

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, : Civil Action 96-1285  
et al. :  
Plaintiffs :  
v. : Washington, D.C.  
: Monday, October 15, 2007  
: DIRK KEMPTHORNE, Secretary :  
of the Interior, et al. :  
Defendants : AFTERNOON SESSION

*TRANSCRIPT OF EVIDENTIARY HEARING  
DAY 3  
BEFORE THE HONORABLE JAMES ROBERTSON  
UNITED STATES DISTRICT JUDGE*

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## P R O C E E D I N G S

1  
2 MR. QUINN: Good afternoon, Your Honor.

3 THE COURT: Good afternoon.

4 MR. QUINN: A couple of housekeeping matters before we  
5 get into continuation of Ms. Herman's direct testimony. As  
6 Your Honor may recall, this morning we had a discussion about  
7 the particular production of the data completeness validation  
8 reports and the fact that some changes had to be made to reports  
9 after their initial production. And we moved into evidence  
10 Defendants' Exhibits 152 to 158.

11 I've conferred with Plaintiffs' counsel and they're  
12 agreeable that we will have another set of the DCV identified by  
13 the same exhibit number but with the suffix A, so that the  
14 adjusted compiled, however you want to describe the complete  
15 completeness report, would be Defendants' Exhibit 152A, 153A,  
16 and so on, Your Honor, so that if you're looking at it you can  
17 compare and you'll know which report you're looking at.

18 THE COURT: All right.

19 MR. QUINN: And if that's agreeable, we would like to  
20 move at this time for admission into evidence of the  
21 reconstituted Defendants' Exhibits 152A through 158A.

22 THE COURT: Now, do you know whether, in the  
23 reconstituted exhibits, any of the page numbers that you dealt  
24 with this morning will be different?

25 MR. QUINN: I don't believe so, Your Honor. I don't

1 believe that any of the page numbers that were a part of the  
2 direct examination this morning that we put up on the screen  
3 have changed.

4 THE COURT: All right. Well, I will task you with the  
5 job of informing me and Plaintiffs' counsel if there are any  
6 different page numbers.

7 MR. QUINN: We'd be happy to do that, Your Honor. We  
8 would want to know as well.

9 THE COURT: All right. Proceed.

10 MR. QUINN: One other last housekeeping -- in  
11 Ms. Herman's direct examination this morning we covered -- in  
12 any event, we had referred to two exhibits of charts that  
13 Ms. Herman identified that she had prepared for and that were  
14 used in the Phase 1.5 trial, Defendants', in that trial, 157 and  
15 158.

16 The witness identified having prepared those. Plaintiffs  
17 have marked them as exhibits in this proceeding as Plaintiff's  
18 Exhibits 869 and 870, and I would like to move those into  
19 evidence at this time.

20 THE COURT: As Plaintiffs' exhibit numbers?

21 MR. QUINN: Yes, Your Honor. If there's an objection  
22 to that, we'll renumber.

23 THE COURT: 859 and 870?

24 MR. QUINN: 869 and 870, Your Honor.

25 THE COURT: Plaintiffs' exhibit numbers moved in by

1 the government are received.

2 (Plaintiff Exhibit Nos. 869,  
3 870 received into evidence.)

4 MR. QUINN: Thank you, Your Honor.

5 (The witness resumed the stand.)

6 DIRECT EXAMINATION (Continued)

7 BY MR. QUINN:

8 Q. Ms. Herman, good afternoon.

9 A. Hello.

10 Q. We were just beginning to discuss reconciliation work that  
11 you had done, work on the litigation support accounting, and if  
12 I could, we began that discussion with a little bit of general  
13 overview of the reconciliation -- can you put up AR-566, please.

14 I think we've looked at this document earlier today. This  
15 is part 2 of the historical accounting project plan document  
16 identified for indexing as AR-566. If we could look over  
17 internal page there at 9/10, I think it's actually on page 10,  
18 and zoom in on that. Have you seen this before, Ms. Herman?

19 A. Yes, I have.

20 Q. On page 10 of the part 2 of the plan, it describes the  
21 account reconciliation tool. Is that the tool that you  
22 described that you've used in the course of doing  
23 reconciliations?

24 A. Yes, it is.

25 Q. The plan rationale document here describes the ART that was

1 developed in 2002 as a closed network computer system for use by  
2 different accounting firms performing the historical accounting  
3 reconciliation. Did you participate in the design of the ART?

4 A. Yes, we did.

5 Q. What did you -- what role did you play in its development?

6 A. Our firm took the lead in designing the ART, and another  
7 firm actually did the programming behind the tool.

8 Q. When you say designing the ART and having another firm do  
9 the programming, what specifically were you doing in terms of  
10 design for the ART?

11 A. We designed a mock version of the database, and set up the  
12 different screens, how transactions would flow through the tool  
13 in the reconciliation process, things of that nature.

14 Q. So you helped set out the way it would operate -- the way  
15 it would operate for the user, for the end user?

16 A. Yes.

17 Q. Going back to the plan document that's on the screen, the  
18 next sentence says that "ART serves several purposes: to ensure  
19 consistent accounting by the different firms, as a system to  
20 store, search for, retrieve, and link needed supporting document  
21 images to specific transactions, as indicated by the ASM.

22 Another reason, to provide -- purpose, to provide a replicable  
23 accounting process to facilitate quality control review by an  
24 independent certified public accounting firm and to archive  
25 reconciliation results."

1           With respect to the first purpose there, ensuring  
2 consistent accounting, how does ART achieve that purpose?

3       A.    The ART really more achieved how you document your work  
4 product, not necessarily how you query transactions, how you  
5 link supporting documents to those transactions, how you assign  
6 an accounting code to those transactions.  It doesn't perform  
7 the accounting for you; it's just a tool you use in the process.

8       Q.    But by having everyone use the same tool, that helps  
9 consistency?

10      A.    Yes, because each one of the firms has to link documents in  
11 the same way, assign the same accounting codes and so on.

12      Q.    Okay.  The other purpose about, concerning storing,  
13 searching, retrieving, and linking documents, how does ART do  
14 that?

15      A.    The images are stored in the same place that the  
16 transactions are stored, and as you go through the  
17 reconciliation process, you actually link the supporting  
18 documents to the transaction that you're reconciling.

19      Q.    So do I understand you correctly that ART has the financial  
20 information as well as the coded images?

21      A.    Yes, it does.

22      Q.    And those coded images are from the documents that have  
23 been retrieved for purposes of doing the reconciliation or other  
24 accounting work?

25      A.    Yes, it does.

1 Q. With respect to the other purpose mentioned in that part of  
2 the plan, the to provide a replicable accounting process, how do  
3 you understand that ART contributes to that?

4 A. There's a standard process as you go through reconciling a  
5 transaction, from the initial stages, through quality control  
6 within the firm, to quality control by Grant Thornton.

7 Q. And we'll come back to that a little bit further on here.  
8 The other purpose, to facilitate quality control, I guess you've  
9 addressed that, right, you've jumped ahead of me. How about  
10 archiving reconciliation results?

11 A. All of the results of the reconciliation, the codes that  
12 you assign, the documents that you link, and the work papers  
13 that you create are all stored within the ART at the end of the  
14 day.

15 Q. So if somebody wanted to go back to review a  
16 reconciliation, that information would be there?

17 A. Yes, it is.

18 Q. Back up on the screen, AR document 8, the accounting  
19 standards manual, which we talked about a little bit before  
20 lunch. Inside the report, Roman Numeral III, lower case Roman  
21 Numeral ii, reconciliation procedures, and then back out to the  
22 table. Ms. Herman, have you seen this part of the ASM before?

23 A. Yes, I have.

24 Q. It lays out reconciliation process overview and it has a  
25 reference to step 1, document collection. Did you participate



1 in the document collection?

2 A. Yes, we did.

3 Q. Describe what aspects -- what steps are involved -- what  
4 work is involved in that step.

5 A. To identify the documents that you need in support of the  
6 accounting, you actually have to search the financial and realty  
7 records for those documents.

8 Q. So you search the database for information in the records?

9 A. This step is actually talking about collecting the physical  
10 documents themselves.

11 Q. Going out and actually retrieving documents relating to the  
12 transaction in some way.

13 A. Yes.

14 Q. And I think you described, testified earlier today that in  
15 terms of doing reconciliation, you have assistance from  
16 contractors that work in Lenexa?

17 A. Yes. Prior to the movement of the documents to Lenexa,  
18 though, we did some of that searching ourselves.

19 Q. So you're familiar with the undertaking.

20 A. Yes.

21 Q. Step 2, the reconciliation of transactions, what's involved  
22 in that step?

23 A. This is the step where you identify all of the transactions  
24 that are going to become part of your reconciliation group and  
25 all of the documents that support those transactions.

1 Q. Okay. Describe that process of identifying those that will  
2 be in your reconciliation group. What's involved in that?

3 A. You start with the transaction that's been assigned to you  
4 by NORC, which is the sample transaction, and you have to trace  
5 that transaction back to the first posting in the system. In  
6 some instances transactions post directly to an individual  
7 account, but in other instances it posts to a special deposit  
8 account.

9 Q. Okay. And then after you've completed that step on the  
10 ASM, it identifies step 3, quality control and reporting.  
11 What's involved in that step of the process?

12 A. There's quality control that goes on within the firm prior  
13 to submitting the transaction, but once the transaction's  
14 submitted, Grant Thornton does a sample across all firms to  
15 review those transactions.

16 Q. Let's break this down to after a reconciliation is done,  
17 has been completed by someone in your firm, who does an internal  
18 quality control check?

19 A. There's quality control checks throughout the course of the  
20 process. Typically, a new consultant on the team would  
21 reconcile the transaction, a more senior consultant would  
22 quality control it the first time, a manager would review it,  
23 and a partner would sign off on it.

24 Q. Now, in the process of conducting the intermediate check  
25 you mentioned and the review by a higher person at FTI, how are

1 those tasks carried out?

2 A. There are different phases within the reconciliation tool,  
3 as you'll see, so you move from the first phase, which is  
4 referred to as a session, to the second phase, which is referred  
5 to as a group. And transactions are QC'd in that second phase.

6 Q. I guess what I'm getting at, are all these people going  
7 back and using the ART, the account reconciliation tool?

8 A. Yes, they are.

9 Q. That's how it's accomplished?

10 A. Yes, it is.

11 Q. Using this software?

12 A. Yes.

13 Q. Now, you are prepared to run through some examples in a  
14 live setting of how the reconciliation tool works, right?

15 A. Yes, I am.

16 Q. And you brought with you today a laptop?

17 A. Yes.

18 Q. Okay. Describe for the Court what is on that laptop.

19 A. It's a stand-alone version of the ART, with a subset of the  
20 transactions and images stored within the tool.

21 Q. Okay. So you have in there a subset of the reconciliation  
22 information that you would normally access from your offices  
23 using ART?

24 A. Yes.

25 Q. And you have on there the information relating to the

1 specific examples we're going to show the Court?

2 A. Yes.

3 Q. Is ART ordinarily installed on a laptop?

4 A. No, it's not.

5 Q. Is this an ordinary, what we'd all consider an ordinary  
6 installation of operating system on this software?

7 A. No. Actually, a server version of the software's installed  
8 on this laptop to run the program.

9 Q. And did you try it out before coming to court today?

10 A. I did.

11 Q. And in your testing of it and use of the laptop, does it  
12 fairly represent the kind of accounting -- reconciliation steps  
13 you used when using ART in your office?

14 A. Yes, it does.

15 MR. QUINN: Your Honor, if it's all right with you,  
16 we'd like to go through the demonstration and show Your Honor  
17 some examples of using actual information from reconciled  
18 accounts of how this accounting process takes place.

19 THE COURT: Fine.

20 MR. QUINN: Okay.

21 BY MR. QUINN:

22 Q. All right. Do your sign-in and begin with...

23 A. This is the icon for the ART. I've already logged into the  
24 application and had to provide my password.

25 Q. We're now at the ART opening page?

1 A. Yes, we are.

2 Q. This is the main menu. Describe what we're seeing here.

3 A. These choices are available to me based on the firm that  
4 I'm associated with and my level within the firm. And so the  
5 two options that I have are reconciliation tool and  
6 administration.

7 Q. What's administration for?

8 A. This is where I could establish new accounts within our  
9 firm. Disable an account for instance.

10 Q. Accounts for whom?

11 A. People on our staff.

12 Q. People doing the reconciliation work?

13 A. Exactly.

14 Q. Okay. We're at reconciliation menu page. Describe what  
15 we're seeing here.

16 A. The first option is reconcile transactions, and this refers  
17 to IIM transactions. The second, tribal transactions. The  
18 third, as I mentioned earlier, are groups. So this would be a  
19 completed reconciliation awaiting internal firm QC. The same  
20 option for the tribal groups.

21 The next option is a tool available to firms to assign work  
22 to junior members. The third major option is a batch. Once  
23 you've completed your internal firm QC you send forward the  
24 transaction to OHTA and Grant Thornton using the batch function.

25 Q. And Grant Thornton does the independent quality control

1 check?

2 A. Yes, they do.

3 Q. All right. What would you do next then?

4 A. Begin a reconciliation.

5 Q. As we get into this, you're signing in and you have to go  
6 to a particular transaction, correct?

7 A. Yes. So you have three options at this point. If somebody  
8 had sent work to me, it would appear in the queued sessions. If  
9 I wanted to start something brand-new I could hit the new  
10 session button. Or if I had already begun a reconciliation, it  
11 would show up in my own session.

12 Q. What kind of example's our first example?

13 A. It's a range distribution.

14 Q. Okay. Range distribution. Okay. And we've put up the  
15 reconciliation tool page. There's one window that has numbers  
16 in it at the top. How is this -- why don't you describe first  
17 how this is set up, how this page is set up as a work space?

18 A. Unfortunately, the fields on the left are cut off slightly  
19 on the monitor, but the very top section where you see the  
20 record already in the screen is where you query for transactions  
21 for your reconciliation group. Once you've decided that this  
22 transaction's going to be a component of your reconciliation,  
23 you move it down into the middle section of your screen,  
24 selected transactions. So both of these sections are IRMS and  
25 TFAS data, and you use the box to the left to query for that

1 information.

2 Q. Okay. So what is showing up now on the screen?

3 A. This is one of the transactions that was assigned to our  
4 firm for reconciliation.

5 Q. Okay. And now, is this -- do you know whether this is a  
6 sampled transaction or -- well, I guess it's not high dollar.

7 How much is it in -- this transaction is what? 58 cents?

8 A. It's a 58-cent credit.

9 Q. All right. And the description, is that similar to what we  
10 saw you were describing, the data completeness validation  
11 testimony about JV codes and so forth?

12 A. Yes, it is.

13 Q. So you can tell by that what kind of transaction that is?

14 A. There's several different things that tell you what type of  
15 transaction you're looking at. One, the "type" field has a 13,  
16 which tells me this is a journal voucher. The "code" field, a  
17 150C, stands for a range. The next field, the "description"  
18 field, JV again for journal voucher, 12 for December, A15 is the  
19 agency, and then, it's a little bit hard to see here, but 015  
20 would be the 15th journal voucher. The L0024 tells me that this  
21 is range unit 24, and the T followed by the 0807 tells me this  
22 is tract 807.

23 Q. How do people who are beginning work on the account  
24 reconciliation learn to decipher this information? Is that part  
25 of your training?

1 A. It's part of the training our firm provides to new members  
2 of the team.

3 Q. And if I didn't know what code 150C meant, looking at it  
4 for the first time, is there a way in ART to figure that out?

5 A. There's several ways. One, there's -- this field reads  
6 "rev code" in its entirety. You can hit the pull-down arrow and  
7 you can look at all of the different codes and what they mean.

8 Q. So it lists the codes for you on the side.

9 A. Yes.

10 Q. What would be the next thing you'd do after getting  
11 assigned this particular 58-cent transaction?

12 A. As I know this isn't -- because this is a transfer, this  
13 isn't the first time this money is credited to the system, so I  
14 would need to identify where the money was posted initially.

15 Q. Okay. So you're going to go back to try to figure out  
16 where this 58 cents came from?

17 A. Yes, I am. So I would use several different things to  
18 facilitate that. One, this field -- the second field in your  
19 table is referred to as "source." This is the number that's  
20 assigned through our transaction mapping process. So this  
21 number will pull back all of the related transactions for this  
22 journal voucher.

23 So I'm going to copy that and paste that into the source  
24 field in the query window. And I also know that I am looking  
25 for a range debit, so in this instance I'm going to pick a 150D



1 transaction.

2 Q. Why D?

3 A. I'm sorry?

4 Q. The code I thought was 150C.

5 A. C for credit.

6 Q. I gotcha. Okay.

7 A. So I'm going to look for a 150D transaction, the debit  
8 transaction.

9 Q. Okay.

10 A. And I know that the transaction's going to have a similar  
11 reference to the credit posting, so I'm going to use that in my  
12 query as well. The percent sign that I just typed is a wild  
13 card character within the tool.

