

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, : Civil Action 96-1285
et al. :
Plaintiffs :
V. : Washington, D.C.
: Thursday, October 25, 2007
:
DIRK KEMPTHORNE, Secretary :
of the Interior, et al. :
:
Defendants : MORNING SESSION
TRANSCRIPT OF EVIDENTIARY HEARING
DAY 10
BEFORE THE HONORABLE JAMES ROBERTSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: DENNIS GINGOLD, ESQUIRE
LAW OFFICES OF DENNIS GINGOLD
607 14th Street, NW
Ninth Floor
Washington, DC 20005
(202) 824-1448
ELLIOTT H. LEVITAS, ESQUIRE
WILLIAM E. DORRIS, ESQUIRE
KILPATRICK STOCKTON, L.L.P.
1100 Peachtree Street
Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6450
KEITH HARPER, ESQUIRE
JUSTIN GUILDER, ESQUIRE
KILPATRICK STOCKTON, L.L.P.
607 14th Street, N.W.
Suite 900
Washington, D.C. 20005
(202) 585-0053
DAVID C. SMITH, ESQUIRE
DANIEL R. TAYLOR, JR., ESQUIRE
KILPATRICK STOCKTON, L.L.P.
1001 West Fourth Street
Winston-Salem, North Carolina 27101
(336) 607-7392

<p style="text-align: right;">Page 1975</p> <p>For the Defendants: ROBERT E. KIRSCHMAN, JR., ESQUIRE JOHN WARSHAWSKY, ESQUIRE MICHAEL QUINN, ESQUIRE J. CHRISTOPHER KOHN, ESQUIRE U.S. Department of Justice 1100 L Street, N.W. Washington, D.C. 20005 (202) 307-0010</p> <p>JOHN STEMPLEWICZ, ESQUIRE Senior Trial Attorney U.S. Department of Justice Commercial Litigation Branch Civil Division Ben Franklin Station P.O. Box 975 Washington, D.C. 20044 (202) 307-1104</p> <p>Court Reporter: REBECCA STONESTREET Official Court Reporter Room 6511, U.S. Courthouse 333 Constitution Avenue, N.W. Washington, D.C. 20001 (202) 354-3249</p> <p>Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.</p>	<p style="text-align: right;">Page 1977</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p>1 THE COURT: Good morning, everybody. Who's next? 2 3 MR. KIRSCHMAN: Your Honor, you had stated you wanted 4 to address a couple of housekeeping matters? 5 THE COURT: Oh, yes, I did. Thank you. I was so 6 traumatized by the baseball score last night. 7 First of all, let's talk about Kansas. Anybody want to 8 go to Kansas? 9 MR. KIRSCHMAN: Your Honor, we put on evidence related 10 to Kansas that included the testimony of Kathy Ramirez and the 11 exhibits, including photographs, related to that. We did that 12 so there would be a clear evidentiary record and you would have 13 testimony. 14 Having said that, though, a trip to Lenexa would show 15 the Court more than a couple of mere pictures would, and would 16 convey to the Court visually the process in place and the extent 17 of the documents that are being collected. So we believe it 18 would assist the Court, but we do have the evidentiary record 19 established through testimony. So, we leave it to the 20 discretion of the Court, of course. 21 We believe, because there is already a record and 22 there's been Q&A, question and answers through testimony, that 23 it should be a limited site visit, a procedure where you and 24 your clerk would go. And we don't see a need, for example, to 25 have a transcription, because we wouldn't envision testimony</p>																																																													
<p style="text-align: right;">Page 1976</p> <p style="text-align: center;">C O N T E N T S</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">WITNESS</th> <th style="text-align: left;">DIRECT</th> <th style="text-align: left;">CROSS</th> <th style="text-align: left;">REDIRECT</th> <th style="text-align: left;">RECROSS</th> </tr> </thead> <tbody> <tr> <td>SALLY WILLETT</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>By Mr. Smith</td> <td>1986</td> <td>--</td> <td>--</td> <td>--</td> </tr> <tr> <td>By Mr. Kirschman</td> <td>--</td> <td>2024</td> <td>--</td> <td>--</td> </tr> <tr> <td>JOE CHRISTIE</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>By Mr. Gingold</td> <td>2034</td> <td>--</td> <td>2096</td> <td>--</td> </tr> <tr> <td>By Mr. Quinn</td> <td>--</td> <td>2086</td> <td>--</td> <td>--</td> </tr> </tbody> </table> <p style="text-align: center;">E X H I B I T S</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">NUMBER</th> <th style="text-align: left;">ADMITTED</th> </tr> </thead> <tbody> <tr> <td colspan="2">PLAINTIFF:</td> </tr> <tr> <td>350</td> <td>2086</td> </tr> <tr> <td>2152</td> <td>2086</td> </tr> <tr> <td>4208</td> <td>1984</td> </tr> <tr> <td>4455</td> <td>1985</td> </tr> <tr> <td>4487 - 4490</td> <td>1985</td> </tr> <tr> <td>4493 - 4494</td> <td>1985</td> </tr> <tr> <td>4497 - 4500</td> <td>1985</td> </tr> <tr> <td>4501</td> <td>1984</td> </tr> <tr> <td colspan="2">DEFENDANT:</td> </tr> <tr> <td>152-A</td> <td>1984</td> </tr> <tr> <td>158-A</td> <td>1985</td> </tr> </tbody> </table>	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	SALLY WILLETT					By Mr. Smith	1986	--	--	--	By Mr. Kirschman	--	2024	--	--	JOE CHRISTIE					By Mr. Gingold	2034	--	2096	--	By Mr. Quinn	--	2086	--	--	NUMBER	ADMITTED	PLAINTIFF:		350	2086	2152	2086	4208	1984	4455	1985	4487 - 4490	1985	4493 - 4494	1985	4497 - 4500	1985	4501	1984	DEFENDANT:		152-A	1984	158-A	1985	<p style="text-align: right;">Page 1978</p> <p>1 being taken. That's what we've attempted to do here in the 2 formal setting of the courtroom. 3 But that you could go and see the facilities, and you 4 would certainly, and your clerk, could ask questions. But it 5 wouldn't be a formal affair where we had a court reporter, 6 transcription, or videotaping. 7 That would be our recommendation to the Court. Thank 8 you, Your Honor. 9 THE COURT: What do the plaintiffs say, Mr. Dorris? 10 MR. DORRIS: Your Honor, of course we believe what you 11 think would be helpful to you, but we have some suggestions and 12 reservations about the trip to Lenexa. 13 First of all, to the extent that the purpose and nature 14 of the trip is as Mr. Kirschman just described, we think it's 15 entirely cumulative with the testimony that has gone in. We 16 have thought some time for how this could possibly be done in an 17 even-handed way, with us never having been to Lenexa. It would 18 be, from our perspective, a very one-sided tour of the people 19 that are there going through and showing you just what they want 20 you to see. 21 Now, if we go to Lenexa, and what really the issue 22 there to be addressed if you were to go is, can they find things 23 out there that they've got out in the cave? And if we were 24 going to go there and pick some names, and then watch and see 25 the process by which they try to locate those documents, and</p>
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<p>1 whether they can or can't, that might be something that is not 2 cumulative to what we have done.</p> <p>3 So first, we think the trip as just described is 4 cumulative with what you have seen and is in evidence already; 5 but two, if we go, we would suggest that perhaps we do something 6 more than what Mr. Kirschman has just described to you.</p> <p>7 MR. KIRSCHMAN: Your Honor, may I respond to that? 8 THE COURT: Sure.</p> <p>9 MR. KIRSCHMAN: Just briefly. What we envision, and 10 what I attempted to just describe, was a visual inspection of 11 the physical site. You have heard testimony on the record 12 regarding the process of how documents are found. You've also 13 heard testimony regarding how long that process can be.</p> <p>14 So there's no reason, and we do not anticipate 15 testimony from employees at Lenexa as they continue to perform 16 their daily work. That's not what we envision.</p> <p>17 So there's no reason to pick a name and try to find a 18 document in front of you. This isn't an experiment. It's a 19 visual inspection of the physical site.</p> <p>20 Second of all, regarding the argument that it's 21 cumulative, Your Honor, just because you go to your travel agent 22 and see pictures of a vacation spot doesn't mean it's the same 23 as going to the spot and actually witnessing it. There's more 24 than just the couple of pictures, although those are certainly 25 representative, and we tried to be all-inclusive, as you'll</p>	<p>1 best example, you can see that what Mr. Clinger would be 2 presenting would be hearsay. Looking at paragraph eight, he 3 states, "Those of us who had been working on or following the 4 creation of both the misplaced Trust report and the subsequent 5 '94 Trust reform legislation," and he goes on.</p> <p>6 There's no need in this hearing, given the scope of the 7 hearing, to hear such hearsay related to those individuals who 8 were working on or following the creation of the '94 Act.</p> <p>9 It also appears that the former congressman may want to 10 offer legal conclusions regarding what is and is not the 11 interpretation of the 1994 Act.</p> <p>12 With that in mind, there is no basis to hear his 13 testimony. It does not relate to the issues in this hearing, 14 and will not assist the Court.</p> <p>15 THE COURT: Counsel want to be heard in reply? 16 MR. LEVITAS: Yes, Your Honor. Very briefly, on the 17 points that Mr. Kirschman made, the so-called hearsay is not 18 hearsay because it's not being offered for the truth of what is 19 said, but it relates to the state of mind of the people, the 20 witness; what was his state of mind, what did he understand?</p> <p>21 But key to this is the fact that Mr. Clinger, who was 22 intimately involved, is giving the Court context, the context in 23 which this legislation was created. He is not testifying, as 24 the Court had I think very accurately pointed out, what is the 25 intent of Congress. But he explains how legislation is written,</p>
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<p>1 recall, through the pictorial walk-through. I don't think you 2 can equate the two. Thank you.</p> <p>3 THE COURT: All right. I think we will not go to 4 Lenexa. Notwithstanding our earlier -- my earlier enthusiasm 5 for the trip, I really think that both of you are right, that 6 going out there just to see what I've already seen would not be 7 all that illuminating.</p> <p>8 And on the other hand, going out to hand some random 9 names to somebody at the front door and say, "Find me 10 documents," would be -- they might find them, they might not 11 find them. Everybody would scramble around. I don't think it 12 would be a very productive use of counsel's time or of mine, and 13 so we're going to abandon that idea.</p> <p>14 Now, we talked yesterday about the case for hearing 15 testimony of a former congressman who was present at the 16 creation of the Reform Act of 1994. I have a proffer of what 17 his testimony would be. I told Mr. Kirschman that I would hear 18 his response to it this morning, and I will hear it now.</p> <p>19 MR. KIRSCHMAN: Thank you, Your Honor. We believe that 20 the affidavit of former Congressman Clinger demonstrates that 21 there is no basis to hear his testimony on this. The report 22 basically -- I'm sorry, the affidavit itself appears to indicate 23 that Congressman Clinger would just be attempting to recreate a 24 legislative history that he has in his own mind.</p> <p>25 Also, looking specifically at paragraph eight as the</p>	<p>1 and that the people who write the legislation follow the 2 directions and guidance of the members of Congress. The members 3 of Congress don't actually sit down and write most of this 4 legislation.</p> <p>5 And he points out that, as a person who was actively 6 involved in this process, he heard and was not aware of and did 7 not himself give any instructions or guidance to temporarily 8 limit the scope of the accounting. And that is not a question 9 of intent. That's a matter of fact.</p> <p>10 The fact is that no such instructions were given that 11 he knew of, that he gave. And he, being intimately involved, is 12 able to state that the people who write legislation under the 13 guidance of directions from members of Congress were given no 14 directions to limit the scope of the accounting.</p> <p>15 That was the purpose of this legislation -- of his 16 testimony and the proffer.</p> <p>17 THE COURT: I understand you yourself are a former 18 member of Congress.</p> <p>19 MR. LEVITAS: Guilty. Yes, sir, I was.</p> <p>20 THE COURT: Well, then, you have more intimate 21 understanding of the sausage-making process than anybody around 22 here.</p> <p>23 I think I will sustain the government's objection to 24 Mr. Springer's (sic) testimony, let your proffer be of record. 25 And maybe, when we get around to closing arguments, you yourself</p>

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<p>1 can tell me something about the sausage-making enterprise. 2 MR. LEVITAS: Thank you, Your Honor. 3 THE COURT: Thank you. 4 MR. KIRSCHMAN: Your Honor, could I raise another 5 matter? 6 THE COURT: Yes, sir. 7 MR. KIRSCHMAN: Unfortunately, I have to correct a 8 mistake I made on Monday. You may recall, after I presented 9 Mr. Cymbor as our last witness, I also presented the Court with 10 two CDs of the DX-152-A -- 11 THE COURT: Yeah. 12 MR. KIRSCHMAN: -- and 158-A. At the time I did that, 13 it was my understanding that when Mr. Quinn had originally moved 14 to have those admitted, you had accepted them conditional on us 15 explaining whether any of the pages had been used on direct or 16 cross or redirect. 17 Our review of the transcripts revealed that wasn't the 18 case, and in fact that what I should have done was, after 19 explaining that they weren't used, I should have then moved on 20 Monday for their admission into evidence, instead of simply 21 handing them to you. 22 Because while Mr. Quinn had moved for their admission, 23 you hadn't actually addressed it. 24 THE COURT: All right. 25 MR. KIRSCHMAN: So I would like to re-open the record</p>	<p>1 4497 - 4500 were moved into evidence.) 2 MR. HARPER: Thank you, Your Honor. 3 MR. KIRSCHMAN: Your Honor, one moment. 4 (OFF THE RECORD.) 5 THE COURT: Yes. 6 MR. KIRSCHMAN: Your Honor, I would like to note that 7 not all of these exhibits were presented to Mr. McCarthy. And 8 specifically related to 4489, only the last document of a 9 compilation was addressed with him. But I understand you have 10 admitted those, but I would like to make that clear for the 11 record. 12 THE COURT: Okay. 13 Got another witness for me? Mr. Smith? 14 MR. SMITH: Good morning, Your Honor. 15 THE COURT: Good morning. 16 MR. SMITH: Your Honor, if it please the Court, there 17 were two additional exhibits, as well. With Ms. Infield's 18 testimony, Plaintiffs' Exhibit 607, which was the Tiger Team 19 report; and Plaintiffs' Exhibit 4154, which was the HLIP, the 20 High-Level Implementation Plan. I understand there's no 21 objection to those exhibits. 22 THE COURT: 607 and 4154 are received. 23 (Plaintiffs' Exhibits 607, 4154 were moved into 24 evidence.) 25 MR. SMITH: Your Honor, our next witness is Judge Sandy</p>
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<p>1 so we could formally move into admission DX-152-A through 158-A 2 as I presented to the Court and plaintiffs' counsel on Monday. 3 THE COURT: 152-A through 158-A will be received. 4 (Defense Exhibits DX-152-A - DX-158-A were moved into 5 evidence.) 6 MR. KIRSCHMAN: Thank you, Your Honor, I appreciate it. 7 THE COURT: Mr. Harper? 8 MR. HARPER: Yes, Your Honor. Good morning. Just one 9 final preliminary matter. We would like to move into evidence a 10 number of exhibits that we had used: Plaintiffs' Exhibit 4208, 11 which is Mr. Fasold's expert report; and Plaintiffs' 12 Exhibit 4501, which is a color chart that was basically the 13 AR-171 chart provided by the defendants. But you will recall we 14 added a line that I think dealt with total receipts. 15 And so we would like to move both of those into 16 evidence. 17 THE COURT: Received. 18 (Plaintiffs' Exhibits 4208, 4501 were moved into 19 evidence.) 20 MR. HARPER: And with respect to Mr. McCarthy, we would 21 like to move the following exhibits into evidence: 4455, 4487, 22 4488, 4489, 4490, 4493, 4494, 4497, 4498, 4499, and 4500. 23 THE COURT: Without objection, they will all be 24 received. 25 (Plaintiffs' Exhibits 4455, 4487 - 4490, 4493 - 4494,</p>	<p>1 (sic) Willett. 2 (Oath administered by Courtroom Deputy.) 3 THE COURT: Judge? Don't get many judges in the 4 witness chair. We're happy to have you here. 5 THE WITNESS: Thank you very much, sir. It is unusual 6 to be on the receiving end from this much lawyerdom. 7 THE COURT: Now we'll see if judges can answer 8 questions. 9 THE WITNESS: That will be the trick, won't it? 10 MR. SMITH: Your Honor, Judge Willett was an Interior 11 Administrative Law Judge for 18 years, and after that she was 12 involved in the High-Level Implementation Plan. 13 And she will testify regarding three areas: Number 14 one, the probate process, and what is considered during the 15 probate process; and number two, the issue of fractionization 16 (sic) and backlog, and how that is affected in the probate 17 process; and finally, how the probate process deals with the 18 Youpee interests. 19 THE COURT: All right. 20 (SALLY WILLETT, PLAINTIFF witness, having been duly sworn, 21 testified as follows): 22 DIRECT EXAMINATION 23 BY MR. SMITH: 24 Q. Judge Willett, can you state your full name, please? 25 A. Sally Mann Willett.</p>

