

**LEGAL SERVICES CORPORATION**

**AUDIT AND APPROPRIATIONS COMMITTEE MEETING**

**December 4, 1993**

**6:56 p.m.**

**The Legal Services Corporation  
750 First Street, N.E.  
The Board Room, 11th Floor  
Washington, D.C.**

**Diversified Reporting Services, Inc.  
918 16TH STREET, N.W. SUITE 803  
WASHINGTON, D.C. 20006  
(202) 296-2929**



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**BOARD MEMBERS PRESENT:**

Maria L. Mercado, Chair  
Hulett H. Askew  
LaVeeda M. Battle  
John T. Broderick, Jr.  
John G. Brooks  
Douglas S. Eakeley  
W. William McCalpin  
Nancy H. Rogers  
Thomas F. Smegal, Jr.  
Ernestine P. Watlington  
Edna Fairbanks-Williams

**STAFF PRESENT:**

John P. O'Hara, President  
Emilia DiSanto, Vice President  
Patricia D. Batie, Secretary  
David Richardson, Treasurer & Comptroller  
Edouard Quatrevaux, Inspector General  
Victor Fortuno, General Counsel  
Ellen Smead, Director, Office of Program Services  
Suzanne Glasow

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1 (A chorus of ayes.)  
2 CHAIRMAN MERCADO: Opposed?  
3 (No response.)  
4 CHAIRMAN MERCADO: Abstention?  
5 (No response.)  
6 CHAIRMAN MERCADO: We'll see you in the morning.  
7 (Whereupon, at 8:34 p.m., the meeting was  
8 adjourned, to be reconvened at 9:30 a.m. on December 5,  
9 1993.)

10

\* \* \* \* \*

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## P R O C E E D I N G S

1  
2 CHAIRMAN MERCADO: Let me go ahead and call the  
3 meeting of the Audit and Appropriations Committee meeting to  
4 order, please. I'm Maria L. Mercado, and I want to thank the  
5 committee members for being here, and the other Board members  
6 who have been here all day long, and members in the audience,  
7 and staff for bearing with us. We do have a lot of business  
8 to take care of.

9 If there seems to be a lot of urgency to a lot of  
10 the areas that we have to cover, there is. My understanding  
11 is that we're probably nine months behind schedule on a lot  
12 of things that we have to deal with as far as the budget is  
13 concerned.

## A P P R O V A L O F T H E A G E N D A

14  
15 CHAIRMAN MERCADO: What I would like at this time  
16 is to entertain a motion to approve the agenda as submitted,  
17 unless there is any additions or alterations to the agenda.

## M O T I O N

18  
19 MR. SMEGAL: So moved.

20 MS. FAIRBANKS-WILLIAMS: Second. Oh, wait a  
21 minute, I can't do it. I'm not allowed.

22 MR. BRODERICK: I'll second it.

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1 CHAIRMAN MERCADO: All those in favor?

2 (A chorus of ayes.)

3 CHAIRMAN MERCADO: Opposed?

4 (No response.)

5 CHAIRMAN MERCADO: Abstention?

6 (No response.)

7 CHAIRMAN MERCADO: Motion carries.

8 APPROVAL OF THE MINUTES OF SEPTEMBER 9, 1993

9 CHAIRMAN MERCADO: The next item is the approval of  
10 the minutes of September 9, 1993, meeting.

11 M O T I O N

12 MR. EAKELEY: I move that the minutes be accepted  
13 rather than approved. That's the procedure we used in the  
14 last two committee meetings.

15 MR. SMEGAL: Second.

16 CHAIRMAN MERCADO: All those in favor?

17 (A chorus of ayes.)

18 CHAIRMAN MERCADO: Opposed?

19 (No response.)

20 CHAIRMAN MERCADO: Abstention?

21 (No response.)

22 CHAIRMAN MERCADO: Motion carries. Item 3 on the

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1 agenda, Consideration of Report on the Corporation's Fiscal  
2 Year 1993 Consolidated Operation Budget, Mr. David Richardson  
3 and Mr. Gerry Singsen will be addressing us on that issue.  
4 Mr. Richardson?

5 CONSIDERATION OF REPORT ON THE CORPORATION'S FISCAL YEAR 1993  
6 CONSOLIDATED OPERATION BUDGET

7 MR. RICHARDSON: For the record, my name is David  
8 Richardson. I'm the treasurer/comptroller of the  
9 Corporation. At your last meeting I presented to you a memo  
10 dated November 4th that presented the budget the way that the  
11 prior Board had passed it, as basically a cash basis budget.  
12 Since that time, there was some concern about that, and we  
13 talked about it at that meeting.

14 I have converted the cash basis budget to an  
15 accrual basis. We would have to do this for financial  
16 statement purposes anyway because we could not present a cash  
17 basis budget with our audited financial statement to comply  
18 with generally accepted accounting principles. It would have  
19 to be converted to an accrual basis.

20 In doing so, there's a couple of adjustments.  
21 Today, to help consolidate things, because I know that you've  
22 been given a great deal of materials, I have given you the

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1 November 4th budget and I have also given you the November  
2 23rd memo to Ms. Mercado. In between that, I have an  
3 analysis showing how we have adjusted from the cash basis  
4 down to an accrual basis.

5 Ms. Mercado, at your pleasure, should I --

6 CHAIRMAN MERCADO: I think it would be helpful for  
7 you to highlight it, specifically in the areas where there  
8 will be a difference because since the Board did get a cash  
9 analysis budget in November, if we could do some of the  
10 comparison, I think it would be real helpful.

11 MR. RICHARDSON: Do you want to present the budget,  
12 the revised budget through September, the amount of expenses,  
13 and then show how we designate the money?

14 CHAIRMAN MERCADO: Yes, please.

15 MR. RICHARDSON: Let me refer you to the memorandum  
16 of November 23rd, then. This presentation shows you, when  
17 you flip it over, the complete, as you would say, history of  
18 the delivery of legal assistance for the period of October 1,  
19 1993, through September 30th.

20 MR. BRODERICK: David, I'm sorry, what are we  
21 looking at; your November 4 memo?

22 MR. RICHARDSON: Yes.

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1 CHAIRMAN MERCADO: The 23rd.

2 MR. RICHARDSON: October 1992 through September of  
3 1993.

4 CHAIRMAN MERCADO: Oh, okay.

5 MR. BRODERICK: What handout should I be looking  
6 for?

7 MR. RICHARDSON: November 23rd.

8 CHAIRMAN MERCADO: There's a handout that he passed  
9 out just right before the meeting that should be stapled,  
10 beginning with a November 4, 1993, and it's got a couple of  
11 green dividers in it.

12 MR. BRODERICK: I only have the November 4 one.

13 CHAIRMAN MERCADO: It should be attached to it.  
14 Look underneath.

15 MR. BRODERICK: Thank you.

16 MR. RICHARDSON: Everybody have the document? What  
17 I do start with is the appropriation for the year. I'm going  
18 to read the captions across the top. If you have any  
19 questions, just stop me as we go along.

20 We start with the appropriation. Then we have the  
21 allocation of the 1992 carryover. Column 3 is the allocation  
22 of deferred rent incentive. The only areas that that will

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1 affect will be on pages further down, on page 4, because it  
2 deals with money that was allocated to management and  
3 administration. Then we have the revised budget.

4 Column 4 is the original budget that was adopted by  
5 the Board last December. We have a March revision where we  
6 moved money into a migrant line to provide money for an ADR  
7 project. Column 7 is the July revisions. We had set up a  
8 meritorious grant solicitation. The money that you see moved  
9 into, for instance, the Native American line, the \$5,453, was  
10 the small amount of money that was needed to complete that  
11 meritorious project; same thing with the special emergency.

12 We had money that was set aside for Hugo a few  
13 years ago. An insurance company paid the grantee that was in  
14 South Carolina. The money was earmarked for them in the  
15 meritorious. We have now moved this to the special emergency  
16 fund because that's the way the Board had characterized them  
17 before. They had characterized them as an emergency. So  
18 we've moved them there so that they will have the same type  
19 of characteristics.

20 As you look at Column 8, that appears on both  
21 pages. That way you see the wrap there. We have September  
22 revisions. In September, of course, we got a supplemental

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1 appropriation for \$300,000 for the special emergencies  
2 dealing with the midwest floods. Much of that money has been  
3 spent at this time. Then we have the revised FY 1993 budget.

4 So the budget that we are working with for the  
5 delivery of legal assistance shows that we have available  
6 funds of \$328,687,506. We've spent, contracted to date,  
7 \$327,812,170, with remaining funds of \$875,356.

8 MR. SMEGAL: You don't mean to date. You mean you  
9 spent through September 30, 1993.

10 MR. RICHARDSON: Through September 30th, yes, sir.  
11 Column 13 is nothing more of what we did to go ahead and  
12 adjust to the cash basis. Then, the accrual basis figure  
13 would be 12 plus 13 would equal 14, as far as the columns.  
14 Within the \$875,000 that I mentioned, we have designated  
15 funds. Those funds are designated by legislation. Those are  
16 the funds that are remaining for the month-to-month grantees.

17 When you do see a financial statement, the audited  
18 financial statements from the Corporation, this line would be  
19 showed as deferred revenue. Since we have not gotten the  
20 money, the auditors characterize it as deferred revenue.  
21 Therefore, it is not in our fund balance.

22 In Column 16 we have president and Board. I should

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1 have also put IG because the inspector general also  
2 designates funds for his particular budget. So when you look  
3 at 17, the remaining budget -- I should go back, the  
4 designated funds, \$805,742. The presidential or Board  
5 designated funds are \$49,070. The balance is the  
6 undesignated funds, \$20,524.

7           Instead of going through each line, I will go  
8 through the Roman numerals. If anybody would like to ask a  
9 question as we go, that way it would condense the  
10 presentation some. As we flip the page, we will look at  
11 Attachment A, page 2 of 4. This is a continuation.

12           Again, I will go to column 10. Revised budget for  
13 fiscal year 1993 shows that we have for the supportive  
14 delivery of legal assistance \$20,981,783. This, as you see,  
15 is the state support, national support, CLRA, Clearinghouse,  
16 and the training and technical assistance areas. Of that  
17 money, we spent \$20,907,466, which leaves a balance of  
18 \$74,317.

19           As you look over at Columns 15, there's none of  
20 that money for month-to-month funded grantees. Column 16 is  
21 designated \$74,315. That money has been set aside for an  
22 ongoing -- actually, two purposes. We have money that has

1 now gone to NERP that was in this line before.

2           There's also money that's set aside for a training  
3 that will happen in the next year that's being set up by the  
4 National Support Centers. The two dollars in the national  
5 support line carryover is just money that was not designated  
6 for a particular grantee.

7           As we flip to page 3 of 4, we will get to the  
8 substance of what has created some heartache and some concern  
9 for the Board. Our original appropriation was \$9,774,000.  
10 An allocation of the accrual basis carryover was \$364,865.

