



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20543

THIS IS THE END OF MUR # 1872

Date Filmed 5/7/84 Camera No. --- 2

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Fund to Keep America #1)	
Frank Trotta, Jr., as treasurer)	MUR 1872
)	
Lewis E. Lehrman)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of October 8, 1985, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 1872:

1. Find no probable cause to believe that the Fund to Keep America #1 and Frank Trotta, Jr., as treasurer, violated 2 U.S.C. § 434(b).
2. Find no probable cause to believe that Lewis E. Lehrman violated 2 U.S.C. § 441a(a)(1)(C).
3. Find no probable cause to believe that the Fund to Keep America #1 and Frank Trotta, Jr., as treasurer, violated 2 U.S.C. § 441a(f).
4. Approve the letters attached to the General Counsel's report dated October 1, 1985.
5. Close the file.

Commissioners Aikens, Elliott, Josefiak, McDonald, and McGarry voted affirmatively for the decision. Commissioner Harris was not present.

Attest:

Oct 8, 1985
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

36040360417



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 11, 1985

Frank Trotta, Jr., Esquire
24 North Avenue
New Rochelle, New York 10805

Re: MUR 1872
Fund to Keep America #1
Frank Trotta, Jr., as treasurer

Dear Mr. Trotta:

This is to advise you that after an investigation was conducted, the Commission concluded on October 8, 1985, that there is no probable cause to believe that the Fund to Keep America #1 and you, as treasurer, violated the Act. Accordingly the file in this matter, numbered MUR 1872, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within 10 days.

If you have any questions, contact Jonathan Levin, the attorney assigned to handle this matter, at (202) 523-4000.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles N. Steele".

Charles N. Steele
General Counsel

95040360418



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 11, 1985

C. Michael Deese, Esquire
Webster, Chamberlain & Bean
1747 Pennsylvania Avenue, N.W.
Suite 1000
Washington, D.C. 20006

Re: MUR 1872
Lewis E. Lehrman

Dear Mr. Deese:

This is to advise you that after an investigation was conducted, the Commission concluded on October 8, 1985, that there is no probable cause to believe that your client, Lewis E. Lehrman, violated the Act. Accordingly the file in this matter, numbered MUR 1872, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within 10 days.

If you have any questions, contact Jonathan Levin, the attorney assigned to handle this matter, at (202) 523-4000.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles N. Steele".

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

C. Michael Deese, Esquire
Webster, Chamberlain & Bean
1747 Pennsylvania Avenue, N.W.
Suite 1000
Washington, D.C. 20006

Re: MUR 1872
Lewis E. Lehrman

Dear Mr. Deese:

This is to advise you that after an investigation was conducted, the Commission concluded on , 1985, that there is no probable cause to believe that your client, Lewis E. Lehrman, violated the Act. Accordingly the file in this matter, numbered MUR 1872, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within 10 days.

If you have any questions, contact Jonathan Levin, the attorney assigned to handle this matter, at (202)523-4000.

Sincerely,

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Frank Trotta, Jr., Esquire
24 North Avenue
New Rochelle, New York 10805

Re: MUR 1872
Fund to Keep America #1
Frank Trotta, Jr., as treasurer

Dear Mr. Trotta:

This is to advise you that after an investigation was conducted, the Commission concluded on , 1985, that there is no probable cause to believe that the Fund to Keep America #1 and you, as treasurer, violated the Act. Accordingly the file in this matter, numbered MUR 1872, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within 10 days.

If you have any questions, contact Jonathan Levin, the attorney assigned to handle this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

JS
10/9/85

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *l.d.*
DATE: October 2, 1985
SUBJECT: MUR 1872 - General Counsel's Report

The attached is submitted as an Agenda document
for the Commission Meeting of October 8, 1985
Open Session _____
Closed Session XX

CIRCULATIONS		DISTRIBUTION	
48 Hour Tally Vote	[]	Compliance	[XX]
Sensitive	[]	Audit Matters	[]
Non-Sensitive	[]	Litigation	[]
24 Hour No Objection	[]	Closed MUR Letters	[]
Sensitive	[]	Status Sheets	[]
Non-Sensitive	[]	Advisory Opinions	[]
Information	[]	Other (see distribution below)	[]
Sensitive	[]		
Non-Sensitive	[]		
Other	[XX]		

SENSITIVE

CIRCULATE ON BLUE PAPER

ON AGENDA 10-8-85

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SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

EXECUTIVE SESSION

OCT 8 1985

In the Matter of)	
)	
Fund to Keep America #1)	MUR 1872
Frank Trotta, Jr., as treasurer)	
)	
Lewis E. Lehrman)	

OCT 8 1985
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 FEDERAL ELECTION COMMISSION
 EXECUTIVE SESSION

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter involves the possible failure by the Fund to Keep America #1 ("the Committee") to disclose fully the administrative costs provided by Lewis E. Lehrman, its landlord, and possible contributions by Mr. Lehrman to the Committee in excess of the limits of 2 U.S.C. § 441a(a)(1)(C).

The 1983 Mid-Year Report of the Fund to Keep America #1, a non-connected political committee, disclosed \$47,256.75 in total disbursements but only itemized \$4,971 in administrative costs. These were for contributions for payroll services from Lewis E. Lehrman. The Committee's 1983 Year End Report disclosed disbursements of \$30,843 with no disbursements for administrative expenses.

In response to Requests for Additional Information ("RFAI") from the Reports Analysis Division ("RAD"), the Committee's treasurer stated that more administrative expenses were not listed because such expenses were provided for in an "exchange agreement" between the Committee and its landlord. The agreement provided the landlord with a full ownership interest in the Committee's "mailing lists in return for free administrative services and space."

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In response to another RFAI containing questions as to the details of the exchange, the Committee's counsel provided further information as to the nature of the exchange, the value of the space rented, and the value of the landlord's interest in the lists and other Committee assets. This information raised further questions.

On January 8, 1985, the Commission found reason to believe that the Committee and Timothy S. Carey, as its treasurer,^{1/} violated 2 U.S.C. § 434(b) for an alleged failure to disclose fully the administrative costs provided by Mr. Lehrman and 2 U.S.C. § 441a(f) for alleged receipt of excessive contributions from Mr. Lehrman. The Commission also found reason to believe that Mr. Lehrman violated 2 U.S.C. § 441a(a)(1)(C) for allegedly making excessive contributions to the Committee. In addition, the Commission approved subpoenas to be sent to the Committee and to Mr. Lehrman pertaining to the exchange agreement and the valuation of items in the agreement.

Counsel for the Committee and its treasurer and counsel for Mr. Lehrman sent replies during February, March, and April of 1985. On August 5, 1985, this Office sent briefs recommending findings of no probable cause to believe that the Committee and Mr. Carey, as treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f) and that Mr. Lehrman violated 2 U.S.C. § 441a(f). Neither counsel has sent a reply brief.

^{1/} On August 15, 1983 the Commission received a letter designating Frank Trotta, Jr., as the new treasurer.

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II. LEGAL ANALYSIS

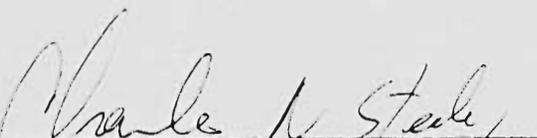
Since no responses to the General Counsel's Briefs were submitted to this Office, the General Counsel refers the Commission to its briefs, dated August 14, 1985, for analysis of this matter.

III. RECOMMENDATIONS

1. Find no probable cause to believe that the Fund to Keep America #1 and Frank Trotta, Jr., as treasurer, violated 2 U.S.C. § 434(b).
2. Find no probable cause to believe that Lewis E. Lehrman violated 2 U.S.C. § 441a(a)(1)(C).
3. Find no probable cause to believe that the Fund to Keep America #1 and Frank Trotta, Jr., as treasurer, violated 2 U.S.C. § 441a(f).
4. Approve the attached letters.
5. Close the file.

25040560425
Date

10/1/85


Charles N. Steele
General Counsel

Attachments

1. Proposed letter to Frank Trotta, Jr., counsel for the Committee.
2. Proposed letter to C. Michael Deese, counsel for Mr. Lehrman.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Frank Trotta, Jr., Esquire
24 North Avenue
New Rochelle, New York 10805

Re: MUR 1872
Fund to Keep America #1
Frank Trotta, Jr., as treasurer

Dear Mr. Trotta:

This is to advise you that after an investigation was conducted, the Commission concluded on , 1985, that there is no probable cause to believe that the Fund to Keep America #1 and you, as treasurer, violated the Act. Accordingly the file in this matter, numbered MUR 1872, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within 10 days.

If you have any questions, contact Jonathan Levin, the attorney assigned to handle this matter, at (202)523-4000.

Sincerely,

Charles N. Steele
General Counsel

Attachment 1

35040360426



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

C. Michael Deese, Esquire
Webster, Chamberlain & Bean
1747 Pennsylvania Avenue, N.W.
Suite 1000
Washington, D.C. 20006

Re: MUR 1872
Lewis E. Lehrman

Dear Mr. Deese:

This is to advise you that after an investigation was conducted, the Commission concluded on , 1985, that there is no probable cause to believe that your client, Lewis E. Lehrman, violated the Act. Accordingly the file in this matter, numbered MUR 1872, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within 10 days.

If you have any questions, contact Jonathan Levin, the attorney assigned to handle this matter, at (202)523-4000.

Sincerely,

Charles N. Steele
General Counsel

Attachment 2

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 15, 1985

C. Michael Deese, Esquire
Webster, Chamberlain & Bean
1747 Pennsylvania Avenue, N.W.
Suite 1000
Washington, D.C. 20006

RE: MUR 1872
Lewis E. Lehrman

Dear Mr. Deese:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on January 8, 1985, found reason to believe that your client had violated 2 U.S.C. § 441a(a)(1)(C), a provision of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

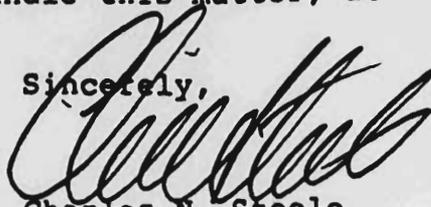
Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your client's position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

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Letter to C. Michael Deese
Page 2

Should you have any questions, please contact Jonathan Levin, the attorney assigned to handle this matter, at (202) 523-4000.

Sincerely,



Charles N. Steele
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Lewis E. Lehrman

)
)
)

MUR 1872

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter involves an allegation that Lewis E. Lehrman made contributions to the Fund to Keep America #1 ("the Committee") in excess of the limits of 2 U.S.C. § 441a(a)(1)(C).

The 1983 Mid-Year Report of the Fund to Keep America #1, a non-connected political committee, disclosed \$47,256.75 in total disbursements but only itemized \$4,971 in administrative costs. These were for contributions for payroll services from Mr. Lehrman. The Committee's 1983 Year End Report disclosed disbursements of \$30,843 with no disbursements for administrative expenses.

The Committee failed to respond to a first RFAI sent on April 11, 1984, but responded shortly after receiving a second sent on May 3. The Committee treasurer responded that the reports "have reflected all expenditures made," and that the reason more administrative expenses are not listed is that such expenses are provided for in an "exchange agreement" between the Committee and its landlord. This agreement provides the landlord with a full ownership interest in the Committee's "mailing lists in return for free administrative services and space."

