

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, : Civil Action 96-1285  
et al. :  
Plaintiffs :  
 : Washington, D.C.  
V. : Tuesday, June 24, 2008  
 :  
DIRK KEMPTHORNE, Secretary :  
of the Interior, et al. :  
 :  
Defendants : MORNING SESSION

TRANSCRIPT OF EVIDENTIARY HEARING  
DAY 9  
BEFORE THE HONORABLE JAMES ROBERTSON  
UNITED STATES DISTRICT JUDGE

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WITNESS DIRECT CROSS REDIRECT RECROSS

BRIAN PALMER  
By Mr. Gingold 1444 -- -- --

E X H I B I T S

NUMBER ADMITTED

(No Exhibits Moved into Evidence.)

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P R O C E E D I N G S

1  
2 COURTROOM DEPUTY: This is Civil Action 96-1285,  
3 Elouise Cobell, et al. versus Dirk Kempthorne, et al.  
4 THE COURT: Good morning, Mr. Warshawsky.  
5 MR. WARSHAWSKY: Good morning, Your Honor. If I may  
6 for a moment just advise the Court of a situation. There was a  
7 little slippage on the schedule over this weekend --  
8 THE COURT: I've just added 15 minutes to it, so...  
9 MR. WARSHAWSKY: We can live with that, Your Honor.  
10 As the Court will recall, Thursday afternoon we were  
11 advised that the plaintiffs initially intended to provide their  
12 model to us on Friday, but they needed time to scan and copy the  
13 materials to get to us on Saturday.  
14 In fact, the materials ultimately were e-mailed to us  
15 at 1:41 a.m. on Sunday morning, the first set of the materials.  
16 The second part of the -- first set, I guess, was the early  
17 edition. We got the second set of the first set of materials at  
18 1:30 p.m. Sunday afternoon.  
19 Now, we can live with that. We spent all weekend and  
20 of course all day yesterday working with it. We got the late  
21 edition last night at 10:30 p.m. by e-mail. The models have  
22 been apparently revised again.  
23 We've looked at it, we'll certainly work --  
24 hopefully -- I think everybody wants to be through today, and  
25 we'll certainly attempt to conduct cross and get it done today,

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1 but I did want to advise the Court ahead of time of where we  
 2 were just in case after hearing Dr. Palmer's direct we need to  
 3 ask the Court for additional time.  
 4 THE COURT: All right.  
 09:56:28 5 MR. WARSHAWSKY: Thank you.  
 6 THE COURT: Mr. Gingold?  
 7 MR. GINGOLD: Good morning, Your Honor.  
 8 THE COURT: Good morning.  
 9 MR. GINGOLD: Everything Mr. Warshawsky said is  
 09:56:48 10 correct. However, the model hasn't changed, it's the data that  
 11 is the subject of the modifications, Your Honor.  
 12 Your Honor, plaintiffs would like to call Brian Palmer.  
 13 (Oath administered by Courtroom Deputy.)  
 14 MR. GINGOLD: If we can put on the screen, Antonio,  
 09:57:33 15 Plaintiffs' 182.  
 16 Your Honor, I will provide a brief background of  
 17 Dr. Palmer and briefly state what he is going to be testifying  
 18 to today.  
 19 Your Honor, Brian -- Dr. Palmer is testifying because  
 09:57:54 20 of the unavailability of Professor Cornell, who is involved in  
 21 testifying in another litigation unrelated to this case, and  
 22 scheduling conflicts precluded continuing to postpone the  
 23 deposition. So Dr. Palmer is sitting in for Dr. Cornell.  
 24 THE COURT: All right.  
 09:58:16 25 MR. GINGOLD: Dr. Palmer has a Ph.D. in economics from  
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1 THE COURT: All right. Let's proceed.  
 2 MR. GINGOLD: Plaintiffs would like to identify  
 3 Exhibit 189-A, which is Attachment A, analysis of benefit to the  
 4 government.  
 5 (BRIAN PALMER, PLAINTIFF WITNESS, having been duly sworn,  
 6 testified as follows:)  
 7 DIRECT EXAMINATION  
 8 BY MR. GINGOLD:  
 9 Q. Dr. Palmer, can you please describe what this is?  
 10:00:47 10 A. Yes. This is Attachment A that Professor Cornell --  
 11 THE COURT: Can you speak up on that microphone a  
 12 little bit, please?  
 13 A. This is Attachment A that Professor Cornell had presented  
 14 earlier to this Court. The data in this attachment and for this  
 10:01:05 15 model has been revised.  
 16 BY MR. GINGOLD:  
 17 Q. Did you prepare or help prepare -- did you help develop the  
 18 model that Dr. Cornell testified to in this litigation?  
 19 A. Yes, I worked closely with Dr. Cornell. We worked together  
 10:01:23 20 and I worked closely with him in developing the model that was  
 21 originally prepared, and then worked to augment the data  
 22 subsequently because of the information we learned in this  
 23 litigation.  
 24 Q. Dr. Palmer, did you sit through the Defendant's  
 10:01:43 25 case-in-chief?  
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1 MIT, he has a BA in economics and a BS in economics, or a double  
 2 major from Brigham Young University. He has been with CRA  
 3 International for 19 years, he specializes in econometrics and  
 4 statistics, and his expertise in economic and quantitative  
 09:58:46 5 analysis has been employed in anti-trust, intellectual property,  
 6 and a variety of other litigation related to financial issues.  
 7 Page two of his CV identifies the fact that he has been  
 8 a teacher in statistics at the Fletcher School of Law and  
 9 Diplomacy, Tufts University, and he has been an instructor in  
 09:59:11 10 statistics at MIT.  
 11 Dr. Palmer is offered by plaintiffs as an expert in  
 12 economics, econometrics and statistics. He's going to be  
 13 explaining to this Court, based on his review of the testimony  
 14 and hearing of the testimony of defendants and exhibits, the  
 09:59:36 15 flow of funds into the Trust, the flow of funds out of the  
 16 Trust, his calculation for the benefit conferred, and, in the  
 17 alternative, an interest calculation for interest that  
 18 plaintiffs believe the government would be obligated to pay our  
 19 clients.  
 10:00:01 20 Your Honor, plaintiffs offer Dr. Palmer for this  
 21 purpose.  
 22 MR. WARSHAWSKY: Your Honor, subject to our preserving  
 23 the rights to object to the admissibility of any of this opinion  
 24 testimony, we certainly do not challenge Dr. Palmer's  
 10:00:20 25 credentials.  
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1 A. Yes, I was here for most of the witnesses.  
 2 Q. Did you hear the testimony of Michelle Herman?  
 3 A. I did.  
 4 Q. Did you hear the testimony of Dr. Angel?  
 10:01:55 5 A. Yes, I did.  
 6 Q. Did you hear the testimony of Dr. Kehoe?  
 7 A. Yes, I did.  
 8 Q. And did you hear the testimony of Dr. Scheuren?  
 9 A. Yes, I did.  
 10:02:05 10 Q. Did you review exhibits that were introduced by defendants  
 11 in this proceeding?  
 12 A. Yes, I did.  
 13 Q. And did you also review the written testimony of defendants'  
 14 exhibits?  
 10:02:17 15 A. Yes, I did.  
 16 Q. The modifications -- you stated there were modifications  
 17 made in the data. Is that correct?  
 18 A. That is correct. The model itself has not changed, it's  
 19 just the input data that were used for the model have changed,  
 10:02:40 20 from information learned.  
 21 Q. Information learned where?  
 22 A. During the course of this litigation that were previously  
 23 unavailable to us.  
 24 MR. GINGOLD: Plaintiffs would like to mark for  
 10:02:49 25 identification Exhibit 190.  
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1 BY MR. GINGOLD:  
 2 Q. Exhibit 190 is identified as Attachment A, corrected  
 3 revenues compared with Dr. Scheuren's estimated collections.  
 4 Dr. Palmer, did you prepare this exhibit?  
 5 A. I did.  
 6 Q. Could you explain to the Court what it is?  
 7 A. Yes. What I did was I took from the output of  
 8 Dr. Scheuren's model his estimated collections, and then I  
 9 graphed it or plotted it to compare against the attachment of  
 10 corrected revenues so I could compare -- they had gone about a  
 11 different procedure to get to their numbers, so I wanted to  
 12 compare to see what they looked like after we finished with  
 13 ours.  
 14 Q. And what is the red line on the graph?  
 15 A. The red line would be Dr. Scheuren's estimated collection  
 16 numbers.  
 17 Q. And the black line, what is that?  
 18 A. The other line would be the revenues that are found in  
 19 Attachment A.  
 20 Q. Generally speaking, do you have any assessment with regard  
 21 to what is reflected in this chart?  
 22 A. That the revenues were quite similar.  
 23 Q. Are there differences?  
 24 A. Yes, there are.  
 25 Q. What are they?

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1 A. Yes, I prepared this to show the different time periods and  
 2 different ways that disbursements and revenues were calculated  
 3 or used to establish the numbers for inputs into the model.  
 4 Q. And will this help explain with some clarity precisely how  
 5 you performed the calculations in your model?  
 6 A. It's helpful, at least for me, to see when we had reported  
 7 evidence, when we had -- when we estimated for the missing data,  
 8 and when we had adjusted other information that were available  
 9 to us.  
 10 Q. You identify in the first column on the left period  
 11 identifier. Correct?  
 12 A. Correct. The period identifier there was again just as an  
 13 easy way, these are -- the periods were identified only by the  
 14 change of information, and for example, you'll see here for the  
 15 revenues, periods six, seven, and eight, we had the same basic  
 16 information and methodology used, it's just that in 1945 there  
 17 was no disbursement information. So that's why there was a  
 18 break in there. But these periods were to identify the  
 19 different ways that the revenues and disbursement information  
 20 was used.  
 21 Q. And what is the first period that you've identified?  
 22 A. The first period there is 1987 to -- excuse me, 1887 to  
 23 1908. During the period -- during the first period there was no  
 24 information available, so we had used the estimate procedure, as  
 25 described by Dr. Cornell, a straight line interpolation. Based

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1 A. Well, for example, Dr. Scheuren did not use the \$121 million  
 2 receipt revenue number in 1968 that, when presented to him  
 3 during his cross-examination, he said he should have used that  
 4 number, that would cause his numbers to be higher, I believe,  
 5 during that period.  
 6 Also, there were some adjustments that we made to the  
 7 data in terms of exclusion of interest and the inclusion of the  
 8 entire Osage annuity, that adjustments were not made by  
 9 Dr. Scheuren.  
 10 Q. Let's go back to Plaintiffs' 189-A, which is Attachment A,  
 11 analysis of benefit to the government. Dr. Palmer, I would like  
 12 to focus on the revenue or the flow of funds into the Trust  
 13 aspect of this attachment. Could you generally explain what the  
 14 columns refer to in the revenue component of this model?  
 15 A. The revenue, the corrected revenue, which is the ultimate  
 16 revenue that we used, is comprised of estimated revenues, also  
 17 an adjustment to the Osage annuity. The revenue column, which  
 18 is Column B labeled here, we took available information that we  
 19 received, sometimes had to adjust it, but we have that -- that's  
 20 what's included here. Sometimes there were missing information  
 21 and we also had to estimate for missing values.  
 22 MR. GINGOLD: Plaintiffs would like to mark for  
 23 identification Exhibit 188.  
 24 BY MR. GINGOLD:  
 25 Q. Dr. Palmer, do you recognize this exhibit?