11           MR. BRODERICK: Just pause for a minute.

12           MR. RICHARDSON: Yes, sir.

13           MR. BRODERICK: Until last year, my understanding  
14 is that the Legal Services Corporation always kept its books  
15 of account on an accrual basis.

16           MR. RICHARDSON: That is correct, sir.

17           MR. BRODERICK: So we're talking about a change  
18 last year that you're about to lead up to.

19           MR. RICHARDSON: That's correct, sir.

20           MR. BRODERICK: Just to make sure everybody  
21 understands what's coming next.

22           MR. RICHARDSON: There is two allocations of the

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1 rent incentive in Column 3. One is for the amount of  
2 money --

3 MR. EAKELEY: Can you start by describing what that  
4 means? What does deferred rent incentive mean?

5 MR. RICHARDSON: A deferred rent incentive is the  
6 money that is made up of two elements. One is cash, money  
7 that was set aside through the construction agreement to pay  
8 for rent at 400 Virginia Avenue. It was \$343,000 of that.  
9 The remaining portion of that money is the --

10 We have to recognize rent expense on an equal basis  
11 each month based on a nine-year pay out of our rent. So what  
12 we did was we went into -- we set up how much we know we're  
13 going to pay for base rent and the escalation for a nine-year  
14 period.

15 MR. EAKELEY: It's a nine-year lease, so you say --

16 MR. RICHARDSON: One year free.

17 MR. EAKELEY: -- how much is it going to cost over  
18 the entire nine years, and then you start saving up for when  
19 you start paying.

20 MR. MCCALPIN: What's the \$760 --

21 MR. EAKELEY: Wait, we'll get to that, Bill. I  
22 just wanted to do this very slowly from the deferred rent

1 increase and just get the basic principles down so that we're  
2 all going together in the same direction at the same speed.

3 MR. RICHARDSON: Let me go ahead and answer his  
4 question because it is effective here. The \$763,540,  
5 \$343,000 of that is cash. It was money that was paid for the  
6 rent --

7 MR. McCALPIN: By whom to whom?

8 MR. RICHARDSON: It was paid to us by Trammell Crow  
9 using the construction allowance. It was paid to us to  
10 reimburse us for paying the rent at 400 Virginia Avenue.  
11 That money also has to be set aside as a rent incentive  
12 because that was used as an inducement to get us to move to  
13 this building.

14 So when we look at the nine-year period where I was  
15 talking about we had to -- we have pay rent for nine years,  
16 we divide that by 10 and then we recognize one-tenth of that  
17 nine-year rent during this year plus \$343,000 which they paid  
18 rent for at 400 Virginia Avenue. That's how the deferred  
19 rent incentive was put together.

20 Now, Mr. Eakeley is correct that in most cases in  
21 any business that I've been involved with, you do set that  
22 money aside. The Board, however, last year decided to go on

1 a cash budget because we were very short on money.

2 Yes, ma'am?

3 MS. FAIRBANKS-WILLIAMS: So were we paying rent in  
4 two places, here and there?

5 MR. RICHARDSON: That is correct.

6 MR. BRODERICK: What's the annual rent here?

7 MR. RICHARDSON: We're paying, basically, \$150,000  
8 a month, and we're paying \$114,000 at 400 Virginia Avenue.  
9 That is offset by \$23,000 of a HUD lease, and there's also  
10 \$9,000 for a lease for ESSI, which is a government  
11 contractor.

12 MR. BRODERICK: So, in a net basis on a monthly --  
13 what are we netting out? What are we paying, approximately?

14 MR. RICHARDSON: Eighty-two.

15 MR. BRODERICK: It's down to 82. It was at 115 for  
16 quite awhile. There weren't any subtenants.

17 MR. RICHARDSON: That's correct. Well, actually,  
18 HUD moved in July 15th, six weeks after we moved out.

19 CHAIRMAN MERCADO: And how much longer is our lease  
20 at Virginia Avenue?

21 MR. RICHARDSON: August 1995.

22 MR. EAKELEY: Why is the accrued rent broken out

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1 separately from management and administration? Does that  
2 suggest that it's a separately appropriated item? I thought  
3 management and administration was the line reference to what  
4 the Congress appropriates for this function.

5 MR. RICHARDSON: That's correct, and this is the  
6 way, actually, that the prior Board asked me to put it  
7 together to show them.

8 CHAIRMAN MERCADO: Because, in effect, we're  
9 charging to the budget twice for rent because if M&A is  
10 supposed to include the rent in it, and then we're doing a  
11 separate column for rent, then we're actually, in the budget,  
12 noting it twice. I mean, isn't that the net effect of what  
13 happens?

14 MR. RICHARDSON: That is correct because at the  
15 time when we set this up, we had October 1 through June 1,  
16 eight months of free rent in this fiscal year. The second  
17 amount, the accrued rent, is the estimate that we were  
18 working on at that time prior to the adjustment or accrual of  
19 this year's rent.

20 So, basically, what this is doing is saying okay,  
21 we are accruing this rent but we are not funding it. And  
22 that is, in essence, what happened. Plus, not funding this

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1 year's rent, we are using the money that should have been set  
2 aside in 1992 to use that to underwrite the 1993 budget.

3 MR. EAKELEY: Plus that cash amount.

4 MR. RICHARDSON: Plus the cash amount.

5 MR. EAKELEY: You pulled out what was there in  
6 cash. You didn't set aside what should have been set aside  
7 under generally accepted accounting principles for rent  
8 obligations that will continue for nine years. Instead, you  
9 spent that. You budgeted for the next year also based upon  
10 not setting aside the next year's rent. Is that about right?

11 We had a FY 1993 rent that should have been accrued  
12 and wasn't, we have a 1993 account that had cash in it that  
13 should have been accruing with the rent accruals that was  
14 spent, and we have a 1994 proposed budget initially that  
15 likewise did not accrue or set aside funds for the rent that  
16 we know we're going to have to pay. Is that fair so far?

17 MR. RICHARDSON: Well, the first few statements,  
18 yes; the second, no.

19 MR. EAKELEY: Actually, we don't have -- we're  
20 talking about the budget for this year now.

21 MR. RICHARDSON: Right, but the budget that is  
22 proposed before you, the \$12 million budget, includes the

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1 cash that we will need to pay for rent this year, which  
2 includes the money that we're going to have to put back into  
3 the liability.

4 MR. EAKELEY: Right. That's my main point in  
5 basically rephrasing the question.

6 MR. RICHARDSON: Right. I was looking before with  
7 Mr. Singesen as we were walking through this -- just to  
8 mention, our rent incentive at this time should be  
9 \$1,598,033. Now, by doing this, and what we have funded this  
10 year -- because starting June 1st we had to start recognizing  
11 when we were paying rent \$9,000 of the rent we were paying  
12 helped to underwrite the deferred rent incentive. At this  
13 point we have used, of the deferred rent incentive to fund  
14 our budget, \$1,540,000. So you're looking at a deficit there  
15 of -- that's the deficit you're looking at, actually.

16 MR. EAKELEY: Well, that's jumping ahead a little  
17 bit. We were stopped at Column 3 on, I guess, page 3 of 4 in  
18 Attachment A.

19 MR. RICHARDSON: So the revised budget that was  
20 passed --

21 MR. EAKELEY: I'm sorry, I've got one other  
22 question. I'm sorry, do you mind?

1 CHAIRMAN MERCADO: Go right ahead.

2 MR. EAKELEY: I'm still not sure I understand all  
3 of it, but by breaking accrued rent out of the management and  
4 administration line, was there an intention to spend beyond  
5 the amount appropriated for management and administration  
6 last year? Forget the intention.

7 By breaking accrued rent out as a separate line  
8 apart from management and administration, did that have the  
9 effect of masking the possible excess of expenditure over  
10 appropriation for management and administration?

11 MR. RICHARDSON: I understand what you're saying.  
12 I really can't answer the intention of the prior Board.

13 MR. EAKELEY: I know. That's an unfair question.

14 MR. RICHARDSON: In effect, yes, that is what has  
15 happened because when you look at it, the prior Board had an  
16 appropriation of \$9,774,000. There was basically \$365,000 in  
17 available carryover. So the budget should have been  
18 \$10,050,000 to have money available that converted the cash  
19 basis, the deferred rent, and used that money to underwrite  
20 the 1993 budget.

21 MR. EAKELEY: Or put it another way, the FY 1993  
22 appropriation level for management and administration was

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1 \$9,774,000.

2 MR. McCALPIN: Plus 364.

3 MR. EAKELEY: Plus 364. And what was actually  
4 spent was \$10,142,000 plus \$834,000 of rent, right?

5 MR. RICHARDSON: That's correct.

6 MR. EAKELEY: So it's \$10.9 instead of roughly 10,  
7 about a \$900,000 difference?

8 MR. RICHARDSON: That's correct, sir.

9 MR. EAKELEY: We're pausing on this so long because  
10 tomorrow the Board is going to be asked whether to reverse  
11 the decision made by the prior Board to go on to a cash  
12 basis, and indeed the Audit and Appropriations Committee, I  
13 think tonight, I know we're not -- I'll shut up after this, I  
14 promise, for at least five minutes.

15 But tonight, the Audit and Appropriations Committee  
16 has been asked to recommend to the Board what action to take  
17 with respect to this issue. Now, we're going to go from this  
18 issue to the consequences in terms of the budget, once we let  
19 David go from Column 3 to Column 17.

20 MR. RICHARDSON: Well, at this point, let me go  
21 ahead. One of the things that the Board did in passing this  
22 \$10.9 million budget was say you need to take the equivalent

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1 of six furlough days, which we had equated to \$150,000. When  
2 you look at Column 5, this is the breakdown of how we had to  
3 spread that to the different offices to get the six furlough  
4 days built into their budget. July --

5 CHAIRMAN MERCADO: Now, David, just a minute before  
6 we go any further. On Column 5, was that a budget revision  
7 that actually occurred in March or are we doing that now?

8 MR. RICHARDSON: That occurred in March. All this  
9 has occurred during last year. When you look at July, we  
10 were looking at -- there was a reorganization taking place.  
11 We were putting money aside for the annual conference. So  
12 these are the adjustments that were made through the July  
13 review to make that money available.

14 Column 8, again, we'll mask over. Column 9 is the  
15 budget revisions. This is now reversing the deferred rent  
16 incentive and putting it back to the monies, the actual cash  
17 and appropriations that was available. So, in doing so, we  
18 have now a revised budget of \$10,138,000. That is the figure  
19 that Mr. Eakeley was looking at before when you were looking  
20 at the \$9.974 plus 364, almost 365.

21 MR. McCALPIN: They actually did that reversal in  
22 September?

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1 MR. RICHARDSON: No, sir.

2 CHAIRMAN MERCADO: No. We're doing that as a  
3 result of our preliminary review of the budget for 1994.

4 MR. McCALPIN: Well, it's a September budget  
5 revision, is the heading on the column.

6 CHAIRMAN MERCADO: I understand that, and that  
7 wasn't there in the November 4th budget that you got. That  
8 came as a result of our visits, and our briefing on the  
9 proposed budget for 1994, and the budget mark for 1995, and  
10 looking at what the actual budget reflected and in the  
11 problem that we had in how the accounting was handled on the  
12 accrual of rent.

