

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, : Civil Action 96-1285
et al. :
Plaintiffs :
 : Washington, D.C.
V. : Thursday, October 18, 2007
 :
DIRK KEMPTHORNE, Secretary :
of the Interior, et al. :
 :
Defendants : MORNING SESSION

TRANSCRIPT OF EVIDENTIARY HEARING
DAY 6
BEFORE THE HONORABLE JAMES ROBERTSON
UNITED STATES DISTRICT JUDGE

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CONTENTS

WITNESS VOIR DIRE EXAMINATION

EDWARD ANGEL
By Mr. Siemietkowski 1153 -- -- --
By Mr. Harper 1157 -- -- --

DIRECT CROSS REDIRECT RECROSS

By Mr. Siemietkowski 1160 -- -- --
By Mr. Harper -- 1218 -- --

EXHIBITS

NUMBER ADMITTED

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234 - 268 1217

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PROCEEDINGS

1 THE COURT: Good morning, everybody. A couple of
2 preliminary thoughts before we start. First of all, you were
3 good enough to put together a glossary. I have another request.
4 After looking at that flowchart, that finance flowchart that the
5 government put on, I would also like to see kind of an
6 organizational flowchart, with all of the offices of "this's"
7 and "that's." Can you do that for me?
8 MR. KIRSCHMAN: Yes, Your Honor.
9 THE COURT: Also, just thinking about yesterday's
10 ruling on the question of what we were all calling redundant
11 testimony, I think we should have used the word cumulative.
12 Fair notice to plaintiffs that cumulative sauce for the goose is
13 sauce for the gander. Okay?
14 Who is your next witness?
15 MR. SIEMIETKOWSKI: I have not yet appeared before Your
16 Honor. Sir, my name is John Siemietkowski, and I'm one of the
17 government attorneys representing the United States in this
18 matter. The government calls Edward Angel to the stand.
19 THE COURT: All right. Mr. Siemietkowski, welcome.
20 MR. SIEMIETKOWSKI: Thank you.
21 THE COURT: And I'm advised by my courtroom deputy that
22 the clock is now set, meaning that it is synchronous with the
23 clock that I have in chambers.
24 Raise your right hand, Mr. Angel, and take the oath.
25

1 (Oath administered by Courtroom Deputy.)
 2 MR. SIEMIETKOWSKI: Your Honor, consistent with your
 3 earlier guidance, I would like to provide the Court just a very
 4 brief summary of the relevance of Mr. Angel's testimony.

09:37:49 5 THE COURT: Thank you.

6 MR. SIEMIETKOWSKI: Your Honor, Mr. Angel -- and I will
 7 refer to him as Dr. Angel based upon his educational
 8 qualifications. Dr. Angel will testify about three things: He
 9 will testify about the availability of throughput data in

09:38:03 10 historic records, specifically what throughput data exists and
 11 what throughput data does not exist; secondly, he will be
 12 testifying as an expert witness, assuming he is qualified, on
 13 the availability and accessibility of IIM Trust records; and
 14 thirdly, Your Honor, in his capacity, if qualified as an expert,

09:38:29 15 he'll provide a critique of plaintiffs' experts, Mr. Homan and
 16 Mr. Fasold's reports.

17 THE COURT: All right, sir.

18 MR. SIEMIETKOWSKI: Again, Your Honor, consistent with
 19 your previous guidance, I would like to show the Court
 09:38:49 20 appendices A and B of Dr. Angel's expert report, ask the Court
 21 to review that briefly, and then offer Dr. Angel as an expert
 22 witness in the history of federal Indian relations, and as an
 23 expert witness in federal Indian records.

09:39:21 24 MR. HARPER: Your Honor, we would object to the first
 25 designation as an expert on Indian matters. And I would like a

1 **Washington University on a few occasions, three or four**
 2 **occasions.**
 3 BY MR. SIEMIETKOWSKI:
 4 Q. We may have skipped this over, Mr. Angel. What is your
 5 profession?

6 **A. I'm a historian. I have a doctoral degree in American**
 7 **history. And professionally, I'm a consultant with Morgan,**
 8 **Angel & Associates.**

9 Q. And what is Morgan, Angel & Associates?

09:41:14 10 **A. It's a consulting firm that specializes in historic research**
 11 **and public policy research.**

12 Q. And how long have you been a professional historian?

13 **A. I received my doctoral degree in 1979, so since about 1977.**

14 Q. And since 1977, what percentage of your work has focused on
 09:41:36 15 federal Indian relations?

16 **A. Quite a lot, probably 75 percent.**

17 Q. And what about today? What percentage of your work focuses
 18 on federal Indian relations?

19 **A. Today, as in 2007?**

09:41:48 20 Q. Yes.

21 **A. Probably about 75 percent.**

22 Q. Who are some of your government clients, if any, in the --

23 **A. Some of the government clients include Department of the**
 24 **Interior. We've done work for the Forest Service, we've done**
 09:42:02 25 **work for of course the Department of the Interior. We've had**

1 foundation regarding that. From Dr. Angel's prior testimony, we
 2 think that he has not demonstrated qualifications on that front.

3 With respect to records, and where to find records, we
 4 don't object on that ground.

09:39:54 5 THE COURT: Mr. Siemietkowski, do you want to qualify
 6 the witness on the history of federal Indian relations?

7 MR. SIEMIETKOWSKI: Yes, Your Honor.

8 **(EDWARD ANGEL, DEFENDANT WITNESS, having been duly**
 9 **sworn, testified as follows:)**

09:40:06 10 **VOIR DIRE EXAMINATION**

11 BY MR. SIEMETKOWSKI:

12 Q. Dr. Angel, what is your educational background, please?

13 **A. I have a doctoral degree from the George Washington**
 14 **University in American history.**

09:40:16 15 Q. And what sort of work and study have you done in the area of
 16 federal Indian relations?

17 **A. Since 1983, as a member of Morgan, Angel & Associates --**

18 THE COURT: Can you get a little closer to that
 19 microphone, or get it closer to you please, sir?

09:40:30 20 THE WITNESS: Okay. Is this better?

21 THE COURT: Much better.

22 **A. Since 1983, as a member of Morgan, Angel & Associates, we've**
 23 **worked on a number of issues concerning Native Americans. I've**
 24 **testified in federal courts concerning Native American issues.**

09:40:48 25 **In addition, I've taught American Indian policy at the George**

1 **the Air Force as a client, as well.**

2 Q. Do you have Indian clients as well, Dr. Angel?

3 **A. Yes. Currently our Indian clients include the Lower Brule**
 4 **Sioux Tribe, the Crow Creek Tribe, the Shinnecock Nation, the**

09:42:20 5 **Lost Arkansas -- excuse me, the Lost Cherokee of Arkansas, and**
 6 **the Nipmuc Tribe, and perhaps another.**

7 Q. Have you worked with any Native American groups here in
 8 Washington D.C. in your work, Dr. Angel?

9 **A. Well, as part of our work, what we've done is research here**
 09:42:46 10 **in Washington D.C. As part of our work, we've provided**

11 **testimony to Congress, Morgan, Angel & Associates, now Dr. Mike**
 12 **Lawson on the Tribal Parity Act for the Pick-Sloan project.**

13 **It's a project in the upper Missouri, in which Indian lands were**
 14 **taken to build dams by the Army Corps of Engineers.**

09:43:07 15 Q. Dr. Angel, have you worked with any Native American groups
 16 associated with any of plaintiffs' counsel?

17 **A. Well, I believe that the Shinnecock Nation, we've been**
 18 **working with NARF, with the Native American Rights Fund.**

19 Q. With who, I'm sorry?

09:43:22 20 **A. The Native American Rights Fund, on the Shinnecock issue.**

21 Q. Have you ever been qualified as an expert before, Dr. Angel?

22 **A. Yes, I have.**

23 Q. How many times?

24 **A. Four or five.**

09:43:34 25 Q. All right. Have you been previously qualified in this

1 particular litigation as an expert?
 2 **A. Yes, I have.**
 3 **Q.** And when was that?
 4 **A. At the Cobell 1.5 trial, in 2003.**
 09:43:43 5 **Q.** Thank you.
 6 THE COURT: In what subjects?
 7 THE WITNESS: I beg your pardon, sir?
 8 THE COURT: In what subjects? You've been proffered
 9 here as an expert both I think in the history of federal Indian
 09:43:57 10 relations, and in the availability of Indian records. The
 11 objection is to your qualification to testify as an expert in
 12 the history of federal Indian relations. Were you previously
 13 qualified in that field by Judge Lamberth in this case?
 14 MR. SIEMIETKOWSKI: Your Honor, from what I recall, in
 09:44:16 15 2003 Dr. Angel was offered as an expert in the history of
 16 federal Indian relations. Plaintiffs conducted an extensive
 17 voir dire, and Judge Lamberth said, "I'm going to allow his
 18 testimony as an expert," without necessarily specifying what he
 19 was qualified as an expert in.
 09:44:34 20 THE COURT: Okay. Go ahead.
 21 MR. SIEMIETKOWSKI: Your Honor, again at this time I
 22 would offer Dr. Angel as an expert not only in federal Indian
 23 records, but as well in the history of federal Indian relations.
 24 THE COURT: Mr. Harper, you're sitting in the hot seat
 09:44:50 25 this morning. Do you want to do any voir dire here?

1 MR. HARPER: Yes, Your Honor.
 2 THE COURT: Proceed.
 3 MR. HARPER: Just a couple of moments, Your Honor, if I
 4 could.
 09:44:58 5 **VOIR DIRE EXAMINATION**
 6 BY MR. HARPER:
 7 **Q.** Good morning, Dr. Angel.
 8 **A. Good morning, Mr. Harper.**
 9 **Q.** You testified a couple of years ago, as you mentioned, in
 09:45:06 10 this matter. Correct?
 11 **A. That's correct.**
 12 **Q.** And we had a discussion regarding, as you will recall,
 13 whether or not -- well, let me ask you this preliminarily: When
 14 you're talking about Indian relations, how do you define those
 09:45:22 15 relations?
 16 **A. Well, I'm looking at it as history of the United States**
 17 **government policy toward Native Americans. And basically,**
 18 **that's been in policies that have been developed over the course**
 19 **of the years by the government that have affected the United**
 09:45:38 20 **States government's relations with Native Americans.**
 21 **Q.** And you would agree that -- do you recall us talking about
 22 some landmark Indian law cases? Do you recall that testimony?
 23 **A. That's correct.**
 24 **Q.** And identified maybe 20 or so landmark Indian law cases?
 09:45:59 25 **A. That's correct.**

1 **Q.** And you didn't have a sense of what those landmark Indian
 2 law cases held. Correct? And they were all Supreme Court
 3 cases. Correct?
 4 **A. That was correct. There were several of them. I don't**
 09:46:10 5 **recall if I was able to answer one or two, but I didn't think of**
 6 **myself as, you know, an attorney or having that Indian law**
 7 **background, no.**
 8 **Q.** And Supreme Court cases, particularly in Indian Affairs,
 9 they're not important to know for Indian policy. Is that
 09:46:26 10 your --
 11 **A. They are important to know.**
 12 **Q.** So if you're an expert on Indian relations, you should know
 13 something about the Supreme Court's cases and what they've held
 14 regarding Indian policy. Is that correct?
 09:46:41 15 **A. That's correct. And unfortunately, I forgot several of**
 16 **them.**
 17 **Q.** In fact, the vast majority of them. Correct?
 18 **A. That's correct.**
 19 **Q.** And with respect to -- do you recall your testimony that
 09:46:56 20 Indian -- the Indian community is similar to other communities
 21 in the United States? Do you recall that testimony, as far as
 22 historical policy towards them?
 23 **A. I believe what I had said at the time was that what had**
 24 **generated my interest in Native American affairs was the fact --**
 09:47:17 25 **what originally generated my interest was the fact that**

1 **immigrant communities coming to the United States in the**
 2 **19th century faced many of the same issues and policies that the**
 3 **United States government was trying to impose on Native**
 4 **Americans; that is, the effort to "Americanize" the Native**
 09:47:38 5 **American, quote/unquote, the effort to Americanize the**
 6 **immigrants coming to the United States.**
 7 **And I think what I had said is, you know, that's what**
 8 **generated my initial interest in Indian affairs.**
 9 **Q.** But you also agree that we went through a series of
 09:47:56 10 policies, starting from the late 19th century - do you recall
 11 that testimony - and you agreed with me at the time that only
 12 Indians went through many of these policies, such as allotment
 13 termination, reorganization, self-determination, and various
 14 others. Is that a fair statement?
 09:48:12 15 **A. Well, to a degree it's a fair statement, but I think the**
 16 **question was related to my initial interest in this. And, you**
 17 **know, initially what brought me -- what made me interested in**
 18 **this was events in the 19th century.**
 19 **Then we went on to social events and property events**
 09:48:32 20 **and other historical events that, you're correct, other people**
 21 **did not have to go through. And I agreed fully with that, you**
 22 **know. Other European Americans didn't have to go through**
 23 **allotment.**
 24 **But again, getting back to --**
 09:48:49 25 THE COURT: This is drifting off of qualifications and

1 getting to substance. I mean, you may not agree with his views
 2 of history, Mr. Harper, but that doesn't disqualify him as an
 3 expert to testify.
 4 MR. HARPER: Your Honor, my point was, if I may, that
 09:49:08 5 Dr. Angel conceded, last time he was on the stand, that the
 6 notion that Indians somehow had similar policy effectuating them
 7 as others was in fact erroneous. And I think that goes straight
 8 to his qualifications as to whether or not he's an expert to
 9 testify on Indian policy, as opposed to records.
 09:49:34 10 THE COURT: Okay. I'm going to allow him to testify as
 11 an expert on the history of federal Indian relations. I'm not
 12 quite sure what that has to do, frankly, with the issues before
 13 me, but I will allow that under the rubric of Rule 702, finding
 14 that his knowledge will assist the trier of fact, that's me, to
 09:49:58 15 understand the evidence and determine a fact in issue.
 16 Whether it's correct or not, what weight it has, can be
 17 determined later, and you can cross-examine on the merits.
 18 Thank you, Mr. Harper.
 19 You may proceed, Mr. Siemietkowski.
 09:50:12 20 MR. SIEMIETKOWSKI: As importantly, Your Honor, am I
 21 clear in understanding that you're also qualifying the witness
 22 as an expert in federal Indian records, absent objection?
 23 THE COURT: Yes, both proffered subjects.
 24 MR. SIEMIETKOWSKI: Thank you.
 09:50:24 25 **DIRECT EXAMINATION**

1 BY MR. SIEMETKOWSKI:
 2 Q. Dr. Angel, I want to start off talking with you about
 3 throughput and your work with throughput data. Now, in a
 4 moment, Dr. Angel, I'm going to ask you how you have gone about
 09:50:37 5 researching throughput data. But I want to first give the judge
 6 a bottom line up front, if you will.
 7 If you had to sum up, in a bottom line up front, what
 8 you have found factually regarding the existence of throughput
 9 data, what would you say?
 09:50:52 10 **A. In general, I would say that Individual Indian Monies were**
 11 **kept on an individual level quite a bit with individual Indian**
 12 **money ledgers, things of that nature. And they were kept at an**
 13 **aggregate level; for example, total IIM, at the end of a fiscal**
 14 **year or a calendar year.**
 09:51:19 15 **I have found some annual receipt and disbursement data**
 16 **for the entire fund, but that's been more the exception than the**
 17 **rule.**
 18 Q. Now, let's talk a little bit about how you came upon that
 19 finding. How long have you worked with Indian records
 09:51:37 20 generally, Dr. Angel?
 21 **A. Generally, since about 1983.**
 22 Q. And how long have you worked as a contractor for Interior?
 23 **A. Since approximately 2001. 2001, 2002.**
 24 Q. In what capacity?
 09:51:51 25 **A. Well, I've been working for the Office of Historical Trust**

1 **Accounting, as a historian.**
 2 Q. How long have you worked as a contractor for the Department
 3 of Justice?
 4 **A. Since 1983.**
 09:52:01 5 Q. And in what capacity?
 6 **A. As a consultant, expert witness.**
 7 Q. And where, Dr. Angel, have you researched Indian records?
 8 **A. I've researched Indian records at a number of places:**
 9 **Largely at National Archives, the various branches, regional**
 09:52:19 10 **branches of the archives through the United States; I've**
 11 **researched at Federal Records Centers through the United States;**
 12 **a number of records repositories, like state historical**
 13 **societies; a number of libraries, including the Department of**
 14 **Interior library, Treasury Library, Library of Congress, General**
 09:52:41 15 **Accounting Office Library.**
 16 Q. Have you physically been to these locations?
 17 **A. Yes, physically I've been to these locations.**
 18 Q. Have you been to the American Indians Records Repository?
 19 **A. Yes, uh-huh.**
 09:52:52 20 Q. What types of Indian records have you researched?
 21 **A. Well, I've researched -- our primary work has been in**
 22 **policy, public policy issues, and history issues. But in**
 23 **addition, I've worked with accountants in an effort to gather**
 24 **records that would either locate or actually physically gather**
 09:53:11 25 **records that would assist them with their accounting efforts.**

1 Q. What I would like to do now, Dr. Angel, is actually show the
 2 Court an example of a throughput record. And I would turn your
 3 attention to page one of Defense Exhibit 72. Do you that have
 4 that on your screen, Dr. Angel?
 09:53:31 5 **A. Yes, I do.**
 6 Q. What is that, if you know?
 7 **A. That's a report by the Office of Survey and Review. That's**
 8 **a part of the Department of the Interior that handled audit**
 9 **operations for the entire department. And they're kind of the**
 09:53:44 10 **predecessor to the Office of Inspector General.**
 11 Q. Where was this record found?
 12 **A. I found this record, if you'll notice at the bottom of the**
 13 **record I've got the source citation. I found it at the office**
 14 **of Trust records, OTR, in Albuquerque. That's the box number,**
 09:54:01 15 **OST box number, and it's in the file labeled "audit report."**
 16 **Now, I gathered those records while they were still in**
 17 **Albuquerque; subsequently they've been moved to the American**
 18 **Indian Records Repository.**
 19 Q. In your experience, Dr. Angel, would this record be
 09:54:17 20 available to counsel for Indians?
 21 **A. As is the case with going to a Federal Records Center, you**
 22 **have to get permission to go to the American Indian Records**
 23 **Repository. But it's been my experience that tribes have used**
 24 **AIRR in the course of their research for the Tribal Trust cases.**
 09:54:35 25 Q. Dr. Angel, now I would like to show you page four of Defense

1 Exhibit 72.
 2 MR. SIEMIETKOWSKI: If we could have that enlarged so
 3 you can read it.
 4 BY MR. SIEMIETKOWSKI:
 09:54:47 5 Q. And what is the significance, if any, of this particular
 6 page?
 7 A. **This is one of the sources that I used for the year-end**
 8 **account balance chart on IIM. Point number three, as you'll see**
 9 **pretty much in the middle of the page, shows that cash on hand**
 09:55:06 10 **and interest-bearing investments totaled \$66.3 million as of**
 11 **September 30th, 1968. That's one of the figures I used on the**
 12 **IIM chart, total IIM chart that I created.**
 13 Q. Dr. Angel, what I would like to do now is show the Court
 14 another example of 1968 throughput data. And I'll ask that you
 09:55:26 15 take a look at page one of Defense Exhibit 71. Do you recognize
 16 that?
 17 A. **Yes, I do. It's a report that I gathered at the Department**
 18 **of Interior library, although it's a hearing so it can be**
 19 **gathered in a number of law libraries, Library of Congress,**
 09:55:43 20 **et cetera. This is hearings before the subcommittee of the**
 21 **House of Representatives looking at Interior Department**
 22 **appropriations. Specifically, I was looking at Bureau of Indian**
 23 **Affairs.**
 24 Q. And then, Dr. Angel, after looking at this page, I ask you
 09:55:59 25 to take a look at page five and draw your attention to the right

1 side of page five of DX-71. Are you able to see that on your
 2 screen, Dr. Angel?
 3 A. **Yes, I am.**
 4 Q. And what if anything is that telling you?
 09:56:11 5 A. **Well, here we have monies invested for both Tribal funds and**
 6 **Individual Indian Monies. You'll see on page 191, the second --**
 7 **thank you. The second column there, Individual Indian Monies in**
 8 **banks, \$36,523,000. Individual Indian Monies in U.S.**
 9 **securities, \$29,820,000-plus. And those were figures that I've**
 09:56:41 10 **also used in my individual Indian money chart.**
 11 **Now, this is dated as of June 30th, 1967.**
 12 MR. HARPER: Your Honor, we would object to the use of
 13 this exhibit, and move to strike the testimony. This is one of
 14 the exhibits that we identified quite awhile ago to the
 09:57:00 15 defendants had missing pages, and those pages have still not
 16 been provided to plaintiffs.
 17 And what we have seen in these old records is that they
 18 have to be read in the proper context. And obviously, we don't
 19 have that context in light of the failure to provide a full
 09:57:21 20 copy.
 21 MR. SIEMIETKOWSKI: Your Honor, may I --
 22 THE COURT: I'm not sure the full copy is any more
 23 accessible to the government than to the Indians at this point.
 24 I don't know if a full copy exists.
 09:57:31 25 I'm going to overrule the objection, and let it in for

1 what it's worth. You can certainly point out any
 2 inconsistencies or omissions in your cross-examination.
 3 BY MR. SIEMIETKOWSKI:
 4 Q. Dr. Angel, now, in this particular page as well as the
 09:57:43 5 previous pages we just showed the Court, do you see any specific
 6 evidence regarding receipts and disbursements as opposed to
 7 year-end balances?
 8 A. **No. What I see is aggregate totals rather than receipts and**
 9 **disbursements.**
 09:57:56 10 Q. Now, what I would like to do is try to demonstrate,
 11 Dr. Angel, for the Court an example of evidence of receipts and
 12 disbursements.
 13 MR. SIEMIETKOWSKI: And if I could have DX-259, please,
 14 and specifically page one.
 09:58:09 15 BY MR. SIEMIETKOWSKI:
 16 Q. What is that, if you know, Dr. Angel?
 17 A. **That's an annual Treasury Department report, the**
 18 **consolidated financial statements of the United States**
 19 **government. This is for 1997.**
 09:58:21 20 Q. And then if we move, Dr. Angel, to page three of DX-259, can
 21 you see that on your screen, Dr. Angel?
 22 A. **Thank you. Yes, I can.**
 23 Q. And what if any significance is this page of this report?
 24 A. **This is a message from the Secretary of the Treasury, at**
 09:58:43 25 **this point Robert Rubin. And he's noting that this report is**

1 **sort of a historic undertaking, as he says in the first**
 2 **paragraph. This is the United States government's first effort**
 3 **to produce an annual statement of both receipts and**
 4 **disbursements.**
 09:59:00 5 Q. And along those lines, I ask you to next take a look at page
 6 four of DX-259. And I draw your attention to the bottom right
 7 of that page. What if anything, Dr. Angel, is that page telling
 8 you?
 9 A. **This is U.S. government as trustee for Indian Trust funds,**
 09:59:22 10 **and they don't separate individual Indian from Tribal in this**
 11 **particular exhibit. It shows receipts and disbursements for the**
 12 **year, and it shows the year-end fund balance.**
 13 Q. And where is this document from, or where is it available,
 14 Dr. Angel?
 09:59:39 15 THE COURT: That's a pretty round number.
 16 THE WITNESS: Yes. Yes. A lot of them are,
 17 Your Honor.
 18 THE COURT: In billions.
 19 THE WITNESS: Yeah, a lot of them are, Your Honor.
 09:59:47 20 A. **This document is from the GAO website. We got it online. I**
 21 **assume it's at other places, as well. We were able to get it**
 22 **simply by going to Google and typing in the title of the report.**
 23 **BY MR. SIEMIETKOWSKI:**
 24 Q. And do you know whether, Dr. Angel, these reports, which
 10:00:04 25 apparently started in 1997, have continued to the present?

1 **A. Yes, they have.**

2 **Q.** Let me then show you the next year's report, Dr. Angel.

3 THE COURT: Just a moment. How many individual

4 Indian -- let me ask Dr. Angel: How many individual Indian

10:00:21 5 accounts do you think are lost in the rounding down to

6 1.0 billion or 1.2 billion?

7 THE WITNESS: I don't know, Your Honor.

8 THE COURT: Okay. Go on.

9 BY MR. SIEMIETKOWSKI:

10:00:31 10 **Q.** DX-260, Dr. Angel, do you recognize this?

11 **A. Yes. It's the following year's Treasury Department report.**

12 **Q.** And turning your attention to the next page. And what is

13 this page showing, if you know, Dr. Angel?

14 **A. This page now for the first time breaks the Trust fund into**

10:00:55 15 **Tribal Trust and Individual Indian Monies. It shows monies,**

16 **receipts and disbursements for 1998; and it shows the year-end**

17 **Trust fund balance.**

18 **Q.** And again --

19 THE COURT: Oh, I take it back. I maligned that

10:01:20 20 report. That was just an executive summary on the first page.

21 MR. SIEMIETKOWSKI: From the Secretary, Your Honor?

22 THE COURT: The single-digit receipts and disbursements

23 was just an executive summary. It is repeated in more detail.

24 Correct? Are we communicating this morning?

10:01:37 25 MR. SIEMIETKOWSKI: I don't know, Your Honor.

1 (OFF THE RECORD.)

2 MR. SIEMIETKOWSKI: Yes, Your Honor, yes. The previous

3 document from 1997 was in summary form. The difference in this

4 document from 1998, as Dr. Angel has testified, is that it not

10:01:54 5 only provides receipts and disbursements, but it breaks it out

6 in Tribal funds versus individual funds.

7 THE COURT: All right. Go ahead, go ahead.

8 BY MR. SIEMIETKOWSKI:

9 **Q.** Dr. Angel, let me move back, if I could, to evidence of

10:02:05 10 year-end balances, as opposed to evidence of receipts and

11 disbursements, what you're looking at now.

12 In your work, have you prepared any summary of the

13 various year-end balance research you've conducted?

14 **A. Yes, I have.**

10:02:19 15 **Q.** And if I could, let me show you DX-94 please, and ask you if

16 you recognize this.

17 **A. Yes, that's a chart that I prepared with assistance from**

18 **other people in my firm, showing total IIM when we could get**

19 **those figures. And when we couldn't get total IIM, the various**

10:02:44 20 **components that made up total IIM. For example, total**

21 **Individual Indian Money in banks, total held as collateral for**

22 **IIM. Quite often, banks would have to provide collateral for**

23 **the amount of IIM that they held. The total invested in federal**

24 **securities, that type of information.**

10:03:02 25 **Q.** And as I ask Matthew to scroll through the rest of the

1 screens for the judge, I'll ask you, Dr. Angel, what sorts of

2 records went into the compilation of this data?

3 **A. We used Bureau of Indian Affairs reports, several of them,**

4 **particularly for the earlier years, annual reports of the**

10:03:24 5 **Commissioner of the Bureau of Indian Affairs. When appropriate,**

6 **we used congressional documents. Quite often IIM was mentioned**

7 **in hearings before the House Committee on Appropriations, like**

8 **the exhibit that we referred to a little bit earlier.**

9 **I've used documents from the Bureau of Indian Affairs**

10:03:44 10 **investment branch, documents from the General Accounting Office,**

11 **documents -- publications from the United States Treasury,**

12 **documents of that nature.**

13 THE COURT: And your sources are all listed in the

14 right-hand column. Is that right?

10:03:58 15 THE WITNESS: That's correct. That's our Morgan Angel

16 document number. That's the document that would back up these

17 figures, sir.

18 THE COURT: Okay.

19 BY MR. SIEMIETKOWSKI:

10:04:05 20 **Q.** And Dr. Angel, why does the chart --

21 THE COURT: Have plaintiffs been provided with these

22 backup documents?

23 MR. SIEMIETKOWSKI: Yes, Your Honor. They're defense

24 exhibits. This is a point of contention which I anticipate

10:04:18 25 plaintiffs to raise later when we move their admission, because

1 for the most part they are in excerpted form, focusing on the

2 throughput data, and not focusing on the other, what we believe

3 is not relevant data. And I will have Dr. Angel address that in

4 his testimony.

10:04:36 5 THE COURT: Proceed.

6 BY MR. SIEMIETKOWSKI:

7 **Q.** Why does the chart stop in 1985, Dr. Angel?

8 **A. We were asked by our client, Department of Justice, just to**

9 **simply stop it in 1985, because that's the beginning of the**

10:04:47 10 **so-called electronic era. I believe the Court has heard about**

11 **IRMS, the Integrated Resource Management System. That's the**

12 **beginning of the so-called electronic era.**

13 **Q.** And when did you actually begin developing the chart,

14 Dr. Angel?

10:05:01 15 **A. About 2000.**

16 **Q.** Now, to be crystal clear, does the chart show receipts and

17 disbursements for these various years?

18 **A. No. It shows, when we can, year-end account balances. And**

19 **it shows year-end account components, as well.**

10:05:16 20 **Q.** Now, let me turn your attention back to the line 1968.

21 **A. Uh-huh.**

22 **Q.** The report pages we showed earlier to the Court were from

23 1968. Now I notice, Dr. Angel, if you take the column in total

24 IIM in banks and the column in invested federal securities, add

10:05:36 25 those two up, it's a slightly higher number than the total IIM

1 number. Why would that be?

2 **A. Well, there's a couple of reasons why that could be. First**

3 **of all, I believe that the number reported to Congress in**

4 **document 231, the House hearing, was as of June 30th, whereas**

10:05:54 5 **the number used by the Office of Survey and Review was dated as**

6 **of September 30th of that year.**

7 **And obviously IIM is fluid, so...**

8 Q. Now let me ask you, Dr. Angel, about your collection of

9 these particular documents that support this chart. How did you

10:06:14 10 become familiar with these supporting documents?

11 **A. Through the course of my research, particularly looking**

12 **at -- starting with the Bureau of Indian Affairs annual reports.**

13 Q. And who are you gathering them for and giving them to,

14 beyond just yourself?

10:06:28 15 **A. Well, the purpose of this was to try to gather as much**

16 **information about total IIM as we could. Initially, we gave**

17 **these to the Department of Justice. Subsequently, as we added,**

18 **as we built the chart, we would supply it both to the Department**

19 **of Justice and the Department of the Interior.**

10:06:45 20 Q. What about any contractors for Interior?

21 **A. Yes. It went to FTI, it went to other groups as well.**

22 Q. Anyone particular at FTI?

23 **A. Well, Michelle Herman was our primary contact -- is our**

24 **primary contact there.**

10:06:59 25 Q. Now, in collecting these documents, Dr. Angel, you've

1 would be necessary to place this data in context, that you did

2 not include in the parts of the reports that you did copy?

3 **A. My belief is no.**

4 Q. Now, let's move back for a second to --

10:08:55 5 THE COURT: Just a second. Dr. Angel, I gather there

6 is some controversy about how complete the documents are that

7 you have produced to support this. But are all these sources

8 capable of being kind of reengineered? I mean, could you go

9 back through and do the archaeology? Could somebody go back and

10:09:18 10 find the complete documents again?

11 THE WITNESS: Definitely. Definitely, Your Honor. We

12 have source citations on it. For example, that Office of Survey

13 and Review audit report, we could find out where that was. The

14 annual reports of the Commissioner of Indian Affairs, probably

10:09:35 15 the single most heavily used source, is at the Department of the

16 Interior library. Congressional hearings are at a number of

17 places. The annual investment reports, we could gather either

18 from Lenexa or the Department of Interior library.

19 THE COURT: So to use the word Mr. Gingold was using

10:09:53 20 yesterday afternoon, this is a replicable study?

21 THE WITNESS: It is indeed.

22 THE COURT: All right. Go ahead.

23 MR. SIEMIETKOWSKI: Thank you, Your Honor.

24 BY MR. SIEMIETKOWSKI:

10:10:00 25 Q. I want to step back from your chart, Dr. Angel, and talk

1 already described for the Court where you found some of them.

2 Did you at all times collect the entire document?

3 **A. No, very rarely. We rarely collected the entire document.**

4 **Commissioner of Indian Affairs reports are typically,**

10:07:18 5 **particularly the early ones, four or five hundred pages long.**

6 **Congressional hearings typically are several hundred pages long.**

7 **We collected for this chart the relevant portions.**

8 **We do note on each of our sources where we got them**

9 **from, minus the fact that they're a congressional hearing, which**

10:07:37 10 **are just widely available.**

11 Q. Now, aside from the burden of copying them, why would you

12 have used certain pages as relevant and other pages as not

13 relevant to throughput data?

14 **A. What we were looking for was that specific information.**

10:07:49 15 **Now, a lot of times what we did is, if there were pages**

16 **discussing the administration of Trust funds, for example in an**

17 **investment report or a congressional hearing, we would also copy**

18 **those pages.**

19 **But otherwise, with roads or something like that, it**

10:08:10 20 **really would not be directly involved with the administration of**

21 **Individual Indian Monies. We wouldn't collect it.**

22 **I might add, just by the way, that we also typically,**

23 **frequently did not collect Tribal data as well. We confined it**

24 **to IIM.**

10:08:32 25 Q. In your research, Dr. Angel, would there be anything that

1 briefly a little bit more about receipts and disbursements data.

2 Now, aside from those Treasury reports which we showed

3 two examples of to the Court, that started in 1997, do you know

4 whether there's any other receipts and disbursements data

10:10:20 5 sprinkled in among earlier years?

6 **A. Yes, sir. We've got a few examples in our exhibits of those**

7 **reports. For example, in 1909, Commissioner of Indian Affairs**

8 **report shows receipts and disbursements. I believe our**

9 **Exhibit 27 shows a few years of that. And we have one report**

10:10:39 10 **dated 1990 that shows receipts and disbursements for the year.**

11 Q. Did you see any consistency in the reporting?

12 **A. No, did not. Did not. We're continuing to look, however.**

13 Q. And in continuing to look, from what you found so far, are

14 there any other potential sources of receipts and disbursement

10:11:00 15 data for earlier years?