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1 upon the information from 1909 and starting with a balance of  
 2 zero.  
 3 Q. And what does the second period reflect?  
 4 A. The second period we have reported information from  
 5 documentary evidence, and so we used that for that time period.  
 6 And then the third period is, again we didn't have information  
 7 there, so estimates were provided through using a straight line  
 8 interpolation between the information we had reported and the  
 9 following period.  
 10 Q. When you state you didn't have information, was any  
 11 information provided by defendants in the course of this  
 12 proceeding?  
 13 A. Not for that time period. The time periods where estimates  
 14 are listed in this column were neither plaintiffs nor defendants  
 15 had any information during that period. When defendants did  
 16 provide additional information, we used that information as  
 17 well.  
 18 Q. Could you please explain period number four?  
 19 A. Period number four, the 1915 to 1920, the defendants did not  
 20 use this information but we had found documentary evidence in  
 21 the course of the litigation. It was -- Dr. Angel had mentioned  
 22 that we had previously used both allotted and unallotted lands  
 23 and he felt it was inappropriate to use the unallotted lands.  
 24 So we did change our numbers there where we took out the  
 25 unallotted lands and only included revenues for the allotted

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1 lands. That would cause the estimates between 1912 and 1914  
 2 also to change because they were interpolated. So if we change  
 3 one end of the information used, the interpolated values would  
 4 change as well.  
 10:09:42 5 Q. So in the original model, was the unallotted income included  
 6 in the data?  
 7 A. It was. It was included, but again, because of the  
 8 testimony during the course of litigation, we took it out.  
 9 Q. With regard to period identifier number six?  
 10:10:06 10 A. Period identifier number six, there were Morgan Angel data  
 11 that were provided, again during the course of the litigation,  
 12 that we did not have available to us when we prepared  
 13 Attachment A for Dr. Cornell. It says "adjusted" here, because  
 14 also in the litigation Dr. Angel, I believe, testified and there  
 10:10:27 15 was also a footnote in Ms. Herman's backup material that said  
 16 that the revenues during this period were understated. So we  
 17 adjusted the revenues upward during this period.  
 18 MR. GINGOLD: Let's call up Defendant's Exhibit 372,  
 19 please. If we can go to page 10. If you can focus in on the  
 10:11:03 20 highlighted footnote, please.  
 21 BY MR. GINGOLD:  
 22 Q. Doctor, have you seen this footnote before?  
 23 A. Yes, I have. This is what I was referring to.  
 24 Q. This is what you were referring to with respect to what?  
 10:11:17 25 A. That here she had said that because the information that was  
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1 used by Dr. Angel were reports that did not include -- as it  
 2 says, the proceeds did not include any sources that were not  
 3 paid into the General Treasury Account, so that the information  
 4 was incomplete, and it would understate receipts. And the  
 10:11:42 5 testimony during the trial was that the receipts would be  
 6 understated.  
 7 Q. Did you review the legislation that was referenced in this  
 8 footnote?  
 9 A. I believe I did look at it at some point.  
 10:11:54 10 MR. GINGOLD: Could you please mark for identification  
 11 the 1906 statute, please?  
 12 BY MR. GINGOLD:  
 13 Q. Dr. Angel -- sorry, Dr. Palmer, if you can focus in on the  
 14 highlighted section of this statute. Have you read this before?  
 10:12:15 15 A. Yes, I have.  
 16 Q. Is this a statute that you just testified to that you've  
 17 read related to the footnote?  
 18 A. That's correct.  
 19 Q. Thank you. Now, you say -- what is identified in this  
 10:12:36 20 column is adjusted MA. Correct?  
 21 A. That is correct.  
 22 Q. And what exactly is adjusted MA?  
 23 A. Again, we used the information that was the data reported by  
 24 Dr. Angel, and then because it was understated, the question --  
 10:12:52 25 we tried to find an estimate to scale it up, as it were, to what  
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1 an appropriate level would be. There was -- as I recall, there  
 2 was a comment that was made in the January 30th decision by the  
 3 Court, and went and found the document that related to that, and  
 4 there it talked about collections were a fraction -- or that the  
 5 monies that went into the Trust were a fraction of the total  
 6 collections, and there's a number that they used of around  
 7 77 percent.  
 8 So I used that number to adjust up the revenues. Once  
 9 I did that, then I looked at the disbursement ratio, just as  
 10:13:17 10 kind of a sanity check, to see if the number was what we had  
 11 observed elsewhere, and it seemed to be in line. So, the best  
 12 information we had and that's what we used.  
 13 MR. GINGOLD: Antonio, could you please put on the  
 14 screen Defendant's 365? If we can focus in on the footnote,  
 10:13:58 15 please.  
 16 BY MR. GINGOLD:  
 17 Q. Dr. Palmer, the last two lines of the footnote reference  
 18 estimated credits. Do you see that?  
 19 A. I do.  
 10:14:17 20 Q. Have you read this before?  
 21 A. Yes. This is indeed where we got the 77 percent that we  
 22 used as an adjustment factor for the Morgan Angel data.  
 23 Q. Thank you.  
 24 MR. GINGOLD: Let's go back to Plaintiffs' 188.  
 10:14:37 25 BY MR. GINGOLD:  
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1 Q. With respect to period seven?  
 2 A. Well, periods six through eight, we used the same procedure,  
 3 where we took the Morgan Angel data and adjusted it. Then,  
 4 after we used that, the next data point we had was in 1955, so  
 10:14:55 5 we used linear interpolation between 1950 to '54 time period to  
 6 estimate those. The '55 data point would have been identical to  
 7 what we had before.  
 8 In this litigation we learned about the 1923 to 1949  
 9 data, so our estimates during that period of '50 to '54 for the  
 10:15:22 10 missing data would be different because the estimation procedure  
 11 is using different data.  
 12 Also, I guess I do want to point out for 1922, is an  
 13 estimate, that Dr. Angel did provide data for 1922. It was  
 14 substantially different than the rest of the data. Dr. Scheuren  
 10:15:40 15 called it an outlier and disregarded it in his analysis, and I  
 16 believe Dr. Angel also said it was unusual as well. So we  
 17 treated that as a missing data year.  
 18 Q. So did you treat that the same as Dr. Scheuren and Dr. Angel  
 19 have treated it?  
 10:15:54 20 A. I treated it exactly the way Dr. Scheuren did. So anyway,  
 21 that takes us back to 1955. The next data point that we had  
 22 from reported information was in 1968. The defendants did not  
 23 use 1968. Dr. Angel was asked about it and had said he was  
 24 unaware of it or didn't use it, at least, and then came back the  
 10:16:19 25 following day, I believe it was, and said that he viewed it as a  
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1 run rate, or an average of several years.  
 2 So arguably we could have put that amount of, I think  
 3 it was \$121 million for several years, but we were conservative  
 4 and only used it for 1968, and then estimated, again the linear  
 5 interpolation, for the missing data between those two points.  
 6 One other distinction that is different from the data  
 7 here from what we used before, is that all of -- because of the  
 8 model, we take out interest that was included kind of in the  
 9 inflows, and before we did not have any information about  
 10 interest in 1968 or interest in other years, we don't have an  
 11 interest breakout for the information during the year, so we  
 12 used the Morgan Angel data. So we estimated an implicit  
 13 interest amount to take out.  
 14 So we've actually, in comparing the new Attachment A  
 15 versus the earlier one, although some of the data points  
 16 themselves haven't changed, the numbers would be lower because  
 17 we've taken interest out. We don't know what it would be, so  
 18 what we did is estimate it based upon the balances that were  
 19 provided by I think Dr. Angel, and estimated what the entire  
 20 amount of interest would be using a 10-year Treasury bond rate,  
 21 and subtracted that out.  
 22 Q. And why did you subtract it out, Dr. Palmer?  
 23 A. Again, because of the way the model works, the model looks  
 24 at inflows without interest so that it can calculate what the  
 25 totals would be in terms of benefit, and then subtracts out at

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1 Q. And then from 1996 to 2007, you've stated you used qualified  
 2 audit data. Correct?  
 3 A. That is correct.  
 4 MR. GINGOLD: Let's go back to Attachment A, which is  
 5 Plaintiffs' 189-A, please.  
 6 BY MR. GINGOLD:  
 7 Q. So in the discussion of revenues and how you calculated  
 8 them, where is that reflected on Attachment A?  
 9 A. Well, the discussion we just had would be the Column B that  
 10 talks about all the different adjustments that were made to the  
 11 individual years for new information.  
 12 Q. At any point in time when you reviewed documents and you  
 13 found revenue data in those documents, did you use that data?  
 14 A. We tried to use as much reported information as was  
 15 available for the IIM Trust as a whole. So for example, the  
 16 1915 period that we talked about a little earlier, we used that  
 17 information, the defendants did not. We used it because we  
 18 added up some areas that we thought would be -- for example,  
 19 grazing and timber, mineral rights, other things like that to  
 20 try to get up at a number, so we tried to use that as an  
 21 estimate.  
 22 Q. Were there documents that reported revenue information and  
 23 disbursement information where you didn't use disbursement  
 24 information?  
 25 A. Not that I'm aware of.

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1 the bottom any interest or other things that would have accrued  
 2 because it's sitting in the balance of the Trust.  
 3 The next period after the information that we had in  
 4 1968, we have data starting in 1972 provided by the defendants.  
 5 So again, there's an estimation that's done between 1969 and  
 6 1971. Those years were estimated by linear interpolation again.  
 7 Q. With regard to 1972 to 1987?  
 8 A. 1972 to 1995, for revenues we used information from --  
 9 that's provided on AR-171, and then subsequently in the years  
 10 1996 to 2007, we used the qualified audit report information.  
 11 Q. Is the information you used from 1972 to 1995 the same or  
 12 different from the information the government has used?  
 13 A. Well, it was -- the information the government used in  
 14 October. It's different from the information that the  
 15 government used in the trial that is currently proceeding. I  
 16 believe it was DX-371 was the exhibit that Michelle Herman used  
 17 that had different information for those years.  
 18 Q. And why didn't you use that information?  
 19 A. The information -- the new information that Michelle Herman  
 20 had used had been reduced from the earlier years on her  
 21 cross-examination. As I recall, she wasn't able to identify  
 22 what that information was or why she had done a procedure, but  
 23 was really unable to identify why the information had changed.  
 24 There was also some other concerns with some of the underlying  
 25 data, so he used the earlier data.

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1 Q. Was there any issue in 1955 in that regard?  
 2 A. For 1955 the disbursement information we did adjust, and we  
 3 can talk about that now or we can talk about it later when we  
 4 talk about disbursements.  
 5 Q. We'll talk about it later. I'm just asking whether or not  
 6 you used the information?  
 7 A. The information was used.  
 8 Q. Let's go to page two of Attachment A. In all these periods  
 9 that we've identified and you've discussed in your period  
 10 identifiers, is the information in Column B the calculation that  
 11 you made based on what you just explained to the Court?  
 12 A. That is correct.  
 13 Q. And that's on page two, page three -- well, throughout  
 14 Column B, revenues, the information that is contained in these  
 15 revenues through 2007, how does that relate to the discussion or  
 16 explanation you've just provided to the Court?  
 17 A. Again, we just walked through the document that describes  
 18 each of the individual ways that we obtained the revenue and  
 19 used the information that is put into the Attachment A,  
 20 Column B.  
 21 Q. And that relates directly to the periods or the years that  
 22 you identified. Correct?  
 23 A. 1887 through 2007.  
 24 Q. Was there any change in your total revenue calculation as a  
 25 result of the modifications you made?

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1 A. Yes, there was.  
 2 Q. What was the result?  
 3 A. The total went down, I'm trying to remember the exact  
 4 number, but the total went down because of the new data and  
 5 information we had received that we utilized.  
 6 Q. Let's talk about the next column, which is Column C in  
 7 Plaintiffs' 189.  
 8 THE COURT: We don't have any of this on our screen. I  
 9 don't think the witness --  
 10 MR. GINGOLD: We're getting it.  
 11 BY MR. GINGOLD:  
 12 Q. Let's talk generally about a couple of the issues that we  
 13 have in Attachment A. Attachment A, Column C is identified as  
 14 "Osage Government Calculated." Could you please provide the  
 15 Court with a general discussion of what that means.  
 16 A. Consistent with what we had done before, the Osage  
 17 government calculated information is taken -- the government's  
 18 estimate of how much of the Osage annuity went into the IIM  
 19 Trust.  
 20 Q. Is there a difference between the government's calculation  
 21 and yours?  
 22 A. Between -- I'm sorry?  
 23 Q. Is there a difference between the government's calculation  
 24 of the annuity that went into the IIM Trust from your  
 25 calculation of the flow of funds?  
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1 government that they had claimed that the tribal amount of the  
 2 Osage headright was one-and-a-quarter percent.  
 3 Q. Doctor, did you yourself review that brief?  
 4 A. I did.  
 5 MR. GINGOLD: Could you please mark for identification  
 6 Plaintiffs' Exhibit 183?  
 7 BY MR. GINGOLD:  
 8 Q. Dr. Palmer, do you recognize what is identified as  
 9 Defendant's motion to dismiss?  
 10 A. Yes, I do.  
 11 Q. What is it?  
 12 A. This is the source of the information for the  
 13 one-and-a-quarter percent. This is the defendant's motion,  
 14 United States of America, and the date on this is in 2001.  
 15 Q. I would like to turn to page 39 of this brief, please.  
 16 MR. GINGOLD: If we can focus in on the highlighted  
 17 section at the bottom of the page.  
 18 BY MR. GINGOLD:  
 19 Q. The statement in the brief is, there is one exception to the  
 20 last statement. The tribe itself is also a headright owner, in  
 21 fact, approximately one-and-a-quarter headright.  
 22 Is that the information you relied on to make the  
 23 adjustment with regard to your Osage data?  
 24 A. Yes. We reduced the amount of the annuity that would have  
 25 been going to the individual IIM by the one-and-a-quarter  
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1 A. That is correct. The government estimated -- there's a  
 2 couple of different things. The government estimated the amount  
 3 of the annuity that they believed was -- had gone into the  
 4 Trust. That estimate was also based upon headright -- a  
 5 constant number of headright shares, 2,229. Dr. Angel had  
 6 testified that the number of headright shares before 1906, I  
 7 believe, were different, and that the -- in fact, at the  
 8 beginning his estimate was it was around 1,500, and that in 1906  
 9 I believe it was around 2,100.  
 10 So we adjusted accordingly to make -- based upon his  
 11 testimony, we tried to adjust the total value of the Osage  
 12 annuity based on those number of shares. And then also we then  
 13 took out what the government's estimate was of revenues, so  
 14 subtracted it out, and then took the total value of the annuity.  
 15 So add that back in. So it was kind of taking out and adding  
 16 in.  
 17 We also adjusted the total value of the annuity by  
 18 one-and-a-quarter percent based upon information that -- there  
 19 was an earlier case that one-and-a-quarter percent was actually  
 20 going to the tribe, so it was not available to the individual  
 21 Indians.  
 22 Q. Was that information presented by defendants in this  
 23 proceeding?  
 24 A. That information was actually from an earlier litigation,  
 25 and it was -- my recollection is it was a brief by the  
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1 percent.  
 2 Q. Did you apply that one-and-a-quarter percent throughout the  
 3 history of the IIM Trust?  
 4 A. Yes, for every year from 1887 through 2007 we reduced the  
 5 annuity by one-and-a-quarter percent.  
 6 Q. And why did you do that?  
 7 A. It was the best available information we had, so we used it  
 8 for all time.  
 9 Q. Do you know whether or not the tribe had a one-and-a-quarter  
 10 headright at any time prior to the date of this brief?  
 11 A. I do not. I believe that I read something that the original  
 12 annuity was set up for individual members, so I would imagine  
 13 that at the time it was set up the tribe had zero headright.  
 14 But this is the best available information, so we used it for  
 15 all time.  
 16 Q. And let's go back to Attachment A, please.  
 17 THE COURT: Mr. Gingold, this might be -- I'm sorry to  
 18 interrupt your Q&A here, but this might be an opportune time to  
 19 have at least a brief discussion of a motion that was filed last  
 20 week, as you undoubtedly know and as the government knows, by  
 21 the Osage to intervene. Do the plaintiffs have a position on  
 22 that motion, and if so, are you prepared to articulate it?  
 23 MR. GINGOLD: If you give me about 10 seconds, Your  
 24 Honor. We have not focused on the motion, but we're prepared to  
 25 address it.  
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1 THE COURT: Anybody here representing the Osage?  
 2 MR. GODFREY: Yes, Your Honor. Merrill Godfrey from  
 3 Akin, Gump, Strauss, Hauer & Feld, on behalf of the Osage  
 4 Nation.  
 5 (OFF THE RECORD.)  
 6 MR. GINGOLD: Your Honor, as I stated, we have not  
 7 focused on that because we've been preparing the litigation. We  
 8 have informed the Osage tribe that we oppose, and we oppose for  
 9 several reasons, one of which is that the proceeds from the  
 10 mineral estate are identified by statute as the funds of the  
 11 individual Osage Indians.  
 12 Secondly, the Mineral Council for the Osage tribe  
 13 itself has identified in a resolution that the litigation that  
 14 it has brought, and there are two separate actions, Your Honor,  
 15 one in this court and one in the United States Court of Federal  
 16 Claims, is for the benefit of the individual headright owners.  
 17 That is consistent, Your Honor, with the statute itself, which  
 18 identified all the proceeds of the mineral estate as the rights  
 19 and property of the individual headright owners.  
 20 Our class was certified on February 4th, 1997, for all  
 21 past and present Individual Indian Trust beneficiaries, and it  
 22 has been interpreted by this Court as for funds held in Trust.  
 23 It is plaintiffs' position that the funds have been  
 24 continuously held in trust, that those funds are the  
 25 individuals', and that the right, title, and interest in those

