

# Transcript of: **W. Hord Tipton**

**Date:** March 25, 2005

**Volume:**

**Case:** Eloise Pepion Cobell v. Gale A. Norton

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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ELOISE PEPION COBELL, et al., |

Plaintiffs, |

v. |

Case No. 1:96CV01285

GALE A. NORTON, Secretary of |  
the Interior, et al., |

Defendants |

|-----+

Washington, D.C.

Friday, March 25, 2005

DEPOSITION OF:

W. HORD TIPTON

called for examination by counsel for the Plaintiffs,  
pursuant to notice, in the law offices of the Native  
American Rights Fund, 1712 N Street, N.W., Washington,  
D.C., when were present on behalf of the respective  
parties:

APPEARANCES:

On behalf of the Plaintiffs:  
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1 PROCEEDINGS  
2 (9:35 a.m.)  
3 Whereupon,  
4 W. HORD TIPTON  
5 was called as a witness by counsel for the Plaintiffs  
6 and, having been first duly sworn, was examined and  
7 testified as follows:  
8 MR. GINGOLD: Go ahead.  
9 MR. WARSHAWSKY: I was going to say --  
10 MR. GINGOLD: Could you identify yourself  
11 for the record, please?  
12 MR. WARSHAWSKY: I'm sorry. John Warshawsky  
13 from the Justice Department, for the record.  
14 We received Mr. Harper's letter last night  
15 requesting Mr. Tipton's CV. I didn't see the letter  
16 until this morning. Tipton's CV actually is  
17 accessible on the Internet if you all want to pull it  
18 up. So I did want to make that available to you.  
19 MR. GINGOLD: You have brought it with you.  
20 Is that what you're telling me?  
21 MR. WARSHAWSKY: Right, because I didn't see  
22 the letter until this morning, but you can certainly

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EXHIBITS

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Tipton Deposition:

1 9/26/01 Letter from Shyloski to Balaran. . .115  
2 18/15/02 Letter from Tipton. . . . .161

1 retrieve that at a break.  
2 MR. GINGOLD: But what you're saying is that  
3 you didn't bring it. Thank you.  
4 Let's deal with the two housekeeping issues  
5 we talked about before we went on the record, and we  
6 are on the record now. And it's my understanding that  
7 Mr. Warshawsky and Mr. Quinn are representing Mr.  
8 Tipton. Is that fair or not?  
9 MR. WARSHAWSKY: Well, I'm defending the  
10 deposition.  
11 MR. QUINN: He'd defending the deposition.  
12 I'm attending.  
13 MR. GINGOLD: Okay, okay. So, mr.  
14 Warshawsky, you and I will have the discussion on the  
15 two issues that are outstanding or is Mr. --  
16 MR. WARSHAWSKY: I think we can have a brief  
17 discussion, yeah.  
18 MR. GINGOLD: Okay. Your position is we're  
19 entitled to only take Mr. Tipton for one seven-hour  
20 day, correct?  
21 MR. WARSHAWSKY: I think at the end of the  
22 day let's assess it, if there's a need for another day

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1 of his deposition. We'll see what we cover today.  
2 MR. GINGOLD: Just so you should know, I  
3 would anticipate that it's going to be probably at  
4 least three days. So I just want you to understand  
5 that, based on the amount of material, but we can  
6 assess at the end.  
7 MR. WARSHAWSKY: We will.  
8 MR. GINGOLD: Okay. Now, I left a message  
9 for the Judge's law clerk that to the extent we have  
10 an issue where we do not agree or disagree, I'd like  
11 to go to call. He hasn't returned that message, but  
12 I assume we could all get on the phone with him.  
13 MR. WARSHAWSKY: I think local practice they  
14 normally don't do these things by phone, but whatever  
15 you have arranged is fine.  
16 MR. GINGOLD: Where in the local rules is  
17 that?  
18 MR. WARSHAWSKY: I didn't say local rules.  
19 MR. GINGOLD: Oh, okay.  
20 MR. WARSHAWSKY: I think that's the local  
21 practice, but in any event --  
22 MR. GINGOLD: By the Justice Department.

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1 MR. WARSHAWSKY: No. In any event, we'll  
2 see what happens. Go ahead.  
3 MR. GINGOLD: Okay. Now, with regard to the  
4 protective order issues that Mr. Quinn has raised in  
5 his correspondence with Mr. Harper.  
6 MR. WARSHAWSKY: Right.  
7 MR. GINGOLD: What is your position?  
8 MR. WARSHAWSKY: Right. Well, we'll see,  
9 first of all, if the deposition plays out and you  
10 don't cover any materials requiring protection. It  
11 becomes a moot issue. Since you've noticed up a  
12 number of IT security professionals, my assumption is  
13 that at some point you'll be asking about IT security  
14 issues.  
15 And as you know, we consider those matters  
16 sensitive and not something that should be a part of  
17 the public record. So we'll see.  
18 It very well may be when you ask a question  
19 that Mr. Tipton can respond in such a fashion that a  
20 protective order isn't necessary, but if you get into  
21 details that would jeopardize the security of interior  
22 systems, obviously we'll have a protective order

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1 issued at that point.  
2 And that's why we tried to resolve it a week  
3 ahead of time and unsuccessfully, but that's the way  
4 it is sometimes. So why don't we see how it goes.  
5 MR. GINGOLD: Would you have an objection to  
6 the extent you believe something would -- you  
7 characterize it as jeopardizing the security of the IT  
8 system. Is that a fair statement or not?  
9 MR. WARSHAWSKY: I think that's the  
10 principal concern, sure.  
11 MR. GINGOLD: No, but again, I'm trying to  
12 make sure that I understand what your concern is. To  
13 the extent that testimony is elicited from Mr. Tipton  
14 that you believe has that issue and can request that  
15 the reporter note that in the record; so if I may  
16 finish.  
17 MR. WARSHAWSKY: Go ahead.  
18 MR. GINGOLD: Okay. You can request that  
19 your concern in that regard, which may be the same as  
20 ours, is noted in the record. So to the extent there  
21 may be a need to put this transcript under seal, it  
22 could be put under seal with respect to the matters

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1 that you believe could compromise or affect the  
2 security of the OT systems; is that fair?  
3 MR. WARSHAWSKY: No. As you know, a  
4 protective order governs not simply the information  
5 that's covered, but access to it, and I think it would  
6 be better to actually have an order establishing who's  
7 entitled to gain access to that information and how it  
8 can be utilized.  
9 We've had discussions in the past about our  
10 concerns, and I think they're well, well established.  
11 So your oral offer would not be sufficient for us, and  
12 again, that's how we tried to work this out ahead of  
13 time, but let's see what happens when you take his  
14 deposition. You may not hit any information that  
15 requires protection, and it may be --  
16 MR. GINGOLD: No, I was trying to  
17 accommodate you. If it's okay with me, if you don't  
18 need the accommodation, you file a motion for  
19 protective order afterwards. I was just going to make  
20 it easy for you, John, but let's not make it easy.  
21 Okay.  
22 MR. WARSHAWSKY: And we very well may have

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1 to file a motion, but we'll see what happens.  
2 MR. GINGOLD: Fine.  
3 DIRECT EXAMINATION  
4 BY MR. GINGOLD:  
5 Q Good morning, Mr. Tipton.  
6 A Good morning.  
7 Q My name is Dennis Gingold. We haven't met,  
8 have we?  
9 A Not formally.  
10 Q Have we met informally?  
11 A I've observed one hearing, I believe.  
12 Q Which one?  
13 A A year or so ago on the preliminary  
14 injunction.  
15 Q Which preliminary injunction was that?  
16 A I don't remember the exact date.  
17 Q Was it a preliminary injunction dealing with  
18 information technology security?  
19 A Not specifically. Well, yes, I guess it  
20 was. It was on the system disconnections.  
21 Q Was it on the disconnections or  
22 reconnections?

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1 A (Pause.)  
2 Q Tell me what you recall of that hearing.  
3 A Simply the Government's argument that we  
4 needed to reconnect our systems for specified reasons  
5 Q That's all the systems. Is that your  
6 understanding? Reconnect all of the systems?  
7 A I believe it was case by case.  
8 Q Are all of your systems secured today?  
9 A They adequately secured, yes.  
10 Q So they are secured. All of your systems in  
11 Interior are secured today. That's your testimony?  
12 A They are adequately secured, yes.  
13 Q Okay. You say they're adequately secured.  
14 What do you mean by "adequately secured"?  
15 A Adequately secured as defined by FISMA and  
16 Circular A-130, Appendix 3.  
17 Q And what do you mean by that? What's your  
18 interpretation of FISMA, first of all, and what is  
19 necessary for adequate security?  
20 A Adequate security is defined as assessing  
21 each of your systems having appropriate documentation,  
22 assessing your risk, balancing available resources to

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1 mitigate those risks, and then accepting those risks,  
2 mitigating those that need to be mitigated, and then  
3 monitoring those systems for continued compliance.  
4 Q So you yourself have assessed each of the  
5 systems that house or access individual Indian Trust  
6 data, correct?  
7 A Could you repeat the question?  
8 Q Yes. Have you -- you've defined "adequate  
9 security" in a term that I've not heard before, which  
10 is it means assessing each of your systems. Is that  
11 a fair statement? That's part of your definition,  
12 isn't it?  
13 A Yes.  
14 Q Okay. So when you say the systems that  
15 house and access individual Indian Trust data are  
16 adequately secured, which is your testimony today,  
17 does that mean you assessed, you yourself assessed  
18 each of your systems that at present access trust  
19 data?  
20 MR. WARSHAWSKY: I just object to the form  
21 of the question to the extent you're summarizing  
22 testimony. It may not be accurate, but you can answer

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1 subject --  
2 MR. GINGOLD: If you understand the  
3 question, you can do so. If Mr. Warshawsky wants to  
4 testify, we'll put him under oath.  
5 MR. WARSHAWSKY: No, I just said he could  
6 answer subject --  
7 MR. GINGOLD: Mr. Warshawsky, it's not your  
8 deposition.  
9 MR. WARSHAWSKY: And he can answer subject  
10 to my objection.  
11 MR. GINGOLD: That's very nice of you.  
12 THE WITNESS: If you're asking if I  
13 personally certified the systems, I oversee the  
14 certification of the individuals and people who  
15 certify, and then I check on those people through an  
16 oversight process to determine the quality of their  
17 certifications.  
18 MR. GINGOLD: That wasn't my question.  
19 BY MR. GINGOLD:  
20 Q I asked you whether or not you assessed each  
21 of the systems that you have testified are adequately  
22 secured there. That's what I asked you.

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1 A The department through its respective  
2 bureaus and responsible owners assess each and all of  
3 the systems, yes.  
4 Q So is your answer to my question no?  
5 A The answer to your question is yes.  
6 Q Oh, you have assessed. I'm sorry. I  
7 misunderstood. You are now testifying that you  
8 personally have assessed each of the systems that has  
9 individual Indian Trust data. Is that true or false.  
10 MR. WARSHAWSKY: Object to the argumentative  
11 form of the question. You can answer subject --  
12 BY MR. GINGOLD:  
13 Q Is that true or false?  
14 A As you stated it, it is false.  
15 Q Okay. So my question to you is simple.  
16 Have you personally assessed each of the systems that  
17 house and access individual Indian Trust data?  
18 A That's a poorly worded question which I have  
19 to answer now.  
20 Q So the answer is that you have not assessed  
21 the systems, notwithstanding the fact you don't like  
22 my question. Fair?

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1 A Fair.  
2 Q Okay. Thank you.  
3 What's your understanding of "adequate  
4 security" again?  
5 A What was the question?  
6 Q Yes. Your understanding of the term  
7 "adequate security." You used that.  
8 A Yes.  
9 Q What is your understanding of the term  
10 "adequate security"?  
11 A You want me to repeat the first answer I  
12 gave?  
13 Q No, I want you to tell me what your  
14 understanding of the term "adequate security," if you  
15 have one. If you don't just let me know and we can  
16 move on.  
17 A I provided you my definition of adequate  
18 security, and I'll be happy to do it again if that's  
19 what you're asking me.  
20 Q Let's do it again.  
21 A It's an individual assessment of a system  
22 from an initial review of the system to the assessment

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1 of the risk in that system, establishing the  
2 boundaries of that system, testing of that system  
3 after controls have been applied. It's a  
4 certification of the system, the technical controls  
5 within that system by qualified professionals. It's  
6 a testing of the system by independent third parties,  
7 and then finally, it's acceptance of the risk that has  
8 been identified within that system by an official  
9 that's responsible for the system, for crediting it.  
10 Q Okay. Do you know how your understanding of  
11 the term "adequate security" is distinguished from  
12 OMB's use of the term, the definition of the term  
13 "adequate security" in OMB Circular A-130?  
14 A If you're asking me if I cited it verbatim,  
15 then, no, I'm sure it's not verbatim.  
16 Q I didn't ask that question.  
17 A But it's consistent with the way OMB has  
18 interpreted adequate security.  
19 Q Mr. Tipton, you've taken depositions before,  
20 haven't you?  
21 A Yes.  
22 Q If you can please listen to the question I'm

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1 asking and answer the question I'm asking.  
2 A And if you can let me finish when I start my  
3 question.  
4 Q Oh, I thought you were finished.  
5 MR. WARSHAWSKY: And if you'll please not  
6 argue with the witness, that would be helpful, too.  
7 Go ahead and ask the next question.  
8 MR. GINGOLD: Your editorial comments are  
9 wonderful. We can have a standing objection on that.  
10 MR. WARSHAWSKY: Let's get it going.  
11 MR. GINGOLD: Thank you very much.  
12 MR. WARSHAWSKY: Let's keep it going.  
13 MR. GINGOLD: Oh, thank you, Mr. Warshawsky.  
14 BY MR. GINGOLD:  
15 Q Now, did you understand my question? Do you  
16 understand whether, do you know whether or not your  
17 stated definition of "adequate security" is in any way  
18 different, in any way different from OMB's definition  
19 of "adequate security" in OMB Circular A-130?  
20 A No.  
21 Q Have you ever read that definition?  
22 A Yes.

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1 Q When?

2 A Many times.

3 Q When was the last time you read it?

4 A Yesterday.

5 Q Okay. I'll read it to you. Let's see if

6 this refreshes your recollection.

7 "OMB Circular A-130 defines as adequate

8 security or security commensurate with risk, including

9 the magnitude of harm resulting from the unauthorized

10 access, use, disclosure, disruption, modification, of

11 disruption of information."

12 Is that your understanding of what you were

13 saying, quite frankly? Is that what you were saying?

14 A Yes.

15 Q All right. This is then not -- an

16 assessment of risk isn't adequate security, is it?

17 A It is part of a process.

18 Q Isn't adequate security the security

19 necessary to insure the integrity of the information

20 in the system?

21 A It is more than that.

22 Q Okay. So it's at least that. Is that fair?

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1 A It is at least that.

2 Q Okay. So the primary -- a primary objective

3 of IT security is that the integrity in a system is

4 secure, correct?

5 A Correct.

6 Q So you're telling me that all of the

7 interior systems today have -- you've insured the

8 integrity of the information in the systems.

9 A We have conducted processes on those systems

10 that evaluate the confidentiality that the systems,

11 the availability of the information in the systems,

12 and the integrity of the data in the systems.

13 Q Okay. What have you done to examine or

14 assess the integrity of the data in the systems? Tell

15 me exactly what you have done, you personally.

16 A It's my responsibility as CO of the

17 department to make sure that processes are in place,

18 procedures and guidelines, information, and leadership

19 is available to conduct the operation throughout all

20 components of the department.

21 Q That's not the question. My question is:

22 what have you done to examine or assess the integrity

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1 of the data in the system so that you can make the

2 statement that you're making today under oath, subject

3 to penalty of perjury, that the information in the

4 system has integrity? What have you done?

5 Please answer the question.

6 MR. WARSHAWSKY: Object to the argumentative

7 tone.

8 MR. GINGOLD: Please answer the question.

9 MR. WARSHAWSKY: And it was a responsive

10 answer.

11 Go ahead and answer.

12 MR. GINGOLD: Please answer the question,

13 unless you're instructing him not to, Mr. Warshawsky.

14 MR. WARSHAWSKY: No, I'm telling him to

15 answer it again. Give you the same answer.

16 MR. GINGOLD: I'm going to ask you to answer

17 the question the way I asked the question, not what

18 Mr. Warshawsky is telling you to answer it.

19 BY MR. GINGOLD:

20 Q Can you answer the question or not?

21 A Do you want to repeat it? You --

22 Q Yes. What have you done to insure the

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1 integrity of the data? What have you done to examine

2 that issue? What have you done?

3 MR. WARSHAWSKY: Mr. Gingold, do not raise

4 your voice to Mr. Tipton.

5 BY MR. GINGOLD:

6 Q What have you done, Mr. Tipton?

7 A I have required each of the system owners

8 and the system certifiers to provide signed

9 documentation and back-up materials to address the

10 issue of integrity of the data.

11 Q So you have signed declarations. You

12 have --

13 A I didn't --

14 MR. WARSHAWSKY: Let him ask his question.

15 MR. GINGOLD: Then I'll ask you again.

16 BY MR. GINGOLD:

17 Q Do you have a signed declaration that

18 attests to the integrity of the data in the systems?

19 A They are not declarations.

20 Q Do you have signed certifications that

21 attest to the security of the data in the systems or

22 the integrity of the data in the systems?

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1 A Yes.

2 Q Okay. Tell me from whom you received such

3 a certification.

4 A You want a list of all of them or confined

5 to the --

6 Q I'll ask each person. The data in BIA

7 systems, the individual Indian Trust data in BIA

8 systems, tell me who provided to you a certification

9 that the data in the systems has integrity.

10 A Certifications provided by Brian Burns, the

11 CIO.

12 Q When?

13 A When?

14 Q When.

15 MR. WARSHAWSKY: I'm sorry. He was trying

16 to give you some names.

17 MR. GINGOLD: No, no. You said Brian Burns.

18 I said, "When?"

19 THE WITNESS: That's a certification, and

20 then the accreditation -- you don't want the

21 accreditation?

22 MR. GINGOLD: I asked you one question at a

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1 time. I asked you for a cert. and you said

2 certification. So I asked you this. We'll get to

3 each question at a time because Mr. Warshawsky will

4 object about compound questions. So what I'm trying

5 to do is ask you specifically.

6 BY MR. GINGOLD:

7 Q You said, if my understanding is correct --

8 and tell me where I'm wrong --

9 MR. WARSHAWSKY: Just for the record --

10 BY MR. GINGOLD:

11 Q -- that you received a certification from

12 Brian Burns that the data in BIA systems has

13 integrity, correct?

14 MR. WARSHAWSKY: Just for the record, I

15 wasn't objecting to a question. You cut him off and

16 he was trying to give you an answer.

17 MR. GINGOLD: All right. Unless you

18 prepared his testimony, you wouldn't have any idea if

19 he was cut off.

20 MR. WARSHAWSKY: No, he was. He --

21 MR. GINGOLD: Please answer my question.

22 THE WITNESS: Brian Burns certified over a

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1 period of several months on varying systems the

2 official documentation for certifications.

3 MR. GINGOLD: I asked you a simple question,

4 and if the answer is he didn't do this, please tell me

5 that.

6 BY MR. GINGOLD:

7 Q Did he certify that the BIA data, the

8 individual Indian Trust data in the BIA systems has

9 integrity, today or yesterday or whenever he certified

10 this? Did he certify to that?

11 A He did.

12 Q He did. Okay. When did he certify to that

13 and where is that certification located?

14 A A copy of the certification is located in my

15 secure files, and I don't recall the exact number that

16 he signed, but there are several, and some have dates

17 as early as last summer. Some have dates as late as

18 February.

19 Q And he specifically said based on your

20 recollection that the individual Indian Trust data in

21 the BIA systems has integrity, correct?

22 A That is the basis of the certification, yes.

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1 Q No. Did he say that? Did he say that?

2 A In his certification?

3 Q Yes. Did he say that, what you just said,

4 that it has integrity literally, not figuratively?

5 Did he say the data has integrity?

6 MR. WARSHAWSKY: Just to clarify, you're

7 asking him verbatim. Is that in the --

8 MR. GINGOLD: No, no. I'm asking did he --

9 I'm not asking the processes he exactly utilized. I'm

10 not asking you whether or not the systems have been

11 corrected to take care of material deficiencies that

12 existed before. I'm asking one question, and that

13 question is this:

14 BY MR. GINGOLD:

15 Q Did he certify in the several certifications

16 that you've just identified under oath that the

17 individual Indian Trust data housed in BIA systems has

18 integrity?

19 MR. WARSHAWSKY: And you're asking is that

20 the specific language in the certification?

21 MR. GINGOLD: No, I'm asking if he did that.

22 BY MR. GINGOLD:



1 Q Did he do that?  
 2 A I do not know that he singled it out in  
 3 those specific terms.  
 4 Q Okay.  
 5 (Pause in proceedings to respond to  
 6 extraneous noises.)  
 7 BY MR. GINGOLD:  
 8 Q Okay. You testified that it's your  
 9 understanding that the data in the Interior systems  
 10 had integrity, and you based it on the certifications  
 11 provided by Bureau CIOs, among others, correct?  
 12 A You've changed the --  
 13 Q Okay. The --  
 14 A -- the nature of what you -- the way you  
 15 stated it.  
 16 Q Okay. Let me clear it then. I want to make  
 17 sure there is no misunderstanding on this and we can  
 18 spend as much time as you like to make sure you're  
 19 satisfied that you're answering the question I'm  
 20 asking. Okay? This is not a trick question.  
 21 My question is this: are you satisfied that  
 22 the individual Indian Trust housed in the Interior

1 Department IT systems has integrity?  
 2 A I am satisfied that the systems as certified  
 3 and accredited protect the integrity of the data  
 4 that's there. I am not testifying as to the integrity  
 5 of the data, whether it's accurate or whether it's --  
 6 Q Thank you.  
 7 A -- missing. There's a difference. There's  
 8 a great big difference.  
 9 Q As a matter of fact, integrity is a broad  
 10 topic, isn't it? Is that a fair statement?  
 11 A I don't know that it's broad, but it has two  
 12 sides.  
 13 Q Okay. What is your understanding of  
 14 integrity so that at least we have a common  
 15 understanding for today's purposes?  
 16 A Integrity in one sense speaks to the  
 17 validity, the accuracy of the data itself. Integrity  
 18 from a security point of view stands for protecting  
 19 and assuring that whatever state the integrity is in  
 20 is not changed.  
 21 Q Okay. So let me ask you this. When you  
 22 state that you received certifications that the data

1 has integrity, you are not referring to the first part  
 2 of the definitions you have just stated, i.e., the  
 3 accuracy and completeness of integrity of the data  
 4 itself, correct?  
 5 MR. WARSHAWSKY: Can you read that question  
 6 back, please?  
 7 MR. GINGOLD: I'll be brief.  
 8 MR. WARSHAWSKY: No.  
 9 BY MR. GINGOLD:  
 10 Q You're not testifying that the data has any  
 11 integrity from the completeness or accuracy  
 12 perspective, are you?  
 13 A No.  
 14 Q Okay. Can you? Are you able to?  
 15 A I'm not in a position to make that judgment.  
 16 Q Why not?  
 17 A I'm not the system owner. I do not manage  
 18 the data.  
 19 Q Okay. So the system, is it your  
 20 understanding that the individuals who are the systems  
 21 owners -- and we'll get into that later -- are the  
 22 ones who should be able to attest to the integrity of

1 the data, i.e., the accuracy and completeness of the  
 2 data?  
 3 A The system owner through their information  
 4 owner and through their data owners.  
 5 Q And for BIA it's Mr. Burns; is that correct  
 6 or not?  
 7 A In terms of owning the data?  
 8 Q Well, the system owner. You said the system  
 9 owner.  
 10 A No, sir.  
 11 Q Okay. Who's the system owner for BIA?  
 12 A At this point I believe it is Director Pat  
 13 Pegsdale, but they have several systems, and I'm not  
 14 sure that he's the owner of all of those.  
 15 Q Okay. Who are the other owners that you are  
 16 aware of at BIA systems?  
 17 A None that I'm sure enough to testify to.  
 18 Q Have you had discussions with Mr. Regsdale  
 19 about the integrity of the data in the systems that he  
 20 is identified as the owner?  
 21 A No.  
 22 Q Have you reviewed his certifications?

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1 A Mr. Regsdale did not certify. Mr. Brian  
2 Burns certified.  
3 Q Okay. To your knowledge, has Mr. Burns  
4 certified that the data housed in the Interior  
5 Department systems are accurate and complete?  
6 MR. WARSHAWSKY: I'm sorry. Interior or  
7 BIA?  
8 MR. GINGOLD: BIA first.  
9 THE WITNESS: Not from that question, no.  
10 BY MR. GINGOLD:  
11 Q Have you seen anyone certify that the data,  
12 the individual Indian Trust data housed in any of the  
13 Interior Department systems is accurate and complete?  
14 Have you seen any testimony with respect to that sort  
15 of integrity? Any certification.  
16 MR. WARSHAWSKY: Are you asking  
17 certification or testing?  
18 MR. GINGOLD: Anything. That's what I'm  
19 asking.  
20 MR. WARSHAWSKY: Okay.  
21 THE WITNESS: No.  
22 BY MR. GINGOLD:

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1 Q Have you had any discussions with anybody  
2 about that particular issue?  
3 A Yes.  
4 Q Okay. With whom and when?  
5 A I've had discussions with Brian Burns on  
6 several occasions. I've had discussions with Mr. Bob  
7 McKenna, the CIO of OST, on several occasions  
8 involving past initiatives and projects to do data  
9 validation, insure completeness of data records and to  
10 make improvements in the system.  
11 Q Okay. When did you speak with Mr. Burns to  
12 the best of your recollection?  
13 A Probably within the last month.  
14 Q How many conversations have you had with him  
15 about that particular subject?  
16 A I don't know exactly.  
17 Q More than one?  
18 A More than one.  
19 Q A dozen maybe?  
20 A Probably not that many. I wouldn't think it  
21 would.  
22 Q A half dozen, is that a fair statement, over

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1 the last couple of years?  
2 A Half dozen.  
3 Q Approximately during that time, and Mr.  
4 McKenna, how often -- when was the last time you spoke  
5 with Mr. McKenna about the accuracy and completeness  
6 and integrity in that regard of the data housed in the  
7 OST system?  
8 A Three weeks ago.  
9 Q Okay. What did Mr. Burns tell you when you  
10 had the conversation with him?  
11 A Well, he acknowledged certain areas that the  
12 data needed to be completed. In several cases just  
13 migrating data from one system to the other requires  
14 validation and checking. Sometimes pieces are in the  
15 wrong format or they're not. They don't migrate  
16 satisfactorily, and you have an opportunity to do  
17 what's known as data cleansing.  
18 Q Did he tell you in the course of that  
19 conversation that data housed in the BIA systems that  
20 he is the owner of or has knowledge of is accurate and  
21 complete? Did he tell you that?  
22 A He told me it was reasonably accurate and

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1 complete, but not perfect.  
2 Q Okay. What is your understanding of  
3 reasonably accurate and complete? In the course of  
4 the conversation, what was your impression?  
5 A It's suitable to do business with.  
6 Q Suitable for a fiduciary to do business with  
7 or suitable for anyone to do business with?  
8 A I'm not qualified to answer a fiduciary  
9 question.  
10 Q Do you --  
11 A I'm not an accountant.  
12 Q I didn't ask you if you were an accountant.  
13 Do you understand that your role with regard to  
14 individual Indian Trust data is as a fiduciary or not?  
15 A Not my role.  
16 Q Not your role?  
17 A Not as defined within the department.  
18 Q Okay. So no one has ever instructed you or  
19 informed you or advised you that you have a fiduciary  
20 responsibility that you owe to an individual in the  
21 trust fund system; is that fair?  
22 MR. WARSHAWSKY: Just to be clear. You're

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1 asking about Mr. Tipton's duties; is that correct?  
2 MR. GINGOLD: I'm asking about -- I'm not  
3 asking him about anybody. I'm asking you. I asked  
4 you.  
5 BY MR. GINGOLD:  
6 Q Did you understand what I said? You?  
7 A Yes.  
8 Q Okay. Thank you.  
9 Has Mr. Warshawsky informed you at any time  
10 in the years that you've spoken to him, has he told  
11 you that you were a fiduciary?  
12 MR. WARSHAWSKY: Objection. You don't have  
13 to answer that question. It calls for privileged  
14 communication.  
15 BY MR. GINGOLD:  
16 Q Have you talked to any lawyer at any time  
17 who has ever told you that your role is as a  
18 fiduciary?  
19 MR. WARSHAWSKY: I'll object. You do not  
20 have to answer that. It's subject to privilege.  
21 BY MR. GINGOLD:  
22 Q Has anyone told you you're not a fiduciary?

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1 Anyone.  
2 A No.  
3 Q Is it your understanding, do you have any  
4 understanding as to whether the Secretary of the  
5 Interior is a fiduciary with respect to individual  
6 Indians and the individual Indian tribes?  
7 A You're asking me to answer on behalf of the  
8 Secretary?  
9 Q I'm asking you what your understanding is.  
10 You can tell me what your understanding is.  
11 MR. WARSHAWSKY: I'm just objecting. You're  
12 asking --  
13 MR. GINGOLD: You can tell me what your  
14 understanding is.  
15 MR. WARSHAWSKY: You're asking him for a  
16 legal conclusion.  
17 MR. GINGOLD: No, I'm asking for your  
18 understanding as a professional in the IT security  
19 managing individual Indian Trust data.  
20 BY MR. GINGOLD:  
21 Q Is your understanding that the Secretary is  
22 a trustee delegate? Is she a fiduciary or is she not?

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1 Your understanding.  
2 MR. WARSHAWSKY: And I will state for the  
3 record, Mr. Gingold, it's an objection. You're asking  
4 for a legal conclusion. He can answer subject to that  
5 objection.  
6 BY MR. GINGOLD:  
7 Q Do you believe the Secretary is a fiduciary  
8 vis-a-vis the Cobell Plaintiffs in this litigation?  
9 A I believe the Department of Interior has  
10 Indian Trust fiduciary responsibilities.  
11 Q Do you have any understanding as to whether  
12 or not the Secretary does?  
13 A The Secretary is the head of the department.  
14 Q So she would? Yes or no, based on your  
15 understanding? What's your understanding?  
16 A On my understanding?  
17 Q That's solely on your understanding.  
18 A I would say yes.  
19 Q What does that mean to you? What does it  
20 mean to you when he has fiduciary responsibilities?  
21 What does it mean?  
22 MR. WARSHAWSKY: Objection. Calls for a

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1 legal conclusion.  
2 BY MR. GINGOLD:  
3 Q What is your understanding of that?  
4 MR. WARSHAWSKY: You can answer it subject  
5 to the objection.  
6 THE WITNESS: I choose not to answer it if  
7 I'm absolutely not compelled to.  
8 MR. GINGOLD: You are compelled to.  
9 MR. WARSHAWSKY: I'm saying you can answer  
10 subject to the objection.  
11 MR. GINGOLD: You must answer, as a matter  
12 of fact, Mr. Tipton.  
13 MR. WARSHAWSKY: Please.  
14 MR. GINGOLD: You must answer that question.  
15 MR. WARSHAWSKY: Mr. Gingold, let me just  
16 get this on the record.  
17 Mr. Tipton, I've objected because his  
18 question is asking you to offer a legal opinion. I've  
19 stated you can answer subject to that objection.  
20 MR. GINGOLD: Answer the question.  
21 THE WITNESS: The liability that the  
22 Secretary and others charged with fiduciary duties in

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1 the Indian Trust area, they have a responsibility to  
2 provide information and accurate accounting to Indian  
3 bodies (phonetic) and Native Americans.  
4 BY MR. GINGOLD:  
5 Q Is that responsibility different than  
6 providing, as you understand it, information to  
7 someone with a recreational vehicle who wants to park  
8 at Yellowstone? Is it different?  
9 A Yes.  
10 Q How?  
11 A I think it's of a higher sensitivity. I  
12 think it's of higher importance.  
13 Q That's it?  
14 A I don't know what you're really looking for  
15 here.  
16 Q I'm asking for your understanding. You work  
17 for the Secretary, don't you?  
18 A Yes.  
19 Q All right. You're the Chief Information  
20 Officer of the department, correct?  
21 A Yes.  
22 Q And one of your responsibilities is to

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1 insure the security of individual Indian Trust data,  
2 isn't it?  
3 A Only indirectly in the sense that the  
4 department is split into two accountable units on  
5 that.  
6 Q Do you have the responsibility though,  
7 whether it's direct or indirect, correct?  
8 A Not the ultimate responsibility, not in the  
9 Indian Trust area, no.  
10 Q You say you have no responsibility. Is that  
11 fair?  
12 A It's hard to say no, but I am not the first  
13 line accountable with the Secretary on Indian Trust  
14 matters.  
15 Q Has the individual in Indian Trust data been  
16 segregated out of systems that you have no  
17 responsibility for?  
18 A It has been securely protected, isolated,  
19 and in many cases separated, yes.  
20 Q Oh, so you have no responsibility for those  
21 systems at all?  
22 A I'm not saying I don't have any

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1 responsibility whatsoever. I'm saying there may be  
2 shared responsibility, but I am not the sole  
3 accountable official for Indian systems, fiduciary or  
4 otherwise.  
5 Q Well, Mr. Tipton, if there's anything I said  
6 in the question that said you're solely responsible  
7 for anything, I apologize. I did not ask you that  
8 question, did I?  
9 MR. WARSHAWSKY: Objection. You're --  
10 THE WITNESS: That's the way I --  
11 MR. WARSHAWSKY: Excuse me. Objection.  
12 You're arguing with the witness. Please ask --  
13 MR. GINGOLD: No, I'm trying to explain to  
14 your witness what the questions I'm asking, Mr.  
15 Warshawsky. Please be quiet so he can continue on.  
16 MR. WARSHAWSKY: Excuse me. My job --  
17 MR. GINGOLD: Mr. Tipton --  
18 MR. WARSHAWSKY: Excuse me.  
19 BY MR. GINGOLD:  
20 Q Mr. Tipton, who else --  
21 MR. WARSHAWSKY: Excuse me, Mr. Gingold.  
22 BY MR. GINGOLD:

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1 Q -- is responsible, Mr. Tipton?  
2 MR. WARSHAWSKY: Excuse me, Mr. Gingold.  
3 BY MR. GINGOLD:  
4 Q Who else is responsible, Mr. Tipton?  
5 MR. WARSHAWSKY: Mr. Gingold, you are not  
6 going to argue --  
7 BY MR. GINGOLD:  
8 Q Beyond you, Mr. Tipton, who's responsible?  
9 MR. WARSHAWSKY: You're not going to argue  
10 with this witness, Mr. Gingold.  
11 BY MR. GINGOLD:  
12 Q Mr. Tipton, besides you, who is responsible  
13 for insuring the integrity of individual Indian Trust  
14 data in Interior systems, besides you?  
15 A There's a separate unit in charge of Indian  
16 Trust records, and Mr. Jim Cason is more or less the  
17 overseer of what happens in Indian Trust. He's point  
18 official for the Secretary.  
19 Q Are you finished?  
20 A Yes.  
21 Q That's it?  
22 A Yes.

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1 Q So there's no one else other than you and  
2 Jim Cason?  
3 A I could name subordinate officials if you're  
4 looking for that.  
5 Q Yes, I am. I'm asking you who.  
6 A Mr. Abe Haspel is in charge of the Indian  
7 Trust records.  
8 Q What does that mean to you?  
9 A What it means to me is that the Secretary  
10 has chosen to treat Indian Trust records special and  
11 with a higher degree of priority than normal record  
12 process. I work with Mr. Haspel. We try to make sure  
13 the policies are consistent. We have an Office of  
14 Historical Trust and Accounting, which the Director is  
15 Burt -- I forget his last name, and then we have OST,  
16 the Office of Special Trust, which is headed by the  
17 special trustee, Carl Swimmer, and that's all I can  
18 think of at the moment.  
19 Q What about MMS?  
20 A MMS has trust responsibilities with respect  
21 to the royalty system.  
22 Q Are we talking about -- again, just to be

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1 clear, we're talking about individual Indian Trust  
2 data housed in electronic systems right now. Okay?  
3 That's all we're talking about right now, and I asked  
4 you who shared responsibility with you. You've  
5 identified Mr. Cason, Mr. Haspel, the head of OHTA who  
6 name, the last name, you don't recall, Mr. Swimmer  
7 from OST. Who with Internets (phonetic)?  
8 A The CIO is Robert Brown.  
9 Q Surface Mining.  
10 A The CIO is Rich Frazier.  
11 Q Office of the Solicitor?  
12 A The CIO position is vacant at the moment.  
13 The Acting CIO is Greg Littlejohn.  
14 Q BIONA (phonetic)?  
15 A CIO is Ronnie Lavine.  
16 Q And when you identify these people as CIOs,  
17 again, you're seeing that these people have hard  
18 responsibility for the integrity of the trust,  
19 individual Indian Trust then; is that correct or not?  
20 MR. WARSHAWSKY: Excuse me. Do you want to  
21 go through these?  
22 MR. GINGOLD: No.

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1 BY MR. GINGOLD:  
2 Q Is that your understanding? Yes or no?  
3 MR. WARSHAWSKY: Excuse me.  
4 BY MR. GINGOLD:  
5 Q Is that your understanding? Yes or no?  
6 MR. WARSHAWSKY: Mr. Gingold, you're going  
7 to let me object for the record.  
8 MR. GINGOLD: You have objected. Are you  
9 instructing him not to answer the question?  
10 MR. WARSHAWSKY: No.  
11 MR. GINGOLD: Okay.  
12 MR. WARSHAWSKY: I'm asking you to clarify.  
13 Are you asking him now about Indian Trust data on OSM  
14 Solicitor? Is that what you mean? Because you didn't  
15 ask about --  
16 BY MR. GINGOLD:  
17 Q What is your understanding of my question,  
18 Mr. Tipton?  
19 A My understanding, you're looking for  
20 individuals within the various trust bureaus of which  
21 -- I don't know what you asked about OSM -- but the  
22 CIO is Rick Schrader (phonetic), but I understand

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1 you're looking for individual within those agencies  
2 who have responsibilities for the trust segment of  
3 that data.  
4 Q So you do understand what I'm asking. So  
5 is it fair to say that the individuals you are  
6 identifying, correct, to me right now have shared  
7 responsibility to insure the integrity of the data in  
8 their systems, correct?  
9 A Yes.  
10 Q What other systems and material housed  
11 individual Indian Trust data in other bureaus or  
12 offices, to the best of your knowledge?  
13 A In BLM, Bureau of Land Management, we have  
14 the automated fluid mineral system, better known at  
15 AFMS. In MMS, we have the royalty system, and there  
16 may be some others there, but I don't recall.  
17 Q Other bureaus and offices. That's what I  
18 asked.  
19 A Oh. In the Solicitor's Office, BIA, OST,  
20 OHA, Office of Hearing and Appeals.  
21 Q Thank you.  
22 A And the Office of Historical Trust

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1 Accounting.