13 MR. McCALPIN: So, basically, what you're saying is  
14 that this, in effect, reverses the decision of last year's  
15 Board?

16 CHAIRMAN MERCADO: Yes, it does.

17 MR. EAKELEY: It's a conversion of going from the  
18 cash basis that they opted for back to an accrual basis.

19 MR. McCALPIN: Right.

20 MR. RICHARDSON: That is correct, sir.

21 CHAIRMAN MERCADO: And it will require formally --  
22 since the former Board voted to have a cash base budget, this

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1 Board has to also formally vote to go back to an accrual base  
2 budget.

3 MR. RICHARDSON: For the reporting purposes --

4 MR. MCCALPIN: Is this sort of a pro forma set of  
5 figures here or -- if nobody has approved it -- did the old  
6 Board approve this reversal?

7 MR. RICHARDSON: May I at this point?

8 CHAIRMAN MERCADO: Go ahead, David.

9 MR. RICHARDSON: I don't think the Board needs an  
10 action on this because they did pass a cash budget. The  
11 reason this was done is I've got to, as comptroller of the  
12 Corporation, convert the books and the reporting to financial  
13 statement purposes back to an accrual basis. I did this so  
14 that I could present it to our auditors to have it and review  
15 it, and also to present a statement change of fund balance,  
16 basically an income and expense statement to you, and also  
17 the balance sheet.

18 CHAIRMAN MERCADO: But I don't understand how we  
19 can make those presentations to our auditors if, in fact, the  
20 books reflect that we're on a cash basis unless we, at the  
21 same time, elect to go back to an accrual basis.

22 MR. RICHARDSON: It is irrelevant. You cannot

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1 present financial statements on the cash basis. You would  
2 get a qualified opinion. I explained that to the Board at  
3 the time when they adopted this concept, that it would have  
4 to, at the end of the year, be shown in financial statement  
5 purposes on an accrual basis.

6 MR. EAKELEY: But the significance again is that --

7 CHAIRMAN MERCADO: It does affect the 1994 budget.

8 MR. EAKELEY: That if we continue on a cash basis,  
9 then we have on that accounting basis something that suggests  
10 a carryover fund balance that is in the black and positive.  
11 If we were to go back to accruing for our rent obligations,  
12 which needs to be done for last year as well as going  
13 forward, we have a carryover deficit and a projection of  
14 extra accrued expenses for 1994. And that has a dramatic  
15 impact on this fiscal year for which no budget is approved  
16 but where we're almost 20 percent of the way into the year.  
17 So that's where it really gets into where do we go from here,  
18 very dramatically.

19 MR. SINGSEN: Madam Chairman?

20 CHAIRMAN MERCADO: Yes, Mr. Singesen?

21 MR. SINGSEN: For the record, my name is Gerry  
22 Singesen. Maybe I'll say more about my history here later,

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1 but I just wanted to offer one technical point now. That  
2 technical point is that what the Board decided last December  
3 wasn't to go on a cash basis. It was to report expenditures  
4 on the consolidated operating budget which is an expense  
5 budget on a cash basis.

6 But the books of this Corporation have continued to  
7 reflect an accrual basis of accounting. Your financial  
8 statement to Congress has to be on an accrual basis of  
9 accounting. So that what Mr. Richardson is trying to  
10 describe is that he has to make a final report to Congress on  
11 your expenditures and on your balances on an accrual basis,  
12 but that the management of the Corporation, through the  
13 Board, was conducted with a consolidated operating budget  
14 that was on a cash basis.

15 MR. McCALPIN: Are you, in effect, saying we've got  
16 two sets of books?

17 MR. SINGSEN: I'm saying you've been managed by a  
18 set of reports that were different than the underlying  
19 financial books of the organization.

20 MR. McCALPIN: Two sets of books.

21 MR. SMEGAL: The raw data is different than the  
22 final report, Bill. One is books and the other isn't. The

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1 other is just data.

2 MR. EAKELEY: What was the thinking -- if you had  
3 to go back to the Congress on an accrual basis accounting,  
4 wouldn't you be reporting a deficit?

5 MR. RICHARDSON: You certainly would be, and they  
6 were well aware of that, yes.

7 MR. EAKELEY: Well, what --

8 CHAIRMAN MERCADO: Congress was aware of it?

9 MR. RICHARDSON: The Board was.

10 MS. BATTLE: Help us to understand the wisdom.

11 MR. EAKELEY: Wouldn't that mean you would have  
12 spent more than was appropriate?

13 MR. RICHARDSON: That is true. On a cash basis, we  
14 would not have. But on an accrual basis, we would have.

15 MR. EAKELEY: But that's the accounting basis  
16 required by the Congress.

17 MR. RICHARDSON: That is correct.

18 MR. EAKELEY: And that's presumably the basis on  
19 which appropriations are also made? I mean, we're reporting  
20 back on how we're expending funds appropriated and confided  
21 in us, right?

22 MR. MCCALPIN: It seems to me they were

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1 anticipating our confirmation. (Laughter)

2 CHAIRMAN MERCADO: I'm sorry, Bill. I guess I  
3 should have made one of those disclaimers, you know. This  
4 Board did not approve this budget because we were not  
5 confirmed at the time. However, in looking at the budget for  
6 1994, and the staff has been very helpful, and I'm very  
7 grateful to you, Gerry Singsen also, for trying to educate us  
8 on how we can deal with the budget, the reality is that the  
9 staff is going to have to do some serious rethinking of what  
10 your budget is going to look like in 1994 because we cannot  
11 be going to Congress in deficit. There's going to be some  
12 hard choices. I say that to you because I hope somebody will  
13 put their thinking caps on. We will be coming back in the  
14 morning to work on some additional things. But it's  
15 unfortunate that the Board decided to do that because then it  
16 puts the legal services programs for the fiscal 1994 in a  
17 predicament. Yet, I think it's one that I think is better  
18 handled now rather than later, because sooner or later we're  
19 going to have to pay Peter, okay, whether we want to or not.  
20 So it's better that we deal with it.

21 We're going to try and get as much input from the  
22 staff to try and figure out how we can come up with a

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1 positive and not a negative budget fund balance at the end.  
2 I'll let you continue. Just sort of be thinking about that  
3 in the back of your mind.

4 MR. RICHARDSON: I understand that. There's a  
5 couple other things that you need to be aware of also. There  
6 was some discussion in regards to the law school clinics. We  
7 had \$1.2 million there and there was actually a proposal that  
8 went to Congress to basically not fund the law school  
9 clinics, and that I think it was \$760,000 would go to  
10 management and administration, with the balance going to the  
11 field programs.

12 That was also being worked at when this budget was  
13 passed, and, of course, it did not come to fruition. We went  
14 ahead and made the law school clinics as the awards as the  
15 appropriation indicated. That was denied. There was also  
16 some discuss of supplemental appropriation with members on  
17 the Hill. Of course, that did not come to fruition also.

18 So there was some thinking that there was a  
19 financial problem, and there was a couple of different ways  
20 that they were going about trying to cover it, but they did  
21 not come through as far as with additional appropriation for  
22 us.

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1 MR. McCALPIN: Where is that law school thing on  
2 these documents?

3 MR. RICHARDSON: Flip back to the first page, 1 of  
4 4. You'll see law school. It's under Roman numeral 1(c)1.

5 MR. McCALPIN: So there was an appropriation of  
6 \$1.254 million plus \$150.

7 MR. RICHARDSON: One hundred fifty dollars was the  
8 carryover from the prior year.

9 MR. McCALPIN: And what was spent?

10 MR. RICHARDSON: This year there was \$949,000 of  
11 that money was spent. The \$300,000 that is sitting there is  
12 designated for some law school clinics that were finalized in  
13 the paperwork at the end of September.

14 MR. EAKELEY: In any event, Column 9 on this  
15 basically reflects if you're going to go back to an accrual  
16 bookkeeping, if I can call it that, or to state the  
17 consolidated operating budget in accrual terms, that the  
18 adjustments are \$1.3 million; is that right? That's the  
19 total budget under 9?

20 MR. RICHARDSON: It is. The actual total is \$1.6  
21 million. The \$300,000 was the emergency grant. But for  
22 management and administration, it is \$1,623,000.

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1 MR. MCCALPIN: Where is that?

2 MR. RICHARDSON: Column 9. When Mr. Eakeley was  
3 speaking, I thought he was referring to the total.

4 MR. EAKELEY: Yes, I was.

5 MR. RICHARDSON: Which does show \$1.3.

6 MR. EAKELEY: But it's really that top line that is  
7 of immediate concern to us because that's what we inherit as  
8 a starting point for this year's management and  
9 administration.

10 MR. RICHARDSON: That's correct. If I may, it's as  
11 Mr. Singen had said, we're going back from the cash  
12 reporting of expenses to the accrual basis of reporting.  
13 This is done for financial statement and for the financial  
14 audit of the Corporation.

15 MR. EAKELEY: Just to repeat the obvious, the  
16 reason it's done that way, and recommended that way, and  
17 generally accepted accounting principles that way, is that  
18 because it's a more prudent, conservative way to maintain  
19 your books knowing what your liabilities are going to be?

20 MR. RICHARDSON: That is correct, sir.

21 MR. MCCALPIN: Are we going to get a qualified  
22 auditor's report for fiscal 1993 because of this?

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1 MR. RICHARDSON: No, sir, at least -- when this  
2 budget was passed, I called the audit partner and discussed  
3 it with them, and the magnitude of the deficit was not of  
4 concern to them. With a \$300-and-basically-60 million  
5 budget, we were showing a negative fund balance of \$450,000.  
6 It was not of concern to her, and she told me it would not  
7 need a qualified opinion.

8 MR. McCALPIN: What about the fact of overspending  
9 the appropriation for M&A? Will that qualify the report?

10 MR. RICHARDSON: They would not get into that  
11 particular line. They are looking at it, certainly, but I'm  
12 not sure that that would qualify the report.

13 MR. SINGSEN: May I make just one --

14 CHAIRMAN MERCADO: I'm sorry, Gerry, go ahead.

15 MR. SINGSEN: Two actually, one going back to the  
16 difference between -- one of the things that was always very  
17 puzzling to me when I worked with these budgets in the past  
18 is that unlike everything else you ever did, the numbers add  
19 up but not down, which is why the total you were looking for  
20 is at the top of that page not at the bottom of that page.  
21 But that's how these budgets are constructed. So, for  
22 whatever it's worth --

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1 I do want to make one comment with regard to Mr.  
2 McCalpin's question. The Corporation's appropriation from  
3 Congress comes with specified amounts for each line item.  
4 The entire amount is specified. There is not any money to  
5 move around with. The Congress makes clear each year in the  
6 conference report, each of the last several years, a strong  
7 desire for the expenditures to stay within the line.

8 So, if the audit firm hasn't yet considered the  
9 question whether an appropriations restriction was violated,  
10 I think that it will have to ask and to consider that  
11 question as part of its overall statement about internal  
12 control. I don't know at all what they will say at the end  
13 of that inquiry.