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1 funds in a beneficial way is in the members of the tribe, not in  
 2 the tribe itself.  
 3 There is, as was testified to by Dr. Palmer, an  
 4 acknowledged one-and-a-quarter interest in that particular pool  
 5 of funds. Those funds are held at the Treasury, and the  
 6 Treasury itself disburses those funds. It is in a different  
 7 ALC, but they are still individual Indian funds held in trust.  
 8 It's characterized as an annuity, Your Honor, but in fact it's  
 9 not an annuity as that is defined as a matter of law.  
 10 But it is a fund; all right, title, and interest is to  
 11 the beneficiaries, the individuals themselves, and not to the  
 12 tribe. But the tribe does, Your Honor, as a result of the  
 13 legislation, have a right to a percentage of the interest earned  
 14 on that pool for the 3 months that it's held in the Treasury.  
 15 That plus the one-and-a-quarter interest, to the best of our  
 16 knowledge, is the only right that the tribe has in that regard.  
 17 Consequently, Your Honor, we believe the interests of  
 18 the tribe are protected if the one-and-a-quarter interest is  
 19 deducted from whatever is discussed here, and the interest  
 20 issue, to the extent it applies, is not included in this  
 21 litigation. And Your Honor, we brought this action not for  
 22 purposes of damages litigation, as we've stated from the  
 23 beginning and repeated frequently in this proceeding. The  
 24 action brought in the Claims Court, Your Honor, is a damages  
 25 case.

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1 To the extent the tribe is seeking damages, and it is  
 2 within whatever the rules are in the Court of Claims, for itself  
 3 or, if possible, the individuals -- and Your Honor, we  
 4 understand there's a lot of controversy in that regard that  
 5 we're not involved in -- or for the action brought by the tribe  
 6 in this court that was filed several years after the class was  
 7 certified, we think whatever claims the tribe has have been  
 8 independently litigated, they do not involve the claims in this  
 9 litigation, and to the extent they do involve the claims in this  
 10 litigation, the class certification order trumps the effort made  
 11 by the Osage tribe.  
 12 So, Your Honor, it is our position that since we're not  
 13 seeking damages in this proceeding, the tribe is seeking damages  
 14 in the Claims Court, the tribe is seeking damages for whatever  
 15 its interest is, as I understand it, in this court, and filed  
 16 several years after we filed our case, it is very well protected  
 17 and there's no need for it to intervene in this proceeding.  
 18 And it's as simple as that, Your Honor, and we believe  
 19 it's a question of law as stated in the governing statute, and  
 20 as the government itself represented to the U.S. Court of Claims  
 21 in the brief that was just referenced by Dr. Palmer.  
 22 THE COURT: Mr. Quinn, do you want to be heard?  
 23 MR. QUINN: Yes, thank you, Your Honor. Michael Quinn  
 24 for the United States.  
 25 We had anticipated responding in writing to this, but I

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1 can address the United States's position with respect to the  
 2 motion to intervene by the Osage Nation. Frankly, we don't have  
 3 any objection to the Osage Nation intervening for the purpose, a  
 4 narrow purpose, which would need to be specifically stated by  
 5 the Court, with respect to the Tribal interests that the Osage  
 6 Nation expresses concern about in their motion to intervene.  
 7 At page three of their brief they express concern about  
 8 an argument by plaintiffs that the Osage mineral estate income  
 9 is at all times the vested property interest of individual Osage  
 10 headright owners. And they go on to say that according to the  
 11 plaintiffs, when the United States collects Osage mineral  
 12 royalties and deposits them, it, quote, collects the trust funds  
 13 of Osage headright owners and deposits them into the Treasury.  
 14 The Osage Nation, to the extent it has responsibilities  
 15 over the mineral assets and initial collection of funds for  
 16 later disbursement to headright owners, may have a collective  
 17 organizational and entity interest with respect to the monies at  
 18 that period of time. Plaintiffs in this case have certified a  
 19 class, and Mr. Gingold likes to talk about it, but the  
 20 definition is clearly stated in the February 4, 1997 order, and  
 21 it isn't exactly as Mr. Gingold articulates it.  
 22 If we could put it up on the screen. The definition is  
 23 actually a class of present and former beneficiaries of  
 24 Individual Indian Money accounts. And it has been the United  
 25 States' position throughout this litigation that unless a

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1 beneficiary, an individual has had an Individual Indian Money  
 2 account, there's no possibility that they could be in this  
 3 class, regardless of whether they receive other monies,  
 4 including tribal monies that are paid out of the Tribal Trust.  
 10:37:02 5 The Osage headright interests for the most part are  
 6 paid to individuals and disbursed directly out of the Tribal  
 7 Trust. That has been the historical experience. Monies  
 8 disbursed in that fashion that never enter into the IIM system  
 9 in the first place are not even part of this case, regardless of  
 10:37:21 10 what plaintiffs argue here and do so in effect in their model  
 11 that we're taking examination on today.  
 12 The only plaintiffs in the class and the only aspect of  
 13 the Osage annuity that's at issue before the Court are the  
 14 amounts, the fractions of headright payments that are paid into  
 10:37:44 15 the IIM system for deposit into individual accounts. Those are  
 16 primarily people who are minors at the time of receipt, or  
 17 incompetents who have a guardianship relationship, and the money  
 18 is deposited into the account for their benefit.  
 19 The tribe, however, may have a collective interest in  
 10:38:04 20 certain early aspects of the money flow, but once it is  
 21 disbursed to individuals, those are individual interests. The  
 22 individuals who are not in this class, that is, all the people  
 23 who received direct payments who have never had an IIM account,  
 24 have no standing in this class, they're not even part of the  
 10:38:22 25 plaintiff group, they can't be represented by the plaintiffs'  
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1 papers amicus curiae, and I said no, we don't do amicus curiae  
 2 in this case. But I sort of invited the intervention for the  
 3 limited purpose for which they have moved for leave to  
 4 intervene.  
 10:40:43 5 Intervention, at least permissive intervention, is, I  
 6 think, liberally granted in a case in which a party asserts an  
 7 interest, and I will grant the motion of the Osage Nation to  
 8 intervene. I'll call it permissive intervention. I do not  
 9 anticipate that the Osage Nation will take any active part in  
 10:41:10 10 the examination of witnesses or the presentation of evidence,  
 11 but they certainly will be heard at the briefing stage when they  
 12 want to be heard on the question of exactly how Osage money  
 13 should be treated.  
 14 So the motion is granted for the limited purpose  
 10:41:32 15 asserted in the motion for leave to intervene. And this may be  
 16 an appropriate time, since I've already interrupted the  
 17 testimony, to take a brief recess so we can handle the two brief  
 18 criminal matters that we have. We'll be in recess, I think it  
 19 will take us about 15 minutes.  
 11:08:22 20 (Recess taken at 10:41 a.m.)  
 21 THE COURT: All right, Mr. Gingold. Proceed. Thank  
 22 you.  
 23 MR. GINGOLD: Thank you, Your Honor.  
 24 BY MR. GINGOLD:  
 11:08:29 25 Q. Dr. Palmer, prior to the break you were discussing in  
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1 counsel here. Also, we would submit they cannot be represented  
 2 by the Osage Nation.  
 3 In another case -- and forgive me, I don't have the  
 4 cite here. We can provide it to the Court later today. In a  
 10:38:41 5 March decision by the Court of Federal Claims, where an attorney  
 6 representing individual headright owners sought to intervene in  
 7 an Osage litigation involving the United States, the Osage  
 8 opposed that intervention but opposed the attorney because he  
 9 had previously represented the tribe. And the Court went into  
 10:39:04 10 some extended discussion about the different interests that  
 11 individual headright owners hold vis-a-vis the Osage Nation.  
 12 So with respect to anything that the Osage Nation would  
 13 wish to assert on behalf of headright owners who are receiving  
 14 money who are not in the class, we would -- our position is that  
 10:39:30 15 they are not in a position to represent or speak for those  
 16 individuals, but they may have a limited role in protecting the  
 17 interest of the tribe overall, in terms of the early stages of  
 18 the revenue generation before disbursement to individuals.  
 19 THE COURT: All right. Well, I certainly succeeded in  
 10:39:49 20 interrupting the direct examination of Dr. Palmer, and you both  
 21 responded on the fly with interesting and complex arguments that  
 22 I'm frank to say I'm not sure I entirely follow at this point.  
 23 But I think I need to -- I think we need to deal with the motion  
 24 to intervene of the Osage Nation just for the record.  
 10:40:18 25 This began with a motion by the Osage for leave to file  
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1 Attachment A, analysis of benefit to the government --  
 2 MR. GINGOLD: If we can put Attachment A back up. It's  
 3 189-A. Thank you, Antonio.  
 4 BY MR. GINGOLD:  
 11:08:52 5 Q. The Osage government calculated Osage corrected columns?  
 6 A. That's correct.  
 7 Q. These columns are C and D of your attachment?  
 8 A. That is correct.  
 9 Q. Just briefly, could you please restate what you identified  
 11:09:09 10 as what you corrected with regard to the Osage revenue numbers?  
 11 A. There were two corrections. The one correction that we had  
 12 just talked about before the break was a reduction of the  
 13 annuity by one-and-a-quarter percent for the tribal headright  
 14 share. Also a correction we had made was to adjust for the  
 11:09:34 15 early years -- this would be 1887 to 1906 -- for a different  
 16 number of headright shares. Again, we're trying to calculate  
 17 the value of the total annuity.  
 18 Q. Was that calculation based on information provided by  
 19 Dr. Angel?  
 11:09:50 20 A. During his testimony he provided that information, and  
 21 that's the basis for that adjustment.  
 22 Q. Did you make any corrections as a result of Ms. Herman's  
 23 testimony?  
 24 A. There were changes to what we had used here and what we had  
 11:10:05 25 previously used because Ms. Herman had changed -- I believe  
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1 changed her estimate of how much of the Osage was actually in  
 2 the IIM Trust.  
 3 Q. As a result of your calculations, what occurred with regard  
 4 to your totaling the Osage revenue?  
 11:10:25 5 A. I'm not sure I understand.  
 6 Q. Did the revenues go up or down?  
 7 A. Oh, the revenues would have gone down.  
 8 Q. Let's turn to page four of this exhibit.  
 9 MR. GINGOLD: If we can focus in on the total column on  
 10 page four of Attachment A, "Analysis of Benefit to Government."  
 11 BY MR. GINGOLD:  
 12 Q. Do you see the totals under "Osage Corrected"?  
 13 A. I do.  
 14 Q. Is that the total that you've just testified went down as a  
 11:11:09 15 result of your calculations?  
 16 A. That's a nominal total, and I believe it's lower. I don't  
 17 remember the exact number of the earlier, but I believe it's  
 18 lower.  
 19 Q. With regard -- while we're focusing on this total column on  
 11:11:23 20 page four, if we can look at the revenues under Column B,  
 21 please.  
 22 A. Yes.  
 23 Q. With regard to those revenues, are they also stated in  
 24 nominal terms?  
 11:11:36 25 A. They are.  
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1 Q. I would like to now talk to you about disbursements.  
 2 A. Okay.  
 3 MR. GINGOLD: If we could go to page one of Plaintiffs'  
 4 Exhibit 189. If we can please focus on the disbursement  
 11:12:12 5 columns. That's the last five columns on this page, please.  
 6 BY MR. GINGOLD:  
 7 Q. Were you asked to calculate disbursements as well?  
 8 A. Yes, we did.  
 9 Q. And generally, before you go into detail, what did you do  
 11:12:35 10 with regard to the calculation of disbursements?  
 11 A. The calculation of disbursements changed from what we had  
 12 previously used. Again we had additional information that we  
 13 received, and so we incorporated that information. Previously  
 14 we had taken an average over the entire time period and used  
 11:12:53 15 that average throughout. Here we tried to incorporate any  
 16 reported information we had, again, sometimes subject to an  
 17 adjustment, but we tried to use as much available data as  
 18 possible.  
 19 Q. And with respect to the available data, when you sat through  
 11:13:11 20 this proceeding for the last two weeks or so, is that where you  
 21 gathered a lot of your new information?  
 22 A. That's correct. There is new information that we received  
 23 that we didn't previously have.  
 24 Q. Now, one of the items that is related -- may be related to  
 11:13:30 25 disbursements may be the IIM Tribal issue. Are you familiar  
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1 with that?  
 2 A. I'm familiar somewhat with it, yes.  
 3 Q. What is your understanding of that issue?  
 4 A. The defendants identified a separate amount of IIM Tribal  
 11:13:44 5 monies. We looked at the IIM Tribal monies, and something we'll  
 6 talk about soon, I believe, is disbursement information, and the  
 7 checks and the electronic fund transfers were all the  
 8 information that were identified as going out of the account, so  
 9 we included all of that.  
 10 Also, as I understand, there are -- at least the tribal  
 11 monies were not supposed to be in the IIM Trust at this point,  
 12 and in the calculation at the very end we subtract out  
 13 everything that's in the Trust so that it was really not an  
 14 issue in our calculation.  
 11:14:23 15 Q. Were you able to identify Tribal IIM money in any of the  
 16 documents that you reviewed?  
 17 A. What I recall from the documents I reviewed said that often  
 18 the Tribal monies were combined with the individual monies, and  
 19 it couldn't exactly be identified. The government did provide  
 11:14:46 20 an estimate of what they thought were Tribal monies. I believe  
 21 Dr. Angel had provided a number to Ms. Herman of 10 to  
 22 15 percent for different years. That was his understanding, and  
 23 upon I believe cross-examination some documents were pointed out  
 24 of much smaller percentages, one or two percent as I recall, so  
 11:15:05 25 that there wasn't really information, precise information that  
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1 we could examine in that regard.  
 2 MR. GINGOLD: Plaintiffs would like to mark for  
 3 identification Exhibit 83.  
 4 BY MR. GINGOLD:  
 11:15:25 5 Q. Exhibit 83 is GAO testimony dealing with Indian Trust funds  
 6 Tribal account balances. This is dated Thursday, February 7th,  
 7 2002, and it is stated -- it is reported as a statement of  
 8 McCoy Williams, acting director, Financial Management and  
 9 Assurance. Plaintiffs would like to turn to page six of PX-83.  
 11:15:56 10 Dr. Palmer, I would like you to focus on the  
 11 highlighted section of this report. Have you read this before?  
 12 A. Yes, I have.  
 13 Q. What is your understanding of this highlighted language?  
 14 A. Well, in the middle it says, due to missing records and the  
 11:16:13 15 lack of an audit trail throughout IRMS, Tribal transactions  
 16 could not be efficiently isolated from the individual  
 17 transactions, and therefore, because of this, Tribal IIM  
 18 accounts maintained in IRMS were not reconciled to source  
 19 documents.  
 11:16:28 20 So essentially they weren't able to distinguish the  
 21 two.  
 22 Q. So that confirms your understanding of the testimony --  
 23 there was testimony but no documents presented?  
 24 MR. WARSHAWSKY: Objection. Leading.  
 11:16:41 25 BY MR. GINGOLD:  
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1 Q. Sorry. Were there documents presented during the testimony  
2 of Dr. Angel?  
3 A. From what I remember from Dr. Angel's testimony is that he  
4 was not able to identify precisely his feeling of what those  
5 percentages were, but since we didn't have really precise  
6 information, we did not make any separate distinction.  
7 Q. Were you able to verify any of the estimates of Dr. Angel?  
8 A. No.  
9 MR. GINGOLD: Plaintiffs would like to have Exhibit 188  
10 back on the screen, please. I would like to isolate the  
11 disbursement section of Plaintiffs' 188.  
12 BY MR. GINGOLD:  
13 Q. Dr. Palmer, did you prepare the disbursement column in this  
14 exhibit?  
15 A. Yes, I did.  
16 Q. Okay. Could you please explain what the disbursement column  
17 means, beginning with the periods in question?  
18 A. Well, again, there were several periods for which  
19 information was missing, and for the missing information -- for  
20 the periods of missing information we used what reported  
21 documentary evidence we had and adjusted -- and used an average  
22 rate for the periods surrounding that time frame. There's one  
23 period early that we relied on the 1909 to 1911 documents,  
24 there's also a later time period that we had the CP&R and EFT  
25 data so we could identify and examine precisely what went out of

