

UNITED STATES COURT OF FEDERAL CLAIMS

SHELDON PETERS WOLFCHILD,)
et al.,)
)
Plaintiffs,)
)
v.) Docket No.: 03-2684L
)
UNITED STATES,)
)
Defendant.)

Pages: 1 through 147
Place: Washington, D.C.
Date: July 18, 2006

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

SHELDON PETERS WOLFCHILD,)
 ET AL,)
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 Plaintiffs,)
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 v.) Docket No.: 03-2684L
)
 UNITED STATES,)
)
 Defendant.)

Courtroom 4, Room 501
 National Courts Building
 717 Madison Place NW
 Washington, D.C.

Tuesday,
 July 18, 2006

The parties met, pursuant to notice of the
 Court, at 10:00 a.m.

BEFORE: HONORABLE CHARLES F. LETTOW
 Judge

APPEARANCES:

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1 Plaintiffs.

2 THE COURT: Yes.

3 MR. KILLINGER: Also Sam Killinger. I'm co-
4 counsel, but I'm also on a motion to intervene.

5 THE COURT: All right. Welcome. Now, could
6 counsel for Defendant, Mr. Longstreth, if you would
7 introduce yourself for the record?

8 MR. LONGSTRETH: Yes, Benjamin Longstreth
9 for the United States.

10 THE COURT: Welcome. Now, if we could start
11 with the counsel for the Intervenors for the record
12 for those who are present, and if you would start at
13 this portion of the table and work your way around,
14 please?

15 MR. MAGNUSON: Thank you, Your Honor. Good
16 morning. Eric Magnuson of the Rider Bennett firm
17 representing the Intervenor Lower Sioux Community.

18 THE COURT: Welcome, Mr. Magnuson

19 MR. MAGNUSON: Thank you.

20 MR. THOMPSON: Randy Thompson, Your Honor,
21 representing the Intervenors known as the Loyal 394 as
22 well as the Krohn Family Group.

23 THE COURT: All right. Thank you.

24 MR. STRICHERZ: Kelly Stricherz here for the
25 Mozak Intervenors.

1 THE COURT: Let me just make a note. Thank
2 you, Ms. Stricherz.

3 MR. MONTANA: Gary Montana for the
4 Intervenors, approximately 2,000.

5 THE COURT: And the lead Intervenor? Let
6 me just look at my list, Mr. Montana.

7 MR. MONTANA: Mr. Volesky is with me as co-
8 counsel.

9 THE COURT: All right. Just a moment. Here
10 we are. I have that as the Dumarce Group. Is that
11 appropriate?

12 MR. MONTANA: Yes, Your Honor. That's
13 correct.

14 THE COURT: Yes?

15 MR. KILLINGER: Your Honor?

16 THE COURT: Please.

17 MR. KILLINGER: I'll introduce myself again,
18 but I represent Winona Enyard, et. al., Intervenors
19 also.

20 THE COURT: Enyard? And just would you
21 remind me again, sir, what your name is?

22 MR. KILLINGER: Killinger, Sam Killinger.

23 THE COURT: Killinger. All right. Just a
24 moment. Let me make a note, Mr. Thompson. Let me
25 just find -- I can see right now. What is the first

1 named party in your group, Mr. Thompson?

2 MR. THOMPSON: It would be Abrahamson.

3 THE COURT: Abrahamson. All right. We'll
4 call it the Abrahamson Group.

5 MR. THOMPSON: That's fine, Your Honor.

6 THE COURT: Now, do we have people on the
7 line?

8 (Pause.)

9 THE COURT: Now, I wonder if we could just
10 go down the list of names of people who are likely to
11 be on the call. Is Mr. Pierce on the call? Mr.
12 Pierce? No? Ms. Felix? Ms. Walker? Let's try
13 again. Is Mr. Pierce on the call? All right. Mr.
14 Blair? Now, can those of you on the call hear
15 appropriately?

16 MS. WALKER: I can. This is Liz Walker.

17 THE COURT: Just a moment. Let's adjust the
18 volume a little bit. You can now?

19 MS. WALKER: Yes.

20 THE COURT: All right. Ms. Walker?

21 MS. WALKER: Yes.

22 THE COURT: All right. I have you down as
23 representing a group of anonymous applicants for
24 intervention. Is that correct?

25 MS. WALKER: Yes, that's right.

1 THE COURT: All right. If you don't mind,
2 I'm going to refer to that group as the Walker Does.

3 MS. WALKER: Okay.

4 THE COURT: Is that satisfactory?

5 MS. WALKER: That's fine.

6 THE COURT: Mr. Pierce, are you on the line?

7 MR. PIERCE: I am, Your Honor.

8 THE COURT: Now, Mr. Pierce, I have you for
9 seven groups; the first of which is the Stephens
10 Group. Is that correct?

11 MR. PIERCE: That is correct, Your Honor.

12 THE COURT: All right. Thank you. Now, is
13 Ms. Felix on the line?

14 MS. FELIX: Yes. Yes, I'm here.

15 THE COURT: All right. Now, in your case I
16 take it you are not a lawyer who is admitted to this
17 Court. Is that correct?

18 MS. FELIX: That's correct, Your Honor.

19 THE COURT: But you are representing your
20 family. Is that correct?

21 MS. FELIX: Yes. I'm not exactly sure if I
22 can legally represent them without asking or going
23 through them for any decisions, but they have approved
24 to have me talk.

25 THE COURT: All right. Now, I will say for

1 the record that there's an exception to the rule this
2 Court has that entities must be represented by
3 counsel, and that exception obviously provides that a
4 person may represent himself or herself, and a person
5 who is not a lawyer may also represent family members.

6 MS. FELIX: All right.

7 THE COURT: So I am going to allow you, Ms.
8 Felix, to participate.

9 MS. FELIX: Thank you. I appreciate that.

10 THE COURT: All right. Thank you. Now, I'm
11 going to mispronounce this name. Is it Ms. or Mr.
12 Zephier?

13 MR. ZEPHIER: Hello, Your Honor. This is
14 Mr. Zephier.

15 THE COURT: All right.

16 MR. ZEPHIER: You had it correct.

17 THE COURT: All right. And I have you down
18 for the Zephier Group. Is that correct?

19 MR. ZEPHIER: That's correct, Your Honor.

20 THE COURT: Now, is Mr. Garelick or Mr.
21 Leventhal on the line?

22 MR. LEVENTHAL: Yes, we both are.

23 THE COURT: All right. Which one of you
24 would be lead counsel? We must have one designated
25 lead counsel.

1 MR. LEVENTHAL: I'll be lead counsel, Your
2 Honor. This is Larry Leventhal.

3 THE COURT: Mr. Leventhal. All right. Mr.
4 Leventhal, I have you for the Burley Group?

5 MR. LEVENTHAL: Yes.

6 THE COURT: Is Mr. Rooney on the line?

7 MR. ROONEY: Yes, Your Honor, I am.

8 THE COURT: Are you admitted as counsel to
9 this Court's bar?

10 MR. ROONEY: No, I am not. I'm admitted in
11 the State of New York.

12 THE COURT: All right. Will you apply for
13 admission to the bar here?

14 MR. ROONEY: I haven't as yet.

15 THE COURT: Would you, please?

16 MR. ROONEY: Yes, I will.

17 THE COURT: I have you as representing the
18 Rooney Group. Is that correct?

19 MR. ROONEY: Yes, Your Honor.

20 THE COURT: All right. Thank you. Now, Mr.
21 Johnson?

22 MR. JOHNSON: Yes, Your Honor. Scott
23 Johnson.

24 THE COURT: All right. I have you as
25 representing, and I'm going to mispronounce it, and I

1 apologize, the Rocque and Taylor Descendants.

2 MR. JOHNSON: Yes. We ask to be amended as
3 Rocque, pronounced Rock, Taylor and Prescott
4 Descendants.

5 THE COURT: Well, let's just pick one.

6 MR. JOHNSON: Okay. Rocque.

7 THE COURT: All right. Rocque, R-O-C-Q-U-E,
8 decedents. Now, Mr. Horn?

9 MR. HORN: Yes, Your Honor.

10 THE COURT: Mr. Horn, I have you as
11 representing the Saul Group. Is that correct?

12 MR. HORN: Your Honor, actually I am lead
13 counsel on six groups.

14 THE COURT: Yes.

15 MR. HORN: But yes, I represent the Saul
16 group.

17 THE COURT: Now, are you lead counsel as
18 well for the Cournoyer, Robinette, Kimbell, Vassar and
19 Wanna Groups?

20 MR. HORN: Your Honor, some of those are
21 represented by Creighton Thurman who I believe is also
22 on the line.

23 THE COURT: All right.

24 MR. THURMAN: I'm here, Your Honor.

25 THE COURT: All right. Which groups are you

1 lead counsel for, Mr. Thurman?

2 MR. THURMAN: I believe that you have the
3 ones that you listed off as correct, Your Honor.

4 THE COURT: Well, you must choose between
5 one of the two of you per group. Just tell us which
6 group.

7 MR. HORN: Your Honor, this is Garrett Horn.
8 I represent the Troudell Family, the Deborah Saul
9 Family.

10 THE COURT: Right. But I have those as the
11 Saul Group.

12 MR. HORN: The Saul Group, the Ferris Group.

13 THE COURT: Well, I do not have such a
14 group. Let's go to Cournoyer. Which of you is taking
15 the lead for the Cournoyer Group?

16 MR. THURMAN: This is Creighton Thurman, and
17 I am, Your Honor.

18 THE COURT: All right. Which of you is
19 taking the lead for the Robinette Group?

20 MR. THURMAN: Again, this is Creighton
21 Thurman, and I am, Your Honor.

22 THE COURT: Which for the Kimbell Group?

23 MR. THURMAN: That would be me, Your Honor,
24 Creighton Thurman.

25 THE COURT: Which for the Vassar Group,

1 Laura Vassar and others?

2 MR. HORN: Your Honor, that is mine. This
3 is Garrett Horn.

4 THE COURT: And which for the Wanna Group
5 headed by Charlene Wanna?

6 MR. THURMAN: That would be mine, Your
7 Honor, Creighton Thurman.

8 THE COURT: All right. Thank you very much
9 for sorting that out. Mr. Blair, are you on the line?

10 MR. BLAIR: Yes, I'm here, Your Honor.

11 THE COURT: I have you as taking the lead
12 for the Renaud Group that has some Doe Plaintiffs. Is
13 that correct?

14 MR. BLAIR: The Renaud Group is our group,
15 Your Honor, and Barry Hogan should be there in the
16 courtroom.

17 MR. MOHRMAN: Yes.

18 THE COURT: Now, Ms. Emerson, are you on the
19 line?

20 MS. EMERSON: Yes, Your Honor.

21 THE COURT: And I have you down for the
22 Garreau Group. Is that correct?

23 MS. EMERSON: That is correct.

24 THE COURT: Is Mr. William Shapiro from the
25 Department of Justice on the line?

1 MR. SHAPIRO: I am, Your Honor.

2 THE COURT: Now, you're representing the
3 Department of Justice and the Department of Interior
4 actually in the Cermak case. Is that correct?

5 MR. SHAPIRO: That's correct, Your Honor.

6 THE COURT: All right. Thank you. Now, Mr.
7 Gaskins, are you on the line?

8 MR. GASKINS: Yes, Your Honor, I am.

9 THE COURT: And, Mr. Gaskins, the Court has
10 you down for the Prescott and Goodthunder proposed
11 amicus. Is that correct?

12 MR. GASKINS: That is correct, Your Honor.

13 THE COURT: I think that's it. Is there
14 anyone on the line who has not been identified or
15 spoken?

16 MR. FOSTER: Yes, Your Honor.

17 THE COURT: And you are?

18 MR. FOSTER: I'm Wood Foster from
19 Minneapolis.

20 THE COURT: And, Mr. Foster, who do you
21 represent?

22 MR. FOSTER: I have four complaints IN
23 intervention that were filed, and they appear to be on
24 the docket. I represent the John Moose group.

25 THE COURT: How do you spell that?

1 MR. FOSTER: M-O-O-S-E. I represents
2 decedents of Joseph Graham. I represent certain
3 Trudell descendants. I hear that there is someone
4 else who had Trudell descendants, and Wells/Paypay
5 Group descended from Clifford Wells and Mary Paypay.

6 THE COURT: Now, Mr. Foster, I take it you
7 say M-O-O-S-E is pronounced mose?

8 MR. FOSTER: Moose.

9 THE COURT: Moose. Let's just refer to this
10 group as the Moose Group for the moment.

11 MR. FOSTER: That would be fine.

12 THE COURT: All right. Thank you. Is there
13 anyone else?

14 MR. HORN: Your Honor, may I; this is
15 Garrett Horn again.

16 THE COURT: Yes.

17 MR. HORN: I do have four other complaints
18 in intervention that were timely filed with the Court.

19 THE COURT: And those are?

20 MR. HORN: There's the Oldman group.

21 THE COURT: How do you spell that?

22 MR. HORN: O-L-D-M-A-N.

23 THE COURT: Yes.

24 MR. HORN: The Taylor Group, T-A-Y-L-O-R.

25 THE COURT: Yes.

1 MR. HORN: Ferris Group, F-E-R-R-I-S, and
2 the Trudell Group.

3 THE COURT: All right. We'll have to sort
4 that out in due course. Now, is there anyone else on
5 the line who hasn't been identified or who hasn't
6 spoken?

7 THE COURT: All right. Thank you. Now, as
8 far as the Court is concerned we have five sets of
9 issues. The first is a proposed amendment to the
10 complaint. We had a third amendment to the complaint.
11 Now, that third amendment as the Court would recall
12 it identified 4,300 Plaintiffs or approximately that
13 number and a proposed revision of that third amended
14 complaint has just been filed, and I take it the
15 number of individual Plaintiffs is up to 6,500. Is
16 that correct, Mr. Kaardal?

17 MR. KAARDAL: That's correct, Your Honor.

18 THE COURT: Now, what I propose to do is to
19 address that as the first issue. The second issue the
20 Court would propose to address is the Cermak case and
21 the relationship if any of that case to this one, and
22 in that respect the Court would propose to hear
23 especially from Mr. Shapiro. Now, is counsel in that
24 case, the Cermak case that has been transferred from
25 the U.S. Court of Appeals for the Eight Circuit, is

1 counsel for Mr. Cermak and the plaintiffs in that case
2 on the line or here?

3 MR. PIERCE: This is Jack Pierce, Your
4 Honor, and I represent the Cermaks in this matter. I
5 do not believe Mr. Crosby is on the line or present in
6 the Court there.

7 THE COURT: All right. Well, it's on our
8 list. Mr. Crosby is absent. All right. Now, as the
9 third set of issues, those related to intervention.
10 As the fourth set of issues, those related to
11 summonses to the communities, and that would be the
12 two communities other than the Lower Sioux. Now, as
13 the fifth set of issues, the request by Mr. Gaskins'
14 clients to file an amicus brief. Does anyone have any
15 additional sets of issues that they propose we ought
16 to address here today? Mr. Kaardal?

17 MR. KAARDAL: No, Your Honor. Those were
18 the ones that we had on our list.

19 THE COURT: All right. Thank you. The
20 entire purpose of these proceedings and the various
21 motions, many motions leading up to this hearing today
22 is to sort out the parties to the case in an orderly
23 fashion. All right. Now, if we could proceed first
24 to the amendment to the complaint. Mr. Kaardal, could
25 you speak to that, please?

1 MR. KAARDAL: Yes, Your Honor. May it
2 please the Court. We move to amend the complaint, and
3 the new complaint that we propose, the revised third
4 amended complaint, has no new claims, has no new facts
5 alleged. It's virtually the same complaint, but we've
6 added Plaintiffs that have gone through the process
7 that we indicated in the previous briefs regarding Dr.
8 Buttes and so forth, and we put them on the caption.

9 We believe that this is a way to facilitate
10 the case being completed. We represent lineal
11 descendants, persons of the May 20, 1886, census
12 inclusive of the 1889 supplement, and we've now
13 concluded our process, and we're done. The revised
14 third amended complaint has over 6,500 Plaintiffs
15 approximately. I think 211 are John Doe Plaintiffs,
16 and we'd hope that the Court would grant the motion to
17 amend, and from this point on we're not accepting any
18 new documents or clients. We're done.

19 THE COURT: Now, Mr. Kaardal, precisely how
20 many Plaintiffs do you have? You say over 6,500. I
21 take it they're all listed.

22 MR. KAARDAL: They're all listed one by one,
23 and I didn't count them, Your Honor. They're all
24 listed one by one.

25 THE COURT: All right. We will have to count

1 them, and we will have to check them, but we will do
2 that. Now, this is a case that arises under the
3 Indian Tucker Act as well as the Tucker Act and as a
4 result the case has been filed on behalf of a group,
5 that is the lineal descendants of the Loyal
6 Mdewakanton.

7 And so one of the purposes of the exercise
8 is to make sure that we have an identification as
9 you've described of those people who are presumptively
10 descendants of the Loyal Mdewakanton, and we're going
11 to be examining it with that in mind. We are also not
12 going to be making any findings at this time as to
13 whether any particular person was or was not a
14 descendant of the Loyal Mdewakanton.

15 We are going to take the allegations that
16 people are lineal descendants at face value and prove
17 that out as a matter of fact in later proceedings.

18 MR. KAARDAL: Yes, Your Honor. Thank you.

19 THE COURT: Thank you. Mr. Longstreth,
20 would you address Mr. Kaardal's proposed revised third
21 amendment to the complaint?

22 MR. LONGSTRETH: Yes, Your Honor. I have
23 not yet seen it, so I'm somewhat compromised in my
24 ability to speak to it, but to the extent the claims
25 have not changed, and Mr. Kaardal represents in their

1 pleading that all the individuals are lineal
2 descendants of individuals who were in Minnesota in
3 1886, we don't oppose the revised third amended
4 complaint.

5 THE COURT: All right. Thank you very much,
6 Mr. Longstreth.

7 MR. LONGSTRETH: Thank you.

8 THE COURT: Now, the Court will issue an
9 opinion in this matter in due course, but the Court is
10 likely to accept or adopt for filing the revised third
11 amended complaint. We're going to have to work with
12 counsel to set a procedure for sorting through the
13 issues associated with descent, but that's a matter
14 for the future. Are we ready to move to the second
15 issue, that is the Cermak complaint? All right. Now,
16 Mr. Pierce?

17 MR. PIERCE: Yes, Your Honor.

18 THE COURT: I take it that you represent at
19 least two Cermak groups as proposed applicants for
20 intervention. Is that correct?

21 MR. PIERCE: I represent two groups who have
22 the last name Cermak. There are two other groups,
23 Your Honor, who do descend from John Cermak who I
24 represent as well.