16 **A. We're talking about the total fund, correct?**

17 Q. That's correct.

18 **A. Yeah, no, I couldn't find any other total receipt and**

19 **disbursement documents thus far.**

10:11:17 20 Q. Dr. Angel, are you familiar with the term "GAO settlement

21 package"?

22 **A. Yes, I am.**

23 Q. And what are those, if you know?

24 **A. Indian Service Special Disbursing Agents were required to**

10:11:34 25 **submit packages of their financial documents to the General**

1 **Accounting Office regularly, roughly every six months. And**
 2 **these contained financial documents relating to Individual**
 3 **Indian Monies.**
 4 Q. And what years do those records exist for, if you know?
 10:11:50 5 **A. Those records exist primarily for 1922 to 1950 or 1951.**
 6 Q. And how voluminous are they?
 7 **A. They're quite voluminous. There's about 14,000 feet of such**
 8 **records at College Park, Maryland at the National Archives**
 9 **there. About 8,400 feet of these records that cover the period**
 10:12:15 10 **1936 to 1950, '51.**
 11 Q. Being in a NARA facility -- N-A-R-A.
 12 **A. National Archives and Records Administration. It's an**
 13 **abbreviation.**
 14 Q. Being in a NARA facility, Dr. Angel, would those records be
 10:12:34 15 accessible to the public?
 16 **A. Yes.**
 17 Q. What if any, in your experience, data would those GAO
 18 settlement packages contain regarding receipts and
 19 disbursements?
 10:12:44 20 **A. Well, they contain Individual Indian Money data, such as**
 21 **Individual Indian Money account cards, a lot of different types**
 22 **of financial vouchers, collection schedules, financial records**
 23 **of that nature that were central to the receipt and disbursement**
 24 **of Individual Indian Monies. And they're done, by the way, on**
 10:13:09 25 **an agency-by-agency basis.**

1 Q. Meaning, they would take some aggregation or addition --
 2 **A. Correct.**
 3 Q. -- to add up the grand receipts and disbursement numbers?
 4 **A. Correct.**
 10:13:20 5 Q. Dr. Angel, at this point I would like to switch gears and
 6 move from talking about what throughput data exists or doesn't
 7 exist, and discuss with you the availability, the quantity, and
 8 the quality of IIM records.
 9 Now, you've already described for the Court how long
 10:13:41 10 you've worked with Indian records and where you have physically
 11 gone to do your research. Have you prepared any exhibit that
 12 would assist you in explaining to the Court the availability,
 13 quality, and quantity of Indian records?
 14 **A. Yes, Mr. Siemietkowski. I prepared a PowerPoint**
 10:14:01 15 **presentation just showing volume, location, and accessibility of**
 16 **these records.**
 17 Q. At this point I would like to show you, Dr. Angel, Defense
 18 Exhibit 31. What is this, Dr. Angel, if you know?
 19 **A. This is the PowerPoint presentation that I prepared**
 10:14:17 20 **regarding historical records maintained by the United States. I**
 21 **prepared this originally as an exhibit for the 1.5 trial. We**
 22 **went through it at that point. But subsequently I've revised it**
 23 **and updated it.**
 24 Q. Now, I understand, Dr. Angel, this is 16 slides. Would this
 10:14:36 25 assist you in your explanation to the Court?

1 **A. I believe it would.**
 2 Q. I ask you then to take a look at the next slide and use it,
 3 if you would, please, in explaining historical documents and
 4 accounting to the Court.
 10:14:47 5 **A. Okay, what I'm trying to do with this presentation is to**
 6 **address three issues. First of all, where physically are**
 7 **documents located that could be relevant to an historical**
 8 **accounting of Individual Indian Monies; secondly I want to**
 9 **address the volume, the quantity of this documentation; and**
 10:15:05 10 **third, I want to talk about how accessible this documentation**
 11 **is. And when I talk about accessibility, I mean what kind of**
 12 **finding aids would assist any researcher to go from a mass of**
 13 **document -- would narrow down this massive documentation that**
 14 **we're going to be discussing.**
 10:15:25 15 Q. So if you look to the next slide...
 16 **A. As I mentioned, I had prepared this originally as part of**
 17 **the Cobell 1.5 trial. Since that time, two very important**
 18 **issues have arisen, two very important events have arisen**
 19 **concerning Indian Trust accounting records.**
 10:15:46 20 **First of all, there was the termination of the Indian**
 21 **Trust accounting division of the General Services**
 22 **Administration. The Indian Trust accounting division, or ITAD,**
 23 **performed accountings for government cases involving Native**
 24 **American Trust funds. When ITAD was terminated, its records**
 10:16:08 25 **went either to AIRR or to branches of the National Archives.**

1 **The second and more important event, of course, was the**
 2 **establishment of the American Indian Records Repository, which**
 3 **centralized records in one location, provided for boxing records**
 4 **that were in fairly poor holding facilities, and inventoried**
 10:16:33 5 **those records.**
 6 **The major repositories that I'll be discussing are BIA**
 7 **agencies and regional offices, what types of records we can**
 8 **expect to find there. Federal Records Centers; Federal Records**
 9 **Centers are part of the National Archives and Records**
 10:16:55 10 **Administration, and actually, the National Archives itself. And**
 11 **I'll mention briefly AIRR, although I understand that AIRR has**
 12 **already been discussed previously in this trial.**
 13 **The types of records you could expect to find at**
 14 **agencies and regional offices are, generally speaking, financial**
 10:17:17 15 **documents that are of a much more recent nature. Generally, the**
 16 **strength of these will be about the last 10 years or so. They**
 17 **include such records as leases and permits, and such records**
 18 **that would assist in historical accounting as bills of**
 19 **collections, vouchers. Each of these agencies has an IIM**
 10:17:38 20 **records officer. But again, usually these are the more recent**
 21 **Trust fund and Trust asset records.**
 22 Q. What about Federal Records Centers?
 23 **A. Federal Records Centers, as I said, are part of the National**
 24 **Archives and Records Administration system. However, unlike**
 10:17:57 25 **records at the National Archives, these records, records held at**

1 a Federal Records Center, remain in the custody of the agency
2 that produced the records. Therefore, you need permission to
3 look at these records.
4 Bureau of Indian Affairs records at the time of the 1.5
10:18:15 **5 trial were held in a number of Federal Records Centers**
6 throughout the United States. Subsequently, they've been
7 consolidated at the American Indian Records Repositories.
8 Q. Let me interrupt you if I could. And I notice that you have
9 listed several records of potential use in your bottom bullet
10:18:35 **10 there, Dr. Angel. Are all of those specific to individual**
11 Indians? Is that what you mean by that?
12 A. Yes. I'm talking now about records that would contain
13 information useful to an accounting of Individual Indian Monies
14 historically.
10:18:52 **15 MR. HARPER: Objection, Your Honor. He doesn't know**
16 what's useful to an accounting or not useful. He's not an
17 accountant, and he's not qualified to give that opinion. Move
18 to strike.
19 THE COURT: I'm going to allow it. Overruled.
10:19:03 **20 BY MR. SIEMIETKOWSKI:**
21 Q. What about the relevance of MMS and USGS records, Dr. Angel?
22 A. The Minerals Management Service and the U.S. Geological
23 Survey handle both solid minerals and oil and gas on Indian
24 reservations. USGS had this function from 1931 until the
10:19:36 **25 creation of the Minerals Management Service in 1982. These**

1 records are particularly useful to a historical accounting
2 because they show information concerning the production of
3 minerals on Indian reservations, and payment for those
4 resources.
10:19:52 **5 Looking at these records, there are approximately**
6 10,000 cubic feet of Minerals Management Service and USGS
7 records that would be potentially useful for a historical
8 accounting. These are located primarily at the Federal Records
9 Center in Denver, Colorado, and the Federal Records Center in
10:20:14 **10 Ft. Worth, Texas.**
11 Q. Now, what's meant by a finding aid, Dr. Angel?
12 A. Finding aid typically, and certainly in this case, at least
13 for the top two, are --
14 THE COURT: I'm sorry, Mr. Siemietkowski. Let's go
10:20:27 **15 back and crawl over that last couple of questions and answers a**
16 little bit.
17 THE WITNESS: Sure.
18 THE COURT: The records that are now in the custody of
19 MMS, or they may be in a federal records service and MMS has
10:20:43 **20 custody of them, are records that you say reflect the production**
21 of oil and gas and minerals on Indian lands, and payment for
22 them?
23 THE WITNESS: That's correct.
24 THE COURT: So is that where one would find oil and gas
10:21:06 **25 leases?**

1 THE WITNESS: Oil and gas leases typically would be
2 held by the Bureau of Indian Affairs, although some will be held
3 by the Minerals Management Service. Minerals Management Service
4 records go to the lease level, rather than to the allotted
10:21:23 **5 individual Indian level. Does that make sense, sir?**
6 THE COURT: Yes, it does. But I'm trying to figure out
7 what there is at a Federal Records Center under the custody of
8 MMS that might not be at AIRR or in the custody of the BIA.
9 THE WITNESS: Certainly. Records are divided by the
10:21:47 **10 National Archives into record groups. For example, there's one**
11 record group that's devoted to Bureau of Indian Affairs records.
12 That's record group 75.
13 Records of the Minerals Management Service are a
14 different record group. I believe they're 473, records of the
10:22:06 **15 Minerals Management Service.**
16 Treasury Department has its own record group. That's
17 the way archives divides records of the different federal
18 agencies.
19 These records would not be the type of records that
10:22:18 **20 would go to the American Indian Records Repository. What's been**
21 centralized at AIRR, Your Honor, is record group 75, records of
22 the Bureau of Indian Affairs.
23 THE COURT: So what might happen in a typical case is
24 that MMS would collect the money on an oil and gas lease,
10:22:37 **25 collect the money --**

1 THE WITNESS: Correct. Yes, sir.
2 THE COURT: -- and send all the money over to BIA for
3 allotment, or to divide it up among applicable IIMS?
4 THE WITNESS: That's correct, sir.
10:22:50 **5 THE COURT: And MMS doesn't know anything about how**
6 it's to be divided up. All it knows is, it's Indian lands?
7 THE WITNESS: What MMS knows is the lease number, the
8 appropriate lease number. So it does not -- so you're correct,
9 sir. It does not know the individual Indian.
10:23:11 **10 THE COURT: Are there any leases that cover both Indian**
11 lands and private lands?
12 THE WITNESS: A large portion of the leases that I've
13 looked at are called unit agreements, or communitization
14 agreements. These are very large leases that could include
10:23:30 **15 federal lands, U.S. Forest Service lands for example, Indian**
16 lands, state lands, and other lands, private lands, sure.
17 THE COURT: And lurking in the background of this case,
18 although we're not trying it in this particular trial, is the
19 suggestion, or more than the suggestion, that less money was
10:23:53 **20 collected for oil and gas production on Indian lands, for**
21 example, than on other lands.
22 THE WITNESS: I know that -- yeah, I know that's one of
23 the key issues, sir.
24 THE COURT: Where does one do the archaeology to figure
10:24:09 **25 that out? At MMS?**

1 THE WITNESS: That would make the most sense. That
 2 would make the most sense. The office that we work with there
 3 is the Office of Enforcement, and the Office of Enforcement
 4 enforces leases on federal and Indian lands.
 10:24:28 5 THE COURT: Well, is there an office called the Office
 6 of Negotiation and Lease Signing?
 7 THE WITNESS: Not that I know of, sir.
 8 THE COURT: All right, go ahead.
 9 Thinking out loud, Mr. Siemietkowski. Go ahead.
 10:24:42 10 MR. SIEMIETKOWSKI: Pardon me, Your Honor?
 11 THE COURT: I'm thinking out loud. You go ahead.
 12 MR. SIEMIETKOWSKI: Yes, sir.
 13 BY MR. SIEMIETKOWSKI:
 14 Q. And Dr. Angel, I don't want to get bogged down in the next
 10:24:49 15 several slides, but if you could please explain for the Court
 16 what a finding aid is, and through the other slides explain how
 17 you use finding aids.
 18 A. Certainly, Mr. Siemietkowski.
 19 First of all, as Your Honor may have heard, the
 10:25:06 20 160,000 feet of records at the American Indian Records
 21 Repository have been inventoried by a system known as the box
 22 inventory search system. And this is done at a, as I understand
 23 it, I've used the system, but a folder or sometimes even a
 24 document-level basis.
 10:25:19 25 For other Federal Records Centers, we've used two

1 finding aids that are produced by the National Archives and
 2 Records Administration. One is called an 01 list, and I've got
 3 an example of an 01 list in the next slide; and the second is
 4 called the standard form 135. The standard form, SF-135, is a
 10:25:42 5 records transmittal document that shows what kinds of records
 6 are being transferred to the Federal Records Center from the
 7 agency that's transferring the records.
 8 Q. And then what does the next slide show, Dr. Angel?
 9 A. The next slide is one that I used at the Cobell 1.5 trial a
 10:26:01 10 few years ago. And this is an 01 list, one of the things that
 11 we would have traditionally used to try to locate documents.
 12 These are all record group 75, meaning that they're all Bureau
 13 of Indian Affairs. You'll see --
 14 Q. Dr. Angel, let me interrupt. I know you're pointing. If
 10:26:22 15 you would please speak for the record as to which column you're
 16 pointing to.
 17 A. Sorry about that. K shows -- the FRC is K, which is the
 18 Federal Records Center in Kansas City. The record group, the
 19 second column, is record group 75. That's Bureau of Indian
 10:26:38 20 Affairs records. These records are divided into accessions, and
 21 the accession is 7586. That's the second one, and that shows
 22 the fiscal year it was submitted. And then an accession number
 23 assigned by the National Archives.
 24 These records are all held as part of a freeze. You
 10:27:04 25 might see that FRZ-1 column, meaning that you can't destroy

1 these records. Archives are not allowed to destroy them.
 2 "Beginning location" and "Ending location" is simply an internal
 3 way for archives to retrieve the documents, to pull the boxes
 4 back.
 10:27:20 5 But you'll notice the last column, the column entitled
 6 "Series." It's a very, very brief description of what's in
 7 those records. Now, if you go down to -- there's an accession
 8 containing 452 boxes, that's six from the bottom. Can you see
 9 that the subject is "Indian area office files" --
 10:27:54 10 THE COURT: Yeah, I see it. AO files?
 11 THE WITNESS: Yes, that's area office files.
 12 THE COURT: All right.
 13 A. The significance here is that we would have had trouble
 14 determining which files -- we would have had to have gone
 10:28:12 15 through a lot of files prior to the creation of the box
 16 inventory search system, because we would have very limited
 17 information other than the fact that they're area office files.
 18 With the creation of the box inventory search system,
 19 we can actually -- we actually have an inventory on a
 10:28:30 20 folder-by-folder level of what's in those 452 boxes, and it's
 21 searchable by using key words.
 22 So this is the old style, what we had to go through,
 23 and it's been replaced by the BISS.
 24 BY MR. SIEMIETKOWSKI:
 10:28:46 25 Q. And what about the next slide, Dr. Angel? What does that

1 show?
 2 THE COURT: How long did this 01 list, old style, last?
 3 THE WITNESS: It lasted until 2004, 2005, somewhere in
 4 there.
 10:29:00 5 BY MR. SIEMIETKOWSKI:
 6 Q. What about the 10th slide, Dr. Angel?
 7 A. This is actually a records transmittal form signed by
 8 somebody transmitting records belonging -- in the custody of the
 9 Minerals Management Service. This is the type of record that we
 10:29:18 10 would want to look at, because it includes such information,
 11 you'll see in series description, as Indian statements of
 12 accounts, Indian reports of sales and royalties, Indian
 13 collections, forms 9-614.
 14 You'll notice that it's got a location, a way that we
 10:29:39 15 can locate where those boxes are. And the total volume is under
 16 agency box number -- well, you see "Volume, feet: 20. Agency
 17 box numbers 1 through 20."
 18 THE COURT: All right.
 19 A. Again, we need permission to look at these boxes because
 10:29:59 20 they're in a Federal Records Center. This is unlike records at
 21 the National Archives in Washington D.C.
 22 The main building, of course, is pretty much right
 23 across the street from we are, and it's become a second home to
 24 a lot of us at Morgan, Angel & Associates. The national
 10:30:19 25 archives holds records that are open to the public. There's a

**1 total of roughly 67,000 cubic feet of Indian records at the main
 2 archives, and 11 branches, throughout the United States. And
 3 these records are accessible by using a decimal classification
 4 scheme.**

10:30:37 **5 BY MR. SIEMIETKOWSKI:**

6 Q. Now, before we leave this slide, Dr. Angel, just to be
 7 crystal clear for the Court, are all these 67,000 feet relevant
 8 specifically to Individual Indian Monies?

**9 A. No, no. There's -- no, and I certainly don't mean to imply
 10 this, even with the 160,000 feet of records at AIRR. These
 11 records will include health, they'll include law enforcement,
 12 they'll include a number of areas that are not directly relevant
 13 to Individual Indian Monies. They'll include records that are
 14 strictly Tribal in nature, as well. So this is what NARA has in
 15 its universe of documents.**

10:31:20 **16 THE COURT:** Of Indian-related documents?

17 THE WITNESS: Well, please, if I may again, this is
 18 within Bureau of Indian Affairs records. It also holds General
 19 Accounting Office records that are relevant to Indian Affairs.

10:31:35 **20 It also holds some Treasury records, some other even MMS records
 21 that are relevant to Indian Affairs.**

**22 The 67,000 cubic feet I'm referring to here are
 23 strictly record group 75, records of the Bureau of Indian
 24 Affairs.**

10:31:52 **25 BY MR. SIEMIETKOWSKI:**

1 Q. What about your next slide, Dr. Angel? What are these?
**2 A. What these are effectively are the finding aids that I used
 3 prior to engaging in research. There are four major finding
 4 aids that you can use to get into the records, to determine
 5 which of the records that you want to look at.**

10:32:10 **6 This is a National Archives agency list, and this is
 7 part of the finding aids that I was just talking about. The way
 8 to access the records best -- thank you. Actually, if you just
 9 do the top part, I think we can get the -- yeah, if you can
 10 expand that, I would appreciate it. Thank you.**

10:32:33 **11 If I'm interested in doing work, arbitrarily picking
 12 Crow because it's the top left one, and I'm interested in doing
 13 the research between 1907 and 1939, the first thing I tell
 14 National Archives when I filled out a request slip is that I'm
 15 interested in looking at Crow records for that period. This is
 16 taken from the National Archives finding aid, so there's other
 17 pages, obviously. I just wanted to use these as representative.**

10:32:58 **18 MR. SIEMIETKOWSKI:** Next slide, please.

**19 A. The next thing I would like to tell the National Archives is
 20 what specifically I'm looking for. And here's where the decimal
 21 classification scheme comes in. So for example -- please, could
 22 I go down on this a little bit to 224? If I'm interested in
 23 looking at Trust funds relating to the Crow reservation, I would
 24 ask for decimal 224. Being kind of a cautious guy, I would
 25 actually say I wanted everything in the 220 series. But I could**

1 just ask for 24, 224, which deals with Trust funds.

2 THE WITNESS: Can we go to the second side of the page,
3 please? Thank you.

10:33:56

**4 A. You'll see that the 300 series, if I'm interested in leasing
 5 of lands, here's oil and gas leases, approvals, decimal 322.
 6 Other information relating to oil and gas leases.**

**7 Quite often, I try to be in my research as inclusive as
 8 possible. If there are a lot of oil and gas leases, I do
 9 confine myself, but I do try to be as inclusive in my research
 10 as possible.**

10:34:21

11 Another set of records that the --

12 THE COURT: Let me just tie this together. You go over
**13 to the archives, and you tell them you want 224 documents
 14 relating to the Crow from 1909 to 19-whatever-it-is.**

10:34:45

15 THE WITNESS: Sure.

16 THE COURT: And what are you going to get?

17 THE WITNESS: I'm going to get boxes from the National
**18 Archives. I'm going to get these nine-inch Hollinger boxes that
 19 will contain those records. There might be IIM records. There
 20 will be Tribal records in with those records. There might be
 21 account ledgers in there, there might be Individual Indian Money
 22 ledgers, the books, the actual books that show, you know, on an
 23 individual-by-individual basis, receipts and disbursements.
 24 That type of record.**

10:34:57

10:35:17

25 THE COURT: And if you ask for it here in Washington

**1 and that record is in Albuquerque, you'll wait three weeks to
 2 get it?**

3 THE WITNESS: No, sir. You have to go out to --
4 THE COURT: Oh, you have to go to Albuquerque?

10:35:28

5 THE WITNESS: Yeah, yeah, yeah. You have to go to one
6 of the regional branches.

7 THE COURT: All right.

8 BY MR. SIEMIETKOWSKI:

9 Q. What about your next-to-last slide here, Dr. Angel?

10:35:36

10 THE WITNESS: I might add, Your Honor, that if we go
**11 back to -- a couple of slides back to where I talk about my
 12 finding aids. If you go to the www.archives.govresearch_room,
 13 you can find out what's at the various regional archives. So
 14 that would also be one of the first steps I would take. In
 15 other words, I would want to go to -- I can't remember which
 16 regional archives, whether it's Seattle or Denver, for Crow
 17 records. And I would -- you know, I would know whether I would
 18 have to make a research trip to the regional archives to review
 19 those specific records.**

10:35:58

10:35:58

20 BY MR. SIEMIETKOWSKI:

21 Q. And Dr. Angel, at the risk of stating the obvious, are these
22 records held by NARA, in addition to those held at AIRR?

10:36:15

23 A. That's correct.

24 Q. If we can go back to your GAO slide, if you can explain for
25 the Court the GAO records.

10:36:33

1 A. Okay. From 1922 to 1951, the General Accounting Office
 2 routinely received, regularly received every six months or so,
 3 packages from BIA, Indian Service special disbursement agents,
 4 containing financial documents relating to the accounts of
 5 individual Indians. These can be quite voluminous, several
 6 boxes.
 7 For example, for the period from 1936 to 1951, there
 8 are 8,315 boxes of GAO records at NARA that contain these
 9 documents. And they are the types of documents that would be
 10 potentially useful for historical accounting.
 11 Q. Is this what you referred to earlier as settlement packages?
 12 A. Yes. These are called -- in NARA parlance they're called
 13 settled account packages.
 14 Well, the conclusions that I'm drawing as a historian
 15 is that there is a vast body of documents potentially relevant
 16 to an historical accounting of Individual Indian Monies. Since
 17 the beginning of the litigation, efforts have been made to
 18 centralize these records and to inventory these records. We're
 19 talking about a pretty large-scale effort with the records at
 20 the American Indian Records Repository. And the Office of
 21 Historical Trust Accounting is using these records in its effort
 22 to provide an historical accounting to Native American account
 23 holders.
 24 Q. Dr. Angel, before we move to a critique more specifically of
 25 Mr. Homan's and Mr. Fasold's report, I would like to leave your

10:36:56

10:37:18

10:37:38

10:38:00

10:38:18

1 an individual Indian who passed away. This is -- the blacked
 2 out parts obviously are the names, and the amounts are to the
 3 right.
 4 Q. Thank you, Dr. Angel.
 5 Having discussed now, so far in your testimony, the
 6 existence of throughput information, and having discussed with
 7 the Court the availability, quantity, and quality of Trust
 8 records, I would like to move more specifically to the expert
 9 reports of plaintiffs two experts, Mr. Fasold and Mr. Homan.
 10 Let's discuss Mr. Fasold first. Have you read
 11 Mr. Fasold's 2003 report?
 12 A. Yes, I have read it.
 13 Q. Have you read his 2007 report?
 14 A. Yes, I've read both.
 15 Q. What if anything struck you about Mr. Fasold's 2007 expert
 16 report?
 17 A. Mr. Fasold said that he did not update his 2003 report
 18 effectively.
 19 Q. So then, focusing on his 2003 report, what are your views
 20 regarding what he said there?
 21 A. Mr. Fasold was asked to generate a methodology, to develop a
 22 methodology that would show revenues to individual Indians
 23 without relying on Department of Interior records.
 24 Q. Now, in your expert opinion as an historian, what is your
 25 view of that approach?

10:39:56

10:40:18

10:40:28

10:40:46

10:41:06

1 general presentation and make it more concrete for the Court.
 2 And I would like to show you DX-30, if I could, and more
 3 specifically, page five of DX-30.
 4 MR. SIEMIETKOWSKI: If we could have that enlarged a
 5 bit for the witness.
 6 BY MR. SIEMIETKOWSKI:
 7 Q. What is this, if you recognize it, please?
 8 A. This is the type of records that we would find at National
 9 Archives.
 10 THE WITNESS: Matthew, may I see the bottom of the
 11 page, please?
 12 A. We got these records from the National Archives, record
 13 group 75. Here's how we would retrace the document: We've got
 14 the box information, effectively, other information that would
 15 be relevant to this document. These records, I know from
 16 experience, also would have gone to the American Indian Records
 17 Repository.
 18 After "National Archives" you'll see "Washington
 19 National Records Center." That's a Federal Records Center who
 20 sent its records to the American Indian Records Repository. We
 21 could still get at it, though, by accession number and box
 22 number.
 23 Q. And then showing the top part of that page, what is that
 24 showing?
 25 A. This is a disbursement from an individual Indian's account,

10:38:38

10:38:48

10:39:06

10:39:24

10:39:35

1 A. I had a twofold problem with that approach. First of all,
 2 as a historian, I believe in using the historical record. I
 3 believe in using the existing historical documents.
 4 Secondly, some of the research that helped Mr. Fasold
 5 develop his model, as I understand it, actually physically did
 6 use records of the Interior Department. For example, timber
 7 records, Bureau of Indian Affairs timber records were used; USGS
 8 records were used for solids and oil and gas records.
 9 Q. Now, those government records which Mr. Fasold did not rely
 10 upon, as a historian, do you have an opinion about any
 11 regularity they show regarding recordkeeping?
 12 A. We do know that there was a regularity relating to
 13 recordkeeping. We've seen that with the reports that are in my
 14 IIM chart. We know that every six months, from the period 1922
 15 to 1950 or '51, Indian Service Special Disbursing Agents were
 16 sending these financial packages to the General Accounting
 17 Office.
 18 We know the Treasury Department was producing reports
 19 concerning how much money was held by the Treasury on behalf of
 20 individual Indians. So there are regularity to reporting.
 21 Q. And from your perspective as a historian, Dr. Angel, what if
 22 anything does that regularity tell you regarding oversight of
 23 BIA's fund management?
 24 A. Well, there is oversight, obviously. General Accounting
 25 Office is looking at, is reviewing Bureau of Indian Affairs

10:41:24

10:41:47

10:42:11

10:42:33

10:42:54

1 records. Bureau of Indian Affairs personnel when they go to
2 appropriations hearings are talking about the amount of money
3 that is held in IIM. So there is oversight.
4 Q. Now, you say GAO is reviewing. You mean that in the present
10:43:10 **5 sense?**
6 A. I beg your pardon. Did review Individual Indian Monies
7 every six months.
8 Q. Let me move from Mr. Fasold's report, Dr. Angel, and ask you
9 about Mr. Homan's report. Have you read Mr. Homan's 2007
10:43:25 **10 report?**
11 A. Yes, I have.
12 Q. And sir, have you read his 2003 report?
13 A. Yes, I have.
14 Q. Would it be fair to say that Mr. Homan postulates records
10:43:40 **15 are lost, missing, destroyed, or not retrievable?**
16 A. That's correct.
17 Q. And in your opinion as an historian, how do you view that
18 supposition of Mr. Homan's?
19 A. As a historian, placing Mr. Homan in historical context, the
10:43:57 **20 period when he was special trustee, I think that was a fair**
21 comment for him to make in the 1990's. I think everything
22 Mr. Homan would have been reading at that time would have
23 indicated that records were in poor shape, they were hard to
24 retrieve, they were not properly stored, that they weren't easy
10:44:17 **25 to use for accounting purposes from the standpoint of 1996.**

1 Q. So how are things different today?
2 A. Well, again, a lot of the records that were in such poor
3 shape have been inventoried, re-boxed, and are much more useful
4 at the American Indian Records Repository. A lot of the
10:44:39 **5 problems that folks were citing in the 1980's and 1990's**
6 regarding the poor shape of records, the inability to get at
7 these records in a meaningful manner, in a manner that you could
8 actually conduct research, I think that AIRR has solved a lot of
9 those problems.
10:44:58 **10 Q.** Now, in forming your opinion, have you considered some of
11 those negative congressional and GAO reports from the '80s and
12 '90s?
13 A. Yes, I have. I've written about it.
14 Q. Dr. Angel, are you telling the Court that BIA never lost or
10:45:14 **15 destroyed records?**
16 A. No. There was policies in place under records retention
17 schedules by which the Bureau of Indian Affairs did destroy some
18 of its records.
19 Q. Now, since 2003, when you last testified, have you continued
10:45:32 **20 to work with Indian records?**
21 A. Yes, I have.
22 Q. And what if anything have you observed about their quality,
23 quantity, and accessibility since that time?
24 A. It's been -- it's improved, particularly at AIRR. At
10:45:44 **25 National Archives it was always good. At National Archives it**

1 was always fairly easy. AIRR has given us the same effective
2 ability to review these types of records.
3 Q. Since your 2003 testimony, Dr. Angel, have you yourself
4 found any additional Indian records?
10:46:01 **5 A. Yes.**
6 Q. And are you confident that you have found all that you will
7 find?
8 A. No. No indeed.
9 Q. Dr. Angel, is there any way -- you talked about cubic feet.
10:46:18 **10 Is there any way to perhaps quantify that in a layman's distance**
11 term, the amount of Indian records that you believe exist?
12 A. Yes. One of the things I did in my free time, I decided I
13 would try to convert these figures, to see how much these
14 figures converted to in miles. I took 67,000 cubic feet of
10:46:42 **15 records, determined by the National Archives in record group 75;**
16 I added 160,000 feet, that's the amount held in AIRR; I totaled
17 them, I divided by 5,280, and I got approximately 43 miles of
18 records, approximately the distance from here to Baltimore.
19 And again, I'm not saying -- obviously, I'm not saying
10:47:09 **20 all those are records that are relevant to an historical**
21 accounting. But I am saying there's a lot there.
22 MR. SIEMIETKOWSKI: Now, have you actually seen --
23 THE COURT: Do you know who Dorothy Parker was?
24 THE WITNESS: Sure do.
10:47:20 **25 THE COURT:** Calls to mind a famous Dorothy Parker

1 quote, which I think I will not repeat for the record.
2 Go ahead, Mr. Siemietkowski.
3 BY MR. SIEMIETKOWSKI:
4 Q. Dr. Angel, have you seen any of these records being used by
10:47:33 **5 OHTA or its contractors?**
6 A. Yes, I have. I've worked with some of the accountants in
7 gathering these records. I worked in Albuquerque while the LSA
8 project was going on back in 2004. As a matter of fact, about a
9 quarter of my office was there during the course of that LSA
10:47:50 **10 work at the beginning of 2004.**
11 Q. From your experience with the LSA and other projects, would
12 you say that the accountants in some instances are relying upon
13 the records that you have found?
14 A. Yes, but they're also finding these records themselves
10:48:05 **15 through using the box inventory search system and other finding**
16 aids.
17 Q. All right. Dr. Angel, if I could show you Defense Exhibit 1
18 please, briefly. This is a 13-page document. Do you recognize
19 this, Dr. Angel?
10:48:23 **20 A. Yes, it is. It's the report that I submitted to the**
21 Department of Justice on September 14th of this year, my
22 rebuttal report.
23 Q. Is everything contained in that report, Dr. Angel, true and
24 accurate?
10:48:35 **25 A. To the best of my ability.**

1 Q. Is it consistent with your testimony today?

2 A. **I believe it is.**

3 Q. And then finally, Dr. Angel, if you had to sum up, if you

4 would, your expert opinion regarding records for the Court, what

10:48:49 5 would you say?

6 A. **There's a large volume of documentation that's potentially**

7 **useful to an historical accounting. And this volume of**

8 **documentation is accessible using finding aids that have been**

9 **created both by National Archives and as part of the work at the**

10:49:10 10 **American Indian Records Repository.**

11 Q. Thank you, Dr. Angel.

12 MR. SIEMIETKOWSKI: At this time, Your Honor, I would

13 like to move the admission of several of our defense exhibits,

14 beginning with Defense Exhibit 1, which is Dr. Angel's expert

10:49:25 15 report, which is on your screen at this time.

16 THE COURT: Go ahead.

17 MR. SIEMIETKOWSKI: Your Honor, we would like to move

18 the admission of Defense Exhibit 1 for identification into

19 evidence as Defense Exhibit 1.

10:49:39 20 THE COURT: Just list them off.

21 MR. SIEMIETKOWSKI: All right, Your Honor. The second

22 is Defense Exhibit 94, which is Dr. Angel's total IIM chart.

23 Matthew, there's no need to actually put up all these

24 on the screen.

10:49:57 25 THE COURT: No, just give me the numbers. I've made

1 notes as you've gone along.

2 MR. SIEMIETKOWSKI: Yes, sir.

3 THE COURT: 72, 71, 259.

4 MR. SIEMIETKOWSKI: There are additional ones too, Your

10:50:07 5 Honor, which we have not used but I would like to move the

6 admission of: DX-8 through DX-28; DX-32 through DX-79. Those

7 are all the supporting reports which went into the total IIM

8 chart.

9 MR. HARPER: Your Honor, we would object to the

10:50:25 10 admission of these documents. They have neither been

11 authenticated, nor have they -- again, many of them have missing

12 pages.

