

accurate data and a proper interface with the other trust management business and computer components.” *Id.* at 19.

“As impressive as Interior’s new computer systems appear to be, these computer systems still depend upon the labor and skill of Interior’s employees.” *Id.* at 45.

These statements and others by this Court regarding the TAAMS computer system under pilot testing in the Billings Area BIA office (*see generally Cobell* at 19-20), were made based on the Interior defendants’ presentation of testimony and evidence in a six week trial during June and July 1999.

The trial had been bifurcated into two phases known to the parties as Phase I - - “fixing the system”- - and Phase II - - the rendition of an “accounting” due the IIM account holders. The Court’s December 1999 decision addressed the Phase I trial findings based on the testimony and documentary evidence of the parties regarding “plaintiffs’ requests for prospective relief with regard to their rights arising from the IIM trust and related statutes.” *Id.* at 31.

Much of the trial addressed plaintiffs’ allegations that the Interior defendants had not complied with Congress’ mandates concerning the management of the IIM trust including their fiduciary obligation to provide plaintiffs with an account of the “daily and annual balance of all funds held in trust by the United States for the benefit of individual Indians.” *Id.* at 39.”

The Interior defendants’ testimony, in part, regarding their compliance with this mandate involved an extensive presentation about the new computer system under development and testing by the Bureau of Indian Affairs (BIA) known as the aforementioned “TAAMS.” As this court stated in reviewing what the Interior defendants testified TAAMS would do:

“TAAMS, when implemented, will allow BIA to administer trust assets, generate timely bills, identify delinquent payments, track income from trust assets, and distribute proceeds to the appropriate account holders....”

“The key features of TAAMS that will support these functions are a billing and accounts receivable subsystem and a collection subsystem. TAAMS also will have a major module for administering land title records, a sub-module for probate tracking, and a tickler system that will notify BIA employees of upcoming important events, such as when leases are about to expire, when it is time to advertise leases, and when collections are due. TAAMS will generate title status reports and modern title documents. Specifically, TAAMS will pull all tracts of land owned by a single individual nationwide. Conversely, the tract mechanism in TAAMS will provide information on who actually owns the land and the legal description of the tract. In addition, TAAMS will provide all documents associated with a tract of land or, conversely, will identify the land that a document covers.” *Id.* at 19, citations omitted.

Having considered the adequacy of this system, as testified to by the Interior defendants’ witnesses, and the other efforts of the Interior defendants to comply with their statutory and fiduciary duties, this Court concluded:

“(I)nterior has established numerous high-level plans and has acquired and begun to implement effective new accounting and asset management systems....” *Id.* at 48.

Addressing a remedy for the plaintiffs for the Interior defendants’ breaches of their fiduciary duties to plaintiffs the Court first noted that:

“Despite defendants’ history, the court has decided to give defendants one last opportunity to carry through on their promises. The HLIP (High Level Implementation Plan), defendants’ most comprehensive plan to eventually bring themselves into compliance with their duty to render an accurate accounting, is a substantial step in the right direction, as even plaintiffs admit. This time there is substance to support defendants’ promises. The court feels that it is its constitutional duty to allow defendants the opportunity to cure the breaches of trust declared in this Memorandum Opinion.... Should the court find in the future upon proper motion by plaintiffs that defendants have been less than truthful in their representations or that defendants’ adherence to prompt remedial action turns out to have been feigned, then the court may well decide to exercise its authority to ensure that its orders are carried out.” *Id.* at 54, citations omitted, emphasis added.

The HLIP the Interior defendants provided to the Court was their plan to discharge their trust duties. It consisted of twelve subprojects. One of these was TAAMS, “central to the Court’s purposes of determining the propriety of affording plaintiffs that prospective relief.” *Id.* at 14. Defendants described that computer system to this Court as previously quoted from the Court’s own recitation of the defendants’ testimony and exhibits.

B. The Nessi Memoranda

The Court Monitor was appointed with the consent of the parties as this Court’s response to the plaintiffs’ call for a renewed examination of DOI’s compliance with the Court’s December 1999 decision that was based on the Phase I trial. Not only did the plaintiffs seek a Show Cause hearing as to why Secretary of the Interior Gale Norton should not be sanctioned for the actions or inactions of the Interior Defendants in complying with this Court’s order, the Court was urged to reopen the Phase I trial in light of the alleged lack of progress and mismanagement associated with the implementation and deployment of the TAAMS computer system.

The major catalyst for plaintiffs’ requests were two memoranda written on February 23, 2001 by Dom Nessi, Chief Information Officer for the Bureau of Indian Affairs (BIA) and former TAAMS project manager. One, entitled “Trust Reform,” was provided the Special Trustee, Office of the Special Trustee (OST) (**Tab 1A**), and the other, entitled “BIA Data Cleanup,” was sent to the Deputy Commissioner - Bureau of Indian Affairs, Sharon Blackwell and to the Director, Office of Trust Responsibility, Terry Virden (**Tab 1B**).

In the Trust Reform memorandum, Nessi stated, in part,

“I believe that trust reform is slowly, but surely imploding at this point in time.”

Also:

“The relationship between BIA and OTFM (and some individuals in OST) has deteriorated beyond anything I have seen since my involvement in November 1998.... The trust level is non-existent. Whatever the cause of this conflict (historical, personalities, etc.), it is severely hurting trust reform and must come to end for there to be any success.” *Id.* at 1.

He continued with comments regarding the High Level Implementation Plan (HLIP) that had been made a part of the Interior defendants’ evidence at trial to show their progress on trust reform in general and the TAAMS project specifically. It had been rewritten in response to the Court’s direction in its opinion. He stated

“The HLIP itself was built on wishful thinking and rosy projections. No in-depth analysis was performed before the development of the HLIP. Instead, posturing for the Court and between DoI organizations seemed to be the primary influence on objectives and timelines. In short, the Plan was too ambitious given the challenges at hand and the resources available.” *Id.*

He followed this by stating:

“This HLIP constructed milestones based on no analysis and now we are trying to live with impossible expectations. Trust has been neglected for decades in DoI. It cannot be corrected in a couple of years.” Further, **“The HLIP’s subprojects are unclear and were developed in separate ‘stovepipe’ fashion when some are clearly cross-cutting objectives.... I have raised this concern numerous times to no avail. For example, the lack of clear policies and procedures within BIA and between BIA and OTFM continues to plague the TAAMS project.**

As far as objectives, the philosophy of TAAMS has changed at least three times and the definition of BIA data cleanup seems to be different to everyone. These guiding objectives were never clearly defined to begin with.” *Id.* at 1-2.

The final relevant passage to TAAMS was his statement that

“There is no over-all coordination and interaction between subprojects other than what people conduct on an informal basis.” *Id.*

In his memorandum to the Deputy Commissioner, Nessi stated:

“The purpose of this memorandum is to recommend that the BIA Data Cleanup subproject be managed independently from the TAAMS project. Originally, we strongly believed that the two projects should be managed together to ensure that data cleanup activities were closely coordinated according to the short timeframes required by the High Level Implementation Plan (HLIP). Obviously, if an office was ready to deploy, but the data cleanup process was on a different schedule, there would be problems. It was thought that TAAMS software and training would be the driving force on deployment.

The reality is that the data cleanup process is now driving the deployment schedule. Because the data cleanup task has proven to be a far greater challenge than anyone previously considered, it will elongate the TAAMS deployment schedule and must receive close and constant attention.” *Id.* at 1.

The Court Monitor’s initial review of the TAAMS project was to determine the status of the rollout of TAAMS. If the former TAAMS project manager, later BIA Chief Information Officer (CIO), and the primary defense witness on TAAMS’ capabilities and deployment was concerned enough about trust reform progress to write these memoranda to his superiors, what was the present status of TAAMS regarding its implementation and deployment?

Without the TAAMS computer system, the completion of all other HLIP subprojects cannot bring about trust reform. If there is no system on which to place the historical accounting data, or present or future data, and produce and distribute accurate account statements to IIM account holders and beneficiaries, there can be no compliance with this Court’s order to provide the statutory and fiduciary trust accounting owed to the IIM account holders.

The Court Monitor’s first task upon turning to review of the TAAMS project was to attempt to determine the status of the rollout, or deployment, of TAAMS as of June 2001.

C. Summary Description of TAAMS

A general understanding of the functions and terminology associated with TAAMS will enable the reader to better follow this Report’s review of the TAAMS testing, trial testimony, interviews, and document reviews. Based on interviews and document review, the following summary is provided to facilitate that understanding.

TAAMS is to be designed to perform a number of functions for BIA. They fall into three major categories.

- Land Title and Beneficial Ownership Determinations – the system must be able to record title documents and allow the user to determine and certify title documents to include both ownership and encumbrances. This is referred to as the **Title module** or function of TAAMS.
- Natural Resources Asset Management – the system must also be capable of supporting the BIA users responsible for the day-to-day management of all Indian lands, including surface, sub-surface, easement and right-of-way approvals, and projects associated with the lands. This is referred to as the **Realty module** of TAAMS. It is sometimes referred to as the **Leasing module** or project.
- Accounting, Disbursing, and Reporting – the system must be able to interface with several other computer systems known as TFAS (Trust Fund Accounting System) and MMS (Mineral Management System) to collect funds, record payments, account for trust funds, and disburse payments to beneficial owners. This is referred to as the **Accounting module** or function of TAAMS and is a subpart of the Realty function. Also, the **Interface** project involves TAAMS’ exchanging data, such as account

holder and financial information, with TFAS and MMS. TAAMS must have the capability to track names and addresses of IIM account holders and public and private contractors (**Name and Address**) as well as disburse monies to users (**Distribution**).

The Title module has two major parts: Title Current and Title History. To properly track ownership, the system must contain both parts.

The Realty module also includes functions such as Contracting, Acquisition & Disposal, Collection and Deposit, and Distribution.

TAAMS (and TFAS) will replace two older or “legacy” computer systems presently used by BIA. The first is the Land Records Information System (**LRIS**) which is operated by the BIA title plants and service centers and which maintain land title and records for all trust lands except for a manual system in Eastern Oklahoma. The second is the Integrated Records Management System (**IRMS**) that presently performs the accounting, distribution, leasing information collection, and “people” functions that fall under the rubric of Realty or Leasing module.

Additionally, TAAMS will have **Probate** and **Appraisal** functions. It will need to be able to track and record probate cases and decisions as well as record appraisals of Indian lands. These functions involve gathering information from other departments and bureaus within DOI.

TFAS is presently operating as the financial management and investment computer system. It must be able to interface with TAAMS to get and provide personal, accounting or financial data.

An over-simplified method of deciphering between TAAMS’ functions is that the **Title module** keeps track of **who owns the land** and the **Realty or Lease module** tracks the **income generating activities associated with that land**. The additional TAAMS modules or functions keep track of the location of the owners and contractors (**Name and Address**), the income (**Accounting**), the disbursements (**Distribution**) and the communication with the other computer systems needed to support these functions (**Interface**).

This summary is by no means an all-encompassing description of TAAMS or its functions. When fully implemented in 12 regions and 87 agencies, TAAMS will oversee approximately 170,000 tracts of land, 110,000 plus active leases, 2,000,000 plus owners, 3,000 system users at more than 250 separate locations involving rights to oil, minerals, gas, coal, timber and grazing. It is solely meant to aid the reader in understanding the terminology involving the TAAMS system.

II. INTEGRATED USER ACCEPTANCE TEST, BILLINGS, MONTANA, MAY 14 – JUNE 1, 2001

Upon the arrival at the Department of the Interior (DOI) in April 2001, the Court Monitor became aware that BIA was performing an Integrated User Acceptance Test (IUAT) of TAAMS in May 2001.

A. The General Accounting Office Briefing of the Special Trustee

On June 11, 2001, the Court Monitor attended an informal presentation by the General Accounting Office (GAO) representatives who have responsibility to carry out the Congressional mandated GAO oversight of DOI's trust reform efforts. This presentation to the Special Trustee, Tom Slonaker, covered the GAO's attendance at the IUAT in Billings, Montana, and their initial observations and recommendations that would later be placed in a report to Congress.

GAO has had a long history of reviewing DOI trust reform efforts beginning in the early 1900s. They have been involved in making reports to Congress on issues such as insufficient fund allocation to trust reform and lack of high-level DOI focus on trust reform since the mid-1980s. They participated in drafting "The Indian Trust Fund Management Reform Act of 1994."

They have taken a broad look at the management of trust reform including the Strategic Plan drafted by the first Special Trustee and have publicly reported their concerns regarding the lack of system architecture and the failure of DOI to analyze their business systems before contracting with a vendor to provide software for the TAAMS system. They have been critical in the past of the lack of sound planning and realism in drafting the HLIP and in setting the initial two-year and subsequent three-year timeframes for the completion of HLIP subprojects.

They believed the milestones for TAAMS were arbitrary and unrealistic. Not unlike Nessi's criticism, they felt the lack of interface between the subprojects, to include training for TAAMS users, and the TAAMS subproject was a factor that would inhibit the process of trust reform.

The major problem, in their view, with specific regard to the TAAMS subproject, was that it was contracted as a Commercial Off-The-Shelf (COTS) software with a service vendor with the expectation that it would not need to be significantly modified. The Artesia system used for TAAMS was a good system for oil and gas leasing. The problem was the TAAMS system needed to include many other modules and address user needs that the Artesia system could not handle without substantial modification and systems development. Instead of having a software developer create the system from the start, they had contracted for a COTS that required further development by a service vendor as new problems arose. In summary, TAAMS had become a system development instead of a service provider project.

The GAO representatives gave an overview of the May 2001 IUAT in Billings. They cautioned that they had not conducted the testing but only observed what was done.

However, it was their opinion from watching the testing, observing the initial test results, and listening to the comments of the contractors and users that the TAAMS project remained at risk. Although it might be a salvageable project, the GAO representatives stated that DOI should consider delaying further TAAMS implementation until an assessment could be made of the options available to correct the management and systems failures. Milestones might have to be moved and discipline processes introduced in both vendor operations and BIA's test systems.

B. The BIA Briefing of the Special Trustee

To better understand BIA's perspective on the IUAT, the Court Monitor attended the BIA TAAMS Project Management Office's IAUT briefing of the Special Trustee's Steering Committee on June 25, 2001.

The BIA Project Management Office's conclusions were that, based on the Billings' test results, TAAMS modules tested were not ready for deployment. Nor was TAAMS ready for further pilot operations.

They agreed with the GAO that although the TAAMS concept was good, the COTS approach was ill advised. The causes of the current problems were the date-driven schedule versus event-driven; requirements were not adequately defined and managed; and the lack of disciplined processes. Also, adequate system testing had not been performed.

The TAAMS Project Management Office's recommendations, among others, were to conduct more system tests, TFAS and MMS interface tests, and conduct another IUAT in the fall. They also recommended bringing in an outside contractor to provide an overall assessment of TAAMS.

A related project recommendation was to continue to clean up the legacy data with a target date continuous through 2004. Also, there was a need to determine what legacy data should be converted and what part of it should be encoded from original documents indicating a lack of recoverable data or inaccurate data in the legacy systems. Here again, the target date was continuous through 2004.

The revised deployment schedule was based on a successful deployment for the Rocky Mountain Pilot (Billings) to be completed in December 2001. Deployment in all regions would extend from 2002 through 2004.

C. The NIAD IUAT Results

To determine the exact results of the IUAT, the Court Monitor contacted the vendor in charge of providing TAAMS testing support. There have been a series of User Acceptance Tests conducted by BIA and its industry contractor and program manager, Native American Industrial Distributors (NAID).

On June 28, 2001, The Court Monitor interviewed the principal program manager at NAID responsible for this testing, Jim Bomgardner, Deputy Program Manager. He provided his company's report on the IUAT for the Rocky Mountain Regional Office, Billings, MT, to the Court Monitor and stated in substance the following:

The BIA's TAAMS Program Management Office has conducted a series of UATs or other tests of the TAAMS system using NAID as the Program Management Office. NAID has provided assistance at designing and carrying out the tests using BIA personnel. Tests conducted for BIA by NAID started in February 2000. At that time, TAAMS had undergone a series of tests in 1999. The first BIA-attended user acceptance test was in Dallas at the ATS facility in July 1999.

The next user acceptance test was in August 1999. Bomgardner, having recently joined NAID and been assigned to work with BIA to determine the field requirements for use in TAAMS, went to Dallas from August 10 to 15, 1999 to meet his counterparts at ATS.

He did not participate in the testing. However, he observed that the participants did not use actual live data during the test.

He had no more involvement with the testing of TAAMS until February 2000 when Dom Nessi asked him to prepare a UAT for TAAMS at Billings. The UAT was designed to test only current Title. ATS was working on several projects for TAAMS including Title, Realty, Data Conversion, Name and Address, and Accounting. At the time, there were no modules for Probate or Appraisal capable of being tested. ATS was concentrating on Title as it was less complex than the other modules. Therefore, that was the system to be tested in the first NIAD UAT.

Bomgardner designed a UAT including transaction and boundary testing. This was the first time that TAAMS used actual live data. The purpose of the test was BIA acceptance of the current Title module.

The BIA users would not accept the Title module. It had no title history and there was an unacceptable failure rate even with the BIA-imposed low 86% passing grade. ATS needed to do further data conversion and create a title history module before the users would accept the system.

In April 2000, another UAT was conducted on current Title at Billings. There were 52 transactions tested and they passed. Current Title was accepted for Billings deployment *contingent* upon adding a title history module to TAAMS. However, current Title data was no longer put into the legacy system although it was still used for inputting historical data.

The next module to be tested was Realty. Bomgardner set it up for a UAT at Nessi's direction in August 2000. The UAT had been scheduled for the September to October 2000 timeframe. Nessi moved it up to August 14 to 25, 2000. The Realty UAT failed to live up to expectations and the test was called off. There was no formal report submitted and the test was rescheduled for the September to October 2000 timeframe.

However, the next test, which had been initially scheduled to be a UAT of Realty, was changed due to the fact that the Realty module was not capable of passing the standards expected for a user acceptance test. Nessi had the test identified as a Realty Verification Transaction Exercise (RVTE). The test ran from September 18 to October 13, 2000. All Realty functions were tested as well as the Realty links to Title. The BIA user personnel documented what didn't work and gave the results to ATS for further modification. The failure rate for this test of 151 leasing and distribution transactions was 56%. Distribution transactions had an 86% failure rate. Leasing transactions had a 38% failure rate.

In December 2000, BIA managers made a decision after discussions with DOI not to deploy the TAAMS Realty module due to its development problems. Because of this decision it was later decided at a meeting in Las Vegas of all TAAMS Regional Office Coordinators working on the project to do a Gap analysis of the Realty module. A Gap analysis is a test conducted to determine what does not work in a system and what the system vendor must do to correct it. Both current Title and Realty were analyzed in January 2001.

Current Title had to be reviewed again because of the changes needed for implementation of this module in Anadarko, Oklahoma, a site that had different requirements from Billings. BIA performed the test for four weeks in January 2001. The results and needed corrections were given to ATS to prepare for the May 2001 IAUT.

Bomgardner went to Billings in the February to March 2001 timeframe to prepare for the IUAT. The IUAT would test not only current Title but also Title history, Realty (to include Accounting), and Name and Address. It would be comprised of two separate tests - - a Gap Analysis Verification Test and a TAAMS Transaction Encoding Test.

The Report of the IUAT (*see* extracts at **Tab 1C**) noted that it was the first time Realty, Title (Current and History) and Name and Address were tested together as an integrated system in a TAAMS UAT. It was viewed as a major milestone in the TAAMS program. *Id.* at 10-146.

The test was conducted at Billings between May 14 and June 1, 2001.

The Report's Data Analysis Section at page 10-17 outlined the results of the IUAT.

- All Gap analysis task orders that were given ATS following the January 2001 testing were supposed to be 100% completed by ATS. Only 86% of the orders were completed.
- There could be no critical events attributable to TAAMS software during the test. Users experienced 253 critical events attributable to the TAAMS software.
- Transaction results were to be 100% accurate. Only 77% of the events were rated accurate.
- TAAMS forms and reports were expected to meet a number of criteria including presenting the same data as provided by the legacy systems; accurate data, data required by the user, and adhere to BIA formatting requirements. Although 49% of the forms and reports were passed with no events, 21% were rated critical and 30% were rated non-critical but not passed. *Id.* at 10-147.

The Data Analysis Summary concluded:

“Failures were spread across all applications and disciplines, and none of the applications appear mature enough for implementation. However, TAAMS did show continued improvement over the Realty Transaction Verification Exercise (RTVE). A significant amount of new functionality was available for test. The percentage of critical events attributable to the system decreased from 50% to 25%. The majority of the current critical events are associated with Forms and Reports.

Although there should be concern about the apparent regression in the Title Application, many of the failures could be expected due to the limited time available to adequately develop and test the application. For example, Forms and Reports were the last items to be addressed, so it is not a surprise that this is where many of the critical events occurred. Likewise, the urgency of the deadline precluded plans for a more controlled and managed process of development, documentation, and test.” *Id.*

None of the modules passed the IUAT. The software itself had failed to pass the test with 25% “critical events.” Of even more concern, when Title history data was linked to current Title data, that had received user acceptance and was the system of record in Billings, the current Title data was corrupted and would not function correctly.

In concluding his interview, Bomgardner stated that he had had a career of working with complicated software systems. He had never seen one that was more complicated than TAAMS due to the diversity and complexity of the tasks needed to be accomplished by the BIA and the TAAMS system. What began as a COTS system had morphed into a very complicated system development project that was far from complete.

III. TRIAL TESTIMONY REGARDING THE DEVELOPMENT AND IMPLEMENTATION OF TAAMS.

If two years after the trial in which much of the testimony and presentation about trust reform progress was about the implementation and deployment of TAAMS, most of the system is still in the testing stage and under risk of being declared unsalvageable, what was this court told of the prospects for TAAMS that it relied on to make its decision regarding the Phase I trial? That decision permitted the Interior defendants to continue with their method of trust reform including TAAMS' deployment.

The prospective relief either granted or denied plaintiffs by this Court was, at least in part, based on its understanding of the capabilities, implementation, and deployment prospective for TAAMS. Trial testimony regarding those matters was provided for the most part by two Interior witnesses; Dom Nessi, Senior Advisor to the Assistant Secretary for Indian Affairs and Project Manger for TAAMS, and David Orr, Senior Vice President of Applied TerraVision Systems, Inc. (ATS) and General Manager of the Artesia Systems Group, the vendor hired to provide the software system which was denominated at trial as TAAMS.

A. Nessi Testimony

Nessi's relevant testimony regarding the capabilities, deployment and implementation schedule for TAAMS was in substance the following.

Nessi was hired and began work at BIA on November 1, 1998. Trial Tr. at 2253. In speaking to Assistant Secretary for Indian Affairs Kevin Gover, his supervisor, about the importance of TAAMS to BIA he described the dialogue in the following manner:

Q How did you come to be working on TAAMS in November of '98. Did someone ask you?

A The Assistant Secretary - - actually, Nancy Jemisen raised the issue with me first a few weeks earlier, and I spoke to Assistant Secretary Gover and asked him what he would prefer that I do because I was very much involved with moving the economic development office forward. It had been somewhat held back in the past few years. And he said that he considered TAAMS to be the most important activity that the Bureau of Indian Affairs is undertaking, and would prefer that I did that. Trial Tr. at 2253-2254.

He next was asked what function TAAMS would take over from the two existing "legacy systems" known as the Land Records Information System (LRIS) and the Integrated Resource Management System (IRMS). The testimony began with the following dialogue:

Q We're going to get into this in detail as I mentioned, but can you describe generally what is in the IRMS that's going to be replaced with TAAMS?

A Okay. And I made a mistake in the name. Its Integrated Records Management System. I apologize.

Q Okay.

A Well it consists currently of five modules, and the reason it reminded me that it wasn't integrated is that the system isn't integrated, even though the name implies that it is. It's five separate modules. One is called the people module, which lists all of - - was originally intended to list every Native American and their ID number. The second is a lease module, which has all of the current leases in it. The third is a distribution module, which has all of the distribution interests of various parties. The fourth is a royalty distribution system, specifically for oil and gas. The fifth was the IIM module, or individual money account, which is being replaced by TFAS.

Q Now, again, keeping it to a general level, could you describe what's going to happen to the LRIS in connection with TAAMS?

A Well, it will be eliminated also as TAAMS is deployed around the country.

Q Is TAAMS going to pick up the information there though?

A Yes, it will. Trial Tr. at 2256-2257

Nessi went on to add to his testimony about the modules that would be in TAAMS with the following exchange:

Q Now, let me ask you, ... has the Department of the Interior for TAAMS obtained an off-the-shelf product?

A Yes, it has.

Q Give us a reference for that, if you would?

A It's a system called ArtesiaLand. That's one word. It was designed and developed by a company called Artesia, who recently been (sic) purchased and now goes by Applied TerraVision. Trial Tr. at 2268.

Continuing later:

Q Are you aware whether there were modifications to it.

A Yes, there were a number of modifications to it. Trial Tr. at 2268-2269

And finally:

Q Okay, describe to the Court generally what modifications - - the extent of modifications that were made.

A Well, probably the most important modification was the inclusion of a title records system because ArtesiaLand itself did not have something similar to that.... It's probably - - ArtesiaLand was developed in a way that made it easy to modify for the Bureau of Indian Affairs. Artesia seemed to be very, very good at object oriented system development, which is the creation of small object modules, or object functions, which can then be used for other

functions. And by doing so, they were able to take the business rules of ArtesiaLand and easily adapt them to the business rules of the Bureau of Indian Affairs. Trial Tr. at 2270.

Nessi also spoke of the ability of TAAMS to interface with the other computer systems, which were being developed to provide for accurate accountings:

Q Is TAAMS going to be able to interface with other systems?

A Yes, it will.

Q Such as the Trust Fund Accounting System?

A Yes, it interfaces with Both TFAS and the Minerals Management system. Trail Tr. at 2273.

Nessi's continued with his description of the implementation schedule for TAAMS:

Q Now, again, because we're going to go through this in some detail, could you describe for the Court what the implementation schedule is for TAAMS, but with dates?

A Well, in general, we began a pilot last week in the Billings office, which runs for a hundred days. That pilot is everything from unveiling the system to converting their data, rolling -- training of the staff, ironing out any issues that need to be ironed out, system testing, independent verification and validation. We'll implement a number of the agencies in the Billings office so that we can have a full functional test of the system. There will be more post-deployment clean. And we hope to have the overwhelming majority of Billings completed by around October 1st. At that point in time we have plans to go on to Juneau, Aberdeen, and Minneapolis. We've already started working toward those. But, you know, they're tentative until we know that we have a good system that's well tested and ready to move forward.

Q Is there some point at which a decision is going to be made about whether to continue on to these other areas?

A Well, we'll have an official decision in approximately the last week of September, but we'll have a pretty firm idea well in advance of that.

Q At the end, how many sites will TAAMS be available at?

A At the end of this initial deployment period, it will be the 12 area offices, the central office, OTFM, 86 agency offices, and approximately 120 tribes. Trial Tr. at 2280-2281.

Nessi later discussed the Billings pilot test that he was conducting during the trial:

Q Where did you go last week, sir?

A In Billings, Montana.

Q This is the pilot project?

A This is the unveiling of the system in the beginning of the pilot.

Q Again, at a general level how did it go?

A It went very, very well.

Q Can you give us a little more detail than that?

A Well, from - - I mean, not only from the system perspective, but from the psychological perspective, we were very committed to meeting the June date. As the project manager, I felt strongly that we needed that kind of success to build upon. It was a major milestone for us. I did not believe that we should miss that, because I didn't want to set a precedent later down in the schedule.

So we had - - the entire Bureau of Indian Affairs and Artesia were focused on this date. And to have the system unveiled and to see probably the best data processing system I have ever seen unveiled at that point in time was very exciting. We had a ceremony. We had the Secretary cut a ribbon and put (sic) a ceremonial button to turn the system on. Trial Tr. at 2286 to 2287.

Nessi next turned to a description of the system itself guided by his attorney through the use of Exhibit Number 82 (marked for pretrial purposes as Exhibit Number 321, *see* generally **Tab 2**) which was a power-point computer presentation of a TAAMS briefing given by Nessi to interested parties including the media, the Department of Justice (DOJ), and to the named plaintiff in this case, Eloise Cobell, as the Chairman of the Office of Special Trustee Advisory Committee.

Nessi, in discussing the definition of TMIP as described by Exhibit Number 82 (Ex.), page 10,¹ stated the following:

Q Would you identify for the Court what the acronym TMIP stands for?

A It's the Trust Management Improvement Project.

Q When I asked you earlier about the role of TAAMS at the BIA, does this slide reflect the importance there of TAAMS to trust reform?

A Well, I'm not sure that - - the slide attempts to do it, but, you know, it doesn't -- I think in terms of the importance of the Department, the slide doesn't do it justice. But it does outline the importance, yes. Trial Tr. at 2296.

The subject slide stated that:

"DOI has long recognized that there needs to be major improvement in the manner in which its trust responsibility to Indian people is carried out. TMIP is a Departmental initiative to address a variety of trust issues.

¹ Numbered by the Court Monitor for purposes of this Report.

TAAMS is an integral component of the TMIP.” *Id.*

Nessi was next asked to describe the accuracy of the Ex. 82 text at page 12 in the following series of questions:

Q Now, I’ve moved to the next slide, and the top portion of this talks about the goal of data cleanup. We’ve talked about that, and so I want to pass on that and direct your attention to paragraph B there. I’ll ask you to read that into the record.

A “TAAMS will include an asset management system, with a master lease subsystem, a billing and accounts receivable subsystem, and a billing and accounts receivable subsystem and a collection subsystem. It will also have a sub-module for probate tracking.”

Q Is that currently accurate with respect to some of the things TAAMS will do?

A Yes, it is.

Q Is that the exclusive list of the things TAAMS will or can do?

A Well this is - - this is the core function. TAAMS is expandable into a number of asset management areas that we have plans on the board for. Trial Tr. at 2297-2298.

The testimony went on to consider the next slide, Ex. 82, page 13. Nessi testified regarding the statement at D that “The appraisal subgroup has already produced a design for a sophisticated appraisal tracking system which can be added to TAAMS in a future system enhancement” by stating:

“Well, again, appraisals is one of the subprojects, and it’s an issue of concern. We had an appraisal subgroup working on the design team, and they have already designed a very sophisticated appraisal tracking system, which we believe - - as soon as we get this first configuration and release of TAAMS settled down, we’ll take a look at adding this appraisal subgroup - - I’m sorry, appraisal subsystem to TAAMS. Trial Tr. at 2299.

The next sentence on the slide, which was not discussed but was shown to the Court stated:

E. TAAMS is integrally related to TAAMS through electronic interfaces to (sic) for a seamless trust management system. *Id.*

The next slide shown to the Court and discussed by Nessi stated:

“There is no doubt that this is one of the most important management efforts in the BIA’s history.

A successful implementation is critical for the Federal Government to insure that it properly carries out its role as trustee to Indian tribes and people well into the 21st Century.

In fact, the TMIP project is one of the federal government’s 20 top management initiatives. *Id.* at 14.

The following slide, page 15, discussed the importance placed by DOI on TAAMS and stated that was the “Personal priority of the Secretary, Assistant Secretary and Deputy Commissioner,” and “A chance to demonstrate BIA’s management expertise and commitment to the trust process.”

A lengthy and detailed presentation not relevant at this time was provided to the Court on the “Trust Process, Legacy Systems, and TAAMS,” and the “Project Management Approach to TAAMS.” *See* generally Trial Tr. at 2311-2349 and Ex. 82 at 22-46.

Following that discussion, Nessi turned to the “Major Project Milestones” portion of the presentation and a discussion of page 48 of Ex. 82:

Q Let’s move on, then, to the next one. This slide is entitled Project Phases, and I see you have listed four here. I think your testimony has covered this, but, if you could, just generally identify the phases for us, and to the extent possible, associate them with a calendar date.

A Well, the initial project kickoff was the first phase, and that really took place - - some of it was before I came on board, but, basically, it was the month of November to mid-December. The pre-integration phase began approximately December 1st and continued until last week in Billings. Integration and implementation begins now, as we integrate TAAMS into the Billings environment. It includes everything from business unit policies and procedures, testing, training, conversion, cut-over.

The post-project phase is the continued data cleanup system, performance review, follow-up training, and depending on the site, we’ll have still integration and implementation going on in some areas. Whereas, in other areas, we’ll be in the post-project phase. So they’re kind of parallel at this point.

Q So, if I understand, the post-project phase will depend - - I mean, in terms of relating it to a calendar, it will depend on when each area is converted over?

A That’s correct. You know, a system is never over. So there’s always something you do. Trial Tr. at 2348-2349.

Addressing the next slide, “Major Milestones” (Ex. 82 at 49) Nessi testified in answer to the questions as to whether they had been met that all the dates in the milestones were actual dates from selecting the vendor in October 1998 to December 1998, to development of screen designs and code tables in March through May 1999, to programming and testing in May through June 1999.

The questioner asked Nessi about the following slide (Ex. 82 at 50):

Q Let me explore a couple of these with you. It references, about six down, the Billings pilot. This is the one that started last week, right?

A Correct.

Q The next one states “implement OTFM.” Could you explain to the Court what that means?

A Well, OTFM is actually a user of TAAMS, just the way an agency or an area office is. We view OTFM as one of our customers, and we’ll do training for them and bring the software down to Albuquerque and actually implement them.

They are the official repository for name and address in this system. So they’ll actually input data, and we have to do training for them and give them access.

Q So does this relate to your earlier testimony about the interface with TAAMS and TFAS?

A You’re correct. In fact, it is, and as TAAMS has evolved, TFAS is becoming more of an integral part of the entire TAAMS picture. Trail Tr. at 2350-2351.

The slide listed the Billings Pilot as having been implemented from June through September 1999. The OTFM interface implementation was to be accomplished in July 1999. Independent validation and verification of the system in Billings and with OTFM was set for August 1999. A decision to “proceed with Juneau AO” was to be made in September 1999. *Id.*

The Juneau decision was noted and elicited the following testimony:

Q Then, the last one, Decision to Proceed to Juneau, does this relate to your testimony from this morning about seeing whether what you’ve learned with Billings, whether to proceed with the other areas?

A Right. The Billings pilot is not only about the system. It’s about data cleanup. It’s about data conversion. It’s how best to do training, and as we go through this 100-day period, we have to make some decisions as to how much time we need to bring up an area office. Juneau is the next one on the stair step, and as I said, we’ll know well in advance of this, but we’ll make an official decision at the end of September. Trial Tr. at 2352

The next slide was labeled “The TAAMS implementation schedule by Area Office.” The slide listed the dates of TAAMS implementation at the 12 Regional offices starting with Billings in June 1999 and going through the next eleven in chronological order ending with Sacramento in July 2000. The testimony about this slide was the following:

Q Let me ask you to go to the next slide, please.... Is it correct that these are the 12 area offices and the dates in which TAAMS is going to be implemented?