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Another RFAI inquiring as to the exchange agreement was sent on June 6, 1984. A second RFAI making the same inquiry was sent on June 28, 1984. A response was received from the Committee's counsel on July 3, 1984, stating that he was having the answers to RAD's questions researched. On July 17, RAD received a response from the Committee's counsel.

In answer to a question as to the "normal and usual cost of renting space" at the office's location, counsel revealed that the cost for the rental space at 641 Lexington Avenue on the 25th floor is \$21.296 per square foot per year, that the Committee uses 138 square feet, and that, therefore, the monthly rent was \$244.90. In response to a question as to the fair market value and the manner in which the figure was derived (including the number of contributions and the price of the list per thousand names), counsel responded that the list contains approximately 17,000 names, that the list is rented only to "selected bidders" of similar political attitudes, and that the value of the list may differ at any given point. In response to a query as to the "amount of income generated in 1983 and the specifics" of the rental agreements, counsel stated that

[i]n 1983, no direct mail appeal was sent by our Committee to the entire mailing list. However, in 1983, a portion of the list (i.e., all contributors over a certain "giving history" threshold) was used for a direct mail event-solicitation which generated \$108,721.00 in income as reported in our filings in your office.

He further elaborated on the "barter agreement" between the landlord and the Committee, stating that the Committee foregoes

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all payment for rent or "overhead expenses" in return for "an unconditional and permanent proprietary interest in all its mailing, contributor and volunteer lists, records, files, computer tapes, and all other pertinent information." Counsel also indicated that there is no agreement providing for additional payment if the value of the list depreciates.

On January 8, 1985, the Commission found reason to believe Mr. Lehrman violated 2 U.S.C. § 441a(a)(1)(C) for making allegedly excessive contributions to the Committee. The Commission also approved a subpoena to be sent to Mr. Lehrman with questions pertaining to the exchange agreement and the valuation of items in the agreement.

On February 22, 1985, counsel for Mr. Lehrman responded to the reason to believe notification. On this date, this Office also received correspondence from counsel for the Committee. Both responses enclosed a copy of an agreement signed by Mr. Lehrman and the Committee treasurer granting Mr. Lehrman an "unconditional permanent proprietary interest" in the Committee's "lists, records, files, computer tapes and all other pertinent information relating thereto" in return for payment for administrative costs provided by Mr. Lehrman. This agreement, was signed on March 9, 1984. According to counsel for Mr. Lehrman, an unwritten agreement to this effect existed in 1983.

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The Committee treasurer also explained the rental rate for the space used by the Committee. The treasurer explained that the rental figure was determined by prorating the monthly rental charge for the space taken by the Committee's desk and files "as it related to the total leased space of 5,500 square feet (i.e., 138 square feet is approximately 2.5% of 5,500 square feet) and annualizing that figure of 2.5% of the monthly rent." With an annual rent of \$90,750 for the total leased space, the rate per square foot is approximately \$16.50. The higher figure of \$21,296 "may represent some utility charges and/or an inflation or cost of living or tax adjustment imposed upon the leasee (sic) of the entire space in question, (i.e. imposed upon Fund's 'landlord')." The treasurer also stated that the \$4,971 in in-kind payroll services paid by Mr. Lehrman was not contributed as part of the barter agreement.

Mr. Lehrman's response sets out more specifically the values involved in the exchange. He states that the Committee occupied the rental space from April to June, 1983, i.e., three months, and shared the space with two other entities, occupying "at most, fifty percent of that 138 square feet." Based on this, Mr. Lehrman determined that the Committee received \$367.36 in rental value from him over the three-month period. Mr. Lehrman states that, for the remaining months of the year, the Committee did not use the space, but Mr. Lehrman's employees answered "occasional telephone calls to the Committee." Mr. Lehrman estimated the telephone answering and mail collection services provided from

April to December, 1983, at \$900, using a "maximum estimated market value" of \$100 per month. Mr. Lehrman adds the in-kind payroll services, which he claims totalled \$4,941 (not \$4,971) to reach a total of \$6,208.36 as the total value of the benefit from him to the Committee.

With reference to the value of the list, Mr. Lehrman states that he is "not in a position to quantify the value" of the 17,000 name list in 1983 but states that a minimum value of the "customary one-time rental rate" should be placed on the list. This rate was \$80 per thousand or \$1,360 for the entire list. Subtracting this figure from the \$6,208.26 figure, Mr. Lehrman computes his 1983 contribution as \$4,848.38, under the \$5,000 limit. In a supplemental response, Mr. Lehrman states that, although he did not use the list for fundraising in 1983 and is therefore unable to report that

[he] raised a specific sum of money in 1983 by reason of having owned the list, [he] would submit that, for valuation purposes, a contributor list and its accompanying information have a fair market value at the time of their acquisition, irrespective of the results which may or may not be achieved when that information is ultimately used in fundraising activities.

II. LEGAL ANALYSIS

Section 441a(a)(1)(C) of Title 2 provides that no person shall make contributions to any political committee, other than a candidate's authorized political committee or a national political party committee, which, in the aggregate, exceed \$5,000 in any calendar year. Section 441a(f) prohibits knowing

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acceptance of contributions in violation of the provisions of § 441a. If the exchange involved a net benefit to the Committee of \$5,000 or under, then no violation occurred. The key to resolving this issue is the determination of the value of Mr. Lehrman's interest in the mailing list in 1983.

Mr. Lehrman reports that he did not use the list in 1983 but wishes to establish a minimum value of the list at \$1,360. This appears reasonable from two standpoints. First, in its responses to RAD, the Committee, which also has an ownership interest in the list, claims that it received \$108,721 in contributions during 1983 by using a portion of the list. Secondly, Mr. Lehrman is correct in defining the list as an asset. The rental rate placed on it, i.e., \$80 per thousand names, is entirely within the reasonable standards of the mailing list industry. Furthermore, Mr. Lehrman was receiving more than a leasehold interest in the list. He was receiving an ownership interest in the entirety of the list with the right to use the list whenever he wanted.

The figures submitted by Mr. Lehrman as to the benefit received by the Committee appear to be reasonably derived. When \$1,360 is subtracted from this total, Mr. Lehrman's contribution total remains under \$5,000.

Based on the foregoing analysis, the General Counsel recommends that the Commission find no probable cause to believe that Lewis E. Lehrman violated 2 U.S.C. § 441a(a)(1)(C).

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III. RECOMMENDATIONS

1. Find no probable cause to believe that Lewis E. Lehrman violated 2 U.S.C. § 441a(a)(1)(C).

12 August 1985
Date

By:



Charles N. Steele
General Counsel

36040560436



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 15, 1985

Frank Trotta, Jr., Esquire
24 North Avenue
New Rochelle, New York 10805

RE: MUR 1872
Fund to Keep America #1
Timothy S. Carey, as treasurer

Dear Mr. Trotta:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on January 8, 1985, found reason to believe that your clients had violated 2 U.S.C. §§ 441a(f) and 434(b), provisions of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

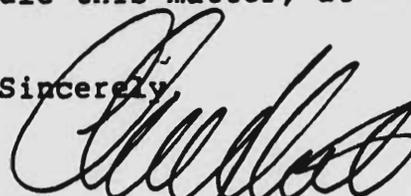
Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your client's position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

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Letter to Frank Trotta, Jr.
Page 2

Should you have any questions, please contact Jonathan Levin, the attorney assigned to handle this matter, at (202) 523-4000.

Sincerely,



Charles N. Steele
General Counsel

Enclosure
Brief

86040760478

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Fund to Keep America #1) MUR 1872
Timothy S. Carey, as treasurer)

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter involves the possible failure by the Fund to Keep America #1 ("the Committee") to disclose fully the administrative costs provided by Lewis E. Lehrman, its landlord, and possible contributions by Mr. Lehrman to the Committee in excess of the limits of 2 U.S.C. § 441a(a)(1)(C).

The 1983 Mid-Year Report of the Fund to Keep America #1, a non-connected political committee, disclosed \$47,256.75 in total disbursements but only itemized \$4,971 in administrative costs. These were for contributions for payroll services from Lewis E. Lehrman. The Committee's 1983 Year End Report disclosed disbursements of \$30,843 with no disbursements for administrative expenses.

The Committee failed to respond to a first RFAI sent on April 11, 1984, but responded shortly after receiving a second sent on May 3. The Committee treasurer responded that the reports "have reflected all expenditures made," and that the reason more administrative expenses are not listed is that such expenses are provided for in an "exchange agreement" between the Committee and its landlord. This agreement provides the landlord with a full ownership interest in the Committee's "mailing lists in return for free administrative services and space."

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In answer to a question as to the "normal and usual cost of renting space" at the office's location, counsel revealed that the cost for the rental space at 641 Lexington Avenue on the 25th floor is \$21.296 per square foot per year, that the Committee uses 138 square feet, and that, therefore, the monthly rent was \$244.90. In response to a question as to the fair market value and the manner in which the figure was derived (including the number of contributions and the price of the list per thousand names), counsel responded that the list contains approximately 17,000 names, that the list is rented only to "selected bidders" of similar political attitudes, and that the value of the list may differ at any given point. In response to a query as to the "amount of income generated in 1983 and the specifics" of the rental agreements, counsel stated that

[i]n 1983, no direct mail appeal was sent by our Committee to the entire mailing list. However, in 1983, a portion of the list (i.e., all contributors over a certain "giving history" threshold) was used for a direct mail event-solicitation which generated \$108,721.00 in income as reported in our filings in your office.

He further elaborated on the "barter agreement" between the landlord and the Committee, stating that the Committee foregoes

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all payment for rent or "overhead expenses" in return for "an unconditional and permanent proprietary interest in all its mailing, contributor and volunteer lists, records, files, computer tapes, and all other pertinent information." Counsel also indicated that there is no agreement providing for additional payment if the value of the list depreciates.

On January 8, 1985, the Commission found reason to believe that the Committee and Mr. Carey, as its treasurer, violated 2 U.S.C. § 434(b) for an alleged failure to disclose fully the administrative costs provided by Mr. Lehrman and 2 U.S.C. § 441a(f) for alleged receipt of excessive contributions from Mr. Lehrman. The Commission also approved a subpoena to be sent to the Committee with questions pertaining to the exchange agreement and the valuation of items in the agreement.

On February 22, 1985, counsel for the Committee responded to the reason to believe notification. On that date, this Office also received correspondence from counsel for Mr. Lehrman. Both responses enclosed a copy of an agreement signed by Mr. Lehrman and Mr. Carey granting Mr. Lehrman an "unconditional permanent proprietary interest" in the Committee's "lists, records, files, computer tapes and all other pertinent information relating thereto" in return for payment for administrative costs provided by Mr. Lehrman. This agreement, was signed on March 9, 1984. According to counsel for Mr. Lehrman, an unwritten agreement to this effect existed in 1983.

36040500441

The Committee treasurer also explained the rental rate for the space used by the Committee. The treasurer explained that the rental figure was determined by prorating the monthly rental charge for the space taken by the Committee's desk and files "as it related to the total leased space of 5,500 square feet (i.e., 138 square feet is approximately 2.5% of 5,500 square feet) and annualizing that figure of 2.5% of the monthly rent." With an annual rent of \$90,750 for the total leased space, the rate per square foot is approximately \$16.50. The higher figure of \$21,296 "may represent some utility charges and/or an inflation or cost of living or tax adjustment imposed upon the leasee (sic) of the entire space in question, (i.e. imposed upon Fund's 'landlord')." The treasurer also stated that the \$4,971 in in-kind payroll services paid by Mr. Lehrman was not contributed as part of the barter agreement.