2 Q And who at OHA is the CIO with shared

3 responsibility as you understand it?

4 A I don't believe they have a CIO per se, but

5 the individual that we work with routinely is Charles

6 Breece.

7 Q Could you spell that please?

8 A B-r-e-e-c-e.

9 Q Is he acting CIO?

10 A I'm not sure at that.

11 Q Is there a CIO position at OHA?

12 A I don't recall at this time.

13 Q How about Bureau of Reclamation?

14 A The CIO at Bureau of Reclamation is Randy

15 Feurstein.

16 Q Could you just please spell that to the best

17 of --

18 A To the best of my knowledge, F-e-u-r-s-t-e-

19 i-n.

20 Q That is your understanding that the Bureau

21 of Reclamation has individual Indian Trust data

22 housing systems, isn't it?

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1 A Only a small segment that has been isolated.

2 Q Okay. What is your understanding of

3 individual Indian Trust data?

4 A By definition?

5 Q Your understanding.

6 A Individual Indian Trust data is any data

7 obtained from any source that has information

8 regarding to individual Indian allottees.

9 Q Now, you indicated in one of your comments

10 about OSM that you didn't understand or you suggested

11 that you weren't sure if it has federal SMs

12 (phonetic); is that fair or not? That's Office of --

13 A I'm simply clarifying that our position is

14 that OSM does not have Indian Trust cases.

15 Q Okay. So you're saying that there's no

16 information in OSM regarding allottees; is that your

17 statement?

18 A There's no, to my knowledge, in any of their

19 electronic systems.

20 Q Regarding allottees, correct?

21 A Yes.

22 Q Or with regard to individuals who have --

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1 explain to me because you are in charge of them; is

2 that correct?

3 A That's correct.

4 Q Okay. When?

5 A I was Acting Director for 11 months 1992 or

6 '93.

7 Q Through?

8 A I was Deputy Director for four years

9 preceding that.

10 Q So you were with OSM approximately five

11 years. Is that true?

12 A I was in Washington. I was with OSM for

13 seven and a half years as State Director for the

14 Kentucky Program and Deputy Director for the Southeast

15 Region and the initial start-up for OSM in 1979.

16 Q And what does OSM do?

17 A Regulates and oversees the state programs

18 for coal mining and runs a mine reclamation program.

19 Q Coal mining on reservations?

20 A Yes.

21 Q Mines that are owned in whole or part to

22 individual Indian Trust beneficiaries?

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1 A I don't recall ownership to that degree.

2 Q Do you --

3 A I recall mines that I'm familiar with being

4 tribally owned.

5 Q Are you aware of any mines that are not

6 tribally owned and that are owned in part or in whole

7 by individuals?

8 A No.

9 Q Have you ever made an inquiry into that?

10 A No, not that I recall.

11 Q Were you ever asked by anyone to make an

12 inquiry into that?

13 A I don't recollect.

14 Q Okay. If, in fact -- this is a hypothetical

15 question -- if, in fact, mines on reservations are

16 owned in whole or in part by individuals, do you

17 believe there's information that relates to allottees?

18 MR. WARSHAWSKY: Objection. You're asking

19 him to speculate.

20 MR. GINGOLD: You can speculate.

21 MR. WARSHAWSKY: No, you can't speculate.

22 MR. GINGOLD: Yes, you can speculate.

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1 MR. WARSHAWSKY: But you may answer subject  
2 to --  
3 MR. GINGOLD: No, you're allowed to  
4 speculate in a deposition.  
5 MR. WARSHAWSKY: No, I don't want him  
6 guessing, and I'm sure you don't want him to guess  
7 either.  
8 But go ahead and answer subject to the  
9 objection.  
10 MR. GINGOLD: Well, I want an answer to the  
11 question. Answer my question.  
12 BY MR. GINGOLD:  
13 Q If, in fact, a mine on a reservation is  
14 owned in whole or part by the individuals, would there  
15 be information with regard to that mine in information  
16 that's in individual Indian Trust in your opinion?  
17 MR. WARSHAWSKY: And object to the extent  
18 you're asking for a legal conclusion.  
19 You may answer subject.  
20 MR. GINGOLD: I said in your opinion, not  
21 your legal opinion.  
22 THE WITNESS: One more time.

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1 BY MR. GINGOLD:  
2 Q Okay. You testified that OSM has certain  
3 regulatory responsibilities for mines, coal mines that  
4 are on reservations. Is that a fair statement?  
5 A Yes.  
6 Q You testified that there's data in the OSM  
7 electronic systems with regard to those mines. Is  
8 that a fair statement?  
9 A I said that there was at the time I was at  
10 OSM. It's my understanding that electronic data,  
11 individual Indian data or otherwise, has been removed,  
12 but that's simply my understanding.  
13 Q Okay. At the time you were in OSM, you  
14 stated that you made no inquiries to actual ownership  
15 of the mines; is that true or not?  
16 A I only recall the Black Mesa as an example  
17 of a mine operated by Peabody and the Navajo Tribe,  
18 not individual Indians.  
19 Q And that's one. There are more than -- OSM  
20 is responsible for more than one mine, correct?  
21 A I'm simply giving you my recollection.  
22 Q I understand. I'm just asking you. It's

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1 really "mines." Are there many mines that are on  
2 reservations?  
3 A I don't recall there being very many.  
4 Q How many do you think there are?  
5 A I wouldn't guess more than four or five.  
6 Q And where do you think they're located?  
7 A Four Corners area, New Mexico.  
8 Q On Navajo's reservation? Is that where you  
9 --  
10 A Those are the ones I recall. There are  
11 probably some in Montana, some small ones.  
12 Q Crow, is that a possibility?  
13 A Crow is a possibility.  
14 Q Do you know? Did you ever make any  
15 inquiries into that or not if the mines are in part or  
16 in whole owned by individual Indian Trust  
17 beneficiaries?  
18 A No.  
19 Q Did you make an inquiry on whether or not  
20 those mines are on individual allottee lands?  
21 A No.  
22 Q Was it your understanding that -- then if,

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1 in fact, you have no knowledge that individual Indian  
2 Trust beneficiaries or allottees have an ownership  
3 interest in these mines, why would there be individual  
4 Indian Trust data in OSM systems?  
5 MR. WARSHAWSKY: Can you read that back  
6 please?  
7 MR. GINGOLD: Why would there be individual  
8 Indian Trust data in OSM systems if, in fact,  
9 individuals didn't own mines?  
10 THE WITNESS: I didn't say that they didn't.  
11 MR. GINGOLD: No. If they don't, they  
12 wouldn't.  
13 BY MR. GINGOLD:  
14 Q There would be no data with individuals if  
15 they didn't own mines, correct? Is that wrong?  
16 A If they had no mines, there would be no  
17 data. That seems to be a logical conclusion.  
18 Q Okay, but you indicated that there was data  
19 segregated and migrated out, correct?  
20 A Well, we're mixing tribal data with what  
21 presumably might be individual Indian data.  
22 Q No, no, no, I'm not asking you about tribal

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1 data. I'm asking you about individual Indian Trust  
2 data.  
3 A I was referring to tribal data.  
4 Q Okay. How many of the questions that you've  
5 answered refer to tribal data, not individual data?  
6 Has all of your testimony this morning been with  
7 respect to tribal data?  
8 A No.  
9 Q Okay. When did you move from individual  
10 Indian Trust data to tribal data in the course of your  
11 testimony this morning?  
12 A When you moved into OSM.  
13 Q So it's your testimony there is no  
14 individual Indian Trust data in OSM?  
15 A As certified to me.  
16 Q You worked there for approximately seven  
17 years, correct?  
18 A I worked there 12 years ago.  
19 Q When you worked there 12 years ago, did you  
20 have an understanding as to whether there was  
21 individual Indian Trust data in OSM?  
22 A I don't recollect.

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1 Q Did you ever ask?  
2 A No, but I don't remember asking.  
3 Q Did anyone ask you ever?  
4 A Not that I remember.  
5 Q Anyone instruct you how to protect that  
6 data?  
7 A Twelve years ago?  
8 Q Whenever you worked there, for whatever  
9 period of time, ever.  
10 A I don't recall it coming up.  
11 Q Okay. Why did the Pittsburgh Office of the  
12 Solicitor use the E-mail systems for OSM instead of  
13 the Solicitor's Office? Do you have any idea?  
14 A What was the question?  
15 Q Yes. Are you aware -- I'll ask this  
16 question -- are you aware that the Pittsburgh office  
17 of the Department of Interior, Office of the Solicitor  
18 utilized the OSM servers for its E-mail?  
19 A No.  
20 Q Do you know if they do today?  
21 A No.  
22 Q Were you aware that the E-mails were

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1 routinely overwritten in the Pittsburgh's Solicitor's  
2 Office?  
3 A I'm not aware of that.  
4 Q Do you know that OSM E-mails were routinely  
5 overwritten?  
6 A No.  
7 Q So no one has ever brought that to your  
8 attention?  
9 A They have not.  
10 Q Are you aware that that was reported to the  
11 court?  
12 A No.  
13 Q Now, when you were at OSM during the period  
14 of time, did you insure that your E-mail was  
15 preserved?  
16 A No.  
17 Q So you overwrote the E-mail on a routine  
18 basis; is that correct? Deleted it?  
19 A Pursuant to normal write-over procedures,  
20 yes.  
21 Q Because you were never told not to, correct?  
22 A That's correct.

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1 Q Okay. Since June 10th, what was your job on  
2 June 10th, 1996?  
3 A 1996, to the best of my recollection, I  
4 would have been State Director for the 31 eastern  
5 states in BLM.  
6 Q And what did that entail?  
7 A It entailed managing the general Land Office  
8 and the Land Office records; entailed managing oil and  
9 gas leasing; managing a wild horse and burrows  
10 program; recreation; cadastral survey; a variety of  
11 land use/land management functions.  
12 Q Did any of that individual individual Indian  
13 Trust lands?  
14 A Not to my knowledge.  
15 Q None of it?  
16 A None of it.  
17 Q So it was all set -- do you know why?  
18 A Do I know why there's no Indian --  
19 Q No, why did you have -- during the course of  
20 your responsibility on June 10th, 1996, based on the  
21 description of your functions with regard to leasing  
22 and land management functions, was it only the



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1 government's land that you were concerned about?

2 A Yes.

3 Q Okay. Solely.

4 A To the best of my recollection, yes.

5 Q Okay. When did your responsibilities go

6 beyond government land into trust land?

7 A From '96 forward?

8 Q Yeah, let's start with '96 forward. Is

9 there any point in time to your knowledge, that your

10 responsibilities have been extended beyond just the

11 government's own land analysis?

12 A As Assistant Director for BLM for land and

13 minerals management.

14 Q And when was that?

15 A I had policy responsibilities.

16 Q And when was that?

17 A 1994.

18 Q To '96?

19 A I'm not sure that the spacing is right, but

20 I was in that position before I moved to State

21 Director at Eastern States, yes.

22 Q But on June 10th, at least you were under --

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1 your recollection is that you were the State Director,

2 correct?

3 A Yes.

4 Q So prior to that, you had broader

5 responsibilities than just government lands, correct?

6 A I had policy responsibilities for all of the

7 minerals programs in BLM.

8 Q Including minerals programs that affect

9 individual Indian Trust beneficiaries?

10 A Yes.

11 Q Did you retain all of your E-mail at that

12 point in time when you were in the position as

13 Assistant Director with responsibilities that included

14 individual Indian Trust beneficiaries?

15 A No.

16 Q Did anyone tell you to save it?

17 A No.

18 Q Did you understand you were dealing with

19 trust data, have any understanding that you were

20 dealing with trust data?

21 A Yes. I treated trust records the same as I

22 would at any other record at that point. There was

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1 not the sharp distinction at that time that there is

2 now.

3 Q So an invoice for paper clips would be

4 treated the same as trust data?

5 A No.

6 Q How so? It's another record though, isn't

7 it?

8 A It's one someone else keeps.

9 Q Okay, but if you had an invoice for paper

10 clips that was E-mailed to you, you would treat it the

11 same way, wouldn't you?

12 A No.

13 Q Oh, you wouldn't?

14 A No, I wouldn't.

15 Q So there is a difference?

16 A There would be a duplicate copy. Oh, so is

17 it correct that -- do you believe duplicate copies

18 should be treated differently from originals?

19 A Not with respect to individual Indian data

20 or trust data, but since the court order in our mind

21 supersedes normal record retention pieces, we keep all

22 of those. If it's a duplicate copy of an invoice on

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1 paper clips, yes, it would be destroyed.

2 Q The paper clip record would be destroyed

3 along with the individual Indian Trust record at that

4 time, correct, that you're talking about, which is

5 basically from '94 to '96, correct?

6 A You're referring to electronic records. If

7 it's an official record that the government does

8 business with, transactions, then whether there's a

9 requirement to do it or not, record retention policies

10 would require that a copy of that material, that

11 record be maintained.

12 Q I'm not talking about the electronic record

13 in your computer. Let's talk about your E-mail, for

14 example. You would treat the E-mail with an

15 attachment of an invoice for paper clips the same way

16 you would treat an E-mail with a document dealing with

17 individual Indian Trust data, correct, at that time?

18 A No.

19 Q Oh, you wouldn't. So you preserved it in--

20 A I tried to make the distinction between a

21 record over which I had personal knowledge or personal

22 business, direct business with versus one that's an

1 administrative function. Your example is too extreme.

2 Q I'm asking you if you received an E-mail  
3 dealing with the individual Indian Trust data, whether  
4 or not it was your primary responsibility or secondary  
5 responsibility, while you were in the position of BLS,  
6 would you have preserved that and insured that it was  
7 preserved with back-up tapes at that time, '94 to '96?

8 A If it constituted a record by --

9 Q No, no, no. I'm asking if you would do that  
10 as a practice.

11 A If it constituted a record by the definition  
12 that we applied at that time, yes.

13 Q Do you know what the definition was at that  
14 time?

15 A The records definition, yes.

16 Q The trust, individual Indian Trust records,  
17 do you know what that was?

18 A To the extent that it differs from the  
19 narrow definition of record?

20 Q Was there a definition of individual Indian  
21 Trust record at that time?

22 A I can't say I recall specifically a specific

1 definition for an individual trust record in 1996.

2 Q Was there a general -- to your knowledge,  
3 was there any definition of individual Indian Trust  
4 record?

5 A To my knowledge?

6 Q Correct.

7 A No.

8 Q So you wouldn't have been able to  
9 distinguish a trust record from another record.  
10 That's the reason you treated them as similar,  
11 correct?

12 A We would treat them appropriately as we  
13 treat any other proper record.

14 Q No, all I'm asking: as a matter of practice  
15 you treated all the records the same way. You did not  
16 distinguish individual Indian Trust records, correct?

17 A In 1994?

18 Q To 1996 as in OST.

19 So if Plaintiffs were to make a document  
20 production request for the records that you preserved  
21 from 1994 to 1996, where would they be located?

22 A If -- let me see. Well, they would be in

1 BLM, and I'm not sure what the storage or archiving  
2 procedures would be since that's ten years ago.

3 Q Do you know whether or not those records  
4 have been segregated today from the individual Indian  
5 Trust records from the general government records?

6 A No.

7 Q Do you know what the --

8 A Are we talking paper records now?

9 Q No, I'm talking electronic records. I'm  
10 talking about the electronic. I asked you about E-  
11 mail. I asked you if you E-mailed in electronic form.  
12 You treated everything the same way, correct? '94 to  
13 '96?

14 A Yes.

15 Q Correct. so if you preserved it on your  
16 computer, it was preserved, correct, the same way?

17 A If you preserved it on your computer, but  
18 again, if it was an official record, the requirement  
19 is to make sure you have a printed copy of the record  
20 before you destroy and delete it.

21 Q But that's not what I'm asking. Were there  
22 back-up tapes from 1994 to '96?

1 A Well, they had been recycled, as was common  
2 practice.

3 Q How often were they recycled?

4 A I don't recall the exact time.

5 Q Do you believe all of those records have  
6 been recycled by now? This is 1994 to 1996 --  
7 electronic records.

8 A Electronic.

9 Q Yes. That means the E-mail --

10 A Electronic copies.

11 Q -- itself and the back-up tapes.

12 A Just to emphasize, electronic copies of  
13 records would have been recycled, yes.

14 Q Okay. The electronic data itself, has that  
15 been deleted, the original data?

16 A From the E-mail systems?

17 Q That's right.

18 A I don't know for a fact that it has, but I  
19 would say if I had to answer, I would say --

20 Q It should be?

21 A -- in my opinion, yes, it should be.

22 Q Okay. Who would know the answer to that

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1 question?  
2 A I don't recall who was in charge of IT at  
3 that time.  
4 Q Well, who today would know?  
5 A Who today?  
6 Q Yes, who would know today the answer to that  
7 question? Does anybody?  
8 A I would start with their CIO, and it would  
9 probably then go to the records officer.  
10 Q The CIO of the Bureau or office?  
11 A Of the Bureau, yes.  
12 Q Or the office?  
13 A Bureau of Land Management.  
14 Q Okay.  
15 MR. WARSHAWSKY: We've been going for an  
16 hour. Let's take a break.  
17 MR. GINGOLD: Do you need a break, Mr.  
18 Tipton?  
19 THE WITNESS: I'm supposed to walk every  
20 hour.  
21 MR. GINGOLD: Okay. Just let me know. I  
22 wasn't told that.

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1 (Whereupon, the foregoing matter went off  
2 the record at 10:36 a.m. and went back on  
3 the record at 10:44 a.m.)  
4 MR. GINGOLD: Mr. Tipton, we're back on the  
5 record.  
6 We just came back from a brief break, and  
7 again, whenever you need to take a walk to stretch  
8 your legs, just let us know so that you're not  
9 uncomfortable at least physically.  
10 BY MR. GINGOLD:  
11 Q What did you discuss with your counsel  
12 during break, if anything?  
13 THE WITNESS: That's not privileged?  
14 MR. WARSHAWSKY: You can tell him the  
15 general subject matter that we talked about.  
16 MR. GINGOLD: No, it's not. go ahead.  
17 THE WITNESS: Well, I was advised not to be  
18 so speculative. That's about it.  
19 BY MR. GINGOLD:  
20 Q And what did you say to Mr. Warshawsky?  
21 MR. WARSHAWSKY: I just object. Again,  
22 you're not allowed to ask him about his attorney-

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1 client communication. You can give him the general  
2 subject matter of our discussion.  
3 You're not allow to inquire into the  
4 conversation.  
5 MR. GINGOLD: So you're instructing him not  
6 to answer the question?  
7 MR. WARSHAWSKY: I'm telling him not to  
8 provide you with conversations, and you know that.  
9 BY MR. GINGOLD:  
10 Q What did you generally discuss during the  
11 break with Mr. Warshawsky, generally discuss? What  
12 were the subjects?  
13 A We discussed no subjects of material  
14 content. It was simply too much conversation.  
15 Q Were you given --  
16 A It was speculative.  
17 Q Okay. Were you given instructions?  
18 A I was given advice.  
19 Q But no instructions?  
20 A No instructions.  
21 Q Did you ask for any help?  
22 A No.

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1 Q Okay. So you discussed generally how you  
2 respond to my questions?  
3 A That was it.  
4 Q Is there any information you provide Mr.  
5 Warshawsky?  
6 A No.  
7 MR. GINGOLD: So Mr. Warshawsky has a  
8 privilege. Just for clarification, you asserted a  
9 privilege. What is the privilege, please?  
10 MR. WARSHAWSKY: To the extent we're getting  
11 into questions about our discussions, I always  
12 considered that -- if you're asking about  
13 communications that we had about the deposition.  
14 BY MR. GINGOLD:  
15 Q Did you provide any facts to Mr. Warshawsky  
16 during the break?  
17 A No.  
18 Q Did you provide any information to Mr.  
19 Warshawsky during the break that wasn't discussed in  
20 this room before the break?  
21 A Only on the nature of our discourse.  
22 Q Okay, but not any facts, correct?

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1 A No facts.  
2 MR. GINGOLD: So, Mr. Warshawsky, what's the  
3 nature of your privilege?  
4 MR. WARSHAWSKY: I'm not going to argue with  
5 you about this. Why don't you go ahead and ask your -  
6 -  
7 MR. GINGOLD: It's not privileged, is it?  
8 MR. WARSHAWSKY: Ask your question.  
9 BY MR. GINGOLD:  
10 Q So specifically then, since we're not  
11 dealing with privileged information, what did you  
12 discuss with Mr. Warshawsky?  
13 MR. WARSHAWSKY: Again, I'll object to the  
14 extent you're asking him for a privileged  
15 communications during --  
16 MR. GINGOLD: Well, give me the specific  
17 information, please.  
18 MR. WARSHAWSKY: I'm going to direct him not  
19 to answer that.  
20 MR. GINGOLD: Even though he provided you  
21 now facts, Mr. Warshawsky?  
22 MR. WARSHAWSKY: If you want to file a

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1 motion, file a motion.  
2 MR. GINGOLD: We're not filing a motion.  
3 That's not the issue.  
4 MR. WARSHAWSKY: That's --  
5 MR. GINGOLD: You're saying right now that  
6 he provided no facts to you in the break we had that  
7 you're asserting is a privileged communication.  
8 MR. WARSHAWSKY: Mr. Gingold, I know the  
9 game you're playing. Let's move on.  
10 MR. GINGOLD: Is the answer yes or no, Mr.  
11 Warshawsky?  
12 MR. WARSHAWSKY: Let's not waste Mr.  
13 Tipton's time.  
14 MR. GINGOLD: Mr. Warshawsky, can you please  
15 answer the question? He said he gave you no facts.  
16 MR. WARSHAWSKY: Ask your question, Mr.  
17 Gingold.  
18 MR. GINGOLD: Mr. Warshawsky, you did not  
19 give him facts. I just want this under oath so when  
20 we're dealing with the issues and any sanctions we  
21 might request, I want to make sure this is clear.  
22 BY MR. GINGOLD:

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1 Q You provided no facts to Mr. Warshawsky,  
2 correct?  
3 MR. WARSHAWSKY: You can answer that yes or  
4 no.  
5 THE WITNESS: I didn't.  
6 BY MR. GINGOLD:  
7 Q You provided no facts to Mr. Warshawsky  
8 during the break, correct?  
9 A I provided no facts.  
10 Q Right. None at all, correct?  
11 A Correct.  
12 MR. GINGOLD: Thank you very much.  
13 Nevertheless, his objection is noted, and we  
14 will deal with that in separate motions with regard to  
15 Mr. Warshawsky. Thank you very much.  
16 MR. WARSHAWSKY: I'm sure you will.  
17 MR. GINGOLD: Oh, we sure will, Mr.  
18 Warshawsky.  
19 MR. WARSHAWSKY: So let's move on with Mr.  
20 Tipton.  
21 MR. GINGOLD: Thank you very much, Mr.  
22 Warshawsky. This is your deposition. You can call

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1 the shots.  
2 Okay. Let's talk about the E-mail you saved  
3 post June 10th of 1996.  
4 BY MR. GINGOLD:  
5 Q Did you save in all of your capacities in  
6 the Department of Interior all of your E-mail in  
7 electronic form?  
8 A Please restate.  
9 Q Yes. Do you understand what E-mail in  
10 electronic form is? Yes or no?  
11 A Yes.  
12 Q What is it?  
13 A It's any communication saved in electronic  
14 format.  
15 Q And electronic format includes to the best  
16 of your knowledge what?  
17 A In any form. I'm not sure what answer  
18 you're looking for.  
19 Q The information on the hard drive of your  
20 computer, for example, is that electronic?  
21 A It's electronic. It's also looked at as a  
22 storage media.

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1 Q Is it electronic data?  
2 A It's electronic data stored on a hard drive,  
3 yes.  
4 Q So it's electronic E-mail.  
5 A Save in --  
6 Q Is that part -- let's save if your E-mail  
7 came into your computer, what happens to the E-mail?  
8 A I save my E-mail in folders. That E-mail is  
9 also saved on servers, and is backed up daily.  
10 Q I'm asking you since June 10th, 1996 now.  
11 As a matter of practice, that's how you've done it  
12 since June 10th, 1996?  
13 A No.  
14 Q Okay. When did you begin to do what you've  
15 just described? Do you understand what I'm asking  
16 you?  
17 A I think I do. We began implementing the  
18 printouts of all the data as prescribed by the court  
19 order and maintained the back-ups of the E-mail data  
20 from all of our trust bureaus and servers.  
21 Q Mr. Tipton, I'm asking you personally. When  
22 I ask about the department for further clarification,

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1 I'll ask you about the department.  
2 When did you begin to preserve the E-mail in  
3 the folders and back-up tapes of any form? When did  
4 you begin to do that?  
5 If it was -- did you begin to do that on  
6 June 10th, 1996?  
7 A I have always saved my E-mail in personal  
8 folders in my E-mail structure, not because I was  
9 ordered to. That's just the way I maintain my  
10 correspondence and my business. I sort the records  
11 from the millions of other E-mails that come through  
12 my office.  
13 Q So -- okay. Sorry.  
14 A When we went to a more rigorous procedure of  
15 printing out not only just what we considered records,  
16 but what we considered anything discussing the three  
17 major topics of the Cobell litigation and the back-  
18 ups, I began that as ordered, and I believe I was CIO  
19 of BLM at the time.  
20 Q And when was that? When was that? When was  
21 that?  
22 A I don't remember the exact date.

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1 Q Do you remember the year?  
2 A I would have to approximate. I don't  
3 remember exactly the year. I can be close.  
4 Q 2003?  
5 A No, earlier than that.  
6 Q 2002?  
7 A It seems 1999, but again, that's to the best  
8 of my recollection.  
9 Q You believe some time in 1999, and this was  
10 when you became the CIO; is that correct? But not of  
11 BLM, correct?  
12 A Of BLM, yes.  
13 Q That's what I'm saying. Was it at the time  
14 you became the CIO of BLM?  
15 A During I think it was June at that time.  
16 Q So it wasn't at the outset, correct?  
17 A I don't know. I didn't come prepared to  
18 give you these kinds of details. I didn't know what  
19 kind of depth you wanted.  
20 Q Well, we would have been very happy to  
21 prepare you if you had called us.  
22 As a CIO of BLM, did you insure that all of

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1 your employees preserved all of their E-mail?  
2 A We did due diligence to make reasonable  
3 assurance that all employees were aware of the  
4 requirements and were compliant.  
5 Q What did you do to insure that your  
6 instructions were implemented in accordance with the  
7 court orders?  
8 A We issued policy directions, copies of the  
9 orders, and required certifications from our field  
10 units.  
11 Q What did you do to verify that the guidance  
12 and instructions that you provided to your employees  
13 were followed in accordance with the court orders?  
14 A I don't recall any of the oversight  
15 procedures or anything. We didn't look over their  
16 shoulder or do any sampling.  
17 Q Who was your compliance officer who at that  
18 time was a CIO of BLM do you recall?  
19 A You mean security officer?  
20 Q No. To insure compliance with the court  
21 orders, who was your Compliance Officer?  
22 A We don't have anything called Compliance

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1 Officer.  
2 Q Who had the function at that time?  
3 A It was a shared responsibility between  
4 myself, my deputy, and my security officer.  
5 Q Okay. Who is your Deputy, by name?  
6 A At that time?  
7 Q Correct.  
8 A David Shearer.  
9 Q Can you spell the last name, please?  
10 A S-h-e-a-r-e-r.  
11 Q Is he still with the department?  
12 A Yes, in a different capacity.  
13 Q Okay, and you mentioned a third person, you,  
14 Mr. Shearer and a third person.  
15 A I can't recall the security officer's name  
16 at this time.  
17 Q Okay, but what did you -- since you said the  
18 three of you were involved in that, what did you do  
19 personally to insure that the employees complied with  
20 the requirements of the court orders as you understood  
21 them?  
22 A They developed the policies, distributed the

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1 information, conducted training, did some technical  
2 techniques, and required certifications from the  
3 responsible individuals in the field.  
4 Q And did you do anything to insure that what  
5 was instructed was done in accordance with the  
6 instructions? Did you independently verify any of  
7 that, you personally?  
8 A I personally? No, I did not.  
9 Q Do you know if Mr. Shearer did?  
10 A I don't recall.  
11 Q Do you know if your security officer did?  
12 A I don't recall.  
13 Q Do you know if your security officer is  
14 still with the department?  
15 A I think he has since retired.  
16 Q Do you know where -- you provided memoranda  
17 to the field in the form of a memorandum in support of  
18 the guidance in how the E-mail should be preserved.  
19 Is that fair?  
20 A Directives, yes.  
21 Q You yourself signed directives to the field.  
22 Is that true or not?

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1 A Yes.  
2 Q Okay. Do you know when that occurred  
3 approximately?  
4 A Shortly after the order was issued.  
5 Q Which order?  
6 A Order for E-mail retention.  
7 Q Okay, and you're --  
8 A And for printing of records.  
9 Q Was it -- so it's your understanding it was  
10 an order for E-mail retention and an order for  
11 printing of records?  
12 A Yes. There's orders covering both of those.  
13 Q Is it your understanding that --  
14 A It may be the same order, but there are two  
15 requirements.  
16 Q Okay, and approximately what year was that?  
17 Do you recall?  
18 A Again, I'm estimating 1999. It may have  
19 been 2000.  
20 Q Does August 12th, 1999, mean anything to  
21 you?  
22 A I'd be speculating or guessing. I don't

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1 know for sure. It doesn't -- it doesn't trigger any  
2 instant response.  
3 Q Do you know how many orders that are entered  
4 by the court in Cobell v. Norton deal with the  
5 preservation of trust records?  
6 A At least one.  
7 Q And which one is that?  
8 A On preservation of the E-mail through back-  
9 ups and through printing of trustworthy E-mail.  
10 Q You're not sure when that was -- which  
11 particular -- where it says that?  
12 A I'm not sure.  
13 Q But it wasn't in 1998. Is that a fair  
14 statement?  
15 A I don't know that. Like I said, I'm giving  
16 my best estimate as to when I have knowledge.  
17 Q Okay, were you the CIO in 1998?  
18 A I would have to check my resume. I've had  
19 several differing jobs over the last ten years.  
20 Q Were you the CIO in 1997?  
21 A No.  
22 Q Okay. In 1997, did you preserve all of your

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1 E-mails? Did you instruct all of your employees to  
2 preserve all of their E-mail with regard to individual  
3 Indian Trust records?  
4 A I instructed my employees to -- whatever the  
5 date was -- to do what the court ordered when we had  
6 the orders to do it, and I don't know whether it was  
7 '97, '98, '99 or 2000.  
8 Q So if there wasn't an order entered by the  
9 court, you did not make that instruction. Is that  
10 fair?  
11 A As I said earlier, we abided by the record  
12 retention and disposition schedules that are required  
13 by law up until the court order changed that.  
14 Q Are you aware that in June of 1996, the  
15 Deputy Assistant Attorney General of the United States  
16 in Environment and Natural Resources confirmed to  
17 Plaintiffs' counsel that all records of material,  
18 electronic and hard copy would be preserved relevant  
19 to individual Indian Trust records? Are you aware of  
20 that?  
21 A I'm not intimately familiar with that, no.  
22 Q Nothing like that was communicated to you in

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1 June of 1996, was it?  
2 A I don't recall.  
3 Q Were you preserving all -- were you  
4 segregating individual Indian Trust records from other  
5 records in 1996?  
6 A If I was instructed, then, yes, I would  
7 have.  
8 Q But you have no recollection of any  
9 instruction?  
10 A I have no recollection of that.  
11 Q Do you have any recollection in 1997?  
12 A I was in the programmatic function and  
13 operations at the time. I was not in IT.  
14 Q No, but you yourself --  
15 A I was not in records management.  
16 Q But you yourself, did you preserve all of  
17 your electronic records to the best of your knowledge  
18 at that time?  
19 A Not in electronic format. Preserve them in  
20 record format.  
21 Q You mean in hard copy format?  
22 A Hard copy.

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1 Q Are you aware that records come in multiple  
2 formats, hard copy and electronic?  
3 A Yes.  
4 Q Is it your understanding that you were able  
5 to destroy the electronic format in 1999 as long as  
6 you kept the hard copy?  
7 A Not after the court order.  
8 Q Before that that was your understanding?  
9 A Before the court order records retention and  
10 records management practices as dictated by NARA allow  
11 you and require that you destroy electronic records  
12 after you have made the proper printing and filing  
13 disposition of them.  
14 Q Is that what NARA says?  
15 A Yes.  
16 Q NARA says you're supposed to destroy all the  
17 electronic records as long as you printed them in hard  
18 copy? Is that what NARA says?  
19 A Once you have made a judgment that they are  
20 records, classified the nature of the records, it says  
21 you should dispose of them, yes.  
22 Q What about regulations that were promulgated

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1 in 1990 that require all department with respect to  
2 its electronic records to insure the documentation of  
3 those systems so the integrity of the records and  
4 trustworthy of the system can be demonstrated? What  
5 did you do in that regard, let's say, in 1996?  
6 A I don't understand that question.  
7 Q Are you aware that since at least 1990 the  
8 regulations have been in place enforceable to insure  
9 the protection and insure the trustworthiness of  
10 electronic systems operated by the government?  
11 MR. WARSHAWSKY: Can you read that back,  
12 please?  
13 BY MR. GINGOLD:  
14 Q Are you aware that the regulations that are  
15 in place that require the agencies to insure the  
16 trustworthiness of electronic records?  
17 A Yes, I'm aware of that.  
18 Q Since 1990?  
19 A I don't recall what specific date in  
20 particular, but I'm aware of the requirement.  
21 Q Are you aware of the requirement that there  
22 must be documentation to demonstrate the

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1 trustworthiness of the systems?  
2 A I can't provide cites, but any system  
3 requires documentation to demonstrate its  
4 trustworthiness. So --  
5 Q That's any system.  
6 A -- the answer is obviously yes.  
7 Q Oh, as the CIO today, do you have the  
8 records from 1984 -- well, let's say from 1990, where  
9 December 17th, 2001, that demonstrate the  
10 trustworthiness of Interior's electronic systems?  
11 A I was not CIO at that time. So, no, I do  
12 not have any of those records.  
13 Q Who does?  
14 A I do not know.  
15 Q Have you ever seen them?  
16 A No.  
17 Q Have you ever asked for them?  
18 A No.  
19 Q Has anyone ever discussed them with you?  
20 A No.  
21 Q Do you know if they exist?  
22 A No.

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1 Q Do you believe they exist?  
2 MR. WARSHAWSKY: Objection. Calls for  
3 speculation.  
4 MR. GINGOLD: You can answer.  
5 MR. WARSHAWSKY: You can answer subject to  
6 the objection.  
7 THE WITNESS: I really don't have an  
8 opinion.  
9 BY MR. GINGOLD:  
10 Q Do you believe that material deficiencies  
11 existed in electronic systems operated by Interior,  
12 owned by Interior, utilized by Interior through at  
13 least December 17th, 2001?  
14 A Two thousand?  
15 Q One.  
16 A I believe that's documented. They're  
17 documented deficiencies.  
18 Q Material deficiencies?  
19 A Yes.  
20 Q You believe the systems were trustworthy up  
21 until that point in time?  
22 A Well, I'm not going to say they were not

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1 trustworthy. I would say that they are not as  
2 trustworthy as they are today.  
3 Q So you believe they were trustworthy. You  
4 believe they're better today. Is that a fair  
5 statement? You believe they were trustworthy prior to  
6 December 17th, 2001. That's your testimony.  
7 A Well, again, it depends upon how much risk  
8 you were willing to take, the conditions at the time,  
9 the threats against the systems. It's hard to compare  
10 systems operating in the year 2000 with the system  
11 operating today. The threat scenario is entirely  
12 different. The approach to providing information from  
13 Interior system is entirely different.  
14 Q Do you believe that the designate of your  
15 office or someone in this area has documentation,  
16 thorough documentation that demonstrates the  
17 trustworthiness of record keeping, systems,  
18 operations, and controls? Do you believe that exists  
19 today?  
20 A Today?  
21 Q Yeah, with regard to the systems from '84  
22 through December 17th, 2001. Does that exist?

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1 MR. WARSHAWSKY: Can you ask that again,  
2 please?  
3 BY MR. GINGOLD:  
4 Q Do you believe there's thorough  
5 documentation demonstrating that the record keeping  
6 systems, operations, and controls are trustworthy?  
7 Does that documentation exist at Interior based on  
8 your knowledge?  
9 A It exists today, meeting today's standards.  
10 The majority --  
11 Q I'm asking you a different question. You're  
12 telling me today the systems are trustworthy, and my  
13 understanding is you've just testified that today  
14 there is thorough documentation that demonstrates the  
15 trustworthiness of Interior's record keeping systems  
16 operations and control today, correct?  
17 A Yes.  
18 Q But I'm asking you a different question.  
19 I'm asking you whether or not from 1994, which was the  
20 beginning of the electronic records era so stated by  
21 many Interior witnesses in court under oath, through  
22 December 17th, 2001, the record systems were



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1 trustworthy and that materials has been thorough  
2 documentation approval.  
3 That's what I'm asking you. Does that  
4 exist anywhere at Interior?  
5 A Prior to 2001, I was not in charge of that.  
6 I've only been the CIO for materials since October of  
7 2002.  
8 Q Okay, in the files of the Office of CIO,  
9 does that documentation exist?  
10 A For systems 19 --  
11 Q 1994.  
12 A -- 1999 and '94?  
13 Q '94 to December 17th, 2001.  
14 A I don't know.  
15 Q Have you ever looked?  
16 A I've never been asked to look.  
17 Q Have you ever asked?  
18 A No, I had no reason to ask for that.  
19 Q No reason to ask whether or not systems were  
20 secure or trustworthy prior to that, prior to your  
21 coming on board?  
22 A No.