14 Q. So if there are other suffix information added in other  
15 transactions, you'd still find it.

16 A. That's correct. So because I know that this one  
17 transaction that we started with is going to be part of our  
18 reconciliation group, I'm going to use the M button to move it  
19 down to the next section before I run my query.

20 Q. Okay.

21 A. So once I hit execute, this is going to query against the  
22 IRMS and TFAS transactions, to bring back any transactions that  
23 meet this criteria. And so in this particular instance, as you  
24 can see, I received one, two -- six transactions back that  
25 fulfill that criteria.

1           So now I need to evaluate which of these is the correct  
2 transaction. And you can see that it starts with the same  
3 reference, the JV 12 A15 015, and the balance of the reference,  
4 you can see the 0024 that we saw in the credit transaction, and  
5 then the balance of this field, 9702, tells me that this permit  
6 ranged from 1997 to 2002.

7 Q. Okay.

8 A. So now I know that this is the appropriate transaction that  
9 I want. So I'm just going to move that one particular  
10 transaction down.

11 Q. So you're pulling it into your basket down there at the  
12 bottom?

13 A. Exactly. And I'm going to hit the clear button to remove  
14 the rest of these, since they're not a part of my group.

15 Q. How do you know they're not part of your group? I guess  
16 that's what I'm trying to figure out.

17 A. Because this one transaction debit is the one that was  
18 associated with range unit 24.

19 Q. I see. And the others show other numbers?

20 A. Yes. You can see this one says 26, 17, 34. These would  
21 each be different range units that were being distributed at the  
22 same time.

23 Q. Okay.

24 A. So I'm going to clear those. So I now know that I'm  
25 looking for a credit in approximately December of 1997 in the

1 special deposit account that had the debit in it.

2 Q. Okay.

3 A. And I'm going to start by looking for a credit in the same  
4 amount as the debit. So all I've entered here is the account  
5 number and the dollar amount.

6 Q. Okay. So you started out with a 58-cent transaction, and  
7 then by going through querying the database you're able to  
8 identify a \$6,234 transaction that had similar matching  
9 information, right? And now you're trying to figure out where  
10 that \$6,000 number's tracing to?

11 A. Exactly. And so when I run that next query, I see that  
12 there's a collection in that dollar amount in 1997 and 1998, and  
13 because I'm looking at the 1997 distribution, I'm going to  
14 select that transaction.

15 Q. Okay. So you've matched the date.

16 A. Exactly. So the next step at this point would be to  
17 identify the supporting documents for this transaction.

18 Q. So you found this series of transactions, and how do you  
19 find the supporting documentation?

20 A. Based on the transaction description, I know which permit  
21 I'm looking for, I know the journal voucher number that I'm  
22 looking for, and I also know the bill for collection number that  
23 I'm looking for.

24 Q. Okay.

25 A. And the protocol when coding these was to associate the

1 images with the record ID of the sample transaction, so I'm  
2 going to use that to query against the document database.

3 Q. So when Ecompex is coding the information, they're adding  
4 some -- what did you call it number, transaction number?

5 A. The record ID.

6 Q. Record ID, sorry.

7 A. So I'm going to come down here into the document database  
8 query section.

9 Q. So the lower left side is for searching the document  
10 database?

11 A. Yes, it is. And so I can see that there have been three  
12 documents that were identified in support of this transaction.  
13 The first is a permit filed, the second is a bill for  
14 collection, and the third is a journal voucher.

15 Q. Who would have put that information into the database?

16 A. This would have been coded by Ecompex.

17 At this point, I'd also start the working paper that we're  
18 going to associate with this group, and typically we would do  
19 those in Excel and attach the pdf to the final work product.

20 Q. This is your worksheet?

21 A. Yes, it is. So the first page of the worksheet just gives  
22 you summary information for the reconciliation. In this case,  
23 because it's a range unit, the contract number, the range unit  
24 number, the tract number, and once we start reviewing the  
25 balance of the documentation, you can fill in the rest of these

1 fields.

2 Q. Okay. This information varies depending on the type of  
3 income or transaction?

4 A. Exactly. And then the document ID column would tell you  
5 which specific document and page we found that information on.  
6 And so if we go back to the ART again, you can see that the  
7 first document that was located has the same document ID that  
8 you just saw in the workbook. And that's the permit file. So  
9 I'm going to go ahead and view this document by hitting the V  
10 button.

11 Q. And the V button, that first document brings up what?

12 A. This is bringing up a permit file. It's difficult to see,  
13 but this is a 65-page document. And you can see on the top that  
14 this is range unit 24, which is what we were looking for, and  
15 we'd noticed that our permit ran from 1997 through 2002.

16 Q. So the dates match.

17 A. Exactly. And then you can see that the permit specifies  
18 that \$6,234 should be collected each year for the term of the  
19 permit. And down in the bottom section it specifies again the  
20 permit amount, but then also an administrative fee charged by  
21 the agency.

22 Q. Who pays that administrative fee?

23 A. The permittee. And so I would enter all of that  
24 information into our spreadsheet. And the next step is going to  
25 be to review the financial documents that support that

1 transaction. So the first would be the bill for collection, and  
2 this bill matches the name of the permittee that we just saw on  
3 the grazing permit.

4 Q. Mike and Pat Durkin?

5 A. Exactly. And you can see this CV number matches the  
6 transaction in our reconciliation group.

7 Q. Can you just read that into the record. What is it, CV?

8 A. CV number A15-98-037.

9 Q. Thank you.

10 A. And the description of the moneys collected, it says 1998  
11 grazing and preparation fees for range unit 24.

12 Q. And that was the range unit in that reference code.

13 A. Exactly. And you can see in the middle section of the  
14 bill, it breaks down the collection into the permit amount, the  
15 6,234, and the fee amount, \$117.34.

16 So the next document that we're going to evaluate is the  
17 journal voucher that transfers the money from the special  
18 deposit account to the individual accounts. And again, you can  
19 see at the top of the journal voucher it has a number as well,  
20 A15-98-015.

21 Q. Okay.

22 A. Which matches the transaction that we had looked at. And  
23 if you'll recall when we did our first query for the special  
24 deposit accounts, it listed several different range units being  
25 distributed at the same time, and you can see on this journal

1 voucher it says range unit 24, 26, 17, 34, 14, and 23.

2 Q. What does that mean? Does it mean there are all these --  
3 different people have contracted for all these land areas  
4 together?

5 A. Yes.

6 Q. Is it together or is it something that's just  
7 administratively handled as one piece?

8 A. No, it's not necessarily the same permittee; it's just  
9 being distributed at the same time. And so if you'll recall,  
10 our permittee was Pat Durkin. So there are actually several  
11 different distributions being made at this time.

12 If you go further back into the document -- and again not  
13 every page of this journal voucher was copied because it's very  
14 long -- you can see that somebody's put an arrow here. That was  
15 added by the search team.

16 Q. To help you find the information there?

17 A. On the page, exactly.

18 Q. That's better.

19 A. So it's a little bit askew, but you can see here it says  
20 R. Thompson, and the transaction we're reconciling is for Rex  
21 Thompson, and you can see the 58 cents.

22 Q. Okay.

23 A. So now the next question that we have to answer is is that  
24 the correct amount of money for that account holder to have  
25 received.

1 Q. So the grazing payment was this \$22,000 amount?

2 A. 22,000 was being distributed, but for our particular range  
3 unit it was the 6,234, I believe.

4 So the next question we have to answer because, as we  
5 discussed earlier, that typically a range unit has more than one  
6 tract that's a part of the range unit, is how much of the range  
7 unit in essence was owned by the tract that we're evaluating.  
8 And in order to do that, we look back to the permit file.  
9 Within the range permit file, there's a listing that shows you  
10 the different tracts that are part of this range unit for this  
11 particular period. And --

12 Q. There's 24.

13 A. That's our range unit, 24. And if you scroll across the  
14 page you can see that this particular tract is to receive  
15 \$802.50 of that total collection.

16 Q. Okay.

17 A. And because our individual sampled has an ownership  
18 interest in that tract, that's the question that we need to  
19 evaluate. So you can see here the total payment is the 6,234,  
20 but the tract itself is only going to receive \$802.50 of that  
21 payment.

22 Q. And that's because the lessee is renting more space than  
23 these people own?

24 A. There are multiple tracts in that range unit, so if you  
25 were to add up on that page all of the different tracts, you



1 would get to the 6,234.

2 So the next thing we do is compute what we refer to as a  
3 tract payment ratio, how much of the total is due to this tract.  
4 On the next page you have how much of this particular tract does  
5 the account holder, Rex Thompson, own. And you can see here  
6 that this account holder owns 84 over 117,600 of this particular  
7 tract.

8 Q. And how do you know that? What is that based on, that  
9 information?

10 A. The BIA provided OHTA an excerpt from LRIS system, and that  
11 was provided to us, and we received information on each tract  
12 that this particular account holder owned, and this is a report  
13 of that data provided by BIA. And the tract that we're  
14 interested in evaluating is tract 807, and this is the date that  
15 this particular account holder inherited an interest in this  
16 tract, and it was inherited through probate. And it shows the  
17 fraction that this account holder owns of the total tract.

18 Q. So it's 84/117,600. That fraction of 160 acres?

19 A. Yes. And so on the subsequent tab you have all of the  
20 transactions that we had included in this reconciliation group,  
21 along with the document ID and the page reference for the  
22 financial documents that we reviewed. And then on the final  
23 tab, it shows you how much did we expect should have been  
24 collected, which is the 6,234 from the permit, how much was  
25 recorded on the bill, 6,234 again, how much was actually posted

1 in this case to IRMS, 6,234, and then the question is how much  
2 should our account holder have received of that total  
3 collection.

4 Down on the bottom, this ownership percentage is carried  
5 forward from the page that we just looked at.

6 Q. That's -- I'm trying to keep these percentages right.

7 That's the percentage of what he owns --

8 A. Of the tract. The next is how much does the tract share in  
9 the total collection for the range unit. And so now you need to  
10 multiply those two numbers times the total expected payment,  
11 which tells you that this account holder should have received 57  
12 cents.

13 Q. Okay.

14 A. And as you continue across the page, you'll see that the  
15 account holder actually received 58 cents. In this instance,  
16 and it's similar when you're looking at many large distributions  
17 across hundreds if not thousands of owners, the pennies don't  
18 necessarily allocate exactly perfectly. And so in this  
19 particular instance, we've considered that one penny difference  
20 a rounding adjustment.

21 Q. So you consider the fact that he received 58 cents instead  
22 of 57 as a rounding?

23 A. Yes, not a mistake.

24 Q. What if it was two cents?

25 A. That we would have concluded was a mistake.

1 Q. You would have reported that as an error?

2 A. Yes, we would.

3 Q. So you get to this point, and you checked out all the  
4 paperwork and followed the transaction back to its beginning.  
5 What happens next?

6 A. We have to finish documenting within the tool all of the  
7 paperwork that we've looked at and link all of the supporting  
8 documents. So in this case we would have, if you checked the  
9 box in the center of the screen, it selects all of the  
10 transactions for you.

11 So I'm going to go ahead and link these documents to the  
12 transactions by using the link button. And once I've done that,  
13 if you scroll to the right, you can see that this field that  
14 says "doc" has been populated with a number, and that number  
15 shows you the documents that I've actually linked to this  
16 particular transaction, and this would stay with this group as  
17 it moves forward into quality control.

18 Q. Okay. So the next person to review this would be able to  
19 pick up the work at this point?

20 A. Exactly.

21 Q. And see what documents have been connected and considered  
22 in making the account reconciliation?

23 A. Yes. The next thing that we would do is associate the --  
24 on the sample transaction we would update the contract number,  
25 just to store that within the ART.

1 Q. Why would you do that?

2 A. So that you could have a record of which particular leases  
3 you had reviewed and what time frames you had reviewed under  
4 those leases. So you put the permit number and the period for  
5 that permit.

6 The next thing we're going to do is assign an accounting  
7 code to the transaction. And the accounting code doesn't assess  
8 whether or not the transaction's correct or incorrect, but  
9 rather the level of supporting document you had when you were  
10 doing your reconciliation. And so in this instance, since I had  
11 all of the documents that were specified under the manual, I  
12 would assign this an accounting code of 1.

13 Q. And that reflects that you found the supporting  
14 documentation.

15 A. Exactly.

16 Q. I don't want to interrupt your presentation, because I did  
17 have a slide from the accounting standards manual. The  
18 accounting standards manual, does that contain a listing of the  
19 account codes that you just referenced?

20 A. Yes, it does.

21 Q. And explained the conditions under which you would apply  
22 one account code or the other?

23 A. Yes, it does.

24 Q. If you didn't have exactly the supporting documents you  
25 wanted, what code number would you be putting in?

1 A. It depends on the level of documentation that was found.  
2 If you still felt that you could reconcile the transaction,  
3 there's an accounting code of 2, which indicates alternative  
4 procedures were used. If you felt that you had some of the  
5 documents but not enough to complete your reconciliation, you  
6 would assign it an accounting code of 3. And if you felt you  
7 didn't have enough documents, period, you would assign an  
8 accounting code of 4.

9 So the final thing we need to update before we finish  
10 evaluating this group is the variance amount for each one of  
11 these transactions. Do you want me to do that now?

12 Q. Yeah. Finish that up.

13 A. So the first transaction that we evaluated, the collection,  
14 did match what we were expecting, and it was posted. And again,  
15 this would be in agreement with the work papers, so somebody  
16 could go back and review this as well.

17 Q. So basically if you had a variance of some sort you'd be  
18 indicating that there someone could follow up on that at a later  
19 time?

20 A. Exactly. And we'd also have to include an explanation as  
21 to why we thought the variance had occurred.

22 And so at this point, we've populated all of the fields  
23 within the tool, and we'd hit the "view results" button, and  
24 that just summarizes all of the information that you were  
25 seeing. And you hit the button in the center, which says

1 "assigned group," which means that this transaction is now ready  
2 for internal quality control.

3 Q. So pressing that would send it on?

4 A. Exactly. So if you can see now, that choice 6 is no longer  
5 available to me.

6 Q. Because it's been pushed along the line to the next step in  
7 review?

8 A. Exactly.

9 Q. When -- are you finished with this part of the example?

10 A. Yes, I am.

11 Q. If we could go back to the defense table on the video  
12 screen. Let me ask you about, when the reconciliation's  
13 complete, this individual had this 58-cent transaction that was  
14 reconciled in your demonstration, and was that an actual  
15 transaction that was part of the LSA reconciliation?

16 A. Yes, it was.

17 Q. With respect to that individual's historical statement of  
18 account and all the information compiled regarding their  
19 transactions in their account, what happens after the  
20 reconciliation?

21 A. This information, as I mentioned, gets forwarded on to  
22 Grant Thornton and to OHTA, and they'll review and sign off on  
23 it, and then the results of that reconciliation would be  
24 included in the historical statement and the statement of known  
25 differences.

1 Q. And I think -- did you participate in the preparation of  
2 the design for the historical statements of account?

3 A. I did.

4 Q. Did you bring some examples of those?

5 A. I did.

6 Q. If we could go back to Defendants' video console. I put up  
7 a slide. Can you see it okay?

8 A. Yes, I can.

9 Q. Defendants' Exhibit 115 marked for identification, and if  
10 we could zoom in on the top a little bit. Could you identify  
11 this document for the record, please?

12 A. This is a draft historical statement of account.

13 Q. Okay. And the name on there, No. 2 on the right-hand side,  
14 that refers to the same person that you just did the  
15 demonstration?

16 A. Yes, it does.

17 Q. Could you describe what information is to be conveyed using  
18 this historical statement of account?

19 A. This is a listing of all of the transactions during the  
20 electronic ledger era for this particular account. If you start  
21 at the top right-hand corner, if this account number had changed  
22 over time, all of the account numbers would be listed there. In  
23 this instance there's only one. And it has a letter and a name  
24 after the account number, which indicates the area that this  
25 account started in, the Great Plains region, or the Aberdeen

1 area.

2 The name indicates the last name associated with this  
3 account. The NAAN appears below that, which is the number that  
4 was assigned by our firm. And just below that, in the center of  
5 the page, is the summary of the activity in this account.

6 Q. Could we switch to the next slide after this? I think  
7 that -- marked for identification Defendants' Exhibit 109, and  
8 it's page -- Defendants' Exhibit 109. Ask the witness if you  
9 could identify what this document is.

10 A. This is an explanation of the fields presented on the  
11 historical statement.

12 Q. Okay. Do you know where this table came from?

13 A. Yes. I participated in creating it.

14 Q. And what's the purpose for this table?

15 A. This is going to be the beginning of an explanation  
16 brochure that would be created as a component of the HSA  
17 package.