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<p>1 Q. And where are you from, Judge Willett?</p> <p>2 A. I'm from Coffeyville, Kansas.</p> <p>3 Q. And you are a Tribal member?</p> <p>4 A. Yes, of the Cherokee Nation of Oklahoma.</p> <p>5 Q. Are you also an allottee?</p> <p>6 A. I'm not an allottee, but I'm from a land-owning family. My</p> <p>7 grandmother and my great-grandmother were both allottees.</p> <p>8 Q. You have a law degree?</p> <p>9 A. Yes, I do.</p> <p>10 Q. And from where and when?</p> <p>11 A. UCLA School of Law. I attended under the University of</p> <p>12 New Mexico Indian Law Program.</p> <p>13 Q. And after you graduated from law school, what kind of work</p> <p>14 did you do?</p> <p>15 A. I worked for Native American Rights Fund, and then went to</p> <p>16 the Department of Interior for the Office of Rights Protection.</p> <p>17 And from that point I transferred -- I was appointed as an</p> <p>18 Administrative Law Judge for Indian probate.</p> <p>19 Q. And when were you appointed as an Administrative Law Judge?</p> <p>20 A. I was appointed in November of 1977, but reported for duty</p> <p>21 on January 29th, 1998. And at Phoenix, Arizona.</p> <p>22 Q. If we could slow down just a little bit.</p> <p>23 A. I will slow down.</p> <p>24 THE COURT: So far the record says you were appointed</p> <p>25 in '77 and reported in '98. There's something wrong with that.</p>	<p>1 individual allotted land issues. And then I worked with the</p> <p>2 work group that preceded the American Indian Probate Reform Act.</p> <p>3 And I also teach Indian probate, estate planning,</p> <p>4 Indian Land Consolidation Act, and the American Indian Probate</p> <p>5 Reform Act.</p> <p>6 Q. Thank you. I want to focus on your work as an</p> <p>7 administrative judge for Interior.</p> <p>8 What areas of Indian country did you work?</p> <p>9 A. Well, my home territory was Arizona and Nevada --</p> <p>10 correction, Arizona and Southern California, with the exception</p> <p>11 of Navajo. Because of the dispute between the Hopis and Navajo,</p> <p>12 I had Hopi and another judge had Navajo. Then later, Nevada was</p> <p>13 added.</p> <p>14 However, because of the relocation in the '50s and</p> <p>15 '60s, we had out-of-area Indian residents within my territory.</p> <p>16 So the cases would follow the individual; they would be sent to</p> <p>17 us from their home agency or their home OHA office.</p> <p>18 So I would hear cases from all over the United States,</p> <p>19 and then would also hear dockets out of my own region, let's say</p> <p>20 if a judge were sick or there were a vacancy and that type of</p> <p>21 thing.</p> <p>22 Q. And generally, did you deal with most every tribe?</p> <p>23 A. Pretty much.</p> <p>24 Q. Any limitation on the type of estate matters you handled at</p> <p>25 all?</p>
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<p>1 THE WITNESS: No, it isn't. Reported for duty. The</p> <p>2 appointment occurred two months before I reported for duty.</p> <p>3 THE COURT: But the record has it 20 years. You were</p> <p>4 appointed in '77 or '97?</p> <p>5 THE WITNESS: Oh, '77. And I reported in '78.</p> <p>6 THE COURT: Got it, thank you.</p> <p>7 THE WITNESS: I'm sorry. I probably did say 9. Excuse</p> <p>8 me.</p> <p>9 BY MR. SMITH:</p> <p>10 Q. And over what period of time were you an Administrative Law</p> <p>11 Judge with Interior?</p> <p>12 A. From January 29th, 1978 until October 6th, 1996.</p> <p>13 Q. And what was your employment after that?</p> <p>14 A. I am continuing to be an Administrative Law Judge with the</p> <p>15 Social Security Administration.</p> <p>16 Q. After you left your position with Interior, did you continue</p> <p>17 to be involved in Indian probate matters?</p> <p>18 A. Yes, in a variety of ways. I was on the High-Level</p> <p>19 Implementation Plan, Phase II of the probate reinvention lab. I</p> <p>20 have worked on the Indian Land Consolidation Act Amendments of</p> <p>21 2000; I have worked on each set of the regulations that have</p> <p>22 been promulgated. And this is from the landowner standpoint.</p> <p>23 I work with an all-volunteer organization called the</p> <p>24 Indian Land Working Group, and we are the only national</p> <p>25 landowner organization in the country that works exclusively on</p>	<p>1 A. I'm not sure I understand your question.</p> <p>2 Q. Okay. What kind of probate resources did you deal with?</p> <p>3 Natural resources, funds?</p> <p>4 A. All of them. Oil, gas, land, agricultural leasing, grazing,</p> <p>5 anything. Anything that the resource produced.</p> <p>6 Q. And do you have an approximate number of the number of</p> <p>7 probate estates you have dealt with over those years?</p> <p>8 A. Thousands. I really would not be able to do that, because</p> <p>9 our caseload increased, actually quintupled, over the period of</p> <p>10 time I was there. And so our numbers at the end were much</p> <p>11 greater, because they would -- as the property was</p> <p>12 fractionating, they were reducing the system. So our caseloads</p> <p>13 increased dramatically.</p> <p>14 Q. Now, the Indian probate process is a bit different than that</p> <p>15 which might fall under state law. Is that fair?</p> <p>16 A. The function is the same, but how it's handled is I believe</p> <p>17 entirely different. Because the government initiated,</p> <p>18 government prosecuted, and people are largely unrepresented.</p> <p>19 Q. What is the purpose of Indian probate?</p> <p>20 A. Well, the purpose of Indian probate is to wind up the</p> <p>21 affairs of the decedent, and to transfer the assets into new</p> <p>22 ownership. And you do it one of two ways: Either by testate</p> <p>23 succession, which is will; or intestate succession, which is</p> <p>24 without a will and it's a default method.</p> <p>25 Q. Generally in Indian country, do Indians have wills?</p>

Page 1991	Page 1993
<p>1 A. Rarely.</p> <p>2 Q. So generally, you're dealing with an intestate?</p> <p>3 A. Intestate unrepresented.</p> <p>4 Q. Is there a personal administrator in the Indian probate</p> <p>5 process?</p> <p>6 A. The superintendent.</p> <p>7 Q. So the superintendent for BIA serves as the administrator?</p> <p>8 A. Right. There are no private representatives permitted,</p> <p>9 because they would interfere with the authority of the</p> <p>10 Secretary, which is delegated to the superintendent. The</p> <p>11 superintendent is in fact the legal custodian of the assets,</p> <p>12 under the regulations.</p> <p>13 Q. I would like you to briefly explain the Indian probate</p> <p>14 process. Did you prepare a chart that sets out that process?</p> <p>15 A. Yes.</p> <p>16 Q. And would that assist you in explaining the process?</p> <p>17 A. Yes, it would.</p> <p>18 MR. SMITH: If we could see Exhibit 4512, please.</p> <p>19 MR. KIRSCHMAN: Your Honor, defendants would object to</p> <p>20 the use of this chart, to the extent that we received this after</p> <p>21 11:30 last night and have not had a chance to review it and</p> <p>22 analyze it with our client. So I note that objection.</p> <p>23 THE COURT: All right. Well, I think you'll be able to</p> <p>24 handle it. Overruled.</p> <p>25 BY MR. SMITH:</p>	<p>1 A. All right. That was an effort to denote the new changes</p> <p>2 that have come since the High-Level Implementation Plan, with</p> <p>3 the addition of non-ALJ adjudicators.</p> <p>4 So when you see red, that is a new category of</p> <p>5 adjudicator that has come since the High-Level Implementation</p> <p>6 Plan processes.</p> <p>7 Q. Apart from those differences, does this chart reflect the</p> <p>8 probate process since maybe the '70s or so?</p> <p>9 A. Yes, it does, with the exception of the ADMs. If you strike</p> <p>10 off that, we had some redistribution, but that was done by the</p> <p>11 superintendent. And what would in reality happen is, the</p> <p>12 superintendent would ship it over to us because they were</p> <p>13 uncomfortable with doing adjudicative or quasi-adjudicative</p> <p>14 duties.</p> <p>15 Q. Going to step one, can you describe generally BIA's process</p> <p>16 in initiating the probate?</p> <p>17 A. Well, a death is reported. And then at some point, it's</p> <p>18 supposed to be within 90 days, they're supposed to prepare a</p> <p>19 probate file and submit it to OHA. And what the probate file</p> <p>20 contains is a -- data for heirship finding, a family history</p> <p>21 form --</p> <p>22 Q. Go ahead.</p> <p>23 A. It will contain an inventory of assets based on the records</p> <p>24 at the time; it will contain a death certificate; it will</p> <p>25 contain any documents that pertain to relationships, that would</p>
Page 1992	Page 1994
<p>1 Q. Judge Willett, is this a chart that you prepared?</p> <p>2 A. Yes, it is.</p> <p>3 Q. And does it describe the Indian probate process?</p> <p>4 A. Yes, it does.</p> <p>5 Q. And there are three sections at the top: One, two, and</p> <p>6 three. Could you describe what those are?</p> <p>7 A. Basically, when I'm teaching a class, I like to</p> <p>8 conceptualize things. And so what I'll do is -- "initiate" is</p> <p>9 basically the preparation of the probate done by the Bureau of</p> <p>10 Indian Affairs, and starting -- because that is the legal</p> <p>11 custodian of the assets.</p> <p>12 And then they prepare a probate package governed by the</p> <p>13 sections that are on the screen, 15.104 and 15.203, and they</p> <p>14 submit it to the Office of Hearings and Appeals, who then begins</p> <p>15 the adjudication process of one of two types. Because there are</p> <p>16 only two statutes that govern Indian probate proceedings, and</p> <p>17 that is 373, which is the will; and 372, which are the</p> <p>18 intestate.</p> <p>19 Q. Let me stop you there. There's references to regulations</p> <p>20 and statutes, and are those the current regulations?</p> <p>21 A. Yes, these are.</p> <p>22 Q. And if you notice, some of the areas are in red. For</p> <p>23 example, in the center of the page we have IPJ, which is in red,</p> <p>24 and then next to that ADM.</p> <p>25 What does it mean if it's in red?</p>	<p>1 be marriages, divorces, adoptions.</p> <p>2 It would then have -- on the data sheet, it would</p> <p>3 contain a statement of what was in the account, an IIM account</p> <p>4 on the date of death, and, at my request, on the date of</p> <p>5 submission.</p> <p>6 It would contain any documents. It would contain the</p> <p>7 original or a Court-certified copy of the decedent's last will</p> <p>8 and testament, and creditor claims. That would be a typical</p> <p>9 file.</p> <p>10 Q. And then that file is submitted to the adjudicator?</p> <p>11 A. Yes, it is.</p> <p>12 Q. And that would be you?</p> <p>13 A. Me. That would have been me.</p> <p>14 Q. And once you get that file, what is the process?</p> <p>15 A. Well, we would assign it, because we covered territories --</p> <p>16 we had multiple agencies, and they would go in to their judge</p> <p>17 who would then set dockets. Because we were circuit riders, we</p> <p>18 would set dockets of hearings, and build up enough cases then to</p> <p>19 go out to that area and hold the hearings.</p> <p>20 And once we concluded the hearing -- well, if we had</p> <p>21 additional development to do, which was frequent, we would then</p> <p>22 request -- if you look at the chart in the first column, go down</p> <p>23 to the box that says 4.210, we would ask the Bureau of Indian</p> <p>24 Affairs to supplement the record on whatever the issue was.</p> <p>25 And they would then get back to us, and we would make</p>

Page 1995	Page 1997
<p>1 that officially of record; I would serve a notice to all 2 interested parties, or in a proper case I would hold a 3 supplemental hearing. 4 Q. So if, after reviewing the file, there was some area you 5 felt needed additional information, you would refer it back to 6 the superintendent? 7 A. Yes. 8 Q. And the superintendent in turn would provide -- 9 A. He's the custodian. We -- 10 Q. It's helpful to the court reporter if you don't answer until 11 I finish the question. She's having -- 12 A. Excuse me. 13 Q. -- some trouble. 14 A. Excuse me. 15 Q. So it's referred back to the superintendent, and then she 16 provides you that information? 17 A. Yes. 18 Q. And once you get that information back, what is the next 19 step? 20 A. Well, it's officially made of record by one of two 21 processes: Either the service of a notice to all interested 22 parties by -- that I direct my staff to do; or in certain cases, 23 for example in will contests, we might have an additional 24 supplemental hearing, at which time the evidence would be 25 admitted.</p>	<p>1 process? 2 A. Huge backlog. 3 Q. Excuse me? 4 A. Huge backlog. 5 Q. Okay. What is the nature of the backlog today, do you know? 6 A. Well, there are several backlogs. There's a 53,802 pending 7 probate. They call it pending probate, but if you haven't 8 adjudicated, it's a backlog. They did 7,445 cases last year, 9 and still have 53,802 pending. Which to me, if you take in more 10 than you put out, that's a backlog. 11 I have -- I would like to clarify something. I have 12 always done high-volume adjudication in the Department of 13 Interior and now, and I'm pretty good with systemic things. And 14 if you take in more than you put out, there is only one 15 classification, and that's backlog. 16 Q. Okay. In a few minutes I'm going to talk about that 17 particular backlog, the probate backlog. How about the 18 recordation backlog? 19 A. Well, this is one of the sources of extreme consternation by 20 Indians. And that is the fact that we are unable to get answers 21 from the department. 22 On October 19th -- correction, on April 19th of 2007, I 23 asked Jim Cason for three numbers: The probate backlog, the 24 posting backlog, and the number of unrestored two percent 25 interests. I was told to send a fax. My group, the Indian Land</p>
Page 1996	Page 1998
<p>1 Q. Okay, good. And once there's a decision made by you as the 2 adjudicator, what's the next step? 3 A. You assemble the file that has the documents that I 4 indicated, the data sheet, the inventory, the will, the creditor 5 claims, any of the documents that I previously enumerated. The 6 original copies are then filed with the Land Title and Records 7 Office that served your area. 8 Now if you had, for example, mixed assets from two 9 areas, that you had an individual who had assets in say Aberdeen 10 and in Phoenix, you would send a duplicate copy - but obviously 11 not original and not certified - to that title plant and to the 12 agency that covered that particular asset, so that they could be 13 aware that probate had occurred. 14 Q. And the purpose of sending it to the Land Title Records 15 Office is what? 16 A. They're the county recorder office equivalent for Indian 17 lands in the federal system. 18 Q. So there would be a notice of the change in ownership? 19 A. Yes. That's their purpose, is to record the ownership. 20 It's under 43 CFR, Section 4.236. 21 Q. To your knowledge, what is the time period from when you 22 would make a decision to the actual recordation of that 23 decision? 24 A. Varied. There was no -- I couldn't answer that question. 25 Q. Do you know if there's any backlog in the recordation</p>	<p>1 Working Group, did. We received no response. 2 This has been the historical pattern of our efforts to 3 get hard information out of the department. 4 Q. Prior to talking to Mr. Cason, what was your understanding 5 of the recordation backlog? 6 A. Huge. 7 Q. How many filings? 8 A. No numbers. Huge. 9 Q. That's just the delay from the time you make a decision to 10 the time it's actually posted? 11 A. From the time decisions -- the posting backlog -- this is 12 the sequence: When a decision -- let me see if I can find it 13 here. 14 If you go to the center column, bottom row, there's a 15 citation omitted, and it's 4.240. There's a 60-day waiting 16 period, and that's considered the rehearing period. But what 17 that is, is supposed to be the recordation period in which the 18 title plant would have recorded it. 19 But beginning in 1980, which was two years after I 20 came, the resources for the Bureau of Indian Affairs, of which 21 the title plant is a component of the Bureau of Indian Affairs, 22 were eviscerated. And as was the OHA probate function. 23 So recordation lagged everywhere. Because you see, the 24 agency posts, too, but that's not the official recordation. 25 Only the Land Title and Records Agency is the official record.</p>

Page 1999	Page 2001
<p>1 And they're like the mother ship, basically, against which all 2 is matched by the agency. 3 Q. Let's go back to the probate process. As part of the 4 probate process, what if anything do you do as a matter of 5 practice, as an adjudicator, to determine the accuracy and 6 completeness of Trust funds represented by BIA to be in the 7 estate? 8 A. Nothing. 9 Q. If we could look -- 10 A. We don't go behind what's reported by the superintendent 11 unless there's an issue raised by a party. And in which case we 12 might, depending on what they were alleging, general or 13 specific, we would look at it. But it would be fact-specific. 14 MR. SMITH: If we could see Exhibit 4507, please. 15 BY MR. SMITH: 16 Q. And can you describe for the Court what Exhibit 4507 is? 17 A. That's a data for heirship finding and family history form. 18 They currently refer to it as an OHA-7 because that is -- I 19 guess it's government printing number. 20 Q. And is this the form that is provided to you as an 21 adjudicator by BIA? 22 A. Yes, it is. 23 Q. And if you look on the first page, primarily it lists 24 information about the decedent, and then potential heirs. Is 25 that --</p>	<p>1 that is the point of transfer. That's the effective date of the 2 transfer of the asset. 3 But what the family would be interested in would be the 4 amount of money on hand now. But because there would be a lag 5 between when we would hold the hearing and when we would receive 6 this, they would report it as the information on hand on the 7 date of submission. 8 Q. So as an adjudicator, what if any reliance do you place on 9 what BIA tells you to be the -- 10 A. This is the report. This is what I probate. 11 Q. Now, you indicated your mother is an allottee? 12 A. No, she is an enrolled Indian who is the sole heir in her 13 line. 14 Q. Okay. Have you had personal experiences trying to get an 15 accounting of your mother's interest? 16 A. Oh, yes. Yes. 17 Q. Have you had difficulty doing that? 18 A. Well, yes. They condemned -- "they" being a utility company 19 in Oklahoma, condemned in state court, which has no jurisdiction 20 over condemnation of allotted lands, they condemned one-eighth, 21 the flat portion, of the equalization allotment that my 22 grandmother had. And then they asked BIA if they wanted to 23 remove it to federal court, and BIA declined. 24 So somebody assigned a value to it, which I call chump 25 change, and they posted -- they did not make any effort to</p>
Page 2000	Page 2002
<p>1 A. It is. The form in its entirety is basically a summary of 2 probate. Because fundamentally, probate is who takes how much 3 and in what order. So what you have, you have to have a dead 4 person, so therefore you have the fact of death established; 5 where, because that determines the descent of personal property; 6 how determines whether or not you have to find out if an heir 7 killed the decedent. 8 So basically, what this form is, is a summary of 9 everything that is in that estate. 10 Q. And if you could look to page four of that form. 11 A. Am I supposed to be doing something to get to that? All 12 right. Thank you. 13 Q. And focus in on the top half. 14 A. All right. Yes. 15 Q. Is this where BIA would provide you information regarding 16 personal and real property in the estate? 17 A. Yes, it is. 18 Q. And generally, would that include allotted interests? 19 A. I'm sorry? 20 Q. Would that include allotted interests? 21 A. Are you talking about personal property, or are you talking 22 about the... 23 Q. Both. Either interest in allotted income or -- 24 A. Well, the personal property would be -- they would 25 automatically report all funds on hand at death in IIM, because</p>	<p>1 contact anyone, and simply did it by publication. And then, to 2 the best of our knowledge, we cannot find out whether or not 3 they ever opened an IIM account. But no money was ever given to 4 anyone in the family for the taking from that land. 5 Q. And you've been trying to get an accounting of that? 6 A. Well, I wrote the letter for my mother, who is now in her 7 80s, in 1999. And I'm still waiting for the response. 8 Q. So is it fair to say that you're somewhat sympathetic to 9 individual Indians seeking an accounting of their funds? 10 A. Well, you have to realize, I've worked for both the 11 plaintiff and the defendant, so I have interests -- you know, 12 I'm not a lopsided unit. I am not unsympathetic to that. I 13 understand it, and I also understand the impediments. 14 So I probably see it in a more dimensional way than a 15 lot of people do. 16 Q. And that was my next question. What if any provision is 17 there in the probate code for the heirs to request an accounting 18 of Trust assets as part of the probate process? 19 A. In the code? You would have to be more clear. 20 Q. As part of the probate process, what provision is there for 21 an heir actually to seek an accounting of -- 22 A. None. 23 Q. And that includes IIM assets? 24 A. Right. Not in the probate process. There has been a 25 provision added to the American Indian Probate Reform Act, but</p>