14 MR. BRODERICK: May I ask on that question? As  
15 this was occurring in the previous Board, what was being said  
16 about it by counsel and others on that topic? Was that issue  
17 discussed or raised?

18 MR. RICHARDSON: It was not. It was not a concern  
19 to the prior Board, and it was not discussed outside of the  
20 meetings where they were told that there would be a negative  
21 fund balance. What I'm hearing now is that -- Gerry and I  
22 had talked before, and so had Mr. Eakeley and I, Doug, spoke.

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1 There's a possibility we will get general counsel to look at  
2 that to see if there's indeed a violation of the  
3 appropriation.

4 MR. BRODERICK: My question was: Was general  
5 counsel looking at it as it was happening?

6 MR. RICHARDSON: He was not.

7 MR. BRODERICK: Who were the beneficiaries or what  
8 aspects of management were the beneficiaries of this deficit?

9 MR. EAKELEY: You mean who got the spending?

10 MR. RICHARDSON: Just the whole Corporation.

11 MR. BRODERICK: Where was it spent?

12 MR. RICHARDSON: When you look on page 3 of 4,  
13 under 3 you see the corporate management and administration  
14 and the expenses. The Board of Directors, for instance,  
15 spent \$182,000.

16 MR. BRODERICK: I'm sorry, what column should I be  
17 looking at?

18 MR. RICHARDSON: Column 11.

19 MS. ROGERS: What was that spent for?

20 MR. RICHARDSON: The \$182,000 was spent for the  
21 Board of Directors for the meetings such as this, the annual  
22 conference, and there was also some small expenses for an ✓

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1 outside counsel that they had hired. The executive office,  
2 you see there, spent \$579,000.

3 MR. BRODERICK: What is that spent on, is my  
4 question?

5 MR. RICHARDSON: What was this spent on? Okay. If  
6 we can turn back to the -- there's a complete breakdown with  
7 the first memo, the one that's dated November 4th. That  
8 gives you the personnel categories by office. I'm sorry,  
9 it's Schedule C of the November 4th memo, the last page of  
10 that memo. That shows you the categories down the left, as  
11 you're facing it, the left-hand column, the personnel  
12 compensation by office, temporary employee pay, the benefits,  
13 personnel benefits.

14 To say what office, it was multiple. It was the  
15 offices of the Corporation. If the Board had done much like  
16 this Board is saying, we're going to go on an accrual basis,  
17 we would had to have cut out of last year's budget \$1.6  
18 million.

19 MR. McCALPIN: All out of M&A?

20 MR. RICHARDSON: All out of M&A. So, instead of  
21 having basically what we termed an \$11.7 million budget, it  
22 would have been a \$10 million budget.

1 MR. EAKELEY: That's appropriate.

2 MR. RICHARDSON: So, basically, as someone  
3 suggested a moment ago, instead of the prior Board having a  
4 \$10 million budget, if you go to an accrual basis, it looks  
5 like you will have a \$10 million budget.

6 MR. EAKELEY: No, actually, I'm sorry. Instead of  
7 the last Board having a \$10 million budget, they spent \$11  
8 and we're going to have a \$9 million budget.

9 CHAIRMAN MERCADO: That's right.

10 MR. RICHARDSON: It will not be that much because  
11 we have \$655,000 that was designated in the cash basis.

12 MR. EAKELEY: We should get to that -- it's not  
13 quite as bad as --

14 CHAIRMAN MERCADO: But I'd like to know net effect.

15 MR. EAKELEY: Well, that's that Column 17 on 3 of  
16 4. Is that right? Is it the \$970,841 deficit coming in to  
17 this year?

18 MR. RICHARDSON: No, sir. If you look at page 4 of  
19 4, you'll see that the bottom line there, the total, in the  
20 undesignated is \$864,777. That's the total that is  
21 undesignated. Now part of that is for field programs and  
22 field operations. I should back up and say in doing so, yes,

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1 if you decide that we are going to go back to an accrual  
2 basis, we will have to subtract \$908,000 from the \$10,928,000  
3 that was appropriated.

4 MR. EAKELEY: That's on page 3 of 4 under Column 17  
5 under corporate management and grant administration, just so  
6 everybody gets there before we flip over the page.

7 MR. RICHARDSON: So you would still have a \$10  
8 million budget for this year, not a \$9 million, if you go  
9 back to an accrual basis.

10 MR. EAKELEY: But our appropriation is how much?

11 MR. RICHARDSON: \$10,928,000.

12 MR. EAKELEY: We're basically starting off with 10  
13 percent of our total year's appropriation spent, right?

14 MR. RICHARDSON: That's correct, sir.

15 CHAIRMAN MERCADO: Mr. Singesen, do you have some --

16  
17 MR. SINGSEN: I'm not sure when -- there's another  
18 problem.

19 MR. EAKELEY: An undesignated carryover?

20 MR. SINGSEN: The grant recoveries and interest  
21 income problem.

22 CHAIRMAN MERCADO: Will you go ahead and elaborate

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1 on that, Mr. Singsen?

2 MR. SINGSEN: Yes, although I can't be precise  
3 about the numbers. At the end of fiscal year 1992, there was  
4 approximately -- and, David, please correct these numbers  
5 because you're much more familiar with them than I am --  
6 approximately \$400,000 in funds that had not been allocated  
7 to the budget. This was about half money that was returned  
8 by programs because they had excess fund balances or because  
9 they were penalized for improper costs.

10 I can't tell you the breakdown between those kinds  
11 of categories. About half was interest that the Corporation  
12 earned on money in its bank accounts. It would write a grant  
13 check, put the money in the bank for the grant to be  
14 collected against. There would be a few days. It's like  
15 IOLTA. But these funds accrued to the Corporation's benefit,  
16 and there was a couple of hundred thousand dollars of that  
17 kind of money.

18 There is a legal question, which I think needs a  
19 proper interpretation, about precisely the appropriation  
20 restriction on appropriated funds for management and  
21 administration, and appropriated funds for basic field grants  
22 applies to funds that are put out in a grant and then

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1 returned under these conditions.

2 Does it return to the same fund or subfund, the  
3 basic field fund, the Native American fund, or the like, or  
4 does it return to some unallocated category from which it can  
5 be moved into management and administration? The Corporation  
6 generally, in the last several years, has brought the money  
7 back into the grant lines when it's been recovered from a  
8 basic field program or a Native American program.

9 However, this couple hundred thousand or so at the  
10 end of 1992 was combined with the calculations regarding the  
11 construction allowance, the construction expenses and the  
12 rent on this building. So it was brought into management and  
13 administration in the calculation of carryover into 1993.

14 In addition, there was a couple hundred thousand of  
15 interest income earned on a variety of funds. I have no idea  
16 which, but certainly some on grants and probably some on  
17 payroll accounts, and so on. It is another legal question  
18 whether interest earned in that way returns to the fund that  
19 provided the money in the bank that earned the interest or  
20 whether it goes into an undesignated you-can-use-it-for-  
21 anything category.

22 In your grants to legal services programs, you have

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1 a requirement in your audit guide that the interest remained  
2 designated as LSC interest and used with regard to  
3 restrictions on LSC funds. If you followed that practice,  
4 you would have to return the interest that you earned to the  
5 grant funds, if it was earned on grant funds.

6 In many other government programs, the contracts or  
7 grants specified that interest earned either be used for  
8 grant purposes or simply be returned to the government. So  
9 there is a legal question. I don't know the answer to it,  
10 but it is possible that that \$400,000 didn't belong in  
11 management and administration.

12 MR. SMEGAL: Gerry, with respect to the \$200,000 or  
13 whatever it was of interest, that's not last year's problem.  
14 That's been there all along. That happens every year.

15 MR. SINGSEN: Yes.

16 MR. SMEGAL: It is not a specific problem.

17 MR. SINGSEN: It is not only last year's problem,  
18 but I think in many other years the money in the other funds  
19 available category has been used for grant as opposed to  
20 management and administration purposes.

21 MR. EAKELEY: Can we just pause there because I  
22 think --

1 CHAIRMAN MERCADO: That's the difference.

2 MR. EAKELEY: That will have some considerable  
3 bearing on the legal issue. But, David, you were shaking  
4 your head.

5 MR. RICHARDSON: In the past, that has not been the  
6 case. For instance, in July, when we did our revisions and  
7 our nine-month plan, we provide that information to Congress.  
8 We have for six years. In that we do project interest and  
9 grant recoveries.

10 I understand what Mr. Singesen is saying, but we've  
11 actually had the conference reports come back and tell us  
12 that we expect you to use \$1.7 million. We expect you to use  
13 \$3.3 million in what we would term undesignated, which would  
14 include the grant recoveries and the interest to fund  
15 management and administration. That has gone on for years.

16 MR. SINGSEN: Was that done at the end of 1992?

17 MR. RICHARDSON: Yes, it was. Actually, it was  
18 done in August of 1992 in preparation for the 1993  
19 appropriation.

20 MR. EAKELEY: So the Congress, or at least the  
21 staff, have implicitly accepted, if not required, a bringing  
22 back into the M&A line of any carryover funds to reduce the

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1 need for new increased appropriation for the following year  
2 of M&A?

3 MR. RICHARDSON: I think I heard two questions.  
4 Are you saying Congress staff or our staff?

5 MR. EAKELEY: The congressional staff reviewing  
6 your budget submissions. You're saying Congress is aware and  
7 may have implicitly or explicitly approved whatever you call  
8 the process by which you take carryover funds and switch them  
9 into the management and administration line?

10 MR. RICHARDSON: Yes. Congress has made those  
11 funds available for the support of management and  
12 administration.

13 CHAIRMAN MERCADO: And, Doug, looking at the  
14 minutes, I read some of the minutes of the former Audit and  
15 Appropriation Committees. In looking at their minutes, they  
16 actually voted a particular item that it was a carryover. If  
17 it was a carryover from Native American, they voted to change  
18 it to management and administration. I mean, they would vote  
19 to change the category into a different category.

20 MR. RICHARDSON: That is correct.

21 MR. SMEGAL: In fact, there was a recent year when  
22 I was last on the Board where -- and my numbers may be

1 incorrect, but Senator Rudman was aware that there was \$5  
2 million in carryover and the Congress reduced the management  
3 and administration portion by that \$5 million. The  
4 Corporation was instructed to take that \$5 million and put it  
5 in management and administration. That's happened  
6 frequently. David is absolutely correct.

7 CHAIRMAN MERCADO: I know it's contrary to the  
8 regulation, but --

9 MR. SINGSEN: If I could just add, it certainly is  
10 not contrary to the power of Congress to regulate what it  
11 means when it says how to use the funds. So that if in the  
12 appropriation they allocate the carryover, there is no  
13 problem.

14 So that I think the only question that would be  
15 correct for the Board would be to get some documentation  
16 that, in fact, in the time period we're talking about, the  
17 Congress was shown a carryover estimate that included grant  
18 recoveries and interest income and setback, fine, use them.