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1 Q. So did you use the same reported data that Dr. Angel used?  
2 A. I believe so.  
3 Q. With respect to 1923 to 1944, what does MA signify in the  
4 disbursements column?  
5 A. Again, that's the Morgan Angel data. Morgan Angel data were  
6 provided for 1923 to 1949. They happened to have one year  
7 missing of 1945, so we supplied, consistent with what we had  
8 done in other areas, that missing data with an average from the  
9 documentary evidence that we had.  
10 Q. You don't identify this as adjusted, do you?  
11 A. In terms of the Morgan Angel data, we did not adjust it,  
12 that's correct.  
13 Q. 1945, what issue is associated with 1945?  
14 A. 1945 was a period during the Morgan Angel data that they did  
15 not have any disbursement information, so we estimated that  
16 missing year.  
17 Q. And 1946 to 1949 you have MA as well. Correct?  
18 A. That's correct.  
19 Q. And does that mean that you used the same data that  
20 Morgan Angel used?  
21 A. That is correct.  
22 Q. For 1950 to 1954?  
23 A. During that period, again, we took an average of -- it's  
24 somewhat between the earlier period, 1909 and 1911, and the  
25 later period, which was 1988 to 2002. So we took the average

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1 the Trust. And so we used that average for a later time period.  
2 And then there were some time periods in between where we took  
3 an average of those two.  
4 So that was what we did for the missing information  
5 periods. Also we had some disbursement information that was  
6 provided by Dr. Angel that we previously didn't have. We  
7 utilized that. And then for some of the periods we did an  
8 adjustment to the information that defendants had provided for  
9 disbursements.  
10 Q. Let's start with period one, 1887 to 1908.  
11 A. Okay. That was a period where there was no information  
12 available. Also from the 1912 to 1922 period, there was no  
13 information available. So we took from 1909 to 1911, we had  
14 documentary evidence and used those reported numbers for the  
15 time periods around then.  
16 Q. With respect to 1909 to 1911, you identified documents?  
17 A. That's correct.  
18 Q. What does that mean?  
19 A. There's some annual reports that we looked at that reported  
20 at the time what the receipts into the Trust and disbursements  
21 for individual monies were.  
22 Q. Do you know whether those are the same documents that  
23 Dr. Angel relied on?  
24 A. Yes. The 1909 to 1911 numbers are the same that both the  
25 government and we are using.

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1 rate of those two and averaged it.  
2 Q. With respect to 1955?  
3 A. 1955 we had some information -- we had information, both --  
4 the same information that defendants were using. In looking at  
5 that information there was -- that particular document in 1955,  
6 there was a lot of concern raised in the document about  
7 disbursements not having been documented, not having an audit  
8 trail. There was just an awful lot of concern about the  
9 disbursements during that time, so we had adjusted the  
10 disbursement number there based upon information that we had  
11 calculated in Attachment C.  
12 MR. GINGOLD: Plaintiffs would like to mark for  
13 identification Exhibit 53. If you can focus in a little more  
14 clearly, please.  
15 BY MR. GINGOLD:  
16 Q. Plaintiffs' Exhibit 53 is an audit report to the Congress of  
17 the United States, Administration of Individual Monies by Bureau  
18 of Indian Affairs, Department of Interior, November 1955. And  
19 this is by the comptroller general of the United States.  
20 I would like to turn your attention to page eight of  
21 this exhibit. I would like to focus on the left-hand side of  
22 the page, the last paragraph, if we can, where it begins:  
23 Following is a summary of deficiencies.  
24 Have you read this document before?  
25 A. Yes, I have.

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1 Q. Is the information that's identified on this page -- and if  
 2 we can go to the next page when you're finished reviewing  
 3 that -- the information that led you to be concerned about the  
 4 disbursement data?  
 11:23:57 5 MR. WARSHAWSKY: Objection. Leading.  
 6 THE COURT: I'll allow it.  
 7 A. As I mentioned, there was a document that I had identified  
 8 that I had seen that discussed concerns at the time about the  
 9 disbursement data and issues with the disbursement data, so we  
 11:24:14 10 had adjusted that year, the information for that year that was  
 11 reported.  
 12 MR. GINGOLD: So for purposes of making sure the record  
 13 is clear, we have this as page eight of the exhibit, but it was  
 14 actually page 10 and page 11 of the document itself.  
 11:24:47 15 Plaintiffs would also like to mark for identification  
 16 Exhibit 181. This is identified as an audit report to Congress  
 17 of the United States, Bureau of Indian Affairs, for the fiscal  
 18 years ended June 30, 1952 and 1953, by the comptroller general  
 19 of the United States.  
 11:25:14 20 BY MR. GINGOLD:  
 21 Q. I would like you to turn your attention to page 19 of this  
 22 document -- or page 12 of this document, please. This is  
 23 identified on page 19 of the original document itself, but it's  
 24 page 12 of our exhibit.  
 11:25:32 25 Have you read this before?

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1 ratio for pretty bad?  
 2 THE WITNESS: No, I'm sorry, we only have one ratio.  
 3 THE COURT: All right. I can't wait.  
 4 MR. GINGOLD: Thank you, Your Honor.  
 11:27:14 5 BY MR. GINGOLD:  
 6 Q. With respect to 1969 to 1971, back to Plaintiffs' 188.  
 7 A. 1969 to 1971, actually, from 1956 to 1971 there were no  
 8 disbursement information available to us that we could find, and  
 9 also the defendants didn't have any, so we used there the  
 11:27:41 10 average rate for a time period later, when we had both the CP&R  
 11 and the EFT information, so checks and electronic fund  
 12 transfers, that we could identify exactly what was leaving the  
 13 Trust. We used the average rate for that time period for the  
 14 1956 to 1971 period.  
 11:27:59 15 Q. What did you do for 1972 to 1987?  
 16 A. For 1972 to 1987, again we did an adjustment, and that  
 17 adjustment, it's the same ratio we just talked about, that when  
 18 we get to Schedule C and talk about how it was calculated,  
 19 you'll see that's the adjustment we used for that period. Also  
 11:28:23 20 the period after, the time period we had the information, the  
 21 2003 to 2007, we do have a ratio adjustment there, and that's  
 22 based upon the time period 1988 to 2002, when we had the actual  
 23 check data and the electronic transfer data.  
 24 MR. GINGOLD: Let's go to Schedule C, which is  
 11:28:46 25 PX-189-C.

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1 A. I believe so.  
 2 Q. Could you please tell me whether or not you've read this and  
 3 what effect it had on your calculation of disbursements?  
 4 A. Well, again, this expresses concern at the time about the  
 11:25:49 5 handling of disbursements and the information that was  
 6 available, so therefore, as it says, there's weaknesses and  
 7 deficiencies, is when we looked at the reported information, we  
 8 adjusted for, in 1955, we adjusted that year, this being close  
 9 to it.  
 11:26:09 10 THE COURT: But how did you use -- I mean, these are  
 11 words like "deplorable conditions", "little concern regarding  
 12 the deplorable conditions", "completely inadequate" and so  
 13 forth. I mean, did you use words like this to come up with any  
 14 quantitative adjustment, or did this just color your view of the  
 11:26:32 15 data?  
 16 THE WITNESS: I can't quantify --  
 17 THE COURT: Is this a 15 percent discount, or what is  
 18 this?  
 19 THE WITNESS: We will get to that. In Schedule C we  
 11:26:42 20 actually estimate an amount of adjustments, and from information  
 21 we actually have in terms of checks and EFTs for a time period  
 22 where we can look at what actually was disbursed from the Trust,  
 23 and then we can compare that with other reported information at  
 24 the time, and from that we get a ratio, we can compare it.  
 11:26:58 25 THE COURT: So there's a ratio for deplorable and a

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1 BY MR. GINGOLD:  
 2 Q. Did you prepare Attachment C, Dr. Palmer?  
 3 A. Yes.  
 4 Q. Please explain what it is.  
 11:29:06 5 A. Well, there's a couple of different things that happened in  
 6 this attachment. Basically what we're doing is we're trying to  
 7 look at actual information that we have, or at least we  
 8 understand is the actual information. The CP&R captures the  
 9 checks that were actually written, the EFT or the electronic  
 11:29:27 10 funds transfers -- and both of these are out of the IIM Trust --  
 11 and we used those to look at what the total disbursements out of  
 12 the Trust would be.  
 13 We compared that to the corrected revenue numbers for  
 14 those years, and that gave us an average disbursement rate. We  
 11:29:46 15 then, since we had this actual information for those years, 1988  
 16 to 2002, we used the actual disbursement rates in our  
 17 calculation. We then take an average of those years and use  
 18 that average for time periods when we don't have information.  
 19 Also, this document was used to examine what the  
 11:30:07 20 defendants had reported as their disbursements and their rate of  
 21 disbursement during this same time period, and then that's how  
 22 we calculated the average adjustment rate, because in some years  
 23 we can see that the plaintiffs' numbers are lower, some years  
 24 they're higher, and so what we did is use that average of that  
 11:30:27 25 ratio to say when there were years when we didn't have the check

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1 and EFT information, the CP&R and EFT information, that it  
2 seemed to us logically that that same type of overreporting  
3 would be in those other years as well. So that's why we did a  
4 ratio adjustment.