A Yes. This is the current roll-out that we have in mind.

Q And that’s current today still?

A Yes, it is. Trial Tr. at 2354.

The next slide (Ex. 82 at 52) addressed deployment and elicited the following testimony:

Q The slide is entitled “Deployment at Each Area Office Site Includes the Following Components and Activities.” I guess, if I could ask you to describe here at this point for the Judge exactly what deployment means when you are going from area to area.

A Well, deployment is the general term that you use that would relate to all of the transition activities from the Legacy system to TAAMS, everything that is involved with that.

The slide listed periods for various activities involved in implementing TAAMS at each site listed on the previous slide. Data cleanup was given three to four months. Area-wide implementation could take up to six months. The actual assessment of the area offices had only been conducted at the time in Billings and Juneau according to Nessi. They knew they had an issue at Portland and were considering starting there about eight months in advance. *Id.*

Skipping the next slide and moving to one entitled “What is the Billings Pilot?” (Ex. 82 at 53) the testimony continued:

A This slide is entitled “What is the Billings Pilot?” Now, I guess - - well, let me ask you. This is phrased prospectively, it appears, in the text. What is the duration again of the Billings pilot?

A It’s approximately 100 days.

Q Okay. Let me ask you to direct your attention to the third paragraph on this page. It starts out: “Billings will provide a robust system test.” Describe your reasoning behind that conclusion.

A Well, if you continue, the next statement, “It has the second largest area office in terms of owner interest, and it has correspondingly a large title records operation.” We need to have - - we need to start the system someplace where all the components of TAAMS would be tested and run with large volumes of data before we moved on to smaller offices.

There’s really two large offices, Billings and Aberdeen, and it was very important to ensure that the TAAMS could operate in a very high-activity environment. Trial Tr. at 2356.

The slide is worthy of quoting from it:

“The Billings Pilot period provides an opportunity for the Department of Interior to fully and thoroughly test TAAMS, data conversion techniques, the capacity of the communications infrastructure, and the data cleanup approach before moving on to other AO jurisdictions.

Using *live data* in a parallel processing environment, we will be able to perform a detailed transactional review of each document as it flows through TAAMS to insure that it is properly recorded on the data base and that all calculations are in conformance with expected results.” Ex. 82 at 54, emphasis added.

Moving on to the next slide entitled “Key Billings Pilot Milestones,” Nessi was asked the accuracy of the timelines listed in the slide:

Q Okay. Now, does this accurately state the milestones here for, say, the next 2 months?

A For the most part. We’ve had to change one on here. On June 28th, we were going to train our Billings office and Northern Cheyenne users and our user acceptance team, and last week, in doing the training, we saw that it was just impossible to have almost 60 people trained at one time.... So, right now, because we’re doing user acceptance testing next week, we felt we wanted to have them trained and then we’re going to train Billings area and Northern Cheyenne users on July 12th instead....

Q The user acceptance testing, could you describe for the Court what that’s going to tell you as project manager?

A That’s internal to the project management team. Within the contract, for - - Artesia actually had the requirement to do its own testing, and to certify that the system was operational. We felt that we wanted to have additional testing that was BIA-generated. This is a group of about 17 BIA area, agency, and tribal staff who will go to Dallas and will just, within their own particular areas, go through hundreds of reiterations of the screens, entering data, looking to see if it works quickly, looking to see if the screens make sense. This is our own verification and streamlined - - a very structured approach to this, developing a problem report for everything you find, and we’ll do that for about 4 or 5 days, until we get through all the screens and a great number of repetitions. Trial Tr. 2358.

That slide listed a series of milestones for the Billings Pilot including a detailed User Acceptance Test from July 6 to 10, 1999. A second round of system testing was to occur on July 26, 1999 with implementation of TAAMS in all Billings’ agencies beginning on August 16, 1999. Ex. 82 at 55.

Nessi again referred to the User Acceptance Test in Billings in discussing System Testing in the slide at Ex. 82, page 72. That slide discussed the initial testing that would be done by the software vendor prior to the Billings pilot. It also spoke of the user acceptance team and their work in testing transactions on the system and comparing them with the legacy systems processing of the same data. The tests were to be conducted a second time under the supervision of an Independent Verification and Validation contractor. *Id.*

Q I think your testimony has covered this in a fair amount. Let me direct your attention, though, to the second one, the user acceptance test team. Is this the one that you’ve referenced will start next week under the new milestones?

A Yes. This really covers our entire test package.

Q In other words, that’s going to start next week? Or, maybe I have my weeks off.

A Well, this outlines all of the pre-implementation activities. I mean, the initial testing began with the vendor itself. They do individual module testing of each piece of TAAMS. They, they do integration testing, which is the entire system put together.

Our user acceptance testing begins next week. While the - - last week and this week, we're putting in some sample transactions into TAAMS. At the same time, we're putting them into Legacy systems so we can see - - I mean, for instance, we want to make sure that TAAMS interfaces with TFAS the way IRMS interfaces with TFAS.

Then we test it all again. Everything that we're doing between now and August 1st, we're going to do again for the IV&V contractor after August 1st. Trial Tr. at 2366-2367.

The final slide discussed by Nessi in his testimony was labeled "Goal Three." The testimony was brief:

Q This is entitled Goal Three. You talk about the implementation date. You talk about the completion of implementations, budget estimates, and an integrated user-friendly modern business system for managing trust assets. Is this still your goal today, sir? Trial Tr. at 2376.

A Yes, it is.

This slide states the following:

To meet the Secretary's goals for time, budget and system design.

Implementation date of June, 1999

Complete Implementations by March 2001

Meet budget estimates currently established

Develop an integrated, user-friendly, modern business system for managing trust assets

Ex. 82 at 87. Emphasis added.

On cross-examination, Nessi was brought into the following debate by plaintiffs' counsel:

Q So what will happen in (sic) TAAMS, as I hypothesized before, fails? What will be the impact of that failure on the trust beneficiaries?

A Are you talking about the TAAMS program, the system itself?

Q I'm talking about the program and the - - yes, the program.

A Well, it's a hypothetical question because *the system is already working*. So it's difficult for me to say what would happen if it failed. It hasn't failed. *It's already operational*.

Q Well, I thought you -

A From an operating standpoint. I mean, it runs.

Q You mean you turn the key on and the motor is running?

A May I give you an analogy?

Q I'm going to give you one.

A Oh, no, you go first.

Q You bought a new Ford pick-up truck. You go into the showroom and you turned it on, and the motor was running. Have you done much more than that with respect to TAAMS?

A I don't think your analogy fits an information technology program.

Q Well, the reason I ask that is, your testimony is that you still don't know whether TAAMS is going to work. That's why you've got consultants looking at it, that's why you've got a hundred days before further deployment. You don't know if it's going to work?

A *No, I'm absolutely certain it will work, but prudent project management, prudent IT development knows that you have bugs in software, and that's how you get them out, you test through them. TAAMS is - - TAAMS is not an ALMRS. I mean, ALMRS had some other issues, from what I understand, just in terms of development time and some other things. That's not TAAMS.* Trial Tr. at 2580-2581, emphasis added.

Plaintiffs' attorney was not convinced by this response and continued to press the issue of what would happen if TAAMS would not work.

Q If TAAMS - - let me go back to my question. If TAAMS does not work, what is the impact on the trust beneficiary?

A That's a hypothetical question that I can't answer because there's - - that's not a possibility.

Q So you don't know how it will impact trust beneficiaries of (sic) the TAAMS system breaks down of fails? Have you considered that?

A You're asking if I personally have considered that?

Q Have you personally considered that?

A As I said earlier, we have legacy systems. They don't go away. They could continued (sic) to be used if TAAMS is not available.

Q I thought you said that they would not be maintained permanently, so they may not be there.

A Do you want to give me a time frame as to when TAAMS is going to fail? I mean, are you talking about - - I'm not understanding your - -

Q Two years, five years, three years.

A Three years. Well, by that time we would know that TAAMS was working. Trial Tr. 2581-2582

Making no progress with this line of questioning counsel switched subjects:

Q You said that the failure, or the lack of a system architecture increases the risk of failure?

A Correct.

Q Is it acceptable as a trustee to expose the trust beneficiaries to that risk?

Mr. Clark: I'm going to object and ask that the counsel identify what he means by "failure," Your Honor. I think there is a disconnect here between what the witness is talking about and what counsel is inquiring about.

The Court: Overruled. You can answer that.

Witness: I sort of had the same question myself.

The Court: Well, what do you think failure is?

Witness: Well, I'm assuming that you mean that the programs just don't run for a period of time, or the system - - I mean, just like it crashes one day.

By Mr. Levitas

Q No, I mean more than that. That's why I said "the system."

A Okay.

Q Suppose the interface with TFAS fails. Suppose the data cleanup is not successful. All of those many elements that make up TAAMS. If any of them don't work, and the system, therefore, doesn't work, what is the impact on the trust beneficiary?

A Well, obviously if any of the systems don't work, it has a very detrimental impact on the beneficiary. I mean, that's obvious. Trial Tr. at 2582-2583.

Later in the cross-examination, the issue of the TFAS and TAAMS interface was raised again:

Q Is the TFAS interface with TAAMS operational?

A The programming is - - is completed now, I believe, and we're going to be testing that most of next week and the following week. Trial Tr. at 2623.

And again:

Q And I also understand that this TFAS/TAAMS interface is not yet fully operational?

A No. The system right now - - I mean, your answer is - - it's correct.

Q Okay. Now, when you testified that the TAAMS program and the Billings pilot is up and running, is it up and running without the TFAS interface?

A The TAAMS system itself is in Billings. It's running, but the interface is not inside the system; the interface is a set of programs between two systems.

Q Right, and yet this seamless interface between TAAMS and TFAS is a very important innovation in the TAAMS program; is that correct?

A Yes, that's correct.

Q So it's fair to say, as I had suggested earlier, that the TAAMS program, the total TAAMS program has not yet become fully operational? You've turned the key on the Ford pick-up, but it hasn't really run yet?

A If you look at TAAMS and everything that it touches, you're speaking of a point in time. Today, as we sit here, I have not - - I have not checked to see if - - from my perspective, nothing is completely operational till we test it. So the programs may be in place, but it hasn't been tested yet. That testing begins next week. Trial Tr. at 2624-2625.

B. Orr Testimony

Mr. Orr, the Senior Vice President of the vendor supplying the TAAMS system, testified next. He also addressed the implementation of TAAMS and the Billings Pilot test on direct examination:

Q And as of today, has the TAAMS been fully implemented?

A It is not fully implemented. It is implemented in the Billings office and also in the agency office in northern Cheyenne in a pilot project. Trial Tr. at 2753-2754.

Later, he addressed the TFAS/TAAMS interface:

Q Now, when do you expect this interface to be fully functional between TFAS and TAAMS.

A Well, currently were in pilot mode here, and all the data is not converted at this point in time. We expect to test those interfaces in a parallel mode later in the month of July. We are - - we are currently going through integrated system tests. Next week we will begin a user acceptance test, and we already can test the data communication link. I mean, we know that it works. Our next phase will be to actually take some live file data and pass it back and forth between our systems and TFAS. Trial Tr. at 2777-2778.

The Court questioned the status of the interface:

The Court: I'm sorry, go back one step. What is the status of the interface with TAAMS?

The Witness: Both of the interfaces to MMS and TFAS are written. As far as the computer programs, they are in a test mode.

Referring to a power-point slide presentation he had prepared on TAAMS, Orr continued to testify:

Q Under that programming phase bullet, it says, “6-99 and beyond.” Tell me about programming beyond June of ‘99.

A Well, first of all, I want to make sure that everybody understands that while we’re in system test right now, we are - - we are continuing to refine and enhance the programs. We are going through a user acceptance test process, and if we have to make adjustments to the system, things that we uncover past the initial design phase, we will continue to do that.
Trial Tr. at 2785.

He spoke further about the user acceptance testing:

Q Lt (sic) me ask you about the next bullet, this “UAT” training and “UAT in Dallas.” Can you tell us what “UAT” stands for?

A Yes. “UAT” stands for “user acceptance test.” This week we were training 25 people that will be involved in the user acceptance process. That training was held in Billings, Montana on the live system up there.

Q And then the “UAT in Dallas”?

A Next week members of the team will come in on the 7th, and they will begin the actual user acceptance testing phase. Now, this is the first phase of testing where we take actual TAAMS users, allow them to go into the programs, run them. We compare them both back to the statement of work, but also to what their real functionality needs are and made (sic) sure that the programs are operating and doing the job that they were intended to coming out of the design phase.

Q Okay. I would like to ask a little bit more about training later, but in terms of this, the last bullet on here is IV&V Systems test,” July 26 of “99. Can you explain to the Court what an “IV&V Systems test” is, please?

A This is a test that an independent - - I believe it stands for Independent Verification and Validation, or it may be Independent Validation and Verification. I’m not sure which “v” stands for which. But, basically, there is an independent contractor that has been awarded a contract to come in and review our systems test procedures, our documentation, and the various functions in TAAMS, and we will be working with them from the end of July through September 30th in the system validation process.....

Q So that’s basically a 60-day process beginning towards the end of July?

A Yes, that’s what the intended time frame is, I believe. Trial Tr. at 2788-2789.

Finishing his testimony about the user acceptance test:

Q Now, you had mentioned earlier about the testing that was being done as part of the pilot, and I think you talked a little bit about user acceptance test and the IV&V. That is a process that will be going on for about the next 60 to 90 days?

A Yes.

Q How will you use the results of the user acceptance test?

A Well, the initial user acceptance test we're using as a confirmation process to confirm that the design and the functionality in the systems actually meets the needs of the individual users out in the area and agency offices. So it is a period where they run scripts of data through the system, set up documents, process them through, and if they hit problems or find things that don't fit exactly what they hoped they would, then we can come back in and adjust the design, do the programming or whatever it takes to make it work right, and then we have them go back through that script of the test. Trial Tr. at 2852-2853.

Continuing on to address the target completion date:

Q Would you characterize the roll-out schedule as an aggressive one?

A Yes, I would.

Q And that aggressive schedule doesn't concern you in terms of being able to become fully operational?

A I'm very concerned about the aggressive schedule, but that doesn't mean I don't believe that we can meet it. Trail Tr. at 2857.

And further on cross-examination:

Q But the system will be fully implemented when? What (sic) the target date?

A The target date is for all the area offices to be complete within the Year 2000. The infrastructure project needs to be complete prior to the Year 2000....

Q So the architecture will have to be complete, all of the details will have to be worked out by the end of this year?

A I think the details are worked out now. It's simply a matter of installation of the equipment from area to area and agency offices.

Q But the system will continue to be modified as it's rolled out in new areas with different needs; isn't that correct?

A No.

Q There will be no further modifications?

A The systems - - the information systems infrastructure will not change as a result of the programs changing. The computer programs will still continue to be run in the same environment. Trial Tr. at 2866-2867.

And later:

Q Now, the system has been rolled out only at one agency; is that right?

A That is correct, the Northern Cheyenne agency.

Q When will the other - - when will the system be rolled out in the other - -

A We're performing training for Fort Belnap and for Fort Peck, currently scheduled for the week of July 19th. So, we train users from those agencies, we will begin bringing those agencies over.

Q When will all of the agencies need to be using TAAMS?

A We intend for all the agencies in the Billings area to be up and using it by the end of system test in September.

Q Okay. I don't quite understand this. I thought that the plan was to test the system for a period of 3 months.

A It is. We began that test this week.

Q But you won't be testing it on all of the agencies for 3 months?

A That's right. We'll be testing it on a manageable set of test data out of Northern Cheyenne and the Billings land title records office. Trial Tr. at 2871-2872.

Moving to the overall roll-out of TAAMS, Orr testified to his view of the plan:

Q Do you think the roll-out schedule is realistic if you will have to do more manual encoding or mapping than you are doing now in Billings?

A The roll-out schedule - - the roll-out schedule covers the concept of us delivering TAAMS and performing the setup of the TAAMS system, training the users, but we are very well aware that it will be an ongoing process. For instance, if you look at the overall schedule over time, we will be working in two or three areas at one time, while some of the agency offices continue their work. So the initial roll-out schedule is completely and totally reasonable.

Now, the completion of the actual use of TAAMS may take quite a while past when we go up and roll it out in an area or an agency office, but the volume of data coming up - - in other words, we can set up TAAMS, have it in use and have people putting data into it. In some areas, they may continue that process for a year or more past the time we roll it out, but the term "roll-out" in my mind does not denote completion.

Q Okay. So Artesia has no responsibility under the contract to ensure that all of the necessary data is input into the system?

A As a matter of fact, under the terms of the contract, we are only required to install the software at the area office in one agency, and then it becomes the BIA responsibility to install the software at the additional agencies.

Q And that's true in every area?

A Yes. Trial Tr. at 2874-2875.

Addressing the question of overall completion of the project he testified:

The Court: So, if you had been standing beside Secretary Babbitt when he gave the press conference they put in evidence, you would have told him he was wrong when he said all of this was going to be done in 2000. It's all going to be started in 2000, but it's not going to be done?

The Witness: I think the desire is to get it done in the Year 2000.

By Ms. Babby:

Q Do you think that is possible?

A I don't think that I'm qualified to make that prediction.

Q If you're not qualified, who is?

A Possibly the Datacom people or somebody else....

Q Why would the Datacom people?

A Only because they're the ones working with the data. They'll have a better handle on the numbers of accounts and things there are - - and the error rate going through. Trial Tr. at 2890.

This Court again questioned Orr at the end of his testimony:

The Court: You said this is an aggressive rollout schedule. What do you think are the things that could interfere with continuing to roll out this way? Obviously, if the users don't like next week what you've done so far - -

The Witness: Yes.

The Court: But that would only be probably a temporary delay while you tried to adjust to the things they think they need, right?

The Witness: Yes. Every care had been taken to try to make sure we had enough user involvement. We already have identified just in going through training this week a couple of areas that we know we want to adjust, but none of them constitute what I would consider

a schedule breaker.... The data cleanup project is a valid point that has the potential for slowing down how soon everything is fixed, but I wouldn't let that slow down the roll-out of TAAMS....

So I don't see - - you know, if we let that push us back, that would be one potential problem. The other potential problem would be political setbacks. I know that this Court case and other things in Congress could impeded (sic) the roll-out of it. So, in my mind, I'm not nearly as afraid of the technological problems and the things that I'm accustomed to as I am the political and potential congressional problems, the things that I don't understand or can't see.

The Court: Right

The Witness: So, to me, we feel like between now and September 30th is crucial, we finish getting the system up. Every effort is being focussed (sic) on it.

B. Summary of Testimony

The picture painted for this Court was a very rosy one. In summary, The Interior defendants informed this Court through testimony or documentary presentation that:

- A TAAMS pilot would begin in Billings in July 1999 and last for 100 days. There would be implementation and a full functional test of TAAMS within that time period.
- An official decision would be made the last week of September 1999 to deploy TAAMS to the 12 area (region) offices and the 86 agency offices.
- TAAMS/TFAS interface implementation would be accomplished in July 1999.
- TAAMS implementation would begin with Billings in June 1999 and continue to all 12 regions up to July 2000.
- Live data would be used in the detailed User Acceptance Test (UAT) that was to begin in early July 1999.
- A second UAT was to be performed in August 1999.
- There would be an IV&V test in September 1999 following the August UAT.
- The time between the trial and September 30, 1999 was "crucial" for "getting the system up."
- Complete TAAMS implementation would be accomplished by December 2000 - March 2001.
- The TAAMS "system" was already "working," "operational" and "running."
- There would be no further "modifications" of the system.
- They would get "it done" in the Year 2000.

But today, the TAAMS deployment is limited to the current Title module having been declared the "system of record" in the title plant at the Rocky Mountain Region (Billings) and three other similar title offices. There is no other system module implemented in any other of the 12 Regional locations or at these Regional locations. There is some question as to whether these four title modules are actually running independently of the legacy system and whether they are properly used. The interface with the TFAS financial

management system is not completed and the Name and Address information may not be usable with all functions of TAAMS in the current Title module.²

What happened following the Nessi and Orr testimony at trial to bring TAAMS to a point in May 2001 so far removed in the status of its implementation from the projections given to this Court two years ago? When did the Interior defendants first know of the inability of TAAMS to live up to their testimony on its capabilities and its implementation and deployment? What has this Court been told and when about TAAMS' testing, deployment, and implementation that gave it an accurate indication of the status of the Interior defendants' compliance with its orders regarding "fixing the system" and reporting on the status of trust reform (including TAAMS) to this Court?

IV. THE JULY AND AUGUST 1999 USER ACCEPTANCE TESTS

This court was informed during the trial that there would be user acceptance tests conducted in July and August 1999 (including an IV&V test in September 1999) with a pilot test extending for 90 days into September 1999. Also, that live data would be used in those tests. This statement, repeated in testimony and in the exhibits used to support that testimony, gave a strong indication to the Court of the progress and advanced status of the TAAMS system.

To answer the questions posed by the July 1999 TAAMS testimony juxtaposed against the present state of the TAAMS implementation, Dom Nessi and his assistant at the time of the trial, Frank Lawrence, were interviewed. Their testimony was in substance the following.

A. Frank Lawrence

Frank Lawrence, presently a Trust Resource Specialist working for OST in the Office of Records Management, went to work for Dom Nessi in December 1998, soon after Nessi became TAAMS Project Manager. His assignment was to head up the User Acceptance Team. His responsibility was to prepare to test the TAAMS system once the systems tests conducted by ATS were completed to the point where one or more modules were ready for user acceptance testing by BIA under the terms of the contract.

He began his duties by visiting ATS in Dallas, Texas, and observing the work on the COTS system. It was his initial impression that the system would work with TFAS. However, he was not convinced that the programs and data conversion necessary for

² The Court Monitor interviewed the key BIA and OST managers on the actual implementation of TAAMS as well as attended briefings on the May to June 2001 IUAT. A live data demonstration of TAAMS has also been presented to the Court Monitor. The above description of the TAAMS implementation is based on an understanding gained in these interviews and briefings. However, there were many inconsistencies in the understanding of the officials involved with TAAMS' implementation as to where and how TAAMS' current Title had been implemented and was operating as envisioned (but *see* pages 92-93). The status of the majority of the remaining unfinished TAAMS' modules and functions was also subject to debate.

TAAMS could be built. However, ATS managers were confident of their ability to match the system with the BIA users' needs.

Lawrence worked over the winter and spring of 1999 with the BIA users to provide the requirements for TAAMS - - what they needed it to do - - to ATS. By May or June 1999, ATS had come a long way from where they had begun. However, he had had to spend what he thought had been an inordinate amount of time training the ATS managers on BIA requirements.

Another problem was that BIA users continued to make changes and ask for more modifications of the system than he viewed were necessary. However, ATS was willing to accomplish whatever was requested. In Lawrence's opinion, "it got out of hand." He could not control the process.

The COTS system began to change into a newly created system that was not compatible with the initial philosophy that the business systems would be conformed to the requirements of the system. The system was now being extensively modified to meet whatever the BIA user group wanted. TAAMS went from an "off-the-shelf" system with minor modifications to fit the BIA's operations to a system development project requiring extensive user-directed modifications.

A further problem developed over the spring. The rate of Realty data conversion was too slow. The data that needed to be placed in TAAMS came from the IRMS legacy system. The first team doing the data conversion had to be replaced because the method they used did not work. Everyone was working night and day to meet the June 1999 deadline set by the senior BIA and DOI managers. He was not knowledgeable of why there was so much pressure to get the system ready for user testing.

ATS assured Dom Nessi and him that their system tests were successful and they were ready for the July 1999 UAT. He had prepared the UAT for Billings.

On initiation of the test in July, he quickly became aware that the TAAMS system was not close to being ready for user acceptance testing. The data had not been adequately converted; there was no completed interface capability with TFAS; and the software programs for both Title and Realty were not complete. The screens would not work. Entering data on one screen would cause a display on another screen to fail.

He abandoned the UAT and did a pre-test. He tried to do a Title test using data from IRMS. The data corrupted the system. It had not been properly converted.

He began to prepare another UAT for August 1999 but left the TAAMS team before completing this project. He did not attend the August test.

He had alerted Nessi during the winter and spring of 1999 to his concern that the system was taking on too many modifications and the data conversion was developing problems.

He believed that had they limited the data conversion and modifications to what the system was designed to do as a COTS system it might have worked.

B. Dom Nessi

Nessi became Project manager for TAAMS in November 1998. He continued in that role until June 2000 when he became TAAMS Program Manager. He left that position to concentrate on his duties as Chief Information Officer at BIA in December 2000.

When he began working with TAAMS, the project was in disarray. There was no one who knew what they wanted to do with the system or the objectives to be met by it. They did not know what business systems should be addressed by TAAMS. There were no standardized business systems throughout BIA on which to base a model for TAAMS. There was no budget and no staff. His only resource was ATS.

The COTS system and vendor had already been selected by DOI based on the philosophy that the business systems would be made to conform to the needs of TAAMS, not vice versa. However, BIA managers would only accept a system that did what they wanted based on each individual's requirements and a Region's needs.

He attended his first combined ATS/user meeting in January 1999. He described the realization that this was a much larger development project than he had expected would be necessary based on using a COTS system as like being "hit by a ton of bricks." The Realty business staff had not documented their needs and the BIA users did not want the COTS type of system. ATS had only done background work on the Title module.

He directed the Realty staff to begin to formulate the business process plan and requirements for ATS. ATS started with the Title-coding as Title was a new module that had to be added to the COTS system.

Had he had the opportunity, he would have considered hiring a system developer to design the software but felt he could not buck the direction of the Secretary of the Interior and Assistant Secretary for Indian Affairs who had directed him to carry out the project using the vendor with whom DOI had contracted.

By May 1999, BIA users turned over what was thought to be their Realty and Title final requirements to ATS. In June, he observed a systems test using artificial data. The accounting system seemed to work but there were bugs in the Realty module. He was assured by ATS that they could quickly fix the errors.

He had considered at this time doing a prototype of the TAAMS system to allow the BIA users to see if it met their requirements. He based this idea on his observation that the BIA users had vast differences of opinion on the Realty module. No one in BIA could tell him what he or she wanted to do with Realty.

He concurred with Lawrence's memory about the data conversion difficulties in the spring of 1999. They could not get the data converted into TAAMS from IRMS as quickly or efficiently as they would have liked. But ATS assured him that the system would be ready for the July 1999 user acceptance test. He set the July test date in March 1999. He wanted to find out by July 1999 where the system stood and continue with a pilot test during the summer.

When the trial date was set for June 1999, he was selected to be the primary witness for the TAAMS system. He was not only the Project Officer, but no one else knew enough to talk about it. In DOI managers' opinions, TAAMS was floundering in 1998 and he had put it back on track

But the system was now a modified COTS or "MOTS." Although ATS said they had done what the contract called for by June 1999, he was not certain about the data conversion or how it would address the user requirements. He also knew that DOI management was set on using the COTS system as designed but that the BIA management were determined it would conform to their needs rather than their having to change or standardize their business systems.

He stated that during his preparation for his testimony he expressed his concerns about these issues and his unfamiliarity with BIA and their business systems and requirements. He was told to limit his testimony to what he was familiar with and discuss the TAAMS' system software developments and not address the capabilities of the other related activities that impacted on TAAMS such as the data cleanup or conversion. At the time, he did not know the software wouldn't work or that what ATS assured him they were capable of accomplishing with the converted IRMS data was not accurate. But he did not feel qualified to vouch for the rest. He limited his testimony as best he could to the software, not the data cleanup, data conversion, or the system's user modifications that might impact on the software's reliability.

The data he used for his testimony and the Power-point presentation were based on the ATS contract and were prepared by him. He was surprised that DOI did not offer someone to testify who was more familiar with BIA business systems and data requirements. He had been with BIA for less than one year.

Nessi's description of this alleged trial strategy is confirmed to some extent in the transcript of his actual testimony. Under cross-examination by plaintiffs' counsel Levitas, the following series of questions were put to Nessi due to the obtuse nature of his testimony:

Q Before I get into some specific questions, in light of the slide show that you presented and some of the questions that you answered for Mr. Clark at the end, I wanted to make sure that I understood correctly that the TAAMS system is an information management system, data management system, and it is a tool, I think you said, but the TAAMS program, as fully displayed, has not yet been implemented.

A What would be your definition of "implement"?

Q Well, all of the things that you displayed for us have not been put in place. Some of them are not going to occur for years down - - some out-years. Is that correct?

A Actually, the items that were in the presentation are all in the contract, and the only few items that are not in the out-years are the probate tracking, and I believe I mentioned compliance checks. Everything else would be in the first version of the system.

Q What about data cleanup?

A The data cleanup is not actually part of the system. It's part of the process.

Q So you don't consider data cleanup part of the TAAMS system?

A When I'm speaking of the TAAMS system, I speak of the software itself, and the system itself is - - well, it's the system. You know, data cleanup is one of the steps leading up to systems implementation and after.

Q Let me try again.

A Okay.

Q Is data cleanup an integral part of the TAAMS system?

A It's an integral part of the TAAMS initiative.

Q But not part of the TAAMS system?

A No, sir. The system itself is a collection of computer programs.

Q So the TAAMS system, as you define it, is very narrowly restricted to computers, software, a tool to be used?

A Well, I wouldn't narrowly - - I mean, that's a very broad category. It's everything from the programs to the training to the user manuals. It's - - I wouldn't narrowly define it, but I would consider data cleanup as being a preparation activity for implementing a system. Trial Tr. at 2393-2394.

Later, Levitas tried again:

Q All right. We'll get back into that very shortly. One other question I had before we get started, since we started using the word TAAMS again, when you were being questioned by Mr. Clark on direct examination about the slide show, you used the word TAAMS a great number of times. You recall that, of course?

A Yes.

Q And when I asked you a question on cross-examination about TAAMS, you said it was only the software. Do you recall that?

A No. I said exactly the opposite.

Q Tell me, what is TAAMS?

A TAAMS is a system which includes software, user manuals, training. TAAMS is a contractual relationship with a vendor, which includes activities. If you're talking about the TAAMS initiative, it includes all of the activities of deploying TAAMS and preparing the system to be implemented. So it depends on the context that you're using it in.

Q Do you consider data cleanup part of TAAMS?

A I consider data cleanup part of the TAAMS initiative.

Q Is it - - if I use the word data cleanup, is that covered by your meaning of the word TAAMS?

A It would depend on the context in which I'm speaking.

Q I asked you yesterday at the beginning of your examination by me whether or not data cleanup was part of TAAMS. Do you recall that?

A I remember some interaction with that.

Q You told me - - do you remember telling me when I asked you about that, that there was a difference between data cleanup and the software of TAAMS, and, therefore, TAAMS did not cover data cleanup?

A If I remember what I think I explained was, the - -

Q Tell me.

A - - system does not cover data cleanup, but the TAAMS initiative does cover data cleanup. Trial Tr. At 2457-2459.

And finally, in response to an answer from Nessi:

A Well, I guess I should go back to Monday. I'm - - my role is to bring a new system into place. Some of the issues that are existing (sic) in the current system don't necessarily have an impact on what we're doing for the future. So if you - - it's difficult for me to answer some of these questions.

Q Okay. I'm getting a clearer picture of where your responsibilities begin and end than I had at the beginning, so if I've asked you questions that went afield, that's the reason for it.

Are you telling me, then, that you don't have any responsibility for the existing mess, for the existing system situation, but only for bringing into operation the new system, and other people are responsible for cleaning up the data and operating the existing system?

A Yes. Trial Tr. at 2613.

The statement was correct with regard to how Nessi stated he had planned to conduct his

testimony but not with respect to reality. Nessi was responsible for ensuring that the data that was entered into the TAAMS system would enable that system to work. The data from IRMS was the source of the data in TAAMS. Nessi testified that TAAMS system was going to work and be deployed on the schedule he highlighted in his Power-point presentation even though he had doubts about the data cleanup and conversion. But now he was limiting that testimony to the a more limited “system” - - the software. As he had previously testified, the “system is already working.... It’s already operational.” Trial Tr. At 2580.

Levitas had tried to give Nessi an example to help him understand what Nessi meant by stating the system was working. Quoting again:

Q You bought a new Ford pick-up truck. You go into the showroom and you turned it on, and the motor was running. Have you done much more than that with respect to TAAMS?

A I don’t think your analogy fits an information technology program.

Q Well, the reason I ask that is, your testimony is that you still don’t know whether TAAMS is going to work. That’s why you’ve got consultants looking at it, that’s why you’ve got a hundred days before further deployment. You don’t know if it’s going to work?

A No. I’m absolutely certain it will work, but prudent project management, prudent IT development knows that you have bugs in *software*, and that’s how you get them out, you test through them. TAAMS is - - TAAMS is not an ALMRS. I mean, ALMRS had some other issues, from what I understand, just in terms of development time and some other things. That’s not TAAMS. Trial Tr. at 2580-2581, emphasis added.

Levitas did not understand the limitation Nessi was putting on his testimony if that is what he was doing.³ What Nessi said was that the COTS *software* system for which he took responsibility worked. He was not addressing Levitas’ questions based on Levitas’ understanding of what the bulk of Nessi’s three-day testimony had indicated about what the *entire* system, including the data cleanup process, was able or would be able to do. That testimony encompassed much more than software; including whether the data that was being placed into it would allow it to accurately report account information and whether it could interface with the other computer systems. Nessi did not address those issues in responding to Levitas in stating that the system was operational. His definition of “system” was entirely different from Levitas’ understanding of what he meant.

But Nessi stated to the Court Monitor that he testified knowing that he could not ensure the data cleanup or data conversion that impacted on the TAAMS’ software would work. Nor that he was responsible for ensuring that they did. Specifically, that he was not responsible for data cleanup. But the Secretary of the Interior, the Assistant Secretary for Indian Affairs and the Acting Special Trustee all testified that he was responsible for data cleanup.

³ It is unlikely anyone, including this Court, would have understood this limitation.

First, Secretary Babbitt:

Q Now, did I understand your testimony yesterday that prior to the implementation of TAAMS each area will do the data cleanup process first?

A Yes, that's the plan. Before TAAMS is deployed in any given area or agency, the clean-up has to precede TAAMS, or there is no data to enter into the system.

Q And could you tell me when you say that there will be a data clean-up process, could you describe exactly what's occurring there?

A I can only tell you generally. Dom Nessi is really the expert at this point. Trial Tr. at 1083.

Next, Assistant Secretary Gover:

Q First of all, are you aware of who the TAAMS project manager is?

A Yes.

Q And he is?

A Dom Nessi.

Q Were you involved in the selection of Mr. Nessi?

A I was. Trial Tr. at 989-990.

And next:

A We initially made him the acting director of Economic Development because of his experience in financing and lending while he was at HUD, and as TAAMS began to move forward or, more accurately, as TAAMS didn't move forward in the early months of the subproject, I began looking for some other management for the project, and Dom sort of presented himself. After I found out about his experience in project management, I put him in charge of TAAMS. Trial Tr. at 991.