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1 Q How can you determine if the material  
2 deficiencies are deficiencies are corrected or cured  
3 if you don't know what the material deficiencies were  
4 prior to your becoming CIO?  
5 MR. WARSHAWSKY: Objection. Argumentative.  
6 You can answer subject --  
7 BY MR. GINGOLD:  
8 Q How can you make that determination?  
9 A The deficiencies were documented by third  
10 party evaluations and audits. So we had a work sheet  
11 to go from, and then we did independent analysis of  
12 each of those Legacy systems to find their problems,  
13 their vulnerabilities, their weaknesses and what risks  
14 they posed.  
15 Q So you looked at that information. Is that  
16 fair?  
17 A Yes.  
18 Q Okay. So you reviewed it all, correct, to  
19 the best of your knowledge?  
20 A Well, myself and my people looked at all of  
21 it, yes.  
22 Q No, I'm talking about --

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1 A Not personally. You keep personalizing  
2 this. I did not personally look at all of this stuff.  
3 Q Okay. Well, I'm asking you personal  
4 questions because you are testifying. Somebody else  
5 isn't. So you can only testify to what you know or  
6 what you believe. Okay? You can't testify what Mr.  
7 Warshawsky knows. You don't know what he knows. You  
8 can speculate, and Mr. Warshawsky will object and  
9 allow you to answer the question, but nevertheless,  
10 you can't testify.  
11 I'm asking you what you did and what you  
12 knew. You're the Chief Information Officer of the  
13 Department of Interior. So I'm asking you as the  
14 Chief Information Officer.  
15 When you became Chief Information Officer,  
16 I believe it was June of 2002; is that correct?  
17 A Yes.  
18 Q And you became Acting CIO. What did you do  
19 to review the trustworthiness of the Interior IT  
20 systems that house or access individual Indian Trust  
21 data? What explicitly did you do personally?  
22 A I led the development of policy and

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1 direction to field units to begin a certification and  
2 accreditation process for each of the systems. I led  
3 an effort to refine and conduct our inventory of what  
4 systems we had, where they were, and then we developed  
5 a work list, if you will, and priorities. We went  
6 from money to budgeting them for funds and resources  
7 to do that work and put them on a schedule for full  
8 accreditations.  
9 When I was CIO, we had no systems  
10 accredited.  
11 Q What does that mean? Does that have any  
12 significance?  
13 A It has significance in it in that there's no  
14 formal recognition that the trustworthiness, the  
15 information assurance, the assessment, the testing of  
16 those systems meets standard criteria, and that's not  
17 saying that they were not trustworthy at that time.  
18 It's simply saying that they were not certified. They  
19 did not have a complete regimented analysis that fits  
20 what OMB was requiring and what the law has required.  
21 Q And what the court requires, too, correct?  
22 A And the court.

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1 Q Now, but my question is different. What did  
2 you do to review the information that existed with  
3 regard to material deficiencies in the systems that  
4 existed through December 17th, 2001?  
5 What, if anything, did you do to review that  
6 information?  
7 A I just told you.  
8 Q No, you, not when. You responded some --  
9 did you read the documents, the reports? Did you read  
10 the GAO reports?  
11 A Yes.  
12 Q Did you read the report of the Special  
13 Master dealing with the RT security deficiencies?  
14 A Yes.  
15 Q Did you various expert reports that were  
16 produced over a period of time, including SRA, dealing  
17 with material deficiencies, inaccuracies?  
18 A Yes.  
19 Q Did you read deposition testimony of  
20 government consultants and experts with regard to  
21 material deficiencies?  
22 A I read some. I don't know that I read them

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1 all.  
2 Q Which ones did you read?  
3 A I don't recall specific names. I don't know  
4 that I read the depositions, for example. It may have  
5 been excerpts.  
6 Q Who would have provided you excerpts?  
7 A Newsprints, reprints. This -- I don't  
8 remember everything.  
9 Q Did the Solicitor's Office provide you  
10 copies of this information?  
11 A No.  
12 Q Never?  
13 A Not that I remember.  
14 Q Did they provide you copies of Jeremy Katz's  
15 deposition?  
16 A I don't --  
17 Q Do you know who Jeremy Katz is?  
18 A No, I don't know.  
19 Q You don't know who Jeremy Katz is. He was  
20 deposited by the former Special Master.  
21 A No.  
22 Q Did you review the deposition of the NIST

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1 representative that was taken by the former Special  
2 Master?  
3 A I don't recall.  
4 Q Is there any list of studies and reports and  
5 depositions dealing with the deficiencies in the  
6 Interior RT systems through December 17th, 2001?  
7 A Is there a master list of --  
8 Q Is there any list? Do you have a list?  
9 A Not organized in that manner.  
10 Q Since then?  
11 A Since 2001?  
12 Q Since December 17th, 2001, is there a list?  
13 A I didn't under --  
14 Q Is there a list of reports that were  
15 compiled? The first question dealt with prior  
16 reports.  
17 A I'm not aware of such a list.  
18 Q So there's no -- okay. So you have no  
19 inventory of these type of reports, at least to your  
20 knowledge, correct?  
21 A That's correct.  
22 Q Now, how do you know; how can you possibly

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1 determine what material deficiencies have been  
2 corrected if you are not familiar with the material  
3 deficiencies that had existed?  
4 MR. WARSHAWSKY: Objection. Argumentative.  
5 You may answer subject.  
6 THE WITNESS: It doesn't matter whether I  
7 have a list of those deficiencies or not. We started  
8 from ground zero with all of these in 2002. All of  
9 those systems were reviewed independently from start  
10 to finish, whether they be development systems or  
11 whether they be systems in Legacy. The information  
12 that we had from the Inspector General reports, from  
13 audits from the Inspector General's contractor were  
14 all factored into that. I don't know of any master  
15 list that we worked from to assure that we had --  
16 everything was out there. We depended upon the  
17 thorough examination and testing of those systems in  
18 order to get to the accreditation in order to remedy  
19 those.  
20 Q I'm not asking about the accreditation. I'm  
21 asking about the source of the information that you  
22 have to make your judgments. You don't have a master

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1 list today, correct, of reports?  
2 A No, but the point I'm making is that the  
3 accreditation takes that into account, that is, the  
4 benchmark by which you determine whether or not you  
5 have addressed your material deficiencies, weaknesses  
6 and vulnerabilities within the system.  
7 Q No, I'm not asking you about the  
8 accreditation process here. I'm asking you about your  
9 knowledge, your knowledge, Hord Tipton, and what the  
10 source of your knowledge is. I'm asking you what --  
11 the extent to which you understood the material  
12 deficiencies that existed in the materials IT system.  
13 So my question is you answered there is no  
14 such list that you don't ordinarily print, correct?  
15 A That's correct.  
16 Q Do you know if anyone else within the  
17 department have such a master list?  
18 A I'm not aware of it.  
19 Q Do you know if the Solicitor's Office does?  
20 A No.  
21 Q Do you know if, for example, your CIO in  
22 BIA, Mr. Burns, correct?

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1 A Yes.  
2 Q Do you know if Mr. Burns has a list of all  
3 the ports' assessments, testimony dealing with the  
4 data housed in the systems that he was responsible  
5 for, either his own or a certifier or a CIO? Do you  
6 know if he has a list?  
7 A No.  
8 Q What reports have you commissioned to  
9 assess, you as a CIO, since you have become acting in  
10 June of 2002; what reports have you commissioned to  
11 assess the trustworthiness of the RT systems at  
12 Interior that house or access individual Indian Trust  
13 data?  
14 A The only systems I personally have  
15 commissioned or authorized that type of analysis would  
16 be the systems that I own as a CIO.  
17 Q Okay. What have you done? Who have you  
18 returned?  
19 A That I?  
20 Q Who have you returned to assess your systems  
21 as the owner, as the CIO owner?  
22 A Who did my accreditation and certi --

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1 Q No, no. I'm not asking for the  
2 accreditation. I'm asking you whether or not you've  
3 asked anyone to do -- have you asked anyone to do a  
4 risk assessment?  
5 A I don't think you understand the  
6 certification.  
7 Q I do. I'm not asking that.  
8 A That includes the risk assessment.  
9 Q I will ask you --  
10 A Why would I do that?  
11 MR. WARSHAWSKY: Please don't argument with  
12 him. Let him ask questions.  
13 MR. GINGOLD: Well, I -- I'm asking you a  
14 question.  
15 BY MR. GINGOLD:  
16 Q Have you commissioned -- you came on board  
17 as Acting in June of 2002, correct?  
18 A Yes.  
19 Q A month after your predecessor was deposed  
20 by the Special Master, correct?  
21 Do you know who your predecessor is?  
22 A Yes.

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1 Q Who?  
2 A Daryl White.  
3 Q Did you read his deposition?  
4 A No.  
5 Q Do you know any Special Master's RT security  
6 report that was the subject of the fifth specification  
7 of the Interior Secretary's contential (phonetic),  
8 when that was done?  
9 A Not exactly.  
10 Q Did you review that when you came on board  
11 in June 2002?  
12 A I reviewed a lot of stuff. I don't recall  
13 if that was one or not.  
14 Q Well, what were you -- did you ask to become  
15 a CIO?  
16 A No.  
17 Q Okay. How were you recruited to be the CIO?  
18 A I was recruited to be the CIO because of the  
19 success we had achieved in BLM.  
20 Q And who contacted you?  
21 A The Assistant Secretary for Policy  
22 Management and Budget.

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1 Q And who was that at that time?  
2 A Lynn Scarlett (phonetic).  
3 Q And today she is what? What's her position?  
4 A She's a nominee for Deputy Secretary.  
5 Q Hasn't she been confirmed? No?  
6 A No.  
7 Q Okay. So you did a very good job at BLM  
8 with regard to IT security and that's why you asked to  
9 be the CIO; is that your understanding?  
10 A Yes.  
11 Q ALMRS was an effective project? A-L-M-R-S,  
12 for purposes of the transcript record.  
13 A I didn't understand what you --  
14 Q ALMRS, have you ever heard the term ALMRS  
15 before?  
16 A Yes.  
17 Q Okay. Was that a BLM project?  
18 A Yes.  
19 Q That wasn't your project though, was it?  
20 A No.  
21 Q What did you do with respect to that  
22 project?

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1 A I filled it.  
2 Q Okay, and how long was that project in  
3 operation?  
4 A About 15 years.  
5 Q Is that secure?  
6 A It never got to that point.  
7 Q So you didn't assess the security?  
8 A No.  
9 Q Did you assess the --  
10 A It was never --  
11 Q I'm sorry. Were you finished?  
12 A It was never deployed.  
13 Q Was there data in the system?  
14 A Not production data.  
15 Q But was there data in the system?  
16 A I don't know for a fact because I was not in  
17 the development cycle of ALMRS, but it possibly has  
18 data; it had data in it, but again, it was not in  
19 production.  
20 Q Was the data preserved when you killed the  
21 project?  
22 A No data was lost to my knowledge.

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1 Q Did you ever make an inquiry?  
2 A As to the data when --  
3 Q When you killed -- let me ask you this.  
4 MR. WARSHAWSKY: Excuse me. You're  
5 interrupting him.  
6 MR. GINGOLD: You're asking --  
7 MR. WARSHAWSKY: Let him finish.  
8 THE WITNESS: I was trying to clarify where  
9 he's going with this.  
10 MR. GINGOLD: Yeah, please, Mr. Warshawsky.  
11 We're trying to.  
12 BY MR. GINGOLD:  
13 Q Did you when you killed the project insure  
14 that the trust, that the data that was in ALMRS was  
15 preserved at the time you killed ALMRS?  
16 A When we killed ALMRS, we did an assessment  
17 of what parts of ALMRS were salvageable. The data in  
18 that system as a separate initiative went through a  
19 cleansing/conversion process, and the data were  
20 preserved. No data was lost.  
21 Q There's a report that says no data was lost?  
22 A Not specifically. We didn't ask that

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1 question.  
2 Q So you're assuming that no data was lost.  
3 A I have no reason to believe that any data  
4 was lost.  
5 Q Do you know whether or not any data was  
6 lost?  
7 A I can't answer the question.  
8 Q The answer is you don't know, do you?  
9 A I can't prove a negative.  
10 Q No. Did you ask that the data be preserved,  
11 you specifically?  
12 A We asked that the data be preserved. We  
13 asked that any other pieces of ALMRS that was  
14 salvageable be preserved to get as much out of that  
15 investment as we could.  
16 Q You said, I believe, that you killed ALMRS,  
17 correct?  
18 A Yes.  
19 Q Okay. When you, Hord Tipton, killed ALMRS,  
20 did you request that all of the data in ALMRS be  
21 preserved?  
22 A I didn't issue a direct order to that

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1 effect. Reasonable assurances were taken to make sure  
2 that all of that occurred.  
3 Q Okay. Who gave you those reasonable  
4 assurances at that time you killed ALMRS? Who?  
5 A I don't recall the names.  
6 Q One person? Can you give me one name?  
7 A Leslie Cone.  
8 Q Is she at Interior?  
9 A Yes.  
10 Q What is her position?  
11 A She's head of the project office for BLM's  
12 IT.  
13 Q IT did you say?  
14 A IT, information technology.  
15 Q And can you spell her last name, please?  
16 A C-o-n-e.  
17 Q And she informed you expressing that the  
18 data in ALMRS has been preserved, correct?  
19 A She also did the follow-on project.  
20 Q No, but my question wasn't what she did  
21 after that. My question is did she tell you expressly  
22 that the data in ALMRS was preserved and would be

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1 preserved when you killed it?  
2 A To the best of my recollection, it was  
3 Leslie Cone as one person.  
4 Q So the answer is, yes, she told you,  
5 correct?  
6 A To the best of my recollection.  
7 Q She informed you, but no one else you can  
8 think of.  
9 A Others that I can't think of right now.  
10 Q Well, what type of trust data was in that  
11 system? Do you know?  
12 A I don't know that any individual Indian data  
13 was in there. I'm not aware of it. Trust records,  
14 tribal data was in the original records and moved over  
15 to the system that we replaced ALMRS with, but to my  
16 knowledge it has also been removed from what we call  
17 the LR-2000 system just as a safety precaution, but it  
18 was basically information on Indian patents, Indian  
19 grants.  
20 Q But not any --  
21 Q We didn't consider it individual Indian  
22 data, to the best of my recollection.

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1 Q So is the individual data segregated from  
2 the trial data before it was input into the calendars?  
3 A I don't know. That was before my time.  
4 Q Well, didn't you testify you weren't sure  
5 what date it was in ALMRS before it was up there? You  
6 said no production data, correct?  
7 A I said I didn't believe that there was any  
8 production data because the system simply had not  
9 survived the IB&B examination.  
10 Q But how do you believe it was limited to  
11 travel data?  
12 A I was simply saying to the best of my  
13 recollection. I don't recall that.  
14 Q Did you ever ask?  
15 A No.  
16 Q Did anyone ever tell you that?  
17 MR. WARSHAWSKY: Hey, you guys are talking  
18 over each other. It's hard for the reporter.  
19 MR. GINGOLD: You're a big help, Mr.  
20 Warshawsky.  
21 BY MR. GINGOLD:  
22 Q Who did --

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1 MR. WARSHAWSKY: Just trying to be helpful.  
2 BY MR. GINGOLD:  
3 Q No one ever told you that, correct?  
4 A Not that I remember.  
5 Q So you're guessing?  
6 A I said I didn't remember.  
7 Q You don't know.  
8 A It's not a guess.  
9 Q You don't know, right?  
10 A However you want to read that.  
11 Q Well, do you know or do you not know?  
12 A Whether there was individual Indian data in  
13 the original ALMRS?  
14 Q In any form of ALMRS, not just the  
15 originals.  
16 A Fine. I don't know.  
17 Q And you never asked, right?  
18 A I didn't ask.  
19 Q And you never asked to protect it either,  
20 and you killed it, right?  
21 A We protect all data. We don't single out  
22 just individual Indian data at that time.

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1 Q Well, I'm glad you said that. That's a nice  
2 segue into another subject. The inventory of all your  
3 data that you always preserve since you're talking  
4 "we" now, I presume it's the department and not you.  
5 What about the inventory of back-up tapes?  
6 Have you completed that inventory for all back-up  
7 tapes?  
8 A Yes, we have an inventory.  
9 Q So you've completed the inventory.  
10 A Yes.  
11 Q Where is it?  
12 A It's in my project manager's office.  
13 Q Okay. How many back-up tapes are there?  
14 A I don't recall the exact number. There's  
15 over 20,000.  
16 Q Why hasn't it been produced to the court?  
17 A I don't know. I don't know that the court  
18 asked for it. I don't know.  
19 Q So you're not aware that representations  
20 were made by Judge Department lawyers to the Special  
21 Master that an inventory would be completed and  
22 provided to the court?

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1 A I haven't been asked for an inventory to the  
2 best of my knowledge.  
3 Q But you have the inventory, correct?  
4 A We have an inventory of the back-up tapes.  
5 Q And that's an audited inventory, correct?  
6 A It's not audited. It's a certified  
7 inventory.  
8 Q Are you aware that the Justice Department  
9 made a representation to the Special Master there  
10 would be an audited inventory?  
11 A I can remember some details on an audited  
12 inventory. I'm trying to think of the name of the  
13 company that did the audit.  
14 Q Oh, so there is an audit.  
15 A Of the tape.  
16 Q So there is one. Well, it wouldn't have  
17 been inclusive because I believe it ended before -- I  
18 believe it ended before I even became CIO.  
19 Q So to your knowledge, you haven't had anyone  
20 perform an audit of the back-up tapes that exist at  
21 Interior, correct?  
22 A I have certifications from the various

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1 bureaus that generate the tapes. I have  
2 certifications from ZANTAZ, the company that deals  
3 with these, that they received tapes, and I have  
4 matches between those tapes.  
5 Q We'll get into ZANTAZ in a moment, but I'm  
6 not at ZANTAZ at this point in time. I'm asking you  
7 about whether or not were you ever asked by the  
8 Justice Department or Solicitor's Office to prepare or  
9 have an audit inventory of all the back-up tapes  
10 Interior-wide?  
11 A Not that I recall.  
12 Q Would that be something that would be  
13 something you would recall?  
14 A Well, I don't recall.  
15 Q Would that be a significant event to your  
16 knowledge?  
17 A An audit of the tapes?  
18 Q An audit of all the back-up tapes of the  
19 Department of Interior, throughout the Department of  
20 Interior. Is that a significant issue?  
21 A I don't believe it -- it is significant if  
22 it is court ordered. It's not significant enough to

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1 me that I would feel compelled without external forces  
2 to go out and to audit my own people on the -- on the  
3 -- on the inventory of those tapes.  
4 Q So it would be significant. You'd remember  
5 that, correct, normally?  
6 A I don't know.  
7 Q How much would it cost? Is that expensive?  
8 A I don't know.  
9 Q Throughout the whole Department of Interior.  
10 A To do an audit of every back-up tape in  
11 Interior or just for the trust bureaus or --  
12 Q The Department of Interior in its entirety;  
13 how's that? You've never heard of that one before,  
14 have you?  
15 A Can you re --  
16 MR. GINGOLD: Let me refresh your  
17 recollection. This is Tipton Exhibit 1. Please mark  
18 it.  
19 (Whereupon, the document referred to  
20 was marked as Tipton Deposition  
21 Exhibit No. 1 for identification.)  
22 BY MR. GINGOLD:

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1 Q Have you ever seen this letter before, Mr.  
2 Tipton? Take your time and read it.  
3 A (Examining document.)  
4 Q And to help you, the third paragraph, it  
5 talks about the department-wide audit.  
6 MR. WARSHAWSKY: The first question was had  
7 he seen it before? Is that --  
8 MR. GINGOLD: Correct.  
9 THE WITNESS: Okay.  
10 BY MR. GINGOLD:  
11 Q Have you ever seen this before?  
12 A Not that I recall.  
13 Q By the way, let me know when you are  
14 finished reading so I don't --  
15 A I read it. I read the letter. I don't  
16 recall seeing this.  
17 Q Do you see this as a -- this is a letter  
18 dated September 26, 2001. It's on the Department of  
19 Justice Environment and Natural Resources letterhead.  
20 It is addressed to Alan L. Balaran, Special Master,  
21 re. Cobell v. Norton, and it is signed on page 2 by an  
22 individual who identifies herself as Jo-Ann M.

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1 Shyloski.  
2 Do you see that, Mr. Tipton?  
3 A Yes.  
4 Q Pay careful attention to Paragraph 3 on page  
5 1, which states as follows: "Further, as mentioned in  
6 my letter of September 10th, 2001, the proposed audit  
7 of E-mail preservation and back-up tape retention is  
8 not only for the Solicitor's Office, but also for the  
9 Department of Interior in its entirety, including the  
10 Bureau of Indian Affairs."  
11 It goes on and gives further explanation of  
12 various things, but my question to you is: has anyone  
13 ever told you about that?  
14 A Not that I'm aware of. I don't recollect.  
15 Q but correct me if my recollection is  
16 incorrect. Did you state earlier a few moments ago  
17 that an audit has been completed?  
18 A I'm vaguely familiar of an audit that was  
19 completed some time ago. I don't know what the  
20 contents of that audit are. I have not seen it.  
21 Q Some time ago, was that before you became a  
22 CIO?

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1 A I believe that's my recollection. It was.  
2 It was before. I believe so.  
3 Q Well, if an audit was completed for the type  
4 of information that's referenced by Ms. Shyloskui,  
5 would your office have been involved in that?  
6 MR. WARSHAWSKY: Objection. Clearly calls  
7 for speculation.  
8 BY MR. GINGOLD:  
9 Q Aren't you the only department-wide CIO?  
10 A Not on September 26, 2000.  
11 Q No, no, no, no. It's the CIO of -- I'm  
12 dealing with the position now. Is the CIO position  
13 the only department-wide CIO position?  
14 A Yes.  
15 Q Could the Bureau of Indian Affairs CIO do a  
16 department-wide audit? Is that reasonable here?  
17 A No.  
18 Q Is it reasonable that any of the other  
19 bureaus could have begun a department-wide audit?  
20 A No.  
21 Q So is it reasonable that if there was an  
22 audit that was going to be commissioned and rendered,

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1 you office, whether it was before you were there or  
2 after you were there, would have to have something to  
3 do with it?  
4 MR. WARSHAWSKY: Objection. Calls for  
5 speculation. You can answer subject.  
6 THE WITNESS: One would expect involvement  
7 in such an audit.  
8 BY MR. GINGOLD:  
9 Q If you didn't do it, who would?  
10 MR. WARSHAWSKY: Same objection.  
11 MR. GINGOLD: To your knowledge.  
12 MR. WARSHAWSKY: Answer subject.  
13 MR. GINGOLD: It's to the best of your  
14 knowledge. I'm asking if you didn't do it who would.  
15 THE WITNESS: It would have occurred by the  
16 way Interior is structured to get special attention to  
17 this case out of an office other than the CIOs, but  
18 with the CIO involvement.  
19 BY MR. GINGOLD:  
20 Q But to your knowledge, there's no such  
21 involvement since you've been there has occurred; is  
22 that correct?

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1 A That's correct.  
2 Q And to your knowledge, no one from the  
3 Justice Department's Solicitor's Office has ever  
4 talked to you about this, correct?  
5 A Not about an audit, no.  
6 Q No. And you do understand what an audit is,  
7 don't you?  
8 A Yes.  
9 Q What is it?  
10 A An audit is a third party validation and  
11 count and verification of the information, and that's  
12 about as far as I can go.  
13 Q Did anyone inform you that approximately  
14 2,000 oil and gas tapes were identified as overwritten  
15 and corrupted at about this same time?  
16 A Two thousand?  
17 A I have no knowledge of that.  
18 Q Do you have any knowledge as to whether or  
19 not anyone has restored those back-up tapes to the  
20 extent they were overwritten or corrupted?  
21 MR. WARSHAWSKY: Objection. Calls for  
22 speculation. You can answer subject.

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1 THE WITNESS: To the extent I didn't know  
2 they had been overwritten, I would not know that they  
3 have been restored.  
4 BY MR. GINGOLD:  
5 Q So the answer is you have no idea if they  
6 have been or not. Is that fair?  
7 A Yes, that's fair.  
8 Q But you've never been told about that. Is  
9 that true?  
10 A Not to my -- I don't remember being advised  
11 of that, no.  
12 MR. WARSHAWSKY: Let's take a break. It's  
13 been an hour.  
14 MR. GINGOLD: No, it has not. It has been  
15 57 minutes.  
16 MR. WARSHAWSKY: Let's take a break in three  
17 minutes.  
18 MR. GINGOLD: Okay.  
19 MR. WARSHAWSKY: If you're in the middle of  
20 a subject, we'll take a break then.  
21 MR. GINGOLD: No. You don't --  
22 MR. WARSHAWSKY: -- spar between us, do we?

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1 MR. GINGOLD: Mr. Warshawsky, you're not  
2 taking the deposition. He hasn't asked for a break.  
3 MR. WARSHAWSKY: We'll give you three more  
4 minutes.  
5 MR. GINGOLD: He -- he -- is it unclear, Mr.  
6 Tipton, that if you need to take a break, we will do  
7 that? Is that unclear?  
8 MR. WARSHAWSKY: We'll take it in two  
9 minutes.  
10 MR. GINGOLD: Is that unclear, Mr. Tipton?  
11 THE WITNESS: I understand.  
12 MR. GINGOLD: Thank you. So if you need to  
13 take a break, just say you need to take a break and  
14 we'll do it. If Mr. Warshawsky needs to take a break,  
15 we'll accommodate him, too.  
16 MR. WARSHAWSKY: I need to take a break in  
17 two minutes and 30 second.  
18 MR. GINGOLD: All right. This is not your  
19 deposition, Mr. Warshawsky. If you've got to take a  
20 break, you've got co-counsel here.  
21 BY MR. GINGOLD:  
22 Q So let's talk about the fact that you -- by

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1 the way, the inventory that you do have with regard to  
2 the back-up tapes that have been retained, was that  
3 prepared by ZANTAZ?  
4 A It was not prepared by ZANTAZ. It was in  
5 collaboration with ZANTAZ and involved certification  
6 on both ends.  
7 Q Who prepared the inventory?  
8 A My project manager.  
9 Q So ZANTAZ relied on the information provided  
10 by your project manager.  
11 A Yes.  
12 Q And that's the inventory you're talking  
13 about.  
14 A Yes.  
15 Q Is that a comprehensive inventory Interior-  
16 wide?  
17 A No.  
18 Q What is it limited to?  
19 A The bureaus by which we are under order to  
20 obtain the back-ups.  
21 Q And that includes Surface Mining, correct?  
22 A No.



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1 Q And that include Bureau of Reclamation,  
2 correct?  
3 A I'm not positive on the Bureau, but I don't  
4 believe it includes those.  
5 Q Now, if, in fact, Officer of Surface Mining  
6 has been handling the E-mail for the Pittsburgh  
7 Solicitor's Office, why wouldn't that be included in  
8 the inventory?  
9 MR. WARSHAWSKY: Objection. Calls for  
10 speculation.  
11 MR. GINGOLD: We will get into the specifics  
12 on that.  
13 MR. WARSHAWSKY: You can answer subject.  
14 MR. GINGOLD: Why wouldn't he?  
15 MR. WARSHAWSKY: He's already stated he  
16 didn't know.  
17 MR. GINGOLD: Why wouldn't it?  
18 MR. WARSHAWSKY: So it clearly calls for  
19 speculation.  
20 BY MR. GINGOLD:  
21 Q Why wouldn't it, Mr. Tipton?  
22 MR. WARSHAWSKY: He may answer -- Mr.

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1 Gingold.  
2 BY MR. GINGOLD:  
3 Q Mr. Tipton, why wouldn't it?  
4 MR. WARSHAWSKY: Mr. Gingold.  
5 MR. GINGOLD: Are you instructing him not to  
6 answer the question?  
7 MR. WARSHAWSKY: No. I'm instructing you to  
8 let me make an objection for the record.  
9 MR. GINGOLD: You've already done that.  
10 MR. WARSHAWSKY: And then I can tell him to  
11 answer subject. It calls for speculation, and you may  
12 answer subject.  
13 BY MR. GINGOLD:  
14 Q Why wouldn't it?  
15 A I don't know the circumstances of how the  
16 Solicitor may have allegedly been using the Pittsburgh  
17 system. If they were within the Solicitor's Office  
18 per se, then we are collecting their E-mail light and  
19 also on back-up.  
20 Q Well, then let me ask you this. Let me read  
21 from the September 25th, 2002 order. September 25th,  
22 2002, you're still Acting, correct?

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1 MR. WARSHAWSKY: Do you have a copy that we  
2 can look at?  
3 MR. GINGOLD: No, I don't. I'll tell you  
4 I'm doing it -- I'm reading the order right off of the  
5 -- off of the Web site, as a matter of fact.  
6 THE WITNESS: It would be nice to have that.  
7 Can we look at your Web site?  
8 MR. GINGOLD: Afterwards, but let me ask you  
9 this. I'm going to read it to you first and you'll  
10 have plenty of time to discuss with your counsel that  
11 then I can ask you about your discussions.  
12 It says as follows, in pertinent part:  
13 "Ordered, that the following offices and bureaus  
14 within the Department of the Interior shall be  
15 'designated offices' for purposes of implementing an  
16 E-mail proposal: Office of the Solicitor, Bureau of  
17 Indian Affairs, Office of the Special Trustee, Office  
18 of Historical Trust Accounting, Minerals Management  
19 Service, Bureau of Land Management, Office of the  
20 Secretary, Office of the Assistant Secretary for  
21 Indian Affairs, Office of Hearings and Appeals, and  
22 Office of the Assistant Secretary of Policy

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1 Management, Budget, Bureau of Reclamation, National  
2 Business Center, Office of Surface Mining, and any  
3 other office of bureau determined by the Special  
4 Master to warrant inclusion in the list of designated  
5 offices," semicolon, and it goes on for further  
6 orders.  
7 My question is: was Office of Surface  
8 Mining included, to your knowledge?  
9 A The Office of Surface Mining if -- has their  
10 mail electronically captured, yes.  
11 Q So it's included in the inventory.  
12 A It's included in the electronic capture for  
13 purposes of related to that certification address  
14 (phonetic).  
15 Q And is it included in the inventory as well?  
16 A The inventory for what?  
17 Q I think you said there was an inventory  
18 back-up tapes. Did I misunderstand what you said?  
19 A We don't -- we do not do daily back-ups in  
20 OSM on their tapes. We capture their mail like --  
21 Q But how --  
22 MR. WARSHAWSKY: Okay. It has been 60

1 minutes. We'll take a break.  
 2 MR. GINGOLD: We're going to get back to  
 3 this because --  
 4 MR. WARSHAWSKY: That's fine.  
 5 MR. GINGOLD: -- you understand what a court  
 6 order is, don't you?  
 7 MR. WARSHAWSKY: Don't answer that.  
 8 MR. GINGOLD: Of course you know. Don't  
 9 answer anything. You can take a Fifth Amendment.  
 10 (Whereupon, the foregoing matter went off  
 11 the record at 11:42 a.m. and went back on  
 12 the record at 11:52 a.m.)  
 13 MR. GINGOLD: Welcome back, Mr. Tipton.  
 14 By the way, John, when would you like to  
 15 break for lunch? Would you like to do it in an hour  
 16 when Mr. -- if you'll tell me when you want to do it  
 17 so that we can.  
 18 MR. GINGOLD: Well, I do want to break in an  
 19 hour. So --  
 20 MR. GINGOLD: We can do it for lunch then.  
 21 Is that okay with you, Mr. Tipton?  
 22 BY MR. GINGOLD:

1 Q Mr. Tipton, just before we move on to some  
 2 more detail on ZANTAZ, you, I believe, testified that  
 3 ZANTAZ assisted in putting together an inventory of  
 4 back-up tapes, correct?  
 5 A They helped us.  
 6 Q Is it correct that you testified that ZANTAZ  
 7 helped create an inventory for back-up tapes?  
 8 A They helped in the sense that when we sent  
 9 them a certified listing of tapes through the shipping  
 10 that they received the exact number of tapes and  
 11 provide the numbers on the tapes when they have  
 12 received them. So it was a collect -- to the extent  
 13 that's assisting us, then that's what that means.  
 14 Q And that was for what period of time that  
 15 those tapes were collected and inventoried?  
 16 A It ranges back to the beginning of the  
 17 project when we first started collecting and shipping  
 18 tapes for the purpose of restorations.  
 19 Q And when was that?  
 20 A Some time in 2000. I don't remember the  
 21 exact date.  
 22 Q So the year 2000?

1 A 2002. I'm sorry.  
 2 Q And did it cover tapes going back to 1984?  
 3 A I don't believe so.  
 4 Q What was the period of time that the tapes -  
 5 - the project began in 2002 as far as you know,  
 6 correct?  
 7 A The actual formation of the project,  
 8 selecting a contractor and all started in 2001, to the  
 9 best I recollect, and actual execution on the  
 10 contract, I think, started some time in 2002.  
 11 Q While you were the CIO?  
 12 A Yes.  
 13 Q So it was after June 2002.  
 14 A Yes. I didn't sign the contract. I did not  
 15 sign up with ZANTAZ, but I inherited it, yes.  
 16 Q I'm not blaming you for anything. I'm just  
 17 trying to get dates.  
 18 A The project was launched prior to my  
 19 arrival. That's all I can tell you.  
 20 Q Okay. Now, do you know what the scope with  
 21 regard to the temporal tape issues were? Do you  
 22 recall what years those tapes were to be covering, the

1 back-up tapes?  
 2 A 1999, I believe, is where it begins.  
 3 Q It was January of 1999?  
 4 A I don't -- I don't know what date.  
 5 Q So the tapes date back to 1999, to the best  
 6 of your knowledge?  
 7 A Some do, yes. As I understand the process,  
 8 we collected what was available, and then started the  
 9 restoration process based on that inventory.  
 10 Q Do you have an inventory of tapes that were  
 11 destroyed or overwritten?  
 12 A I have records of tapes that failed to  
 13 restore. I can't recall records of tapes that have  
 14 been overwritten.  
 15 Q So to your knowledge, there haven't been any  
 16 types that have been overwritten from whatever this  
 17 project became -- was implemented in 1999 forward,  
 18 correct?  
 19 A To my knowledge, yes, that's correct.  
 20 Q Were any lost?  
 21 A Some have been lost. Some have failed to  
 22 back up or to restore due to the equipment

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1 availability and the differing methods of back-up.  
2 Q How many have been lost to your knowledge?  
3 A I'm not sure I could even get an estimate on  
4 that sine the availability of tapes from bureau to  
5 bureau varied over that time period, 1999 forward. So  
6 if we didn't have the tapes, I presume that that does  
7 not mean that they were lost. I have more  
8 recollection of tapes that failed to restore, and  
9 there really weren't that many of them.  
10 Q So do you have -- does the report -- is  
11 there a report that has been written on this subject?  
12 A A report on?  
13 Q Written about the inventory that you're  
14 talking about that began to be implemented in 1999,  
15 the tapes that may have been lost, the tapes that  
16 failed to restore or reveal data, that the bureaus or  
17 offices that didn't back up their information with  
18 tapes? Is there any report on that?  
19 MR. WARSHAWSKY: Can you repeat that,  
20 please?  
21 BY MR. GINGOLD:  
22 Q Do you have a report on this inventory that

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1 was being done with the assistance of ZANTAZ?  
2 A We haven't generated a report per se  
3 covering the history of the performance on ZANTAZ. We  
4 have I believe it's biweekly reports to the court of  
5 ongoing actions within that, and ZANTAZ provided each  
6 bureau a monthly -- I think they still provide them a  
7 monthly report of their activities, but a  
8 comprehensive report, I don't think we have that.  
9 Q Now, is that a report that would identify  
10 the tapes that were lost, destroyed, overwritten or  
11 the bureaus that didn't keep that information? Is  
12 that report -- would there be any report like that?  
13 A Information like that is often reported in  
14 those two reports as it happens in a timely fashion.  
15 Q Okay, but this goes back to '99 we're  
16 talking about now, correct?  
17 A That's the range of the tapes.  
18 Q That's my point. My point, sir, today: is  
19 ZANTAZ going through the tapes now to see whether or  
20 not they were corrupted, the 1999 tapes to determine  
21 whether or not they were corrupted or lost?  
22 A ZANTAZ has completed what we call the first

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1 phase of the project, and that is restoration of all  
2 the tapes to the best that they could from the  
3 condition that they were in and putting it in the  
4 different formats that they got since 1999, and I  
5 believe that's complete for all bureaus and offices  
6 are required to do that. All bureaus are actively  
7 capturing electronically. They still have their back-  
8 up tapes. We have not given them any go-ahead or any  
9 authority to overwrite those tapes even though they  
10 are electronically captured today.  
11 Q So the biweekly reports would identify the  
12 lost and destroyed tapes to the extent that they have  
13 been identified to ZANTAZ; is that correct?  
14 A I can't tell you that that's an absolute,  
15 but the problems that we have are reported in the  
16 biweekly. So it's reasonable to think that they might  
17 be there.  
18 Q Have you been provided a list of lost tapes?  
19 A Not in summary, not collectively.  
20 Piecemeal.  
21 Q Have you been provided a list of destroyed  
22 tapes?

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1 A What do you mean "destroyed"?  
2 Q Overwritten, destroyed based on weather  
3 conditions, such as poor storage and water, mold,  
4 other types of environmental conditions, Hanta virus  
5 I know John wanted to --  
6 (Discussion was held off the record.)  
7 MR. WARSHAWSKY: I don't think the virus  
8 affects tapes.  
9 MR. GINGOLD: Well, I don't know. Viruses  
10 do affect electronic media, don't they?  
11 MR. WARSHAWSKY: Not that type. Go ahead  
12 and answer the question.  
13 THE WITNESS: Reacting to that broad  
14 definition of "destroyed," I don't have an itemized  
15 list. As I said, we do not have a comprehensive  
16 report of that, but we do have it in individual  
17 incident reports.  
18 BY MR. GINGOLD:  
19 Q Okay. So is there any list whether or not  
20 it's itemized that categories this information when it  
21 is identified to ZANTAZ?  
22 A Repeat please.