11:30:46 5 The adjustment that we do use here is different from  
6 the one that was previously done. The one that was previously  
7 done that Dr. Cornell talked about in Attachment C was using an  
8 average -- used number of checks, and I believe, as the Court  
9 pointed out, and we have a little box down there, that the  
11:31:06 10 average number of checks paid were higher than the average  
11 number of checks that were written, being -- so they were kind  
12 of, the residual or unpaid checks were lower.

13 So what we did for this instead is we used a total  
14 amount, so a dollar amount, which would be essentially a dollar  
11:31:25 15 weighted average. But the total dollar checks that were paid  
16 versus the total dollar checks that were written, we see that's  
17 93.68 percent. So in the years where we didn't have that  
18 information in terms of the checks that were paid, we  
19 adjusted -- that's the difference between Column B and  
11:31:43 20 Column C -- we adjusted the checks that were written by this  
21 percentage of checks that were cashed, as it were, to get at an  
22 adjusted number.

23 We then added to that adjusted number the electronic  
24 funds transfers. This was again information that we had  
11:32:02 25 received during the course of this litigation that we didn't

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1 which was -- this was an example of what was previously done.

2 MR. GINGOLD: Could we please go to footnote seven,  
3 which is on the next page?

4 BY MR. GINGOLD:

11:33:50 5 Q. Dr. Palmer, did you draft this footnote?

6 A. It was drafted under my direction.

7 Q. Please explain it.

8 A. What we were doing here was taking information that we had  
9 on DX-272 -- 236, DX-236, which had the total amount that was  
11:34:15 10 paid out in checks for the given year.

11 Q. Total amount paid out in checks from what source?

12 A. The source was on DX-236. It was the government data that  
13 they had provided to us.

14 Q. Okay. Proceed.

11:34:33 15 A. Okay. And from that then we also -- we knew the number of  
16 checks that had been cashed, and so we divided those two numbers  
17 to get the value of checks cashed. We knew from the CP&R data  
18 the number of checks that were issued and the total value of  
19 checks issued. Dividing the total checks issued divided by the  
11:34:59 20 checks that were issued gave us an average check value.

21 So then we created those two. The amount of money that  
22 was not cashed that was issued gave us the amount of money --  
23 you're holding up your hand.

24 Q. Let's go to DX-272.

11:35:20 25 A. Okay.

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1 previously have. The defendants provided to us the PACER  
2 database so we could go in and add up and calculate the number  
3 of electronic funds that were transferred out of IIM Trust  
4 accounts, so we can add the checks to the electronic funds  
11:32:20 5 transfers, which we were told were the only way that funds  
6 really go out of the IIM Trust, and that gave us the total  
7 disbursement.

8 That total disbursement then, divided by the revenues  
9 in any given year, give us a disbursement rate for that year,  
11:32:35 10 and it varies over time. And then that's how we got the  
11 average. And then as I mentioned earlier, we calculated a ratio  
12 that defendants' documents had used for disbursement numbers for  
13 other years.

14 THE COURT: All right. Mr. Gingold, I'm sure that  
11:32:50 15 answer was complete, comprehensive, and understandable to you.  
16 But it's a textbook example of why narrative answers don't sell,  
17 because I need for you to go over that line by line, calculation  
18 by calculation if I'm going to have any idea what he just said.

19 MR. GINGOLD: Your Honor, I was planning to do that.

11:33:15 20 THE COURT: Good. Thank you.

21 BY MR. GINGOLD:

22 Q. First, when you were -- you were talking about average  
23 checks. Correct?

24 A. Average checks, so we're talking now about the blue box down  
11:33:28 25 in the lower left-hand corner. That is the average check amount

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1 Q. Have you reviewed this exhibit before?

2 A. Yes, I have.

3 Q. On page 48 of DX-272, I would like to direct your attention.  
4 Have you seen this information before?

11:36:08 5 A. Yes, I have. This is the information that we were able to  
6 obtain -- that we obtained for the CP&R data.

7 Q. And what does that reflect as you understand it?

8 A. These are the checks that were issued out of the account,  
9 the IIM Trust account, the amount and the number of records.

11:36:25 10 Q. Is it limited to any particular period of time?

11 A. Well, we have information here annually from 1987 to 2002.

12 Q. Let's now turn to Defendant's 236, DX-236. Have you seen  
13 this document before?

14 A. Yes. This is the -- the second page of this document  
11:36:53 15 actually gives the dollar number of the checks that were cashed.  
16 It's reflected on the first page, but here we have it all the  
17 way out to the cents, whereas the first page it was rounded to  
18 less digits. And the number we used you'll see for 1999 is the  
19 \$175,544,960.19.

11:37:21 20 Q. Did you utilize that data in Attachment C?

21 A. Yes, we did. That is the information that we were able to  
22 utilize to get at the fraction of -- the amount that was cashed  
23 versus the amount that was written. That's the 93 percent.

24 This is also the information that was used to illustrate and to  
11:37:43 25 calculate the average dollar amount for checks cashed.

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1 MR. GINGOLD: I would like to back go to DX-272,  
 2 please. I would like to go to page 50.  
 3 BY MR. GINGOLD:  
 4 Q. Now, you've seen this before. Have you seen this before?  
 5 A. Yes, I have.  
 6 Q. Did you utilize this information at all?  
 7 A. Yes. This is the source that gives us, in the table down  
 8 below, of the number of checks.  
 9 Q. Let's focus in on the table below. What is reflected in  
 10 this table, as you understand it?  
 11 A. Again, I believe it's called "R," as we saw the code above,  
 12 for 1999 gives us the number of checks that were cashed. And we  
 13 used that information in conjunction with the dollar amount that  
 14 we just looked at, to get at the average value for checks  
 15 cashed.  
 16 Q. Did you adjust this information that is contained in this  
 17 table?  
 18 A. I don't believe so.  
 19 Q. Let's go to page 51 of this exhibit. Have you seen this  
 20 table before?  
 21 A. Yes.  
 22 Q. What is it, as you understand it?  
 23 A. Again, the same type of information. There's two CDs that  
 24 were provided, so it's combining the two tables together to  
 25 create the total number.

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1 Q. Now, does this explain how you used the CP&R data?  
 2 A. This shows that for -- the last two tables we just looked at  
 3 were used in terms of the number of checks, in order to  
 4 calculate the per check value. The numbers we looked at earlier  
 5 in terms of the dollar numbers, that's what we used for the CP&R  
 6 data that's reflected in Attachment C.  
 7 Q. Did you rely on any other information other than the  
 8 information in DX-272 for that calculation?  
 9 A. For the calculations in Schedule C, that was the source of  
 10 our information.  
 11 MR. GINGOLD: Let's go back to Schedule C, please.  
 12 BY MR. GINGOLD:  
 13 Q. I would like you to focus your attention on Column D, which  
 14 is EFT.  
 15 A. Okay.  
 16 Q. What exactly does the EFT data mean?  
 17 A. EFT are electronic funds transfers. Again, in the previous  
 18 version of Attachment C that Dr. Cornell testified to, we did  
 19 not have the EFT information. That's been subsequently provided  
 20 to us, so we looked at that. We had data actually for 1988  
 21 through 2002 of the funds that were transferred out of the IIM  
 22 Trust electronically as opposed to by check. So the  
 23 disbursements are the two, the checks and the EFTs.  
 24 Q. Do you recall which database you relied on for that  
 25 information?

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1 A. It's the PACER database, and that went from the years 1998  
 2 to 2002. Before 1998 there was not information available for  
 3 that fiscal year, so what we did was to -- we had a separate  
 4 report from NORC that they had prepared in examining the EFTs  
 5 earlier, and said there were a -- they gave a number of  
 6 transactions from before the PACER database information we have.  
 7 So we took the average number of EFT per transaction in  
 8 1998, multiplied it by the number of transactions that the NORC  
 9 document indicated, and then had a three-year decay so we could  
 10 smooth that out over time.  
 11 Q. Were there any other data sources that you reviewed other  
 12 than PACER, the NORC document, and the CP&R database?  
 13 A. Those were the foundation for the information here.  
 14 Q. Just for clarity, could you just explain to me how you  
 15 calculated the average check value?  
 16 A. The average check value was, take the total amount of  
 17 checks, divide it by the number of checks, and that gives an  
 18 average check value. And then there are different categories  
 19 that we looked at. So we looked at checks that were written,  
 20 checks that were paid, and then other checks that were not paid.  
 21 Q. The not-paid checks, how did you calculate that amount?  
 22 A. That would be the difference dollar-wise between what was  
 23 written and what was paid. That would be the dollar other, and  
 24 then the number would be the number of checks that were written  
 25 versus the number of checks that were cashed. And that would be

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1 the number of checks other. And then dividing those two gave  
 2 the average other.  
 3 Q. Did you eliminate any checks that were identified in the  
 4 database for any reason whatsoever?  
 5 A. We used all the information that were available.  
 6 Q. So you didn't review whether or not the checks were paid to  
 7 Trust beneficiaries. Correct?  
 8 A. We used any and all checks that came out of the IIM Trust.  
 9 It was the code that was identified and to whom it went -- we  
 10 don't have the checks, we don't know where it went, but we took  
 11 all the information for checks that were paid out, and the same  
 12 with the electronic funds transfers.  
 13 Q. And did you use all that information as a disbursement from  
 14 the Trust?  
 15 A. That's correct.  
 16 Q. What did you do with regard to EFT in that regard?  
 17 A. Again, all of the electronic funds transfers that came out  
 18 of the accounts that we had, we used all of those to come out.  
 19 So with regards to whom it went, the information we have is if  
 20 it leaves the Trust, then we're counting it as a disbursement.  
 21 MR. GINGOLD: Plaintiffs would like to mark for  
 22 identification Plaintiff Exhibit AR-388.  
 23 BY MR. GINGOLD:  
 24 Q. Dr. Palmer, this document is identified as electronic  
 25 payment prototype for the Alaska region. It is a NORC document

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1 dated September 30th, 2003. Have you reviewed this document?  
 2 A. Yes, this is a document that was the source of the number  
 3 that I had just mentioned about the number of electronic funds  
 4 transfers before the PACER database information.  
 5 MR. GINGOLD: Can we turn to page nine, please? If we  
 6 could focus on the highlighted paragraph at the bottom of the  
 7 page.  
 8 BY MR. GINGOLD:  
 9 Q. Have you reviewed this before?  
 10 A. Yes, this is the number, this 669 are the number of  
 11 electronic payments in the IRMS that were posted before October  
 12 of 1997. The PACER data system begins, at least the information  
 13 we were provided begins in October of 1997, so we wanted to  
 14 include an estimate of what the electronic payments were before  
 15 the time period, and that's when we used the average of the  
 16 earliest time that was available, and multiplied it by the 669,  
 17 and then spread that over time.  
 18 Q. Were you able to identify any other information to be able  
 19 to include in your calculations for CP&R disbursements or EFT  
 20 disbursements?  
 21 A. This is all the information we had available to us.  
 22 Q. I would like to go back to Attachment C, please. The  
 23 information that's identified in the columns that you prepared,  
 24 let's take 1988, for example. CP&R disbursements unadjusted,  
 25 what is that?

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1 going specifically out of the Trust.  
 2 BY MR. GINGOLD:  
 3 Q. And with respect to Column F, corrected revenues, what is  
 4 that?  
 5 A. Column F are the numbers from Attachment A that we have just  
 6 looked at and we talked about earlier. So we have -- those  
 7 revenue numbers are brought in here, they're identical. Then we  
 8 take the division between the information in Column E and Column  
 9 F, and that gives us a disbursement rate. So the ratio of those  
 10 two.  
 11 Q. With regard to 1988, you have a disbursement rate column.  
 12 There is no percentage there. Why is that?  
 13 A. That's a good question. I don't know. There should be.  
 14 Q. In any event, how would you calculate the disbursement rate?  
 15 A. It would be the ratio of the information in Column E to  
 16 Column F.  
 17 Q. With regard to Column AR-171 "disbursement rate, one percent  
 18 of receipts," what is that?  
 19 A. I'm sorry, what was that again?  
 20 Q. What is supposed to be in Column H, AR-171, "disbursement  
 21 rate, one percent of receipts"?  
 22 THE COURT: It doesn't say "one percent;" it just says  
 23 "percent."  
 24 MR. GINGOLD: Sorry, I misread it, Your Honor.  
 25 THE COURT: Okay.