Regarding what the TAAMS' project was composed of:

Q Do you have a general understanding of what TAAMS is going to be able to do?

A. Yes.

Q I don't want you to delve into the details because that is not the point here. Can you give us a general understanding?

A TAAMS is, at heart, a data management system. It enters - - it will receive a lot of the raw data that now exists regarding each and every parcel of land that is under our trust supervision, and it will basically allow us to manipulate that data, the ownership data, the

leasing data, and the land title data....

Q Is that why you referenced the changing number of subprojects that - -

A That's right. That's right. There was another project, also subproject folded into TAAMS which was the land records cleanup, and what's happening out there is as we go area by area and location by location, *the TAAMS system is preceded by a team that is going out to clean up the land records so that when the information is entered into TAAMS, it is the current land data that we have.* Trial Tr. at 992-993, emphasis added.

Also confirming Nessi's responsibilities and the confidence placed in him, the Acting Special Trustee, Tommy Thompson, said the following in response to the Court's questions about data cleanup:

The Court: It depends on data cleanup, doesn't it?

The Witness: Data cleanup has to be done, yes, but the system is on the ground in Billings, and we can work with that. It narrows the things we have to deal with if we have to go to data cleanup.

The Court: One of the risks is now reduced because we now have some sort of a system?

The Witness: Yes. Dom Nessi successfully designed, developed, and rolled that system out, and we have something to work with now. One of the major risks is eliminated, yes. Trial Tr. at 3117-3118.

And later, regarding plaintiffs' counsel's question regarding who was responsible for data cleanup as part of the TAAMS system:

Q And as far as "A" through "E" is concerned, those are really what you would call more preliminary steps? I meant he (sic) real guts of the data cleanup is "F, G," and "H," and then what happens after "F, G, H"?

A That's fair.

Q Okay. I just want to ask you about Mona Infield and Stuart Ott were in charge of this prior at some point?

A Yes. They were identified in the original high level plan as the project officers on this particular effort.

Q And approximately when did Mr. Nessi take over the project?

A I really don't have a date. His engagement commenced in the December time frame, and discussions there were about he being in charge of LRIS, TAAMS, and *data cleanup.* Trial Tr. at 3147-3148, emphasis added.

Nessi is accurate in at least one thing about his testimony. He did not tell a consistent story about his own responsibilities or what they covered. He certainly testified on direct examination about the whole TAAMS system including every single element that would

impact on TAAMS software development and its deployment including data cleanup. The largest subproject next to TAAMS that would have a major impact on the success of trust reform was data cleanup and it was his responsibility. But he, at least in his cross-examination, took no responsibility for managing it.

This manner of testimony on cross-examination casts doubt on his whole presentation. His statements to the Court Monitor add to the skepticism about the accuracy of his testimony concerning the TAAMS “initiative” or “system” and what was actuality known by the Interior defendants about its ability to be deployed and implemented on the schedule and in the manner found in his testimony and Power-point presentation put before this Court. He could not have been responsible for testifying only about the ability of the software to work; that had been Orr’s testimony. Orr was the software vendor. Nessi was the TAAMS Project Manager responsible for most if not all efforts involving TAAMS including the data cleanup project.

Furthermore, he must have realized this. In the Joint Pretrial Statement, submitted to this Court on May 27, 1999, Nessi was listed as a witness as the TAAMS’ Project Manager and the description of his testimony was as follows:

“This witness will testify on development and implementation of the Trust Asset and Accounting Management System (TAAMS) sub-project of the HLIP. He will testify on the Land Records Information System enhancements and the BIA data-clean up. *Id.*, at 11-12, emphasis added.

The senior managers at DOI testified that Nessi was in charge of all aspects of TAAMS and was the supposed expert. Nessi stated to the Court Monitor that he only had responsibility for TAAMS’ software and he did not know the status of all of the projects whose information would be incorporated into it. He at least had concerns about the entire system’s (or “initiative” in his terminology) capability to be deployed. But he testified to its development and rapid deployment in detail on direct examination. Contemporaneous document reviews and interviews by the Court Monitor support the Secretary’s and his subordinates’ testimony that Nessi was in charge of TAAMS including data cleanup. All who prepared him for or heard that testimony thought he was testifying to the whole TAAMS project’s capabilities.⁴

However, the documents do support Nessi’s statements to the Court Monitor that he was concerned about data conversion and other aspects of TAAMS development but was

⁴ Due to the serious nature of this allegation concerning the method of his testimony, the Court Monitor conducted an extensive document review and interviews of as many of the participants in the events leading up to Nessi’s testimony as possible while observing the restrictions regarding attorney/client and work product privilege. There was *no* evidence that anyone coached Nessi to limit his testimony in the manner he says he did and apparently proceeded to do. His superiors and colleagues believed he was responsible for and knowledgeable of all TAAMS’ subprojects including data cleanup. No different picture by Nessi or any DOI official was provided to those DOJ attorneys who prepared him for and conducted his direct examination. Nessi had previously testified to his responsibility for TAAMS’ subprojects including data cleanup. For example: “Q: Okay. Now, as project manager of TAAMS, do you have a role in overseeing or overlooking the data cleanup that we talked about? A: Yes, I do.” Trial Tr. at 2277. Also, “That gave me the opportunity to look very carefully at how the data cleanup was going.” *Id.* at 2291.

assured by the ATS vendor about his ability to bring the system on line. As previously described, Nessi stated that although he had concerns about whether the TAAMS software was prepared for the UAT, or that the data conversion was proceeding as required, the ATS management had assured him and his subordinates that they were ready based on their in-house system tests. Therefore, his testimony in his view was not misleading with respect to the Billings pilot because he had confidence TAAMS' software would at least pass the first series of UATs.

A contemporaneous memorandum from a subordinate working with the software modifications, dated July 6, 1999 (**Tab 3A**), just prior to the start of the Billings test, supports Nessi's memory of his concerns about the software preparation but also the confidence placed in ATS:

“Thought I should let you know some personal observations about the TAAMS system. I reviewed the Title, Right-of-Way, and Lease systems in detail. It was interesting to note that the original prototype screens as certified by us in Dallas have been modified. Four screens were eliminated from the Lease/Range/Rights-of-Way systems.

I think this demonstrates the need for the implementation of some kind of review process. It became obvious to me that TAAMS is evolving every day and that all of the systems are in flux, which isn't necessarily a bad thing. I'm not concerned with the modification of our original design, only that the functionality we designed into the system is preserved. My guess is that time has not permitted the revisiting of the existing screens by the original design teams. The issue remains though, is the original functionality preserved. Artesia continues to make changes to improve the system. However, I do have some concerns with giving Artesia carte blanche to initiate these changes without some ratification by the Design teams.

I told Greg Lawrence and Beverly Johnson that I think Artesia has done a great job in such a short time. For those issues that need to be resolved prior to implementation, time is the only issue. We clearly have the Contractor with the expertise to make all the modifications necessary.” Emphasis added.

Nessi went from the trial to the user acceptance test in Billings the next week after his testimony. At the UAT, it became apparent to him that ATS had not been able to get the data converted. The data that was in the system corrupted the test to the point where it was called off. They did not take the test of either the Realty or Title modules all the way to completion. There were major system functional requirements that were not met and the users rejected the software.

Initially, in his interview about his testimony, Nessi did not remember that this July UAT was attempted. When shown his testimony and the evidence that UATs were scheduled for July and August 1999, he reviewed his records and refreshed his recollection about the UATs and their results.

Regardless of the previous assurances of the vendor, Nessi's concerns were confirmed by the July 1999 test. But ATS still assured him and his subordinates that they could fix the problems for the August UAT. A series of memoranda sent to Nessi reveal some of the

conflicting messages he was receiving about ATS' progress and the renewed data conversion effort:

On July 15, 1999, he received an e-mail (**Tab 3B**) from Lawrence stating in part:

“Just a note to let you know what is going on. Fran will have done by next week the Data Conversion plan. We will send six (6) people to Dallas the week of July 26th to test the conversion. We feel confident that the data conversion will be done by that date.” *Id.*

Emphasis added

But a little over a week later he was told in an e-mail status report (**Tab 3C**):

I'm pleased to say that we resolved the issues we had when we visited ASG. However, as we continue the process of mapping the data, we continue to encounter new issues.

We are currently working on the “Chain of Title” data. This is known as “interest transfers” on the TAAMS side and “History Transfers” on the LRIS side. It is considered by everyone to be the most complex portion of the data model.

I need to mention a considerably important fact. In the past, including last week, the sessions we have had to resolve our conversion issues could have been a lot more productive. Key personnel being pulled out to attend to other TAAMS tasks, have impaired (sic) our progress and have not allowed us to sit down and work with any consistency, and it does not matter if we're at OSC or ASG!

I'm not trying to point fingers or cause any dissension amont (sic) the parties involved, and it's not to say that other TAAMS issues are important. But it's very evident that much is riding on the data conversion effort! It must be made very clear to everyone that 100% of their time must be commitment when working on the data conversion issues! It will expedite (sic) our progress tremendously if we can get that commitment from everyone. *Id.*, emphasis added.

The subsequent August UAT of the Realty and Title modules did not produce acceptable results. They were again rejected. By that time, it was obvious to Nessi that the Realty module needed significant redevelopment. He decided to separate out the Realty module from the subsequent tests to be conducted on TAAMS. He wanted to limit them to the Title module. This decision was reflected in an August 13, 1999 memorandum entitled, “TAAMS Implementation Schedule” (**Tab 3D**) that he had sent to the concerned parties and which he provided to the Court Monitor:

“The Configuration Management Board has made a conditional decision to accelerate the deployment of TAAMS to the title plants this calendar year.”⁵

⁵ Nessi's manner of announcing a TAAMS' system failure as an “accomplishment” (i.e., “accelerating the deployment of the title module”) and burying the actual results (failure of the Realty module tests) in BIA terminology became a pattern for him as TAAMS continued to fail its tests and fall farther behind in deployment. This technique and his statements about his trial testimony called into question the veracity of his statements to the Court Monitor and required the Court Monitor to treat his statements about all matters related to his TAAMS' responsibilities with circumspection, requiring independent verification.

The subsequent TAAMS systems tests in the fall of 1999 continued to have defects sufficient for Nessi to hold off on any further UATs. The November 1999 tests still revealed that the project had not made sufficient progress on any of the modules. Realty was even farther behind in development.

Also, another development had caused the TAAMS system to fall farther behind in development. The ALMRS computer system development at the Bureau of Land Management was abandoned by DOI in the summer of 1999, in part, because the users would not accept it. This rejection of a system that had cost hundreds of millions of dollars sent shock waves through the DOI whose managers were taken to task by Congress. The DOI did not want TAAMS to also be rejected by BIA users who were complaining that it was a COTS system incapable of meeting their needs and was not user-friendly.

DOI changed the nature of the contract with ATS to reflect the goal of meeting BIA user needs. Congress also passed appropriation language to ensure BIA users were satisfied with the system before its implementation. This change in philosophy and direction invited the BIA users to demand significant modifications in the software to accommodate the different trust operations carried out in each separate region.

A November 18, 1999 House Conference Report (**Tab 3E**), located by the Court Monitor, did limit the deployment of TAAMS by stating:

“Prior to the Department deploying the Trust Asset and Accounting Management System (TAAMS) in an Bureau of Indian Affairs Area Office, with the exception of locations in the Billings area, the Secretary should advise the Committees on Appropriations that, based on the Secretary’s review and analysis, such systems meet TAAMS contract requirements and user requirements.” *Id.* at 471, emphasis added.

No longer was the objective to standardize the operations to fit the COTS vendor’s software. The service vendor had to become a systems developer that was, in Nessi’s judgment, stretching what ATS was capable of quickly accomplishing. It was Nessi’s judgment that the subsequent issues with the user testing and the most recent IUAT’s unsatisfactory results stem from this decision.

Nessi was questioned about his and his superiors’ response to the failure of the TAAMS UATs in July and August 1999 and the continued inability of DOI to deploy the system in Billings as this Court had been advised would happen in 1999, at least in the Billings area.

He stated in substance the following:

Soon after the July 1999 UAT, and, he believed, during the trial he expressed his concern that TAAMS was not living up to his expectations, or to his testimony in Court, to the members of the Trust Management Improvement Plan (TMIP) committee; also called the High Level Implementation Plan (HLIP) committee. This was a committee composed of senior officials within the DOI and other managers with responsibilities related to

TAAMS. John Berry, Assistant Secretary, Office of Policy, Management and Budget, chaired the TMIP committee. The TMIP committee met every two weeks unless Berry was unavailable.

He also spoke to an Office of the Solicitor attorney at one of these meetings, he believed either in July or August 1999, about his concern that his testimony was not accurate and might need to be corrected with the Court based on the problems he was observing with the TAAMS software and data. Nessi did not remember the name of the attorney although he did not believe it was the Solicitor himself. He did remember that the attorney replied to him that they would not change what they told the Court about TAAMS regardless of the status of the development of the project.

As shown by a TAAMS Monthly Status report (**Tab 3F**), BIA had set the User Acceptance Tests (UATs) to be conducted between July 6, 1999 to July 8, 1999 and during the week of August 9, 1999. In order to assist the Court Monitor in understanding Nessi's statements and to put them in context with the existing record concerning this testing, an extensive review of the files of the Chief Information Officer (CIO), DOI, was carried out. The CIO, Daryl White, kept a chronological record of correspondence and email regarding TAAMS' developments from the beginning of the project.

On Saturday, June 26, 1999, the weekend before his testimony began on Monday, June 28, 1999, Nessi sent a memorandum to numerous DOI and BIA managers, entitled "TAAMS Update #15 – Special Report" (*See Tab 3G*). It reported that Secretary Babbitt cut a ceremonial ribbon and unveiled the new TAAMS in the Billings Area office that was followed by a small demonstration of TAAMS. He stated, "The day before, Applied TerraVision (Artesia Systems Group) gave us a very thorough demonstration of the system and it not only looks great, but performs very well.... The technology employed is state of the art, giving us tremendous potential for the future." *Id.*

He went on to state, however, that:

"We still have challenges to iron-out during the Billings Pilot:

- **refinement of the data conversion process**
- **more comprehensive data cleanup**
- **better understanding of how TAAMS will impact on business processes**

Furthermore, we must run TAAMS through a rigorous testing process over the next 60 days and develop the final testing package for use in future deployments." *Id.*

Others were getting a slightly different picture, however. In a June 17, 1999 memorandum entitled, "IV&VV Feedback," from his assistant, John Snyder (**Tab 3H**), the CIO, Daryl White, was told:

"The feedback I'm getting from the TAAMS IV&V contractor, visiting in Dallas this week for the system test, is this:

PLUS. We have an excellent contractor.... They're building an excellent system. The key end users (i.e., Frank Lawrence ...) attending the test in Dallas like what they see very much.

MINUS. The User Acceptance test plan needs significant work.... Applied Terravision has the TAAMS software together though some screens have no programming behind it (sic). May be by design but SRA unclear due to their limited exposure to TAAMS system requirements. Applied Terravision has no CM Configuration control left to the PM (according to SRA)" *Id.*

In handwritten notes attached to a memorandum entitled, "Summary of Dallas/TAAMS/Applied TerraVision (AT) Visit July 7-8, 1999 and "Purpose of Visit": Attend BIA Users Test of TAAMS Software" (**Tab 3I**), the author stated the following:

IV&V – SRA

- 1. SRA's general impression – system is fine.**
- 2. Biggest problem: Artesia and BIA are not documenting part of the system properly – don't have time or manpower....**
- 3. SRA has reviewed BIA's Acceptance Test Plan twice and changes are being made....**
Id.

In a note on the side of this paper, the author wrote:

"We will need to have sufficient documentation to support our business decision." *Id.*

Nessi did attend a July 15, 1999 HLIP meeting and gave a TAAMS' update to the participants. Notes on and attached to a copy of an Agenda of that meeting (**Tab 3J**) quote Nessi as covering the following:

- **"Billings unveiling**
- **Testing required**
- ***Data conversion is a challenge***
- **LRIS and IRMS data into a format for conversion to TAAMS**
- **3 August: All data into system**
- **Deploy all 7 sites on 30 August -**
- **Take extra time for testing and data conversion**
- **Transition/Deployment Plan is out for comment**
- **User Acceptance Plan has been completed.**
- **Getting 2-3 second response times in Billings."** *Id.* at 2, emphasis added.

In a note on the agenda itself, the author wrote, in part:

"Data Cleanup - read that part of the transcripts Review Dom's and Secy's testimonies." *Id.* at 1, emphasis added.

Among the other presentations at the HLIP meeting was the first on "Litigation Status

Report.” The presenter was Edith Blackwell, an attorney within the Office of the Solicitor.

This documentary record tends to support Nessi’s interview statements concerning his acknowledged confidence in the TAAMS system vendor and also his concerns about the status of the data conversion. Also, he did make a presentation to the HLIP committee on July 15, 1999 that covered the July UAT and the fact that there were at least data conversion problems with the test.

He also stated that he believed he had spoken to an attorney at one of these meetings about his concern over the accuracy of his testimony and about that testimony being corrected with the Court. An attorney responsible for the *Cobell* litigation was present at this meeting. Also, the note-taker, later identified in his interviews as Daryl White, felt it important to read Nessi’s and Secretary Babbitt’s trial testimony transcripts about data cleanup.

White, in his interviews with the Court Monitor, did not remember Nessi expressing concern about his testimony at the meeting. He did confirm that, based on Nessi’s presentation, he decided to determine what status data conversion was at during the time of the trial to judge how far the system development had progressed from the trial to July 1999 when Nessi expressed concern about it. He subsequently told the Secretary of the Interior that independent verification of TAAMS’ would have to be conducted due to his own concerns about TAAMS’ progress. So, in July 1999 or sometime thereafter, the Secretary had been put on notice that there were at least data conversion problems with TAAMS.

Nessi stated he had decided in August 1999 that the Realty module was not anywhere near ready to be tested or deployed. He had decided to change the deployment of TAAMS to a rollout of just the Title module that was closer to acceptance. Rather than hold up the whole TAAMS project deployment, he decided to move forward with just the Title module by deploying that software to the Title offices since, with the limited scope of their functions, they could begin to use this portion of TAAMS.

Following the July UAT, Nessi made a presentation documented on White’s copy of the agenda for an August 2, 1999 TMIP meeting (**Tab 4A**). Confirmed by the agenda, he spoke about the Billings Pilot and Independent Verification & Validation test in the presence of both Assistant Secretary for Indian Affairs Kevin Gover and the DOI Chief Information Officer, Daryl White,

Of note, White made comments on the agenda next to the presentation description stating:

“Will extend SRA’s K by 5 weeks. 13-17 Sept – Final User Acceptance Test. *Id.*

Also, he noted:

“Dom wants to bring up all title plants in Dec 99. 6-automated, 3- title service offices.

Flathead tribe is compacted.” *Id.*

An indication that the Secretary of the Interior or his representative may have been present for this presentation, the note-taker bracketed the above-notes with this statement:

‘Secy – Go slow on contracting w/Tribes.’” *Id.*

Nessi also stated in his interview that things did not go well with the August UAT. Indications of the potential problems were telegraphed by a subordinate’s August 5, 1999 memorandum to the CIO entitled “TAAMS Issues” (**Tab 4B**). He stated:

“I have just completed a review of the latest version of the TAAMS RMP. A copy is attached. I refer you to the ”Summary.” Three issues need close attention. A data conversion from the legacy systems has yet to be successfully completed. This is absolutely critical. Second and third is the complaint that the trial and GAO oversight are diverting resources....

One other major issue I have discovered. The integrated nature of this beast tells me that a single data dictionary should be developed and used for ALL project subcomponents, it should be available on-line to the appropriated people. If this is not the case, and I have not discovered that it is as yet, NOW is the time to make this decison (sic) and get a single data administrator in place for the whole enchilada. Otherwise you get the pleasure of several stovepipe systems and continued agruements (sic) over how data should be collected and described.” *Id.* at 1, emphasis added.

In notes made on the back of this document, White asked:

“SRA: how important to measure veracity of the test?

**Bill: - Y2K \$ provided for TAAMS machines
What happens if they were diverted to non-TAAMS users?**

Dom/Nancy: why were Area Directors, Sup’ts given “discretion” in assigning machines that were to be earmarked for TAAMS? This is an issue re: “Config Mgt” and doesn’t bode well for the future.” *Id.* at reverse of 1.

John Berry held a meeting following the August UAT on August 20, 1999. Attendees were Bob Lamb, Deputy Assistant Secretary for Budget, Tommy Thompson, Acting Special Trustee, and several other managers including the CIO. On that agenda entitled “TAAMS Activity,” White made comments concerning the presentation made by Nessi to the participants (**Tab 4C**). Quoting Nessi:

“Dom, “need to go through every piece of the system in Dallas.” *Id.* at 2.

And he listed four issues:

ISSUES:

- 1. Data Conversion –**

- Need “full” set of live data for user/system test in Dallas,
2. 30 Aug: Training may have to change – If not, what about changing 30 Aug training?
 3. Full up perf. Testing
 4. disaster recovery

Id.

Quoting John Berry, he wrote:

“J. Berry: don’t let schedule drive you – goal is to make it (TAAMS) work. 1-2 weeks extra is fine.” *Id.*

On the final page of the attachments to the agenda, White expressed some of his own views:

“CRITICAL PROBLEMS (show stopper)

SEVERE PROBLEMS

DATA

- use of “test” vs. “actual/live data.
- Only @ 25% level now
- On 13 Sep – a copy of the “latest” Billings data base – (30% of country)

Question: How “full” will it be?

- cannot test 1500 simultaneous users. This will not be IV&V’d. To test, SRA would have to use a tool that would have to be purchased.
- **DISASTER RECOVERY:** will not be “tested” until later (no date has been set). A plan has supposedly been prepared.

On a different copy of the agenda (**Tab 4D**), a different note-taker present at the meeting quoted both Berry and Nessi:

“JB – Goal is to make this work – should not feel schedule driver.

Dom – SW demo on Tues – no problems. Heck of a problem w/ Data conversion.” *Id.* at 2

The agenda also notes at page 3 the possibility of revising the deployment schedule:

“Meeting 8/26 for planning possibility of revising deployment schedule to complete all title plants this fall as a function. This would defer Juneau approximately 45-60 days until the Juneau title plant was ready to be deployed. It would also push back 8 agencies in Aberdeen and Minneapolis into 2000. It is expected that all other deployments would remain on the current schedule.” *Id.*

The status of the TAAMS project and the poor results of the two UATs in July and August were the subject of another meeting set for September 8, 1999 by Anne Shields,

Chief of Staff to the Secretary of the Interior.

V. THE COURT REPORT

The agenda for the meeting was entitled, "TAAMS MEETING" (Tab 4E) and included a list of attendees limited to Shields, Gover, Berry, Lamb, Thompson, and White. The purpose of the meeting was to "Discuss current TAAMS status and agree on Departmental Policy Position." The balance of the agenda is worth reciting here:

"BACKGROUND:

- Secretary Unveiled TAAMS in Billings On June 25, the announced beginning of a two month Pilot.
- Conversion of current BIA Data has been repeatedly delayed due to numerous problems.
- BIA has been reluctant to share information with the Special Trustee and Chief Information Officer
- Indian Affairs has been continuously upbeat in public (e.g. self nomination for award given by Government Computer News and various newspaper articles)

CURRENT STATUS: *In effect, the TAAMS pilot is just beginning*

DEPARTMENTAL POSITION: The Department needs to develop a unified position based on where the BIA actually is in the TAAMS effort

OUTSIDE NOTIFICATION: *The Department needs to quickly inform:*

-U.S. District Court Judge Royce C. Lamberth

And immediately thereafter:

-The Appropriations and authorizing Committees of Congress

OVERSIGHT: BIA needs to be completely forthcoming with the Special Trustee and the Chief Information Officer on the actual status of TAAMS on a real time basis in the future" *Id.* Emphasis added.

A memorandum entitled, "ITEMS for TAAMS IMPLEMENTATION REVIEW MEETING w/Chief of Staff 9/8/99 (Tab 4F)," within the CIO's files indicated some of the concerns prompting this meeting. The author first reported on the comments of the SRA vendor's IV&V Team:

"Readiness for OAT&E/IV&V: System stability is still in question, primarily from a data perspective. SRA hasn't seen any of the test results from the late August testing so they (sic) have no idea of where troubles are appearing. They remain concerned the test team has not yet completed a full run-through of all the test scripts outlined in the Test Plan. The TAAMS team needs to validate the testing process is correct and complete before trying to perform the IV&V...."

Schedule: Concerned about conducting Billings pilot and OAT&E/IV&V concurrently rather than serially as outlined in the contract. Billings personnel will have only used the new TAAMS system, with their data, for about 2 weeks before the IV&V is conducted. (Much different than the three month pilot described in the contract).

Testing Requirements: *Some requirements still don't appear in the test plan.... Id., emphasis in original.*

Reporting on the author's TAAMS' contact:

“Testing: I'm concerned the efforts on system testing are incomplete. I'm sure the testing team is actively working to prepare the best possible test plan for TAAMS but I'm concerned they haven't had sufficient time to walk through that plan to clean up any of the “bugs” in the plan's execution. *Testing prior to September 3, didn't use representative BIA data (since successful conversion of Billings data didn't occur until this week) so it didn't test TAAMS completely. I haven't seen the August 30-Sept. 1 testing results but from what I've heard, I have no confidence the testers have used the test scripts all the way through for any of the systems tests conducted to date. I would hate to have the IV&V on Sept 27 be the first time the scripts are used all the way through. Id., emphasis added.*

Pilot Duration: I'm concerned, because of the need to meet the schedule, that we are shrink (sic) the Billings pilot duration down significantly. We made the June deadline of implementing TAAMS but I don't think any of the Billings BIA personnel have used the system with any regularity since. *Don't know how we can say we've had a pilot going since June.... Seems we've compressed too many activities into the same time frame and I'm not sure we'll like the results. Id., emphasis added.*

Whether Nessi, who was at the meeting, expressed it or not, the Chief of Staff and the senior DOI managers and decision-makers knew TAAMS was in trouble; perhaps so serious that the agenda for the Chief of Staff of the Secretary of the Interior included a reference to quick “Outside Notification” of this Court and Congress. The Interior defendants must have known of Nessi's concerns about TAAMS' lack of performance and failure to pass the UATs up to September 1999 (to include having to postpone the early September 1999 test until late September 27, 1999). They may have shared his concerns based on their own information. They addressed alerting this Court (and Congress) to the failure of TAAMS to live up to the picture painted for this Court in June and July 1999 during the trial.

Someone, if not Nessi, had addressed his or her concern about notification of this Court and Congress about the TAAMS' test and data conversion problems and, possibly, the need to correct the trial testimony concerning TAAMS' ability to meet its deployment schedule. Notification of the Court and Congress about TAAMS was placed on the agenda for the Chief of Staff to the Secretary of the Interior. The meeting was held.⁶

⁶ The senior managers still employed at DOI who attended this meeting could not shed any light on the substance of the discussion about the notification of the Court and Congress. The existing written record

Whether or not Nessi actually talked to a DOI attorney about his concerns with his testimony, an attorney from the Office of the Solicitor had asked him prior to this September 8, 1999 TAAMS meeting to prepare a memorandum concerning the status of TAAMS. This draft became the subject of discussion after the meeting as a method to inform both this Court and the Congress of the serious problems with TAAMS.

On August 31, 1999, Nessi forwarded his draft memorandum (**Tab 4G**) in an e-mail to Edith Blackwell, the primary Solicitor's Office attorney working on the *Cobell* litigation. Highlights of that draft memorandum were:

“First, the system was unveiled on June 25, 1999 in the Billings Area Office as scheduled. Originally, it was planned that the Billings area agency offices would be deployed two at a time over the next two months, with the final agency being deployed in early September.

The schedule was revised to postpone actual operations in Billings and the phased deployment to the agencies in lieu of investing more time in the system testing and data conversion processes during July and August....

The Billings Pilot will continue until TAAMS is fully incorporated into the operational environment of the Office.... As a result, the pilot may extend beyond the point in time when the Billings Area discontinues entering data into the legacy systems and the Department decides to initiate deployment of TAAMS to other offices.

Second, the original decision to conduct the final system testing, observed by an independent verification and validation contractor was scheduled for September 13, 1999. The logistical requirements of deploying all of the Billings sites in a two week period will require a substantial outlay of human resources...and it would not be possible to conduct a thorough system test Therefore, the system test is scheduled for September 27, 1999 in order to ensure that adequate personnel are available....

Third, The earlier deployment schedule was completely geographic-based with Area Offices being deployed in their entirety for all functions. *The schedule has been tentatively revised (final decision to be made September 13, 1999) to implement the Title Plants in all geographic areas during the period of November and December. This change was considered for the following reasons:*

- **Implementing a single major function across the BIA will allow a more focused integration of the new system into existing business processes.**
- **It will eliminate the necessity for BIA title plants having to use two systems for processing BIA Inventory Reports for probate purposes....**
- ***Simplify the data conversion process by transferring data from one system (LRIS then IRMS) to TAAMS rather than two at one time. Id. at 2, emphasis added.***

review is the best source of those discussions and decisions made regarding that notification. Others, such as the former Chief of Staff, the Assistant Secretary for Policy, Management and Budget, and the Deputy Solicitor, had previously declined the Court Monitor's invitation to discuss their involvement with trust reform. But *see* Kevin Gover's testimony at page 105.

Nessi stated that the actual reason for deploying TAAMS in this altered manner was because he could not get the Realty module ready. He felt they had a better chance of passing the next UAT if only the Title module was tested for deployment.

However, this memorandum, like his previous notification, did not address the overall reason for this change - - the failure of TAAMS to be accepted by the users due to the data and software programming and testing problems. Again, it buried the negative information about the true test status of TAAMS in positive or neutral language that did not give the reader an accurate picture of the severe problems faced by the system developers.

The day following the Chief of Staff's meeting, Shields sent an email to the Deputy Solicitor, Ed Cohen, entitled, "TAAMS" (Tab 4H). In it, she stated:

"I met with folks yesterday about the TAAMS schedule and whether there was a need to notify the court of any changes. Did you know about the meeting and decide not to come or what? Anyway, while the consensus was that no one had testified to an exact schedule so we probably don't have to correct anything, everyone thinks that the court has the schedule in some of the documents and since we will be giving the Hill clarification, we should give it to the court as well. Dom said that he had send (sic) a one-pager to SOL (Solicitor's Office) (I have a copy) which should suffice. Dom seems to think we are reaching our goals in a timely fashion, that everyone should expect changes along the way. The biggest issue seems to be the need for intensive training for users so that they know how to use the system and are confident that they know how so they will use it. That is under way." *Id.*, emphasis added.

A number of questions about the September 8, 1999 meeting's discussion are resolved by the Chief of Staff's email. The senior managers and Shields did discuss the testimony and exhibits submitted by the Interior defendants at trial. There was a concern expressed about what the Court had been told concerning TAAMS' deployment schedules. They discussed that concern and the Court's understanding of what they had provided for a schedule of TAAMS' deployment. They discussed whether the Court would view that schedule as one that it would rely on. Also, whether other documents were submitted to the Court that indicated the schedule. So Nessi or someone made the connection between what the testimony at trial had been and whether it needed to be corrected because of the issues with TAAMS' deployment.

Apparently the decision was made that because no one had testified to an "exact" schedule the Court would not need to be fully apprised of the changes that would now have to be made to that schedule because of the TAAMS' development problems. Shields also had Nessi's "one-pager." That memorandum and her memory of his comments at the meeting indicate that he had discussed the reasons for the need to change the schedule and the impact that might have on this Court due to his previous testimony but had again given an optimistic view of reaching his further TAAMS'

deployment goals in a timely fashion.⁷

In an email from Tommy Thompson dated September 10, 1999 (**Tab 4I**), two days after the Shields meeting, addressing this memorandum, which had been provided to the meeting participants, he cited a problem:

“Dom: In thinking about our Wednesday conversation on this topic, and upon reviewing the attached paper it seems to me that we did not come to closure on the process that will be needed in the Department (sic) to make a decision to change the current deployment from a geographic approach, to implementing the TAAMS modules replacing the Land Records Information System first.

I raise this issue since the attached paper indicates a September 13 “final decision” coupled with a November/December implementation. Since the “final decision” date is well in advance of the results of the IV&V required – and promised – for a Departmental decision, on what, and how, will the Department make a decision to deploy a major portion of TAAMS?” *Id.*

On the same page as Thompson’s email is one with the same date from Tom Gernhofer, an assistant to John Berry who coordinated the TMIP committee’s activities and documents, also expressing concern that the Secretary had testified before Congress on TAAMS and in his Statement For the Record, dated July 14, 1999, (attached to the email) had said he would make the decision on TAAMS deployment or continued testing after concluding the Pilot and receiving recommendations from Gover, Berry, the Special Trustee, and the CIO. Gernhofer inferred without stating it that Nessi’s statement that there had been a decision to change the manner of deployment was impossible. *Id.*

Finally, Bob Lamb stepped into the picture in an email on the same date (**Tab 4J**). He asked:

Maybe I am missing something, but why would we decide to initiate deployment if the pilot is not finished? There may be other facets added to the system as we go along, as you explained in the meeting, but wouldn’t the core pilot be completed. Maybe the problem is calling this new work a pilot too?” *Id.*

In a September 14 -15, 1999 email exchange about the Nessi memorandum between John Berry and Kevin Gover (**Tab 4K**), the issue was debated further. First Berry:

⁷ It would appear that whoever raised the concerns expressed in the agenda’s subjects for discussion (and it may not have been Nessi), although Nessi may have addressed the problems with his testimony as he told the Court Monitor he had done, he again convinced at least the Chief of Staff that the problems could be remedied by changing the deployment schedule to address only the TAAMS’ Title module. But this, in itself, was a major change to what had been told this Court about the *method* of deployment if not also the *timing* of deployment. As others understood, this change would require notification of the Court about the major deployment schedule changes because of the TAAMS’ data conversion and development problems. As can be seen, the initial draft memorandum reflected this consideration albeit in Nessi’s usual “speak no evil” manner.

“It seems to me that we need to clearly define when will the IVV (sic) test begin and end, and when we will make a recommendation to the Secretary that what we have is good to go. Can we reach agreement on this quickly – because I will soon need it when I am talking with appropriators to try and keep our \$100 m...” *Id.*

Gover replied:

“All of this is a matter of definition. I have discussed with Dom the need for a point of decision, and he agrees. I also think his reliance on the Configuration Management Board is sound, but OST should be involved in the CMB, perhaps in an ex officio (sic) capacity, to carry out its oversight responsibilities.” *Id.*

But the budget problems were a larger issue than understood as seen from the following September 15, 1999 email exchange (**Tab 5A**) between a budget officer and Tom Gernhofer. First, Ms. Shaughnessy:

“OST’s draft budget estimated to OMB currently includes the revised TAAMS schedule, that proposes implementing TAAMS-title functions nationwide in Nov/Dec of this year.