18 Q. This would be included with the statement?

19 A. Yes, it would.

20 Q. Or the anticipation is you would include an explanation of  
21 this type with the statement?

22 A. Yes. It most likely wouldn't be in this format, but it  
23 would have this type of information included.

24 Q. And for the purposes of the example we just looked at of  
25 the HSA, they had little numbers on it. Are those the



1 associated explanations going down the side on this table?

2 A. Yes, they are.

3 Q. If we could go back to the HSA. So the first column there,  
4 if you could describe with respect to the HSA what we're seeing  
5 in the columns here that would be reported on this exemplar.

6 Transaction number, in what's identified as No. 5?

7 A. This is the record ID that we assign to each transaction  
8 within the data set.

9 Q. This is a unique number for each transaction?

10 A. Exactly.

11 Q. And 6 I think is fairly self-explanatory. This is whenever  
12 it was recorded?

13 A. In the system, yes.

14 Q. In the system. Type of transaction, where is that  
15 information coming from?

16 A. As we saw on our example, you saw the 150C and the 150D.  
17 This is the textual representation of those codes.

18 Q. If we scroll a little bit to the right. What is the system  
19 reference identified as No. 8 in the middle of the table?

20 A. This is the transaction reference that was posted either in  
21 IRMS or TFAS.

22 Q. Okay. Move over to the next column, No. 9, disbursement  
23 reference. What does that refer to?

24 A. Typically, this is a check number, but in some instances it  
25 has other values in that field.

1 Q. And column 10, the transaction amount?

2 A. The first line item is -- the 60 cents is a computed  
3 beginning balance as we looked at earlier today, and the balance  
4 of the items in that list are the transaction dollar amounts  
5 posted to this account.

6 Q. And the last column, the account balance?

7 A. This is a running balance based on the particular  
8 transaction as posted.

9 Q. Okay. If we could scroll through to the last page of the  
10 exhibit here. So the reconciled transaction, the 58 cents that  
11 you investigated, that would be reported in here, that would be  
12 one of the items listed?

13 A. That would be one of the items listed in the statement.

14 Q. Now, page 7 of Defendants' Exhibit 115 has another table.  
15 Ms. Herman, can you identify this for the Court, the last page  
16 of this exhibit?

17 A. This is the draft statement of known differences.

18 Q. A statement of known differences? What's the purpose of a  
19 known differences report?

20 A. To the extent that either through our data completeness  
21 validation work, the litigation support accounting work, the  
22 interest recalculation work, any of the test work that OHTA is  
23 performing, if any differences had been identified, they would  
24 be reported on this statement.

25 Q. If there was a difference that related to this account?

1 A. Exactly.

2 Q. Okay. So when we had the example earlier today, data  
3 completeness validation example, where you had potential  
4 mispostings, had those remained mispostings after finishing your  
5 investigation, and related to this account, this is where it  
6 would be reported?

7 A. Yes, it would.

8 Q. Okay. Now, how would a beneficiary who got a statement  
9 with a statement of differences understand what this last table  
10 is conveying?

11 A. There's an explanation key that also has been drafted for  
12 this statement, and then, as you can see in the final column,  
13 there's a note as to how the difference was determined and what  
14 it's based on.

15 Q. So in this exemplar, there is an interest difference,  
16 interest variance?

17 A. Yes, there is.

18 Q. And then there's the explanation on the right-hand side you  
19 just noted. Could we go to slide -- Defendants' Exhibit 120 for  
20 identification. It's a one-page exhibit. Can you identify what  
21 that is?

22 A. Similar to the HSA, this is an explanation of the fields on  
23 the statement of known differences.

24 Q. This is a draft of the kind of explanation that OHTA would  
25 expect to give?

1 A. Yes, it is.

2 Q. Do the numbers in the table on the left-hand side  
3 correspond to the numbers in the statement of known differences  
4 in the exemplar?

5 A. Yes, they do.

6 Q. If you could go back to the witness stand on the video, I'd  
7 like to have you run through a different type of reconciliation  
8 example a little bit more. And now we've gone through the  
9 entire process, if you could just kind of show how the different  
10 types of transactions are reconciled, demonstrate that for the  
11 Court.

12 Okay. So we're back to the account reconciliation tool.  
13 And I think this example is a disbursement?

14 A. Yes, it is. I've already moved this transaction down to  
15 the middle section and associated the documents, to make it a  
16 little bit faster for everyone.

17 Q. You would have essentially gone through the same detailed  
18 steps in doing the reconciliation, starting at the top and  
19 finding all the associated documents; is that right?

20 A. Yes, I would.

21 Q. So we're here kind of to the meat of the reconciliation,  
22 correct?

23 A. Exactly. So this is for an original allottee account, as  
24 indicated by the A, and it's a disbursement transaction. It's a  
25 type 22, which is a manual disbursement, from 1994. And the

1 description indicates this is some kind of a land sale  
2 transaction, and it's a disbursement of \$618,700.

3 Q. Does that mean that this would have been one of the  
4 high-dollar-value transactions?

5 A. Yes, it was.

6 Q. How do you reconcile a disbursement of this sort?

7 A. The first step is to determine to whom the check was  
8 issued.

9 Q. Okay. How do you do that?

10 A. We would start by looking to a check register, and that  
11 document's been attached here.

12 Q. When this process started, I take it you didn't have all  
13 these documents right there ready to click on and have them --

14 A. No.

15 Q. You had to request them?

16 A. We had to request them and, as I mentioned, earlier in the  
17 process our team actually searched for the documents as well.

18 Q. Okay. All right. Now, you've brought another document up  
19 on the screen, the check register. What is that?

20 A. The check register is a printout from, in this case the  
21 IRMS system, that indicates the check number, the check amount,  
22 the account from which the check was debited, the name of the  
23 account holder. And then also you can see below the name of the  
24 account holder it says "Mail to Ernest Noah." So this tells me  
25 this check was not issued to the account holder herself but to a

1 third party.

2 Q. Did you investigate that?

3 A. Yes, we did. So the next document that we've linked to  
4 this transaction is what's referred to as an individual Indian  
5 account application, and this is typically a document that the  
6 account holder would fill out for a manual check of some type.  
7 And this was -- I flipped to the page now. It's page 3 of the  
8 document. And you can see that the account holder's requested  
9 the \$618,000, and the check to be made to Ernest Noah in trust  
10 for the account holder.

11 As you scroll down the page, it's signed by the account  
12 holder, and it's approved by the regional director of the Palm  
13 Springs field office. As you continue through the document,  
14 there's actually a statement from the notary acknowledging that  
15 it was the account holder who signed this document.

16 The next step in this process would be to determine whether  
17 or not the check were actually negotiated, and as I mentioned  
18 earlier, we have available to us the CP&R file from the Treasury  
19 Department.

20 Q. And you make use of that in the reconciliation process?

21 A. We look to that file to determine whether or not the check  
22 had been negotiated or canceled. So the beginning of this work  
23 paper just shows you the transaction reference itself. And  
24 below that is information that we've added to the work paper  
25 that came from the CP&R file. So it shows you the check symbol,

1 the date the check was issued according to the CP&R file, the  
2 date the check was negotiated, February 8, the amount of the  
3 check, in the CP&R file it's actually referred to as a serial  
4 number versus a check number, and then a status code. And in  
5 this case status code R means negotiated.

6 Q. Okay. Now, your comparison against the CP&R, is that made  
7 outside of the account reconciliation tool? Is that something  
8 you refer to outside of this software?

9 A. Yes. It's a table stored within the same database.

10 Q. So the person doing the reconciliation on a disbursement  
11 would take this information, then go to this other database with  
12 the CP&R data. I take it you don't have that on here.

13 A. No, it's a very large table. So it didn't fit on my  
14 laptop. But you would have to write a query against that table  
15 to find this information.

16 Q. Okay.

17 A. So once we had finished associating the documents, again we  
18 would assigning an accounting code to the transaction. In this  
19 case we had all the information available to us, and we would  
20 just indicate in the comment that we had checked the CP&R  
21 record, what the CP&R record had indicated, and then we would  
22 group this transaction.

23 Q. And then the grouping, that puts it into the quality review  
24 mode?

25 A. Exactly.

1 Q. This, I think you would agree with me, this disbursement  
2 was a high-dollar-value transaction. What's your understanding  
3 what constitutes a high-dollar-value transaction as the plan  
4 defines it today?

5 A. Credits or debits that are greater than or equal to a  
6 hundred thousand dollars.

7 Q. Once the reconciliation s connected to that account are  
8 completed, you expect there to be an issuance of the HSA?

9 A. Yes.

10 Q. And did you prepare a pro forma HSA for this individual?

11 A. Yes, I did.

12 Q. Mr. Richburg, could we switch back one more time to defense  
13 table? Thank you. Put up on the screen Defendants' Exhibit  
14 116, and starting at page 1. Could we zoom in on the top of the  
15 table.

16 Could you describe where the -- does the disbursement show  
17 up on this, the one we just reconciled?

18 A. Yes, it does.

19 Q. Do you know where that is on here?

20 A. I'd have to look at the date again, I'm sorry.

21 Q. You need your screen up?

22 A. I believe it was 1994, but I don't recall. It's at the top  
23 of this page.

24 Q. Okay. Very good. The first line, actually. The  
25 transaction amount, 618,700?



1 A. That's correct.

2 Q. So this again, this HSA would report on this transaction,  
3 all the other transactions associated with this account.

4 A. Yes, it would.

5 Q. And if you go to the last page. And again, you have a  
6 table of known differences. Here there's nothing that's come  
7 up, at this juncture anyway.

8 A. That's correct.

9 Q. Could we go back to the previous HSA? I just wanted to  
10 make a point about the range example. I believe it's 115.

11 A. The second to the top.

12 Q. There we go. Mr. Thompson and the range example. The  
13 reconciled transaction you looked at with the 58 cents, would it  
14 appear on here?

15 A. Yes, it would.

16 Q. Could we zoom in on the transaction amounts?

17 A. I believe that was 1997.

18 Q. Okay. So it's -- yes. I think you're right. I think it's  
19 the next page, perhaps.

20 A. It's the fourth transaction from the top.

21 Q. And that JV number shows up as well in the reference?

22 A. That's correct.

23 Q. All right, great. I'm going to show -- if we could go back  
24 to the witness stand on the video presenter. And Mr. Richburg,  
25 if I could ask you to switch it over to our witness again.

1 Thank you.

2 One other disbursement example. If you could show the  
3 Court how sometimes these transactions show up differently on --  
4 what the records are are a little bit different.

5 A. This is a more current disbursement, and it's in June of  
6 1999, also a high-dollar transaction.

7 Q. Okay. And you've already done the preliminary work, right?

8 A. Yes, I have.

9 Q. Okay.

10 A. In this particular instance, because it's a newer check,  
11 the actual image of the check was available to us, and this one  
12 was made out to the account holder, to be deposited in his  
13 account at Seafirst Bank.

14 Q. Okay.

15 A. And you can see the dollar amount and the check number.  
16 And it's actually endorsed by the bank on the back. And it's  
17 very difficult to read on the screen, but credited to the  
18 account with the named payee, endorsement guaranteed by Seafirst  
19 Central Bank. So in this instance we wouldn't look for the  
20 check register because we have an actual copy of the check.

21 Q. Where was that found?

22 A. This was provided by the Treasury Department.

23 Q. Okay. We have an example of a different type of  
24 transaction.

25 MR. QUINN: Your Honor, I have two more examples, one

1 on a probate example, distribution of reconciliation, and a farm  
2 and pasture example to show the Court, if you'd like to go  
3 through that.

4 BY MR. QUINN:

5 Q. Could we bring up your probate reconciliation? Probate  
6 related.

7 A. This too was a high-dollar transaction that was selected  
8 because both the debit and one of the credits was over a hundred  
9 thousand dollars.

10 Q. Now, you have a -- showing a few of these high-dollar-value  
11 transactions. Did your firm -- you're selecting examples to  
12 show the Court, but what was FTI's role with respect to the  
13 different reconciliations that were being done?

14 A. We performed both reconciliations of the sample  
15 transactions as well as the high-dollar transactions.

16 Q. Of the regions, did you have particular responsibility for  
17 certain regions?

18 A. Initially, we focused on the Pacific region, the Sacramento  
19 area, and the Great Plains region or the Aberdeen area, and  
20 later we actually did work in Northwest, in Rocky Mountain.

21 Q. Did the Pacific region have a fair number of  
22 high-dollar-value transactions?

23 A. Yes, particularly in the Palm Springs Agency.

24 Q. Could you describe for the Court what you did, what the  
25 reconciliation was that you had to accomplish and how you went

1 about investigating the transaction?

2 A. In this case, as I mentioned, there were two transactions  
3 that had actually been selected. The \$180,000 disbursement and  
4 the \$135,000 credit, and this is a distribution of a probate  
5 from the account of the original allottee, a distribution from  
6 account 584A000079 to her heirs. And in this instance we would  
7 have needed to evaluate the probate documentation.

8 Q. Okay. And did you did that?

9 A. We did. So again we create a summary page for our work  
10 papers, and you can see this one differs from the range example  
11 we looked at. It has the decedent's name and her account  
12 number, the amount that was being distributed for her estate,  
13 the date of death. In this instance there was a probate, and  
14 the probate had been appealed, so there was a rehearing as well,  
15 and both of those numbers are indicated here. And it shows the  
16 date the original probate was approved and the date that the  
17 appeal was approved.

18 Q. Okay. Now, what was involved in learning, discovering all  
19 this information, that this probate had gone on, there had been  
20 an appeal? How did people working on the reconciliation find  
21 that information?

22 A. We started again with the journal voucher, which is showing  
23 the transfer of the funds. And the journal voucher indicates to  
24 us the probate number and the date of the probate, and the  
25 number of the account that was being debited, and the accounts

1 that were being credited as a result.

2 Q. Okay.

3 A. Then we had to request the probate file, and we did that.  
4 The probate information in this case was actually found within  
5 the account holder's jacket file.

6 Q. And that's the same kind of file that you were describing  
7 this morning?

8 A. Yes, it is. And if we turn to page 10, this is the  
9 original order in the case, and it shows the decedent's name and  
10 her account number. And if you go through the package, it lists  
11 her date of death and the assets that she owned as of the date  
12 of her death. You can see that she had a will, and that goes  
13 into the fact that the will was in fact contested by her  
14 husband.

15 On page 37 it has, from the original probate order, how the  
16 funds were to be allocated, and later in the file it goes  
17 through the appeal process that occurred. The husband appealed  
18 the will. And in the appeal process the court denied his  
19 appeal, and so the funds were distributed in accordance with the  
20 will.

21 Q. So it was divided -- you're putting up here 75 percent and  
22 then split the remainder between the two Mendezes?

23 A. Yes. The first is her daughter and the second are her  
24 sisters. So at that point, you can see that we've added that to  
25 our work paper, the four transactions that we saw in the

1 reconciliation group, and then we look at the initial  
2 distribution, the percentage that each was to receive, and  
3 whether or not they actually received that amount of money.

4 And then again we would update the accounting code, we  
5 would link the documents, and we'd assign the variance amounts.

6 Q. Were you able to confirm that the money specified in the  
7 probate decision was divided up and distributed to the heirs?

8 A. Yes. This initial distribution, there were actually  
9 several distributions that were made in this account, was in  
10 agreement with the probate. The other thing that I'd like to  
11 highlight is the orange that appears in this example.

12 Q. Yes. This is under the code in the window?

13 A. Exactly. If you click on the account number, which is  
14 bolded here, this brings up how the transaction was recorded in  
15 IRMS, and you can see that the code here indicates miscellaneous  
16 credit. So as a component of the reconciliation, we added this  
17 information that says that this is actually a probate  
18 distribution.

19 Q. So you added more detail than what IRMS may have had  
20 originally?

21 A. Yes, we did. And so to indicate that it had been changed,  
22 the color is updated in the tool, to give a visual cue to the  
23 reviewer. And so at this point we would group this transaction  
24 for quality control.

25 Q. And did you bring an exemplar of an HSA relating to that

1 transaction?

2 A. Yes, I did.

3 Q. How many did you bring?

4 A. Actually two.

5 Q. Up on the screen I've put Defendants' Exhibit 117, and  
6 we're starting at page 1 of that exhibit. And if you could zoom  
7 in on the title.

8 Could you identify that for the record, Ms. Herman?

9 A. This is an account statement for Lois Sanchez estate.

10 Q. Okay. And that's the person whose estate was probated.

11 A. That's correct.

12 Q. And where do the numbers that you were looking at in the  
13 reconciliation show up on this exemplar? Is that at page 8 of  
14 11?