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<p>1 it doesn't include an accounting. It just simply gives red 2 people the same rights that white people have to ordinary 3 records about their assets. 4 Q. For example, as an adjudicator, would you be able to 5 investigate whether the appropriate income was received from a 6 particular lease? 7 A. No. I would make the referral back to the program agency, 8 which would be the custodian, the Bureau of Indian Affairs. 9 Q. During the probate process, is an heir -- does an heir get 10 access to all of the source documentation relating to an IIM 11 account? 12 A. The judge doesn't get access to all those documents. 13 Q. You talked about the fractionization (sic) issue. 14 MR. SMITH: And if we could look at Exhibit 4510, 15 please. 16 THE WITNESS: My screen is blank. There we go. 17 MR. SMITH: It's getting there. 18 THE COURT: While we're waiting for that to come up, I 19 would like to ask Judge Willett a couple of questions about 20 the -- her grandmother's story. It went by real quickly. And I 21 understand, counsel, that her grandmother 's story is not 22 exactly the issue that's before us, but I want to understand it. 23 You said that -- I think you said a one-eighth interest 24 or something in her land was condemned by the state government? 25 THE WITNESS: Right. No, the state -- a utility</p>	<p>1 it in federal court. 2 So the state court didn't have jurisdiction -- 3 THE COURT: Oh, I see. 4 THE WITNESS: -- to hear the condemnation proceeding of 5 the allotted interest. 6 THE COURT: Okay. 7 THE WITNESS: But that's the type of loose practice 8 that is rampart (sic) in Indian country. Oklahoma is a little 9 different than most other areas. It's considered the laboratory 10 rat for everything strange thing in the country. 11 THE COURT: So the chump change valuation was a result 12 of state court condemnation proceedings? 13 THE WITNESS: Right. 14 THE COURT: And what I hear you saying is that if BIA 15 had taken an interest in that and had taken it to federal court, 16 they might have gotten a better value for it? 17 THE WITNESS: Well, I think maybe they might have done 18 something like be involved in it, other than giving them the 19 high sign to go ahead and take it in an illegal forum. But 20 their only activity in that regard was to say, "Oh, yeah, go 21 ahead, boys." 22 So essentially, I would hope that the government 23 apparatus, had they gone through the proper court system, would 24 have bothered to do a few things, like make sure that there was 25 an appropriate appraisal, and make sure that the money was --</p>
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1 But in fact, it was located just north of Jay, Oklahoma.
 2 And so there was a great deal of confusion about where
 3 the equalization allotment was. Because it wasn't -- you know,
 4 it wasn't the big ticket.
 5 Q. And what if any notice did your grandmother receive
 6 regarding that condemnation --
 7 A. Well, she was deceased by this point. But my mother, who
 8 was constantly in contact with what we call down there the
 9 Indian agent, they knew where everybody was.
 10 Q. What notice did she get of that -- what notice did she get
 11 of that condemnation proceeding?
 12 A. None. They published it locally.
 13 Q. Where she didn't live?
 14 A. Where she did not live, right.
 15 Q. Okay. If we could look at Exhibit 4510. Is this a chart
 16 that you prepared in the past discussing the fractionization --
 17 A. Yes, it is.
 18 Q. Could you describe generally the fractionization problem?
 19 A. All right. Basically, when the government divided Indian,
 20 or usually Tribal lands, in severalty, and assigned it to
 21 eligible Tribal members at the time, that tribe would be
 22 allotted. That person is called the allottee. And then the
 23 property then would pass, overwhelmingly by intestacy, as
 24 tenancy in common interest.
 25 So, for example, when I teach the class, I explain

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1 fractionation as follows: You have the allottee; the allottee
 2 dies and has two heirs --
 3 THE WITNESS: And we will put in the heirs, please.
 4 All right.
 5 A. And then when those two die, they have two each; and when
 6 they die, they have two each. All right.
 7 So these people do not have divided interests, any
 8 particular right to any particular piece that a common undivided
 9 right in the entirety to the extent of their share. All right.
 10 BY MR. SMITH:
 11 Q. And going over to the left side of the chart, can you
 12 explain --
 13 A. Oh, that basically, when I'm teaching this -- because I
 14 teach tribes, I teach Indian community members, I teach BIA, I
 15 teach everybody, usually, this is the most commonly perceived
 16 pattern. This would be a Northern Plains "open to settlement
 17 and entry" model; that is, a large reservation that was then
 18 divided up. The A represents the dividing. If there wasn't
 19 sufficient land or sufficient land that they would allow to be
 20 allotted, they would then create off-reservation allotments as
 21 well.
 22 There were other ways you could get an off-reservation
 23 allotment, such as the Indian Homestead Act. But basically
 24 then, any that wasn't allotted on-reservation for 38 tribes
 25 would be open to settlement and entry by non-Indians.

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1 So that's -- when I'm teaching this, I'm showing the
 2 creation of the reservation, its reduction or fragmentation
 3 through the allotment process. And the triangle represents the
 4 pyramiding ownership that occurs as a result of
 5 multigenerational inheritance from the allottee.
 6 Q. Now, what impact has this fractionization had on the probate
 7 process?
 8 A. Oh, it causes it to proliferate. Because fractionation,
 9 every fractional interest is probated.
 10 Q. I want to talk a little bit about what you've referred to as
 11 the probate backlog. But first, how long has there been an
 12 Indian probate system?
 13 A. There are two answers to that question.
 14 Q. Okay.
 15 A. A formal system since 1910; the unofficial, informal, since
 16 1887, under Section V of the General Allotment Act. The right
 17 to probate or determine heirs was inferred from Section V of
 18 that Act.
 19 Q. How long has there been a probate backlog?
 20 A. The first backlog appeared in 1913. It was 40,000 estates,
 21 worth a then-value of \$60 million.
 22 Q. When you retired as an Administrative Law Judge for
 23 Interior, what was the probate backlog?
 24 A. I'll give you a range, because I just remember carrying this
 25 in my mind. Between 33 and 36 hundred.

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1 Q. Now, after you retired, you were -- you were asked back to
 2 assist with the HLIP?
 3 A. Right. Department of Justice called me, Lawrence Bacca
 4 called and said, "Would you be on this task force?"
 5 Q. And what were the concerns of probate to be addressed in the
 6 High-Level Implementation Plan?
 7 A. Its implosion. It was one of the sub-tasks in the
 8 High-Level Implementation Plan. Because if you'll go back to
 9 that chart that you just had up -- it's gone off the screen now.
 10 The fractionation basically causes everything to
 11 increase. And what our system was doing was invert that
 12 pyramid. It was decreasing the system, and has been since 1980
 13 been decreasing the system to address an exploding subject
 14 matter.
 15 So the department was doing an inverted pyramid while
 16 the subject matter was doing a pyramid. And that was lethal.
 17 Q. What do you mean, the department was doing an inverted
 18 pyramid?
 19 A. It was decreasing the probate offices. We were located in
 20 the Office of the Secretary of the Interior, and we somewhat
 21 operated as a slush fund for high-level interests. When
 22 everybody wanted some money, they would just dip into the OHA
 23 account.
 24 And then, of course, we had an additional problem.
 25 Just before I left, we had an office administrator who used to

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<p>1 shut down mission travel in August and horde the money, and then 2 turned herself in for a cash award when she returned it back to 3 the department. 4 MR. KIRSCHMAN: Objection. Lack of foundation, 5 hearsay. 6 THE COURT: I think I'll sustain that objection. 7 BY MR. SMITH: 8 Q. Did the HLIP successfully address the backlog problem? 9 A. Obviously not. 10 Q. And today, as you understand it, how much has the backlog 11 increased from when you retired? 12 A. It's now 53,802, and it was 33 to 36 hundred when I left. 13 Q. The typical Indian estate, are we dealing with a small 14 number of potential heirs or a large one? 15 A. Varies by reservation and the culture of the population. 16 The largest number of heirs were 200 that I did. 17 And each reservation is different. So you have some 18 reservations where people had few children; Hopi would be an 19 example. And then you have Donatham on the main reservation, 20 where they have almost no children. Quite a few estates have no 21 children, but huge collateral inheritance. So you would see 20 22 to 60 heirs. 23 MR. SMITH: If we could see Exhibit 4509, please. 24 BY MR. SMITH: 25 Q. Can you describe for the Court what Exhibit 4509 is?</p>	<p>1 the subsequent posting backlog, what effect if any does this 2 have on the Indian land title records? 3 A. It makes them infirm. 4 Q. What if any impact does that backlog have on the ability to 5 render an accounting for beneficiaries? 6 MR. KIRSCHMAN: Objection. Lack of foundation. 7 THE COURT: Overruled. Overruled. 8 A. Please ask that again. 9 BY MR. SMITH: 10 Q. Sure. What if any impact would the probate backlog and the 11 posting backlog have on the ability to render an accounting for 12 beneficiaries? 13 A. I don't think of it in exactly those terms. The money 14 follows the land. If you have the land un-probated or 15 un-posted, then it is not accurately reported. If it is not 16 accurately reported, then that would necessarily affect any 17 activity that would flow from that. 18 Q. Okay. 19 MR. SMITH: If we could look at Exhibit 779, please. 20 BY MR. SMITH: 21 Q. And do you recognize this as the January 6th, 2003 22 historical accounting plan? 23 A. Yes. 24 Q. And I want to address the specific section dealing with 25 probate.</p>
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<p>1 A. That's a case I handled involving -- it was a transfer case 2 from Quinault, which is in the Northwest, down to me because the 3 probable heir, or the will beneficiary in this case lived in 4 Mesa, Arizona. 5 Q. And if you could look at the second page of that document, 6 does this reflect the heirs in that particular case? 7 A. Yes. 8 Q. Was this unusual in your work? 9 A. No. 10 Q. So is it fair to say that a single estate may affect a large 11 number of heirs and potential allottees? 12 A. Oh, yes. 13 Q. To what extent if any would that problem be -- the problem 14 of a backlog, the 53, 54 thousand-case backlog, be exacerbated 15 by subsequently deceased heirs? 16 A. Oh, when you have a backlog, you have buried within that 17 backlog the hidden problem; and that is, you have heirs who have 18 died which create their own estates. Because the vesting point 19 for probate is the date of death, so if a person is alive on the 20 date of death, they're a life in being. If they later die, it 21 creates a second estate. 22 And the older your backlog, the greater the probability 23 of having these estates that are going to be triggered within 24 that backlog. 25 Q. The backlogs you've described, the probate backlog and then</p>	<p>1 A. All right. 2 Q. If we could move to appendix page 2-3, I think. 3 A. Oh, I can't see it. 4 Q. If we could focus on the -- 5 THE COURT: You're not alone, judge. We'll blow it up 6 for you. 7 BY MR. SMITH: 8 Q. If we could focus on the bottom paragraph. 9 A. Can you make that bigger? 10 Q. Yeah, it's getting there. 11 A. Oh, okay. Thank you. 12 Q. And have you reviewed this language of the plan? 13 A. Yes, I have. 14 Q. And it indicates that, "The plan does not contemplate 15 performing historical accounting work for the closed accounts of 16 deceased predecessors of current IIM account holders." And then 17 it goes on. 18 In your review of this language, did you find this 19 language to be accurate or inaccurate in describing the probate 20 process? 21 MR. KIRSCHMAN: Objection. I'm not clear as to if he's 22 asking her to comment on the entire paragraph. Did I 23 misunderstand? 24 MR. SMITH: I can take it sentence by sentence, if that 25 would help.</p>

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<p>1 MR. KIRSCHMAN: It's vague, otherwise. 2 MR. SMITH: Okay. 3 A. Well, the first sentence says what it says. It doesn't 4 contemplate doing it. So I don't have any opinion as to that. 5 BY MR. SMITH: 6 Q. How about the second sentence? 7 A. "General Trust law principles support the assumption of 8 correctness of any property distribution made to a current 9 account holder through the distribution of a probated estate." 10 That is very ambiguous, from the standpoint of a person 11 who adjudicates probate, because there are several things in 12 there. "The assumption of correctness of any property," well -- 13 THE COURT: I'm going to ask you to get a little closer 14 to that microphone please, judge. 15 THE WITNESS: I'm sorry. I'm looking, then talking 16 sideways. 17 A. Well, let's start with general trust law principles. This 18 isn't a general trust. This is a very unique bird. The Indian 19 Trust is very unique. Almost nothing standard could be applied 20 to this unique setting. You have a probate that's initiated by 21 the government, and prosecuted and pushed through by the 22 government, with virtually no one representing the Indians. So 23 as a consequence, you already have a non-general situation. 24 Let's go to the next, "Support the assumption of 25 correctness of any property distribution." Well, our order</p>	<p>1 decisions? 2 A. Yes. 3 Q. When was the first one? 4 A. 1987. Oh no, there was Hodel, which was the '83 two percent 5 rule; then there was the '97 Youpee two percent. It was the 6 1984 amendment decision. 7 Q. The earlier decision, how did that affect the probate 8 process? 9 A. Oh, my. The decision, we immediately desisted -- you know, 10 ceased and desisted from doing probate and dedicated ourselves 11 to restoring those interests. Would you like to hear how? 12 Q. Certainly. 13 A. We called in help from the Bureau of Indian Affairs agency 14 offices, we got typewriters, and we all sat down and started 15 modifying -- issuing orders of modification. 16 Q. And that was to bring escheated interests back into the 17 estate? 18 A. Right. 19 Q. What if any concern did you have, as a probate judge, as to 20 whether that escheated statute would be held unconstitutional? 21 A. I told the department prior to its enactment that it was 22 unconstitutional because it was an uncompensated taking. And 23 from that point on, I ceased to be included in the loop. 24 Q. What if any provision did you make for that in your probate 25 orders?</p>
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<p>1 applies to the assets that are attached to it that were made 2 part of the record during the probate, and to no others. 3 Because what occurs then is, if there are other assets, or 4 assets that were not included, or assets that were improperly 5 included, the Bureau of Indian Affairs prepares modifications of 6 that and submits them. So the program agency does the -- the 7 manager, the custodian, performs those functions and feeds them 8 to the judge. 9 So it says, "Support the assumption of correctness of 10 any property distribution," then "to a current account holder." 11 Our order would only pertain to that which was before the judge 12 at that time. 13 Q. You've described modifications to the probate orders. Is 14 that a common process, or uncommon? 15 A. Unbelievably common. 16 Q. And why is that? 17 A. Because the records are out of date, not posted. You know, 18 you have too many duties, too many people trying to perform too 19 many duties, not enough arms and legs. 20 Q. So as additional information comes in, your probate orders 21 are modified to reflect -- 22 A. Right. There is no -- it's not a finite activity. It can 23 expand. 24 Q. I want to change the subject and turn to what are commonly 25 referred to as Youpee interests. Were there two Youpee</p>	<p>1 A. Well, we learned a lot from that. We learned an awful lot, 2 because we knew we didn't want to have to sit down and do this 3 army of modification again. So I began writing alternative 4 contingent dispositions that said to the effect of, if an 5 interest is held, if the interest was held unconstitutional, 6 then the property will go, if it's an intestate order, to the 7 heirs at law as named in the order. Or, if it was a will case, 8 would go specifically to X. And this would be determined by the 9 content of the will at issue. 10 Q. So you actually anticipated the possibility of -- 11 A. Oh, absolutely. Because it only changed -- it was a 12 cosmetic change in the Act. It didn't change the fundamental 13 underlying problem, which was the uncompensated taking. So we 14 knew it was coming, so this time, we just geared up for it 15 better. 16 Q. So when the decision came down in the '80s, was it addressed 17 by BIA? 18 A. Well, Kevin Gover issued a -- well, in the '80s, 19 immediately, we immediately set about restoration. 20 Q. What about the decision in Youpee in the late '90s? How was 21 that handled? 22 A. That turned into a battle. And I'm not really sure who all 23 was involved, but I know who theoretically won, and that was the 24 landowners. Because Kevin Gover issued a letter in 1998 25 directing BIA to restore the two percent interest that had been</p>