1 Q Yes. Is there any -- whether or not it's an  
 2 itemized list -- is there any list that deals with  
 3 anything on this particular subject that you can give  
 4 me?  
 5 A Individually by bureau we have information  
 6 as to what tapes were restored, what tapes couldn't be  
 7 restored, that type of thing.  
 8 Q What's the name of those reports?  
 9 A Well, there's two. there's the biweekly  
 10 report to the court, and then there are reports that  
 11 we require from the bureaus any time they have an  
 12 instance that -- and these would have gone back to  
 13 when they first provided their tapes to ZANTAZ and got  
 14 reports back.  
 15 Sine that time, a lot of time is past, and  
 16 we deal now primarily with periods of disconnection.  
 17 Somebody changes a configuration of human error,  
 18 technical error due to equipment malfunction at some  
 19 point. That comprises most of what we have. We'd  
 20 have to go back in history to resurrect the --  
 21 Q At least we're dealing -- sorry. What I'm  
 22 trying to deal with is the period of time which ZANTAZ

1 now is dealing with these tapes, the inventory that  
 2 you indicated was being put together and the tapes  
 3 that may be in the process of being restored. Within  
 4 that are there reports that have been filed with you  
 5 from your bureaus detailing the year, nature and scope  
 6 of the problems that they have discovered?  
 7 A There are some reports that relate issues  
 8 that they have in trying to get their tapes restored  
 9 and returned.  
 10 Q And you have those reports, correct?  
 11 A Yes.  
 12 Q What do you call them or what are they  
 13 called at Interior so that when we request them in  
 14 document production someone is not going to say it's  
 15 vague and ambitious?  
 16 A They would be incident reports.  
 17 Q Instant?  
 18 A Incident.  
 19 Q Okay, and these incident reports are  
 20 monthly?  
 21 A They're as we have incidents.  
 22 Q Okay. So they're from all the bureaus,

1 correct?  
 2 A For all the bureaus that we are at this  
 3 point electronically capturing E-mail from. Not all  
 4 bureaus, no.  
 5 Q Okay. We'll get into --  
 6 A Park Service, no.  
 7 Q We'll get into -- but at least to the extent  
 8 you believe are relevant bureaus, you have incident  
 9 reports that are filed from all of the relevant  
 10 bureaus, correct?  
 11 A That's correct.  
 12 Q And we'll get into which are relevant and  
 13 which aren't shortly.  
 14 And those incident reports began when? Do  
 15 you recall?  
 16 A Well, they would -- they would have begun  
 17 back when we attempted the restoration of the original  
 18 tape inventory and then moved forward from that point,  
 19 and it would vary by date depending on how far back  
 20 the tapes would go for a particular bureau.  
 21 Q But to your knowledge, it goes back to  
 22 approximately '99?

1 A 1999, to the best of my knowledge.  
 2 Q I'm just asking you for an approximate  
 3 answer.  
 4 And none of this is audited, correct?  
 5 A Not as I interpret the word "audit." It's  
 6 not audited. It's certified, but not audited.  
 7 Q That's right. It's dependent upon the  
 8 accuracy of the representations of Interior personnel,  
 9 correct?  
 10 A Correct.  
 11 Q Now, are you aware that biweekly reports are  
 12 no longer provided to the court?  
 13 A I wasn't sure they had stopped, but we still  
 14 -- we still get biweekly reports. I guess I'd have to  
 15 ask counsel as to whether they're provided or not.  
 16 Q Well, if --  
 17 A I don't do it directly, obviously.  
 18 Q But it's your understanding that incident  
 19 report information should be provided to the court,  
 20 correct?  
 21 MR. WARSHAWSKY: Objection. You're asking  
 22 for a legal opinion.

1 BY MR. GINGOLD:  
 2 Q Is it your understanding that that has been  
 3 done and it should continue to be done?  
 4 MR. WARSHAWSKY: Same objection.  
 5 BY MR. GINGOLD:  
 6 Q Has it been done?  
 7 A I provide information to the counsel.  
 8 Q So --  
 9 A That's the end of my obligation.  
 10 Q Do you know whether or not all of the  
 11 incidents reported to you have been reported to the  
 12 court?  
 13 A To the best of my knowledge. Now, wait a  
 14 minute. Wait a minute. You said court.  
 15 Q Yes.  
 16 A I'm saying I report mine to my counsel.  
 17 Q What I'm asking you is different. Do you  
 18 know, yes or no, whether or not all of the incidents  
 19 that have been reported to you have been reported to  
 20 the court in Cobell v. Norton?  
 21 A I have -- I'm not in the position to be  
 22 knowledgeable of that.

1 Q Has anyone told you they have been?  
 2 A No.  
 3 Q Do you include that information in your  
 4 section of the quarterly reports?  
 5 A Clarify what specific information I'm  
 6 supposed to verify.  
 7 Q Okay. I'm talking about you characterized  
 8 a report that identifies the destruction, loss, or  
 9 other type of corruption of tapes as information that  
 10 would be included in an incident report from the  
 11 bureau. Is that fair?  
 12 A Yes.  
 13 Q My question, I think you also testified that  
 14 you are provided reports from the bureaus when  
 15 incidents of that nature occur; is that correct?  
 16 A Yes.  
 17 Q And you've also testified that you provided  
 18 that information to your lawyers, correct?  
 19 A Yes.  
 20 Q And you testified you didn't know whether or  
 21 not all of the incidents that have been reported to  
 22 you have been reported to the court, correct?

1 A I'm not in a position to know.  
 2 Q Now, when you said to your counsel, do you  
 3 provide those directly to Justice or do you provide  
 4 them directly to the Solicitor's Office?  
 5 A I believe my project manager provides them  
 6 directly to Justice after consulting or discussing  
 7 with Interior attorneys.  
 8 Q I'm trying to understand it. So you believe  
 9 that you office provides that information directly to  
 10 the Justice Department in that report, correct?  
 11 A I'm not aware or I don't recall being  
 12 instructed not to send that, although it's possible  
 13 that they said they didn't need it in all. I'm not  
 14 aware.  
 15 Q Now, again, that's whether or not they  
 16 instructed you not to. I'm not asking you that  
 17 question, but at least your understanding is that you  
 18 provide that information as you receive it to the  
 19 Department of Justice, correct?  
 20 A Correct.  
 21 Q Is there any delay in providing it to  
 22 Justice, to your knowledge?

1 A From my role, only to the extent I want to  
 2 verify and have a complete report on the incident. So  
 3 it may be a day or two before I get to them.  
 4 Q But it's fair to say it's contemporaneous.  
 5 A That's true.  
 6 Q Within a reasonable period of time.  
 7 Do you believe the incident report would  
 8 reveal important information or can?  
 9 A It depends upon the incident. We look at  
 10 ZANTAZ and the like capture as being in an operations  
 11 and maintenance mode at this point. It is a difficult  
 12 system to administer because of all the differing  
 13 areas that we have to cover with it. But if we were  
 14 of the opinion, I guess, that we had -- were certain  
 15 that something had violated some piece of the order or  
 16 that we had missed a critical piece of data that  
 17 should have gotten, well, then that would be  
 18 escalated.  
 19 We had a number of procedures in place to  
 20 provide assurance that as much as one can get from  
 21 running the system the way it is constructed that it  
 22 has a high percentage of success.

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1 Q So you wouldn't provide the information  
2 unless you were certain, correct?  
3 A Pardon?  
4 Q You want certainty before you would provide  
5 that information that you believe should be provided  
6 to the court as opposed to any likelihood that  
7 something occurred?  
8 A Again, it depends upon the situation. A lot  
9 of things happen in the E-mail and the collection  
10 world that you have to talk to a number of people just  
11 to see what precautions they've made, what actually  
12 caused the incident. Was there a serious impact as a  
13 result of the incident? And then your safety  
14 procedures to preserve the data.  
15 Q And until you come to all of those  
16 conclusions, you wouldn't report it, correct?  
17 A Not necessarily. If it looks like it would  
18 be drawn out over an extended period of time, we would  
19 alert the appropriate parties.  
20 Q If you were told about it.  
21 A If I was told about it?  
22 Q For example, let me give you an

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1 illustration. The Justice Department told the court  
2 in 2001 an inventory would be done, an audit inventory  
3 done would be done of the back-up tapes. Do you  
4 believe three or four years is an extended period of  
5 time?  
6 MR. WARSHAWSKY: Objection. You're assuming  
7 facts that Mr. Tipton hasn't identified.  
8 BY MR. GINGOLD:  
9 Q Do you believe that three or four years is  
10 an extended period of time?  
11 MR. WARSHAWSKY: Excuse me, Mr. Gingold.  
12 Let me state an objection for the record.  
13 You're asking Mr. Tipton about facts that he  
14 hasn't personally attested to knowing about. You may  
15 answer subject to the objection.  
16 BY MR. GINGOLD:  
17 Q Is three or four years an extended period of  
18 time?  
19 A It seems like an extended period of time,  
20 but would suggest that there's not an agreement upon  
21 what is to be provided to me.  
22 Q An agreement between whom?

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1 A Since you're asking me to offer an opinion.  
2 Q Yes, I am. That's true.  
3 A I just can't. I doubt that they would  
4 ignore the port in such a matter.  
5 Q Oh, you do?  
6 A That they may very well disagree with you  
7 guys on what the order means. So I'm not going to get  
8 into the legal debate as to what they should have  
9 provided you and when they would have provided it.  
10 I'm just telling you my knowledge of it is limited.  
11 Q Now, how would you as a CIO go about  
12 preparing a comprehensive list of tapes that have been  
13 destroyed and overwritten?  
14 A I would research from the log of the reports  
15 that I have and categorize the tapes as to  
16 successfully restored, tapes partially restored, tapes  
17 corrupted, and maybe tapes damaged in transit, and if  
18 there were tapes overwritten, then we could specify  
19 those.  
20 Q And would you assume that the logs would be  
21 accurate, correct?  
22 A Yes.

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1 Q And this is from 1984 to 1999?  
2 A No.  
3 Q Okay. What would you do to restore back-up  
4 tapes or identify back-up tapes that have been lost,  
5 destroyed, or overwritten from 1984 to 1999?  
6 Could it be done in your opinion?  
7 A If you had the tapes it may be able to do,  
8 but the technology has changed tremendously. Tapes  
9 age, as you probably know, over that time, and the  
10 success rate of restoring them would probably be  
11 limited.  
12 Q Are you aware of the Solicitor's Office  
13 overwriting of back-up tapes?  
14 A No.  
15 Q So those incidents were not recorded, at  
16 least to your knowledge, to the office, the Chief  
17 Information Officer's Office, correct?  
18 MR. WARSHAWSKY: Objection. Calls for  
19 speculation.  
20 BY MR. GINGOLD:  
21 Q You've not seen reports, have you?  
22 MR. WARSHAWSKY: You may answer subject to

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1 the objection.

2 BY MR. GINGOLD:

3 Q Have you ever seen a report like that?

4 A To the best of my knowledge, I'm not aware

5 of the Solicitor's writing over back-up tapes.

6 Q Are you aware; have you ever been given

7 information by anyone that the Solicitor didn't keep

8 logs?

9 A Not specific accusations like that, no.

10 Q Are you aware that information has been

11 filed with the court from the Justice Department the

12 says that?

13 A I can't recall.

14 Q No one has talked to you about it?

15 A Not that I remember.

16 Q How would you go about restoring and

17 identifying and obtaining the information contained in

18 the Solicitor's Office tapes that have been

19 overwritten when there are no logs? How would you do

20 that?

21 A Well, if they had been completely

22 overwritten, odds of reconstructing or restoring them

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1 are slim.

2 Q It can be done though, to your knowledge?

3 It can be done?

4 A I wouldn't have a lot of faith that it could

5 be done if you have -- if you have overwritten the

6 tape.

7 Q But do you know, do you believe it's

8 possible to do that? It can be done? It's physically

9 possible?

10 A I don't pose myself as an expert in back-up

11 and restoration technology.

12 Q Have you ever been asked to do that,

13 arranged for a contractor to do that for the

14 Solicitor's Office, back-up tapes that have been

15 overwritten?

16 A Not that I remember.

17 Q Has the Department of Interior, to your

18 knowledge, ever restored back-up tapes that have been

19 overwritten, first of all, at any point in time since

20 you've been CIO?

21 A Not that I'm aware of.

22 Q Has it attempted to?

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1 A Again, not that I'm aware of.

2 Q Has it ever been a subject that you've been

3 involved in with the Secretary?

4 A No.

5 Q Has it been a matter that you've discussed

6 with anyone in the Solicitor's Office?

7 A Not that I recall.

8 Q Have you discussed that with Burt Edwards,

9 the Executive Director, the Office of Historical?

10 A No.

11 Q Have you discussed that with the Inspector

12 General?

13 A No.

14 Q Or his staff?

15 Have you discussed it with anybody, quite

16 frankly?

17 A I don't recall the incident.

18 Q To your knowledge, that's never been done in

19 Interior, correct?

20 A To my knowledge, yes.

21 Q Has it been done anywhere else to your

22 knowledge?

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1 A Anywhere else being?

2 Q In your business. You speak and are on

3 panels dealing with IT security and the preservation

4 of data; is that correct?

5 A Yes.

6 Q Have you been involved in discussions with

7 anyone where that type of restoration and recovery has

8 been accomplished?

9 MR. WARSHAWSKY: Just to be clear, can you

10 define what kind of restoration/recovery you're

11 talking about?

12 MR. GINGOLD: We're talking about the

13 overwritten back-up tapes.

14 You understand that's what we're talking

15 about, don't you?

16 BY MR. GINGOLD:

17 Q Have overwritten back-up tapes at the

18 Solicitor's Office, whether in the Washington or in

19 the field, been successfully restored?

20 A Is there more to the question?

21 Q Yeah, has anything been successfully

22 restored? Yes or no?

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1 A In the Solicitor's Office?  
2 Q Yeah.  
3 A Not that I'm aware of.  
4 Q All right. Now --  
5 A Wait. Let me back up. You switched gears  
6 on the question. There have been tapes successfully  
7 restore from the Solicitor's Office.  
8 Q That were overwritten.  
9 A I didn't say that.  
10 Q No, but that was my question. We're talking  
11 about overwritten tapes in the Solicitor's Office.  
12 Now, it's not possible to restore a lost tape, is it?  
13 A It would be difficult.  
14 Q As a matter of fact, nearly impossible,  
15 correct? Would you concede that?  
16 A I'll concede that.  
17 Q Thank you.  
18 And a tape that was destroyed because of  
19 environmental issues, whatever the issues are, that  
20 would be difficult, too, correct?  
21 A It would be difficult, but that's not  
22 impossible to restore the tape.

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1 Q But it's not impossible. How many have been  
2 restored that you're aware of that have been corrupted  
3 because of environmental issues?  
4 A I have no information on that.  
5 Q Do you know if any have been?  
6 A I do not know.  
7 Q Do you know how much E-mail has been lost or  
8 destroyed as a result of overwritten Solicitor's  
9 Office back-up tapes?  
10 A Since I'm not aware of the overwriting, I'm  
11 not aware of any data that there has been.  
12 Q Is it possible for you or anyone in your  
13 office that you could identify who could quantify  
14 that, the number of overwritten Solicitor's Office E-  
15 mail tapes that have been restored?  
16 MR. WARSHAWSKY: Objection. Calls for  
17 speculation. Answer --  
18 BY MR. GINGOLD:  
19 Q Is there anyone in your office who knows  
20 that?  
21 MR. WARSHAWSKY: You may answer subject to  
22 the objection.

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1 THE WITNESS: I'm having a hard time  
2 understanding what you would expect someone from my  
3 office to do.  
4 MR. GINGOLD: Assist in the contracting for  
5 the restoration of overwritten back-up tapes to  
6 recover the E-mail that's supposed to be produced or  
7 preserved in this litigation.  
8 THE WITNESS: I obviously have someone that  
9 could help, but again, I state I am not an expert in  
10 back-up. I know that you can erase a hard drive. You  
11 can erase a file off of non-tape media, and you can  
12 restore that unless you have done what's known as a  
13 complete wipe. One of the methods of cleaning storage  
14 media is to write over it, but to do a complete wipe,  
15 you write over ones and zeros. So I do not know to  
16 what extend one could do this.  
17 I think it would have to have a feasibility  
18 statement before you would jump into it.  
19 Q But to your knowledge, that effort hasn't  
20 commenced with regard to the Solicitor's Office at  
21 this time. Is that fair?  
22 A I know of no effort to do that.

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1 Q As a result, is it, as a matter of fact,  
2 impossible to quantify the number of E-mails that have  
3 been destroyed if the overwritten back-up tapes  
4 haven't been restored? Isn't that impossible to  
5 quantify?  
6 A It's impossible to be exact.  
7 Q Well, how can you approximate that an  
8 overwritten record --  
9 MR. WARSHAWSKY: Excuse me. Were you done  
10 answering?  
11 THE WITNESS: Yes.  
12 MR. WARSHAWSKY: You jumped right in,  
13 Dennis.  
14 MR. GINGOLD: Well, that's because he had  
15 finished. I hate to tell you, John.  
16 BY MR. GINGOLD:  
17 Q Is it possible to approximate the number of  
18 -- approximate the number of E-mails that have been  
19 destroyed in overwritten back-up tapes?  
20 A You could make a rough approximation if you  
21 know a back-up strategy and how -- what kind of tape  
22 it was, what kind of capacity it had.



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1 Q If it's a weekly; for example, if it's daily  
2 or weekly or monthly, correct?  
3 A Or that had multiple back-ups on the same  
4 tape. It depends upon the back-up procedure for the  
5 office.  
6 Q But you'd be, as Mr. Warshawsky likes to  
7 say, speculating, however, wouldn't you?  
8 A Yes, you would.  
9 Q Now, are you aware as to whether or not  
10 there's any effort that has been made to recovery the  
11 E-mail on back-up tapes of the Solicitor's Office to  
12 1996, whether or not those back-up tapes were  
13 overwritten?  
14 A '96?  
15 Q Correct.  
16 A No, I'm not aware of that.  
17 Q Has there been any effort in any Bureau in  
18 the Department of Interior to recover the E-mail in  
19 back-up tapes back to June 10th, 1996?  
20 A Not that I'm aware of.  
21 Q And there's no effort that it was at least  
22 initiated at the department level, correct, to do

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1 that, to restore overwritten tapes within the  
2 department, at the department level back to '96?  
3 A Again, I have no knowledge of overwritten  
4 tapes, period. So I can't answer what happened for  
5 '96, and no one has asked me to do any type of a  
6 project or to inject any type of a question like that  
7 to ZANTAZ, which is our vehicle for overwritten tapes.  
8 Q How about any types, whether or not they  
9 were overwritten? Has anyone asked you recover the E-  
10 mail in back-up tapes through June 10th, 1996, whether  
11 or not they were overwritten?  
12 A No.  
13 Q In any bureau?  
14 A No.  
15 Q And do you have any idea is it possible to  
16 even estimate based on your knowledge of how much E-  
17 mail was lost or destroyed from, let's say, June 10th,  
18 1996 through whenever the project commenced in 1999?  
19 Do you have any way to estimate that on a department-  
20 wide basis?  
21 A Again, if you're looking at the E-mail as  
22 the sole record of the transmission and discounted any

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1 printed data from that, assuming that it's lost simply  
2 because it's overwritten, one could make a rough  
3 approximation of how many messages went through the  
4 system at that time, but again, it is speculative, and  
5 it would be rough.  
6 Q It would be entirely speculative, wouldn't  
7 it?  
8 A Without actually being able to restore it,  
9 yes.  
10 Q Now, let's talk about ZANTAZ. You, I think,  
11 testified that ZANTAZ was initiated prior to your  
12 becoming the Acting Chief Information Officer; is that  
13 correct?  
14 A Yes.  
15 Q Who did it?  
16 A Who did it?  
17 Q Who initiated the project?  
18 A My predecessor, Daryl White.  
19 Q Do you know why?  
20 A As I understand, it was a result of a court  
21 order.  
22 Q Okay. What was your understanding of the

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1 circumstances behind that court order, based on your  
2 understanding?  
3 A I have a general understanding of it, yes.  
4 Q What is it?  
5 A The court wanted an independent third part  
6 to capture and retain and restore E-mails back to a  
7 specified time and to make that digital safe, as we  
8 call it, available for queries and searches from the  
9 court on the E-mail collected.  
10 Q Do you know why? Do you know why that was  
11 ordered?  
12 A I don't know definitively why, other than  
13 not trusting me to capture and collect my own E-mail  
14 and manage it.  
15 Q So you don't think it was focused on you, do  
16 you?  
17 A By me I mean the generic "me" I guess.  
18 Q You don't know that any events or incidents  
19 that might have occurred that was the basis for the  
20 court to entre an order of that nature?  
21 A I'm generally aware of accusations of record  
22 destruction which led, I guess, to the order to

1 preserve this type of a record.  
 2 Q So you're not aware of any findings of  
 3 destruction, just accusations, correct?  
 4 A I'm not familiar with exactly what the court  
 5 found and didn't find.  
 6 Q Are you aware of records that were lost?  
 7 A I heard about it --  
 8 Q Or accusations.  
 9 A -- but I was in another job. As I say, at  
 10 the time focused on wild horses and burrows and  
 11 grazing, forestry and recreation, fighting fires.  
 12 Q And the individual Indian Trust data,  
 13 correct?  
 14 A Along with that.  
 15 Q That's right.  
 16 In the same storage shed, too, correct?  
 17 Never mind. Strike that.  
 18 Mr. Tipton, I'd like to ask you a question  
 19 about a particular document that is identified as  
 20 being from you, and I will identify this as Tipton  
 21 Exhibit 2.  
 22 (Whereupon, the document referred to

1 was marked as Tipton Deposition  
 2 Exhibit No. 2 for identification.)  
 3 BY MR. GINGOLD:  
 4 Q Could you please review that and verify its  
 5 authenticity?  
 6 A (Examining document.)  
 7 MR. WARSHAWSKY: Just for the record, Tipton  
 8 Exhibit 2 doesn't have the attachments; is that  
 9 correct?  
 10 MR. GINGOLD: We're going to go through  
 11 various elements.  
 12 MR. WARSHAWSKY: Yeah, but the exhibit  
 13 itself does not have the attachments.  
 14 MR. GINGOLD: No, no, no. This is just the  
 15 letter.  
 16 MR. WARSHAWSKY: Okay.  
 17 MR. GINGOLD: It's the memorandum, and I'll  
 18 identify it.  
 19 MR. WARSHAWSKY: Okay.  
 20 MR. GINGOLD: When you're finished, I will  
 21 identify it for the record.  
 22 Have you finished?

1 For the record, this is a memorandum, dated  
 2 August 15th, 2002, from W. Hord Tipton, Chief  
 3 Information Officer, Acting, to Bureau Chief  
 4 Information Officers, subject, electronic E-mail  
 5 archive system. There are no attachments appended to  
 6 Tipton Exhibit 2, but they will be discussed  
 7 separately as we go through this examination.  
 8 BY MR. GINGOLD:  
 9 Q Mr. Tipton, did you draft this memorandum?  
 10 A The memorandum was drafted by my project  
 11 manager, Regina Lawrence, who's in charge of day-to-  
 12 day operations on the project.  
 13 Q So Regina L. Lawrence, the individual who's  
 14 identified on the last paragraph of page 2, is the  
 15 individual who actually drafted this memorandum,  
 16 correct?  
 17 A With -- with assistance from our Solicitor's  
 18 Office.  
 19 Q Who in the Solicitor's Office assisted in  
 20 the drafting of this memorandum that you signed?  
 21 A At that time, I'm not sure enough of the  
 22 name to state it now.

1 Q You're not sure?  
 2 A Well, I got the memorandum, and the contact  
 3 point is Regina Lawrence, but it's just normal  
 4 practice that she'd consult with the Solicitor's  
 5 Office when we issue these type of documents.  
 6 Q Who would she normally deal with at the  
 7 Solicitor's Office?  
 8 A At this time it was probably Sabrina,  
 9 Sabrina McCarthy.  
 10 Q Was anyone from the Justice Department  
 11 involved in the drafting?  
 12 A I don't know. I don't think so.  
 13 Q Who asked you to prepare this?  
 14 A I don't recall that I had specific  
 15 instructions. It was part of my job as system owner  
 16 on the ZANTAZ project to get it started, get it  
 17 moving.  
 18 Q Who asked you to sign it?  
 19 A No one asked me to sign it. It was my job  
 20 to sign it. I'm a system owner.  
 21 Q Did you verify the accuracy of the  
 22 information in this, you yourself?

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1 A What verification techniques are you  
2 referring to?  
3 Q Did you do any -- what due diligence did you  
4 conduct to determine that the representations made in  
5 this memorandum are true and correct?  
6 A the information in here is fairly  
7 straightforward. I don't know that I or don't believe  
8 that an extensive verification process is necessary.  
9 So none. I reviewed it for --  
10 Q So you did not review --  
11 A -- for content and signed it.  
12 Q Okay. So you signed it as prepared. No  
13 questions?  
14 A I don't recall any. I may have made some  
15 edits on it, but I don't recall.  
16 Q Do you know how much of this was actually  
17 directed by the Solicitor's Office?  
18 A No.  
19 Q Do you know if it all, if it entirely was  
20 drafted by the Solicitor's Office?  
21 A No.  
22 Q Let's go to the first paragraph. It says,

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1 "Interior has proposed a system for capturing live E-  
2 mail." That's a true statement, correct?  
3 A Yes.  
4 Q What was the system that existed prior to  
5 August 15th, 2002 for capturing live E-mail within  
6 Interior?  
7 A It was a combination of retaining for a  
8 period of time on servers and then capturing on back-  
9 ups which normally were recycled after about 90 days.  
10 Q And that's throughout each Bureau of  
11 Interior, correct?  
12 A On average every bureau has a slightly  
13 variable procedure.  
14 Q Have. We were talking about that because  
15 you changed it, correct?  
16 A Well, for this purpose, yes, it was changed  
17 for the --  
18 Q So you're talking about prior to or at least  
19 as of August 15th, 2002, what you described is what  
20 each bureau actually did, correct? What you just  
21 testified to.  
22 A Before implementing the court order in

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1 ZANTAZ, what I testified to was, yes, they backed  
2 up --  
3 Q They actually did --  
4 A -- normally around --  
5 MR. WARSHAWSKY: Please don't interrupt Mr.  
6 Tipton.  
7 THE WITNESS: -- 90 days.  
8 MR. WARSHAWSKY: You're interrupting Mr.  
9 Tipton.  
10 BY MR. GINGOLD:  
11 Q They actually did it, correct, Mr. Tipton?  
12 They actually did it?  
13 A Did back-ups? Yes. They did --  
14 Q You saw them?  
15 A -- back-ups or E-mails.  
16 Q You saw them?  
17 A Did I see their back-ups?  
18 Q Yeah. Did you?  
19 A No, I didn't see the back-ups.  
20 Q Okay. What did you do to verify the  
21 accuracy of the information you just testified to,  
22 that they actually did what they were supposed to

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1 implement? What did you do to verify that the  
2 practices were identical to what their plans were?  
3 A As CIO for the department, I don't run  
4 operations for Interior. I run the policy shop.  
5 Q So you didn't do anything, did you?  
6 A To go out and to verify that each and every  
7 mail server is backed up and restored? No.  
8 Q Not each and every. Let's say, first of  
9 all, did you do one?  
10 A We do annual --  
11 Q Did you?  
12 A -- reviews of the administration of IT as  
13 part of the oversight process. To say we specifically  
14 went out here and targeted E-mail servers, no, I'm not  
15 testifying to that.  
16 Q And you're not testifying to the fact that  
17 your predecessor did it either, correct?  
18 A No. It's not an expected normal practice  
19 from an office, such as the CIO's.  
20 Q Is it a practice to insure that the plans  
21 that are considered acceptable for security are  
22 implemented as stated? Is that a practice that you're

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1 supposed to do as a CIO?  
2 A Yes.  
3 Q Do you do that?  
4 A Yes.  
5 Q So you do verify that there --  
6 A We verify, but not 100 percent verification  
7 on everything that you're trying to specify.  
8 Q I'm asking one question on everything.  
9 A But you're targeting on one particular --  
10 one particular subject.  
11 Q You're right. One particular subject.  
12 You're absolutely right, and let me ask you about that  
13 one particular subject. You are aware that there's a  
14 difference between a plan and an implementation of the  
15 plan. Is that a fair statement?  
16 A Yes.  
17 Q Are you aware that one of the  
18 responsibilities under FISMA (phonetic) is to insure  
19 that the plans are implemented as developed?  
20 A Yes.  
21 Q So implementation is different than actual  
22 plans on the books, correct?

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1 A Yes.  
2 Q And is it one of the responsibilities to  
3 insure they are implemented as stated?  
4 A Yes.  
5 Q Do you do that?  
6 A Yes.  
7 Q Did you do that with regard to E-mail  
8 servers?  
9 A Prior to this date?  
10 Q Well, I'm asking you whether -- you made a  
11 statement that certain practices were undertaken prior  
12 to a certain date. I'm asking you whether or not you  
13 verified whether or not they were the actual practices  
14 or those were the stated plans.  
15 Did you verify that?  
16 A At this point in time that verification  
17 probably did not exist.  
18 Q And why didn't it exist?  
19 A (Pause.)  
20 Q Do you --  
21 A Why didn't verification exist up to this  
22 point? The procedure was not in place. We verified

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1 IT practices across the board after this, but one  
2 would say we were not as thorough in verification at  
3 that time as we are now. FISMA was only passed in  
4 2002. ISMA --  
5 Q I'm not --  
6 A -- was passed in 2000.  
7 Q So FISMA determines your obligation; is that  
8 correct?  
9 A FISMA is only one of the things that  
10 determines my obligation.  
11 Q That's right. Litigation has other  
12 obligations, doesn't it?  
13 A Yes.  
14 Q Are you aware that representations were made  
15 by your lawyers and by the Secretary to the court that  
16 the information was actually preserved? Are you aware  
17 of that?  
18 A I don't understand the content of that  
19 question.  
20 Q August 15th, 2002 is more than six years  
21 into the Cobell litigation. The litigation was filed  
22 on June 10th, 1996. Are you aware of that?

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1 A I'm aware it's about eight years old.  
2 Q No, no.  
3 A The litigation.  
4 Q As of August 15th, 2002, are you aware that  
5 that's more than six years into the litigation?  
6 A Yes.  
7 Q Are you aware that during that period of  
8 time, representations were made repeatedly by the  
9 government that the E-mail was being preserved? Are  
10 you aware of that?  
11 A No.  
12 Q My question for you is: can you make that  
13 representation to the court if you didn't verify the  
14 information that is being represented?  
15 A I still fail to understand how this relates  
16 to this memo.  
17 Q We're starting with this memo. My question  
18 is you didn't even prepare this memo. You accepted  
19 everything that was written, correct?  
20 And I asked you: what was done before  
21 capturing the live E-mail? That's the first sentence,  
22 correct?

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1 MR. WARSHAWSKY: Objection. You  
2 mischaracterized his earlier testimony. You can  
3 answer it subject.  
4 BY MR. GINGOLD:  
5 Q How have I mischaracterized your testimony?  
6 Explain that to me.  
7 MR. WARSHAWSKY: Why don't you just ask the  
8 question?  
9 BY MR. GINGOLD:  
10 Q Explain how I mischaracterized your  
11 testimony, Mr. Tipton.  
12 A I explained to you my knowledge of how back-  
13 up systems on E-mails worked prior to issuance of this  
14 memo, and it turned into a personal verification that  
15 all of those E-mails were done exactly as I said, and  
16 I do not have knowledge at that time. I was not in a  
17 position to exercise authority over that. So I cannot  
18 testify as to whether my predecessor had oversight  
19 procedures that went out and guaranteed that this mail  
20 was collected and backed up, as you -- as you  
21 illustrate.  
22 Q Didn't I ask you a question as to whether or

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1 not the actual practice was identical to what they  
2 stated they would do? Isn't that what I asked you?  
3 A Whatever that means.  
4 Q Oh. Do you know what "practice" means?  
5 A Practice?  
6 Q Practice, when you practice doing some, when  
7 you engage in doing something. Do you understand what  
8 that means? The practice of doing something versus  
9 the development of a plan; do you understand the  
10 distinction between those?  
11 A I call it execution, deployment,  
12 implementation.  
13 Q Okay.  
14 A Call it what you will.  
15 Q Let's use your term, execution and  
16 deployment. That's actually doing it, correct?  
17 A Yes.  
18 Q What I asked you was: do you know whether  
19 they actually did what they said they'd do? That's  
20 what I asked you, didn't I?  
21 A I do not know.  
22 Q Okay. Do you know if they're doing it now?

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1 A I know that we're doing it now, yes.  
2 Q You do know. You verified that.  
3 A With reasonable assurances, yes.  
4 Q No, no. I'm asking you if you know. Do you  
5 know?  
6 MR. WARSHAWSKY: Just to be clear, you're  
7 asking him if he's personally verified. Is that what  
8 you're asking?  
9 BY MR. GINGOLD:  
10 Q You know exactly what I'm asking, don't you,  
11 Mr. Tipton?  
12 A No, I don't. You're asking me if I  
13 personally go out here and look at these things and  
14 verify them, and that is not the way the system is  
15 worked.  
16 Q Do you understand -- well, let me ask you  
17 this.  
18 A It just cannot work that way.  
19 Q It cannot work that way?  
20 A It cannot work with my personal assurance in  
21 visiting every E-mail server in Interior.  
22 Q Then how can you make representations to the

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1 court that something is being done when, in fact, you  
2 don't know?  
3 A I do know. I do know through attestations  
4 and certifications from people responsible and in  
5 charge of that.  
6 Q So that's what you believe is your personal  
7 knowledge. You know they give you a certification,  
8 correct?  
9 A Yes.  
10 Q You know they gave you a certificate. Do  
11 you know that the certification is accurate? Yes or  
12 no?  
13 A I have no reason to believe that it is not.  
14 Q Do you have any reason to believe that it is  
15 accurate based on your knowledge, Mr. Tipton?  
16 A Yes.  
17 Q Based on your -- based on your -- what  
18 knowledge do you have that every E-mail that is being  
19 transmitted within the Department of Interior today is  
20 being saved and backed up so when it is to be produced  
21 and recorded is available? What knowledge do you have  
22 today?

1 A I am not saying or guaranteeing that 100  
2 percent of all E-mail in Interior is backed up and  
3 captured today. You will never find a system that can  
4 make that guarantee. I am telling you we have  
5 reasonable processes in place, reasonable assurances  
6 in checks and balances to give the highest efficiency  
7 of that system that can be attained.

8 Q And the reasonable assurances go beyond the  
9 certification. They go to the actual enforcement and  
10 compliance where you send someone into the field to  
11 independently verify it, correct?

12 MR. WARSHAWSKY: Can you state that again,  
13 please?

14 MR. GINGOLD: Yeah.

15 BY MR. GINGOLD:

16 Q Do you know what independent verification  
17 is?

18 A Yes.

19 Q Okay. Do you believe that FISMA requires  
20 independent verification of certain information?

21 A Yes.

22 Q Does FISMA say -- why is that important to

1 have independent verification, Mr. Tipton?

2 A It eliminates potential for conflict of  
3 interest. It gives an objective view of the  
4 verification and validation of the system and the data  
5 in the system.

6 Q Isn't it also because you're supposed to  
7 insure that what is stated as the process is actually  
8 executed and deployed as stated? Isn't that one of  
9 the reasons?

10 A Yes.

11 Q And it's not based on your certifications,  
12 is it?

13 A Certifications has a lot of it, yes.

14 Q It's not based on that, is it, Mr. Tipton?

15 A But it is based upon certifications by some  
16 party, yes.

17 Q A verification, an independent verification  
18 is the basis of an independent verification? Is that  
19 what you're saying?

20 A What did you just say?

21 Q I am asking you about independent  
22 verification. Isn't it a requirement under FISMA that

1 you verify that the actual practices are consistent  
2 with what is actually stated that would be done to  
3 assure the security of the information?

4 MR. WARSHAWSKY: Mr. Gingold, do not raise  
5 your --

6 BY MR. GINGOLD:

7 Q Do you understand this?

8 MR. WARSHAWSKY: Excuse me. Do not raise  
9 your voice.

10 BY MR. GINGOLD:

11 Q Do you understand that?

12 MR. WARSHAWSKY: Do not raise your voice --

13 BY MR. GINGOLD:

14 Q Do you understand that, Mr. Tipton?

15 MR. WARSHAWSKY: -- to Mr. Tipton.

16 BY MR. GINGOLD:

17 Q Do you understand that, Mr. Tipton, what I'm  
18 asking you?

19 MR. WARSHAWSKY: If you can't keep your  
20 voice --

21 BY MR. GINGOLD:

22 Q Mr. Tipton, do you understand what I'm

1 saying to you?

2 MR. WARSHAWSKY: You don't have to answer  
3 this yet.

4 MR. GINGOLD: If he's instructing you not to  
5 answer the question, we'll put that on the record and  
6 we'll see about sanctions.

7 BY MR. GINGOLD:

8 Q Do you understand what I'm asking you?

9 MR. WARSHAWSKY: You'll let me state my --

10 MR. GINGOLD: You've already stated it three

11 times. Do you want to testify?

12 MR. WARSHAWSKY: No.

13 MR. GINGOLD: Put yourself under oath.

14 MR. WARSHAWSKY: You keep talking over me.

15 You're not going to raise your voice to Mr. --

16 MR. GINGOLD: Put your finger down, Mr. --

17 MR. WARSHAWSKY: You can't -- you've been  
18 doing it all morning. If you can't --

19 MR. GINGOLD: Put your finger down.

20 MR. WARSHAWSKY: -- keep your voice down,

21 we'll go take a break while you calm yourself down.

22 MR. GINGOLD: For the record, Mr.

1 Warshawsky, you're grossly exaggerating what is going  
 2 on here.  
 3 BY MR. GINGOLD:  
 4 Q Do you understand my question, Mr. Tipton?  
 5 A Yes.  
 6 Q Please answer the question.  
 7 A We do independent verification and  
 8 validation. We have done so on this system.  
 9 Q But you did have certifications though,  
 10 didn't you, independently of the independent  
 11 verification and validation, correct?  
 12 A We have certifications from each of the CIOs  
 13 in charge of these mail systems' internal points. We  
 14 have certifications from ZANTAZ on the receipt. We  
 15 have an independent third party contractor that has  
 16 tested the system and gives us a report, and it has  
 17 led to a certification and accreditation to me as a  
 18 system owner.  
 19 Q But that wasn't my question. We haven't  
 20 gone to the certifications yet with regard to a system  
 21 owner. We're talking about certifications that you  
 22 rely on to make representations. That was the basis

1 of your knowledge, correct?  
 2 A Yes.  
 3 Q And that's what we're talking about. Do you  
 4 understand that?  
 5 A Well, that's part of what I rely on, yes.  
 6 MR. WARSHAWSKY: Please put your hand down,  
 7 Mr. Gingold.  
 8 BY MR. GINGOLD:  
 9 Q That's part of what you rely on, correct?  
 10 What is the other part that you rely on to  
 11 make a representation to the court that -- or under  
 12 oath in a deposition -- that the practices or the  
 13 deployment or execution actually occurs as stated?  
 14 What else do you do?  
 15 A We depend upon the CIOs to verify and to  
 16 certify not only the number of servers that they have,  
 17 the practices and procedures that they have to operate  
 18 their mail systems. We also depend upon them to  
 19 certify the networks by which the mail travels on, and  
 20 then we also depend upon ZANTAZ to certify their end  
 21 of the receipt of this. So there are a combination of  
 22 boundaries that overlap by which the data is

1 transmitted.  
 2 And then there are technical checks within  
 3 the system to give us indication as to the potential  
 4 problems of that system and to give us confidence that  
 5 the system is working as it's supposed to.  
 6 Q And that's what you would do before making  
 7 representations to the court, correct?  
 8 MR. WARSHAWSKY: Excuse me. What  
 9 representation?  
 10 MR. GINGOLD: About the number of servers  
 11 that are being protected based on, let's say, for  
 12 example, the ZANTAZ concept.  
 13 MR. WARSHAWSKY: Unless you're going to show  
 14 him the representation that you're referring to,  
 15 you're asking him to speculate.  
 16 BY MR. GINGOLD:  
 17 Q Is that an answer? You wouldn't make a  
 18 representation to the court without going through that  
 19 process, correct?  
 20 A It's based upon the knowledge that I just  
 21 testified to.  
 22 Q That's right, and that includes your

1 independent verification, right?  
 2 A Well, it includes -- that's the final  
 3 verification of the system.  
 4 Q Because that satisfies your judgment that  
 5 the information is correct. Is that a fair statement?  
 6 A Yes.  
 7 Q What happened with regard to BRM (phonetic)  
 8 Mail 2 and Mickey (phonetic) E-mail 1? Why was that  
 9 omitted from a representation to the court as to the  
 10 number of servers that were being, let's say, included  
 11 within the ZANTAZ program and the E-mail was being  
 12 captured live? What happened?  
 13 A BLM, BLM 1 and 2?  
 14 Q No, BRA.  
 15 A Oh, BIA-1 and 2? There were two instances.  
 16 I'm not sure which one you're referring to in BIA on  
 17 the servers.  
 18 Q But in that case, the representation was  
 19 made before an independent verification, correct?  
 20 A Independent verification, I being the  
 21 attestation, being an S on this does not guarantee  
 22 that these systems are going to work forever without

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1 error or without problems. So our accreditation is no  
2 guarantee that a server will not be misconfigured in  
3 the future due to human error or that a server will  
4 not break down. This is our best effort to due  
5 diligence, to capture and, to the best of our  
6 knowledge, make sure that we have all of those servers  
7 included, and that's where the certifications come  
8 from. The CIOs who are certifying to the best of  
9 their knowledge that they know where they are and they  
10 have them plugged in and their E-mail are going into  
11 ZANTAZ.