13 MR. SIEMIETKOWSKI: Your Honor, would you like me to

14 address that or go through the other exhibits?

10:50:40 15 THE COURT: No, I want to go through them one at a

16 time, Mr. Siemietkowski. Let's go.

17 MR. SIEMIETKOWSKI: Okay. DX-259 --

18 THE COURT: Let me see it on the screen.

19 MR. SIEMIETKOWSKI: Okay. DX-259, please, Matthew.

10:50:52 20 THE COURT: I'm talking about these supporting

21 documents.

22 MR. SIEMIETKOWSKI: Okay. DX-8 then, please, Matthew.

23 THE COURT: This is a multiple-page document?

24 MR. SIEMIETKOWSKI: Yes, sir. 37 pages.

10:51:32 25 MR. HARPER: Your Honor, if it would aid the process,

1 we have the specific ones with missing pages that I can give

2 Mr. Siemietkowski, because these are the only ones we object to.

3 THE COURT: Let's deal with those. Which ones are you

4 objecting to?

10:51:45 5 MR. HARPER: Objecting to DX-12.

6 THE COURT: Put up DX-12, please.

7 MR. SIEMIETKOWSKI: Matthew, could you cursor through

8 some of the pages, please, for the Court?

9 Your Honor, would it be helpful if Dr. Angel directed

10:52:26 10 the Court to the specific page from which he drew the data?

11 THE COURT: Yes, it would be. And I'm trying to figure

12 out how he can do that. Does he have before him hard copy?

13 These are all documents that support the throughput estimate.

14 Right?

10:52:39 15 MR. SIEMIETKOWSKI: That is correct, Your Honor.

16 THE COURT: Why don't you give him a hard copy of the

17 throughput estimate so he can figure out which one you're

18 working with.

19 MR. SIEMIETKOWSKI: May I approach the witness, Your

10:52:50 20 Honor?

21 THE COURT: Yes, you may.

22 BY MR. SIEMIETKOWSKI:

23 Q. Dr. Angel, if you could, please, would you please point the

24 Court in DX-12, which particular page in DX-12 contains the

10:53:10 25 throughput data?

1 A. **Let's try page five, please.**

2 Q. It would be helpful, Dr. Angel, perhaps, if that's the right

3 page, if you would explain to the Court how you drew that

4 conclusion from that particular page.

10:54:03 5 A. **Could you scroll through the document, please? Please keep**

6 **going.**

7 MR. SIEMIETKOWSKI: Your Honor, may I approach the

8 witness with a hard copy of the exhibit?

9 THE COURT: Yes, please.

10:54:19 10 THE WITNESS: Thank you.

11 MR. SIEMIETKOWSKI: Before we leave this subject, Your

12 Honor, we do have several responses to plaintiffs' counsel's

13 objections to these particular documents.

14 THE COURT: Tell you what. Mr. Harper, how many of

10:55:29 15 these exhibits are you objecting to?

16 MR. HARPER: Well, Your Honor, the difficulty, if I

17 could just explain -- the difficulty, Your Honor, if I could

18 explain for a moment, is that if you look at this document as an

19 example, which is DX-12.

10:55:46 20 And if we could look at page three of that document,

21 you can see -- and this is the problem that we're having. If

22 you look at that number three, it talks about -- or it talks

23 about information on Indian Trust funds. And page three -- and

24 basically, it goes to page 15, and all they have is one page.

10:56:07 25 So it's impossible for us to sort of see this in the context.

1 I mean, if the government would be willing to produce
 2 these, then we would eliminate our objections, and, if need be,
 3 have Dr. Angel come back, and talk to him about some of the
 4 items that may be on these missing pages.

10:56:29 5 But without that context, we're concerned that it may
 6 have a skewed picture.

7 THE COURT: Have you done your own research to find any
 8 of these documents, to see whether anything important is missing
 9 from any of them?

10:56:42 10 MR. HARPER: We just received these very recently, Your
 11 Honor.

12 THE COURT: How recently?

13 MR. HARPER: A few weeks ago.

14 THE COURT: Where does this document come from,
 10:56:52 15 Dr. Angel?

16 THE WITNESS: This particular document, Your Honor, if
 17 you go to the title page, we've written on the side of the
 18 document where it's from. This is from the Office of the
 19 special trustee in Albuquerque. We've got an OST box number,
 10:57:08 20 we've got the indication that it was loose, not in a file. So
 21 those records, this particular document would be in Lenexa.
 22 THE COURT: Uh-huh. Let's put it on a to-do list for
 23 Lenexa.
 24 MR. SIEMIETKOWSKI: Your Honor, again may I for the
 10:57:29 25 record respond to the objections? Because we have several

1 points we would like to make, if the Court would indulge me in
 2 making them.

3 THE COURT: Go ahead.

4 MR. SIEMIETKOWSKI: First, we had testimony from the
 10:57:42 5 witness regarding why he chose these particular portions of
 6 these documents. He made it clear that none of the missing
 7 information was in any way necessary to place the exhibit within
 8 the context of the excerpted portion which has been on the
 9 Court's screens. That's the standard for Rule of Evidence 106.

10:58:06 10 And there's case law on that subject, albeit from
 11 outside of this circuit, which clearly states that the rule of
 12 completeness which plaintiffs are invoking is not appropriate
 13 here because there's nothing necessary to render what's been
 14 provided to the Court as complete. There's nothing that would
 10:58:31 15 be added from the missing portions of the reports that would
 16 render the documents included misleading in any way for the
 17 Court.
 18 THE COURT: Well, Mr. Siemietkowski, I understand the
 19 legal argument, which is very scholarly. I don't think that
 10:58:53 20 we're dealing with the rule of completeness here. These
 21 documents are not being offered, as I understand it, for --
 22 necessarily for the truth of their contents. These are
 23 documents that are demonstrating the basis of the expert opinion
 24 of the man who is using them to estimate throughput.
 10:59:22 25 Now, the real question of completeness has to do with

1 whether or not the plaintiffs have a reasonable look at what it
 2 is that Dr. Angel and his people actually relied upon, so that
 3 they can effectively cross-examine him.

4 MR. SIEMIETKOWSKI: And that's the practical side, Your
 10:59:45 5 Honor. You mentioned the legal side. The practical side has a
 6 few interesting points, as well.

7 We would note for the Court that three of these reports
 8 relied upon by Dr. Angel in formulating his chart were used in
 9 excerpted form at Trial 1.5 by plaintiffs, the identical
 10:00:04 10 documents. We also note that they have, I think three of these
 11 reports relied upon by the witness in their complete form right
 12 now, because they listed them as their plaintiffs' exhibits for
 13 this current hearing.

14 We also note, as the Court has noted already, that
 11:00:24 15 these documents are equally available, and have been since
 16 September 17th, to plaintiffs' counsel, as they are to us. So
 17 we believe there's a practical side as well as the legal
 18 argument.

19 MR. HARPER: Your Honor, if I may address those points.

11:00:44 20 THE COURT: Yeah -- well, no, I think -- here's what
 21 I'm going to do. It's time for the mid-morning break, and
 22 everybody gets to take a break except Dr. Angel. He has a
 23 homework assignment.

24 Mr. Harper, you're going to give -- you can draw this
 11:01:07 25 sample randomly or pointedly as you choose, three of these

1 exhibits that are being offered as the basis for Dr. Angel's
 2 opinion. Give him three exhibit numbers. And when we come
 3 back -- Dr. Angel will have a chance to look them over, and when
 4 we come back I'm going to ask him to locate the sources of his
 11:01:33 5 estimates within those exhibits. And then we'll pursue this
 6 inquiry after that.

7 We'll be in recess now for, let's give Dr. Angel a
 8 little time. Let's call it 20 whole minutes.

9 MR. SIEMIETKOWSKI: Your Honor, before we leave, may I
 11:01:52 10 clarify what the plaintiffs are objecting to - Defense
 11 Exhibit 1, the expert report, and Defense Exhibit 31, the
 12 PowerPoint slide show - or whether they're just objecting to the
 13 historic documents.

14 THE COURT: No, I understand you to be talking about
 11:02:08 15 the historical documents.

16 MR. HARPER: Yes, Your Honor. We don't have any
 17 objection to either the PowerPoint or the expert report.

18 THE COURT: We'll be in recess for 20 minutes.

19 MR. SIEMIETKOWSKI: Thank you, sir.

11:16:01 20 (Recess taken at 11:00 a.m.)
 21 THE COURT: All right. Let's see. Have you had a
 22 chance to do your homework?
 23 THE WITNESS: Almost. All but one.
 24 THE COURT: Is there some break that you need that we
 11:34:06 25 haven't given you?

1 THE WITNESS: No, Your Honor. I'd like a little more
 2 time to look at it, but that's okay.
 3 THE COURT: We're going to catch it on the fly. Go
 4 ahead, Mr. Siemietkowski.
 11:34:17 5 BY MR. SIEMIETKOWSKI:
 6 Q. Dr. Angel, approximately how much time have you had to look
 7 at the three exhibits which plaintiffs have provided you?
 8 A. **15 minutes or so, 20 minutes or so.**
 9 Q. And recognizing that this is a much different environment
 11:34:30 10 than your typical working environment, what type of time would
 11 you typically take to review these kind of documents in your
 12 work?
 13 A. **Well, I wouldn't be the only one to review them. I would**
 14 **have given them to somebody else to review after I have made --**
 11:34:43 15 **and they have been reviewed by others as well. So it would have**
 16 **been a little bit longer than that.**
 17 Q. All right.
 18 A. **Particularly with one of the documents we'll talk about.**
 19 Q. Now, which documents -- let's identify for the record and
 11:34:57 20 for the judge the three documents which plaintiffs picked from
 21 our list of exhibits to provide to you.
 22 A. **One was Defense Exhibit 40. Defense Exhibit 40 is a report**
 23 **of the Commissioner of Indian Affairs for the year 1926; the**
 24 **second was DX--13, which is annual investment report for fiscal**
 11:35:25 25 **year 1977; and the third, and the one that I'm working with**

1 **right now, is DX--26.**
 2 Q. Dr. Angel, which of these would you like to discuss first?
 3 A. **Okay. The first one is DX--13.**
 4 Q. And what year is that, again?
 11:35:58 5 A. **Which is an Indian Trust fund investment for fiscal year**
 6 **1977. It's an annual report. We got this at the Office of the**
 7 **Special Trustee in Albuquerque, and I've got the box cited.**
 8 **On page 06, under "deposit funds," ISSDA, those are the**
 9 **figures that we used in the investment chart.**
 11:36:33 10 Q. Now, before you leave that, again, which figures went into
 11 the investment chart?
 12 A. **Sure. 65,800,000 is total IIM in banks. You'll see it's in**
 13 **"Time Certificates of Deposit," is the column heading.**
 14 Q. And before we leave that, Dr. Angel, if it's not asking too
 11:37:01 15 much of Matthew to perhaps pull up DX--94 and show for the Court
 16 where those two figures, the 65.8 and the 148, are on the 1977
 17 line of DX--94.
 18 MR. SIEMIETKOWSKI: Thank you, Matthew.
 19 BY MR. SIEMIETKOWSKI:
 11:37:46 20 Q. And Dr. Angel, would you be able to again point the Judge to
 21 how those figures from page six of DX--13 transferred on to your
 22 chart?
 23 A. **Certainly, Mr. Siemietkowski. 1977 is the second from the**
 24 **bottom. Total IIM in banks, that's time certificates of**
 11:38:07 25 **deposit, 65,800,000. That's on page DX--13. U.S. Treasury and**

1 **other government certificates, I've got -- you'll see 148**
 2 **million.**
 3 THE COURT: I see it.
 4 THE WITNESS: That's where I've gotten those figures.
 11:38:31 5 THE COURT: The 148 also comes from DX--13?
 6 THE WITNESS: That's correct, Your Honor, page 06.
 7 THE COURT: Let me see page six again of DX--13.
 8 MR. SIEMIETKOWSKI: It's coming, Your Honor.
 9 THE COURT: Okay. I got it. Thank you.
 11:38:50 10 BY MR. SIEMIETKOWSKI:
 11 Q. Now, Dr. Angel, during the break, plaintiffs informed me
 12 regarding DX--13 that certain pages were missing around the page
 13 six that you're referring to. Can you speak to what pages are
 14 missing from that document, DX--13?
 11:39:21 15 A. **Much of the information that would be missing is Tribal**
 16 **information. Again, we gathered for the most part the specific**
 17 **pages relating to Individual Indian Monies for the purpose of**
 18 **our chart.**
 19 Q. Now, are you able to give the Court an estimate of how many
 11:39:40 20 pages are missing from DX--13?
 21 A. **Well, 36 pages total, according to the table of contents,**
 22 **which is DX--13-04, and we appear to have -- we appear to have**
 23 **21 pages in the exhibit.**
 24 Q. And again, looking at the table of contents --
 11:40:14 25 A. **Uh-huh.**

1 Q. -- can you give the judge an understanding of which pages
 2 substantively are missing, and what type of information is
 3 missing from this particular excerpted report?
 4 A. **For the most part it would be summary Tribal Trust funds.**
 11:40:54 5 **That's the main missing element, I would say.**
 6 Q. And why would you have not included summary of Tribal Trust
 7 funds, Dr. Angel?
 8 A. **Simply because we were asked to get the IIM portion.**
 9 Q. Which of the three exhibits that plaintiffs handed us would
 11:41:13 10 you like to discuss next, Dr. Angel?
 11 A. **This is actually one I'd like to discuss, DX--40, which is**
 12 **an annual report of the Commissioner of Indian Affairs to the**
 13 **Secretary of the Interior for 1926. And this one we actually**
 14 **discussed at the 1.5 trial.**
 11:41:35 15 **If you go to page 02, DX--40-02, you'll see under the**
 16 **heading, "Individual Funds in Banks and in Hands of**
 17 **Superintendents."**
 18 Q. Now, where are you on that page, Dr. Angel, for the benefit
 19 of the Court, please?
 11:41:54 20 A. **Under the heading "Individual," which is at the top of the**
 21 **page, the column entitled, "Funds in Banks and in Hands of**
 22 **Superintendents."**
 23 Q. Is that in the center of the page, roughly?
 24 A. **Pretty much in the center of the page, yeah, yeah.**
 11:42:08 25 Q. As we put the chart together, 1926 was very much an

1 anomaly --

2 THE WITNESS: As you might be able to see, Your Honor.

3 A. And again, I'm going to just refer quickly to the chart.

4 The preceding year, as you can see from this, the total

11:42:24 5 IIM was 56,808,000. The following year, 1926, it drops all the

6 way to 22 million. And that didn't make sense, particularly

7 since the year after that, 1927, which would be represented in

8 DX--41, page two, was 73,905,000. That figure isn't on here.

9 That's the following year.

11:42:50 10 So the question became to us, what happened? What

11 happened in 1926 that would cause such a dramatic drop in IIM

12 held.

13 Well, what we did was we looked at the column -- you'll

14 see this is on an agency-by-agency basis.

11:43:11 15 Q. And where do you see that, Dr. Angel?

16 A. "States and superintendents," the column listed states and

17 superintendents.

18 Q. Would that be the left-hand side?

19 A. Yeah. Sorry, I shouldn't say that that way.

11:43:24 20 So you'll see as you go down, these funds, these

21 figures are broken down on an agency-by-agency basis.

22 Now, during this period of history, the primary source

23 of IIM, of total IIM, came from Oklahoma, largely because of the

24 large mineral resources that were in Oklahoma at this time.

11:43:45 25 Indeed, Osage remains one of the wealthier reservations in the

1 United States.

2 If you go down to Oklahoma, that would be DX--40-03, if

3 you go down to Oklahoma, you'll see they give the total figure

4 as 13,182,949.

11:44:23 5 Q. And again, Doctor --

6 A. That's in the boxed figure.

7 Q. If you would please point the judge where exactly on the

8 page --

9 THE COURT: I see it.

11:44:31 10 MR. SIEMIETKOWSKI: Yes, sir.

11 THE COURT: Five civilized tribes, fifth column,

12 13,182,949.

13 A. That's represented as total for Oklahoma. What it ignores

14 is Osage, which was 16,502,911, it ignores Kiowa, it ignores

11:44:53 15 Quapaw and the other reservations.

16 So what we did was we went through the report and we

17 simply retailed everything to get to the figure that we used

18 for 1926, which is 44,305,529.

19 THE COURT: You mean, the report simply had an

11:45:14 20 inaccurate total?

21 THE WITNESS: That's correct. Exactly, Your Honor.

22 And the inaccurate total can be traced to Oklahoma.

23 THE COURT: All right.

24 BY MR. SIEMIETKOWSKI:

11:45:29 25 Q. Now, Dr. Angel, are you able to tell by DX--40, which we

1 have here, what tables were not included when you made this

2 copy?

3 A. This is where we get to the statistical portion of the

4 Commissioner of Indian Affairs reports, so we would not have

11:45:46 5 included the narrative portion. This table, as is entitled,

6 simply gets to value of individual Indian and Tribal property as

7 of June 30th, 1926. That's the only table we captured.

8 Q. Now, DX--40 is entitled "Report of the Commissioner of

9 Indian Affairs to the Secretary of Interior 1926"?

11:46:08 10 A. Correct.

11 Q. Approximately how many pages would this report typically

12 have included?

13 A. Probably about 100. The earlier ones are about five, six

14 hundred pages.

11:46:17 15 Q. And what type of information would have been included beyond

16 the narrative on the pages that you did not copy?

17 A. Nothing that I felt would relate to this chart.

18 Q. What about, then, Defense Exhibit 26? Is that the last

19 defense exhibit that you were asked to review by plaintiffs

11:46:41 20 during the break?

21 A. That's correct.

22 Q. Is that the one that you began looking at just before the

23 judge retook the bench?

24 A. That's correct.

11:46:55 25 Q. Based on the time you have had to review DX--26, what can

1 you tell the Court about it?

2 A. I haven't had -- I can't match up the funds. And I know

3 that we were able to do so for the chart. The chart's been

4 checked and rechecked, so I'm slightly dismayed, to say the

11:47:17 5 least.

6 Q. Are you able to speak, Dr. Angel, to which pages are not

7 included in DX--26?

8 A. Well, this is a report of the House of Representatives, and

9 we didn't include any of the narrative pages.

11:47:45 10 Q. In this House report from 1953, would you have an idea of

11 approximately how many pages it would have included?

12 A. I don't. I do not.

13 Q. Do you know what information typically would have been on

14 the pages that you did not copy?

11:48:02 15 A. Well, this would have included Native American -- it would

16 have been part of an investigation of the Bureau of Indian

17 Affairs.

18 Q. All right.

19 A. This would have been the time of -- yeah, this would have

11:48:17 20 been an investigation of the Bureau of Indian Affairs.

21 MR. SIEMIETKOWSKI: Your Honor, that's all the

22 questions that I have for Dr. Angel regarding these three

23 exhibits.

24 THE COURT: All right. I think what we've succeeded in

11:48:34 25 doing, probably, is introducing lines of questioning for

1 cross-examination. These documents are being -- are identified
 2 by the witness as documents on which he relied for the numbers
 3 that appear in Defense Exhibit 94, which is the estimate of
 4 throughput from I think 1909 through the end of 1985.
 11:49:16 5 That estimate is an estimate, it's an estimate offered
 6 by a person who's been qualified as an expert. The rules don't
 7 actually require that any of this be in evidence at all, but
 8 it's useful to have it as a record of the case so that both the
 9 basis of the estimate and the cross-examination of the estimate
 11:49:44 10 can be a matter of record for anybody who wants to review it.
 11 I'm going to receive the proffered exhibits in
 12 evidence. There will of course be cross-examination on some or
 13 all of them, and objections will go to the weight, not to the
 14 admissibility of the documents.
 11:50:10 15 MR. SIEMIETKOWSKI: Thank you, Your Honor. May I at
 16 this point move the admission of our other exhibits?
 17 THE COURT: You may.
 18 MR. SIEMIETKOWSKI: We would like to move the admission
 19 of Defense Exhibit 94. That is the total IIM chart itself.
 11:50:22 20 THE COURT: Received.
 21 (DEFENDANT EXHIBIT Number 94 was moved into evidence.)
 22 MR. SIEMIETKOWSKI: We'd like to move the admission of
 23 Defense Exhibits 259 through 268. Those are the consolidated
 24 financial statements from Treasury from 1997 to 2006.
 11:50:39 25 THE COURT: Received.

1 know what that is or what it means.
 2 MR. SIEMIETKOWSKI: That is 4,800 pages, Your Honor, of
 3 historic documents which contain some information regarding
 4 throughput data going back to 1884. It is a rough compilation
 11:52:27 5 which the witness has not reviewed himself. Nonetheless, they
 6 are public records that have been collected in the public
 7 domain.
 8 THE COURT: Why do we need 4,800 pages of documents the
 9 witness has not reviewed in the record?
 11:52:41 10 MR. SIEMIETKOWSKI: Simply as a matter of record, Your
 11 Honor, as further evidence regarding what throughput data does
 12 exist, even if the witness has not examined it.
 13 THE COURT: No. Objection sustained.
 14 MR. SIEMIETKOWSKI: We have no further evidence that we
 11:53:02 15 wish to move the admission of, Your Honor, and I have no further
 16 direct examination of Dr. Angel.
 17 THE COURT: Thank you, sir.
 18 Mr. Harper, you want to cross examine?
 19 MR. HARPER: Thank you, Your Honor.
 11:53:13 20 **CROSS-EXAMINATION**
 21 BY MR. HARPER:
 22 Q. Dr. Angel.
 23 A. **Mr. Harper.**
 24 Q. I wanted to just talk first about the three documents you
 11:53:34 25 reviewed, just to summarize, if I could.

1 (DEFENDANT EXHIBIT Number 259-268 were moved into
 2 evidence.)
 3 MR. SIEMIETKOWSKI: We would like to move the admission
 4 of DX--30. That is the example of that estate distribution
 11:50:50 5 document that Dr. Angel had found.
 6 THE COURT: That one doesn't do much for me. I mean,
 7 I'll receive it, but I don't know quite what it amounts to.
 8 (DEFENDANT EXHIBIT Number 30 was moved into evidence.)
 9 MR. SIEMIETKOWSKI: We would like, Your Honor, to move
 11:51:09 10 the admission of DX--258. Those are Treasury annual reports
 11 from 1949 through 1973.
 12 THE COURT: Received.
 13 (DEFENDANT EXHIBIT Number 258 was moved into evidence.)
 14 MR. SIEMIETKOWSKI: We would like to move the
 11:51:27 15 admission, Your Honor, of DX--243 through DX--257. Those are
 16 the GAO settlement packages which Dr. Angel testified to.
 17 THE COURT: Received.
 18 (DEFENDANT EXHIBIT Number 234-257 were moved into
 19 evidence.)
 11:51:42 20 MR. SIEMIETKOWSKI: And then lastly, Your Honor, we'd
 21 like to move the admission of DX--289. That is a compilation of
 22 Treasury and GSA reports dating back to 1884.
 23 THE COURT: Have we seen that?
 24 MR. SIEMIETKOWSKI: No, sir.
 11:52:05 25 THE COURT: Let me take a look at that. I don't quite

1 The first, Defendant's Exhibit 13. Do you recall that
 2 document?
 3 A. **Excuse me. Yes.**
 4 Q. And that was -- that document, if you look at the page
 11:53:50 5 three, which is the table of contents, it indicates Indian Trust
 6 funds. Correct?
 7 A. **Correct.**
 8 Q. And that section is not included. Correct?
 9 A. **That's correct. You're talking about section two. Correct?**
 11:54:22 10 Q. Information on Indian Trust funds?
 11 A. **Correct.**
 12 Q. Starts on page three, goes to probably page 14 or 15 where
 13 the next section begins. Correct?
 14 A. **Correct. Uh-huh.**
 11:54:32 15 Q. And then Tribal Trust funds begins at 15. Correct?
 16 A. **Correct.**
 17 Q. You said the Tribal Trust wasn't included, but information
 18 on Indian Trust funds, is it your testimony that there was no
 19 discussion of Individual Indian Trust funds or assets or
 11:54:50 20 anything between 3 and 15?
 21 A. **No, my testimony would be that starting on page DX--13-012**
 22 **is what we've copied for the Individual Indian Money portion of**
 23 **the testimony.**
 24 Q. That's not my question, actually.
 11:55:11 25 I'm asking you whether you are certain, as you sit here

1 today, that from page three to page 15, there is no discussion
2 of individual Indian Trust funds?

3 **A. No, there may well be a discussion of the types of**
4 **investments that could be made and things of that nature.**

11:55:28 5 **If I may, again, you know, our purpose was to try to**
6 **get information for the chart, with the acknowledgment that,**
7 **well, that that's exactly what we were doing, trying to get**
8 **information for the chart.**

9 Q. But you would agree as a historian that oftentimes documents
11:55:47 10 have to be read in context. Correct?

11 **A. Oftentimes documents do have to be read in context. You're**
12 **correct.**

13 Q. And if there is material in the document that might go to,
14 say, the accuracy of the information, that would be relevant,

11:56:00 15 wouldn't it?

16 **A. Yes.**

17 Q. Are you familiar with the Merriam report?

18 **A. Yes.**

19 Q. And is that 1928? Did I recall that correctly?

11:56:11 20 **A. I believe so, yes.**

21 Q. And did that report talk about how information from the
22 Department of the Interior, their aggregate information was
23 inaccurate? Do you recall that?

11:56:26 24 **A. It questioned the statistical accuracy of the Department of**
25 **the Interior, Bureau of Indian Affairs.**

1 Q. And DX--26 is the third one you reviewed, and that one, the
2 numbers don't add up as you sit here today. Correct?

3 **A. As I sit here today. I would like a little bit more time**
4 **with it.**

11:57:55 5 Q. And so -- okay. Thank you.

6 I would like to talk for a moment, if we could, about
7 DX--94. Do you recall testifying regarding DX--94? It's the
8 chart you prepared, I believe.

9 **A. Oh, uh-huh. The total IIM chart, correct.**

11:58:18 10 Q. Now, when they say "total IIM chart," those numbers reflect
11 balances. Correct?

12 **A. For the most part, those reflect year-end account balances,**
13 **correct.**

14 Q. Okay. So that's not really what went through the accounts
11:58:35 15 in that given year; it's not throughput, it's just a snapshot of
16 the balance at a given time. Correct?

17 **A. Correct.**

18 Q. And you understand that that's fundamentally different, that
19 if you have a balance -- you could have, say, \$1,000 balance in
11:58:53 20 an account at any given time, and that doesn't mean \$200,000
21 didn't go through that account. Correct?

22 **A. That's correct, yeah. And that's actually what I've been**
23 **trying to testify to. These are year-end account balances, this**
11:59:11 24 **is not throughput. This isn't starting date receipts,**
25 **disbursement, you know, this is a year-end account balance.**

1 Q. But indeed it did list, it did list out the aggregate
2 numbers. Correct? It did talk about the aggregate numbers?

3 **A. That I don't recall, Mr. Harper. That I don't recall.**

4 Q. We'll have an opportunity to look at that closer.

11:56:43 5 So DX--13, you said that's at OST. You received that
6 from OST. Correct?

7 **A. That's correct. Picked it up in Albuquerque.**

8 Q. And as we saw, it had Indian Trust funds, that part was not
9 included?

11:56:53 10 **A. Correct.**

11 Q. And when you reviewed it, you noticed that the calculations
12 were in error. Correct?

13 **A. Oh, I'm sorry. Which one are we on now?**

14 Q. DX--13. Did I read that correctly?

11:57:07 15 **A. I don't believe we're talking about DX--13 in that context,**
16 **Mr. Harper. I think the calculations that I've referred to as**
17 **being incorrect - pardon me - was the annual report for 1926,**
18 **which is DX--40. That's the Oklahoma one. Is that the one**
19 **you're talking about?**

11:57:27 20 Q. So the first one, it leaves out Indian Trust funds, DX--13.
21 It's DX--40 that is in error because it leaves out Oklahoma.
22 Right? Or Osage?

23 **A. Yeah, essentially.**

24 Q. Okay.

11:57:43 25 **A. More than Osage, but you're on the right track. So, yeah.**

1 Q. So this doesn't deal with collections, for example?

2 **A. No. No, it does not.**

3 Q. And it doesn't deal with disbursements?

4 **A. It does not. That's correct.**

11:59:24 5 Q. What went in and what went out?

6 **A. That's correct.**

7 Q. It doesn't address those issues?

8 **A. That's correct.**

9 Q. And that's what you would think of as throughput. Correct?

11:59:30 10 **A. That's correct.**

11 Q. I have -- well, you also testified, I believe, regarding the
12 IRMS system. Do you recall that testimony?

13 **A. I believe I said we had been asked to stop our chart in 1985**
14 **by the Department of Justice because that was the beginning of**
12:00:09 15 **the IRMS era, the electronic era.**

16 Q. Okay. So my question for you is, is it your understanding
17 that IRMS was put in place in 1985?

18 **A. It was put in place at different places at different times,**
19 **different agencies at different times. In other words, it**

12:00:27 20 **didn't come online everywhere in 1985, is my understanding of**
21 **IRMS.**

22 Q. But your understanding of IRMS is that they began
23 implementing it, if you will, from 1985. Is that a fair
24 statement?

12:00:40 25 **A. Roughly speaking, yes. But not totally for every Indian**

1 agency, as long as we're agreed with that.

2 Q. Sure.

3 A. Yeah.

4 Q. What I'm saying is they began implementing it -- your belief

12:00:51 **5** is that they began implementing it in 1985?

6 A. Uh-huh.

7 Q. And it got rolled out into various agencies and they

8 completed it sometime later, maybe, I think it's around the

9 1990's. Does that sound right to you?

12:01:02 **10 A. You know, Mr. Harper, I really didn't testify to that. What**

11 I testified to just during my examination was that we were asked

12 to stop in 1985. Why? Because that was the beginning of the

13 electronic era. But that was not a decision that I had made.

14 Q. But prior to 1985 -- let's put it this way, prior to 1985,

12:01:29 **15** it's your understanding that they had not had an Integrated

16 Resource Management System. Is that a fair statement?

17 A. No, it isn't. Because I believe that it started at

18 different times at different places. I believe it may have

19 started earlier than that at some agencies, and later than '85

12:01:45 **20 at other agencies.**

21 You know, that's my memory of the situation with IRMS.

22 And just to reiterate, it didn't go online -- you know,

23 it wasn't like January 1st, 1985, you know, they threw the

24 switch, basically.

12:02:00 **25 Q.** Sure. It didn't sort of one day there was no Integrated

1 that there's two footnotes. There is Morgan Angel & Associates

2 for one; and two, estimates based on Morgan Angel's data from

3 other years. Do you see that?

4 A. Yes.

12:03:36 **5 Q.** Are you familiar with this chart?

6 A. Yes, I am.

7 Q. And you will see from beginning around 1929 to 1954, you see

8 how they're all sort of rounded numbers?

9 A. That's correct.

12:03:51 **10 Q.** And do you know why -- and they have a 2 next to them.

11 A. Yeah. I believe that Dr. Scheuren made estimates on that.

12 Now, my exhibit where I do the IIM chart is the most recent

13 version of it. You know, as we picked up other years, we've

14 included it on the chart.

12:04:11 **15 I guess I don't remember specifically what years we had**

16 when Dr. Scheuren got the chart. But I know that he did make

17 estimates, he did make estimates on this for the years I didn't

18 have figures.

19 Q. So when he says, "estimates based on Morgan Angel's data,"

12:04:35 **20** those are his estimates, not yours?

21 A. That's correct.

22 Q. As you sit here today, do you have any idea how he

23 calculated these round number estimates?

24 A. I do not.

12:04:44 **25 Q.** You would agree that there's still aggregate numbers for

1 Resource Management System, you flip the switch and the next day

2 there was?

3 A. Correct, Mr. Harper. That's my belief. That's my

4 understanding.

12:02:10 **5 Q.** But your understanding is that it was basically implemented

6 or began to be implemented in the 1980's. Is that a fair

7 statement?

8 A. Yeah. Yes, sir.

9 Q. Dr. Angel, I would like to turn your attention to an item in

12:02:28 **10** the administrative record.

11 MR. HARPER: It is AR-602701.

12 BY MR. HARPER:

13 Q. It will be up in a moment.

14 A. Okay.

12:02:43 **15 MR. HARPER: Thanks.**

16 BY MR. HARPER:

17 Q. And as you can see, this is a report from NORC, and it's

18 called, and I can read the title, "Statistical Estimate of

19 Receipts Credited to IIM Trust Funds." Do you see that?

12:03:05 **20 A. Yes. Dr. Scheuren.**

21 Q. And do you know Dr. Scheuren?

22 A. Yes, I do.

23 Q. And I would like to turn your attention, if I could, to 005

24 of that document.

12:03:18 **25** And if we can go down to the footnote area, you can see

1 various years even just with balances, not considering

2 throughput, just for balances where you don't have the aggregate

3 number. Is that a fair statement?

4 A. That's a fair statement, yes.

12:04:58 **5 Q.** And some of those years are years in which there was even

6 some oversight over the Department of the Interior, and still

7 there's no global numbers, aggregate numbers. Is that a fair

8 statement?

9 A. That we could find. Obviously one of the things I would

12:05:16 **10 like to emphasize is we have continued on since this, and we are**

11 continuing on, but thus far, we haven't found every year

12 aggregate numbers.

13 Q. In fact, there's a number of years that you don't have a lot

14 of information. You're kind of pulling things together from

12:05:31 **15** various sources?

16 A. That's a fair statement, yes.

17 Q. And that's your sort of best guess at this time. Is that a

18 fair statement?