25 THE COURT: And which are those groups?

1 MR. PIERCE: Those two groups, Your Honor,
2 would be Michael Stephens, that motion to intervene,
3 and as I look through the various motions that I have
4 I believe Dolores Klingberg. That is also a Cermak
5 group.

6 THE COURT: All right. Thank you.

7 MR. PIERCE: And I believe that is the
8 extent of the Cermak groups, Your Honor.

9 THE COURT: All right. Now, Mr. Shapiro,
10 may I from memory try to give a summary of what I
11 think the proceedings are and where we stand? As the
12 Court has it, there are two Mr. Cermaks at issue. One
13 the father of another. Both are deceased. John
14 Cermak was an assignee of property at the Shakopee
15 Community. Is that correct?

16 MR. SHAPIRO: Mr. Cermak was a certificate
17 holder. That's correct, Your Honor.

18 THE COURT: All right. Thank you. Well,
19 assignee. Right. Now, as I understand it Mr. Cermak
20 brought a claim before the U.S. District Court for the
21 District of Minnesota, or the descendants, asking to
22 be continued in the assignment and that raised a set
23 of claims under the Administrative Procedure Act and
24 also some trust claims, and the District Court
25 transferred part of the case here, or at least part of

1 it got to this Court. Excuse me. Just a moment.

2 MR. SHAPIRO: This is Mr. Shapiro.

3 THE COURT: Yes.

4 MR. SHAPIRO: As we're speaking, I believe
5 someone on the line is typing, and if could ask the
6 people on the line to mute their phone so I can hear?

7 THE COURT: Thank you. That's a reasonable
8 request, but in any event a judge of this Court, Judge
9 Hodges, issued a decision essentially dismissing the
10 case. Certainly, this Court is not a court of review
11 ordinarily that has jurisdiction under the
12 Administrative Procedure Act.

13 We do a fair amount of administrative
14 review, but not directly under the Federal Questions
15 Statute and the Administrative Procedure Act. Our
16 review basically takes place under the Tucker Act.
17 And then also rejected the trust claims by Mr. Cermak
18 on statute of limitations grounds. It was back on the
19 APA grounds, it was back before the District of
20 Minnesota. The District of Minnesota ruled against
21 Mr. Cermak on those claims.

22 Those were carried forward to the Eighth
23 Circuit. The APA claims, as the Court understands it,
24 are still pending before the Eighth Circuit. The
25 Eighth Circuit transferred the trust claims back to

1 this Court for action, and you have moved, Mr.
2 Shapiro, to confirm this Court's prior order
3 dismissing those claims. Is that correct?

4 MR. SHAPIRO: Your Honor, with certain
5 clarifications that is partially correct.

6 THE COURT: All right.

7 MR. SHAPIRO: Believe it or not there are
8 actually some other courts that were involved in the
9 Cermak matter.

10 THE COURT: Well, I understand the Federal
11 Circuit got involved on reviewing a transfer, but in
12 any event I skipped over that.

13 MR. SHAPIRO: For the most part, that's
14 correct. I would say that the Cermaks have brought
15 not only a breach of trust claim but also a Fifth
16 Amendment takings claim, and when Judge Hodges had the
17 case, he considered both the takings claim and the
18 breach of trust claim, and although he didn't enter an
19 order of final judgment, he did dismiss both of those
20 claims.

21 THE COURT: Now, the question I have for you
22 on your motion is whether the Indian trust accounting
23 statute doesn't permit the trust claims to go forward?

24 MR. SHAPIRO: Your Honor, I wanted to
25 address that, but as the Court is aware, Mr. Cermak's

1 counsel is not present in this phone call, and I'll
2 just let the Court know that I did talk to Mr. Crosby
3 who is Cermak's counsel in that matter prior to this
4 hearing. He was aware of this case, but because he
5 had not received an order or direction from the Court,
6 I don't think that although he knew about this he was
7 intending on participating.

8 So if the Court would like me to address the
9 merits of our position on the accounting statute I'd
10 be glad to if this is the proper forum.

11 THE COURT: Well, the Court is going to have
12 to address this issue one way or the other. Now, it's
13 been briefed. The Court certainly has the papers from
14 both sides, and the one question the Court has for
15 you, Mr. Shapiro, is whether or not the Indian trust
16 accounting statute doesn't bar, and I hate to say bar,
17 but prevent the statute of limitations from acting as
18 a bar to Mr. Cermak's trust claim or the Cermaks'
19 trust claims.

20 MR. SHAPIRO: It's our position, Your Honor,
21 that it does not, and the reason is because the claim
22 that the Cermaks have brought would not fall within
23 the scope of the Indian trust accounting statute.
24 What the Cermaks have brought in the Cermak v. United
25 States case is a different breach of trust claim than

1 what the Wolfchild Plaintiffs are currently arguing.

2 In addition, the takings claims would not
3 fall within the Indian trust account statute. But as
4 far as the breach of trust claim, we have argued in
5 our papers including our reply brief that what the
6 Cermaks are arguing in Cermak v. United States does
7 not fall within the Indian trust accounting statute.

8 THE COURT: And the basis for that is?

9 MR. SHAPIRO: In the Shoshone Indian Tribe
10 case out of the Federal Circuit, the Twelfth Circuit
11 considered the scope of that accounting statute and
12 concluded that that statute merely delays the
13 commencement of a limitations period until an
14 accounting has been completed that reveals whether a
15 loss has been suffered. The Federal Circuit
16 determined that that statute applied to losses of
17 trust funds, but not losses of trust assets.

18 The claim that the Cermaks are making is at
19 most a claim on the loss of trust assets, not a loss
20 of trust funds because what they are arguing is that
21 the cancellation of the John Cermak land certificate
22 by application of the 1980 Act took away land which
23 should have been allowed to descend to plaintiffs, and
24 because that is a claim that does not fall within the
25 Indian trust accounting statute, I believe that that

1 statute would apply in this case.

2 THE COURT: Well, the Court has a little
3 trouble with the whole set of arguments dealing with
4 what I would think of as the heirship aspect. Now,
5 granted there was a custom and practice of continuing
6 assignments of 1886 property to a member of the prior
7 assignee's family, but that was a custom and practice.
8 There did not appear to be a right of heirship, and
9 there are a couple of Supreme Court cases, the Hodel
10 cases that deal with heirship specifically. So do you
11 accept those premises, Mr. Shapiro?

12 MR. SHAPIRO: If I understand the Court's
13 question, I believe we do, Your Honor. The land
14 certificates here were canceled, and we believe that
15 that was the proper course of action for the BIA to
16 take upon the death of John Cermak after 1989, so
17 there was no right of heirship for the land
18 certificate for the 50 acres that were covered under
19 those land certificates.

20 The proceeding that the Cermaks wanted to
21 occur is they wanted that land to descend to them
22 through John Cermak's will, and when that didn't
23 occur, they then sued us under the APA, but also
24 brought the takings claims, the breach of trust claim.
25 We believe those claims have no merit.

1 THE COURT: Well, the takings claim depends
2 on (a) interpretation and application of the Supreme
3 Court's Hodel cases, and the Court has in mind Justice
4 O'Connor's decisions in those cases. That's a matter
5 of whether the Cermak family had rights of heirship,
6 and the Court can certainly look at that issue.

7 The trust claims appear to be broader
8 however, and you say they are not. I take it your
9 position is that they are not in the Cermak case
10 itself, but they are insofar as the Cermak Groups
11 represented by Mr. Pierce are making claims in the
12 Wolfchild case itself. Is that your position, Mr.
13 Shapiro?

14 MR. SHAPIRO: You mean Mr. Pierce's
15 complaint for intervention in the Wolfchild case?

16 THE COURT: Yes.

17 MR. SHAPIRO: I understand those to allege
18 similar allegations to the Wolfchild claim, but again
19 I do not believe those are the allegations that are
20 made in the Cermak first amended complaint or second
21 amended complaint.

22 THE COURT: All right. Well, we will
23 examine that question.

24 MR. SHAPIRO: And, Your Honor, in the second
25 amended complaint in paragraph 28 for example in the

1 Cermak matter, the Cermak plaintiffs allege as they
2 have always alleged that defendant, and this is a
3 quote from paragraph 28, "Defendant's refusal to allow
4 the Cermaks to retain an interest in the land
5 certificates."

6 And then continuing on, "had deprived
7 plaintiffs of this land or its use without
8 compensation and in derogation of the explicit
9 language of the Indian land certificates at issue
10 here." The complaint is in Cermak that the land
11 certificates were canceled, and these plaintiffs were
12 not allowed to inherit that land, and the decision was
13 considered by the BIA and IBIA, and it was rejected.

14 It was that rejection and the cancellation
15 of those land certificates that led to the filing of
16 the Cermak v. U.S. case.

17 THE COURT: Now, you say that the
18 assignments were canceled. That's not the Court's
19 impression of the facts. The Court appears to have,
20 or at least I have the impression that Mr. John Cermak
21 died, and the assignment expired with his death, and
22 the question was whether a member of his family was
23 entitled to or should have received the assignment
24 thereafter. I don't have the Department of Interior
25 actually as canceling an existing assignment to a

1 living person.

2 MR. SHAPIRO: Your Honor, that did occur.
3 In 1990 the land certificate that had been assigned to
4 John Cermak was canceled, and there is a letter in the
5 record in the Cermak case that was put before Judge
6 Hodges. I believe it was June of 1990 where their
7 land certificates were canceled, and because that
8 occurred six years prior to the filing of this lawsuit
9 that was one of the arguments we made that this claim
10 is barred by the statute of limitations.

11 THE COURT: Mr. Longstreth?

12 MR. LONGSTRETH: Your Honor, I was just
13 going to add that I believe Mr. Cermak died, and then
14 the Department of Interior does sort of do a
15 cancellation just for the record after the death.

16 THE COURT: All right. That's what I had
17 understood. I tried to be very precise in the
18 language I used that no assignment to a living person
19 was canceled.

20 MR. SHAPIRO: Your Honor, if I
21 misinterpreted what you were saying, I apologize.
22 Yes, Mr. Cermak died, and the land certificate was
23 canceled.

24 THE COURT: Right.

25 MR. SHAPIRO: It was then that the Cermaks

1 sued the United States claiming a violation of APA,
2 breach of trust and the takings claim.

3 THE COURT: All right. Thank you because
4 otherwise the record of this hearing would have been
5 muddled, and the Court appreciates the clarification.
6 All right. Is there anything else, Mr. Shapiro, that
7 the Court should take into account in addition to the
8 moving papers?

9 MR. SHAPIRO: Well, we believe our position
10 is set out fairly well in our papers unless the Court
11 has any questions about our position.

12 THE COURT: All right. Well, I've asked the
13 question I had, and I take it with that we may take it
14 under submission as far as you're concerned, Mr.
15 Shapiro?

16 MR. SHAPIRO: That's correct, Your Honor.

17 THE COURT: All right. Thank you. Now, may
18 we move to intervention? We have the moving papers.
19 Mr. Kaardal, you have not had an opportunity to
20 address all of the applicants for intervention. Is
21 that correct?

22 MR. KAARDAL: Your Honor, I did file a
23 response yesterday to the motions to intervene that
24 are pending. Did the Court receive it? We tried to
25 fax it to Chambers yesterday.

1 THE COURT: Well, we did receive it, but the
2 question I have is that we received a set or many sets
3 of applications for intervention that were basically
4 received by the clerk's office on the 12th. Many of
5 them were actually filed yesterday because the clerk's
6 office identified various defects in them, and we
7 acted on those defects to cause them to be filed
8 yesterday. Now, I take it you did not address those
9 that were filed within the last several days?

10 MR. KAARDAL: That's correct, Your Honor.
11 We may not have copies. However, I think the general
12 principles that I've laid out in my response to the
13 pending motions to intervene will likely hold for
14 them.

15 THE COURT: All right. And if you could
16 summarize your position?

17 MR. KAARDAL: To summarize, our position is
18 the only trust beneficiaries as determined in the
19 2004/2005 opinions so far are the lineal descendants
20 of persons on the May 28, 1886, Minnesota/Mdewakanton
21 census inclusive of the 1889 supplement. I understand
22 there are other theories of trust beneficiary status
23 that are being presented by the proposed Intervenor
24 as well as people who are trying to prove lineal
25 descent through this case according to our theory, so

1 there are two groups:

2 One, they've accepted our definition of what
3 a trust beneficiary is, and they have counsel, or
4 they're pro se, and they are attempting to show that
5 they're trust beneficiaries just like our clients as
6 the Judge earlier indicated, so they have similar, for
7 lack of a better term, standing.

8 Then there's another group which is saying
9 we have a different standard that we would like the
10 Court to look at to define what a trust beneficiary
11 is. Ms. Felix, I refer to them as the Loyal 394,
12 that's Mr. Thompson's clients; then the Cermaks, and
13 we've identified those three. There may be more. Our
14 biggest concern isn't that they be excluded because we
15 see an interest in the Court in having one case to
16 resolve all these different claims of trust
17 beneficiary status.

18 The Plaintiffs have an interest in that, and
19 we believe those claims can be managed in this Court
20 process efficiently as long as they're integrated with
21 respect to the pending motions, and that's what I
22 proposed in my response to the motion to intervene.
23 On March 3 I filed partial summary judgment motions
24 regarding the alleged U.S. breach of its fiduciary
25 responsibilities to the lineal descendants with

1 respect to the formation of the Shakopee government:

2 1) the overinclusiveness and the
3 underinclusiveness of the base tribal roll consisting
4 of 33 people. We assert, and we have the evidence
5 that there are many lineal descendants; over 4,000
6 lineal descendants that are alive today that were
7 alive then that should have been included on the
8 underinclusive base roll at Shakopee; 2) it was
9 underinclusive because of the 33, some of them were
10 not lineal descendants, and it wasn't properly
11 checked.

12 To give a historical context to the Court,
13 the Department of Interior discovered that soon after
14 Shakopee's constitution was approved by these 33 and
15 discovered that there were nonlineal descendants, the
16 Solicitor, William Gershnee, wrote a 1971 letter
17 indicating no, you have to check to make sure at
18 Shakopee that they are lineal descendants by getting
19 their birth certificates, for them and their
20 ancestors, much like the Court notice indicated.

21 There were meetings held at Shakopee. Those
22 documents have been submitted to the Court, then a
23 federal investigation continued for years, and then
24 when they discovered the size of the problem, George
25 Goodwin in his 1976 letter -- he was the Minneapolis

1 BIA director, wrote a letter to Normal Crooks, the
2 chairman at Shakopee and said: (and I'm paraphrasing)
3 we know what the law is, but we're not going to
4 disturb the land assignments to the nonlineal
5 descendants at Shakopee, and then the 1980 Act.

6 And the important point about the partial
7 summary judgment motion is that Your Honor has
8 determined there was a breach beginning in 1980.
9 We're asking the Court to go back to 1969 when the
10 real problems arose when the BIA improperly did a
11 tribal roll and approved a constitution that allowed
12 the Shakopee community to keep people out based on
13 voting them in.

14 And also on a quarter blood quantum
15 requirement, neither of which are in the statute and
16 are also inconsistent with the foundation or formation
17 of the governments at Prairie Island and Lower Sioux
18 which are not implicated in the pending partial
19 summary judgment motions.

20 So to summarize with respect to not the
21 former group of Intervenors, but the latter group of
22 Intervenors, that is the group of Intervenors that are
23 saying there's a different way to define trust
24 beneficiary status, Your Honor, you should look at
25 this.

1 We believe to ensure a complete record so
2 that Your Honor can define what the nature and extent
3 of the breach is as in your earlier opinion you
4 indicated; we think it's helpful to have them in and
5 then to have those claims made at this time, and what
6 basically they would be saying is: Mr. Kaardal's
7 arguing that there was a breach in 1969 and that there
8 was a subsequent federal investigation based on sound
9 principle that wasn't completed.

10 What these proposed Intervenors are saying
11 and this latter group are saying, not only did the BIA
12 get it wrong when they allowed Shakopee to form this
13 way, but the Solicitor of the Department of Interior
14 also misdefined the trust beneficiary group when the
15 federal investigation was conducted. That's why I
16 think it's the appropriate time to bring these
17 Intervenor claims to the fore because they're legal
18 claims, and they can be resolved by the Court
19 regarding the trust beneficiary status, so I'm
20 proposing two steps.

21 The judge already indicated the one step.
22 The first step would be resolve the legal claims
23 regarding what is a trust beneficiary, and the second
24 step would be the factual questions determining for
25 each purported trust beneficiary, do they meet the

1 standard. This I think would be a way to officially
2 adjudicate the claims.

3 It would also provide for maximum due
4 process, and I'm stuck. I'm stuck because the United
5 States refuses to allege a claim of substantive
6 interest for any other people. We don't have them
7 accepting historical conditions, explaining how this
8 group of Mdewakanton people has had this relationship
9 over 100 years. If I may just quickly, by analogy.
10 It's one thing for the corporate trustee to forget the
11 third and fourth generation of the Rockefellers.

12 It's far worse to give half the money to the
13 Joneses, but the United States in this case, the
14 nonlineals aren't the Joneses, they're not related, so
15 the trustee in this case doesn't have an alternative
16 position or hasn't presented one yet to our definition
17 of a trust beneficiary.

18 And that's why we're kind of spinning our
19 wheels, and so having the second group of proposed
20 Intervenors in play allows us to filter out these
21 different claims and create a sufficient record.
22 Otherwise it's just, Your Honor, myself and the Court
23 communicating, and there isn't any friction, right?

24 But now there's lots of friction because we
25 have others, and if the United States would take a

1 position on who the trust beneficiaries are or how you
2 define a trust beneficiary, maybe it would be
3 different, but I think this is actually useful in
4 facilitating the case and for efficient adjudication
5 with the provisions I added.

6 THE COURT: Well, just to remind you, Mr.
7 Kaardal, part of the purpose of this exercise leading
8 up to today was to define the parties, and that's what
9 the Court has been endeavoring to do since the second
10 Wolfchild decision was issued, so I think that really
11 is our function in part today or what's going to
12 happen immediately thereafter.

13 MR. KAARDAL: And I appreciate that, Your
14 Honor, and the Court-issued notice obviously worked.
15 Secondly, I understand why you stayed our motions for
16 partial summary judgment, and we have not moved today
17 to lift that stay.

18 THE COURT: No, and we're not going to do
19 that.

20 MR. KAARDAL: I understand.

21 THE COURT: We have enough issues before the
22 Court today.

23 MR. KAARDAL: Is there anything else, Your
24 Honor?

25 THE COURT: No, not at the moment, Mr.

1 Kaardal. Thank you. Mr. Longstreth?

2 MR. LONGSTRETH: Thank you, Your Honor. So,
3 like counsel for the Wolfchild Plaintiffs, we haven't
4 had a chance to examine all of the motions for
5 intervention or respond fully in our papers, but as
6 we've indicated in our filing, we don't oppose the
7 motions to intervene with just one exception which we
8 thought didn't make sense to combine with this action;
9 that is the Felix motion to intervene for the reason
10 that they indicate in their proposed complaint: that
11 they were not in Minnesota in 1886.