19 And if that happened, I would not actually think  
20 there was a problem. There might be a very small technical  
21 problem if it was done in the report line which the  
22 appropriation had the restriction.

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1           CHAIRMAN MERCADO: Will we get this in a verbal  
2 format or did they actually send us little memos basically  
3 authorizing us to do funding that way?

4           MR. RICHARDSON: I think what you'll find, most of  
5 it is in the Senate report language.

6           MR. SINGSEN: But Mr. Richardson submits a  
7 document, if I understand it correctly, showing the projected  
8 carryover. It seems to me that that document would pretty  
9 well clear up what was being done.

10          MR. SMEGAL: But that's a legitimate concern of  
11 Gerry's, that if, in fact, that kind of language or report  
12 language is not there, then it's a different situation. It  
13 isn't the circumstance where Senator Rudman says in the  
14 report take the \$5 million. Gerry is talking about \$400,000  
15 here that may not have that kind of tracks.

16          CHAIRMAN MERCADO: Mr. Richardson, could you get  
17 copies of that language? I don't know if general counsel or  
18 you, whomever, can get that information for us.

19          MR. RICHARDSON: Certainly, sure can. As a matter  
20 of fact, we're referring to last year. I may have the -- I  
21 don't have the exact figure, but I think the Senate report  
22 said that management and administration should live with the

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1 budget of \$10,125,000 or 129. It was considerably lower than  
2 the amount that the Board did approve for a management and  
3 administration budget. They did that with the cash amount.

4 MR. EAKELEY: Well, assuming that Gerry's second  
5 concern is taken care of by the legislative history, or if  
6 it's not it's an order of magnitude, a \$400,000 additional  
7 starting point deficit for this year, this is just a prelude  
8 to the 1994 -- what is this -- is there a proposed budget  
9 for 1994 from the staff that reflects this starting point  
10 rather than the positive starting point that we were given  
11 less than a month ago?

12 MR. RICHARDSON: No. We still have a cash basis  
13 budget before you. That budget is \$12,060,000.

14 MR. McCALPIN: We're going to have a \$10 million  
15 budget if we go to accrual accounting?

16 MR. RICHARDSON: That is correct, sir.

17 MR. McCALPIN: We've got to cut \$2 million out.

18 MR. EAKELEY: Out of the proposed budget.

19 CHAIRMAN MERCADO: Yes.

20 MR. RICHARDSON: That's correct, sir.

21 CHAIRMAN MERCADO: That's why I mentioned a little  
22 bit earlier that I think we need our thinking caps on about

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1 things we're going to cut. We don't really want to be going  
2 into deficit.

3 MR. EAKELEY: Would the Chair entertain a motion to  
4 recommend to the full Board that the Corporation go back to  
5 the accrual method of accounting for its consolidated  
6 operating budget? Would that be an appropriate moment to  
7 deal with that or is that out of line right now?

8 CHAIRMAN MERCADO: I would think so. I know you  
9 said there probably wasn't a need for it, but I think for our  
10 --

11 MR. EAKELEY: This will be for the 1994 budget.

12 CHAIRMAN MERCADO: The 1994 budget.

13 MR. EAKELEY: Obviously that means that we have to  
14 go back and restate the 1993 budget so that we can deal with  
15 the 1994 budget apples and apples and oranges and oranges.

16 MR. RICHARDSON: That is correct.

17 MR. EAKELEY: If it's timely to do that, then I  
18 think that starts us talking about okay, now you've got \$2  
19 million less than you're projecting, and we're 20 percent of  
20 the way into the year. What do we do now?

21 MR. RICHARDSON: Absolutely. There is an urgency  
22 there because we are, as you said, 20 percent into the year.

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1 If we wait another month, we're a third into the year. Then  
2 if we try to cut \$2 million from a \$12 million budget in 75  
3 percent of the year, it's going to be very difficult to do.

4 CHAIRMAN MERCADO: My recommendation is that we go  
5 ahead and take care of those two items which is first, to  
6 recommend an accrual budget for 1994; and then secondly, to  
7 deal with the expenditures.

8 MS. BATTLE: What about reporting the 1993 budget  
9 on an accrual basis so your beginning of 1994 --

10 MR. EAKELEY: That's required.

11 CHAIRMAN MERCADO: That's required.

12 M O T I O N

13 MR. EAKELEY: I think implicit in the motion, or  
14 maybe I can restate it or maybe you could restate it for me,  
15 but I would move that the Audit and Appropriations Committee  
16 recommend to the full Board that the consolidated operating  
17 budget for the fiscal year 1994 be presented and approved on  
18 an accrual basis, and that the cash basis, consolidated  
19 operation budget of 1993 be restated so that we have the  
20 correct starting point for the budget proposal and analysis  
21 of 1994.

22 MR. RICHARDSON: The last attachment, the one that

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1 we just went through --

2 MR. EAKELEY: Wait, wait, hold on.

3 CHAIRMAN MERCADO: Is there a second to the motion?

4 MR. SMEGAL: Second.

5 MR. EAKELEY: Is that more or less adequately  
6 stated?

7 CHAIRMAN MERCADO: Tom Smegal seconds. Any  
8 discussion on the motion? David, did you have discussion on  
9 that?

10 MR. RICHARDSON: I was just going to say the  
11 last -- the memo that we just went through, the November  
12 23rd, is reporting that on an accrual basis. So what we are  
13 looking at is basically limiting the amount of money that is  
14 available for management and administration in 1994.  
15 Basically, you'll have a \$10,017,000 budget.

16 MR. EAKELEY: All right. But if we don't go back  
17 to an accrual, the more we delay an accruing, the larger the  
18 deficit is going to be next year and the year following,  
19 right?

20 MR. RICHARDSON: There's a couple ways that we  
21 could go about it. But yes, you are correct that it could  
22 happen.

1 MR. EAKELEY: First we have a motion. I just want  
2 to make sure that the motion was properly framed so that  
3 everyone understood it.

4 CHAIRMAN MERCADO: Is there any other discussion on  
5 the motion?

6 (No response.)

7 CHAIRMAN MERCADO: If I hear none, all those in  
8 favor?

9 (A chorus of ayes.)

10 CHAIRMAN MERCADO: Opposed?

11 (No response.)

12 CHAIRMAN MERCADO: Abstention?

13 (No response.)

14 CHAIRMAN MERCADO: Motion carries. Now to the next  
15 item which is this committee, recommending to the full Board,  
16 needs to make some recommendations on expenditures, current  
17 expenditures, because the 1994 budget has not been approved  
18 by the former Board or this Board, and we are 20 percent into  
19 the year. I would entertain any motions or recommendations  
20 on how we deal with those expenditures.

21 MS. BATTLE: I just have a question. Are the  
22 current expenditures meeting the budgetary marks that we've

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1 got for the period that we're already into the budget for  
2 this year? I mean, are we spending to the level?

3 MR. McCALPIN: We're spending at the \$12 million  
4 level.

5 MS. BATTLE: Are we spending at that \$12 million  
6 level?

7 MR. RICHARDSON: We're not spending at the \$12  
8 million level. It's in the middle. In October we spent, as  
9 I recall, \$800-and-I-think-it-was-60,000. I may be off a  
10 little bit, but that's the amount of money we've spent.  
11 Certainly that is over our \$10 million budget. So we will  
12 have to go back and revisit our spending and make some  
13 decisions and some cuts.

14 MR. EAKELEY: Is there something in the handouts  
15 that at least shows us your current -- what the most recent  
16 proposed 1994 budget is? Is that one of these green sheets?

17 MR. RICHARDSON: That's correct. When you look  
18 behind the green sheets, you will see that there is a budget  
19 proposed. It is a cash budget because that's the way the  
20 prior board had suggested that we would be operating. So we  
21 have developed basically what we would term a freeze budget,  
22 no new hires, no new initiatives.

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1           CHAIRMAN MERCADO: For this, it's the proposed  
2 Legal Services fiscal year 1994 consolidated operating --  
3 it's the very last piece of paper, underneath the last green  
4 divider.

5           MR. McCALPIN: Does it have a date of 11/18/94 in  
6 the upper right-hand corner?

7           CHAIRMAN MERCADO: No.

8           MR. EAKELEY: No. I think it's the two page, and  
9 it's the second page of the two-page -- 11/18/94.

10          CHAIRMAN MERCADO: Yes, it's a two-page, the last  
11 one. Are there extra copies of that, by any chance?

12          MR. SMEGAL: Madam Chair, are we going to talk  
13 about the one that says proposed in the upper left-hand  
14 corner?

15          CHAIRMAN MERCADO: Yes.

16          MR. SMEGAL: The bottom left-hand column says \$400  
17 million?

18          CHAIRMAN MERCADO: Yes. Then the accrual budget is  
19 right behind it.

20          MR. EAKELEY: What we're talking about is the  
21 management and administration budget for 1994, and that's the  
22 one that's set out in that 11/18/94. I see Bill's point.

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1           CHAIRMAN MERCADO: It's the second page of a two-  
2 page document. It has fiscal year budget --

3           MR. EAKELEY: That's the \$12 million budget.

4           CHAIRMAN MERCADO: The discussion of the deficit is  
5 primarily targeted in the management and administration  
6 section of the budget rather than the other categories of the  
7 budget, for the other Board members who haven't had an  
8 opportunity to look at all of these documents.

9           MR. SMEGAL: Right, but the basis of this document,  
10 as with the carryovers from 1993 and 1994 that we've just  
11 discussed, aren't really there.

12           CHAIRMAN MERCADO: This is a cash budget right  
13 here. This is cash. This is not accrual.

14           MR. EAKELEY: And basically what we'd have to do is  
15 come up with actually more than \$2 million in cuts because  
16 we've already spent two months worth of resources.

17           MR. RICHARDSON: That's correct. I was annualizing  
18 here. As I said, as I recall, it's about 860 we spent in  
19 October. That works out to a \$10.3 million budget. So we're  
20 not spending at a \$12 million clip.

21           CHAIRMAN MERCADO: That was my question.

22           MR. EAKELEY: So the implications for adjustments

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1 to current spending levels are much less radical than if you  
2 were spending at a \$12 million annual?

3 MR. SINGSEN: Just one small caution. Early month  
4 expenditures are never at the rate the late month  
5 expenditures are because a lot of expenditures don't get into  
6 the books that quickly. So there's some money that's not  
7 expensed yet that was, in fact, used.

8 CHAIRMAN MERCADO: In particular, I would think  
9 that because we have such a huge item within M&A that deals  
10 with a lot of consulting, I mean, people who are not on-  
11 board, year-round personnel, that that is an area that we  
12 ought to look at very closely on how that's going to be  
13 handled. I don't know how many contracts are committed.  
14 Maybe you can tell --

15 MS. BATTLE: It seems to me we're going to have to  
16 get that kind of detail on current expenses to be able to  
17 make an assessment as to how appropriate cuts could  
18 potentially be made.