Mr. Lehrman's response sets out more specifically the values involved in the exchange. He states that the Committee occupied the rental space from April to June, 1983, i.e., three months, and shared the space with two other entities, occupying "at most, fifty percent of that 138 square feet." Based on this, Mr. Lehrman determined that the Committee received \$367.36 in rental value from him over the three-month period. Mr. Lehrman states that, for the remaining months of the year, the Committee did not use the space, but Mr. Lehrman's employees answered "occasional telephone calls to the Committee." Mr. Lehrman estimated the telephone answering and mail collection services provided from

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April to December, 1983, at \$900, using a "maximum estimated market value" of \$100 per month. Mr. Lehrman adds the in-kind payroll services, which he claims totalled \$4,941 (not \$4,971) to reach a total of \$6,208.36 as the total value of the benefit from him to the Committee.

With reference to the value of the list, Mr. Lehrman states that he is "not in a position to quantify the value" of the 17,000 name list in 1983 but states that a minimum value of the "customary one-time rental rate" should be placed on the list. This rate was \$80 per thousand or \$1,360 for the entire list. Subtracting this figure from the \$6,208.26 figure, Mr. Lehrman computes his 1983 contribution as \$4,848.38, under the \$5,000 limit. In a supplemental response, Mr. Lehrman states that, although he did not use the list for fundraising in 1983 and is therefore unable to report that

[he] raised a specific sum of money in 1983 by reason of having owned the list, [he] would submit that, for valuation purposes, a contributor list and its accompanying information have a fair market value at the time of their acquisition, irrespective of the results which may or may not be achieved when that information is ultimately used in fundraising activities.

At this Office's request, counsel for the Committee submitted a supplemental response as to why the Committee was not obligated under 2 U.S.C. § 434(b) to report the details of the barter arrangement. Counsel cites AO 1981-46 for the proposition that "if the exchange of names is of equal value to the service received, (as is the case in MUR 1872), 'no contribution or expenditure would result and the transaction would not be

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reportable under the Act.'" Counsel further points out that, according to the opinion, "it makes no difference whether the recipient of the names uses the list presently or in the future." Counsel also cites AO 1977-45 which states that when there is a barter for a line of credit in return for services, no reporting obligation with respect to the line of credit arises until the line is actually used. Finally, he cites AO 1982-8 for the proposition that the value of barter "credit units" can be determined with certainty "only when they are exchanged." Counsel cites these opinions to maintain that "it would have been impossible" for the Committee to "place an accurate dollar value on the mailing list" and the figure, therefore, could not have been reported.

II. LEGAL ANALYSIS

Section 441a(a)(1)(C) of Title 2 provides that no person shall make contributions to any political committee, other than a candidate's authorized political committee or a national political party committee, which, in the aggregate, exceed \$5,000 in any calendar year. Section 441a(f) prohibits knowing acceptance of contributions in violation of the provisions of § 441a. If the exchange involved a net benefit to the Committee of \$5,000 or under, then no violation occurred. The key to resolving this issue is the determination of the value of Mr. Lehrman's interest in the mailing list in 1983.

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Mr. Lehrman reports that he did not use the list in 1983 but wishes to establish a minimum value of the list at \$1,360. This appears reasonable from two standpoints. First, in its responses to RAD, the Committee, which also has an ownership interest in the list, claims that it received \$108,721 in contributions during 1983 by using a portion of the list. Secondly, Mr. Lehrman is correct in defining the list as an asset. The rental rate placed on it, i.e., \$80 per thousand names, is entirely within the reasonable standards of the mailing list industry. Furthermore, Mr. Lehrman was receiving more than a leasehold interest in the list. He was receiving an ownership interest in the entirety of the list with the right to use the list whenever he wanted.

The figures submitted by Mr. Lehrman as to the benefit received by the Committee appear to be reasonably derived. When \$1,360 is subtracted from this total, Mr. Lehrman's contribution total remains under \$5,000.

Section 434(b) of Title 2 sets out requirements for the itemization of contributions to a political committee. At the initial stage of this investigation, this Office set forth the position that this section required the itemization of the value of the services provided and of the value of the list. Counsel has cited AO 1981-46 which deals specifically with the exchange of one set of mailing list names for another set of mailing list names of equal value. The Commission based its analysis in that AO on 11 C.F.R. § 100.7(a)(1)(iii)(A) which states that "the provision of any goods or services without charge or at a charge

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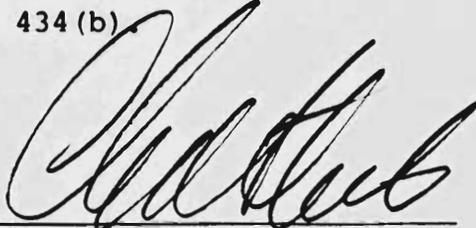
which is less than the usual and normal charge for such goods or services is a contribution." Based on this analysis, since no benefit was received by the Committee in the exchange, no contribution was received from Mr. Lehrman and no contribution should be reported.^{1/}

Based on the foregoing analysis, the General Counsel recommends that the Commission find no probable cause to believe that the Fund to Keep America #1 violated 2 U.S.C. §§ 441a(f) and 434(b).

III. RECOMMENDATIONS

1. Find no probable cause to believe that the Fund to Keep America #1 violated 2 U.S.C. § 441a(f).
2. Find no probable cause to believe that the Fund to Keep America #1 violated 2 U.S.C. § 434(b).

12 August 1988
Date

By: 
Charles N. Steele
General Counsel

^{1/} Counsel for the Committee has cited other advisory opinions to support the position that no reporting obligation arises if a value cannot be attributed to the goods or services exchanged. Counsel for Mr. Lehrman, however, has set a reasonable value on the mailing list and on other services involved in the transaction.

95040360446



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Frank Trotta, Jr., Esquire
24 North Avenue
New Rochelle, New York 10805

RE: MUR 1872
Fund to Keep America #1
Timothy S. Carey, as treasurer

Dear Mr. Trotta:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on January 8, 1985, found reason to believe that your clients had violated 2 U.S.C. §§ 441a(f) and 434(b), provisions of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your client's position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

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Letter to Frank Trotta, Jr.
Page 2

Should you have any questions, please contact Jonathan Levin, the attorney assigned to handle this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

25040300448



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

C. Michael Deese, Esquire
Webster, Chamberlain & Bean
1747 Pennsylvania Avenue, N.W.
Suite 1000
Washington, D.C. 20006

RE: MUR 1872
Lewis E. Lehrman

Dear Mr. Deese:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on January 8, 1985, found reason to believe that your client had violated 2 U.S.C. § 441a(a)(1)(C), a provision of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your client's position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

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Letter to C. Michael Deese
Page 2

Should you have any questions, please contact Jonathan Levin, the attorney assigned to handle this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

35040300450

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Fund to Keep America #1) MUR 1872
Timothy S. Carey, as treasurer)

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter involves the possible failure by the Fund to Keep America #1 ("the Committee") to disclose fully the administrative costs provided by Lewis E. Lehrman, its landlord, and possible contributions by Mr. Lehrman to the Committee in excess of the limits of 2 U.S.C. § 441a(a)(1)(C).

The 1983 Mid-Year Report of the Fund to Keep America #1, a non-connected political committee, disclosed \$47,256.75 in total disbursements but only itemized \$4,971 in administrative costs. These were for contributions for payroll services from Lewis E. Lehrman. The Committee's 1983 Year End Report disclosed disbursements of \$30,843 with no disbursements for administrative expenses.

The Committee failed to respond to a first RFAI sent on April 11, 1984, but responded shortly after receiving a second sent on May 3. The Committee treasurer responded that the reports "have reflected all expenditures made," and that the reason more administrative expenses are not listed is that such expenses are provided for in an "exchange agreement" between the Committee and its landlord. This agreement provides the landlord with a full ownership interest in the Committee's "mailing lists in return for free administrative services and space."

Attachment 1- p. 1 of 15

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Another RFAI inquiring as to the exchange agreement was sent on June 6, 1984. A second RFAI making the same inquiry was sent on June 28, 1984. A response was received from the Committee's counsel on July 3, 1984, stating that he was having the answers to RAD's questions researched. On July 17, RAD received a response from the Committee's counsel.

In answer to a question as to the "normal and usual cost of renting space" at the office's location, counsel revealed that the cost for the rental space at 641 Lexington Avenue on the 25th floor is \$21.296 per square foot per year, that the Committee uses 138 square feet, and that, therefore, the monthly rent was \$244.90. In response to a question as to the fair market value and the manner in which the figure was derived (including the number of contributions and the price of the list per thousand names), counsel responded that the list contains approximately 17,000 names, that the list is rented only to "selected bidders" of similar political attitudes, and that the value of the list may differ at any given point. In response to a query as to the "amount of income generated in 1983 and the specifics" of the rental agreements, counsel stated that

[i]n 1983, no direct mail appeal was sent by our Committee to the entire mailing list. However, in 1983, a portion of the list (i.e., all contributors over a certain "giving history" threshold) was used for a direct mail event-solicitation which generated \$108,721.00 in income as reported in our filings in your office.

He further elaborated on the "barter agreement" between the landlord and the Committee, stating that the Committee foregoes

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all payment for rent or "overhead expenses" in return for "an unconditional and permanent proprietary interest in all its mailing, contributor and volunteer lists, records, files, computer tapes, and all other pertinent information." Counsel also indicated that there is no agreement providing for additional payment if the value of the list depreciates.

On January 8, 1985, the Commission found reason to believe that the Committee and Mr. Carey, as its treasurer, violated 2 U.S.C. § 434(b) for an alleged failure to disclose fully the administrative costs provided by Mr. Lehrman and 2 U.S.C. § 441a(f) for alleged receipt of excessive contributions from Mr. Lehrman. The Commission also approved a subpoena to be sent to the Committee with questions pertaining to the exchange agreement and the valuation of items in the agreement.

On February 22, 1985, counsel for the Committee responded to the reason to believe notification. On that date, this Office also received correspondence from counsel for Mr. Lehrman. Both responses enclosed a copy of an agreement signed by Mr. Lehrman and Mr. Carey granting Mr. Lehrman an "unconditional permanent proprietary interest" in the Committee's "lists, records, files, computer tapes and all other pertinent information relating thereto" in return for payment for administrative costs provided by Mr. Lehrman. This agreement, was signed on March 9, 1984. According to counsel for Mr. Lehrman, an unwritten agreement to this effect existed in 1983.

1- p. 3 of 15

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The Committee treasurer also explained the rental rate for the space used by the Committee. The treasurer explained that the rental figure was determined by prorating the monthly rental charge for the space taken by the Committee's desk and files "as it related to the total leased space of 5,500 square feet (i.e., 138 square feet is approximately 2.5% of 5,500 square feet) and annualizing that figure of 2.5% of the monthly rent." With an annual rent of \$90,750 for the total leased space, the rate per square foot is approximately \$16.50. The higher figure of \$21,296 "may represent some utility charges and/or an inflation or cost of living or tax adjustment imposed upon the leasee (sic) of the entire space in question, (i.e. imposed upon Fund's 'landlord')." The treasurer also stated that the \$4,971 in in-kind payroll services paid by Mr. Lehrman was not contributed as part of the barter agreement.