12 And it's our understanding that the Court's
13 interpretation of the trust, that it is founded on the
14 three appropriations acts of 1888, 1890 and therefore
15 if somebody recognizes that they weren't in and
16 doesn't allege that they were en route to Minnesota at
17 that point, it seems like they're just in a class
18 sufficiently removed that intervention does not make
19 sense.

20 THE COURT: Well, the Court was hardly
21 making this up. The Court was looking at the precise
22 language of the appropriations acts of 1888, 1889 and
23 1890, and they seem to require that a person be a
24 Loyal Mdewakanton, whatever that may mean, and have
25 severed tribal relations.

1 In other words, not have been someone who
2 removed to -- the Court thinks of it as the Dakotas,
3 but then in any event, associated with that removal
4 after the 1862 outbreak, and those are statutory
5 criteria that were applied. I understand the problem
6 with the Felix movants, and I'm going to ask Ms. Felix
7 to address that in a moment, and in part it's not just
8 that.

9 There really needs to be an allegation that
10 the persons involved are Loyal Mdewakanton who had
11 severed tribal relations, but that they also could
12 prove that they were in that posture and there are a
13 couple of ways to do it. Presumptively, if you were
14 on the 1886 roll or the 1889 supplement, that ought to
15 suffice. That's not to say there aren't other ways
16 though. Do you have any views on those subjects, Mr.
17 Longstreth?

18 MR. LONGSTRETH: The question of other ways
19 to prove that?

20 THE COURT: Yes.

21 MR. LONGSTRETH: I mean, we certainly
22 recognize the possibility of proving it through other
23 means. I think at this point we also have not ruled
24 out for ourselves the possibility that the 1886 rolls
25 should for the purposes of Interior implementing those

1 appropriations acts serve as the sort of foundation
2 that did at that point in time define the beneficiary
3 group, and I'm hesitant to rule out the possibility of
4 pursuing that in light of sort of fuller argument on
5 the subject that we might be persuaded.

6 THE COURT: All right. Now, do you have any
7 views on the two classifications of intervenors that
8 Mr. Kaardal put forward? That is those that can claim
9 descendency from persons on the 1886 roll and 1889
10 supplement as a first group?

11 MR. LONGSTRETH: I certainly recognize that
12 there is a very strong presumption that those
13 individuals were members of the class that's been
14 defined to date in the case, and so I recognize that
15 there could be benefit to having the latter group that
16 doesn't trace to someone on the descendency sort of
17 explain why they are appropriate Plaintiffs.

18 Whether it makes the most sense to address
19 that issue next in the case or after further summary
20 judgment briefing, I don't have a strong view on it.
21 I can see benefits to both grounds I think. It may be
22 that an additional round of summary judgment briefing
23 defines the potential scope of damages in a useful
24 fashion for the case to go forward. It may be that it
25 does not, of course.

1 THE COURT: Well, this case poses all sorts
2 of case management issues, and one of them has to do
3 with the progression. Let's just stick with the first
4 set of issues here before us today.

5 It just seems natural that there is a
6 division, and this is not offering any views as to the
7 merits, but between those who can claim that they are
8 descendants of the 1886 roll and the 1889 supplement,
9 and those that have another basis for endeavoring to
10 establish that they were in fact descended from a
11 Loyal Mdewakanton who had severed tribal relations.

12 MR. LONGSTRETH: Absolutely. When I was
13 making notes about the complaints, that's the central
14 distinction that I was making. It didn't seem to me
15 that there was a basis to oppose intervention simply
16 because somebody doesn't trace to a name on the 1886
17 roll.

18 THE COURT: All right. Thank you. Now, the
19 Court has a set of questions for counsel for different
20 groups of Intervenors. I wonder if we could take
21 those and then potentially hear from Mr. Kaardal, and
22 you, Mr. Longstreth, in response, and I guess the
23 first might be Ms. Felix.

24 MS. FELIX: Yes.

25 THE COURT: Ms. Felix?

1 MS. FELIX: Can you hear me?

2 THE COURT: Yes.

3 MS. FELIX: Okay. Because I'm having a
4 little bit of trouble hearing what Mr. Longstreth
5 said, but if I could comment? I believe that you want
6 me to speak a little bit to the issue of why we should
7 be able to intervene?

8 THE COURT: Yes. Now, let's just say that
9 Mr. Longstreth to be precise about it has raised the
10 question, and it's not a flat objection, but it's a
11 question whether or not, Ms. Felix, your family is
12 claiming descent from someone who was either in
13 Minnesota at the relevant times or in any event had
14 another basis for establishing that they were Loyal
15 Mdewakanton.

16 MS. FELIX: Okay. I'll try to speak to
17 that, Your Honor. Just for future accuracy, my first
18 name is spelled in the feminine version with an E, not
19 an I, and that would be the only thing. Not critical,
20 but just for accuracy.

21 I do want to say that the issues and ideas
22 expressed in the Felix family motion should stand as
23 stated, but in a nutshell, we believe that the Act of
24 Congress in 1863 was directed at the Indians who
25 either helped the non-Indians or fought heavily in

1 August and September of 1863, and then all of the
2 subsequent acts were part and parcel of the intention
3 of that Act, and that the language of the subsequent
4 acts were not really consistent.

5 They went back and forth between mixed blood
6 to whole blood and back again, and that the use of the
7 1886 census was simply a tool for the Bureau of Indian
8 Affairs at the Department of the Interior to make this
9 payment that had already been established in law and
10 that primarily in general the people who were in power
11 at that time were not Indians and did not really
12 understand the history of these people.

13 And what is important at this point is that
14 the ancestor that we're talking about here, Joseph
15 Coursolle, was raised as a ward of Sibley, before he
16 was governor of Minnesota, and Joseph's daughter,
17 Elizabeth, married Dana Felix who was raised at
18 Mendota; and his father, Joseph, both who had mixed
19 blood of Indian in them. Dana grew up around the
20 Sibley household.

21 Her father worked for him, and so that was
22 the basis for their loyalty to the non-Indians, and
23 they were loyal. They both fought to defend war
24 victory and that's kind of in it from the history, and
25 that isn't in question. The fact that they used the

1 census, the 1886 census, as I said was simply an
2 administrative tool, and I think what is important now
3 is the development of an accurate census of all of the
4 descendants of the Mdewakanton who were in Minnesota
5 and not on the land since '62.

6 One other thing I just want to say is that I
7 know from looking at the Dakota County land records
8 that some of the Indian lands as being his father's
9 sold; he had to go to Court and testify that he was
10 selling it because they were in financial hardship and
11 at the point that Dana and his wife Elizabeth left
12 Minnesota, they had five of their own children in that
13 same cabin.

14 They were looking for a place to farm. They
15 believed that they were apprised that that area had
16 land that they could farm. They returned to Minnesota
17 in 1992 after the special agent of the Department of
18 the Interior put a notice in the paper and searched
19 for all of these people who had fought with them and
20 so they returned in 1992 and began to look for land.

21 And that's when he purchased the land at
22 Prior Lake where Dana's family grew up, my father grew
23 up, and I grew up, and I became part of that land, and
24 this was long, long before the establishment of those
25 Shakopee governments. You must remember the rule

1 wasn't established until 1969, and I graduated from
2 high school in 1968 and was long gone before that
3 time, so I think what has to be understood in this
4 process is that the intent of Congress was to benefit
5 those people who were non-hostile. That's all I
6 have. Thank you.

7 THE COURT: All right. Thank you, Ms.
8 Felix. Now, you used a date 1992. I'm not sure I
9 heard you correctly.

10 MS. FELIX: Yes. I'm sorry. 1892.

11 THE COURT: That's what I thought, but I
12 just wanted to clarify that for the record.

13 MS. FELIX: Yes. The special agent had
14 documented the people that he was searching for in
15 1892, and at that point Dana and his family including
16 my father who would have only been about -- well, he
17 was born in 1891, so he was a baby, came back to
18 Minnesota, and then purchased the land and built a
19 cabin at Prior Lake.

20 THE COURT: All right.

21 MR. JOHNSON: Your Honor, this is Scott
22 Johnson. If I might -- we're not representing that he
23 is simply an officer of the Court. I wonder if this
24 might be helpful. Our office has had an opportunity
25 to review some of the Minnesota historical and diary

1 matters and some of the empirical records relating to
2 Joseph Coursolle.

3 And I just wanted to tell you of course that
4 it is fascinating, and Mr. Coursolle actually appears
5 to actually reference a firsthand account from the
6 diary entry that he actually took up arms in Fort
7 Ridgely, was later recognized in 1892 among others and
8 had been honored for his heroism in that very
9 difficult couple of days, so if this is helpful, it is
10 in our records that you have reviewed.

11 THE COURT: All right. Now, thank you, Mr.
12 Johnson, Ms. Felix and Mr. Johnson, I take it Joseph
13 Coursolle's name is spelled, or at least sometimes
14 spelled C-O-U-R-S-O-L-L-E?

15 MS. FELIX: That's correct. It's actually
16 spelled differently on different documents depending
17 on how people heard it, but that's the correct
18 spelling.

19 THE COURT: All right. Thank you. Now,
20 let's see. Mr. Thompson, you have the Abrahamson
21 Group. I wonder if you would please comment, sir?

22 MR. THOMPSON: Thank you, Your Honor. Randy
23 Thompson. I represent the Abrahamson Group, also
24 known as the Loyal 394 as well as the Krohn Family
25 Group as the Intervenors.

1 We've submitted substantial evidence to the
2 Court including the historical research by Dr. Bruce
3 White showing that in the nine years after the three
4 appropriations acts in question, that Robert Henton
5 from 1891 to 1898, and then subsequently following his
6 death in 1899, Mr. McLaughlin conducted census
7 documents of the individuals who met the statutory
8 criteria: that is they were Mdewakanton descendants
9 or Mdewakanton bloodlines residing in Minnesota on
10 May 20, 1886, and who had severed tribal relations.

11 As you look at the historical record you
12 will see that the census records continue to increase
13 over the years primarily because of the addition of
14 mixed blood persons to those registrations, so we
15 believe that the statutory criteria of the
16 appropriations acts control, and that one way to
17 demonstrate that you meet those statutory criteria is
18 to show that you are a descendant of the person on the
19 Henton censuses that occurred from 1891 to 1898 or the
20 comprehensive McLaughlin census in 1899.

21 McLaughlin's accompanying letter said all of
22 the persons enrolled were born in Minnesota and have
23 resided here their entire lives in the letter
24 accompanying his 1899 census. Thank you, Your Honor.

25 THE COURT: Thank you. Now, let me just go

1 down. Mr. Pierce, if this Court were to basically
2 sort the proposed Intervenor into two groups, one
3 consisting of the descendants of persons on the 1886
4 roll and 1889 supplement, and the second group being
5 those such as the Felix Group and the Abrahamson Group
6 that have another basis for a claim of being a lineal
7 descendant. Which of those two groups would your
8 proposed Intervenor fall into?

9 MR. PIERCE: Your Honor, to the extent the
10 Court decides to adopt that approach which I don't
11 think it needs to, but if it does, I have clients who
12 would fall under both. Both who are descendants of
13 those who are on the 1886 or 1889 supplement as well
14 as those who are descendants from censuses that were
15 mentioned by Mr. Thompson.

16 THE COURT: All right. Thank you. Among
17 other things what I'm trying to get an idea about more
18 than intervention is to anticipate future proceedings
19 where we basically have different issues associated
20 with these two groups, and the idea of having
21 somewhere in the range of 30 different Intervenor
22 groups; the idea of getting 30 different briefs is not
23 very attractive.

24 And I'm just trying to see if there are at
25 least aggregations that people might join briefs if

1 nothing else, and that's the purpose of my question.
2 So you say you really have people in both of these
3 general categories?

4 MR. PIERCE: That is correct, Your Honor.

5 THE COURT: All right. Ms. Stricherz, may I
6 ask the same question of you? Yes, please.

7 MS. STRICHERZ: Your Honor, I think that the
8 categories stand correct. The legal issues raised by
9 other parties as to who qualifies as a trust
10 beneficiary I think are questions that are still open
11 based on the Court's opinion because in that Court's
12 opinion it says, "The presumptive starting point is
13 the 1886 census as supplemented by the 1889 census."

14 It kind of left an opening there, and I
15 think those other issues should be addressed fully.
16 However, my group does fall into a similar group as
17 Mr. Kaardal's, and that is they do assert that they
18 are a lineal descendant from someone on the 1886
19 census as supplemented by the 1889 census, and we have
20 no claims that differ from that. Thank you.

21 THE COURT: Thank you, Ms. Stricherz. That
22 helps. Now, Ms. Felix, you're next on my list, but I
23 think you've very adeptly and adequately addressed the
24 issues associated with your group. Do you have
25 anything further in light of the subsequent comments

1 that have been made?

2 MS. FELIX: No. I just think it's important
3 to recognize that, you know, within 30 years of the
4 Dakota uprising the feelings about Indian people were
5 pretty negative, and that anyone who could by bill or
6 education not be associated tried to do that, and in
7 my family's case the loyalty to Sibley as to the non-
8 Indians was very clear.

9 And one of the things in the fifties -- my
10 father was that they purposely turned the land that
11 they got at Prior Lake into a title -- I have
12 forgotten the term now, but the title that could not
13 be challenged because they did not want it to be
14 Indian land, and so I guess, you know, that's the only
15 thing that I can add is that if in fact an appropriate
16 census had been taken in 1959, our family at the very
17 least could be part of the Shakopee community, so I
18 guess I'll just leave it at that.

19 Our group at this point would not fall into
20 the category of the Kaardal Group. It would be
21 separate.

22 THE COURT: All right. Thank you. That's
23 helpful. Ms. Walker?

24 MS. WALKER: Yes.

25 THE COURT: May I ask the same question of

1 you?

2 MS. WALKER: Yes, the parties I'm
3 representing that are various John Does all do go back
4 to the 1886 census as either Henton or McLaughlin
5 roll.

6 THE COURT: All right. Thank you very much.
7 Mr. Zephier?

8 MR. ZEPHIER: Yes, Your Honor. According to
9 the earlier discussed categories, it is true that our
10 group mainly descends from names on the 1886 census,
11 however we have also raised the argument that I agree
12 with so eloquently described by Ms. Felix, we have
13 raised the issue of also being descendants of the
14 Loyal Mdewakanton who were part of the Elrod from 1891
15 to '92 which referred to the loyal two scouts and
16 soldiers.

17 And I think that was part and parcel of the
18 progression from the Congressional acts dating back to
19 1862 to honor the allegiance and honorable service of
20 those individuals and their families, and I think that
21 we have raised both of those issues, Your Honor, and
22 so I really don't know specifically where we would
23 fall into these categories, but maybe it is in both.

24 THE COURT: All right.

25 MR. ZEPHIER: We are of course mindful of

1 the Court's earlier opinion regarding the 1886 and
2 1889 census as a presumptive starting point, but we
3 also have direct lineal descendants whose Loyal
4 Mdewakanton as derived from that list of Sioux scouts
5 and we have raised that in our proposed complaint as
6 well.

7 THE COURT: All right. Thank you, Mr.
8 Zephier. That's also quite helpful. Mr. Leventhal?

9 MR. LEVENTHAL: Yes.

10 THE COURT: Would you address the same
11 question respecting your group?

12 MR. LEVENTHAL: Well, our group would be in
13 the second category in that they are a part of the
14 surveys that were completed in 1899, and they're in
15 that group, and we believe that that's the proper
16 nexus for the Court when indicating that 1886 was not
17 the only provision or only stopping point for Loyal
18 Mdewakanton.

19 THE COURT: All right. Thank you, Mr.
20 Leventhal. Mr. Foster?

21 MR. FOSTER: Yes, Your Honor. The groups I
22 represent at least at this time are alleging status
23 similar to the named Plaintiffs in the case. At this
24 point I think it would be fair to say we have no
25 position as to other possible avenues of entitlement.

1 THE COURT: All right. Thank you. That's
2 helpful. Mr. Killinger, I'm going to ask you if you
3 could identify where your group stands in this
4 respect?

5 MR. KILLINGER: In the first group, Your
6 Honor. The motion that I thought was up today was No.
7 173 on the docket list. It's on the Winona Enyard
8 list. There's about 217 names on it. They're in the
9 first group. I filed a subsequent amendment to that
10 adding 38 names, part of what was filed on July 12.

11 THE COURT: Yes.

12 MR. KILLINGER: I didn't think that was up
13 for hearing today.

14 THE COURT: We're not going to have a
15 separate hearing, Mr. Killinger.

16 MR. KILLINGER: All right. Okay. And
17 they're in the first group also.

18 THE COURT: That's what I wanted to know.

19 MR. KILLINGER: So the ones in the first
20 filing were in the first group. The ones in the
21 second group are also in the first group as you've
22 defined the groups.

23 THE COURT: Well, I'm just taking a set of
24 suggestions. That seemed a logical way to approach
25 it. Now, just to go back, the amendment or the

1 supplement; let's put it that way, the additional list
2 that you filed, Mr. Killinger, is something that the
3 parties, Mr. Kaardal and Mr. Longstreth, can address
4 and they will have time to do that before the Court
5 issues an opinion.

6 So there's no doubt about that, but I wanted
7 to clarify that if anything startling comes out of
8 their responses, then you or anyone else whose
9 representing an Intervenor group may file a reply.

10 MR. KILLINGER: We made the same claims in
11 the amendment as we did in the original motion to
12 intervene and complaint.

13 THE COURT: Okay.

14 MR. KILLINGER: Same claims, just some
15 additional names.

16 THE COURT: So you're basically in the first
17 group?

18 MR. KILLINGER: First group.

19 THE COURT: Thank you. That helps.

20 MR. KILLINGER: Thank you.

21 THE COURT: Mr. Rooney?

22 MR. ROONEY: Yes, sir.

23 THE COURT: Where do you stand?

24 MR. ROONEY: All of our proposed Intervenors
25 are direct descendants of Madelyn Rocque listed on the

1 '89 Henton census.

2 THE COURT: All right. Thank you. I think
3 that answers the question insofar as your group is
4 concerned. Mr. Johnson?

5 MR. JOHNSON: Yes, Your Honor. Our groups
6 are three: First, descendants of Madelyn Rocque who
7 is listed on the 1889 census; second, John Taylor who
8 is also listed in the '89 census: and thirdly,
9 Margaret Prescott who is on the '86 census, so we're
10 all in the first group.