19 MR. EAKELEY: Why don't we ask the president what  
20 he'd recommend, now that we've gotten ourselves -- assuming  
21 the Board accepts the recommendation of the committee, and we  
22 shoot ourselves in both feet, how would you propose

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1 addressing the necessary reduction in expenditures?

2 CHAIRMAN MERCADO: Tom has a question before he  
3 starts.

4 MR. SMEGAL: I'd be interested in the answer. But  
5 before the answer, can we define the playing field a little  
6 better? We've got a document that says proposed. It's got  
7 \$400 million in the lower left-hand corner. Of that \$400  
8 million, \$10.928 is management and administration. Then  
9 there is some --

10 MR. McCALPIN: 12.060.

11 MR. SMEGAL: No, no. Bill, start with me, please.  
12 Fiscal year 1994 appropriation levels, Column 1, of the \$400  
13 million, David has given us a document that using the same  
14 arithmetic relationship between all the numbers that were  
15 there with \$357 million, taking \$400 million to get this  
16 number. So you start with \$10.928 million.

17 Now, if I understand what we've been doing for the  
18 last half hour, when we go back to an accrual system, we have  
19 a negative coming in rather than a positive of \$907,841. So  
20 that budget number has to be reduced by 907,841. So we have  
21 roughly \$10,021,000. Now the question is: What are we going  
22 to do with it?

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1 MR. McCALPIN: You don't have the 782 carryover.

2 MR. SMEGAL: I know. I've taken it out. It  
3 doesn't exist, Bill. Columns 2 and 3 are nonexistent on an  
4 accrual system. In fact, on an accrual system, those numbers  
5 are not those positive numbers but a negative 907,841. So  
6 we're coming in -- Congress has given us \$10,928,000. The  
7 last Board overspent the prior year by 907,841. So we, in  
8 fact, have \$10,021,000 for management and administration.  
9 Now, Mr. O'Hara, what's the answer to the question?

10 MR. O'HARA: Well, actually, there's an  
11 intermediate question that LaVeeda asked that I think can be  
12 restated. That is, we've got a proposed budget spending  
13 level by function, but we don't have the current spending  
14 levels by function, which would --

15 MR. RICHARDSON: I certainly do have that. That  
16 was sent to you two or three weeks ago. I can run and get a  
17 copy of it, if you'd like, or have it in the morning.

18 MR. EAKELEY: Maybe in the morning. But why don't  
19 we go back to the president and the methodological question?

20 MS. BATTLE: Where and how do we make the cuts?

21 MR. O'HARA: Nothing like being in the hot seat.  
22 As the Board knows, we had a very difficult year last year.

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1 I think that my thinking right now is that we have to take a  
2 look at everything we do, including our monitoring operations  
3 and the use of consultants from outside the Corporation,  
4 because there is a great deal of money, as you can see from  
5 looking at this proposed budget, where that goes.

6 I'm guessing we're looking at some furlough days.  
7 I'm guessing we're looking at a continued freeze on hiring  
8 because there just isn't any money available, and possibly  
9 worse things. You'll have to give me a couple of days to  
10 work out where these figures are going to come from, but  
11 there will be some substantial cuts.

12 CHAIRMAN MERCADO: One of the things that we want  
13 to keep in mind is that in anything that we do, we want to  
14 keep the integrity of whatever program service that happens  
15 to be. But at the same time, realistically, and particularly  
16 in the consulting or contract, if those are not committed at  
17 this point, then we have to seriously look at how to pare  
18 that down.

19 MR. McCALPIN: Let me ask you a question. Does  
20 this page, the one with the 11/18/94, this one here, include  
21 compensation increases for this year?

22 MR. RICHARDSON: Yes, it does.

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1 MR. McCALPIN: Have they been affected yet?

2 MR. RICHARDSON: Some of them, not all. We  
3 evaluate employees on their hire date. So employees that  
4 were hired in whatever year between October 1 and now, yes,  
5 have been given increases. Anybody hired after January 1  
6 through September 30 have not been evaluated and raises have  
7 not been given.

8 MR. McCALPIN: So, if we were to put in a freeze,  
9 those who had a fortunate early hire date would have their  
10 increase and those who had a later hire date would not; is  
11 that correct?

12 MR. RICHARDSON: That is correct.

13 MR. EAKELEY: But it may be better than some  
14 alternatives, which are layoffs. The other advantage of the  
15 consultants -- I thought -- what I got out of the last  
16 session in part was that at least with respect to healthy  
17 programs or programs for which there is no particular reason  
18 to pay an on-site visit by consultants and travel expenses,  
19 that there wasn't much risk to the program if we were to  
20 stretch out those visits or indeed not commit to doing  
21 further on-site visits at this time, with the exception of  
22 emergencies and programs in trouble.

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1           But that one way to have an early, quick, but-  
2 relatively-painless-for-the-staff-here bite would be to say  
3 no new commitments for outside consultants and extra travel  
4 while we figure out what else to do to bring the budget into  
5 balance.

6           CHAIRMAN MERCADO: Well, I would think that we  
7 would want to have some kind of a time frame so that at least  
8 we can -- maybe like a three-month period of time, and then  
9 if it needs to be revisited at that point, hopefully Audit  
10 and Appropriations with staff can have a better sense of what  
11 our budget is going to be.

12           MR. EAKELEY: I think you'd want the input of the  
13 Provisions Committee also about what could be accomplished.

14           CHAIRMAN MERCADO: Yes.

15           MR. MCCALPIN: Let me ask another question.

16           CHAIRMAN MERCADO: What's your sense of this,  
17 Bucky? I know that I wasn't here for all of your meeting.  
18 What is your sense of the kind of work that needs to be done  
19 as to whether or not --

20           MR. ASKEW: Well, we met with staff over dinner to  
21 begin discussion of how we could effectuate some cost  
22 savings, and we're working on that now. We may have

1 something to present tomorrow on that, not tonight.

2 MR. BRODERICK: I think we ought to ask the  
3 Operations and Regulations Committee also to look at the  
4 divisions. We had some discussion this morning.

5 MS. BATTLE: We certainly did, and we talked about  
6 administration this morning and we talked about the fact that  
7 there have been several vacancies created, and that's why I  
8 want to get a true picture of where we are in terms of  
9 spending and where we might be able to make some assessments  
10 as well.

11 MR. BRODERICK: Is there a consensus here as to how  
12 much money it is we need to save?

13 CHAIRMAN MERCADO: Two; isn't it two?

14 MR. RICHARDSON: From the budget that you have in  
15 front of you, yes. We would go from a \$12 million budget  
16 down to basically a \$10 million budget.

17 MR. BRODERICK: Does the \$12 million budget on  
18 personnel include new hires?

19 MR. RICHARDSON: It does not.

20 MR. McCALPIN: Let me ask this question: How much  
21 of the space occupancy cost is fixed? Two million eight  
22 forty-nine is a very large portion if that's fixed in a \$10

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1 million budget. It's 28 percent of the budget.

2 MS. FAIRBANKS-WILLIAMS: Paying on two places,  
3 right?

4 MR. McCALPIN: Yes.

5 MR. RICHARDSON: Basically, all of that is fixed.

6 MR. McCALPIN: So we can't really affect any saving  
7 in that unless you can sublease more space in the other  
8 quarters?

9 MR. RICHARDSON: That is correct, sir.

10 CHAIRMAN MERCADO: So we have to look at other  
11 categories.

12 MR. SMEGAL: This is a total aside, but one of the  
13 things in one of Gerry's footnotes in an early document he  
14 sent to the A&A Committee was the concept of getting Congress  
15 to approve a different general accounting procedure for this  
16 accrued rent, not only for us but for our grantees. You made  
17 that point, I think, Gerry.

18 Certainly a large part of this problem is the cash  
19 basis that the prior Board used and then our going back to  
20 the accrual system. But if Gerry's footnote has any validity  
21 and if we go to Congress and get approval for that,  
22 apparently we could approve that ourselves from all of our

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1 grantees, if I read you correctly. This Board could take  
2 that action.

3 MR. SINGSEN: There are two ways that you could do  
4 it with regard to grantees. One I think would be kind of  
5 brute force on general accounting principles. The other  
6 would be to revise the fund balance regulation, which is the  
7 operating tool for carrying this principle out in field  
8 program fund balances. That's probably the much more  
9 sensible way to deal with it with regard to 300-and-some  
10 grantees.

11 Congress clearly has the power to let you off the  
12 hook with regard to the manner in which these funds were  
13 accounted for in several ways, including, simply, as they've  
14 done on other issues, saying you have this money. You can  
15 use it this way.

16 That does require a discussion with Congress which  
17 I think you'd want to consider in a broader context, the  
18 context of other things that you're going to be talking to  
19 Congress about in the next few months. But I certainly think  
20 it could be in the package if you wanted it there.

21 MR. SMEGAL: That's an aside. I have one more  
22 question, Doug, and then I'll let you get back to where you

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1 were. With respect to this accrued rental computation, is  
2 that money actually drawn down into the the Treasury and it  
3 comes over and you stick it in a rat hole?

4 MR. RICHARDSON: No, sir. This is non-money. This  
5 is expenses that we have to recognize that we did not have to  
6 put out money for, except \$343,000.

7 MR. SMEGAL: So we really don't draw down from the  
8 Treasury. So some year in the future we go and say hey, we  
9 put the money over there on the side there on that shelf, and  
10 now we want to come and get it. Is that the way it's going  
11 to work?

12 MR. RICHARDSON: No. I think it's in the reverse  
13 of the way you're thinking. It's expenses that we recognized  
14 that we did not have to draw the money out of the Treasury  
15 for.

16 MR. SMEGAL: That's what I thought I said.

17 MR. RICHARDSON: Next year when we do rent, we will  
18 pull \$150,000 a month. Ten thousand dollars of that would  
19 then go back and underwrite and put the money in there to  
20 satisfy this deferred rent incentive. It's a liability on  
21 our books at this point.

22 MR. SMEGAL: But somewhere along the way the

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1 landlord has got to get some rent. Now where is that going  
2 to come from?

3 MR. RICHARDSON: Monthly, when we pay them the  
4 \$150,000, basically \$140,000 of it will be expensed on an  
5 accrual basis. We're paying \$150,000, but \$10,000 of it goes  
6 then back to the deferred rent incentive.

7 MR. SMEGAL: As a debit against the deferred rent  
8 incentive?

9 MR. RICHARDSON: That's correct.

10 MR. SMEGAL: But where is this deferred rent  
11 incentive sitting all during this time? It's just a  
12 bookkeeping entry?

13 MR. RICHARDSON: That's correct.

14 MR. SMEGAL: That money doesn't exist. So the  
15 Treasury is going to come up with \$10,000 more.

16 MR. RICHARDSON: Over the nine-year period, yes,  
17 sir, \$10,000 more.

18 MR. SMEGAL: But the Congress has appropriated it  
19 already, has it not, but we haven't drawn it down?

20 MR. RICHARDSON: I think we're talking a couple of  
21 different terms here that may not coexist together. We have  
22 not pulled money out of the Treasury for the deferred rent

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1 incentive and put it in a bank.