12 Q But again, my question wasn't your  
13 certification process for FISMA. It's the process of  
14 making your presentation to the court. I want to make  
15 sure you understand I'm not asking you about the FISMA  
16 certifications yet. So, please, when you're giving  
17 the answers, we'll get to that later.

18 A I'm not talking about FISMA at this point  
19 either.

20 Q Okay, okay. Which BIA incidents did you --  
21 were you referring to with regard to BIA-1 and 2?  
22 A The first one, I believe, in the initial

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1 set-up, we thought they had operating mail on 11  
2 servers, and then we found a 12th server which was  
3 included.

4 The second instance was the result of  
5 software upgrade that didn't go through the proper  
6 testing procedure, and for a period of time appeared  
7 to be sending an E-mail message to ZANTAZ, but  
8 actually it was not.

9 MR. WARSHAWSKY: Mr. Gingold, we've been  
10 going about an hour. I don't know when you want to  
11 break. Really, I know time flies, but --

12 MR. GINGOLD: Okay.

13 MR. WARSHAWSKY: -- I know that clock  
14 doesn't work, but --

15 MR. GINGOLD: Okay.

16 MR. WARSHAWSKY: -- when you get to a  
17 stopping --

18 MR. GINGOLD: No, again, we tried to deal  
19 with making sure Mr. Tipton is comfortable. So why  
20 don't we come back in an hour?  
21 MR. WARSHAWSKY: That's fine.  
22 MR. GINGOLD: Will that do it?

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1 MR. WARSHAWSKY: That's fine.

2 MR. GINGOLD: Okay, but again, Mr. Tipton,  
3 if you need a break, just say you need a break. All  
4 right?

5 (Whereupon, at 12:51 p.m., the deposition  
6 was recessed for lunch, to reconvene at 1:51 p.m., the  
7 same day.)

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1 AFTERNOON SESSION  
2 (1:56 p.m.)  
3 Whereupon,  
4 W. HORD TIPTON  
5 resumed as a witness by counsel for the Plaintiffs  
6 and, having been previously duly sworn, was examined  
7 and testified further as follows:  
8 DIRECT EXAMINATION (Resumed)  
9 BY MR. GINGOLD:  
10 Q Mr. Tipton, we've been discussing Tipton  
11 Exhibit 2, which is an August 15th, 2002 memorandum  
12 that you signed to Bureau Chief Information Officers,  
13 and it's a memorandum without any attachments. Do you  
14 recall that?  
15 A I recall the memorandum, yes.  
16 Q All right. And you described that you  
17 signed this, but you did not prepare it. It was  
18 prepared by one of your subordinates, Regina Lawrence,  
19 in conjunction with the Solicitor's Office. Is that  
20 a fair statement?  
21 A Yes.  
22 Q And is it true that this is fairly typical



1 of the practice? You would prepare memoranda. You  
2 were relying on your subordinates to prepare them, and  
3 then you would execute them in your name. Is that  
4 reasonable to assume that's the way you conduct your  
5 activities?

6 A Yes.

7 Q As a general rule?

8 A Yes.

9 Q There are exceptions to that. And are there  
10 any circumstances where you wouldn't do that that you  
11 can recall?

12 A I have independent written memoranda. I  
13 can't recall any that relate to this particular  
14 subject.

15 Q But there again, you're a high government  
16 official with significant responsibilities and you  
17 dependent on your staff to prepare memoranda. Is that  
18 fair?

19 A That's fair.

20 Q By the way, is that how your declarations  
21 are prepared?

22 A Obviously one has a lot more involvement in

1 the fine tuning of the wording of your person  
2 declaration, but we generally have a template or a  
3 format that we would adhere to.

4 Q And you are providing a signed quarterly  
5 report section, whether it's the 20th quarterly report  
6 to the court or otherwise. That information is  
7 generally prepared by your subordinates as well,  
8 correct?

9 A It's -- it starts from a series of input  
10 from various bureaus that have things to report on.  
11 I have a staff member that collects that, puts it into  
12 a form. I do editing on it and our attorneys also  
13 read these.

14 Q But when you sign that, for example, let's  
15 take the 20th quarterly report. When you signed the  
16 section dealing with IT security, you signed it  
17 relying on the information provided to you by whomever  
18 provided the information, correct? You did not  
19 independently verify the information, did you?

20 A No, not all of it. If I had reason to want  
21 more information on a particular reported item, I do  
22 that, yes.

1 Q So when you execute the certification to the  
2 best of your knowledge, it's not based on your actual  
3 knowledge. It's based on your belief that the  
4 representations to you are correct and complete. Is  
5 that fair?

6 A Well, that's fair. That's why that's an  
7 important assertion and not an absolute assertion.

8 Q Because it wouldn't be -- is it fair to say  
9 it wouldn't be accurate to state that you are  
10 attesting to the information. It is, in fact, to the  
11 best of your knowledge because it's not independently  
12 obtained by you, correct?

13 A It's to the best of my knowledge and  
14 judgment and level of comfort with the information  
15 provided.

16 Q The information provided and the comfort in  
17 the integrity of the individual that provided it to  
18 you, correct?

19 A That's correct.

20 Q And you've had experience working with these  
21 people. So is it your belief that you can rely on  
22 what they tell you?

1 A Yes.

2 Q Now, with regard to Regina Lawrence, who is  
3 identified in your last paragraph of the memorandum,  
4 what is her background and experience? Does it  
5 involve IT security?

6 A Regina is not an IT specialist, if you will.  
7 She is not a professional in the IT sense of the word.

8 Q What is her background? Do you know?

9 A She was on board when I went to the CIO's  
10 office. So I'm really not sure what her expertise  
11 area is.

12 Q Do you know what her academic background is?

13 A I know she went to Maryland University.

14 Q You know she has a degree?

15 A I believe she does.

16 Q Do you know what discipline?

17 A No, I don't.

18 Q Do you know if -- I asked you whether she  
19 had a background in IT security. Do you know if she  
20 has a background in information technology independent  
21 of the security aspect of information technology?

22 A I don't believe she does. I had her working

1 on project impingement, which is the area that's most  
2 important at this point.

3 Q Did you know or do you know whether Sabrina  
4 McCarthy, who is a Solicitor's Office lawyer that I  
5 believe you identified, participated in the drafting  
6 of this memorandum, whether or not she has a  
7 background in IT security?

8 MR. WARSHAWSKY: Excuse me. I object to the  
9 extent you're mischaracterizing prior testimony, but  
10 you can answer subject.

11 MR. GINGOLD: Okay. Let's get to the bottom  
12 of that since Mr. -- no, no, no, Mr. Warshawsky.

13 MR. WARSHAWSKY: Clarify it.

14 MR. GINGOLD: Mr. Warshawsky.

15 BY MR. GINGOLD:

16 Q Did you -- did you testify that Sabrina  
17 McCarthy assisted in the preparation of this  
18 memorandum?

19 A You asked how in the Solicitor's Office did  
20 I think would normally be a part of review of our  
21 documentation. Sabrina was assigned to us. So I said  
22 I had reason to believe that it possibly was Sabrina

1 McCarthy. She would be my first person to ask.

2 Q You believe that she or someone else who is  
3 not normally a person who works with you would have  
4 helped in the preparation of this memorandum. Is that  
5 a fair statement?

6 A I would think if outside help was involved  
7 in it that Sabrina would be the first person it would  
8 go to.

9 Q Now, is it your understanding that Sabrina  
10 has a professional background and experience in IT  
11 security?

12 A I don't know that she has a background in IT  
13 security, no.

14 Q Do you know what her background and  
15 experience is?

16 A She's an attorney.

17 Q Other than having a license to practice law,  
18 do you know what her substantive background and  
19 experience is?

20 A No.

21 Q And you're not sure about Ms. Lawrence  
22 either. Is that a fair statement?

1 A Not positive, no.

2 Q Nevertheless, you assume that the -- you  
3 assumed, based on your position, that the information  
4 provided you is accurate and complete. Fair?

5 A In this particular memorandum?

6 Q That's correct.

7 A Yes.

8 Q And with regard to the 20th quarterly report  
9 in the section that you certified to the best of your  
10 knowledge and belief, did you also assume that the  
11 information provided to you was accurate and complete?

12 A Yes.

13 Q And did you do any independent verification  
14 yourself of the information that was provided to you?

15 A A couple of sections I asked for a  
16 clarification of some of the points that were made.

17 Q But did you independently verify the  
18 information that was analyzed by those who made the  
19 representations to you to see if you agreed with it?

20 A As I said, on certain sections, not the  
21 entire --

22 Q Which sections? Do you recall?

1 A The architectural.

2 Q Okay. Other than the architectural?

3 A I may have verified the certification  
4 numbers.

5 Q What do you mean "the certification  
6 numbers"?

7 A We attested to some level of certification  
8 of our systems, and that's sort of a dynamic process,  
9 and I wanted to be sure that we had accurate numbers  
10 for that report.

11 Q And what information did you review to  
12 confirm that numbers were accurate?

13 A The records on that are kept within my  
14 security shop. That is the authoritative source.  
15 It's the status of the certifications.

16 Q So do you review --

17 A And I verified it.

18 Q So are you finished, Mr. Tipton?

19 A I verified it with my security officer and  
20 my C&A manager, as we call him.

21 Q So you reviewed the information that he  
22 reviewed to give you the representation, correct or

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1 not?

2 A I didn't go into the files to personally

3 look and do the counts and the balances and the

4 individual parts of these. I relied on his

5 information and the information of the manager.

6 Q Did he or the manager prepare a report that

7 summarized this information for you?

8 A I don't know that we have an independent

9 report. We have what we call a command center that

10 dynamically records any changes in the process status

11 of our certification.

12 Q So did you review that information?

13 A Yes.

14 Q And is it a computer generated report?

15 A It's a computer tabulated report. It's

16 dependent upon input that comes from people who do the

17 certifications in the field.

18 Q Okay. Such as the individual with whom you

19 talked to before you certified your section of the

20 report? Is that who you're talking about?

21 A I didn't go down to that individual level.

22 I talked with CIOs who are responsible for making sure

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1 the information is maintained. The information is

2 summarized by my C&A manager and then he works for my

3 Chief Information Security Officer.

4 Q So let me see if I understand it. You have

5 a hierarchy of individuals who work for you in these

6 areas or work with you in these areas. Is that a fair

7 statement?

8 A Yes.

9 Q At any point in time before you certified

10 your section of the quarterly report, did you talk to

11 the individuals who actually created the data upon

12 which the representations were made?

13 A I have talked to the individuals about their

14 data and about in some cases their individual systems,

15 but not necessarily in the compilation of the 20th

16 quarterly report.

17 Q And in the 20th quarterly report did you

18 review the data that they had that they relied on to

19 provide the representations?

20 A Not specifically for that purpose, but over

21 the course of meetings and reviews and just the

22 general work process moving towards certification of

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1 as many systems as we have, I have bits and pieces of

2 a comfort level that they information supplied was

3 accurate.

4 Q So you have the identifications of each

5 individual providing the information to you that you

6 would have relied on in the certification of the 20th

7 quarterly report, correct?

8 A Yes. Each system we have has a system

9 owner. It has a person that's responsible for

10 attesting to a content of the system, the risk that

11 they take within that system, and the certification

12 person and also the safety security officer that's

13 responsible for that system.

14 Q So what are you certifying when you certify

15 the 20th quarterly report section? Are you certifying

16 that the information is accurate or you're certifying

17 that the information was certified to you?

18 MR. WARSHAWSKY: Object. The document

19 speaks for itself. You may --

20 MR. GINGOLD: No, no, I'm asking --

21 MR. WARSHAWSKY: You may answer subject to

22 the objection.

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1 BY MR. GINGOLD:

2 Q What exactly are you certifying?

3 A I'm certifying as my signature states

4 subject to my best information and belief.

5 Q No, but what do you believe you're attesting

6 to or certifying to in that? Is there anything that

7 you are saying is true? Is there anything in there

8 that you are saying is true?

9 A I'm having trouble grasping the content of

10 this. I have to depend upon the credibility of the

11 people that work within the organization. When I have

12 reason to question what they provide, I do that, and

13 having said that, we summarize; we cross examine the

14 information; and then I attest to it.

15 Q You're not attesting to the accuracy of the

16 information. You're attesting to the fact that to

17 your knowledge it's true, correct?

18 A That's correct.

19 Q And therefore, you're assuming the

20 information is correct. Is that a fair statement

21 based on your belief in the credibility of the

22 individuals, among other things? Fair statement?

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1 A As you stated it, yes.  
2 Q Is that a fair statement? Okay.  
3 Did you inform the Justice Department that  
4 you had no direct personal knowledge of the  
5 information that you are certifying?  
6 MR. WARSHAWSKY: I'll object to the extent  
7 you're asking for an attorney-client communication.  
8 You don't have to answer that.  
9 BY MR. GINGOLD:  
10 Q Did you -- did you state to the government  
11 or to anybody at any time that the information you  
12 were certifying to the United States District Court is  
13 information that you don't know is true?  
14 MR. WARSHAWSKY: And I'll ask you to exclude  
15 conversations that you had with counsel in --  
16 BY MR. GINGOLD:  
17 Q How about anybody but counsel? Did you tell  
18 the Secretary though?  
19 A Restate your question.  
20 Q Okay. I will do it in the context in which  
21 we put the questions. Do you report of the Secretary  
22 of Interior with regard to these functions?

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1 A Yes.  
2 Q Is it your understanding that the quarterly  
3 reports to the court is the Secretary's report to the  
4 court?  
5 A It's the Secretary's report to the court.  
6 I'm responsible and attest to the best of my  
7 information the IT section.  
8 Q No. So the answer is, yes, it's the  
9 Secretary's report to the court, correct?  
10 A That's my understanding.  
11 Q That all I'm -- again, I'm not asking you  
12 for a legal opinion. Heaven forbid.  
13 A Yeah. Don't ask engineers for legal  
14 opinions.  
15 Q No, that's right. Not even Presidents  
16 sometimes.  
17 Did you inform the Secretary that the  
18 information you provide in your report is not  
19 information that you personally know to be true and  
20 correct?  
21 A I have informed people all up and down my  
22 supervisory chain and colleagues, for that matter,

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1 that the information we attest to is to the best of  
2 our knowledge and belief.  
3 Q But my question is different. You assume  
4 it's correct based on, among other things, the  
5 credibility of individuals who make the  
6 representations to you. Fair statement?  
7 A As we previously --  
8 Q That's right. I'm not trying to trick you.  
9 I'm just asking.  
10 A Well --  
11 Q Trust me in that. I'm not from the  
12 government.  
13 A I'm trusting you.  
14 Q I'm not from the government and I'm not here  
15 to help you.  
16 MR. WARSHAWSKY: He's telling the truth  
17 there.  
18 MR. GINGOLD: That's exactly right. I'm  
19 here for only one purpose. Your lawyers are here for  
20 helping you.  
21 MR. WARSHAWSKY: Your question? I'm sorry.  
22 MR. GINGOLD: You don't have to apologize,

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1 John.  
2 BY MR. GINGOLD:  
3 Q The fact of the matter is you're assuming  
4 information that you're attesting to is accurate based  
5 on how you've testified in today's proceedings,  
6 correct?  
7 A That's correct.  
8 Q Did you tell the Secretary that what you  
9 were certifying is an assumption of accuracy?  
10 A Not specifically in --  
11 Q Did she ever ask -- sorry -- did she ever  
12 ask you that question?  
13 A No.  
14 Q Did anybody ever ask you that question?  
15 A I don't know that it came as a question, but  
16 as I'm sure you're well aware, the nature of how we  
17 attest to things has been a point of debate. So there  
18 has been discussion on exactly what our declarations,  
19 what our attestations mean and our character.  
20 Q And as was pointed out in that debate, is it  
21 fair to say that you were attesting that you have no  
22 personal knowledge?

1 A I'm not sure I know what you --  
 2 Q You're assuming the information is correct.  
 3 So is it fair to say you don't have actual knowledge  
 4 yourself as to whether or not the information is  
 5 correct. You're assuming it's correct.  
 6 A That's correct.  
 7 Q What I'm saying is correct.  
 8 A You asked me to attest --  
 9 Q Yes, I'm asking whether you told -- before  
 10 the reports were filed that you certified to the  
 11 United States District Court judge as being true and  
 12 correct to the best of your knowledge, did you explain  
 13 to any non-lawyer or volunteer to anybody that the  
 14 information that you were providing you're assuming to  
 15 be correct?  
 16 A Did I -- did I -- you're asking did I  
 17 discuss that with non-lawyer personnel within  
 18 Interior?  
 19 Q Did you disclose to anybody?  
 20 A I disclosed the nature of what I was  
 21 attesting to, yes.  
 22 Q So you did disclose that the information was

1 not first-hand knowledge?  
 2 A I disclosed that the knowledge I was  
 3 swearing to was to the best of my knowledge and  
 4 belief.  
 5 Q And so you never said to anybody that what  
 6 you didn't know is true in fact, correct?  
 7 A I didn't use your words.  
 8 Q But they understood that. Is that your  
 9 understanding?  
 10 When you conveyed that information to the  
 11 Secretary of the Interior, she understood -- is it  
 12 fair to say that she understood that you did not have  
 13 first-hand knowledge of what you were attesting to?  
 14 MR. WARSHAWSKY: Obviously you're asking him  
 15 to speculate.  
 16 MR. GINGOLD: Yes, I am.  
 17 BY MR. GINGOLD:  
 18 Q You're telling me you communicated with her.  
 19 So I'm asking you to speculate.  
 20 A Anyone who has to sign and attest to these  
 21 operates under the same limitations of only be able to  
 22 have direct knowledge of a limited number of things.

1 You have to depend upon the people that you hire to do  
 2 these jobs. If you ask us for an out-and-out  
 3 attestation without those qualifications, we would be  
 4 not in a position to attest to very much at all.  
 5 Q Which would mean the people who have the  
 6 knowledge would have to attest to it, correct?  
 7 A It would mean hundreds of people that had  
 8 the knowledge.  
 9 Q Would have to attest to it, correct?  
 10 A And they could very well have the same  
 11 reservations.  
 12 Q Oh, so nobody knows what the facts are. Is  
 13 that your understanding?  
 14 MR. WARSHAWSKY: Objection. You're arguing.  
 15  
 16 You can answer subject.  
 17 BY MR. GINGOLD:  
 18 Q If they have the same problems that you  
 19 would have on assuming the facts are correct, does  
 20 that mean that anybody knows what the facts are?  
 21 A That's not what I meant, no.  
 22 Q Okay. Please explain it.

1 A Depending on how low you want to go down to  
 2 their thing, a particular fact on millions of facts  
 3 that we have to deal with, you would have to go very  
 4 low in an organization to have someone to be able to  
 5 swear without doubt, but I'm not saying it's  
 6 impossible.  
 7 Q Mr. Tipton, to my knowledge, the 20th  
 8 quarterly report section that you attested to doesn't  
 9 contain millions of bits of information, does it?  
 10 A When you want to verify the contents of  
 11 every C&A document that's reported out of the  
 12 Department of Interior, yeah, you get to millions of  
 13 bits of data.  
 14 Q And that's what you say is included in the  
 15 20th quarterly report? A result of an analysis of  
 16 millions of bits of information in the 20th quarterly  
 17 report?  
 18 A That's my approximation. I didn't count  
 19 them obviously.  
 20 Q So do you determine, let's say, what is more  
 21 material than other things before you attest to it  
 22 within the report?

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1 I mean, for example, there are irrelevant  
2 things or insignificant things that you wouldn't  
3 bother to report. Is that a fair statement?  
4 A There are irrelevant things that aren't  
5 reported in our quarterly reports.  
6 Q And there were millions of irrelevant  
7 things that are not reported, correct? Justifiably.  
8 Fair statement? That happen every day, that are  
9 insignificant or nonmaterial, correct?  
10 A There are lots of things.  
11 Q Do you believe material deficiencies in the  
12 RT systems are insignificant?  
13 A No, I think they are significant.  
14 Q Then why aren't they identified in your  
15 quarterly report section?  
16 A Because we corrected all of them.  
17 Q You correct -- you're testifying as a matter  
18 of fact right now that you corrected all of the  
19 material deficiencies in Interior's IT security for  
20 systems that house and access individual Indian Trust  
21 data? Is that your testimony under oath today?  
22 MR. WARSHAWSKY: Would you repeat that,

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1 please?  
2 MR. GINGOLD: Yeah.  
3 BY MR. GINGOLD:  
4 Q Did you testify, are you testifying under  
5 oath today that the Interior Department has corrected  
6 all of the material deficiencies in the IT systems  
7 that house and access individual Indian Trust data?  
8 Is that what you're testifying to?  
9 A I'm testifying that material weaknesses that  
10 were listed in last year's program and included in the  
11 Inspector General's report have been corrected, and we  
12 are left with only what the Inspector General reports  
13 as reportable additions, which is a lesser  
14 seriousness.  
15 Q But that wasn't my question, was it?  
16 A Yes, it was.  
17 Q My question was: did you correct all the  
18 material deficiencies that exist in the Interior  
19 Department's IT systems that house and access  
20 individual Indian Trust data?  
21 That's my question.  
22 A I will repeat. The independent evaluation

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1 of the status of the Interior program, including the  
2 systems that have housed ITD and Indian materials, was  
3 determined not to have significant deficiencies in the  
4 2004 report.  
5 Q So the answer to my question is, yes, you've  
6 corrected all of the material deficiencies. Is that  
7 fair?  
8 A To my knowledge, we've corrected all of  
9 these deficiencies that I'm aware of.  
10 Q But you just said you're not aware of  
11 anything, as a matter of fact. You weren't -- is that  
12 true?  
13 A Well, if you're discounting information I  
14 obtained from the Inspector General and have no faith  
15 in his report, then -- and I am not allowed to rely on  
16 that, I don't know how you expect me to attest to the  
17 sanctity of anything.  
18 Q No. I'm asking you to attest to what you  
19 know. That's what I'm asking you. That's all I'm  
20 asking you.  
21 A I know the Inspector General reported in the  
22 manner that I just repeated to you.

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1 Q So is it your understanding the Inspector  
2 General has concluded that there are no material  
3 deficiencies that exist in the Interior Department  
4 systems that house and access individual Indian Trust  
5 data? Is that your understanding today?  
6 A Yes.  
7 Q Could you tell me in which report that  
8 information is found?  
9 A It's in this year's FISMA report.  
10 Q And that's what it says, no material  
11 deficiencies?  
12 A It has -- the FISMA report lists one for the  
13 financial systems. That was premature and was  
14 corrected in the financial audit report that was  
15 issued in November. So it's your understanding that  
16 Solicitor -- sorry -- the Inspector General has  
17 determined there are no material deficiencies that  
18 exist in the IT security of IT systems of Interior  
19 that house or access individual Indian Trust data? Is  
20 that fair? That's your conclusion, right?  
21 MR. WARSHAWSKY: Objection. Asked and  
22 answered several times.

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1 BY MR. GINGOLD:  
2 Q Is that true to your knowledge?  
3 A It's true for all of the systems and not  
4 just those for ITD.  
5 Q Well, that's interesting. That includes the  
6 systems that access the trust data to, correct?  
7 A Yes.  
8 Q Let's talk about the contractor's systems.  
9 How many contractor's systems access Interior systems  
10 that house individual Indian Trust data? Do you have  
11 that inventory of that?  
12 A We have -- we have that information. I  
13 don't have it on me, from my recollection.  
14 Q Okay. Who is "we"? Who has it so we can  
15 request it?  
16 A It's in my security shop, and also in our  
17 architectural or property.  
18 Q And is identified as what document?  
19 A Well, that's where our system repository  
20 resides.  
21 Q And is there a particular -- sorry.  
22 A It's the authoritative database for systems

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1 in Interior.  
2 Q Is there a document that you can go to that  
3 identifies every contractor that the systems access  
4 Interior's RT systems that house individual Indian  
5 Trust data; is there any document that you can go to,  
6 the CIO can go to?  
7 A I'm not aware of a document that segments  
8 out and categories systems in that manner. I could  
9 produce such a document for myself if need arises.  
10 Q But it doesn't exist, does it, today?  
11 A I have no knowledge of a document with that  
12 specification.  
13 Q Do you have any idea how many thousands of  
14 contractor systems access it, access the RT systems in  
15 Interior that house individual Indian Trust data?  
16 A I don't know that it's thousands. I suspect  
17 it's much less than that.  
18 Q Well, why do you suspect that? Have you  
19 read something recently to tell you that?  
20 A Just my knowledge of the systems that are  
21 out there.  
22 Q Your direct knowledge or your inferential

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1 knowledge?  
2 A Both.  
3 Q All right. Let's talk about your knowledge.  
4 Let's talk about are you aware of the 100 compacting  
5 and contracting tribe systems that access individual  
6 Indian Trust data?  
7 A No.  
8 Q You're not? So how can you possibly -- do  
9 you know the tribal systems have individual Indian  
10 Trust data in them pursuant to contract or compact?  
11 Are you aware of that?  
12 A I am not intimately with the tribal systems.  
13 Q Are you aware of compacting and contracting  
14 cooperative agreements?  
15 A Yes, I know what those are.  
16 Q Tell me what you think they are.  
17 A They're agreements with the tribes to  
18 contract and to be compensated for work done for  
19 themselves and the government.  
20 Q To do what?  
21 A To do business in the interest of the  
22 tribes.

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1 Q What about to administer functions that  
2 relate to the management of the individual Indian  
3 trust? Are you aware of that?  
4 A I am not an expert in that area.  
5 Q Are you aware of that?  
6 A I'm generally aware of some of the things  
7 they do.  
8 Q Are you aware that there are more than 100  
9 tribes that do that?  
10 A I hadn't thought of it in those terms, but  
11 I would not be surprised at that number.  
12 Q What have you --  
13 A I do not, if I could finish --  
14 Q Go ahead.  
15 A -- I am not aware that they have access to  
16 any of our systems that house individual Indian Trust  
17 data.  
18 Q Then how in your opinion would they manage  
19 to administer functions of the individual Indian Trust  
20 if they didn't have access?  
21 MR. WARSHAWSKY: Objection. Calls for  
22 speculation.

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1 BY MR. GINGOLD:  
2 Q Do you know?  
3 MR. WARSHAWSKY: You can answer subject.  
4 BY MR. GINGOLD:  
5 Q Do you know?  
6 A I don't know with enough certainty to  
7 answer.  
8 Q How about the cooperative agreements? Are  
9 you aware of those?  
10 A Yes.  
11 Q Okay. Tell me about which cooperative  
12 agreements you're aware of. I am not aware, nor have  
13 I been advised by the CIO or from BIA that access to  
14 any of the Interior operating systems allow access to  
15 cooperative agreements or to tribes at this point.  
16 Q Did you ask?  
17 A Yes, I have asked.  
18 Q And the CIO told you, no, they do not?  
19 A That's my recollection, yes.  
20 Q And what about MMS? Did you ask that  
21 question?  
22 A As to?

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1 Q MMS, Minerals Management Service.  
2 A Yes, I know what that is, but what is the  
3 relevance of the question for the --  
4 Q The access. You said you asked the CIO of  
5 BRA. Did you ask the CIO of MMS if the tribes have  
6 access to MMS systems which house individual Indian  
7 Trust data?  
8 A I did not ask him directly. I feel fairly  
9 confident that they do not.  
10 Q You assume that, correct?  
11 A Yes.  
12 Q You are aware of STRAC sites?  
13 A I --  
14 Q Do you know what a STRAC site is?  
15 A I have heard the word. I can't say I know  
16 exactly what it is.  
17 Q What do you think it means?  
18 A I don't want to speculate.  
19 Q Are you aware that the STRAC sites that  
20 tribes, certain tribes, certain states with certain  
21 companies have direct access into MMS?  
22 A I'm not directly aware of that, but I am

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1 directly aware that MMS has partnership arrangements  
2 and appropriate connection approval agreements that  
3 allow external access to their networks. As to  
4 whether or not it allows access to systems of that  
5 individual Indian data I'm not certain. I had no  
6 knowledge of that.  
7 Q Is it your understanding that MMS has  
8 segregated individual Indian Trust data from all the  
9 other data in its systems?  
10 A It is my understand that MMS presumes Indian  
11 Trust data is everywhere and they treat it as such.  
12 Q So through the STRAC sites, how would these  
13 tribes, states, and companies not have access to trust  
14 data?  
15 MR. WARSHAWSKY: Objection. Calls for --  
16 BY MR. GINGOLD:  
17 Q Systems Indian Trust data; how is that  
18 possible?  
19 MR. WARSHAWSKY: Calls for speculation. You  
20 can answer subject.  
21 BY MR. GINGOLD:  
22 Q Are you aware of what's been submitted in

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1 this court with regard to that?  
2 A No.  
3 Q No one has ever told you?  
4 A Not that I recall.  
5 Q So you don't know, do you, whether or not  
6 contractors, compacting tribes, cooperative agreements  
7 with tribes through MMS or BLA are secure, do you?  
8 A You don't know whether their systems are  
9 secure, do you?  
10 A I know that they have certified them secure  
11 and we're back to where we were discussing moments  
12 before. We rely upon the people who had to put their  
13 name on the line as to how that system is protected  
14 and what risk they're taking when they're accredited.  
15 Q Oh, so are you aware that whoever  
16 administers the tribal systems as certified under  
17 penalty of perjury, that their systems are secure?  
18 Are you -- do you have those certifications as well?  
19 A People sign agreements under penalty of  
20 perjury?  
21 Q Well, that's what a certification is  
22 normally. It's not with regard to Interior, but are



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1 you aware of how a compact works, by the way?  
2 A I did, but it has been years since I worked  
3 with them directly.  
4 Q Okay. You said you were aware of  
5 cooperative agreements. Which cooperative agreements  
6 were you aware of?  
7 A I'm aware of a cooperative agreement. It may  
8 not be the right term, but I'm aware of contracting  
9 agreements by which IT equipment and services can be  
10 acquired, which is a fairly large contractor.  
11 Q Okay. I asked a different question.  
12 A Yeah.  
13 Q Have you been told there are three general  
14 types of agreements that have been entered into  
15 between Interior and tribes for the administration of  
16 trust assets including individual Indian Trust assets?  
17 Are you aware of that?  
18 A I'm generally aware of the three differing  
19 types of agreement. I am not aware or involved in the  
20 details of the specifics of what those agreements  
21 allowed.  
22 Q Okay. Are you aware that the Quinnault

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1 agreement is a cooperative agreement, not a compact or  
2 contract?  
3 A I am not familiar with that agreement.  
4 Q Are you aware as to whether or not in any of  
5 the orders entered by the judge in Cobell v. Norton  
6 that the third parties who access Interior systems and  
7 who administer trust assets also have to be certified  
8 as trustworthy?  
9 MR. WARSHAWSKY: Can you read that back,  
10 please?  
11 MR. GINGOLD: Let me ask you again.  
12 BY MR. GINGOLD:  
13 Q Are you aware that there is no limitation in  
14 any of the orders that have been entered that we are  
15 aware of that excludes parties that have contracted  
16 with Interior and access their systems vis-a-vis  
17 security and trustworthiness? Are you aware of that?  
18 MR. WARSHAWSKY: Okay. Objection to the --  
19 BY MR. GINGOLD:  
20 Q Do you understand that question?  
21 MR. WARSHAWSKY: Excuse me.  
22 MR. GINGOLD: Yes, he does.

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1 MR. WARSHAWSKY: No, Mr. Gingold. Objection  
2 to the extent you're asking him for a legal opinion.  
3 You can answer subject.  
4 MR. GINGOLD: I'm not asking for your legal  
5 opinion. If that's not clear, it's a little late.  
6 I'm asking for what you know. All right?  
7 BY MR. GINGOLD:  
8 Q Do you know whether or not the judge has  
9 asked that not just Interior systems that it directly  
10 controls, but those that have actual access, third  
11 party contractors including companies and tribes, that  
12 their systems also be secure? Are you aware of that?  
13 MR. WARSHAWSKY: Same objection. You can  
14 answer subject.  
15 BY MR. GINGOLD:  
16 Q Has anyone -- go ahead and answer that.  
17 I'll ask you some more questions in sequence.  
18 A Contractors running any type of systems for  
19 Interior, regardless of where they're located are  
20 subject to the same certification or accreditation  
21 process as Interior or any other government system is  
22 subject to. External parties, partners coming back

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1 into our network or systems are subject to connection  
2 approval agreements. CAPSAs we call them, and in  
3 there there are levels of certification that  
4 individuals have to attain and various commitments  
5 they have to make in order to become determined  
6 trustworthy.  
7 Q So you have seen the certifications from all  
8 of the contractors, including the tribes, correct?  
9 A I have not seen those particular contracts,  
10 no.  
11 Q Have you seen any report that states that  
12 those systems are secure and there are no material  
13 deficiencies?  
14 A I have seen the certifications from all the  
15 systems that attest that all of the rules have been  
16 followed.  
17 Q I'm not asking -- again, I'm not asking you  
18 whether the rules are being followed. I'm asking you  
19 whether the systems are secure. We're not going to go  
20 back through that again between what is done in  
21 practice and what is the statement. I'm asking you a  
22 different question. Do you know whether or not the

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1 systems are secure, contractor systems are secure?  
2 A I can only answer in the previous -- the  
3 previous mode that I gave you, and those are things --  
4 many connections come in and have to be evaluated and  
5 approved, and that's up to the CIO and it's up to the  
6 system owner to determine and to test, determine what  
7 risk it offers to the system and to either accept or  
8 reject it.  
9 Q Let's take a particular tribe, Quinnault  
10 cooperative agreement. Handles timber for the tribe  
11 and several or either other tribes on that  
12 reservation, as well as individual Indian Trust  
13 registries (phonetic) within that reservation. Have  
14 you seen a certification that the systems are secure?  
15 A I have -- I have no knowledge as to what  
16 systems you're alleging that particular cooperative  
17 agreement in that tribe have access to. So the answer  
18 is no.  
19 Q What about with regard to the trust data  
20 itself that is contained in their systems? Individual  
21 Indian Trust data, do you know whether or not that  
22 information is secure?

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1 A Are you asking me to attest to the security  
2 of data in tribal systems?  
3 A No, I'm asking you whether you know that  
4 data is secure in the tribes that are contracting to  
5 manage and administer individual Indian Trust data or  
6 compacting through cooperative agreements.  
7 MR. WARSHAWSKY: Objection. Asked and  
8 answered.  
9 BY MR. GINGOLD:  
10 Q Do you know? Do you know.  
11 A I cannot speak to the condition of tribes  
12 unless I know what system that they're connecting to  
13 or getting information about.  
14 Q Is there any reason that information isn't  
15 included in your quarterly reports to your knowledge?  
16 A I don't know why there would be reason to  
17 report that.  
18 Q What if court orders require that amount of  
19 information? Would you think that's a good reason?  
20 A If someone explained and showed that to me,  
21 that that was, indeed, then it would certainly be  
22 there.

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1 Q So as of right now, nobody has told you that  
2 it must be there. Is that a fair statement?  
3 A Not with that level of specificity.  
4 Q It was your understanding that it was only  
5 the systems that are under the control of Interior  
6 that are the subject to the various orders, including  
7 the quarterly report order which is December 21, 1999.  
8 Is that your understanding?  
9 A That's my understanding with the exception  
10 that we have to be responsible for contractors and  
11 external people coming into our systems under approved  
12 procedures.  
13 Q And so --  
14 A I'm sorry.  
15 Q I'm sorry. I thought you were finished.  
16 A I've lost my train of thought.  
17 Q Screening, screening.  
18 A Screening of people coming into our systems.  
19 Q That's right. That's the other part.  
20 Everyone is screened before they have access to the  
21 data, correct?  
22 A Screened? Yes, and approved to a written

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1 agreement.  
2 Q Okay. You're screened, correct?  
3 A I am screened?  
4 Q Are you screened?  
5 A Yes.  
6 Q Okay. When were you screened?  
7 A For what?  
8 Q There's a screening process for access to  
9 individual Indian Trust data. Were you aware of that?  
10 A Are you referring to clearance level, access  
11 and control allowances?  
12 Q That is part of it. Also the  
13 trustworthiness of the individual with regard to  
14 access to the actual data itself, concerns about  
15 misappropriation of data and funds and like that.  
16 There's actually a screening process before  
17 individuals are allowed to access the data. Are you  
18 aware of that process?  
19 A I'm aware of everything from background  
20 checks to top secret clearances and access to data on  
21 a need to know. I call that screening, role  
22 assignment. I'm not familiar with a process per se

1 that's called screening.

2 Q Were you ever screened before you accessed  
3 individual Indian Trust data, to your knowledge, for  
4 this particular process that I'm suggesting as is?