11 THE COURT: All right. That's helpful. Mr.
12 Horn?

13 MR. HORN: Thank you, Your Honor. Each of
14 the six complaints that I've filed as lead counsel are
15 lineal descendants of someone on the '86 census or
16 this '89 supplemental.

17 THE COURT: All right. That's helpful. Mr.
18 Thurman?

19 MR. THURMAN: Yes, Your Honor, my people
20 actually fit into both categories. I do have clients
21 that are direct descendants of people appearing on the
22 '86 or '89 census, as well as falling into the second
23 category. I do have two families that would be of
24 mixed blood. It's very clear that their descendants
25 were present in Minnesota in 1886.

1 However since at that time they weren't
2 necessarily listing being mixed bloods on these
3 censuses, however the later act of Congress as
4 recorded indicated includes mixed bloods in their
5 language. We believe that that would be an avenue
6 that they should be included as well, Your Honor.

7 THE COURT: All right. Thank you. That's
8 helpful. Mr. Blair?

9 MR. BLAIR: Yes, Your Honor. Our John Doe
10 families I believe fall into both of the categories;
11 one or the other of the two categories as you've
12 defined them this morning. Mr. Barry Hogan, my
13 partner, has met with those families over the last few
14 weeks, and he's there in the courtroom, so he may be
15 able to elaborate a little bit.

16 THE COURT: Mr. Hogan?

17 MR. HOGAN: Your Honor, our group consists
18 of seven different families, and some of the families
19 track in part to the '86 and '89 census and almost all
20 of them have a combined connection through the 1892
21 Sioux scout list which Mr. Zephier referred to, so
22 we've got them both ways.

23 THE COURT: All right. Thank you. Now, let
24 me just say there's a distinct possibility those of
25 you such as Mr. Blair and Mr. Hogan, Mr. Thurman, Mr.

1 Leventhal, Mr. Pierce -- I'm just from memory going
2 down through the list.

3 If you have people in both camps, then
4 you're likely to be filing twice because the Court at
5 some point will ask that the Intervenor group
6 themselves, and so you want to be prepared I think to
7 join both groups. I hope there are no conflicts that
8 arise. I'm assuming that there won't be. We'll find
9 out. Ms. Emerson?

10 MS. EMERSON: (No response.)

11 THE COURT: Ms. Emerson?

12 MS. EMERSON: (No response.)

13 THE COURT: Well, we seem to have lost Ms.
14 Emerson.

15 MR. HORN: Your Honor, may I? This is
16 Garrett Horn.

17 THE COURT: Yes.

18 MR. HORN: I have talked to Ms. Emerson, and
19 I know that the family that she is representing she
20 has indicated to me is a lineal descendant from
21 somebody on the 1886 census.

22 THE COURT: All right. That's helpful.

23 Thank you again, Mr. Horn. Now, let me just review.

24 Is there anyone who is representing an Intervenor

25 group that we have not asked? I'm putting aside Lower

1 Sioux. We're going to come to that Lower Sioux
2 motion. Anyone who hasn't been asked a set of
3 questions? Yes, sir?

4 MR. MONTANA: Yes, I'm Dumarce.

5 THE COURT: I apologize. If you would
6 please come forward.

7 MR. MONTANA: Yes, Your Honor. Gary
8 Montana.

9 THE COURT: Mr. Montana.

10 MR. MONTANA: Yes. Thank you, Your Honor.
11 We would have people that would fall into both groups,
12 but we're proffering to the Court that there are many
13 other indicators other than 1886/'89 census and the
14 supplement to the '89 census that we have to look at.
15 For instance, with Mr. Thompson we're talking about
16 the 1899 McLaughlin census which talks about
17 Mdewakanton within Minnesota during that period of
18 time.

19 Also the James McLaughlin census of 1917 on
20 the second or third page, I don't have it in front of
21 me right now, indicates that these people were not
22 involved in the uprising. Also, there was an Indian
23 camp census that was taken in December of 1863 which
24 is right after the uprising which would also be a good
25 indicator of who is in Minnesota and who wasn't in

1 Minnesota right after the uprising.

2 Also, we would agree that Samuel Brown's
3 scout list of 1892 and the Elrod census of 1895, or
4 1892 was the census of Elrod, 1889 was of Samuel
5 Brown. Those are scouts that were assisting the
6 military in bringing in hostiles; it would also be a
7 good indicator to the Court of who are Loyal
8 Mdewakantons. I guess it goes back to the Court
9 deciding what category or what elements you have to
10 meet.

11 I mean, you have to be loyal, you have to be
12 Mdewakanton obviously, and then you have to be
13 residing or re-moving into Minnesota during this
14 period of time.

15 THE COURT: And you have to have severed
16 tribal relations.

17 MR. MONTANA: Right. But the question is
18 with severed tribal relation, what does that mean?

19 THE COURT: Yes.

20 MR. MONTANA: I mean obviously back then we
21 didn't have tribal enrollment as we do today, so
22 severing tribal relations would be to me as an Indian
23 lawyer who has practiced Indian law for 20 years, it
24 would be difficult to define. Does that mean that
25 they were no longer Mdewakanton; does it mean you

1 plan on picking up annuities?

2 I mean, I think that that raises a lot of
3 issues on how you define severing tribal relations.

4 Okay? An issue.

5 THE COURT: Well, that is in the
6 Appropriations Act.

7 MR. MONTANA: Yes, Your Honor.

8 THE COURT: And we have to deal with that,
9 Mr. Montana.

10 MR. MONTANA: Yes, and I think the loyalty
11 issue is a big issue too because we did do some
12 research into the loyalty issue, and it appears from
13 Meyers' book which you cite that there are really only
14 three Indians that were not involved in the uprising,
15 and that was Other Day, Coursolle and another half
16 breed, so I mean if they had to be loyal, then that
17 narrows the group dramatically to three people and
18 their descendants. We would have people, Your Honor,
19 in both groups.

20 THE COURT: All right. Thank you, Mr.
21 Montana. That's actually very helpful

22 MR. CROSBY: Your Honor, this is Gordon
23 Crosby. They just patched me in.

24 THE COURT: Mr. Crosby?

25 MR. CROSBY: Yes.

1 THE COURT: Have you joined?

2 MR. CROSBY: I have just joined, Your Honor.

3 THE COURT: All right. I wonder if you
4 would wait just a moment. We'll go back and revisit
5 something we had talked about earlier?

6 MR. CROSBY: All right.

7 THE COURT: And we're actually dealing with
8 intervenors at this point, and let me just ask again
9 out of an excess of caution, just apart from Mr.
10 Magnuson, is there anyone else who is representing a
11 set of applicants for intervention who has not yet
12 spoken? All right. Now, Mr. Magnuson

13 MR. MAGNUSON: Good morning, Your Honor.

14 THE COURT: Good morning.

15 MR. MAGNUSON: Fascinating proceedings. I
16 represent the Lower Sioux Community who wants to
17 intervene as a matter of right or by permission.
18 Under Rule 24 a party is entitled to intervene if they
19 submit a timely application demonstrating a sufficient
20 interest in the property or transaction that is the
21 subject of the litigation, an interest that is not
22 adequately represented by the current parties and
23 where there is no prejudice to the parties already in
24 the litigation.

25 All of those factors exist here, Your Honor.

1 Additionally, under 24(b) if there are common
2 questions of law and fact, the Court may in its
3 discretion allow intervention. Intervention
4 requirements are to be construed in favor of
5 intervention, and the well pleaded allegations in the
6 complaint are to be accepted. Your Honor, clearly the
7 application is timely.

8 You're adding parties left and right, and we
9 are here with the rest of the Intervenors wanting to
10 join in this case. The interest of the community is
11 also clearly adequate. I think that was the focus of
12 the government's opposition that we have no interest.
13 Before 1980, the communities only had an advisory
14 role with regard to the disposition of the property.

15 The 1980 Act gave the communities control of
16 the property exclusively. Now, the nature of that
17 interest as you yourself noted in your opinions isn't
18 entirely clear. It's described as the property being
19 disbursed or transferred or control transferred, but
20 the fact of the matter is for the last 26 years the
21 communities have exercised control over this property.

22 THE COURT: Well, now that deals with the
23 implementation of the 1980 Act. The Court has a whole
24 set of questions about that because the United States
25 appeared to transfer its interest in the property, and

1 the 1886 property is what we're talking about, to the
2 communities in trust.

3 MR. MAGNUSON: Yes.

4 THE COURT: And we have a whole set of
5 questions about what that means and how that fits with
6 the initial Appropriations Act.

7 MR. MAGNUSON: I agree, Your Honor, and my
8 client wants to be a participant in the litigation to
9 explore that further. What is clear is that we have
10 control of the property at this point in time.

11 THE COURT: Right. Now, that was a question
12 because the United States appeared to retain after the
13 1980 Act a role as trustee.

14 MR. MAGNUSON: Yes.

15 THE COURT: Do you agree with that?

16 MR. MAGNUSON: I agree, Your Honor, but --

17 THE COURT: But practically you're saying
18 the communities control the property?

19 MR. MAGNUSON: Right. So the question is is
20 that a sufficient interest to participate in the
21 litigation? You have indicated the possibility that
22 the communities may lose control of the property; that
23 it may be the government wants it back. We certainly
24 have standing and an interest in litigating that
25 issue.

1 I think if you look at the Karok Tribe case
2 that we cited, there it was an action in some ways
3 similar to this, an action for damages for a taking
4 brought by certain tribes, and the tribe who wasn't a
5 participant but who claimed to have an interest in the
6 property that would be defeated by a successful claim
7 by the Plaintiffs or at least implicated was found to
8 have standing to intervene.

9 The Court said, "In this litigation the
10 ultimate issue is whether the plaintiffs are entitled
11 to monetary compensation," the plaintiffs' claim here.
12 "In the course of rendering a judgment the Court will
13 necessarily resolve the following subissues: whether
14 the plaintiffs had property rights in the former
15 reservation.

16 "If so, whether the Settlement Act took
17 those rights away, and if so, then is that taking
18 compensable," and the key is the Court's statement
19 further down in the opinion, "If plaintiffs still have
20 rights in the land and the Hoopa Valley Tribe," or
21 analogously the Lower Sioux Community, "would have to
22 share with plaintiffs such rights as the land that is
23 apportioned to the tribe. The obligation to share the
24 land would impair Hoopa Valley Tribe's right to
25 exclude others."

1 By analogy, Your Honor, if we have control
2 now, and it is property that really is for the benefit
3 of people other than our community members because it
4 has been administered for the benefit of both, we're
5 going to have a diminution of our rights that is a
6 sufficient interest for intervention to allow us to
7 appear.

8 THE COURT: Now, let me just clarify. The
9 Lower Sioux under what's happened in implementing the
10 1980 Act has gained, or gained is maybe not the right
11 word.

12 MR. MAGNUSON: Has possessed.

13 THE COURT: Possessed or taken. I don't
14 mean that in the Fifth Amendment taking sense, but
15 taken full control over the 1886 lands. Is that
16 correct? That's your position?

17 MR. MAGNUSON: That's my position. Yes,
18 Your Honor, and this litigation is necessarily going
19 to decide whether other people then, community
20 members, that is lineal descendants have an interest
21 in that. That's going to diminish inevitably whatever
22 interest it is that the community controls, and we're
23 just talking intervention here, Your Honor. We're
24 talking to make sure that we have a sufficient stake
25 in the fight to let us participate, and I think that

1 we clearly meet that test.

2 THE COURT: All right. Your moving papers
3 Mr. Magnuson are very well done. I will commend you
4 on well-researched, although brief, and the Court
5 appreciates that, moving papers.

6 MR. MAGNUSON: Thank you.

7 THE COURT: All right. Thank you.

8 MR. MAGNUSON: And then if the Court has any
9 other questions, I'd be happy to answer them, but our
10 interests significantly overlap with the Plaintiffs'
11 interests because the vast majority of our members are
12 lineal descendants, but they are not mutual in every
13 respect. We may take a different position with
14 respect to who is a lineal descendant or what property
15 goes where. What we really want is the opportunity to
16 make sure the accounting is fair, full and accurate.

17 THE COURT: All right. Thank you very much.

18 MR. MAGNUSON: Thank you.

19 THE COURT: Let's hear from Mr. Longstreth
20 on this issue, and then, Mr. Kaardal, you might get a
21 chance to reply. I think you might. All right. Mr.
22 Longstreth?

23 MR. LONGSTRETH: Thank you, Your Honor.

24 THE COURT: Now, let me just say at the
25 outset that the interest that the Lower Sioux assert

1 through Mr. Magnuson appears to be as the entity in
2 control of the relevant 1886 lands, not as a group
3 that has members who are Plaintiffs.

4 MR. LONGSTRETH: Yes, Your Honor. I mean,
5 to the extent that we found other interests
6 represented in their papers, our papers address those
7 and we won't go into that here. With respect to their
8 interest in the 1886 lands at the lower Sioux
9 reservation, we certainly recognize they have a strong
10 interest.

11 It did not appear to us from their papers
12 that they intended to participate in order to protect
13 that interest, and if you look at the standing
14 doctrine, you need to have a concrete interest. I
15 guess the first point I should make really is it's our
16 view that this is a proceeding for money damages
17 against the United States.

18 THE COURT: Well, the United States still is
19 a trustee of the 1886 lands even under the 1980 Act.

20 MR. LONGSTRETH: Correct. Yes.

21 THE COURT: That's what it says.

22 MR. LONGSTRETH: Absolutely. We are a
23 trustee of those lands. We believe that we are
24 administering them consistent with the 1980 Act. To
25 date the three communities have, in our understanding,

1 but for these intervention papers agreed with us on
2 that so the first issue is we don't believe that this
3 proceeding actually affects their ability to continue
4 to possess those lands because it's an action for
5 damages.

6 THE COURT: Now, there is a way. Let me
7 just comment on that issue. There is a way to
8 construe the Appropriations Acts of 1888, 1889 and
9 1890 and the 1980 Act consistently, and that is you
10 could say that the United States was and still is a
11 trustee, and that in effect as a result of the 1980
12 Act, the United States has appointed as its agents for
13 administration of the trust, the three communities.

14 MR. LONGSTRETH: We certainly think there's
15 another way the two acts are consistent.

16 THE COURT: I'm just saying that's a
17 possibility.

18 MR. LONGSTRETH: Yes, I understand. And
19 you've indicated an intent to pursue that further, and
20 to date the Court hasn't provided an explanation yet,
21 and that seems relevant to future motions, so if we
22 can address that further, that seems useful.

23 THE COURT: Well, but that possibility is
24 the one thing that is consistent not only with Mr.
25 Kaardal's position and Mr. Magnuson's position, but to

1 some extent at least with your position, although I
2 know you don't like that result.

3 MR. LONGSTRETH: Yes. Our position of
4 course is that there was not a trust and that the acts
5 are consistent.

6 THE COURT: Form the outset.

7 MR. LONGSTRETH: Yes.

8 THE COURT: I understand that.

9 MR. LONGSTRETH: If I may? Perhaps I can
10 just turn to the issue that in the proposed complaint
11 and intervention that Lower Sioux proposes, they
12 suggest that we have breached our duty by doing
13 precisely what we've done in terms of transferring the
14 lands and designating them as the trust beneficiary
15 and giving them substantial control over the lands.

16 THE COURT: Well, I take it you not only
17 transferred the land, and I'm not saying you; the
18 Department of Interior, but the monies that were held
19 as well, but not all the monies. I don't quite
20 understand that part. There's some monies still held
21 by Interior?

22 MR. LONGSTRETH: It appears to me, and we
23 are in the process of engaging with an expert to try
24 to get a better accounting of all of this, but that
25 there is \$3,000 that has not been disbursed, and

1 approximately \$90,000 was disbursed.

2 THE COURT: Right.

3 MR. LONGSTRETH: And certainly with respect
4 to claims as to the possession of the lands, we are
5 consistent with what Mr. Shapiro was arguing earlier.
6 Under the Indian trust accounting statute the only
7 claims that are not barred by the statute of
8 limitations are claims to trust funds, so again there
9 isn't an issue as to possession of the land.

10 THE COURT: Well, but that position, Mr.
11 Longstreth, depends upon an interpretation not only of
12 the 1980 Act, but also of the Appropriations Act, so
13 you're kind of assuming an answer.

14 MR. LONGSTRETH: No, I'm just presenting our
15 arguments.

16 THE COURT: All right. That's fine.

17 MR. LONGSTRETH: Turning just to the
18 question of --

19 THE COURT: I apologize. This weather has
20 just gotten to me.

21 MR. LONGSTRETH: It's very pleasant in here.
22 Just turning to the issue that I sort of started down
23 initially. In order to have standing, you have to
24 have a protectable or concrete interest that is
25 protectable and could be remedied, and in terms of the

1 complaint that Lower Sioux has presented, they're
2 arguing that when we turned the lands over to them, we
3 breached our fiduciary duty.

4 And they appear to be supportive of the
5 Plaintiffs who include of course, Mr. Wolfchild who is
6 the chairman at Lower Sioux at the moment, so it
7 doesn't appear to me that simply because they could
8 seek to protect that interest, and they could have
9 standing if they are not actually attempting to
10 protect that interest. It doesn't seem to me that
11 they've satisfied the requirements of standing.

12 THE COURT: But they haven't denied the
13 fact, and in fact they've averred that they are the
14 managers and controllers of the 1886 property at Lower
15 Sioux.

16 MR. LONGSTRETH: Certainly, and it appears
17 to me that they could assert an interest that would
18 meet the criteria of standing, but it wasn't clear to
19 me from their papers that they have actually done that
20 to date. This morning Mr. Magnuson was less clear
21 about where they stand on whether they should be in
22 possession of those lands and whether they seek to
23 protect their interest in those lands or whether they
24 seek to assist in the case of their member Plaintiffs
25 who are present as Plaintiffs in the case.

1 THE COURT: Well, the individuals can
2 represent themselves either with Mr. Kaardal or with
3 one of the Intervenor groups. We're putting aside the
4 Intervenors. We're taking about the entity.

5 MR. LONGSTRETH: That makes sense to me.

6 MR. GASKINS: Your Honor?

7 THE COURT: Yes.

8 MR. GASKINS: This is Steve Gaskins for
9 Dennis Prescott and Joseph Goodthunder who are two
10 elected members of the five-person Lower Sioux
11 Community counsel?

12 THE COURT: Yes.

13 MR. GASKINS: I don't mean to bust in line.

14 THE COURT: Don't.

15 MR. GASKINS: The very issue --

16 THE COURT: Mr. Gaskins?

17 MR. GASKIN: Yes, sir.

18 THE COURT: Your turn will come.

19 MR. GASKIN: Okay.

20 THE COURT: Thank you.

21 MR. LONGSTRETH: Thank you.

22 THE COURT: All right. Mr. Kaardal?

23 MR. KAARDAL: Your Honor, it will be no
24 surprise to you that this case originated at the Lower
25 Sioux Community, and that's where the first individual

1 Plaintiffs were, and there's a long history of the
2 Lower Sioux Community being the most open to the
3 lineal descendants as far as admission and sharing per
4 capita payments.