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1 A. That is the information that we received of the total amount  
 2 that was written, or checks written out of the account for the  
 3 IIM Trust.  
 4 Q. Now, you have Column C, which is CP&R disbursements  
 5 adjusted. What does that mean?  
 6 A. What we did is we looked when we had information, which we  
 7 had just reviewed, for a year, 1999, where we were able to see  
 8 that the total dollar amount of checks that were cashed, we took  
 9 the ratio of the checks that were cashed to the total amount of  
 10 checks, and that gave us a 93.68 percentage.  
 11 So we adjusted the other years that all the amounts of  
 12 checks that were written were not all cashed. So the adjusted  
 13 column reflects that adjustment.  
 14 Q. And the CP&R and EFT disbursement column, what is that?  
 15 With respect to 1988.  
 16 A. So for 1988 we do not have --  
 17 THE COURT: Excuse me, Dr. Palmer. Every number in  
 18 Column C is 93.68 percent of the numbers in Column B?  
 19 THE WITNESS: That's exactly correct.  
 20 THE COURT: All right.  
 21 A. And then Column D we've just talked about are the electronic  
 22 funds transfer information we have. Column E then is the sum of  
 23 the adjusted CP&R amount and the EFT amount.  
 24 So if we add those two columns together, that should be  
 25 the total amount of disbursements that have been identified

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1 A. What we did there is we took the disbursement information  
 2 and the revenue information from AR-171, and we divided the two  
 3 to get a disbursement rate that would be reported in AR-171.  
 4 And that then, on the year-by-year comparison, would be able to  
 5 be seen to be what is the rate that's reported there versus what  
 6 is the rate that we observed looking at what was actually  
 7 disbursed through checks and EFTs.  
 8 BY MR. GINGOLD:  
 9 Q. Now let's look at -- so we have a completed year, let's drop  
 10 to 1989 and the disbursement rate column.  
 11 A. Yes.  
 12 Q. There is a rate identified under the disbursement rate  
 13 column. What is it?  
 14 A. 74.5.  
 15 Q. And how did you calculate that?  
 16 A. And that's calculated, the ratio of Column E to Column F.  
 17 So the total amount that was disbursed from checks and EFTs,  
 18 divided by the revenues for that year, gave the 74.5.  
 19 Q. And under Column H for 1989?  
 20 A. So Column H, the number there is taken from taking the  
 21 disbursements for 1989, divided by the revenues for 1989 found  
 22 in AR-171, and that gave the 108.3 percent.  
 23 Q. And now under the disbursement adjustment ratio percent of  
 24 actual disbursements under Column I, what is that number?  
 25 A. So what we've done there is take the amount that was the

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1 disbursement rate in AR-171, which is the 108.3, and divided  
 2 that by the 74.5, which is the disbursement rate that we  
 3 calculate based upon the information we have going out of the  
 4 Trust, the checks and EFTs, and we see that the disbursement  
 5 rate on AR-171 was 45.4 percent higher.  
 6 THE COURT: What do you do with that number?  
 7 THE WITNESS: What we do with that number is we do that  
 8 for each year, then we come down to the bottom and get an  
 9 average of all those years, so on average those numbers are  
 10 34 percent higher.  
 11 THE COURT: Yeah.  
 12 THE WITNESS: Then what we do is take that back to the  
 13 years where we don't have specific check and EFT information.  
 14 So for example, in 1985, 1985 we don't have information on what  
 15 the checks were and what the EFTs were. But we do have a number  
 16 from Ms. Herman of what her disbursements were. So we look and  
 17 we see when we can identify, when we have all the information,  
 18 that on average those numbers are 34 percent higher, so we  
 19 adjust in the years when we don't have the specific information,  
 20 we adjust her numbers down. And that's when we were talking  
 21 about earlier, that you had asked to see what the ratio  
 22 adjustment was. That's the ratio we adjust things by.  
 23 So, for example, again, the disbursement number that we  
 24 have for 1985 we take from AR-171.  
 25 THE COURT: Well, I don't understand why you need  
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1 out, then it's true that the disbursement rate would change.  
 2 But again, we have information that not all checks that went out  
 3 were actually cashed, so -- and we have an average number there  
 4 as an illustration.  
 5 But it does affect --  
 6 THE COURT: And Mr. Gingold, do the parties all agree  
 7 that the float, basically the float, which is uncashed checks,  
 8 constitutes money that should be returned to all the IIM account  
 9 holders?  
 10 MR. GINGOLD: Your Honor, I can't speak for the  
 11 government. It's plaintiffs' position that if the money was to  
 12 be paid out by check and it wasn't, it's Trust money that  
 13 remained in the Trust.  
 14 THE COURT: It's paid out but never cashed.  
 15 MR. GINGOLD: Well, it's never been paid out. The  
 16 check wasn't negotiated. If you write a check to yourself and  
 17 put it in your desk drawer, your account balance shouldn't  
 18 change. The difference is, Your Honor, when a check is cut on  
 19 the 14X-6039 account, immediately the account is debited without  
 20 regard to when the check is cashed or not.  
 21 THE COURT: So I suppose the question devolves into two  
 22 subquestions. The first is, in your theory of the case, the  
 23 government is required to disgorge all the float to IIM members.  
 24 Right?  
 25 MR. GINGOLD: If that's what you would like to  
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1 134.1 percent. Aren't you really just using the 74.45 percent  
 2 number? Isn't that essentially the same thing?  
 3 THE WITNESS: No, they're different. The 74 percent  
 4 number is the average disbursement rate. We use that for years  
 5 when we don't have any information at all.  
 6 When we have actual information, as reported in AR-171,  
 7 they're going to bounce up and down. On average it would  
 8 probably be the same, but we wanted to look at, instead of just  
 9 taking a straight percentage, we wanted to allow year-to-year  
 10 variation. But that year-to-year variation, when we observed  
 11 the information for both years, that information was higher, so  
 12 we adjusted down by dividing by 1.34.  
 13 So again, 1985, whatever was in AR-171, we divided that  
 14 number down to adjust it, and then we can use that number, but  
 15 just adjusted down to a level that was consistent when we had  
 16 information from the actual checks and actual electronic funds  
 17 transfer.  
 18 THE COURT: All right. Now, this disbursement rate  
 19 that you've got in Column G is powerfully driven by this average  
 20 check calculation that you've done, isn't it?  
 21 THE WITNESS: I wouldn't say powerfully. It does have  
 22 an effect. So if the average -- so if, for example, we just  
 23 took, instead of using an adjusted number, it was 94 percent,  
 24 approximately, 93.6 percent, if we used 100 percent so that  
 25 every check that went into the system, we assumed it was paid  
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1 characterize it, Your Honor, yes. But they are funds that have  
 2 not --  
 3 THE COURT: But the answer is yes. Okay?  
 4 MR. GINGOLD: Yes.  
 5 THE COURT: And the next question is, you also want a  
 6 benefit of the government calculation based on that, because you  
 7 assert that the money was wrongfully withheld. Right?  
 8 MR. GINGOLD: That's correct. Or withheld. Whether it  
 9 was wrongful or not is not the issue, Your Honor.  
 10 THE COURT: Okay. Just want to orient myself in your  
 11 argument, that's all.  
 12 MR. GINGOLD: Be my guest, Your Honor.  
 13 Maybe it would help if we had an example of what  
 14 Dr. Palmer was talking about.  
 15 Can we bring up Plaintiffs' 191, please?  
 16 BY MR. GINGOLD:  
 17 Q. Have you seen this before, Dr. Palmer?  
 18 A. Yes.  
 19 Q. What is this?  
 20 A. This is an example of taking a specific year and showing how  
 21 the adjustment would be, based upon the information in  
 22 Attachment C, we had just talked about roughly this. And here  
 23 it lists the number in AR-171 for disbursements for 1987 is  
 24 258.4 million. Based upon our adjustment factor, that again we  
 25 calculated looking at what actually went out in terms of what  
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1 was cashed, went out in terms of checks and also electronic  
 2 funds transfer, and there we look at, the total there would be  
 3 adjusted to 192.62 million.  
 4 Q. And what does that adjusted number mean?  
 11:57:38 5 A. The adjusted number is then what we used in our calculation  
 6 as the outflows in that year.  
 7 Q. Okay. Let's go to AR-171. Let's go to --  
 8 MR. GINGOLD: Can we focus on 1987, please?  
 9 BY MR. GINGOLD:  
 11:58:11 10 Q. Do you see the number that you just discussed?  
 11 A. Yes, it's in the far right-hand column, the 258.4 million.  
 12 So that's the source of the information in the example that was  
 13 just put up.  
 14 Q. Did you prepare this document?  
 11:58:24 15 A. AR-171, I did not. I prepared the example that we just  
 16 showed, but I did not prepare 171.  
 17 Q. Do you know whose document this is?  
 18 A. AR-171 is a government document.  
 19 Q. Thank you. I would like to return to Attachment A, please.  
 11:58:49 20 And again I would like to focus on the disbursement component of  
 21 Attachment A.  
 22 Have you reviewed government documents regarding  
 23 disbursements -- items identified as disbursements from the  
 24 Individual Indian Trust?  
 11:59:27 25 A. Yes, I have.

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1 MR. GINGOLD: Plaintiffs would like to identify  
 2 Exhibit 87. This is a document that is identified as reports of  
 3 the Department of the Interior for the fiscal year ended  
 4 June 30, 1918. It's Indian Affairs, Washington Government  
 11:59:56 5 Printing Office.  
 6 I would like to turn to page five of this document.  
 7 Excuse me. Before we turn to page five of the document, I would  
 8 like to turn to page four of the document.  
 9 Let's pull up Plaintiffs' 92. PX-92 is another report  
 12:00:47 10 of the Department of Interior, 1919. It is identified as House  
 11 of Representatives. And I would like to turn to page four of  
 12 this document.  
 13 BY MR. GINGOLD:  
 14 Q. Have you reviewed this document before?  
 12:01:25 15 A. Yes, I have.  
 16 Q. And what do you understand is stated on that page?  
 17 A. This document talks about disbursements and revenues. This  
 18 particular page begins -- the bottom begins, "Disbursements."  
 19 MR. GINGOLD: Can we go back to the previous page,  
 12:01:44 20 please?  
 21 A. So here's the section that begins -- this is the information  
 22 that begins, "Receipts." The next page begins, "Disbursements."  
 23 So there are sections where they're identifying the individual  
 24 areas for receipts and disbursements.  
 12:02:19 25 MR. GINGOLD: I think we're having some technological

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1 problems, Your Honor. We'll go back to this document.  
 2 BY MR. GINGOLD:  
 3 Q. Do these documents refresh your recollection about anything?  
 4 A. Well, the next page of the document actually talks about  
 12:02:35 5 specific areas of disbursements, and one of the items it talks  
 6 about for disbursements were investments in Liberty Loan bonds  
 7 and war stamps, and they were listed as disbursements.  
 8 Q. Now, why did you take note of that?  
 9 A. Well, investment in Liberty Loan bonds and purchasing war  
 12:02:56 10 stamps, it's an investment. It's an asset. And so it may have  
 11 been a disbursement of funds out of an account to purchase  
 12 those, but it's still within the IIM Trust. It's still an  
 13 asset, it's still an investment.  
 14 And so noticing that in some years disbursements were  
 12:03:14 15 called lots of different things, gave me some concern, and I  
 16 think that's one of the reasons that we looked at this ratio for  
 17 time periods when we did have information.  
 18 MR. GINGOLD: Your Honor, this is PX-92, and this is  
 19 the page we didn't have before.  
 12:03:35 20 BY MR. GINGOLD:  
 21 Q. This page in highlight, what does it say, Doctor?  
 22 A. The highlighted area says disbursements.  
 23 Q. And then let's go on to the next page, please. And let's  
 24 focus in on the last paragraph.  
 12:03:52 25 A. Again, so this is under the categories of disbursements, it

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1 has --  
 2 MR. GINGOLD: Can we get a little more clarity on the  
 3 last paragraph? Thank you.  
 4 A. Focusing on individual Indian and miscellaneous monies,  
 12:04:07 5 these are disbursements. It says paid to Indians of 1.8  
 6 million, then purchase of Liberty Loan bonds. Again, the  
 7 purchasing of a bond would still be an investment but it is  
 8 counted as a disbursement.  
 9 So if the disbursements for that year, this would be  
 12:04:27 10 counted as not necessarily two paid out to individual Indians,  
 11 but there are lots of things in disbursements.  
 12 BY MR. GINGOLD:  
 13 Q. And you also identified another investment, did you not?  
 14 A. Again, purchasing of war savings stamps is another  
 12:04:43 15 investment as well.  
 16 Q. Why was this information important to you in your  
 17 calculations?  
 18 A. Well, when we looked at disbursements, the time period that  
 19 we had information of monies going out from the system -- well,  
 12:05:02 20 let me start again.  
 21 We had information of monies going out from the Trust,  
 22 be it through check or electronic funds transfer, we can  
 23 identify what monies went out. We used that information, and  
 24 that sometimes there were lots of other things that might have  
 12:05:18 25 been included in disbursements, which gave me pause to consider

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1 other years when there was reported disbursement information.  
 2 Hence, we used this ratio adjustment for when we had  
 3 specific information, as opposed to the numbers we were provided  
 4 by the defendants.