Mr. Lehrman's response sets out more specifically the values involved in the exchange. He states that the Committee occupied the rental space from April to June, 1983, i.e., three months, and shared the space with two other entities, occupying "at most, fifty percent of that 138 square feet." Based on this, Mr. Lehrman determined that the Committee received \$367.36 in rental value from him over the three-month period. Mr. Lehrman states that, for the remaining months of the year, the Committee did not use the space, but Mr. Lehrman's employees answered "occasional telephone calls to the Committee." Mr. Lehrman estimated the telephone answering and mail collection services provided from

1- p. 4 of 15

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April to December, 1983, at \$900, using a "maximum estimated market value" of \$100 per month. Mr. Lehrman adds the in-kind payroll services, which he claims totalled \$4,941 (not \$4,971) to reach a total of \$6,208.36 as the total value of the benefit from him to the Committee.

With reference to the value of the list, Mr. Lehrman states that he is "not in a position to quantify the value" of the 17,000 name list in 1983 but states that a minimum value of the "customary one-time rental rate" should be placed on the list. This rate was \$80 per thousand or \$1,360 for the entire list. Subtracting this figure from the \$6,208.26 figure, Mr. Lehrman computes his 1983 contribution as \$4,848.38, under the \$5,000 limit. In a supplemental response, Mr. Lehrman states that, although he did not use the list for fundraising in 1983 and is therefore unable to report that

[he] raised a specific sum of money in 1983 by reason of having owned the list, [he] would submit that, for valuation purposes, a contributor list and its accompanying information have a fair market value at the time of their acquisition, irrespective of the results which may or may not be achieved when that information is ultimately used in fundraising activities.

At this Office's request, counsel for the Committee submitted a supplemental response as to why the Committee was not obligated under 2 U.S.C. § 434(b) to report the details of the barter arrangement. Counsel cites AO 1981-46 for the proposition that "if the exchange of names is of equal value to the service received, (as is the case in MUR 1872), 'no contribution or expenditure would result and the transaction would not be

1 - p. 5 of 15

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reportable under the Act.'" Counsel further points out that, according to the opinion, "it makes no difference whether the recipient of the names uses the list presently or in the future." Counsel also cites AO 1977-45 which states that when there is a barter for a line of credit in return for services, no reporting obligation with respect to the line of credit arises until the line is actually used. Finally, he cites AO 1982-8 for the proposition that the value of barter "credit units" can be determined with certainty "only when they are exchanged." Counsel cites these opinions to maintain that "it would have been impossible" for the Committee to "place an accurate dollar value on the mailing list" and the figure, therefore, could not have been reported.

II. LEGAL ANALYSIS

Section 441a(a)(1)(C) of Title 2 provides that no person shall make contributions to any political committee, other than a candidate's authorized political committee or a national political party committee, which, in the aggregate, exceed \$5,000 in any calendar year. Section 441a(f) prohibits knowing acceptance of contributions in violation of the provisions of § 441a. If the exchange involved a net benefit to the Committee of \$5,000 or under, then no violation occurred. The key to resolving this issue is the determination of the value of Mr. Lehrman's interest in the mailing list in 1983.

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Mr. Lehrman reports that he did not use the list in 1983 but wishes to establish a minimum value of the list at \$1,360. This appears reasonable from two standpoints. First, in its responses to RAD, the Committee, which also has an ownership interest in the list, claims that it received \$108,721 in contributions during 1983 by using a portion of the list. Secondly, Mr. Lehrman is correct in defining the list as an asset. The rental rate placed on it, i.e., \$80 per thousand names, is entirely within the reasonable standards of the mailing list industry. Furthermore, Mr. Lehrman was receiving more than a leasehold interest in the list. He was receiving an ownership interest in the entirety of the list with the right to use the list whenever he wanted.

The figures submitted by Mr. Lehrman as to the benefit received by the Committee appear to be reasonably derived. When \$1,360 is subtracted from this total, Mr. Lehrman's contribution total remains under \$5,000.

Section 434(b) of Title 2 sets out requirements for the itemization of contributions to a political committee. At the initial stage of this investigation, this Office set forth the position that this section required the itemization of the value of the services provided and of the value of the list. Counsel has cited AO 1981-46 which deals specifically with the exchange of one set of mailing list names for another set of mailing list names of equal value. The Commission based its analysis in that AO on 11 C.F.R. § 100.7(a)(1)(iii)(A) which states that "the provision of any goods or services without charge or at a charge

1- p. 7 of 15

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which is less than the usual and normal charge for such goods or services is a contribution." Based on this analysis, since no benefit was received by the Committee in the exchange, no contribution was received from Mr. Lehrman and no contribution should be reported.^{1/}

Based on the foregoing analysis, the General Counsel recommends that the Commission find no probable cause to believe that the Fund to Keep America #1 violated 2 U.S.C. §§ 441a(f) and 434(b).

III. RECOMMENDATIONS

1. Find no probable cause to believe that the Fund to Keep America #1 violated 2 U.S.C. § 441a(f).
2. Find no probable cause to believe that the Fund to Keep America #1 violated 2 U.S.C. § 434(b).

^{1/} Counsel for the Committee has cited other advisory opinions to support the position that no reporting obligation arises if a value cannot be attributed to the goods or services exchanged. Counsel for Mr. Lehrman, however, has set a reasonable value on the mailing list and on other services involved in the transaction.

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35040700453

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Lewis E. Lehrman) MUR 1872

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter involves an allegation that Lewis E. Lehrman made contributions to the Fund to Keep America #1 ("the Committee") in excess of the limits of 2 U.S.C. § 441a(a)(1)(C).

The 1983 Mid-Year Report of the Fund to Keep America #1, a non-connected political committee, disclosed \$47,256.75 in total disbursements but only itemized \$4,971 in administrative costs. These were for contributions for payroll services from Mr. Lehrman. The Committee's 1983 Year End Report disclosed disbursements of \$30,843 with no disbursements for administrative expenses.

The Committee failed to respond to a first RFAI sent on April 11, 1984, but responded shortly after receiving a second sent on May 3. The Committee treasurer responded that the reports "have reflected all expenditures made," and that the reason more administrative expenses are not listed is that such expenses are provided for in an "exchange agreement" between the Committee and its landlord. This agreement provides the landlord with a full ownership interest in the Committee's "mailing lists in return for free administrative services and space."

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Another RFAI inquiring as to the exchange agreement was sent on June 6, 1984. A second RFAI making the same inquiry was sent on June 28, 1984. A response was received from the Committee's counsel on July 3, 1984, stating that he was having the answers to RAD's questions researched. On July 17, RAD received a response from the Committee's counsel.

In answer to a question as to the "normal and usual cost of renting space" at the office's location, counsel revealed that the cost for the rental space at 641 Lexington Avenue on the 25th floor is \$21.296 per square foot per year, that the Committee uses 138 square feet, and that, therefore, the monthly rent was \$244.90. In response to a question as to the fair market value and the manner in which the figure was derived (including the number of contributions and the price of the list per thousand names), counsel responded that the list contains approximately 17,000 names, that the list is rented only to "selected bidders" of similar political attitudes, and that the value of the list may differ at any given point. In response to a query as to the "amount of income generated in 1983 and the specifics" of the rental agreements, counsel stated that

[i]n 1983, no direct mail appeal was sent by our Committee to the entire mailing list. However, in 1983, a portion of the list (i.e., all contributors over a certain "giving history" threshold) was used for a direct mail event-solicitation which generated \$108,721.00 in income as reported in our filings in your office.

He further elaborated on the "barter agreement" between the landlord and the Committee, stating that the Committee foregoes

1 - p. 10 of 15

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all payment for rent or "overhead expenses" in return for "an unconditional and permanent proprietary interest in all its mailing, contributor and volunteer lists, records, files, computer tapes, and all other pertinent information." Counsel also indicated that there is no agreement providing for additional payment if the value of the list depreciates.

On January 8, 1985, the Commission found reason to believe Mr. Lehrman violated 2 U.S.C. § 441a(a)(1)(C) for making allegedly excessive contributions to the Committee. The Commission also approved a subpoena to be sent to Mr. Lehrman with questions pertaining to the exchange agreement and the valuation of items in the agreement.

On February 22, 1985, counsel for Mr. Lehrman responded to the reason to believe notification. On this date, this Office also received correspondence from counsel for the Committee. Both responses enclosed a copy of an agreement signed by Mr. Lehrman and the Committee treasurer granting Mr. Lehrman an "unconditional permanent proprietary interest" in the Committee's "lists, records, files, computer tapes and all other pertinent information relating thereto" in return for payment for administrative costs provided by Mr. Lehrman. This agreement, was signed on March 9, 1984. According to counsel for Mr. Lehrman, an unwritten agreement to this effect existed in 1983.

1-p. 11 of 15

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The Committee treasurer also explained the rental rate for the space used by the Committee. The treasurer explained that the rental figure was determined by prorating the monthly rental charge for the space taken by the Committee's desk and files "as it related to the total leased space of 5,500 square feet (i.e., 138 square feet is approximately 2.5% of 5,500 square feet) and annualizing that figure of 2.5% of the monthly rent." With an annual rent of \$90,750 for the total leased space, the rate per square foot is approximately \$16.50. The higher figure of \$21,296 "may represent some utility charges and/or an inflation or cost of living or tax adjustment imposed upon the leasee (sic) of the entire space in question, (i.e. imposed upon Fund's 'landlord')." The treasurer also stated that the \$4,971 in in-kind payroll services paid by Mr. Lehrman was not contributed as part of the barter agreement.

Mr. Lehrman's response sets out more specifically the values involved in the exchange. He states that the Committee occupied the rental space from April to June, 1983, i.e., three months, and shared the space with two other entities, occupying "at most, fifty percent of that 138 square feet." Based on this, Mr. Lehrman determined that the Committee received \$367.36 in rental value from him over the three-month period. Mr. Lehrman states that, for the remaining months of the year, the Committee did not use the space, but Mr. Lehrman's employees answered "occasional telephone calls to the Committee." Mr. Lehrman estimated the telephone answering and mail collection services provided from

1- p. 12 of 15

April to December, 1983, at \$900, using a "maximum estimated market value" of \$100 per month. Mr. Lehrman adds the in-kind payroll services, which he claims totalled \$4,941 (not \$4,971) to reach a total of \$6,208.36 as the total value of the benefit from him to the Committee.

With reference to the value of the list, Mr. Lehrman states that he is "not in a position to quantify the value" of the 17,000 name list in 1983 but states that a minimum value of the "customary one-time rental rate" should be placed on the list. This rate was \$80 per thousand or \$1,360 for the entire list. Subtracting this figure from the \$6,208.26 figure, Mr. Lehrman computes his 1983 contribution as \$4,848.38, under the \$5,000 limit. In a supplemental response, Mr. Lehrman states that, although he did not use the list for fundraising in 1983 and is therefore unable to report that

[he] raised a specific sum of money in 1983 by reason of having owned the list, [he] would submit that, for valuation purposes, a contributor list and its accompanying information have a fair market value at the time of their acquisition, irrespective of the results which may or may not be achieved when that information is ultimately used in fundraising activities.

II. LEGAL ANALYSIS

Section 441a(a)(1)(C) of Title 2 provides that no person shall make contributions to any political committee, other than a candidate's authorized political committee or a national political party committee, which, in the aggregate, exceed \$5,000 in any calendar year. Section 441a(f) prohibits knowing

1 - p. 13 of 15

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acceptance of contributions in violation of the provisions of § 441a. If the exchange involved a net benefit to the Committee of \$5,000 or under, then no violation occurred. The key to resolving this issue is the determination of the value of Mr. Lehrman's interest in the mailing list in 1983.