5 MR. WARSHAWSKY: Objection. Calls for  
6 speculation.

7 BY MR. GINGOLD:

8 Q Do you believe you were screened? Did you  
9 get an FBI report and things like that?

10 A I'm cleared at the highest level in  
11 government. So I don't know what else you --

12 Q When?

13 A -- are looking for.

14 Q When?

15 A I have been since I went into BLM  
16 management.

17 Q Okay. When was the last time you were  
18 screened?

19 A Last fall.

20 Q And what does that authorize you to do?

21 MR. WARSHAWSKY: Excuse me. Can we go off  
22 the record? I want to make sure --

1 THE WITNESS: I'm not sure I can answer  
2 that.

3 MR. WARSHAWSKY: Yeah, I want to make sure  
4 whether he's allowed to talk about this on the record.

5 MR. GINGOLD: This is -- could I tell you  
6 something? You're aware of the whole issue with  
7 regard to screening and your security people with  
8 regard to OIRM and everything else, including access  
9 to the data, aren't you?

10 MR. WARSHAWSKY: But I don't know if what  
11 you're asking him right now is relevant to what this  
12 litigation is about, and I need --

13 MR. GINGOLD: Do you want to take a minute?  
14 Do you want to take a minute?

15 MR. WARSHAWSKY: Yeah, I want to.

16 MR. GINGOLD: Go ahead. No, no. I'm  
17 serious. Why don't you go ahead and talk to him about  
18 it?

19 I'm not asking you about top secret. I'm  
20 asking you about a specific screening process before  
21 anyone in Interior and a contractor is allowed to  
22 access the data. That's all I'm -- including KPM

1 June --

2 MR. WARSHAWSKY: Maybe it would be helpful  
3 for you to clarify that, and we can step out if you  
4 want. He's expressed some confusion about what you're  
5 referring to, and I just want to be sure we'll talking  
6 about the same thing.

7 BY MR. GINGOLD:

8 Q All right. You have a process that has been  
9 represented to the court -- that's the Interior  
10 Department, not you personally -- that is supposed to  
11 identify whether or not individuals are, let's say,  
12 trustworthy; they don't have serious credit issues;  
13 they aren't involved in criminal activities before  
14 they're allowed to access the data.

15 MR. WARSHAWSKY: May I make a suggestion?

16 MR. GINGOLD: Sure.

17 MR. WARSHAWSKY: I mean, you and I -- and  
18 when I say "you and I," I'm referring to the  
19 Plaintiffs and the government -- often don't see eye  
20 to eye on what has been represented and what's  
21 required. If you're referring to some specific  
22 representation that's been made to the court in a

1 document, a pleading, for example, it might help Mr.  
2 Tipton to see what you're talking about because  
3 obviously the term "screening" is generic. It can  
4 mean a lot of things.

5 MR. GINGOLD: Well, listen. If you don't --  
6 let's go back on the record.

7 MR. WARSHAWSKY: I think we were on the  
8 record.

9 MR. GINGOLD: Hold on, hold on. No, I  
10 don't think we -- are we on the record?

11 THE REPORTER: Yes.

12 MR. GINGOLD: Oh, okay. We are on.

13 Okay. The important thing is this. The  
14 screening process has been discussed for years in this  
15 litigation. This is not a secret, and it was a  
16 subject of an investigation by the Special Master  
17 because of the problems with OIRM.

18 BY MR. GINGOLD:

19 Q Are you familiar with OIRM?

20 A Office of Information Resources Management?

21 Q Are you familiar with there is a bit of a  
22 brouhaha on the three locations from Albuquerque to

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1 Herndon and then to Reston again and issues regarding  
2 that? Are you familiar with that?  
3 A Not in a lot of detail.  
4 Q As part of that examination into the  
5 relocation and substantial issues raised, including  
6 through declarations by experts for the government, is  
7 the Marshall declaration. That was the subject of an  
8 April 4th, 2000 bench opinion from the court that  
9 identified the absence of any security in the Legacy  
10 systems at OIRM.  
11 The other issues were related to the  
12 screening of the individuals, contractors, and  
13 employees who had access to the data because of the  
14 concerns about the misappropriation of the data and  
15 things related to that. Are you familiar with that?  
16 A I'm familiar with where you're going with  
17 this in terms of having assurances that people who  
18 access the data have had their background checks, have  
19 had the right clearance levels, which has led to a  
20 very high classification and requirement on people  
21 working on much of anything in BIA. It's much higher  
22 than the rest of the part. I'm familiar with that

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1 type of detail.  
2 Q Okay. That's a screening process to  
3 determine, let's say, the credibility of the  
4 individuals on a general basis who have access to the  
5 data because of the sensitivity of the data. So  
6 you've generally heard about that, correct?  
7 A Yes.  
8 Q Now, you were screened for that purpose,  
9 correct?  
10 A Not for that purpose. I was screened for  
11 the purpose -- for that and for other purposes within  
12 my job.  
13 Q No, but that purpose specific --  
14 A I don't need --  
15 Q I'm sorry. Go ahead.  
16 A I don't need the level of clearance that I  
17 have for just this specific purpose. That's as much  
18 as I can say about it.  
19 Q Is this a reduced level?  
20 A No. It's a higher level.  
21 Q No, no, no, no, no. Is the level for access  
22 to trust data a reduced level from that you otherwise

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1 have? Do you have a -- what do you have, multiple top  
2 secret security clearance? Is that what it is?  
3 A I really can't tell you.  
4 Q Okay. But you were last screened for, among  
5 other things, the ability to access the trust data,  
6 well, within the last year, correct?  
7 A Let's say it like this. My security level  
8 is more than adequate to access trust data and  
9 individual Indian data.  
10 Q Okay. Is that satisfactory based on the  
11 operating procedures of Interior with regard to who  
12 has access to the trust data?  
13 A Even though one might have a very high  
14 clearance and they have no need to know for Indian  
15 data, then they still would not get into it.  
16 Q So then there are distinctions?  
17 A Yes.  
18 Q But you are cleared, correct?  
19 A Yes.  
20 Q All right. Are the contractors cleared  
21 whose systems access individual Indian Trust data?  
22 Are all of the employees of the contractors cleared?

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1 Do you know?  
2 A I can't attest that all are. I can attest  
3 that all are supposed to be. I can only attest for  
4 the system that I own.  
5 Q Is that the same for the tribes whose  
6 systems has or access individual Indian Trust data?  
7 A Again, I cannot speak to the condition or  
8 the certification level of the tribes because that's  
9 too broad.  
10 Q Who would know?  
11 A Who would know the certification status of  
12 those particular systems?  
13 Q Contractors and tribes.  
14 A It would be Brian Burns.  
15 Q What about for OTFM? Who would know?  
16 A I'm not sure.  
17 Q Would it be Doug Lawrence?  
18 A Who?  
19 Q Doug Lawrence.  
20 A Actually I don't know him.  
21 Q Okay. What about MMS?  
22 A MMS would be Robert Brown, CIO.

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1 Q Okay. So the CIOs would have this  
2 information. Fair?  
3 A Yes.  
4 Q An you believe they do have it, correct?  
5 A I think they would have it.  
6 Q And they would also have the certifications  
7 that attest to the security of the systems themselves,  
8 correct, the same CIOs?  
9 A If they are allowing those systems access to  
10 their networks and to their systems.  
11 Q What about if they allow them access to  
12 individual Indian Trust accounts? Would they still  
13 have that?  
14 A Depending upon where that individual Indian  
15 data is located and who's the custodian of it. If  
16 it's within the confines of Department of Interior,  
17 then the answer would be yes. If it's within the  
18 confines of a tribe, that's another issue.  
19 Q But that's not what the IG says about that  
20 issue, does he? Doesn't he say that it's not just the  
21 systems that are owned and controlled, but those who  
22 contract with or who have access to that same data?

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1 Isn't that also a requirement?  
2 We'll get into that later with the IG  
3 report, but doesn't an IG address that?  
4 A There is some language somewhere on some IG  
5 concerns on that. I'm not sure they've been fully  
6 resolved, but again, the key work here is "access."  
7 Q That's right. Access to the data, correct?  
8 A Correct.  
9 Q That's right, and at least as far as I  
10 understand your testimony, nobody has instructed you  
11 that that's the type of information that is also  
12 addressed by court orders or injunctions, correct?  
13 You're not aware of that. Is that fair?  
14 A (Pause.)  
15 MR. WARSHAWSKY: Can you say that again?  
16 MR. GINGOLD: Yeah.  
17 THE WITNESS: Please, if you will.  
18 BY MR. GINGOLD:  
19 Q You've only signed quarterly reports on IT  
20 dealing with the systems owned by Interior, correct?  
21 You haven't done it with regard to contractors,  
22 correct?

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1 A I haven't done it, done or signed anything  
2 with respect to independently maintained, contracted  
3 systems, with the exception that they have approval,  
4 Commission approval process within Interior systems.  
5 Q But could you identify which quarterly  
6 reports you've identified the satisfactory security of  
7 third party systems? Could you tell me which  
8 quarterly report you've addressed that in?  
9 A I don't know that we broke out and  
10 specifically acknowledged certifying third party  
11 contractors.  
12 Q No, not even your certification of the  
13 contractors, but your discussion of the security of  
14 the contractor systems, including the tribes. Could  
15 you identify which quarterly report that you've  
16 provided a certification to the court on that deals  
17 with that issue?  
18 A As I recall from our quarterly reports, we  
19 have simply reported numbers of systems certified and  
20 accredited, and as I testified earlier any system that  
21 has that certification is required, whether it be  
22 contracted, an out-source directly or whether it

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1 allows contractor connections, has to meet the  
2 appropriate approval processes.  
3 Q But, again, how many quarterly reports have  
4 you provided a certification for?  
5 A Personally, let's see. I believe it was the  
6 18th, 19th, and the 20th. I think I have signed  
7 three.  
8 Q In those three, is there any mention of  
9 third party systems in your section?  
10 A I can't specifically recall singling out  
11 third party systems.  
12 Q Can you recall having the discussion with  
13 the Secretary about third party systems?  
14 A No.  
15 Q Can you recall having any discussion with  
16 Mr. Cason about third party systems?  
17 A Only with respect to the conceptual  
18 configuration of how we have to take responsibility  
19 for third party systems if, indeed, they're considered  
20 to be under the control of DOI or if they're entering  
21 and obtaining data from an internal system. We have  
22 not discussed a specific system or a specific third

1 party. It has been -- it's making sure that we have  
2 covered so that our certifications are sound when we  
3 attest to the security of a particular system.

4 Q Are you then in the discussion you had with  
5 Mr. Cason -- did you talk about the need for those  
6 systems to be secure to insure the integrity of the  
7 individual Indian Trust data in those third party  
8 systems as well?

9 A Well, not only with Mr. Cason. It is made  
10 clear in the Inspector General's report that this is  
11 an obligation. If, indeed, we control those systems,  
12 if we have out-sourced them, then we're responsible  
13 for them.

14 Q And out-sourcing means what to you?

15 A That means actually contracting with a third  
16 party vendor to operate a system for us.

17 Q And that could include the tribes and  
18 companies, correct?

19 A It could.

20 Q And, again, do you know how many systems are  
21 in that category, fall within that category?

22 A That are operated by tribes?

1 Q Tribes and companies that house individual  
2 Indian Trust data.

3 A The TFAS system is the only one that comes  
4 to mind that I know is a pure out-sourced. At MMS a  
5 lot of their data is out-sourced.

6 Q Okay, and OTFM is out-sourced to SEI; isn't  
7 that correct?

8 A I'm not positive about that. That could  
9 well be.

10 Q So to your knowledge, there's only one  
11 system other than something with MMS, correct?

12 A I'm saying that's all I know about, yes.

13 Q That's what I'm saying. To your knowledge.  
14 I'm not asking you --

15 A I'm sure we have others out there. We  
16 contract -- we used to contract Web sites out, for  
17 example, to third parties, but since we have pulled  
18 those back into demilitarized zones just for the  
19 security aspect.

20 Q Again, I'm talking about individual Indian  
21 Trust and they're not Web sites. Okay? So we're  
22 talking about that and your three reports, 18, 19, and

1 20, your three certifications for the quarterly  
2 reports don't discuss third party contract and the  
3 tribal issue at all, do they?

4 A I don't recall.

5 Q Did anyone tell you not to worry about that  
6 issue?

7 A No.

8 Q Is there any reason -- if my assumption is  
9 correct, based on what has been represented to the  
10 court over several years in this litigation, that  
11 there are hundreds of such systems, is it a material  
12 weakness not to discuss that in your quarterly  
13 reports?

14 MR. WARSHAWSKY: Objection. It calls for  
15 speculation. You can answer subject.

16 BY MR. GINGOLD:

17 Q Why don't you discuss it?

18 A Because I have no knowledge that that is  
19 factual.

20 Q Have you read the record of these  
21 proceedings? They're your agency's representations to  
22 the court.

1 A Which proceedings are you referring to?

2 Q Well, we've been in litigation for almost  
3 nine years.

4 A That's a lot of proceedings.

5 Q There's a lot of information, and some of it  
6 relates to extra security, but with regard to this  
7 this year, which was raised for a period of years, and  
8 it was triggered by the OIRM issue, in particular, do  
9 you recall the issue of diminishment of trust  
10 responsibility and the authority of the Interior  
11 Department to compel the tribes to insure the security  
12 of the trust data in the contract and cooperative  
13 agreement systems? Are you aware of that issue at  
14 all?

15 A No.

16 Q So you can't even assume that that  
17 information if it's housed in any of the third party  
18 systems is secure, can you? You have no basis to do  
19 that at this time.

20 A I have a basis if any of those systems are  
21 coming in through systems that we have certified  
22 through the Office of Special Trust or BIA, OHA, or

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1 any of the other trust systems.

2 Q But you've never seen similar certification

3 in that regard, have you?

4 Have you seen any certifications with regard

5 to third party systems that have been filed in court?

6 Not one? Have you seen one?

7 A Those certifications would be referenced or

8 included within the documentation of the Interior

9 system being certified. We do not -- to my knowledge,

10 we do not require an independent third party to

11 provide us with a special certification just for

12 Interior. And some of our systems we have to test

13 their systems for vulnerabilities and risk, but

14 certification and accreditation, as an example, on

15 non-federal, non-public systems is just not a

16 requirement.

17 Q It is if it's in a court order, isn't it?

18 A Well, in a court order. In our case, we're

19 pushing companies that we do business with to move in

20 that direction and to provide us information that meet

21 our certification --

22 Q And again, I'm only -- sorry.

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1 A -- tests.

2 Q I'm only talking about individual Indian

3 Trust data, not the business that Interior is

4 otherwise engaged in. You understand that. That's

5 all we're talking about now, third party systems that

6 house individual Indian Trust data, not tribal trust

7 data, individual trust data. Do you understand that?

8 A I understand.

9 Q Let me read something to you.

10 MR. WARSHAWSKY: Do you have something to

11 show him?

12 MR. GINGOLD: No.

13 MR. WARSHAWSKY: Well --

14 MR. GINGOLD: This is FISMA. This is FISMA.

15

16 BY MR. GINGOLD:

17 Q You're familiar with FISMA.

18 A Yes.

19 Q Okay.

20 MR. WARSHAWSKY: But if you're going to read

21 from a document, it's not fair for the witness not to

22 --

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1 MR. GINGOLD: Well, he can say he doesn't

2 understand what I'm talking about and we'll move on.

3 Okay? Go ahead. It's fair.

4 MR. WARSHAWSKY: No.

5 MR. GINGOLD: You're not expected to know

6 everything. You're only the CIO. You're not the

7 Secretary.

8 MR. WARSHAWSKY: All right. Listen. It has

9 been an hour. Why don't we take a break?

10 MR. GINGOLD: Is it an hour?

11 MR. WARSHAWSKY: Over an hour. Let's take

12 a break.

13 MR. GINGOLD: Okay.

14 (Whereupon, the foregoing matter went off

15 the record at 2:54 p.m. and went back on

16 the record at 3:04 p.m.)

17 MR. GINGOLD: Okay, I'd like to have this

18 exhibit identified as Tipton Exhibit 3 and it's

19 entitled, "Information Security Agency's Need to

20 Implement Consistent Processes", et cetera. Here you

21 go.

22 (Tipton Exhibit No. 3 was marked for

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1 identification.)

2 (Witness proffered document.)

3 BY MR. GINGOLD:

4 Q Have you ever read this document before, Mr.

5 Tipton, and again this is entitled -- it's a June 2004

6 report, Report to Congressional Requesters by the

7 "GAO, Information security agencies need to implement

8 consistent processes in authorizing systems operation.

9 Have you ever seen this?

10 A Yes.

11 Q Have you read it?

12 A Yes.

13 Q I'd like to turn your attention to page 7 of

14 the report, the bottom paragraph. And I'd like to

15 read it to you in part, as a matter of fact, probably

16 in its entirety, it's not that long. It carries over

17 to page 8. "In addition to these information security

18 program requirements, FISNO also requires each agency

19 to develop, maintain and annually update an inventory

20 of major information systems including major national

21 security systems operated by the agency or that are

22 under its control. This inventory is to include an

1 identification of the interfaces between each system  
2 and all other systems or networks, including those not  
3 operated by or under the control of the agency".

4 Where is this inventory kept, Mr. Tipton?

5 A The inventory of our major systems is kept  
6 in two places. One is in the interior CIO's security  
7 office. Those systems are also included in the  
8 Departments architectural repository.

9 Q I would like to point out that major is only  
10 part of this. Major systems are in the first part of  
11 the paragraph. The second part of the paragraph  
12 continues, "This inventory is to include an  
13 identification of the interfaces between each system  
14 and all other systems or networks, including those not  
15 operated by or under the control of the agency".

16 Where are all -- where is the inventory of  
17 all the systems that are referenced in this paragraph  
18 contained to your knowledge?

19 A The inventory of systems not operated by  
20 Interior would have to be extracted from the  
21 certification documents of systems that we do operate.  
22 I'm not positive but I don't think we have those

1 listed in that type of detail in the architectural  
2 repository.

3 Q So is it fair to say they're not yet  
4 inventoried?

5 A No, it's not fair to say that.

6 Q Okay, where is the inventory at then? Where  
7 can it be obtained by Plaintiff?

8 A I don't know offhand that we have a report  
9 that summarizes those. We would have to extract that  
10 from the certification documents and construct such a  
11 list.

12 Q So you don't have an inventory, correct?

13 A Well, we have it but it's contained within  
14 other documents.

15 Q What is your understanding of what an  
16 inventory is?

17 A An inventory is having a listing of your  
18 systems and details on those systems. It doesn't  
19 necessarily mean that they all have to be in the same  
20 place.

21 Q So you could have them in the -- sorry, go  
22 ahead.

1 A It simply depends on how you construct your  
2 inventory or what state of involvement your inventory  
3 is.

4 Q So if it's in your data base -- if the  
5 system is identified in the data base, that satisfies  
6 your understanding of what an inventory is?

7 A To some extent, recognizing that there are  
8 other details within that inventory and information on  
9 the system.

10 Q Now, how do you verify whether the inventory  
11 is complete if it's scattered throughout your data  
12 base?

13 A Well, I'm testifying at this point that --  
14 as to my memory of what's in our system that I'm  
15 simply not sure that all of the externally operated  
16 systems are there yet. I could be wrong on that.

17 Q Again, help me with this and tell me where  
18 this language doesn't appear to mean what it says.  
19 "Each agency is to develop and maintain and annually  
20 update an inventory of major systems, including  
21 national security system, operated by the agency or  
22 that are under its control. This inventory is to

1 include an identification of the interfaces between  
2 each system and all other systems or network including  
3 those now operated or under the control of the  
4 agency". How do you -- how would you go about  
5 updating an inventory if it's just data scattered  
6 throughout your data base?

7 A Well, it would be updated through the  
8 monitoring of those systems that have those interfaces  
9 with the external site. I'm not saying that the ideal  
10 world might not have all of those broken out and  
11 parched in one master data base at some point and we  
12 may well be further along on that than I think. I'm  
13 just hesitant to attest to the exhaustiveness of those  
14 external systems. That was a weakness that we had in  
15 our FISMA report, not necessarily a weakness but it's  
16 an area we didn't score well on in terms of having a  
17 full grasp of all contracted systems.

18 Q But you corrected that based on your  
19 testimony, correct?

20 A We corrected part of it. Our FISMA report  
21 data cutoff was July 31st. We have added contract  
22 language to -- security language to the contract and



1 systems and are making continued improvements on the  
2 overall inventory. I have not testified that we have  
3 fixed everything that can possibly be fixed.

4 Q I thought you testified and correct me if  
5 I'm wrong here, but the reason you didn't identify  
6 material deficiencies in your section of the reports  
7 is that you corrected those material deficiencies.

8 A I further stated that the seriousness of our  
9 deficiencies had been downgraded to reportable  
10 conditions, which still means we have work to do.

11 Q So it's not a material deficiency in your  
12 opinion, not to have a complete inventory that is  
13 identified in this paragraph that we've been  
14 discussing. Fair?

15 A Not in my opinion nor was it in the opinion  
16 of the Inspector General.

17 Q Did you identify all the interfaces or is  
18 there an inventory of the interfaces even if there is  
19 no inventory of the systems themselves? Do you know?

20 A Again, those interfaces would be identified  
21 in the systems that we own or operate with  
22 certifications that they provided.

1 Q How can you possibly determine whether or  
2 not there's a material deficiency if you don't even  
3 know the identity of each system that's identified in  
4 this paragraph, its interfaces and what data is housed  
5 in those systems? How could you possibly make that  
6 judgment?

7 MR. WARSHAWSKY: Objection. It's  
8 argumentative. You can answer subject to --

9 BY MR. GINGOLD:

10 Q Can you make that judgment without that  
11 knowledge?

12 A I believe I can make that judgment. I'm not  
13 saying that I wouldn't like to have this data in more  
14 organized fashion or easier to access. That does not  
15 mean the data is not there and does mean if I were  
16 questioned on a particular system that I could go  
17 check and find what those interfaces were. It's up to  
18 the system owner and the system certifier to do  
19 monitoring of those systems and to maintain their  
20 accreditation that they keep up with any changes in  
21 interfaces, any major modifications to the systems.

22 Q But the fact of the matter is, you don't

1 know, do you? You don't know whether or not you have  
2 identified all the -- all the systems that must be  
3 identified in accordance with FISMA, do you?

4 A I know through the certifications of SAIOs  
5 and the accreditations of the system owners.

6 Q Oh, so you've read those certifications, so  
7 there -- each one of these CIOs has identified each  
8 system and each interface and reports to you that are  
9 covered by this paragraph?

10 A That's their job, yes.

11 Q No, they have -- I didn't ask you what their  
12 job is. They've done that for you, correct?

13 A They have signed, certified and put their  
14 name on the line.

15 Q Then they've identified each system,  
16 correct, sir?

17 MR. WARSHAWSKY: That wasn't from me.

18 MR. GINGOLD: You're only entitled to one  
19 light bulb?

20 MR. WARSHAWSKY: How many? For the record,  
21 Mr. Tipton's Blackberry went off. Clarify your  
22 question. You're asking specifically --

1 MR. GINGOLD: I'll ask the question, thank  
2 you.

3 BY MR. GINGOLD:

4 Q Has Brian Burns, for example, identified  
5 each system and each interface in a report to you  
6 that's covered by the paragraph that we've just been  
7 discussing?

8 A He's reported it to me through his  
9 individual certifications that this is so.

10 Q So he's identified each system by name.

11 A Yes.

12 Q How many systems are there, for example,  
13 that access -- that are involved in or covered by this  
14 that relate to BIA?

15 A You lost me. What are you referring to?

16 Q Now, you just testified, if my understanding  
17 is correct, that your CIOs have identified to you the  
18 -- each system and the interfaces and in fact, have  
19 certified that the systems are secure, correct?

20 A Secure at that station, yes.

21 Q No, but each one, that's what you just  
22 testified, correct?

1 A Each system, yes.  
 2 Q So my question to you is, for example, Brian  
 3 Burns, BIA, how many systems has he identified to you,  
 4 first of all?  
 5 A Testing my memory, I believe he has 24  
 6 systems that are listed as Trust.  
 7 Q Individual Indian Trusts?  
 8 A Trust systems. I don't know -- I don't know  
 9 the exact breakdown of how many of them are individual  
 10 Indian Trusts.  
 11 Q Okay, I'm only asking you about -- I don't  
 12 care about tribal trust issues. I just want you to  
 13 understand. We're focusing -- because this case  
 14 focuses solely on individual Indian Trusts. So I'm  
 15 asking you how many systems that are covered by this  
 16 paragraph house individual trust data or access  
 17 individual Indian Trust data, to your knowledge?  
 18 MR. WARSHAWSKY: In the Burns --  
 19 BY MR. GINGOLD:  
 20 Q First we'll start with Burns. How many has  
 21 Burns identified to you, any?  
 22 A There's some -- I don't have that number in

1 my immediate recollection.  
 2 Q Were they always secure?  
 3 A Well, they weren't always secure, no.  
 4 Q When -- okay, we're going to get into this  
 5 because you've also testified earlier today that your  
 6 security is enhanced over what it had been before.  
 7 It's not that you didn't have security before.  
 8 Correct?  
 9 A Yes.  
 10 Q Okay, and we're going to get into exactly  
 11 how you attest to them under oath. That's a different  
 12 issue but you're telling me now -- which systems were  
 13 insecure when you -- when the 18th quarterly report  
 14 was filed, for example, which of the systems covered  
 15 by this paragraph that we're discussing? Among the  
 16 systems reported to you by Brian Burns, which among  
 17 those systems was not secure in your 18th report  
 18 segment?  
 19 A I don't believe I testified that any of them  
 20 were insecure.  
 21 Q Would you testify that any of them were  
 22 secure?

1 A I testified that they were in some state of  
 2 security.  
 3 Q Isn't it material that if a system in  
 4 insecure that you disclose it?  
 5 A I just said, I didn't testify that any  
 6 systems were insecure.  
 7 Q So they were secured, is that true?  
 8 A They were secure but not secure to the  
 9 extent that we wanted them.  
 10 Q Did you explain that to the court? Did you  
 11 explain what was -- what was the security deficiencies  
 12 that existed among the systems that Mr. Burns reported  
 13 to you that you had before you when you certified your  
 14 18th quarterly report segment? Which ones did you  
 15 identify as being not secure enough and what were the  
 16 problems?  
 17 A We have many systems, including the  
 18 individual in the trust systems that are not secure  
 19 enough because they are legacy systems and are in need  
 20 of upgrading or in need of consolidation and they're  
 21 in need of correcting many of the things that the TAMS  
 22 tried to correct. So they're not secure enough to the

1 extent that security applications and tools cannot  
 2 even be applied to them at this point. So we have to  
 3 upgrade those systems.  
 4 Now, it does not mean that we have not taken  
 5 separate measures to provide added protection for  
 6 those systems until we can invest in upgrading. For  
 7 example, some of your -- our legacy systems cannot  
 8 take strong passwords, so in order to compensate for  
 9 that, you put compensating measures such as extra  
 10 firewall protection or technical controls. But most  
 11 of these systems are in need of upgrading.  
 12 Q Now, are these statements as of the 18th  
 13 quarterly report or as of today?  
 14 A I'm speaking as of today.  
 15 Q So it is fair to say that all the material  
 16 weaknesses have not been corrected in the systems that  
 17 promise trust data; is that fair?  
 18 A No, it's not fair.  
 19 Q They have been. You're going to stick to  
 20 that, okay.  
 21 MR. WARSHAWSKY: Excuse me, you're arguing  
 22 with Mr. Tipton.

1 MR. GINGOLD: I'm not arguing. It's an  
 2 editorial comment.  
 3 MR. WARSHAWSKY: Well, call it what you  
 4 want, you're here to ask questions not to  
 5 editorialize.  
 6 BY MR. GINGOLD:  
 7 Q You believe that the trust data is  
 8 sufficiently secured today in the entire trust  
 9 systems, correct?  
 10 A Say that again?  
 11 Q Yeah, you just testified that the trust  
 12 data, individual Indian trust data, not paper clips,  
 13 the individual Indian trust data is sufficiently  
 14 secure in the legacy systems that are still being used  
 15 today, correct?  
 16 A I'm saying it is adequately secured today.  
 17 Q And that means -- is it true that it means  
 18 that it cannot be deleted without an audit trail that  
 19 identifies every aspect of that deletion transaction,  
 20 correct?  
 21 A That's one of the things that has to be  
 22 measured individually on a system to system basis.

1 Q I'm asking you, today, IRMS, can you testify  
 2 today that the system, if there's a deletion of a  
 3 record or a file in the IRMS system, there's an audit  
 4 trail that will identify what happened to that record,  
 5 who did it, and what is the consequence of that  
 6 transaction?  
 7 MR. WARSHAWSKY: Excuse me, before we get  
 8 into that, I need to ask Mr. Tipton if we've gotten  
 9 into an area where we need to talk about a protective  
 10 order.  
 11 THE WITNESS: Not yet, not yet.  
 12 MR. WARSHAWSKY: Well, you let me know.  
 13 MR. GINGOLD: We're not talking about  
 14 technical configurations.  
 15 THE WITNESS: I'm not going to tell him how  
 16 we do it.  
 17 MR. GINGOLD: No, I'm not asking you how you  
 18 do it.  
 19 MR. WARSHAWSKY: But when we get to that  
 20 point, I want to make sure that he --  
 21 MR. GINGOLD: We're all sensitive to that  
 22 and it doesn't matter because we can deal with it with

1 the transcript. It may also be worth thinking about  
 2 just for your information, once you get this, when you  
 3 go through it again and read the transcript, if  
 4 there's something that concerns you, you ought to do  
 5 that, too. It's not necessarily fair to do that.  
 6 BY MR. GINGOLD:  
 7 Q Are individual Indian trust systems  
 8 including the legacy systems, high impact systems?  
 9 A Hung in what?  
 10 Q High impact, do you know what the term is?  
 11 High impact information systems. They are. What does  
 12 that mean to you?  
 13 A That means that at least one judgment on the  
 14 data in those systems has met the test of serious  
 15 impact to confidentiality, integrity or availability  
 16 of data when we do your sensitivity analysis on the  
 17 system.  
 18 Q Which means it's to insure the complete  
 19 integrity of the data, correct, with the high impact  
 20 system; is that correct?  
 21 A Well, it could be integrity, it could be  
 22 confidentiality, it could be availability. It could

1 be either one of those three.  
 2 Q Okay, now, let's talk about what I was going  
 3 to ask you before Mr. Warshawsky wanted to clarify  
 4 whether we were moving into an area that required a  
 5 protective order or seal, or seal, because we do have  
 6 protective orders and certain things could be under  
 7 seal where they're not in need of a protective order.  
 8 MR. WARSHAWSKY: Again, we won't have the  
 9 argument, but it also has to do with to whom -- who  
 10 has access to the information even if it's a sealed  
 11 transcript. So --  
 12 MR. GINGOLD: Well, we've been through that  
 13 one.  
 14 MR. WARSHAWSKY: Right.  
 15 MR. GINGOLD: That's a different issue.  
 16 BY MR. GINGOLD:  
 17 Q So the question, are you telling me that  
 18 IRMS today, the data in IRMS, trust data, individual  
 19 Indian trust data, cannot be deleted without a  
 20 complete and thorough record and documentation of what  
 21 was done, when it was done, who did it and that  
 22 information is preserved? Are you telling me that's

1 the case today?  
 2 A No, that's not what I'm telling you.  
 3 Q Okay, I'm asking, is -- when the regulations  
 4 and FISMA and the court talks about security of the  
 5 system, what do you believe -- why do you believe it's  
 6 important to secure a system?  
 7 A Can you say that again?  
 8 Q Why do you believe it's important to secure  
 9 a system? Do you understand that?  
 10 A Why do I believe it is a secure system?  
 11 Q Why do you believe it's important to secure  
 12 a system?  
 13 MR. WARSHAWSKY: Object to the vagueness of  
 14 the question.  
 15 MR. GINGOLD: Oh, you don't understand that.  
 16 Okay, I'm sorry.  
 17 BY MR. GINGOLD:  
 18 Q Security is an issue that is supposedly in  
 19 the framework of the CIO. Do you agree with that?  
 20 A Yes.  
 21 Q Okay. And security is -- at least based on  
 22 regulations, is designed to insure integrity of data.

1 Do you accept that?  
 2 A Yes.  
 3 Q Are you stating that today the integrity of  
 4 the data in the legacy systems is insured?  
 5 A I'm stating that the data in all of the  
 6 systems we've discussed has been evaluated as to the  
 7 impact, the sensitivity classification that goes onto  
 8 that system, the controls on those systems have been  
 9 tested, application of controls, to the extent that  
 10 they can be applied, has been evaluated, risk that  
 11 result from inability to put controls on those systems  
 12 have been transcribed to vulnerabilities. That  
 13 information and those risks have been listed in a  
 14 corrective action plan that we call our POAM, so we  
 15 have two types of risk. We have residual risk and  
 16 risk to be mitigated. On these older systems there  
 17 are more things in there that can't be mitigated that  
 18 result in risk and by the definition, anywhere you  
 19 want to look on IT security, simply requires that you  
 20 evaluate that risk. You do the testing on your  
 21 systems to confirm those risks and then you certify  
 22 around what controls you deem that are appropriate.

1 You discuss those with your system owner. The system  
 2 owner knows the risk by not having a control as you  
 3 just prescribed to that system, and it is up to them  
 4 to accept or to reject that risk.  
 5 If they reject that risk then they do not  
 6 operate the system. But it is a judgment based upon  
 7 as good as you can secure the system in the state that  
 8 it's in and knowing exactly what risks are out there.  
 9 Q But you understand what the integrity of the  
 10 data means, don't you?  
 11 A Yes.  
 12 Q And it is true that you're responsible for  
 13 insuring the integrity of the data, correct?  
 14 A That's correct.  
 15 Q And my question to you is, have you insured  
 16 the integrity of the data in the legacy systems?  
 17 A Well, you're talking insuring, there's  
 18 assuring and then there's guaranteeing and there's no  
 19 guarantee on security from any corner you want to look  
 20 at it.  
 21 Q Are you insuring its authenticity, today?  
 22 A I'm assuring, not insuring.

1 Q Okay, I'd like you to turn -- we'll go to  
 2 another exhibit. Let's see. This is Tipton Exhibit  
 3 4, I believe. Have you seen this?  
 4 (Tipton Exhibit No. 4 was marked for  
 5 identification.)  
 6 (Witness proffered document.)  
 7 MR. WARSHAWSKY: Can you state --  
 8 MR. GINGOLD: Okay, Tipton Exhibit 4 for the  
 9 record is the February 2005 Information Security  
 10 Document finalized by NIST, which is the National  
 11 Institute on Standards and Technology, entitled  
 12 "Recommended Security Controls in Federal Information  
 13 Systems". As you know, Mr. Tipton, this was in draft  
 14 form for some time. It's not finalized. Correct?  
 15 THE WITNESS: It is final now.  
 16 MR. WARSHAWSKY: For the record, Special Pub  
 17 800-423.  
 18 BY MR. GINGOLD:  
 19 Q So you've read this, haven't you, Mr.  
 20 Tipton?  
 21 A Yes.  
 22 Q I'd like you to turn to page 24. I'd like

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1 you to look at the definition of integrity. Do you  
2 see the definition? It's in the middle of the page 1,  
3 2, 3, 4, 5 items down? It's under also Bracket 44,  
4 USC Section 3542. Do you see that?  
5 A Yes.  
6 Q It states, quote, "Guarding against improper  
7 information, modification or destruction and includes  
8 insuring information, non-repudiation and  
9 authenticity". My question to you, based on the  
10 definition of integrity and the use of the term  
11 insured here, have you insured the authenticity of the  
12 individual Indian trust data today in the legacy  
13 system?  
14 A As I explained, the process for reaching the  
15 benchmark on ensuring with an e, the integrity,  
16 confidentiality and the availability of that data, in  
17 assessing the systems by which -- or the computers and  
18 the systems by which the system resides, we have made  
19 that judgment or I will say the crediting official,  
20 the system owner has made that judgment that they have  
21 done what they can to ensure that integrity and they  
22 have made reasonable acceptance of risk.

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1 Q Okay, that wasn't the question I've asked  
2 you. I've asked you whether or not you've insured the  
3 integrity of the data in the individual Indian trust  
4 systems.  
5 MR. WARSHAWSKY: And just to be clear, the  
6 definition that you're reading from for the Court  
7 Reporter's benefited ensuring is e-n-s-u-r-i-n-g. Are  
8 you talking about ensuring or insuring?  
9 MR. GINGOLD: I've been saying insuring.  
10 THE WITNESS: I misunderstood. I was  
11 reading that as a "I", which has a different meaning.  
12 BY MR. GINGOLD:  
13 Q Okay, are you saying that the information,  
14 the data, individual Indian trust data in the legacy  
15 systems today is authentic, you've ensured that's the  
16 case today?  
17 A Well, now --  
18 Q Ensured, ensured.  
19 A You asked that --  
20 Q I'm only using "e". Does that help? Have  
21 you ensured that, you?  
22 A That it's authentic?