12:05:37 5 Q. Did you review any other documents that identified  
 6 disbursements from the Trust other than check or EFT?

7 A. Again, in that time period what we were specifically focused  
 8 on, the 1988, when we had check and EFT information, then we  
 9 focused on that and we used that.

12:06:02 10 For 1909, the reported information for 1909, 1910, and  
 11 1911, talked about what the disbursements were. There were no  
 12 mention of things like purchasing of assets or anything like  
 13 that, so we used that reported information for that earlier time  
 14 period.

12:06:17 15 Q. Why did you use that information --

16 THE COURT: Let me just interrupt you a minute here to  
 17 make sure I understand what you're saying. Are you saying that  
 18 for these war years, World War I years, you backed out the  
 19 purchase of Liberty bonds from the disbursement numbers because  
 12:06:33 20 you didn't consider them disbursements?

21 THE WITNESS: The World War I years, I believe were  
 22 missing years for disbursement information. We didn't have  
 23 disbursement information at all. In those particular years we  
 24 used an average. Showing this exhibit -- or showing the  
 12:06:52 25 illustration here, was more to say there's oftentimes something

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1 THE COURT: So you will consider the redemption amount  
 2 of a war bond to be a receipt, but not the purchase of it as a  
 3 disbursement?

12:08:19 4 THE WITNESS: From what we identified as receipts,  
 5 there were no identified as war bonds that were being receipts  
 6 into the system. If the war bond is a disbursement and then  
 7 later was a receipt in the system, by treating one and not the  
 8 other, that would be incorrect.

9 But we don't see that, and I don't take any specific  
 12:08:35 10 adjustment in a year for a war bond, just noticing that in  
 11 disbursements there's often things that don't look like a  
 12 disbursement to an individual, as an example. We don't take any  
 13 specific adjustments.

14 THE COURT: So you are basically explaining to me why  
 12:08:50 15 you use an average number instead of a number that appears in an  
 16 account here. You're not saying that you backed out of  
 17 disbursement numbers funds that were used to invest in war bonds  
 18 or savings stamps or things like that?

19 THE WITNESS: No, this particular year, there was not  
 12:09:07 20 enough information for total disbursements, it's only for a  
 21 subset. So we looked at that and we did not back out -- there  
 22 was no calculation that backs it out. When the information was  
 23 absolutely missing, we used an average.

24 THE COURT: And just for comparison purposes, we have a  
 12:09:23 25 number, you just showed me a number that included money paid to

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1 in disbursements that we don't know -- if we reported a number  
 2 of disbursement, don't always know what's included in that  
 3 number. We were just given the bottom line number.

12:07:09 4 For a year where disbursements were actually identified  
 5 of all the different component pieces, we see there was an  
 6 investment in there that was identified as disbursement.

7 If we only got the bottom line number here, we wouldn't  
 8 know that there was a big chunk of that, in fact the majority of  
 9 it, went to purchase an asset.

12:07:23 10 THE COURT: Yeah, but just do you not consider the  
 11 expenditure of IIM monies for war bonds to be a disbursement?

12 THE WITNESS: From what -- my understanding of a  
 13 disbursement is money that goes to individual Indians. If a  
 14 purchase of an asset, that the Trust still holds that asset, is  
 12:07:43 15 not to an individual Indian, so it still sits in the Trust. So  
 16 the redemption of that war bond --

17 THE COURT: Does it sit in the Trust or does it go out  
 18 to a war bond account?

19 THE WITNESS: If it goes out to a war bond account, it  
 12:07:55 20 doesn't go to an individual Indian.

21 THE COURT: Right, but then the war bond gets redeemed  
 22 at some point?

23 THE WITNESS: And those proceeds from that presumably  
 24 go back to the IIM Trust. So it's the Trust that purchases the  
 12:08:07 25 war bond --

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1 Indians, money paid for war bonds, money paid for savings  
 2 stamps, and a total number identified as disbursements.  
 3 Dr. Palmer says he doesn't consider that a good number for  
 4 disbursements so he used a substitute number. What's the  
 12:09:44 5 comparison between that number and the substitute number?

6 MR. GINGOLD: Your Honor, the government didn't use  
 7 that number either because that is solely relating to the five  
 8 civilized tribes. There is no similar number for the remainder  
 9 of the Trust beneficiaries or members of other tribes.

12:09:56 10 So it was a subset of whatever was done during that  
 11 particular year. It wasn't enough information to include as the  
 12 disbursement total from the Trust.

13 THE COURT: Nobody is using that disbursement?

14 MR. GINGOLD: That's correct.

12:10:08 15 THE COURT: So I just wasted five minutes of your time?

16 MR. GINGOLD: No, Your Honor, you did not. Because  
 17 Dr. Palmer was explaining why it was necessary to evaluate what  
 18 constitutes a disbursement and what doesn't, and that explained  
 19 further why he was using this calculation that he was, to ensure

12:10:26 20 that checks and EFTs were properly reflected as disbursements  
 21 from the Trust.

22 THE COURT: All right.

23 MR. GINGOLD: This may help a little bit. It's not  
 24 directly on point but I would like to bring this up for purposes  
 12:10:45 25 of this discussion.