Mr. Lehrman reports that he did not use the list in 1983 but wishes to establish a minimum value of the list at \$1,360. This appears reasonable from two standpoints. First, in its responses to RAD, the Committee, which also has an ownership interest in the list, claims that it received \$108,721 in contributions during 1983 by using a portion of the list. Secondly, Mr. Lehrman is correct in defining the list as an asset. The rental rate placed on it, i.e., \$80 per thousand names, is entirely within the reasonable standards of the mailing list industry. Furthermore, Mr. Lehrman was receiving more than a leasehold interest in the list. He was receiving an ownership interest in the entirety of the list with the right to use the list whenever he wanted.

The figures submitted by Mr. Lehrman as to the benefit received by the Committee appear to be reasonably derived. When \$1,360 is subtracted from this total, Mr. Lehrman's contribution total remains under \$5,000.

Based on the foregoing analysis, the General Counsel recommends that the Commission find no probable cause to believe that Lewis E. Lehrman violated 2 U.S.C. § 441a(a)(1)(C).

1 - p. 14 of 15

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III. RECOMMENDATIONS

1. Find no probable cause to believe that Lewis E. Lehrman violated 2 U.S.C. § 441a(a)(1)(C).

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1-p. 15 of 15



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Frank Trotta, Jr., Esquire
24 North Avenue
New Rochelle, New York 10805

RE: MUR 1872
Fund to Keep America #1
Timothy S. Carey, as treasurer

Dear Mr. Trotta:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on January 8, 1985, found reason to believe that your clients had violated 2 U.S.C. §§ 441a(f) and 434(b), provisions of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your client's position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

Attachment 2 - p. 1 of 4

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Letter to Frank Trotta, Jr.
Page 2

Should you have any questions, please contact Jonathan Levin, the attorney assigned to handle this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

C. Michael Deese, Esquire
Webster, Chamberlain & Bean
1747 Pennsylvania Avenue, N.W.
Suite 1000
Washington, D.C. 20006

RE: MUR 1872
Lewis E. Lehrman

Dear Mr. Deese:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on January 8, 1985, found reason to believe that your client had violated 2 U.S.C. § 441a(a)(1)(C), a provision of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your client's position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

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Letter to C. Michael Deese
Page 2

Should you have any questions, please contact Jonathan Levin, the attorney assigned to handle this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

35040360469

2 - p. 4 of 4



FEDERAL ELECTION COMMISSION
 WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
 FROM: Office of General Counsel *Pa*
 DATE: August 14, 1985
 SUBJECT: MUR 1872 - Memorandum to the Commission

The attached is submitted as an Agenda document
 for the Commission Meeting of _____
 Open Session _____
 Closed Session _____

CIRCULATIONS

48 Hour Tally Vote []
 Sensitive []
 Non-Sensitive []
 24 Hour No Objection []
 Sensitive []
 Non-Sensitive []
 Information ~~[X]~~
 Sensitive ~~[X]~~
 Non-Sensitive []
 Other []

DISTRIBUTION

Compliance [X]
 Audit Matters []
 Litigation []
 Closed MUR Letters []
 Status Sheets []
 Advisory Opinions []
 Other (see distribution below) []

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
OFFICE OF THE FEC
COMMISSION SECRETARY

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August 14, 1985

~~CONFIDENTIAL~~

MEMORANDUM

TO: The Commission

FROM: Charles N. Steele *CNS*
General Counsel

SUBJECT: MUR 1872

Attached for the Commission's review are briefs stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. A copy of these briefs and letters notifying the Respondents of the General Counsel's intent to recommend to the Commission findings of no probable cause to believe were mailed on August 14, 1985. Following receipt of the Respondents' replies to these notices, this Office will make a further report to the Commission.

Attachments

1. Briefs (2)
2. Letters to Respondents (2)

95040:00471



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Frank Trotta, Jr., Esquire
24 North Avenue
New Rochelle, New York 10805

RE: MUR 1872
Fund to Keep America #1
Timothy S. Carey, as treasurer

Dear Mr. Trotta:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on January 8, 1985, found reason to believe that your clients had violated 2 U.S.C. §§ 441a(f) and 434(b), provisions of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

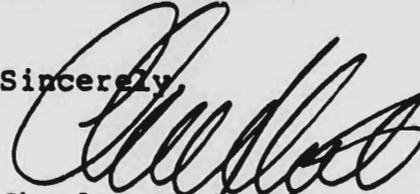
Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your client's position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

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Letter to Frank Trotta, Jr.
Page 2

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Sincerely,



Charles N. Steele
General Counsel

Enclosure
Brief

35040560476

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Fund to Keep America #1) MUR 1872
Timothy S. Carey, as treasurer)

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter involves the possible failure by the Fund to Keep America #1 ("the Committee") to disclose fully the administrative costs provided by Lewis E. Lehrman, its landlord, and possible contributions by Mr. Lehrman to the Committee in excess of the limits of 2 U.S.C. § 441a(a)(1)(C).

The 1983 Mid-Year Report of the Fund to Keep America #1, a non-connected political committee, disclosed \$47,256.75 in total disbursements but only itemized \$4,971 in administrative costs. These were for contributions for payroll services from Lewis E. Lehrman. The Committee's 1983 Year End Report disclosed disbursements of \$30,843 with no disbursements for administrative expenses.

The Committee failed to respond to a first RFAI sent on April 11, 1984, but responded shortly after receiving a second sent on May 3. The Committee treasurer responded that the reports "have reflected all expenditures made," and that the reason more administrative expenses are not listed is that such expenses are provided for in an "exchange agreement" between the Committee and its landlord. This agreement provides the landlord with a full ownership interest in the Committee's "mailing lists in return for free administrative services and space."

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Another RFAI inquiring as to the exchange agreement was sent on June 6, 1984. A second RFAI making the same inquiry was sent on June 28, 1984. A response was received from the Committee's counsel on July 3, 1984, stating that he was having the answers to RAD's questions researched. On July 17, RAD received a response from the Committee's counsel.

In answer to a question as to the "normal and usual cost of renting space" at the office's location, counsel revealed that the cost for the rental space at 641 Lexington Avenue on the 25th floor is \$21.296 per square foot per year, that the Committee uses 138 square feet, and that, therefore, the monthly rent was \$244.90. In response to a question as to the fair market value and the manner in which the figure was derived (including the number of contributions and the price of the list per thousand names), counsel responded that the list contains approximately 17,000 names, that the list is rented only to "selected bidders" of similar political attitudes, and that the value of the list may differ at any given point. In response to a query as to the "amount of income generated in 1983 and the specifics" of the rental agreements, counsel stated that

[i]n 1983, no direct mail appeal was sent by our Committee to the entire mailing list. However, in 1983, a portion of the list (i.e., all contributors over a certain "giving history" threshold) was used for a direct mail event-solicitation which generated \$108,721.00 in income as reported in our filings in your office.

He further elaborated on the "barter agreement" between the landlord and the Committee, stating that the Committee foregoes

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all payment for rent or "overhead expenses" in return for "an unconditional and permanent proprietary interest in all its mailing, contributor and volunteer lists, records, files, computer tapes, and all other pertinent information." Counsel also indicated that there is no agreement providing for additional payment if the value of the list depreciates.

On January 8, 1985, the Commission found reason to believe that the Committee and Mr. Carey, as its treasurer, violated 2 U.S.C. § 434(b) for an alleged failure to disclose fully the administrative costs provided by Mr. Lehrman and 2 U.S.C. § 441a(f) for alleged receipt of excessive contributions from Mr. Lehrman. The Commission also approved a subpoena to be sent to the Committee with questions pertaining to the exchange agreement and the valuation of items in the agreement.

On February 22, 1985, counsel for the Committee responded to the reason to believe notification. On that date, this Office also received correspondence from counsel for Mr. Lehrman. Both responses enclosed a copy of an agreement signed by Mr. Lehrman and Mr. Carey granting Mr. Lehrman an "unconditional permanent proprietary interest" in the Committee's "lists, records, files, computer tapes and all other pertinent information relating thereto" in return for payment for administrative costs provided by Mr. Lehrman. This agreement, was signed on March 9, 1984. According to counsel for Mr. Lehrman, an unwritten agreement to this effect existed in 1983.

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The Committee treasurer also explained the rental rate for the space used by the Committee. The treasurer explained that the rental figure was determined by prorating the monthly rental charge for the space taken by the Committee's desk and files "as it related to the total leased space of 5,500 square feet (i.e., 138 square feet is approximately 2.5% of 5,500 square feet) and annualizing that figure of 2.5% of the monthly rent." With an annual rent of \$90,750 for the total leased space, the rate per square foot is approximately \$16.50. The higher figure of \$21,296 "may represent some utility charges and/or an inflation or cost of living or tax adjustment imposed upon the leasee (sic) of the entire space in question, (i.e. imposed upon Fund's 'landlord')." The treasurer also stated that the \$4,971 in in-kind payroll services paid by Mr. Lehrman was not contributed as part of the barter agreement.

Mr. Lehrman's response sets out more specifically the values involved in the exchange. He states that the Committee occupied the rental space from April to June, 1983, i.e., three months, and shared the space with two other entities, occupying "at most, fifty percent of that 138 square feet." Based on this, Mr. Lehrman determined that the Committee received \$367.36 in rental value from him over the three-month period. Mr. Lehrman states that, for the remaining months of the year, the Committee did not use the space, but Mr. Lehrman's employees answered "occasional telephone calls to the Committee." Mr. Lehrman estimated the telephone answering and mail collection services provided from

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April to December, 1983, at \$900, using a "maximum estimated market value" of \$100 per month. Mr. Lehrman adds the in-kind payroll services, which he claims totalled \$4,941 (not \$4,971) to reach a total of \$6,208.36 as the total value of the benefit from him to the Committee.

With reference to the value of the list, Mr. Lehrman states that he is "not in a position to quantify the value" of the 17,000 name list in 1983 but states that a minimum value of the "customary one-time rental rate" should be placed on the list. This rate was \$80 per thousand or \$1,360 for the entire list. Subtracting this figure from the \$6,208.26 figure, Mr. Lehrman computes his 1983 contribution as \$4,848.38, under the \$5,000 limit. In a supplemental response, Mr. Lehrman states that, although he did not use the list for fundraising in 1983 and is therefore unable to report that

[he] raised a specific sum of money in 1983 by reason of having owned the list, [he] would submit that, for valuation purposes, a contributor list and its accompanying information have a fair market value at the time of their acquisition, irrespective of the results which may or may not be achieved when that information is ultimately used in fundraising activities.

At this Office's request, counsel for the Committee submitted a supplemental response as to why the Committee was not obligated under 2 U.S.C. § 434(b) to report the details of the barter arrangement. Counsel cites AO 1981-46 for the proposition that "if the exchange of names is of equal value to the service received, (as is the case in MUR 1872), 'no contribution or expenditure would result and the transaction would not be

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reportable under the Act.'" Counsel further points out that, according to the opinion, "it makes no difference whether the recipient of the names uses the list presently or in the future." Counsel also cites AO 1977-45 which states that when there is a barter for a line of credit in return for services, no reporting obligation with respect to the line of credit arises until the line is actually used. Finally, he cites AO 1982-8 for the proposition that the value of barter "credit units" can be determined with certainty "only when they are exchanged." Counsel cites these opinions to maintain that "it would have been impossible" for the Committee to "place an accurate dollar value on the mailing list" and the figure, therefore, could not have been reported.