Page 2019	Page 2021
<p>1 improperly held in limbo, or improperly given to the tribes 2 under the 1984 version of the Indian Land Consolidation Act, 3 two percent rule. 4 Q. So the decision in Youpee was in 1997? 5 A. Yes. 6 Q. And then in 1998, Kevin Gover ordered the return of the -- 7 A. Right. 8 Q. -- interests? 9 A. Right. 10 Q. And has that happened? 11 A. Well, now, that would be interesting, because we can't get 12 data. That was one of the three things that I asked Jim Cason: 13 Which probate backlog, which posting backlog, and how many of 14 the two percent interests remain unrestored? And it's almost 15 like a state secret. 16 Q. And what is the last information you had on the number of 17 unrestored Youpee interests? 18 A. The report that Kevin Gover issued said 81,000 interests in 19 over 15,000 estates. But what that didn't say was if that was 20 the total or the number that was unrestored. So his letter did 21 not differentiate. He didn't provide that degree of 22 specificity. 23 Q. What effect do the escheated interests have on the title 24 records of BIA -- 25 A. -- title. Because you have -- go back to the vesting of</p>	<p>1 A. Pig-headed. Actually, the plan -- they made them a priority 2 in the Indian Land Consolidation Act of 2000. Instead of acting 3 upon the Supreme Court decisions that said it's void, you know, 4 that it's unconstitutional, they went after them, targeted them 5 for acquisition. But they haven't -- to my knowledge, have not 6 acquired them all. 7 But it's almost like flypaper. These interests -- and 8 my group, the Indian land working group, is that we're very 9 concerned about this. Because we have practical reasons for 10 everything, every position we take, and the practical reason in 11 this case is that you are depriving someone of an asset that is 12 theirs. They're legally entitled to it by Supreme Court case 13 law, and they want it. 14 Q. Based on your understanding, what is the BIA's position 15 regarding the Youpee case? Is it retroactive or not? 16 MR. KIRSCHMAN: Same objections. 17 THE COURT: Overruled. 18 A. They've changed their position. It is my understanding that 19 somebody concocted a theory that holding a statute 20 unconstitutional wasn't retroactive, which was not the position 21 that they took -- that we took in the invalidation of the '83 22 version, in 1987. 23 So you have just -- what it is, is two different 24 administrations basically taking two different positions on 25 something; one acting upon their view, and the other acting upon</p>
Page 2020	Page 2022
<p>1 interest vest. The effective transfer date for property as 2 determined in probate -- probate is a ministerial action. Date 3 of death is the legal effective date for the transfer. So you 4 have the ministerial transfer through an administrative 5 proceeding, quasi-judicial, that relates back to the moment of 6 death. And it relates back so that you don't have a hole in the 7 title. 8 So if you have title directed to a party that's been 9 determined not entitled to receive it, but it's recorded in 10 them, and you have by operation a law because we've named the 11 takers in the order, if you have them automatically legally 12 entitled to it, you basically have wrong recordation. 13 So you have this person named to be the owner and this 14 person who is legally entitled to it. So therefore it's 15 clouded. And there would be certain transactions that would be 16 affected by that. 17 Q. Do you have any understanding as to BIA's position as to why 18 the Youpee interests have not been returned to the estates or to 19 the proper owners? 20 MR. KIRSCHMAN: Objection. Lack of foundation, 21 hearsay. 22 THE COURT: I would like to hear her answer. 23 A. I don't think you do want to hear my answer. If I have your 24 permission, I'll say it. 25 THE COURT: Say it.</p>	<p>1 their view, apparently. 2 MR. SMITH: Your Honor, I have no further questions. 3 THE COURT: All right. Judge Willett, I'm not sure I 4 understand that chart of yours that shows the three columns of 5 activity. What happens to income from allotment property or 6 property owned by a deceased Indian? 7 THE WITNESS: The assets are frozen. Once the death is 8 reported -- 9 THE COURT: Does it go into a Special Deposit Account, 10 do you know? 11 THE WITNESS: Let me clarify something. I didn't do 12 inter vivos work, which means I didn't do the active management 13 or anything about that. Assets are frozen as of the date of 14 death, and so essentially they would stay in that decedent's IIM 15 account. Special Deposits are for other types of activities. 16 And so the IIM account of that person is effectively frozen as 17 of the date of death. 18 THE COURT: The assets build up -- or the income, to 19 the extent there is income, builds up in the account -- 20 THE WITNESS: Right. 21 THE COURT: -- until it's distributed -- 22 THE WITNESS: Right. 23 THE COURT: -- by a probate -- 24 THE WITNESS: Yes. Because our order is the release 25 and transfer. That is what I was -- talking back to the</p>

Page 2023	Page 2025
<p>1 relation back, we declare who takes what, how much, and in what 2 order. And that may be years down the road, but it relates back 3 to the moment of death, and so the money would be distributed 4 according to the order. 5 And the cash on hand at death would be like a separate 6 asset pot. And then the money that came in after death would go 7 to whoever is designated to receive it, if it were under a will, 8 or in the proportion you were entitled to it, if you were taking 9 an interest at law. 10 THE COURT: And you didn't have an answer to the 11 question how long this process takes. And you said it varies, 12 of course, from time to time. But I assume there's some sort of 13 statistical -- 14 THE WITNESS: I didn't have that information. I can 15 give you an idea based upon my experience. 16 THE COURT: How about a range? I mean, it could be 17 wrapped up in six months, it might take five years, something 18 like that? 19 THE WITNESS: I had people, I had agencies come in and 20 say, "We'll waive notice, we'll waive the 20-day posting, we'll 21 bring the old people down from Wallapi, we'll hold the hearing 22 today, I'll issue the order today," and they would do the 23 distribution when they got back. So you can do it that fast. 24 Or you can have one -- we had \$4,000 in an account for 25 two kids that had been kidnapped by some missionaries, and we</p>	<p>1 that relevant material that favors or assists the Indian in 2 developing the record is there? 3 A. Depending upon the issues involved in that particular 4 proceeding. 5 Q. Right. And you also testified -- well, let me back up. 6 You were asked whether an Administrative Law Judge 7 reviews assets in the trust. Do you recall that? 8 A. Yes. 9 Q. And I believe you said nothing is reviewed, and then you 10 qualified that by saying something to the effect of: Unless an 11 issue is raised by a party, and then the judge looks at the 12 assets in the trust. Did I correctly summarize what you said? 13 A. It doesn't sound like what I said. It sounds like a version 14 of what I said. But I'm not sure I said it exactly that way. 15 There's something not ringing right about your representation of 16 my comment. 17 Q. And I'm sorry. I don't have immediate transcript in front 18 of me, so I'm paraphrasing, basically. 19 A. I don't mind clarifying it. But I believe the question I 20 was asked had to do with source documents. 21 Q. Okay. Could you -- and your response to that question, 22 then? I don't want to miss -- 23 A. No, we don't. For example, lease documents, we would not -- 24 no, we don't see those. 25 Q. You would not --</p>
Page 2024	Page 2026
<p>1 couldn't find these kids. We knew they existed, and we knew 2 they were not adopted, but we couldn't find the kids. So this 3 thing went on for 15 years. 4 THE COURT: Okay. Thank you, ma'am. 5 THE WITNESS: All right. Thank you. 6 CROSS EXAMINATION 7 BY MR. KIRSCHMAN: 8 Q. Good morning, Judge Willett. 9 A. How are you? 10 Q. I'm all right. I have just a few questions for you. At one 11 point regarding the probate process, you I believe testified 12 that there was no one representing the Indian. Is that correct? 13 A. Yes, it is true. 14 Q. In fact, in probate proceedings, one of the roles of the 15 Administrative Law Judge is to consider the well-being of the 16 Indian in the probate process. Correct? 17 A. Yes. The estate of Charles Webster Hill, that was my case. 18 Q. I reviewed it recently. So in fact, in this proceeding, the 19 Administrative Law Judge is looking over the interests of the 20 individual Indian? 21 A. Well, let's qualify that. The judge is acting pursuant to 22 the Administrative Procedure Act, and we are required to develop 23 the record pro and con on all material issues. And what would 24 be material would be dependent upon the facts of each case. 25 Q. That's right. But you make sure, to the extent possible,</p>	<p>1 A. No. 2 Q. I'm sorry, I didn't hear your answer. 3 A. NO. 4 Q. You would not -- 5 A. We would not see a lease document. 6 Q. You would not see a lease document? 7 A. The only lease documents I ever saw during the conduct of 8 probate did not have anything to do with money. They were home 9 site leases, they were handled under a Tribal administrative 10 program. They did not have anything to do with money per se. 11 They were strictly a realty related to units of land that were 12 superimposed upon the allotments. 13 Q. Now, it is true, is it not, that the inventory that is 14 listed on the form OH-7 can be challenged by heirs. Correct? 15 A. Anything in that record can be challenged by an heir. 16 Q. And such background documents can be presented and then 17 considered by you, by the heirs? 18 A. If they wish to present something to be considered, I would 19 consider it. 20 Q. And it is correct to state, isn't it, that under the case 21 law, a notice of disputed estate inventory can be presented to 22 the Court, and then the Court will review the dispute related to 23 the estate inventory. Correct? 24 A. Well, in the near two decades that I did it, I never had 25 that submitted to me. So I will take your word for it.</p>

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1 Q. Are you aware of the standing order from the board related
2 to the case of Douglas Leonard --
3 A. Ducheneaux?
4 Q. -- Ducheneaux?
5 A. Yes. I never did a Ducheneaux proceeding. I did another
6 version of that process, but I didn't do Ducheneaux proceedings.
7 Q. That Ducheneaux proceeding has been standard since at least
8 1985. Correct?
9 A. It has been out there since 1985, but I don't know -- it was
10 more of a Northern Plains process that didn't get wide sway in
11 all areas of OHA.
12 Q. It is the law in all areas, is it not?
13 A. I found the directive to be a universal mandate outside the
14 context of the specific case before it to be a little bit
15 overreaching by the board. But --
16 Q. You view it as possibly overreaching by the board, but that
17 is the mandate of the board, as you state. Correct?
18 A. It is the mandate in that case, yes, it is.
19 Q. And now, I believe you've just testified you used some
20 alternative procedures other than the procedures set out in
21 Ducheneaux?
22 A. Yes.
23 Q. Is that what you just said?
24 A. And I'm going to tell you, they were tedious. They were
25 tedious and really not helpful. What I would do --

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1 Q. I'm sorry, did you say tedious?
2 A. They were tedious and not helpful, when you can get to the
3 bottom line much faster. And the structure that they came up
4 with really was at odds with on-the-ground reality.
5 My process would be -- could we go back to my
6 three-pronged chart?
7 Q. Certainly.
8 MR. KIRSCHMAN: Whoever has controls. Technology.
9 A. Because one thing that I would like for you to know --
10 MR. KIRSCHMAN: I'm sorry.
11 One moment, Your Honor. Just so the record is clear,
12 this is Plaintiffs' Exhibit 4512 we're looking at. And it's the
13 chart that begins "Probate process."
14 BY MR. KIRSCHMAN:
15 Q. Is that correct?
16 A. Yes, it is.
17 Q. Okay, thank you. Go ahead.
18 A. Well, so that you'll understand the -- you know, the
19 universal mandate in a single case, about which there was great
20 disagreement amongst the corps of judges, what you're trying to
21 do is determine the accuracy of a record.
22 Q. Right.
23 A. There are two components to probate: There's the data
24 developer, the custodian, the program, Bureau of Indian Affairs;
25 and there's the adjudicator. And the adjudicator follows the

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1 APA.
2 If you go to my chart, you will see that -- let's go to
3 the box of ALJ and IPJ, and you will see the hearing. So we
4 would be on record at a hearing, and let's say somebody said, "I
5 think there ought to be more land in there." So what I would
6 do -- the probate clerk would be sitting there or the realty
7 person would be sitting there. And I would say, "Why don't you
8 go pull their records, and let's see what they've got?" Or, in
9 a particular case that I had, I halted proceedings, I determined
10 a procedure by which we could determine what part of the estate
11 was disputed or not, I sent the disputed portion back to the
12 Bureau of Indian Affairs for development. They made a report,
13 an actual decision concerning the accuracy of particular title
14 records, and I incorporated that into mine.
15 But no, I did not do that, because we do not have the
16 records. The Bureau of Indian Affairs is the custodian and the
17 manager, so that activity -- it is their responsibility under
18 our structure to provide the data that is needed to make
19 determinations.
20 Q. Okay. So you refer it back to the BIA to develop that
21 information, and then in your particular case, the BIA then
22 presents that additional information back to you?
23 A. In the form of a decision.
24 Q. In the form of a decision. Okay.
25 And do you take evidence from anyone disputing the

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1 inventory, and then offer that back to BIA to use?
2 A. Give me an example, please.
3 Q. Well, someone contests the inventory and comes to you with
4 letters from heirs or relatives saying, "I believe I have an
5 interest in this 26-acre allotment based on this letter from the
6 deceased."
7 A. I would do one of two things. I would refer them to realty,
8 because we would usually be holding the probate hearing in
9 realty. I would refer them to the realty officer, and have them
10 go over the records with them there.
11 Or, in an appropriate case - it would depend entirely
12 on the circumstances at hand - I would have them maybe come in
13 and bring me the records, to see if something had been omitted.
14 But if someone questions something and it's not, for
15 example, the notorious fishing expeditions, let's say we have a
16 genuine inquiry, concern that's concrete and identifiable, then
17 I will do what I can to have the Bureau of Indian Affairs inform
18 me and/or the individuals.
19 But it was the function of the program side to handle
20 those processes. And if there was a hole in it, then I would
21 naturally want them to update my record.
22 Q. Thank you for that clarification.
23 A. Uh-huh.
24 Q. I believe you may have addressed this on direct, or with the
25 Court, but I would like to ask you. As you served as an

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1 Administrative Law Judge, you saw cases where property was
 2 initially omitted from the estate, and then it comes to the
 3 estate later after the probate had been closed?
 4 A. Yes, very much.
 5 Q. And that's what you were discussing when you noticed that
 6 there were often modifications to the probate orders?
 7 A. Right.
 8 Q. As a result, then, once the omitted property is brought
 9 before you, that omitted property is then distributed among the
 10 heirs eventually. Right?
 11 A. Generally. There could be some qualifications on that.
 12 Q. Okay.
 13 A. All right.
 14 Q. Is it also true that, when it comes to this omitted
 15 property, creditors can no longer claim it because the case
 16 before the OHA was closed?
 17 A. They have -- they had to file, under our system --
 18 Q. "They" being?
 19 A. The creditor.
 20 Q. Okay, go ahead.
 21 A. I thought that was the antecedent we were referring --
 22 Q. I just want to make it clear.
 23 A. Okay. The creditor had to file by the conclusion of the
 24 first hearing. And there were time frames for leaving the
 25 record -- now, you remember, I'm talking pre-2000 with

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1 High-Level Implementation Plan. The creditor had to file by the
 2 conclusion of the first hearing, or thereafter be barred, and
 3 then there was a payout period for that person.
 4 If you were a general creditor, you had a three-year
 5 payout life, and if you were a preferred creditor you had a
 6 seven-year payout life. If you were the United States, you
 7 obligated the estate in perpetuity.
 8 So there were different kinds of creditors for
 9 different periods, with different sets of rules.
 10 Q. I see. You also testified about probate matters in
 11 Oklahoma. Correct?
 12 A. Yes.
 13 Q. And is this a correct statement: That, as a result of a
 14 1947 federal statute and U.S. statute, the Five Civilized Tribes
 15 probate have occurred in Oklahoma state courts?
 16 A. Yes.
 17 Q. And they are decided under Oklahoma state law?
 18 A. Yes.
 19 Q. And that's a matter of federal statute. Right?
 20 A. Now, only the Five Civilized Tribes, yes.
 21 Q. I'm sorry?
 22 A. Did you say the Five Civilized Tribes?
 23 Q. Yes.
 24 A. Yes, that is true.
 25 Q. So probate matters are handled differently than in Oklahoma.

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1 Correct?
 2 A. For Osage, and also for Five Civilized Tribes, yes.
 3 Q. And you did not deal with probate cases related to those
 4 five tribes, the Five Civilized Tribes. Correct?
 5 A. Not officially, no.
 6 Q. Okay.
 7 MR. KIRSCHMAN: One moment, Your Honor.
 8 THE COURT: All right.
 9 MR. KIRSCHMAN: Thank you, Judge Willett.
 10 No further questions from the government, Your Honor.
 11 MR. SMITH: No further questions.
 12 THE COURT: Judge Willett, it's been a pleasure to have
 13 you in my courtroom.
 14 THE WITNESS: Thank you very much, sir.
 15 THE COURT: Thank you, ma'am, you are excused.
 16 MR. GINGOLD: Good morning, Your Honor.
 17 THE COURT: Good morning.
 18 MR. GINGOLD: Our next witness is Joe Christie.
 19 (Oath administered by Courtroom Deputy.)
 20 MR. GINGOLD: Your Honor, may I ask this Court's
 21 indulgence? Mr. Christie has a terrible back problem. He
 22 traveled to Washington from Albuquerque in great pain, and it
 23 may be we may have to have briefer sessions during the
 24 examination, Your Honor.
 25 THE COURT: That's fine. If there's anything we can do

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1 to make you more comfortable, let us know, Mr. Christie. That
 2 chair is not the most comfortable chair in the world, is it?
 3 THE WITNESS: No, it's not. But we'll make do.
 4 MR. GINGOLD: I think it's more comfortable than the
 5 benches in the rear.
 6 (JOE CHRISTIE, PLAINTIFF witness, having been duly sworn,
 7 testified as follows:)
 8 DIRECT EXAMINATION
 9 BY MR. GINGOLD:
 10 Q. Mr. Christie, please state where you live.
 11 A. I live in Albuquerque, New Mexico at 11704 San Victorio
 12 Northeast, Albuquerque, New Mexico.
 13 Q. And what is your current position?
 14 A. I currently am the president of Chata Consulting.
 15 Q. How long have you been president of Chata Consulting?
 16 A. Since 2001.
 17 Q. What did you do prior to 2001?
 18 A. I worked for the Bureau of Indian Affairs, and for the
 19 Office of Special Trustee.
 20 Q. Could you -- how long were you employed -- Bureau of Indian
 21 Affairs is part of the Department of the Interior. Correct?
 22 A. That's correct.
 23 Q. How long were you employed at the Department of the
 24 Interior?
 25 A. I started in 1972, and retired at the end of December of