15 A. That's it.

16 Q. Fourth entry from the bottom?

17 A. Yes. These other dollar amounts that have similar  
18 references were claims against the estate that were paid.

19 Q. Creditors of the estate as far as you could tell?

20 A. Yes, as outlined in the probate document.

21 Q. Okay. There continue to be little amounts of money after  
22 that distribution, and then the account is closed. Is it  
23 closed?

24 A. In 2000 the account was closed.

25 Q. Ending balance of zero. If you go to the last page of the

1 exhibit, could you describe what this page is, page 12 of the  
2 exhibit.

3 A. This is a statement of difference for this account.

4 Q. And there is an indication of an account level variance for  
5 interest on the table; is that right?

6 A. That's correct.

7 Q. What is that reporting?

8 A. It's reporting that the account holder was overpaid by  
9 \$1,584.42.

10 Q. So that's a difference that had occurred that was in favor  
11 of the account holder?

12 A. Yes, it is.

13 Q. You had brought another example with you of one of the  
14 heirs?

15 A. Yes.

16 Q. And we'll get to that as time permits. Why don't we go  
17 back to the last example that you brought with you today to  
18 demonstrate, the farm and pasture example.

19 What kind of transaction are we looking at here?

20 A. This is a farm and pasture transaction.

21 Q. Okay. And what is the -- is this a sample transaction?

22 A. Yes, it is.

23 Q. Which is the sampled -- identified as the sampled  
24 transaction that was supposed to be reconciled?

25 A. The 2-cent transaction.



1 Q. That's the third one on your table here in the middle?

2 A. That's correct. So in this situation, similar to the range  
3 example that we looked at earlier, the first step would be to  
4 identify the account from which this money had been transferred.  
5 And again, we would use the source number that we had created as  
6 a component of our transaction mapping, and through that number  
7 I was able to identify account 304S501121 was the account that  
8 transferred money into our individual's account.

9 And again, just starting with the transaction reference,  
10 you can see the indication of 1263. And so the first step in  
11 this process would have been to identify the journal voucher,  
12 and then after the journal voucher had been identified, the  
13 lease contract.

14 Q. Okay.

15 THE COURT: Mr. Quinn?

16 MR. QUINN: Yes, sir.

17 THE COURT: I want everybody in the courtroom to stand  
18 up.

19 (Everyone complies.)

20 Stretch. I noticed a few glazed eyes.

21 (Laughter)

22 Mr. Quinn, make it more interesting.

23 (Laughter)

24 MR. QUINN: I will do my best. I guess the best hope  
25 I can offer is there's light at the end of the tunnel. This is

1 our last example of the reconciliations.

2 THE COURT: Okay.

3 THE WITNESS: And we did 6,000. If you view the lease  
4 document, the first page of the lease indicates the allotment  
5 number; the lease number; the period for the lease, 1993 through  
6 2000; the term of the lease, January 1, 1993, through December  
7 31, 1997; the dates that payments were due; and then something  
8 slightly different than what we saw before is it indicates the  
9 percentage of the tract that's in trust, because some of this  
10 allotment had gone into fee, which means it's owned by  
11 non-Indian land owners.

12 So in this particular instance, we're only going to look at  
13 the component of the money that was collected for the trust.  
14 And so back on our worksheet page you'll see that we've computed  
15 an expected payment amount. This is what would have been  
16 collected for the entire allotment, not just the component that  
17 was in trust. Then the component based on the lease that was  
18 for the trust component, the difference being the fee component.

19 BY MR. QUINN:

20 Q. So you had to figure out the percentage that related to the  
21 trust component.

22 A. Exactly.

23 Q. Okay.

24 A. So on the next page again, using the LRIS information that  
25 had been provided, we found the fraction of this particular

1 allotment that the account holder owned, in this case 1 over  
2 3920. And we had to determine in this case, we had to adjust  
3 that ownership percentage based on how much of the tract was  
4 actually in trust, and that's what these next columns represent,  
5 the adjusted ownership.

6 Q. Okay.

7 A. Then the next page, similar to our earlier examples, shows  
8 the credit into the special deposit account, the debit out of  
9 that special deposit account, the credit to the individual, and  
10 the page references with those financial documents.

11 Q. Okay. And applying the percentages to the \$70, did you  
12 come out with the 2 cents?

13 A. That's correct.

14 Q. And that's what's shown in the last line there.

15 A. That's correct.

16 Q. And then this would be reflected in this individual's,  
17 Ms. Rackum's, HSA?

18 A. It would.

19 Q. And you prepared an exemplar HSA for this individual?

20 A. Yes, I did.

21 MR. QUINN: Your Honor, with respect to the evidence  
22 we'd like to offer for introduction, I didn't want to keep  
23 switching back and forth -- it takes some time to do that,  
24 switch from the witness back to the defense table -- but we do  
25 have the supporting documentation that was acquired from

1 Interior's records, that Ms. Herman has referenced in the course  
2 of her testimony this afternoon, and for the purposes of the  
3 record we'd like to offer those into evidence. If the Court  
4 requires, we can go through and verify the exhibits and her  
5 reference to those in the course of her testimony.

6 THE COURT: You are offering for the record all the  
7 backup documents that she's just shown us in this demonstration?

8 MR. QUINN: That's correct, Your Honor.

9 THE COURT: Received.

10 MR. QUINN: We would offer into evidence Defendants'  
11 Exhibit 143, 145, 146, that pertains to the first example, the  
12 range example, the supporting documentation that Ms. Herman  
13 testified to. Example 2, which was the first disbursement  
14 example, we would offer Defendants' Exhibit 125, which is the  
15 jacket folder, 126, which is a worksheet on the disbursement,  
16 Defendants' Exhibit 127, the accounting code screen capture for  
17 the entry of the CP&R cross-check that Ms. Herman demonstrated,  
18 and Defendants' Exhibit 128, which is the check register  
19 information.

20 On example No. 3, which is the second disbursement example,  
21 we would offer Defendants' Exhibit 130, Defendants' Exhibit 131,  
22 and 132. 131 is the third-party disbursement worksheet, 131 is  
23 the screen cap of the accounting code relating to that  
24 disbursement, and 132 is the front and back of the Treasury  
25 check Ms. Herman showed.

1 For the probate example, we would offer supporting  
2 documents of Defendants' Exhibit 140, which is the estate folder  
3 that contained the probate decisions and other information  
4 concerning the settlement of that estate, Defendants' Exhibit  
5 141, the probate work file, and Defendants' Exhibit 142 is a  
6 journal voucher relating to that distribution from the estate.

7 Example 5, our last example, the farm and pasture example,  
8 we would offer Defendants' Exhibit 133 and 134. 133 is a lease  
9 worksheet and 134 are the lease files containing the lease, a  
10 joint voucher -- a journal voucher and a bill for collection  
11 with respect to the receipt of income for that pasture rental.

12 That is the supporting documentation with respect to the  
13 five examples, Your Honor, and we would offer that for admission  
14 into evidence.

15 THE COURT: All right. It'll be received.

16 (Defendant Exhibit Nos.

17 125-128, 130-134, 140-143,

18 145, 146 received.)

19 MR. QUINN: Thank you, Your Honor. I would also like  
20 to offer at this time the exemplar HSAs. We didn't review them  
21 all here in court this afternoon, but there is an associated HSA  
22 draft that Ms. Herman has prepared.

23 That includes Defendant's Exhibit 115, which is the first  
24 example of the range, Defendants' 113 -- I don't have the  
25 Preckwinkel example. One moment, please, Your Honor. The first

1 disbursement example, our second example this afternoon,  
2 Defendant's Exhibit 116 is the HSA for that distribution --  
3 associated with that distribution. And Exhibit 113 is the  
4 second distribution example, the one with the Treasury check.

5 Example 4, the probate example, the associated -- there are  
6 two historical statements of account, one for the estate, which  
7 is Defendants' Exhibit 117, and one for one of the three heirs,  
8 which is Defendants' Exhibit 119.

9 The fifth example, the Rackum historical statement of  
10 account is Defendants' Exhibit 113. We would offer those into  
11 evidence as well, Your Honor.

12 THE COURT: 113, you said?

13 MR. QUINN: Yes.

14 THE COURT: You already gave me 113.

15 MR. QUINN: Maybe -- I started I guess with the last  
16 example. Let me just double-check.

17 I'm sorry, I misspoke. 114 is the Rackum exhibit, the last  
18 example HSA.

19 THE COURT: All right. They'll all be received.

20 (Defendant Exhibit Nos.

21 113-117, 119 received.)

22 MR. QUINN: Thank you, Your Honor. One last part on  
23 this. Ms. Herman has gone through and created screen captures  
24 of this exercise, taking step by step as best she could of  
25 exactly what her presentation would be here today. She did that

1 over the course of the summer, and we had compiled those screen  
2 captures for each example and would offer those into evidence as  
3 well to support the demonstration that was testified to here  
4 today.

5 THE COURT: What's the exhibit number?

6 MR. QUINN: Defendants' Exhibit 107 is example 1.  
7 Defendants' Exhibit 103, example 2. Defendants' Exhibit 104 is  
8 example 3. Defendants' Exhibit 106 relates to example 4. And  
9 Defendants' Exhibit 105 relates to the last example. We would  
10 offer that into evidence as well, Your Honor.

11 THE COURT: All right. They will be received.

12 (Defendant Exhibit Nos.

13 103-107 received.)

14 MR. QUINN: Thank you.

15 BY MR. QUINN:

16 Q. Ms. Herman, I think on Thursday -- turn off your screen if  
17 you want to. You testified in the course of doing your  
18 reconciliation demonstrations that you refer to the historical  
19 statement of account, and we had the explanation of codes for  
20 the draft statements of account that you referred to, and I  
21 think you mentioned something as a historical statement package.

22 A. Yes, I did.

23 Q. Describe what you mean by that.

24 A. The package is still in draft form, but right now the  
25 drafts that have been created are a transmittal letter, a

1 statement of work performed, a Q&A brochure, the historical  
2 statement, and the statement of known differences.

3 Q. Okay. Is there a reference to what would be in that  
4 package as part of the administrative record, do you know?

5 A. I believe it's outlined in the accounting standards manual.

6 Q. This indexes document AR-008 as part of the administrative  
7 record, and that's part of the accounting standards manual,  
8 correct?

9 A. Yes, it is.

10 Q. This is page III-i, entitled "III, Reconciliation  
11 Procedures." Ms. Herman, you've seen this before?

12 A. Yes, I have.

13 Q. Describe what this part of the manual is explaining.

14 A. It's contemplated that the historical statement packages,  
15 as I mentioned, will include the historical statement of  
16 account, which as you saw in our example has the statement of  
17 known differences attached to it, and explanation -- transmittal  
18 letter that explains why you've received this statement. The  
19 statement of limitations that it's referring to here would  
20 include the summary of the work that was performed. And then a  
21 question and answer brochure for the account holder.

22 Q. What's a statement of limitations? What's that?

23 A. It explains any issues that were encountered during the  
24 course of the reconciliation process, the testing work that was  
25 done, things of that nature.



1 Q. Okay. Is there an explanation -- do you know whether  
2 Interior intends to deliver an explanation of the historical  
3 statement of account with respect to whether there may be  
4 additional changes to that account?

5 A. That's my understanding, yes.

6 Q. What might those later changes be?

7 A. For instance, if there are funds that are sitting in a  
8 special deposit account that have not yet been distributed, that  
9 would be a current accounting posting, not something that would  
10 show up on the HSA.

11 Q. Could there also be changes relating to further sampling of  
12 the population?

13 A. That's possible, yes.

14 Q. Ms. Herman, at what point are you aware that the -- in the  
15 development is the statement of limitations that's referred to  
16 in the accounting standards manual?

17 A. There would most likely be a different statement for the  
18 judgment and per capita accounts than for the land-based  
19 accounts, because they're very different types of income.

20 Q. But the land-based account statement, at what stage of  
21 development is that?

22 A. It's been drafted.

23 Q. What's it based on?

24 A. The work that's been performed to date.

25 Q. But the statement of limitations, is there any reference

1 back to a prior document?

2 A. I'm sorry, I don't understand.

3 Q. Was there some original source document that the statement  
4 of limitations, statement of accounting limitations, Interior's  
5 looked to as a starting point for drafting that statement?

6 A. Yes. We started with the statement that was included in  
7 the judgment and per capita account statement, the interest  
8 component of it.

9 Q. Okay.

10 MR. QUINN: Your Honor, in the course -- this hasn't  
11 been marked in an exhibit, but in the course of the pleading  
12 submissions to the Court, as you know, there have been per  
13 capita and judgment account statements prepared and submitted to  
14 the Court for consideration and distribution. This is one of  
15 those submissions, the fifth submission in docket 3288. Within  
16 here I'd like to show the witness attachment 10, which is the  
17 statement of limitations for the per capita accounts, for  
18 purposes of discussion.

19 THE COURT: All right.

20 MR. QUINN: If we could go to that page.

21 BY MR. QUINN:

22 Q. For the record purposes, this is a document attached as  
23 attachment 10 to document 3288 of the case docket, filed January  
24 26, 2007. It's entitled "Statement of Accounting Limitations."  
25 Do you see that, Ms. Herman?

1 A. Yes, I do.

2 Q. Do you recognize that as one of the documents that has been  
3 considered in preparing the land-based statement of accounting  
4 limitations?

5 A. Based on what I can see on the screen, it looks like this  
6 is referring to interest recalculation issues.

7 Q. Okay. Would that be one of the things that would be  
8 addressed in the land-based?

9 A. Yes, it is.

10 Q. And this is a further discussion of the interest aspect of  
11 limitations for per capita purposes?

12 A. Yes. I don't recall this last component of it.

13 Q. Okay. But the land-based statement of accounting  
14 limitations would be part of the historical accounting package?

15 A. Yes, it would.

16 Q. And along with a question and answer sheet?

17 A. Yes.

18 Q. I believe you testified -- change subjects slightly -- to  
19 the issue of through-put. Through-put in a slightly different  
20 way than we talked about it up to this point today. Have you  
21 participated -- I think you testified that you had, on Thursday,  
22 involved in assisting the Department of Interior with  
23 determining the total amount of dollars that have gone through  
24 the IIM trust system over the course of the years?

25 A. Yes, I have.

1 Q. What did you do as part of any kind of through-put  
2 analysis?

3 A. Our firm aggregated the results of the analyses from other  
4 firms, and also performed the 1986 through 2005 analysis, as  
5 well as taking the revenue component of the analysis and  
6 breaking it into more discrete buckets, so other revenue,  
7 interest, Osage Quarterly Annuity, et cetera.

8 Q. When did you first become involved in working on any number  
9 that concerns total dollar value of dollars that have gone  
10 through the IIM system over time?

11 A. The first time I evaluated anything like that was in August  
12 of 1998.

13 Q. Okay. And are you aware of an estimate that was prepared  
14 for use -- for provision to Congress?

15 A. Yes, I am.

16 Q. In or around 2002?

17 A. Yes.

18 Q. What do you recall that dollar number?

19 A. I believe it was approximately 13 billion.

20 Q. Did you have any involvement in helping come to that rough  
21 estimate?

22 A. No, I did not.

23 Q. Have you had involvement in preparing any refinement to  
24 that number or further analysis of the \$13 billion estimate from  
25 2002?

1 A. Yes, I have.

2 Q. Could you describe for the Court what you've done?

3 A. We extended the estimate to 2005. We segregated the  
4 estimate into more discrete revenue buckets, and we also used  
5 the result of our transaction mapping up and through that point  
6 in time to remove some of the additional double counting.

7 Q. When you say you tried to break it into more discrete  
8 buckets, what more specifically were you doing?

9 A. We segregated the credits into the system into an interest  
10 bucket, an Osage Quarterly Annuity bucket, a tribal IIM bucket,  
11 a judgment and per capita bucket, and an other receipts bucket.

12 Q. March 25, 2007 memorandum. Have you seen this document  
13 before?

14 A. Yes, I have.

15 Q. Can you identify what it is for the Court?

16 A. It's a transmittal from Bert Edwards, OHTA's executive  
17 director, to the Office of Special Trustee.

18 Q. And can you scroll down, please. And the topic of this  
19 memorandum concerns what?

20 A. The \$13 billion revenue estimate project.

21 Q. And you were involved in that project?

22 A. Yes, I was.

23 Q. This is AR-171, the color version. The administrative  
24 record as filed with the court originally, AR-171 had a black  
25 and white copy of the memorandum with a black and white table.