5 Even though it's the poorest of the three
6 communities, it has the most open enrollment. It
7 requires residency, but then people are admitted in,
8 and we're very happy to have Lower Sioux seeking the
9 responsibility of intervening and participating in
10 these arguments regarding 1886 lands, and we see a
11 history there.

12 We also see a present interest that Lower
13 Sioux has to intervene regarding the control and
14 management of the '86 land also relating to these
15 membership issues. These judgments that will occur in
16 this Court will have some prospective effect at least
17 collateral estoppel effect and so forth we believe.
18 We think it's very important to have all the voices
19 here.

20 That's why we didn't object to any of the
21 individual motions to intervene, and that's why we
22 feel that Lower Sioux's motion to intervene should be
23 granted and also welcomed. Thank you, Your Honor.

24 THE COURT: Thank you, Mr. Kaardal. Mr.
25 Magnuson?

1 MR. MAGNUSON: Your Honor, our position is
2 simple. In resolving the issues in this case, you
3 will determine the rights of these Plaintiffs, and the
4 rights of all three communities in the 1886 lands.

5 THE COURT: And the rights of the United
6 States.

7 MR. MAGNUSON: Yes, and not all the property
8 we hold is 1886 lands. You're going to do an
9 accounting, and you're going to make a decision in
10 awarding your damages if you choose to do so as to who
11 should have gotten what. The people who hold the
12 stuff that's not going to be part of that award are
13 the communities.

14 They should be allowed to participate
15 because as in the Karok case, your decision will
16 affect the rights that we have in the property. Mr.
17 Longstreth talked about standing. I couldn't find a
18 decision from this Court or the Federal Circuit
19 addressing standing in intervention. There is a split
20 of authority.

21 The San Juan County case out of the Tenth
22 Circuit kind of pulls the circuits, and more appear to
23 not require Article III standing than do require it,
24 but we have standing. We have an interest that will
25 be directly affected by the outcome of this case.

1 THE COURT: Now, the Karok case seems to
2 anticipate at least factually in that case, or it
3 seems to decide that there was Article III standing,
4 that was really the basis, and you're saying that
5 applies here.

6 MR. MAGNUSON: I think the same analysis
7 does. But then, Your Honor, if you look at the
8 American Renovation case, a creditor of the Plaintiff
9 had a sufficient interest even though this Court
10 wouldn't adjudicate the creditor's rights, they had an
11 interest in what was being resolved. If you look at
12 the Armour of America case trade secrets.

13 The Court wasn't going to adjudicate trade
14 secrets, but it was going to affect them. The
15 Cherokee Nation cases and other cases of intervention
16 that support this. The question is do we have enough
17 of an interest so that we have the right to get in.
18 The alternative question is can we be of assistance to
19 the Court should you allow us to come in on permissive
20 intervention.

21 THE COURT: Well, let me ask one quick
22 question. You say on behalf of the Lower Sioux as
23 indeed all the communities and property that is 1886
24 property, and property that is not?

25 MR. MAGNUSON: At least the Lower Sioux

1 does. I think it may be the case. I don't know if
2 it's Prairie Island or Shakopee. It may consist
3 entirely of 1886 lands, but I can only speak for my
4 client.

5 THE COURT: All right. I seem to recall Mr.
6 Longstreth -- maybe the first Wolfchild case;
7 Shakopee at least had 1886 lands and then other lands,
8 and anyway we'll sort that out, but you're
9 representing, Mr. Magnuson, that Lower Sioux has 1886
10 lands and other lands?

11 MR. MAGNUSON: Yes, Your Honor.

12 THE COURT: All right. And the other lands
13 certainly would not be affected in any respect by this
14 case as the allegations have been made?

15 MR. MAGNUSON: Right. But sorting it out is
16 important.

17 THE COURT: Right.

18 MR. MAGNUSON: Thank you very much.

19 THE COURT: Thank you. Now, I wonder if we
20 could go back briefly so the Cermak case. Mr. Crosby?

21 MR. CROSBY: Yes, Your Honor.

22 THE COURT: The Court is pleased to have you
23 join this proceeding. We had discussed the nature of
24 the claims that were made in the Cermak case, and
25 those that were transferred to this Court by the U.S.

1 Court of Appeals for the Eight Circuit, and we focused
2 on the trust claims rather than the takings claims
3 recognizing that the APA claims were being briefed to
4 the Eighth Circuit.

5 MR. CROSBY: Right.

6 THE COURT: Could you give us an idea of the
7 status of the APA claims before the Eighth Circuit?

8 MR. CROSBY: Your Honor, we have time yet to
9 file our reply brief. I don't know whether that's
10 necessary. I'm still working through the United
11 States' brief, and I've got I think another four or
12 five days to decide whether or not I want to file a
13 reply brief. From my experience with the Eighth
14 Circuit, it could be months yet before this case is
15 argued, and then months after that before the Eighth
16 Circuit reaches any decision.

17 THE COURT: All right. Now, I wonder if we
18 could focus on the trust case or the trust aspect of
19 your case? That is part of it that the Eighth Circuit
20 had transferred here?

21 MR. CROSBY: Sure.

22 THE COURT: Mr. Shapiro was dealing with the
23 trust aspects of the case and had argued earlier that
24 the trust aspects of your case was not I'm going to
25 use the word comparable, although that's not the set

1 of words Mr. Shapiro used; comparable to the trust
2 claims that were being raised by Mr. Kaardal on behalf
3 of the Wolfchild Plaintiffs, and I wonder if you could
4 address the nature of the trust claims?

5 And if you need to, we could ask Mr. Shapiro
6 to restate his position, but you've already seen the
7 briefing on this matter, and so I guess if you can I'd
8 appreciate it if you could address it.

9 MR. CROSBY: All right. Our position has
10 been that Stanley Cermak and Raymond Cermak had a
11 viable claim to two 25-acre land assignments that were
12 held in the name of John Cermak who was the father and
13 grandfather of Stanley and Raymond, and our claim that
14 we have brought to the Court of Claims is for the loss
15 of the use and the funds that they could have gotten
16 through these two 25-acre land assignments.

17 And I think that that is fundamentally
18 different from the claim that is brought by Mr.
19 Kaardal which is very broad and is very general. Our
20 claim is far more specific, and it's again a much,
21 much older claim. We've been back and forth to the
22 Eighth Circuit and the Federal Circuit and the Court
23 of Claims and the U.S. District Court here in
24 Minnesota for, Your Honor, I believe the last 12
25 years.

1 I think I've been in Court with the Cermaks
2 as long as one of my daughters. I figure that when
3 this is over that we'll have enough to send her to law
4 school.

5 THE COURT: Perhaps, but we'll try to avoid
6 that. We don't want to make this a Dickensian
7 proceeding, and that's part of the reason why we're
8 proceeding orderly, step by step. So part of the
9 claim focuses on two 25-acre tracts and part of the
10 claim focuses on funds. Is that correct?

11 MR. CROSBY: Yes.

12 THE COURT: All right. Now, I wonder that
13 if given that background, Mr. Shapiro, you would
14 comment, please?

15 MR. SHAPIRO: Yes, Your Honor. As I
16 understand the Cermak claim, it is one and the same.
17 The Court just said that part of it is land and part
18 of it is funds. I wanted to just be clear on our
19 understanding of what the papers actually say, but
20 what the Cermak plaintiffs are alleging is that the
21 cancellation of the two land certificates in their
22 claim -- and they are not talking about as we
23 understand it, funds generally.

24 They are talking about these funds that may
25 have been generated from these two 25-acre tracts, and

1 it is the loss of that land that they are claiming
2 results in their claim, so when they're talking about
3 loss of funds, that's just a measurement of their
4 damages, not some other trust mismanagement claims as
5 is raised in the Wolfchild case.

6 But as we understand it what the Wolfchild
7 Plaintiffs are alleging in their second amended
8 complaint at least; there was a breach of trust
9 arising from some sort of trust mismanagement, and
10 that is at least somewhat similar to what the Cermaks
11 have argued in their complaints in intervention in
12 Wolfchild. At least in that complaint there's some
13 inkling of trust fund mismanagement.

14 That then may implicate the Indian trust
15 accounting statute, but what the Cermak plaintiffs
16 have alleged is very different. They are saying the
17 U.S.'s cancellation of the Cermaks certificate was
18 improper because those 50 acres should have descended
19 from John Cermak to the plaintiffs.

20 THE COURT: Well, let me ask you a question,
21 Mr. Shapiro? Is there any doubt but that the two 25-
22 acre tracts are part of the 1886 lands?

23 MR. SHAPIRO: Your Honor, I'm not really
24 able to answer that, but maybe Mr. Longstreth could.

25 THE COURT: Well, that seems kind of a key

1 question in the case.

2 MR. SHAPIRO: Well, Your Honor, in the
3 Cermak matter what they were alleging again is that a
4 cancellation of those certificates should have
5 descended to plaintiffs. We were defending that
6 claim.

7 THE COURT: Well, no. I understand that.
8 I'm just trying to figure out whether the land
9 encompassed by the Cermak claims -- John, Stanley and
10 Raymond, going to Raymond, was part and parcel of the
11 1886 lands?

12 MR. SHAPIRO: I think that would certainly
13 be something if the Cermaks were permitted to proceed
14 in the Wolfchild matter that would certainly be
15 something that the Court would have to consider, but
16 that's not a necessary resolution of the Cermak v.
17 United States case.

18 THE COURT: Well, all right. Just a moment,
19 Mr. Thompson. I wonder if we could hear from Mr.
20 Longstreth.

21 MR. LONGSTRETH: Your Honor, it's my
22 understanding that the two land assignments are part
23 of the 1886 land.

24 THE COURT: All right. Thank you. Mr.
25 Thompson?

1 MR. SHAPIRO: Your Honor, if I could?

2 THE COURT: Now, just a moment. Who is
3 this, please?

4 MR. SHAPIRO: I'm sorry, Your Honor. This
5 is William Shapiro again.

6 THE COURT: Go ahead, Mr. Shapiro. Mr.
7 Thompson, if you'd wait just a moment?

8 MR. THOMPSON: Sure.

9 MR. SHAPIRO: I don't mean to cut you off,
10 Mr. Thompson. Excuse me. If I could just clarify one
11 point, Your Honor? The Indian trust accounting
12 statute applies with certain types of breach of trust
13 claims, and it applies to a situation where there is
14 at least an argument that there was some sort of trust
15 fund mismanagement.

16 How would an accounting help in the Cermak
17 matter? What the Cermak plaintiffs are saying is that
18 here there were 50 acres that we should have
19 inherited, and we were wronged because the U.S. did
20 not allow us to inherit that land. What the trust
21 accounting statute applies to is it applies to protect
22 trust beneficiaries when they wouldn't know they had a
23 claim without first reviewing an accounting. Was
24 there a trust fund mismanagement, and I think --

25 THE COURT: Well, actually, Mr. --

1 MR. SHAPIRO: There may be some cases where
2 --

3 THE COURT: Mr. Shapiro, if you could just
4 stop a moment. Let's go to the Basic COBOL case
5 that's pending before the U.S. District Court for the
6 District of Columbia. The claim there is that the
7 plaintiffs need an accounting in order to determine
8 what the loss is. That's the claim that's pending
9 here that Mr. Kaardal has brought. Do you agree with
10 that?

11 MR. SHAPIRO: I do agree with that, Your
12 Honor, but that is not the claim that the Cermaks have
13 raised.

14 THE COURT: All right.

15 MR. SHAPIRO: Because how would an
16 accounting help in the Cermak case. They know that
17 there were 50 acres in those land certificates. They
18 know that it was canceled; with that cancellation --
19 but that doesn't mean that the Indian trust accounting
20 statute applies to their claim.

21 We believe that our position is consistent
22 not only with the recent Simmons v. United States case
23 out of this Court, but also with the Federal Circuit's
24 decision on the Shoshone case where the Court there
25 said that the trust accounting statute does not apply

1 when what you're talking about is not an allegation of
2 a trust fund mismanagement.

3 And here at best what the Cermaks have
4 raised is some sort of argument that maybe we should
5 have inherited this land, and so we didn't get that
6 trust access, and that, according to the Shoshone
7 case, is not covered under the Indian trust accounting
8 statute.

9 THE COURT: All right.

10 MR. SHAPIRO: And if you consider what
11 Plaintiff previously argued in this matter when this
12 was first brought to Judge Hodges, we argued that
13 their claims were barred by the statute of
14 limitations, and the Indian trust accounting statute
15 didn't come up, and we believe that the reason it
16 didn't come up is because plaintiffs recognized at
17 that point that it wasn't applicable to their
18 argument.

19 In response to what we argued that their
20 claims were time barred, plaintiffs argued that their
21 claims should be considered to have been tolled
22 because they had participated in the administrative
23 process before the BIA and IBIA in relation to whether
24 they should have been allowed to inherit these 50
25 acres.

1 We fully briefed that argument, and Judge
2 Hodges agreed with us, and all we are asking in our
3 motion for entry of final judgment is just to
4 effectuate the holding that Judge Hodges did reach,
5 and in entering final judgment, Judge Hodges
6 transferred their claim to the District Court to allow
7 them to pursue their APA claim.

8 But what they are arguing in Wolfchild and
9 perhaps what the Cermaks have argued in their motion
10 for intervention in Wolfchild is not what Judge Hodges
11 was dealing with in the Cermak v. United States case,
12 and it's not as we understand it what the Cermaks have
13 alleged in their second amended complaint.

14 THE COURT: All right. Thank you, Mr.
15 Shapiro. Now, Mr. Thompson. Thank you for your
16 patience.

17 MR. THOMPSON: I just wanted to address the
18 Court's question about whether or not the John Cermak
19 lands were part of the 1886 lands, and the answer is
20 yes, and I think you'll find those Certificate Nos. 64
21 and 65 in the filings we made on behalf of the Eleanor
22 Krohn Family which shows that they're clearly 1886
23 lands.

24 THE COURT: Thank you very much, Mr.
25 Thompson. Ms. Stricherz, did you have something?

1 MR. STRICHERZ: No, Your Honor.

2 THE COURT: Mr. Kaardal, did you have
3 something?

4 MR. KAARDAL: For shorthand, Your Honor --
5 the lands at Shakopee -- there's a Department of
6 Interior memo in 1976 indicating all the lands at
7 Shakopee at that time were 1886 lands, so it's easy to
8 remember it.

9 THE COURT: What was the date again?

10 MR. KAARDAL: 1976.

11 THE COURT: All right. Then I take it lands
12 have been acquired subsequently by the Shakopee
13 community?

14 MR. KAARDAL: With the casinos that came in
15 the late '80s. Thank you, Your Honor.

16 THE COURT: Thank you. Now, Mr. Crosby, is
17 there anything you want to add?

18 MR. CROSBY: Nothing I can think of at this
19 moment. Thank you.

20 THE COURT: All right. Thank you very much.
21 Now, I wonder if we could move to the issue of the
22 summons and whether this Court should issue summons to
23 the two communities, that is Shakopee and Prairie
24 Island, that have not moved to intervene. The summons
25 would be issued under 41 U.S.C. . 114. Mr. Kaardal?

1 MR. KAARDAL: Yes, Your Honor, thank you.
2 Mr. Mohrman was able to count the Plaintiffs, so
3 before I forget, so the Court doesn't have to spend
4 its time doing it, 6,553; so that's the number.

5 THE COURT: And that includes 211 Does?

6 MR. KAARDAL: That's correct, Your Honor.

7 THE COURT: All right. Thank you.

8 MR. KAARDAL: Your Honor, it's my motion to
9 issue the summons to both the communities and their
10 members, and I wanted to note that because the Court
11 hadn't mentioned that.

12 THE COURT: Well, I appreciate that. I'm
13 sorry?

14 MR. MOHRMAN: It's 219 Does.

15 THE COURT: 219. Is that included within
16 the 6,553?

17 MR. MOHRMAN: It is, and that's without a
18 calculator.

19 MR. KAARDAL: Ten points for honesty.

20 THE COURT: Well, I have a four-and-a-half-
21 year-old granddaughter who would say it matters when
22 you count individually because sometimes she loses
23 track when she gets over 20. The 40s she has trouble
24 with. Go ahead, Mr. Kaardal.

25 MR. KAARDAL: So the context in which I

1 filed the March 3 motion to issue the summons has now
2 sort of played out. We have approximately 10,000
3 intervenors who want to come into the case. With
4 respect to the community members, the adults, there
5 are approximately 200 at Shakopee, 250 at Prairie
6 Island, and at Lower Sioux approximately 360.

7 But a majority of those have joined the case
8 through us and perhaps through others because there
9 are John Doe Plaintiffs represented by other attorneys
10 here, and the context which we filed the motion for
11 issuance of the summons was after reading your
12 opinions, and you addressed the summonses issue
13 briefly in the December 16 opinion.

14 But more importantly to me and because of
15 the Court's interest in due process was the raising of
16 the issue of how are we going to show the extent and
17 nature of the breach of fiduciary duty, and it became
18 clear to me that not only the communities should be
19 summoned under 114(b), but also the members, and I go
20 back to the two-step process.

21 THE COURT: Well, just a question for you,
22 Mr. Kaardal. We had the discussion with Mr. Magnuson
23 about the fact that the communities as entities are
24 different from their members?

25 MR. KAARDAL: That's correct.

1 THE COURT: So you're saying the summons
2 should be issued not only to the two communities; the
3 two that are not represented by Mr. Magnuson, but also
4 each of their individual members?

5 MR. KAARDAL: Who are not Plaintiffs, yes,
6 and so this is our position.

7 THE COURT: All right.

8 MR. KAARDAL: And I'll explain why.

9 THE COURT: Yes, please.

10 MR. KAARDAL: Okay. And so as I discussed
11 earlier this morning with respect to the two-step
12 process there's going to be a two-step process, or
13 we're proposing a two-step process. First, what I
14 would call purely legal questions regarding how do we
15 define trust beneficiary status, and our proposal is
16 this is about connecting the dots because the Court
17 ruled that a trust existed, and that a breach occurred
18 in 1980.

19 I grant it stayed, but they're important
20 because they relate to our motion to issue the summons
21 is that the Court should look at our partial summary
22 judgment motions eventually and determine whether the
23 United States breached when approving the Tribal Base
24 roll at Shakopee at 33 people both over- and
25 underinclusive in our briefs.

1 And then also regarding the approval of the
2 Shakopee constitution in 1969 which had a quarter
3 blood quantum requirement which wasn't in the statutes
4 and further a vote-in restriction which wasn't in the
5 statutes, and so our view is that the communities
6 should be involved, particularly Shakopee in that
7 case, should be involved under 114(b) to allege or
8 assert or defend an interest.