II. LEGAL ANALYSIS

Section 441a(a)(1)(C) of Title 2 provides that no person shall make contributions to any political committee, other than a candidate's authorized political committee or a national political party committee, which, in the aggregate, exceed \$5,000 in any calendar year. Section 441a(f) prohibits knowing acceptance of contributions in violation of the provisions of § 441a. If the exchange involved a net benefit to the Committee of \$5,000 or under, then no violation occurred. The key to resolving this issue is the determination of the value of Mr. Lehrman's interest in the mailing list in 1983.

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Mr. Lehrman reports that he did not use the list in 1983 but wishes to establish a minimum value of the list at \$1,360. This appears reasonable from two standpoints. First, in its responses to RAD, the Committee, which also has an ownership interest in the list, claims that it received \$108,721 in contributions during 1983 by using a portion of the list. Secondly, Mr. Lehrman is correct in defining the list as an asset. The rental rate placed on it, i.e., \$80 per thousand names, is entirely within the reasonable standards of the mailing list industry. Furthermore, Mr. Lehrman was receiving more than a leasehold interest in the list. He was receiving an ownership interest in the entirety of the list with the right to use the list whenever he wanted.

The figures submitted by Mr. Lehrman as to the benefit received by the Committee appear to be reasonably derived. When \$1,360 is subtracted from this total, Mr. Lehrman's contribution total remains under \$5,000.

Section 434(b) of Title 2 sets out requirements for the itemization of contributions to a political committee. At the initial stage of this investigation, this Office set forth the position that this section required the itemization of the value of the services provided and of the value of the list. Counsel has cited AO 1981-46 which deals specifically with the exchange of one set of mailing list names for another set of mailing list names of equal value. The Commission based its analysis in that AO on 11 C.F.R. § 100.7(a)(1)(iii)(A) which states that "the provision of any goods or services without charge or at a charge

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which is less than the usual and normal charge for such goods or services is a contribution." Based on this analysis, since no benefit was received by the Committee in the exchange, no contribution was received from Mr. Lehrman and no contribution should be reported.^{1/}

Based on the foregoing analysis, the General Counsel recommends that the Commission find no probable cause to believe that the Fund to Keep America #1 violated 2 U.S.C. §§ 441a(f) and 434(b).

III. RECOMMENDATIONS

1. Find no probable cause to believe that the Fund to Keep America #1 violated 2 U.S.C. § 441a(f).
2. Find no probable cause to believe that the Fund to Keep America #1 violated 2 U.S.C. § 434(b).

12 August 1988
Date

By:


Charles N. Steele
General Counsel

^{1/} Counsel for the Committee has cited other advisory opinions to support the position that no reporting obligation arises if a value cannot be attributed to the goods or services exchanged. Counsel for Mr. Lehrman, however, has set a reasonable value on the mailing list and on other services involved in the transaction.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

C. Michael Deese, Esquire
Webster, Chamberlain & Bean
1747 Pennsylvania Avenue, N.W.
Suite 1000
Washington, D.C. 20006

RE: MUR 1872
Lewis E. Lehrman

Dear Mr. Deese:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on January 8, 1985, found reason to believe that your client had violated 2 U.S.C. § 441a(a)(1)(C), a provision of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

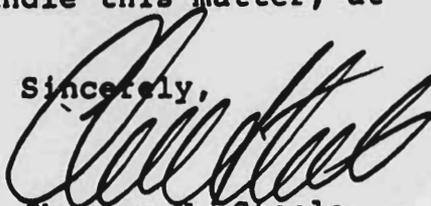
Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your client's position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

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Letter to C. Michael Deese
Page 2

Should you have any questions, please contact Jonathan Levin, the attorney assigned to handle this matter, at (202) 523-4000.

Sincerely,



Charles N. Steele
General Counsel

Enclosure
Brief

35040750485

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
Lewis E. Lehrman

)
)
)

MUR 1872

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter involves an allegation that Lewis E. Lehrman made contributions to the Fund to Keep America #1 ("the Committee") in excess of the limits of 2 U.S.C. § 441a(a)(1)(C).

The 1983 Mid-Year Report of the Fund to Keep America #1, a non-connected political committee, disclosed \$47,256.75 in total disbursements but only itemized \$4,971 in administrative costs. These were for contributions for payroll services from Mr. Lehrman. The Committee's 1983 Year End Report disclosed disbursements of \$30,843 with no disbursements for administrative expenses.

The Committee failed to respond to a first RFAI sent on April 11, 1984, but responded shortly after receiving a second sent on May 3. The Committee treasurer responded that the reports "have reflected all expenditures made," and that the reason more administrative expenses are not listed is that such expenses are provided for in an "exchange agreement" between the Committee and its landlord. This agreement provides the landlord with a full ownership interest in the Committee's "mailing lists in return for free administrative services and space."

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Another RFAI inquiring as to the exchange agreement was sent on June 6, 1984. A second RFAI making the same inquiry was sent on June 28, 1984. A response was received from the Committee's counsel on July 3, 1984, stating that he was having the answers to RAD's questions researched. On July 17, RAD received a response from the Committee's counsel.

In answer to a question as to the "normal and usual cost of renting space" at the office's location, counsel revealed that the cost for the rental space at 641 Lexington Avenue on the 25th floor is \$21.296 per square foot per year, that the Committee uses 138 square feet, and that, therefore, the monthly rent was \$244.90. In response to a question as to the fair market value and the manner in which the figure was derived (including the number of contributions and the price of the list per thousand names), counsel responded that the list contains approximately 17,000 names, that the list is rented only to "selected bidders" of similar political attitudes, and that the value of the list may differ at any given point. In response to a query as to the "amount of income generated in 1983 and the specifics" of the rental agreements, counsel stated that

[i]n 1983, no direct mail appeal was sent by our Committee to the entire mailing list. However, in 1983, a portion of the list (i.e., all contributors over a certain "giving history" threshold) was used for a direct mail event-solicitation which generated \$108,721.00 in income as reported in our filings in your office.

He further elaborated on the "barter agreement" between the landlord and the Committee, stating that the Committee foregoes

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all payment for rent or "overhead expenses" in return for "an unconditional and permanent proprietary interest in all its mailing, contributor and volunteer lists, records, files, computer tapes, and all other pertinent information." Counsel also indicated that there is no agreement providing for additional payment if the value of the list depreciates.

On January 8, 1985, the Commission found reason to believe Mr. Lehrman violated 2 U.S.C. § 441a(a)(1)(C) for making allegedly excessive contributions to the Committee. The Commission also approved a subpoena to be sent to Mr. Lehrman with questions pertaining to the exchange agreement and the valuation of items in the agreement.

On February 22, 1985, counsel for Mr. Lehrman responded to the reason to believe notification. On this date, this Office also received correspondence from counsel for the Committee. Both responses enclosed a copy of an agreement signed by Mr. Lehrman and the Committee treasurer granting Mr. Lehrman an "unconditional permanent proprietary interest" in the Committee's "lists, records, files, computer tapes and all other pertinent information relating thereto" in return for payment for administrative costs provided by Mr. Lehrman. This agreement, was signed on March 9, 1984. According to counsel for Mr. Lehrman, an unwritten agreement to this effect existed in 1983.

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April to December, 1983, at \$900, using a "maximum estimated market value" of \$100 per month. Mr. Lehrman adds the in-kind payroll services, which he claims totalled \$4,941 (not \$4,971) to reach a total of \$6,208.36 as the total value of the benefit from him to the Committee.

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acceptance of contributions in violation of the provisions of § 441a. If the exchange involved a net benefit to the Committee of \$5,000 or under, then no violation occurred. The key to resolving this issue is the determination of the value of Mr. Lehrman's interest in the mailing list in 1983.

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The figures submitted by Mr. Lehrman as to the benefit received by the Committee appear to be reasonably derived. When \$1,360 is subtracted from this total, Mr. Lehrman's contribution total remains under \$5,000.

Based on the foregoing analysis, the General Counsel recommends that the Commission find no probable cause to believe that Lewis E. Lehrman violated 2 U.S.C. § 441a(a)(1)(C).

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III. RECOMMENDATIONS

1. Find no probable cause to believe that Lewis E. Lehrman violated 2 U.S.C. § 441a(a)(1)(C).

12 August 1985
Date

By:



Charles N. Steele
General Counsel

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OGC Docket #



FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

RECEIVED
GENERAL COUNSEL
FEDERAL ELECTION COMMISSION
COMMUNICATIONS SECTION

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August 14, 1985

EXIST

MEMORANDUM

TO: The Commission
FROM: Charles N. Steels *CNS*
General Counsel
SUBJECT: MUR 1872

Attached for the Commission's review are briefs stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. A copy of these briefs and letters notifying the Respondents of the General Counsel's intent to recommend to the Commission findings of no probable cause to believe were mailed on August 14, 1985. Following receipt of the Respondents' replies to these notices, this Office will make a further report to the Commission.

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35040700491



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Frank Trotta, Jr., Esquire
24 North Avenue
New Rochelle, New York 10805

RE: MUR 1872
Fund to Keep America #1
Timothy S. Carey, as treasurer

Dear Mr. Trotta:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on January 8, 1985, found reason to believe that your clients had violated 2 U.S.C. §§ 441a(f) and 434(b), provisions of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

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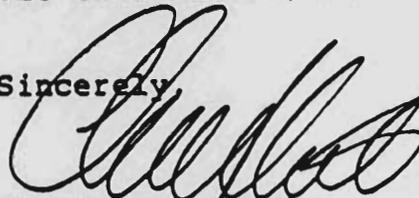
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Letter to Frank Trotta, Jr.
Page 2

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Sincerely,



Charles N. Steele
General Counsel

Enclosure
Brief

35040560493

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Fund to Keep America #1) MUR 1872
Timothy S. Carey, as treasurer)

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter involves the possible failure by the Fund to Keep America #1 ("the Committee") to disclose fully the administrative costs provided by Lewis E. Lehrman, its landlord, and possible contributions by Mr. Lehrman to the Committee in excess of the limits of 2 U.S.C. § 441a(a)(1)(C).

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all payment for rent or "overhead expenses" in return for "an unconditional and permanent proprietary interest in all its mailing, contributor and volunteer lists, records, files, computer tapes, and all other pertinent information." Counsel also indicated that there is no agreement providing for additional payment if the value of the list depreciates.

On January 8, 1985, the Commission found reason to believe that the Committee and Mr. Carey, as its treasurer, violated 2 U.S.C. § 434(b) for an alleged failure to disclose fully the administrative costs provided by Mr. Lehrman and 2 U.S.C. § 441a(f) for alleged receipt of excessive contributions from Mr. Lehrman. The Commission also approved a subpoena to be sent to the Committee with questions pertaining to the exchange agreement and the valuation of items in the agreement.

On February 22, 1985, counsel for the Committee responded to the reason to believe notification. On that date, this Office also received correspondence from counsel for Mr. Lehrman. Both responses enclosed a copy of an agreement signed by Mr. Lehrman and Mr. Carey granting Mr. Lehrman an "unconditional permanent proprietary interest" in the Committee's "lists, records, files, computer tapes and all other pertinent information relating thereto" in return for payment for administrative costs provided by Mr. Lehrman. This agreement, was signed on March 9, 1984. According to counsel for Mr. Lehrman, an unwritten agreement to this effect existed in 1983.