1 This is the colorized version. Can you identify what that is  
2 for the record, Ms. Herman?

3 A. It's the color-coded version of the revenue estimate that  
4 we prepared.

5 Q. That FTI prepared?

6 A. Yes.

7 Q. And it's brightly colored. Who selected the colors?

8 THE COURT: Don't answer. Next question.

9 BY MR. QUINN:

10 Q. What do the colors represent?

11 A. This was really meant to be used for conversation purposes,  
12 to assist the user in determining where the numbers had been  
13 pulled from because, as you can see, there are quite a few  
14 colors in the chart. We had to turn to many different places to  
15 find this information.

16 Q. Okay. And that has to do with because of the time period  
17 you're covering here?

18 A. Yes. There are different systems that were in place over  
19 time and different firms that assisted in pulling these numbers  
20 together.

21 Q. Okay. Could we zoom in on the header so we can see what  
22 the columns represent? Walk us through the chart what the  
23 information is that's represented here.

24 A. The first column represents the fiscal year. The second,  
25 the balance at the beginning of the fiscal year. The third --

1 Q. And that's balance based on -- balance of what?

2 A. The balance in the trust fund.

3 Q. Overall?

4 A. In the IIM fund, yes. The third is the interest revenue in  
5 that particular fiscal year. The fourth would be the Osage  
6 Quarterly Annuity revenue that came into the IIM trust.

7 Q. Okay. We'll talk about that more in a minute.

8 A. The fourth is the judgment and per capita revenue. The  
9 fifth is the tribal IIM revenue. The sixth is other receipts.

10 Q. Okay. Now, what is --

11 THE COURT: Mr. Quinn, I misunderstood where you were  
12 with this witness. I thought you were about ready to wrap it  
13 up, but it looks like you're getting into a whole new area.

14 MR. QUINN: Yes, Your Honor.

15 THE COURT: It's time for our mid-afternoon break, so  
16 we'll be in recess.

17 MR. QUINN: That's fine, Your Honor. Thank you.

18 (Recess from 3:16 p.m. to 3:36 p.m.)

19 MR. QUINN: Your Honor, before we continue with  
20 Ms. Herman's testimony on her work on through-put, one more  
21 follow-up with respect to the account reconciliation testimony,  
22 and two more exhibits to move into evidence if I could.

23 Defendants' Exhibit 109 is the explanation table of the  
24 HSA, explaining what the different numbered contents were. It's  
25 a table Ms. Herman had participated in preparing. And Defense

1 Exhibit 120 is the explanation of the known differences, giving  
2 an associated number down the left-hand side of the page,  
3 explaining what each component of that table explained --  
4 contained.

5 I would like to move Defendants' Exhibit 109 and 120 into  
6 evidence as well as all the other account reconciliation  
7 exhibits.

8 THE COURT: All right. They'll be received.

9 (Defendant Exhibit Nos. 109  
10 and 120 received into  
11 evidence.)

12 MR. QUINN: Thank you, Your Honor. At the break,  
13 Ms. Herman also requested whether she could have a paper copy of  
14 the color table. She was having difficulty reading it on the  
15 screen. May I approach, Your Honor?

16 THE COURT: Of course.

17 MR. QUINN: Also, Your Honor, for the Court's use, we  
18 have burned to CD a copy of the color version, the  
19 administrative record 171, which is the chart that's up on the  
20 screen now.

21 THE COURT: Hand it to Mr. Richburg, if you will.

22 Thank you.

23 BY MR. QUINN:

24 Q. Okay. We have up here the table from the last page of --  
25 the attachment page of AR-171. If you could scroll up just a



1 bit so we can see where we are on the page.

2 Could you describe -- and scroll to the left a little bit  
3 so we can pick up where we started here. And the collections,  
4 all the way over to the left, please.

5 Ms. Herman, just before our afternoon break you were  
6 describing what the representations were for each column,  
7 balance at the beginning of the year, interest, C being the  
8 Osage Quarterly Annuity, judgment and per capita, E being tribal  
9 IIM, and then we have other receipts. What's contained in the  
10 other receipts column? What does that represent?

11 A. The balance of the funds collected into the trust in that  
12 particular fiscal year.

13 Q. So if it's not tribal IIM -- and we'll come back to discuss  
14 that in more detail -- or judgment per capita income, or Osage  
15 Quarterly Annuity or interest, it falls into that category?

16 A. Yes. And as you can see in the judgment per capita column,  
17 for those earlier years we weren't able to segregate that money,  
18 so that would also be included in other receipts in those  
19 particular years.

20 Q. Okay. So in the earlier years that's why that column D is  
21 blank?

22 A. That's correct.

23 Q. If we could move over to column G through K, get an  
24 overview of what this document contains. G is entitled  
25 "Disbursements." What does that reflect?

1 A. Disbursements made from the trust in that fiscal year.

2 Q. And what information is that based on? In the yellow code,  
3 what does that mean?

4 A. You can see that that information varies over time, but the  
5 yellow is from the finance system.

6 Q. We'll come back more specifically to the source material.  
7 But the H column next to it, balance per system, what does that  
8 represent?

9 A. The balance at the end of that period within the accounting  
10 system. So we had the first column, A, was at the beginning of  
11 the period, and column H is at the end of the period.

12 Q. And after H, the next column is I, adjustment. What does  
13 that represent?

14 A. If you were to add the collection numbers, so columns B  
15 through F, and subtract the disbursement number, it should tie  
16 to the balance at the end of the year, and that's represented  
17 in -- column H represents the math that I just discussed. And  
18 the difference between column H and J is the adjustment number.  
19 So column H represents the sum again of columns B, C, D, E, F.

20 Q. Could we zoom back out a bit? I'm sorry, can you explain  
21 that again?

22 A. Perhaps if you look on the page 2 of the chart.

23 Q. Okay.

24 A. At the bottom. You can see column H.

25 Q. Okay.

1 THE COURT: Have you got another paper copy of that?

2 MR. QUINN: I do, Your Honor. It doesn't have the  
3 entire memo, but it's the chart we're discussing.

4 (Chart tendered to the Court.)

5 MR. QUINN: I don't believe I have the codes though.

6 THE WITNESS: So column H, and this is indicated on  
7 page 2 in the color legend, is if you add the numbers going  
8 across the page, it sums to column H. The difference between  
9 column H and column J is the adjustment number.

10 BY MR. QUINN:

11 Q. Okay. So the adjustment number is just a mathematical  
12 result.

13 A. Yes, it is.

14 Q. Okay. And the J, the balance at the end of the year  
15 represents what?

16 A. The balance at the end of the year in the system, and you  
17 can see again that this has been pulled from different sources  
18 over time.

19 Q. And that's based on -- if you can quickly determine that by  
20 looking at the number of colors that are going down the column?

21 A. Yes, I did.

22 Q. Okay. And column K, balance end of year, report to  
23 Congress, what does that column represent?

24 A. That's what was represented in I believe the 2002 plan to  
25 Congress.

1 Q. Okay. Let's go back to the first column and zoom in just a  
2 bit. I still want to see most of the chart. I just want to  
3 get -- thank you.

4 Let's go over the sources of information that were used and  
5 how they're reflected in this chart. Can you explain overall  
6 what sources of information you're pulling from to do the  
7 calculation?

8 A. As you can see by the colors, there were quite a few  
9 different sources that we referenced in pulling this information  
10 together. In the earlier years, NORC, the statistician firm  
11 employed by OHTA, came up with an estimate of total receipts  
12 from 1909 to 1933, and then again from 1934 to 1971.

13 Q. So that's what's represented in that top block of  
14 information going across the row?

15 A. Yes, it is.

16 Q. Okay.

17 A. And then --

18 Q. But in column C, it's kind of a tan, orangey color, and  
19 purple. Is that a different source?

20 A. NORC provided a total estimate, and we had information on  
21 the Osage Quarterly Annuity payments from another source, so the  
22 difference between their total estimate and the amount that was  
23 in the Osage Quarterly Annuity and tribal IIM is what's  
24 reflected in other receipts.

25 Q. What was the other source of the information that you had?

1 A. We had listings of what the Osage Quarterly Annuity payment  
2 had been from 1909 through, I believe at this point, 2005.

3 Q. Why is the Osage Quarterly Annuity of interest with respect  
4 to these estimations?

5 A. It's a fixed dollar amount based on the share that a given  
6 individual owned, and some of that came into the IIM trust and  
7 some of it was paid directly.

8 Q. If we back up just a bit more. What is this income coming  
9 from?

10 A. I'm sorry. It's primarily based on oil and gas revenue.

11 Q. And this is oil and gas revenue coming to the tribe or  
12 coming to Department of Interior?

13 A. It's money that's earned by the tribe, and they pay that  
14 money out to the members of the tribe in a quarterly annuity  
15 payment.

16 Q. So the quarterly annuity is based on tribal income?

17 A. Yes, it is.

18 Q. And it's not based on allotted land. Is that your  
19 understanding?

20 A. The mineral rights for the land are owned by the tribe. I  
21 don't know if the surface rights are or not.

22 Q. But these payments are from the tribal revenue.

23 A. Yes.

24 THE COURT: I'm not sure I understood the question.  
25 Do these Osage Quarterly Annuity payments pass through BIA or

1 Treasury at all?

2 THE WITNESS: They are credited into the tribal trust,  
3 not into the individual trust initially.

4 THE COURT: They're credited into the tribal trust.  
5 So the money is collected by the government and paid out to the  
6 tribe?

7 THE WITNESS: I've only looked at the disbursements  
8 from the tribal trust, Your Honor, not the initial collections  
9 into the trust.

10 THE COURT: Okay.

11 BY MR. QUINN:

12 Q. Could you describe what you've seen or observed with  
13 respect to the disbursements? Maybe that will help.

14 A. There's a transfer from the tribal trust account to the  
15 individual trust for some component of that money, and typically  
16 that's for minors and adults who are deemed to be incompetent.

17 Q. It's similar to per capita accounts?

18 A. Yes.

19 Q. So that money shows up in the totals for the trust  
20 information over time? Is that why it's here?

21 A. Yes, it does. It's one of the components.

22 Q. Okay. If we could go to -- skip over to column E, the  
23 tribal IIM. Could you describe for the Court what those dollars  
24 represent, what kind of transactions those are?

25 A. Over time, there have been tribal monies within the IIM

1 system. Sometimes it's because the tribe and individuals own  
2 shares of the same allotment. Sometimes it's been a result of  
3 the tribe using an IIM account similar to a checking account.  
4 Sometimes it's been per capita money that the tribe has  
5 transferred into the IIM system.

6 Q. Okay. So these are not -- this is in the first instance  
7 tribal money?

8 A. Yes, it is.

9 Q. That just happens to be in the IIM system.

10 A. That's correct.

11 Q. And you have various sources for these estimates for the  
12 tribal IIM. Could you go through a description over time, where  
13 the estimate numbers are sourced from?

14 A. In the earlier years, Morgan Angel provided an estimate to  
15 us of how much of total -- sorry.

16 Q. I want to break this down. Who is Morgan Angel?

17 A. Morgan Angel's one of the historian firms employed by OHTA.

18 Q. And they've been studying the history of these kinds of  
19 transactions?

20 A. Yes, they have.

21 Q. Go ahead and describe the sources.

22 A. So Morgan Angel --

23 MR. SMITH: Object on grounds of hearsay. She's  
24 reporting what another expert said and that expert is going to  
25 testify in this case.

1 THE COURT: Sustained.

2 MR. QUINN: Your Honor, we're not offering this at  
3 this moment for the truth of the matter asserted. We're  
4 offering it to show the source of where the information comes  
5 from that's represented in this table.

6 BY MR. QUINN:

7 Q. But Ms. Herman, you have one source coming from information  
8 from a historian. Which part of the IIM calculation is that,  
9 for tribal?

10 A. The purple and green.

11 Q. Okay. And what's the difference between the purple and  
12 green to your knowledge?

13 A. The total, as I mentioned, for the purple was provided by  
14 NORC.

15 MR. SMITH: Objection again to anything provided by  
16 someone else.

17 THE COURT: Well, I think this witness is just giving  
18 us an overview, and if she's not vouching for the accuracy of  
19 these numbers, but only saying where she understands it came  
20 from, that's all right. Allowed. Go ahead.

21 MR. QUINN: Thank you, Your Honor.

22 BY MR. QUINN:

23 Q. So the green period covers into about 1985?

24 A. That's correct.

25 Q. And from '87 to about '97, you have another source



1       apparently.

2       A.     '86 forward, the orange represents the IRMS data.

3       Q.     And that's the same data set you've been analyzing as part  
4       of the DCV?

5       A.     Yes, it is.

6       Q.     And then after -- where are we, '97 or so, I see another  
7       color block. What are the sources in the later years?

8       A.     In '98, '99 and 2000, both the IRMS and TFAS systems were  
9       both in use, and that's the light pink color. And the dark pink  
10      color is when only TFAS was in use, from 2000 forward.

11      Q.     The other receipts category, the next column over, F, is  
12      that a simple mathematical computation or you source that  
13      information referencing other information -- other document  
14      sources?

15      A.     Those years we have audited fund level balances, and so the  
16      other receipts column is the difference between the columns that  
17      you see to your left and the audited amount.

18      Q.     Okay. And where does the audited amount show up on here?  
19      You have the audited amount --

20      A.     The yellow column is the difference between the total  
21      audited amount, and if you flip to the second page of the  
22      spreadsheet, you can see that it's the audited IIM minus columns  
23      C, D and E.

24      Q.     I'm sorry.

25      A.     The light yellow shaded color is the audited amount less

1 columns C, D and E, which is the Osage Quarterly Annuity  
2 judgment per cap in tribal IIM.

3 Q. About when was this table prepared?

4 A. We prepared the initial table in June 2006, and then we  
5 updated it in March 2007.

6 Q. What does this indicate with respect to the \$13 billion  
7 estimate? How does it relate to that?

8 A. This is somewhat larger because it goes later in time.

9 Q. So is that why the last column ends in 2001 or so, and the  
10 other columns go all the way through 2005?

11 A. That's correct.

12 Q. Did you prepare any summaries at all of these calculations  
13 for Interior's use as part of its analysis of through-put?

14 A. Some of these numbers I computed, and I also prepared a  
15 summary that went with this color chart that we're taking a look  
16 at.

17 Q. Okay. Could we put up 172. I'm sorry. Go to the next  
18 slide.

19 I put up a document that's part of the administrative  
20 record, AR-176. And could we zoom in on the Bates number on the  
21 lower left. Yeah. That begins at D00 HTA-WDC-56-7-1. Could  
22 you identify that document for the record?

23 A. This is the estimate that we put together in June 2006.

24 Q. Okay. This is your work product?

25 A. Yes, it is.

1 Q. Could you go to the next page. Is that your signature on  
2 the enclosed letter?

3 A. Yes, it is.

4 Q. What does this report contain?

5 A. This report contained the summary schedule, I believe at  
6 that point it only went through 2001, and all of the supporting  
7 schedules that we used to create that summary schedule.

8 Q. Summary schedule with respect to what?

9 A. Similar to the one that we're looking at in the courtroom.

10 Q. The color chart? Similar to the color chart?

11 A. Yes.

12 Q. And that's -- can you go back to the cover, please. In the  
13 administrative record, index at 176. Could we put up 172 now.  
14 Showing on the screen AR-172, part of the administrative record,  
15 could we go to the Bates number, the bottom of the left page.  
16 This is, the last digits of the number, 56-3-1.

17 Ms. Herman, could you identify what this document is for  
18 the record?

19 A. This is an e-mail from me to Dr. Haspel.

20 Q. And what information are you conveying in that letter?

21 A. This was just a --

22 Q. Or e-mail.

23 A. This was just a summary of how we had computed different  
24 columns in this chart.

25 Q. So you're explaining basically the calculations that are

1 represented in the chart we've been looking at?

2 A. Yes.

3 Q. Going through this, you're -- under the heading Osage  
4 Quarterly Annuity payments, 497 million, the bullet points below  
5 that reflect what?

6 A. The different items that we used for those different time  
7 frames to compute that number.

8 Q. And the next item, tribal IIM of 1 billion 565.7 million,  
9 what are the sources there?

10 A. For the period 1909 through 1933, we didn't have a source.  
11 For 1933 to 1986, Morgan Angel indicated that 15 percent of  
12 other receipts would be reasonable, and for 1987 through 2001,  
13 we used the IRMS and TFAS data.

14 Q. And then the last category, interest and judgment per  
15 capita and other receipts all summed together. The interest is  
16 826.6 million based on your computation?

17 A. Yes.

18 Q. And that's based on sources coming from where?

19 A. As you'll see in the earlier years, we didn't break out  
20 interest from 1909 through 1971. From 1972 through 1985, we had  
21 investment reports that Morgan Angel had identified. From 1985  
22 through 1997, we used the IRMS and TFAS data, and from 1998  
23 through 2001, auditor reports.

24 Q. For the judgment per capita number, 189.3 million, what  
25 were the sources of information you used?

1 A. We didn't break out those numbers for earlier years, from  
2 1909 through 1985, and we used the IRMS and TFAS data to do so  
3 from 1985 through 2001.