9 And I think that's very important, and I
10 think that the community members also should be
11 because this relates as we talked about with the
12 proposed intervenors whether they're going to be trust
13 beneficiaries. The intervenors, 10,000 of them, are
14 going to be proposing different standards for trust
15 beneficiary status. That's going to be determined.

16 We should also have the Shakopee, Prairie
17 Island and Lower Sioux community members who may have
18 different claims in their communities regarding this
19 case to at least be summoned to allege or assert their
20 interest. We're a bit between a rock and a hard place
21 on that one because this is a trust proceeding, and in
22 courts which have lots of trust proceedings like in
23 state trust courts, this is a matter of course, a
24 jurisdiction in rem, notice to all interested parties,
25 they get copies of pleadings.

1 My concern is because the due process here
2 is that these people get notice of the proceedings so
3 that they can allege or defend their interest as
4 Section 114(b) provides.

5 THE COURT: Is there any real question,
6 factually, but that the lineal descendants who are
7 members of the Shakopee and Prairie Island communities
8 haven't received notice? I mean, they must have
9 notice.

10 MR. KAARDAL: Your Honor?

11 THE COURT: The problem was identifying the
12 persons who were not involved with the communities.

13 MR. KAARDAL: I believe that the summons are
14 necessary because of the inadequacy of the Court's
15 rules, and to draw a comparison again in the State
16 Probate courts, everyone gets notice at the beginning
17 and of every proceeding all the way to trial. And I
18 understand that this is a big undertaking, and I've
19 argued for all intents and purposes this is a
20 jurisdiction in rem case because the Court has limited
21 jurisdiction but has great powers as well.

22 And in those powers, the Court can resolve
23 these claims at least as a legal matter, and I think
24 that they ought to be summoned so that they can make
25 their claims, and to use Shakopee as sort of a

1 representative isn't giving them their due process.
2 The reason being that we don't have a case where the
3 people who we allege are purportedly getting the
4 benefits as wrongful beneficiaries are all related.

5 Shakopee and Prairie Island have a problem.
6 Just like the United States, they don't have an
7 alternative trust beneficiary theory. They're not
8 joined like we're trying to join the
9 intervenors here. We're going to have intervenor
10 groups, Your Honor said. Well, they have a problem
11 because they have also intervenor groups in the second
12 category I'm talking about.

13 So when they present their arguments,
14 they're going to present an argument consistent with
15 intervenor groups here as I indicated the possible
16 arguments in my brief including the 1929 Pipestone
17 roll and so forth. They're not going to make all the
18 arguments for all their members, and I think that due
19 process I don't want to do this over again. I just
20 want to do it once.

21 Due process would require the Court to issue
22 summons to individual community members so that
23 they're summoned as parties, and they get the copies
24 of the pleadings, and they get to understand what's
25 going on, and they get to participate with respect to

1 most importantly the definition of trust beneficiary
2 status, and they're in no different position than
3 these proposed intervenors in the second category.

4 They're going to be arguing 1929 Pipestone
5 roll, 1899 census, the McLaughlin 1917 Act judgment
6 roll and so forth, and they deserve an opportunity
7 here. I also think it relates to --

8 THE COURT: I don't think there's any
9 question about that. Persons who claim to be lineal
10 descendants should have an opportunity to participate.
11 The difficulty, Mr. Kaardal, I'm having with your
12 argument insofar as the members of those two
13 communities are concerned, is that this Court really
14 arguably does not have power to summon a plaintiff.

15 Arguably, the due process requirements are
16 ones of notice, and we discussed the Hoffman LaRoche
17 case from the first anticipation or before the first
18 decision that was issued in 2004 that a federal trial
19 court has a responsibility to oversee joinder of
20 additional parties in an orderly manner, and people
21 who in essence opt in to the group of plaintiffs
22 should have notice to give them the chance to opt in,
23 but to summon a plaintiff?

24 MR. KAARDAL: Your Honor, that's not what
25 the statute says, what the statute says is that you

1 can summon parties to allege or defend an interest.

2 THE COURT: Right.

3 MR. KAARDAL: So I don't see anything in the
4 statute that says for all intents and purposes
5 jurisdiction in rem that you shouldn't be summoning
6 those parties to give them maximum notice. The reason
7 being is that these trust beneficiary definitions
8 matter. If Mr. Montana is right, then some of them
9 out to be joining Mr. Montana.

10 THE COURT: That might be so, but this is a
11 situation where they have a choice.

12 MR. KAARDAL: Well, I guess there's a
13 distinction here as the Court would know between legal
14 authority and what you decide to do, choose to do
15 prudentially, and so I think the statute clearly
16 provides the Court with this power to summon a party
17 to allege or defend an interest even if it's a
18 reluctant party; to come into the Court and state his
19 case.

20 So if the Court would concede that then as a
21 prudential matter I would point out that if the Court
22 were to come to a conclusion based on my analogy the
23 state courts having jurisdiction in rem that it would
24 make sense because that would mean that the typical
25 member of Shakopee would receive a copy of the trust

1 beneficiary designation papers filed by Mr. Montana or
2 Ms. Felix or whatever, and then they would be able to
3 respond.

4 And that is a different type of involvement
5 in the case than what we're discussing, and my concern
6 again is that to rely on the communities as
7 representatives of a people it's just not possible.
8 It would be easy for all of us if all the nonlineals
9 at Shakopee -- remember it was formed in 1969 when
10 there is only 1886 land, and part of our arguments are
11 that that list was overinclusive, that the 33 had
12 people that were nonlineals on it, and the federal
13 government investigated that.

14 Pursuant to the solicitor's opinion in
15 1971, they had meetings at Shakopee, they identified
16 nonlineal descendants, and then they quit the
17 investigation, and so those people have expectations
18 based on first relying on what the BIA told them,
19 George Goodwin in the 1976 letter, and then
20 subsequently after the 1980 Act.

21 So they've been relying on what their
22 federal government has told them and what their
23 communities told them. It would strike me that they
24 ought to get notice of actually what's going on in
25 court to the extent it's going to affect their rights.

1 THE COURT: Well, they have in a sense
2 received notice through the publication that was made
3 after the second decision last year.

4 MR. KAARDAL: I understand, Your Honor, but
5 with respect to that --

6 THE COURT: You're saying that doesn't
7 satisfy due process implicitly?

8 MR. KAARDAL: Because they could be hurt,
9 right?

10 THE COURT: Well, they could be heard.

11 MR. KAARDAL: Hurt, like a defendant.

12 THE COURT: Hurt. That's possible.

13 MR. KAARDAL: They would be damaged, right?

14 THE COURT: That's possible. There isn't
15 any doubt about that, but presumably they already know
16 that.

17 MR. KAARDAL: Well, how would they know
18 without the papers that are going to be filed? These
19 motions regarding trust beneficiary status? The
20 notice was drafted for the purpose of adding
21 Plaintiffs, and these people have a different standing
22 with respect to the Plaintiffs because they benefitted
23 from the breach.

24 Wrongful beneficiaries in all trust
25 proceedings I've been involved with in state court get

1 notice because they have a lot at stake, not only for
2 the past but prospectively, and I don't think it's
3 much different here. We have purported wrongful
4 beneficiaries who are receiving the trust funds.

5 THE COURT: All right. Now, Mr. Montana,
6 we'll cover you in just a moment. I'd actually like
7 to hear from Mr. Longstreth if that's possible. Mr.
8 Longstreth, it seems we have two different questions.
9 One is summons to the communities, and presumably the
10 interest of the entities itself is potentially the
11 same kind of interest that was discussed with Mr.
12 Magnuson, and then we have potential summons to the
13 members of these two communities.

14 MR. LONGSTRETH: Your Honor, I would make a
15 distinction whether we're talking about providing
16 notice and whether we're talking about a summons that
17 will as described in Plaintiffs' papers make these
18 entities parties to the litigation.

19 THE COURT: I was going to raise the same
20 question with Mr. Kaardal, but if you know of someone
21 who is going to be affected positively or negatively
22 by a proceeding then notice arguably seems
23 appropriate, but to summons them?

24 MR. LONGSTRETH: I entirely agree that a
25 summons seems excessive, and I don't believe that it's

1 contemplated by the rule as we articulate in our
2 papers that a plaintiff can summons third parties to
3 become actual parties in a litigation where they would
4 face default judgment. The Court's rules distinguish
5 between issues of summons and indicate only the
6 government can.

7 THE COURT: Well, now we're not talking
8 about Rule 14. We're talking about Section 114.

9 MR. LONGSTRETH: Yes, precisely which at
10 least according to the Rules' committee notes of Rule
11 14, Rule 14 implements --

12 THE COURT: Well, yes and no.

13 MR. LONGSTRETH: Okay.

14 THE COURT: It does not fully implement it.
15 You happen to have a judge who is the chair of the
16 Court's Rules Committee.

17 MR. LONGSTRETH: I should have learned that
18 sooner.

19 THE COURT: I'm sorry. That argument is --

20 MR. LONGSTRETH: Yes, so then let's turn to
21 the provision itself, and as the Court has explained
22 in the Oak Forest case and the Byrd v. United States
23 case, there's a distinction between the effect of
24 summonses depending on who has requested them, and
25 when it's on motion of the Attorney General it has

1 what I think of as a real summons effect and becomes a
2 party and can come and appear or face the possibility
3 of a default judgment against them.

4 So with respect to that sort of summons, I
5 don't believe that 114(b) provides that kind of
6 authority to a plaintiff, and I likewise don't believe
7 that it would be appropriate in this case particularly
8 given our view of the potential scope and
9 ramifications of the Court's ruling in terms of on the
10 ground access to 1886 lands, which by the way the
11 government of course does have a view on the trust
12 beneficiary.

13 It's a view that the Court has rejected, but
14 it's our view that the lands are held in trust
15 according to the 1980 Act for the three communities.

16 THE COURT: Well, if I read your papers
17 correctly, you seem to in essence be arguing that
18 Section 114 should be construed in pari materia with
19 Rule 14 as it now stands.

20 MR. LONGSTRETH: I believe that's correct.
21 In other words, at least I'll say as I read
22 Plaintiffs' papers their intent to make the
23 communities and their members parties to the
24 litigation was something that they did not have power
25 to seek under Section 114(b) because of a distinction

1 recognized in the Court's decisions of the Oak Forest
2 and Byrd cases -- between the effect of a summons
3 sought by the Attorney General and the summons sought
4 by a plaintiff, and it's consistent with --

5 THE COURT: Now, that's not how I read Mr.
6 Kaardal's papers at all unless I misheard you. In
7 fact, just to the contrary he's arguing that not only
8 can the Court summons Prairie Island and Shakopee
9 because they have an interest in the 1886 lands, but
10 he's arguing that the Court should summons those
11 members who are not already Plaintiffs because they
12 could be adversely affected. Could be. I mean, who
13 knows?

14 MR. LONGSTRETH: Right. I mean, that's
15 consistent with my reading of their papers that he
16 argues they should summon them. I may not have been
17 clear. Our argument was that under Section 114(b)
18 they don't have the power to seek a summons that would
19 make somebody a party.

20 THE COURT: Well, but Section 114 says, "The
21 United States Court of Federal Claims on motion of
22 either of the parties or on its own motion may summon
23 any and all persons with legal capacity to be sued to
24 appear as a party or parties in any suit or proceeding
25 of any nature whatsoever pending in said Court to

1 assert and defend their interests if any in such suits
2 or proceedings."

3 MR. LONGSTRETH: Right.

4 THE COURT: Where do you get --

5 MR. LONGSTRETH: Well, if we read further,
6 the nature of the claim or the effect of that, and it
7 could well be that we were responding to just a
8 concern the government could seek, and the summons
9 that a plaintiff might seek equally, but under Rule
10 114 there is a distinction between the effect of a
11 summons brought on the motion of the Attorney General
12 and the effect of a summons brought by a plaintiff,
13 and in our --

14 THE COURT: That might well be so, but that
15 doesn't mean that the summoned entity or person
16 wouldn't be a party.

17 MR. LONGSTRETH: I guess as I read 114 the
18 sort of consistent use of the word "summons" didn't
19 seem appropriate, and in Plaintiffs' papers, the
20 reason they argue the community should be summoned was
21 that the United States may have claims they want to
22 bring against the communities.

23 THE COURT: Well, that may be so, but that's
24 up to the United States.

25 MR. LONGSTRETH: Yes, I agree.

1 THE COURT: And before I asked that
2 question, and you said well no we're not going to do
3 that.

4 MR. LONGSTRETH: Precisely.

5 THE COURT: That's your business, that is
6 our government's business, but that doesn't mean that
7 the court under Section 114 arguably wouldn't have
8 power to summons as a party an entity that claimed an
9 interest in the subject of a suit.

10 MR. LONGSTRETH: So recognizing that the
11 effect of that summons would be different, I agree.

12 THE COURT: Right.

13 MR. LONGSTRETH: The 114(b) I can't deny
14 what it says. It seemed to me that it was not using
15 the terms as precisely as it would have been good if
16 we were using them.

17 THE COURT: Well, just to clarify, the Court
18 could not separately enter a money judgment against a
19 summoned party under Section 114, that is unless and
20 until the United States sought a money judgment
21 against that party.

22 MR. LONGSTRETH: Right.

23 THE COURT: Just like a setoff or a
24 counterclaim this Court has the power to issue a
25 judgment against a private party if the United States

1 not only seeks such a judgment but proves its case.

2 That's a separate matter.

3 MR. LONGSTRETH: Yes, certainly. I remind
4 the Court that it's our view that the primary question
5 here is one of money damages against the United
6 States.

7 THE COURT: Correct.

8 MR. LONGSTRETH: And therefore in our view
9 the sort of possible interests of the communities or
10 members who either are descendants or are not
11 descendants who are not present will not be affected
12 by the judgment which will go to the U.S. Treasury and
13 take money and give it possibly to the Plaintiffs.

14 THE COURT: I mean, that's anticipating a
15 result in the future, but that affects the analysis of
16 the question as to summoning members that Mr. Kaardal
17 put forward. There's no doubt about that.

18 MR. LONGSTRETH: I mean, if the United
19 States is wrong about the potential effect of the
20 Court's ruling, then we would have a very different
21 view I believe on whether other communities in
22 particular should be brought into the case or are
23 necessary to the case.

24 THE COURT: That's a little opaque to the
25 Court, Mr. Longstreth. I wonder if you could explain

1 what you just said?

2 MR. LONGSTRETH: Well, our position is that
3 the Court has a limited jurisdiction to provide money
4 damages to the parties, and in a case of this sort
5 does not have authority to direct the Department of
6 Interior to take specific land parcels and hold them
7 in trust for different entities, different beneficiary
8 groups.

9 THE COURT: No, this court couldn't do that
10 in any event. Congress did that.

11 MR. LONGSTRETH: In the 1980 Act?

12 THE COURT: It did it to the Court's mind in
13 the 1888, 1889 and 1890 Appropriations Act, and the
14 1980 Act.

15 MR. LONGSTRETH: Right. Yes, so I think
16 we're in agreement there. If Plaintiffs' view of the
17 Court's power is correct, we would have a different
18 view of whether other parties ought to be brought in.
19 We're not going to change our view of the Court's
20 power simply because Plaintiffs are seeking relief
21 that we think they can't obtain.

22 THE COURT: Well, we're a long way from the
23 scope of relief in this case unfortunately. Mr.
24 Montana?

25 MR. LONGSTRETH: Thank you.

1 MR. MONTANA: Just a point of clarification,
2 Your Honor. My understanding of the power of the
3 Court is to enter damages for a breach of trust.

4 THE COURT: Yes.

5 MR. MONTANA: Is that correct?

6 THE COURT: That's correct.

7 MR. MONTANA: Okay.

8 THE COURT: Well, now there's a preliminary
9 step.

10 MR. MONTANA: Right. Okay. Before we get
11 to that point?

12 THE COURT: Before we get to that point, you
13 have to deal with an accounting, and then the object
14 of the whole exercise is a money judgment.

15 MR. MONTANA: Right. So my confusion is the
16 Court does not have the power to disrupt the
17 communities that are organized under the Indian
18 Reorganization Act. In other words, being an Indian
19 community is not premised on the fact that you have
20 lands. I mean you can still be an Indian community
21 without trust property.

22 THE COURT: Well, go ahead. I'm sorry.

23 MR. MONTANA: So by summoning the
24 individual members in, unless they're part of the
25 beneficiary class, I would see no point in that

1 because they're always going to be part of that
2 community whether it's Shakopee, Prairie Island, Lower
3 Sioux. They're still going to be members of that
4 tribe because the Court does not have the authority to
5 overturn their constitutions or tell them who can be
6 members and who can't be members, although --

7 THE COURT: That's correct. The Court has
8 no powers that I can discern with respect to the
9 organization of the communities as entities.

10 MR. MONTANA: Right. So listening to the
11 gossip in the Indian communities with the beneficiary
12 class, they think that someone they're going to take
13 over these tribes, and I said no. The end result will
14 be a money damages if that suits the Court's judgment
15 on this.

16 THE COURT: Well, that's right, but in this
17 particular case it is probably essential and necessary
18 that the Court not only construe the United States'
19 interest in the so-called 1886 land.

20 MR. MONTANA: Yes, Your Honor.

21 THE COURT: From the Appropriations Act.

22 MR. MONTANA: Yes, Your Honor.

23 THE COURT: But what happened to those
24 interests after or in implementation of the 1980 Act.

25 MR. MONTANA: Correct.

1 THE COURT: And that's the argument that Mr.
2 Magnuson so adeptly made.

3 MR. MONTANA: Right.

4 THE COURT: So I don't see how the Court
5 could avoid a construction of the 1980 Act over and
6 against the appropriations acts.

7 MR. MONTANA: Yes, Your Honor.

8 THE COURT: And deal with the situation
9 today if you will.

10 MR. MONTANA: And I understand the summons
11 of the communities. It's just the individuals I'm not
12 real clear about. If they have notice of this
13 lawsuit, this claim, then they clearly have a right if
14 they are lineal descendants and Mdewakanton to join
15 one of these gentlemen in this lawsuit, correct?

16 THE COURT: Or your groups?

17 MR. MONTANA: My group or whoever, but the
18 communities represent them in large, all the community
19 members, and they represent those assets and oversee
20 those assets, so I can understand --

21 THE COURT: Well, now that's a question.
22 The powers that the communities have over the assets.
23 I mean, that turns on the 1980 Act, and propriety is
24 too strong a word. The appropriateness of what the
25 Department of Interior did under the 1980 Act, that's

1 a different question.