<p style="text-align: right;">Page 2035</p> <p>1 '99. So about 27 years. 2 Q. Could you please briefly go through the positions you held 3 at the Department of Interior? 4 A. I started, as I said, in 1972. I started as a teacher at 5 John F. Kennedy Day School. Then I moved to Seneca Indian 6 School as student activities director, and then principal. 7 Following that, I became -- I came to Washington, D.C. 8 as part of the departmental management training program. That 9 was in '76-'77. After that, I began work for the planning 10 support group in Billings, Montana, and social analyst for 11 reservation-based studies for the five regions of the northwest. 12 Then I moved to Albuquerque, New Mexico, where I was the program 13 implementation specialist for the Integrated Records Management 14 System, IRMS. 15 Following that, I went to Fort Totten, North Dakota as 16 superintendent of the reservation. And then down to Winnebago, 17 Nebraska, where I was superintendent of four different 18 reservations. 19 Then out to -- the next job was Northern California, 20 where we had 23 reservations. And then from there to 21 Washington, D.C. to implement the anti-drug legislation that was 22 passed in '86. From there I stayed in D.C. and became deputy 23 director for Trust and Economic Development, and then took the 24 position as deputy director for education. That's when I moved 25 into the SES program, became an SESer.</p>	<p style="text-align: right;">Page 2037</p> <p>1 superintendent of the Northern California Agency, were you not? 2 A. Yes, that's correct, I was superintendent. We had 3 23 different reservations. In California, you have a 4 reservation at Hupa, and then the rest of them were rancherias. 5 MR. GINGOLD: Your Honor, it is anticipated that 6 Mr. Christie will be testifying regarding deficiencies in and 7 problems with Interior's hard copy and electronic Trust records, 8 and obstacles with regard to inadequate reconciliation or 9 accounting. 10 THE COURT: All right. 11 BY MR. GINGOLD: 12 Q. Mr. Christie, I would like to start with an easy issue 13 first, and the issue is direct pay. What experience if any did 14 you have, in your positions at the Department of Interior, with 15 regard to direct pay Trust beneficiaries? 16 A. Direct pay was an issue that I had to deal with when I was 17 at Winnebago, Nebraska. And there was -- other than the 18 regulations, what I did at Winnebago, Nebraska was, was that 19 since the government was a party to the lease, I required my 20 office to obtain copies of the check, to verify that payment was 21 made to the beneficiary so that we would be assured that payment 22 had been made to the landowner. 23 And since we were a party to the lease and they were a 24 party to the lease, the issue never came up. But if we needed 25 to verify that the canceled check was indeed made out to and</p>
<p style="text-align: right;">Page 2036</p> <p>1 Then in 1992 I was asked to head up the Tribal 2 Reconciliation Project in Albuquerque, and so I moved to 3 Albuquerque officially in January of 1993. And stayed -- as 4 part of that, I was the deputy special assistant to the deputy 5 commissioner, Hilda Manuel, until the passage of the legislation 6 for creating the Office of Special Trustee. 7 And then in about '96, '97, I was transferred as 8 deputy -- as a special assistant to Mr. Holman, the special 9 trustee, and stayed in that position until December of 1998, 10 when I was transferred as the acting director of the Office of 11 Indian Education. And stayed in that position until October, 12 November of '99. And then retired in December of 1999. 13 Q. Thank you, Mr. Christie. 14 Mr. Christie -- 15 THE COURT: You couldn't keep a job, could you, 16 Mr. Christie? 17 THE WITNESS: Had a tough time holding down a job. 18 BY MR. GINGOLD: 19 Q. But for the time you were transferred to the Office of the 20 Special Trustee, is it correct that your career in the 21 Department of Interior was at the Bureau of Indian Affairs? 22 A. Yes, until about '96, '97. And that's when I transferred 23 over to the Office of Special Trustee. 24 Q. And when you stated you moved from Winnebago Agency as a 25 superintendent to Northern California, you were also the</p>	<p style="text-align: right;">Page 2038</p> <p>1 cashed by the beneficiary, we had copies of their signature on 2 the lease. 3 Q. Did you treat, as the superintendent in Winnebago, direct 4 pay beneficiaries any differently than any other Individual 5 Indian Trust beneficiary? 6 A. No, it was my understanding that since we were the people 7 who were involved in the lease, that we had the responsibility 8 to that. 9 Now, I might also mention that that was one form of 10 direct pay. There was another form of direct pay which was crop 11 share. And so, since that was a part of the lease, I had my 12 lease compliance officer in that instance to go out and monitor 13 the harvesting of the crop, and the transportation of the crop 14 to the co-op, and the measuring of the crops and the ticket that 15 resulted of that, so that we knew exactly how much crop was 16 taken off of there, and what the volume of that was, so that we 17 then could be assured that the Indian beneficiary received their 18 share of that crop share. 19 Q. Now, could you explain what crop share is? 20 A. Well, what you do is that the Indian beneficiary, rather 21 than taking a cash payout, would get a percentage of the crop. 22 And so if they were growing short grain, it was harvested in 23 bushels and then transported to the co-op, where they would then 24 take that grain, measure it, and give a ticket as to the volume 25 of it. And then we would -- based on the total volume of the</p>

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<p>1 crop taken off, we would check to make sure that they in fact 2 got their proportionate share. 3 Q. You made -- you stated during your testimony that you did 4 have copies of the checks. Correct? 5 A. Yes. I required my realty office to get a copy of the 6 canceled check and put it into the lease folder so that we would 7 have a copy of that. 8 Q. Were you able to determine whether or not the signature or 9 the endorsement was the Trust beneficiary's signature? 10 A. Well, we didn't have -- to my memory, we never had that 11 issue come up. But if we had have, we had their signature on 12 the lease, and it would have been on the endorsement side of the 13 check. But that issue never came up, so we never had to make 14 that check. 15 Q. So it was unnecessary to have a signature card because you 16 had the signature on the lease. Correct? 17 A. That's correct. 18 Q. I would like to talk to you about the IRMS system and your 19 role. Can you please describe what your role was in the -- 20 THE COURT: I'm sorry, Mr. Gingold. 21 Before we leave the subject of direct pay, you required 22 your staff to do this in Winnebago. Do you have any sense of 23 whether you were unique among the people working, doing the same 24 work in other areas at that time? That wasn't done pursuant to 25 any nationwide directive, was it?</p>	<p>1 A. The system was designed to load leases, people, and 2 ownership, and then it had a subsystem of IIM. 3 So as you loaded the ownership information, it was used 4 to then take the leases, which you would have in there which 5 would produce your 90-day notices, it would produce other things 6 so that the agency wouldn't have to do that themselves, and then 7 to take the collections. 8 And then, utilizing the People system, which is also 9 tied to the IIM system, you would then take the ownership and 10 the lease and the amount of money collected, you would run the 11 program to do the distribution of the funds. 12 At that point in time, you would create a distribution 13 worksheet which would lay out for you what owners were involved 14 in the lease, what their percentage of ownership, how much funds 15 you collected for the lease, how that was then distributed via 16 the ownership record and the percentage against the amount 17 collected, and then how much was put into the accounts. 18 Since it was a realtime system, essentially every time 19 that you ran the lease distribution system it would produce this 20 distribution worksheet. And since it was a dynamic system and 21 we didn't keep historical ownership, at that point in time it 22 was a snapshot of who the owners were in the system and their 23 percentage of ownership. 24 Q. Is the distribution worksheet, in your opinion, a key 25 document?</p>
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<p>1 THE WITNESS: No, that was not. But that was the way I 2 handled it as the superintendent. I can't speak to how other 3 superintendents handled it. 4 THE COURT: All right. 5 BY MR. GINGOLD: 6 Q. With respect to the IRMS system, could you please explain to 7 the Court what your role was with regard to the implementation 8 of IRMS? 9 A. Right. When I left Billings, Montana, I was selected to be 10 the program implementation specialist for IRMS in Albuquerque, 11 New Mexico. And my job was to lay out the planning on how the 12 implementation was going to take place, and to conduct training 13 on the IRMS system. 14 Since it was a voluntary system at that time, we were 15 out trying to essentially sell the product and let them know how 16 it worked and what was the usefulness of the IRMS system. 17 Q. And what date, what period of time was this when you were 18 trying to sell IRMS? Was it to the superintendents? 19 A. It was to the regions and to the superintendents. I went 20 down there, I think in 1978, and I left there in early 1981 when 21 I became superintendent at Fort Totten in North Dakota. 22 Q. And were you aware of what the IRMS system was designed to 23 do? 24 A. Yes, I was. 25 Q. What was your understanding?</p>	<p>1 A. Well, because it's a dynamic system and the ownership 2 changes, there is no historical data in IRMS. In other words, 3 you can't go a year from then, and then try to work yourself 4 back, because there was no historical data. 5 Yes, the worksheet distribution worksheet is the 6 critical document to verify who was considered the owners, the 7 amount of funds that were collected, and who it was distributed 8 to. It's the only document, by the way, that does that. 9 Q. Are there any alternative documents that would be an 10 adequate substitute for that? 11 A. Not within the IRMS system. 12 Q. Were the proceeds from the sale of timber moved through the 13 IRMS system? 14 A. To my knowledge, we never did use the -- timber was never 15 moved through the IRMS system, other than putting it into the 16 IIM system. 17 Q. And could you explain that? 18 A. Timber -- the regulations in timber, and at Hupa we had an 19 extremely large timber program. And at Winnebago we had a 20 timber program, but it was hardwood timber -- 21 Q. Let me just stop you a minute. Hupa was when you were at 22 Northern California? 23 A. Northern California, right. 24 So the requirements were that the person or company 25 that got the timber contract, they were required to put their</p>

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1 money up front, a certain percentage of the money up front. So
2 that would go into the IIM system, into a Special Deposit
3 Account.
4 And then, as timber was taken off of the land and then
5 scaled, as the logs come down, a scaling process where they
6 develop a scaling ticket that tells you the volume and the
7 price, and what type of standard was being used to determine
8 that.
9 And then, based upon that volume of where you convert
10 the logs to a specific dollar amount, then from there you would
11 go back into the Special Deposit Account and make the transfer
12 out of the Special Deposit Account to the owners in the amount
13 that was the total of the scaling tickets for that drawdown.
14 And then, if the Special Deposit Account fell below a
15 threshold level, then the company would have to come in and put
16 more money in there. It always required that the company or the
17 person who has the contract maintain at least a minimal amount
18 in the Special Deposit Account.
19 Q. And the scaling tickets were essential -- is it true the
20 scaling tickets were essential to determine the accuracy of the
21 payment?
22 A. That's correct. The scaling ticket is the lowest point of
23 conversion of the logging resource into funds.
24 Q. To your knowledge, was the scaling ticket put on an
25 electronic system?

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1 A. To my knowledge, no. At least, not during the period that I
2 was associated with it.
3 Q. To your knowledge, was the scaling ticket, were there
4 multiple copies of that ticket made?
5 A. My understanding was that there might have been one or two
6 copies of it. But it wasn't like a bill for collection. There
7 wasn't seven parts to it, no.
8 Q. And so this is similar in many respects to what you
9 characterize as the distribution worksheet, where there was one
10 copy of that sheet. Is that correct?
11 MR. QUINN: Objection. Leading, Your Honor.
12 THE COURT: The objection is overruled.
13 A. The scaling ticket was the lowest point of conversion, and
14 so it was a document that needed to be protected, just like the
15 distribution worksheet was a one-time document for that specific
16 distribution and needed to be protected.
17 BY MR. GINGOLD:
18 Q. Now, did you have any knowledge as to whether or not these
19 documents were routinely protected?
20 A. As part of the Tribal reconciliation, we were in the records
21 search process, and we were looking for all kinds of records
22 relate to the Trust asset.
23 One of the things that we found in this process was
24 that the scaling ticket was being routinely destroyed. In those
25 locations where they did preserve them and then sent them to

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1 Federal Records Centers, one particular Federal Records Center,
2 in conjunction with its own policy, the Seattle Federal Records
3 Center, were routinely destroying the scaling tickets also.
4 Once we found that out, we passed that information
5 along to the deputy commissioner and asked the deputy
6 commissioner to halt all destruction of any Trust record.
7 Q. I would like to ask you to review a document which is
8 Plaintiffs' Exhibit 350, PPX-350.
9 As you see, Mr. Christie, this is a memorandum dated
10 March 7th, 1995.
11 A. Uh-huh.
12 Q. It is to area directors, agency superintendents, from Deputy
13 Commissioner Indian Affairs, Hilda Manual. Subject:
14 "Preservation of records vital to Trust funds reconciliation."
15 Have you ever seen this memorandum before,
16 Mr. Christie?
17 A. Yes, I have. This is the recommendation -- I was working
18 for the deputy commissioner for Indian Affairs when I was doing
19 the Tribal reconciliation, so she was my boss.
20 Q. So were you responsible for the issuance of this, to your
21 knowledge?
22 A. This is who I reported the incident to, and had recommended
23 that she put out such a policy, yes.
24 Q. And in the first paragraph it states, "It has come to my
25 attention that federal records relating to financial and lease

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1 documents are being destroyed at the agencies."
2 That was your understanding at the time. Is that
3 correct?
4 A. That's correct.
5 Q. And do you know why federal records relating to financial
6 and lease documents were being destroyed at the agencies?
7 A. Well, the agencies were not -- records management in the
8 Bureau of Indian Affairs was not a high priority, and so this
9 whole issue really didn't come to light until we started doing
10 the Tribal reconciliation.
11 And so funding for records management, even though
12 there may have been policies in place, there was not very much
13 training or anything like that. So like I say, it was very low
14 priority.
15 And so as a result, people had -- they were nonstandard
16 in how they dealt with records throughout the Bureau of Indian
17 Affairs, at the agencies and at the regional offices, or area
18 offices, as they were called at that time.
19 And so it was very important, once we determined this
20 as part of our records search, that we try to halt any
21 destruction of records out there.
22 THE COURT: Mr. Christie, would you like to stretch
23 your back?
24 THE WITNESS: No, I'm fine right now, sir.
25 THE COURT: Well, I would like to stretch mine. We'll

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1 be in recess for 10 minutes.
 2 (Recess taken at 11:21 a.m.)
 3 THE COURT: All right, sir.
 4 MR. GINGOLD: Thank you, Your Honor.
 5 BY MR. GINGOLD:
 6 Q. Mr. Christie, one question I wanted to ask you when you
 7 described your background and experience. Are you an enrolled
 8 member of a tribe?
 9 A. Yes, I'm an enrolled member of the Choctaw Nation of
 10 Oklahoma.
 11 Q. Thank you. With regard to Plaintiffs' 350, the second
 12 sentence that was identified in the first paragraph is, "Of
 13 particular concern are those records relating to leases required
 14 in the reconciliation process, specifically scaling tickets for
 15 timber, run tickets for oil, and distribution worksheets for
 16 grazing."
 17 Is that what you observed when you informed the deputy
 18 commissioner that something needed to be done to stop records
 19 destruction?
 20 A. Yes. We had asked for the distribution worksheets for IRMS
 21 to be -- I don't know how it got interpreted as just for
 22 grazing, but there are distribution worksheets for grazing,
 23 there are distribution worksheets in IRMS for leases.
 24 But yes, that's correct.
 25 Q. So is it correct, then, that the distribution worksheets are

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1 for grazing and for other leases whose revenues are going
 2 through the IRMS system?
 3 A. Yes.
 4 Q. And that would include what, to your knowledge?
 5 A. Well, all forms of leases. And when we refer to grazing,
 6 that is basically range. Those are those range programs where
 7 you're figuring AUMs, average -- animal units, monthly animal
 8 units, or we call them animal units monthly, AUMs.
 9 That's one of the reasons why grazing is a little bit
 10 different, because of the way it's figured, so that's probably
 11 why it's highlighted out there. And a huge range program up in
 12 Aberdeen area, and some in the Billings area.
 13 Q. I would like to read the last sentence in the second
 14 paragraph and ask if this is correct: "This memorandum
 15 supersedes any other established policy allowing destruction of
 16 records."
 17 Mr. Christie, prior to this memorandum, were the BIA
 18 superintendents and others actually allowed to destroy Trust
 19 records?
 20 A. Yes. This had to lead -- BIAM-16 was the records management
 21 directives for the Bureau of Indian Affairs. And so that set up
 22 what they call a retention register that allowed records to be
 23 scheduled to be destroyed and/or moved to the national records
 24 centers.
 25 So what this did was make sure that no records were

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1 being destroyed, period.
 2 Q. Was there enforcement of this?
 3 A. Other than through the regional area directors and the
 4 agency superintendents, there was no program to go out there and
 5 monitor to see how they were doing, other than us going out,
 6 trying to find and collect and bring in the records.
 7 Q. But that was related to specific projects. Correct?
 8 A. That was related to the Tribal reconciliation.
 9 Q. So that was March 7th, 1995. Correct?
 10 A. Yes. I guess, that's the date. I'd have to look. But I
 11 think it was in 1995.
 12 MR. GINGOLD: If we can just bring it back up.
 13 A. Yes, 1995.
 14 BY MR. GINGOLD:
 15 Q. Do you know whether or not the areas and agencies stopped
 16 destroying records as a result of this?
 17 A. I couldn't say definitively that they did or didn't.
 18 Q. I'd like to call your attention to another plaintiffs'
 19 exhibit, which is PPX-2152. Have you seen this particular
 20 exhibit before, Mr. Christie?
 21 A. Yes, I have. And I authored it.
 22 Q. As you can see, it's dated May 27th, 1998, and it's to
 23 John M. Miller, Paul Homan, Thomas M. Thompson. Who are they?
 24 A. Right. Well, Paul Homan, of course, was the special
 25 trustee; John worked in that office and so did Mr. Thompson.

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1 Q. Were you now in the Office of Special Trustee as opposed to
 2 within the office of the deputy commissioner of Indian Affairs?
 3 A. I think by this time I was. We had moved my position -- I
 4 was also doing litigation support, and so they had moved my
 5 position over under the special trustee.
 6 Q. The subject matter of the memorandum is, records MOU
 7 standard for Trust records retention. What does MOU mean?
 8 A. That's a memorandum of agreement.
 9 Q. Between whom?
 10 A. Or memorandum of understanding. That's between the Office
 11 of the Special Trustee and Bureau of Indian Affairs.
 12 We were trying to get an agreement with the Bureau of
 13 Indian Affairs as to exactly what they were going to do in terms
 14 of records and what we were going to do in terms of records so
 15 we wouldn't be duplicating efforts, and that that memorandum of
 16 understanding would also allow us then to work with them at the
 17 agencies and the regional area offices and central offices in
 18 going through and working with the records.
 19 Q. So at this time, which is approximately three years after
 20 the March 1995 memorandum issued by the deputy commissioner, was
 21 there still concern that records weren't being preserved?
 22 A. Well, we were -- again, the Office of Special Trustee, when
 23 it was established, was not the most liked agency, and so it was
 24 not unusual for the working relationship to be less than
 25 cordial.