19 A. Please tell me what my best guess is.

12:05:39 **20 Q.** Those numbers that were in your chart, those are sort of

21 your best estimates at this time of balances, not throughput.

22 Fair statement?

23 A. Well, but you're saying estimate, but we're actually using

24 real numbers. That's the only thing that's troubling me with

12:05:53 **25 that statement. Otherwise you're correct. We don't have**

1 aggregate numbers for many years. Where we can get other
2 numbers that fill in the piece of the puzzle, so to speak, like
3 money in banks, we've used those minus the aggregate figure.
4 **Am I stating fairly what you're asking?**
12:06:10 **5** Q. No, that's fair. Let me ask it a little differently.
6 The estimates that you include there -- you've had
7 estimates at certain times that changed over time. Correct?
8 Because you get different information. Is that a fair
9 statement?
12:06:25 **10** A. **The only thing I'm objecting to is the word "estimate."**
11 **We're using documents to cite to specific figures. I haven't**
12 **made any estimates.**
13 **Now, as I hear you saying estimates, immediately what**
14 **I'm thinking of is the period on Dr. Scheuren's chart where he**
12:06:45 **15** **has these estimates from 1929 down. Okay? And I haven't made**
16 **estimates like that.**
17 Q. Okay. Let me change the question. The numbers reflected in
18 your chart, there are times where you have certain numbers in
19 earlier charts, in earlier time periods, where you reflect one
12:07:05 **20** number, and then you learn more information and you reflect a
21 different number. Is that a fair statement?
22 A. **That's a fair statement, yes.**
23 Q. So based on what information you find, those numbers can
24 fluctuate. Fair?
12:07:16 **25** A. **Yes.**

1 Q. With respect to -- last question with respect to the
2 difference between throughput and balance.
3 A. **Uh-huh.**
4 Q. Can you estimate -- have you gone through the exercise of
12:07:37 **5** estimating throughput based on balances?
6 A. **Oh, no. No, I have not.**
7 Q. And that would not be something you would want to do.
8 Correct?
9 A. **You're correct, that is not something I would do.**
12:07:46 **10** Q. I mean, as a historian, that just doesn't make a lot of
11 sense. Correct?
12 A. **I don't believe I would have the capacity to do something**
13 **like that. What I provided NORC in this chart was year-end**
14 **account balances, and that's what I've continued to provide.**
12:08:15 **15** Q. Dr. Angel, do you recall testifying regarding MMS during
16 your direct testimony, mineral management service?
17 A. **Correct. I did. Records of the Minerals Management**
18 **Service, yes.**
19 Q. You talked about how some may be available. Correct?
12:08:31 **20** A. **That's correct.**
21 Q. When did the Minerals Management Service first begin?
22 A. **1982.**
23 Q. Okay. So the records there would be from '82 forward, if
24 any?
12:08:41 **25** A. **I'm sorry, Mr. Harper. Just so we're correct about this,**

1 when it began in 1982, it assumed the old conservation division
2 of the USGS and it assumed the records of the conservation
3 division as well.
4 **So even those these are -- and I don't want to get too**
12:09:00 **5** **detailed on this. Even though these are USGS records, they're**
6 **records of the Minerals Management Service, they're in record**
7 **group 73, so they will go back to the '30's, for example. These**
8 **records will go back to the '30's.**
9 Q. And is it your understanding that USGS regularly destroyed
12:09:21 **10** records and failed to retain records based on certain schedules?
11 Is that your understanding?
12 A. **I've not looked at the USGS schedules. I haven't looked at**
13 **their record retention schedules.**
14 Q. So you don't know whether and to what extent USGS may have
12:09:38 **15** destroyed records important for oil and gas production in years
16 prior to 1982. Is that a fair statement?
17 A. **That's a fair statement.**
18 Q. You also talked about -- I think you testified, and I may
19 not get this exactly correct so I'm going to ask you whether I
12:10:02 **20** did or I didn't. You testified something regarding how
21 production of MMS from Indian lands was checked or something of
22 that nature. Do you recall that testimony?
23 A. **I'm sorry, I don't.**
24 Q. Maybe I misheard that. I thought you said that the
12:10:21 **25** production of oil and gas from Indian lands was somehow checked

1 by MMS, the amounts collected and things of that nature.
2 MR. SIEMIETKOWSKI: Objection, Your Honor,
3 mischaracterizes prior testimony.
4 THE COURT: Well, he's trying to --
12:10:38 **5** THE WITNESS: Mr. Harper, I truly don't know where
6 you're going with this. I don't remember exactly what you're
7 talking about at this stage.
8 BY MR. HARPER:
9 Q. Okay. So you don't recall testifying -- if you had
12:10:48 **10** testified -- I mean, so to your knowledge, you don't know one
11 way or the other -- you're not an expert on the MMS and how it
12 checks or doesn't check production on Indian lands. Is that a
13 fair statement?
14 A. **Well, it's a little bit overly broad. I know that they use**
12:11:08 **15** **forms to record it, but is that what you're getting at? I know**
16 **that they use, for example, a form 361 or a 2014, which are**
17 **royalty payment forms, stuff like that. But is that what you're**
18 **asking me, or are you asking me something other than that?**
19 Q. I'll move on, because it may have been just a
12:11:26 **20** misunderstanding.
21 Do you recall testifying and talking, Dr. Angel, about
22 the GAO settlement of accounts?
23 A. **That's correct.**
24 Q. Or alleged settlement of accounts, I should say.
12:11:45 **25** A. **I actually -- to science up the issue, I kept using the word**

1 "review" whenever I could.

2 Q. Are you aware that there has been a summary judgment in this

3 case?

4 A. Yes, I am.

12:11:57 5 MR. SIEMIETKOWSKI: Objection, Your Honor. Relevance

6 and beyond the scope.

7 MR. HARPER: Your Honor, they put forward settlement

8 packages regarding the GAO.

9 THE COURT: Overruled.

12:12:03 10 BY MR. HARPER:

11 Q. So you're aware of that?

12 A. Correct.

13 Q. And are you aware of what that summary judgment held?

14 A. Generally, yes.

12:12:15 15 Q. And what is your understanding?

16 A. My understanding was that these were not settled by the

17 General Accounting Office.

18 But my testimony, if I may continue, went to the

19 documentation that was in those packages. And when I spoke of

12:12:33 20 the packages, again, in order to avoid this issue, I talked

21 about them as that's archives parlance for this set of records,

22 settled account packages.

23 Q. And so your testimony limited it to the notion that there

24 are some settlement packages and they may have information

12:12:55 25 potentially relevant, and that's it?

1 BY MR. HARPER:

2 Q. Do you recognize this document? I'll read the title. It's

3 "Interior Defendant's Notice of Filing of Expert Report of

4 Edward Angel." This is from 2003, when you testified in 2003.

12:15:18 5 A. Yes, I do.

6 Q. Do you recall that testimony?

7 A. The report now?

8 Q. Well, do you recall the report, yeah?

9 A. Sure. Yes, I do.

12:15:25 10 Q. And if I can first turn your attention to Bates stamp 004 of

11 that document, and if we can look down where it says "expert

12 witness reports authored."

13 A. Yes.

14 Q. And you talked a little bit earlier today about how you have

12:15:48 15 some clients that are both the United States, but also other

16 clients and some tribes, indeed. Right?

17 A. That's correct.

18 Q. At this point in time, you hadn't had any of those Tribal

19 clients, though. Correct?

12:16:01 20 A. That's incorrect. We've had Tribal clients for quite some

21 time.

22 Q. Okay.

23 A. We've had Tribal clients for quite some time. At this point

24 in time, we were heavily involved with the Nipmuc tribe, we were

12:16:13 25 heavily involved with a couple of tribes including Lower Brule

1 A. No, it is not. They do have relevant information. My

2 testimony was that there was a great deal of documentation that

3 the Indian Service Special Disbursing Agent, the ISSDA,

4 submitted as part of these regular reviews to the GAO.

12:13:12 5 The documents that are in those exhibits are very

6 extensive in that regard. So I'm just talking about

7 documentation now, Mr. Harper.

8 Q. You're saying that the GAO packages have information that

9 may be relevant -- you're not saying every piece of information

12:13:35 10 in the GAO settlements is relevant to historical accounting, are

11 you?

12 A. That's correct, I'm not saying that every piece of paper is

13 relevant.

14 Q. So it has some information that is relevant. That's what

12:13:47 15 you're testifying?

16 A. That's correct.

17 Q. Was it your testimony that the GAO audited the accounts

18 during that time period?

19 A. It's my belief they did. I know that that's not the -- that

12:14:10 20 doesn't reflect the Court's opinion, but it's my belief that

21 they did.

22 Q. Dr. Angel, I would like to turn to another subject area, if

23 I could.

24 MR. HARPER: If we could have up AR-12401, the title

12:15:03 25 page.

1 Sioux, for which we've worked for a very long time, for whom I

2 should say we've worked for a rather long time.

3 Q. In the "expert witness reports authored" section on that

4 page, any of those, did you write those on behalf of tribes?

12:16:34 5 A. No.

6 Q. Those are all on behalf of the United States?

7 A. No. History of Land and Water was for the Salt River

8 Project in Arizona.

9 Q. And tribes were on the other side of that project, correct?

12:16:48 10 The Salt River Pima-Maricopa?

11 A. That's correct. Actually -- yes. Sure.

12 Q. But the rest of them, these were on behalf of the United

13 States?

14 A. Yes.

12:17:00 15 Q. Including at the bottom, reforestation, administrative fees

16 and the Quinault Indian reservation, do you see that?

17 A. That's correct, yeah.

18 Q. Did that discuss administrative fees that were charged

19 regarding timber production on Indian lands?

12:17:19 20 A. That's correct. Timber production on Indian lands, people

21 paid an administrative fee for. I don't know whether that was

22 allotted lands or Tribal lands, although I do know, of course,

23 on Quinault, most of the land was allotted.

24 Q. And there were administrative fees paid for production of

12:17:38 25 timber. Correct?

1 A. **There were administrative fees paid.**
 2 Q. I want to now turn your attention, if I could, to page 013
 3 of that document.
 4 A. **Mr. Harper, are you going to be asking me a lot of questions**
 12:18:08 5 **about the document? If so, I'd like to ask permission to have a**
 6 **hard copy of it. Is that all right?**
 7 Q. Sure.
 8 A. **May I get a hard copy of my 1.5 report, please?**
 9 MR. HARPER: Your Honor, maybe we'll take this one
 12:18:27 10 after the luncheon. I can turn to something else at this point.
 11 THE COURT: You're going to go past lunch with this
 12 witness, Mr. Harper?
 13 MR. HARPER: Your Honor, I do have a number of
 14 questions regarding his many reports.
 12:18:38 15 THE COURT: We'll take it after lunch. Meanwhile,
 16 we'll see what box search technology will find the hard copy
 17 over there.
 18 A. **Mr. Harper, how many questions do you have there for me for**
 19 **that report?**
 12:18:50 20 **BY MR. HARPER:**
 21 Q. Well, I just have a couple more. Maybe I can run them by
 22 you a little bit, and then if we have difficulty...
 23 A. **Okay.**
 24 Q. If we can turn to page, again, 013 of that report. And do
 12:19:04 25 you see that one talks about a look at management of Individual

1 **handling of IIM were decreasing and that the system was**
 2 **effective." So Cato Sells is saying there are fewer complaints**
 3 **and the system was working.**
 4 Q. And do you recall testifying in Trial 1.5 that in actuality,
 12:20:53 5 what you meant by that was not that it was effective in managing
 6 IIM funds, but it was effective in assimilating Indians? Do you
 7 recall that testimony?
 8 A. **I do not, Mr. Harper.**
 9 Q. Okay. Do you recall testifying about the 1915 report?
 12:21:17 10 MR. HARPER: And we can bring that up and show that to
 11 you. Plaintiffs' Exhibit 681.
 12 BY MR. HARPER:
 13 Q. I know that you have reports that have talked about this
 14 report. Correct?
 12:21:46 15 A. **That's correct. Yes.**
 16 Q. So you recognize this report?
 17 A. **I do.**
 18 Q. And this is essentially contemporaneous, if we can focus on
 19 the bottom, it says 1915, you'll see. Correct?
 12:21:56 20 A. **That's correct, yeah.**
 21 Q. And this is essentially contemporaneous with the report, the
 22 commissioner's report from Cato --
 23 A. **Sells.**
 24 Q. Correct? In essence?
 12:22:10 25 A. **Well, 1915, 1916, if I'm reading this correctly, yeah.**

1 Indian Money accounts from the perspective of the appropriations
 2 process? Do you see that?
 3 A. **That's correct, yes.**
 4 Q. And if you turn to the second page, "major findings"
 12:19:19 5 section, it says --
 6 MR. HARPER: And if we can go up to the top of that
 7 page.
 8 BY MR. HARPER:
 9 Q. The first three sentences to, "was effective." If you could
 12:19:29 10 just read those to yourself, from "annual" to footnote two.
 11 A. **I see it.**
 12 Q. And when you say here the system was effective, the last
 13 part there, that he pointed out that complaints against the
 14 BIA's handling of IIM were decreasing and that the system was
 12:20:03 15 effective. Do you see that?
 16 A. **Yes, I do.**
 17 Q. Was effective at what?
 18 A. **Well, this is Commissioner Cato Sells speaking, and he's**
 19 **saying the system overall was working. Again, I'd like to see**
 12:20:19 20 **the document associated with it, but as I'm reading it right**
 21 **here, this was my report, it was a review of my former partner,**
 22 **who has subsequently retired quite awhile ago now.**
 23 **But as I'm reading this, I'm saying, "although**
 24 **Commissioner Cato Sells expressed concern over difficulties in**
 12:20:36 25 **IIM accounting, he pointed out the complaints against the BIA's**

1 Q. So about the same period of time?
 2 A. **Roughly.**
 3 Q. And you just testified that Commissioner Sells thought that
 4 the systems were effective. Correct?
 12:22:26 5 A. **He said complaints were decreasing, and yeah, and the system**
 6 **was effective, yes.**
 7 Q. But in actuality, that was not the case. Correct?
 8 A. **There were problems. Some of the problems addressed by this**
 9 **report, the Bureau of Indian Affairs attempted to handle by**
 12:22:43 10 **implementing new accounting procedures. But there were**
 11 **problems.**
 12 Q. And those accounting procedures -- we'll talk about those in
 13 a moment, but those accounting procedures ultimately were also
 14 criticized in the '20's, and among other places, the Merriam
 12:23:00 15 report of 1928. Correct?
 16 A. **That's correct.**
 17 Q. So let's look at this document if we could.
 18 MR. SIEMIETKOWSKI: Objection. I believe this is
 19 beyond the scope of our direct examination.
 12:23:12 20 MR. HARPER: Your Honor, first of all, the witness has
 21 filed a number of reports for this Court, and this is from his
 22 2003 expert report, and he makes a claim about how systems were
 23 effective. And I'm trying to discuss with the witness how he
 24 could -- why that is, when a contemporaneous report suggests
 12:23:37 25 exactly the opposite.

1 THE COURT: Well, if I let you proceed with this, which
 2 I'm going to for a little while, it's not because the witness
 3 said the systems were effective. The witness' partner in an
 4 earlier report quoted a statement by somebody named Sells that
 12:23:56 5 the systems were effective. I don't hear this witness
 6 sponsoring them or accepting them or repeating them.
 7 But you're entitled to reasonable cross-examination of
 8 an expert witness, and I'm going to let you go. Scope is not my
 9 issue so much as time, Mr. Harper. But I will let you proceed
 12:24:20 10 for a reasonable period of time with this line of questioning.
 11 MR. HARPER: Thank you, Your Honor.
 12 THE COURT: But let's not get confused about what he
 13 testified about and what Mr. Sells said in 1915.
 14 MR. HARPER: And that's a fair point, Your Honor. The
 12:24:39 15 only point I was making is that this 1915 report is not
 16 mentioned in his expert report; however, nor is any caveats
 17 about how the statements in his expert report should be taken
 18 into some context. He just says that -- quotes Commissioner
 19 Sells. And we can put that up, and that was the only point of
 12:25:01 20 why I think it's relevant to this witness.
 21 THE COURT: Well, that may be why he wants the whole
 22 report, to see if you selectively quoted from the report.
 23 But proceed, Mr. Harper. Let's see where we're going.
 24 MR. HARPER: Thank you, Your Honor.
 12:25:15 25 If we can turn to the third page on this report.

1 THE COURT: On the Congressional report?
 2 MR. HARPER: Excuse me, on the Congressional report,
 3 which is Plaintiffs' Exhibit 681.
 4 BY MR. HARPER:
 12:25:32 5 Q. And down on the bottom, Dr. Angel, if we could focus on that
 6 last paragraph, "Conditions Adverse to Good Administration." Do
 7 you see that, Dr. Angel?
 8 A. I do.
 9 Q. I'm just going to read into the record part of this,
 12:25:45 10 beginning, "in no other relations."
 11 "In no other relations are the agents of the Government
 12 under conditions more adverse to efficient administration. The
 13 influence which makes for infidelity to trusteeship, the
 14 subversion of properties and funds, and violations of physical
 12:26:02 15 and moral welfare have been powerful. The opportunities and
 16 inducements to speculation are much greater than those which have
 17 operated with ruinous effect on other branches of public
 18 service, and on the trustees and officers of our great private
 19 corporations."
 12:26:19 20 THE COURT: They don't write like that anymore,
 21 Mr. Harper.
 22 MR. HARPER: That's true.
 23 THE COURT: That's English.
 24 MR. HARPER: And if we can turn the page to the next
 12:26:32 25 page.

1 BY MR. HARPER:
 2 Q. And you can see where it says, Dr. Angel, Government -- I'm
 3 going to read a little bit more and then I'm going to ask you a
 4 couple of questions. "Government machinery inadequate," on the
 12:26:45 5 top there.
 6 "In the first place, the machinery of government has
 7 not been adapted for purpose of administering Trusts. In the
 8 second place, there has been little sympathy or favorable
 9 opinion to demand an effective business machine be developed.
 12:26:58 10 In fact, the public opinion, which has dominated the Government,
 11 has been either hostile or passively indulgent of abuse. This
 12 is one side of the picture."
 13 "On the other side, behind the sham protection, which
 14 operates largely as blind to publicity, have been at all times
 12:27:18 15 great wealth in the form of Indian funds to be subverted,
 16 valuable lands, mines, oil fields, and other natural resources
 17 to be despoiled or appropriated for the use of the trader. And
 18 large profits to be made by those dealing with trustees who are
 19 animated by motives of gain."
 12:27:33 20 "This has been the situation in which the Indian
 21 Service has been for more than a century. The Indian, during
 22 all these times, having the rights of properties to greater or
 23 lesser extent neglected; the guardian, the Government, in many
 24 instances passive to conditions which contributed to his
 12:27:52 25 undoing."

1 MR. SIEMIETKOWSKI: Objection, Your Honor, to the form
 2 of the question. It's not a question at all, rather it's a
 3 statement being read into the record rather than a question that
 4 tests the basis of the witness' knowledge.
 12:28:03 5 THE COURT: Objection is overruled.
 6 MR. HARPER: Thank you, Your Honor.
 7 THE COURT: I enjoyed listening to it.
 8 MR. HARPER: I can continue, then. No, I'm kidding.
 9 BY MR. HARPER:
 12:28:14 10 Q. Dr. Angel, you're familiar with this report. Correct?
 11 A. Yes, I am.
 12 Q. And just from that language -- I mean, that's reflected
 13 throughout this report. Correct?
 14 A. That's a fair statement, yes.
 12:28:23 15 Q. We can read this report, we can pick out quotes all over it
 16 that talk about just how problematic the management of the Trust
 17 was in this report prepared for Congress. Correct?
 18 A. That's correct.
 19 Q. And would you -- as a historian, would it be your view that
 12:28:48 20 to truly understand the context of what was going on in 1915,
 21 1916, you would want to know both what's going -- what
 22 Commissioner Sells is saying, but also what a joint report like
 23 this is saying? Would that be a fair statement?
 24 A. Yeah, that really is one reason why I'd like to see my 1.5
 12:29:14 25 report and look at it really quickly. I thought I had mentioned

1 that report in the 1.5 report. I might be incorrect, but I
 2 thought I had mentioned that report.
 3 Q. We'll give you a copy to look over during lunch and then
 4 maybe we can talk a little bit about it further. I'll stop with
 12:29:32 5 this report at this point.
 6 Dr. Angel, you talked a little bit about records
 7 management. Do you recall that testimony?
 8 A. I do. May I go back to your previous question concerning
 9 the report from which you just read?
 10 Q. Sure.
 11 A. May I just address one point about it?
 12 THE WITNESS: I had written, Your Honor, a study of IIM
 13 policy which was in draft form, and as such, was not --
 14 Mr. Harper, I think you argued against the admission of those
 12:30:06 15 reports because they were in draft form and they weren't
 16 accepted by Judge Lamberth. That's my memory of the situation,
 17 at least. And I discussed the report that you've just cited in
 18 that report, in my policy report.
 19 Do you know what I'm talking about now?
 12:30:25 20 BY MR. HARPER:
 21 Q. Do you recall also testifying that you, as a matter of
 22 policy at Morgan Angel, marked everything "draft" and "work
 23 product" until such time as you want to utilize the report in
 24 Court?
 12:30:40 25 A. I'm sorry, please say that again.

1 Q. That you mark -- as a matter of policy, Morgan Angel marks
 2 things "draft" or "work product" in general terms until they
 3 want to use it in court. Is that a fair statement?
 4 A. Until the client tells us. Is that right? A fair statement
 12:31:11 5 is, until the client tells us.
 6 Q. And normally the client tells you when you're about to use
 7 it in court. Correct?
 8 A. Normally, yeah.
 9 Q. Because they would like to have those be confidential prior
 12:31:22 10 to that point. Right?
 11 A. But my point, Mr. Harper, was that I did write about that
 12 report. I said, you know, I thought I'd written about it in the
 13 1.5 report, and I may have and I may not have. But I did write
 14 about that report in the draft report that you had seen.
 12:31:40 15 THE COURT: Mr. Harper, Dr. Angel may want to look at
 16 his report over lunch, so we can talk about it more after lunch.
 17 But it is actually lunchtime. And I'd like everybody involved
 18 with this, yourself and Dr. Angel and Government counsel,
 19 Mr. Siemietkowski, to consider where I think we are with this
 12:32:02 20 witness.
 21 I was quite genuine when I said that I'm interested in
 22 your reading all that eloquent, eloquent language from 1915, but
 23 I don't really know quite what it has to do with the testimony
 24 of this witness, which as I understand it has to do with the
 12:32:30 25 availability of throughput data in historical records. And the

1 witness has now made it very clear that the chart that he's
 2 prepared and the sources of the chart that he's prepared do not
 3 give throughput but annual balances. That's, I think, an
 4 important point that you've made in your cross-examination.
 12:32:53 5 Availability and accessibility of IIM Trust records,
 6 which basically was, there are lots of records out there, you
 7 can find them, and his critiques of the Homan and Fasold
 8 reports, which as I understand it were that Fasold should have
 9 used records, and, in fact, he did use records - and I wrote
 10 this down in quotes - "we know that there is oversight." Maybe
 11 that's what you're after.
 12 And Homan's 2003 and 2007 reports criticizing Homan's
 13 postulate that records are lost, missing, destroyed, not
 14 retrievable, and this witness says that might have been correct
 12:33:29 15 in 1996, but since then, they've been inventoried, reboxed, and
 16 they're much more useful.
 17 So as much as you may object to this witness' reports
 18 in other cases about what the situation was or was not in 1915,
 19 I'm not sure how relevant it is or how you're really challenging
 12:34:30 20 any of the opinions that the witness is actually offering.
 21 I don't want a response to that at all, I want you to
 22 think about it over lunch, and when we get back we'll continue
 23 with the cross-examination. We'll be in recess for an hour.
 24 MR. HARPER: Thank you, Your Honor.
 25 (Recess taken at 12:35 p.m.)

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 25

\$	15 - 1203:24, 1208:8, 1219:12, 1219:15, 1219:20, 1220:1 16 - 1177:24 16,502,911 - 1213:14 160,000 - 1184:20, 1188:10, 1198:16 17th - 1206:16 18 - 1148:5 1884 - 1217:22, 1218:4 19-whatever-it-is - 1190:14 1907 - 1189:13 1909 - 1175:7, 1190:14, 1216:4 191 - 1165:6 1915 - 1238:9, 1238:19, 1238:25, 1240:13, 1240:15, 1243:20, 1245:22, 1246:18 1916 - 1238:25, 1243:21 1922 - 1176:5, 1192:1, 1195:14 1926 - 1208:23, 1211:13, 1211:25, 1212:5, 1212:11, 1213:18, 1214:7, 1214:9, 1221:17 1927 - 1212:7 1928 - 1220:19, 1239:15 1929 - 1226:7, 1228:15 1931 - 1180:24 1936 - 1176:10, 1192:7 1939 - 1189:13 1949 - 1217:11 1950 - 1176:5, 1176:10, 1195:15 1951 - 1176:5, 1192:1, 1192:7 1953 - 1215:10 1954 - 1226:7 1967 - 1165:11 1968 - 1164:11, 1164:14, 1171:20, 1171:23 1973 - 1217:11 1977 - 1154:13, 1154:14, 1208:25, 1209:6, 1209:16, 1209:23 1979 - 1154:13 1980's - 1197:5, 1225:6 1982 - 1180:25, 1229:22, 1230:1, 1230:16 1983 - 1153:17, 1153:22, 1161:21, 1162:4 1985 - 1171:7, 1171:9, 1216:4, 1223:13, 1223:17, 1223:20, 1223:23, 1224:5, 1224:12, 1224:14, 1224:23 1990 - 1175:10 1990's - 1196:21, 1197:5, 1224:9 1996 - 1196:25, 1246:15 1997 - 1166:19, 1167:25, 1169:3,	1175:3, 1216:24 1998 - 1168:16, 1169:4 19th - 1159:2, 1159:10, 1159:18 1st - 1224:23	2	2 - 1226:10 20 - 1157:24, 1187:16, 1187:17, 1207:8, 1207:18, 1208:8 20's - 1239:14 2000 - 1171:15 20001 - 1149:13 20005 - 1148:14, 1148:22, 1149:4 2001 - 1161:23 2002 - 1161:23 2003 - 1156:4, 1156:15, 1194:11, 1194:17, 1194:19, 1196:12, 1197:19, 1198:3, 1234:4, 1239:22, 1246:12 2004 - 1187:3, 1199:8, 1199:10 20044 - 1149:9 2005 - 1187:3 2006 - 1216:24 2007 - 1148:5, 1154:19, 1194:13, 1194:15, 1196:9, 1246:12 2014 - 1231:16 202 - 1148:14, 1148:22, 1149:5, 1149:10, 1149:14 21 - 1210:23 22 - 1212:6 220 - 1189:25 224 - 1189:22, 1189:24, 1190:1, 1190:13 231 - 1172:4 234 - 1150:12 234-257 - 1217:18 24 - 1190:1 243 - 1217:15 257 - 1217:15 258 - 1217:10, 1217:13 259 - 1201:3, 1216:23 259-268 - 1217:1 26 - 1209:1, 1214:18, 1214:25, 1215:7, 1222:1 268 - 1150:12, 1216:23 27 - 1175:9 27101 - 1148:25 2800 - 1148:17 289 - 1217:21 29,820,000-plus - 1165:9	30th - 1164:11, 1165:11, 1172:4, 1172:6, 1214:7 31 - 1177:18, 1207:11 322 - 1190:5 333 - 1149:13 336 - 1148:25 354-3249 - 1149:14 36 - 1210:21 361 - 1231:16 37 - 1201:24	4	4,800 - 1218:2, 1218:8 40 - 1208:22, 1211:11, 1213:25, 1214:8, 1221:18, 1221:21 40-02 - 1211:15 40-03 - 1213:2 404 - 1148:18 41 - 1212:8 43 - 1198:17 44,305,529 - 1213:18 452 - 1186:8, 1186:20 473 - 1182:14	5	5,280 - 1198:17 56,808,000 - 1212:5 585-0053 - 1148:22	6	6 - 1148:9 607 - 1148:13, 1148:21 607-7392 - 1148:25 65,800,000 - 1209:12, 1209:25 65.8 - 1209:16 6511 - 1149:12 66.3 - 1164:10 67,000 - 1188:1, 1188:7, 1188:22, 1198:14 681 - 1238:11, 1241:3	7	702 - 1160:13 71 - 1164:15, 1201:3 72 - 1163:3, 1164:1, 1201:3 73 - 1230:7 73,905,000 - 1212:8 75 - 1154:16, 1154:21, 1182:12, 1182:21, 1185:12, 1185:19, 1188:23, 1193:13, 1198:15 7586 - 1185:21	8	8,315 - 1192:8 8,400 - 1176:9 815-6450 - 1148:18 824-1448 - 1148:14	9	9-614 - 1187:13	900 - 1148:21 94 - 1150:12, 1200:22, 1209:15, 1209:17, 1216:3, 1216:19, 1216:21, 1222:7 96-1285 - 1148:3 975 - 1149:9	A	abbreviation - 1176:13 ability - 1198:2, 1199:25 able - 1158:5, 1165:1, 1167:21, 1209:20, 1210:19, 1212:2, 1213:25, 1215:3, 1215:6 above-entitled - 1247:5 absent - 1160:22 abuse - 1242:11 accepted - 1244:16 accepting - 1240:6 access - 1189:8 accessibility - 1152:13, 1177:15, 1178:11, 1197:23, 1246:5 accessible - 1165:23, 1176:15, 1178:10, 1188:3, 1200:8 accession - 1185:21, 1185:22, 1186:7, 1193:21 accessions - 1185:20 according - 1210:21 account - 1164:8, 1171:18, 1171:19, 1176:21, 1190:21, 1192:13, 1192:22, 1193:25, 1222:12, 1222:20, 1222:21, 1222:23, 1222:25, 1229:14, 1232:22 accountant - 1180:17 accountants - 1162:23, 1199:6, 1199:12 Accounting - 1162:1, 1162:15, 1170:10, 1176:1, 1188:19, 1192:1, 1192:21, 1195:16, 1195:24, 1232:17 accounting - 1162:25, 1178:4, 1178:8, 1178:19, 1178:21, 1178:22, 1179:18, 1180:13, 1180:16, 1181:1, 1181:8, 1192:10, 1192:16, 1192:22, 1196:25, 1198:21, 1200:7, 1233:10, 1237:25, 1239:10, 1239:12, 1239:13 accountings - 1178:23 accounts - 1168:5, 1187:12, 1192:4, 1222:14, 1231:22, 1231:24, 1233:17, 1237:1
0	004 - 1234:10 005 - 1225:23 01 - 1185:2, 1185:3, 1185:10, 1187:2 013 - 1236:2, 1236:24 02 - 1211:15 06 - 1209:8, 1210:6	1	1 - 1187:17, 1199:17, 1200:14, 1200:18, 1200:19, 1207:11 1.0 - 1168:6 1.2 - 1168:6 1.5 - 1156:4, 1177:21, 1178:17, 1180:4, 1185:9, 1206:9, 1211:14, 1236:8, 1238:4, 1243:24, 1244:1, 1245:13 10 - 1179:16 10,000 - 1181:6 100 - 1214:13 1001 - 1148:24 106 - 1205:9 10th - 1187:6 11 - 1188:2 1100 - 1148:17, 1149:4 1153 - 1150:3 1157 - 1150:4 1160 - 1150:6 11:00 - 1207:20 1216 - 1150:12 1217 - 1150:12 1218 - 1150:6 12:35 - 1246:25 13 - 1208:24, 1209:3, 1209:21, 1209:25, 1210:5, 1210:7, 1210:12, 1210:14, 1210:20, 1219:1, 1221:5, 1221:14, 1221:15, 1221:20 13,182,949 - 1213:4, 1213:12 13-012 - 1219:21 13-04 - 1210:22 13-page - 1199:18 135 - 1185:4 14 - 1219:12 14,000 - 1176:7 148 - 1209:16, 1210:1, 1210:5 14th - 1148:13, 1148:21, 1199:21	2	2 - 1226:10 20 - 1157:24, 1187:16, 1187:17, 1207:8, 1207:18, 1208:8 20's - 1239:14 2000 - 1171:15 20001 - 1149:13 20005 - 1148:14, 1148:22, 1149:4 2001 - 1161:23 2002 - 1161:23 2003 - 1156:4, 1156:15, 1194:11, 1194:17, 1194:19, 1196:12, 1197:19, 1198:3, 1234:4, 1239:22, 1246:12 2004 - 1187:3, 1199:8, 1199:10 20044 - 1149:9 2005 - 1187:3 2006 - 1216:24 2007 - 1148:5, 1154:19, 1194:13, 1194:15, 1196:9, 1246:12 2014 - 1231:16 202 - 1148:14, 1148:22, 1149:5, 1149:10, 1149:14 21 - 1210:23 22 - 1212:6 220 - 1189:25 224 - 1189:22, 1189:24, 1190:1, 1190:13 231 - 1172:4 234 - 1150:12 234-257 - 1217:18 24 - 1190:1 243 - 1217:15 257 - 1217:15 258 - 1217:10, 1217:13 259 - 1201:3, 1216:23 259-268 - 1217:1 26 - 1209:1, 1214:18, 1214:25, 1215:7, 1222:1 268 - 1150:12, 1216:23 27 - 1175:9 27101 - 1148:25 2800 - 1148:17 289 - 1217:21 29,820,000-plus - 1165:9	3	3 - 1219:20 30 - 1217:4, 1217:8 30's - 1230:7, 1230:8 300 - 1190:4 30309-4530 - 1148:18 307-0010 - 1149:5 307-1104 - 1149:10	4	4,800 - 1218:2, 1218:8 40 - 1208:22, 1211:11, 1213:25, 1214:8, 1221:18, 1221:21 40-02 - 1211:15 40-03 - 1213:2 404 - 1148:18 41 - 1212:8 43 - 1198:17 44,305,529 - 1213:18 452 - 1186:8, 1186:20 473 - 1182:14	5	5,280 - 1198:17 56,808,000 - 1212:5 585-0053 - 1148:22	6	6 - 1148:9 607 - 1148:13, 1148:21 607-7392 - 1148:25 65,800,000 - 1209:12, 1209:25 65.8 - 1209:16 6511 - 1149:12 66.3 - 1164:10 67,000 - 1188:1, 1188:7, 1188:22, 1198:14 681 - 1238:11, 1241:3	7	702 - 1160:13 71 - 1164:15, 1201:3 72 - 1163:3, 1164:1, 1201:3 73 - 1230:7 73,905,000 - 1212:8 75 - 1154:16, 1154:21, 1182:12, 1182:21, 1185:12, 1185:19, 1188:23, 1193:13, 1198:15 7586 - 1185:21	8	8,315 - 1192:8 8,400 - 1176:9 815-6450 - 1148:18 824-1448 - 1148:14	9	9-614 - 1187:13	