4 Q. And the earlier years that -- the information at that point  
5 you don't have available to you, is that what it is?

6 A. The information's available electronically but not on a  
7 discrete enough level to segregate the judgment per cap money.

8 Q. To specifically identify that type, is that what you're  
9 saying?

10 A. Yes.

11 Q. And for other receipts of 10 billion, 380 million and 6,  
12 what are the sources of information you were using for that  
13 number?

14 A. From 1909 to 1971, NORC had estimated the total number of  
15 collections. For 1972 through 1985 we used the finance system,  
16 which is here represented as GLDL.

17 Q. Can you describe that? What's the finance system?

18 A. The finance system is the general ledger system that  
19 Interior used.

20 Q. And that had balance information in there, or receipt  
21 information?

22 A. It has balance information, but it also has detail  
23 information.

24 Q. Detail -- can you describe what detail it contains?

25 A. It contains specific transactions for the tribes, but it

1 contains aggregate transactions for the IIM trust.

2 Q. And from '86 to '97, you're using the IRMS and TFAS data?

3 A. That's correct.

4 Q. And then referring to -- in '98 to 2001, you're doing what?

5 A. Audit reports.

6 Q. So if you were to make -- wanted to make an adjustment to  
7 the 13 billion estimate, refine it to take out anything  
8 determined to be not part, really part of the IIM trust, you'd  
9 go through some process like this to quantify that component?

10 A. That's correct.

11 Q. So if you were to use the tribal IIM numbers that you  
12 estimated, what did that total out to be?

13 A. I would use the current schedule, the March 2007 schedule.

14 Q. Where does that appear?

15 A. In the purple chart.

16 Q. Okay. Can we put the chart back up?

17 A. It's in the other exhibit. 171. So the 1.5 billion number  
18 at the bottom.

19 Q. Yeah, on the bottom, thank you. That's the -- we're  
20 pointing there -- the pointer's at the 1.5 --

21 A. Exactly.

22 Q. So it's 1 billion 513,000 was the number you were working  
23 with here with respect to a tribal IIM number that had gone into  
24 the IIM trust system.

25 A. Yes.

1 Q. So if you were doing math and taking \$13 billion estimate  
2 and were to back out that number, the tribal IIM number, you'd  
3 get to the answer in terms of what the net amount would be for  
4 IIM trust money through-put, minus this tribal IIM. Is that it?

5 A. Yes, but you'd have to increase the 13 billion, as this  
6 chart goes through 2005.

7 Q. Because that 13 billion report to Congress was into 2002.

8 A. 2001, I believe.

9 Q. Right. The report was 2002. What other things in your  
10 experience in looking at the data in the system have come into  
11 the IIM trust system that probably most people would not view as  
12 a receipt for IIM beneficiaries?

13 A. Over time we -- in the special deposit accounts, bid  
14 deposits have been placed into those accounts which are not  
15 funds due to IIM account holders. And as I mentioned,  
16 occasionally there's tribal monies that go into some of these  
17 special deposit accounts as well.

18 Q. The bid deposits, can you explain how that occurs, based on  
19 your experience looking at the data?

20 A. When a lessee starts a new lease, sometimes the Bureau  
21 requires a bid to be put down when they're advertising the  
22 lease, and those monies go into the IIM system. Sometimes  
23 they're bonds that are put into the IIM system to guarantee that  
24 the lessee is going to pay the monies due. And if the lessee  
25 finishes the lease successfully and there are no other issues,

1 those monies are returned to them at the end of the lease.

2 Q. Okay. So an unsuccessful bidder would get his money back.

3 A. That's correct.

4 Q. And it wouldn't go into an IIM beneficiary's account.

5 A. That's correct.

6 MR. QUINN: May I have one moment, Your Honor?

7 Thank you, Your Honor. I have no more questions of this  
8 witness.

9 THE COURT: Okay. Mr. Smith.

10 MR. SMITH: Good afternoon, Your Honor.

11 THE COURT: Good afternoon.

12 CROSS-EXAMINATION

13 BY MR. SMITH:

14 Q. Good afternoon, Ms. Herman.

15 A. Good afternoon.

16 Q. I want to look at an exhibit you looked at earlier this  
17 afternoon. If we could look at Defendants' Exhibit 158, please.  
18 I'm sorry, 158-158.

19 I want to make sure I understand this document, Ms. Herman.  
20 You were looking at that time, trying to figure out why there  
21 was more than one person having an account name on an account;  
22 is that correct?

23 A. Trying to determine who was the appropriate name on the  
24 account, yes.

25 Q. Because we were dealing with Beverly Piper and then it



1 changed to Thomas Piper.

2 A. That's correct.

3 Q. In looking up at the shaded area on the right-hand corner  
4 under first date and last date, can you tell me why Beverly  
5 Piper's listed as only being the owner of the account for a day,  
6 October 7?

7 A. That's the -- as I mentioned, we aggregated all of the  
8 names together, and some of those were found in the transaction  
9 file and some in the master file. So that would tell me that  
10 her name was associated with the transaction on October 7, 1992.

11 Q. Okay. I understand. So you went back and wanted to try to  
12 find documentation as to why it was changed to Thomas Piper. Is  
13 that correct?

14 A. Whether or not Beverly had been on the account incorrectly,  
15 exactly.

16 Q. Okay. And you looked at Defendants' Exhibit 158-159.

17 A. I'm sorry. Is that the page that I'm looking at?

18 Q. 158-159. And you found the IIA change order?

19 A. This is one of the documents we looked at, yes.

20 Q. And it has the name changed from Beverly Piper to Thomas  
21 Piper in October 1992; is that correct?

22 A. That's correct.

23 Q. And that was signed off by the superintendent on October 5,  
24 1992?

25 A. That's correct.

1 Q. And it indicates he has a date of birth of June 25, 1979;  
2 is that correct?

3 A. That's correct.

4 Q. So this document was changed to him when he was 13 years  
5 old?

6 A. I'm sorry?

7 Q. He was born in 1979. The change was made from Beverly to  
8 Thomas in 1992?

9 A. Yes, it was. On October 7.

10 Q. So he was 13 or 14 years old?

11 A. Yes.

12 Q. And you understand Beverly was his mother?

13 A. Yes.

14 Q. Okay. And then you looked at Defendants' Exhibit 158-160?

15 A. Yes.

16 Q. And this was the supporting documentation for that change;  
17 is that correct?

18 A. No. This is a separate letter that was sent in. These  
19 were found at different places within that file.

20 Q. Okay. So this document does not necessarily justify the  
21 change on October 1992; is that correct?

22 A. This is just another note found within the jacket file.  
23 They weren't attached to one another.

24 Q. Okay. So my question is does this document 158-160, was  
25 this intended to support the change on October 1992?

1 A. This from our perspective was intended to clarify why her  
2 name was on the account in the first place.

3 Q. Okay. And in fact, that letter, 158-160, is dated August  
4 1, 1996; is that correct?

5 A. It is, and has a receipt date in August of 1997.

6 Q. Do you know why it was written but not received for a year  
7 later?

8 A. I do not.

9 MR. QUINN: Objection, Your Honor. Assumes facts not  
10 in evidence.

11 THE COURT: It assumes something that's on that stamp.  
12 I'll overrule the objection.

13 BY MR. SMITH:

14 Q. So his letter is dated August 1, 1996. It's stamped Wind  
15 River Agency August 11, 1997; is that correct?

16 A. Yes. That's how it's stamped.

17 Q. Was anything done to verify the signature of Thomas Piper?

18 A. No.

19 Q. So you didn't look at any signature verification cards,  
20 anything else to determine if that was his correct signature; is  
21 that correct?

22 A. No, I did not.

23 Q. Okay. Can you tell me why the change was made in 1992 to  
24 the name of Thomas Piper from his mother when he was only 13  
25 years old?

1 A. The account still belonged to Thomas. It didn't mean that  
2 they were making disbursements to him at that point in time.

3 Q. Was anything done to verify that in fact the disbursements  
4 were made to the proper person when he was 13 years old?

5 A. That's not a component of this test.

6 Q. So it's not a component of the test to determine that the  
7 payments are made to the correct person?

8 A. That wasn't the goal of this test.

9 Q. Now, this is part of your data completeness test, and not  
10 part of your account reconciliation tool process; is that  
11 correct?

12 A. That's correct.

13 Q. And you indicated you had a team of people who would look  
14 at these documents and determine if the supporting documentation  
15 was sufficient as part of your completeness test.

16 A. I think that we need to clarify what sufficient is. In  
17 this test we're trying to determine who was the appropriate  
18 owner of this account, so there's not something in the  
19 accounting standards manual that's going to lay that out.

20 Q. So tell me, who are the people who determined whether this  
21 particular document was sufficient to support that transaction?

22 A. There are many people on our staff that review those  
23 documents.

24 Q. And are these the people down at Lenexa?

25 A. I'm sorry?

1 Q. Are they the people down at Lenexa?

2 A. No. These are people on our staff, not the people who are  
3 searching for the documents.

4 Q. So when they're sent out from Lenexa, someone on your staff  
5 in Los Angeles reviews the transaction?

6 A. Reviews the documents.

7 Q. Okay. And how many people do you have that do that, who  
8 review the documents?

9 A. As I mentioned, that varies over time.

10 Q. More than 10?

11 A. It depends on the point in time, but yes, our staff has  
12 ranged anywhere from 10 to 45 people at a given point.

13 Q. That just are involved in the review of documents for the  
14 data completion analysis?

15 A. The staff is broken up among the various data completeness  
16 tests that we're performing. I couldn't tell you exactly how  
17 many were working on that specific test.

18 Q. And how many people working on this particular test, the  
19 data completeness test, are accountants?

20 A. They all have business or accounting degrees. I would have  
21 to look to see specifically who worked on that test.

22 Q. Okay. How many of them are certified public accountants,  
23 do you know?

24 A. I don't know off the top of my head, no.

25 Q. Some of them are not certified public accountants; is that

1 correct?

2 A. That's correct.

3 Q. Of the ones who were reviewing documents as part of your  
4 data completeness analysis, do you know how many of them were  
5 certified public accountants?

6 A. I would have to check my records.

7 Q. Was it the majority of them?

8 A. No. It was a percentage of them, but I don't know how  
9 many.

10 Q. So less than half of them?

11 A. Sir, as I mentioned, I'd have to check my records.

12 Q. But you can't tell if it was more than half or less than  
13 half of the people who had accounting backgrounds?

14 A. Our staff changes over time, so, no, I can't tell you that  
15 without checking my records.

16 Q. But some of the documents that would -- some of these  
17 transactional documents that would be reviewed would be people  
18 who are not licensed as accountants; is that fair?

19 A. That's correct.

20 Q. Who would review their work?

21 A. We have a staff of people who would review work.

22 Q. Okay. And does that staff consist of accountants, licensed  
23 accountants?

24 A. Yes, it does.

25 Q. And is everybody on that staff -- part of that staff that

1 reviews the documentation, are they all licensed accountants?

2 A. No, they are not.

3 Q. Do you know how many of those are licensed accountants?

4 A. As I mentioned, our staff has changed over time, so I  
5 couldn't tell you over the course of the entire project how many  
6 were certified public accountants and how many weren't.

7 Q. So it's possible that on any given transaction you can have  
8 a nonaccountant do the initial review and a nonaccountant do the  
9 secondary review?

10 A. Of the data completeness work, yes.

11 Q. Okay. If we could look at the accounting standards manual,  
12 44-1-9. Ms. Herman, are you familiar with this document?

13 A. I am.

14 Q. And if we could blow up the highlighted language, please.

15 This document states that "To help determine sufficiency of  
16 the documents used, the accounting teams should consider the  
17 nature of the evidence. Although the historical accounting is  
18 not an audit engagement, the American Institute of Certified  
19 Public Accountants (AICPA) statement of auditing standards No.  
20 31 (AU 326) should be considered. In the case of a financial  
21 statement audit, the auditor obtains evidence to support  
22 financial statement assertions, the measure of validity of such  
23 evidence for audit purposes lies in the judgment of the  
24 auditor."

25 Now, this comes from the accounting standards manual,

1 correct?

2 A. It does.

3 Q. But you do not use the same standard on your review of  
4 documents in the data completion analysis; is that correct?

5 A. This is referring to the reconciliation of transactions.  
6 This isn't referring to the data completeness test.

7 Q. And my question is you do not use this same standard when  
8 you're doing your data completion analysis; is that correct?

9 A. I don't believe I understand your question.

10 Q. For the accounting reconciliation, you require that  
11 licensed accountants review the transactions and make judgments.

12 A. Well, for instance, sir, the documents you just showed me  
13 aren't financial documents. It's correspondence. So those  
14 documents wouldn't even be found within this manual.

15 Q. But for determining whether the documentation is sufficient  
16 for a particular transaction, to justify a transaction, as part  
17 of your data completeness test, you do not use licensed  
18 accountants to make that review or make that judgment?

19 A. We aren't determining the sufficiency of the transaction;  
20 we're looking at an account, in this first instance that we  
21 looked at, and we're determining who's the owner of that  
22 account. It's a different comparison that you're trying to  
23 draw.

24 Q. Okay. Ms. Herman, you have been working on Cobell-related  
25 matters for about 10 years; is that correct?



1 A. Yes, it is.

2 Q. You began with Arthur Andersen back in 1995?

3 A. I did.

4 Q. And I believe you testified you became involved in  
5 Cobell-related matters in 1997; is that correct?

6 A. I did.

7 Q. And that was while you were with Arthur Andersen?

8 A. Yes, it was.

9 Q. And as you indicated to the Court, you do not have a degree  
10 in accounting, are not licensed as an accountant; is that  
11 correct?

12 A. No, I am not.

13 Q. Okay. You received a BA degree?

14 A. A BS.

15 Q. I'm sorry, a BS degree from University of California?

16 A. Yes, at Berkeley.

17 Q. And your experience over the past 10 years has been in data  
18 management and analysis; is that correct?

19 A. Yes, and analyzing accounting records.

20 Q. Okay. And your work at Arthur Andersen ended, is it early  
21 2000?

22 A. 2002.

23 Q. 2002. And then you went to KPMG?

24 A. Yes, our group was sold.

25 Q. So basically you started doing the same thing at KPMG?

1 A. That's correct.

2 Q. And wasn't long before you were sold again; is that  
3 correct, or you transferred?

4 A. Our group was sold, yes.

5 Q. And that was to FTI?

6 A. That's correct.

7 Q. And approximately when was that?

8 A. I believe it was November of 2003.

9 Q. Okay. So you had a short stay at KPMG?

10 A. That's correct.

11 Q. So basically you've done the same work for a ten-year  
12 period for three different firms.

13 A. That's correct.

14 Q. Trying to get a handle on what exactly you've done over  
15 this past 10 years. When you started with Arthur Andersen, or  
16 actually two years after you started, you were assigned the  
17 project of reviewing the IRMS database; is that correct?

18 A. The IIM component of that database, yes.

19 Q. Okay. And you were just trying to take a look at it, see  
20 what was on there, see what wasn't on there; is that fair?

21 A. Initially, we had to actually load the data into a server  
22 and then combine it all so we could analyze what information had  
23 been provided.

24 Q. And sometime after that you were provided the TFAS server  
25 as well to look at; is that correct?

1 A. Yes. TFAS started many years later.

2 Q. About 1998?

3 A. Yes.

4 Q. For the first transactions.

5 A. Correct. The first transactions were in September 1998.

6 Q. And is it fair to say that the bulk of your work for Arthur  
7 Andersen and KPMG and your current employer has centered around  
8 the IRMS and the TFAS databases?

9 A. Yes, primarily.

10 Q. Okay. And most recently that has been as part of your data  
11 completion or data validation project; is that correct?

12 A. That's correct.

13 Q. We have been provided two reports that were prepared by FTI  
14 regarding that project. The first one was in June of this year  
15 and then there was the most recent one, September of this year,  
16 and then you provided some new documents this past weekend. Are  
17 those the only documents you have related to the data  
18 completeness test?

19 A. No, they're not.

20 Q. Okay. Do you have other reports relating to that test?  
21 Because I know you've worked on it for, what, four years now?

22 A. I'm sorry?

23 Q. You've worked on it for four years now?

24 A. We started working on the test when OHTA was formed.

25 Q. And when was that?

1 A. I believe it was July 2001.

2 Q. Okay. So you have other reports relating to your work.

3 A. The first report that we issued was actually for the  
4 Justice Department in 1997.

5 Q. Okay. And what other reports have been issued since that  
6 time?

7 A. We issued interim reports last year.

8 Q. 2006?

9 A. Yes.

10 Q. And what did the interim report cover?

11 A. It covered the Alaska region, the Pacific region, the  
12 Western region, and the Northwest region. Our work to date at  
13 that point.