2 MR. MONTANA: I guess my confusion was is
3 that yes I see the community as being summoned, but
4 the individual members? If they have notice of the
5 suit, then they can join the suit. I mean otherwise
6 it's still not going to affect their membership in the
7 tribes and their interest in those tribes in the end,
8 and obviously unless they lose per capita or money
9 because of a judgment or something like that.

10 THE COURT: Well, there are a set of
11 questions in this particular case. The Court has real
12 doubts that these three communities have sovereign
13 immunity for example. Because they're not aboriginal
14 tribes if you will.

15 MR. MONTANA: Yes, Your Honor.

16 THE COURT: They're not native tribes.
17 They're collections of people who had to sever tribal
18 relations as a kind of qualification.

19 MR. MONTANA: Qualification to be a member
20 of the tribe?

21 THE COURT: To be a member of the
22 beneficiary group.

23 MR. MONTANA: Group. Exactly. Okay. So I
24 understand that.

25 THE COURT: And so they just don't have, at

1 least I have real doubts that they have, we'll look at
2 it because the government has made arguments that
3 maybe sovereign immunity might be implicated.

4 MR. MONTANA: But those tribes are not
5 premised on those lands. I mean, their organization
6 and their recognition as federal organized tribes was
7 not premised on the 1886 lands.

8 THE COURT: That's right. Well, it was in a
9 sense. Now, that's an interesting factual question.
10 You say no.

11 MR. MONTANA: No, because any Indian tribe
12 can be recognized, but they don't have to have trust
13 lands.

14 THE COURT: Well, no. They don't have to
15 have trust lands.

16 MR. MONTANA: Or lands period.

17 THE COURT: Now, that's another question.

18 MR. MONTANA: Well, I have some California
19 clients that have their tribal headquarters in a strip
20 mall on fee lands, a very small tribe.

21 THE COURT: Right.

22 MR. MONTANA: So there are tribes that are
23 landless.

24 THE COURT: You could have a recognized
25 group under the Indian Reorganization Act that would

1 not have, I hate to use the word "reservation" because
2 that's not really appropriate. A lot of them don't,
3 and you have the whole history of colonias and things
4 like that in the west, especially New Mexico from
5 Spanish grants and so on and so forth.

6 MR. MONTANA: Right. Pueblos.

7 THE COURT: So we don't need to deal with
8 that.

9 MR. MONTANA: Those issues, correct. Okay.
10 I was just trying to sort this out in my mind because
11 it was confusing to me. I mean, if you summon the
12 communities, I can understand that because they
13 oversee the assets of the federal government, but the
14 individuals? I mean, if they feel that their
15 interests are being negated by the communities, they
16 obviously can join in.

17 THE COURT: If they have notice, and that's
18 really the question.

19 MR. MONTANA: They have notice.

20 THE COURT: I guess the question I'd have
21 for you, Mr. Montana, is whether you believe that
22 there has not been adequate notice to members?

23 MR. MONTANA: Well, that was an issue I was
24 going to bring up because I filed a motion to extend
25 the intervention period, but I guess I probably should

1 have just asked for a motion to amend my complaint to
2 add plaintiffs, and that's what I will do, Your Honor.

3 But I know there are a lot of people that
4 were denied to be part of this suit by representation
5 of Mr. Kaardal and his firm and also Mr. Kettering and
6 his firm based on the fact that they did not meet
7 their criteria which is not obviously the Court's
8 criteria, and so those people got very late notice.

9 I mean, I had people calling my office three
10 days ago, two days ago, that had just recently
11 received notice, and these are Indian people from a
12 reservation in South Dakota that don't have telephones
13 a lot of times, no computers. They think once they
14 get a denial letter from these firms that all of a
15 sudden because they believe that these people are the
16 lions at the door that they no longer have a right to
17 assert what they believe are their interests in this
18 lawsuit.

19 So because of the late denials that were
20 sent to them, there are probably hundreds and maybe
21 thousands of people out there that want to be involved
22 in this lawsuit, but didn't have time to meet the July
23 12 deadline.

24 THE COURT: Let me just put it this way. We
25 have issued a set of orders yesterday and today.

1 MR. MONTANA: Yes, Your Honor.

2 THE COURT: Of persons who in a very
3 informal way expressed interest in joining the suit.

4 MR. MONTANA: Yes, Your Honor.

5 THE COURT: But we said uniformly you must
6 move to intervene, you must provide an accompanying
7 complaint.

8 MR. MONTANA: Yes, Your Honor.

9 THE COURT: And if you do so after July 12,
10 you must show good cause for why you're coming in
11 belatedly. We aren't foreclosing it, but we're saying
12 you have to show a good reason why you did not join
13 this case earlier.

14 MR. MONTANA: So that would be a same basis
15 for first amended complaint?

16 THE COURT: Yes.

17 MR. MONTANA: Yes, Your Honor.

18 THE COURT: It would.

19 MR. MONTANA: I thank you very much.

20 THE COURT: No, thank you. Mr. Kaardal?
21 Actually, I think, Mr. Montana, the Court will thank
22 you for that discussion because I think we want to put
23 to rest the idea that the Court will focus in any way
24 on the organization of the communities.

25 MR. KAARDAL: Not so fast, Your Honor, if I

1 may?

2 THE COURT: All right.

3 MR. KAARDAL: I think one of the challenges
4 of this case is that once we uproot ourselves from the
5 historical record, then we run into problems, and so
6 when we take generally applicable principles that
7 apply to tribes and place them on this remnant if you
8 will, the Loyal Mdewakanton, we run into problems, and
9 so when we go back --

10 THE COURT: Well, these aren't tribes. I
11 think everyone would agree with that, and they aren't
12 bands.

13 MR. KAARDAL: Right.

14 THE COURT: There's an identifiable group.
15 The word used in the Indian Tucker Act.

16 MR. KAARDAL: The Appropriation Act does say
17 Minnesota Mdewakanton Band, and so there's self
18 identification there. Now, with respect to the 1934
19 Indian Reorganization Act, the basis as I explain in
20 my papers filed with the court on March 3, the basis
21 for organization was residence on reservation land.

22 Now, one could say that that's just land,
23 but what it really means is that there are trust
24 beneficiaries on the land, and that was the foundation
25 for the organization of the governments' under the

1 1934 Act that led of course to the 1938 Solicitor's
2 opinion saying that they weren't historical tribes,
3 and so they have limited powers in sovereignty.

4 THE COURT: Right.

5 MR. KAARDAL: But that's critical,
6 absolutely critical, to the arguments that I place
7 before the Court granted stayed because in --

8 THE COURT: Let's just stop a minute, Mr.
9 Kaardal. What that 1938 opinion indicates to the
10 Court is that this is an identifiable group, and as
11 Mr. Montana suggests, they could organize themselves
12 under the 1934 Act.

13 MR. KAARDAL: With the consent of all the
14 trust beneficiaries which actually occurred.

15 THE COURT: Well, but they didn't have
16 control over the property at that time. The
17 Department of Interior had it.

18 MR. KAARDAL: And it still has.

19 THE COURT: It still is a trustee?

20 MR. KAARDAL: That's right, and so then
21 where I dissent I guess is with respect to 1969, the
22 conversation that Mr. Montana and the Court had
23 suggests in some way that my motion, the Department of
24 Interior should not have approved that tribal base
25 roll at Shakopee, and should not have approved certain

1 provisions in the constitution which in total excluded
2 all the trust beneficiaries we're talking about.

3 That is at issue in the case, and it relates
4 to the collection of trust funds at Shakopee and how
5 they're distributed and --

6 THE COURT: We're going to talk with Mr.
7 Longstreth about that in a minute. I want to make
8 sure that you've fleshed out your argument in that
9 respect, and I'm not going to cut you off, but I'm
10 going to ask though in 1969 Shakopee, Prairie Island,
11 Lower Sioux did not control the 1886 lands.

12 MR. KAARDAL: That's true.

13 THE COURT: They gave advice if you will or
14 comments to the Department of Interior.

15 MR. KAARDAL: And my pending motions relate
16 to Shakopee, and all the lands at that time were 1886
17 lands.

18 THE COURT: Right. But you're going to have
19 to convince the Court that it should get involved when
20 the Shakopee community, however it was organized, did
21 not have control at that time over those lands.

22 MR. KAARDAL: Prior to the approval of the
23 constitution?

24 THE COURT: Yes.

25 MR. KAARDAL: You're right. The land

1 assignments were made. It was the approval of the
2 constitution, the constitutional provisions and the
3 approval of the base roll at Shakopee that led to the
4 underinclusiveness that all the rights -- let's take
5 the quarter blood quantum requirement -- so a lot of
6 the proposed intervenors here and my Plaintiffs don't
7 meet the Shakopee constitution's quarter blood quantum
8 requirement, and that's not in the statute.

9 So the Department of Interior approved the
10 constitution with the quarter blood quantum
11 requirement cutting off all these people from being
12 members at Shakopee, and so we argue that's a breach,
13 the Department of Interior was not fulfilling its
14 fiduciary duties under the Appropriations Act, the
15 Indian Reorganization Act did not permit the
16 Department of Interior to eliminate preexisting land
17 rights.

18 And so if you read the statutes
19 harmoniously, you would conclude the Department of
20 Interior did not have the power and violated federal
21 law by approving that constitution in 1969 because it
22 for all intents and purposes terminated many of my
23 clients' beneficiary rights.

24 THE COURT: Now, you're saying that's
25 because the Shakopee Community would not recommend

1 that an assignment be issued to a person who is not on
2 the Shakopee roll?

3 MR. KAARDAL: And didn't have quarter blood
4 of the May 20, 1886 list.

5 THE COURT: Right.

6 MR. KAARDAL: Right. And those are the
7 arguments I've submitted to the Court, and I
8 understand the Judge wasn't prejudging, but it sounded
9 like he was prejudging an issue as saying that we were
10 going to --

11 THE COURT: I'm just saying that I have real
12 doubts. I'm trying to be fairly straightforward about
13 this. I have real doubts about getting into any issue
14 of governance of the communities.

15 MR. KAARDAL: I understand that, but with
16 respect to the calculation of damages and establishing
17 liability -- for example, in the context of the
18 summonses to the individuals, Dr. Buttes is here.
19 She's our expert, and we've done opposition genealogy
20 on members of Shakopee. We're going to show that many
21 of them are nonlineal descendants.

22 I for one feel uncomfortable with this Court
23 making that determination for the purposes of
24 liability and damages without them being summoned, and
25 I think that when we look at the particulars there, my

1 concern is that you may feel uncomfortable when Dr.
2 Buttes presents that genealogical research in order to
3 show that the list in 1969 of 33 people, was
4 overinclusive. It included nontrust beneficiaries,
5 and no argument based on the 1980 Act is going to save
6 them on that, and then with respect to --

7 THE COURT: I might feel uncomfortable about
8 that, Mr. Kaardal, but that's kind of looking with a
9 retrospective view at an action that was not only
10 taken by members of that community but by the
11 Department of Interior at that time, and the Court is
12 dubious that it has juridical power to go back and
13 look at those kinds of actions because they touch on
14 governance.

15 MR. KAARDAL: Yes, but it touches on
16 American governance in the sense that the tribal roll
17 was approved by the BIA pursuant to federal statute.

18 THE COURT: Right.

19 MR. KAARDAL: The constitutions were
20 approved pursuant to federal statute, and if you
21 harmonize those federal statutes with the trust
22 obligations under the 1888, 1889 and 1890
23 Appropriation Acts, then you have a breach.

24 THE COURT: That's why I asked you the
25 question about what control the community had in 1969

1 as contrasted to late 1981 realistically.

2 MR. KAARDAL: Up until 1969 before the
3 formation of Shakopee, the Lower Sioux as indicated in
4 the Cermak papers made recommendations to the BIA
5 regarding who would get the land assignments.
6 Ultimately, the land assignments were issued by the
7 BIA.

8 THE COURT: Right.

9 MR. KAARDAL: And those people I think were
10 then included in sort of the community of Lower Sioux
11 to the extent they wanted to participate, and so it
12 was part of the trust corpus, and I just want to
13 mention on the tribal sovereignty the Court mentioned.
14 We believe it's limited, and the Solicitor's memo
15 indicates that, and we also believe that sovereignty
16 is shared here.

17 I would disagree with the point between the
18 Minnesota/Mdewakanton Band, the lineal descendants and
19 the other purported beneficiaries and the communities,
20 and maybe that ties in with the agency theory the
21 Court has mentioned. The communities are agents for
22 the United States as trustees serving these people,
23 but that's our position.

24 THE COURT: Well, let's just stop a second
25 because for example the residents of an incorporated

1 city or town certainly have some governmental powers
2 and rights. They can vote. They, in effect to some
3 extent within the limits of the state laws and
4 constitutions they're government, but the city or town
5 does not by itself have sovereign immunity.

6 The sovereign immunity is a part of the
7 state government in our federal system, and the
8 federal government certainly has sovereign immunity,
9 and the Supreme Court has said that certain -- I have
10 to say that Indian is not inclusive enough, but Native
11 American is a better word for it. Native American
12 groups had an aboriginal sovereignty that carried
13 over. That doesn't appear to be the case here because
14 that was divested.

15 MR. KAARDAL: Yes.

16 THE COURT: And actions that individuals
17 took.

18 MR. KAARDAL: Yes, and we also wanted to
19 point out that we think that the issuance of summonses
20 to the communities is not a lawsuit. We are not
21 arguing that this will result in a judgment claim
22 against the communities, but rather they should be
23 here to allege and assert and defend their interest,
24 and that that would be part of the due process. That's
25 all I have, Your Honor.

1 THE COURT: All right. Mr. Longstreth?

2 MR. LONGSTRETH: Yes, Your Honor. At this
3 point we have not fully briefed the motion for partial
4 summary judgment regarding the 1969 formation, but I
5 certainly strongly concur that the Court should have
6 doubts about whether it has jurisdiction to consider
7 these issues.

8 With respect to the communities, the
9 particular distinction that was made at one point
10 between communities formed at a reservation under the
11 IRA and historical tribes is a distinction that
12 Congress acted on and held or passed an act that says
13 that distinction should not be followed.

14 I think it's sort of a directive to the
15 Department of Interior that they should not take any
16 action, or it basically reverses an opinion of the
17 Solicitor General of the Department of Interior that
18 recognized that distinction, and at some point we
19 obviously can brief that when that becomes relevant.

20 I'm sorry. I don't have the specifics with
21 me here, so the United States' position is that these
22 three communities are no different from other tribes
23 within the United States with respect to all of their
24 rights including sovereign immunity, but obviously we
25 can address that, and the tribes can very well address

1 that if you choose to issue a summons through a motion
2 to quash.

3 The only other issues I wanted to address at
4 this point is that it's our view certainly that
5 members of the communities do have notices of the
6 case. I know that Plaintiffs have indicated in their
7 papers in the past that the communities, at least the
8 Shakopee Community have sent out notices to their
9 members about the case.

10 And it has definitely been well publicized
11 not only through the Court's notice, but through the
12 media on the issues, so it's our view that that sort
13 of notice is not needed.

14 THE COURT: All right. Thank you. Mr.
15 Kaardal, anything further?

16 MR. KAARDAL: Yes, just one.

17 THE COURT: Certainly.

18 MR. KAARDAL: The Indian Reorganization Act
19 was amended in 1998, and the relevant amendment,
20 Public Law 100-581 . 101 removed the residing on the
21 reservation text of the 1934 Indian Reorganization
22 Act, but at a specific savings clause stating nothing
23 in this Act is intended to amend, revoke or affect any
24 tribal constitution by law or amendment, ratified or
25 approved prior to this Act.

1 So the approval of the Shakopee constitution
2 in 1969 and its residency on a reservation basis
3 exist, and our argument is from its inception, the
4 United States Department of Interior has breached its
5 fiduciary responsibilities causing monetary damages, a
6 lack of collection, loss of funds.

7 And since the Court previously had only
8 judged a breach since 1980, and the United States'
9 defense to that very breach at its inception is the
10 1980 Act, this is a critical claim for the Plaintiffs
11 and the Intervenors because if the breach started in
12 '69, then the 1980 Act can't be a defense. Thank you,
13 Your Honor.

14 THE COURT: All right. We will take that
15 under consideration. Now, we have one set of issues
16 left, and that is participation by Joseph Goodthunder
17 and one other, Dennis Prescott. Mr. Gaskins?

18 MR. GASKINS: Yes, Your Honor. Thank you.

19 THE COURT: Now, with your moving papers,
20 there was not an appended brief. Is that correct?

21 MR. GASKINS: Yes, Your Honor. Your order
22 in this case has prohibited the filing of a brief
23 without permission from you first.

24 THE COURT: Well, that's true, but usually
25 what happens is you proffer a brief with the

1 application or motion. All right. Let's just put
2 that aside.

3 MR. GASKINS: Well, Your Honor, we would
4 have proffered a brief, but the line in your order
5 that says, "Any person or entity seeking to file
6 briefs or memoranda as amicus in this case in the
7 future must specifically seek leave from the Court to
8 do so at least 21 days in advance of the filing, and
9 any entity seeking to file papers of amicus must be
10 represented by counsel."

11 THE COURT: Well, let me just say that the
12 idea was, the 21 days was you would file your motion
13 with an appended brief, and that would give the
14 parties to the case 21 days in effect to have briefing
15 on that particular motion before the Court acted to
16 either give leave for the filing or not. I'm sorry
17 there was a misunderstanding.

18 MR. GASKINS: Okay. Your Honor, we
19 completely misapprehended the intent of your order,
20 and we thought you were trying to prevent people from
21 filing briefs you had to read that you didn't want to.

22 THE COURT: Well, there's a difference
23 between submitting a brief as an addendum to a motion
24 and actually filing a brief. You couldn't file brief
25 without leave is what the Court had in mind, but you

1 could certainly submit one appended to a motion, but
2 we'll clear up that little misunderstanding.

3 MR. GASKINS: Okay. Your Honor, I apologize
4 for that. Dennis Prescott and Joseph Goodthunder as
5 two elected members of the five-person Lower Sioux
6 Community Council, seek to aid the Court in the
7 determination of whether the Lower Sioux Indian
8 Community is a person of standing in the case, and we
9 think that it is important to present views not
10 otherwise presented to the Court on the issue of
11 standing.

12 One of the presumptions is that (a) the
13 Lower Sioux Indian Community is not a person with
14 legal capacity to be sued in that it has sovereign
15 immunity. That is a fundamental and underlying issue
16 which we know understand we should brief to the Court
17 as to the reason for that;

18 b) the Lower Indian Sioux Community as a
19 result of not being able to be sued should not be
20 brought in as a party defendant under the name of a
21 party plaintiff, and whether the Lower Indian Sioux
22 Community should be seeking intervention as a party
23 plaintiff is a question of government that the Court
24 should defer to that community.