What is the status of this decision? My understanding is that PMB doesn’t have any objections at present. Tom, were are you on this?

Us (sic) budget folks need to know so that we can be accurate in our omb (sic) submission.” *Id.*

The reply from Gernhofer:

“Here is where I am on TAAMS. When the pilot is “complete” e.g. systems test, user test, IV&V or whatever technical terms the IT people want to employ; we (PMB, IA, ST, and CIO) will recommend whether to deploy or further work on TAAMS. Once the decision is made I personally am in no position to recommend area by area vs. Title plant implementation. The IT experts may have a different view. therefore (sic), I think the language should provide for either eventuality. TG. *Id.*⁸

Bringing everyone back to the question at hand, the Deputy Solicitor, Ed Cohen, sent a September 16, 1999, email to White (**Tab 5B**) stating:

“Daryl – Attached is Dom’s document. Can you write something up that can be used to advise the court of these developments? The Secretary will need to know this for the hearing on Wednesday and the notice should go to the court before the hearing.” *Id.*, emphasis added.

In an internal Solicitor’s office email, dated. September 18, 1999, (**Tab 5C**) Cohen explained his views on the report to a subordinate:

⁸ Title “plant” was the terminology used to describe the Regional offices that provided, among other information, the IIM account holders with information on the legal titles to their property. Title “module” was the portion of the TAAMS software that was used by a title plant to enable it to provide that information.

“My view is that it has been written as a report, but as I understand it, there are a number of changes in our approach or timetable that are needed. I think we should include them.

The lead in might be something like “As a result of our experience in Billings, we will be modifying our TAAMS implementation plans in several respects. First...”’

The changes that I understand might be being considered are the following:

- 1. Rescheduling the IV&V (delay 2 weeks??)**
- 2. Installing TAAMS (sic) the area and associated agency offices at once**
- 3. I don’t know if there are or are not any changes as a result of this in the overall end date for installation.**

This narrative is needed to brief the Secretary for Wednesday’s hearing. But we also need to file something with the Court on Tuesday so that the Judge does not read this in the newspaper. Can you (1) work with White, Gernhofer and Thompson to perfect this document; (2) alert Justice of the need to file something Tuesday; and (3) make sure that the appropriate document is drafted for the court (perhaps a letter or other transmittal document which attaches the report).

Thanks. Ed.” *Id.*⁹, emphasis added.

The need for not only informing the Court but also for the Secretary to be able to speak to the TAAMS’ deployment at the Congressional hearing generated a flurry of activity in the next several days. Two drafts were submitted; one by the Office of Policy, Management, and Budget (PMB) (**Tab 5D**) and the second by the CIO’s office (**Tab 5E**). John Snyder, CIO’s office, was designated to be the responsible official for coordinating the changes and putting the memorandum in final form.

The Nessi memorandum, attached to these emails, had undergone significant changes. There was no longer any mention of the decision to revise and postpone actual operations in Billings and the phased deployment to the agencies to provide for more time to test and do data conversion. Nor, as previously written, was there mention of a decision to be made in September 1999 to change the deployment schedule to implement TAAMS at title plants instead of rolling out TAAMS to the geographical regions.

The Office of Policy, Management and Budget’s memorandum mentioned the

⁹ The Deputy Solicitor’s reason of why the “court report” was to be provided to the Court prior to the Secretary’s Senate testimony - to inform the Court of what the Senate would be told - was not totally accurate. It was not just a courtesy notification to this Court of what was to be provided the Senate. The September 8, 1999 meeting, which he did not attend, had an agenda item that clearly indicated the discussion was about the data conversion and deployment problems with TAAMS and the need to rapidly notify *both* the Court and the Congress’ appropriation and oversight committees. It was recommended that the Court be notified first. But he did recognize that changes to the deployment schedule should be reported to the Court.

difficulty with data conversion but noted it had reached a satisfactory level and a final conversion was begun on September 1, 1999. The memorandum went on to state:

“The culmination of system testing, conversion and data cleanup activities, allowed for an installation of TAAMS in the entire Billings Area beginning September 7, 1999.” *Id.*
at 2.

And further:

“Deployment activities initiated with installation of TAAMS software in the Billings Title Plant and training for approximately 30 Billings Title Plant staff....

On September 13, 1999, TAAMS was installed and training commenced for 60 personnel of seven Agency Offices under Billings’ jurisdiction. During this time, land title was input into both the old system and TAAMS to ensure no adverse impact on daily operations.” *Id.*

The last page of the memorandum discussed activities for September 1999. A final system test would be conducted by ATS. A UAT would be conducted in Billings to determine the initial level of user satisfaction and would be repeated monthly to assess changes in the level of acceptance. A business-engineering consultant was to work with the Billings staff in October.

The final bullet in the memorandum addressed the change in the deployment schedule first mentioned by Nessi in his memorandum:

“A proposal for accelerating implementation of all BIA title plants has been developed and reviewed by the BIA’s Configuration Management Board. Their (sic) appears to be a number of positive results by amending the deployment schedule to accommodate a “Title Plants First” approach.

All of the above actions are designed to facilitate a Departmental deployment decision to additional TAAMS sites in Mid-October.” *Id.* at 3.

The CIO’s memorandum mentioned that the TAAMS Status report needed to be delivered to the Court no later than Tuesday, September 21, 1999. It had input from Nessi, White and Gernhofer. It added dates to the planned fall activities. The final system test by ATS would be conducted with an IV&V contractor issuing a final report on November 12, 1999. Also, a UAT to determine the initial level of user satisfaction would be conducted in Billings and repeated monthly through December 1999 to assess changes in the level of acceptance.

The Secretary’s Trust Management Improvement Committee (Assistant Secretaries for Indian Affairs, Land and Minerals, Management, Policy and Budget, the Special Trustee, the Solicitor, and the CIO) would receive the results of these tests and, following careful review, would make a recommendation to the Secretary on or about November 19, 1999. *Id.* at 3.

What both memoranda failed to clearly point out was that the TAAMS' activities discussed were only the preliminary installation of the TAAMS hardware and software to Billings without any successful user acceptance tests. The tests that had already been conducted that TAAMS failed were not mentioned in favor of focusing on the September 1999 UAT, November 1999 IV&V report, Committee recommendations, and Secretarial decision.

Further, the Board's review of the proposal to "accelerate" implementation of all "BIA title plants" was because of the BIA's inability to proceed with the Realty module testing. The only part of TAAMS that they could hope would achieve a passing grade on the September 1999 test was the Title module. But they spoke of the tests in this memorandum as if they would address the whole TAAMS system.

By September 20, 1999, the "Court Paper" had changed again. Snyder provided the parties a new email-version (**Tab 5F**) incorporating comments from Bob Lamb and John Nyce of the National Business Center. The memorandum still did not mention the results of the July and August 1999 UATs but repeated the conversion problem and stated that it had reached a satisfactory level by August 30, 1999. In referring to the system testing, it became a positive:

"The culmination of system testing, conversion and data cleanup activities, allowed for an installation of TAAMS in the entire Billings Area beginning September 7, 1999...."

On September 13, 1999, TAAMS was installed and training commenced for 60 personnel of seven Agency Offices under Billings' jurisdiction." *Id.* at 2-3.

Again, the only mention of the fact that what had been installed and would be tested was the Title module was one sentence after the above quoted September 13, 1999 installation. It stated "During this time, land title data was input into both the old system and TAAMS to ensure no adverse impact on daily operations." *Id.* at 3. No mention was made that any decision on a broader deployment would address only the Title module, not the fully integrated system that had been addressed in testimony and exhibits during trial. The term "TAAMS" was used very loosely in this memorandum to, presumably, avoid addressing the fact that no part of TAAMS had passed the UATs and only the Title module was under consideration for deployment.

The accurate picture of what was happening was contained in a memorandum for internal review emailed from Nessi to Berry, dated September 21, 1999 entitled, "TAAMS Configuration Management Board" (**Tab 5G**). Nessi provided Berry with a final decision "on recommending a change to the Department in the TAAMS implementation schedule to deploy to all Title Plants following the Billings Pilot (upon a Departmental decision to proceed)." *Id.* at 2.

The benefits of this approach, in part, Nessi said were:

"The ability to have a major TAAMS function operational nationally much earlier in the process as opposed to waiting for all 12 area offices to be implemented to

have any one function operating consistently across the Nation.

Simplification of the conversion process by focusing on LRIS data only. The combined LRIS/IRMS conversion was the source of many of the difficulties in the Billings conversion.

Consolidation of training effort focused on Title functions will allow us to mix staff from a number of offices into the same class.

Data cleanup will focus on the title data and we will be able to provide a more concentrated effort on one singular data set....

Most importantly, it eliminates BIA field staff from having to operate two systems for an extended period of time to collect the necessary national data for probate and other informational purposes.” *Id.* at 2.

The unstated reason implicit in all of these “benefits” was that TAAMS neither had the software, data conversion, personnel, scope or data cleanup to do more than address the Title module and do it on a much smaller deployment schedule. Acknowledging one disadvantage of this approach, Nessi commented:

“The primary disadvantage raised was that the Department could receive criticism for changing its implementation plan.

The response to that concern would be that the purpose of the Billings Project was to provide (sic) better information on a number of topics (conversion, cleanup, deployment, etc) not just the system itself and the lessons we learned indicated that this course of action would be best.” *Id.*

There was no truth in this proposed response. The decision had to be made because BIA could do no more than address further testing of the Title module. They weren’t even certain the September 1999 tests of that module would be successful. The Court had been told that TAAMS would be deployed in September 1999 in Billings if testing was successful and rolled out in October 1999 from there to the rest of BIA regions and agencies. There was no limitation put on the deployment or implementation of either the Realty or Title modules in the testimony. The interface between the three computer systems was also to have been completed. TAAMS was not even capable of being tested using live data. If they reported this limited rollout to the Court, the plaintiffs would see behind the statement to the truth.

The report was never sent to this Court. Inquiries by the Court Monitor of the senior management of DOI and at the Department of Justice have failed to produce any formal or informal written notice to this Court based on these DOI meetings and drafts of the “court report” memorandum and no explanation of why it was not sent.¹⁰

¹⁰ The Department of Justice has informed the Court Monitor in answer to his inquiry that a review of its records and interviews with their attorneys involved in the *Cobell* litigation during this period have confirmed that, to the best of their knowledge, the report was never discussed with or sent to the DOJ or its attorneys responsible for the litigation. The Court Monitor specifically asked the DOJ to confirm whether

The Interior defendants had been put on notice confirmed by their own written statements that the deployment of TAAMS could not meet the schedule testified to and outlined for the Court in exhibits in the trial that had occurred a little over a month before. They had been told of the July to September 1999 tests results and data conversion problems in briefings to the TMIP committee's senior management and the Chief of Staff to the Secretary of the Interior. They had discussed what this Court had been told of TAAMS' deployment schedules and whether they needed to correct that testimony as a result of their being put on notice that that schedule and method of deployment could no longer be met because of TAAMS development problems. They had addressed notification of the Court and Congress. They had begun to prepare a memorandum to make that notification. As will be discussed later, Congress was given a patently incorrect description of the status of TAAMS with no mention of the testing and data problems. This Court was told nothing.

VI. SUBSEQUENT TESTS

A. The September IV&V Tests And Congressional Testimony

Part of the reason for this silence might have been the concern over the possible results of the September 1999 test. Two memoranda located in the CIO's files indicated that there were early warnings that things would not go as planned in the September 1999 tests. The CIO, Daryl White, emailed Nessi on September 16, 1999 (**Tab 5H**). He expressed his concerns to Nessi by stating:

“As you know, SRA still lacks some information concerning the system test scheduled to begin on the 27th. From a review of the feedback they provided to you I still believe that we are cutting it very close to be in a position to have a meaningful test starting on the 27th. I suggest we meet soonest to go over SRA's concerns to ensure we are ready. While this may be viewed by some as a test internal to Artesia, we must recognize that we are using the results to decide whether or not to deploy the system beyond Billings.” *Id.* at 1-2, emphasis added.

The second memorandum, entitled “Trip Report: TAAMS System Test and IV&V in Dallas, September 27-30, 1999 (**Tab 5I**),” reported the following:

“Background: Attended Applied Terravision's system test of TAAMS from September 27-30, 1999. The test was conducted at the developer's facility using a mirror image of the Billings production database and used two testers (Applied Terravision Systems (ATS) employees). GAO personnel and the IV&V Contractor, SRA, were also in attendance as observers....

DOI attorneys could determine if they did communicate with the DOJ about this report or provided a copy or a draft of it to its attorneys. The DOJ has informed the Court Monitor that DOI attorneys have responded to DOJ that they have not been able to confirm that any communication about this report was ever made to DOJ attorneys. The DOI attorneys also reported that there was no evidence that they could discover that it was sent to DOJ. Independent questioning of potentially knowledgeable DOI managers by the Court Monitor has resulted in similar negative assertions.

The daily wrap-up meeting was not held until Wednesday (third day of testing) and only after I badgered the ATS Project Manager. GAO and SRA were not provided copies of the scripts until the third day of testing, making it difficult to monitor the test.... *The Accounts Receivable test scripts were inaccurate and needed rewriting because the module wasn't ready until after testing started.* It seemed ATS was still modifying code as late as Tuesday, September 28. Copies of the daily test results were not available to GAO nor SRA.

“Observations: ATS was not prepared for conducting the test. The scripts were incomplete.... ATS didn't present an organized approach to the test, leading one to question their control procedures, quality assurance capability, etc. ATS didn't have all the test scripts completed nor were they sure which requirements they needed to test. Documents describing the mandatory requirements expressed in the contract and the testing scripts didn't have a one-to-one match....” *Id.*

The major recommendation made by the author was to have ATS conduct another full systems test using several BIA users as testers. The plan to have the Secretary approve a deployment of even the Title module had failed and testing went on.

While the Court was not informed of the alleged status of TAAMS, the Congress was. In prepared testimony submitted to the Senate Committee on Indian Affairs on September 22, 1999 (**Tab 5J**), Secretary Babbitt stated in part:

“On June 25th, I unveiled TAAMS at our pilot site in Billings, MT. Since that time we have worked extensively with our vendor to run the system through an exhaustive series of tests in order to ensure that TAAMS meets our users' needs and performs as effectively and efficiently as possible. Also during this time, we developed data conversion programs to transfer the electronic information from the existing BIA systems to TAAMS. This was a very challenging task given the characteristics of the 25-year old systems, including widely divergent formats that had been developed by the field offices over the years....

I am pleased to announce that all of these Billings offices are now operating TAAMS in a parallel environment with the existing systems. We will continue to test the system during this pilot period. We anticipate minor system adjustment as a result of this testing process....

Our current plan is to conduct a final system test in late September....” *Id.* at 2, emphasis added.

The Secretary's hearing testimony (see extract at **Tab 5J**) took on a more strident note in his initial oral statement before the committee and in response to questioning from the committee members; to wit:

“The deployment of the basic data processing system, the TAMS (sic) system, is going exceedingly well. I was in Billings in June for the startup of that process with our partners from Applied Terra Vision and the other contractors. The system is moving along nicely. We now have it running in parallel with the existing systems. That's a very important milestone....

It is my sense that we now move to conclusion. That SRA's final report is about 6 to 8 weeks away and I anticipate making a final deployment decision by late November.... I can only say to you that I believe we'll be back here in early November with a comprehensive report

which says the TAMS (sic) system is meeting expectations, that the original decision to go with off-the-shelf technology was entirely correct and that the validation and testing that is taking place demonstrates that.” *Id.* at 24, emphasis added.

Questioning followed:

The Chairman (Senator Ben Nighthorse Campbell). Let me suggest I don’t believe the GAO has ever been accused of gamesmanship. In June, the GAO labeled your plan highly risky. What has changed since then that would make the GAO - - I haven’t heard from them in the last week or two but what would make it any better now?

Mr. Babbitt. Well, Senator, *the proof of the pudding is that it is working.* *Id.* at 26, emphasis added.

Later:

Senator Murkowski. Mr. Secretary, I appreciate the explanation but I don’t know that I feel necessarily any better because I think the GAO predicted the IRS system would be a failure and the IRS said it wouldn’t and they stuck by their guns and it cost us about \$3.3 billion. That’s perhaps a generality but the problem I have with your explanation is it seems to me that we’re stilling (sic) looking at whether or not there’s a defined architecture for Indian trust operations in the TAAMS. That is the criticism that GAO has made because they consider that integrated architecture for the Indian trust corporations is lacking from the system and it either is or isn’t. You say it is and I guess we’ll just express our concern and hold you responsible if it isn’t. Is that fair enough?

Mr. Babbitt. Senator, if you go to Billings, MT today, you will see the TAAMS system running in parallel with the old system. You will meet the people, you will meet the outside critics from SSA (sic) Associates. You can talk to them and hear what they have to say.

Senator Murkowski. We can go down rabbit trails on computer systems until the cows come home.

Mr. Babbitt. It’s very important. I don’t view it as a rabbit trail, it’s very important.” *Id.* at 31.

Had Senator Murkowski gone down that “rabbit trail” and visited Billings, he would have found the Secretary’s statements were wrong. Whoever drafted his statement and briefed the Secretary provided him with information that was misleading in several major respects. The previous tests were not exhaustive and certainly did not ensure TAAMS met users’ needs or performed effectively and efficiently. TAAMS had not performed during testing and had not even used live data to an extent sufficient to allow the system to be validated or verified. Nor had the data been successfully converted. The Realty module was not in a state where it could be tested. Finally, the Billings offices were not operating with “BIA data.”

Whatever the Secretary thought he meant by stating the system was “working” and running in “parallel” with the legacy system, his testimony did not comport with the true picture on the ground as his senior advisors knew all too well. But he had now

committed DOI to a November 1999 decision date for deployment of TAAMS beyond Billings.

The September 1999 test was conducted. Nessi submitted an email report to Bob Lamb on its results dated October 1, 1999 entitled, “IMPORTANT – from DOM NESSI – TAAMS SYSTEM TEST (Tab 5K).” In the attached report, entitled “TAAMS System Test Update,” he wrote:

“During the week of September 27, ATS conducted its final system and functionality test....

The results of the test were very positive for those aspects of TAAMS that had been populated with data from the legacy systems. Less than 10 errors were discovered, none of a critical nature....

The system process is exactly where the Department expected it to be at this stage and the results are consistent with our expectations. There were a minimum of reported errors in the software and a few design requirements that must be better defined and may require additional minor programming.

Early indications from TAAMS users show a high degree of acceptance, despite the very different nature of TAAMS from the legacy systems.

There is little question that TAAMS will be a successful tool for BIA use and will be fully operational in the very near future to perform the basic trust functions outlined in the contract.” *Id.* at 1-2, emphasis added.

This report apparently did not correspond with the testing contractor’s initial report. In an email dated October 10, 1999, entitled, “clarification,” (Tab 6A) Lamb stated to White:

“It occurred to me as we were talking that a third of the system was not expected to be tested at this time because it was deferred for later implementation. So of what (sic) was expected to be tested at this point. 50% was tested, not 33%. John Snyder felt this was a fair characterization.

Nessi replied to Snyder in an October 11, 1999 email entitled “System Test” (Tab 6B), explaining the percentage of the systems tested were not the reported 34% but actually 92% since those that weren’t tested were either “non-operational,” “deferred” or just need some “programming time.” *Id.* at 1.

Lamb emailed Nessi on October 12, 1999 (Tab 6C) stating that his memorandum explanation would be very helpful in giving a summary to the Secretary but added:

“And we will have to go further to elaborate on these results, in my judgment, in order to present where we are at this point in time.” *Id.*

White was less guarded in his opinion of Nessi’s memorandum regarding the test results. On the same day, he wrote to Lamb by email (Tab 6D) stating:

“I’m glad you responded before I did.... your response is very “diplomatic.” TAAMS will need another monitored “test”.... I don’t believe the results from Dallas were conclusive.... either pro or con. I will hold further judgement (sic) until I see SRA’s DRAFT report on the 22nd.” *Id.*

SRA submitted that draft report on October 29, 1999. It was reviewed by Daryl White’s office. He reported to John Berry in a memorandum dated November 1, 1999 (*See* cover letter at **Tab 6E**) that, based on their analysis of the “inclusive results” of the draft report, he recommended a second test be conducted in Billings at a later date using actual users.

He also recommended that the test require Independent Verification and Validation (IV&V) oversight from another vendor, SRA. Conditions to be met included that the TAAMS system was “stable;” that Billings users had had sufficient time to become proficient with the system; and that system documentation was consistent with that which was to be tested. *Id.*

The draft report’s Constraints Section at page 5 listed the constraints experienced by the independent testers; three in number:

- The lack of contract standards was the major constraint on the TAAMS project. There were no standards levied on the product.
- The project schedule was extremely aggressive with little or no slack. The result was that there were limited resources and the testing activity was “just in time.” This sometimes resulted in little or no time to review documents and software before they were used.
- There were no documented processes. As a result, there was no way for the testers to verify completion of each process step. Tasks were started and not completed. *Id.* at 5.

The CIO’s subordinates’ analysis at the back of the report was more direct. It stated in part:

“The TAAMS system testing through September 27 tested about two thirds of the mandatory requirements SRA was to look at. While only about 10 percent of those requirements failed, nearly 50% of the requirements were only partially demonstrated successfully and the demonstrated success was often highly variable.

A numerical summary of the requirements reviewed by SRA for this report looks like this.

Of the 66 requirements reviewed by the IV&V team:

- 24 still need testing because they were not demonstrated during the Sept. test
 - 1 needs additional analysis

Of the 41 that were demonstrated:

- 7 failed
- 32 were partially demonstrated and;
 - 2 were fully demonstrated.

This means we are at risk if we accept the results other than the two requirements that were demonstrated successfully.

SRA has not received any feedback from Billings users. The survey sheets, sent out by BIA to Billings TAAMS users, have not been received nor the results analyzed making an assessment by SRA nearly impossible. A key component of assessing TAAMS, user feedback from the field is very important.

SRA is still concerned about such critical requirements as Disaster Recovery and Y2K verification. Specifically, they are concerned about the level of detail given to the testing of these requirements and the date when these tests would be completed.” *Id.* at page 4 of Attachment 2, emphasis added.

Of interest, the draft report also reviewed the June, July and August 1999 tests. Statements in the report regarding the results of those tests were:

June Test Monitoring: This testing was conducted 15-17 June and was essentially a proof of concept/screen design session....

- **No connectivity/flow of screens from one to another**
- **Conversion problems acres to hectares**
- **Lack of Remarks areas, and typographical errors**
- **Several screens, including those for Forest use, were defined as deferred from Development until after Billings.**

The three BIA representatives from SD all seemed pleased with what they were seeing as a major improvement made in the past three weeks, since their last visit.

Accounting screens were identified as not yet ready, but would be available soon, within a few days.

The general guidance was that as many problems must be fixed as soon as possible.” *Id.* at 15.

This was the status of TAAMS a little over a month before the testimony of Nessi and Orr on the TAAMS system at trial in July 1999.

Several statements by SRA in the draft report summed up the July and August UATs:

“This testing took place at the ATS facility in Addison, Texas on July 6 – 9, 1999....

“It was quickly apparent that the system was not yet ready for formal testing....

Major problems with data conversion were found. There was no planning for Y2K testing, Disaster Recovery testing, and Performance testing....

The IV&V Team made many suggestions. For the most part, it seems people are willing to make the suggested changes; whether or not these changes can be incorporated in time is questionable. The original schedule was modified to allow time for correcting the problems found during test.” *Id.* at 16, emphasis added.

The August UAT was described in the following manner:

“This testing is best described as User Testing. Testing was conducted from August 10th to the 13th The ground rules were that this would be functional testing only and that no redesign would be considered during this time. The objective was to ensure that all business areas were working properly to ensure that the system was ready for the Billings Pilot Program.

The first critical problem discovered involved data conversion errors. The process had resulted in some of the data being shifted by 20 characters resulting in multiple data errors and causing difficulty in the test evaluation process. The data conversion problem was partially resolved during the day, but the testers were limited to testing using manually – entered records from one tract.

A new software test version was loaded, 5 of the 10 critical problems identified on the first day had been resolved.

The team was briefed on the developer – test database differences. *The development database had old Billings test data.* The Test Team had been using a newer database. Due to this, the programmers could not duplicate several problems found by the testers. This indicated that the data conversion was causing problems, and the testers couldn’t tell when they had an application problem or a DB problem. The data conversion team arrived, and it was decided that they would work on the test system and that testing would pick up when they were finished.

It was decided that testing time would be extended for several weeks to allow for data conversion and application fixes to be incorporated and tested prior to the next test event. When the data conversion team was finished, the plan was to bring in a team of Billings users that understand their own data and could validate it.

Although 15 critical application problems were identified out of around 26 total problems found in the two days of test; the testing was considered successful in that the problems were found in test, not after release. However, the system was not ready for formal testing. Id. at 16-17, emphasis added.

The reason for the September 8, 1999 Chief of Staff’s meeting on the results of the tests and the need to notify the Court become obvious from this report of the test results in July and August 1999. The Interior defendants were on notice either during or soon after the trial that there was no TAAMS system in existence like the system that had been described to the Court at trial. Instead of reporting this fact to the Court, the senior managers of DOI may have decided to wait for the results of the September 1999 tests.

The September 1999 test also did not prove the viability of the system. The Interior defendants still failed to inform the Court. They pushed a deployment decision off until the November 1999 test results were received.

B. The November 1999 Test

But they were concerned about those possible test results. In a November 15, 1999 email entitled, “Test Script Risk” (Tab 6F), Snyder wrote to White stating:

“FYI. I’m still concerned the ATS/DOM team is trying to get too much done too soon and that ATS will not be ready for the system test next week.” *Id.* at 1.

I tried to remind Dom that with the presence of GAO and the IV&V contractor, the test must be conducted orderly and with rigor. We can’t repeat the events of last time. If ATS and the TAAMS team can’t provide the support as required to complete this test properly then they need to speak up quickly. The last test took 3+ days (and they didn’t test all the basic functionality, let alone disaster recovery, etc.) and the administration was very haphazard.

Forcing people to travel during the ‘worst travel period of the year’ is bad enough, but to do that, to only discover the testers weren’t really ready, adds insult to injury. I understand ATS would like to go into the Thanksgiving holiday with a heavy load off their shoulders but we need the test done right. If more time is needed to ensure that success, let’s take it.” *Id.* at 2, emphasis added.

The November 22 to 25, 1999 UAT was important. By email, dated November 18, 1999, entitled, “TAAMS meeting next Tuesday” (Tab 6G) the parties had been put on notice that a meeting with the Secretary was to be held on November 29, 1999 to make a decision on implementation of TAAMS. The reason was obvious from the Secretary’s testimony to the Senate Indian Affairs Committee in September 1999. They were waiting to hear from him on whether he had made the decision to deploy a working and functional TAAMS to all BIA locations and if not, why not.

As reported by Snyder, who was attending the November test, in a faxed memorandum to White on November 24, 1999 (Tab 6H) the test included Title, Realty and Name and Address. Also, although the interface with TFAS and MMS computer systems were to be tested, they were “not really tested and would need a “separate test.” Y2K testing and system problems occurred throughout the test. SRA thought them to be marginal. Server and other systems problems continued and hampered testing of the Accounts Receivable function. Several other requirements were not tested because BIA users had not supplied the specifications. They were mandatory requirements and would have to be tested later before deployment would be possible. *Id.*

The critical nature of the TFAS/TAAMS interface tests had been discussed previous to the November test at which the interface could not be tested. In an October 27, 1999 email entitled, “test distribution (Tab 6I),” Snyder told White:

The TFAS/TAAMS interface is a critical piece for going forward. In the matrix that Dom put together that element is a MANDATORY contract element, requires IV&V review and must be demonstrated BEFORE we implement elsewhere. So it (sic) if it’s not there, we’re not ready to proceed with the LTRO implementation or anywhere else.” *Id.*

On the same copy of this email is one from Thompson on the same subject. He stated:

“This provides an update to the TFAS/TAAMS interface issue. The first Distribution Test is to be run today. However, it seems there’s quite a bit of testing not yet done and that perhaps that testing hasn’t been thought through thoroughly.” *Id.*

There was no hope of TAAMS deployment or implementation even of the Title module at the title plants unless they conducted a successful interface test among others.

Notwithstanding Snyder’s report of problems and the lack of interface testing based on the partial results of the test, the DOI leadership, including Assistant Secretaries Berry and Gover, sent a memorandum to Secretary Babbitt on November 29, 1999 entitled, “Trust Asset and Accounting System (TAAMS) Status” (Tab 6J). They reported:

“Our conclusion is that *tremendous progress* has been made over the past year. The contractor, Applied Terravision Systems, Inc, has produced and is delivering a technically sound and superior replacement for BIA’s legacy systems....

We base our conclusion on multiple, observed, contractor tests of TAAMS; a difficult but successful data conversion; an ongoing data cleanup effort; anecdotal feedback from the pilot in the Billings region; and oversight by an independent validation and verification (IV&V) contractor. It is our opinion that TAAMS: 1) meets the specified contractual requirements and 2) is favorably considered by BIA staff. Thus, we are very close to a final deployment decision.

In summary, we feel the project is on target and in line with similar complicated systems development efforts, and reflects the tremendous effort devoted to this initiative by the BIA and Departmental staff and a committed cadre of contractors. *Id.*, emphasis added.

The status report bore absolutely no semblance to reality. It is difficult to understand what possessed the DOI senior managers to make these unsupported statements.¹¹

Some indication of why they may have thought they needed to state TAAMS was up and running can be gained by the following email from Diane Shaughnessy from the Office of PMB to Nessi and others dated November 15, 1999 entitled, “Likely TAAMS Language in Conference Report” (Tab 7A), which stated:

“The House and Senate passed ‘conference report’ includes the following report (not bill) language:

The managers direct that prior to the Department deploying the Trust Asset and Accounting Management System (TAAMS) in any Bureau of Indian Affairs Area Office, with the exception of locations in the Billings area, the Secretary should advise the

¹¹ As will be discussed later in this Report’s Analysis section, it should not be overlooked that the Court already had been supplied with the Interior defendants’ “Findings of Fact and Conclusions of Law” regarding the trial testimony including a section on the TAAMS’ presentation. Informing this Court or Congress of the failure of TAAMS to pass its UATs or that no scheduled deployment would be possible of the whole system or any part of it because of the data conversion problems would not have been helpful to the Interior defendants’ litigation prospects.

Committees on Appropriations that, based on the Secretary's review and analysis, such systems meet TAAMS contract requirements and user requirements."

What we expect to happen is that substantially identical language will be included in an Omnibus Conference Report....

We need to start thinking about how we want to comply with the directive. It could be as simpl (sic) as one sentence or a detailed report that includes the results of the IV&V and user acceptance tests. Do we need to meet to discuss the strategy for responding?" *Id.*

Not only would the Secretary have to back up his previous testimony before Congress in September 1999, he would have to confirm that the TAAMS met not only the contract requirements but also the users' needs. The senior management obviously knew that the Secretary was faced with the prospect of telling Congress that TAAMS could not be deployed and indirectly informing this Court of something they had known during the trial or soon thereafter. They had considered reporting it in September 1999 and had not. Now, the Secretary, if advised of the true status of TAAMS, would alert the Court to TAAMS' failure and their inaction regarding the Court's orders to keep it informed by his testimony before Congress.

The need to conduct further user acceptance testing based on the preliminary findings of the November 1999 test prompted Nessi to write an undated memorandum to Gover, White, Thompson and others to address "User Testing – Billings Pilot" (Tab 7B). He stated in part:

"Over the past few months there has been a considerable amount of discussion regarding the proper course of timing and level of user acceptance testing conducted on-site in Billings and associated agency offices.

There are a number of factors that should be considered in completing the testing phase of the Billings pilot.

First, TAAMS is a very different system from the existing legacy systems and, as such, there will be a considerable time period before the entire user community feels comfortable using TAAMS. At this early stage in the system life cycle, we are observing a wide range of acceptance in the Billings region - - from the very positive to a small group of staff who have been trying to avoid using TAAMS - - to an even smaller group struggling to understand how TAAMS is operated.... *Conducting a wide-spread user test at this time will result in inaccurate test results....*

Second, there are aspects of TAAMS that begin to modernize some of the BIA's business processes that will require a period of adjustment for user. Some of these differences are not unanimously accepted, but have been deemed essential by BIA management. *Frankly, we are not seeking user acceptance for these changes...*

Resources are already strained and it is essential that we do not overburden the office with a level of testing which exceeds our actual need....

In many ways, 'user acceptance' has already been achieved by involving users early and throughout the process....

It is important that we consider these factors when proceeding with the final stages of testing on TAAMS and not develop expectations which cannot yet be achieved or perform tests for which the results can too easily be misconstrued by the casual observer.” Id. at 2.

He proposed one test at one agency using a small number of users. The test would be run by BIA and not by the IV&V vendor. The proposal was more of an admission that TAAMS could not handle a full-fledged user acceptance test than a legitimate proposal for determining the feasibility of implementing or deploying TAAMS.

White made short shrift of it in his response on December 16, 1999 entitled, “Your Undated Memo Received 12/10/99” (Tab 7C). He replied:

“After a review of your comments concerning user testing at the Billings Area site and your proposed schedule, I offer the following comments:

Your fourth point (1st paragraph of second page) discusses the level of involvement BIA users have had on the design of TAAMS. As a result you state ‘In many ways, ‘user acceptance’ has already been achieved by involving users early and throughout the process.’ I don’t share that view. Though I agree the participation of the user community throughout the process significantly increases the probability of user acceptance of this system, I do not believe it obviates the need for a formal user (i.e., usability) test..... It is important to get a sense of how this system will actually play in the field, not the ideal installation.

The bottom line is I need to see:

- **User survey results, preferably two sets of surveys**
- **User testing in some orderly fashion observed by GAO and the IV&V contractor**
 - **Interface testing and validation of TFAS and MMS interfaces**
 - **Y2K testing success**
 - **Successful Disaster Recovery results....**

We should not rush to judgment on a deployment decision.” Id. at 1-2, emphasis added.

These two memoranda exhibit the state of TAAMS testing up to the end of 1999. There had been no successful user acceptance test of any module and no interface with TFAS or MMS had been achieved. In the Project Manager’s opinion, the system was not prepared for rigorous user and IV&V testing. In the CIO’s opinion, no deployment of any part of the system could go forward without an increased level of testing.

The REVISED DRAFT of the “Independent Verification and Validation Readiness Assessment Report,” dated 7 January 2000 (Tab 7D) regarding the November 1999 test reported similar problems with the November version of TAAMS as had been found in the September 1999 test:

“The lack of contract standards was a major constraint on the TAAMS project. There were no standards levied on the products or processes.... Since there were no standards identified in the contract for Testing..., project documentation was sometimes not up to par with

typical government deliverables for a system of this complexity. Since there were no standards levied, reviews and comments on documents were subject to individual preferences....