<p>accuracy - 1220:14, 1220:24 accurate - 1199:24 acknowledgment - 1220:6 Act - 1155:12 Action - 1148:3 actual - 1190:22 actuality - 1238:4, 1239:7 adapted - 1242:7 add - 1171:24, 1173:22, 1177:3, 1191:10, 1222:2 added - 1172:17, 1198:16, 1205:15 addition - 1153:25, 1162:23, 1177:1, 1191:22 additional - 1198:4, 1201:4 address - 1171:3, 1178:6, 1178:9, 1201:14, 1206:19, 1223:7, 1244:11 addressed - 1239:8 administered - 1152:1 administering - 1242:7 Administration - 1176:12, 1178:22, 1179:10, 1179:24, 1185:2, 1241:6 administration - 1173:16, 1173:20, 1241:12 administrative - 1225:10, 1235:15, 1235:18, 1235:21, 1235:24, 1236:1 admissibility - 1216:14 admission - 1170:25, 1200:13, 1200:18, 1201:6, 1201:10, 1216:16, 1216:18, 1216:22, 1217:3, 1217:10, 1217:15, 1217:21, 1218:15, 1244:14 Admitted - 1150:9 Adverse - 1241:6 adverse - 1241:12 advised - 1151:22 Affairs - 1158:8, 1164:23, 1170:3, 1170:5, 1170:9, 1172:12, 1173:4, 1174:14, 1175:7, 1180:4, 1182:2, 1182:11, 1182:22, 1185:13, 1185:20, 1188:18, 1188:19, 1188:21, 1188:24, 1195:7, 1195:25, 1196:1, 1197:17, 1208:23, 1211:12, 1214:4, 1214:9, 1215:17, 1215:20, 1220:25, 1239:9 affairs - 1158:24, 1159:8 affected - 1157:19 afternoon - 1174:20 agencies - 1179:7, 1179:14, 1179:19, 1182:18, 1223:19, 1224:7, 1224:19, 1224:20</p>	<p>Agency - 1187:16 agency - 1176:25, 1180:1, 1185:7, 1187:16, 1189:6, 1212:14, 1212:21, 1224:1 agency-by-agency - 1176:25, 1212:14, 1212:21 Agent - 1233:3 agents - 1192:3, 1241:11 Agents - 1175:24, 1195:15 aggregate - 1161:13, 1166:8, 1220:22, 1221:1, 1221:2, 1226:25, 1227:2, 1227:7, 1227:12, 1228:1, 1228:3 aggregation - 1177:1 ago - 1157:9, 1165:14, 1185:10, 1204:13, 1237:22 agree - 1157:21, 1159:9, 1160:1, 1220:9, 1226:25 agreed - 1159:11, 1159:21, 1224:1 agreements - 1183:13, 1183:14 ahead - 1156:20, 1169:7, 1174:22, 1184:8, 1184:9, 1184:11, 1199:2, 1200:16, 1205:3, 1208:4 aid - 1181:11, 1181:12, 1184:16, 1189:16, 1201:25 aided - 1149:16 aids - 1178:12, 1184:17, 1185:1, 1189:2, 1189:4, 1189:7, 1191:12, 1199:16, 1200:8 Air - 1155:1 Airr - 1163:24, 1178:25, 1179:11, 1182:8, 1182:21, 1188:10, 1191:22, 1197:8, 1197:24, 1198:1, 1198:16 al - 1148:3, 1148:6 albeit - 1205:10 Albuquerque - 1163:14, 1163:17, 1191:1, 1191:4, 1199:7, 1204:19, 1209:7, 1221:7 alleged - 1231:24 allotment - 1159:12, 1159:23, 1183:3 allotted - 1182:4, 1235:22, 1235:23 allow - 1156:17, 1160:10, 1160:13, 1180:19 allowed - 1186:1 Almost - 1207:23 American - 1153:14, 1153:24, 1153:25, 1154:6, 1155:7, 1155:15, 1155:18, 1155:20, 1158:24, 1159:5, 1162:18, 1163:17, 1163:22, 1178:24, 1179:2,</p>	<p>1180:7, 1182:20, 1184:20, 1192:20, 1192:22, 1193:16, 1193:20, 1197:4, 1200:10, 1215:15 Americanize - 1159:4, 1159:5 Americans - 1153:23, 1157:17, 1157:20, 1159:4, 1159:22 amount - 1169:23, 1196:2, 1198:11, 1198:16 amounts - 1194:2, 1217:7, 1231:1 Angel - 1150:3, 1151:19, 1151:25, 1152:6, 1152:7, 1152:8, 1152:21, 1153:8, 1153:12, 1153:17, 1153:22, 1154:4, 1154:8, 1154:9, 1155:2, 1155:8, 1155:11, 1155:15, 1155:21, 1156:15, 1156:22, 1157:7, 1160:5, 1161:2, 1161:4, 1161:20, 1162:7, 1163:1, 1163:4, 1163:19, 1163:25, 1164:13, 1164:24, 1165:2, 1166:4, 1166:11, 1166:16, 1166:20, 1166:21, 1167:7, 1167:14, 1167:24, 1168:2, 1168:10, 1168:13, 1169:4, 1169:9, 1170:1, 1170:15, 1170:20, 1171:3, 1171:7, 1171:14, 1171:23, 1172:8, 1172:25, 1173:25, 1174:5, 1174:25, 1175:20, 1176:14, 1177:5, 1177:17, 1177:18, 1177:24, 1180:10, 1180:21, 1181:11, 1184:14, 1185:8, 1185:14, 1186:25, 1187:6, 1187:24, 1188:6, 1189:1, 1191:9, 1191:21, 1192:24, 1194:4, 1195:21, 1196:8, 1197:14, 1198:3, 1198:9, 1199:4, 1199:17, 1199:19, 1199:23, 1200:3, 1200:11, 1202:9, 1202:23, 1203:2, 1204:3, 1204:15, 1206:2, 1206:8, 1206:22, 1207:3, 1207:7, 1208:6, 1209:2, 1209:14, 1209:20, 1210:11, 1211:7, 1211:10, 1211:18, 1212:15, 1213:25, 1215:6, 1215:22, 1217:5, 1217:16, 1218:16, 1218:22, 1225:9, 1226:1, 1229:15, 1231:21, 1233:22, 1234:4, 1241:5, 1241:7, 1242:2,</p>	<p>1243:10, 1244:6, 1244:22, 1245:1, 1245:15, 1245:18 Angel's - 1152:4, 1152:20, 1153:1, 1200:14, 1200:22, 1207:1, 1226:2, 1226:19 animated - 1242:19 annual - 1161:15, 1166:17, 1167:3, 1170:4, 1172:12, 1174:14, 1174:17, 1208:24, 1209:6, 1211:12, 1217:10, 1221:17, 1237:10, 1246:3 anomaly - 1212:1 answer - 1158:5 answers - 1181:15 anticipate - 1170:24 Ao - 1186:10 appear - 1210:22, 1216:3 Appearances - 1148:11 appeared - 1151:16 appendices - 1152:20 applicable - 1183:3 appreciate - 1189:10 approach - 1194:25, 1195:1, 1202:19, 1203:7 appropriate - 1170:5, 1183:8, 1205:12 appropriated - 1242:17 appropriations - 1164:22, 1196:2, 1237:1 Appropriations - 1170:7 approvals - 1190:5 Ar-12401 - 1233:24 Ar-602701 - 1225:11 arbitrarily - 1189:11 archaeology - 1174:9, 1183:24 archives - 1162:10, 1182:17, 1186:3, 1187:25, 1188:2, 1190:13, 1191:13, 1191:16, 1191:18, 1232:21 Archives - 1162:9, 1176:8, 1176:12, 1178:25, 1179:9, 1179:10, 1179:24, 1179:25, 1182:10, 1185:1, 1185:23, 1186:1, 1187:21, 1189:6, 1189:14, 1189:16, 1189:19, 1190:18, 1193:9, 1193:12, 1193:18, 1197:25, 1198:15, 1200:9 area - 1153:15, 1186:9, 1186:11, 1186:17, 1225:25, 1233:22 areas - 1188:12 argued - 1244:14 argument - 1205:19, 1206:18 arisen - 1178:18 Arizona - 1235:8</p>	<p>Arkansas - 1155:5 Army - 1155:14 aside - 1173:11, 1175:2 asset - 1179:21 assets - 1219:19 assigned - 1185:23 assignment - 1206:23 assimilating - 1238:6 assist - 1160:14, 1162:25, 1177:12, 1177:25, 1178:12, 1179:18 assistance - 1169:17 associated - 1155:16, 1237:20 Associates - 1153:17, 1153:22, 1154:8, 1154:9, 1155:11, 1187:24, 1226:1 assume - 1167:21 assumed - 1230:1, 1230:2 assuming - 1152:12 Atlanta - 1148:18 attempted - 1239:9 attention - 1163:3, 1164:25, 1167:6, 1168:12, 1171:20, 1225:9, 1225:23, 1234:10, 1236:2 Attorney - 1149:6 attorney - 1158:6 attorneys - 1151:18 audit - 1163:8, 1163:15, 1174:13 audited - 1233:17 authenticated - 1201:11 authored - 1234:12, 1235:3 availability - 1152:9, 1152:13, 1156:10, 1177:7, 1177:12, 1194:7, 1245:25 Availability - 1246:5 available - 1163:20, 1167:13, 1173:10, 1206:15, 1229:19 Avenue - 1149:13 avoid - 1232:20 aware - 1232:2, 1232:11, 1232:13 awhile - 1165:14, 1237:22</p>
B				
<p>background - 1153:12, 1158:7, 1183:17 backup - 1170:22 balance - 1164:8, 1167:12, 1168:17, 1169:13, 1222:16, 1222:19, 1222:25, 1229:2 balances - 1166:7, 1169:10, 1171:18, 1222:11, 1222:12, 1222:23, 1227:1, 1227:2, 1227:21, 1229:5, 1229:14, 1246:3 Baltimore - 1198:18</p>				

<p>Banks - 1211:16, 1211:21 banks - 1165:8, 1169:21, 1169:22, 1171:24, 1209:12, 1209:24, 1228:3 based - 1152:7, 1226:2, 1226:19, 1228:23, 1229:5, 1230:10 Based - 1214:25 basis - 1176:25, 1184:24, 1190:23, 1205:23, 1207:1, 1212:14, 1212:21, 1216:9, 1243:4 Bates - 1234:10 bearing - 1164:10 became - 1212:10 become - 1172:10, 1187:23 beg - 1156:7, 1196:6 began - 1214:22, 1223:22, 1224:4, 1224:5, 1225:6, 1230:1 begin - 1171:13, 1229:21 Beginning - 1186:2 beginning - 1171:9, 1171:12, 1192:17, 1199:10, 1200:14, 1223:14, 1224:12, 1226:7, 1241:10 begins - 1219:13, 1219:15 behalf - 1195:19, 1235:4, 1235:6, 1235:12 behind - 1242:13 belief - 1174:3, 1224:4, 1225:3, 1233:19, 1233:20 belonging - 1187:8 Ben - 1149:8 bench - 1214:23 benefit - 1211:18 best - 1189:8, 1199:25, 1227:17, 1227:19, 1227:21 better - 1153:20, 1153:21 between - 1189:13, 1219:20, 1229:2 beyond - 1172:14, 1214:15, 1232:6, 1239:19 Bia - 1179:6, 1182:8, 1183:2, 1192:3, 1197:14 Bia's - 1195:23, 1237:14, 1237:25 billion - 1168:6 billions - 1167:18 bills - 1179:18 Biss - 1186:23 bit - 1161:11, 1161:18, 1170:8, 1175:1, 1181:16, 1189:22, 1193:5, 1208:16, 1222:3, 1231:14, 1234:14, 1236:22, 1242:3, 1244:4, 1244:6 blackd - 1194:1 blind - 1242:14 body - 1192:15 bogged - 1184:14 books - 1190:22</p>	<p>bottom - 1161:6, 1161:7, 1163:12, 1167:6, 1180:9, 1186:8, 1193:10, 1209:24, 1235:15, 1238:19, 1241:5 box - 1163:14, 1163:15, 1184:21, 1186:15, 1186:18, 1187:16, 1187:17, 1193:14, 1193:21, 1199:15, 1204:19, 1209:7, 1236:16 Box - 1149:9 boxed - 1197:3, 1213:6 boxes - 1186:3, 1186:8, 1186:20, 1187:15, 1187:19, 1190:17, 1190:18, 1192:6, 1192:8 boxing - 1179:3 branch - 1170:10 Branch - 1149:7 branches - 1162:9, 1162:10, 1178:25, 1188:2, 1191:6, 1241:17 break - 1206:21, 1206:22, 1207:24, 1210:11, 1214:20 breaks - 1168:14, 1169:5 brief - 1152:4, 1186:6 briefly - 1152:21, 1175:1, 1179:11, 1199:18 bring - 1238:10 broad - 1231:14 broken - 1212:21 brought - 1159:17 Brule - 1155:3, 1234:25 build - 1155:14 building - 1187:22 built - 1172:18 bullet - 1180:9 burden - 1173:11 Bureau - 1164:22, 1170:3, 1170:5, 1170:9, 1172:12, 1180:4, 1182:2, 1182:11, 1182:22, 1185:12, 1185:19, 1188:18, 1188:23, 1195:7, 1195:25, 1196:1, 1197:17, 1215:16, 1215:20, 1220:25, 1239:9 business - 1242:9</p>	<p>1232:3, 1239:7 cases - 1157:22, 1157:24, 1158:2, 1158:3, 1158:8, 1158:13, 1163:24, 1178:23, 1246:18 cash - 1164:9 catch - 1208:3 Cato - 1237:18, 1237:24, 1238:2, 1238:22 cautious - 1189:24 caveats - 1240:16 center - 1211:23, 1211:24 Center - 1163:21, 1180:1, 1181:9, 1182:7, 1185:6, 1185:18, 1187:20, 1193:19 Centers - 1162:11, 1179:8, 1179:9, 1179:22, 1179:23, 1180:5, 1184:25 central - 1176:23 centralize - 1192:18 centralized - 1179:3, 1182:21 century - 1159:2, 1159:10, 1159:18, 1242:21 certain - 1173:12, 1210:12, 1219:25, 1228:7, 1228:18, 1230:10 certainly - 1166:1, 1181:12, 1188:9 Certainly - 1182:9, 1184:18, 1209:23 Certificate - 1247:1 Certificates - 1209:13 certificates - 1209:24, 1210:1 certify - 1247:3 cetera - 1164:20 challenging - 1246:19 chambers - 1151:24 chance - 1207:3, 1207:22 change - 1228:17 changed - 1228:7 charged - 1235:18 chart - 1164:8, 1164:12, 1165:10, 1169:17, 1170:20, 1171:7, 1171:13, 1171:16, 1172:9, 1172:18, 1173:7, 1174:25, 1195:14, 1200:22, 1201:8, 1206:8, 1209:9, 1209:11, 1209:22, 1210:18, 1211:25, 1212:3, 1214:17, 1215:3, 1216:19, 1220:6, 1220:8, 1222:8, 1222:9, 1222:10, 1223:13, 1226:5, 1226:12, 1226:14, 1226:16, 1227:20, 1228:14, 1228:18, 1229:13, 1246:1, 1246:2 chart's - 1215:3 charts - 1228:19 check - 1231:12 checked - 1215:4, 1230:21, 1230:25</p>	<p>checks - 1231:12 Cherokee - 1155:5 choose - 1206:25 chose - 1205:5 Christopher - 1149:2 circuit - 1205:11 citation - 1163:13 citations - 1174:12 cite - 1228:11 cited - 1209:7, 1244:17 citing - 1197:5 City - 1185:18 Civil - 1148:3, 1149:8 civilized - 1213:11 claim - 1239:22 clarify - 1207:10 classification - 1188:3, 1189:21 clear - 1160:21, 1171:16, 1188:7, 1205:6, 1246:1 clearly - 1205:11 client - 1155:1, 1171:8, 1245:4, 1245:5, 1245:6 clients - 1154:22, 1154:23, 1155:2, 1155:3, 1234:15, 1234:16, 1234:19, 1234:20, 1234:23 clock - 1151:23, 1151:24 closer - 1153:18, 1153:19, 1221:4 Cobell - 1148:3, 1156:4, 1178:17, 1185:9 collateral - 1169:21, 1169:22 collect - 1173:2, 1173:21, 1173:23, 1182:24, 1182:25 collected - 1173:3, 1173:7, 1183:20, 1218:6, 1231:1 collecting - 1172:25 collection - 1172:8, 1176:22 collections - 1179:19, 1187:13, 1223:1 College - 1176:8 Colorado - 1181:9 Columbia - 1148:1 column - 1165:7, 1170:14, 1171:23, 1171:24, 1185:15, 1185:19, 1185:25, 1186:5, 1209:13, 1211:21, 1212:13, 1212:16, 1213:11 coming - 1159:1, 1159:6, 1210:8 comment - 1196:21 Commercial - 1149:7 Commissioner - 1170:5, 1173:4, 1174:14, 1175:7, 1208:23, 1211:12, 1214:4, 1214:8, 1237:18, 1237:24, 1239:3, 1240:18, 1243:22 commissioner's - 1238:22 Committee - 1170:7</p>	<p>communicating - 1168:24 communities - 1158:20, 1159:1 communitization - 1183:13 community - 1158:20 compilation - 1170:2, 1217:21, 1218:4 complaints - 1237:13, 1237:25, 1238:2, 1239:5 complete - 1174:6, 1174:10, 1205:14, 1206:11 completed - 1224:8 completeness - 1205:12, 1205:20, 1205:25 components - 1169:20, 1171:19 computer - 1149:16 computer-aided - 1149:16 conceded - 1160:5 concern - 1237:24 concerned - 1204:5 concerning - 1153:23, 1153:24, 1178:19, 1181:2, 1195:19, 1244:8 conclusion - 1203:4 conclusions - 1192:14 concrete - 1193:1 Conditions - 1241:6 conditions - 1241:12, 1242:24 conduct - 1197:8 conducted - 1156:16, 1169:13 confident - 1198:6 confidential - 1245:9 confine - 1190:9 confined - 1173:23 confused - 1240:12 Congress - 1155:11, 1162:14, 1164:19, 1172:3, 1243:17 congressional - 1170:6, 1173:9, 1173:17, 1197:11 Congressional - 1173:6, 1174:16, 1241:1, 1241:2 conservation - 1230:1, 1230:2 consider - 1245:19 considered - 1197:10 considering - 1227:1 consistency - 1175:11 consistent - 1152:2, 1152:18, 1200:1 consolidated - 1166:18, 1180:7, 1216:23 Constitution - 1149:13 consultant - 1154:7, 1162:6 consulting - 1154:10 contact - 1172:23</p>
C				
<p>calculated - 1226:23 calculations - 1221:11, 1221:16 calendar - 1161:14 capable - 1174:8 capacity - 1152:14, 1161:24, 1162:5, 1229:12 captured - 1214:7 cards - 1176:21 Carolina - 1148:25 case - 1156:13, 1163:21, 1181:12, 1182:23, 1183:17, 1205:10, 1216:8,</p>				

<p>1172:24 contain - 1176:18, 1176:20, 1180:12, 1190:19, 1192:8, 1218:3 contained - 1176:2, 1199:23 containing - 1186:8, 1192:4 contains - 1202:24 contemporaneous - 1238:18, 1238:21, 1239:24 contention - 1170:24 contents - 1205:22, 1210:21, 1210:24, 1219:5 context - 1165:18, 1165:19, 1174:1, 1196:19, 1203:25, 1204:5, 1205:8, 1220:10, 1220:11, 1221:15, 1240:18, 1243:20 continue - 1232:18, 1243:8, 1246:22 continued - 1167:25, 1197:19, 1227:10, 1229:14 continuing - 1175:12, 1175:13, 1227:11 contractor - 1161:22, 1162:2 contractors - 1172:20, 1199:5 contributed - 1242:24 controversy - 1174:6 convert - 1198:13 converted - 1198:14 copied - 1219:22 copy - 1165:20, 1165:22, 1165:24, 1173:17, 1174:2, 1202:12, 1202:16, 1203:8, 1214:2, 1214:16, 1215:14, 1236:6, 1236:8, 1236:16, 1244:3 copying - 1173:11 corporations - 1241:19 Corps - 1155:14 Correct - 1157:10, 1158:2, 1158:3, 1158:17, 1168:24, 1177:2, 1177:4, 1183:1, 1214:10, 1219:6, 1219:7, 1219:8, 1219:9, 1219:11, 1219:13, 1219:14, 1219:15, 1219:16, 1220:10, 1221:2, 1221:6, 1221:10, 1221:12, 1222:2, 1222:11, 1222:16, 1222:17, 1222:21, 1223:9, 1225:3, 1228:7, 1229:8, 1229:11, 1229:17, 1229:19, 1232:12, 1234:19, 1235:25, 1238:14, 1238:19, 1238:24, 1239:4, 1239:7, 1239:15, 1243:10,</p>	<p>1243:13, 1243:17, 1245:7 correct - 1157:11, 1157:23, 1157:25, 1158:4, 1158:14, 1158:15, 1158:18, 1159:20, 1160:16, 1170:15, 1175:16, 1175:17, 1181:23, 1183:4, 1183:8, 1191:23, 1196:16, 1202:15, 1210:6, 1213:21, 1214:21, 1214:24, 1219:9, 1220:12, 1221:7, 1222:9, 1222:13, 1222:22, 1223:4, 1223:6, 1223:8, 1223:10, 1226:9, 1226:21, 1227:25, 1229:9, 1229:20, 1229:25, 1230:19, 1231:23, 1233:12, 1233:16, 1234:17, 1235:9, 1235:11, 1235:17, 1235:20, 1237:3, 1238:15, 1238:20, 1239:16, 1243:18, 1246:14, 1247:4 correctly - 1220:19, 1221:14, 1238:25 counsel - 1155:16, 1163:20, 1206:16, 1245:18 counsel's - 1203:12 couple - 1151:2, 1157:3, 1157:9, 1172:2, 1181:15, 1191:11, 1234:25, 1236:21, 1242:4 course - 1154:25, 1157:18, 1163:24, 1172:11, 1179:1, 1187:22, 1199:9, 1216:12, 1235:22 Court - 1148:1, 1149:11, 1149:12, 1151:2, 1151:10, 1151:20, 1151:22, 1152:3, 1152:5, 1152:17, 1152:19, 1152:20, 1153:5, 1153:18, 1153:21, 1156:6, 1156:8, 1156:20, 1156:24, 1157:2, 1158:2, 1158:8, 1159:25, 1160:10, 1160:23, 1163:2, 1164:13, 1165:22, 1166:5, 1166:11, 1167:15, 1167:18, 1168:3, 1168:8, 1168:19, 1168:22, 1169:7, 1170:13, 1170:18, 1170:21, 1171:5, 1171:10, 1171:22, 1173:1, 1174:5, 1174:19, 1174:22, 1175:3, 1177:9, 1177:12, 1177:25, 1178:4, 1180:19, 1181:14, 1181:18, 1181:24, 1182:6, 1182:23, 1183:2, 1183:5, 1183:10, 1183:17, 1183:24, 1184:5, 1184:8, 1184:11, 1184:15,</p>	<p>1186:10, 1186:12, 1187:2, 1187:18, 1188:7, 1188:16, 1190:12, 1190:16, 1190:25, 1191:4, 1191:7, 1191:25, 1193:1, 1194:7, 1197:14, 1198:23, 1198:25, 1200:4, 1200:16, 1200:20, 1200:25, 1201:3, 1201:15, 1201:18, 1201:20, 1201:23, 1202:3, 1202:6, 1202:8, 1202:10, 1202:11, 1202:16, 1202:21, 1202:24, 1203:3, 1203:9, 1203:14, 1204:7, 1204:12, 1204:14, 1204:22, 1205:1, 1205:3, 1205:14, 1205:17, 1205:18, 1206:7, 1206:14, 1206:20, 1207:14, 1207:18, 1207:21, 1207:24, 1208:3, 1209:15, 1210:3, 1210:5, 1210:7, 1210:9, 1210:19, 1211:19, 1213:9, 1213:11, 1213:19, 1213:23, 1215:1, 1215:24, 1216:17, 1216:20, 1216:25, 1217:6, 1217:12, 1217:17, 1217:23, 1217:25, 1218:8, 1218:13, 1218:17, 1231:4, 1232:9, 1236:11, 1236:15, 1239:21, 1240:1, 1240:12, 1240:21, 1241:1, 1241:20, 1241:23, 1243:5, 1243:7, 1244:24, 1245:15, 1247:1, 1247:10 court - 1245:3, 1245:7 Court's - 1158:13, 1205:9, 1233:20 Courthouse - 1149:12 courtroom - 1151:22 Courtroom - 1152:1 courts - 1153:24 cover - 1176:9, 1183:10 crawl - 1181:15 created - 1164:12, 1200:9 creation - 1180:25, 1186:15, 1186:18 Credited - 1225:19 Creek - 1155:4 criticized - 1239:14 criticizing - 1246:12 critique - 1152:15, 1192:24 critiques - 1246:7 cross - 1160:17, 1166:2, 1206:3, 1216:1, 1216:9, 1216:12, 1218:18, 1240:7, 1246:4, 1246:23 Cross - 1150:5, 1218:20</p>	<p>Cross-examination - 1218:20 cross-examination - 1166:2, 1216:1, 1216:9, 1216:12, 1240:7, 1246:4, 1246:23 cross-examine - 1160:17, 1206:3 Crow - 1155:4, 1189:12, 1189:15, 1189:23, 1190:14, 1191:16 crystal - 1171:16, 1188:7 cubic - 1181:6, 1188:1, 1188:22, 1198:9, 1198:14 cumulative - 1151:12, 1151:13 current - 1206:13 cursor - 1202:7 custody - 1180:1, 1181:18, 1181:20, 1182:7, 1182:8, 1187:8</p>	<p>defense - 1170:23, 1200:13, 1214:19 Defense - 1163:3, 1163:25, 1164:15, 1177:17, 1199:17, 1200:14, 1200:18, 1200:19, 1200:22, 1207:10, 1207:11, 1208:22, 1214:18, 1216:3, 1216:19, 1216:23 define - 1157:14 Definitely - 1174:11 degree - 1153:13, 1154:6, 1154:13, 1159:15 demand - 1242:9 demonstrate - 1166:10 demonstrated - 1153:2 demonstrating - 1205:23 Dennis - 1148:12 Denver - 1181:9, 1191:16 department - 1163:9 Department - 1149:3, 1149:7, 1154:23, 1154:25, 1162:2, 1162:13, 1163:8, 1164:17, 1164:21, 1166:17, 1168:11, 1171:8, 1172:17, 1172:18, 1172:19, 1174:15, 1174:18, 1182:16, 1194:23, 1195:6, 1195:18, 1199:21, 1220:22, 1220:24, 1223:14, 1227:6 deposit - 1209:8, 1209:25 Deposit - 1209:13 deputy - 1151:22 Deputy - 1152:1 described - 1173:1, 1177:9 description - 1186:6, 1187:11 designation - 1152:25 despoiled - 1242:17 destroy - 1185:25, 1186:1, 1197:17 destroyed - 1196:15, 1197:15, 1230:9, 1230:15, 1246:13 detail - 1168:23 detailed - 1230:5 determination - 1159:13 determine - 1160:15, 1189:4 determined - 1160:17, 1198:15 determining - 1186:14 develop - 1194:21, 1195:5 developed - 1157:18, 1242:9 developing - 1171:13 devoted - 1182:11 difference - 1169:3, 1229:2 different - 1176:21,</p>
D				
<p>dams - 1155:14 data - 1152:9, 1152:10, 1152:11, 1161:3, 1161:5, 1161:9, 1161:15, 1164:14, 1170:2, 1171:2, 1171:3, 1173:13, 1173:23, 1174:1, 1175:1, 1175:4, 1175:15, 1176:17, 1176:20, 1177:6, 1202:10, 1202:25, 1218:4, 1218:11, 1226:2, 1226:19, 1245:25 Date - 1247:10 date - 1222:24 dated - 1165:11, 1172:5, 1175:10 dating - 1217:22 David - 1148:23 Dc - 1148:4, 1148:14, 1148:22, 1149:4, 1149:9, 1149:13, 1155:8, 1155:10, 1187:21 deal - 1202:3, 1223:1, 1223:3, 1233:2 dealing - 1205:20, 1242:18 deals - 1190:1 decided - 1198:12 decimal - 1188:3, 1189:20, 1189:24, 1190:5 decision - 1224:13 decreasing - 1237:14, 1238:1, 1239:5 Defendant - 1150:11, 1153:8, 1216:21, 1217:1, 1217:8, 1217:13, 1217:18 Defendant's - 1219:1, 1234:3 defendants - 1165:15 Defendants - 1148:7, 1149:1</p>	<p>defenses - 1152:1, 1152:2, 1152:3, 1152:4, 1152:5, 1152:6, 1152:7, 1152:8, 1152:9, 1152:10, 1152:11, 1152:12, 1152:13, 1152:14, 1152:15, 1152:16, 1152:17, 1152:18, 1152:19, 1152:20, 1152:21, 1152:22, 1152:23, 1152:24, 1152:25, 1152:26, 1152:27, 1152:28, 1152:29, 1152:30, 1152:31, 1152:32, 1152:33, 1152:34, 1152:35, 1152:36, 1152:37, 1152:38, 1152:39, 1152:40, 1152:41, 1152:42, 1152:43, 1152:44, 1152:45, 1152:46, 1152:47, 1152:48, 1152:49, 1152:50, 1152:51, 1152:52, 1152:53, 1152:54, 1152:55, 1152:56, 1152:57, 1152:58, 1152:59, 1152:60, 1152:61, 1152:62, 1152:63, 1152:64, 1152:65, 1152:66, 1152:67, 1152:68, 1152:69, 1152:70, 1152:71, 1152:72, 1152:73, 1152:74, 1152:75, 1152:76, 1152:77, 1152:78, 1152:79, 1152:80, 1152:81, 1152:82, 1152:83, 1152:84, 1152:85, 1152:86, 1152:87, 1152:88, 1152:89, 1152:90, 1152:91, 1152:92, 1152:93, 1152:94, 1152:95, 1152:96, 1152:97, 1152:98, 1152:99, 1153:0, 1153:1, 1153:2, 1153:3, 1153:4, 1153:5, 1153:6, 1153:7, 1153:8, 1153:9, 1153:10, 1153:11, 1153:12, 1153:13, 1153:14, 1153:15, 1153:16, 1153:17, 1153:18, 1153:19, 1153:20, 1153:21, 1153:22, 1153:23, 1153:24, 1153:25, 1153:26, 1153:27, 1153:28, 1153:29, 1153:30, 1153:31, 1153:32, 1153:33, 1153:34, 1153:35, 1153:36, 1153:37, 1153:38, 1153:39, 1153:40, 1153:41, 1153:42, 1153:43, 1153:44, 1153:45, 1153:46, 1153:47, 1153:48, 1153:49, 1153:50, 1153:51, 1153:52, 1153:53, 1153:54, 1153:55, 1153:56, 1153:57, 1153:58, 1153:59, 1153:60, 1153:61, 1153:62, 1153:63, 1153:64, 1153:65, 1153:66, 1153:67, 1153:68, 1153:69, 1153:70, 1153:71, 1153:72, 1153:73, 1153:74, 1153:75, 1153:76, 1153:77, 1153:78, 1153:79, 1153:80, 1153:81, 1153:82, 1153:83, 1153:84, 1153:85, 1153:86, 1153:87, 1153:88, 1153:89, 1153:90, 1153:91, 1153:92, 1153:93, 1153:94, 1153:95, 1153:96, 1153:97, 1153:98, 1153:99, 1154:0, 1154:1, 1154:2, 1154:3, 1154:4, 1154:5, 1154:6, 1154:7, 1154:8, 1154:9, 1154:10, 1154:11, 1154:12, 1154:13, 1154:14, 1154:15, 1154:16, 1154:17, 1154:18, 1154:19, 1154:20, 1154:21, 1154:22, 1154:23, 1154:24, 1154:25, 1154:26, 1154:27, 1154:28, 1154:29, 1154:30, 1154:31, 1154:32, 1154:33, 1154:34, 1154:35, 1154:36, 1154:37, 1154:38, 1154:39, 1154:40, 1154:41, 1154:42, 1154:43, 1154:44, 1154:45, 1154:46, 1154:47, 1154:48, 1154:49, 1154:50, 1154:51, 1154:52, 1154:53, 1154:54, 1154:55, 1154:56, 1154:57, 1154:58, 1154:59, 1154:60, 1154:61, 1154:62, 1154:63, 1154:64, 1154:65, 1154:66, 1154:67, 1154:68, 1154:69, 1154:70, 1154:71, 1154:72, 1154:73, 1154:74, 1154:75, 1154:76, 1154:77, 1154:78, 1154:79, 1154:80, 1154:81, 1154:82, 1154:83, 1154:84, 1154:85, 1154:86, 1154:87, 1154:88, 1154:89, 1154:90, 1154:91, 1154:92, 1154:93, 1154:94, 1154:95, 1154:96, 1154:97, 1154:98, 1154:99, 1155:0, 1155:1, 1155:2, 1155:3, 1155:4, 1155:5, 1155:6, 1155:7, 1155:8, 1155:9, 1155:10, 1155:11, 1155:12, 1155:13, 1155:14, 1155:15, 1155:16, 1155:17, 1155:18, 1155:19, 1155:20, 1155:21, 1155:22, 1155:23, 1155:24, 1155:25, 1155:26, 1155:27, 1155:28, 1155:29, 1155:30, 1155:31, 1155:32, 1155:33, 1155:34, 1155:35, 1155:36, 1155:37, 1155:38, 1155:39, 1155:40, 1155:41, 1155:42, 1155:43, 1155:44, 1155:45, 1155:46, 1155:47, 1155:48, 1155:49, 1155:50, 1155:51, 1155:52, 1155:53, 1155:54, 1155:55, 1155:56, 1155:57, 1155:58, 1155:59, 1155:60, 1155:61, 1155:62, 1155:63, 1155:64, 1155:65, 1155:66, 1155:67, 1155:68, 1155:69, 1155:70, 1155:71, 1155:72, 1155:73, 1155:74, 1155:75, 1155:76, 1155:77, 1155:78, 1155:79, 1155:80, 1155:81, 1155:82, 1155:83, 1155:84, 1155:85, 1155:86, 1155:87, 1155:88, 1155:89, 1155:90, 1155:91, 1155:92, 1155:93, 1155:94, 1155:95, 1155:96, 1155:97, 1155:98, 1155:99, 1156:0, 1156:1, 1156:2, 1156:3, 1156:4, 1156:5, 1156:6, 1156:7, 1156:8, 1156:9, 1156:10, 1156:11, 1156:12, 1156:13, 1156:14, 1156:15, 1156:16, 1156:17, 1156:18, 1156:19, 1156:20, 1156:21, 1156:22, 1156:23, 1156:24, 1156:25, 1156:26, 1156:27, 1156:28, 1156:29, 1156:30, 1156:31, 1156:32, 1156:33, 1156:34, 1156:35, 1156:36, 1156:37, 1156:38, 1156:39, 1156:40, 1156:41, 1156:42, 1156:43, 1156:44, 1156:45, 1156:46, 1156:47, 1156:48, 1156:49, 1156:50, 1156:51, 1156:52, 1156:53, 1156:54, 1156:55, 1156:56, 1156:57, 1156:58, 1156:59, 1156:60, 1156:61, 1156:62, 1156:63, 1156:64, 1156:65, 1156:66, 1156:67, 1156:68, 1156:69, 1156:70, 1156:71, 1156:72, 1156:73, 1156:74, 1156:75, 1156:76, 1156:77, 1156:78, 1156:79, 1156:80, 1156:81, 1156:82, 1156:83, 1156:84, 1156:85, 1156:86, 1156:87, 1156:88, 1156:89, 1156:90, 1156:91, 1156:92, 1156:93, 1156:94, 1156:95, 1156:96, 1156:97, 1156:98, 1156:99, 1157:0, 1157:1, 1157:2, 1157:3, 1157:4, 1157:5, 1157:6, 1157:7, 1157:8, 1157:9, 1157:10, 1157:11, 1157:12, 1157:13, 1157:14, 1157:15, 1157:16, 1157:17, 1157:18, 1157:19, 1157:20, 1157:21, 1157:22, 1157:23, 1157:24, 1157:25, 1157:26, 1157:27, 1157:28, 1157:29, 1157:30, 1157:31, 1157:32, 1157:33, 1157:34, 1157:35, 1157:36, 1157:37, 1157:38, 1157:39, 1157:40, 1157:41, 1157:42, 1157:43, 1157:44, 1157</p>			