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<p>1 And so what he were trying to do with the MOU was to 2 find a way to get more cordiality in the working relationship 3 between the BIA and OST, and doing that by clarifying and 4 defining what the roles would be in the records area. 5 Q. And how were you going to do that? 6 A. Well, this particular memorandum had more to do with the 7 fact that we had -- we were asking for some standards to be 8 established that we then could put into the MOU that would give 9 us a set of minimum standards as to what a Trust record was and 10 how to -- and then have an influence over 16 BIAM as to how long 11 the retention would be for each of those records. 12 And so my staff had been working on a standard that put 13 forward a minimal standard of the life of the trust plus 14 10 years, so that we would then have a threshold level that we 15 would know that these records must be maintained and must be 16 protected. 17 Q. Now, were there just no standards at all at this point in 18 time? 19 A. Well, there were record retention levels, but it wasn't 20 necessarily related to the trust aspect. And there was no 21 definition as to what a trust record was during this time, 22 either. 23 So there was a lot of discussion on our part as to what 24 was and what was not a trust record, and even after -- by the 25 time I left in '99 and retired, or left OST in '98 and then</p>	<p>1 BIA, as we develop records and we don't need them, let's say, at 2 our location, at an agency, following -- if we followed the 3 16 BIAM, we would then box them up and then we would send them 4 to a Federal Records Center. 5 But they're still our records, they're the agency's 6 records at the agency or area. They're still the agency records 7 in the Federal Records Center where you send them for storage, 8 like Seattle. And then after a certain period of time, they 9 would move from the Federal Records Center into the Archive. 10 Once they move into the Archive, they're no longer the 11 agency record, they are now captured by the Archive and they are 12 the Archive's record. 13 So for us to be able to get those records back, which 14 we were trying to get back for the Tribal reconciliation, we had 15 to strike an agreement with them and go through set procedures 16 that would allow us to bring the boxes in, go through the boxes, 17 and then denote what records we had utilized. And then leave 18 markers in there and then repackage those and send them back to 19 the Archive. 20 If we got those records from the Records Center, we 21 could hold on to those records for as long as we wanted to 22 because they were still our records. But if they were 23 Archives', then they had to go back to the Archives. 24 Q. And in the first paragraph, the last sentence, which are the 25 last three lines of the paragraph, it says, "NARA only</p>
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<p>1 retired in '99, I was still not aware of any definition of what 2 a trust record was or how far it extended into the records. 3 Q. And was this concern for standardization caused by the work 4 you were doing with regard to the Arthur Andersen Tribal Trust 5 Reconciliation Project? 6 A. Well, it came out of that. But we had finished the Tribal 7 reconciliation and issued the reports in late '95, and then 8 issued the reports in 1996 and then met with the tribes in '96 9 and part of '97. And then we were asked to become a Trust 10 litigation support office. So we were then looking at all the 11 various trust litigations that were going on and trying to find 12 records for those. 13 We had Little Shell up in Aberdeen was one of those 14 litigations. We had several other litigations. I can't 15 remember them all at that time. So that when Cobell came along 16 in '96, then we just moved right in as a support to try to find 17 the records for Cobell. 18 But this was a result of not only the Trust 19 reconciliation, but all of the other support litigation efforts 20 we had under way, too, was trying to figure out what should be 21 the minimum standards for this. 22 Q. Now, did you also need to deal with the National Archives? 23 A. Yes. Well, NARA is really composed of two different 24 sections. You've got the Federal Records Centers and then 25 you've got the National Archives. And so, as an agency, OST or</p>	<p>1 recognizes historical significance, not Trust responsibility. 2 So to allow them to set a standard would result in destruction 3 of trust records in the same manner as in the past." 4 Did you find that Trust records were being destroyed 5 routinely? First paragraph. 6 A. Yes. As I said, if I read... 7 THE COURT: The witness may be having difficulty tying 8 your question to these three lines, like I do. 9 BY MR. GINGOLD: 10 Q. When you were dealing with NARA and you were dealing with 11 the issues at NARA, did you also find, based on what you were 12 seeking for the Tribal Trust Reconciliation Project, that NARA 13 was routinely destroying Trust records? 14 A. That's correct. 15 MR. QUINN: Objection. Foundation. 16 THE COURT: Overruled. 17 A. That's correct. And the instance, as I said before, that 18 really brought this to bear was the fact that they had routinely 19 destroyed scaling tickets out of the Seattle office. And once 20 we found that out, we alerted people throughout our agency and 21 others. 22 Now, it turns out -- 23 THE COURT: So it was NARA that was destroying them, 24 not the Seattle office? 25 THE WITNESS: Well, Seattle NARA office. The Federal</p>

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1 Records Center in Seattle. 2 And they had their own version of how long to keep 3 records, and so they would then -- what they told us was that 4 they had sent notification down to the agency, and the agency 5 didn't respond to those notifications, so they went ahead and 6 destroyed those records. 7 BY MR. GINGOLD: 8 Q. Isn't it true that NARA's record destruction schedule was 9 based on what was reported to NARA by the Interior Department? 10 MR. QUINN: Objection. Leading. 11 THE COURT: Sustained. 12 BY MR. GINGOLD: 13 Q. How does NARA determine whether or not records should be 14 destroyed? 15 A. Well, NARA doesn't have any definition of trust. A record 16 is a record is a record for NARA. So they set up their own 17 retention schedules, apart and separate from the Bureau of 18 Indian Affairs. 19 Q. Did the Bureau of Indian Affairs request that Trust records 20 not be destroyed? 21 A. Well, since they were Bureau records, the policy that we saw 22 there would apply to NARA as well, since they are still the 23 Bureau's agency records. 24 Q. Prior to the policy that was announced by the deputy 25 commissioner in March of 1995 regarding the secession of Trust	1 A. No, not that I remember. 2 Q. Did you have one with the Office of Hearings and Appeals? 3 A. Not that I can recall. 4 Q. So is the BIA MOU the only one you're aware of? 5 A. The only one that I'm aware of. 6 Q. Was it this point in time that your -- were you discussing 7 with Mr. Homan or anyone the need for a national records 8 depository? 9 A. As part of the effort that my office undertook, I worked 10 with Mr. Homan in development of his strategic plan, which was a 11 requirement of the legislation that established his office. 12 My part of that plan was to assist him in developing a 13 records management side, which would include a national Indian 14 fiduciary records center. 15 And so we developed a strategic plan that incorporated 16 the establishment and operation of a National Indian Fiduciary 17 Records Center for both hard copy records and for electronic 18 records. 19 Q. And what period of time was that? 20 A. I think that that would have been '96, '97, '98. 21 Q. Do you know whether or not the special trustee was 22 authorized to move forward with that? 23 A. My understanding was that the Department of the Interior had 24 real problems with the National Indian Fiduciary Records Center, 25 and, in fact, did not approve that portion of it. At least as
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1 record destructions, did the agencies inform NARA not to destroy 2 Trust records? 3 A. No. They were just following the policies and procedures 4 that were in place at the time. 5 Q. And when you're referring to Trust records at Interior, 6 you're not limiting Trust records to BIA Trust records, are you? 7 MR. QUINN: Objection. Leading. 8 THE COURT: I'll allow that. 9 A. Any record, financial or ownership records, that relate to 10 the Trust asset, whether that Trust asset be land or whether 11 that Trust asset be financial, or related to the Indian Trust 12 asset records. That could include BLM records that relate to 13 Indian land, that could be MMS records that relate to Indian 14 land, that could be the Office of Hearing Appeals in the probate 15 process, that would become Trust records. 16 So any of those records that deal or impact the Indian 17 Trust asset, whether it be financial or land, would then be a 18 chain of that Trust record. 19 Q. So did the MOU that you were involved with extend beyond BIA 20 records? 21 A. No. The MOU that was reflected there was our attempt to 22 first get the recognition between the BIA and OST. 23 Q. Did you have a similar MOU with BLM? 24 A. I don't recall. I don't think so. 25 Q. Did you have one with MMS?	1 long as I was there. 2 Q. Was the national records center solely going to hold BIA and 3 OST records? 4 A. No. We had planned to try to find records, all records 5 within Interior that related to the Trust assets. So we would 6 have asked for BLM records, we would have asked for copies of 7 the MMS records as it related to the Indian asset. 8 Q. Now, was the purpose of the records center designed to 9 further preserve the Trust records that were created by the 10 department? 11 A. Well, it had two major functions; it was to preserve, as one 12 function, but it was also to provide the ability to go in and 13 research the records. 14 Q. Was there any function to recreate or try and restore 15 records that had been destroyed? 16 A. No. No. 17 Q. Were you aware of any project that was undertaken to do that 18 at the department while you were there? 19 A. No, I was not. 20 Q. I would like you to talk now a little bit more about IRMS 21 and data in IRMS before we move on to another topic. 22 Based on your knowledge of IRMS, it goes back to the 23 early 70's. Is that correct? 24 A. It was originally developed in Billings, Montana, and the 25 start of that development was somewhere around 1972.

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<p>1 Q. And do you know when it was implemented in Billings?</p> <p>2 A. My understanding is that it was fully implemented in</p> <p>3 Billings somewhere around '76, '77, because that was the model</p> <p>4 that we used when we established the office in Albuquerque then</p> <p>5 to start training other people on it.</p> <p>6 Q. And do you know why Billings was selected as the model?</p> <p>7 A. No. It was being pushed -- the idea of the need for</p> <p>8 integrated records to operate there was being pushed by Bill</p> <p>9 Batty, who was the deputy area director, and he undertook to</p> <p>10 oversee the project.</p> <p>11 So it was part of his effort.</p> <p>12 Q. And when you say Billings, do you mean the area office?</p> <p>13 A. Yes, the area office.</p> <p>14 Q. So the implementation was solely in the area office and</p> <p>15 not --</p> <p>16 A. Well, again, the way the system was set up, it ran on a</p> <p>17 centralized computer. Okay? And so, what you would do is you</p> <p>18 would go out to each of the agencies and you would then start to</p> <p>19 build through worksheets, filling out worksheets and things,</p> <p>20 build the ownership and build the lease and build the people,</p> <p>21 and then send those documents into the central office, Billings</p> <p>22 office, and then they would do the encoding and start to build</p> <p>23 the databases.</p> <p>24 And so, the updates were actually coming from the</p> <p>25 agency, but being encoded and run out of the central computer</p>	<p>1 THE COURT: So, of course, there was no Internet back</p> <p>2 then. IRMS contemplated that there would be what? They didn't</p> <p>3 even call them servers then. There would be computers in</p> <p>4 Billings and Albuquerque and various places --</p> <p>5 THE WITNESS: Yes.</p> <p>6 THE COURT: -- all running IRMS data but only for those</p> <p>7 areas?</p> <p>8 THE WITNESS: That's correct.</p> <p>9 THE COURT: Who, if anybody, put them all together?</p> <p>10 THE WITNESS: We didn't have the technology to</p> <p>11 interconnect them at that time, so they would have been</p> <p>12 stand-alone servers in each of those areas. And then later, as</p> <p>13 technology changed, that would have allowed the connections.</p> <p>14 And that was one of the problems, in that you could</p> <p>15 have -- the way the Indian country is, you could have an Indian</p> <p>16 in Oklahoma that had land in Aberdeen or that had land in the</p> <p>17 Billings region or that had land in the Phoenix region. And so,</p> <p>18 in the early part of that, we had a lot of duplications. And</p> <p>19 they may have different numbers.</p> <p>20 If they had land in the reservation where they were</p> <p>21 enrolled, they may have a U number or an A number, if they were</p> <p>22 an allottee. But if they were in another region and had land,</p> <p>23 since they would be nonenrolled, they would have an N number in</p> <p>24 there.</p> <p>25 And so one of the early issues was how do we resolve</p>
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<p>1 operation in Billings.</p> <p>2 Q. So is it fair to say when you say it was implemented in</p> <p>3 Billings in the mid-70's, that it also included the agencies</p> <p>4 within the Billings area?</p> <p>5 A. Yeah, they were building their own databases in IRMS. It</p> <p>6 was just being run centrally there out of the computer center.</p> <p>7 Q. Do you know how many agencies there are within the Billings</p> <p>8 area?</p> <p>9 A. Let's see. You've got Crow, you've got Northern Cheyenne,</p> <p>10 you've got Fort Peck, you got Belknap, you've got Blackfeet, you</p> <p>11 had Flathead, and I'm sure I'm missing some. But there's at</p> <p>12 least six agencies there.</p> <p>13 Q. And when you mean implement, did you mean the area office</p> <p>14 and the agencies were implemented in the mid-70's?</p> <p>15 A. They were using it, yes. They developed it and then they</p> <p>16 utilized it.</p> <p>17 Q. Were they using other systems as well?</p> <p>18 A. They may have been, but they were very dedicated to IRMS.</p> <p>19 It was their system of choice.</p> <p>20 Q. Was the RDRS system --</p> <p>21 THE COURT: Before you leave IRMS, or before you move</p> <p>22 on to RDRS, you say centralized computer. Was that just</p> <p>23 centralized for that area or was that supposed to be centralized</p> <p>24 for the entire nation?</p> <p>25 THE WITNESS: No, that was for that area.</p>	<p>1 these naming or number conflicts.</p> <p>2 THE COURT: I think we've already heard from Ms. Herman</p> <p>3 that at some point when they tried to put all this together, or</p> <p>4 migrated or reported or whatever to TFAS, they found that it</p> <p>5 would look one way in Billings and another way in Albuquerque.</p> <p>6 It wouldn't actually be all the same -- wouldn't be configured</p> <p>7 the same way.</p> <p>8 THE WITNESS: That's correct. One of the issues that</p> <p>9 we had to deal with was that as we started off, it was a</p> <p>10 voluntary system. So when we moved it out of Billings and we</p> <p>11 wanted to set it up over in Aberdeen, for instance, or</p> <p>12 Anadarko - I think Anadarko was the first one - they had their</p> <p>13 own local things that they wanted to accommodate because of the</p> <p>14 way they had been doing business.</p> <p>15 And so you lost that standardization, so that you'd</p> <p>16 have a little bit of difference in Anadarko, you'd have a little</p> <p>17 bit of difference in Aberdeen, have a little bit of difference</p> <p>18 in Albuquerque. And we understood that. We needed to get it</p> <p>19 implemented and deal with the nonstandardization later and try</p> <p>20 to bring them all in.</p> <p>21 THE COURT: All right. All right, sir.</p> <p>22 MR. GINGOLD: Thank you, Your Honor.</p> <p>23 BY MR. GINGOLD:</p> <p>24 Q. Now, was the LRIS system operating as well during that same</p> <p>25 period of time?</p>

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<p>1 A. Yes, LRIS was operating. That was the land titles records 2 official system that they used. 3 Q. And Billings continued to use LRIS. Correct? 4 A. Yes. Yes, that's correct. 5 Q. Now, is there a land ownership system within IRMS as well? 6 A. Yes, there is. 7 Q. Which was the official system of record? 8 A. LRIS is the official system of record. The ownership in 9 IRMS is not certified, it is not certified title, and we 10 didn't -- we weren't able to download or take the IRMS data and 11 utilize that. Because LRIS, in some cases, were six months to a 12 year to a year and a half backlogged. 13 And so when you got the lease money in, you wanted to 14 get the lease money distributed as quickly as possible. So you 15 would create the ownership based on the best available data, but 16 it was not certified title, it was only who the realty staff 17 thought owned the land on that day and their interest. 18 Q. And is that why the distribution worksheet is so important? 19 A. That's why the distribution worksheet is so important, 20 because it's the only document that tells you who was considered 21 the owners and their share of the ownership at the point in time 22 that that distribution was run. 23 And since IRMS is a dynamic system, the ownership could 24 have changed the next day, it could have changed the next week, 25 and there's no historical data, so there's no way to get back to</p>	<p>1 owners, including life estates. 2 Q. Now, was the Special Deposit Account an account on this 3 system as well? 4 A. It was an account in the IIM. Remember, IIM was a subsystem 5 of IRMS. 6 Q. Now, you said it was an account in the IIM. Correct? 7 A. Yes. Special deposits are a government -- for the 8 efficiency of the government account in IRMS down in the IIM 9 system. 10 Q. Based on your experience, how are they used? 11 A. Well, we would collect the lease funds, and the lease funds 12 would go into -- we'd have a Special Deposit Account. And so as 13 all of the lease funds came in, we would put it into that 14 special deposit account. 15 And then we would take and run the IRMS system from its 16 lease and ownership, and run the lease distribution, which would 17 give us the distribution worksheet, which would then tell us who 18 the owners were and how much of those funds should be 19 distributed. 20 And then we would go in and then make the distribution 21 out of the Special Deposit Account into their accounts. 22 Q. So were the Special Deposit Accounts used for deposits on 23 leases for multiple beneficiaries? 24 A. Yes. And multiple leases. 25 Q. And the detailed information was necessary to allocate the</p>
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<p>1 that date and recreate that document. 2 Q. So the LRIS system had the historical data. Correct? 3 A. LRIS is the formal system for land titles and records, and 4 it keeps all of the information and it has a historical 5 component. 6 Q. Do you know whether or not the IRMS ownership data and the 7 LRIS data was consistent? 8 A. Well, as I said, it normally was not consistent, because 9 LRIS had these backlogs and we tried to utilize the most current 10 data in making the payouts at the point that we distribute the 11 funds. 12 Q. And was this one of the issues you had to deal with when you 13 were the project manager of the Arthur Andersen Tribal 14 Reconciliation Project? 15 A. It was an issue that we had to deal with, because IRMS also 16 contains Tribal information. So we used to have this acronym 17 called AUNTXS. So the A stood for allottees, the U stood for 18 unenrolled -- enrolled but unallotted Indians, the N stood for 19 nonenrolled Indians, and then the T stood for Tribal, the X 20 stood for non-Indian, and the S stood for special deposits. So 21 you had to be able to deal with all of that. 22 And originally, when we started IRMS, we accounted for 23 non-Indian ownership, or proportionate ownership and life 24 estates, which could also be non-Indians, as a way of being able 25 to look at a plot of land and take into consideration all of the</p>	<p>1 funds to a Trust beneficiary. Is that correct? 2 MR. QUINN: Objection. Leading, Your Honor. 3 A. Yes. 4 BY MR. GINGOLD: 5 Q. How did you allocate the funds to the particular Trust 6 beneficiary? 7 A. Once you got the worksheet distribution, then you would know 8 how to allocate that portion of the Special Deposit Account into 9 the individual accounts. 10 Q. What if you didn't have the distribution worksheet? 11 A. Well, at the point that we ran it, we had it. If you wanted 12 to go back and recreate how it was done, you couldn't without 13 the worksheet distribution worksheet. 14 Q. Is that what you found during the Tribal Trust 15 reconciliation? 16 A. When we were trying to find those records, we found that the 17 worksheets were routinely destroyed or they were missing. 18 Q. Now, did you search Federal Records Centers for those 19 worksheets? 20 A. Yes. As part of our records search, we searched agencies, 21 we searched regional offices, we searched NARA, Federal Records 22 Centers, we searched the Archives. 23 It's possible, the way the Archives system is set up, 24 that it's only supposed to -- the record is only supposed to go 25 into Archives based upon a mature matriculation. But if an</p>

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1 agency inadvertently sent a box of records that they thought
 2 they were sending to the Federal Records Center, but they sent
 3 it into the Archive, then the Archive then would immediately
 4 take possession of that record and it would no longer become an
 5 agency record.
 6 So that's why we searched all of them, because there
 7 may have been these inadvertent records being sent to an
 8 Archive.
 9 Q. And a distribution worksheet was for every single
 10 transaction. Is that correct?
 11 A. It was for every time you distributed money. It laid out
 12 the ownership, who owned it, the percentage of ownership, the
 13 funds collected, and how that distribution took place. That was
 14 your snapshot of that distribution.
 15 Q. And it was good for that date?
 16 A. On that date.
 17 Q. Was there also a distribution worksheet printed out when
 18 funds were transferred from an SDA?
 19 A. No. No, that would have been handled inside the IIM system.
 20 The worksheet was only for the distribution of funds from those
 21 lease funds collected, and who were the owners and what manner
 22 it was to be distributed.
 23 Q. Were Individual Indian Trust funds that were in an SDA
 24 transferred to other SDAs?
 25 A. We found that to be true.