The lack of requirements clarification was a major constraint on TAAMS development and test.... Because many requirements were inadequate and/or too complex, software development and test script development schedules were difficult to maintain, and many test scripts had an extremely large number of steps or did not completely test all nuances of the requirement....

There were no documented processes....

Without documented processes there was no way to verify the completion of each process step. ...” *Id.* at 5.

And later:

“The TAAMS interfaces with Trust Fund Accounting System (TFAS) and Minerals Management Service (MMS) were not tested, although these interfaces are critical to successful system operation....

The history data had not been loaded into the Billings DB prior to the test, so any requirements that had history dependence could not be tested.” *Id.* at 21, emphasis added.

Later, the report pointed out that total system performance could not be fully tested. During the November 1999 functional testing, the system response appeared adequate but was only tested by a few users. Also, a documented data conversion methodology and process was required as the experience with functional testing and in the Billings pilot had been a limited success. *Id.* at 36.

Before any deployment, the extensive recommendations and risk mitigation strategies laid out in the report would have to be implemented.

Nessi had an immediate reaction to the report. In a January 10, 2000, email he sent to Snyder who forwarded it to White, entitled, “Draft IV&V” (Tab 7E) he stated:

“I have thoroughly read the IV&V and am really disappointed that what occurred is exactly what I predicted would occur. SRA correctly, and repeatedly, points out the problems associated with not having a good contract or a design specification. They emphasize that these problems would significantly inhibit a good system test. These are precisely the points I have tried to make at HLIP and other meetings repeatedly for months, to no avail. I also continually recommended that we design the IV and V contract to fit the TAAMS initiative and the contract with ATS. Instead, they conducted an IV and V as though this was a standard system development. Its ironic that we contradicted our own position we took with the GAO.

In other parts of the report, they criticize the project management effort. Again, when I took on this role it was clearly emphasized that the goal was to get the job done, not to produce a ‘picture perfect’ management effort. I could have done the latter had that been

required of me, but even a fool would know that both a perfect management effort and a quick effort were impossible.... Apparently someone must feel that more could have been done over the past year. I did all I could so I guess it is time to see what the next person can do. It is unfortunate that SRA did not see what I was given to work with before they began to criticize. A lot of people in the Department pulled together, including you, to accomplish what we did, when we did. Its disappointing to see that trashed....” *Id.* at 1.

Announcing that he would request to be replaced he concluded:

“The resultant IV and V report is an insult to the Department, unfair given the circumstances and will serve no purpose other than to fuel the naysayers. Unfortunately, we have a good system, developed by good people and worked on by a committed group of BIA staff and employees and that will be lost because of the IV and V. I must have said a hundred times we would have a good TAAMS and a bad report. I’m sorry I was correct.”
Id. at 2.

A second revised draft was submitted by SRA on February 11, 2000 with minor modifications to the Report (**Tab 7F**). On the same day, another TAAMS Status Update (**Tab 7G**) was submitted to the Secretary by his senior decision-makers. It stated in part:

“The TAAMS Project team and the contractor... *continue to make good progress*. Many of the shortcomings noted during the November final system test are corrected, though a critical component for full deployment – *the interfaces with the Office of the Special Trustee’s (OST) Trust Fund Accounting System (TFAS) and Minerals Management Service (MMS) – is still under development....*

As you know, it is our intention to initially deploy the title plant portion of TAAMS to the BIA’s nine title plant offices and three tribes. As such, we intend to request an implementation decision to the title plants while we continue to refine the interface process between TFAS and other systems because the interface itself is not required for the title plant deployment....

We anticipate the above actions will be completed by the week ending March 3, 2000. Notification of Congress, as required in the FY 2000 Appropriations Conference Report, should occur prior to deployment outside the Billings Area....

While the title plant deployment is occurring, finalization of the following system components related to the leasing function will occur:

- The TAAMS/MMS/TFAS Interface that is thoroughly tested
- The TAAMS Distribution module is completed and thoroughly tested...

Over the next few months, we will be evaluating the testing of the above system components and will be able to determine a firm date for initiating deployment to the remaining BIA and tribal offices that perform the leasing operation. At that time, we should also again notify the Congress, *this time of our intent to fully deploy TAAMS*”. *Id.* at 2, emphasis added.

Whether the senior managers were aware their TAAMS Project Manager had just threatened to resign over the vendor’s draft report of the poor results of the November 1999 test is debatable. But regardless, their expectations exceeded their grasp. They still

needing development, and difficult for the BIA users, he decided to change this definition. “Deployment” would henceforth mean the system would be placed in the field while it was still under development so the users could get familiar with it while it’s development was completed. “Implementation” would mean it was technically ready to become the “system of record.” This would be when the LRIS system would be turned off and only TAAMS would be used for trust operations.

A February 23, 2000 memorandum sent by the Field User Group Chairman, Wayne Nordwall, to the Deputy Commissioner and Assistant Secretary for Indian Affairs, entitled, “Deployment” of TAAMS (**Tab 7I**) confirms Nessi’s memory. He stated:

“Last week the Field User Group (FUG) met in Dallas with Dom Nessi and the LTROs. On Thursday, February 17th, Dom went over a proposed plan for the deployment of TAAMS and we discussed how the user test went and what we, the FUG, could do to advance the project the next few weeks. When we had our large meeting in Dallas last month with the RDs, Supts., etc., we decided to put our primary efforts into getting the title component of TAAMS working first,....

Getting directly to the point, everyone thought we needed to take some time to see where we are on the project, determine what needs to be done to certify that TAAMS can be deployed to the rest of the country, determine who needs to do what, and to determine a reasonable time for getting the job done. I wish to emphasize that everyone believes that we (the BIA) can get the job done and that TAAMS will be a product that will meet our needs for years to come.... However, the users are also concerned that the establishment of deadlines not directly linked to the time required to complete necessary system modifications, data validations, and system testing, will ultimately delay system completion. They are concerned that delay will result from pressure to deploy the system before it is ready. For example, the original deadlines set forth in the HLIP were simply unrealistic and did not adequately reflect the complexity of the Bureau’s mission and the complexity of our records. As another example, during our Dallas meeting, we discussed the idea of defining ‘deploying’ TAAMS as being something that is separate and apart from ‘implementing’ TAAMS. In other words, it was suggested that the Bureau should certify that the software is ‘deployable’ but not ‘implementable’ at this time. We believe that attempting to ‘deploy’ out of Billings at this time, while the system is not ‘implementable’ may open us to accusations by the Cobell Court and the Congress that we are being deceptive about the status of TAAMS.”

But regardless of the field objections so strongly felt that the Group Chairman wrote to the Assistant Secretary, this was what Nessi apparently did. Whom he told of this independent decision to change the definition of what this Court thought “deployment” of TAAMS meant at trial is unclear. However, one must view any subsequent use of the term “deployment” in communications with this Court about TAAMS with suspicion.¹²

¹² The Chairman of the Field User Group was clearly telling senior BIA officials that the deadlines for deployment of TAAMS were unrealistic and were pressuring the users to deploy TAAMS before it or they were ready.

VII. THE REVISED HLIP AND QUARTERLY REPORT NUMBER 1

Another problem landed on their doorstep the next day. The plaintiffs had heard nothing about the deployment of TAAMS in the fall of 1999 as the Interior defendants had testified at trial would likely occur. In its December 1999 decision, the Court had ordered a revised HLIP and quarterly reports be filed. Plaintiffs now requested to know the status of TAAMS pursuant to the Court's concomitant authorization allowing plaintiffs to request information in an informal manner in addition to that provided in the more formal quarterly reports. In a February 15, 2000 letter (**Tab 7J**) to the Department of Justice (DOJ) attorneys they stated the following:

“Because the Defendants made the Trust Accounting and Asset Management System (TAAMS) the centerpiece example of their claim that they could perform their trust duties, we would like to be assured that the report (First Quarterly Report) will clearly address the fulfillment of the Defendants’ commitments made at the trial about TAAMS. *Id.*

They offered the Interior defendants the opportunity to respond informally to eleven pages of detailed questions about Nessi's testimony and defense exhibits about TAAMS. A DOJ attorney replied in a letter dated February 25, 2000 (**Tab 7K**) that the plaintiffs' request was premature in that the Revised HLIP and Quarterly Report would be filed on March 1, 2000 and much of the information they sought would be in those reports.

Now the report to the Court on trust reform including a discussion of the deployment status of TAAMS could not be avoided. The Interior defendants had the obligation under this Court's order to file a revised HLIP and Quarterly Reports in which one of the subprojects was TAAMS. The plaintiffs had put them on notice of their specific interest in knowing the deployment status of TAAMS. They also had the Congress to contend with. It was still waiting to hear of the TAAMS' deployment decision.

They briefed the Secretary of the Interior on these issues in a January 18, 2000 meeting. A “Summary Points for Secretary Babbitt” (**Tab 8A**) included in its schedule the following subject:

“In addition, Judge Lamberth's order requires the submission to the court of:

- **Actions taken since June 10, 1999 (start of trial) under HLIP and commitments made by Government witnesses during the trial**
- **The revised High Level Implementation Plan, and**
- **Quarterly progress reports.” *Id.* at 1.**

The Secretary was also scheduled to be briefed on the fact that Quarterly Report Number 1 was to encompass “actions taken since 6/10/99 including changes in commitments made at trial; changes in subprojects. *Id.* But how would they deal with the 1999 tests' failures and the lack of TAAMS' deployment in 1999?

The focus of the DOI senior managers became the preparation of the HLIP and the First

Quarterly Report. A February 18, 2000 email from White to Snyder entitled “HLIP addition” (Tab 8B) addressed Section P additions to the HLIP by proposing language about the November 1999 test stating, in part:

“The IV&V contractor’s review and observation activities resulted in a final Readiness Assessment Report delivered to February 2000. Though some manageable risks still remain, their report on the TAAMS system was favorable.” *Id.*

Unfortunately, the contractor replied in a February 22, 2000 email of the same title (Tab 8C):

“I guess my opinion of the overall report is that it was not favorable. I think it was favorable in spots but generally it pointed out a significant number of problem areas that I believe offset the positive things we found. I’m not certain what words you might want to use to describe the overall report but my choice would not be favorable.” *Id.* Emphasis added.

The draft Quarterly Report Number 1 was also undergoing modification. In a copy in the CIO’s files, marked “DRAFT – 02/18/00,” (Tab 8D) proposed changes had been written in for several sections within paragraph 6, “Trust Asset and Accounting Management System (TAAMS).” The first was a notation beside the first paragraph that was partially unreadable but which noted, in part, “TESTS IV&V” and Mtg w/Se__ re: Deployment to LTRO’s.” *Id.* at 7. The paragraph covers the development and deployment of TAAMS. It reported:

“DOI now plans to convert the Land Titles and Records Offices to TAAMS prior to TAAMS deployment in the regions.”

- **The TAAMS pilot was installed in the Rocky Mountain Region in June 1999.”** *Id.* at 7-8, emphasis added.

A handwritten note had crossed out “installed” and replaced it with “unveiled” for the obvious reason the former verbiage indicated the system was operating. The next bullet modified by the drafter stated:

“System testing was successfully conducted during September and November 1999. A final systems test, conducted on November 23, 1999, included an independent observer to ensure that test procedures were consistent with industry standards and that the test results were verifiable and met contract requirements. The IV&V report will be submitted in February 2000.” *Id.*, emphasis added.

The word “successfully” had been crossed out. A note in the margin read: “results? findings? conclusion?” These tests had not been “successful” and the managers were aware they would not be able to deploy the system. Finally, the last bullet stated:

- **“TAAMS is ready to be considered for Secretarial certification for deployment at the remaining Land Title and Records Offices.”** *Id.*

Behind this language, the drafter had written “w/ what functionality?” *Id.* The system

could not function adequately to be used by these offices. Deployment in the lexicon of the TAAMS' managers meant no more than installing the software in the offices. It was questionable what value installation would have when even the Title module could not function effectively.

The unknown editor was in the CIO's office. It can be assumed his comments were made a matter of record at some level during the consideration of the final draft of Quarterly Report Number 1. However, the final March 1, 2000 published version (*see* extract at **Tab 8E**) kept the "installed" and "successful" language and did not withdraw the last bullet's language about TAAMS being ready to be considered for Secretarial certification. The section also gained a new introduction that included the following language:

“At the time of trial, Mr. Dominic Nessi testified that he hoped to have the majority of the work completed in the Billings Area (Rocky Mountain Region) around October 1, 1999, and that TAAMS would then be deployed in Juneau, Aberdeen and Minneapolis. In his testimony, Mr. Thompson indicated concerns that the proposed schedule might not be met.

Since the time of trial, it has been determined that deploying TAAMS on first a functional rather than a geographic basis is a better approach. Upon completion of the pilot, BIA plans next to deploy TAAMS to the land Title and Records Offices and to those tribal sites where land records functions are performed....

The interfaces between TAAMS, TFAS and MMS are not yet complete. Completion of all mandatory realty functions and the interfaces is scheduled for December 2000

The 1998 HLIP projected completion of the TAAMS deployment to all regions by June 2000. Pending a Secretarial decision on the BIA's recommendation to modify the deployment schedule and more detailed information on the data cleanup requirements, BIA at this time has not projected a schedule for full deployment of TAAMS. The actual deployment schedule, whether geographical, functional, or some combination thereof, is dependent upon progress in data cleanup at all locations and software development and testing.” *Id.* at 13, emphasis added.

For the first time, in March 2000, this Court was informed that the schedule for TAAMS deployment testified to in July 1999 by Nessi was no longer an accurate projection for the TAAMS rollout. It was also told that the TFAS/MMS/TAAMS interface and the Realty module were not completed but were expected to be completed by December 2000. The total TAAMS' deployment that had been forecast in the first HLIP for June 2000 (and at trial for December 2000) would also be delayed. However, they stated that they had not projected a new deployment schedule pending a Secretarial decision based on BIA's recommendation.

The drafter had noted in the original draft report margin “ TESTS IV&V.” This note and the next about a Meeting with Se__ (Secy?) on deployment to LTROs (Land Title Records Offices) can be assumed to mean the drafter thought some mention should be made of the impact of the failed IV&V test in November 1999 or that the deployment to

these title offices would be delayed because of the need for more testing.

What was not placed in this TAAMS' deployment discussion was that the Interior defendants had known since the summer of 1999 that they had no system capable of deployment. Repeated tests in the summer and fall of 1999 had failed to prove the system was even close to deployment and certainly not implementation. But they had not informed the Court at that time and could not address it now.

The reference to Nessi's and Thompson's testimony at trial regarding the statement that Nessi "hoped" to have the majority of the work completed in the Billings Area around October 1, 1999 but that Thompson indicated "concerns" with that proposed schedule was an obvious attempt to portray the whole trial testimony regarding deployment dates as tentative. But there was little uncertainty expressed to the Court about the deployment and implementation schedule. Orr had even been asked if it was an aggressive schedule and he replied that it was of concern but he thought they could meet it. Nessi showed no similar concerns.¹³

Additionally, the decision to deploy TAAMS on a functional basis rather than a geographical basis was made because there was no part of TAAMS that could function adequately except the Title module that had still not passed an IV&V test. The deployment of the Title module was not a "better approach" for the Interior defendants; it was their *only* choice and one not capable of accomplishment at the time of the March 2000 Quarterly Report Number 1.

The uninformed person reading this section would have no idea of the major software, data conversion, testing, and user acceptance problems that TAAMS had developed. The testing in September and November 1999 was described as *successful*, a patently false assertion by the drafters of this Quarterly Report. The mention in a March 1, 2000 Quarterly Report of the November 2000 IV&V test submitted by the contractor in February 2000 gave the impression that the results were not known by the time of the publication of this first Quarterly Report. But they were known by the Interior defendants and those results, according to no less an authority than the contractor who conducted the test, were not favorable. The Project Manager, Nessi, had threatened to quit over what he felt were too rigorous tests to have subjected TAAMS to because the system was not ready. His plea to have a BIA-conducted test that TAAMS could pass was rejected by the CIO who demanded further IV&V tests before a deployment decision on TAAMS could be made.

¹³ Thompson was shown this statement. He stated that he was not aware of what Nessi and Orr testified to about TAAMS' deployment and implementation schedules at the time of trial and did not learn of their testimony until he read portions of it in the winter of 2000 in connection with work on the summary judgment and appeal motions. His concern about schedules at the time of his testimony related to the overall HLIP schedule for all subprojects including TAAMS. His testimony (Trial Tr. at 3104-3118) confirms his memory. In fact, he believed the system to have met its first objective of rollout in Billings in June 1999 and that Dom Nessi had accomplished what he said he could. However, by early 2000, he knew the fallacy of the testimony and his review of it prompted him to seek to clarify the status of TAAMS for the Court in Quarterly Report Number 1.

The email dialogue between the contractor and the CIO's office (*see* **Tab 8B** and **8C**), addressed an addition to the revised HLIP required by this Court. The tests discussed in the draft addition were these IV&V tests to include a February 2000 user test that the vendor attended as an observer. The vendor rejected the addition's statement that the vendor's report was favorable about these tests.

A review of the HLIP draft was conducted the same day as this email dialogue on February 22, 2000. In handwritten notes summarizing that meeting entitled "HLIP Mtg," (**Tab 8F**) the note-taker quoted several attendees' comments about the drafting process:

"John S – get w/ Jerry @ SRA to find 'acceptable words' for HLIP." *Id.*

On the back of the one-page notes are several other comments:

**"TE
'much improved'
'perhaps too
much candor'**

Edith – some can shift to 1/4/y report"
Id. on reverse¹⁴

The TAAMS section under consideration in the draft HLIP was Section P. This Section became Section O in the published HLIP (*see* extract at **Tab 8G**). The section language quoted only the most favorable statements made by the vendor in its February 2000 report including that the vendor stated "the TAAMS test plan was adequate" and that "the majority of the test scripts for testing the functional requirements were also adequate." *Id.* at 79. It did mention, "some of the scripts would require additional modification to test the critical functions not totally validated (partially tested, not tested, or failed validation) by the IV&V team." *Id.*

It also noted that "Testing of one critical area – the TFAS and MMS interfaces – remained incomplete and the IV&V contractor recommended against full deployment of TAAMS until that functional area was fully tested." *Id.*

However, the section ended with the statement "The IV&V team concluded their report with the following: 'Assuming the foregoing recommendations and risk mitigation strategies are implemented, the IV&V team (SRA) feels that deployment beyond the Rocky Mountain Region could proceed with minimized risk and a reasonable assurance of success.'" *Id.*

The DOI HLIP drafters had taken the substance of the contractor's report out of context. Looking at the report drafts at **Tab 7D** and **7F**, and the comments noted in the Constraints' sections of both reports at page 5, there had been no standards for the tests.

¹⁴ The Solicitor's Office attorneys' comments and recommendations to the TMIP committee about the manner of reporting unfavorable information to this Court is troubling and was repeated. *See* **Tab 9G** and pages 85-87.

Requirements were inadequate or too complex, and there were no documented processes. There was no title history to test and the TFAS/TAAMS interface was not tested. *Id.* at 5.

Based on these constraints, the vendor had made the conditional statement quoted by the Interior defendants but the “recommendations and risk mitigation strategies” would require BIA to clean up their requirements, standards, and testing disciplines as well as develop the Realty and interface systems before any functional testing could validate the system.

In response to this draft HLIP language, Nessi wanted to have his TAAMS portion of the revised HLIP not only outline these issues but also the effect of them on the milestones and projected implementation dates of the TAAMS system throughout BIA. His protestations resulted in his being allowed to put in at least some of the first part of this request. In both the Data Cleanup and TAAMS subproject portions of the revised and updated February 29, 2000 HLIP, there are “Observations” portions of the reports. Nessi prepared them although they were again heavily edited at the direction of his superiors.

The “Observations on TAAMS Initiative” at page 69-72 (*see* extract from High Level Implementation Plan, Revised and Updated, February 29, 2000 at **Tab 8H**) was forthcoming to some extent about the past testing:

“One of the most important observations made after the first prototype was released in mid-summer 1999 was that the initial design meetings did not fully capture the entire scope of the BIA’s needed functionality. Furthermore, it became apparent that the lack of consistent business rules and processes across the BIA... placed the software vendor in a very difficult position as it attempted to modify the software to meet the BIA’s needs. Although it was always assumed that additional adjustments would be necessary after the first prototype, it was initially believed that a large part of the basic functionality was present in the late-June 1999 release of TAAMS. This was not the case and it became apparent during the system tests conducted with BIA users during July and August 1999 that a significant level of analysis and system modification remained in order to ensure that all of the BIA’s unique business functions were addressed. *Id.* at 69, emphasis added.

The observations continued to address the fact that data modification and conversions became a problem with the overall outcome that:

“The net result of these events during the late summer and early fall was that the deployment schedule outlined in the TAAMS contract could not be achieved as originally planned. In retrospect, the Department concedes that the plan was overly optimistic given the complexity of the task at hand.” *Id.* at 69-70.

But there was no explanation of why no mention of this failure to be able to meet the deployment schedule had been made to the Court in the summer of 1999 or even later that year. Nor was it clearly pointed out that the present situation was not much better. To the contrary, as previously discussed, Quarterly Report Number 1 had stated that TAAMS system testing had been “successfully conducted” during September and November 1999. And the HLIP was also reporting that the IV&V team, who had conducted the November 1999 testing and attended the February 2000 UAT, had given

the go-ahead on deployment of TAAMS beyond the Rocky Mountain Region. These statements were not true when compared with the actual facts. The test (operation) may have been conducted “successfully” but the TAAMS system (the patient) failed (died). The IV&V contractor had given a *conditional* go-ahead if its recommendations for major modifications of the system were made; some of which have yet to be made to this date.

No deployment dates were placed in the HLIP. In lieu of them, there was a section entitled, “Deployment Decision Review” that stated:

The BIA completed its official assessment of the title functions of TAAMS in terms of system functionality and usability in February 2000. That assessment will be forwarded to the Department for a final deployment decision for roll-out to BIA title plants as the first stage in the total TAAMS roll-out. *The initial deployment decision for the LTROs is expected to be made in March 2000. A follow-up decision will be required when distribution and interface capabilities are in place and adequately tested. The time for this is to be decided.* *Id.* at 80-81, emphasis in original.

In summary, this Court was not given an accurate picture of TAAMS’ status in the HLIP submitted to it in February 2000 or in the Quarterly Report Number 1 submitted in March 2000. It never learned of the failed UATs conducted in the summer and fall of 1999 during the trial or before its December 1999 decision, nor did it ever hear of the actual unfavorable opinion of the IV&V contractor.

VIII. TAAMS “DEPLOYMENT” AND SUBSEQUENT TESTING

Following submission of the revised HLIP and Quarterly Report Number 1, Assistant Secretary for Indian Affairs Kevin Gover sent a March 2 memorandum to Berry, Thompson and White entitled, “TAAMS Deployment Readiness” (**Tab 9A**) stating in part:

“The purpose of this memorandum is to convey the Bureau of Indian Affairs’ (BIA) findings on the progress of the Trust Asset and Accounting Management System (TAAMS) initiative and to recommend that the Department proceed with a request to the Secretary for deployment of TAAMS to the eight BIA Land Title and Records Plants and three Tribal Title Plants....

As these documents will demonstrate, TAAMS is not without minor flaws. It does however, to an acceptable level, meet and surpass the basic requirements of the contract as amended, and in some areas performs more than capably.” *Id.*

But by March 17, 2000, the CIO had been put on notice that things were at risk with TAAMS. In handwritten notes dated March 17, 2000, from a briefing apparently given by Nessi (**Tab 9B**), the CIO note-taker wrote:

“ATS told: no more regmts added. LTRO’s agreed @ end of Feb 00.

ATS: use traditional “sys test” procedures.

- regression sweep –
tests (sys. test) will tell us that
the 17 April beta test is ready to be
conducted.

Can't do it on "line" Billings data
Use replica of Billings data & some
Fictional data. Why "fictional data?"
Will replicate entire Feb 00 user test:
Won't match w/ legacy system." Id. at 1, emphasis added.

On the next page:

"Chris Martin – TAAMS
DOI have info necessary to determine if
TAAMS can be deployed beyond Pilot site –
MOTS vs. COTS in current HLIP

'DOI not ready from business or technical standpoint'
business process not defined
business rules not defined
not implemented disciplined sys dev process
Testing deficiencies

Can show
improvement

Focus on testing:
SYSTEM TEST –
USER TEST – test plan a 'good document'
Defects not show stoppers – but raised
Concerns about adequacy of testing

Boundary testing issues –“ *Id. at 2, emphasis added.*

And on the last page:

“-business rules needed to add additional edits; this is part of an ‘evolutionary ‘ process.

- *DOI has yet to specify when these rules will be available.*
- *new code may bring in new ‘defects’ if not properly tested before implementing*
- *verification of data input i.e. document numbering*

Follow-on test for TAAMS (Land/Title function)
ATS to deliver version on 17 April
Re-test w/users

Realty Function

Leasing, distrib & realty to follow in August....” *Id. at 3, emphasis added.*

Gover’s recommendation could not be accepted without further testing. The Secretary was so informed in a March 21, 2000 memorandum entitled, “Deployment Decision Review” (Tab 9C) from his senior decision-makers. He was told:

By memorandum dated February 11, 2000, we stated we would soon recommend a deployment decision....

The IV&V contractor delivered their report on February 28, 2000 and the BIA delivered its readiness decision documents on March 2. The documents cited provide ample support for the progress we have made and we are confident we will bring forward to you a recommendation to deploy TAAMS. However, given the importance of this key trust asset system, we would like to have the benefit of one final test of the TAAMS title component before rendering our written recommendation for deployment.” *Id.*

On April 27, 2000, the Secretary was advised in a memorandum submitted by his senior decision-makers (**Tab 9D**) that an April 17-20, 2000 UAT had been conducted and its results coupled with those of the “successful transactions” of the first UAT in February 2000, along with addition documents including the IV&V Readiness Assessment Report, led them to recommend an affirmative deployment decision on the *title* function of the TAAMS software.

Of note, the memorandum stated:

“We reach this recommendation based on the following key points:

- **The IV&V contractor has prepared a list of recommendations and risk mitigation strategies that if implemented they believe, ‘deployment beyond Billings could proceed with minimal risk and a reasonable assurance of success.’ The BIA has prepared a satisfactory response to these recommendations. In many cases, they had already initiated actions that would meet the recommendations of the IV&V contractor....”**
- **Two User Tests have been conducted that clearly document user support for TAAMS. *Id* at 1-2.**

If you accept this decision, before deployment commences, the BIA will complete a detailed implementation plan for all Land Title and Records Offices. The TAAMS deployment schedule calls for the first deployment occurring in mid-May 2000 when each BIA Land Title and Records Office will have an initial deployment of a limited number of TAAMS licenses so that they may have access to Rocky Mountain Region data.... Our plan is to have all Land Title and Records Offices fully deployed by December 2000.” *Id* at 2.

The memorandum was submitted to the Secretary the day before he submitted a series of letters to the Chairmen and Ranking Minority members of the Congressional Appropriations Committees having oversight responsibilities for the DOI. They stated, as the copy at **Tab 9E**:

“The report language included in the conference report accompanying the FY 2000 Interior and Related Agencies Appropriations Act provides the ‘Prior to the Department deploying Trust Asset and Accounting Management System (TAAMS) in any Bureau of Indian Affairs Area Office, with the exception of locations in the Billings area, the Secretary should advise the Committees on Appropriations that, based on the Secretary’s review and analysis, such systems meet TAAMS contract requirements and user requirements.’ *By this*

letter, I am advising the Committee that the Department intends to initiate deployment of the Land Title and Records functionality of TAAMS beginning in May 2000. Deployment is schedule over the remainder of the calendar year 2000....” Id., emphasis added.

The undated decision memorandum was attached to the Secretary’s memorandum.¹⁵ Assumption can be made that the rush to judgment on the TAAMS system ending in a decision memorandum within a day of the Secretary’s report to Congress was based on ensuring the funding for trust reform or at least for TAAMS development was not impacted by the Secretary’s having failed to notify Congress of both contractual and user requirements having been met.

But the Secretary’s report to Congress in April 2000 was no more accurate than his September 1999 testimony before the Senate. There had not been any successful IV&V tests conducted by the date of this decision and there had not been two successful UATs. The February 2000 UAT did not have a favorable result and had to be repeated in April 2000. Also, their Project Manager was still sending them mixed signals about TAAMS and the user acceptance of TAAMS. Again, Congress was misinformed.

Nessi had sent an April 3, 2000 memorandum, very similar to his February 23, 2001 memorandum (**Tab 1A**), entitled **“Trust Reform may be Hazardous to One’s Health,”** to the Assistant Secretary for Indian Affairs, Kevin Gover, the Assistant Secretary for Policy, Management and Budget, John Berry, the Special Trustee, Tom Slonaker, and the Deputy Commissioner, Bureau of Indian Affairs, Sharon Blackwell, (**Tab 9F**). In it, he stated, in part, the following about the lack of support and criticism he and his staff were experiencing and its potential effect on the successful completion of TAAMS:

“The continuing scrutiny and subsequent reporting (*much of it erroneous or misleading*) on TAAMS and other trust improvement projects has necessitated the development of this memorandum.

Those career employees (and contractors) tasked with working on this important initiative are increasingly finding themselves or their work efforts the target of attacks by the many detractors of the Department’s trust reform efforts.” *Id.* at 1, emphasis added.

He listed a number of external and internal BIA opposed to TAAMS including “internal BIA employees who are opposed to TAAMS and other trust reform efforts because they did not believe BIA could accomplish them; they saw TAAMS as a threat to their own positions or duties; or they did not wish to see it succeed. *Id.* He asked for his superiors’ help:

“The difficulties created by these individuals are a very real threat to the successful completion of TAAMS and other efforts and to the staff members engaged in the activities....

¹⁵ In a “Note” at the end of the decision memorandum, Nessi’s distinction between “deployment” and “implementation” definitions was pointed out. But implementation was expected to come soon after deployment.

All of the trust reform processes are difficult given the long-standing nature of the problems. We frequently find when making day-to-day decisions that none of the alternatives are really preferable and we oftentimes have to choose the least disadvantageous. We also find that no matter how many hours worked, the task continues to grow as we uncover additional items that need correction. *As I have worked on TAAMS for the past year, it has become obviously apparent that this initiative is far different from what was originally conceived two years ago. The problems are far greater than originally projected and the resources needed must be continually reevaluated to ensure adequacy.*

The purpose of writing this memorandum is to seek your assistance in helping to shield career employees from the political and public relations wars that continue to erupt over these issues....

Therefore, I recommend the following:

- 1. Longer and more detailed HLIP meetings where all tasks are discussed, documented and approved by the Department's key decision-makers.**
- 2. A strong statement from the Secretary and key Department officials that the direction of Trust Reform is a Departmental decision – not that of any one employee....**
- 5. An HLIP Quality Assurance team should be established to oversee all aspects of the HLIP to ensure that quality standards are being applied and risk management is being practiced. This will help to provide validation to all decisions.**
- 6. More centralized planning to ensure consistency between HLIP activities and to determine the identification of interdependencies.**
- 7. A realistic determination of schedules and deadlines based on an analysis of the requirement as compared with available resources.” *Id.* at 2, emphasis added.**

Nessi, in his opinion, had not received any substantive support from his superiors to solve the TAAMS software and data problems. Nor had he been able to convince them that the TAAMS Project Management Team was not getting the support from BIA or others who were involved in it that it needed to correct these issues. And TAAMS, his staff and he, were coming under increasing attack for the failure of the system to be deployed by the very people who should have been helping with that deployment.

Having sought and failed to be allowed to alert this Court to these issues that he had repeatedly brought to the attention of senior management, he now went to them for help in at least clearing the way for him to attempt to fix the system. He stated he never received any reply to his plea.¹⁶

¹⁶ There is substantial documentary evidence, already discussed, that Nessi, as TAAMS Project Manager, was responsible for his share of the blame for the abysmal relationships and mistrust between BIA, OST, and DOI managers. However, he still sought to address the issues facing TAAMS as he saw them and garner support from his superiors. His attempts, whether they had any confidence in his opinion or not at this point, at least put them on notice of the continuing management and systems problems regarding

Nessi left active management of the project in June 2000 turning it over to Chet Mills but remained as Program Manager to assist Mills where he could. Mills had no more success at solving the issues than had Nessi and the management and political infighting continued. He stated this situation was the genesis for his February 23, 2001, "Trust Reform" memorandum to the Special Trustee.

IX. SUBSEQUENT QUARTERLY REPORTS

Subsequent Quarterly Reports have been of little assistance to this Court's clear understanding of the status of TAAMS.

A. Quarterly Status Report Number 2

The May 31, 2000 Quarterly Status Report Number 2 only reported that the User Acceptance Test conducted in April 2000 concluded that the land title functionality of TAAMS was "sufficient" to initiate deployment to all BIA and tribal land records offices. It did not report that the current Title module was only accepted on a conditional basis until the history portion could be developed; nor did it report that the Title module was only put in Billings for further testing.

It was not and has not been deployed to "all BIA and tribal land records offices." As of this date, the Title module, containing only current title information, is found in partial operation for "Group A" (Alaska, Eastern Oklahoma, Southern Plains, and Rocky Mountain) land title or services offices at the Regional headquarters. In the Rocky Mountain (Billings) and the Southern Plains (Anadarko) regions it is still running in parallel with the Legacy system, LRIS, because it does not include history data that must be provided users by LRIS. In Eastern Oklahoma (Muskogee) and Alaska, title data must still be loaded directly TAAMS as these title service offices never used LRIS. There are eight other regions that do not have any TAAMS' systems.¹⁷

The only agency offices in these four Regions that have TAAMS' current title functionality are the agency offices in the Billings Region, not the other three Group A regions. Nor can TAAMS interface with TFAS to receive needed Name and Address information. That data must be downloaded on a nightly basis into TAAMS as there is no working interface with either TFAS or MMS.¹⁸

Nessi stated he attempted to add approximately twenty-five pages of information to this Quarterly Report in an effort to provide the Court and the plaintiffs a more rounded picture of TAAMS' progress based on plaintiffs' February 15, 2000 request for the status of TAAMS as compared with his trial testimony.

TAAMS even if he was thought to be the cause of or contributor to most of them.

¹⁷ Also *see* pages 92-93.

¹⁸ There is even some concern that the Name and Address module cannot be properly used for all functions at these few sites.

B. Quarterly Status Report to the Court Number Three

The August 31, 2000 Quarterly Status Report to the Court Number Three reported on the deployment of TAAMS to the Alaska Region Title and Records office and that a limited set of “licenses” were deployed to the balance of the Land Title and Records offices. But this report did not clarify that the actual Title module had not been deployed beyond Billings. Nor did it report on the failed TAAMS Realty module UAT started in August 2000 but cancelled because it could not be adequately conducted due to a plethora of systems and data conversion issues.