<p>1182:14, 1182:17, 1197:1, 1208:9, 1222:18, 1223:18, 1223:19, 1224:18, 1228:8, 1228:21 differently - 1228:5 difficulties - 1237:24 difficulty - 1203:16, 1203:17, 1236:22 digit - 1168:22 Dire - 1150:2, 1153:10, 1157:5 dire - 1156:17, 1156:25 direct - 1218:16, 1229:16, 1239:19 Direct - 1150:5, 1160:25 directed - 1202:9 directly - 1173:20, 1188:12 Dirk - 1148:6 disbursement - 1161:15, 1175:14, 1175:19, 1176:23, 1177:3, 1192:3, 1193:25, 1222:25 disbursements - 1166:6, 1166:9, 1166:12, 1167:4, 1167:11, 1168:16, 1168:22, 1169:5, 1169:11, 1171:17, 1175:1, 1175:4, 1175:8, 1175:10, 1176:19, 1190:23, 1223:3 Disbursing - 1175:24, 1195:15, 1233:3 discuss - 1177:7, 1194:10, 1209:2, 1211:10, 1211:11, 1235:18, 1239:23 discussed - 1179:12, 1194:5, 1194:6, 1211:14, 1244:17 discussing - 1173:16, 1178:14, 1179:6 discussion - 1157:12, 1219:19, 1220:1, 1220:3 dismayed - 1215:4 disqualify - 1160:2 distance - 1198:10, 1198:18 distribution - 1217:4 District - 1148:1, 1148:10 divide - 1183:3 divided - 1182:9, 1183:6, 1185:20, 1198:17 divides - 1182:17 Division - 1149:8 division - 1178:21, 1178:22, 1230:1, 1230:3 Doctor - 1213:5 doctoral - 1153:13, 1154:6, 1154:13 document - 1167:13, 1167:20, 1169:3, 1169:4, 1170:16, 1172:4, 1173:2, 1173:3,</p>	<p>1178:13, 1184:24, 1185:5, 1193:13, 1193:15, 1199:18, 1201:23, 1203:5, 1203:18, 1203:20, 1204:14, 1204:16, 1204:18, 1204:21, 1210:14, 1217:5, 1219:2, 1219:4, 1220:13, 1225:24, 1234:2, 1234:11, 1236:3, 1236:5, 1237:20, 1239:17 document-level - 1184:24 documentation - 1178:9, 1178:10, 1178:13, 1200:6, 1200:8, 1232:19, 1233:2, 1233:7 documents - 1170:6, 1170:9, 1170:10, 1170:11, 1170:12, 1170:22, 1172:9, 1172:10, 1172:25, 1174:6, 1174:10, 1175:19, 1175:25, 1176:2, 1178:3, 1178:7, 1179:15, 1185:11, 1186:3, 1188:15, 1188:16, 1190:13, 1192:4, 1192:9, 1192:15, 1195:3, 1201:10, 1201:21, 1202:13, 1203:13, 1204:8, 1205:6, 1205:16, 1205:21, 1205:23, 1206:10, 1206:15, 1207:13, 1207:15, 1208:11, 1208:18, 1208:19, 1208:20, 1216:1, 1216:2, 1216:14, 1218:3, 1218:8, 1218:24, 1220:9, 1220:11, 1228:11, 1233:5 domain - 1218:7 dominated - 1242:10 done - 1153:15, 1154:24, 1155:9, 1176:24, 1184:22, 1204:7 Dorothy - 1198:23, 1198:25 Dorris - 1148:16 down - 1168:5, 1178:13, 1184:14, 1186:7, 1189:22, 1212:20, 1212:21, 1213:2, 1213:3, 1225:25, 1228:15, 1234:11, 1241:5, 1246:10 Dr - 1152:7, 1152:8, 1152:20, 1152:21, 1153:1, 1153:12, 1155:2, 1155:8, 1155:11, 1155:15, 1155:21, 1156:15, 1156:22, 1157:7, 1160:5, 1161:2, 1161:4, 1161:20, 1162:7, 1163:1, 1163:4, 1163:19, 1163:25, 1164:13, 1164:24, 1165:2, 1166:4, 1166:11,</p>	<p>1166:16, 1166:20, 1166:21, 1167:7, 1167:14, 1167:24, 1168:2, 1168:4, 1168:10, 1168:13, 1169:4, 1169:9, 1170:1, 1170:20, 1171:3, 1171:7, 1171:14, 1171:23, 1172:8, 1172:25, 1173:25, 1174:5, 1174:25, 1175:20, 1176:14, 1177:5, 1177:17, 1177:18, 1177:24, 1180:10, 1180:21, 1181:11, 1184:14, 1185:8, 1185:14, 1186:25, 1187:6, 1188:6, 1189:1, 1191:9, 1191:21, 1192:24, 1194:4, 1195:21, 1196:8, 1197:14, 1198:3, 1198:9, 1199:4, 1199:17, 1199:19, 1199:23, 1200:3, 1200:11, 1200:14, 1200:22, 1202:9, 1202:23, 1203:2, 1204:3, 1204:15, 1206:2, 1206:8, 1206:22, 1207:1, 1207:3, 1207:7, 1208:6, 1209:2, 1209:14, 1209:20, 1210:11, 1211:7, 1211:10, 1211:18, 1212:15, 1213:25, 1215:6, 1215:22, 1217:5, 1217:16, 1218:16, 1218:22, 1225:9, 1225:20, 1225:21, 1226:11, 1226:16, 1228:14, 1229:15, 1231:21, 1233:22, 1241:5, 1241:7, 1242:2, 1243:10, 1244:6, 1245:15, 1245:18 draft - 1244:13, 1244:15, 1244:22, 1245:2, 1245:14 dramatic - 1212:11 draw - 1164:25, 1167:6, 1206:24 drawing - 1192:14 drew - 1202:10, 1203:3 drifting - 1159:25 drop - 1212:11 drops - 1212:5 duly - 1153:8 during - 1199:9, 1210:11, 1212:22, 1214:20, 1224:11, 1229:15, 1233:18, 1242:21, 1244:3 Dx - 1208:24, 1209:1, 1209:3, 1209:15, 1209:17, 1209:21, 1209:25, 1210:5, 1210:7, 1210:12, 1210:14, 1210:20, 1210:22, 1211:11, 1211:15, 1212:8, 1213:2, 1213:25, 1214:8, 1214:25, 1215:7, 1217:4, 1217:10,</p>	<p>1217:15, 1217:21, 1219:21, 1221:5, 1221:14, 1221:15, 1221:18, 1221:20, 1221:21, 1222:1, 1222:7 Dx-12 - 1202:5, 1202:6, 1202:24, 1203:19 Dx-259 - 1166:13, 1166:20, 1167:6, 1201:17, 1201:19 Dx-260 - 1168:10 Dx-28 - 1201:6 Dx-30 - 1193:2, 1193:3 Dx-32 - 1201:6 Dx-71 - 1165:1 Dx-79 - 1201:6 Dx-8 - 1201:6, 1201:22 Dx-94 - 1169:15</p>	<p>enforces - 1184:4 engaging - 1189:3 Engineers - 1155:14 English - 1241:23 enjoyed - 1243:7 enlarged - 1164:2, 1193:4 entire - 1161:16, 1163:9, 1173:2, 1173:3 entitled - 1186:5, 1211:21, 1214:5, 1214:8, 1240:7, 1247:5 environment - 1208:9, 1208:10 equally - 1206:15 era - 1171:10, 1171:12, 1223:15, 1224:13 erroneous - 1160:7 error - 1221:12, 1221:21 Esquire - 1148:12, 1148:15, 1148:16, 1148:19, 1148:20, 1148:23, 1149:1, 1149:2, 1149:3, 1149:6 essence - 1238:24 essentially - 1221:23, 1238:18, 1238:21 establishment - 1179:2 estate - 1217:4 Estimate - 1225:18 estimate - 1202:13, 1202:17, 1205:24, 1210:19, 1216:3, 1216:5, 1216:9, 1227:23, 1228:10, 1229:4 estimates - 1207:5, 1226:2, 1226:11, 1226:17, 1226:19, 1226:20, 1226:23, 1227:21, 1228:6, 1228:7, 1228:12, 1228:13, 1228:15, 1228:16 estimating - 1229:5 et - 1148:3, 1148:6, 1164:20 European - 1159:22 event - 1179:1 events - 1159:18, 1159:19, 1159:20, 1178:18 everywhere - 1223:20 evidence - 1160:15, 1166:6, 1166:11, 1169:9, 1169:10, 1200:19, 1216:7, 1216:12, 1216:21, 1217:2, 1217:8, 1217:13, 1217:19, 1218:11, 1218:14 Evidence - 1205:9 Evidentiary - 1148:8 exactly - 1213:7, 1220:7, 1230:19, 1231:6, 1239:25 Exactly - 1213:21 Examination - 1150:2, 1153:10, 1157:5, 1160:25 examination - 1166:2, 1216:1,</p>
E				
<p>early - 1173:5 easy - 1196:24, 1198:1 educational - 1152:7, 1153:12 Edward - 1150:3, 1151:19, 1153:8, 1234:4 effect - 1241:17 effective - 1198:1, 1237:9, 1237:12, 1237:15, 1237:17, 1238:2, 1238:5, 1238:6, 1239:4, 1239:6, 1239:23, 1240:3, 1240:5, 1242:9 effectively - 1189:2, 1193:14, 1194:18, 1206:3 effectuating - 1160:6 efficient - 1241:12 effort - 1159:4, 1159:5, 1162:23, 1167:2, 1192:19, 1192:21 efforts - 1162:25, 1192:17 either - 1162:24, 1174:17, 1178:25, 1207:17, 1242:11 electronic - 1171:10, 1171:12, 1223:15, 1224:13 element - 1211:5 eliminate - 1204:2 Elliott - 1148:15 eloquent - 1245:22 Elouise - 1148:3 emphasize - 1227:10 end - 1161:13, 1164:7, 1166:7, 1167:12, 1168:16, 1169:10, 1169:13, 1171:18, 1171:19, 1216:4, 1222:12, 1222:23, 1222:25, 1229:13 Ending - 1186:2 enforcement - 1188:11 Enforcement - 1184:3</p>	<p>enforces - 1184:4 engaging - 1189:3 Engineers - 1155:14 English - 1241:23 enjoyed - 1243:7 enlarged - 1164:2, 1193:4 entire - 1161:16, 1163:9, 1173:2, 1173:3 entitled - 1186:5, 1211:21, 1214:5, 1214:8, 1240:7, 1247:5 environment - 1208:9, 1208:10 equally - 1206:15 era - 1171:10, 1171:12, 1223:15, 1224:13 erroneous - 1160:7 error - 1221:12, 1221:21 Esquire - 1148:12, 1148:15, 1148:16, 1148:19, 1148:20, 1148:23, 1149:1, 1149:2, 1149:3, 1149:6 essence - 1238:24 essentially - 1221:23, 1238:18, 1238:21 establishment - 1179:2 estate - 1217:4 Estimate - 1225:18 estimate - 1202:13, 1202:17, 1205:24, 1210:19, 1216:3, 1216:5, 1216:9, 1227:23, 1228:10, 1229:4 estimates - 1207:5, 1226:2, 1226:11, 1226:17, 1226:19, 1226:20, 1226:23, 1227:21, 1228:6, 1228:7, 1228:12, 1228:13, 1228:15, 1228:16 estimating - 1229:5 et - 1148:3, 1148:6, 1164:20 European - 1159:22 event - 1179:1 events - 1159:18, 1159:19, 1159:20, 1178:18 everywhere - 1223:20 evidence - 1160:15, 1166:6, 1166:11, 1169:9, 1169:10, 1200:19, 1216:7, 1216:12, 1216:21, 1217:2, 1217:8, 1217:13, 1217:19, 1218:11, 1218:14 Evidence - 1205:9 Evidentiary - 1148:8 exactly - 1213:7, 1220:7, 1230:19, 1231:6, 1239:25 Exactly - 1213:21 Examination - 1150:2, 1153:10, 1157:5, 1160:25 examination - 1166:2, 1216:1,</p>			

1216:9, 1216:12, 1218:16, 1218:20, 1224:11, 1239:19, 1240:7, 1246:4, 1246:23 examine - 1160:17, 1206:3, 1218:18 examined - 1218:12 example - 1161:13, 1163:2, 1164:14, 1166:11, 1169:20, 1173:16, 1174:12, 1175:7, 1182:10, 1183:15, 1183:21, 1185:3, 1189:21, 1192:7, 1195:6, 1203:19, 1217:4, 1223:1, 1230:7, 1231:16 examples - 1175:3, 1175:6 except - 1206:22 exception - 1161:16 excerpted - 1171:1, 1205:8, 1206:9, 1211:3 Excuse - 1219:3, 1241:2 excuse - 1155:5 executive - 1168:20, 1168:23 exercise - 1229:4 exhibit - 1165:13, 1167:11, 1170:8, 1177:11, 1177:21, 1203:8, 1205:7, 1207:2, 1210:23, 1214:19, 1226:12 Exhibit - 1163:3, 1164:1, 1164:15, 1175:9, 1177:18, 1199:17, 1200:14, 1200:18, 1200:19, 1200:22, 1207:11, 1208:22, 1214:18, 1216:3, 1216:19, 1216:21, 1217:1, 1217:8, 1217:13, 1217:18, 1219:1, 1238:11, 1241:3 Exhibits - 1216:23 exhibits - 1165:14, 1170:24, 1175:6, 1200:13, 1201:14, 1203:15, 1206:12, 1207:1, 1207:5, 1208:7, 1208:21, 1211:9, 1215:23, 1216:11, 1216:16, 1233:5 exist - 1152:11, 1176:4, 1176:5, 1177:7, 1198:11, 1218:12 existence - 1161:8, 1194:6 existing - 1195:3 exists - 1152:10, 1165:24, 1177:6 expand - 1189:10 expect - 1179:8, 1179:13 experience - 1163:19, 1163:23, 1176:17, 1193:16, 1199:11 Expert - 1234:3 expert - 1152:12, 1152:14, 1152:20, 1152:21, 1152:23,	1152:25, 1155:21, 1156:1, 1156:9, 1156:11, 1156:15, 1156:18, 1156:19, 1156:22, 1158:12, 1160:3, 1160:8, 1160:11, 1160:22, 1162:6, 1194:8, 1194:15, 1194:24, 1200:4, 1200:14, 1205:23, 1207:11, 1207:17, 1216:6, 1231:11, 1234:11, 1235:3, 1239:22, 1240:8, 1240:16, 1240:17 experts - 1152:15, 1194:9 explain - 1184:15, 1184:16, 1191:24, 1203:3, 1203:17, 1203:18 explaining - 1177:12, 1178:3 explanation - 1177:25 expressed - 1237:24 extensive - 1156:16, 1233:6 extent - 1230:14, 1242:23	1194:15, 1196:8 favorable - 1242:8 federal - 1152:22, 1152:23, 1153:6, 1153:16, 1153:24, 1154:15, 1154:18, 1156:9, 1156:12, 1156:16, 1156:22, 1156:23, 1160:11, 1160:22, 1169:23, 1171:24, 1181:19, 1182:17, 1183:15, 1184:4 Federal - 1162:11, 1163:21, 1179:8, 1179:22, 1179:23, 1180:1, 1180:5, 1181:8, 1181:9, 1182:7, 1184:25, 1185:6, 1185:18, 1187:20, 1193:19 fee - 1235:21 fees - 1235:15, 1235:18, 1235:24, 1236:1 feet - 1176:7, 1176:9, 1181:6, 1184:20, 1187:16, 1188:1, 1188:7, 1188:10, 1188:22, 1198:9, 1198:14, 1198:16 felt - 1214:17 few - 1154:1, 1175:6, 1175:9, 1185:10, 1204:13, 1206:6 fewer - 1238:2 field - 1156:13 fields - 1242:16 fifth - 1213:11 figure - 1182:6, 1183:24, 1202:11, 1202:17, 1212:8, 1213:3, 1213:6, 1213:17, 1228:3 figures - 1164:11, 1165:9, 1169:19, 1170:17, 1198:13, 1198:14, 1209:9, 1209:10, 1209:16, 1209:21, 1210:4, 1212:21, 1226:18, 1228:11 file - 1163:15, 1204:20 filed - 1239:21 files - 1186:9, 1186:10, 1186:11, 1186:14, 1186:15, 1186:17 Filing - 1234:3 fill - 1228:2 filled - 1189:14 finally - 1200:3 finance - 1151:5 financial - 1166:18, 1175:25, 1176:2, 1176:22, 1179:14, 1192:4, 1195:16, 1216:24 findings - 1237:4 firm - 1154:10, 1169:18 First - 1151:3, 1172:2, 1178:6, 1178:20, 1184:19, 1195:1, 1205:4 first - 1152:24, 1161:5, 1167:1,	1167:2, 1168:14, 1168:20, 1189:13, 1191:14, 1194:10, 1209:2, 1209:3, 1218:24, 1219:1, 1221:20, 1229:21, 1234:10, 1237:9, 1239:20, 1242:6 fiscal - 1161:13, 1185:22, 1208:24, 1209:5 Five - 1213:11 five - 1155:24, 1164:25, 1165:1, 1173:5, 1193:3, 1203:1, 1214:13 flip - 1225:1 Floor - 1148:13 flowchart - 1151:5, 1151:7 fluctuate - 1228:24 fluid - 1172:7 fly - 1208:3 focus - 1238:18, 1241:5 focused - 1154:14 focuses - 1154:17 focusing - 1171:1, 1171:2, 1194:19 folder - 1184:23, 1186:20 folder-by-folder - 1186:20 folks - 1197:5 following - 1168:11, 1212:5, 1212:9 follows - 1153:9 footnote - 1225:25, 1237:10 footnotes - 1226:1 Force - 1155:1 foregoing - 1247:3 Forest - 1154:24, 1183:15 forgot - 1158:15 form - 1169:3, 1171:1, 1185:4, 1187:7, 1206:9, 1206:11, 1231:16, 1242:15, 1243:1, 1244:13, 1244:15 former - 1237:21 forming - 1197:10 forms - 1187:13, 1231:15, 1231:17 formulating - 1206:8 forward - 1229:23, 1232:7 foundation - 1153:1 Four - 1155:24 four - 1154:1, 1163:25, 1167:6, 1173:5, 1189:3 Fourth - 1148:24 Franklin - 1149:8 frankly - 1160:12 Frc - 1185:17 free - 1198:12 freeze - 1185:24 frequently - 1173:23 front - 1153:2, 1161:6, 1161:7 Frz-1 - 1185:25 Ft - 1181:10 Fti - 1172:21, 1172:22 full - 1165:19, 1165:22, 1165:24	fully - 1159:21 function - 1180:24 fund - 1161:16, 1167:12, 1168:14, 1168:17, 1175:16, 1179:21, 1195:23, 1209:5 Fund - 1155:18, 1155:20 fundamentally - 1222:18 Funds - 1211:16, 1211:21, 1225:19 funds - 1165:5, 1167:9, 1169:6, 1173:16, 1178:24, 1189:23, 1190:1, 1203:23, 1209:8, 1211:4, 1211:7, 1212:20, 1215:2, 1219:6, 1219:10, 1219:15, 1219:18, 1219:19, 1220:2, 1221:8, 1221:20, 1238:6, 1241:14, 1242:15
F				
faced - 1159:2 facilities - 1179:4 facility - 1176:11, 1176:14 fact - 1158:17, 1158:24, 1158:25, 1160:7, 1160:14, 1160:15, 1173:9, 1186:17, 1199:8, 1227:13, 1242:10, 1246:9 factually - 1161:8 failed - 1230:10 failure - 1165:19 fair - 1159:14, 1159:15, 1196:14, 1196:20, 1223:23, 1224:16, 1225:6, 1227:3, 1227:4, 1227:7, 1227:16, 1227:18, 1228:5, 1228:8, 1228:21, 1228:22, 1230:16, 1230:17, 1231:13, 1240:14, 1243:14, 1243:23, 1245:3, 1245:4 Fair - 1151:13, 1227:22, 1228:24 fairly - 1179:4, 1198:1, 1228:4 familiar - 1172:10, 1175:20, 1220:17, 1226:5, 1243:10 famous - 1198:25 far - 1158:21, 1175:13, 1175:19, 1194:5, 1227:11 Fasold - 1194:9, 1194:10, 1194:17, 1194:21, 1195:4, 1195:9, 1246:7, 1246:8 Fasold's - 1152:16, 1192:25, 1194:11,	G			
gain - 1242:19 gander - 1151:14 Gao - 1167:20, 1175:20, 1176:17, 1191:24, 1191:25, 1192:8, 1196:4, 1197:11, 1217:16, 1231:22, 1232:8, 1233:4, 1233:8, 1233:10, 1233:17 gas - 1180:23, 1181:21, 1181:24, 1182:1, 1182:24, 1183:20, 1190:5, 1190:6, 1190:8, 1195:8, 1230:15, 1230:25 gather - 1162:23, 1162:24, 1172:15, 1174:5, 1174:17 gathered - 1163:16, 1164:17, 1164:19, 1210:16 gathering - 1172:13, 1199:7 gears - 1177:5 general - 1161:10, 1193:1, 1245:2 General - 1162:14, 1163:10, 1170:10, 1175:25, 1178:21, 1188:18, 1192:1, 1195:16, 1195:24, 1232:17 generally - 1161:20, 1179:14 Generally - 1161:21, 1179:15, 1232:14 generate - 1194:21 generated - 1158:24, 1158:25, 1159:8 genuine - 1245:21 Geological - 1180:22 George - 1153:13, 1153:25 Georgia - 1148:18 Gingold - 1148:12, 1174:19 qiven - 1198:1,				

1207:25, 1208:14, 1222:15, 1222:16, 1222:20 global - 1227:7 glossary - 1151:4 Google - 1167:22 goose - 1151:13 Government - 1241:11, 1242:2, 1242:4, 1242:10, 1242:23, 1245:18 government - 1151:6, 1151:18, 1151:19, 1154:22, 1154:23, 1157:17, 1157:19, 1159:3, 1165:23, 1166:19, 1167:9, 1178:23, 1195:9, 1204:1, 1210:1, 1242:6 government's - 1157:20, 1167:2 grand - 1177:3 great - 1233:2, 1241:18, 1242:15 greater - 1241:16, 1242:22 ground - 1153:4 group - 1182:11, 1182:12, 1182:14, 1182:16, 1182:21, 1185:12, 1185:18, 1185:19, 1188:23, 1193:13, 1198:15, 1230:7 groups - 1155:7, 1155:15, 1172:21, 1182:10 Gsa - 1217:22 guardian - 1242:23 guess - 1226:15, 1227:17, 1227:19 guidance - 1152:3, 1152:19 Guilder - 1148:20 guy - 1189:24	1225:3, 1225:11, 1225:12, 1225:15, 1225:16, 1229:25, 1231:5, 1231:8, 1232:7, 1232:10, 1233:7, 1233:24, 1234:1, 1236:4, 1236:9, 1236:12, 1236:13, 1236:18, 1236:20, 1237:6, 1237:8, 1238:8, 1238:10, 1238:12, 1239:20, 1240:9, 1240:11, 1240:14, 1240:23, 1240:24, 1241:2, 1241:4, 1241:21, 1241:22, 1241:24, 1242:1, 1243:6, 1243:8, 1243:9, 1244:14, 1244:20, 1245:11, 1245:15, 1246:24 heading - 1209:13, 1211:16, 1211:20 health - 1188:11 hear - 1228:13, 1240:5 heard - 1171:10, 1184:19 hearing - 1164:18, 1172:4, 1173:9, 1173:17, 1206:13 Hearing - 1148:8 hearings - 1164:20, 1170:7, 1173:6, 1174:16, 1196:2 heavily - 1174:15, 1234:24, 1234:25 held - 1158:2, 1158:13, 1169:21, 1169:23, 1179:25, 1180:5, 1182:2, 1185:24, 1191:22, 1195:19, 1196:3, 1198:16, 1212:12, 1232:13 helped - 1195:4 helpful - 1202:9, 1203:2 Herman - 1172:23 higher - 1171:25 himself - 1218:5 historian - 1154:6, 1154:12, 1162:1, 1192:14, 1194:24, 1195:2, 1195:10, 1195:21, 1196:17, 1196:19, 1220:9, 1229:10, 1243:19 historic - 1152:10, 1154:10, 1167:1, 1207:13, 1218:3 historical - 1158:22, 1159:20, 1162:12, 1177:20, 1178:3, 1178:7, 1179:18, 1181:1, 1181:7, 1192:10, 1192:16, 1192:22, 1195:2, 1195:3, 1196:19, 1198:20, 1200:7, 1207:15, 1233:10, 1245:25 Historical - 1161:25, 1192:21 historically - 1180:14 History - 1235:7 history - 1152:22, 1153:6, 1153:14,	1154:7, 1156:9, 1156:12, 1156:15, 1156:23, 1157:16, 1160:2, 1160:11, 1162:22, 1212:22 holders - 1192:23 holding - 1179:4 holds - 1187:25, 1188:18, 1188:20 Hollinger - 1190:18 Homan - 1152:15, 1194:9, 1196:14, 1196:19, 1196:22, 1246:7 Homan's - 1192:25, 1196:9, 1196:18, 1246:12 home - 1187:23 homework - 1206:23, 1207:22 Honor - 1151:9, 1151:17, 1152:2, 1152:6, 1152:14, 1152:18, 1152:24, 1153:7, 1156:14, 1156:21, 1157:1, 1157:3, 1160:4, 1160:20, 1165:12, 1165:21, 1167:17, 1167:19, 1168:7, 1168:21, 1168:25, 1169:2, 1170:23, 1174:11, 1174:23, 1180:15, 1182:21, 1184:10, 1184:19, 1191:10, 1200:12, 1200:17, 1200:21, 1201:5, 1201:9, 1201:13, 1201:25, 1202:9, 1202:15, 1202:20, 1203:7, 1203:12, 1203:16, 1203:17, 1204:11, 1204:16, 1204:24, 1206:5, 1206:19, 1207:9, 1207:16, 1208:1, 1210:6, 1210:8, 1212:2, 1213:21, 1215:21, 1216:15, 1217:9, 1217:15, 1217:20, 1218:2, 1218:11, 1218:15, 1218:19, 1231:2, 1232:5, 1232:7, 1236:9, 1236:13, 1239:20, 1240:11, 1240:14, 1240:24, 1243:1, 1243:6, 1244:12, 1246:24 Honorable - 1148:9 hostile - 1242:11 hot - 1156:24 hour - 1246:23 House - 1164:21, 1170:7, 1172:4, 1215:8, 1215:10 hundred - 1173:5, 1173:6, 1214:14	identify - 1208:19 ignores - 1213:13, 1213:14 lim - 1152:13, 1161:13, 1164:8, 1164:12, 1169:18, 1169:19, 1169:20, 1169:22, 1169:23, 1170:6, 1171:24, 1171:25, 1172:7, 1172:16, 1173:24, 1177:8, 1179:19, 1190:19, 1195:14, 1196:3, 1200:22, 1201:7, 1209:12, 1209:24, 1211:8, 1212:5, 1212:11, 1212:23, 1216:19, 1222:9, 1222:10, 1225:19, 1226:12, 1237:14, 1237:25, 1238:1, 1238:6, 1244:12, 1246:5 lims - 1183:3 immediately - 1228:13 immigrant - 1159:1 immigrants - 1159:6 implemented - 1225:5, 1225:6 implementing - 1223:23, 1224:4, 1224:5, 1239:10 imply - 1188:9 important - 1158:9, 1158:11, 1178:17, 1178:18, 1179:1, 1204:8, 1230:15, 1246:4 importantly - 1160:20 impose - 1159:3 impossible - 1203:25 improved - 1197:24 inability - 1197:6 inaccurate - 1213:20, 1213:22, 1220:23 inadequate - 1242:4 inch - 1190:18 include - 1154:23, 1155:3, 1174:2, 1179:17, 1183:14, 1188:11, 1188:12, 1188:13, 1215:9, 1228:6 included - 1205:16, 1211:6, 1214:1, 1214:5, 1214:12, 1214:15, 1215:7, 1215:11, 1215:15, 1219:8, 1219:17, 1221:9, 1226:14 includes - 1187:10 including - 1162:13, 1234:25 Including - 1235:15 inclusive - 1190:7, 1190:9 inconsistencies - 1166:2 incorrect - 1221:17, 1234:20, 1244:1 indeed - 1212:25 indeed - 1174:21, 1198:8, 1221:1, 1234:16 Indian - 1152:22,	1152:23, 1152:25, 1153:6, 1153:16, 1153:25, 1154:15, 1154:18, 1155:2, 1155:3, 1155:13, 1156:9, 1156:10, 1156:12, 1156:16, 1156:22, 1156:23, 1157:14, 1157:22, 1157:24, 1158:1, 1158:6, 1158:8, 1158:9, 1158:12, 1158:14, 1158:20, 1159:8, 1160:9, 1160:11, 1160:22, 1161:10, 1161:11, 1161:19, 1162:7, 1162:8, 1162:20, 1163:18, 1163:22, 1164:22, 1165:6, 1165:7, 1165:8, 1165:10, 1167:9, 1167:10, 1168:4, 1168:15, 1169:21, 1170:3, 1170:5, 1170:9, 1172:12, 1173:4, 1173:21, 1174:14, 1175:7, 1175:24, 1176:3, 1176:20, 1176:21, 1176:24, 1177:10, 1177:13, 1178:8, 1178:19, 1178:20, 1178:22, 1179:2, 1180:4, 1180:7, 1180:13, 1180:23, 1181:3, 1181:21, 1182:2, 1182:5, 1182:11, 1182:20, 1182:22, 1183:6, 1183:9, 1183:10, 1183:15, 1183:20, 1184:4, 1184:20, 1185:13, 1185:19, 1186:9, 1187:11, 1187:12, 1188:1, 1188:8, 1188:13, 1188:16, 1188:18, 1188:19, 1188:21, 1188:23, 1190:21, 1192:3, 1192:16, 1192:20, 1193:16, 1193:20, 1194:1, 1195:7, 1195:15, 1195:25, 1196:1, 1196:6, 1197:4, 1197:17, 1197:20, 1198:4, 1198:11, 1200:10, 1203:23, 1208:23, 1209:5, 1210:17, 1211:12, 1214:4, 1214:6, 1214:9, 1215:16, 1215:20, 1219:5, 1219:10, 1219:18, 1219:19, 1219:22, 1220:2, 1220:25, 1221:8, 1221:20, 1223:25, 1230:21, 1230:25, 1231:12, 1233:3, 1235:16, 1235:19, 1235:20, 1237:1, 1239:9, 1242:15, 1242:20, 1242:21 Indian's - 1193:25 Indian-related - 1188:16 Indians - 1159:12, 1160:6, 1162:18,
H				
hand - 1151:25, 1164:9, 1170:14, 1212:18 handed - 1211:9 handle - 1180:23, 1239:9 handled - 1163:8 handling - 1237:14, 1238:1 Hands - 1211:16, 1211:21 hard - 1196:23, 1202:12, 1202:16, 1203:8, 1236:6, 1236:8, 1236:16 Harper - 1148:19, 1150:4, 1150:6, 1152:24, 1156:24, 1157:1, 1157:3, 1157:6, 1157:8, 1160:2, 1160:4, 1160:18, 1165:12, 1180:15, 1201:9, 1201:25, 1202:5, 1203:14, 1203:16, 1204:10, 1204:13, 1206:19, 1206:24, 1207:16, 1218:18, 1218:19, 1218:21, 1218:23, 1221:3, 1221:16, 1224:10,				
		I		
		idea - 1215:10, 1226:22 identical - 1206:9 identification - 1200:18 identified - 1157:24, 1165:14, 1216:1		