14 Q. So were there any reports between 1997 and 2006?

15 A. I'm sure we provided status reports, but not formal  
16 reports, no.

17 Q. And what are the difference between status reports and  
18 formal reports?

19 A. I meet with our contracting officer on a regular basis,  
20 providing them status of what we're doing, questions that we  
21 have that we work through together. I don't recall issuing a  
22 formal, lengthy report, though.

23 Q. And who were those -- were those status reports provided  
24 outside of FTI?

25 A. Yes.

1 Q. Who were they provided to?

2 A. To our contracting officer.

3 Q. Okay, and who was that?

4 A. Currently it's Keith Parsky.

5 Q. And how long has Mr. Parsky been your contracting officer?

6 A. I don't recall. We issue weekly reports on our status to  
7 OHTA in general, but it's not in this format.

8 Q. Do you also provide reports to other contractors, like  
9 NORC, on the status of your work?

10 A. We meet with NORC on a regular basis. I don't recall if we  
11 issued any reports to NORC.

12 Q. Okay. Because NORC is relying for their work on the work  
13 that you do; is that correct?

14 A. That's correct.

15 Q. If we could look at Bates stamp No. 51-3-1 at -- are you  
16 familiar with this document, a sample design report prepared by  
17 NORC regarding the Alaska region?

18 A. I've seen several NORC reports. I don't believe I've  
19 looked at this one.

20 Q. Have you been involved in the sampling for the Alaska  
21 region?

22 A. I'm sorry, I don't know what you mean by that.

23 Q. Have you been involved in any of the work regarding the  
24 Alaska region at all?

25 A. Yes. We performed accounting-related work in the Alaska

1 region, and then obviously our data validation work.

2 Q. Okay. And you provided that data validation work to NORC?

3 A. We provide OHTA with updates to the database on a quarterly  
4 basis, and they would provide information to NORC.

5 Q. Okay. Let's look at page 7 of this document. In the  
6 highlighted language, it says "To define the account population  
7 of land-based accounts, NORC was relying on the data validation  
8 by FTI Consulting as of December 2003." Do you see that?

9 A. I do.

10 Q. So would you provide OHTA a report in December 2003 for  
11 NORC to rely on for their sampling work in Alaska?

12 A. We provided data to OHTA. I don't believe we provided a  
13 report.

14 Q. Okay. And what would that data consist of?

15 A. That data would consist of the transactional information  
16 that we've discussed today and last week, the account-level  
17 information, and a summary table, among other things, of the  
18 accounts that were in -- that we were analyzing.

19 Q. And would that be provided to them in an electronic format?

20 A. Yes, it would.

21 Q. And do you maintain those records?

22 A. OHTA maintains those records.

23 Q. You don't keep those records yourself?

24 A. I don't know if we have a copy of that database or not.

25 Q. And if we could look at page 10 of the same document. It

1 provides "A file of 1,954 high-dollar transactions, 233 of which  
2 belong in the Alaska region, had been provided to NORC by FTI  
3 Consulting, and that file was used to identify and remove these  
4 transactions." Do you see that?

5 A. I'm sorry, were identified to?

6 Q. "Was used to identify and remove these transactions."

7 A. I don't know what it's referring to in terms of removing  
8 transactions.

9 Q. Okay. Do you recall providing NORC as well a copy of your  
10 high-dollar transactions?

11 A. We've provided OHTA, as I mentioned, many electronic  
12 databases over time.

13 Q. And that was provided in electronic format?

14 A. Yes.

15 Q. And you were aware that that was being used by NORC's work?

16 A. Yes, I was.

17 Q. So is it fair to say that NORC was relying on what you were  
18 doing with respect to the data completion studies?

19 A. Yes, they were.

20 Q. I want to focus on your initial work regarding the IRMS  
21 database. You indicated you received a copy of that database in  
22 1997; is that correct?

23 A. Initially, yes.

24 Q. You received another copy later?

25 A. We did, yes.

1 Q. And when was that?

2 A. I don't recall when we received the next copy of the  
3 database. We received several copies of it over time.

4 Q. Okay. You received one copy while you were with Arthur  
5 Andersen, and did you receive another copy while you were with  
6 KPMG?

7 A. I believe we received the second copy while we were still  
8 at Andersen.

9 Q. What was the purpose in receiving a second copy?

10 A. We hadn't worked with the data in many years, so OTFM had  
11 taken -- when we received the data the first time it was on  
12 round reel tapes that we had to aggregate. The second time we  
13 received the data it was in a SQL server database.

14 Q. So it was perhaps updated in a different format?

15 A. It was in a different format, yes.

16 Q. Same information?

17 A. I don't recall if it was exactly the same.

18 Q. Okay. And then you got another copy with you -- when you  
19 were with KPMG, or were these the only two copies you got?

20 A. We received updates to that data over time as new  
21 transactions were processed in the system. I can't recall if we  
22 received two or three original database copies.

23 Q. And how did you receive those databases?

24 A. The first time, as I mentioned, it was on round reel tapes,  
25 and subsequently in SQL server databases.



1 Q. And so they were sent to you in the mail?

2 A. I don't recall how we received them.

3 Q. Did Arthur Andersen or KPMG or FTI ever do anything to  
4 verify that what you received was identical to what was on the  
5 Interior's IRMS system?

6 A. We provided summaries back to OST once we had loaded the  
7 information into our system, for them to confirm to us that that  
8 was what they had sent.

9 Q. Okay. But you independently did not go and confirm that;  
10 is that correct?

11 A. No, I did not.

12 Q. Now, when we were talking about the IRMS database, we're  
13 talking about a database that includes a wide range of  
14 information; is that fair?

15 A. The IRMS system as a whole or that which we received?

16 Q. The IRMS system as a whole.

17 A. Yes. That system contains quite a bit of information.

18 Q. I believe there's seven modules on that system.

19 A. I believe that the modules varied over the agencies, but  
20 there were quite a few modules, yes.

21 Q. One had lease information; is that correct?

22 A. That's correct.

23 Q. And one had range information?

24 A. That's correct.

25 Q. One had a lease distribution module, do you recall that?

1 A. Some of them did, yes.

2 Q. One had ownership information.

3 A. As I mentioned, some, not all.

4 Q. When you say some, not all, is that because some agencies  
5 used them and some didn't?

6 A. Some areas used it and some did not.

7 Q. So there was no consistency in the use of the IRMS  
8 database; is that fair?

9 A. I think it's a very large database. We have to be more  
10 specific in what we're discussing.

11 Q. Okay. Was it your understanding based on your review that  
12 different agencies used the IRMS database in different ways?

13 A. Different areas used different components of the IRMS  
14 system, yes.

15 Q. Okay. So just an example, three agencies might use  
16 ownership in one region, but three agencies in the same region  
17 may not use it.

18 A. It's my understanding that that was typically a regional  
19 determination. I don't know if that could have been decided at  
20 the agency level.

21 Q. Okay. There's something on there called people, which is a  
22 tribal identifier; is that correct?

23 A. That's my understanding.

24 Q. And then you have the IIM module, and that's the one you  
25 spent most of your time on.

1 A. That's correct.

2 Q. Now, there's sort of a related system called RDRS; is that  
3 correct?

4 A. That's correct.

5 Q. That's called the royalty distribution system?

6 A. Royalty distribution reporting system.

7 Q. And that's the system that distributes royalties to, or  
8 determines where royalties go to based on information provided  
9 by MMS?

10 A. I haven't analyzed that system. It's my understanding that  
11 it interfaces with the MMS systems.

12 Q. Now, when you -- so you focused just on that single module  
13 of the IIM system; is that fair?

14 A. That's correct.

15 Q. You were never asked to review any of the other modules.

16 A. No, I was not.

17 Q. And the purpose of your reviewing that, the information on  
18 that module, was to make sure everybody understood what was on  
19 that module; is that correct?

20 A. I'm sorry. It depends on what time frame we're discussing.

21 Q. Okay. Let's talk about your initial review in 1997.

22 A. Initially in 1997 we were trying to identify what  
23 information was available, and we had to look at the data as  
24 provided.

25 Q. Okay. And you wanted to make sure that in reviewing that

1 data you had as complete information as possible before someone  
2 started sampling from that data; is that correct?

3 A. Actually that was not the goal in 1997.

4 Q. Did that become the goal later?

5 A. Yes.

6 Q. When did that become the goal?

7 A. When I began working with OHTA, we started most of our  
8 efforts to restore data to the data set.

9 Q. And that was in early 2002?

10 A. 2001, yes.

11 Q. 2001. So in 2001 you began to look at the IRMS database  
12 with respect -- so as to identify as best you could the  
13 population from which samples could be drawn; is that correct?

14 A. We were looking at the IIM component again, and we were  
15 determining what transactions were present and how to categorize  
16 those transactions.

17 Q. Because you wanted to have the most complete population  
18 before they started sampling; is that correct?

19 A. We understood that it wasn't complete before the sample was  
20 drawn.

21 Q. Okay. But the purpose of your reviewing it was to make  
22 sure it was complete; is that correct?

23 A. We were reviewing it for many things, all of the tests that  
24 we discussed over the last two sessions.

25 Q. If we could look at page 32 of the deposition. Do you

1 recall your testimony back in 2003?

2 A. Not specifically everything I said, no. It was many years  
3 ago.

4 Q. Okay. The transcript reads as follows, and tell me if you  
5 recall this. "Question: What is the purpose of these tests  
6 generally?

7 "Answer: In general when you're starting analysis of  
8 large data sets, you want to ensure that you have an  
9 understanding of the characteristics of the data before you  
10 begin your larger use of the information.

11 "Question: And this analysis or this understanding of  
12 the characteristics of the data is significant because it  
13 enables you to do what?

14 "Answer: Before you begin creating models or sampling  
15 plans or accounting work, you want to attempt to create as  
16 complete a population as possible to begin your analysis with."

17 Is that correct?

18 A. Yes.

19 MR. QUINN: Your Honor, just for the record so it's  
20 clear, could we have the page number?

21 MR. SMITH: Sure. It's page 32 of her testimony in  
22 the afternoon she testified.

23 BY MR. SMITH:

24 Q. You've only testified once; is that correct?

25 A. That's correct.

1 Q. Now, when you got into the IRMS database, you discovered  
2 you had transactional information for various regions and  
3 agencies from approximately February of 1985 to March of 2000.  
4 Is that fair?

5 A. Yes, from the IIM system.

6 Q. But IRMS actually began in the '70s; is that correct?

7 A. In some areas, yes.

8 Q. In Billings it began in the late '70s?

9 A. I believe so, yes.

10 Q. Do you know what happened to the transactional information  
11 between the initiation of that system in the '70s through 1985?

12 A. I don't know what happened to the electronic copy of that  
13 information.

14 Q. But whatever the case, they couldn't find the electronic  
15 copy from 1970, whenever it began, until 1985?

16 A. That's correct. Through January of 1985; the data begins  
17 in February of 1985.

18 Q. Do you know anything about the various computer systems  
19 that that data has been on since the '70s?

20 A. I'm sorry, I don't understand the question.

21 Q. The type of computer systems that the IRMS data was on  
22 since it began in the 1970s?

23 A. The type of mainframe, is that what you're asking?

24 Q. Yes, exactly.

25 A. I believe at one point in time it was on something referred

1 to as an A-17, but I don't know if that was the only system used  
2 or not.

3 Q. Do you know if it was on the B1900? Do you know what that  
4 is?

5 A. I do not.

6 Q. Do you know how many conversions there were of the data to  
7 different systems prior to your getting that information in  
8 1985?

9 A. I do not know.

10 Q. To your knowledge has any investigation been done to  
11 determine lost data between various conversions of this system?

12 A. No, I don't know if there have been tests done prior to  
13 1985.

14 Q. So when you're looking at the data that was on IRMS, the  
15 later date, the most recent date, that date was different for  
16 different agencies based on when they converted to the TFAS  
17 system; is that correct?

18 A. I'm sorry, I don't understand your question.

19 Q. Okay. You had data for different agencies that -- on the  
20 IRMS system that would suddenly end in 1998, 1999, 2000; is that  
21 correct?

22 A. Yes, with the conversion to the TFAS system.

23 Q. So it varied, the ending date on IRMS varied based on the  
24 conversion to the TFAS system.

25 A. That's correct.

1 Q. And the beginning date for which you had data on IRMS for  
2 various agencies would be different as well; is that correct?

3 A. That's correct.

4 Q. Not all the agencies began in February of 1985, based on  
5 the information you had?

6 A. That's correct.

7 Q. If we could look at Exhibit 60-1647 to 50. Is it fair to  
8 say that for some of these agencies, when you got the IRMS  
9 database, you had information that began in February '85 and  
10 some agencies you may not have information for 10 years later;  
11 is that correct?

12 A. I don't recall when the last agency converted. I do  
13 remember one in 1988.

14 Q. Do you recall this document that has your name on it  
15 entitled "Gaps in Electronic Era Files, Michelle Herman, June 8,  
16 2002"?

17 A. I don't recall it specifically.

18 Q. Okay. It was provided as part of the AR, and the document  
19 has your name on it. It's entitled "IRMS Transactional Analysis  
20 Conversion to IRMS by Agency." Do you see that?

21 A. I do.

22 Q. Just focus on the first one, Aberdeen. Aberdeen is an  
23 agency within the Great Plains area; is that correct?

24 A. Aberdeen is the name that was used in IRMS for the Great  
25 Plains region.



1 Q. Okay. And then A00, they have Aberdeen area. Is that a --  
2 is that the name of the agency or, excuse me, the name of the  
3 region or is there a separate agency with that designation?

4 A. There's an office within the Aberdeen area.

5 Q. Okay. So for the Aberdeen area you have the first  
6 transaction, February 4, 1985, the last transaction, October 29,  
7 1999; is that correct?

8 A. I'm presuming that was as of the date that I ran this  
9 report, yes.

10 Q. Okay. In 2002.

11 A. As I mentioned, I don't recall this specific report. I  
12 created many documents over 10 years.

13 Q. Okay. Is there any question in your mind that this  
14 document had been prepared by you?

15 A. It's not in a format that I typically use.

16 Q. Do these dates in this document seem accurate to you?

17 A. Roughly, yes.

18 Q. Okay.

19 A. The Aberdeen section I can view on the screen.

20 Q. And if you go down to -- Fort Berthold starts June '85 and  
21 then ends October 1999; is that correct?

22 A. That's what the document says, yes.

23 Q. But then if you go down, say, to the Albuquerque area, the  
24 first transaction doesn't begin till 1996; is that correct?

25 A. That's what the document reflects, yes.

1 Q. So you would only have -- if the document is correct, you  
2 only have three years of data for that particular area; is that  
3 correct?

4 A. Yes, but typically area offices don't process transactions.  
5 It's more common for the agencies to process those transactions.

6 Q. Okay. And if you go down to the Ramah Navajo Agency, M75,  
7 its first transaction 1992, December 23, last transaction  
8 January 15, 1999; is that correct?

9 A. That's what the document reflects.

10 Q. It's fair to say that not all the agencies began in 1985,  
11 and you had a lot that came onto the IRMS system, based on the  
12 information you got, much later; is that correct?

13 A. Yes, but not all agencies started at the same point in time  
14 either. So it's not necessarily true that -- I'm not familiar  
15 with this particular agency. I don't know when it was created.  
16 Perhaps it wasn't created until later in time.

17 Q. Have you made any determinations to identify when these  
18 agencies started?

19 A. As a component of our regional analysis, we try to identify  
20 the beginning balance transactions within IRMS and whether or  
21 not those agencies came online prior to IRMS.

22 Q. Okay. And have you determined that?

23 A. We've determined for some of the agencies specifically the  
24 beginning balance transactions, but not for all of them, no.

25 Q. And do you have that documentation?

1 A. I'm sorry?

2 Q. Do you have that documentation?

3 A. To the extent we've determined it for the regions we've  
4 reported on, it's included in our reports.

5 Q. Okay. If you could go to the next page. And just look at  
6 the Anadarko area. Here we have a first transaction of August  
7 7, 1990, last transaction of March 31, 2000. Do you see that?

8 A. I do.

9 Q. And so that would reflect, if the document's accurate, that  
10 there was no data on the IRMS system that you had from that  
11 particular area until 1990; is that correct?

12 A. If the document is accurate, yes.

13 Q. Okay. But in fact, the Anadarko area region or agency has  
14 been around a long time; is that correct?

15 A. I don't know when the Anadarko area office opened.

16 Q. Okay. Certainly prior to 1990?

17 A. I just told you I don't know when the office opened.

18 THE COURT: I'm confused by this exhibit. You say no  
19 data from the Anadarko area earlier than August 1990, but right  
20 below that, a couple lines below it, it says data from the  
21 Anadarko Agency began February '85. Is the Anadarko Agency  
22 within the Anadarko area?