In preparing this report, which was the first report the new Special Trustee, Tom Slonaker, would be responsible for verifying, a meeting was held on August 29, 2000, to discuss its contents. The CIO was present and prepared a handwritten summary (**Tab 9G**). Attendees besides the Special Trustee were Nessi, Lamb, White, the Deputy Commissioner, Sharon Blackwell, Solicitor attorneys Tim Elliot and Edith Blackwell, and Thompson. The following dialogue was recorded by White:

SB: grave concerns re: ‘Observations’: difficult/negative statements. May be “subjective”. Includes “½ truths.”

TS: Important in ST role, to be open & honest. TAAMS S/W in very good shape (no one has contracted for this yet – s.b. (should be?) Special Trustee?)

DW: Shouldn’t he advise Secy first? – prior to 3rd Qtrly Report?

SB: Agrees TS s.b. open & truthful to the Court. Suggesting that TS resp. is to Secy of Interior. Suggest ltr goes to Secy (& it is “discoverable”)

EB: Distinction between 1/4y report & sep. ltr that is “discoverable.” If you put it before the Court then you have a different solution.

TS: Has problems with not showing it to the Court. Has spoken to the Secy – not in writing.

BL: Haven’t had mtgs in past few months to address these issues. Needs balance – positive – as well as negative.

TE: File rpt – then send piece to Secy w/ concerns & observations to be raised in next ¼ report.” *Id.* at 1.

What was it that was so troubling to the managers about Slonaker’s observations in Quarterly Status Report to the Court Number Three? What was the concern with informing the Court? Why wait to report to the Secretary first and then report these concerns in the next Quarterly Report as the Solicitor’s attorney recommended?

Behind the notes was a signature copy of the Report. Included in it was a page entitled “Special Trustee Observations” (*see* last page of extract at **Tab 9H**). Under this heading the Special Trustee made the following comments:

“BIA Data Cleanup.

“Recent indications are that the BIA Data Cleanup and data conversion effort continues to present serious obstacles to the successful implementation of TAAMS. The BIA data cleanup effort continues to uncover significantly greater data cleanup challenges than were previously anticipated. For instance, more than 15 months after data cleanup commenced in Billings, the data is still not completely converted, nor cleaned up sufficiently to implement TAAMS in Billings.

The ‘case’ or data anomaly, statistics presented in the subproject report section do not provide sufficient information to evaluate, or validate, the progress we need or the integrity of the data.

BIA Appraisals.

The two milestones scheduled for completion in this subproject were missed during the reporting period. Both related to key improvement initiatives designed to clarify the scope and the authorities for appraisals at the field level. The information provided as justification for missing the deadlines was known when BIA established the dates in late February 2000. The Special Trustee considers the proposed March, 2001 milestone date for the evaluation of appraisal requirements under Task D to be an inordinate delay and is also uncomfortable with continuing to place appraisers under the direct supervision of the BIA Regional Directors.

Probate Backlog.

BIA lacks a satisfactory, detailed workplan to focus effort on and eliminate the probate backlog.

TAAMS.

The TAAMS project schedule is heavily influenced by two activities – data conversion and cleanup, and training and acceptance of the system by the user community.... Significant management intervention will be required to ensure that all BIA users accept TAAMS. It is expected that the DOI decision on the deployment of TAAMS, and the commencing of deployment beyond Billings will not occur by August 31, 2000 as planned.

BIA business rules and processes supporting TAAMS have not yet been completed.

Necessary software interfaces with OST and MMS have not been completed or tested.

In each of the above situations, the Special Trustee is working to reinforce the efforts underway with a view towards ensuring that the Department fully meets its trust responsibilities and its commitments to the Court. The Special Trustee will continue to evaluate the reasonableness of proposed new milestone dates.” *Id.*, emphasis added.

Obviously, the new Special Trustee had looked at TAAMS, consulted with his subordinates, and felt it necessary to inform this Court of these major problem areas with the deployment and implementation of TAAMS. What, after the above-quoted discussion, was placed in the Special Trustee Observations? Tracing the same paragraphs in the Court’s copy of the Report (*see* extract at **Tab 9I**):

“BIA Data Cleanup

Indications are that the BIA Data Cleanup effort continues to present serious challenges and may delay implementation of TAAMS at some locations. For example, in the Rocky Mountain Regional Office (Billings), the historical records for land title and records are not complete and cannot immediately be placed into TAAMS until the missing electronic records are researched and entered into the legacy database. *Id.*

Nothing remained of the Special Trustees report except that there were now “challenges” that “may” delay implementation in “some locations.” The Court would not be informed that additional data cleanup problems were being uncovered or that there was still no end of the project in Billings, which would delay any implementation of TAAMS. Nor was the problem with the ability to evaluate the integrity of the data. Now, the Special Trustee would work with BIA managers to “obtain meaningful metrics” on the progress; if anyone, other than the report drafters, could decipher what those terms meant. But again:

“BIA Appraisals

The Special Trustee is concerned that the independence and integrity of the BIA appraisal staff be established in accord with the Uniform Standards of Professional Appraisal Practice.” *Id.*

Gone was the entire section proposed by the Special Trustee regarding the two missed milestones and the fact BIA had no valid justification for the inordinate delay in meeting the March 2001 deadline. In its place - a bland statement was made about establishing the independence and integrity of the appraisal staff. The questions remain why this was necessary and what were they talking about? And again:

“Probate Backlog

Solving the Probate Backlog has been a serious and complex management problem and remains so....” *Id.*

There remained no mention of the source of the problem – the failure of BIA to create a satisfactory and detailed workplan. Finally, the TAAMS’ language no longer included the need for significant management intervention that was required to ensure that all BIA users accepted TAAMS. Nor that the August 31, 2000 date previously set out for the Court as the deployment date for TAAMS moving beyond Billings would not be met. Now:

“It is expected that the DOI decision on the deployment of the realty portion of TAAMS beyond Billings will occur later in the fall of this year. *Id.*

This Court was not apprised in August 2000 of these opinions and concerns of the Special Trustee and made aware of the risks that he enumerated. Now, in July 2001, nearly a year later, the same or similar conditions exist and have been reported in the

May 2001 IUAT. There is no TFAS or MMS interface with TAAMS, no operating probate or appraisal modules in existence, and the Realty module has still not been deployed or implemented. The May testing showed that even the current Title function had been corrupted when put in contact with the title history data.¹⁹

The November 30, 2000 Quarterly Status Report to the Court Number 4 did report that the system modification of the Realty module was not completed. However, it failed to mention that the Realty Transaction Verification Exercise (RTVE) had a 56% fail rate. This test was mentioned in the report generating only a statement that the vendor might have to make additional modifications and the previously reported “redeployment” to the Rocky Mountain Region of the leasing, distribution, and accounts receivable functionality would not take place.

The Special Trustees’ Observations were limited to acknowledging that the subprojects were interrelated and that interdependency was slowing down progress on one project because of another. Also, that the whole effort was being impacted by the *Cobell* litigation requirements. But what projects were slowing down because of others and why?

What was known about TAAMS at the time of this report? And what was discussed about the information that should be provided this Court to fully understand the status of TAAMS?

A picture can be developed from additional documents. An email from Robert McKenna, the Office of Trust Funds Management’s (OTFM) TFAS systems manager responsible for OTFM’s work on TAAMS/TFAS interface, entitled, “notes and impressions from TAAMS demo in Billings 9_26” (**Tab 9J**) was sent to the Special Trustee and Thompson, among others, and forwarded by separate email by Thompson to Tom Gernhofer who forwarded it on to Bob Lamb (**Tab 10A**). It stated in part:

“The system was demoed (sic) first for the Title portion. A definite division between ‘current’ and ‘history’ was noted. Only the ‘current’ portion and some data clean up still needed to be done.... History is not in the system, i.e. a chain of title could not be accomplished from the data currently present. My overall impression was that the Title Plan Managers were comfortable with the ‘current’ portion and could work around the issues raised. i.e. They’d (sic) take it ‘as is’ after some minor modifications.

The question of data and system validation/verification and (sic) was not raised and as you know, the Billings data was converted last November and the two ‘current’ systems (LRIS

¹⁹ When shown both the draft and final “Observations,” at his interview, Thompson stated that he had prepared these comments at Slonaker’s direction based on his briefing of the new Special Trustee about his concerns regarding TAAMS and the lack of information that had been provided to the Court about TAAMS in the first two Quarterly Reports. The intense negotiations over what would remain of them extended over several days. BIA’s position was that the OST was incorrect in its opinion of the status of TAAMS. As Thompson had not had the resources to conduct a detailed oversight of all of BIA’s operations, he could not defend their inclusion in the face of the strong opposition of BIA and the TMIP managers. They were peeled away one-by-one on the basis they were not accurate, were an unfair characterization of BIA’s performance, and were too negative. However, he believed they were correct then and now.

and TAAMS) are not in synch.

The Realty portion hasn't moved much from when you last looked at it. From the discussions, *my best guess is that the Realty portion won't re (sic) ready until sometime in the 2nd (sic) quarter of FY 2001. For instance, they are going to scrap the existing IRMS conversion programs and an Artesia (sic) person and a BIA person are going to remap the data bases and start over on the IRMS data conversion. System modifications still need to be tested and possibly modified.* When asked to talk about the distribution process I continually referred to it as 'Conceptually' this is what is supposed to happen?' Dom took issue with my use of the word 'conceptually' because he said that he had talked with Artesia and they told him the programming was done. I told him that until I was able to see tangible results, it was still 'conceptual' to me. We agreed to disagree.

No mention was made of a formal plan for data or system validation.

I'm not sure what the outcome of the rest of the meetings were: however, *my best guess would be that some sort of revisions to the published deployment schedule will be made. I would expect that we should hear something 'officially' in the next couple of days.*" *Id.* at 1-2 of McKenna email.

A subsequent email from McKenna to Slonaker and Thompson dated October 23, 2000, and entitled "TAAMS interface file" (**Tab 10B**) questioned the TAAMS/TFAS interface progress:

"This to let you know that we did receive the first interface file on Wednesday afternoon of last week. The cut-to-the-chase version of this is that I'm not going to forward it to SEI. The reasons are:

**As presented, the file would end up generating literally almost a thousand pages of reject messages due to the following errors:
Missing account numbers...**

The first file also contained oil and gas transactions. These transactions needed to be separated out due to the fact that they will be going through a different process...." *Id.*

What was made of this information concerning the status of the TAAMS/TFAS interface; the Realty "portion's" potential delay until the second quarter of 2001; and the scrapping of the IRMS data conversion by the Special Trustee in the preparation of the Quarterly IIM Status Report to the Court Number Four? The first draft of this report in the CIO's files was dated November 1, 2000 (**Tab 10C**). The second draft is dated November 9, 2000 (**Tab 10D**).

A comparison of the statements in the notations in the TAAMS portion of the draft reports and the final November 30, 2000 Quarterly Status Report to the Court Number Four (*see* extract at **Tab 10E**) shows that some acknowledgement was made of these problems.

The early draft versions and in the final copy submitted to the Court the Interior defendants acknowledged in the TAAMS section that, based on the verification analysis

of the Realty module: **“(p)reliminary results from the analysis indicate that the vendor may need to make additional modifications to TAAMS before it can be used as the system of record in this region (Billings).”** *Id.* at 26, draft dated 11/9/00, and final report at 31.

The draft and final reports also acknowledged that the milestone for the Realty Functions and Interfaces had not been met nor had the TAAMS deferred modifications. That may have been meant to indicate the continuing interface and data conversion problems. *Id.* at 27, draft dated 11/9/00, and final report at 32.

However, the final Report submitted by the Special Trustee changed the drafts in two significant ways. First, it cut out a sentence in the drafts of the section entitled “K2. Complete System Modification Effort – Realty Functions and Interfaces,” that stated **“Based on input from the user community, the basic TAAMS realty design meets their needs and expectations....”** Compare draft report dated 11/9/00 at 26 with final report at 31.

Second, it added a lengthy section to the “Summary of Ongoing Activities,” that stated in part:

“During the week of September 26-29, 2000, the TAAMS project management team met... to review the ongoing status of the TAAMS initiative in general, and the progress of the leasing module test.

On of the primary findings of the assembled group was that the activities associated with the deployment of TAAMS, such as conversion, data cleanup, data analysis, etc., were far more intensive and required far more resources than originally estimated. The continuing system development activities further drain BIA staff resources, and impact other HLIP projects.

The TAAMS team concluded that it was not in the best interest of the initiative to continue to work on several fronts and in many geographic areas at the same time. Therefore, the TAAMS team developed a more focused deployment approach that systematically stresses the successful conclusion of all preliminary data cleanup, conversion, data analysis and deployment activities at one site before moving on to another site. While this inhibits long-term planning because a delay at one site will delay the entire schedule, it will further ensure the ultimate success of TAAMS....

During the September meeting, the TAAMS team also reviewed the ongoing eight-week leasing, accounts receivable, distribution and interface test. *The test was very successful in that it presented a clear picture of what has been accomplished and what tasks remain to be performed before TAAMS can be considered fully ready for use.* *Id.* at 32 of final report, emphasis added.

Whether the IV&V in September 2000 was successful in helping the Interior defendants understand their problems with all phases of TAAMS, it was *not* a successful test. It required not only their admission that the relevant TAAMS’ milestones would be missed but also a decision that they could not proceed with any part of TAAMS’ deployment to

any region beyond Billings. The deleted statement concerning user acceptance was also indicative that they still were not convinced the users would even accept the Realty module even if the problems with it could be fixed.

The final report provided an extended series of scheduled activities including noting that a final Realty module Billings' deployment decision had been extended to March 30, 2001.

The Special Trustee's Observations also underwent modification in this report. One is worthy of comment. In the November 1, 2000 draft, comment number 5 stated:

“BIA Data Cleanup remains an increasingly serious time challenge. Data may require another data conversion in the BIA’s Rocky Mountain Region to ensure data integrity questions are resolved. Further, BIA’s overall approach to data cleanup and data conversion is under review by BIA management as a result of process and integrity questions with the current approach and effort.” *Id.*, at unnumbered page 7.

However, this statement disappeared in the second draft (*see* page 6) and was not included in the actual Report. *Id.* at 5.

Nor did a comment in the “Data Cleanup and Management” section at page 13 of the November 9, 2000 draft report related to this statement survive in the final report. That comment, under the Alaska Region Cleanup Status, stated:

“Data cleanup production during September continued to be hindered *due to TAAMS software limitations.*” Compare page 13 of draft report dated 11/9/00 with page 5, final report, emphasis added.

C. Quarterly Status Report to the Court Number Four

The November 2000 Quarterly Status Report to the Court Number Four had gained in transparency to some degree. The Court was informed that the TAAMS' project development and testing would be limited to Billings with no further attempt at deployment anywhere within BIA Regions until successful testing of all systems had been performed at Billings. But the actual reasons for this decision that foretold of additional problems that could result in further delays beyond the published schedules in Realty, TFAS Interface, Title history, and Data Conversion were not reported or not clearly reported.

D. Quarterly Status Report to the Court Number Five

The new administration took over responsibility for the Quarterly Reports. The February 28, 2001 Quarterly Status Report to the Court Number Five's Special Trustee Observations (see extract at **Tab 10F**) stated that the TAAMS' initiative was focused on completing a final review of the Realty module. Also, that, effective December 29, 2000, the land title portion of TAAMS was made the system of record for current Title in the Rocky Mountain, Southern Plains, Eastern Oklahoma and Alaska Regions. It also

mentioned that the Title history was still not complete. *Id.* at 5.

Again, the Special Trustee limited his general observations to another reference to the *Cobell* litigation and to the Special Master's impact on the trust reform effort. The few specific positive observations were that the land Title portion of TAAMS was made a system of record and that the Realty module would be available for approval for the Rocky Mountain Region by May 31, 2001. *Id.*

The general tone of the remaining comments, when factoring in the convoluted nature of the language usage in these reports, did not augur well for TAAMS. The Special Trustee had requested a schedule from BIA for the deployment of the Title and Realty portions of TAAMS to other Regions with appropriate milestones. He also was concerned whether there were enough project managers to sustain the TAAMS' implementation beyond Billings. He mentioned that the interface testing between TAAMS, TFAS, and MMS would need to be completed by mid-April 2001 to permit ample time for user acceptance testing to sustain its implementation beyond the Rocky Mountain Region and that he was reviewing this issue with BIA senior management. *Id.* at 6.

The TAAMS portion of this Quarterly Report mentioned that the focus of the TAAMS' initiative was on completing a final review of the Realty module and retesting the entire TAAMS system. *Id.* at 27. What was not mentioned was the fact that the BIA management had made a decision in December 2000 not to deploy the Realty module because of the results of the IV&V tests in September to October 2000. Further, there had been a decision made at that meeting to do a GAP analysis to assist ATS in preparing for the IUAT in May 2001. As there had been a 56% failure rate in the records tested by the IV&V, ATS needed assistance in correcting the software to meet the 100% pass rate that would be required. That analysis was conducted in January 2001. No mention of the test results and decision to defer deployment was made. To the contrary, it was stated that TAAMS Title and Realty modules were scheduled to be *fully implemented* by June 1, 2001 in the Rocky Mountain Region. *Id.* at 28.

Also, while the Quarterly Report's Observations reported that the Interior defendants had finally "deployed" a small portion of TAAMS – the current Title module – in four Regions, making it the "system of record," they overlooked an important fact revealed by a December 6, 2000 memorandum (**Tab 10G**) sent by the Deputy Commissioner, Sharon Blackwell, to the four Regional Directors. Announcing that TAAMS "shall be considered" the system of record for all current activities in the Land Title and Records Offices in the four regions, the memorandum limited the effect of that announcement "with the following considerations:"

Alaska Region – All transactions in regional areas *for which data has been loaded into TAAMS.*

Easter Oklahoma – All transactions *for which data has been loaded into TAAMS.*

Rocky Mountain Region – In response to your letter of November 29, 2000, the

following actions will be taken. 1) *The name and address information and tract unity information needs to be reconciled by the Bureau of Indian Affairs (BIA). The TAAMS project management team will work with the software vendor to ensure proper data reconciliation.* 2) *The encumbrance data may be entered either by your land title and records staff or your agency offices.* If you decide to have the former enter the data, than TAAMS is available to begin the process. If you choose the latter option, it will be necessary to install 1.17h at the agencies and you will need to monitor their entry of data....

Southern Plains Region – TAAMS as the system of record shall be effective December 26, 2000, *at the conclusion of the Southern Plans Land Title Records Office initial review and parallel test of the system.” Id. at 1.*

It is apparent from this memorandum that while the software may have finally been corrected to accept the data at these locations, that data had not been loaded into the TAAMS system in December 2000 nor could the current Title module be used at any location until, at least, that data was entered.

Inquiry by the Court Monitor into the completion of that data entry and actual use of the current Title module revealed that Billings is the only location where that process has been completed, six months later, and the system is actually used. But even at this location, LRIS has not been turned off and current data is still being loaded into LRIS as well as TAAMS.

So again, the Quarterly Report on February 28, 2001 continued to report misleading and incorrect information. The term “system of record” had been added to the lexicon of DOI terminology when “deployment” was changed to no longer mean “implementation.” But “implementation” – when the system was working and LRIS had been turned off – was when TAAMS, or a portion of it, was designated as a “system of record.” The TAAMS current Title module had been so designated on December 6, 2000 and reported by the new administration in February 2001 as the “system of record” for four Regional title offices. But those offices had not loaded their data or tested the system. Only one – Billings – to this day is using TAAMS current Title. That implementation did not occur until six months after it was announced it was the operating as a system of record.

E. Quarterly Status Report to the Court Number Six

The Special Trustee, in Quarterly Status Report to the Court Number Six, dated May 31, 2001 (*see* extract at **Tab 10H**), mentioned Nessi’s February 23, 2001 memorandum but stated he considered it missed “the point of the management problems faced by the trust reform process in certain large subprojects rather than the smaller subprojects cited by Mr. Nessi.” His discussion of those major problems followed regarding TAAMS and BIA Data Cleanup. His concern was the lack of full-time, experienced BIA assigned personnel, the need to bring the Leasing portion of TAAMS to fruition, the progress of the BIA Data Cleanup project, and the capability of the BIA project management to implement TAAMS across all twelve Regions. *Id.* at 3-4.

There was no mention, again, in this report of the specific reasons for these concerns. At this point in the history of TAAMS, the failed results associated with most if not all user acceptance tests, coupled with the documentary record discussed in this report and available to the Special Trustee, had never been brought to the attention of this Court during the tenure of the past administration and were not brought to its attention by the present administration. While reasons for continuing or missing milestones were reported and concerns about the progress reported, there was no effort from the beginning of the testing of TAAMS to convey to this Court an accurate picture of the *reasons* for the changes in deployment schedules, the missed milestones, or the revised method of deployment. A picture of progress and positive results was supplied this Court, if anything was reported, about the status of TAAMS until the most recent Quarterly Reports. But they still failed to present a completely accurate picture of the shape of the TAAMS' project.

Which brings the status of TAAMS up to the present IAUT that was summarized at the beginning of this report. There is no part of the TAAMS system that has lived up to the picture painted for this Court in July 1999 (or in subsequent Court-directed Quarterly Reports). The TAAMS software was not accepted during the three User Acceptance Tests in 1999 nor were TAAMS Realty and Title modules deployed in the fall of 1999. No live data was used in the system or, if any was attempted to be used, it failed. No report was made to this Court of the failure of those elements of TAAMS either during the conduct of the two-month trial or during the period up to the Court's December 1999 decision.

Presently, there is no integrated TAAMS system that can manage Title and Realty data or any other module discussed at the trial within existence in BIA offices as of the date of this report. The current Title module initially deployed in Billings was adversely affected by the history Title module during the IUAT. TFAS and MMS systems' integration has not been completed. Nor have the Appraisal and Probate systems. The only working part of TAAMS is the current Title module currently in various stages of operation at four Regional headquarters' title plants or service offices. But these systems are apparently unfinished as of this date and also need further work on Name and Address functionality.

X. SENIOR MANAGEMENT INTERVIEWS

The Court Monitor made further inquiry into the reasons for the lack of information supplied to this Court about the past or present status of TAAMS by those DOI managers having responsibility for supervising or reviewing TAAMS' progress who remain at DOI. The TMIP or HLIP committee, chaired by John Berry until his departure in the summer of 2000, was composed of four key members. In addition to Berry, they were Kevin Gover, Assistant Secretary for Indian Affairs and Nessi's boss, Daryl White, the DOI CIO, and Tommy Thompson, Acting Special Trustee until Tom Slonaker's arrival in the summer of 2000. Ed Cohen had represented the Office of the Solicitor with Edith

Blackwell. Tim Elliot later replaced him on the committee when he left DOI. Anne Shields, Chief of Staff to the Secretary of the Interior, was a participant at least at one key meeting.

A. Tommy Thompson

Thompson had been assigned to work on the TAAMS request for proposal by the first Special Trustee, Paul Homan. It had been Homan's idea to have a single computer system for trust operations and to complete the project in a short period of time as it would have been done in private industry. He was convinced to extend the completion date to a two-year period that was later increased to three years by Secretary Babbitt. The first HLIP had been prepared based on this schedule and set deployment dates to meet it.

Later in the process, DOI managers decided to allow TFAS to go forward as a separate OTFM financial and accounting system and have TAAMS handle the BIA's land management functions. The decision to contract for a COTS software system was based on both contractor advice and DOI managers' understanding that such a system could support BIA's business systems without need for much modification²⁰.

The plan was to impose TAAMS functionality on the BIA users to enable DOI to force BIA to standardize their business systems as closely as possible to the requirements of TAAMS. In this manner, the problems with the legacy systems' inability to talk to each other and the heterogeneous nature of their Regional systems could be eliminated.

There was an initial problem with BIA management's willingness to employ an experienced project manager. BIA rejected approximately four managers during 1997 and 1998. Either they were not experienced or their management style did not fit with BIA culture. In the fall of 1998, Kevin Gover selected Dom Nessi for TAAMS' project manager. Initially, Thompson thought Nessi was a good choice. He quickly developed the plans that OST had been seeking from BIA for managing the project. He was an organizer and got the project off the ground by addressing the high-level business system requirements that would need to be supported by TAAMS.

The rush to systems tests in the summer of 1999 was a factor of the original HLIP schedule that Nessi thought he could meet in terms of TAAMS implementation. Whether this confidence was based on his experience or assurances of the vendor, ATS, was never clear. But Nessi insisted he could meet the schedule.

In the spring of 1999, Nessi had ATS give a demonstration of TAAMS' operations to the senior DOI managers. Thompson attended and was concerned that not much more than screens were displayed without the data or functionality behind them. He asked Nessi if

²⁰ Many BIA managers believe they were never properly consulted about this decision and their problems with TAAMS' implementation stem from it. It proved to be incorrect, in their opinion, requiring major modifications to the COTS software so it could handle BIA requirements thus complicating and slowing down the implementation of TAAMS.

the project needed more time but Nessi was optimistic about the vendor meeting the July 1999 UAT test date. It appeared to Thompson that Nessi was anxious to please his supervisors and also was overly confident in ATS.

At the time of trial, Thompson had no involvement with Nessi's preparation for trial or any knowledge of what would be Nessi's actual testimony about TAAMS during the trial. He expected, as TAAMS project manager, Nessi would testify generally about that project and its deployment. Thompson's overall concern, expressed at trial, was that the HLIP's dates for all subprojects including TAAMS were very aggressive. He felt the attorneys had a hard job preparing him because he tried to hedge his bets on the schedule for trust reform. However, he felt Nessi had a handle on TAAMS because he had met the first rollout date in June 1999. He, as he testified at trial, had confidence in Nessi at that time. *See* Trial Tr. at 3271.

With regard to what Nessi was in charge of at the time of trial, Thompson believed he was responsible for not only the TAAMS system or software but for data cleanup and data conversion into TAAMS. He testified to this joint responsibility. *Id.* at 3148.

Thompson did not hear Nessi's testimony because he was a witness and sequestered. He did not find the occasion to read a transcript of that testimony until portions of it were sent to him in the winter of 2000 during the preparation of the Interior defendants' appeal and summary judgment motions. His first indication of that testimony had come from news releases stating that the testimony at trial was that "TAAMS worked."

Thompson did not remember receiving any feedback about the July 1999 UAT. But he knew by August that TAAMS had not passed its tests. He attended and often presented the TMIP briefings. He believed he presented the HLIP status report at the July 15, 1999 meeting. He did not recall why anyone would want to study Nessi's and the Secretary's testimony about data cleanup. Nor did he remember any statements by Nessi that he was concerned about his testimony in light of the summer UATs.

However, Nessi began to make continual complaints to Thompson during this period about the data cleanup problems and the data's effect on TAAMS. Thompson knew that the reports on the data cleanup were not good and that the BIA data cleanup project manager was felt to be using the wrong plan.

He also attended the August 2, 1999 TMIP meeting. The discussion of the Senate amendment dealt with ensuring TAAMS complied with user requirements. He believed the plaintiffs and the Senate committee staffers pushed for these requirements rather than the BIA. He did not believe the Secretary attended this meeting as he had left TAAMS' management to Berry who chaired the meeting.

In August 1999, Nessi came to him and wanted to split the TAAMS project between Realty and Title modules due to the major problems encountered in testing Realty. Nessi also began telling the TMIP committee that there were major problems with data conversion and Realty testing and he would have to revise the schedule.

The September 8, 1999 Chief of Staff's meeting held in Shield's office was a high level membership meeting to discuss the serious issues that Nessi had raised about TAAMS. Tom Gernhofer, Berry's assistant, would probably have prepared the agenda but input for it would have come from Nessi. Thompson had no recollection of the meeting or discussion about notification of the Court and Congress. Nor did he remember the drafting of the report for the Court. He was not aware of what happened to it and was surprised to hear it had not been delivered to the Court if it had been prepared by the TMIP committee staff. All such reports would have been supplied to the DOJ by the Solicitor's office for filing with the Court.

By September 1999, the senior members of the TMIP committee were all aware of the need to push back the TAAMS' deployment schedule due to the test results and the other problems Nessi was addressing such as data conversion. The management had begun to suspect that Nessi was too optimistic about the schedule. Nessi resisted White's insistence on more stringent testing. He took it as a personal criticism and a loss of trust in his ability. Nessi also felt that the IV&V tests were not appropriate because the contract with ATS called for a COTS system and not a development project capable of meeting these stringent testing requirements.

What Nessi failed to understand, apparently, was that the managers no longer considered TAAMS a COTS system due to the extensive modifications it had undergone and would have to undergo. Nessi had allowed the BIA users to propose major changes in the TAAMS' requirements that could not be met by the COTS system without significant modification. Those modifications required testing.

Thompson, among other TMIP managers, accompanied Secretary Babbitt to his September 22, 1999 Senate hearing. Gernhofer probably would have drafted the Secretary's prepared statement. He did not remember who briefed the Secretary for his testimony. Thompson realized the Secretary went beyond his own knowledge of TAAMS in the oral testimony and questioning that followed.

The November 1999 and subsequent status reports to the Secretary were begun with a dual purpose in mind. The managers had begun to question the veracity and ability of BIA managers involved with TAAMS. Nessi's optimism and overly favorable reports about TAAMS and its deployment schedule had raised doubts in their minds. They not only wanted to keep the Secretary apprised of the status of TAAMS but also to force BIA to make accurate reports and projections. If they were reporting to the Secretary, they would be more careful, presumably, in their choice of words to describe the status and projections for TAAMS. Gernhofer would also have coordinated the input to these memoranda and drafted them.

This turned out to be a major negotiation. Each time a report was prepared, the TMIP committee senior managers met with BIA managers to edit their statements and conclusions. The choice of words became a compromise between what the BIA or the Solicitor's office attorneys (Ed Cohen and/or Edith Blackwell) wanted to say and what

the TMIP managers thought was accurate or possible. Thompson based his decision on the accuracy of the status memoranda on the consensus of the TMIP committee. If Berry and Gover agreed with the input from BIA, it was not his place as the Acting Special Trustee to further challenge the quality of the input. Also, he did not have the staff to provide the oversight necessary of BIA.

Thompson took little or no part in the drafting of the revised HLIP and Quarterly Report Number 1. He had been asked to take responsibility for coordinating their preparation but had other projects that took precedence. Office of PMB and BIA managers drafted these initial reports to the Court based on the subproject managers' input. However, it was at this period in early 2000 that he first became aware of Nessi's trial testimony and realized that the Court had been given overoptimistic assessments of the status and future deployment of TAAMS. He sought to have the Quarterly Reports reflect an accurate picture of TAAMS. He was unsuccessful as he had been with the Secretary's status and decision memoranda for similar reasons.

Not unlike the negotiations over the status reports to the Secretary, the BIA managers sought to place the most favorable light on the TAAMS and trust reform projects under their management in the Quarterly Reports. The negotiation sessions over the wording to be included in the reports also extended over many days. Every word or phrase felt to be critical of BIA was a source of argument and compromise. Similarly, the Solicitor's office attorneys Cohen and Blackwell (and Tim Elliot after Cohen's departure in the summer of 2000) did not want any language in the reports that would compromise the DOI's *Cobell* defense.²¹

This process was repeated in the preparation process for the subsequent Quarterly Status Report to the Court Number 2. Upon the newly appointed Special Trustee's arrival, Thompson briefed him on his concerns about the process since Slonaker would now take over responsibility for these Reports' submission to the Court from Berry. Slonaker directed Thompson to begin preparing a "Special Trustee's Observations" section for the Report so that the Special Trustee would be able to comment on the substance of the Report prepared by others without having to negotiate away specific status information that might be objectionable to BIA or the Solicitor's office. Thompson complied by drafting the Observations contained at **Tab 9H**.

The August 29, 2000 meeting notes' quotations regarding Quarterly Status Report to the Court Number Three (*see Tab 9G*) were a mild example of the arguments these draft Observations generated. All attendees took part in addressing Slonaker's wish to accurately apprise the Court of the status of TAAMS as well as other trust reform projects that were behind schedule or facing present or future problems. The substance of the objections dealt with the interpretation Thompson had placed on the events in

²¹ Thompson is a senior career civil servant, not a Presidential political appointee. He was Acting Special Trustee from January 1999 until Slonaker's appointment in June 2000. Secretary Babbitt had placed John Berry in charge of DOI oversight of trust reform in the interim. There were two Assistant Secretaries on the TMIP committee. Although unstated in his interviews, it is doubtful if Thompson could affect any change to the reports or BIA's positions unless his superiors agreed.

question and his and OST's alleged inability to know the true status of the project. To a certain extent, this was true. OST did not have the oversight capability to track the status of each subproject and had to rely on the subproject manager for an accurate picture of that project's condition and future development. But Thompson was certain that most of what he had written was accurate from either his subordinates' direct observation or an interpretation of comments that had been made about TAAMS and the other related projects.

Over a series of days of intense argument with Sharon Blackwell, Bob Lamb, Nessi, Tim Elliot and Edith Blackwell among others, Slonaker agreed to eliminate or change the statements made in the draft Observations down to what appears in the final report submitted to the Court. Slonaker has been able to hold his own in later Report negotiations.

Sometime during this period, Thompson learned of the legal significance of "verifying" a document submitted to the Court. He informed Slonaker that he would not sign the Reports based on the negotiations over their wording and in light of his past experience in which he did not feel an accurate picture of the status of TAAMS had been supplied the Court. Slonaker has prepared the Observation section in the last three Quarterly Reports and has not used the "verify" language in the later Reports' transmittal letters to Thompson's knowledge.

Thompson was also aware that, on several occasions, in either the fifth or sixth Quarterly Report preparation, Slonaker had been forced to hold his position on the wording of the Quarterly Report's Observations or other sections against BIA's or Solicitor's office's objections. He met their threatened refusal to sign off on the report until the changes they wanted were made by informing them that he would send a separate letter to the Court if his Observations' or the Reports' language did not remain as he had agreed to or written.

Thompson is now working with the outside management consulting firm, Electronic Data Systems Corporation, (EDS) to conduct a review of the TAAMS' management and systems status based on Secretary Norton's July 10, 2001 memorandum, entitled, "Action regarding Trust Reform and Historical Accounting" and attached orders (**Tab 10I**) directing, among other actions regarding trust reform, an independent outside assessment of the TAAMS' project. See Id. at 1-2.

B. Daryl White

The DOI Chief Information Officer was and is responsible for the oversight of all computer systems within DOI. However, he does not have direct supervision of the other Bureaus to include BIA who have their own CIOs.

His office has been involved in the TAAMS project from the beginning of the negotiations over the Request For Proposal, the ATS contract, and the development of TAAMS. However, other than sitting on the TMIP committee and, on occasion, supporting the positions of his assistant, John Snyder, whom he had assigned to watch

over TAAMS development, he has had little day-to-day contact with it. He did have significant interface with Dom Nessi over White's decision to bring in an independent testing contractor. This was often a contentious relationship.