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The Committee treasurer also explained the rental rate for the space used by the Committee. The treasurer explained that the rental figure was determined by prorating the monthly rental charge for the space taken by the Committee's desk and files "as it related to the total leased space of 5,500 square feet (i.e., 138 square feet is approximately 2.5% of 5,500 square feet) and annualizing that figure of 2.5% of the monthly rent." With an annual rent of \$90,750 for the total leased space, the rate per square foot is approximately \$16.50. The higher figure of \$21,296 "may represent some utility charges and/or an inflation or cost of living or tax adjustment imposed upon the leasee (sic) of the entire space in question, (i.e. imposed upon Fund's 'landlord')." The treasurer also stated that the \$4,971 in in-kind payroll services paid by Mr. Lehrman was not contributed as part of the barter agreement.

Mr. Lehrman's response sets out more specifically the values involved in the exchange. He states that the Committee occupied the rental space from April to June, 1983, i.e., three months, and shared the space with two other entities, occupying "at most, fifty percent of that 138 square feet." Based on this, Mr. Lehrman determined that the Committee received \$367.36 in rental value from him over the three-month period. Mr. Lehrman states that, for the remaining months of the year, the Committee did not use the space, but Mr. Lehrman's employees answered "occasional telephone calls to the Committee." Mr. Lehrman estimated the telephone answering and mail collection services provided from

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April to December, 1983, at \$900, using a "maximum estimated market value" of \$100 per month. Mr. Lehrman adds the in-kind payroll services, which he claims totalled \$4,941 (not \$4,971) to reach a total of \$6,208.36 as the total value of the benefit from him to the Committee.

With reference to the value of the list, Mr. Lehrman states that he is "not in a position to quantify the value" of the 17,000 name list in 1983 but states that a minimum value of the "customary one-time rental rate" should be placed on the list. This rate was \$80 per thousand or \$1,360 for the entire list. Subtracting this figure from the \$6,208.26 figure, Mr. Lehrman computes his 1983 contribution as \$4,848.38, under the \$5,000 limit. In a supplemental response, Mr. Lehrman states that, although he did not use the list for fundraising in 1983 and is therefore unable to report that

[he] raised a specific sum of money in 1983 by reason of having owned the list, [he] would submit that, for valuation purposes, a contributor list and its accompanying information have a fair market value at the time of their acquisition, irrespective of the results which may or may not be achieved when that information is ultimately used in fundraising activities.

At this Office's request, counsel for the Committee submitted a supplemental response as to why the Committee was not obligated under 2 U.S.C. § 434(b) to report the details of the barter arrangement. Counsel cites AO 1981-46 for the proposition that "if the exchange of names is of equal value to the service received, (as is the case in MUR 1872), 'no contribution or expenditure would result and the transaction would not be

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reportable under the Act.'" Counsel further points out that, according to the opinion, "it makes no difference whether the recipient of the names uses the list presently or in the future." Counsel also cites AO 1977-45 which states that when there is a barter for a line of credit in return for services, no reporting obligation with respect to the line of credit arises until the line is actually used. Finally, he cites AO 1982-8 for the proposition that the value of barter "credit units" can be determined with certainty "only when they are exchanged." Counsel cites these opinions to maintain that "it would have been impossible" for the Committee to "place an accurate dollar value on the mailing list" and the figure, therefore, could not have been reported.

II. LEGAL ANALYSIS

Section 441a(a)(1)(C) of Title 2 provides that no person shall make contributions to any political committee, other than a candidate's authorized political committee or a national political party committee, which, in the aggregate, exceed \$5,000 in any calendar year. Section 441a(f) prohibits knowing acceptance of contributions in violation of the provisions of § 441a. If the exchange involved a net benefit to the Committee of \$5,000 or under, then no violation occurred. The key to resolving this issue is the determination of the value of Mr. Lehrman's interest in the mailing list in 1983.

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Mr. Lehrman reports that he did not use the list in 1983 but wishes to establish a minimum value of the list at \$1,360. This appears reasonable from two standpoints. First, in its responses to RAD, the Committee, which also has an ownership interest in the list, claims that it received \$108,721 in contributions during 1983 by using a portion of the list. Secondly, Mr. Lehrman is correct in defining the list as an asset. The rental rate placed on it, i.e., \$80 per thousand names, is entirely within the reasonable standards of the mailing list industry. Furthermore, Mr. Lehrman was receiving more than a leasehold interest in the list. He was receiving an ownership interest in the entirety of the list with the right to use the list whenever he wanted.

The figures submitted by Mr. Lehrman as to the benefit received by the Committee appear to be reasonably derived. When \$1,360 is subtracted from this total, Mr. Lehrman's contribution total remains under \$5,000.

Section 434(b) of Title 2 sets out requirements for the itemization of contributions to a political committee. At the initial stage of this investigation, this Office set forth the position that this section required the itemization of the value of the services provided and of the value of the list. Counsel has cited AO 1981-46 which deals specifically with the exchange of one set of mailing list names for another set of mailing list names of equal value. The Commission based its analysis in that AO on 11 C.F.R. § 100.7(a)(1)(iii)(A) which states that "the provision of any goods or services without charge or at a charge

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which is less than the usual and normal charge for such goods or services is a contribution." Based on this analysis, since no benefit was received by the Committee in the exchange, no contribution was received from Mr. Lehrman and no contribution should be reported.^{1/}

Based on the foregoing analysis, the General Counsel recommends that the Commission find no probable cause to believe that the Fund to Keep America #1 violated 2 U.S.C. §§ 441a(f) and 434(b).

III. RECOMMENDATIONS

1. Find no probable cause to believe that the Fund to Keep America #1 violated 2 U.S.C. § 441a(f).
2. Find no probable cause to believe that the Fund to Keep America #1 violated 2 U.S.C. § 434(b).

12 August 1955
Date

By:


Charles N. Steele
General Counsel

^{1/} Counsel for the Committee has cited other advisory opinions to support the position that no reporting obligation arises if a value cannot be attributed to the goods or services exchanged. Counsel for Mr. Lehrman, however, has set a reasonable value on the mailing list and on other services involved in the transaction.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

C. Michael Deese, Esquire
Webster, Chamberlain & Bean
1747 Pennsylvania Avenue, N.W.
Suite 1000
Washington, D.C. 20006

RE: MUR 1872
Lewis E. Lehrman

Dear Mr. Deese:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on January 8, 1985, found reason to believe that your client had violated 2 U.S.C. § 441a(a)(1)(C), a provision of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

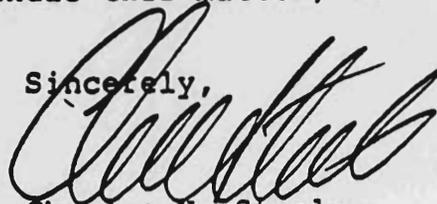
Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your client's position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

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Letter to C. Michael Deese
Page 2

Should you have any questions, please contact Jonathan Levin, the attorney assigned to handle this matter, at (202) 523-4000.

Sincerely,



Charles N. Steele
General Counsel

Enclosure
Brief

86040360503

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Lewis E. Lehrman) MUR 1872

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter involves an allegation that Lewis E. Lehrman made contributions to the Fund to Keep America #1 ("the Committee") in excess of the limits of 2 U.S.C. § 441a(a)(1)(C).

The 1983 Mid-Year Report of the Fund to Keep America #1, a non-connected political committee, disclosed \$47,256.75 in total disbursements but only itemized \$4,971 in administrative costs. These were for contributions for payroll services from Mr. Lehrman. The Committee's 1983 Year End Report disclosed disbursements of \$30,843 with no disbursements for administrative expenses.

The Committee failed to respond to a first RFAI sent on April 11, 1984, but responded shortly after receiving a second sent on May 3. The Committee treasurer responded that the reports "have reflected all expenditures made," and that the reason more administrative expenses are not listed is that such expenses are provided for in an "exchange agreement" between the Committee and its landlord. This agreement provides the landlord with a full ownership interest in the Committee's "mailing lists in return for free administrative services and space."

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Another RFAI inquiring as to the exchange agreement was sent on June 6, 1984. A second RFAI making the same inquiry was sent on June 28, 1984. A response was received from the Committee's counsel on July 3, 1984, stating that he was having the answers to RAD's questions researched. On July 17, RAD received a response from the Committee's counsel.

In answer to a question as to the "normal and usual cost of renting space" at the office's location, counsel revealed that the cost for the rental space at 641 Lexington Avenue on the 25th floor is \$21.296 per square foot per year, that the Committee uses 138 square feet, and that, therefore, the monthly rent was \$244.90. In response to a question as to the fair market value and the manner in which the figure was derived (including the number of contributions and the price of the list per thousand names), counsel responded that the list contains approximately 17,000 names, that the list is rented only to "selected bidders" of similar political attitudes, and that the value of the list may differ at any given point. In response to a query as to the "amount of income generated in 1983 and the specifics" of the rental agreements, counsel stated that

[i]n 1983, no direct mail appeal was sent by our Committee to the entire mailing list. However, in 1983, a portion of the list (i.e., all contributors over a certain "giving history" threshold) was used for a direct mail event-solicitation which generated \$108,721.00 in income as reported in our filings in your office.

He further elaborated on the "barter agreement" between the landlord and the Committee, stating that the Committee foregoes

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all payment for rent or "overhead expenses" in return for "an unconditional and permanent proprietary interest in all its mailing, contributor and volunteer lists, records, files, computer tapes, and all other pertinent information." Counsel also indicated that there is no agreement providing for additional payment if the value of the list depreciates.

On January 8, 1985, the Commission found reason to believe Mr. Lehrman violated 2 U.S.C. § 441a(a)(1)(C) for making allegedly excessive contributions to the Committee. The Commission also approved a subpoena to be sent to Mr. Lehrman with questions pertaining to the exchange agreement and the valuation of items in the agreement.

On February 22, 1985, counsel for Mr. Lehrman responded to the reason to believe notification. On this date, this Office also received correspondence from counsel for the Committee. Both responses enclosed a copy of an agreement signed by Mr. Lehrman and the Committee treasurer granting Mr. Lehrman an "unconditional permanent proprietary interest" in the Committee's "lists, records, files, computer tapes and all other pertinent information relating thereto" in return for payment for administrative costs provided by Mr. Lehrman. This agreement, was signed on March 9, 1984. According to counsel for Mr. Lehrman, an unwritten agreement to this effect existed in 1983.

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The Committee treasurer also explained the rental rate for the space used by the Committee. The treasurer explained that the rental figure was determined by prorating the monthly rental charge for the space taken by the Committee's desk and files "as it related to the total leased space of 5,500 square feet (i.e., 138 square feet is approximately 2.5% of 5,500 square feet) and annualizing that figure of 2.5% of the monthly rent." With an annual rent of \$90,750 for the total leased space, the rate per square foot is approximately \$16.50. The higher figure of \$21,296 "may represent some utility charges and/or an inflation or cost of living or tax adjustment imposed upon the leasee (sic) of the entire space in question, (i.e. imposed upon Fund's 'landlord')." The treasurer also stated that the \$4,971 in in-kind payroll services paid by Mr. Lehrman was not contributed as part of the barter agreement.

Mr. Lehrman's response sets out more specifically the values involved in the exchange. He states that the Committee occupied the rental space from April to June, 1983, i.e., three months, and shared the space with two other entities, occupying "at most, fifty percent of that 138 square feet." Based on this, Mr. Lehrman determined that the Committee received \$367.36 in rental value from him over the three-month period. Mr. Lehrman states that, for the remaining months of the year, the Committee did not use the space, but Mr. Lehrman's employees answered "occasional telephone calls to the Committee." Mr. Lehrman estimated the telephone answering and mail collection services provided from

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April to December, 1983, at \$900, using a "maximum estimated market value" of \$100 per month. Mr. Lehrman adds the in-kind payroll services, which he claims totalled \$4,941 (not \$4,971) to reach a total of \$6,208.36 as the total value of the benefit from him to the Committee.