25 There is current litigation underway that

1 indicates that the Lower Indian Sioux Community should
2 not be attempting to intervene as a party plaintiff,
3 and we think this Court should not decide that issue
4 until the Lower Indian Sioux Community has decided it.
5 I'm sorry, the Lower Sioux Indian Community. With
6 respect to the issue of standing as a party plaintiff,
7 the Court's jurisdiction is to award money damages in
8 a case brought by or against the United States of
9 America.

10 This is a case brought against the United
11 States by individuals of various tribes, not by the
12 tribes themselves. Hence, the Court cannot exercise
13 its jurisdiction to award damages to the Lower Sioux
14 Indian Community in particular, and consequently the
15 Lower Sioux Indian Community does not have standing
16 within the jurisdiction of the Court to collect. It
17 may have an interest. If so, an amicus brief is
18 proper, but intervention as a party is not.

19 Now, I have only briefly stated this issue,
20 and all we are seeking really at this point is the
21 right to give the Court a brief on the issue, and I
22 apologize that we didn't already give you one.

23 THE COURT: Well, we'll overcome that
24 misunderstanding. Mr. Magnuson?

25 MR. MAGNUSON: Thank you, Your Honor. These

1 two individuals have no more unique perspective or
2 interest in this litigation than any other member of
3 the Lower Sioux Community. There was a hotly
4 contested election where participation by the
5 community in this litigation was a central issue.
6 Ninety percent of the community members voted.

7 The slate of three who constitute the
8 quorum, a majority, of the council ran on a platform
9 that they were going to get the community into this
10 litigation if they could. If you accept amicus
11 submissions from these two individuals who do not
12 speak for the government of Lower Sioux, then you
13 might as well expect to receive amicus submissions
14 from anybody who is a community member.

15 You laid out the requirements for amicus
16 participation. Those requirements are not met here.
17 The issues that he proposes, legal capacity to be
18 sued, whether 114(b) summonses can be issued are going
19 to be fully briefed by, presumably if you grant the
20 114(b) summonses, the other two communities. There is
21 one voice for the Lower Sioux now. It's the duly
22 elected government, and they have spoken. Thank you.

23 THE COURT: Thank you. Mr. Kaardal?

24 MR. KAARDAL: Your Honor, I indicated in the
25 Plaintiffs' papers a conditional objection. Our

1 conditional objection was based on if the summons were
2 issued to individual members, that would include the
3 two movants, and so if that were to occur, then I
4 think the amicus curiae part would be redundant, and
5 so we believe that this is a good case where you have
6 a split in a community.

7 I've identified splits at Shakopee and at
8 Prairie Island along similar and different lines, and
9 if we don't summon each of the members, we're going to
10 have these amicus briefs, and the case isn't going to
11 be wrapped up the way it should, and so that's my
12 conditional objection.

13 THE COURT: All right.

14 MR. KAARDAL: That if a summons is issued,
15 then this motion should be denied.

16 THE COURT: Thank you. Mr. Longstreth?

17 MR. LONGSTRETH: Your Honor, we in the past
18 have not taken a position opposing or endorsing amicus
19 filings, and we don't here either.

20 THE COURT: All right. Thank you. Now, to
21 correct the prior misunderstanding that arose, it
22 seems appropriate to provide for submission of a
23 proposed brief amicus curiae or as amici because there
24 are two, and the Court would propose that such a brief
25 be submitted, not filed, on July 28.

1 MR. GASKINS: Okay. Thank you, Your Honor.

2 THE COURT: Now, the Court would propose
3 that the parties and Mr. Magnuson respond to the
4 motion by Mr. Gaskins on behalf of Messrs. Prescott
5 and Goodthunder on or before August 4, and that you,
6 Mr. Gaskins, have an opportunity to reply on or before
7 August 9, and that way we'll have briefing on whether
8 an amicus filing should be allowed with a full
9 understanding of what's at issue, and we don't have
10 that now.

11 MR. GASKINS: I appreciate that, Your Honor.

12 THE COURT: Is that schedule reasonably
13 satisfactory to everyone? We don't want this case to
14 drag on. Mr. Magnuson?

15 MR. MAGNUSON: Your Honor, the responses
16 that you anticipate from my clients among others will
17 address not the substantive merits as presented, but
18 the appropriateness of amicus participation, correct?

19 THE COURT: That's correct

20 MR. MAGNUSON: Thank you very much.

21 THE COURT: All right. Now, we could
22 caution, Mr. Gaskins, that the amicus filing should
23 address the propriety of intervention of the Lower
24 Sioux and not address particular matters dealing with
25 the governance of the Lower Sioux Community as such.

1 MR. GASKINS: Okay.

2 THE COURT: Do you understand what I'm
3 driving at?

4 MR. GASKINS: I do, Your Honor.

5 THE COURT: Just the criteria for
6 intervention, and whether they have been satisfied.
7 That's all, and I'm tempted to put a page limitation
8 on it, but I'm not going to do that.

9 MR. GASKINS: Your Honor, I'm fully
10 cognizant of your praise of the brevity of briefs that
11 preceded us.

12 THE COURT: All right. It's just that there
13 are one or two interested persons in this case, and we
14 really do have to keep a reasonable organization here,
15 and we're really only dealing with party issues at
16 this point. We're not dealing with --

17 MR. GASKINS: Tribal governance.

18 THE COURT: That's correct. I was going to
19 say other matters, but the other matters certainly
20 include tribal governance.

21 MR. GASKINS: Right.

22 THE COURT: Well, tribal is not exactly the
23 right word for it in this instance, but anyway. Now,
24 are there any other matters that we ought to address
25 while we're assembled?

1 MS. EMERSON: Your Honor, this is Ms.
2 Emerson.

3 THE COURT: Yes.

4 MS. EMERSON: And I accidently disconnected
5 myself earlier and later rejoined. I'd like you to
6 know that with regard to Issue 3?

7 THE COURT: Yes.

8 MS. EMERSON: The parties that I represent
9 which is one group, Francine Garreau, we would be in
10 the first category of descendants that are lineal
11 descendants of somebody on the 1886 census.

12 THE COURT: All right. That helps. Thank
13 you very much, Ms. Emerson.

14 MS. EMERSON: Thank you.

15 THE COURT: Anything else?

16 MR. FOSTER: This is Wood Foster in
17 Minneapolis. Your Honor, as a newcomer or new member
18 of the Court I'm wondering just about a simple
19 technical matter here. Just this morning for the
20 first time I received about 30 or 40 electronic
21 notices of filing, but they are not electronic filings
22 that I can look at, and I see that about half the
23 attorneys are receiving these electronically, and
24 about half are listed as not receiving them
25 electronically.

1 And I'm wondering if the Court is going to
2 put together a comprehensive service list or whether
3 the Court is contemplating moving this to electronic
4 filing in view of the large number of parties?

5 THE COURT: That was what I was going to
6 comment about after we addressed whether any party or
7 any applicant to be a party had any additional
8 matters.

9 MR. FOSTER: I apologize for --

10 THE COURT: No, no. That's fine. I'm glad
11 you raised it. Mr. Longstreth?

12 MR. LONGSTRETH: I just wanted to address
13 one issue which was just whether in your view the
14 stayed motions for partial summary judgment will
15 become unstayed automatically or we can await
16 direction from the Court on that?

17 THE COURT: Once we have sifted through the
18 pending motions, the party motions, then I think the
19 parties can confer and decide because we'll do our
20 best with the pending motions and not try to specify a
21 path. The Court might have views, but the parties
22 might have better views, so I'm a little reluctant
23 just to say at this point.

24 MR. LONGSTRETH: Okay. I had one other
25 issue which was just to clarify our understanding of

1 the John Doe procedure; we haven't responded to all of
2 the filings made under a John Doe status, but to date
3 the government has been provided under seal the real
4 true names of the John Doe Plaintiffs.

5 And it's our expectation that that would be
6 how we proceed, and I've sort of addressed that with
7 some of the Plaintiffs who have discussed the John Doe
8 issue with me, but wanted just to make clear to
9 everybody that that's our expectation, and if anyone
10 disagrees, we appreciate hearing from them.

11 THE COURT: All right. Thank you, Mr.
12 Longstreth, and on that point we have a protective
13 order in place, and if that protective order in the
14 view of any party or applicant to be a party needs to
15 be adjusted or amended, the Court would be happy to
16 entertain that.

17 MS. WALKER: Yes. Your Honor, this is Liz
18 Walker. On that -- what I wanted to find out today if
19 the protective order was now in place, and we were
20 under that.

21 I don't have any objection to, and I'm
22 having a little bit more trouble hearing Mr.
23 Longstreth, but if I understood what he was raising is
24 that at some point the government would need to see
25 the names which I've discussed with him which is fine.

1 We just wanted to keep it between the Court and the
2 government at some point when that might have be
3 verified, but not for all the other parties.

4 THE COURT: Well, exactly, and what you
5 ought to do is take a look at the protective order and
6 work out with Mr. Longstreth and Mr. Kaardal whether
7 any adjustments in your view should be made to that
8 protective order.

9 MS. WALKER: All right. I have not seen
10 that. I am getting some things from your offices
11 electronically, and I've got Mr. Kaardal's fax, but
12 I'm not receiving everything electronically. Most
13 things are coming to me in the mail, and I am on
14 Pacer, but I haven't been getting electronic notices.

15 THE COURT: Well, we did the best in working
16 with the clerk's office to get the docket up to date
17 as of this morning, but I don't know if we succeeded
18 in that effort. I would not stake my life on the
19 result, and I would not want to anyway, but we will
20 endeavor to not only get the docket up to date so that
21 people who have access to Pacer may examine the docket
22 entries.

23 We are not yet an electronic filing case.
24 To be honest about it, the Court wanted to wait until
25 we sorted through the party issues before making this

1 an electronic case, and I had in the back of my mind
2 that as soon as we addressed the party issues we would
3 make this an electronic case.

4 But before we do that, we would go over with
5 the clerk the state of the docket in terms of the
6 parties and counsel to make sure that it squares with
7 our records and with your submissions, and we would
8 anticipate a ruling in due course.

9 And we would anticipate after a ruling on
10 the various party motions that we will endeavor to get
11 a date when the clerk's office might convert this case
12 to an electronic case, and once we do that, they will
13 usually pick a date. Especially in a case like this,
14 they will usually pick a date several weeks further
15 from the time that is chosen.

16 They will issue notice to counsel. They
17 will give counsel a chance to be qualified, and then
18 we will hope to not only have at that point a listing
19 of parties, but a listing of counsel that is correct.

20 And if it's not correct, then we hope and
21 ask and request that you note any errors by an
22 appropriate filing with the Court, but that ought to
23 ease not only future filings, but it ought to ease
24 service because service would occur automatically. If
25 there's any objection to that method, it would be

1 helpful to hear it now.

2 MR. MOHRMAN: Your Honor?

3 THE COURT: Yes, Mr. Mohrman.

4 MR. MOHRMAN: By dealing with the parties,
5 you mean dealing with the intervention motions?

6 THE COURT: Yes. Well, also the whole set.
7 We have the Cermak motions, the amendments to your
8 complaint, the summons issues.

9 MR. MOHRMAN: Right. But you're not saying
10 to wait electronic filing until after we deal with
11 them when these parties are in the case whether they
12 should stay in as parties?

13 THE COURT: No.

14 MR. MOHRMAN: Okay.

15 THE COURT: No, when we deal with the
16 constellation of motions that we've addressed today,
17 then we expect that this case ought to be made
18 electronic for the convenience of everyone involved.

19 MR. MOHRMAN: Okay. It'd be wonderful. The
20 cases I'm involved in, electronic filing is great.
21 Works well.

22 THE COURT: Right. Because you don't have
23 service problems, and you don't have notice problems,
24 you aren't delayed in the mail. Now, is there anyone
25 participating on the telephone who thinks that that

1 would be a bad idea?

2 ALL: No.

3 THE COURT: All right. It might help us get
4 organized. Is there anything further?

5 MR. ZEPHIER: Your Honor? This is Robin
6 Zephier.

7 THE COURT: Yes?

8 MR. ZEPHIER: I just had a couple of
9 questions for the Court. What is the Court's
10 direction on the fact that we have just a small number
11 of individuals in a family group that were left off
12 our original filing? Would you suggest filing an
13 amended?

14 THE COURT: Mr. Montana had raised that and
15 Mr. Thompson had raised that. I think that what you
16 need to do is move to amend promptly your application
17 for intervention and your attached complaint and show
18 good cause why the adjustments are being made after
19 July 12.

20 MR. ZEPHIER: Okay. And one other thing,
21 Your Honor. I had a conversation with Mr. Longstreth
22 several weeks ago involving the government's documents
23 which were subject to the Privacy Act protection
24 order, and at that time since we were intending upon
25 intervening, he discussed the matter with the Agency

1 and they were reluctant to release any documents to
2 us.

3 But now since we are a part of this class
4 that has moved to intervene, I'd just like the Court's
5 direction on that whether or not we would be qualified
6 by acknowledging the Privacy Act protective order to
7 receive those documents from the government.

8 THE COURT: At this point, Mr. Zephier,
9 you're still representing a group of applicants for
10 intervention. Until you get to be a party in the
11 case, that probably is not a good idea, but I think
12 depending on whether or not the Court grants your
13 application for intervention, if you are granted
14 intervention, you might address that with a different
15 status with Mr. Longstreth, and you might get farther.
16 Mr. Montana?

17 MR. MONTANA: Yes, Your Honor. So
18 intervenors are not part of the class as of yet?

19 THE COURT: No. Well, there's not a class
20 unfortunately.

21 MR. MONTANA: So then that means that Mr.
22 Kaardal's clients are not part of the class either
23 because you have not set the elements or the standards
24 that we have to reach as Intervenors or Plaintiffs to
25 be part of the beneficiary class.

1 THE COURT: That's not necessarily so
2 because we have a distinction between those persons
3 who were identified on Mr. Kaardal's second amended
4 complaint. Those persons are parties. We have not
5 yet acted affirmatively to grant the revised third
6 amended complaint.

7 MR. MONTANA: But they're not determined to
8 be per se part of the beneficiary class because that
9 determination has not been made.

10 THE COURT: The determination as to whether
11 or not they're lineal descendants has not been made,
12 but for jurisdictional purposes, there is a sufficient
13 allegation that they are lineal descendants; that it
14 passes muster for purposes of Rule 12 and makes them
15 parties.

16 Now, I commend to your attention a case
17 called Fisher, 402 F.3d. I've forgotten the exact
18 page. It's a Federal Circuit case that deals with the
19 sufficiency of a complaint to basically provide the
20 Court with jurisdiction over a party. I have
21 jurisdiction over Mr. Kaardal's named Plaintiffs in
22 the second amended complaint.

23 MR. MONTANA: But not the third.

24 THE COURT: Not the third.

25 MR. MONTANA: So how long will we know

1 before -- taking under submission obviously whether or
2 not each one of our motions are going to be granted or
3 not?

4 THE COURT: That's right. And if I were to
5 grant let's say, Mr. Montana, your motion, then your
6 persons, your group, would be Plaintiff Intervenors,
7 and they would have party status in the case.

8 MR. MONTANA: Right.

9 THE COURT: The Court would have
10 jurisdiction over them.

11 MR. MONTANA: And they have privy to those
12 documents?

13 THE COURT: Well, that we would have to work
14 out. We might have to adjust the order that was
15 entered. We must maintain the Privacy Act protection.

16 MR. MONTANA: Thank you, Your Honor.

17 THE COURT: Does that help? Mr. Longstreth,
18 do you have any commentary?

19 MR. LONGSTRETH: No, Your Honor.

20 THE COURT: Mr. Kaardal?

21 MR. KAARDAL: Yes, just two notes about the
22 proposed intervenors. With respect to the stay issue
23 on the partial summary judgment we see many procedures
24 that need to occur before we make a motion to do that.
25 We don't want to rush things. The motions to

1 intervene need to be decided upon.

2 If so, the answers to the complaint in
3 intervention need to be filed, and then it seems at
4 some point after that that we would move to lift the
5 stay. On the John Doe question from Ms. Walker, I
6 just wanted to mention that there is the Privacy Act
7 protective order, but then there's an earlier one
8 regarding anonymous Plaintiffs, and so that's the one
9 to look for. Thank you.

10 THE COURT: Yes. Let's just clarify. There
11 is an order specifically directed toward anonymous
12 Plaintiffs, and that actually arose early in the case,
13 so we could find it on the docket, but you won't have
14 any trouble identifying that. One of the reasons the
15 Court put a fairly prompt schedule on briefing the
16 question of the amicus participation of Messrs.
17 Prescott and Goodthunder is that the Court doesn't
18 plan on taking forever to address these motions.

19 MS. WALKER: Your Honor, this is Liz Walker.
20 I had a question before we get off this subject, and
21 I seem to get it summarized at the end what you're
22 doing today, but I guess I had a little trouble
23 following the debate and argument around addressing
24 some of the issues about summoning the communities.

25 My impression was that part of Mr. Kaardal's

1 motions for summary judgment had been stayed, and are
2 going to be decided at a later time. Is that correct?

3 THE COURT: No.

4 MS. WALKER: Okay.

5 THE COURT: The summons issues are part and
6 parcel of the party issues, and will be addressed.

7 MS. WALKER: Okay. That's the part I was
8 having trouble following, and I wanted to make sure
9 where we were on that issue.

10 THE COURT: That's where we are.

11 MS. WALKER: So you've decided to summons
12 the communities?

13 THE COURT: No.

14 MS. WALKER: No? That's what I was
15 wondering, and I hated to interrupt you. Sometimes
16 the phone on my end is going in and out. I've
17 overseas, so I didn't want to interrupt the flow.

18 THE COURT: No. Let's just put it this way.
19 The motion to summons the two communities, that is not
20 the Lower Sioux, but Shakopee and Prairie Island is
21 part and parcel of the issues that we've argued today
22 and that will be decided in due course along with the
23 other party issues that we also addressed today.

24 MS. WALKER: Okay.

25 THE COURT: Let's see. Anything else? The

1 Court appreciates the patience of everyone. I had
2 anticipated this might take three hours. It took
3 three hours and 14 minutes, but I think everyone has
4 done quite well, and the Court commends all involved
5 especially with the number of persons affected and
6 interested in this particular case, and we hope that
7 that cooperation and consideration and courtesy,
8 indeed graciousness, continues.

9 With that, with a couple of addenda here for
10 future submissions, amendments of applications to
11 intervene and briefing of the motion on amicus
12 filings, these cases are submitted. We're in
13 adjournment.

14 THE CLERK: All rise.

15 (Whereupon, at 1:15 p.m., the hearing in the
16 above-entitled matter was concluded.)

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REPORTER'S CERTIFICATE

DOCKET NO.: 03-2684L
CASE TITLE: Wolfchild v. United States
HEARING DATE: July 18, 2006
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the United States Court of Federal Claims.

Date: July 18, 2006

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