He became aware of the problems with data conversion and the TAAMS' software development sometime in the summer of 1999. Once shown the July 15, 1999 HLIP meeting agenda that he confirmed contained his handwriting, he recalled that Nessi had discussed data conversion problems at this meeting. His note to himself to review Nessi's and the Secretary's testimony at trial about data cleanup dealt with this concern. If Nessi felt they were having the significant problems with data in July 1999, where had they been at the time of the systems test by ATS in June 1999? He did not remember if he reviewed the testimony but did remember he was concerned enough to go personally to the Secretary of the Interior and inform him of White's opinion that an independent contractor should be brought in to validate and verify what ATS was providing in the way of software for TAAMS. He did not want to rely on ATS or BIA's testing to make that decision. SRA was later hired to do that testing.

White attended the September 8, 1999 Chief of Staff's meeting. He did not recall the discussion about notifying this Court and Congress about the problems with TAAMS or that its deployment would have to be delayed. He also did not recall the "court report" that was prepared by the members of the TMIP committee, including his office, and coordinated by his assistant, John Snyder. He was surprised that, as the documents revealed a report was drafted for use in informing the Court, that it was not submitted to the Court. Had it been "killed" by the TMIP committee, there should have been some evidence in the documents of this decision. If the TMIP committee senior membership had approved its submission to the Court, it would have been sent to the Office of the Solicitor. That office would have forwarded it, as a court document, to DOJ attorneys for filing with the Court.

White thought that since his office (John Snyder) had reported that the status report to the Court had to be delivered to the Court on Tuesday, September 21, 1999, it must have been prepared to meet this date because the DOJ attorneys had directed it be filed by that date. Therefore, it was White's opinion that it likely was finished and provided to the Solicitor's office for forwarding to DOJ by that date. He had no memory of whether the report was filed or not and, as previously mentioned, had no recall of its preparation or the reasons for it other than the agenda of the September 8, 1999 meeting shown to him by the Court Monitor.

White did remember that the IV&V testing in the fall of 1999 was not successful and that the TAAMS' deployment schedule had to be continually adjusted. He also remembered that Nessi decided to change the definition of "deployment" at this time because it was Nessi's belief that they could not define "deployment" as "implementation" as neither the software nor the user requirements were satisfactory when TAAMS had been installed in Billings. It would take a considerable effort and period of time to correct the errors and familiarize the users with the Windows system. Some did not even know what a "mouse" was or its purpose. White suggested the term "system of record" for defining

when TAAMS was actually “implemented” in a region. When the LRIS was turned off and the users were relying on TAAMS, the system was then considered implemented.

White did not recall if there had been any discussion of informing the Court after this decision to change these definitions. He recognized that the Court had been given a different definition of deployment at trial.

White stated that he relied on the input from BIA for the information provided the Secretary in the TAAMS’ status memoranda. There was much negotiation at the TMIP committee over what would be told the Secretary. He knew that Nessi was too optimistic about the status of TAAMS and its deployment schedule. However, he relied on Gernhofer, who coordinated the memoranda, and on John Berry as the senior Assistant Secretary and Chairman of the committee, for the accuracy of what went into those reports.

Notwithstanding the fact that, as CIO, he had direct-line access to the Secretary on issues dealing with all DOI computer systems, he did not believe it was his responsibility to make an independent judgment for the TMIP committee and the Secretary on where TAAMS’ development stood. White pointed out that he had many computer systems to be concerned about during this time, not the least of which was ALMRS which had been under severe attack for his “user unfriendliness.”

Also, the TMIP committee was a monitoring committee set up with Berry as Chairman to monitor and coordinate HLIP projects including TAAMS. They also arbitrated disputes between the various Bureaus or offices handling the projects but were not an oversight body and had to rely to some extent on the experience and knowledge of the subproject managers; and to a great extent on Nessi.

White stated that Berry relied heavily on the Office of the Solicitor for ensuring the input to these status reports to the Secretary, as well as the Quarterly Reports, were vetted to comply with the Court order regarding reporting on trust reform. This was important because the BIA, both the Assistant Secretary and Deputy Commissioner, as well as Nessi, were adamant that BIA be given credit for their TAAMS’ and related subproject’s progress in these memoranda to the Secretary.

The meetings regarding input to the Secretary’s status reports and the Quarterly Reports were intense. But White did not believe the BIA’s and Solicitor’s office’s efforts at writing or changing the language were attempts to conceal the true status of the HLIP subprojects or TAAMS from the Court. However, BIA was facing criticism for their progress or lack of it. In their view, they had not been properly consulted or given the resources to do what others had wanted accomplished with trust reform and TAAMS. They would not now allow their efforts to be criticized or characterized unfairly.

The negotiations over the Quarterly Reports with Slonaker started off on a bad foot because both Sharon Blackwell and Tom Slonaker were new and wanted to uphold their subordinates’ positions on the status of trust reform. There was much animosity between

OST and BIA that was reflected in the first meeting on the Special Trustee's Observations in Quarterly Status Report to the Court Number Three. Blackwell did not believe the Quarterly Reports were Slonaker's responsibility to comment on. They were a DOI reporting process that required the input of all participants in DOI's trust reform projects.

Blackwell felt that if Slonaker had concerns about trust reform in his oversight role he should tell the Secretary who could make the decision on what to report to the Court based on everyone's input. Slonaker disagreed because he viewed his oversight role to include not only reporting to Congress but also to the Court.

White thought the Secretary's decision to require an outside management consultant review of TAAMS was the right choice. He had done a similar review by using SRA to conduct independent testing of TAAMS. In light of the GAO's recommendations based on the IUAT results, an independent assessment should be made of what to do with TAAMS.

White had attended a recent meeting of DOI officials with Jeff Kaplan, the senior staffer on the House Appropriations Committee with oversight of trust reform. Kaplan was told the software would be "up" in twelve months. TAAMS would not be implemented by this time but the software would be completed. This assessment was BIA's. They plan to have another IUAT in the fall of this year. White was unaware how the Special Trustee's own independent consultant's review of TAAMS systems and management would impact on this BIA software redevelopment. Nor did he have sufficient information to base an opinion on whether this forecast was accurate.

C. Sharon Blackwell

Sharon Blackwell is the Deputy Commissioner, BIA. It has been her concern for the approximately one year she has been the Deputy Commissioner that the Court be given an accurate picture of BIA's progress on trust reform. This has been her reason for challenging the observations and input to the Quarterly Reports by the OST and the Special Trustee.

Quarterly Status Report to the Court Number Three was the first report in which the Special Trustee took part. She did not believe that his draft Observations section was accurate. It was poorly worded. The comments did not give a complete picture of BIA's performance. As a lawyer, she did not believe that Slonaker or his staff understood the correct use of words and had not placed the right connotation on the status of the various BIA-managed subprojects. Nor were they fully aware of the developments involving many of these projects.

There was a long history of conflict between OST and BIA over the criticism leveled at BIA by OST that BIA was not performing trust reform operations, including TAAMS, efficiently. But BIA had not been party to the original decision to purchase a COTS system to replace the legacy systems. At least their objections to the reasons for its

selection were not given their due. When it became obvious that the system would need major modifications to meet user requirement and business system needs, it was up to BIA to make those changes and meet the unrealistic OST- imposed schedules for TAAMS' deployment and implementation. The criticism has been unfair but unrelenting. She has sought to put perspective into the Quarterly Reports and the Special Trustees' Observations to counter the misperceptions in the reports. BIA staff and operational personnel have done everything possible against great odds to bring trust reform to fruition. Their accomplishments should be given proper credit in the Quarterly Reports.

When read the notes of the August 29, 2000 meeting concerning Quarterly Status Report to the Court Number Three (*see Tab 9G*), she stated that her suggestion that Slonaker provide his concerns to the Secretary in a letter first before submitting them in the Report was based on her belief that it was the Secretary's ultimate decision what went into the report. She did not remember what her comment meant about Slonaker's writing a letter to the Secretary and it being "discoverable." She believed the final version of the Report accurately reflected the status of the HLIP subprojects. She also believed an accurate picture of trust reform had been given the Court. Therefore, the Special Trustee's Observations section was not necessary. She has had to significantly edit his comments on each of the subsequent reports. The Special Trustee is responsible to the Secretary for trust reform oversight. The Secretary is responsible for the DOI-generated Quarterly Reports.

Some comment must be made about the Deputy Commissioner's quoted statement that the Special Trustee's proposed letter to the Secretary expressing Slonaker's concerns would be "discoverable" in lieu of sending them to the Court in his Observations with the Quarterly Report.

If the Special Trustee had concerns as outlined in his draft Observations, sending them in a letter to the Secretary that might someday be discoverable or, as the Solicitor Office's attorney Tim Elliot suggested, sending them to the Secretary and reporting them in the next Quarterly Report, was not the way to be "open and truthful" with the Court.

The result of both these suggestions would have been to delay informing the Court of the Special Trustee's August 2000 concerns about the progress of trust reform. The suggestions to wait three months for the next Quarterly Report or whenever the letter might be subject to a discovery request sometime in the future were strong indications that what the Special Trustee wanted to report directly to the Court was correct and harmful to BIA's and DOI's interests if it were to be provided to the Court. As Solicitor's attorney Edith Blackwell commented, providing his Observations to the Court in the Quarterly Report would bring about a "different solution." If the information was not correct and was taken out because it was wrong, why first argue for it to be sent in a letter to the Secretary? Slonaker had already talked to the Secretary about his concerns.

D. Tom Slonaker

Upon assuming his duties as Special Trustee, Slonaker familiarized himself with the HLIP subprojects' status and reviewed the first two Quarterly Reports. On what he knew of the status of TAAMS at the moment, he did not believe a totally accurate picture had been provided the Court. Nor did his subordinates feel the information they sought to place in the Quarterly Reports had made it through the contentious review process. He directed his Principle Deputy, Tommy Thompson, to prepare a Special Trustee Observation section for the third Quarterly Report. He wanted to use this method for beginning to clarify through his own observations what was included in the balance of the Quarterly Reports about the overall progress of the HLIP subprojects.

The August 29, 2000 meeting notes addressing the discussion of the draft Observations was a good example of the lengthy and contentious debates held about each of the Quarterly Reports' Observations. Each involved a gaggle of lawyers parsing every word and challenging his terminology and understanding of where the subprojects actually stood. To some extent, they are correct that he and his staff cannot account for every item in the Quarterly Reports. So he must rely on BIA's interpretation of their progress in many cases. However, he believes he backed off too far in his first attempt at holding firm on his concerns. He has written his later Observations based on his own observations and has been better able to hold the line on their content.

However, the reports were true that the Court Monitor had heard from Thompson and the OST staff of Slonaker's having to assert his authority to comment as he saw fit and keep integrity in his communications with the Court. On at least two occasions, he believed both involving Quarterly Report to the Court Number Six, BIA managers or the Solicitor's Office had objected to the inclusion of information he wanted in the report. Or they had sought to have him add comments to the Quarterly Report or his transmittal letter. They had initially refused to surname (endorse) the draft report unless their positions were recognized. He ended the dialogue both times by stating that, if the report or his comments did not go as he had agreed, he would send a separate communication to the Court pointing out these discrepancies. The matters have been dropped after he has taken this position.

He confirmed that he had stopped the practice of "verifying" the Quarterly Reports in his transmittal letters to the DOJ. They had requested that he verify the Quarterly Reports. However, his staff and he were of the opinion that there was too much that they could not confirm the accuracy of in the BIA reports on the subprojects to be able to verify them in the legal sense of the word. Also, as the Solicitor and BIA lawyers have contended it is a DOI report rather than his, although his staff coordinates its preparation, he does not feel he should take a legal position on its content. He does stand by his Observations and the status of the major subprojects in the more recent Quarterly Reports. However, they are still subject to intense negotiations. The last Quarterly Report meeting on his Observations took two and one quarter hours.

He also has had to contend with objections raised by the Solicitor's Office over his offering the Court Monitor an opportunity to attend his Steering Committee meetings. These meetings were the old TMIP meetings with similar attendance by the senior managers and continue to address issues on a by-weekly basis dealing with the status and progress of trust reform. He has approached the Secretary of the Interior about the objections of the attorneys and others on the committee and has agreed to meet with the Court Monitor following the meetings to report on the substance and decisions made at the meetings. Solicitor attorneys have wanted to be present at these meetings with the Court Monitor and he declined their request upon consultation with the Court Monitor.²²

Based on his review of the status of TAAMS provided by the GAO, BIA Project Management Team, and the NIAD testing consultants, it was his decision to hire EDS to conduct a top to bottom review of the TAAMS subproject from both a systems and management perspective. This decision was in compliance with the Secretary's memorandum (*see Tab 10I*) directing that an independent assessment be made of the progress of trust reform. He has assigned Donna Erwin, former Director of the Office of Trust Funds Management, to coordinate and monitor their activities. He has invited the Court Monitor to participate as an observer in their and Erwin's activities as part of his monitoring role.

E. Kevin Gover

Kevin Gover is the former Assistant Secretary for Indian Affairs. He accepted the Court Monitor's invitation to discuss several specific issues involving the review of TAAMS deployment. He stated substantially the following.

He sat on the TMIP committee. The primary senior members of that committee were Berry, White, Thompson (and later Tom Slonaker) and himself. The Solicitor's Office attorney who attended most of the meetings was Edith Blackwell. He remembered the TAAMS status memoranda to the Secretary prepared by the TMIP committee but relied on his staff, Berry, and White for the accuracy of the input.

He was not involved in preparation of most of the Quarterly Reports or the revised HLIP and sent his Deputy Commissioner and Dom Nessi among others to present BIA's position. He was aware these meetings became controversial and the reasons why his staff were concerned about the substance of the Reports. It was his impression that they believed that they would be portrayed by OST as having missed their milestones or not completed the work associated with various projects. There was no love lost between the

²² The Special Trustee has sought to address what he has viewed as a long-standing conflict inherent in the Office of the Solicitor's provision of legal counsel to him and the OST in the oversight role of trust reform that he and his subordinates perform. His duty to Congress, and, in his view to this Court, may require legal advice about his decisions or actions that could be, and have been viewed as, adverse to the DOI and its legal position in the *Cobell* litigation. He has sought to place on his staff separate independent counsel outside of the Office of the Solicitor to resolve this inherent conflict. However, his requests have been refused, most recently in conjunction with the negotiations over the Secretary's July 10, 2001 memorandum. That memorandum's direction requires him to seek legal advice and counsel regarding his decisions with respect to the BIA's trust reform activities from the Office of the Solicitor.

two offices about the trust reform effort and much debate about who was responsible for delaying a project such as TAAMS. His staff believed OST wanted to display their projects in the best light possible while denigrating the work of BIA. This led to rancorous debates about what would be placed in the reports.

He did not remember any discussion about reporting to the Court on the deployment status of TAAMS in September 1999. He did remember that there were discussions about the revised HLIP's preparation around this time. They had begun to prepare a revised HLIP even before the trial. Now that a decision was expected after the trial, they debated whether to complete the HLIP or wait for the Court's decision that was expected to address the content of the HLIP. A decision was made to postpone the HLIP's preparation pending the Court's decision. This did not involve any decision about reporting to the Court on TAAMS' deployment.

However, he did remember that in the same period in the fall of 1999 there was notification to the TMIP committee that the TAAMS' deployment schedule would have to be "slipped" and could not be rolled out as originally planned. He did not remember any discussion about informing the Court of this necessity.

He remembered that the Secretary of the Interior was engaged in meetings in September 1999 before Congress and went with him to the Senate Committee on Indian Affairs where he did present a status report on TAAMS. Gover did not remember the specifics of that discussion except that several Senators were skeptical of the development status of TAAMS.

XI. ANALYSIS

The Second Report of the Court Monitor was scheduled to be a review of the progress of TAAMS. Not unlike the Historical Accounting project addressed in the Court Monitor's First Report, the initial review of TAAMS was completed quickly but led to a further review of the reasons for the lack of progress on TAAMS. Questions arose regarding what this Court had been told of TAAMS development. If in the summer of 2001, the status of TAAMS was so far behind where this Court was informed it would be in the summer of 1999, what had taken place and what had this Court been told of the failure of TAAMS to live up to the testimony at trial? Was either the testimony inaccurate about the status and potential of TAAMS, or had the Interior defendants overestimated their ability to carry out trust reform by implementing this major component of that reform effort?

This review has addressed what the Interior defendants knew of TAAMS' capabilities prior to the June and July 1999 trial; what was testified to by their witnesses about TAAMS at trial; what was the initial reaction of the Interior defendants during or shortly after trial on learning of the status of TAAMS' development and implementation, and what has been done since 1999 to bring about trust reform and report to this Court on TAAMS deployment and implementation.

A. TAAMS – January to June 1999

The interviews of Thompson, Nessi and Lawrence about the status of TAAMS before trial, as well as contemporaneous documents, reveal that the Interior defendants knew what they did not know about TAAMS' performance before trial. Nessi's superiors and predecessors had contracted for a COTS system that had to be modified even before trial. Those modifications had to address a Title system that did not exist in the Artesia (later ATS) software. Also, it became evident to both Nessi and Lawrence that there were both data conversion and user requirement problems with TAAMS. They only had ATS' assurance that they could be corrected before the July 1999 UAT.

However optimistic Nessi may have been about ATS' capabilities to implement TAAMS on the aggressive schedule that had been imposed by his superiors in the contract, he did not have a software system that was working properly at the time of trial. The much-touted unveiling by Secretary Babbitt to which he testified at trial was not an "implementation" of TAAMS but merely a demonstration of the prototype screens that would be used with the system.

Nessi was counting on ATS to be able to accomplish the software modifications, data conversion, and place user requirements into the system for the July and August 1999 UATs. He had been assured by ATS that they were prepared for the tests prior to his trial testimony. Nevertheless, he has repeatedly stated to the Court Monitor that he was concerned enough about the data conversion and user requirements to bring them to the attention of his superiors. He believed he was to testify about the TAAMS' "system's" status and capability rather than address the TAAMS' "initiative" that included those supporting projects about which Nessi stated he had little knowledge and larger concerns.²³

B. Trial Testimony

However, Nessi testified using a Power-point presentation that provided this Court with a review of all phases of TAAMS' development and deployment. It was not limited to the software but addressed deployment and implementation of TAAMS not only projected for the Billings pilot and deployment in September 1999 but also deployment to the entire 12 regions by the end of 2000 or the early part 2001. User Acceptance Testing to certify

²³ The Court Monitor's efforts at confirming this statement about the limitations put on his testimony have revealed three things. First, Nessi believed he was to testify in this manner and thought his testimony was only confirming the operational capabilities of the software instead of all of the projects supporting TAAMS. In four interviews about his testimony, he has remained consistent in his statements that he told those preparing him for his testimony of his concerns and the limitations he would place on that testimony. Second, his testimony, as quoted in this Report, indicates he did what he said he intended to do. Third, there is no evidence that anyone else played an active role in his decision to testify as he did and contrary evidence that those preparing him thought he had a much broader responsibility, which the record supports. But Nessi did not have the experience or knowledge to testify as he did about the TAAMS' system as a whole. He stated in his most recent interview that he was told to testify truthfully but only to those areas of trust reform for which he had responsibility and knowledge. This meant to him to limit his testimony.

the system using live data was to begin in July 1999.

His positive statements about “TAAMS” as opposed to TAAMS “software” gave the impression that his use of words like “it’s already working” and it’s “operational” were referring to more than just the software. No one hearing that presentation would have assumed he was addressing anything less than the whole system until late in his testimony and cross-examination when he was forced by plaintiffs’ counsel to describe what he meant by the terms “initiative” and “system” and attempted to limit his responsibility to the software deployment.

The Interior defendants referred in Quarterly Report Number 1 to Nessi’s trial testimony about deployment and sought to soften it by referring to Thompson’s concerns in his testimony about that deployment. Thompson had spoken of his concern about the aggressive HLIP schedule including the TAAMS’ deployment. However, it was Thompson himself in his testimony that buttressed Nessi’s testimony’s credibility. Thompson did express the following concern about TAAMS:

“The second problem I saw was that with but a year left before the rollout of a new system, with all kinds of procurement, data cleanup, staffing, et cetera, it just appeared to me to increase the risk of failure or delay on the rollout of this new system.” Trial Tr. at 3106.

But he subsequently testified that his concern was allayed by the June 1999 rollout. In response to plaintiffs’ attorney Harper’s questioning about TAAMS “slippage,” he stated:

“Actually, the system rolled out on the 21st of June, so I consider them to have met the deadline for TAAMS implementation.” Trial Tr. at 3109.

And again in answer to a question from the Court:

“BIA has put the system on the ground out there. In other words, they proved me wrong, which I’m happy to say.” Trial Tr. at 3118.

And finally:

“Dom Nessi successfully designed, developed, and rolled that system out, and we have something to work with now. One of the major risks is eliminated, yes.” *Id.*

But Thompson also testified to the fact that Nessi was not only in charge of developing the TAAMS software but also of the data cleanup effort. *See* Trial Tr. at 3148. So Nessi’s positive testimony about the whole TAAMS “initiative” under his direction was buttressed by Thompson’s testimony even though Thompson had had and continued to have concerns about the aggressive HLIP subprojects’ schedule including TAAMS.

Thompson also testified to the fact that rolling out the TAAMS system involved more than just software:

“As we discussed, there are a number of events that have to happen as you roll out a system: data cleanup, testing, training, et cetera.” Trial Tr. at 3116.

Nessi's testimony was also backed up by no less a witness than the Secretary of the Interior. In speaking about the TAAMS' pilot, he stated:

“We got a very strong feeling from talking to all of those people (Artesia, BIA, and Nessi) that this thing was really right on....

Now, my understanding of this is that by sometime in September we'll be ready to make the implementation across the board decision.” Trial Tr. at 3718.

And again, speaking metaphorically about TAAMS and the end of his administration:

“I can't tell you that that ship is going to arrive in a safe harbor on January 20, 2001. I can tell you with a great deal of confidence that this ship will be on an irrevocable course toward the ultimate landing in that harbor by the time I turn the lights off.” Trial Tr. at 3766.

And finally:

“My own view is that it does work. We'll know in September.” Trial Tr. at 3885.

It is difficult to believe that Nessi limited his testimony in the manner he stated he did. Although illogical, he may have assumed when he was asked to testify about TAAMS that everyone understood his belief that he was only responsible for the TAAMS software. Although he testified at one point that he was not in charge of data cleanup, his duties and responsibilities included data cleanup and conversion and were so testified to by Thompson and others. No one would have conceived his Power-point presentation and his testimony on TAAMS' capabilities was just addressing the software capabilities. It included all phases of TAAMS' development and year 2000 deployment including data cleanup and conversion, TFAS interface, and a plethora of other related systems.

But he asserted repeatedly to the Court Monitor that he was only asserting the COTS software worked in stating that “the system is already working” and “already operational.” But even if this Court had viewed his testimony as limited to the software, there was no accuracy in that testimony. All that had been displayed at the Secretary-attended rollout in Dallas in June 1999 were the basic screens with no data behind them. The data conversion had not been completed, the modules had not been developed, the user requirements not integrated into the system, and, as would be seen, the software was not capable of being tested using live data.

If the Interior defendants listening to Nessi's testimony did not realize the alleged limitations Nessi's placed on his testimony about what the TAAMS' integrated system could actually do as opposed to the software, they would soon become painfully aware of the actual capabilities of TAAMS.

C. The Court Report

Nessi asserted that TAAMS' inability to use live data or complete the July and August 1999 UATs convinced him he had provided overly optimistic testimony about the software that had to be corrected by informing this Court of the results of the UATs in the summer of 1999 and the extended and changed deployment schedule. He believed he had raised his concerns about the data conversion and software problems discovered in July and August 1999 to a Solicitor's Office attorney and to the TMIP committee.

Contemporaneous documentation confirms that the DOI CIO was concerned enough about Nessi's presentation in a July 15, 1999 HLIP meeting to note his decision to review Nessi's and the Secretary's testimony about data cleanup. He remembered that he also informed the Secretary that independent testing of TAAMS would have to be conducted by an outside contractor due to the problems ATS and BIA were having with the system.

The September 8, 1999 meeting with the Chief of Staff to the Secretary and the senior members of the TMIP committee also confirms that someone was knowledgeable about the problematic status of TAAMS' data conversion, BIA's reluctance to share information with the Acting Special Trustee, and the slow development of TAAMS, to recommend to the Chief of Staff and the senior members of the TMIP committee that quick notification of not only Congress but this Court would be required.

The Chief of Staff acknowledged that the presentation had raised questions in the meeting participants' minds, including hers, about the testimony about the TAAMS' deployment schedule that had been given to this Court at trial. She addressed their discussion about whether that testimony had given "exact" dates to the Court that they would have to correct. Her understanding of the consensus of the participants was that since the Court probably was only given approximate dates, nothing needed to be corrected but for the fact they could not be sure what the documents provided the Court said. Whether someone checked those filings or not, the decision was made to inform this Court of the changes to be made to the deployment schedule.

Senior DOI officials including the Solicitor's Office attorneys spent several weeks in September 1999 preparing that notification to the Court. The Solicitor's Office had scheduled the submission of the report to this Court before the Secretary's September 22, 1999 testimony to the Senate Committee on Indian Affairs. It was prepared but never provided to this Court and apparently never discussed with or given to the DOJ attorneys responsible for the *Cobell* litigation. The Secretary was given input from the report for his testimony. Congress was provided an inaccurate picture of the status of TAAMS' development on September 22, 1999. This Court was sent and told nothing.

Something happened to cause the Interior defendants, or at least their attorneys, to decide against informing this Court of the status of TAAMS' deployment. The two remaining TMIP senior DOI officials do not remember what the reason was and expressed surprise that the report prepared by them was not provided to this Court. It was their opinion the report, which was prepared at the request of the Solicitor's Office, would have been

provided to the Solicitor's Office for forwarding to the DOJ for further submission to this Court. The DOJ attorneys never received the report and knew nothing about it when the Court Monitor requested it be located.

This Court received no notification of the actual status of TAAMS before its December 21, 1999 decision; a decision that may have been based in part on an overly optimistic and inaccurate presentation of TAAMS' capabilities and deployment schedules by a witness who allegedly was reluctant to testify to those capabilities and limited his testimony to TAAMS' software. Although the Interior defendants were aware of and addressed informing this Court of the testing and development problems with TAAMS during the trial or shortly thereafter, no report was sent then or later until the required revised HLIP and Quarterly Report Number 1.²⁴

What changed their minds? Why was no report ever submitted to this Court? The only logical conclusion is that they wanted to wait and see if the later November 1999 tests would succeed and correct their evolving impression that TAAMS was not the system they had hoped it would be and had told the Court it was. A pressure point regarding their decision about not delivering the putative report to the Court in September 1999 may have been their anticipation of the Court's reaction and subsequent decision in the case if it learned of TAAMS' actual performance in the UATs and its data conversion and user requirements issues as well as the need to delay, and change the method of, deployment.

The Interior defendants' attorneys had submitted their "Proposed Findings of Fact and Conclusions of Law" on August 4, 1999 (*see* extract of pages 68-79 at **Tab 10J**); a month before the September 8, 1999 Chief of Staff's briefing in which the DOI management addressed notification to this Court due to the issues with TAAMS, data conversion, and BIA management. Those Findings and Conclusions addressed TAAMS in favorable terms in eleven pages of factual statements countering the plaintiffs' criticisms of the legacy systems. Among them, the following:

"230. Despite the initial delays, as a result of the efforts of Dom Nessi, the TAAMS project is on schedule and the successful roll-out of the TAAMS pilot in the Billings Office occurred during this trial, in conformance with the schedule set forth in the HLIP. The pilot includes unveiling the system, pre-deployment data cleanup, converting the data, training the staff, ironing out any issues that need to be ironed out, testing the system, independent verification and validation and implementing a number of agencies under the Billings area office to have a functional test of the system and more post-deployment cleanup." *Id.* at 75, citations omitted, emphasis added.

"232. Mr. Nessi testified that the overwhelming majority of the Billings area pilot should be completed by around October 1999. After that, BIA plans to go to the Juneau, Aberdeen and

²⁴ No report may have been better than the draft "court report." It was not an accurate picture of the status of TAAMS as had been reported to the TMIP Committee and the Chief of Staff. Successive drafts had been whittled down to a shadow of the true picture of TAAMS' test failures and data conversion problems requiring deployment delays. Perhaps the realization they could not report the true facts of the reasons for the deployment changes convinced them to forego any report except before the Senate, rather than this Court, in testimony by the Secretary of the Interior.

Minneapolis areas.” Id. at 76., emphasis added.

“233. BIA has an in-depth and aggressive, but realistic, project schedule for implementation of TAAMS.” Id., emphasis added.

Also, in both their initial submission of their proposed facts and conclusions and in their reply to the plaintiffs’ submission, they relied on the Nessi’s testimony to present the factual picture of data cleanup and to counter plaintiffs’ criticisms of that effort.

To report to the Court in September 1999 that these statements regarding the status and deployment of TAAMS and data cleanup and conversion were no longer correct based on Nessi’s own view as well as their CIO’s would have been the possible death knell for the Interior defendants’ case. No available senior member on the TMIP committee at that time can help explain the decision not to send the report nor can they remember anything about it including the DOI CIO whose assistant coordinated its preparation.²⁵

D. The Secretary’s Status Memoranda, the HLIP, and Quarterly Reports

Based on an apparent belief that the testing would soon show TAAMS could be implemented in Billings, the Interior defendants, through the Secretary, informed Congress that after an “exhaustive series of tests” TAAMS was operating in all of the Billings offices in a parallel environment with the legacy systems. The Secretary assured Congress that he would be back in November 1999 with a comprehensive report that the system was meeting expectations. He expected to make a final deployment decision in November 1999.

The pressure to get the system to live up to these expectations must have been intense. Both this Court and Congress were expecting a deployment decision in September 1999. The fact that it was pushed back until November 1999 was not announced to this Court but to Congress. But the testing continued to show the system was far from ready for deployment. In the time before the first Quarterly Report was submitted to this Court, not only had the term “deployment” been altered to no longer mean “implementation” but also the method for deployment of TAAMS’ modules was revised.

The TAAMS deployment schedule was converted to a *current* Title deployment rather than an integrated system deployment because the Realty portion of TAAMS, among other modules, could not come close to passing the systems or user acceptance tests. Attention turned to “deploying” this limited portion of TAAMS.

But in November 1999, the TMIP committee informed the Secretary that “tremendous progress” had been made over the year. They stated that their conclusion was based on the contractor tests and successful data conversion. They believed they were close to a final deployment decision. What possessed them to make this report in light of the continued failed UATs and data conversion problems is unknown. However, Thompson thought this particular status report to the Secretary might have been sent to Congress.

²⁵ Nor did that assistant remember when interviewed by the Court Monitor.

This would explain the glowing report. The Secretary had told Congress in September 1999 that he would be giving them a comprehensive report in November 1999.

In December 1999, after the failed September and November 1999 tests, the DOI CIO called for extensive user testing of TAAMS in an orderly fashion observed by not only the GAO but also by an independent IV&V contractor. The testing was to include interface testing. He did not want a rush to judgment on a deployment decision. *See Tab 7C*. He also was concerned about the accuracy of the BIA reports about the status and progress of TAAMS.

DOI received the independent contractor's draft report of the summer and fall 1999 tests of TAAMS in January 2000. Nessi threatened to resign over the report's discussion of the test's poor results. The report showed the TAAMS system was not capable of implementation in any phase without significant work. The receipt of this report was followed by another TMIP managers' status report to the Secretary that included this statement: "Over the next few months, we will be evaluating the testing of the above system components and will be able to determine a firm date for initiating deployment to the remaining BIA and tribal offices that perform leasing operations. At that time, we should also again notify the Congress, *this time of our intent to fully deploy TAAMS.*" *See Tab 7G*, emphasis added.

But on February 14, 2000, a meeting was held with John Berry. He was informed there were still "data issues" and that Nessi wanted to make further changes to the software. *See Tab 7H.*²⁶

At the same time, the Interior defendants had to begin preparing Quarterly Reports and a Revised HLIP for submission to this Court following its December 21, 1999 decision. The same lack of candor found in the status reports to the Secretary also permeated the initial reports. Quarterly Report Number 1 reported that TAAMS system testing was *successfully* conducted during September and November 1999. But the independent contractor who conducted those tests had reported in his reports that the system was far from ready to be implemented. He stated in an email to the DOI CIO that "I guess my opinion of the overall report is that it was not favorable. I think it was favorable in spots but generally it pointed out a significant number of problem areas that I believe offset the positive things we found." *See Tab 8C*.

Nothing in Quarterly Report Number 1 gave this Court any indication that the summer and fall 1999 testing had been unsuccessful. The result, that the Interior defendants had been forced to rely on testing of only the Title portion of TAAMS, was portrayed as a change in deployment from a "geographical" basis to a "functional" basis.

The revised HLIP was no more forthcoming. It relied on a selective quotation of the independent contractor's comments in his report. It took his statements out of context giving the Court the impression that the contractor had agreed that TAAMS could be deployed beyond Billings with "minimized risk and a reasonable assurance of success."

²⁶ It was in February 2000 that the TAAMS Title module was first tested using live data.

See page 76. The contractor has specifically told the DOI CIO that the results of his test were not favorable and much work needed to be done before that deployment could take place.

A final April 2000 status report to the Secretary recommended deployment of the Title portion of TAAMS to Billings. The Secretary informed Congress of his decision to initiate deployment of TAAMS based on this memorandum. But part of the basis for the decision - that there had been successful IV&V tests - was not correct. And deployment, as pointed out in the status memorandum, was not implementation. It would take until December 2000 for the Interior defendants to get the current Title portion of TAAMS at Billings to a point where they could declare it a “system of record.”²⁷

Subsequent Quarterly Reports have continued to characterize most TAAMS’ initiatives in similar ways. A discussion of these presentations of TAAMS status to the Court is contained at pages 71 to 91 of this Report and will not be repeated here. Suffice it to say that the negotiations over what would go into these reports were always intense and contentious between the Special Trustee and the BIA managers and Office of the Solicitor attorneys. They often have had conflicting views of what was the true picture of TAAMS and the other HLIP subprojects’ status. Reviewing the Quarterly Reports, truth has not fared well in these sessions and the picture of TAAMS was often cloudy.

The Special Trustee, Tom Slonaker, upon assuming his duties in the summer of 2000, sought to bring more transparency to these Reports by introducing a Special Trustee’s Observations section to Quarterly Status Report to the Court Number 3 and the subsequent Quarterly Reports. That effort turned the negotiations over the Quarterly Report and the Observations’ substance into a Donnybrook. BIA managers and Office of the Solicitor attorneys have sought to limit and exclude these comments as can be seen by the initial and final Observations regarding the third Quarterly Report. See generally, pages 77 to 80 of this Report.