2 MR. SMEGAL: Right, understood.

3 MR. RICHARDSON: It is only a negative in our  
4 general ledger system. So there's no money sitting in  
5 Treasury to fund the deferred rent incentive. We will pull  
6 basically \$10,000 a month out of the Treasury as we pay rent  
7 that will then go back in and fund this liability that we  
8 have on the books. It's like a payable. We will liquidate  
9 it \$10,000 a month.

10 MR. SMEGAL: But the money is going to come from  
11 the Treasury?

12 MR. RICHARDSON: That's correct.

13 MR. SMEGAL: It's not going to be in the then  
14 whatever fiscal year budget that we're working with. They're  
15 going to have to go back and look at something that says back  
16 in fiscal year 1993 you did this and now we're going to give  
17 you the money?

18 MR. RICHARDSON: That's correct.

19 MR. SMEGAL: All right, forget it. Thank you very  
20 much, David.

21 MR. EAKELEY: Now I think we need, by the time we  
22 leave here this weekend or Monday, I think tomorrow when

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1 we're in full Board session, we need to adopt a resolution  
2 authorizing a spending level that is commensurate with the  
3 revised accrual basis appropriation as adjusted with a  
4 carryover deficit.

5 I think between now and when we get to that point  
6 in our meeting tomorrow, we need to have some general,  
7 preferably more specific, sense of how it is we're going to  
8 either ratchet down spending or ask the staff to ratchet down  
9 spending and report back to us on an interim basis.

10 I don't think we can do much more on this issue  
11 tonight, but I would encourage the other two committees to  
12 talk about this. I see the inspector general had his hand  
13 up. We might want to solicit input from him right now since  
14 we're right on the point and we had asked him to look at it.  
15 Does that make sense?

16 CHAIRMAN MERCADO: Yes.

17 MR. QUATREVAUX: Thank you. There's lots of things  
18 I've heard I could comment on, but I think the most important  
19 at this point is that you've got a deficit that you  
20 recognize. That deficit includes long term liabilities. We  
21 don't think that there's an imperative to eliminate it by the  
22 end of fiscal year 1994. We've been working this project,

1 but we, unfortunately, are not prepared at this time to give  
2 you your answers. We'll go back and see what we can do and  
3 see what we can provide to you tomorrow. There are some  
4 other considerations that we do need to discuss, however.  
5 Thank you.

6 MR. EAKELEY: Does that mean don't touch your  
7 budget? (Laughter.)

8 MR. QUATREVAUX: That's the first thing.  
9 Seriously, we do need to discuss that. As you know, the  
10 president cannot do that for me.

11 MR. SMEGAL: Madam Chair, it seems to me what would  
12 be helpful, at least to this Board member, this 11/18/94 page  
13 that Bill McCalpin has referred us to several times, where  
14 now the bottom right-hand number is \$10,021,000 rather than  
15 \$12,060,000, corresponds quite closely -- that number  
16 corresponds quite closely to Column 11 of page 3 of 4 of  
17 Attachment A. It's the expenditures through September 30th  
18 fiscal year 1993 of \$10,142,392.

19 CHAIRMAN MERCADO: I need to catch up with my page.

20 MR. SMEGAL: If we're going to look at a budget for  
21 fiscal year 1994, it might be helpful to us to see where we,  
22 or this Corporation, spent a comparable amount of money in

1 fiscal year 1993. I'm sure there's a sheet that looks like  
2 this one here, which is the budget, which is the reality for  
3 the year before. It's within \$100,000 of it. That seems to  
4 be a document we might want to have in front of us.

5 MR. McCALPIN: Those were 9-month expenditures not  
6 12.

7 MR. SMEGAL: Those were 12.

8 MR. McCALPIN: Column 11 says expenses through --  
9 oh, September is 12 months, you're right. It's a fiscal  
10 year.

11 MR. SMEGAL: So, I mean, there's a freeze budget  
12 for you right there.

13 MR. RICHARDSON: Okay, but I need to clarify one  
14 thing. That is, without the rent being paid included  
15 there --

16 MS. ROGERS: Yes, because the No. 11 at the top is  
17 the total.

18 MR. SMEGAL: Okay, you're right.

19 MR. SINGSEN: At the top of your package of  
20 materials that had the green sheets in the middle, you had a  
21 copy of Mr. Richardson's November 4, 1993, memo which you had  
22 received previously as well. The last page of that, Tom, is

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1 the breakout by office within the Corporation and by category  
2 and the line items in the budget that you're talking about  
3 that adds up to the \$10,142,000.

4 MR. SMEGAL: There it is right there.

5 CHAIRMAN MERCADO: Attachment C?

6 MR. SINGSEN: Attachment C.

7 MR. SMEGAL: Column 13?

8 MR. SINGSEN: Right. You'll see that the total  
9 occupancy costs there are \$1,588,000. That's the number  
10 that's two low by the \$900,000.

11 MR. SMEGAL: Thank you.

12 MR. RICHARDSON: If I might add, it's not quite  
13 \$900,000 because we only recognize rent. There's operations  
14 that were not paid also, and that would also be added on top  
15 of it.

16 MR. SMEGAL: Okay, it's not quite that simple.

17 CHAIRMAN MERCADO: Anything else?

18 (No response.)

19 CHAIRMAN MERCADO: That was the easy part. Unless  
20 anyone has any other comments on Item 3 of the agenda, which  
21 is dealing with the 1993 consolidated operating budget, the  
22 carryover and the deferred rent incentive, did we want to go

1 ahead and deal with the resolution or do you want to deal  
2 with that in the morning?

3 MR. EAKELEY: I'd suggest the morning. I think  
4 that we could get some further -- we've been trying to ask  
5 staff during the day, but I think some reflection time and  
6 some comparison of notes time might be helpful. I think  
7 we're going to need, though, by the full Board meeting some  
8 wording of an appropriate resolution, but we can talk about  
9 that in the morning.

10 One other suggestion, Item 4 of --

11 CHAIRMAN MERCADO: Which page?

12 MR. EAKELEY: On the agenda. Item 5 was to be  
13 consideration of an 1995 budget mark. That's also on the  
14 agenda for the full Board meeting tomorrow. So I would  
15 propose we just fold that into -- I mean, we're sitting in  
16 full Board now, but we just leave that on for the agenda for  
17 the full Board and pass that for this committee.

18 CHAIRMAN MERCADO: I don't know if there are any  
19 members of the public that were going to comment on this.

20 MR. EAKELEY: I actually told them they could go  
21 home if they wanted to, but they may be here. I took the  
22 liberty.

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1           CHAIRMAN MERCADO: Just take note to address the  
2 full Board rather than addressing the committee. Basically,  
3 what that is dealing with, unless we have some further  
4 discussions on this Item 3, what we're going to do or what I  
5 would entertain a motion to do would be to recess the meeting  
6 of the Audit and Appropriations Committee to reconvene in the  
7 morning at 9:00, and we would go until 10:30 when the full  
8 Board meets. I would hope that we would have some more  
9 information, I think, to deal with the budget mark and also  
10 to deal with the 1994 budget.

11           MR. EAKELEY: We haven't heard from the inspector  
12 general on his budget, and I know that he would like to  
13 discuss that in Executive Session. Also, I don't know  
14 whether it was a request or a suggestion that he had more to  
15 say tomorrow. I don't know what the practice has been to  
16 deal with that, but obviously the inspector general's budget  
17 is part of the management and administration budget.

18           CHAIRMAN MERCADO: Well, we would be taking him out  
19 of order from the agenda because he's No. 7 on the agenda,  
20 and that's where he was going to talk to us about his budget,  
21 unless he feels that whatever decisions we make prior to his  
22 presentation -- I don't think that we're going to have the

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1 full recommendation from staff.

2 I anticipate that we're going to have another Audit  
3 and Appropriation Committee meeting before the annual Board  
4 meeting to deal with the prioritizing and recommendations on  
5 how to deal with this deficit. So I don't anticipate that we  
6 would have a finalized decision by tomorrow. Mr. Singesen?

7 MR. SINGSEN: Before you recess tonight, I have one  
8 small comment that I'd like to add to this which is quite  
9 different from everything else I've had to say tonight and  
10 what we've talked about. So, if this is a good time, it will  
11 take about a minute.

12 MR. EAKELEY: Will it make us feel better or worse?

13 MR. SINGSEN: It will.

14 MS. BATTLE: We need it, then.

15 MR. SINGSEN: This is a very interesting day.

16 Exactly 13 years ago the Audit and Appropriations Committee  
17 of the Board of the Legal Services Corporation met from 6 to  
18 9 at night in the Fairmont Hotel in New Orleans to consider  
19 the budget for that year and the next year.

20 Bill McCalpin chaired a meeting of this committee  
21 in the absence of the regular chair. At that meeting a  
22 budget mark was adopted which, when rounded to the nearest

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1 million dollars, was \$400 million, which we accomplished this  
2 year. In that budget mark was \$30 million for private  
3 attorney involvement for the first time. We're now spending  
4 \$40 to \$45 million.

5 The next day, the 5th, the day you will be meeting,  
6 tomorrow, the full Board adopted those proposals, not without  
7 considerable discussion, and then held a meeting with  
8 representatives of the bar and leadership in the Corporation  
9 which included Bucky, as well as Bill. Several other people  
10 in the room were certainly there for that meeting.

11 It was quite an important meeting with regard to  
12 the building of the relationship between the private bar and  
13 the legal services community. It was an initiative that Mr.  
14 McCalpin took a lead role in and that Dan Bradley, who many  
15 of us remember and cared for very deeply, put himself on the  
16 line for in order to say we needed to make this change.

17 I think the truth is our profession has changed as  
18 a result of that decision. That organized, institutionalized  
19 pro bono today has changed our whole profession. It dates  
20 back exactly 13 years to a meeting of this committee. So it  
21 just hit me this morning. I have a special memory about the  
22 dates because on the 5th, tomorrow, I met the woman who is

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1 now my wife.

2 CHAIRMAN MERCADO: I knew it was coming to  
3 something personal.

4 MR. ASKEW: What was the management and  
5 administration budget that year?

6 MR. SINGSEN: The management and administration  
7 budget for 1981 was \$21 million.

8 MR. SMEGAL: Madam Chair, there is one item, and  
9 we're right on schedule for it at 8:20, Item 10, I think  
10 there may be some people here who intended to make -- you've  
11 got a 10-minute item and maybe we could do it. It doesn't  
12 carry forward to tomorrow's Board meeting in any way. It's  
13 the consideration of the fiscal year 1995 funding for the  
14 U.S. Court of Veterans Appeals Grant.

15 CHAIRMAN MERCADO: Was he still here?

16 MR. SMEGAL: There were several people here, and I  
17 think it would be a courtesy to them maybe to take that item.

18 CHAIRMAN MERCADO: That's fine. That's why at the  
19 beginning of the agenda I asked whether there was any changes  
20 in the agenda. So I assumed that there wasn't, but we can do  
21 that if it's a consensus of the committee.