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1 And when we were looking for the five named plaintiffs,
 2 one of the problems we ran into was that we found -- and that
 3 was only looking at the five named plaintiffs, now, that funds
 4 had come in and put into a Special Deposit Account, and then
 5 transferred from that Special Deposit Account into a second
 6 Special Deposit Account. Once that occurred, we totally lost
 7 the ability to track those records.
 8 And I reported that back to my superiors, that that's
 9 what I called a double blind. Once it went into that second SDA
 10 account, Special Deposit Account, then we were not able to
 11 determine amounts, where it came from, nothing. I mean, it was
 12 just like the record disappeared in order to be able to track
 13 it.
 14 Q. Was that practice stopped once you reported it?
 15 A. I don't know.
 16 Q. Do you know how long that practice was employed prior to
 17 your --
 18 A. No, I don't. All I can tell you is that that's what we
 19 found when we were looking for the records in the five named
 20 plaintiffs.
 21 THE COURT: I don't think you said that it was a
 22 practice. Was it a practice? Was this commonly done, that
 23 money was transferred from one SDA to another? And if so, how
 24 or why?
 25 THE WITNESS: Well, again, sir, the only thing I can

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1 tell you is what we found when we were looking -- I was amazed
 2 that it occurred, because I had not seen it before.
 3 And so that's why it was so unique and why it was so
 4 frustrating. Was it a common practice? I don't know.
 5 THE COURT: All right.
 6 BY MR. GINGOLD:
 7 Q. But was it only one transaction that you discovered?
 8 A. No, I think there was like two or three times in the five
 9 named plaintiffs, and it was in the -- I think it was only in
 10 the Billings area that that occurred.
 11 THE COURT: But your only knowledge of this -- whether
 12 it was a practice or not, your only knowledge of this is that
 13 you encountered it two or three times in Billings when you were
 14 looking for records pertaining to the five named plaintiffs?
 15 THE WITNESS: That's correct.
 16 BY MR. GINGOLD:
 17 Q. And there's a documentation issue that you discovered once
 18 funds were transferred from one SDA to another. Correct?
 19 A. Right. And then the funds would be transferred on a JV from
 20 one SD to the next SD, and then there was no backup information
 21 on it. And that's why we just lost track of it once that
 22 occurred. We couldn't find other documentation to let us know
 23 where to look next.
 24 Q. Now, let's talk about your role in the Arthur Andersen
 25 Tribal reconciliation project. What was your position?

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1 A. I was the special assistant to the deputy commissioner, and
 2 I was the project director for the government side of the Tribal
 3 reconciliation effort.
 4 Q. What was the other side of the project, if you were on the
 5 government side?
 6 A. There was Arthur Andersen was one of the contractors, Jim
 7 LaBorde was the partner there, Greg Chiavello was, I think, the
 8 project manager. There was also a second contract with
 9 Coopers & Lybrand. Their contract was to do certification of
 10 the work that was performed by Arthur Andersen.
 11 Q. Are you aware of any particular event or situation that
 12 occurred which triggered the commencement of that project?
 13 A. From my knowledge, what triggered the overall look at Indian
 14 Trust funds stemmed out of the problem that was uncovered out on
 15 the Wind River Indian Reservation concerning the theft of oil
 16 and gas, where some of the oil companies had bypassed the oil
 17 gauges.
 18 And they caught some of the trucks trying to get off of
 19 the reservation with loads of oil without any trip tickets, and
 20 so, that launched an investigation of what was going on. And
 21 then after that was the -- I think, the Synar investigation.
 22 And so all of these issues kind of snowballed into the
 23 huge effort to look at -- and then there was creation of the
 24 Inter-Tribal Monitoring Association, which was also a party to
 25 the reconciliation effort.

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1 So you had the government, and then you had ITMA that
 2 was representing the tribes, and then you had Arthur Andersen as
 3 the primary contractor, and then you had Coopers & Lybrand as
 4 the certification contractor to oversee the actions of Arthur
 5 Andersen.
 6 Q. Now, the Arthur Andersen project was known as the Arthur
 7 Andersen Tribal Reconciliation Project. Correct?
 8 A. Yes, it was the Tribal Reconciliation Project, yes.
 9 Q. Okay. What was it?
 10 A. That was the effort to reconcile the Tribal Trust funds
 11 apart and separate from the IIM.
 12 And in our meetings, what we did was meeting with
 13 Arthur Andersen, they told us -- or Jim LaBorde, who was the
 14 partner, said that the only thing that he felt that they could
 15 do, which is they got an agreement with ITMA and others, was an
 16 agreed-upon procedures report. And so in order to do an
 17 agreed-upon procedures report, we had to lay out all of the
 18 procedures that would be used to test the documents that were
 19 found.
 20 Mr. LaBorde over and over and over and over kept
 21 stressing to us that since this was an agreed-upon procedures
 22 report, that any of the findings where you apply these
 23 procedures to a document could only talk to that document that
 24 you found, you couldn't apply it to missing documents, and that
 25 you could not extrapolate the information.

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1 So you couldn't say, because this document had an error
 2 rate of this, therefore the missing documents had an error rate.
 3 He said absolutely you couldn't do that.
 4 MR. QUINN: Objection, Your Honor. We're going into
 5 some hearsay.
 6 BY MR. GINGOLD:
 7 Q. Were you told this by Mr. LaBorde?
 8 A. Yes, I was told that by Mr. LaBorde, and I continually told
 9 that to my superiors. And after --
 10 THE COURT: I think I have to sustain that objection.
 11 BY MR. GINGOLD:
 12 Q. Did anyone at the Department of the Interior talk to you
 13 about the limitations of the Arthur Andersen Tribal Trust
 14 Reconciliation Project?
 15 A. Yes. I talked with the deputy solicitor, Mr. Cohen.
 16 THE COURT: Who?
 17 MR. GINGOLD: Mr. Cohen, Ed Cohen.
 18 THE COURT: Ed Cohen, all right.
 19 A. And explained -- when we would go through the results of it,
 20 I would explain to him the limitations of the reconciliation.
 21 BY MR. GINGOLD:
 22 Q. Did you have to change the agreed-upon procedures after you
 23 commenced the project?
 24 A. Would you restate that?
 25 Q. Yes. You said this was an agreed-upon procedures project.

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1 Were they changed at all after you began the project?
 2 A. Yes.
 3 Q. Okay. What happened?
 4 A. There were numerous changes in how we started the project
 5 versus how we ended up the project.
 6 THE COURT: I have lost the time frame of this.
 7 When was the beginning and when was the end?
 8 THE WITNESS: Well, we began the project in --
 9 actually, in December of '92 when we met with the -- myself and
 10 Arthur Andersen and Karen Turkold (ph) met in Albuquerque, New
 11 Mexico to start laying out the procedures that would be done.
 12 And then we finished the project in 1995, or else it was brought
 13 to a close by the department in 1995.
 14 We then issued the reports in late 1995 and early 1996,
 15 and then met with the tribes to explain the -- on an individual
 16 basis to explain the reports that were issued to them, and how
 17 to utilize the electronic data.
 18 BY MR. GINGOLD:
 19 Q. So for a period of three years, were there changes made in
 20 the agreed-upon procedures?
 21 A. Yes. Yes.
 22 Q. Do you know why the changes were made?
 23 A. Well, as we were going through the project, we would run
 24 into issues. And so we would meet and we would discuss the
 25 issues, and then we would come up with a fix or a modification,

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1 and then move on with the project. It was an enormous project
 2 with a lot of moving parts, and as we ran into issues, we would
 3 make modifications.
 4 Q. Now, were any modifications made as a result of your search
 5 for records?
 6 A. Well, the time frames were pretty well set in concrete. We
 7 had no changes to that.
 8 Q. What were the time frames?
 9 A. July 1st, 1972 through September 29th, 1992. That was the
 10 period that we conducted the reconciliation.
 11 Q. Do you know how that period of time was selected?
 12 A. It was selected as a result that most of the electronic --
 13 the general ledger was the crucial piece of information that we
 14 had to have. And so we had electronic records back to a certain
 15 period, and then we took the, what we call blow backs, or the
 16 microfiche of those general ledgers, and recreated them through
 17 the Arthur Andersen people, and created an electronic version of
 18 those back to July 1st of 1972. We started then because that
 19 was the beginning of the FY year.
 20 And then in 1976, the government changed its FY year,
 21 so we had to account for the transition quarter and then go
 22 through the FY 1992, which ended in September 29th, I think of
 23 1992.
 24 Q. Now, I think you testified earlier today that you searched
 25 Federal Record Centers?

<p style="text-align: right;">Page 2075</p> <p>1 A. Right. 2 Q. You searched BIA agencies? 3 A. Right. 4 Q. You searched the National Archives itself? 5 A. Yes. 6 Q. What else did you search? 7 A. We searched the agencies, the regional offices, we searched 8 the Federal Record Centers, and we searched the National 9 Archives. 10 The records centers presented a major problem in that, 11 just as most organizations have a dynamic organization creating 12 new offices, abandoning old locations, we had during that period 13 of time a lot of Federal Record Centers had been closed down. I 14 can't remember exactly where. Like one like in Chicago. 15 And then you had to figure out where they sent the 16 documents to the new record centers and kind of map that out, so 17 that we could then conduct that search throughout the nation 18 trying to determine when they closed, where did they send their 19 records and stuff. So it was a major undertaking. 20 Q. Were you searching for more than just BIA records? 21 A. No. We were basically trying to find all of the BIA 22 records. 23 Q. What about MMS? 24 A. No, we did not search for MMS records. 25 Q. Did you search for BLM records?</p>	<p style="text-align: right;">Page 2077</p> <p>1 find the tickets, find the bills of collection, find all of the 2 documents, and then put them into reconcilable packages. 3 So we're the ones who had to go out, find those 4 documents, put them into reconcilable packages. Once we 5 believed that we had a reconcilable package - in other words, we 6 had all the bill of collections that equalled to the summary 7 sheet - and maybe it was sent to the area office, where they 8 would bring them in from different agencies, package them into a 9 total package, and then that total amount then would be 10 deposited and you'd have a deposit ticket. 11 So putting all of those documents together, trying to 12 reach the Tribal numbers that were on those documents, matching 13 to the Tribal deposit, which was then registered in the general 14 ledger, we did all of that work. 15 So once we got what we considered a reconcilable 16 package, then we would take that over and give that to Arthur 17 Andersen, and then they would go throw and apply the procedures 18 and stuff. But they didn't go out and look for documents as 19 part of this effort. 20 Q. Was there one standard for a reconcilable package? 21 A. No, not really. There was one standard established as to 22 what we would consider reconciled on receipts, and then 23 originally one standard as to what we would consider reconciled 24 on a disbursement. 25 As we got into the project, on the disbursement side</p>
<p style="text-align: right;">Page 2076</p> <p>1 A. No, we did not. 2 Q. And you didn't search for OHA records, did you? OHA, Office 3 of Hearings and Appeals? 4 A. No, we did not. 5 Q. And is that because the tribe didn't have the OHA issues? 6 A. I'm not aware that there would be any land probates dealing 7 specifically with tribes. 8 Q. Now, were Treasury records also included in this project? 9 A. We had tried to find records from Treasury, but what we got 10 was -- what we were looking for was the Treasury marks, and 11 where the RDOs had been issued from, the regional disbursing 12 offices for Treasury. 13 We were not looking for canceled checks, no. 14 Q. So the purpose of the project was to reconcile the 15 transactions of Tribal Trust funds. Correct? 16 A. That's correct. 17 Q. Did you accomplish that? 18 A. To the extent possible, we did. And within the time frame 19 that we were given, we did. 20 Q. What do you mean by "to the extent possible"? 21 A. Well, there was lots of missing documents. And so if we 22 couldn't find documents, or -- the government side of this -- 23 understand, in the contract, Arthur Andersen was not required to 24 go out and look for documents. They were not required to put 25 documents together in packages. The government had to go out,</p>	<p style="text-align: right;">Page 2078</p> <p>1 particularly, we found that there was very few of the total 2 packages that would meet that standard, what we ended up calling 3 a C standard. 4 Q. The C standard is what in particular now? 5 A. Well, that was the original procedures that were put 6 together that said, all of these documents would be contained in 7 it and they would have Tribal signatures, they would have the 8 signature of the regional director, they would have a Treasury 9 stamp on there, et cetera. That meant it was fully reconciled. 10 As we got into that part of it, we found that there was 11 a lot of the records, I mean, a vast majority of the records, a 12 large majority of the records didn't meet that standard. 13 So, as a result of that, we got together and we talked 14 about that. Well, what do you want to do? And so the decision 15 was made that we would then -- that we would then lay out every 16 document that we had, and that we would have different levels. 17 Like you would have an L level, you'd have a G level, you might 18 have a combination of G and L. And so that was then laid out 19 for the tribe to take a look at, and they could make up their 20 own mind as to whether or not they accepted that level of 21 reconciliation. 22 So when we did report that, we reported, here's the 23 amount that was reconciled to the C level, here's the amount 24 that was reconciled to the L level, here's the amount that was 25 reconciled to the G level, here's the number that had G and L</p>

<p style="text-align: right;">Page 2079</p> <p>1 together, and then there was an other category. 2 Q. What was the other category? 3 A. It was a combination of things. 4 THE COURT: C for? 5 THE WITNESS: Well, you know, we really never really 6 determined what C stood for. But it was a comprehensive -- it 7 was the code that showed a -- we had all of the documents that 8 we had set up as part of the agreed-upon procedures. Everything 9 was there, and so that was what C stood for. 10 THE COURT: All right. 11 BY MR. GINGOLD: 12 Q. Is it fair to say you considered that fully reconciled? 13 A. Yeah, that was completely and fully reconciled. I mean, 14 there was no questions about that. There was no issues related 15 to those disbursements. 16 Q. Do you know what percentages, based on your recollection of 17 transactions? 18 A. No, I would say -- I can't tell you right off the top of my 19 head. If I'd known we were going to talk about it, I could have 20 reviewed it. 21 But I can give you -- I know one tribe, because I was 22 at a meeting last Monday with this tribe on this issue, they had 23 like \$200,000 in C's, they had like a million, two or a million, 24 four, or two million, four in the L levels, and then they had 25 various others.</p>	<p style="text-align: right;">Page 2081</p> <p>1 several packages that would come in from various agencies. And 2 they had in excess of 12 agencies up there in the Aberdeen area. 3 And then, so they would take that and they would come to a 4 total, and then they'd go over and deposit it. 5 But when they came back, they would take that package 6 that would be perfect for reconciliation, and they would take 7 that package apart, and they would file them by document type. 8 So they would disaggregate the whole package, and then 9 file them by each of the various types of documents that was 10 there, so that when it came time for us to put that -- we had to 11 put that package back together. So we had to have all of those 12 documents and then we had to find dates. It was very, very 13 tough. 14 Another agency may have kept their package altogether, 15 or another area would have kept all their packages together and 16 they would have just filed them as a package. When those things 17 occurred, then it was relatively easy to do that. All we had to 18 do was take and make sure all the numbers added up. 19 Q. Now, were you also collecting Individual Indian Trust 20 documents while you were collecting Tribal Trust documents 21 during this project? 22 A. Yes. When we were bringing records in, we would bring all 23 of the records in. And some of those records would include IIM 24 records. 25 Q. Did you notice any difference in the completeness of IIM</p>
<p style="text-align: right;">Page 2080</p> <p>1 So like I say, the vast majority of this was not 2 covered under the C level of reconciliation. 3 Q. And is my understanding correct in your testimony that if it 4 wasn't a C level reconciliation package, that the agency left it 5 up to the tribe to accept it? 6 A. What we did was we displayed the results so the tribe then 7 can make up their own mind as to whether or not they wanted to 8 accept the reconciliation issues at the L level or the G level 9 or the other level. 10 Q. Now, you discussed briefly the different packages for 11 receipts and disbursements. Is that correct? 12 A. That's correct. 13 Q. Was it more difficult to reconcile the disbursement 14 transactions? 15 A. No, not really. According to how the receipt process 16 worked, that could be a lot more difficult than the disbursement 17 side. Because it would involve a lot more documents. 18 As I said, sometimes -- you had various procedures. 19 There was no standardization out there by region or by area, or 20 even by agency. So at one location, like in Aberdeen, they 21 would take the collection vouchers and they would do all the 22 summaries and everything, and then they would put their amounts 23 there and then they would mail that in to the region office. 24 The regional office would take that for that day that 25 they got it, and they may have several of the same type of --</p>	<p style="text-align: right;">Page 2082</p> <p>1 records compared to Tribal Trust records? 2 A. And when you look at the packages that we put together to 3 get to the deposit ticket, they would include both Tribal and 4 they would include IIM. 5 The numbers that we were trying to reconcile back to 6 was the Tribal portion of that deposit ticket, and we didn't try 7 to reconcile the IIM side. 8 But as we would get records in, and they would be 9 clearly IIM records, or related to the individual Indians, we 10 would then set those apart separate in the cage that we had so 11 that we would preserve those records. But they were not records 12 that we utilized in terms of the reconciliation. 13 Q. Is that where you were able to identify that the 14 disbursement settlement worksheet was -- 15 A. We would go through those to make sure that there was not 16 anything Tribal in there. And if we were able to find a 17 distribution worksheet, then we would review that to see if 18 there was any Tribal related to that. 19 And the reason for that was early on, one of the 20 objectives of the Tribal reconciliation was to run like a small 21 pilot to determine whether or not it was possible to just 22 reconcile the Tribal part of IIM versus the individual Indian 23 side. 24 And we had three locations at that, we had Fort Peck, 25 Fort Berthel, and I want to say Flathead, but I'm not absolutely</p>