23 THE WITNESS: Yes, Your Honor. I don't know if this  
24 is something I created or not, but the Anadarko Agency is part  
25 of the Anadarko area, and what I had mentioned earlier is

1 typically area offices don't process transactions. It's more  
2 common for the agency offices to actually process those  
3 transactions.

4 THE COURT: So when the reference is to "Anadarko  
5 area," I should be reading it as the "area office."

6 THE WITNESS: That's correct.

7 THE COURT: All right.

8 BY MR. SMITH:

9 Q. Now, you also have a separate column that says number of  
10 months of missing data. That's the very last column. You see  
11 that?

12 A. I do, but I don't know if this is a chart I prepared. I  
13 mentioned that.

14 Q. Do you know why we would be provided a chart in the  
15 administrative record with your name on it that wouldn't be  
16 prepared by you?

17 A. Sir, I haven't reviewed the document that you extracted  
18 this from.

19 Q. Okay. Is it fair to say that within the agency information  
20 you had, that you were provided on IRMS, there were significant  
21 gaps, monthly gaps in that information?

22 A. Some agencies did have gaps in the data, yes.

23 Q. Almost 50 percent of them had gaps; is that correct?

24 A. I couldn't tell you that without looking at my reports.

25 Q. And in fact you would characterize those gaps as

1 significant, would you not?

2 A. Again I would need to look at our reports to tell you  
3 specifically how many months we're missing, but we have restored  
4 quite a few transactions to the records set.

5 Q. You understand I'm talking about the IRMS database as you  
6 got it in 1997, 2002, whenever you received it.

7 A. Yes, I understand.

8 Q. If we could turn to Exhibit 55-6-1. This appears to be an  
9 e-mail from you to Tonya Cawood, copied to Bert Edwards, dated  
10 July 1, 2002. Do you see that?

11 A. Yes, I do.

12 Q. Do you recognize this e-mail?

13 A. I would need to be able to read it. It appears to be an  
14 e-mail from when I was working at KPMG.

15 Q. Okay. If you could go down to -- and take whatever time  
16 you need to read it. I wanted to focus --

17 A. I'm sorry, it's too small for me to read here.

18 Q. If you could blow it up for her, please.

19 A. Okay.

20 Q. Do you recognize it as an e-mail that you wrote?

21 A. Yes, when I was reviewing the blue plan, I believe it was,  
22 to Congress.

23 Q. Excuse me, the what?

24 A. I believe it was the blue plan to Congress.

25 Q. Okay. And you noted in -- under page VI, cost of the

1 historical accounting. If we could focus on that language,  
2 please. "In phase 1 we will have to supplement the currently  
3 available electronic data as there are a significant number of  
4 gaps. This isn't referenced." Is that correct?

5 A. I'm presuming in that copy of the plan they didn't have a  
6 sufficient reference to restoring data to the data set.

7 Q. In fact, there were significant gaps in the IRMS database;  
8 isn't that correct?

9 A. As I mentioned, we've already restored 275,000  
10 transactions.

11 Q. Talking about the database that you received, not what you  
12 you've restored, what you received, there were significant gaps  
13 in that database; is that correct?

14 A. There were gaps in the database, yes.

15 Q. You have agencies that may go for months without  
16 information; is that correct?

17 A. There were some agencies that had no transactions in a  
18 specific month, yes.

19 Q. And it may be one month or it may be a hundred months there  
20 were no transactions; is that correct?

21 A. I don't know if there were hundreds of months for a  
22 specific agency, but yes, there were multiple gaps for some  
23 agencies.

24 Q. Okay. Let's go back to 60-16-1. Now, the document we were  
25 looking at before, which was designated as coming from you, was

1 attached to a report from NORC. Anadarko Agency IIM  
2 Transactions Described. Do you recognize that document?

3 A. I don't know if I've read this document before or not. As  
4 I mentioned, I've seen several reports from NORC.

5 Q. Okay. And it specifically references the fact that it  
6 comes from you, but you don't recall ever preparing this  
7 document?

8 A. This document is from NORC. This document isn't from me.

9 Q. Go to the next page, please, page 43. Bates stamp No.  
10 16-47. The document specifically references this appendix  
11 coming from you, but you don't recall it.

12 A. This is the document we were discussing earlier.

13 Q. Exactly.

14 A. I've answered that question.

15 Q. Okay. This document in fact lists many months in the last  
16 column for particular agencies that you have no information on  
17 that IRMS database; is that correct?

18 A. I'm sorry, can you repeat your question?

19 Q. Sure. If you will go to the last column, number of months  
20 missing data, a number of agencies have numerous months where  
21 data is missing. Is that correct?

22 A. Typically when we create a schedule like this, it's the  
23 number of months that have no transactions. It doesn't  
24 necessarily mean there were transactions processed. That's one  
25 of the steps that we have to perform in this data validation

1 process.

2 Q. So if we go to the Ramah Navajo Agency, December 23, 1992  
3 to January 15, 1999, it says there's 20 months of missing data.  
4 Correct?

5 A. That's what the report says, yes.

6 Q. Wouldn't that mean that there was 20 months within that  
7 seven-year time period where there is no data?

8 A. That's correct.

9 Q. Actually, if you could go to A55, there's one called  
10 "unknown." Do you have any idea what the unknown agency is?

11 A. I do know, yes.

12 Q. What is that?

13 A. It's another identifier that was used by the Winnebago  
14 Agency.

15 Q. So if we see "unknown," that means the Winnebago Agency?

16 A. No. I said that A55 means Winnebago Agency.

17 Q. Okay. So the data for A55 would be the Winnebago Agency  
18 then?

19 A. Yes. At one point in time the Winnebago Agency set up -- I  
20 don't recall what the F55 agency is, but there's a relationship  
21 between the Winnebago Agency and the agency referenced as F55,  
22 and so when the Winnebago Agency had accounts that they were  
23 establishing for account holders from F55, they set those  
24 accounts up under A55.

25 Q. Okay. So for that particular agency, it appears that



1 during a five-year period there were 46 months of missing data?

2 A. As I mentioned, that was a subset of what was processed by  
3 the Winnebago Agency. So it's inappropriate to look at it this  
4 way.

5 Q. Okay. Is it fair to say that if you have periods where you  
6 have no electronic data, for example, presuming that the  
7 Cheyenne River Agency has 11 months of missing data, that would  
8 be treated as a paper era transaction for purposes of sampling;  
9 is that fair?

10 A. No, it's not.

11 Q. Okay. So if the data is not on the electronic database, it  
12 is still treated as electronic data?

13 A. The period from February '85 forward is the period to which  
14 we're restoring those transactions, and those transactions will  
15 be considered as part of the electronic ledger era.

16 Q. But as far as the sampling that has been done so far -- I  
17 know your work is not complete yet, but as far as the sampling  
18 that has been done so far, if the information is not on the IRMS  
19 database, it's treated as a paper era transaction; is that  
20 correct?

21 A. Well, first, some of the transactions had been restored to  
22 the database when the sample was drawn, and second, there's  
23 going to be a second sample drawn, at least that's my  
24 understanding, once we believe we've completed the record set.

25 Q. Let's go to Bates stamp 10-20-1. Are you familiar with

1 this document?

2 A. Yes. I believe it's a report that we issued while at  
3 Arthur Andersen.

4 Q. Okay. Actually, let's step back. Let's look at Bates  
5 stamp No. 51-8-1. This is entitled "NORC Report, Litigation  
6 Support Accounting Project, Interim Report on Debit  
7 Transactions," dated May 2004. Are you familiar with this  
8 document?

9 A. Sir, as I mentioned, I've read many NORC reports. I don't  
10 know if I've read this specific report.

11 Q. If you could look at Bates stamp No. 8 of this document.  
12 Focus in on the highlighted language at the top of the page.  
13 Stated that "Inference is confined to transactions in the 1985  
14 to 2000 time period that are available electronically, referred  
15 to earlier as from the electronic records era. Transactions  
16 that are not currently available electronically are referred to  
17 as from the paper records era. To sample or test such  
18 transactions, the account ledgers or computer listings must be  
19 located and digitized."

20 So is it your understanding that NORC's sampling is based  
21 solely on what appears on the electronic records era?

22 A. It's my understanding that the electronic ledger era is  
23 going to include those transactions that we restore between  
24 February of '85 and 2000.

25 Q. Okay. But this report was done in 2004. Your work is

1 not --

2 A. I believe it said 2001, didn't it?

3 Q. May 2004.

4 A. Okay.

5 Q. Okay. Your data was not complete in May 2004; is that  
6 correct?

7 A. That's correct.

8 Q. You're working on it now.

9 A. That's correct.

10 Q. So they're basically sampling based on what you had, which  
11 was solely in the electronic era.

12 A. They drew their sample from the transactions that we  
13 provided, but it's my understanding that a second sample will be  
14 drawn once we're done completing the record set.

15 Q. So as far as the sampling that has been done so far, it's  
16 based solely on what appeared on the electronic database; is  
17 that correct?

18 A. Plus transactions we had restored up until that point in  
19 time.

20 Q. Do you have any reports as to what transactions you had  
21 restored up to that point in time?

22 A. I don't know if we issued a specific report. I can  
23 determine which transactions had been added, though.

24 Q. Whatever the case, it was not -- certainly not complete at  
25 the time NORC did their work in 2004.

1 A. No, it was not.

2 Q. If we could go now to 10-20-1. And you indicated that this  
3 was a report that was prepared while you were with Arthur  
4 Andersen?

5 A. I believe so, yes.

6 Q. Entitled "IRMS Database Analysis, Procedures and Findings  
7 Report"?

8 A. Yes, that's the title of the document.

9 Q. And it was back in July 2001?

10 A. Yes.

11 Q. If we could turn to page 7, the second paragraph, please.  
12 Indicates that "Six regions, Albuquerque, Anadarko, Eastern,  
13 Minneapolis, Navajo, and Sacramento have at least one month with  
14 no available transactional data. There are 75,734 accounts  
15 potentially affected by these gaps in information. These  
16 accounts had one or more transactions before and after the  
17 affected data period." Is that correct?

18 A. That's what the report states, yes.

19 Q. Okay. And that's consistent with your understanding?

20 A. Sir, this is many years ago.

21 Q. Nevertheless, there were significant gaps, as you noted,  
22 and that affected quite a large number of accounts; is that  
23 fair?

24 A. Based on what this says, yes, 75,000.

25 Q. Okay. And that's based on the number of accounts that were

1 understood to exist back in 2001.

2 A. I believe what it's saying, that the number of accounts  
3 that were opened prior to the gap and opened after the gap. I  
4 don't believe that's referring to a total number of accounts.

5 Q. And is it your understanding this number would not include  
6 transactions for accounts from agencies which did not even post  
7 their documents or post their information on IRMS until after  
8 1985?

9 A. I don't believe I understand that question, I'm sorry.

10 Q. As we noted, a number of agencies did not post their  
11 information on IRMS till well after 1985; is that correct?

12 A. There are some agencies, yes, that came on after February  
13 of '85.

14 Q. Okay. And there certainly would be no available electronic  
15 transactional data for that period as well, correct?

16 A. For the period prior to February of '85, yes.

17 Q. I'm talking about the agencies that posted their  
18 information on well after 1985.

19 A. Obviously if they converted to IRMS after February of '85  
20 it's not available electronically.

21 Q. Okay. And do you know how many accounts were affected by  
22 those agencies that didn't post their information on IRMS till  
23 well after February of 1985?

24 A. I don't believe I understand the question. If the accounts  
25 weren't being reflected in IRMS because they were still in

1 paper, it would have been posted to a paper ledger era.

2 Q. You haven't determined how many accounts are affected by  
3 the fact that agencies weren't posting their information on IRMS  
4 in February of 1985.

5 A. Because they weren't posting it to IRMS doesn't mean it  
6 wasn't being posted.

7 Q. It wasn't being posted to IRMS, though. It wasn't in an  
8 electronic format; is that correct?

9 A. That's correct.

10 Q. And how many accounts were affected by those agencies'  
11 failure to post that information on IRMS in February --

12 A. It's not a failure to post; they simply hadn't converted  
13 yet.

14 Q. Right. They hadn't converted to IRMS. What systems were  
15 they using? Paper systems?

16 A. I don't know if every single agency was using the same  
17 system. I've seen many paper ledger cards.

18 Q. But you can't tell me how many accounts were affected by  
19 agencies that do not post their information on IRMS from 1985  
20 until some later date?

21 A. I don't think I understand your question, because it's  
22 still posting, it's just not posting to the IRMS system.

23 Q. That was my question. How many accounts were affected by  
24 the failure of an agency to post their information on IRMS in  
25 1985?

1 A. It's not a failure to post, sir, if you're not using the  
2 system.

3 Q. Right. And you have no information, no electronic  
4 information for that period, do you?

5 A. No, because it was recorded in paper ledgers.

6 Q. This paragraph indicates that there were months where  
7 agencies were not reporting information. Isn't it fair to say  
8 that also within months where they were reporting information,  
9 transactions were missing?

10 MR. QUINN: Objection, Your Honor. I don't believe  
11 the document reflects that.

12 MR. SMITH: I'm not talking about this particular  
13 document.

14 THE COURT: The question is isn't it fair?

15 THE WITNESS: I'm sorry, could you repeat the  
16 question.

17 BY MR. SMITH:

18 Q. This document indicates there were periods where an agency  
19 would go and not report on IRMS for a month or more, correct?

20 A. It's not that it wasn't reported; it's that it's not  
21 currently available electronically.

22 Q. When you got this system, when you got the IRMS database,  
23 it wasn't there, correct?

24 A. When we got our copy of the system, no, it was not there.

25 Q. And that's the system you're using for your work?

1 A. That's correct.

2 Q. And isn't it true that you've discovered that even when  
3 agencies did report their information on IRMS, there was account  
4 information that was missing?

5 A. I think we need to clarify our language. If you're asking  
6 were there months that had transactions that still had missing  
7 transactions, that's correct.

8 Q. Is it also fair to say that you do not know whether all  
9 account holders even have accounts listed on the IRMS system?

10 A. I'm sorry?

11 Q. Do you know whether all account holders have accounts  
12 actually listed on the IRMS database?

13 A. Are you asking if all individual Indians or all account  
14 holders?

15 Q. All individual Indians that should have accounts. Are they  
16 all listed on the IRMS database?

17 A. That's a different question, sir.

18 Q. Okay. What's the answer to it?

19 A. I don't know if that's true or not.

20 Q. If you could look at page 7 of the 10-20-1, and you see a  
21 section in the middle entitled "IRMS Limitations." Do you see  
22 that?

23 A. I see the subtitle, yes.

24 Q. Okay. And if we could focus on the highlighted language  
25 under that heading.



1 A. I'd like to read the entire paragraph, please.

2 Q. Take your time.

3 A. Could you focus in on that, please? Thank you.

4 (Witness reviewing document.)

5 Thank you.

6 Q. Does it indicate that first some individual account holders  
7 may not have any accounts or transactions recorded on the  
8 system; is that correct?

9 A. Yes. What this sentence is referring to is just like there  
10 are transactions missing from the transactional database, there  
11 were accounts missing from the account database, that we've  
12 restored as well.

13 Q. The ones you've discovered have been restored?

14 A. Yes, that's correct.

15 Q. Has any effort been undertaken to determine how many  
16 specific accounts may not have never made it to the system at  
17 all?

18 A. I think those are different questions. What I'm referring  
19 to is accounts that did exist in the system.

20 Q. Okay. How about the ones that didn't exist on the system?  
21 Are all accounts listed on the system?

22 A. I think that's a very different question. What our work  
23 focuses on are accounts that were created.

24 Q. You haven't been asked to focus at all on accounts that may  
25 not have ever made it to the IRMS system.

1 A. I don't understand your question. I'm sorry.

2 Q. Have you been asked to look for accounts that may not have  
3 never made it onto the IRMS system?

4 MR. QUINN: Objection, vague, Your Honor.

5 THE COURT: Overruled.

6 THE WITNESS: What we're evaluating are accounts that  
7 were created in the system. I can't evaluate whether or not an  
8 account should have been created.

9 BY MR. SMITH:

10 Q. You have not been tasked with that job; is that correct?

11 A. No, I have not.

12 MR. SMITH: Your Honor, I see it's 5:00. Is this a  
13 good stopping point? It's up to you.

14 (Laughter)

15 THE COURT: Okay. Since you're begging, Mr. Smith.

16 (Laughter)

17 We'll call it a day. See you at 9:30 tomorrow morning.

18 (Proceedings adjourned at 5:01 p.m.)

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CERTIFICATE

I, BRYAN A. WAYNE, Official Court Reporter, certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

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BRYAN A. WAYNE