompetent; is that correct?
 04:51:56PM **6 A.** Correct.
 04:51:57PM **7 Q.** And I mean, is it -- I want to be careful about what I say,
 04:52:02PM **8** but at that time in U.S. history if you were considered white
 04:52:07PM **9** you were competent; if you were Indian, more than fifty percent
 04:52:11PM **10** Indian blood, you were not, is that fair, is that common?
 04:52:13PM **11 A.** Please tell me what period we're talking about.
 04:52:19PM **12 Q.** 1909/1910 that was the standard, wasn't it, you were
 04:52:23PM **13** presumed to be incompetent if you had more than fifty percent
 04:52:28PM **14** Indian blood?
 04:52:29PM **15 A.** Quite often that was the case by 1909.
 04:52:33PM **16 Q.** And it was a different age?
 04:52:35PM **17 A.** Yes.
 04:52:35PM **18 Q.** And so if you had more than fifty percent Indian blood you
 04:52:44PM **19** were treated as incompetent and the government withheld your
 04:52:47PM **20** money and gave you periodic disbursements, correct?
 04:52:50PM **21 A.** That's correct, in 1909.
 04:52:52PM **22 Q.** Do you recall when that standard was eliminated?
 04:52:58PM **23 A.** By about 1917 when Kayto Cells was commissioner of Indian
 04:53:06PM **24** Affairs he issued a declaration of policy. We very much
 04:53:10PM **25** loosened disbursement regulations, did not abolish them but

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04:53:16PM **1** loosened them up. It wasn't until about 1951 when most
 04:53:22PM **2** everything was taken off, most of it. Nonetheless, so saying
 04:53:27PM **3** there were within the IIM regulations various provisions that
 04:53:36PM **4** would allow a superintendent to disburse more money under
 04:53:40PM **5** specific circumstances: the need to buy agricultural supplies;
 04:53:46PM **6** things of that nature.
 04:53:47PM **7** **Q.** So the disbursement of the money wasn't unrestricted until
 04:53:54PM **8** the 1950s?
 04:53:55PM **9** **A.** That's correct.
 04:53:56PM **10** **Q.** Except for Osage?
 04:53:57PM **11** **A.** With Osage I know that quite a bit of money was paid
 04:54:00PM **12** directly. We read that through the historical record.
 04:54:04PM **13** **Q.** Let's look at Exhibit 85. How about 86? I'm sorry.
 04:54:48PM **14** Exhibit 86 appears to be the 1909 annual report for Interior?
 04:54:52PM **15** **A.** Yes, it does.
 04:54:53PM **16** **Q.** If we could look on page 67. If you could focus in on the
 04:55:03PM **17** highlighted language. Just take a look at that.
 04:55:13PM **18** MR. SIEMIETKOWSKI: Objection, your Honor, relevance
 04:55:15PM **19** in terms of what the policy was for payment.
 04:55:17PM **20** THE COURT: Sustained. We've seen this before anyway.
 04:55:21PM **21** Tie this to receipts and disbursements, but let's not dwell on
 04:55:25PM **22** this.
 04:55:27PM **23** BY MR. SMITH:
 04:55:27PM **24** **Q.** Is it fair to say, Dr. Angel, that you would not expect
 04:55:30PM **25** disbursements to equal receipts in those early years when you

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04:58:07PM **1** disbursed from the restricted individual Indian monies the
 04:58:12PM **2** aggregate sum of \$4,869,000, but this is from restricted funds,
 04:58:20PM **3** right, so there could be other individual Indian monies
 04:58:22PM **4** disbursed.
 04:58:25PM **5** BY MR. SMITH:
 04:58:25PM **6** **Q.** Okay. Okay.
 04:58:30PM **7** MR. SMITH: Your Honor, I have another maybe thirty,
 04:58:32PM **8** forty minutes. Do you want to stop for today or do you want me
 04:58:35PM **9** to go forward?
 04:58:36PM **10** THE COURT: I'm tempted to just let you play the whole
 04:58:38PM **11** thing out today, counsel, but we have a criminal matter right
 04:58:42PM **12** behind you that they've been waiting for half an hour for you to
 04:58:45PM **13** finish.
 04:58:48PM **14** MR. SMITH: Okay.
 04:58:49PM **15** THE COURT: In vein. We'll recess until tomorrow
 04:58:52PM **16** morning at 9:30.
17 (Proceedings adjourned at about 4:59 p.m.)
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04:55:34PM **1** had these restrictions on Indian money?
 04:55:38PM **2** **A.** What period again, please, Mr. Smith?
 04:55:40PM **3** **Q.** Beginning 1909 through, say, 1930.
 04:55:49PM **4** **A.** We would not expect to see receipts, equal disbursements,
 04:55:53PM **5** equal receipts.
 04:55:54PM **6** **Q.** Right, for all the money received to be disbursed?
 04:55:56PM **7** **A.** I don't know that that's the case at all.
 04:55:58PM **8** **Q.** Let's look at Exhibit 91. Looking at the 1915 report, do
 04:56:22PM **9** you see that?
 04:56:23PM **10** **A.** I do.
 04:56:24PM **11** **Q.** Pages 376 to 377. Focus in on the section marked
 04:56:38PM **12** Individual Funds. This is the one we looked at before, but does
 04:56:47PM **13** it reflect -- I'm sorry. If you could actually go take it away
 04:57:03PM **14** off the highlighting. Go on to the -- go to the next page.
 04:57:17PM **15** Okay. This is the wrong document. Let's go forward. If we
 04:57:22PM **16** could look at Exhibit 131, please. Does this appear to be an
 04:57:33PM **17** annual report of the commissioner of Indian Affairs for 1929?
 04:57:36PM **18** **A.** It does.
 04:57:37PM **19** **Q.** And if we could look at page 20. And you see there's a
 04:57:43PM **20** section on the five civilized tribes. And there is \$14 million
 04:57:51PM **21** taken in and only \$4.8 million disbursed?
 04:57:59PM **22** MR. SIEMIETKOWSKI: Objection, your Honor; relevance
 04:58:01PM **23** and cumulative.
 04:58:04PM **24** THE COURT: Overruled.
 04:58:05PM **25** THE WITNESS: It says during the fiscal year there was

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1 I N D E X
2
3 WITNESSES:
4
5 EDWARD ANGEL, Ph.D
6 Direct Examination by Mr. Siemietkowski
 Cross-Examination by Mr. Smith
7
8
9
10
11 E X H I B I T S
12 Defendants'
 Exhibit
13 No. Identification Marked Admitted
14 DX483- 826
 DX490
15 All 826
 DX 300s
16 and DX 400s
17
18
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1 CERTIFICATE

2 I, JACQUELINE M. SULLIVAN, Official Court Reporter,
3 certify that the foregoing pages are a correct transcript from
4 the record of proceedings in the above-entitled matter.

5 _____
JACQUELINE M. SULLIVAN

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