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1 Q Yes. Do you know what that means?  
2 A Yes, I know what that means.  
3 Q Have you?  
4 A We have taken the steps as I outlined.  
5 Q I haven't asked you what steps you've taken.  
6  
7 A You're wanting a black and white answer to  
8 a question that doesn't lend itself to that.  
9 Q Oh, so you have not ensured that. Is the  
10 data -- is the -- can you attest under oath, as a  
11 matter of fact, that you've ensured the integrity of  
12 the data in the legacy systems today? Can you, yes or  
13 no? If you say, no, we'll move on.  
14 MR. WARSHAWSKY: Repeat the question in a  
15 nicer tone.  
16 MR. GINGOLD: I think you've been asked  
17 questions before in tones that aren't sweet tones.  
18 BY MR. GINGOLD:  
19 Q You're not offended, are you, Mr. Tipton?  
20 MR. WARSHAWSKY: In a deposition you can use  
21 --  
22 BY MR. GINGOLD:

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1 Q Mr. Tipton, are you offended. You're  
2 smiling. You're smiling, Mr. Tipton, aren't you? Mr.  
3 Tipton, let me ask you this one last time and we'll  
4 move on because you're not answering the question. I  
5 haven't asked what the process is you've undertaken.  
6 I haven't even asked you what practices you've engaged  
7 in, notwithstanding the processes you've undertaken.  
8 I've asked you whether you have ensured, e-n-s-u-r-e-  
9 d, the authenticity of the individual Indian trust  
10 data in the legacy systems as we speak today.  
11 A Give me that last half of that again.  
12 Q Today, as we speak today.  
13 A As I have testified?  
14 Q No, as we speak today. We are dealing with,  
15 what is today's date, the 25th of March? Is that  
16 right? March 25th, 2005, as of March 25, 2005, have  
17 you, as the CIO ensured the authenticity of the  
18 individual Indian trust data housed in the legacy  
19 systems?  
20 A And my answer is, yes, as explained in my  
21 previous testimony.  
22 Q Okay, so I'm going to -- as opposed to

1 allowing you to define it, I will define and ask you  
 2 if you'd done it. Are you sure that the data in the  
 3 legacy systems today is accurate and complete?  
 4 A Are you saying am I -- are you asking me if  
 5 I'm -- it's 100 percent?  
 6 Q I'm asking you if you've ensured, ensured,  
 7 e-n-s-u-r-e-d, that the individual Indian trust data  
 8 housed in interior systems and we're talking legacy,  
 9 right now, is accurate and complete? That's what I'm  
 10 asking.  
 11 MR. WARSHAWSKY: That's been asked and  
 12 answered.  
 13 BY MR. GINGOLD:  
 14 Q And the answer is no, that's correct. We're  
 15 not talking about a process. We're talking about the  
 16 actual quality of the data itself, do you understand  
 17 that?  
 18 MR. WARSHAWSKY: That wasn't his answer  
 19 before.  
 20 BY MR. GINGOLD:  
 21 Q Oh, so the answer is you have ensured that's  
 22 the case. You're testifying under oath that it is

1 accurate and complete, correct?  
 2 MR. WARSHAWSKY: Mr. Gingold, you've got a  
 3 transcript where you've asked that and he's answered  
 4 it.  
 5 BY MR. GINGOLD:  
 6 Q You do understand the question that I'm  
 7 asking, don't you, Mr. Tipton, without regard to the  
 8 interference by counsel?  
 9 A I understand what you're asking.  
 10 Q Okay.  
 11 A And I'm telling you that it's not subject to  
 12 a yes, no answer --  
 13 Q So you don't know.  
 14 A -- without context.  
 15 Q Do you know?  
 16 A I do know.  
 17 Q Okay, what do you know as a matter of fact?  
 18 A I know that that data has been reviewed, it  
 19 has been assessed and that it is not perfect but it is  
 20 suitable as determined by the system owner to conduct  
 21 business with.  
 22 Q Are you aware that the legacy systems have

1 no controls?  
 2 A At one time.  
 3 Q Are you aware that legacy systems were open  
 4 systems?  
 5 A That could have been before my time. I'm  
 6 not -- I'm not -- I don't have recollection of what  
 7 condition those systems were in before I --  
 8 Q Do you --  
 9 MR. WARSHAWSKY: Excuse me, let him answer  
 10 before you --  
 11 MR. GINGOLD: Do you mind, John, we're  
 12 talking.  
 13 BY MR. GINGOLD:  
 14 Q Are you aware that the systems have been  
 15 described by Interior's own experts as egregious  
 16 because of the absence of controls?  
 17 A I've heard words, historically about that.  
 18 Q For when, for whom, historically?  
 19 A Oh, five, six years ago.  
 20 Q How about December 17th, 2001?  
 21 A I don't remember anything specifically  
 22 around that date but --

1 Q How about June?  
 2 A -- I wasn't in charge then, so I don't know.  
 3 Q How about June 2001?  
 4 A Again, I wasn't in charge then.  
 5 Q No, but --  
 6 MR. WARSHAWSKY: Do you need to get that? It  
 7 may be important.  
 8 THE WITNESS: I turned mine off.  
 9 MR. GINGOLD: No, it's just --  
 10 MR. WARSHAWSKY: It might be important.  
 11 MR. GINGOLD: I know, I'll get back to that.  
 12 That will be the night shift.  
 13 BY MR. GINGOLD:  
 14 Q If, in fact, the system is an open system  
 15 and there's testimony to that, and the experts for  
 16 Interior have attested to that under oath as a matter  
 17 of fact, does that give you any concern about the  
 18 integrity of the data in the system?  
 19 A Historically, I'm not making any guarantees.  
 20 I'm strictly speaking on what's been attested to as of  
 21 the last six months.  
 22 Q So tell me what was done to clean up the

1 data that has historically been in the system that  
2 still resides in the system, to insure that it is  
3 accurate and complete to your knowledge, if you have  
4 any knowledge? What clean-up has been done to your  
5 knowledge?

6 A Im only aware of ongoing attempts to data  
7 quality, integrity checks, to clean up data in OSD and  
8 BI. I don't have specific details.

9 Q Are you aware that one of the government's  
10 experts testified in court under oath, that \$26  
11 million was spent attempting to clean up BIA data and  
12 not a single data point have been cleaned up? Are you  
13 aware of that?

14 A Not directly.

15 Q Does that concern you?

16 MR. WARSHAWSKY: You're asking for  
17 speculation.

18 BY MR. GINGOLD:

19 Q No, this is not speculation. You're a CIO  
20 in charge of maintaining the integrity of the data.  
21 Does that concern you as a CIO?

22 MR. WARSHAWSKY: Mr. Tipton said he wasn't

1 those discussions with each of the CIOs because trust  
2 data is housed in all of their systems? Is that a  
3 fair statement?

4 A Can you say that again, please?

5 Q Each of the CIOs, is that what you  
6 recommend, we have those discussions?

7 A You can have those discussions but some  
8 systems are newer than others. Some systems are more  
9 updated and in less need of immediate attention than  
10 the ones you bring up.

11 Q Is it your understanding that if you update  
12 a system that, ipso facto, corrects the data?

13 A If you do a data clean-up and data scrub  
14 along with it.

15 Q Okay. Could you tell me what data clean-up  
16 and data scrub has been conducted and completed at  
17 MMS?

18 A Im not aware of any need for data or any  
19 attempts to clean data at MMS.

20 Q Are you aware of the fraudulent audit  
21 reports at MMS that have been reported to the court?

22 A No.

1 aware of it, so how can he tell you whether it  
2 concerns him?

3 BY MR. GINGOLD:

4 Q The fact that your experts have testified  
5 under oath as a matter of fact without qualification  
6 to that doesn't concern you.

7 A One has to be concerned about those type of  
8 numbers, and I have also testified that those systems  
9 are in need of upgrade and it could include a  
10 continual improvement in that data that's in those  
11 systems. We're not testifying today that those  
12 systems are perfect, not by any means.

13 Q I didn't ask you that question. I'm asking  
14 you questions as to whether the systems are secure and  
15 whether the data has integrity and whether you've been  
16 able to document the integrity. Have you been able to  
17 document the integrity to the best of your knowledge?

18 A Not based on my knowledge.

19 Q Do you know who would know that?

20 A I would start with Brian Burns and perhaps  
21 Bob McKinna with OSD.

22 Q And is it also fair that we should have

1 Q Okay, tell me what data clean-up has been  
2 conducted and completed at the BIA with regard to  
3 individual Indian trust data, please.

4 MR. WARSHAWSKY: Objection. That's been  
5 asked and answered.

6 BY MR. GINGOLD:

7 Q No, you just said it's not the system itself  
8 that corrects the data; is that a fair statement?  
9 Whether or not you have a secure system today, if the  
10 data is bad in the system, the data is bad in the  
11 system. Is that fair?

12 A That's fair. On the other hand, as part of  
13 an accreditation of a system, you're looking forward  
14 more so than backwards to detect that data from that  
15 point forward.

16 Q All right, whether the data is good or bad,  
17 you're protecting whatever it is, correct?

18 A Yes.

19 Q That's the truth, isn't it? You're not  
20 saying the data is good. You're saying whatever is  
21 there today is secure and the integrity, to the extent  
22 it has any, is not going to change, correct?

1 A It won't improve without additional  
2 scrubbing, clean-up work.

3 Q Well, the data doesn't improve by putting a  
4 firewall in the system, does it?

5 A No.

6 Q The data doesn't improve by taking out the  
7 hard -- the encrypted passwords in the hard drive,  
8 does it?

9 A That has nothing to do with that.

10 Q That's right. It doesn't improve by  
11 reducing -- or it doesn't improve by reducing the  
12 privileges available to hundreds of people who can  
13 change the data, does it? It doesn't improve the data  
14 if you remove those privileges, does it?

15 A No, but on the other hand, it doesn't  
16 degrade it either.

17 Q It doesn't degrade further, correct?

18 A Correct.

19 Q That's what I'm saying. And this is what I  
20 thought I was clear about. To the extent the data has  
21 any integrity, it's not going to be effected once you  
22 secure the system from the problems that we're all

1 concerned about; is that a fair statement?

2 A Could you repeat that?

3 Q The correction of the problems, the material  
4 deficiencies in security, don't change the quality of  
5 the data, do they?

6 A Not without a data clean-up.

7 Q Again, but the security issue is not data  
8 clean-up. Are you considering them the same things?

9 A They're linked.

10 Q Okay.

11 A Security in and of itself does not clean up  
12 the data. Security is designed, first of all, around  
13 protecting the data in the form that you have it, to  
14 prevent alteration, to make sure that the proper  
15 people are authenticated that are getting to that  
16 data.

17 Q To insure an audit trail.

18 A Which is why -- audit trails and the  
19 mechanisms, which is why I'm having a difficult time  
20 answering the question in the form that you ask it  
21 with respect to ensure because you're implying that we  
22 have somehow or another just magically cleaned up and

1 have perfect data in the systems because we've  
2 certified them. That's not the case.

3 Q Mr. Tipton, I don't think even your counsel  
4 will conclude that I'm implying that you've cleaned up  
5 the data and there's integrity for doing the systems  
6 work. I will never say that. So if I've led you to  
7 believe that you have good data in your systems, I  
8 really apologize, because I didn't mean to leave you  
9 with that impression. But nevertheless, let me ask  
10 you this.

11 A Thank you.

12 Q What do you know has been done to make sure  
13 the data in the BIA systems today are accurate and  
14 complete, since it's part of the security improvement  
15 process?

16 A I'm only saying I'm aware of efforts on the  
17 parts of OSD and BIA to clean up data. I have no  
18 further specificity as to what their progress is or t  
19 what success levels they are.

20 Q But didn't you just say that the data clean-  
21 up is part of the security improvements that would be  
22 implemented and in effect in the systems? Isn't that

1 part of it?

2 A No, I said just the opposite.

3 Q Oh, it's not part of it. Okay. I'm sorry.  
4 So the two have nothing to do with each other,  
5 correct?

6 A Well, they're linked in that your security  
7 protects the data once it's implemented and your  
8 benchmarks and your standards are set but it doesn't  
9 go back in time and clean up the data for you. That's  
10 a separate initiative.

11 Q Okay, we're going to be going through at  
12 some length later the problems that existed under oath  
13 testimony without qualification, in the legacy  
14 systems. And the question I'm going to ask you then  
15 is to your knowledge at this point in time, there has  
16 been on data clean-up, correct, at BIA?

17 A There has been some. I'm just not  
18 quantifying because I don't know.

19 Q Okay, when, do you know?

20 A It's been ongoing since I came on the scene  
21 as CIO.

22 Q Did Brian Burns tell you that?



1 A No, this is from OSD.  
 2 Q Oh, did Donna Erwin tell you that?  
 3 A Bob McKenna.  
 4 Q Bob McKenna told you that they've cleaned up  
 5 the BIA data?  
 6 A He's told me he has a data quality  
 7 initiative underway and whose data they're cleaning is  
 8 not clear to me at this point. All I'm telling you is  
 9 there are attempts within BIA and OSD to clean up  
 10 data.  
 11 Q Are you aware that two former special  
 12 trustees, former principal deputy special trustee, the  
 13 current principal deputy trustee, Donna Erwin, have  
 14 all testified under oath that the data in OTFM cannot  
 15 be determined to be accurate and complete because it's  
 16 dependent on the accuracy of BIA which they have no  
 17 ability to verify? Would you know that?  
 18 A No.  
 19 Q Would that information be material to you?  
 20 A It's an interesting statement.  
 21 Q It's interesting. Do you know what GIGO is?  
 22 GIGO?

1 A Do I know what --  
 2 Q GIGO, do you know what that is?  
 3 A GIGO?  
 4 Q Garbage in, garbage out. Have you heard  
 5 that before?  
 6 A Yes.  
 7 Q Okay, have you heard that two former special  
 8 trustees, principal deputy special trustee and Donna  
 9 Erwin have all testified that's one of the problems  
 10 they're trying to deal with and they haven't? Have  
 11 you actually cleaned up the data now? Is that what  
 12 you're saying?  
 13 MR. WARSHAWSKY: Excuse me, there are two  
 14 questions there.  
 15 BY MR. GINGOLD:  
 16 Q Have you cleaned up the data? Has the data  
 17 been cleaned up in the systems?  
 18 A How many times do I have to tell you that  
 19 I'm not testifying that we cleaned up the data.  
 20 Q When are you going to?  
 21 A The efforts are underway. I do not have  
 22 their schedule.

1 Q Is there a schedule?  
 2 A Well, there's an initiative and a project.  
 3 A schedule normally goes with that. And I am not sure  
 4 which system that's actually related to or what data  
 5 it pertains to. I have not been that involved in that  
 6 project.  
 7 Q So you're not aware of any schedule,  
 8 correct?  
 9 A I can't give it to you today.  
 10 Q Okay, so let me see if I can understand. So  
 11 when you're describing that the data is -- that you  
 12 are ensuring the data integrity in a particular  
 13 system, you're saying that it is sufficiently secure  
 14 if the system owner concludes that not a study  
 15 identified -- the risks that are identified, the  
 16 benefits of continuing the operation of the system  
 17 outweigh the risks even if it is not fully secured; is  
 18 that fair? That is --  
 19 A I didn't say it wasn't.  
 20 Q Okay, adequate security. Okay, your  
 21 understanding of adequate security isn't that the  
 22 systems are perfectly secure, correct?

1 A No system is ever perfectly secure.  
 2 Q Again, I'm trying to get the extreme, but as  
 3 of right now, you're saying it's not perfectly  
 4 secured. It doesn't have to be. That's beyond that,  
 5 correct?  
 6 A Way beyond that, yes.  
 7 Q Okay. Now we'll go down to what adequate  
 8 is. Does adequate mean that systems can continue to  
 9 operate notwithstanding an understanding of a risk  
 10 that they have security deficiencies, including  
 11 material deficiencies if the system owner concludes  
 12 that the -- that the benefits of operating the system  
 13 outweigh the risks to the data? Is that adequate?  
 14 A Look at it another way. Any data you clean  
 15 up, the products of that have to go into a secure  
 16 system to insure that it stays clean.  
 17 Q But, correct, as of right now, you're not  
 18 aware that any data has been cleaned up, is that fair?  
 19 A No, but I know that any system upgrade,  
 20 combination of systems always involves verification of  
 21 the data and a certain amount of clean-up and  
 22 completion of the field.

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1 Q How much -- how much clean-up is done?  
2 MR. WARSHAWSKY: Objection. This has been  
3 asked and answered.  
4 BY MR. GINGOLD:  
5 Q You said a certain amount of clean-up.  
6 That's the first time you said a certain amount of  
7 clean-up. How much clean-up?  
8 A As much as you can afford, knowing you're  
9 never going to have perfect data.  
10 Q Is that the standard that you understand is  
11 the standard that applies to trust data, not perfect  
12 data? Is that fair? You don't have to have perfect  
13 trust data, correct?  
14 A It would be nice to have perfect data of any  
15 kind but you will never get that.  
16 Q Okay, so currently, you can continue to  
17 operate systems as you -- and they would be adequately  
18 secure, even if there are material deficiencies if the  
19 system owner believes it's important to continue to  
20 operate the system; is that fair?  
21 A Where is the material deficiency you keep  
22 throwing in?

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1 Q Well, it's any -- I'm saying even if there  
2 were material deficiencies -- are you suggesting there  
3 haven't been material deficiencies in these systems?  
4 A Historically, I acknowledge that there were  
5 material deficiencies in the systems.  
6 Q Okay, today, can you identify the Interior's  
7 systems where the benefits of continuing operation  
8 outweigh the risks? Can you identify those today?  
9 A It seems obvious to me, the systems that are  
10 certified, accredited and are operating are -- have  
11 our approval to operate.  
12 Q Well, weren't they continuing to operate and  
13 don't you work under interim approval, so those are  
14 not --  
15 A I'm sorry, what did you say?  
16 Q Interim -- you know the difference between  
17 interim --  
18 A No, I understood that.  
19 Q You understand the difference between  
20 interim approvals, don't you?  
21 A You trailed off at the end.  
22 Q You do understand the difference between

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1 interim approvals, don't you?  
2 A Yes.  
3 Q Okay, now you are continuing to operate  
4 systems that have had material risks, correct?  
5 A Historically.  
6 Q Well, so are you testifying that the legacy  
7 systems material risks have been eliminated today?  
8 A That's the conclusion of our Inspector  
9 General and it's the best advice that I have and that  
10 is confirmed by the certification of our systems.  
11 Q Okay, identify the systems where you know  
12 that substantial risks exist, that outweigh the  
13 benefits of discontinuing the system or where the  
14 benefits outweigh the risks and you continue. Which  
15 particular systems have significant risks today to  
16 your knowledge, that are continuing to operate?  
17 MR. WARSHAWSKY: Is this something that we  
18 need protected?  
19 THE WITNESS: It sounds like you're asking  
20 a conflicting question. We have systems that have  
21 some significant risk, these old legacy systems, that  
22 we had chosen to accept those risks, to go ahead and

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1 certify the systems and to operate.  
2 BY MR. GINGOLD:  
3 Q Okay, which ones, IRMS, for example?  
4 A I think IRMS probably falls in that  
5 category.  
6 Q LRIS, L-R-I-S?  
7 A Yes.  
8 Q What else?  
9 A GLADS probably, there are several old legacy  
10 systems now and we are doing what we can to get them  
11 modernized.  
12 Q And you know that there is. Have you  
13 disclosed that to the court, to your knowledge. To  
14 your knowledge have you disclosed them to the court?  
15 A I can't -- I have no knowledge. I don't  
16 disclose things to the court.  
17 Q Okay, have you recommended that the  
18 Secretary disclose them to the court in the quarterly  
19 reports?  
20 A Well, you're quoting former testimony. I  
21 don't think there's any debate that the systems we're  
22 discussing here need upgrades. I don't know whether

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1 it's been recommended to the court or not. I don't  
2 know.  
3 MR. WARSHAWSKY: Listen to his question.  
4 That's not what he asked you.  
5 MR. GINGOLD: Thank you, John.  
6 MR. WARSHAWSKY: I'm trying to cut this --  
7 MR. GINGOLD: I know, again, I was --  
8 BY MR. GINGOLD:  
9 Q Have you recommended disclosure of that --  
10 of the material deficiencies in the systems that  
11 you're still operating, disclosure of that to the  
12 court, to the Secretary, for her disclosure to the  
13 court in quarterly reports?  
14 A Have I recommended that?  
15 Q Yes.  
16 A No.  
17 Q Have you had any discussion with anybody  
18 about that?  
19 A About the deficiencies of the systems, the  
20 need for upgrading? I'm lost as to what you're asking  
21 me.  
22 MR. WARSHAWSKY: Why don't we take a break.

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1 MR. GINGOLD: Okay, okay.  
2 MR. WARSHAWSKY: No, no, I think it's been  
3 a long day for everyone.  
4 MR. GINGOLD: No, we've just begun, John.  
5 MR. WARSHAWSKY: Yeah, well --  
6 MR. GINGOLD: Couple more hours.  
7 MR. WARSHAWSKY: Your reporter needs to get  
8 out by quarter to 6:00 because you guys wanted the  
9 transcript by Monday?  
10 MR. GINGOLD: Do you have to get out by  
11 quarter to 6:00?  
12 (A brief recess was taken at 3:54 p.m.)  
13 (On the record at 4:05 p.m.)  
14 MR. GINGOLD: Mr. Tipton, what have you  
15 discussed with your counsel during the break?  
16 THE WITNESS: He told me to pay attention to  
17 the questions.  
18 MR. GINGOLD: Good advice, huh? Did he also  
19 tell you to answer the questions?  
20 MR. WARSHAWSKY: You don't have to --  
21 THE WITNESS: Well, by then they were all  
22 starting to sound alike and so he says, just take a

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1 little breath, go back and try again, so here we are.  
2 MR. GINGOLD: Okay, that's fair. They're  
3 going to continue to sound awfully similar, so I'll  
4 try and enunciate more clearly.  
5 BY MR. GINGOLD:  
6 Q Is it fair to say that it's -- what you've  
7 been testifying to means that system owner makes the  
8 decision to continue to operate a system even if there  
9 are risks that are identified to the data housed in  
10 the system? Is that true, not you but the system  
11 owner makes that decision.  
12 A That's true, but we do review their  
13 certifications and decisions to make sure that they at  
14 least meet the baseline criteria.  
15 Q Okay, for example MMS, MMS is on line today,  
16 correct, the entire MMS system; is that a fair  
17 statement?  
18 A Yes.  
19 Q What risks have been reported to you that  
20 exist in the MMS systems that could adversely effect  
21 the data housed in those systems?  
22 A None that I'm aware of.

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1 Q Are all risks reported to you?  
2 A All risks are reported to me through their  
3 copies of their certification and accreditation  
4 documents.  
5 Q So you review all the certification and  
6 accreditation documents of MMS, correct?  
7 A My people have and the third party  
8 contractor has.  
9 Q Okay, so is it your testimony that there are  
10 no risks that have been identified or no risks have  
11 been reported to you?  
12 A Well, that's not the same question you asked  
13 a moment ago.  
14 Q No, I --  
15 A I did not say that there were not risk in  
16 their system. I said, there were not risk that I was  
17 aware of that threatened the integrity of the data.  
18 Q Who is the third party contractor that did  
19 the assessment of MMS?  
20 A I'm not sure who did it actually for MMS  
21 prior to their first accreditation. I have an  
22 oversight process that looks at 100 percent of them

1 and that work was done by a company by the name of  
 2 DSD.  
 3 Q D -- the initials DSD?  
 4 A DSD, I don't know what that stands for.  
 5 Q Do you know where it is?  
 6 A No, I don't.  
 7 Q Do you know who selected them?  
 8 A They were selected off of a competitive  
 9 contract which I have.  
 10 Q And they did a complete risk assessment of  
 11 the MMS systems?  
 12 A No, they evaluated the materials provided in  
 13 the accreditation for thoroughness, completeness, any  
 14 missing parts, missing pieces.  
 15 Q When was that done?  
 16 A Over the last four to five months.  
 17 Q So it was last year?  
 18 A It could have been last year or in January.  
 19 Q Okay, so it's either close to the end of  
 20 2004, beginning of 2005; is that a fair statement?  
 21 A Their initial certification, accreditation  
 22 on all of their systems were submitted by the end of

1 September. Some were submitted before then and we had  
 2 started reviews, particularly in priority order on  
 3 those systems in order to have some basis for standing  
 4 behind the quality of the certifications themselves.  
 5 Q Do you -- and there is a complete report in  
 6 that regard, correct?  
 7 A Well, there is a report from my third party  
 8 contractor on the quality of the C&As, yes.  
 9 Q And to your knowledge, why wasn't that  
 10 attached to the quarterly report to support your  
 11 statements in the -- that you attested to in the  
 12 report, do you know?  
 13 A Why it wasn't attached?  
 14 Q Yeah.  
 15 A I don't know. We acknowledged that we had  
 16 the process ongoing and that we had found some issues  
 17 that needed to be addressed in the C&As. We thought  
 18 we were being forthright on it.  
 19 Q Are you aware that the court has requested  
 20 that the information to be provided to him is to be  
 21 sufficient so he can assess whether your conclusions  
 22 or findings are accurate? Are you aware of that?

1 A Restate, please.  
 2 Q Yes. Are you aware that the court has  
 3 stated that the purpose of the report, among other  
 4 things, is to provide the court with sufficient  
 5 information from which it can make a determination as  
 6 to whether or not the statements that are made in the  
 7 report are accurate? Are you aware of that?  
 8 A I am generally aware of that but I would add  
 9 that the information obtained in these reports is of  
 10 a sensitive nature and we would need to discuss that  
 11 particular item before I would use it as an attachment  
 12 to a report like that.  
 13 Q Are you aware that there are thousands of  
 14 pages of documents that have been submitted under seal  
 15 in a report that are of a sensitive nature including  
 16 specific details as to the configuration of MMS and  
 17 the off-shore and on-shore and STRAC and other  
 18 facilities and that the fact they're of sensitive  
 19 nature has no bearing on whether or not something  
 20 should be filed in the United States District Court?  
 21 Are you aware of that?  
 22 A I am aware that sensitive documents have

1 been filed under a number of terms you legal fellows  
 2 use, protective order, seal, and other methods. I'm  
 3 aware of that, yes.  
 4 Q So it's -- that's one of the reasons it  
 5 didn't -- you didn't think it should be attached to  
 6 that report, the quarterly report, correct, because of  
 7 its sensitivity?  
 8 A That's one of the reasons, yes.  
 9 Q Okay.  
 10 A I would have to have clarification on that  
 11 even today before even discussing what's in that  
 12 report.  
 13 Q I'm not asking you that. We're going to  
 14 request production before I do that. But what's the  
 15 name of that report?  
 16 A It's third party reviews of certifications  
 17 and accreditations.  
 18 Q Okay, what other material does the  
 19 Department of Interior rely on in order to make its --  
 20 other than the C&As to make its decision with regard  
 21 to continuing to operate systems that have  
 22 identifiable risks, the range of information that you

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1 and the colleagues of Interior review and rely on to  
2 make a decision to continue to operate a system,  
3 notwithstanding identifiable risks?  
4 A I'm having a difficult time hearing you.  
5 Q Okay. My understanding -- you know, are you  
6 okay, by the way?  
7 A I'm okay.  
8 Q Okay.  
9 MR. WARSHAWSKY: I never thought I'd say  
10 this, but you're too quiet Dennis.  
11 MR. GINGOLD: John, that's inconsistent with  
12 what you said earlier.  
13 MR. WARSHAWSKY: You must be fading. All  
14 right, let's move on, sorry. We need to get serious.  
15 MR. GINGOLD: This is a very serious  
16 business.  
17 BY MR. GINGOLD:  
18 Q What is the information that you rely on in  
19 addition to the C&As, to make a decision to continue  
20 to operate IT systems with known risks?  
21 A At this point in time, the C&A document is  
22 our benchmark. We believe the C&As are comprehensive

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1 enough, the certifications are adequate enough, and  
2 the analysis and the testing and the evaluation that  
3 comes from that, that it is a benchmark by which the  
4 system owner is capable of making a decision. We  
5 would have to have extraordinary information to the  
6 contrary or something that would contest the validity  
7 of that C&A before we would do otherwise.  
8 Q Does every C&A include a third party  
9 verification?  
10 A At this point, we've decided, since this is  
11 our first major movement into full C&As across  
12 Interior, that we're going to do 100 percent oversight  
13 of all of them.  
14 Q To date, has every C&A included a third  
15 party assessment?  
16 A No, it's not scheduled to complete the 100  
17 percent review until the end of April. As I stated  
18 earlier, we have prioritized to hit our -- what we  
19 consider our most important systems first and then the  
20 lesser, lower impact systems will be done later this  
21 month and next month.  
22 Q But for systems that you're operating on the

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1 Internet today, and through private networks, and  
2 systems where there is remote access, have those  
3 systems had third party assessments associated with  
4 the C&As while you were continuing to operate the  
5 systems?  
6 A I'm not sure I got all of your question but  
7 I will say our first priority of systems were the  
8 trust systems and those have been complete.  
9 Information has been supplied back to the system  
10 owners and the certifiers and corrective actions were  
11 needed and corrective actions were supplied and some  
12 of the systems were decertified because of not being  
13 able to locate particularly all the documents in my  
14 office. My office stands as the authoritative source  
15 repository for them. In many cases, most cases, it  
16 was a matter of the documents were not provided in the  
17 package that we'd asked them when they had to do a  
18 search to make sure we had those and therefore, they  
19 were not provided to DSD in the initial review.  
20 Q DSD did only one system, correct, or did  
21 they do all of them?  
22 A They did all of them.

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1 Q Oh, so they've done an assessment for all  
2 the systems that are operating today, all the trust  
3 systems?  
4 A Yes.  
5 Q And have they done the applications as well  
6 as the systems, an assessment of the applications?  
7 A Okay, can you distinguish your view of the  
8 difference between the system and the application?  
9 Q Sure. The -- there are, I think, 63 systems  
10 that have been identified or 62 or something like  
11 that, that house individual Indian trust data and  
12 Interior's data, something of that nature.  
13 A Sixty-two, 63, I know it's Indian trust.  
14 I'm not sure all of them are individual Indian trust.  
15 Q Do you know how many are?  
16 A No, as I said, before, I can't remember that  
17 particular number but those systems for purposes of  
18 certification and administration, are what we call  
19 enclaved in security terms and certified as inter-  
20 connected systems in some cases, so the number that we  
21 are currently working now, I think, is 33.  
22 Q Okay, for example --

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1 A But it does include the 60 -- it includes a  
2 mapping to the 62 systems.

3 Q Okay, in testimony that's been provided by  
4 Interior Department experts, it was identified that  
5 there were approximately 1500 applications in the  
6 legacy systems themselves. Are you aware of that?

7 A I'm not aware of that number. I am aware  
8 that when I became CIO there was over 600 systems  
9 listed. We did extensive work in eliminating some  
10 systems, upgrading systems and enclaving them and  
11 getting some of those systems that were spread out  
12 under common administrative controls to get our number  
13 down to now, which I believe is 100 -- I believe it's  
14 166.

15 Q Okay, but I'm talking about now -- I'll be  
16 more specific. I think the actual testimony was 1500  
17 applications in IRMS alone, okay? Have you heard that  
18 before?

19 A I haven't heard that specific number. I'm  
20 aware that we have had a number of applications spread  
21 out ranging anywhere from what people will call a  
22 system, it could be a spreadsheet, it could be a Word

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1 Perfect document in some cases, just anything people  
2 keep score on, they had a tendency to call it a  
3 system.

4 Q Again, but I'm actually saying applications  
5 within IRMS, 1500 --

6 A Oh, applications, okay.

7 Q Again, I'm trying to make sure -- and by the  
8 way, if you need a break, because this is -- you're  
9 having problems with focusing, just let me know, okay?  
10 Again, testimony -- the testimony and I believe it was  
11 June 10th, 2001, from Jeremy Katz, under oath, under  
12 oath, there was approximately 1500 applications within  
13 IRMS. Approximately 300 of them were not  
14 identifiable at all, some of which contained Trojan  
15 horses and provide access to the systems and  
16 applications even though the exterior of a system  
17 might otherwise be protected. In that case there were  
18 no firewalls or anything else. That's a different  
19 issue.

20 Are you aware of that and do the C&As cover  
21 the security issues in the applications that are  
22 within the systems?

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1 MR. WARSHAWSKY: Object to the form of the  
2 question. You can go ahead and answer.

3 BY MR. GINGOLD:

4 Q Do you understand what I'm asking you, Mr.  
5 Tipton?

6 A I think so.

7 Q Okay.

8 A To the extent a system presents itself as  
9 certified and accredited, consideration of all those  
10 applications that it services or is connected to or  
11 interfaces with, are supposed to be addressed and  
12 again, I have to depend upon the certification from  
13 people like Brian Burns and the Director of BIA, for  
14 the BIA systems as to how well they have done that.  
15 And that's about the extent of my knowledge on just  
16 how much of a clean-up effort they have done on the  
17 applications.

18 Q And again, I'm not talking about cleaning up  
19 the applications. I'm talking about the security with  
20 respect to the applications because I'm trying to keep  
21 clean-up on a different issue right now. Does the C&A  
22 process include the assessment of the security of each

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1 application within the system?

2 A It depends upon how the boundaries are  
3 defined.

4 Q The boundaries of what?

5 A The boundaries of the system and the  
6 applications right within that system.

7 Q Let's take IRMS. Has there been a C&A and  
8 IRMS?

9 A I believe so.

10 Q Okay, with regard to IRMS -- I'm sorry.

11 A I was going to simply speak with the ease of  
12 the conversation, at this point all of the systems in  
13 BIA have been accredited and certified.

14 Q But have the applications within IRMS been  
15 assessed with respect to the risk?

16 A Well, the definition of the certifications  
17 at this point are the -- are our major systems and to  
18 the extent that they have reached applications or  
19 would have addressed applications that are not within  
20 the scope or the boundaries of the system, that would  
21 have to be explained by Mr. Burns. I don't --

22 Q Okay, you're not sure at this point.

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1 A I don't have that information.  
2 Q Okay, but again, my understanding is DST did  
3 not perform a risk assessment, correct?  
4 A No, they reviewed information provided.  
5 Q Did they do their own due diligence to  
6 independently verify the information?  
7 A Not to my knowledge.  
8 Q So it's based exclusively on the information  
9 that was provided by let's say from BIA's point of  
10 view, Mr. Burns, correct?  
11 A Mr. Burns and I forget who the accreditor  
12 was, anyway whoever accredited the systems.  
13 Q And that's not a third party, is it?  
14 A Well, Mr. Burns and currently Mr. Regsdale's  
15 signatures are based upon third party evaluations at  
16 their level with respect to testing and risk  
17 assessments.  
18 Q Now, we're talking about third party, non-  
19 Department of Interior employees.  
20 A Yes.  
21 Q Okay, so a contractor was brought in to do  
22 risk assessments, correct?

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1 A Yes.  
2 Q Okay, but you said DST did not do a risk  
3 assessment, correct?  
4 A There's two. We have double C&A'd these in  
5 a manner of speaking. Before we even look at them at  
6 the departmental level, we have a directive that  
7 prescribes in detail the C&A process that bureaus are  
8 to take their systems through, and that requires a  
9 third party evaluation and testing before they meet  
10 the certification standards or before the accreditor  
11 signs them. So it already has a third party by the  
12 time it gets to us.  
13 We went the next step beyond that and got  
14 yet a different third party contractor to look at just  
15 the work that had been performed and to pass judgment  
16 on it.  
17 Q How many with -- in one instance for  
18 example, DST did an assessment of the information that  
19 was prepared by Interior officials, correct? It took  
20 the information that was provided to it -- DST did,  
21 assessed it in the C&A context without going  
22 independently and verifying whether that information

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1 was accurate; is that fair? They took it as it was  
2 written and from that alone, it made an assessment,  
3 not necessarily a risk assessment but an assessment,  
4 correct?  
5 A That's correct. They did not go out and do  
6 ST&Es on the systems as an example, but they did  
7 evaluate that ST&E documentation that the other --  
8 that the initial third party contractor provided and  
9 if there were things missing in there or it looked  
10 like it was inadequate or it looked like a contingency  
11 plan was not sufficient, not enough detail, then  
12 that's the type of information that they provided  
13 back.  
14 Q Now, what is the name of the contractor  
15 other than DST that you're referring to?  
16 A We have a list of 10 that bureaus are free  
17 to choose from.  
18 Q Okay, which ones did BIA -- which one did  
19 BIA in addition to DST?  
20 A BIA already had some contractors underway  
21 before we got the departmental contract in place so  
22 they have a variety of different contractors that did

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1 their ST&Es.  
2 Q Are you aware that the court had requested  
3 that contractors be brought in to do assessments that  
4 were not otherwise regularly engaged by Interior so  
5 there can be a fully independent assessment for the  
6 court? Are you aware if that was contained in one of  
7 the court's injunctions? Did anyone tell you that?  
8 A Restate, please.  
9 Q Yes. At the point in time the Special  
10 Master Alan Balaran departed -- or resigned from his  
11 position, there was a -- an element of a reporting  
12 process that was no longer in place. That element was  
13 the Special Master was supposed to independently  
14 verify information with his experts. In lieu of that,  
15 the court added a different requirement in an  
16 injunction that required a third party contractor to  
17 be able to do it that was generally not retained by  
18 Interior. Are you aware of that at all?  
19 MR. WARSHAWSKY: Let me just state -- before  
20 you answer that, I'll state an objection. You're  
21 obviously referring to an injunction that's since been  
22 vacated by the court of appeals and as to which you

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1 and I, again, the government and the plaintiffs have  
2 very different views as to what the court was allowed  
3 to do in terms of following up with reviews of  
4 Interior's systems. So you're asking him to provide  
5 legal opinions --  
6 MR. GINGOLD: No, no.  
7 MR. WARSHAWSKY: -- regarding a vacated  
8 injunction.  
9 MR. GINGOLD: No, no, I'm asking of he knew  
10 that was the case. I didn't ask --  
11 BY MR. GINGOLD:  
12 Q Did I ask you for your legal opinion? Do  
13 you recall that? I know your wife is a lawyer and so  
14 is your daughter, but did I ask you for your legal  
15 opinion? I asked you if you were aware of it.  
16 MR. WARSHAWSKY: Well, you understand the  
17 question.  
18 BY MR. GINGOLD:  
19 Q I asked you if you were aware of that,  
20 didn't I?  
21 MR. WARSHAWSKY: Mr. Tipton --  
22 BY MR. GINGOLD:

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1 Q Didn't I, Mr. Tipton, and you're smiling so  
2 you obviously --  
3 MR. WARSHAWSKY: Just so Mr. Tipton's aware,  
4 as you are Dennis, when we state objections for the  
5 record, it's not simply for the benefit of the  
6 witness, it's also for the benefit of the Judge in the  
7 event this transcript ever becomes the subject of  
8 possible admission into the record. So my stating an  
9 objection for the record is not simply for Mr.  
10 Tipton's benefit. It's also for the court's.  
11 BY MR. GINGOLD:  
12 Q Are you aware of the fact that I did not ask  
13 you for a legal opinion, I asked you if something  
14 existed or did not exist? Is that fair?  
15 A Yes.  
16 Q That's right, that's all I asked you. Are  
17 you aware of that? Do you understand what I asked?  
18 A Am I aware of the --  
19 Q The requirement that the court, at one time  
20 had?  
21 A At one time.  
22 Q That's right.

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1 A Yes, but I'm not sure I understand how that  
2 influences the assessments and the evaluations that we  
3 have done at this point.  
4 Q Well, are your -- the people -- the  
5 contractors who do the assessments engaged in  
6 contracts other than these particular assessments that  
7 we are identifying in the C&A process?  
8 A Engaged in --  
9 Q Other work, other work?  
10 A -- other work with Interior?  
11 Q With Interior, correct, anywhere in  
12 Interior?  
13 A I don't know.  
14 Q That was one of the points that had been  
15 made at one time by the court for an independent  
16 assessment as opposed to someone who was beholden to  
17 Interior. That was the point. So the question is, do  
18 you know if DST -- what is the name of that?  
19 A DST?  
20 Q DST, do you know if they have any other  
21 contracts with Interior beyond the one they did on the  
22 C&A?