22 MR. SMEGAL: It's not a change. It's still No. 10

1 at 8:20. (Laughter)

2 CHAIRMAN MERCADO: We'll move it up before Items 4  
3 through 10. What's your pleasure?

4 MR. SMEGAL: I'd like to hear from them.

5 CHAIRMAN MERCADO: How many members are here?

6 MR. BRODERICK: I don't have a problem with that.

7 MR. EAKELEY: Is anyone here --

8 MR. SMEGAL: Yes, Ellen is here and so is Suzanne.

9 CHAIRMAN MERCADO: Okay, that will be fine. See,  
10 somebody was not awake when I asked whether there was any  
11 change in the agenda.

12 CONSIDERATION OF FISCAL YEAR 1995 FUNDING FOR THE  
13 U.S. COURT OF VETERANS APPEALS GRANT

14 MS. SMEAD: Good evening. For the record again, my  
15 name is Ellen Smead. I'm director of the Office of Program  
16 Services. The Veterans Court pro bono project has been a  
17 very successful project over the past year and a half. The  
18 money goes to the Veterans Court. Part of that is funneled  
19 through to the Corporation to administer the program. The  
20 Court received \$790,000 to continue that project into 1994.

21 In the conference report that accompanied that  
22 appropriation, there was mention of in 1995 the possibility

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1 of the Corporation paying for half of the program. As I  
2 understand it from our counsel, there may be some legal  
3 issues involved in that.

4 MS. GLASOW: Basically, I have provided this Board,  
5 it was sent out to you, a memorandum giving the status and  
6 history of this program. There are attachments to that. The  
7 very last attachment, which is Exhibit 5, just sets out some  
8 concerns about the new funding scheme. These concerns can be  
9 cured with properly worded legislation.

10 So, basically, then, it gets to a policy issue for  
11 this Board's consideration as to whether they are interested  
12 in adopting that type of funding scheme. This year all the  
13 money is again appropriated to the U.S. Court of Veterans  
14 Appeals with LSC administering the program. This conference  
15 report language envisions that for the next fiscal year there  
16 will be a 50-50 split which means two different congressional  
17 committees will be funding this program.

18 Then, for the next year it envisions that all of  
19 the funding will come to LSC. That raises questions as to  
20 whether it would then be subject to restrictions in our act,  
21 our appropriations act and our regulations. With properly  
22 worded legislation, it would not be. Right now it is not

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1 subject to any of those restrictions. It's a separate little  
2 program that's very specific and limited.

3 The policy and legal issues are that nobody can buy  
4 in a future Congress, so it's a matter of really deciding  
5 whether this Board is interested in working with two  
6 different congressional committees, for instance, for one  
7 fiscal year and then with our congressional committee for the  
8 next fiscal year, and be assured that the funding would be  
9 there.

10 So those are the issues and they are all set out  
11 for you to look at more thoroughly. I would like to  
12 introduce James Caldwell who is from the United States Court  
13 of Veterans Appeal. He has been the liaison for the Court to  
14 the Corporation for this project. I have been legal counsel  
15 for the Corporation for this project since its inception.

16 MR. CALDWELL: For the record, my name is James  
17 Caldwell. I hadn't planned on saying anything so I'll keep  
18 it very, very brief because I know you all want to get out of  
19 here. Basically, I would echo what Ellen said. The program  
20 is historic from the standpoint that we've gotten involved in  
21 this project. A number of veteran service organizations are  
22 working very closely together to make the program a success.

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1           From our perspective, at least as far -- I know  
2 what the Board is considering right now is the funding issue  
3 as presented. The Court tentatively agreed with the  
4 Corporation to explore the feasibility of this funding scheme  
5 for the pro bono program. We fully understand the need for  
6 the Board to decide what it's going to do regarding its  
7 approach to that program based on the view of how best to  
8 utilize the resources of the Corporation.

9           We're hopeful that the Board will find a way to  
10 fund the program as described. The Court looks forward to  
11 working with the Board on that issue. It's important for the  
12 success of the program that the LSC and the Board continue to  
13 be involved with the program. We're very hopeful as we come  
14 into this new period, and we look forward to working with  
15 you.

16           CHAIRMAN MERCADO: I just had sort of a logistical  
17 question. Does the Veterans Court of Appeals, does it only  
18 handle low income people?

19           MR. CALDWELL: The program has somewhat more  
20 liberal criteria as far as determining low income. But the  
21 idea behind the program is to handle or set up representation  
22 or establish representation for veterans who cannot otherwise

1 afford it.

2 CHAIRMAN MERCADO: What's the percentage of low  
3 income veterans that are represented by the Court?

4 MR. CALDWELL: We haven't really maintained  
5 statistics in that regard, at least thus far, so I couldn't  
6 really answer that at this stage of the game.

7 MR. McCALPIN: Is there a possibility for the  
8 recovery of contingent fees as well in these matters?

9 MR. CALDWELL: Just recently we had legislation  
10 passed which made EGA in effect for the Court cases.

11 MR. SMEGAL: Funding cannot be used for attorney's  
12 fees. I'm a little confused by that.

13 MR. CALDWELL: That's correct.

14 MR. SMEGAL: Does that mean none of the funding is  
15 used to reimburse lawyers in any sense who are representing  
16 veterans before the Court?

17 MS. GLASOW: The whole idea of the program was to  
18 set up a pro bono program, to recruit attorneys would do pro  
19 bono work. We do have some B grants where, in essence, a  
20 staff attorney type of person is funded to handle some more  
21 complex cases. But mostly it's done by pro bono attorneys  
22 who are recruited.

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1 MR. SMEGAL: So these are private attorneys who are  
2 volunteering, and the 950,000 in the first year and the  
3 790,000 in the second year are expended on administration  
4 training for any of these lawyers? Is that where it's going?

5 MS. GLASOW: There's recruitment, screening,  
6 training, and referral to the pro bono attorneys and, of  
7 course, monitoring and follow up.

8 MR. SMEGAL: So there are some staff people  
9 somewhere who are salaried to do these things? I mean, how  
10 does the money get used? Are there people who get paid on a  
11 full-time basis to recruit and train?

12 MR. CALDWELL: Well, there are several  
13 organizations that have received grants to do this.

14 MR. SMEGAL: I saw that. For example, what would  
15 each of them do with the money?

16 MR. CALDWELL: Well, the veteran's consortium,  
17 which is composed of four organizations -- the American  
18 Legion, the Disabled American Veterans, the Paralyzed  
19 Veterans of America, and the National Veterans Legal Services  
20 Corporation -- have taken on the task of providing a  
21 screening component which screens court cases for assignment  
22 to pro bono attorneys and also the B grant attorneys that

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1 Suzanne described.

2 They have staff positions that do that. They  
3 receive a certain amount of money to operate that screening  
4 component. Then there is the education component and the  
5 outreach component, both of which are primarily handled by  
6 the National Veterans Legal Services Project. They have  
7 several part-time people in and out that run those two  
8 programs. David Adlestone right now serves as the director  
9 of that effort.

10 So the grant monies defray some salary expenses, at  
11 least on those three aspects. Right now the National  
12 Veterans Legal Services Project and the Paralyzed Veterans of  
13 America are running the one B grant program that has staff  
14 attorneys or staff people working to provide representation.  
15 They are paid on a salary basis.

16 MR. SMEGAL: And the role of this Corporation is  
17 that Congress appropriates the money. Well, actually, your  
18 Court goes in, asks Congress for the money as part of your  
19 budget, and the budget is approved with the restriction that  
20 the money comes through this Corporation. Why does it have  
21 to do that?

22 MR. CALDWELL: Well, the money is appropriated to

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1 the Court and then the Legal Services Corporation receives  
2 that money and acts as administrator.

3 MR. SMEGAL: No, I understand that. I'm saying why  
4 is that step necessary? Why couldn't this money be sent  
5 directly to these programs now that they're established, now  
6 that they're operating? Obviously, you've gone from 950 to  
7 790 so there's not as much need now that the conduits are, in  
8 a sense, developed. The reason I ask is I understand we end  
9 up charging you some money to administrate it. Some of the  
10 funds are used --

11 MR. CALDWELL: The administration of the program  
12 takes on, I think, primary importance from the standpoint  
13 that the veterans organizations historically, while they're  
14 working for veterans, to the benefit of veterans, they  
15 generally have not worked together before.

16 There are a number of very sensitive sorts of  
17 things that have to be worked through which the Court cannot,  
18 because of the nature of what it does, get involved in  
19 itself. Therefore, it has to be one step removed from the  
20 whole process, has to have an administrator that will take  
21 care of those kinds of sensitive problems in order for this  
22 thing to work. Fortunately, at least for us, we've had the

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1 LSC designated as that administrator because we've had, I  
2 think, a very successful year, year and a half, with the  
3 program.

4 MR. SMEGAL: So our role is sort of to act as a  
5 buffer between the actual entities that are providing this  
6 service to veterans and the funding source.

7 MR. CALDWELL: Yes.

8 MR. SMEGAL: We're sort of the valve or the faucet  
9 to which it goes.

10 MR. CALDWELL: Yes.

11 MR. SMEGAL: We don't do any monitoring, we don't  
12 do any --

13 MR. CALDWELL: Yes, we do do monitoring. Well, in  
14 a lot of ways the program itself is not subject to LSC  
15 regulations. It is very important that someone experienced  
16 with grant making, with monitoring grants of this type, have  
17 the control in hand on the whole process. That's where we're  
18 fortunate in working with you.

19 MS. FAIRBANKS-WILLIAMS: The question I had was:  
20 Is this self-sustaining or are we kicking in money to do this  
21 extra work in fiscal management and so on and so forth?

22 MR. CALDWELL: There is money designated for

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1 administration, at least thus far. Each year there has been  
2 money in the process designated for administration which the  
3 LSC could draw upon. I don't anticipate that we would change  
4 that scenario, at least as long as the pilot program exists.  
5 I'd emphasize it is a pilot program.

6 CHAIRMAN MERCADO: Any other questions?

7 (No response.)

8 CHAIRMAN MERCADO: Thank you.

9 MR. SMEGAL: Madam Chair, you don't intend to take  
10 any action?

11 CHAIRMAN MERCADO: No, because we still need to  
12 look at our whole budget situation before we even look at  
13 your issue. Thank you.

14 MS. BATTLE: I'm not a member, but can I move to  
15 adjourn? (Laughter)

16 CHAIRMAN MERCADO: I would entertain a motion to  
17 recess until the morning. I think 9:30 is now the time of  
18 consensus; is that right?

19 M O T I O N

20 A PARTICIPANT: So moved.

21 A PARTICIPANT: Second.

22 CHAIRMAN MERCADO: All in favor?

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1 (A chorus of ayes.)  
2 CHAIRMAN MERCADO: Opposed?  
3 (No response.)  
4 CHAIRMAN MERCADO: Abstention?  
5 (No response.)  
6 CHAIRMAN MERCADO: We'll see you in the morning.  
7 (Whereupon, at 8:34 p.m., the meeting was  
8 adjourned, to be reconvened at 9:30 a.m. on December 5,  
9 1993.)

10

\* \* \* \* \*