1163:20, 1165:23, 1180:11, 1192:5, 1194:22, 1195:20, 1238:6 indicated - 1196:23 indicates - 1219:5 indication - 1204:20 Individual - 1161:10, 1165:6, 1165:7, 1165:8, 1168:15, 1169:21, 1173:21, 1176:2, 1176:20, 1176:21, 1176:24, 1178:8, 1180:13, 1188:8, 1188:13, 1190:21, 1192:16, 1196:6, 1210:17, 1211:16, 1211:20, 1219:19, 1219:22, 1236:25 individual - 1161:11, 1165:10, 1167:10, 1168:3, 1168:4, 1169:6, 1180:10, 1182:5, 1183:9, 1190:23, 1192:5, 1193:25, 1194:1, 1194:22, 1195:20, 1214:6, 1220:2 individual-by- individual - 1190:23 inducements - 1241:16 indulge - 1205:1 indulgent - 1242:11 infidelity - 1241:13 influence - 1241:13 information - 1169:24, 1172:16, 1173:14, 1180:13, 1181:2, 1186:17, 1187:10, 1190:6, 1193:14, 1194:6, 1203:23, 1205:7, 1210:15, 1210:16, 1211:2, 1214:15, 1215:13, 1218:3, 1219:17, 1220:6, 1220:8, 1220:14, 1220:21, 1220:22, 1227:14, 1228:8, 1228:20, 1228:23, 1232:24, 1233:1, 1233:8, 1233:9, 1233:14 Information - 1219:10 informed - 1210:11 initial - 1159:8, 1159:16 inquiry - 1207:6 Inspector - 1163:10 instances - 1199:12, 1242:24 Integrated - 1171:11, 1224:15, 1224:25 interest - 1158:24, 1158:25, 1159:8, 1159:16, 1164:10 interest-bearing - 1164:10 interested - 1159:17, 1189:11, 1189:12, 1189:15, 1189:22, 1190:4, 1245:21 interesting - 1206:6	Interior - 1148:6, 1154:24, 1154:25, 1161:22, 1162:14, 1163:8, 1164:18, 1164:21, 1172:19, 1172:20, 1174:16, 1174:18, 1194:23, 1195:6, 1211:13, 1214:9, 1220:22, 1220:25, 1227:6, 1234:3 internal - 1186:2 interrupt - 1180:8, 1185:14 introducing - 1215:25 inventoried - 1179:4, 1184:21, 1197:3, 1246:15 inventory - 1184:22, 1186:16, 1186:18, 1186:19, 1192:18, 1199:15 invested - 1165:5, 1169:23, 1171:24 investigation - 1215:16, 1215:20 investment - 1170:10, 1173:17, 1174:17, 1208:24, 1209:5, 1209:9, 1209:11 investments - 1164:10, 1220:4 invoking - 1205:12 involved - 1173:20, 1234:24, 1234:25, 1245:17 involving - 1178:23 lrms - 1171:11, 1223:12, 1223:15, 1223:17, 1223:21, 1223:22, 1224:21 Issda - 1209:8, 1233:3 issue - 1155:20, 1160:15, 1231:25, 1232:20, 1240:9 issues - 1153:23, 1153:24, 1159:2, 1160:12, 1162:22, 1178:6, 1178:18, 1183:23, 1223:7 Itad - 1178:22, 1178:24 item - 1225:9 items - 1204:4 itself - 1179:10, 1216:19	Justice - 1149:3, 1149:7, 1162:3, 1171:8, 1172:17, 1172:19, 1199:21, 1223:14 Justin - 1148:20	Lawson - 1155:12 layman's - 1198:10 learn - 1228:20 lease - 1182:4, 1182:24, 1183:7, 1183:8 Lease - 1184:6 leases - 1179:17, 1181:25, 1182:1, 1183:10, 1183:12, 1183:14, 1184:4, 1190:5, 1190:6, 1190:8 leasing - 1190:4 least - 1181:12, 1215:5, 1244:17 leave - 1188:6, 1192:25, 1203:11, 1207:9, 1209:10, 1209:14 leaves - 1221:20, 1221:21 ledgers - 1161:12, 1190:21, 1190:22 left - 1189:12, 1212:18 left-hand - 1212:18 legal - 1205:19, 1206:5, 1206:17 Lenexa - 1174:18, 1204:21, 1204:23 less - 1183:19 lesser - 1242:23 level - 1161:11, 1161:13, 1182:4, 1182:5, 1184:24, 1186:20 Levitas - 1148:15 libraries - 1162:13, 1164:19 library - 1162:14, 1164:18, 1174:16, 1174:18 Library - 1162:14, 1162:15, 1164:19 light - 1165:19 limited - 1186:16, 1232:23 line - 1161:6, 1161:7, 1171:20, 1209:17, 1240:10 lines - 1167:5, 1215:25 list - 1185:2, 1185:3, 1185:10, 1187:2, 1189:6, 1200:20, 1204:22, 1208:21, 1221:1 listed - 1170:13, 1180:9, 1206:12, 1212:16 listening - 1243:7 litigation - 1156:1, 1192:17 Litigation - 1149:7 Llp - 1148:16, 1148:20, 1148:24 locate - 1162:24, 1185:11, 1187:15, 1207:4 located - 1178:7, 1181:8 location - 1177:15, 1179:3, 1186:2, 1187:14 locations - 1162:16, 1162:17 look - 1164:15, 1164:25, 1167:5, 1175:12, 1175:13,	1178:2, 1178:15, 1180:3, 1187:10, 1187:19, 1189:5, 1203:18, 1203:20, 1203:22, 1206:1, 1207:3, 1208:2, 1208:6, 1217:25, 1219:4, 1221:4, 1234:11, 1236:25, 1239:17, 1243:25, 1244:3, 1245:15 looked - 1183:13, 1212:13, 1230:12 looking - 1151:5, 1157:16, 1164:21, 1164:22, 1164:24, 1169:11, 1172:11, 1173:14, 1189:15, 1189:20, 1189:23, 1195:25, 1210:24, 1214:22 Looking - 1181:5 loose - 1204:20 lost - 1168:5, 1196:15, 1197:14, 1246:13 Lost - 1155:5 loud - 1184:9, 1184:11 Lower - 1155:3, 1234:25 Lsa - 1199:7, 1199:9, 1199:11 lunch - 1236:11, 1236:15, 1244:3, 1245:16, 1246:22 luncheon - 1236:10 lunchtime - 1245:17 lurking - 1183:17
	J	K	L	M
	James - 1148:9 January - 1224:23 John - 1149:1, 1149:3, 1149:6, 1151:17 joint - 1243:22 Jr - 1149:1 judge - 1161:5, 1170:1, 1208:20, 1211:1, 1213:7, 1214:23 Judge - 1148:10, 1156:13, 1156:17, 1209:20, 1244:16 judgment - 1232:2, 1232:13 June - 1165:11, 1172:4, 1214:7	Kansas - 1185:18 keep - 1203:5 Keith - 1148:19 Kemphorne - 1148:6 kept - 1161:11, 1161:12, 1231:25 key - 1183:23, 1186:21 kidding - 1243:8 Kilpatrick - 1148:16, 1148:20, 1148:24 kind - 1151:6, 1163:9, 1174:8, 1178:11, 1189:24, 1208:11, 1227:14 kinds - 1185:5 Kiowa - 1213:14 Kirschman - 1149:1, 1151:9 knowledge - 1160:14, 1231:10, 1243:4 known - 1184:21 knows - 1183:6, 1183:7 Kohn - 1149:2	labeled - 1163:15 Lamberth - 1156:13, 1156:17, 1244:16 Land - 1235:7 land - 1235:23 landmark - 1157:22, 1157:24, 1158:1 lands - 1155:13, 1181:21, 1183:6, 1183:11, 1183:15, 1183:16, 1183:20, 1183:21, 1184:4, 1190:5, 1230:21, 1230:25, 1231:12, 1235:19, 1235:20, 1235:22, 1242:16 language - 1243:12, 1245:22 large - 1183:12, 1183:14, 1192:19, 1200:6, 1212:24, 1242:18 large-scale - 1192:19 largely - 1212:23, 1242:14 Largely - 1162:9 last - 1160:5, 1179:16, 1181:15, 1186:5, 1187:2, 1191:9, 1197:19, 1214:18, 1229:1, 1237:12, 1241:6 lasted - 1187:3 lastly - 1217:20 late - 1159:10 law - 1157:22, 1157:24, 1158:2, 1158:6, 1164:19, 1188:11, 1205:10 Law - 1148:12	machine - 1149:15, 1242:9 machinery - 1242:4, 1242:6 main - 1187:22, 1188:1, 1211:5 maintained - 1177:20 major - 1179:6, 1189:3, 1237:4 majority - 1158:17 maligned - 1168:19 man - 1205:24 management - 1195:23, 1229:16, 1236:25, 1243:16, 1244:7 Management - 1171:11, 1180:22, 1180:25, 1181:6, 1182:3, 1182:13, 1182:15, 1187:9, 1224:16, 1225:1, 1229:17, 1229:21, 1230:6 managing - 1238:5 manner - 1197:7 maricopa - 1235:10 mark - 1245:1 marked - 1244:22 marks - 1245:1 Maryland - 1176:8 mass - 1178:12 massive - 1178:13 match - 1215:2 material - 1220:13 matter - 1151:19, 1157:10, 1199:8,

<p>1216:10, 1218:10, 1244:21, 1245:1, 1247:5</p> <p>matters - 1152:25</p> <p>Matthew - 1169:25, 1193:10, 1200:23, 1201:19, 1201:22, 1202:7, 1209:15, 1209:18</p> <p>mean - 1160:1, 1174:8, 1178:11, 1180:11, 1188:9, 1196:4, 1204:1, 1213:19, 1217:6, 1222:20, 1229:10, 1231:10, 1243:12</p> <p>Meaning - 1177:1</p> <p>meaning - 1151:23, 1185:12, 1185:25</p> <p>meaningful - 1197:7</p> <p>means - 1218:1</p> <p>meant - 1181:11, 1238:5</p> <p>Meanwhile - 1236:15</p> <p>member - 1153:17, 1153:22</p> <p>memory - 1224:21, 1244:16</p> <p>mention - 1179:11</p> <p>mentioned - 1157:9, 1170:6, 1178:16, 1206:5, 1240:16, 1243:25, 1244:2</p> <p>merits - 1160:17</p> <p>Merriam - 1220:17, 1239:14</p> <p>message - 1166:24</p> <p>methodology - 1194:21, 1194:22</p> <p>Michael - 1149:2</p> <p>Michelle - 1172:23</p> <p>microphone - 1153:19</p> <p>mid - 1206:21</p> <p>mid-morning - 1206:21</p> <p>middle - 1164:9</p> <p>might - 1173:22, 1182:8, 1182:23, 1185:25, 1190:19, 1190:20, 1190:21, 1191:10, 1212:2, 1220:13, 1244:1, 1246:14</p> <p>Mike - 1155:11</p> <p>miles - 1198:14, 1198:17</p> <p>million - 1164:10, 1210:2, 1212:6</p> <p>mind - 1198:25</p> <p>mineral - 1212:24, 1229:16</p> <p>Minerals - 1180:22, 1180:25, 1181:6, 1182:3, 1182:13, 1182:15, 1187:9, 1229:17, 1229:21, 1230:6</p> <p>minerals - 1180:23, 1181:3, 1181:21</p> <p>mines - 1242:16</p> <p>minus - 1173:9, 1228:3</p> <p>minutes - 1207:8, 1207:18, 1208:8</p> <p>mischaracterizes - 1231:3</p> <p>misheard - 1230:24</p> <p>misleading - 1205:16</p> <p>missing - 1165:15, 1196:15, 1201:11, 1202:1, 1204:4, 1204:8, 1205:6, 1205:15, 1210:12, 1210:14, 1210:15, 1210:20, 1211:2, 1211:3, 1211:5, 1246:13</p> <p>Missouri - 1155:13</p> <p>misunderstanding - 1231:20</p> <p>Mms - 1180:21, 1181:19, 1182:8, 1182:24, 1183:5, 1183:7, 1183:25, 1188:20, 1229:15, 1230:21, 1231:1, 1231:11</p> <p>model - 1195:5</p> <p>moment - 1161:4, 1168:3, 1203:18, 1222:6, 1225:13, 1239:13</p> <p>moments - 1157:3</p> <p>Money - 1169:21, 1176:20, 1176:21, 1190:21, 1219:22, 1237:1</p> <p>money - 1161:12, 1165:10, 1182:24, 1182:25, 1183:2, 1183:19, 1195:19, 1196:2, 1228:3</p> <p>monies - 1165:5, 1168:15</p> <p>Monies - 1161:10, 1165:6, 1165:7, 1165:8, 1168:15, 1173:21, 1176:3, 1176:24, 1178:8, 1180:13, 1188:8, 1188:13, 1192:16, 1196:6, 1210:17</p> <p>months - 1176:1, 1192:2, 1195:14, 1196:7</p> <p>moral - 1241:15</p> <p>Morgan - 1153:17, 1153:22, 1154:7, 1154:9, 1155:11, 1170:15, 1187:24, 1226:1, 1226:2, 1226:19, 1244:22, 1245:1</p> <p>morning - 1151:2, 1156:25, 1157:7, 1157:8, 1168:24, 1206:21</p> <p>Morning - 1148:7</p> <p>most - 1171:1, 1174:15, 1184:1, 1184:2, 1210:16, 1211:4, 1222:12, 1226:12, 1235:23</p> <p>motives - 1242:19</p> <p>Move - 1180:17</p> <p>move - 1165:13, 1166:20, 1169:9, 1170:25, 1174:4, 1177:6, 1192:24, 1194:8, 1196:8, 1200:13, 1200:17, 1201:5, 1216:16, 1216:18, 1216:22, 1217:3, 1217:9, 1217:14, 1217:21,</p>	<p>1218:15, 1231:19</p> <p>moved - 1163:17, 1216:21, 1217:1, 1217:8, 1217:13, 1217:18</p> <p>multiple - 1201:23</p> <p>multiple-page - 1201:23</p>	<p style="text-align: center;">N</p> <p>name - 1151:17</p> <p>named - 1240:4</p> <p>names - 1194:2</p> <p>Nara - 1176:11, 1176:14, 1188:14, 1191:22, 1192:8, 1192:12</p> <p>Narf - 1155:18</p> <p>narrative - 1214:5, 1214:16, 1215:9</p> <p>narrow - 1178:13</p> <p>Nation - 1155:4, 1155:17</p> <p>national - 1187:24</p> <p>National - 1162:9, 1176:8, 1176:12, 1178:25, 1179:9, 1179:10, 1179:23, 1179:25, 1182:10, 1185:1, 1185:23, 1187:21, 1189:6, 1189:14, 1189:16, 1189:19, 1190:17, 1193:8, 1193:12, 1193:18, 1193:19, 1197:25, 1198:15, 1200:9</p> <p>Native - 1153:23, 1153:24, 1155:7, 1155:15, 1155:18, 1155:20, 1157:17, 1157:20, 1158:24, 1159:3, 1159:4, 1178:23, 1192:22, 1215:15</p> <p>natural - 1242:16</p> <p>nature - 1161:12, 1170:12, 1176:23, 1179:15, 1188:14, 1220:4, 1230:22, 1231:1</p> <p>necessarily - 1156:18, 1205:22</p> <p>necessary - 1174:1, 1205:7, 1205:13</p> <p>need - 1180:2, 1187:19, 1200:23, 1204:2, 1207:24, 1218:8</p> <p>negative - 1197:11</p> <p>neglected - 1242:23</p> <p>Negotiation - 1184:6</p> <p>never - 1197:14</p> <p>new - 1239:10</p> <p>Next - 1189:18</p> <p>next - 1151:15, 1167:5, 1168:2, 1168:12, 1178:2, 1178:15, 1184:14, 1185:3, 1185:8, 1185:9, 1186:25, 1189:1, 1189:19, 1191:9, 1211:10, 1219:13, 1225:1, 1226:10, 1241:24</p> <p>next-to-last - 1191:9</p> <p>nine - 1190:18</p>	<p>nine-inch - 1190:18</p> <p>Ninth - 1148:13</p> <p>Nipmuc - 1155:6, 1234:24</p> <p>none - 1205:6</p> <p>Nonetheless - 1218:5</p> <p>Norc - 1225:17, 1229:13</p> <p>normally - 1245:6</p> <p>Normally - 1245:8</p> <p>North - 1148:25</p> <p>note - 1173:8, 1206:7, 1206:10, 1206:14</p> <p>noted - 1206:14</p> <p>notes - 1201:1</p> <p>nothing - 1205:13, 1205:14</p> <p>Nothing - 1214:17</p> <p>notice - 1151:13, 1163:12, 1171:23, 1180:8, 1186:5, 1187:14</p> <p>Notice - 1234:3</p> <p>noticed - 1221:11</p> <p>noting - 1166:25</p> <p>notion - 1160:6, 1232:23</p> <p>number - 1153:23, 1162:8, 1162:12, 1162:13, 1163:14, 1163:15, 1164:8, 1164:19, 1167:15, 1170:16, 1171:25, 1172:1, 1172:3, 1172:5, 1174:16, 1180:5, 1183:7, 1183:8, 1185:22, 1187:16, 1188:12, 1193:21, 1193:22, 1203:22, 1204:19, 1226:23, 1227:3, 1227:13, 1228:20, 1228:21, 1236:13, 1239:21</p> <p>Number - 1150:9, 1216:21, 1217:1, 1217:8, 1217:13, 1217:18</p> <p>numbers - 1177:3, 1187:17, 1200:25, 1207:2, 1216:2, 1221:2, 1222:2, 1222:10, 1226:8, 1226:25, 1227:7, 1227:12, 1227:20, 1227:24, 1228:1, 1228:2, 1228:17, 1228:18, 1228:23</p> <p>Nw - 1148:13, 1148:21, 1149:4, 1149:13</p>	<p>1218:13, 1231:2, 1232:5, 1239:18, 1243:1, 1243:5</p> <p>objections - 1203:13, 1204:2, 1204:25, 1216:13</p> <p>observed - 1197:22</p> <p>obvious - 1191:21</p> <p>Obviously - 1227:9</p> <p>obviously - 1165:18, 1172:7, 1189:17, 1194:2, 1195:24, 1198:19</p> <p>occasions - 1154:1, 1154:2</p> <p>October - 1148:5</p> <p>offer - 1152:21, 1156:22</p> <p>offered - 1156:15, 1205:21, 1207:1, 1216:5</p> <p>offering - 1246:20</p> <p>office - 1163:13, 1184:2, 1184:5, 1186:9, 1186:11, 1186:17, 1199:9</p> <p>Office - 1161:25, 1162:15, 1163:7, 1163:10, 1170:10, 1172:5, 1174:12, 1176:1, 1184:3, 1184:5, 1188:19, 1192:1, 1192:20, 1195:17, 1195:25, 1204:18, 1209:6, 1232:17</p> <p>officer - 1179:20</p> <p>officers - 1241:18</p> <p>offices - 1151:7, 1179:7, 1179:14</p> <p>Offices - 1148:12</p> <p>Official - 1149:12, 1247:1</p> <p>often - 1169:22, 1170:6, 1190:7</p> <p>oftentimes - 1220:9</p> <p>Oftentimes - 1220:11</p> <p>Ohta - 1199:5</p> <p>oil - 1180:23, 1181:21, 1181:24, 1182:24, 1183:20, 1190:5, 1190:6, 1190:8, 1195:8, 1230:15, 1230:25, 1242:16</p> <p>Oil - 1182:1</p> <p>Oklahoma - 1212:23, 1212:24, 1213:2, 1213:3, 1213:13, 1213:22, 1221:18, 1221:21</p> <p>old - 1165:17, 1186:22, 1187:2, 1230:1</p> <p>omissions - 1166:2</p> <p>One - 1185:2, 1198:12, 1208:22</p> <p>one - 1151:17, 1158:5, 1163:3, 1164:7, 1164:11, 1164:15, 1165:13, 1166:14, 1175:9, 1179:3, 1181:24, 1182:10, 1183:22, 1183:24, 1185:9, 1185:10, 1185:21, 1189:12, 1191:5, 1191:14, 1201:15, 1202:17, 1203:24,</p>
		<p style="text-align: center;">O</p> <p>oath - 1151:25</p> <p>Oath - 1152:1</p> <p>object - 1152:24, 1153:4, 1165:12, 1201:9, 1202:2, 1246:17</p> <p>objecting - 1202:4, 1203:15, 1207:10, 1207:12, 1228:10</p> <p>Objecting - 1202:5</p> <p>objection - 1156:11, 1160:22, 1165:25, 1207:17</p> <p>Objection - 1180:15,</p>		

<p>1207:23, 1208:13, 1208:18, 1208:25, 1209:3, 1211:11, 1211:13, 1212:25, 1214:22, 1217:6, 1221:13, 1221:18, 1221:20, 1222:1, 1224:25, 1226:2, 1227:9, 1228:19, 1231:10, 1236:9, 1236:25, 1242:12, 1243:24, 1244:11 ones - 1173:5, 1201:4, 1202:1, 1202:2, 1202:3, 1214:13 online - 1167:20, 1223:20, 1224:22 open - 1187:25 operated - 1241:17 operates - 1242:14 operations - 1163:9 opinion - 1180:17, 1194:24, 1195:10, 1196:17, 1197:10, 1200:4, 1205:23, 1207:2, 1233:20, 1242:9, 1242:10 opinions - 1246:20 opportunities - 1241:15 opportunity - 1221:4 opposed - 1160:9, 1166:6, 1169:10 opposite - 1239:25 order - 1232:20 organizational - 1151:7 originally - 1158:25, 1177:21, 1178:16 Osage - 1212:25, 1213:14, 1221:22, 1221:25 Ost - 1163:15, 1204:19, 1221:5, 1221:6 otherwise - 1173:19 Otherwise - 1227:25 Otr - 1163:14 outside - 1205:11 overall - 1237:19 overly - 1231:14 overrule - 1165:25 overruled - 1243:5 Overruled - 1180:19, 1232:9 oversight - 1195:22, 1195:24, 1196:3, 1227:6, 1246:10 own - 1182:16, 1204:7</p>	<p>1166:4, 1166:14, 1166:20, 1166:23, 1167:5, 1167:7, 1168:12, 1168:13, 1168:14, 1168:20, 1190:2, 1193:3, 1193:11, 1193:23, 1201:23, 1202:10, 1202:24, 1203:1, 1203:3, 1203:4, 1203:20, 1203:23, 1203:24, 1204:17, 1209:8, 1209:21, 1209:25, 1210:6, 1210:7, 1210:12, 1211:15, 1211:18, 1211:21, 1211:23, 1211:24, 1212:8, 1213:8, 1219:4, 1219:12, 1219:21, 1220:1, 1233:25, 1235:4, 1236:2, 1236:24, 1237:4, 1237:7, 1240:25, 1241:24, 1241:25 pages - 1165:15, 1166:5, 1171:22, 1173:5, 1173:6, 1173:12, 1173:15, 1173:18, 1189:17, 1201:12, 1201:24, 1202:1, 1202:8, 1204:4, 1210:12, 1210:13, 1210:17, 1210:20, 1210:21, 1210:23, 1211:1, 1214:11, 1214:14, 1214:16, 1215:6, 1215:9, 1215:11, 1215:14, 1218:2, 1218:8 paid - 1235:21, 1235:24, 1236:1 paper - 1233:12 paragraph - 1167:2, 1241:6 pardon - 1156:7, 1196:6, 1221:17 Pardon - 1184:10 Parity - 1155:12 Park - 1176:8 Parker - 1198:23, 1198:25 parlance - 1192:12, 1232:21 part - 1155:9, 1155:10, 1163:8, 1171:1, 1178:16, 1179:9, 1179:23, 1185:24, 1189:7, 1189:9, 1193:23, 1200:9, 1210:16, 1211:4, 1215:16, 1221:8, 1222:12, 1233:4, 1237:13, 1241:9 particular - 1156:1, 1164:5, 1166:4, 1167:11, 1172:9, 1172:22, 1183:18, 1202:24, 1203:4, 1203:13, 1204:16, 1204:21, 1205:5, 1211:3 Particularly - 1208:18 particularly - 1158:8, 1170:4, 1172:11, 1173:5, 1181:1, 1197:24,</p>	<p>1212:6 partner - 1237:21, 1240:3 parts - 1174:2, 1194:2 passed - 1194:1 passive - 1242:24 passively - 1242:11 past - 1236:11 payment - 1181:3, 1181:21, 1231:17 Peachtree - 1148:17 peculation - 1241:16 people - 1159:20, 1169:18, 1206:2, 1235:20 Pepion - 1148:3 percent - 1154:16, 1154:21 percentage - 1154:14, 1154:17 performed - 1178:23 perhaps - 1155:6, 1198:10, 1203:2, 1209:15 period - 1176:9, 1189:15, 1192:7, 1195:14, 1196:20, 1212:22, 1228:14, 1233:18, 1239:1, 1240:10 periods - 1228:19 permission - 1163:22, 1180:2, 1187:19, 1236:5 permits - 1179:17 person - 1216:6 personnel - 1196:1 perspective - 1195:21, 1237:1 physical - 1241:14 physically - 1162:16, 1162:17, 1162:24, 1177:10, 1178:6, 1195:5 Pick - 1155:12 pick - 1243:15 Pick-sloan - 1155:12 picked - 1208:20, 1226:13 Picked - 1221:7 picking - 1189:11 picture - 1204:6, 1242:12 piece - 1228:2, 1233:9, 1233:12 Pima - 1235:10 Pima-maricopa - 1235:10 place - 1174:1, 1197:16, 1205:7, 1223:17, 1223:18, 1242:6, 1242:8 places - 1162:8, 1167:21, 1174:17, 1223:18, 1224:18, 1239:14 placing - 1196:19 plaintiffs - 1151:13, 1165:16, 1170:21, 1170:25, 1194:9, 1205:12, 1206:1, 1206:9, 1207:10, 1208:7, 1208:20, 1210:11, 1211:9, 1214:19 Plaintiffs - 1148:4,</p>	<p>1148:12, 1156:16 plaintiffs' - 1152:15, 1155:16, 1203:12, 1206:12, 1206:16 Plaintiffs' - 1238:11, 1241:3 Pm - 1246:25 Po - 1149:9 Point - 1164:8 point - 1160:4, 1165:23, 1166:1, 1166:25, 1170:24, 1177:5, 1177:17, 1177:22, 1202:23, 1209:20, 1213:7, 1216:16, 1234:18, 1234:23, 1236:10, 1240:14, 1240:15, 1240:19, 1244:5, 1244:11, 1245:10, 1245:11, 1246:4 pointed - 1237:13, 1237:25 pointedly - 1206:25 pointing - 1185:14, 1185:16 points - 1205:1, 1206:6, 1206:19 policies - 1157:18, 1159:2, 1159:10, 1159:12, 1197:16 policy - 1153:25, 1154:11, 1157:17, 1158:9, 1158:14, 1158:22, 1160:6, 1160:9, 1162:22, 1244:13, 1244:18, 1244:22, 1245:1 poor - 1179:4, 1196:23, 1197:2, 1197:6 portion - 1183:12, 1205:8, 1211:8, 1214:3, 1214:5, 1219:22 portions - 1173:7, 1205:5, 1205:15 possible - 1190:8, 1190:10 postulate - 1246:13 postulates - 1196:14 potential - 1175:14, 1180:9 potentially - 1181:7, 1192:10, 1192:15, 1200:6, 1232:25 powerful - 1241:15 Powerpoint - 1177:14, 1177:19, 1207:12, 1207:17 practical - 1206:4, 1206:5, 1206:17 preceding - 1212:4 predecessor - 1163:10 preliminarily - 1157:13 preliminary - 1151:3 prepared - 1169:12, 1169:17, 1177:11, 1177:14, 1177:19, 1177:21, 1178:16, 1222:8, 1243:17, 1246:2 present - 1167:25, 1196:4 presentation - 1177:15, 1177:19,</p>	<p>1178:5, 1193:1 pretty - 1164:9, 1167:15, 1187:22, 1192:19 Pretty - 1211:24 previous - 1152:19, 1166:5, 1169:2, 1244:8 previously - 1155:25, 1156:12, 1179:12 primarily - 1176:5, 1181:8 primary - 1162:21, 1172:23, 1172:24, 1212:22 private - 1183:11, 1183:16, 1241:18 problem - 1195:1, 1203:21 problematic - 1243:16 problems - 1197:5, 1197:9, 1239:8, 1239:11 procedures - 1239:10, 1239:12, 1239:13 proceed - 1160:19, 1240:1, 1240:9, 1240:23 Proceed - 1157:2, 1171:5 Proceedings - 1149:15 proceedings - 1247:4 process - 1201:25, 1237:2 produce - 1167:3, 1204:1 produced - 1149:15, 1174:7, 1180:2, 1185:1 producing - 1195:18 product - 1244:23, 1245:2 production - 1181:2, 1181:20, 1183:20, 1230:15, 1230:21, 1230:25, 1231:12, 1235:19, 1235:20, 1235:24 profession - 1154:5 professional - 1154:12 professionally - 1154:7 proffered - 1156:8, 1160:23, 1216:11 profits - 1242:18 project - 1155:12, 1155:13, 1199:8, 1235:9 Project - 1235:8 projects - 1199:11 proper - 1165:18 properly - 1196:24 properties - 1241:14, 1242:22 property - 1159:19, 1214:6 protection - 1242:13 provide - 1152:3, 1152:15, 1165:19, 1169:22, 1192:22, 1208:21, 1229:14 provided - 1155:10,</p>
P				
<p>package - 1175:21 packages - 1175:25, 1176:18, 1192:3, 1192:11, 1192:13, 1195:16, 1217:16, 1232:8, 1232:19, 1232:20, 1232:22, 1232:24, 1233:8 page - 1163:3, 1163:25, 1164:6, 1164:9, 1164:15, 1164:24, 1164:25, 1165:1, 1165:6,</p>				