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1 Plaintiffs would like to identify Exhibit 139.  
 2 THE COURT: 139?  
 3 MR. GINGOLD: 139.  
 4 BY MR. GINGOLD:  
 12:11:01 5 Q. This is an exhibit that's been introduced prior to your  
 6 testimony, Dr. Palmer. And it is a document that's entitled  
 7 fiscal year 2009 budget of the United States, Office of  
 8 Management and Budget. And first I would like to turn to  
 9 page five of this document, and I would like to highlight this  
 12:11:27 10 figure on five, which is "budget deficit or surplus and means of  
 11 financing." Do you see that?  
 12 A. I do.  
 13 Q. I would like to turn to the next page. In the highlighted  
 14 section of this page it includes the following language:  
 12:11:46 15 "Deposit fund balances may be held either in the form" -- "in  
 16 the form of either invested or uninvested balances. To the  
 17 extent that they are not invested, changes in the balances are  
 18 available to finance expenditures and are recorded as a means of  
 19 financing other than borrowing from the public. To the extent  
 12:12:07 20 they are invested in federal debt, changes in the balances are  
 21 reflected as borrowing from the public in lieu of borrowing from  
 22 other parts of the public and are not reflected as a separate  
 23 means of borrowing."  
 24 Does the invested versus uninvested balances issue have  
 12:12:24 25 any relation to what you were talking about?  
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1 A. Because it's available -- it's still available to the Trust.  
 2 Q. The description here, deposit fund balances in the form of  
 3 either invested or uninvested balances, does that mean anything  
 4 to you?  
 12:14:00 5 A. Well, again, that would be the deposits from the Trust that  
 6 are not disbursed from a check or EFT, so it's not a  
 7 disbursement to an individual Indian; therefore, there would  
 8 still be a fund balance that is held by the government. They  
 9 would hold it -- in this case if they bought Liberty war bonds,  
 12:14:20 10 it would be an invested amount.  
 11 Q. Thank you, Doctor. I would like to go back to Attachment A,  
 12 Plaintiffs' 189-A. Column F, disbursements, what do the numbers  
 13 reflect in Column F?  
 14 A. These are the numbers that we had just talked about that  
 12:14:48 15 have been calculated for the different reasons for different  
 16 years. And they represent the outflows from the Trust.  
 17 Q. And if we can turn to page four of this document. Do you  
 18 see a total?  
 19 A. Yes. There's the total for the nominal dollars in  
 12:15:07 20 disbursements is 10.67 million -- billion, I'm sorry. I'm in  
 21 the wrong units.  
 22 Q. Excuse me?  
 23 A. 10.67 billion.  
 24 Q. Thank you.  
 12:15:20 25 The last four columns deal with nominal benefit to the  
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1 A. In our calculation of benefit to the government, this is  
 2 indicative of something that we're trying to capture.  
 3 Q. But if you have trust fund balances, is it fair to say that  
 4 trust fund balances include investments from this information?  
 12:12:47 5 MR. WARSHAWSKY: Objection, Your Honor. This is beyond  
 6 the scope of his expertise. There's been no foundation laid to  
 7 establish why Dr. Palmer can offer these opinions.  
 8 BY MR. GINGOLD:  
 9 Q. You were discussing with the Court your understanding --  
 12:13:00 10 MR. WARSHAWSKY: Your Honor?  
 11 MR. GINGOLD: I'm not going to continue --  
 12 THE COURT: Well, he's asking a new question, so I'm  
 13 assuming that what's happening is that he's beefing up -- he's  
 14 either beefing up the witness' expertise so that he can answer  
 12:13:17 15 the question or he's asking a new question. So you can have a  
 16 seat, Mr. Warshawsky.  
 17 MR. GINGOLD: Your Honor, I'm asking a new question.  
 18 THE COURT: All right.  
 19 BY MR. GINGOLD:  
 12:13:25 20 Q. You were discussing with the Court the reason you did not  
 21 consider the investment of trust funds in securities as a  
 22 disbursement from the Trust. Is that fair?  
 23 A. That is correct.  
 24 Q. And you explained to the Court why you didn't believe it was  
 12:13:44 25 a disbursement?  
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1 government, 10-year U.S. Treasury bond rate, accrued benefit  
 2 annual and accumulated benefit end of the year. I want to ask  
 3 you about the first column, which is nominal benefit to the  
 4 government. Could you please generally describe what the  
 12:15:41 5 numbers in that column mean?  
 6 A. Certainly. For each year we calculated the corrected  
 7 revenues number. Again, this is a revenue number that would not  
 8 have any interest included in it. Subtract from that number the  
 9 disbursements for that year, and that would give the amount of  
 12:15:59 10 funds that were available to the government in that year.  
 11 Q. Does it make any difference to you whether or not the funds  
 12 were held in banks or the funds were held in the Treasury?  
 13 MR. WARSHAWSKY: Objection, Your Honor. Lack of  
 14 foundation.  
 12:16:18 15 BY MR. GINGOLD:  
 16 Q. In your calculation.  
 17 THE COURT: Overruled.  
 18 A. For this calculation there is no separation as to where the  
 19 funds are held once they're available.  
 12:16:30 20 BY MR. GINGOLD:  
 21 Q. Can you explain why?  
 22 A. Well, what we do is, the way the model works here is it  
 23 takes the nominal benefit and that benefit being available goes  
 24 through and said, okay, we use the 10-year U.S. Treasury bond  
 12:16:47 25 rate as an estimate of avoided costs or costs of borrowing. If  
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1 the funds are held in a bank, then they're not -- they would be  
 2 earning interest in the bank and are not charged necessarily as  
 3 a benefit to the government, because all the monies at the end  
 4 are subtracted out.  
 12:17:09 5 So if there were interest or things earned at a bank,  
 6 those monies would not be included in what we're calculating;  
 7 they would be in the fund, they would be subtracted at the end,  
 8 so there's an offset, as it were, accounting for that  
 9 information.  
 12:17:22 10 So for the calculation, it's not important where the  
 11 information resides -- where the money resides.  
 12 Q. Does it make any difference that at any point in time the  
 13 funds that are in banks are returned to the Treasury?  
 14 A. Well, again, it doesn't -- I don't think it really matters.  
 12:17:40 15 So if we take an example, if the proceeds -- or if the nominal  
 16 benefit amount, the amount of Column G, if half of that were put  
 17 in a bank and half of that were put in the Treasury, and at the  
 18 end of the year let's say there's a five percent interest rate,  
 19 so the amount in the bank would be -- let's say it was 100 in  
 12:18:05 20 each; 105 in the bank. And whatever the Treasury does with it,  
 21 if they invested it, it would be 105. If they just used the  
 22 money and didn't borrow against it, then they would have  
 23 received five in benefit, so there's an amount there.  
 24 If then we subtract it at the very end, as we have done  
 12:18:25 25 here, what the value was for the Trust, the amount in the bank  
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1 a benefit to the government.  
 2 MR. GINGOLD: Plaintiffs would like to call up  
 3 Defendant's Exhibit 497. I would like to turn to page five of  
 4 this exhibit, please. I would like to highlight the language in  
 12:20:23 5 1933. Or if we can just focus on the language. Thank you.  
 6 BY MR. GINGOLD:  
 7 Q. Have you seen this before, Dr. Palmer?  
 8 A. Yes, I have.  
 9 Q. It states as follows: "Congress prohibited the payment of  
 12:20:37 10 interest on bank demand deposits and authorized the Federal  
 11 Reserve to set maximum interest rates on time deposits (Act of  
 12 June 16th, 1933) the BIA then closed all IIM bank checking  
 13 accounts and transferred the funds to checking accounts in the  
 14 Treasury."  
 12:20:53 15 Dr. Palmer, if in fact as a result of legislation in  
 16 1933 all the bank deposits or nearly all the bank deposits were  
 17 returned to the Treasury, how would you calculate the benefit  
 18 conferred to the government if that event occurred?  
 19 A. That was kind of the continuation of my example, where the  
 12:21:16 20 funds went from the bank into the Treasury. The interest that  
 21 would have accrued on the banks, while the funds were in the  
 22 banks, would then also go with the fund into Treasury, and the  
 23 government would then have the benefit of being able to use the  
 24 original amount of the fund, plus the interest that had accrued.  
 12:21:37 25 And the calculation then incorporates that going  
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1 would be completely washed out, and all we're really focusing on  
 2 would be the amount that was in Treasury and the benefit that  
 3 would have been there.  
 4 Now, if instead the following year those monies went  
 12:18:39 5 into Treasury from the bank, well, again, since we've only  
 6 calculated what the revenues were without interest, then the  
 7 following year the Treasury has the 105 that it had -- or let's  
 8 say it invested it, just as an example, so the money it had that  
 9 it could deal with, plus the money it had from the bank, and  
 12:19:02 10 then it has that additional money, the original amount that went  
 11 in, plus the interest earned at the bank, available for its use.  
 12 Again, the following year, then, however that money was  
 13 used, if it were invested and it earned money, if it instead  
 14 didn't borrow with that money, at the end of the day we subtract  
 12:19:19 15 out all that was in the Trust in terms of balance, so the  
 16 interest that would have been earned in the bank while it was  
 17 not in Treasury, would have been subtracted out.  
 18 So it doesn't really matter where the funds reside.  
 19 Q. What if the deposits were never returned to the Treasury?  
 12:19:35 20 A. Well, that was my first example, where if it sat outside, we  
 21 have the total balance and it's subtracted out, then it would be  
 22 just a wash and it wouldn't matter.  
 23 Q. So you would not include that as a benefit conferred?  
 24 A. It would be part of the calculation, but in terms of since  
 12:19:51 25 you're subtracting out that amount, the net amount would not be  
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1 forward, subtracts off of the end of the calculation what  
 2 actually was paid to -- or what the value of the Trust was, so  
 3 those funds would have been calculated out.  
 4 So for that time period that funds were not in  
 12:21:57 5 Treasury, that information, that interest would have been  
 6 accumulated, and then it gets subtracted out at the end. The  
 7 government then has available to it all of the funds plus the  
 8 interest on those funds for its use at that point.  
 9 Q. Now let's go back to Attachment A, analysis of benefit to  
 12:22:16 10 government. For many years or for all the years prior to 1933,  
 11 you have a number in the nominal benefit to the government  
 12 column. Correct?  
 13 A. That is correct.  
 14 Q. Now, why do you have the number stated the way it is in each  
 12:22:39 15 of the years prior to 1933?  
 16 A. That's going to be what the total value would be, because  
 17 it's taking the revenue minus disbursements for that year.  
 18 Again, that doesn't include any interest payments that would  
 19 have been received by the IIM Trust. And then it calculates  
 12:22:59 20 what the benefit -- what the potential benefit would have been,  
 21 and cumulates that forward.  
 22 As we talked about, there's a subtraction at the end of  
 23 the day of what was in there. So if there was interest in  
 24 things earned, then that would be subtracted out, so this would  
 12:23:15 25 be the potential benefit to the government. Not necessarily the  
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1 exact item that year, because again we're subtracting out at the  
 2 end, to make all those that would have been offset at the end of  
 3 the day.  
 4 Q. So if a deposit was returned to the Treasury and the deposit  
 12:23:30 5 was in the bank in 1888 and was returned to the Treasury in  
 6 1934, you have a number that is .29. Correct?  
 7 A. I'm sorry, could you...  
 8 Q. We're in Column G, nominal benefit to the government.  
 9 A. Right.  
 12:23:47 10 Q. You have in 1888 .29 -- am I looking at a different -- .24.  
 11 Do you see that number? Do you see the number .24 in 1888?  
 12 A. Yes, I do.  
 13 Q. That .24, is that what you just described as the nominal  
 14 benefit to the government if the deposit was returned to the  
 12:24:27 15 government -- or to the Treasury in 1934?  
 16 A. Well, the .24 number would be the amount that was possible  
 17 for 1888. If those funds were invested in a bank and returned  
 18 in 1934, there would be interest on those funds that were  
 19 returned to Treasury, and then -- so there would be a cumulated  
 12:24:51 20 number that would be larger in 1934 than the .24. That amount  
 21 then would sit in Treasury and be available for the government's  
 22 use.  
 23 The interest on those funds that went with them at that  
 24 point, whatever the number would be in 1934, would also be  
 12:25:07 25 available and sitting in Treasury. And then to continue, at the  
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1 end of the day we subtract out what was sitting in the Trust, so  
 2 that the cumulated interest between 1888 and 1934 that had then  
 3 been grown until the very end, would have been part of the  
 4 amount that was subtracted out at the end.  
 12:25:34 5 Q. So let's go to 1934 on the second page.  
 6 A. Okay.  
 7 Q. 1934 appears to have a .83 number. Correct?  
 8 A. 1934, .83 was the amount in that year, yes.  
 9 Q. So you didn't -- did you reflect a large deposit into the  
 12:26:01 10 government from the banks reflected in .83?  
 11 A. No, that's the incremental amount from the inflows minus the  
 12 outflows in that year, into the Trust.  
 13 Q. And why is it the incremental amount?  
 14 A. Because it only accounts for the revenues and the  
 12:26:19 15 disbursements for that year. It's not taking into account any  
 16 interest income from any other funds, from any other balances  
 17 from previous years or anything else, it's just the incremental  
 18 amount for that year that would then be available.  
 19 Q. Let's look at 1933.  
 12:26:37 20 A. Okay.  
 21 Q. 1933 has a number, negative 6.50. Do you see that?  
 22 A. I do.  
 23 Q. What does that mean?  
 24 A. 6.5, a negative amount would be when disbursements were  
 12:26:51 25 higher than revenues, so that there was actually funds flowing  
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1 out of the Trust in excess, so the amount that was available to  
 2 the government would be reduced.  
 3 Q. So if you have a negative amount, what are you saying about  
 4 the benefit to the government?  
 12:27:09 5 A. That in that year there would not be a benefit. In fact, it  
 6 would subtract off from the funds that were already available  
 7 for use by the government. So it would reduce the benefit to  
 8 the government of having other funds from prior years, because  
 9 it was subtracting off of those funds.  
 12:27:28 10 Q. From 1934 forward, are you dealing with the bank deposit  
 11 issue in your Column G, nominal benefit to the government, from  
 12 1934 forward?  
 13 A. Again, as we discussed, the calculation does not look  
 14 specifically where the funds are, because once the funds are  
 12:27:51 15 into the government's hands, available to them -- if it's in a  
 16 bank earning interest, that would be then credited later. So it  
 17 doesn't look specifically where the funds are located.  
 18 Q. And let's go to the fourth page of this exhibit and look at  
 19 the total with respect to Column G, nominal benefit to the  
 12:28:14 20 government. Do you see the total, Dr. Palmer?  
 21 A. I do.  
 22 Q. And what is that?  
 23 A. The nominal benefit to the government over this time period  
 24 is, from 1887 to 2007, is \$3,971,000,000.  
 12:28:25 25 Q. Let's talk about the 10-year Treasury bond rate, Column H.  
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1 A. Okay.  
 2 Q. Why did you pick the 10-year Treasury bond rate?  
 3 A. The 10-year Treasury bond rate, it's a conservative rate,  
 4 it's a rate that Professor Cornell and I had discussed. It's a  
 12:28:59 5 rate we previously used. It hasn't changed. I know there's  
 6 been testimony about that rate. It's a long rate, it's a series  
 7 that's available back to this time period.  
 8 Q. Is there a reason you didn't use a five-year Treasury bond  
 9 rate?  
 12:29:13 10 A. Again, the 10-year is about the middle of the road, it's a  
 11 conservative rate, it's probably -- it is reflective of what the  
 12 government's borrowing is. There's lots of different time  
 13 period rates that the government uses; this is again a middle of  
 14 the road, it's an estimate that we used, it's what we had  
 12:29:35 15 provided before.  
 16 Q. And how does the Treasury bond rate affect the nominal  
 17 benefit to the government?  
 18 A. The Treasury bond rate is basically kind of the amount or  
 19 almost kind of like the opportunity cost. If the government had  
 12:29:53 20 funds that -- if it had extra funds available for its use in its  
 21 account, it needs a minimum balance in its account, let's say,  
 22 so it used those funds, it didn't necessarily disburse those  
 23 funds, but it sat -- it needs a certain minimum amount in its  
 24 account. Then it could have those funds available, and it sat  
 12:30:14 25 there, instead of investing them, or instead of having to borrow  
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1 and issue more debt in order to get the funds there, that is the  
 2 rate that we used.  
 3 Again, those funds, if they were sufficiently large,  
 4 could have been in the cash account, could have been lent out to  
 5 banks for overnight rates to have their minimums. But in the  
 6 financial institutions there's always a minimum amount that  
 7 people need to have to make sure their checks clear. The  
 8 government maintains a balance as well. This would have been  
 9 something that's indicative of a rate that the government would  
 10 have avoided borrowing costs.  
 11 Q. Under the accrued benefit column, annual, what is that?  
 12 A. What that does is then takes -- well, as it's listed there,  
 13 it's Column J and H, so it's the amount that it takes from the  
 14 previous year, so it takes the previous year's cumulated benefit  
 15 at the end of the year, multiplies it by the interest rate, so  
 16 it says whatever was in the fund for the previous year, that's  
 17 the balance of funds that were available for the government to  
 18 use. It then calculates the rate on those funds, and that's  
 19 what that amount is.  
 20 Q. And what is the accumulated benefit end of year calculation?  
 21 A. So the benefit then takes the previous year's balance, it  
 22 adds the additional amount of revenues minus disbursements that  
 23 are available, and then it also adds what the benefit was in  
 24 terms of its avoided borrowing cost, with the potential  
 25 available from it from that rate that we just discussed.

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1 Q. And let's go to page four. Page four, there's a total row,  
 2 isn't there?  
 3 A. Yes, there is.  
 4 Q. Is there a total for accumulated benefit end of year?  
 5 A. Not listed there, no.  
 6 Q. Okay. If you look further down on that page under the  
 7 column, under that same page, if we can highlight the bottom,  
 8 immediately under "Total" on the right-hand side, which is  
 9 directly under the "Accumulated Benefit End-of-Year" column, you  
 10 have two numbers. What are they?  
 11 A. So the reported trust balance on September 30th, 2007,  
 12 that's the amount that was reported for the balance, as we  
 13 talked about earlier, subtracting out what the balance is of the  
 14 Trust; therefore, the accumulated benefit over this entire time  
 15 period, once we subtract out and give credit for all those  
 16 offsets, would be 46.85 billion.  
 17 Q. Is this the same number as what was included in the original  
 18 data that was used by the CRMO?  
 19 A. The 423.69 I believe is the same amount.  
 20 Q. How about the accumulated benefit conferred minus the  
 21 reported trust balance?  
 22 A. No, that number is different.  
 23 Q. How is it different?  
 24 A. Well, again, there were several different pieces of  
 25 information. The model is the same, but there are several

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1 Q. Let's take a particular year and apply it.  
 2 A. Okay.  
 3 Q. Let's look at 1914. 1914, under nominal benefit to  
 4 government, you have 1.83. Correct?  
 5 A. That is correct. So that reflects the revenues minus  
 6 disbursements, so that's the incremental amount for that year  
 7 that was not paid out that we talked about earlier.  
 8 Q. And the Treasury bond rate, what is that?  
 9 A. The Treasury bond, that's the loan bond rate for that year,  
 10 the 4.16 percent. That would then be applied to the previous  
 11 balance, the accumulated balance from the previous year. So  
 12 there was 50.27, if we look at the very end column, which is  
 13 also the amount at the beginning of the year. It takes that  
 14 amount as the amount of monies available, or if there's an  
 15 avoided borrowing cost, it's the benefit that were available,  
 16 and multiplies it by that rate, to come up with the additional  
 17 amount there, which would be the 2.09.  
 18 And then the final balance at the end is the 50.27 from  
 19 the previous year, plus the 1.83, which was the incremental  
 20 amount from the additional revenues, plus the 2.09, which is  
 21 this amount that is the benefit from either not having to lend  
 22 out or from receiving monies. And that gives us the 54.19.  
 23 Q. Now, is that what you've done for each year through 2007,  
 24 from 1887 to 2007?  
 25 A. That is correct.

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1 pieces of information of data that we received or obtained  
 2 during the course of this litigation. Also from the testimony,  
 3 some adjustments that were made to other data items.  
 4 So as the data changed, the total number changed as  
 5 well.  
 6 Q. How did it change?  
 7 A. It went down.  
 8 Q. Do you know how much?  
 9 A. I don't remember exactly what the original number was.  
 10 Q. Approximately? You don't remember?  
 11 A. I don't remember. Approximately within several billion, but  
 12 that's not...  
 13 MR. GINGOLD: Your Honor, this might be a good time to  
 14 take a break, if you wouldn't mind.  
 15 THE COURT: Are you going to refresh his recollection  
 16 over lunch?  
 17 THE WITNESS: I can look at a document.  
 18 THE COURT: We'll go to lunch.  
 19 MR. GINGOLD: Thank you very much.  
 20 THE COURT: Be back here in an hour.  
 21 (Recess taken at 12:36 p.m.)  
 22  
 23  
 24  
 25

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1 CERTIFICATE OF OFFICIAL COURT REPORTER

2

3 I, Rebecca Stonestreet, certify that the foregoing is a  
4 correct transcript from the record of proceedings in the  
5 above-entitled matter.

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10 SIGNATURE OF COURT REPORTER DATE

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