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1 A They have none that I'm aware of.  
2 Q Would you know if they did?  
3 A I could find out.  
4 Q That would be terrific. Could you do that  
5 for us? Who would know?  
6 A Who would know without research?  
7 Q Or who would be -- would Mr. Burns know?  
8 A No.  
9 Q Okay, who would know?  
10 A Well, my security officer would know. My  
11 certification and accreditation managers would know.  
12 Q So that would be important information to  
13 have before the decision is made to retain them,  
14 correct? That's material information, isn't it?  
15 A I didn't realize that that was material  
16 information.  
17 Q Well, but what would they know? What would  
18 your security manager know?  
19 A They probably wouldn't know off the top of  
20 their head but they have the data in front of them and  
21 could quickly tell you.  
22 Q Okay.



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1 MR. WARSHAWSKY: I'm okay. I just want to  
2 make sure Mr. Tipton's okay.  
3 BY MR. GINGOLD:  
4 Q So that information would be in a document,  
5 in a particular kind of document?  
6 A No, it would be --  
7 Q It would be in a data base?  
8 A It would be in -- it would be in files on  
9 our ongoing contracts. We would have to extract it  
10 from ongoing work. We don't keep a running list like  
11 that other than we have 10 to insure free and open  
12 competition and we are careful not to have the same  
13 contractor go back in and review their own work, their  
14 own ST\$E work.  
15 Q Who is "we"?  
16 A "We" being the department and the bureaus.  
17 Q Okay, so you're not involved in that role?  
18 A Am I?  
19 Q Yeah, you, are you involved?  
20 A Well, I tell them what to do and what not to  
21 do.  
22 Q Oh, you tell who what to do and what not to

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1 do?  
2 A My security people.  
3 Q Okay, so you can tell them to approve --  
4 MR. WARSHAWSKY: You cut him off.  
5 MR. GINGOLD: Please, Mr. Warshawsky.  
6 MR. WARSHAWSKY: You're cutting off Mr.  
7 Tipton.  
8 BY MR. GINGOLD:  
9 Q Mr. Tipton, were you finished?  
10 A I give instructions to my security  
11 department and to the CIOs about the proper way to  
12 execute contracts, through written memorandum,  
13 meetings and other means of communication.  
14 Q And that includes the issues with regard to  
15 insuring the information about what other work the  
16 contractor should do when they're doing the C&A work;  
17 is that part of your memoranda in guidance?  
18 A I believe -- I believe it is.  
19 Q So who makes the decision, the ultimate  
20 decision, to operate the system or continue to operate  
21 a system? Who actually makes that decision from  
22 Interior?

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1 A The initial decision is made by the  
2 accrediting official after departmental review.  
3 Q Okay, the accrediting official would be the  
4 CIO, correct?  
5 A No.  
6 Q Okay, who is the accrediting official?  
7 A I have delegated that authority to assistant  
8 secretaries and they are allowed to delegate it one  
9 level below them and no further.  
10 Q Who does it for BIA?  
11 A Pat Regsdale at this point.  
12 Q Who did it three months ago?  
13 A I believe it was Dave Anderson.  
14 Q He actually was engaged in that function?  
15 A I believe that to be factual, yes.  
16 Q So he was involved in that aspect of the  
17 trust management; is that right?  
18 A I didn't understand.  
19 Q He was involved in that aspect of trust  
20 management, correct, Mr. Anderson?  
21 A Yes.  
22 Q Now, who is involved at the department

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1 review stage?  
2 A That's my security department and myself.  
3 Q And that's it?  
4 A Yes.  
5 Q Do you have a -- not Mr. Cason, not Mr.  
6 Haspel, not the Department of Justice?  
7 MR. WARSHAWSKY: I'm sorry, can you repeat  
8 that question?  
9 MR. GINGOLD: Do you understand my question?  
10 MR. WARSHAWSKY: Can you repeat it?  
11 MR. GINGOLD: Yes, I can but do you  
12 understand the question, Mr. Tipton?  
13 MR. WARSHAWSKY: I'd like you to repeat it  
14 because I didn't understand it.  
15 MR. GINGOLD: You're not under oath. Mr.  
16 Tipton --  
17 MR. WARSHAWSKY: Well, I'm entitled to know  
18 what the question is. I didn't understand it, please  
19 repeat it.  
20 THE WITNESS: Please repeat the question for  
21 us.  
22 MR. GINGOLD: To help your counsel, I'll do

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1 that. Thank you, Mr. Tipton. It's a nice smile.  
2 BY MR. GINGOLD:  
3 Q Who besides you was involved, besides -- who  
4 at the department level is involved in making the  
5 approval? Is Mr. Cason involved in the continue  
6 operator system?  
7 A I am the official delegated authority from  
8 the Secretary to determine whether or not any system  
9 in Interior meets the requirements. If a system does  
10 not meet the requirements I have serious consultation  
11 with the owner of that system and they either make  
12 immediate correction or they disconnect whether it be  
13 Mr. Cason or anyone in BIA.  
14 Q So is it fair to say you generally make the  
15 decision if there are no significant security  
16 deficiencies identified, correct?  
17 A I'm ultimately responsible.  
18 Q I'm asking you who actually makes the  
19 decision, in fact, makes the decision.  
20 A Well, the decision to operate on several of  
21 the C&As with trust designation on them were deemed to  
22 be in need of additional work. I issued letters to

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1 both BLM and to BIA to decertify. I kick back to the  
2 interim authority to operate status until those  
3 systems provided the needed information. So I made  
4 that decision. They acted upon that decision. They  
5 corrected the systems and resubmitted new paperwork  
6 and went through a new accreditation process.  
7 Q What were the dates of those letters?  
8 A I believe there were some time in January.  
9 Q This year?  
10 A I think that's correct.  
11 Q How many letters?  
12 A One letter to BIA and one letter to BLM.  
13 Q To Mr. Burns at BIA? Mr. Burns at BIA?  
14 A The letters went to the assistant  
15 secretaries.  
16 Q So that letter went to Mr. Anderson?  
17 A Yes.  
18 Q And the other letter went to whom?  
19 A Rebecca Watson.  
20 Q And it was early January of this year.  
21 A It was January. I'm not sure much beyond  
22 that.

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1 Q Is that information going to be included in  
2 the next -- the 21st quarterly report?  
3 A I believe we committed to provide follow-up  
4 information based upon statements that we made in the  
5 20th quarterly report as to the status of the problems  
6 that we found. So we would provide information.  
7 Q Did you specify the problems that you found  
8 in the 20th quarterly report?  
9 A Did we specify the problems in the letters  
10 to the assistant secretaries?  
11 Q No, did you specify the problems that you  
12 found in the 20th quarterly report?  
13 A No, we did not because we had not issued the  
14 letters. We had not made final determinations by the  
15 end of that quarter.  
16 Q But you knew there was a problem by that  
17 time, didn't you?  
18 A And we acknowledged that.  
19 Q And did you specify the nature and scope of  
20 the problem in the 20th quarterly report?  
21 MR. WARSHAWSKY: Objection. It's been asked  
22 and answered.

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1 BY MR. GINGOLD:  
2 Q No, I didn't ask you to specify the nature  
3 and scope. There's a difference, don't you think?  
4 A Do a degree we did.  
5 Q Okay. But not completely, did you? It  
6 wasn't a full candid discussion, was it?  
7 MR. WARSHAWSKY: Object to the form. You  
8 can answer.  
9 BY MR. GINGOLD:  
10 Q Was it a complete discussion of the -- of  
11 what you were concerned about that was the subject of  
12 the two letters that you've just testified to?  
13 A It was complete to the extent that we had  
14 verifiable information at that time. We stated that  
15 pieces were missing or documentation was incomplete.  
16 We didn't go beyond that.  
17 Q That's correct. Did you state what the  
18 consequences were?  
19 A The consequences were decertification of the  
20 systems.  
21 Q No, the consequences to the data.  
22 A To the data? I don't know that there were

1 any consequences to the data.  
 2 Q Did you assess that issue?  
 3 A No.  
 4 Q In each one of the situations that, where  
 5 deficiencies have been identified in systems that you  
 6 are operating or have operated, has the impact of  
 7 those deficiencies been assessed and where is that  
 8 assessment located?  
 9 MR. WARSHAWSKY: Objection to the form of  
 10 the question as compound. You can answer.  
 11 MR. GINGOLD: We can go slower if you'd  
 12 like.  
 13 MR. WARSHAWSKY: If you can answer --  
 14 BY MR. GINGOLD:  
 15 Q Go ahead, Mr. Tipton.  
 16 A The analysis of the remaining risk in those  
 17 systems which is known as residual risk, is identified  
 18 in the certification and accreditation documentation.  
 19 The items that were found and repaired, mitigated, are  
 20 also listed in those documents. And the items to be  
 21 mitigated with milestones and times and funding are  
 22 identified in the documents and also in what we call

1 the plan of operations and milestone document that we  
 2 submit to OMB.  
 3 Q Have they been submitted to the court to  
 4 your knowledge?  
 5 A The C&As have not been submitted to the  
 6 court to my knowledge.  
 7 Q Okay, now if I can ask the question that I  
 8 asked again, I'm not asking about any issue other than  
 9 the impact on the data that is housed in the system.  
 10 Has there been an assessment of the impact to the data  
 11 of the security deficiencies that have been identified  
 12 in the C&A process.  
 13 MR. WARSHAWSKY: Objection, asked and  
 14 answered.  
 15 BY MR. GINGOLD:  
 16 Q No, you didn't answer that question, did  
 17 you? You didn't answer the impact on the data, did  
 18 you?  
 19 A I will answer it now.  
 20 Q Thank you very much.  
 21 A There was no overt need to do any data  
 22 analysis on the review of the deficiencies that were

1 found. Nothing was found that indicated that flaws or  
 2 vulnerabilities weren't addressed. To my knowledge,  
 3 most everything we found was a matter of missing  
 4 documentation, the ST&E was not filed with my office,  
 5 therefore, it was not filed with the third party  
 6 contractor to we used but upon questioning and going  
 7 back to the accrediting bureaus, they located the  
 8 documents in some cases. In other cases, additional  
 9 documentation had to be furnished to defend the  
 10 positions they were taking.  
 11 Q Was there any assessment made concerning the  
 12 risk to the trust beneficiaries with regard to the  
 13 deficiencies that were identified whether or not they  
 14 had been corrected?  
 15 A There were no additional assessments made to  
 16 my knowledge as a result of the reviews, not from DST.  
 17 I can't testify as to what the bureaus did once we  
 18 provided them information back as to the deficiencies  
 19 in some of their documentation.  
 20 Q Do you know if the solicitor's office did  
 21 such an assessment?  
 22 A No, I do not.

1 Q Do you know if anyone recommended that that  
 2 be done in any meeting that you were in?  
 3 A I'm not aware of that.  
 4 Q Okay, and you did not make such a request;  
 5 is that a fair statement?  
 6 A I didn't see any need for that.  
 7 Q And this is with regard to the systems as of  
 8 what date?  
 9 A It was in regard to systems reviewed after  
 10 their certification on or about the end of September  
 11 the 30th. But --  
 12 Q 2004?  
 13 A -- but many of the trust systems were  
 14 certified before that date, so we had review of them  
 15 immediately upon detecting that they needed some  
 16 additional documentation and some pieces were missing.  
 17 Q So basically, it was during the calendar  
 18 year 2004, correct? Is that basically the period  
 19 you're identifying?  
 20 A Yes.  
 21 Q Okay, are you aware of the deficiencies that  
 22 the government admitted on December 17th, 2001, the

1 systems that has access --

2 A I am generally aware of deficiencies  
3 reported in those systems.

4 Q Okay, did you do an assessment or did anyone  
5 do an assessment of the risk to the trust  
6 beneficiaries as a result of the deficiencies that you  
7 were aware of?

8 A The assessments were made on the systems,  
9 per se. I cannot answer whether or not they were  
10 assessed for impact on any particular class of people.

11 Q Well, was there -- specifically then, you  
12 don't know if there was any assessment with respect to  
13 the impact of those deficiencies that the government  
14 admitted to on December 17th. These would be trust  
15 beneficiaries, correct? You don't know.

16 A I don't know that they were made for the  
17 specific purpose of assessing impact on trust  
18 beneficiaries.

19 Q Do you know the context of the admission  
20 made by the government that the systems had  
21 significant deficiencies on December 17th, 2001?

22 A No.

1 Q All right, let's assume, not assuming what  
2 Mr. Warshawsky liked to believe, that the government  
3 did admit to serious deficiencies in the security of  
4 the trust systems. Let's assume that and that its  
5 black letter in the consent order about the need to  
6 urgently correct this problem, all right? As a matter  
7 of fact, let me state it so Mr. Warshawsky is no  
8 longer confused --

9 MR. WARSHAWSKY: I don't think I was  
10 objecting --

11 BY MR. GINGOLD:

12 Q "Whereas defendants recognize significant  
13 deficiencies in the security of information technology  
14 systems protecting individual Indian trust data,  
15 correcting these deficiencies merits Interior  
16 defendants immediate attention".

17 Now, that's literally what the order says  
18 drafted by the government, okay? As a result many of  
19 the systems were disconnected from the Internet on  
20 that date. Are you --

21 MR. WARSHAWSKY: No, no, Mr. Gingold that's  
22 just -- consistently disconnected on December 4th --

1 Q That was an order that was entered by the  
2 court at the request of the government to explicitly  
3 authorize and consent to the disconnection of Interior  
4 systems from the Internet.

5 MR. WARSHAWSKY: Object, I think you're  
6 mischaracterizing the consent order.

7 BY MR. GINGOLD:

8 Q It was an order requested by the government.  
9 It was not an order requested by plaintiffs.

10 MR. WARSHAWSKY: I agree with that.

11 MR. GINGOLD: You don't agree with that?

12 MR. WARSHAWSKY: No, I agree with that.

13 MR. GINGOLD: Oh, it's called a consent

14 order. We opposed that. I don't want to get into  
15 that with you.

16 MR. WARSHAWSKY: Sorry, it's denominated a  
17 consent order but --

18 MR. GINGOLD: Not by us.

19 MR. WARSHAWSKY: That's the caption on the  
20 order, but my point was you're mischaracterizing the  
21 content of it. You can answer subject to --

22 BY MR. GINGOLD:

1 MR. GINGOLD: December 4th or December 5th.  
2 December 5th was an order that was modified on  
3 December 6th on a Saturday morning at the request to  
4 exclude Fish and Wildlife because of the concerns  
5 about the fish.

6 THE WITNESS: I thought it was USGS.

7 MR. GINGOLD: No, they were really worried  
8 about the fish.

9 MR. WARSHAWSKY: The disconnection wasn't  
10 the consent order. It was another order.

11 MR. GINGOLD: Trout fishing was bad that  
12 year.

13 BY MR. GINGOLD:

14 Q But in any event, are you aware of that  
15 specific -- has anyone ever told you about that  
16 before, read you that order before?

17 A It rings bells when I hear you read it but  
18 I haven't thought about it in years.

19 Q Has anyone told you that the government  
20 drafted that language?

21 A Not explicitly.

22 Q Okay. As a result of that admission, that

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1 was stated by the government, what assessments were  
2 done to evaluate the impact on the individual Indian  
3 trusts that were caused by the deficiencies? Do you  
4 know of that?  
5 MR. WARSHAWSKY: We're talking about data  
6 now as opposed to beneficiaries, right?  
7 MR. GINGOLD: I think I said data, didn't I?  
8 MR. WARSHAWSKY: Yeah, because you've been  
9 talking about deficiencies.  
10 MR. GINGOLD: Did I ask -- did you  
11 understand my question, Mr. Tipton?  
12 BY MR. GINGOLD:  
13 Q The data, correct?  
14 A Well, you said data that time, yes.  
15 Q Well, that's right, didn't I? That's a  
16 different question.  
17 MR. WARSHAWSKY: I just wanted to make sure  
18 you were on a different stream, that's all.  
19 MR. GINGOLD: We're back in --  
20 BY MR. GINGOLD:  
21 Q The data, was anything done to effect -- to  
22 assess the impact on the data as a result of the

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1 admitted deficiencies on December 17th, 2001?  
2 A Not making a direct connection to the  
3 separate data clean-up issues or certain integrity of  
4 that data as we mentioned before, the areas I'm most  
5 familiar with involve a correction and securing and  
6 hardening of the systems themselves. So I cannot  
7 speak to any particular assessment that was done on  
8 that data beyond what I've already testified.  
9 Q Okay, do you know whether anyone has  
10 assessed the nature and scope of the irreparable  
11 injury to plaintiffs and whether that was considered  
12 in the C&A process?  
13 A I don't know that that assessment is  
14 included in the C&A process.  
15 Q Are you aware that the Court of Appeals made  
16 a finding in that regard with regard to irreparable  
17 injury on December 3rd, 2004?  
18 MR. WARSHAWSKY: I'll object to your legal  
19 characterization.  
20 MR. GINGOLD: Well, he can read sometimes.  
21 I know Johnson, but we know you don't read -- go  
22 ahead, Mr. Tipton.

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1 THE WITNESS: Well, further explain what  
2 finding you're referencing.  
3 BY MR. GINGOLD:  
4 Q Irreparable injury, plaintiffs have suffered  
5 irreparable injury. It says, quote, on page 3 of the  
6 opinion, "As the District Court noted, 'Interior's  
7 present obligation to administer the trust presents  
8 sufficient grounds for findings that plaintiffs -- for  
9 finding that plaintiffs will be irreparably injured.'  
10 The Court of Appeals accepted that as a result of what  
11 was determined in Code 11". Irreparable injury has  
12 been stated several times. Are you aware that that  
13 was irreparable injury to plaintiffs as a result of  
14 this problem?  
15 MR. WARSHAWSKY: You're asking him to  
16 interpret the Court of Appeals --  
17 BY MR. GINGOLD:  
18 Q No, I'm asking if you're aware there was  
19 irreparable injury.  
20 A No.  
21 Q Oh, you're not aware of it? No one has ever  
22 told you -- is it fair to say that Mr. Warshawsky and

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1 Mr. Quinn and none of the solicitor's offices told you  
2 that plaintiffs had suffered irreparable injury as a  
3 result of the absence of secure systems?  
4 MR. WARSHAWSKY: Well, I'll object. You  
5 don't have to answer regarding communications you and  
6 I have had or Mr. Quinn and you have had about the  
7 case. You can talk about non-lawyers.  
8 BY MR. GINGOLD:  
9 Q With regard to the management of the trust,  
10 do you believe -- are you familiar with how a trust is  
11 managed, by the way?  
12 A Yes.  
13 Q Okay, are you aware that management and  
14 administration issues with regard to the trust are not  
15 privileged? Are you aware of that?  
16 A Are not privileged?  
17 Q Yeah.  
18 A I'm not an attorney. I'm --  
19 Q Okay, as a government lawyer -- have the  
20 government lawyers told you everything they're talking  
21 to you, including with regard to management of the  
22 trust, is privileged?

1 MR. WARSHAWSKY: Excuse me, again.  
2 Discussions that we've had with respect to the  
3 litigation is privileged and I'm not going to let him  
4 answer that.

5 MR. GINGOLD: I'm not asking that question.

6 BY MR. GINGOLD:

7 Q I'm asking, have you been told by Mr.  
8 Warshawsky that any discussion with regard to the  
9 management or administration of the trust is  
10 privileged?

11 MR. WARSHAWSKY: Excuse me, Mr. Gingold, any  
12 discussions I've had with Mr. Tipton have been in the  
13 context of this litigation and therefore, they are  
14 privileged, and I'm not going to let him answer that  
15 one.

16 MR. GINGOLD: So you're instructing him not  
17 to answer, notwithstanding the December 23rd, 2002  
18 opinion which exclusively repudiates that position,  
19 Mr. Warshawsky.

20 MR. WARSHAWSKY: Yes.

21 MR. GINGOLD: Okay, good, then we'll deal  
22 with that later.

1 BY MR. GINGOLD:

2 Q Has anyone ever told you that the plaintiffs  
3 are suffering irreparable harm as a result of the  
4 inadequate security of the systems that house their  
5 data? Has anyone ever mentioned that to you? The  
6 Secretary, for example, has she?

7 A No, but I have read about it plenty of times  
8 in the various motions that have been filed.

9 Q Okay, has Mr. Cason?

10 A Have they acknowledged irreparable --

11 Q Yeah, have they told you that's the problem  
12 here?

13 A Not explicitly in those terms.

14 Q How about generally, what have they said to  
15 you?

16 A They've generally acknowledged that the  
17 systems need to be improved. Controls need to be in  
18 place and the systems need to be hardened.

19 Q So you --

20 A I've not had discussions with the Secretary  
21 or anyone in the Indian trust world with the nature of  
22 the impact on the tribes. That, again, falls under a

1 different reporting area in the Secretary's office.

2 Q Excuse me, you said tribes? You didn't say  
3 tribes, did you?

4 A No, I didn't mean to.

5 Q Okay, does anyone -- have you ever been  
6 informed that in the C&A process you consider the  
7 irreparable harm that has already been done to the  
8 trust beneficiaries in making the decision to continue  
9 operating the system? Has anyone asked you to do  
10 that?

11 A No, not explicitly.

12 Q Okay, how about trust -- have you ever  
13 consulted with trust counsel? Do you know who trust  
14 counsel is? If you can give me the name of who trust  
15 counsel is, I'd like it for the record.

16 A I know several lawyers in Indian trust. I  
17 don't know which one wears the label of trust counsel.

18 Q So you don't know who trust counsel is then.

19 A I can't remember at this time.

20 Q So have you ever consulted with someone you  
21 believe is trust counsel?

22 A Not that I can remember.

1 Q Don't you need to consult with trust counsel  
2 in order to do your job as CIO specifically with  
3 respect to the protection of trust data housed in  
4 Interior systems? Don't you need to do that?

5 A I don't know that I personally have to do  
6 that. I don't know that individuals in BIA have not  
7 done that. I don't know that individuals in the  
8 Secretary's office who deal with the special side or  
9 trusts more straight up than I do have not done that.  
10 I'm confident that discussions have occurred. I am  
11 not saying that I have had.

12 Q Have you had meetings with Mr. Warshawsky  
13 before today?

14 A Yes.

15 Q Have you had meetings with Mr. Warshawsky  
16 and trust counsel on these?

17 A Again, I've said I can't recall at this  
18 time.

19 Q Are there trust counsel of Interior to the  
20 best of your knowledge? Is there anyone -- is the  
21 solicitor trust counsel, by the way, the solicitor him  
22 or herself, trust counsel based on your understanding?

1 A I don't know.  
2 Q Do you know whether or not trust counsel has  
3 ever attended a meeting that you have attended to  
4 discuss individual Indian trust issues?

5 A Without knowing who the trust counsel is,  
6 how can I answer that.

7 Q And you've been the acting CIO since June of  
8 2002, correct?

9 A Yes.

10 Q And you've been with the Department for 25  
11 years or so and you don't know who the trust counsel  
12 is.

13 A I can't remember at this moment.

14 Q A single person.

15 A I know several counsels who work on Indian  
16 trust matters. I sense you're looking for a name of  
17 a particular post within Interior.

18 Q No, I'm asking you this because as Mr.  
19 Warshawsky likes to point out, there are a number of  
20 issues which require legal opinions, aren't there,  
21 with regard to how you do your business, correct?

22 A Yes.

1 Q Are you aware that there is such a thing as  
2 an individual Indian trust?

3 A Yes.

4 Q And you, I think, testified that this -- and  
5 I think you testified that the Interior Secretary is  
6 a trustee delegate; is that correct, the fiduciary?

7 A She has testified that it is my belief that  
8 she has trust fiduciary responsibilities.

9 Q Okay, and I think you testified you do as  
10 well, correct?

11 A Yes.

12 Q So how -- what do you do in performing your  
13 job as CIO to insure that you're discharging your  
14 fiduciary duties to the trust beneficiaries,  
15 particularly with respect to the information that you  
16 are insuring? How do you make sure you're doing it  
17 properly?

18 MR. WARSHAWSKY: I'll object to the vague  
19 form of the question. You can answer it subject --

20 BY MR. GINGOLD:

21 Q How do you make sure you're following the  
22 law?

1 A I consult with the people in the information  
2 technology arena in BIA. I sit as a voting member on  
3 the trust executive steering committee which meets  
4 every Monday at 4:00 o'clock and I am privy to  
5 discussions to stay abreast of general issues.

6 Q All right, does IT --

7 MR. WARSHAWSKY: Excuse me, why don't we  
8 take a break right now.

9 MR. GINGOLD: Sure, it's all right, if you  
10 like we can come back on Monday.

11 MR. WARSHAWSKY: I'm sorry?

12 MR. GINGOLD: If you like, we can come back  
13 on Monday.

14 (A brief recess was taken at 4:59 p.m.)

15 (On the record at 5:09 p.m.)

16 MR. WARSHAWSKY: Okay, we understand that  
17 you're not going to get done in 45 minutes today, so  
18 we will be bring Mr. Tipton back for another 45  
19 minutes. My guess is, obviously, that you're going to  
20 want to talk with him for more than 45 minutes. Mike  
21 Quinn fortuitously is here and handling our deposition  
22 scheduling with Mr. Harper. I think to assess how

1 much longer you're going to need Mr. Tipton, can you  
2 provide us with a proffer as to what additional  
3 information you'll need, how long it's going to be,  
4 all that.

5 MR. GINGOLD: I'll give you an idea,  
6 although it's spilling the beans.

7 MR. WARSHAWSKY: You shouldn't be what,  
8 waiving your privilege?

9 MR. GINGOLD: Waiving the privilege, that's  
10 right. I want to talk about -- I wish I could read my  
11 handwriting. I want to talk about the trust executive  
12 steering committee. I want to talk about -- Mr.  
13 Tipton mentioned that he meets every morning with --  
14 every Monday morning with -- to talk about the issues  
15 they're raising, to talk about documents that have  
16 been generated and submitted to the committee. I want  
17 to talk about the nature and scope of the problems and  
18 deficiencies that existed in the systems prior to Mr.  
19 Tipton's arrival, so we could assess the nature and  
20 scope and adequacy of the C&A process.

21 I'd like to talk a bit about the NIST regs  
22 and some of the required actions to be taken in the

1 event of certain problems. And it's -- you know, part  
2 of it depends on what the answers are, as you know,  
3 John.

4 MR. WARSHAWSKY: But obviously, I assume you  
5 planned this deposition in advance and so you know  
6 what you want to cover so we can figure out --

7 MR. GINGOLD: Generally, this is -- again,  
8 I want to talk about what the problems are in the past  
9 and how they -- and how Mr. Tipton has insured that  
10 the problems have been corrected.

11 MR. WARSHAWSKY: And how long will it take  
12 you to finish this deposition?

13 MR. GINGOLD: It's -- it took a long time  
14 today. It's going to take a long time, John, I think.  
15 Part of it's going to depend on whether or not the --  
16 I'm asking clear enough questions and getting clear  
17 enough answers to the questions.

18 MR. WARSHAWSKY: Okay.

19 MR. GINGOLD: And I can't predict -- it's  
20 going to be at least a full day and maybe what we  
21 ought to do if you want to -- because we might as well  
22 resolve these issues, Mike, because we're going to

1 have these going forward in not only these depositions  
2 but many more depositions, especially related to the  
3 contempt and things like that. So we might as well  
4 get this issue of the one-day rule dealt with, with  
5 the court if you want to do it.

6 If your position is -- and again, I'm asking  
7 this in the context that we're entitled to one seven-  
8 hour day based on the September 2003 change in the  
9 local rules and we --

10 MR. QUINN: Based on the federal rule.

11 MR. GINGOLD: No, no, no, the federal rules  
12 was amended in 2000. The local rules were amended in  
13 September 2003. But between 2000 and 2003, there was  
14 a gap between the federal rules and the local rules  
15 and then they became -- they finally coincided, but my  
16 point is, we believe these issues with regard to RT  
17 security and related matters are broad issues that  
18 have gone over a long period of time and as you know,  
19 we weren't able to take discovery because the Special  
20 Master was doing whatever he was doing. So we have a  
21 lot of questions, including issues, to a certain  
22 extent, that the Special Master has gone over because

1 we feel it's important to have independent information  
2 from that so we don't run into problems with regard to  
3 an effort to disqualify the courts and remove matters  
4 that the court's not allowed.

5 I would say it's going to be at least --  
6 it's possible to do one full day, one more full day  
7 with Mr. Tipton. It's possible and it may be we've  
8 exhausted ourselves too much after that and we don't  
9 want to any more, but it's also possible to go to  
10 another day.

11 MR. WARSHAWSKY: Well, obviously, as much as  
12 people like Mr. Tipton would like to spend time  
13 discussing these issues with you, they have other  
14 responsibilities as well and we need to make sure that  
15 they're able to do their jobs and that everybody --

16 MR. GINGOLD: That's why I --

17 MR. WARSHAWSKY: So I need to make sure that  
18 --

19 MR. GINGOLD: No, we're trying to  
20 accommodate --

21 MR. WARSHAWSKY: Yeah, and to the extent  
22 that their time is spent in deposition here, it needs

1 to be spent constructively.

2 MR. GINGOLD: Well, we believe that -- even  
3 though you don't know who to trust, counsel, we  
4 believe we're concerned about what the trust issues  
5 are, and so we have to deal with those issues in this  
6 case and irreparable harm, and so that's what we're  
7 trying to do there. We're in a position and it's not  
8 because of you personally --

9 MR. WARSHAWSKY: But I've got three topics  
10 right now; trust executive steering committee,  
11 problems that existed before Mr. Tipton became the  
12 CIO, and missed regulations.

13 MR. GINGOLD: And the C&A process and the  
14 completeness of the process and --

15 MR. WARSHAWSKY: Okay, that's obviously,  
16 added.

17 MR. GINGOLD: And of course, we're going to  
18 finish up on the exam test for -- as you imagine. You  
19 recall that issue.

20 MR. QUINN: Well, I guess one question I  
21 have is --

22 MR. GINGOLD: This is not -- let me point



1 out, what we're talking about right now is not taking  
 2 out of the deposition time.  
 3 MR. WARSHAWSKY: No, no, of course not.  
 4 MR. QUINN: Yes.  
 5 MR. QUINN: This is our time. As you know  
 6 we have nine other or eight other witnesses so far  
 7 scheduled and your colleague, Mr. Harper has indicated  
 8 to me that at some point, we're going to get a request  
 9 for the other 10 to a dozen or so witnesses plaintiffs  
 10 have previously noticed for deposition earlier -- late  
 11 last year. If we're going to reschedule the  
 12 deposition, and I don't know, I haven't had a chance  
 13 to confer with the witness, or to look back at the  
 14 schedule, I can't make any warranties that we're going  
 15 to agree to bring the witness back another full day.  
 16 I can't say now what that date is and I don't know --  
 17 you have --  
 18 MR. GINGOLD: I'd like to do it Monday.  
 19 MR. WARSHAWSKY: Well, I know that I'm  
 20 unavailable Monday.  
 21 MR. GINGOLD: Well, let me say this, let's  
 22 talk reality here. In nine years of this litigation

1 we haven't agreed on anything even including the time  
 2 of day and the weather. The likelihood that --  
 3 MR. QUINN: We agreed on the first four days  
 4 of this schedule right off the bat.  
 5 MR. GINGOLD: No, but we haven't.  
 6 MR. QUINN: You mean, the single we?  
 7 MR. GINGOLD: Yes, as Mr. Tipton would refer  
 8 to it. Yes, the we haven't agreed, so if -- I mean,  
 9 I -- if you want to limit us to one day, that's fine  
 10 with me as long as it gets straightened out by the  
 11 court. We have no problem going in front of Judge  
 12 Lamberth and presenting these issues to make sure that  
 13 we can do this again.  
 14 I will also guarantee if Cason is not going  
 15 to be a day, all right. He will not be a single day.  
 16 He will be much longer than that. There are other  
 17 people who will be longer than that, too. So as long  
 18 as we're going to have this particular issue, maybe  
 19 we'd be better off just putting it in front of Judge  
 20 Lamberth.  
 21 You present your position that we have  
 22 limited discovery authority. You've made that

1 argument before. We'll present the position that we  
 2 need this discovery because of all the fraud that is  
 3 going on and we'll see what the judge decides.  
 4 MR. WARSHAWSKY: Now, here's the thing,  
 5 Dennis, you, I recognize have a few people to take  
 6 depositions and you're noticing up an awful lot of  
 7 people.  
 8 MR. GINGOLD: And more.  
 9 MR. WARSHAWSKY: And by necessity, you're  
 10 not able to prepare those depositions as tightly as if  
 11 you had a team of 20 lawyers, say, taking depositions.  
 12 MR. GINGOLD: Or 700.  
 13 MR. WARSHAWSKY: Or whatever, and so my goal  
 14 is to try to do it in an orderly fashion so we don't  
 15 take people like Hord Tipton away from his job longer  
 16 than it's necessary while meeting your legitimate  
 17 needs to take discovery. And because we can't sit  
 18 here for two and three days dealing with, you know,  
 19 the limitations.  
 20 MR. GINGOLD: We understand. We understand.  
 21 It's easy, you don't want us -- we want to be --  
 22 MR. WARSHAWSKY: We want it to be efficient.

1 MR. GINGOLD: Can I say something? If we  
 2 want to take Mr. Tipton's deposition and given the  
 3 information that he has that is relevant to these  
 4 proceedings and the court will allow us, I would like  
 5 to take him for five days or 10 days. As you recall,  
 6 Mike, you were involved in the last trial we had which  
 7 was 44 days long. There are times where we had  
 8 witnesses on for two working weeks. And a lot of --  
 9 MR. QUINN: Your witnesses.  
 10 MR. GINGOLD: You darn right. You can tell  
 11 the Judge that you think it's excessive and that we  
 12 are interfering with the ability of Interior to do its  
 13 job, if that's what you want to do. That's okay with  
 14 me.  
 15 MR. QUINN: I'm, at this point, at this  
 16 juncture, I'm willing to say we will voluntarily bring  
 17 back this witness for another full day based on the  
 18 areas you said you want to cover and I'm not going to  
 19 -- I'm not trying to limit you to those areas, but I'm  
 20 taking that as a good faith representation of the  
 21 proffer of what you intend to cover. And I can see  
 22 that these areas are complicated enough that they will

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1 warrant some time just getting through some of the  
2 language understood of both the questioner and the  
3 witness.  
4       So I'm willing to bring back this witness  
5 for another full day. I'm not willing to go on and  
6 say that we are going to bring him back a third day  
7 until I see the results of the second day of the  
8 deposition.  
9       MR. GINGOLD: That's fair, that's fair.  
10       MR. QUINN: And I'm not sitting here today  
11 saying that you're taking Tao Lee's (ph) deposition on  
12 Tuesday or any of the other witnesses that because  
13 we've agreed to bring this witness back for a second  
14 full day and realizing that you're entitled for 45  
15 minutes more with this witness.  
16       MR. GINGOLD: We need to confirm that by the  
17 way, if it's 45 or 48. We want every minute out of  
18 this one.  
19       MR. QUINN: Forty-two and a half.  
20       MR. GINGOLD: Damn right.  
21       MR. WARSHAWSKY: It's not going to be a  
22 concession that you're entitled to more than one day

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1 for any other witnesses.  
2       MR. QUINN: Yeah, I think the witness time  
3 rule imposes some discipline on the questioning  
4 attorney to conduct it an efficient way.  
5       MR. GINGOLD: Thank you, Professor Quinn.  
6       MR. QUINN: And I think that it does help  
7 the progress in these depositions. So I don't think  
8 it's -- and I don't see that there's a need for us to  
9 go to court unless there is an impasse in terms of the  
10 witnesses.  
11       MR. GINGOLD: I think there's need to -- we  
12 are -- this is the beginning of massive discovery. We  
13 are going to be noticing up witnesses with regard to  
14 contempt. We know you're going to be fighting those  
15 notices of depositions again as you have before and  
16 we've already had to meet and confer with regard to  
17 Carr. This could go beyond -- this is going to be  
18 intensive. This could be real discovery that you guys  
19 have not been subject to over the last couple of years  
20 because the court hasn't allowed us to do it.  
21       We're going to do it now and we're going to  
22 see if we can get everything that's out there that

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1 identifies information. Whatever is relevant,  
2 including by the way, document production requests  
3 where we can be filing motions to compel, as you know.  
4 You didn't do squat with regard to the last request.  
5 You didn't believe it's within the scope of this  
6 litigation. The court is going to hear about this  
7 stuff anyway. I don't have any problems standing in  
8 front of Judge Lamberth and I know you don't either.  
9 So we'll let him make those decisions.  
10       We're not going to agree on limits until we  
11 know where these are going. If, in fact, we get  
12 information from Mr. Tipton that is something we  
13 didn't know about --  
14       MR. QUINN: I didn't say that -- I didn't  
15 think that I was saying that we were asking for  
16 limits. I'm telling you what we're willing to do  
17 today by agreement and that's bring Mr. Tipton back  
18 for another full day.  
19       MR. GINGOLD: When, when?  
20       MR. QUINN: That I have to --  
21       MR. WARSHAWSKY: We need to check his  
22 schedule. We need to check my schedule.

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1       MR. GINGOLD: Mr. Tipton, are you in town  
2 next week?  
3       MR. WARSHAWSKY: Excuse me, you don't have  
4 to answer that.  
5       MR. GINGOLD: Are you in town next week, Mr.  
6 Tipton?  
7       MR. WARSHAWSKY: You don't have to answer  
8 that.  
9       MR. GINGOLD: Is he instructing you not to  
10 answer that question? By the way, you have to answer  
11 that question, I hate to say.  
12       MR. WARSHAWSKY: No, no.  
13       MR. GINGOLD: Are you in town next week?  
14       THE WITNESS: Are we on the record?  
15       MR. GINGOLD: Yes, we are.  
16       MR. WARSHAWSKY: No, you're not in the  
17 deposition.  
18       MR. GINGOLD: That's the first question I'm  
19 going to ask you next time. If we're being told  
20 you're not in town and you're in town, they've already  
21 had problems with Donna Irwin about that, so I'd love  
22 to hear that out.

1 MR. WARSHAWSKY: Okay, let's not go there.  
2 As you know, Dennis, you have a deposition scheduled  
3 Tuesday and I'm going to be defending that witness, so  
4 I'm not available to come in and defend Tipton's  
5 deposition on Monday anyway. I'm defending the  
6 deposition on Tuesday.

7 MR. GINGOLD: Wednesday?

8 MR. WARSHAWSKY: I can check my calendar  
9 when I get back.

10 MR. GINGOLD: Okay, how about Mr. Tipton,  
11 are you aware if you're available on Wednesday?

12 MR. WARSHAWSKY: He'll check his calendar as  
13 well. Okay?

14 THE WITNESS: Monday is not a good day,  
15 guys.

16 MR. GINGOLD: How about Sunday?

17 MR. WARSHAWSKY: Sunday works fine with me.

18 (Whereupon, at 5:22 p.m. the above entitled  
19 matter recessed sine die.)

20  
21  
22