1165:16, 1170:21, 1179:3, 1205:14, 1208:7, 1229:13 provides - 1169:5 public - 1154:11, 1162:22, 1176:15, 1187:25, 1218:6, 1241:17, 1242:10 publications - 1170:11 publicity - 1242:14 pull - 1186:3, 1209:15 pulling - 1227:14 purpose - 1172:15, 1210:17, 1220:5, 1242:7 purposes - 1196:25 pursue - 1207:5 put - 1151:4, 1151:6, 1200:23, 1204:22, 1211:25, 1223:17, 1223:18, 1224:14, 1232:7, 1240:19 Put - 1202:6 puzzle - 1228:2	1243:15, 1246:10 R Raise - 1151:25 raise - 1170:25 randomly - 1206:25 rarely - 1173:3 rather - 1166:8, 1182:4, 1235:2, 1243:2, 1243:3 re - 1197:3 re-boxed - 1197:3 read - 1164:3, 1165:18, 1194:10, 1194:12, 1194:13, 1194:14, 1196:9, 1196:12, 1220:10, 1220:11, 1221:14, 1225:18, 1234:2, 1237:10, 1241:9, 1242:3, 1243:3, 1243:15, 1244:9 reading - 1196:22, 1237:20, 1237:23, 1238:25, 1245:22 real - 1205:25, 1227:24 really - 1173:20, 1222:14, 1224:10, 1243:24, 1243:25, 1245:23, 1246:19 reason - 1243:24 reasonable - 1206:1, 1240:7, 1240:10 reasons - 1172:2 Rebecca - 1149:11, 1247:3 reboxed - 1246:15 rebuttal - 1199:22 receipt - 1161:15, 1175:18, 1176:23 receipts - 1166:6, 1166:8, 1166:11, 1167:3, 1167:11, 1168:16, 1168:22, 1169:5, 1169:10, 1171:16, 1175:1, 1175:4, 1175:8, 1175:10, 1175:14, 1176:18, 1177:3, 1190:23, 1222:24 Receipts - 1225:19 receive - 1216:11, 1217:7 received - 1154:13, 1192:2, 1204:10, 1221:5 Received - 1216:20, 1216:25, 1217:12, 1217:17 recent - 1179:15, 1179:20, 1226:12 recently - 1204:10, 1204:12 Recess - 1207:20, 1246:25 recess - 1207:7, 1207:18, 1246:23 rechecked - 1215:4 recognize - 1164:15, 1168:10, 1169:16, 1193:7, 1199:18, 1234:2, 1238:16 recognizing - 1208:9 Record - 1169:1 record - 1163:2,	1163:11, 1163:12, 1163:13, 1163:19, 1182:10, 1182:11, 1182:12, 1182:14, 1182:16, 1182:21, 1185:12, 1185:15, 1185:18, 1185:19, 1187:9, 1188:23, 1190:24, 1191:1, 1193:12, 1195:2, 1198:15, 1199:1, 1204:25, 1208:19, 1216:8, 1216:10, 1218:9, 1218:10, 1225:10, 1230:6, 1230:13, 1231:15, 1241:9, 1243:3, 1247:4 recordkeeping - 1195:11, 1195:13 Records - 1162:11, 1162:18, 1163:18, 1163:21, 1163:22, 1176:12, 1179:2, 1179:8, 1179:9, 1179:22, 1179:23, 1179:24, 1180:1, 1180:5, 1180:7, 1181:8, 1181:9, 1182:7, 1182:9, 1182:13, 1182:20, 1184:20, 1184:25, 1185:2, 1185:6, 1185:18, 1187:20, 1192:20, 1193:16, 1193:19, 1193:20, 1197:4, 1200:10, 1229:17 records - 1152:10, 1152:13, 1152:23, 1153:3, 1156:10, 1156:23, 1160:9, 1160:22, 1161:19, 1162:7, 1166:8, 1162:12, 1162:20, 1162:24, 1162:25, 1163:14, 1163:16, 1165:17, 1170:2, 1176:4, 1176:5, 1176:8, 1176:9, 1176:14, 1176:22, 1177:8, 1177:10, 1177:13, 1177:16, 1177:20, 1178:19, 1178:24, 1179:3, 1179:5, 1179:7, 1179:13, 1179:17, 1179:20, 1179:21, 1179:25, 1180:2, 1180:3, 1180:4, 1180:9, 1180:12, 1180:21, 1181:1, 1181:5, 1181:7, 1181:18, 1181:19, 1181:20, 1182:4, 1182:11, 1182:14, 1182:17, 1182:19, 1182:21, 1184:20, 1185:5, 1185:7, 1185:20, 1185:24, 1186:1, 1186:7, 1187:7, 1187:8, 1187:20, 1187:25, 1188:1, 1188:3, 1188:10, 1188:11, 1188:13, 1188:18, 1188:19, 1188:20, 1188:23, 1189:4, 1189:5, 1189:8, 1189:15, 1190:11,	1190:19, 1190:20, 1191:17, 1191:19, 1191:22, 1191:25, 1192:8, 1192:18, 1192:19, 1192:21, 1193:8, 1193:12, 1193:15, 1193:20, 1194:8, 1194:23, 1195:6, 1195:7, 1195:8, 1195:9, 1196:1, 1196:14, 1196:23, 1197:2, 1197:6, 1197:7, 1197:15, 1197:16, 1197:18, 1197:20, 1198:2, 1198:4, 1198:11, 1198:15, 1198:18, 1198:20, 1199:4, 1199:7, 1199:13, 1199:14, 1200:4, 1204:21, 1218:6, 1229:23, 1230:2, 1230:5, 1230:6, 1230:8, 1230:10, 1230:15, 1232:21, 1244:6, 1245:25, 1246:5, 1246:6, 1246:9, 1246:13 Recross - 1150:5 Redirect - 1150:5 redundant - 1151:11 reengineered - 1174:8 refer - 1152:7, 1212:3 referred - 1170:8, 1192:11, 1221:16 referring - 1188:22, 1210:13 reflect - 1181:20, 1222:10, 1222:12, 1228:19, 1228:20, 1233:20 reflected - 1228:17, 1243:12 reforestation - 1235:15 regard - 1233:6 regarding - 1153:1, 1157:12, 1158:14, 1161:8, 1166:6, 1176:18, 1177:20, 1194:20, 1195:11, 1195:22, 1197:6, 1200:4, 1205:5, 1210:12, 1215:22, 1218:3, 1218:11, 1222:7, 1223:11, 1229:15, 1230:20, 1232:8, 1235:19, 1236:14 regional - 1162:9, 1179:7, 1179:14, 1191:6, 1191:13, 1191:16, 1191:18 regular - 1233:4 regularity - 1195:11, 1195:12, 1195:20, 1195:22 regularly - 1176:1, 1192:2, 1230:9 reiterate - 1224:22 relate - 1214:17 related - 1159:16, 1188:16 relating - 1176:2, 1189:23, 1190:6, 1190:14, 1192:4,	1195:12, 1210:17 relations - 1152:22, 1153:6, 1153:16, 1154:15, 1154:18, 1156:10, 1156:12, 1156:16, 1156:23, 1157:14, 1157:15, 1157:20, 1158:12, 1160:11, 1241:10, 1241:11 Relevance - 1232:5 relevance - 1152:4, 1180:21 relevant - 1171:3, 1173:7, 1173:12, 1173:13, 1178:7, 1188:7, 1188:12, 1188:19, 1188:21, 1192:15, 1193:15, 1198:20, 1220:14, 1232:25, 1233:1, 1233:9, 1233:10, 1233:13, 1233:14, 1240:20, 1246:19 relied - 1206:2, 1206:8, 1206:11, 1216:2 rely - 1195:9 relying - 1194:23, 1199:12 remain - 1180:1 remains - 1212:25 remember - 1191:15, 1226:15, 1231:6 render - 1205:13, 1205:16 reorganization - 1159:13 repeat - 1199:1 repeated - 1168:23 repeating - 1240:6 replaced - 1186:23 replicable - 1174:20 report - 1152:20, 1163:7, 1163:15, 1164:17, 1166:17, 1166:23, 1166:25, 1167:22, 1168:2, 1168:11, 1168:20, 1171:22, 1173:17, 1174:13, 1175:8, 1175:9, 1192:25, 1194:11, 1194:13, 1194:16, 1194:17, 1194:19, 1196:8, 1196:9, 1196:10, 1196:12, 1199:20, 1199:22, 1199:23, 1200:15, 1207:11, 1207:17, 1208:22, 1208:24, 1209:6, 1211:3, 1211:12, 1213:16, 1213:19, 1214:11, 1215:8, 1215:10, 1220:17, 1220:21, 1221:17, 1225:17, 1234:7, 1234:8, 1236:8, 1236:19, 1236:24, 1237:21, 1238:9, 1238:14, 1238:16, 1238:21, 1238:22, 1239:9, 1239:15, 1239:22, 1239:24, 1240:4, 1240:15, 1240:16, 1240:17, 1240:22, 1240:25, 1241:1, 1241:2, 1243:10, 1243:13,
---	--	---	---	---

<p>1243:15, 1243:17, 1243:22, 1243:25, 1244:1, 1244:2, 1244:5, 1244:9, 1244:17, 1244:18, 1244:23, 1245:12, 1245:13, 1245:14, 1245:16 Report- 1214:8, 1234:3 reported - 1149:15, 1172:3 Reporter- 1149:11, 1149:12, 1247:1, 1247:10 reporting - 1175:11, 1195:20 reports - 1152:16, 1167:24, 1170:3, 1170:4, 1172:12, 1173:4, 1174:2, 1174:14, 1174:17, 1175:2, 1175:7, 1187:12, 1194:9, 1195:13, 1195:18, 1197:11, 1201:7, 1205:15, 1206:7, 1206:11, 1214:4, 1217:10, 1217:22, 1234:12, 1235:3, 1236:14, 1238:13, 1239:21, 1244:15, 1246:8, 1246:12, 1246:17 Repositories- 1180:7 repositories - 1162:12, 1179:6 Repository- 1162:18, 1163:18, 1163:23, 1179:2, 1182:20, 1184:21, 1192:20, 1193:17, 1193:20, 1197:4, 1200:10 representative - 1189:17 Representatives- 1164:21, 1215:8 represented - 1212:7, 1213:13 representing - 1151:18 request - 1151:4, 1189:14 require - 1216:7 required - 1175:24 research - 1154:10, 1154:11, 1155:9, 1163:24, 1169:13, 1172:11, 1173:25, 1177:11, 1189:3, 1189:13, 1190:7, 1190:9, 1191:18, 1195:4, 1197:8, 1204:7 researched - 1162:7, 1162:8, 1162:11, 1162:20, 1162:21 researcher - 1178:12 researching - 1161:5 reservation - 1189:23, 1235:16 reservations - 1180:24, 1181:3, 1212:25, 1213:15 Resource- 1171:11,</p>	<p>1224:16, 1225:1 resources - 1181:4, 1212:24, 1242:16 respect - 1153:3, 1158:19, 1229:1 respond - 1204:25 response - 1246:21 responses - 1203:12 rest - 1169:25, 1235:12 retain - 1230:10 retention - 1197:16, 1230:13 retired - 1237:22 retook - 1214:23 retailed - 1213:17 retrace - 1193:13 retrievable - 1196:15, 1246:14 retrieve - 1186:3, 1196:24 revenues - 1194:22 review - 1152:21, 1191:18, 1196:6, 1198:2, 1208:11, 1208:13, 1208:14, 1214:19, 1214:25, 1216:10, 1232:1, 1237:21 Review- 1163:7, 1172:5, 1174:13 reviewed - 1208:15, 1218:5, 1218:9, 1218:25, 1221:11, 1222:1 reviewing - 1195:25, 1196:4 reviews - 1233:4 revised - 1177:22 right-hand - 1170:14 Rights- 1155:18, 1155:20 rights - 1242:22 risk - 1191:21 River- 1235:7, 1235:10 roads - 1173:19 Robert- 1149:1, 1166:25 Robertson- 1148:9 rolled - 1224:7 Room- 1149:12 rough - 1218:4 roughly - 1176:1, 1188:1, 1211:23 Roughly- 1223:25, 1239:2 round - 1167:15, 1226:23 rounded - 1226:8 rounding - 1168:5 routinely - 1192:2 royalties - 1187:12 royalty - 1231:17 Rubin- 1166:25 rubric - 1160:13 ruinous - 1241:17 Rule- 1160:13, 1205:9 rule - 1161:17, 1205:11, 1205:20 rules - 1216:6 ruling - 1151:11 run - 1236:21</p>	<p>sales - 1187:12 Salt - 1235:7, 1235:10 sample - 1206:25 sauce - 1151:13, 1151:14 saw - 1221:8 scale - 1192:19 schedules - 1176:22, 1197:17, 1230:10, 1230:12, 1230:13 scheme - 1188:4, 1189:21 Scheuren - 1225:20, 1225:21, 1226:11, 1226:16 Scheuren's - 1228:14 scholarly - 1205:19 science - 1231:25 Scope - 1240:8 scope - 1232:6, 1239:19 screen - 1163:4, 1165:2, 1166:21, 1200:15, 1200:24, 1201:18 screens - 1170:1, 1205:9 scroll - 1169:25, 1203:5 search - 1184:22, 1186:16, 1186:18, 1199:15, 1236:16 searchable - 1186:21 seat - 1156:24 Seattle - 1191:16 second - 1165:6, 1165:7, 1174:4, 1174:5, 1179:1, 1185:3, 1185:19, 1185:21, 1187:23, 1190:2, 1200:21, 1208:24, 1209:23, 1237:4, 1242:8 secondly - 1152:11, 1178:8 Secondly - 1195:4 Secretary - 1148:6, 1166:24, 1168:21, 1211:13, 1214:9 section - 1219:8, 1219:9, 1219:13, 1235:3, 1237:5 securities - 1165:9, 1169:24, 1171:24 see - 1151:6, 1164:8, 1165:1, 1165:6, 1166:5, 1166:8, 1166:21, 1175:11, 1185:13, 1185:25, 1186:8, 1186:10, 1187:11, 1187:16, 1190:4, 1193:10, 1193:18, 1198:13, 1201:18, 1203:21, 1203:25, 1204:8, 1207:21, 1209:12, 1210:1, 1210:3, 1210:7, 1211:15, 1212:2, 1212:4, 1212:14, 1212:15, 1212:20, 1213:3, 1213:9, 1225:17, 1225:19, 1225:25, 1226:3, 1226:7, 1235:16, 1236:16, 1236:25,</p>	<p>1237:2, 1237:11, 1237:15, 1237:19, 1238:19, 1240:22, 1240:23, 1241:7, 1242:2, 1243:24 selectively - 1240:22 self - 1159:13 self-determination - 1159:13 Sells - 1237:18, 1237:24, 1238:2, 1238:23, 1239:3, 1240:4, 1240:13, 1240:19, 1243:22 send - 1183:2 sending - 1195:16 Senior - 1149:6 sense - 1158:1, 1182:5, 1184:1, 1184:2, 1196:5, 1212:6, 1229:11 sent - 1193:20 sentences - 1237:9 separate - 1167:10 September - 1164:11, 1172:6, 1199:21, 1206:16 Series - 1186:6 series - 1159:9, 1187:11, 1189:25, 1190:4 service - 1181:19, 1229:16, 1241:18 Service - 1154:24, 1175:24, 1180:22, 1180:25, 1181:6, 1182:3, 1182:13, 1182:15, 1183:15, 1187:9, 1192:3, 1195:15, 1229:18, 1229:21, 1230:6, 1233:3, 1242:21 Services - 1178:21 Session - 1148:7 set - 1151:23, 1190:11, 1232:21 settled - 1192:13, 1232:16, 1232:22 settlement - 1175:20, 1176:18, 1192:11, 1217:16, 1231:22, 1231:24, 1232:7, 1232:24 settlements - 1233:10 several - 1158:4, 1158:15, 1170:3, 1173:6, 1180:9, 1184:15, 1192:5, 1200:13, 1203:12, 1204:25 Sf-135 - 1185:4 sham - 1242:13 shape - 1196:23, 1197:3, 1197:6 Shinnecock - 1155:4, 1155:17, 1155:20 shorthand - 1149:15 show - 1152:19, 1163:1, 1163:25, 1164:13, 1168:2, 1169:15, 1171:16, 1177:17, 1181:2, 1185:8, 1187:1, 1190:22, 1193:2, 1194:22, 1195:11, 1199:17, 1207:12,</p>	<p>1209:15, 1238:10 showed - 1166:5, 1171:22, 1175:2 showing - 1168:13, 1169:18, 1177:15, 1193:23, 1193:24 shows - 1164:9, 1167:11, 1167:12, 1168:15, 1168:16, 1171:18, 1171:19, 1175:8, 1175:9, 1175:10, 1185:5, 1185:17, 1185:21 side - 1165:1, 1190:2, 1204:17, 1206:4, 1206:5, 1206:17, 1212:18, 1235:9, 1242:12, 1242:13 Siemetkowski - 1153:11, 1161:1 Siemietkowski - 1149:3, 1150:3, 1150:6, 1151:16, 1151:17, 1151:20, 1151:21, 1152:2, 1152:6, 1152:18, 1153:5, 1153:7, 1154:3, 1156:14, 1156:21, 1160:19, 1160:20, 1160:24, 1164:2, 1164:4, 1165:21, 1166:3, 1166:13, 1166:15, 1167:23, 1168:9, 1168:21, 1168:25, 1169:2, 1169:8, 1170:19, 1170:23, 1171:6, 1174:23, 1174:24, 1177:14, 1180:20, 1181:14, 1184:9, 1184:10, 1184:12, 1184:13, 1184:18, 1186:24, 1187:5, 1188:5, 1188:25, 1189:18, 1191:8, 1191:20, 1193:4, 1193:6, 1198:22, 1199:2, 1199:3, 1200:12, 1200:17, 1200:21, 1201:2, 1201:4, 1201:13, 1201:16, 1201:17, 1201:19, 1201:22, 1201:24, 1202:2, 1202:7, 1202:15, 1202:19, 1202:22, 1203:7, 1203:11, 1204:24, 1205:4, 1205:18, 1206:4, 1207:9, 1207:19, 1208:4, 1208:5, 1209:18, 1209:19, 1209:23, 1210:8, 1210:10, 1213:10, 1213:24, 1215:21, 1216:15, 1216:18, 1216:22, 1217:3, 1217:9, 1217:14, 1217:20, 1217:24, 1218:2, 1218:10, 1218:14, 1231:2, 1232:5, 1239:18, 1243:1, 1245:19 Signature - 1247:10 signed - 1187:7 significance - 1164:5, 1166:23, 1186:13</p>
	S			
	saalem - 1148:25			

<p>Signing - 1184:6 similar - 1158:20, 1160:6 simply - 1167:22, 1171:9, 1186:2, 1213:17, 1213:19, 1214:6 Simply - 1211:8, 1218:10 single - 1168:22, 1174:15 single-digit - 1168:22 Sioux - 1155:4, 1235:1 sit - 1219:25, 1222:2, 1222:3, 1226:22 sitting - 1156:24 situation - 1224:21, 1242:20, 1244:16, 1246:18 six - 1176:1, 1186:8, 1192:2, 1195:14, 1196:7, 1209:21, 1210:7, 1210:13, 1214:13 skewed - 1204:6 skipped - 1154:4 slide - 1178:2, 1178:15, 1185:3, 1185:8, 1185:9, 1186:25, 1187:6, 1188:6, 1189:1, 1189:18, 1191:9, 1191:24, 1207:12 slides - 1177:24, 1184:15, 1184:16, 1191:11 slightly - 1171:25, 1215:4 slip - 1189:14 sloan - 1155:12 Smith - 1148:23 snapshot - 1222:15 so-called - 1171:10, 1171:12 social - 1159:19 societies - 1162:13 solid - 1180:23 solids - 1195:8 solved - 1197:8 sometime - 1224:8 sometimes - 1184:23 somewhere - 1187:3 Sorry - 1185:17, 1212:19 sorry - 1155:19, 1181:14, 1221:13, 1229:25, 1230:23, 1244:25 sort - 1153:15, 1167:1, 1203:25, 1224:25, 1226:8, 1227:17, 1227:20 sorts - 1170:1 sound - 1224:9 source - 1163:13, 1174:12, 1174:15, 1212:22 sources - 1164:7, 1170:13, 1173:8, 1174:7, 1175:14, 1207:4, 1227:15, 1246:2 speaking - 1179:14, 1223:25, 1237:18 Special - 1175:24,</p>	<p>1195:15, 1209:7, 1233:3 special - 1192:3, 1196:20, 1204:19 specializes - 1154:10 specific - 1166:5, 1173:14, 1180:10, 1191:19, 1202:1, 1202:10, 1210:16, 1228:11 Specifically - 1164:22 specifically - 1152:10, 1166:14, 1188:8, 1189:20, 1192:24, 1193:3, 1194:8, 1226:15 specifying - 1156:18 sponsoring - 1240:6 sprinkled - 1175:5 stage - 1231:7 stamp - 1234:10 stand - 1151:19, 1160:5 standard - 1185:4, 1205:9 standpoint - 1196:25 start - 1151:3, 1161:2 started - 1167:25, 1175:3, 1224:17, 1224:19 starting - 1159:10, 1172:12, 1219:21, 1222:24 Starts - 1219:12 state - 1162:12, 1183:16 statement - 1159:14, 1159:15, 1167:3, 1223:24, 1224:16, 1225:7, 1227:3, 1227:4, 1227:8, 1227:16, 1227:18, 1227:22, 1227:25, 1228:9, 1228:21, 1228:22, 1230:16, 1230:17, 1231:13, 1240:4, 1243:3, 1243:14, 1243:23, 1245:3, 1245:4 statements - 1166:18, 1187:11, 1216:24, 1240:17 states - 1205:11, 1212:16 States - 1148:1, 1148:10, 1151:18, 1157:16, 1157:20, 1158:21, 1159:1, 1159:3, 1159:6, 1162:10, 1162:11, 1166:18, 1167:2, 1170:11, 1177:20, 1180:6, 1188:2, 1212:16, 1213:1, 1234:15, 1235:6, 1235:13 stating - 1191:21, 1228:4 Station - 1149:8 statistical - 1214:3, 1220:24 Statistical - 1225:18 Stemplewicz -</p>	<p>1149:6 step - 1174:25 steps - 1191:14 still - 1163:16, 1165:15, 1193:21, 1226:25, 1227:6 Stockton - 1148:16, 1148:20, 1148:24 Stonestreet - 1149:11, 1247:3 stop - 1171:7, 1171:9, 1223:13, 1224:12, 1244:4 stored - 1196:24 straight - 1160:7 street - 1187:23 Street - 1148:13, 1148:17, 1148:21, 1148:24, 1149:4 strength - 1179:16 strictly - 1188:14, 1188:23 strike - 1165:13, 1180:18 struck - 1194:15 study - 1153:15, 1174:20, 1244:12 stuff - 1231:17 style - 1186:22, 1187:2 subcommittee - 1164:20 subject - 1186:9, 1203:11, 1205:10, 1233:22 subjects - 1156:6, 1156:8, 1160:23 submit - 1175:25 submitted - 1185:22, 1199:20, 1233:4 subsequently - 1163:17, 1177:22, 1237:22 Subsequently - 1172:17, 1180:6 substance - 1160:1 substantively - 1211:2 subversion - 1241:14 subverted - 1242:15 succeeded - 1215:24 suggestion - 1183:19 suggests - 1239:24 Suite - 1148:17, 1148:21 sum - 1161:7, 1200:3 summarize - 1218:25 summary - 1152:4, 1168:20, 1168:23, 1169:3, 1169:12, 1211:4, 1211:6, 1232:2, 1232:13 superintendents - 1212:16, 1212:17 Superintendents - 1211:17, 1211:22 supply - 1172:18 support - 1172:9, 1174:7, 1202:13 supporting - 1172:10, 1201:7, 1201:20 supposition -</p>	<p>1196:18 Supreme - 1158:2, 1158:8, 1158:13 Survey - 1163:7, 1172:5, 1174:12, 1180:23 sustained - 1218:13 switch - 1177:5, 1224:24, 1225:1 sworn - 1153:9 sympathy - 1242:8 synchronous - 1151:23 system - 1179:24, 1184:21, 1184:22, 1184:23, 1186:16, 1186:18, 1199:15, 1223:12, 1237:12, 1237:14, 1237:19, 1238:1, 1238:3, 1239:5 System - 1171:11, 1224:16, 1225:1 systems - 1239:4, 1239:22, 1240:3, 1240:5</p>	<p>Texas - 1181:10 themselves - 1199:14 Therefore - 1180:2 they've - 1158:13, 1163:17, 1180:6, 1246:15 Thinking - 1184:9 thinking - 1151:10, 1184:11, 1228:14 third - 1178:10, 1208:25, 1222:1, 1240:25 thirdly - 1152:14 this's - 1151:7 thoughts - 1151:3 three - 1152:8, 1154:1, 1164:8, 1166:20, 1178:6, 1191:1, 1203:20, 1203:22, 1203:23, 1206:7, 1206:10, 1206:25, 1207:2, 1208:7, 1208:20, 1211:9, 1215:22, 1218:24, 1219:5, 1219:12, 1220:1, 1237:9 threw - 1224:23 throughout - 1180:6, 1188:2, 1243:13 throughput - 1152:9, 1152:10, 1152:11, 1161:3, 1161:5, 1161:8, 1163:2, 1164:14, 1171:2, 1173:13, 1177:6, 1194:6, 1202:13, 1202:17, 1202:25, 1205:24, 1216:4, 1218:4, 1218:11, 1222:15, 1222:24, 1223:9, 1227:2, 1227:21, 1229:2, 1229:5, 1245:25, 1246:3 Thursday - 1148:5 tie - 1190:12 timber - 1195:6, 1195:7, 1235:19, 1235:25 Timber - 1235:20 title - 1167:22, 1204:17, 1225:18, 1233:24, 1234:2 to-do - 1204:22 today - 1154:17, 1197:1, 1200:1, 1220:1, 1222:2, 1222:3, 1226:22, 1234:14 Today - 1154:19 together - 1151:4, 1190:12, 1211:25, 1227:14 took - 1198:14 top - 1181:13, 1189:9, 1189:12, 1193:23, 1211:20, 1237:6, 1242:5 Total - 1209:24 total - 1161:13, 1164:12, 1169:18, 1169:19, 1169:20, 1169:21, 1169:23, 1171:23, 1171:25, 1172:16, 1175:16, 1175:18, 1187:15, 1188:1, 1200:22,</p>
T				
<p>table - 1210:21, 1210:24, 1214:5, 1214:7, 1219:5 tables - 1214:1 talks - 1203:22, 1236:25 taught - 1153:25 technology - 1236:16 term - 1175:20, 1198:11 terminated - 1178:24 termination - 1159:13, 1178:20 terms - 1245:2 testified - 1153:9, 1153:24, 1157:9, 1169:4, 1197:19, 1217:16, 1223:11, 1224:11, 1230:18, 1230:20, 1231:10, 1234:4, 1239:3, 1240:13 testify - 1152:8, 1152:9, 1156:11, 1160:3, 1160:9, 1160:10, 1222:23, 1224:10 testifying - 1152:12, 1222:7, 1229:15, 1231:9, 1231:21, 1233:15, 1238:4, 1238:9, 1244:21 testimony - 1151:12, 1152:4, 1153:1, 1155:11, 1156:18, 1157:22, 1158:19, 1158:21, 1159:11, 1165:13, 1171:4, 1194:5, 1198:3, 1200:1, 1205:4, 1219:18, 1219:21, 1219:23, 1223:12, 1229:16, 1230:22, 1231:3, 1232:18, 1232:23, 1233:2, 1233:17, 1234:6, 1238:7, 1244:7, 1245:23 tests - 1243:4</p>				

1201:7, 1209:12, 1210:21, 1212:4, 1212:23, 1213:3, 1213:13, 1213:20, 1213:22, 1216:19, 1222:9, 1222:10 totaled - 1164:10, 1198:16 totally - 1223:25 totals - 1166:8 toward - 1157:17 towards - 1158:22 traced - 1213:22 track - 1221:25 trader - 1242:17 traditionally - 1185:11 Transcript - 1148:8 transcript - 1149:15, 1247:4 transcription - 1149:16 transferred - 1185:6, 1209:21 transferring - 1185:7 transmittal - 1185:5, 1187:7 transmitting - 1187:8 Treasury - 1162:14, 1166:17, 1166:24, 1168:11, 1170:11, 1175:2, 1182:16, 1188:20, 1195:18, 1195:19, 1209:25, 1216:24, 1217:10, 1217:22 Trial - 1149:6, 1206:9, 1238:4 trial - 1156:4, 1177:21, 1178:17, 1179:12, 1180:5, 1183:18, 1185:9, 1211:14 Tribal - 1155:12, 1163:24, 1165:5, 1167:10, 1168:15, 1169:6, 1173:23, 1188:14, 1190:20, 1210:15, 1211:4, 1211:6, 1214:6, 1219:15, 1219:17, 1234:18, 1234:20, 1234:23, 1235:22 tribe - 1234:24 Tribe - 1155:4, 1155:6 tribes - 1163:23, 1213:11, 1234:16, 1234:25, 1235:4, 1235:9 trier - 1160:14 trip - 1191:18 trouble - 1186:13 troubling - 1227:24 true - 1199:23, 1241:22 truly - 1231:5, 1243:20 Trust - 1152:13, 1161:25, 1163:14, 1163:24, 1167:9, 1168:14, 1168:15, 1168:17, 1173:16, 1178:19, 1178:21, 1178:22, 1178:24, 1179:21, 1189:23, 1190:1, 1192:21, 1194:7, 1203:23,	1209:5, 1211:4, 1211:6, 1219:5, 1219:10, 1219:15, 1219:17, 1219:18, 1219:19, 1220:2, 1221:8, 1221:20, 1225:19, 1243:16, 1246:5 trustee - 1167:9, 1196:20, 1204:19 Trustee - 1209:7 trustees - 1241:18, 1242:18 trusteeship - 1241:13 Trusts - 1242:7 truth - 1205:22 try - 1166:10, 1172:15, 1185:11, 1190:7, 1190:9, 1198:13, 1203:1, 1220:5 trying - 1159:3, 1178:5, 1182:6, 1183:18, 1202:11, 1220:7, 1222:23, 1231:4, 1239:23 turn - 1163:2, 1171:20, 1225:9, 1225:23, 1233:22, 1234:10, 1236:2, 1236:10, 1236:24, 1237:4, 1240:25, 1241:24 turning - 1168:12 two - 1158:5, 1171:25, 1175:3, 1178:17, 1178:18, 1181:13, 1184:25, 1194:9, 1209:16, 1212:8, 1219:9, 1226:1, 1226:2, 1237:10 twofold - 1195:1 type - 1169:24, 1182:19, 1187:9, 1190:24, 1193:8, 1208:10, 1211:2, 1214:15 types - 1162:20, 1176:21, 1179:7, 1179:13, 1192:9, 1198:2, 1220:3 typical - 1182:23, 1208:10 typically - 1173:4, 1173:6, 1173:22, 1181:12, 1182:1, 1208:11, 1214:11, 1215:13 typing - 1167:22	1159:3, 1159:6, 1162:10, 1162:11, 1166:18, 1167:2, 1170:11, 1177:20, 1180:6, 1188:2, 1213:1, 1234:15, 1235:6, 1235:12 universe - 1188:15 University - 1153:14, 1154:1 unlike - 1179:24, 1187:20 up - 1161:6, 1161:7, 1169:20, 1170:16, 1171:25, 1177:3, 1183:3, 1183:6, 1200:3, 1200:23, 1202:6, 1209:15, 1215:2, 1221:7, 1222:2, 1225:13, 1226:13, 1231:25, 1233:24, 1237:6, 1238:10, 1240:19 update - 1194:17 updated - 1177:23 upper - 1155:13 useful - 1180:13, 1180:16, 1181:1, 1181:7, 1192:10, 1197:3, 1200:7, 1216:8, 1246:16 Usqs - 1180:21, 1180:24, 1181:6, 1195:7, 1230:2, 1230:5, 1230:9, 1230:12, 1230:14 utilize - 1244:23	1149:9, 1149:13, 1153:13, 1154:1, 1155:8, 1155:10, 1187:21, 1190:25, 1193:18 Water - 1235:7 wealth - 1242:15 wealthier - 1212:25 website - 1167:20 weeks - 1191:1, 1204:13 weight - 1160:16, 1216:13 welcome - 1151:20 welfare - 1241:15 West - 1148:24 whereas - 1172:4 whole - 1207:8, 1240:21 widely - 1173:10 William - 1148:16 willing - 1204:1 Winston - 1148:25 Winston-salem - 1148:25 wish - 1218:15 Witness - 1150:2, 1153:8, 1153:20, 1156:7, 1167:16, 1167:19, 1168:7, 1170:15, 1174:11, 1174:21, 1181:17, 1181:23, 1182:1, 1182:9, 1183:1, 1183:4, 1183:7, 1183:12, 1183:22, 1184:1, 1184:7, 1186:11, 1187:3, 1188:17, 1190:2, 1190:15, 1190:17, 1191:3, 1191:5, 1191:10, 1193:10, 1198:24, 1203:10, 1204:16, 1207:23, 1208:1, 1210:4, 1210:6, 1212:2, 1213:21, 1231:5, 1244:12 witness - 1151:15, 1152:12, 1152:22, 1152:23, 1153:6, 1160:21, 1162:6, 1193:5, 1202:19, 1203:8, 1205:5, 1206:11, 1216:2, 1218:5, 1218:9, 1218:12, 1234:12, 1235:3, 1236:12, 1239:20, 1239:23, 1240:2, 1240:5, 1240:8, 1240:20, 1245:20, 1245:24, 1246:1, 1246:14, 1246:20 witness' - 1240:3, 1243:4, 1246:17 word - 1151:12, 1174:19, 1228:10, 1231:25 words - 1186:21, 1191:15, 1223:19 Worth - 1181:10 worth - 1166:1 write - 1235:4, 1241:20, 1245:11, 1245:13 written - 1197:13, 1204:17, 1244:12, 1245:12 wrote - 1246:9	www.archives.govresearch_room - 1191:12
Y				
year - 1161:14, 1164:7, 1166:7, 1167:12, 1168:16, 1169:10, 1169:13, 1171:18, 1171:19, 1172:6, 1175:10, 1185:22, 1199:21, 1208:23, 1208:25, 1209:4, 1209:5, 1212:4, 1212:5, 1212:7, 1212:9, 1222:12, 1222:15, 1222:23, 1222:25, 1227:11, 1229:13 years - 1168:2, 1168:11 year-end - 1164:7, 1166:7, 1167:12, 1168:16, 1169:10, 1169:13, 1171:18, 1171:19, 1222:12, 1222:23, 1222:25, 1229:13 years - 1157:9, 1157:19, 1170:4, 1171:17, 1175:5, 1175:9, 1175:15, 1176:4, 1179:16, 1185:10, 1226:3, 1226:13, 1226:15, 1226:17, 1227:1, 1227:5, 1227:13, 1228:1, 1230:15 yesterday - 1174:20 yesterday's - 1151:10 yourself - 1172:14, 1198:3, 1237:10, 1245:18				