Page 2083	Page 2085
<p>1 sure on the third one. And we ran tests on that, Arthur 2 Andersen assisted us in running tests on that to try to 3 determine whether it was feasible or not to reconcile just the 4 Tribal portion of IIM. 5 Arthur Andersen and us both came to the conclusion that 6 that was not feasible, and so we dropped that portion of the 7 project. 8 Q. Was there any evaluation just to do IIM alone without the 9 Tribal? 10 A. No, that was looked at prior to me coming on board as 11 project manager. That was something that was looked as, it's my 12 understanding, between the department and Arthur Andersen and 13 others to determine feasibility of doing that. 14 Q. Do you have any understanding of what the determination was? 15 A. Well, the material that I read said that Arthur Andersen 16 believed that the IIM, if it was going to be reconciled, would 17 cost in excess of \$208 million. But they didn't think the 18 records were available to do that. 19 On the other hand, they thought that there possibly 20 could be possibly enough records to do the Tribal 21 reconciliation, and so that's when the determination was made to 22 do the Tribal side rather than doing the IIM side. 23 Q. Do you know whether or not that consideration of the IIM 24 reconciliation was also for a 20-year period? 25 A. No, I do not.</p>	<p>1 Andersen. 2 Q. Did they do that? 3 A. They were in the process of doing that. It was like herding 4 cats between those two contractors. It was a constant, constant 5 bickering back and forth, and it was really -- that was probably 6 one of the harder things to do in that reconciliation was the 7 work between the two contractors. 8 Eventually, the decision was made to drop the 9 certification part of the contract, and so that contractor was 10 terminated and that work was not completed. 11 Q. Mr. Christie, one last question. With regard to IRMS, since 12 you were involved in the roll-out, and when you were a BIA 13 superintendent, was IRMS in existence at that time? 14 A. When I left the project and went up to Fort Totten, I was 15 dedicated to IRMS, so I started trying to implement the IIM 16 system into Fort Totten, and then lay the ground work for us to 17 start doing the paperwork for the people and the ownership and 18 the leases at Fort Totten. 19 And then I went down to Winnebago and I continued that 20 down at Winnebago, getting the agency ready, both physically and 21 mentally ready to start working into the IRMS system. 22 So, I was a big believer in it, and I was pushing my 23 agency to do it. 24 Q. Were you able to verify whether or not a posting on the 25 system was valid based on going to a paper record? Other than</p>
Page 2084	Page 2086
<p>1 Q. You said -- when you talked about the end of the project, I 2 think you indicated -- you first said completed, and then 3 changed it when you stated that the work on the project was 4 finished. 5 Was the Tribal Trust Reconciliation Project completed? 6 A. We were ordered to shut the project down in, I think, 7 January of '95. We were still in the process of trying to do 8 the fill-the-gap portion. The fill-the-gap portion was where we 9 would go back in, try to find the lease, and then look at the 10 requirements of the lease and then try to determine whether or 11 not the correct amount for that lease was collected, and whether 12 or not it was correctly deposited into the general ledgers. 13 Which was then to close the gap between the resource usage and 14 the funds and the amounts collected. 15 We didn't get an opportunity to fully complete that. 16 We were directed by the Department of the Interior to shut the 17 project down, and so we shut the project down. 18 Q. Do you know why you were directed to shut it down? 19 A. They said that it was because we had done enough and that 20 they didn't want to pursue that any further. 21 Q. Was Coopers & Lybrand involved in this at all? 22 A. Coopers & Lybrand, as I said, was the certification 23 contractor. 24 Q. What were they supposed to certify? 25 A. They were supposed to certify the work done by Arthur</p>	<p>1 the distribution worksheet? 2 A. No. Unless you had the distribution worksheet, you couldn't 3 validate anything. 4 MR. GINGOLD: Your Honor, I'm finished with the direct 5 and I'd like to move in two exhibits. 6 THE COURT: All right. 7 MR. GINGOLD: Plaintiffs would like to move into 8 evidence PPX-350, which is the March 7th, 1995 memorandum from 9 the deputy commissioner regarding preservation of records; and 10 PPX-2152, which is Mr. Christie's memorandum to Messrs. Miller, 11 Homan, and Thompson regarding the records MOU standard for Trust 12 records retention. 13 THE COURT: Exhibits received. 14 (PLAINTIFF Exhibit 350, 2152 were moved into evidence.) 15 THE COURT: How much cross to you have? 16 MR. QUINN: Probably no more than ten minutes, Your 17 Honor. 18 THE COURT: Let's do it. 19 MR. QUINN: Are you okay, Mr. Christie? 20 THE WITNESS: Yes. 21 MR. QUINN: For the record, Michael Quinn on behalf of 22 the defendants. I'll try to keep this brief. 23 CROSS-EXAMINATION 24 BY MR. QUINN: 25 Q. Mr. Christie, when you started out your testimony this</p>

<p style="text-align: right;">Page 2087</p> <p>1 morning, I think you began with an example of what you did in 2 the Winnebago agency with respect to direct pay arrangements. 3 Is that right? 4 A. Yes. 5 Q. I believe you testified that you went out and collected the 6 checks. Where did you get the checks? 7 A. The realty shop. I ordered the realty shop to go to the 8 person leasing the land and to tell them that they had an 9 obligation to give us a copy of the canceled check. 10 Q. So this would have been a piece of paper, the check, being 11 issued by the lessee of the property? 12 A. It would have been the check that they paid to the owner of 13 the property, yes. 14 Q. Okay. So the money that's referenced -- I mean, what's 15 evidenced in that piece of paper is not money that had been 16 deposited with the federal government. Correct? 17 A. No, it was not run into the Special Deposit Account, and it 18 did not enter the IIM account. 19 Q. And in effect, that's what direct pay means. Right? 20 A. Yes. It was paid directly from the person renting the 21 property to the person who owned the property. 22 Q. I believe there was also testimony with respect to IRMS, 23 that you had responsibilities for the IRMS in 1978 to 1981. Is 24 that correct? 25 A. That's correct.</p>	<p style="text-align: right;">Page 2089</p> <p>1 A. Yes. The transaction register. 2 Q. Now, with respect to the -- when the lease revenue is 3 generated and is deposited within the IIM system, and then has 4 to be distributed out to the beneficiaries -- 5 A. Uh-huh. 6 Q. -- what paperwork or what paperwork do you recall being 7 generated in the course of the transactions from the receipt of 8 the money into the system to the distribution? 9 A. Okay. The receipt of the funds would have been off of the 10 billing system which would bill them and then create a document 11 that they would use to bring back in to pay the lease. 12 Q. Would that be known as a bill for collection? 13 A. It was like a bill of collection, yes. I was supposed to 14 mirror the bill of collection, that's right. 15 Q. Okay. 16 A. And then the -- would you restate your question again, 17 please? 18 Q. Sure. I was just asking about -- in the course of receiving 19 the lease payment and then making the distribution to the 20 appropriate beneficiaries, what documentation would be created 21 along that path? 22 A. Right. And so once you got the worksheet distribution, the 23 worksheet distribution would tell you who was supposed to 24 receive the money. And then you would go to the Special Deposit 25 Account and you would create JVs.</p>
<p style="text-align: right;">Page 2088</p> <p>1 Q. And in the course of your involvement with the IRMS system, 2 had you gained any familiarity with a printout known as a 3 transaction register? 4 A. Yes. 5 Q. Can you describe what that is? 6 A. Well, the transaction register deals mainly with IIM. And 7 what that does is, is it shows the JVs and the amounts and stuff 8 that went in there. But the transaction register is not linked 9 back to the ownership. 10 Q. But this is a paper record. Right? 11 A. Yes. 12 Q. A printout from the computer system. Correct? 13 A. Yes. 14 Q. And in your experience, did the area offices make use of 15 those transaction records? 16 A. I couldn't say. 17 Q. With respect to the leasing activities you were referring 18 to, and the lease distribution worksheet, I think you called it 19 Right? 20 A. Yes, sir. 21 Q. That's generated by another subsystem of the IRMS. Is that 22 right? 23 A. That's generated by the lease distribution system, yes. 24 Q. Okay. And that's a different part from what you were just 25 describing, the IIM subsystem?</p>	<p style="text-align: right;">Page 2090</p> <p>1 Now, in some cases -- 2 Q. Can I just stop you there for a second. Just so the record 3 is clear, JV is a journal voucher? 4 A. A journal voucher. 5 Q. Okay. Go ahead. 6 A. That's used to deposit the funds from the Special Deposit 7 Account into the individual accounts. 8 Q. Now, would the journal voucher indicate on there to whom the 9 money is to go and their respective share? 10 A. It would say, yes, who was receiving the funds, and their 11 share. 12 Q. Okay. 13 A. Yes. It would not -- 14 Q. Go ahead. 15 A. It would not necessarily reference the lease, though. 16 Q. I understand that. But in terms of documenting the money 17 flow, the journal voucher, if I understand your testimony 18 correctly, would identify the recipients who were supposed to 19 get the money and their relative share? 20 A. That's correct. 21 Q. Are there any other documents beyond the journal voucher 22 point that you recall in that process of distribution? 23 A. No, that's basically what you would use to transfer it into 24 the account. And once it's in the account, then of course it 25 generates its own interest and everything in the account.</p>

<p style="text-align: right;">Page 2091</p> <p>1 Q. Okay. And then if you were to -- if someone, like when you 2 were in Winnebago, would generate a transaction register, the 3 computer system should also show that activity. Correct? 4 A. Yes. Over on the IIM side, that's correct. 5 Q. I want to ask you just a couple of questions about -- you 6 mentioned also, I think, in the course of your testimony about 7 the five named plaintiffs' project. 8 A. Uh-huh. 9 Q. That was, as I understand it - and correct me if I'm wrong - 10 that the five named plaintiffs as well as all their ancestors in 11 an agreed-upon list. Do you recall? 12 A. Well, when we initially started looking for it, it was all 13 the five named plaintiffs. 14 Q. Okay. 15 A. And so that was the portion that we were concentrating on, 16 was trying to initially find all of the records related to them. 17 Q. Okay. 18 A. There had been discussion about predecessor records, but in 19 the initial stages we were just looking for the five named 20 plaintiffs. 21 Q. Okay. Could you describe what your role was in working to 22 collect documents with respect to that project? 23 A. Yes. I organized -- like I say, we had the office as part 24 of the litigation support, so one of the things that we did was 25 trying to map out where we think all of these records would be.</p>	<p style="text-align: right;">Page 2093</p> <p>1 A. December of 1999. 2 Q. Was that five named plaintiff project still going on at the 3 time of your retirement? 4 A. When I left OST -- I left OST in December of '98. 5 Q. Okay. 6 A. So they were still looking for documents, although we had 7 broadened -- we had other things that we were doing, also. 8 But we were still focused on the five named plaintiffs 9 and we were still looking for documents and we were still trying 10 to figure out how we could make the effort more efficient. 11 Q. Do you know offhand how many documents were ultimately 12 collected as part of that project? 13 A. No, I don't. 14 Q. Do you know offhand how many had been found at the time you 15 left that position? 16 A. No, I don't recall that. 17 Q. Are you familiar at all with the name of Joseph Rosenbaum? 18 A. Joseph Rosenbaum? Joseph Rosenbaum? I don't recall that 19 name. 20 Q. This may be after you left. I'm just trying to get a sense 21 of your experience with respect to this document search. 22 Let's see. I think just maybe one other thing here. 23 MR. QUINN: Bear with me one moment here, Your Honor. 24 One moment. 25 (OFF THE RECORD.)</p>
<p style="text-align: right;">Page 2092</p> <p>1 And then we would organize teams and send the teams out on site 2 to go to those locations and to start looking through boxes of 3 documents that was there. 4 And then with the idea that as you go through the box, 5 if you find a document that had one of the five named plaintiffs 6 on there, then you would take that document and tag it, and then 7 from there, you would try to determine what document you needed 8 to try to find next. So just when you'd find a document, it 9 might be in the middle or it might be at the end or it might be 10 at the beginning. 11 And so the effort was to try to go through all of those 12 records that could possibly contain a reference to that account, 13 and then, once you found a reference, to try to figure out which 14 direction you needed to go to look for the next document. 15 Q. Okay. And I take it that was fairly labor intensive? 16 A. Extremely labor intensive. 17 Q. And time consuming? 18 A. And time consuming. 19 Q. With respect to the search, what was your understanding that 20 the goal of doing the document search was with respect to the 21 five named plaintiffs? 22 A. Was to come up with as many of the documents that we could 23 find related to the five named plaintiffs. 24 Q. Now, I believe it's also your testimony that you retired in 25 December of 1999?</p>	<p style="text-align: right;">Page 2094</p> <p>1 BY MR. QUINN: 2 Q. One other thing. You mentioned that, I think, in the course 3 of the Tribal Reconciliation Project that you were -- and when 4 you were at OST, beginning to collect documents in Albuquerque. 5 Is that -- 6 A. Yes, as part of the Tribal reconciliation, putting the 7 documents back together all occurred in Albuquerque. 8 And so we would bring the records into Albuquerque, and 9 we had to store them and then we had to run them through the 10 reconciliation process to determine whether or not they 11 contained records. 12 As I said, we just brought massive records in, and 13 sometimes they were IIM records versus the Tribal stuff, and we 14 would shuffle them off and put them in a special place in the 15 building where we had set up racks. 16 But we had thousands and thousands of boxes that were 17 coming through. We had a very small space to work in, so we 18 would bring in a trailer full and we would work that trailer, 19 and then feed the empty ones back -- or the ones that we'd gone 20 through back into a trailer and then bring another trailer over, 21 and then we would try to find a place to store those other 22 records. 23 Q. So if I understand your testimony correctly, in addition to 24 the Tribal material coming in, you also had IIM documents coming 25 into Albuquerque as well?</p>

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<p>1 A. Yes. Because when we went out and pulled the records in, we 2 didn't make a distinction between the two. We were trying to 3 pull in as many records that we could to find as many documents 4 as we could. 5 Q. Do you know where those records were moved to after this 6 work? 7 A. We had a building over on Hawkins, and we stored -- we put 8 shelving and stuff in there and we had them in the, I can't 9 remember, Singer Building, and then we had them over in Hawkins 10 and we had people in charge of those boxes and inventorying 11 them, high level inventories, and then storing them and putting 12 them on an inventory record. 13 Q. Are you aware of a records repository, American Indian 14 Records Repository, also known by its abbreviation as the AIRR? 15 A. In Lenexa? 16 Q. In Lenexa. 17 A. Yes, that was created after I left. 18 Q. So any records movement after you left to AIRR would be out 19 of your realm of experience -- 20 A. Yes. 21 Q. -- in terms of collecting that material in Lenexa? 22 A. Yes. 23 MR. QUINN: No more questions, Your Honor. 24 MR. GINGOLD: Just a couple of questions. Thank you. 25 REDIRECT EXAMINATION</p>	<p>1 ownership, but it wasn't the same as LRIS and it was 2 uncertified. 3 Q. And in order to verify the information, though, going back, 4 you needed this disbursement worksheet to do so. Correct? 5 MR. QUINN: Objection, Your Honor, leading. 6 THE COURT: Yeah, you are leading him, and it's your 7 witness. 8 MR. GINGOLD: I was just trying to move the redirect. 9 THE COURT: Well, we'll just be hungry as long as it 10 takes. 11 MR. GINGOLD: Okay. Okay. That's okay with me. I'm 12 sorry, Your Honor. 13 A. The ownership is the only thing that tells you who you were 14 distributing the money to and why. And if the ownership is 15 incorrect, then you would be distribute can to incorrect people. 16 BY MR. GINGOLD: 17 Q. And there's no other document, as far as you know, that 18 provides that information. Correct? 19 MR. QUINN: Same objection, Your Honor. 20 THE COURT: That's also asked and answered. 21 BY MR. GINGOLD: 22 Q. You mentioned interest in response to a question from 23 Mr. Quinn. Do you recall that? 24 A. No, I don't. 25 Q. Okay. Interest was asked by Mr. Quinn.</p>
Page 2096	Page 2098
<p>1 BY MR. GINGOLD: 2 Q. Mr. Quinn asked you whether or not there were various 3 documents available from a transaction in IRMS that were 4 available perhaps for reconciliation. But isn't it true that no 5 matter what needs to be done, you still need that disbursement 6 worksheet? 7 A. Distribution worksheet? 8 Q. Yes, sir. 9 A. It's the only document that ties it back to the land 10 ownership. So if you don't have that to tie it to the land 11 ownership, then you don't know who was the person that they 12 determined was the owner and that they were then distributing 13 to. 14 Q. And is that because the ownership information in IRMS was 15 sometimes inconsistent and in conflict with LRIS? 16 MR. QUINN: Objection. Leading, Your Honor. 17 THE COURT: Sustained. 18 BY MR. GINGOLD: 19 Q. Do you know why that was important to have that information? 20 A. We had always wanted to try to get LRIS to feed into 21 ownership. We were never able to accomplish that. And we 22 couldn't use LRIS because it was anywhere from six months to a 23 year to a year and a half backlogged, and you couldn't wait that 24 long to pay a lease that you had collected. 25 So what you did was you created the best available</p>	<p>1 Did Special Deposit Account -- did income for Trust 2 beneficiaries that were deposited in Special Deposit Accounts 3 earn interest? 4 MR. QUINN: Objection, Your Honor. That's beyond the 5 scope of my cross. 6 THE COURT: Sustained. 7 MR. GINGOLD: I thought he mentioned interest during 8 the course of the -- 9 THE COURT: I don't think so. 10 MR. QUINN: I was interested in the witness' testimony, 11 Your Honor. 12 THE COURT: Sustained. 13 BY MR. GINGOLD: 14 Q. Even though the direct pay funds were not deposited in the 15 Individual Indian Trust, and the share, the crop share income 16 wasn't deposited in the Trust, why did you as a superintendent 17 ensure that the Trust beneficiaries were being paid in 18 accordance with the leases? 19 MR. QUINN: Objection, Your Honor. I believe that was 20 covered on direct. 21 MR. GINGOLD: He asked specifically about it's outside 22 the IIM Trust. 23 THE COURT: I'll allow it. 24 A. The document -- the lease document that contained those 25 provisions was a BIA document; therefore, it was a BIA</p>

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1 responsibility to assure that the person was adequately
2 compensated and received their funding. And that's all I was
3 doing, was verifying that that occurred.
4 BY MR. GINGOLD:
5 Q. And was the income coming off of Individual Indian Trust
6 land?
7 A. Yes, it was.
8 MR. GINGOLD: Thank you.
9 Your Honor, we would like to be able to move certain
10 exhibits into evidence after lunch, so we don't want to rest at
11 this point in time.
12 THE COURT: Let's do it after lunch.
13 MR. GINGOLD: Thank you.
14 MR. QUINN: We have no more questions for this witness.
15 THE COURT: The witness is excused. We'll go to lunch,
16 we'll see you back here at 10 minutes until 2:00. Thank you.
17 (Recess taken at 12:50 p.m.)
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1 CERTIFICATE OF OFFICIAL COURT REPORTER
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