The Special Trustee has been forced to assert his authority to make his observations known to the Court most recently in connection with the negotiations over Quarterly Status Report to the Court Number Six by allowing that, should his comments be changed in the Report or his transmittal letter, he would send a separate letter to this Court informing the Court of the changes and his own position.

The Special Trustee has also agreed to meet alone with the Court Monitor to discuss the substance and decisions of the Special Trustee’s Steering committee meetings over the objections of Office of the Solicitor attorneys. They had previously objected to the Court Monitor attending these meetings at the invitation of the Special Trustee. He rejected their demand that they accompany him to the meetings with the Court Monitor. The Office of the Solicitor took this position in direct defiance of the Secretary’s own

²⁷ It is a “system of record” only because the title plants and service offices have no need to use the other TAAMS modules or all of the interface functionality with TFAS and MMS. TAAMS’ current Title was deployed to the title plants and offices in four Regions because they required little of the integrated TAAMS operations that are still under development and which failed the May 2001 IUAT.

mandate based on this Court's order appointing the Court Monitor and directing that the Court Monitor should have unfettered *ex parte* access to all DOI employees. Her own agreement with the Court Monitor, known to the attorneys, was that the Court Monitor was to have that access.

E. Discussion

It is difficult to put a favorable light on any stage of this saga. Regardless of what Nessi thought he was testifying about, his presentation was about all of TAAMS' functions and capabilities for solving the DOI's accounting problems. TAAMS deployment was presented as near certain. His testimony was presented at trial and in the Interior defendants' pleadings as accurate and comprehensive. The Interior defendants relied on his testimony, as did this Court.

The DOI and BIA senior management learned in the summer or early fall of Nessi's and perhaps others' concerns about TAAMS' functionality and of a need to alert this Court of TAAMS' deployment delays due to the testing and data conversion issues in July and August 1999. The Secretary was informed sometime after the July 15, 1999, HLIP meeting that his CIO had made a decision to do more independent testing of TAAMS due to Nessi's presentation about TAAMS' data conversion problems.

That presentation had concerned the CIO enough that he at least considered reviewing Nessi's and the Secretary's testimony about data cleanup.²⁸ Notification of the need to also inform this Court included a briefing for the Secretary's Chief of Staff whose agenda specifically mentioned a need to quickly inform this Court and Congress about TAAMS delays in deployment and data conversion problems. The current BIA data conversion delays and the fact that BIA had been upbeat in public but that the TAAMS pilot was just beginning were described in the agenda. They prepared a "court report." It was never supplied to this Court. The Secretary's use of its substance in his testimony before Congress was overoptimistic and just plain wrong.

The recognition that Nessi's testimony was not accurate; that the tests and other data conversion problems would delay TAAMS; that that fact would need to be reported to the Court and Congress; their preparation of that report; and their subsequent failure to inform this Court by that report of the results of the UATs in the summer of 1999; cannot be easily dismissed as a series of innocent mistakes and inattention on the part of the senior DOI management or the fault of subordinates such as Nessi.

In reality, TAAMS had to perform and hit the target given this Court and Congress or the target had to be moved. TAAMS did not work so the target of "deployment" was changed to address only the current Title portion of TAAMS. And "deployment," in the

²⁸ Nessi stated that he believed he had spoken about his concerns regarding the inaccuracy of his testimony in July or August 1999 to senior DOI officials. That the CIO thought he needed to review Nessi's and the Secretary's trial testimony after the July 15, 1999 HLIP meeting to determine the status of data cleanup and the progress of TAAMS is a strong indication that Nessi did alert the managers at this meeting to his concerns about his trial testimony.

Interior defendants' lexicon, no longer came to mean "implementation."

Further reports went to the Secretary and from the Secretary to Congress of TAAMS' exemplary progress. Also, this Court was given a first look-see through the prisms of the revised HLIP and Quarterly Report Number 1 that, paraphrasing the words of one reviewer of those reports, did not provide "too much candor." The history of TAAMS' test failures had to be buried. It obviously could not be let out that the test results during and soon after trial had put the Interior defendants on notice that TAAMS had not come close to the meeting the implementation expectations of Nessi and Orr as described in such glowing terms to this Court. Not even the software met Nessi's testimony of a system that was "working" or "operational."

With this picture presented to them, at least by September 1999 if not in July 1999, the entire senior management of DOI, most likely including the Secretary and his Chief of Staff, recognized that they had a duty to the Court to report these discrepancies. Having failed to make that report, the facts surrounding that omission could never come out.

So they slid down a slippery slope of information containment giving the Court and Congress, paraphrasing what one former Watergate era White House official once called, "partial limited hangouts." But there were those who were troubled by this course of reporting limited information to the Court and with the continuing management problems and controversy over TAAMS' development failures. The "cover-up," if this is what it was, is always worse than the "crime." Why not inform the Court of where they stood and what they were going to do about it?²⁹

Thompson and Nessi tried to place some accurate perspective in the HLIP and Quarterly Reports Number 1 and 2. Thompson later aided the Special Trustee in preparing his first Observations for the third Quarterly Report. While those concerns did not survive the BIA managers' and Solicitor's Office's editing, the battle provided Slonaker with a concept of what he was up against and strengthened his desire to report accurately in the future.

Nessi has played many roles in this saga. Not least of which has been an expression of continual optimism that he still holds to this day in the potential performance of TAAMS. But it may have misled not only this Court but also the DOI managers into a false sense of security about the BIA's ability to develop and deploy TAAMS rapidly. Nessi stated he realized the error of his ways soon after the July 1999 user acceptance test. He stated he communicated his concerns to several senior managers on the TMIP committee and a Solicitor's Office attorney. He probably was instrumental in the September 1999 presentation to the Chief of Staff about the needed notification to the Court. It was his draft report requested by the Office of Solicitor that formed the basis for the missing

²⁹ There was an indication in the documents reviewed by the Court Monitor that the GAO at some point had even advised DOI management to go to the Court and explain the delay in deployment as observed by the GAO. As stated by the GAO representatives to the Court Monitor, systems such as TAAMS take a long time to develop. But DOI had set their own schedule in concrete by testimony to the Congress and, previously, to this Court.

“court report,” prepared by senior managers and their staffs, and the Secretary’s testimony before Congress. But that final report and its substance used in the Secretary’s testimony was not accurate and, again, overly optimistic as were many of his reports on the status of TAAMS’ development.

He also sought to alert the senior managers to the problems with the management of TAAMS and the relationships and mistrust between the various Bureaus and offices working on trust reform subprojects that impacted on TAAMS long before his February 23, 2001 memoranda. Those February 2001 memoranda provided this Court with its first overall impression of the depth of the problems associated with TAAMS’ management and systems operations.

But throughout the period between the trial and his departure from active project management of TAAMS, Nessi gave the TMIP committee and his superiors conflicting signals and reports that can best be described as well-intentioned but wrong. Not unlike the apparent limitations he now says he placed on his testimony and presentation to this Court, he portrayed the software or TAAMS “system” as making good strides while being critical of the progress and management of the TAAMS “initiatives” that were integral to that software’s ability to produce any semblance of reliable output.

The Special Trustee has played an increasingly positive role in improving the transparency of the Quarterly Reports with his Observations and his influence over what goes into the body of those reports. He has also taken an active role (one that has brought him and his staff criticism and resistance) in attempting to provide direction and oversight to TAAMS and other trust reform projects. The recent Secretarial memorandum clarifying that he is in charge of trust reform and providing him additional authority over TAAMS and trust reform operations was in no small part due to his efforts to convince the newly appointed Secretary of the Interior of the need for more centralized direction of trust reform.

However, the range of possible criticism of the senior managers and attorneys for their failure to provide this Court with a correct picture of TAAMS, the management and systems failures associated with it, and lack of compliance with the Court’s orders covers the full legal spectrum from nonfeasance, misfeasance, to malfeasance. Some did not carry out their management responsibilities appropriately and sought to avoid criticism by their colleagues and superiors by artful descriptions of their progress on trust reform. Others overlooked their subordinates’ actions or needs. Some became involved in a sequence of responding to test failures with the hope that the next test would prove their misplaced confidence in TAAMS’ progress and obviate the need to tell this Court or Congress of its continued inability to live up to the trial presentation or their public pronouncements. The result of the actions of those managers is that TAAMS is not close to deployment. It is no where near to where this Court was told it would be in the summer of 1999.³⁰

³⁰ It would be easy to target the BIA alone for this last criticism based on its direct responsibility for TAAMS. However, BIA apparently was never in favor of the COTS system for the reasons that seem prophetic today. The major modifications that have been carried out on it and still need to be made to meet

The schisms between managers, offices, and Bureaus caused a bunker mentality to develop. They were not about to communicate or level with each other over the status of their TAAMS' projects for fear of criticism of their performance reaching this Court, Congress, and the public. Finally, senior officials, who had the responsibility to ensure this Court's orders were carried out and that DOI complied with its legal and fiduciary obligations, failed to carry out that responsibility.

Observing the institution as a whole, taking into account the individual actions of all parties, for good or bad, blame must be laid at the feet of senior management. They had and have a trust fiduciary duty to the IIM account holders and were and are accountable for the "cause and effect" results of their subordinates' and their actions. That duty extends back to the Constitution that first addressed the relationship between the United States and the Indian tribes. It has been reinforced for over 200 years through countless treaties and statutes up to the present enactment of The Indian Trust Fund Management Reform Act of 1994. It is not merely an administrative responsibility of the Secretary of the Interior and DOI senior management. It is a trust obligation rooted in the very foundation documents of the United States.

In addition to the trust obligation, the senior management of DOI had legal obligations based on this Court's orders in its December 21, 1999 decision. Among them was their duty to apprise the Court in a timely and accurate manner of the status of trust reform. Their duty to Congress cannot be viewed as any less important for Congress represents the taxpayers who have paid and must pay for the Interior defendant's conduct of trust reform.

TAAMS, as an *integrated* accounting and management system, is not deployed in any Region within BIA. DOI's deployment of a current Title module in four title plants and service offices cannot be called a true deployment because those small portions of TAAMS are not capable of supporting the other functions and modules necessary to provide the plethora of services outlined for this Court in 1999. There are no accurate projections for when, if ever, a working and complete TAAMS will be deployed and become the system of record for the IIM account holders in all BIA Regions.

The manner of how they reported their actions regarding trust reform and TAAMS to this Court has delayed the Court's timely obtaining a true picture of the status of TAAMS and its management. The Court has never received a Quarterly Report that fully described the status of TAAMS during and after the trial in June and July of 1999. Nor have the Quarterly Reports addressed the subsequent lack of candor in failing to report what the Interior defendants' learned about that misleading testimony during or soon after that trial and at least before the December 1999 Court decision.

the field business system requirements would indicate their opposition was correct. They have had to attempt to build a system that may have been incapable of meeting their needs from the start. But they have received the bulk of the criticism from DOI and the OST managers for failing to be able to deploy TAAMS on the schedules given them based on what the Court and Congress have been told would be accomplished. Those schedules have repeatedly been challenged by BIA and, for whatever reasons to include the schedule's possible unrealistic expectations, have been missed.

The Interior defendants presented testimony and evidence to this Court that was overoptimistic at best and false at worst. It was based on mere assumptions of what the nascent TAAMS system could do. The TAAMS Project Manager's concerns about TAAMS' capabilities, and also about the accuracy of his testimony, following the July and August 1999 user acceptance tests, resulted in senior DOI management discussing the need to notify this Court and Congress of the TAAMS' deployment problems. A subsequent report was prepared by these managers and their attorneys but was not provided to the Department of Justice or this Court before its December 1999 decision.³¹

The Secretary of the Interior's subsequent testimony in September 1999 to the Senate Committee on Indian Affairs was false and presented a misleading picture of TAAMS' progress. Subsequent changes in the deployment schedule and method of describing that deployment were not provided this Court until after its December 21, 1999 decision. Subsequent Court-ordered Quarterly Reports have not clearly shown the true status of TAAMS including its repeated test failures.

Those senior DOI managers and attorneys who should have been ensuring that this Court and Congress received accurate and thorough public presentations of the issues with TAAMS have failed to carry out that responsibility throughout the period from the trial until recently when the Special Trustee introduced his Observations into the Quarterly Reports. His proactive efforts at bringing about trust reform and informing this Court and the Court Monitor of his decisions and observations have been subject to what can be described as criticism at best and obstruction at worst. Coincidentally, the Quarterly Reports have not been totally forthcoming even to the present.

XII. CONCLUSIONS AND DISCUSSION

Presently, TAAMS is a system at risk and may not be salvageable. All development activity beyond the current Title module in Billings and three other Regional headquarters may need to be stopped pending an evaluation by DOI of what to do with further TAAMS' modifications and systems management. The Secretary of the Interior has directed that a management and systems' review be carried out on TAAMS. It may be extended to the other trust reform projects. The Special Trustee has announced he has contracted with a computer system management consultant, EDS, to carry out this review of all aspects of the TAAMS system including the internal BIA management and outside vendors' operations and testing.

Present estimates of completion dates for the TAAMS' project extend into 2004, five plus years since the Court was informed that TAAMS' initial deployment would be in September or October 1999 with a full deployment and implementation completed in 2000 or at least by March 2001. These new estimates assume the system is salvageable

³¹ It is doubtful that report, as drafted, would have placed this Court on notice of the actual status of TAAMS. However, it might have given the plaintiffs and the Court an indication of the need to inquire further about why the Interior defendants felt it necessary to send any report.

and that data cleanup and conversion will allow the TAAMS' managers to meet these dates.

A number of conclusions can be drawn from a review of the records and interviews conducted by the Court Monitor.

A. The High Level Implementation Plan's TAAMS Subproject Presently Cannot Support The Court-Directed Trust Reform Effort And Will Not Be Capable Of Supporting It For Years If Ever

But for the current Title module – one fifth or less of the TAAMS system outlined to this Court - introduced in the Rocky Mountain Region and three other Regions to some degree, there is no TAAMS system implementation as of August 2001. No probate or appraisal modules are ready. There is no complete or effective interface with TFAS or MMS. There is some question as to whether the current Title module will work once the history Title module is added to TAAMS. The recent IUAT developed problems with the current Title module when the history Title module was introduced in the same tests. The software has also been shown to still require modification and correction. Probate and Appraisal modules have not been tested or deployed.

There is no realistic deployment schedule. The BIA estimates now for full deployment extend out to 2004. But there is no more certainty presently that those dates will be met than there was for the dates given this Court at trial in 1999. The system may not be salvageable which would require the development of a new system from scratch. TAAMS, or any replacement system, is many years away from providing a system to support trust reform.

The performance of the TAAMS Project Team and BIA users indicate that they do not have the systems management experience to direct such a major systems design and implementation effort as TAAMS.³² A related major management problem has been that no one is in overall charge of trust reform. The HLIP subprojects have had independent management structures with little or no coordination between them. The TAAMS Project Managers have not been given the authority to direct the operations that impact on TAAMS. Nor have they had the management or systems expertise to do it.

The TMIP committee was established to coordinate the entire trust reform project. But as is evident from a cursory review of the documentary record submitted with this Report, when DOI managed by committee they managed nothing but controversy. The schisms between BIA and OST have developed over many years. A committee could not and cannot resolve them.

Nessi may have been overoptimistic and increasingly unwilling to report bad news based on the criticism he began to receive for the TAAMS' system defects and poor test results.

³² This is not to say they do not have the trust operations and business systems expertise. What they need is experienced management and strong leadership to marry their operational expertise with the needed systems management.

But there was no one that he could turn to with the authority to make major overall trust reform decisions other than the Secretary. That management conundrum continues to this day. Even the additional authority given the Special Trustee by the Secretary will not allow him to direct any BIA-managed trust reform project without Secretarial approval if BIA leadership disagrees with that direction. Nor does the Special Trustee have the staff or resources to adequately oversee their activities.

The Special Trustee's only source of legal advice that he is required to consult before directing action be taken by BIA must come from the Office of the Solicitor. Those same attorneys responsible for trust reform or the *Cobell* litigation have taken a very active role in influencing or attempting to influence his communications with this Court and the Court Monitor. The Secretary must also rely on this legal advice in ruling on disagreements between the BIA and the OST on trust reform and, most likely, the substance of future Quarterly Reports.

The TAAMS software system is no longer a COTS. It has been modified so many times that the cost in money and resources to further modify it may not be advisable. GAO has made a recommendation that DOI consider starting over and design a new system with experienced system developers rather than continue to modify an already heavily modified COTS system.

OST has brought in another outside consultant to evaluate the system and the management of the project including the vendors presently providing services to the BIA. What will be the outcome of that evaluation and how further behind will trust reform be placed during and after that review? What will DOI do to manage the project in the future regardless of what the consultants recommend? Will the DOI senior management pay any more attention to fixing the system than they did in supervising Dom Nessi's management of the TAAMS' project? Will they help BIA obtain the resources necessary to complete the project with reasonable schedules based on events and not arbitrary dates? Will BIA management and TAAMS users accept whatever system is selected for their use if TAAMS is abandoned?³³

If the Interior defendants abandon TAAMS and begin again, they will have spent two years and countless tens of millions of taxpayer dollars on what this Court was told was DOI's number one management priority. They will have little to show for their effort. If they attempt to again modify TAAMS, there is question whether the system will work. Had they informed the Court of their problems openly and in a timely manner, this potential management and system failure might have been prevented.

³³ These questions do not address the data cleanup project that has been a major contributing factor (in the opinion of the Special Trustee) to many of the TAAMS functional test failures and user acceptance issues. The Court Monitor will examine this key project's impact on trust reform progress as it represents one of the three trust reform projects that can completely stymie that reform (historical accounting and TAAMS represent the other two and have now been reviewed and will continue to be monitored).

B. The Interior Defendants' Testimony and Evidence Produced At Trial Regarding TAAMS Was At Best Misleading And At Worst False

The TAAMS project manager has stated he specifically limited his testimony about TAAMS to addressing only its software's operational capabilities. He testified it was operational even though his subordinates and he had been put on notice about problems with data conversion and BIA requirements during TAAMS' development in the winter and spring of 1999 and up to the time of trial. But his testimony and the slide presentation relied on by the Interior defendants addressed the whole TAAMS program including activities that Nessi was not capable of giving the favorable projections this Court received about TAAMS. He had neither the knowledge nor the expertise to testify on the capabilities of the system or its deployment and implementation. He relied on the representations of the vendor regarding the company's ability to provide a system capable of being tested in the July to September 1999 timeframe and deployed thereafter. He based his projections on deployment on nothing more than arbitrary dates based on decisions made between the Secretary and the first Special Trustee and written into the first HLIP and ATS contract.

He also was aware that there were significant problems with the ability of the BIA to provide the requisite user information. There were management issues that had not been resolved that he knew could delay or disrupt the implementation. BIA users were not in favor of a COTS system that would force them to change their business systems or could not adequately serve their needs. They attempted before the trial to change the system and modify TAAMS to meet their needs. The modifications had already proceeded to a point where the TAAMS project managers had evidence the system was not prepared to meet the testing and deployment schedule presented to this Court.

Nessi had not conducted any competent examination of the status of data cleanup even with evidence that the data inputted into TAAMS was not operating with the software in a manner sufficient to give a level of confidence in its usability. Again, he put total reliance on the vendor's assurances.

The statements made and exhibits shown to this Court, as well as subsequent pleadings, gave it an incorrect picture of the capabilities of the software to fulfill the user needs and the ability of DOI to meet the TAAMS' deployment schedule. The entire presentation and testimony at trial were based on a testing, deployment, and implementation schedule that conformed to an arbitrary completion date set by senior DOI management years before the trial. It was no more than wishful thinking. It was not based on a researched and reasoned approach to system management. But it was displayed to this Court in a slide presentation as the genuine article that could be met by the Interior defendants based on the "operational" system about to be subjected to a series of sophisticated user acceptance and IV&V tests.

It was not only Nessi's responsibility to the Court to present accurate testimony. Senior DOI managers were aware of his background, limited systems' experience and time on the job. They also had attended the rollout of the TAAMS system in June 1999 and

viewed what was presently in operation. Nessi's briefing was a chimera of optimistic assumptions and pie-in-the-sky projections. However, the Interior defendants placed reliance on it in their arguments and pleadings presented to this Court.

C. The Interior Defendants Intentionally Failed To Inform This Court, Having Been Put On Notice Either During Trial Or Before This Court's December 1999 Decision, That TAAMS Failed Its July and August 1999 User Acceptance Tests And Could Not Be Deployed In September 1999 As An Integrated System On The Schedule Presented To This Court During Trial

Nessi stated he informed the DOI senior management in July or August 1999 of the failure of the user acceptance tests and the fact the TAAMS' software and data conversion had serious problems. He allegedly told an Office of the Solicitor attorney as well of his view that the Court should be informed of the inaccuracy of his testimony based on what he learned from the tests of the problems in the TAAMS software and data conversion.

Contemporary documentary evidence supports his contentions to a large extent. They also add more evidence to the picture of the Interior defendants' knowledge of the TAAMS' test and data failures during or soon after the trial and before this Court's December 1999 decision. They provide a clear picture of the course of events following the trial upon the Interior defendants' notice that TAAMS could not live up to the credit given it in their testimony and presentation to this Court.

The record also shows that senior DOI managers were informed in July 1999 of TAAMS' data conversion problems. They may have also been informed that Nessi's testimony to this Court was suspect. The DOI CIO, Daryl White, was concerned enough during a July 15, 1999 meeting, at which Nessi made a presentation, to consider reviewing Nessi's and the Secretary's testimony at trial about data cleanup issues. He understood Nessi's concern about the TAAMS testing in July and August 1999 and told the Secretary of his decision to conduct further independent testing because of these problems.

On September 8, 1999, the TMIP managers including the Chief of Staff to the Secretary and two Assistant Secretaries discussed notifying this Court that TAAMS could not be deployed on the schedule given the Court. The managers and their attorneys drafted a memorandum to be provided this Court in September 1999. It was not provided to the Court. By this time, they were aware that TAAMS had failed the July and August 1999 user acceptance tests, had not been able to use live data, and had major data conversion problems. Those managers and attorneys who prepared the report cannot remember it or the reason its preparation was abandoned. It was never discussed with or shown to the Department of Justice.

On September 22, 1999, The Secretary of the Interior testified before Congress using information supplied to him by the TMIP managers that had been prepared for notification of not only Congress but also this Court. That testimony was based on no true picture of the operational and deployment status of TAAMS.

The senior managers knew before December 1999 that TAAMS had also failed a comprehensive November 1999 test. They knew that the deployment schedule would have to be delayed and only the Title module had any actual capability of being successfully tested, deployed, and implemented. They also knew that the Title module would only contain and handle current data and that the interface with TFAS or MMS was not available.

No successful effort was made during the trial or thereafter before this Court's December 1999 decision to enlighten this Court regarding the inaccurate testimony about the capabilities of the software, the ability to convert the legacy data into TAAMS, the ease of development of additional modules, or the inaccuracy of the estimates of the fall 1999 Billings deployment or the 2000 TAAMS' Regional deployment. The actual status of TAAMS' test failures and data and software problems that would delay the deployment of TAAMS, known to the senior management of DOI including the Chief of Staff of the Secretary of the Interior, was never communicated to this Court prior to its decision.

D. The Interior Defendants, In Their Quarterly Reports To This Court Up To The Present, Have Intentionally Sought To Avoid Apprising This Court Of Information Regarding The Serious Deficiencies In The TAAMS System That Have Delayed And Continue To Delay TAAMS' Implementation And Court-Ordered Trust Reform

The Court's decision specifically ordered the Interior defendants to "file with the court and serve upon plaintiffs quarterly status reports setting forth and explaining the steps that defendants have taken to rectify the breaches of trust declared today and to bring themselves into compliance with their statutory trust duties embodied in the Indian Trust Fund Management Act of 1994 and other applicable statutes and regulations governing the IIM trust." *Cobell* at 59.

The Quarterly Reports have been misleading regarding the true status of the TAAMS project. No adequate description was ever given this Court of the failure by TAAMS to pass the user acceptance and IV&V tests. Every effort has been made to show progress and positive events and suppress negative results when in actuality the system was repeatedly failing in major areas that clearly would set back trust reform by many months if not years.

Only when a new Special Trustee was appointed did any semblance of a true picture of the status of TAAMS begin to be reflected in the Quarterly Reports. However, the opposition of senior DOI and BIA officials, to include attorneys, to the substance of his reports heavily influenced his published Observations. That criticism and opposition as well as the presentation of false and misleading information to the Court continue to the present.

XIII. REMARKS

A. The Past Administration

Beginning with the trial testimony and continuing through the submission of the revised HLIP and Quarterly Reports, the Interior defendants have not given this Court a true picture of the tested capabilities and deployment prospects of TAAMS. TAAMS is now, two years after trial, in peril of being scrapped. At least it will require a major overhaul and new management to put it back on track. At the direction of the Secretary, the Special Trustee has retained a management consultant corporation to start the evaluation process of the trust reform effort regarding TAAMS to determine what actions to consider taking to put trust reform back on track.

Again, not unlike the historical accounting process, TAAMS management and counsel responded to the needs of the *Cobell* litigation defense rather than those of the IIM account holders. As with the historical accounting, DOI wanted to avoid Court intervention and chose to support that position with an overoptimistic and misleading presentation at trial of the status and capabilities of a system that they did not know would work and had concerns would not be capable of living up to their expectations and testimony.

When it became obvious to the TAAMS Project Manager and primary witness at trial on the TAAMS system that the system would not live up to his testimony, he sought to alert DOI senior management including at least one attorney to the need to correct the representations made to this Court. His recommendation was allegedly rejected out of hand either during or soon after the trial. An attempt to convince senior management including the Chief of Staff to the Secretary of the need to notify the Court and Congress of the TAAMS issues was made and a “court report” drafted at the Office of the Solicitor’s request and with the knowledge of the Chief of Staff of the Secretary of the Interior. That effort was abandoned for some unknown reason. The Secretary of the Interior used the substance of the report in testimony to Congress. That testimony painted a misleading picture of TAAMS’ deployment potential and test failures.

The revised HLIP and Quarterly Reports have been less than forthcoming and were used to give this Court as positive a picture as possible of the status of TAAMS without revealing all aspects of its failures. Hoped-for progress not forthcoming, the reports made more and more artful disclosures wrapped in systems terminology only decipherable to those aware of the actual condition of TAAMS.

Once learning of the fallacy of their assumptions and testimony, DOI and BIA senior managers chose to downplay the failures of TAAMS and its inability to be deployed while they attempted to correct the software and data conversion problems and accommodate the increasing requests for changes from the BIA users. The pressure on the Project Manager became too great. He left active management of the TAAMS project but continued as BIA CIO with oversight for it. Troubled by his major role in

misleading this Court and unable to correct it, he chose to report his concerns one more time to the Special Trustee. On the day of the Court of Appeals' opinion upholding this Court's *Cobell* decision, February 23, 2001, Nessi wrote his "Trust Reform" memorandum.

The Nessi memorandum was accurate but did not go far enough. As stated by the Special Trustee to the Court Monitor, there was nothing new in the memorandum that was not known by DOI management. Nessi, among others, had been alerting management to these issues for months if not years. While he was part of the problem, he at least voiced his concerns. What Nessi did not point out was that no effort of his or others had resulted in this Court being made fully aware of DOI's management and system failures associated with trust reform in general and with TAAMS specifically.

The senior managers responsible to the Secretary of the Interior for trust reform and TAAMS' operations had argued not only over what to report to this Court but what to do to correct the problems they were not reporting. Evidence of the dearth of leadership within DOI and BIA is apparent in the decisions that were made regarding consideration of informing this Court of the true status of TAAMS. Management by committee enabled those bent on covering their tracks to succeed. In the process, they misled not only this Court but also Congress.

No one leader rose among the multitude of conflicting agendas and bickering opponents to take charge of trust reform, TAAMS management, and accurate Court-ordered reporting. No leader with the courage and integrity to oppose those who chose to color the true picture of TAAMS' failures in the Quarterly Reports to this Court stood up because, for want of a better explanation, because of the example that had been set by the administration. Secretary of the Interior Babbitt and his direct subordinates not only did not bring the TAAMS' "ship into the harbor," they placed it in a turbulent sea; without compass, direction or course; in danger of impending shipwreck.

B. The Present Administration

The Special Trustee and his office was a Congressional creation to bring oversight and leadership to DOI's trust reform efforts. This Court has also looked to him to provide it accurate information of the status of the Interior defendants' compliance with its orders. He has brought increasing leadership and transparency to the trust reform picture through his efforts to gain the cooperation of all parties working on trust reform projects and his observations of those projects' status in the Quarterly Reports. His partial successes have not been without struggle. The continued BIA management's and Solicitor Office's opposition to his reporting and his small staff's inability to provide universal oversight of trust reform has negatively impacted on the accuracy of even his Quarterly Reports and Observations.

He has faced a recent effort on at least two occasions in May 2001 to suppress his open communication with this Court. He has had to forcibly assert his intention to resist any such attempt by threatening to submit his observations to this Court with or without a

Quarterly Report. But the pressure to conform to someone's expectations of "proper conduct" and "team playing" still exists in the new administration. Those managers and attorneys who have been involved in past questionable activities regarding not only TAAMS' activities and reporting to this Court but also the Historical Accounting project remain in positions of influence over trust reform and the reporting of the status of that reform. Secretary Norton and the Special Trustee and their subordinates must rely on their advice and counsel.

The Secretary of the Interior's most recent memorandum on Trust Reform acknowledged the need to clarify that the Special Trustee is in charge of trust reform. It also increased the Special Trustee's authority to carry out that reform.³⁴ That will include increased oversight of BIA's trust reform activities and an outside management consultant review of TAAMS in particular and perhaps trust reform in total. But there is no assurance that those who do not support the Special Trustee's plans or direction for trust reform or the TAAMS project will cooperate with him and accept his direction. Many have not in the past.

If senior DOI and BIA managers and attorneys can ignore and attempt to circumvent a Federal Court's order, they could well frustrate a political appointee's direction. The Secretary's memorandum-direction to the Special Trustee and her Assistant Secretaries places additional responsibility on her office and them to ensure that the events of the past leading up to the present do not reoccur. That responsibility includes the specific need to ensure the Special Trustee receives the management and legal support required to carry out not only system reform but also long-overdue *management* reform of trust reform operations.

The recently appointed Assistant Secretary for Indian Affairs' cooperation with the Special Trustee and leadership of the BIA will be critical to assure this is accomplished. The Secretary's personal attention to the needs of trust reform and support of the Special Trustee's efforts will be paramount for ensuring the prospects for the success of trust reform in the future.³⁵

C. The Career Civil Servants

A caveat must again be added to this Second Report. The discussion and conclusions herein address the actions or inactions of DOI and BIA high-level management and

³⁴ Secretary Norton's direction to the Special Trustee to seek outside management consultant expertise to evaluate the TAAMS' effort and, possibly, trust reform management in general, is also a tacit admission that the problems with TAAMS and the management of trust reform run deep. There has been no similar acknowledgement that one of the major management problems, still uncorrected, has been that the senior management of DOI and BIA have disregarded and disobeyed Court orders and their fiduciary trust duties to the IIM account holders. Secretary Norton's press relation's office has asserted that her administration is focusing on the *future* of trust reform. But the *past* is prologue.

³⁵ That support may need to include an evaluation of and remedy for the past actions of managers and attorneys on behalf of BIA and the Office of Solicitor. They have created the record of opposition to and actions against the provision of open and honest communications to this Court and Congress on trust reform both in the past and the present administrations that have been the subject of this Report.

attorneys with regard to the status of TAAMS implementation and their failure to comply with this Court's orders. However, those conclusions do not cast any shadow on the hard work and integrity of the DOI, OST, and BIA employees involved with TAAMS development. They are not responsible for the decisions that have been made on the direction of TAAMS' development or what this Court has or has not been told of that development.

The Court Monitor has met with and relied upon the information and assistance of numerous DOI, OST and BIA staff and operations personnel in Central Headquarters and Indian Country. They have willingly and with a high degree of integrity provided the Court Monitor with an understanding of their activities and operations; successes and failures with trust reform; concerns and viewpoints. They remain the one positive composite picture of the potential for trust reform.³⁶

No matter how they view their leadership, its management decisions and unrealistic schedules, they have stayed the course. They stand ready to take whatever avenues are necessary to bring about trust reform. Their only plea is that they be given experienced and involved leadership who can resolve the management and communication problems, develop realistic schedules, and provide them adequate resources and people. They also seek some attention to their ideas and recommendations as well as recognition for their sincere desire and efforts to do what is right for trust reform and the IIM account holders.

The majority of these employees are responsible for bringing TAAMS and trust reform as far as it has come even with the lack of responsible leadership to which they have been subjected. With few responses to their call for additional resources and people, they have carried out their trust reform effort mostly as an additional duty to their already heavy daily trust workloads.

If they do not receive experienced and committed leadership and the resources required for trust reform; if they are not provided leaders who can work together with each other and the Special Trustee and his staff; if they do not put aside their past differences with each other and gain trust in their leaders; they will be incapable of bringing about needed trust reform and will fail. Not only is the TAAMS' system at risk of abandonment, the network of DOI and BIA employees working on it and the other HLIP subprojects associated with trust reform may be just as close to calling it quits without quick management intervention.

They presently are demoralized and insecure about their ability to carry out the needed trust reform based on this leadership vacuum and what they perceive as their being the brunt of the criticism for senior BIA and DOI management's misguided and uninformed direction and questionable communications to this Court. BIA managers and

³⁶ This Report does not name all those men and women within DOI, OST, and BIA or outside of the government who were interviewed or participated in providing the Court Monitor with the insight on which to build the knowledge necessary for an understanding of the information gained from interviews and documents used in this Report. Their assistance on behalf of the Court Monitor and the Court was invaluable and sincerely appreciated.

subordinates alike have approached The Court Monitor to report what they viewed as the misinformation being provided this Court by senior management. With the *ex parte* authority of the Court Monitor to keep their confidences, they spoke on the condition of anonymity. Their fear, anger, and view of the futility of their efforts spoke eloquently about their condition. It also confirmed the Court Monitor's review of the written record in the TAAMS' saga.³⁷

³⁷ A perfect example of what more than one of the BIA managers and employees' confirmed about the misleading communications to this Court affect on their ability to carry out their duties and receive credit for their efforts was the BIA's and DOI's exaggerated reports of completion of various milestones. The Court and/or Congress would be told that a portion of the TAAMS' implementation would take place on a certain date. The employees responsible for that implementation would argue vehemently against a date being set that they knew and told their superiors could not be met. However, when they would complete it, having missed the date, they would be given no credit for accomplishing it because it already had been reported months before as having been completed. In fact, management would criticize them for having been late as if they had not informed them before they began the project or the date had been reported that they could not meet it.

Copies of the Second Report of the Court Monitor have been provided to:

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