With reference to the value of the list, Mr. Lehrman states that he is "not in a position to quantify the value" of the 17,000 name list in 1983 but states that a minimum value of the "customary one-time rental rate" should be placed on the list. This rate was \$80 per thousand or \$1,360 for the entire list. Subtracting this figure from the \$6,208.26 figure, Mr. Lehrman computes his 1983 contribution as \$4,848.38, under the \$5,000 limit. In a supplemental response, Mr. Lehrman states that, although he did not use the list for fundraising in 1983 and is therefore unable to report that

[he] raised a specific sum of money in 1983 by reason of having owned the list, [he] would submit that, for valuation purposes, a contributor list and its accompanying information have a fair market value at the time of their acquisition, irrespective of the results which may or may not be achieved when that information is ultimately used in fundraising activities.

II. LEGAL ANALYSIS

Section 441a(a)(1)(C) of Title 2 provides that no person shall make contributions to any political committee, other than a candidate's authorized political committee or a national political party committee, which, in the aggregate, exceed \$5,000 in any calendar year. Section 441a(f) prohibits knowing

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acceptance of contributions in violation of the provisions of § 441a. If the exchange involved a net benefit to the Committee of \$5,000 or under, then no violation occurred. The key to resolving this issue is the determination of the value of Mr. Lehrman's interest in the mailing list in 1983.

Mr. Lehrman reports that he did not use the list in 1983 but wishes to establish a minimum value of the list at \$1,360. This appears reasonable from two standpoints. First, in its responses to RAD, the Committee, which also has an ownership interest in the list, claims that it received \$108,721 in contributions during 1983 by using a portion of the list. Secondly, Mr. Lehrman is correct in defining the list as an asset. The rental rate placed on it, i.e., \$80 per thousand names, is entirely within the reasonable standards of the mailing list industry. Furthermore, Mr. Lehrman was receiving more than a leasehold interest in the list. He was receiving an ownership interest in the entirety of the list with the right to use the list whenever he wanted.

The figures submitted by Mr. Lehrman as to the benefit received by the Committee appear to be reasonably derived. When \$1,360 is subtracted from this total, Mr. Lehrman's contribution total remains under \$5,000.

Based on the foregoing analysis, the General Counsel recommends that the Commission find no probable cause to believe that Lewis E. Lehrman violated 2 U.S.C. § 441a(a)(1)(C).

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III. RECOMMENDATIONS

1. Find no probable cause to believe that Lewis E. Lehrman violated 2 U.S.C. § 441a(a)(1)(C).

12 August 1985
Date

By:



Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *OK*
DATE: April 12, 1985
SUBJECT: MUR 1872 - Comprehensive Investigative Report #1

The attached is submitted as an Agenda document
for the Commission Meeting of _____
Open Session _____
Closed Session _____

CIRCULATIONS		DISTRIBUTION	
48 Hour Tally Vote	[]	Compliance	[X]
Sensitive	[]	Audit Matters	[]
Non-Sensitive	[]	Litigation	[]
24 Hour No Objection	[X]	Closed MUR Letters	[]
Sensitive	[X]	Status Sheets	[]
Non-Sensitive	[]	Advisory Opinions	[]
Information	[]	Other (see distribution below)	[]
Sensitive	[]		
Non-Sensitive	[]		
Other	[]		
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SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

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FEC
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In the Matter of)	
)	
Fund to Keep America #1)	MUR 1872
Timothy S. Carey, as treasurer)	
Lewis E. Lehrman)	

COMPREHENSIVE INVESTIGATIVE REPORT #1

This matter refers to an alleged failure by the Fund to Keep America #1 ("the Committee") and Timothy S. Carey, as its treasurer, to disclose fully the administrative costs provided for the Committee by Lewis E. Lehrman. This matter also pertains to a possible excessive contribution by Lewis E. Lehrman as payment of or provision for the Committee's administrative costs.

On January 10, 1985, the Commission found reason to believe that the Committee and Timothy S. Carey, as its treasurer, violated 2 U.S.C. §§ 434(b) and 441a(f) and that Mr. Lehrman violated 2 U.S.C. § 441a(a)(1)(C). The Commission approved letters asking respondents to reply to the allegations. The Commission also approved subpoenas with interrogatories and requests for documents.

On February 22, 1985, a response was received from counsel for Mr. Lehrman and from counsel for the Committee and the treasurer. Counsel for Mr. Lehrman was asked to clarify his response to an interrogatory addressing the determination of the value of the services exchanged and his supplemental response was received on March 18, 1985. This Office is currently evaluating

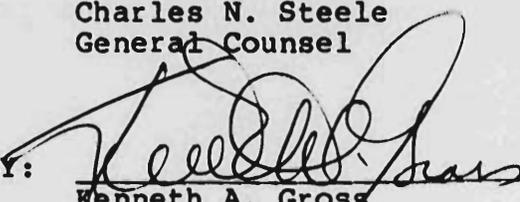
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the responses received and will report to the Commission shortly with appropriate recommendations.

Charles N. Steele
General Counsel

April 11, 1985
Date

BY:


Kenneth A. Gross
Associate General Counsel

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BCC # 7326

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Frank Trotta, Jr.
ATTORNEY AT LAW

TWENTY-FOUR NORTH AVENUE
NEW ROCHELLE, NEW YORK 10805
TELEPHONE: (914) NE 2-7069

April 22, 1985

Office of the General Counsel
Federal Election Commission
Washington, D.C. 20463
Attention: Jonathan Levin, Esq.

APR 30 4:01
GENERAL
FILE

RE: MUR 1872
Additional Response on Behalf of Timothy S. Carey, Treasurer,
Fund to Keep America Number One

Ladies and Gentlemen:

This letter is in further response to your review of the above-captioned matter.

The thrust of the charges against my client, the Fund to Keep America #1 (hereinafter "Fund") is that by entering into a barter arrangement exchanging an ownership interest in its lists, informational and research files for minimal administrative service, the Fund received an excessive contribution, and failed to make appropriate disclosures.

NO EXCESSIVE CONTRIBUTION

There would only be an excessive contribution if there was an inequity in the aforementioned barter arrangement and that inequity exceeded \$5000. We contend that there was no inequity whatsoever. A fortiori, there was no excessive contribution received.

Under the barter arrangement, the Fund gave a full, undivided ownership interest in its lists to its landlord and in exchange received the use of a desk and mail-drop and certain administrative services. The list is a dynamic item which, by definition, is continually changing. The value received by the landlord was the value of compiling such a list as well as the value of maintaining and updating such a list. The maintenance of the list was an on-going occurrence, just as were the services received by the Fund. Thus, in every sense, the agreement was an equitable quid pro quo.

continued...

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The Fund's position, in its preliminary response to the RAD's RFAI and now, is that while it is unable to determine an exact dollar value of an ownership interest in its lists and other records at any given point in time, it knows that whatever that value is, it is not less than the value of the administrative services received, to wit, file space and occasional and non-exclusive use of a desk.

Also, it should be noted that when the Fund received services from the landlord which were more than the minimal administrative services covered under the barter agreement, those services were deemed an in-kind contribution and properly reported as "in-kind payroll services" under both the "Itemized Disbursements" and "Itemized Receipts" headings of the Commission's disclosure forms on the Fund's Mid-Year Report for 1983.

REPORTING REQUIREMENTS

The Fund made all appropriate disclosures. As mentioned above, in-kind contributions above and beyond the terms of the barter arrangement were properly reported. Further, any cash outlays relating to list maintenance (i.e., computer services, list-use or computer-generation, mailing services, etc.), were fully disclosed. These are the only items which are required to be reported.

The list-exchange agreement is not reportable. The Commission has dealt with other cases involving the exchange of a mailing list as payment. (See, AO 1981-46.) Indeed, such exchanges are a common and accepted practice among direct mail fundraisers. In AO 1981-46, the Committee for Congressman Ronald V. Dellums entered into an agreement with a fundraising firm. The terms of the agreement called for the exchange of the use of the Committee's mailing list as "full consideration for services rendered." The Commission came to the conclusion that if the exchange of names is of equal value to the service received, (as is the case in MUR-1872), "no contribution or expenditure would result and the transaction would not be reportable under the Act [FECA]." Further, it makes no difference whether the recipient of the names uses the list presently or in the future; or whether the recipient is another committee, a non-profit group or a for-profit corporation, according to said advisory opinion.

Irrespective of whether a mailing list or some other good or service is the medium of exchange, there is no reporting obligation relating to any barter until the good or service exchanged is actually used. [See, AO 1977-45.] The facts involved in AO 1977-45 are that a candidate bartered his services for "a line of credit" to be used as payment for advertising. The Commission states, "neither [the candidate] nor his principal campaign committee, has any reporting obligations with respect to the line of credit until it is actually used...."

continued...

The reasoning for this rule is obvious: It would be impossible to disclose accurately, the dollar value of a barter transaction before consumation. This is the same sentiment as expressed by the Federal Election Commission in another advisory opinion AO 1982-8. The Commission, in discussing the reporting of barter-contributions, states "While [barter] credit units resemble in-kind contributions under the Act in that their value can be determined with certainty only when they are exchanged, they nevertheless are like cash in that they function as a medium of exchange." [AO 1982-8. (Emphasis added.)] Accordingly, it would have been impossible for the Fund to place an accurate dollar value on the mailing list.

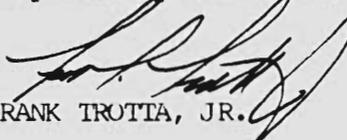
Finally, it is important to understand that the Fund sought guidance on this matter from the Commission and received none. In an April 25, 1984 letter to the FEC's Reports Analysis Division, the Fund disclosed the barter agreement and simultaneously asked for guidance as to reporting the barter. Beyond that, the Fund offered to amend its disclosures in any manner the Commission directed. (A copy of the letter is annexed hereto and made a part hereof.)

The final paragraph of said letter reads, "We are willing to amend in any manner you suggest our reports to reflect this 'barter' like arrangement. Please advise." No advise or guidance was ever given and no directive ever rendered. The Fund did make every good faith effort to disclose its finances completely and accurately.

CONCLUSION

Accordingly, the Fund believes that no laws have been violated and that the matter should be closed with a determination to that effect.

Respectfully submitted,


FRANK TROTTA, JR.

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April 25, 1984

Ms. Doris Gardner
Reports Analyst
Reports Analysis Division
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Ms. Gardner:

Your letter of April 11, to our Treasurer, Timothy S. Carey was referred to me for response.

In your letter you indicate that our reports reflect only "limited payments for administrative expenses." We have reflected all expenditures made. The reason these expenditures are limited is that we have an exchange agreement with our landlord. Under this agreement, we provide our landlord with a full ownership interest in our mailing lists in return for free administrative services and space.

We are willing to amend in any manner you suggest our reports to reflect this "barter" like arrangement. Please advise.

Very truly yours,

S/FT

Frank Trotta
Counsel

FT/ms

cc: Timothy S. Carey

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Frank P. Trotta, Esq.
24 North Avenue
New Rochelle, New York 10805

05 APR 30 12:09

Office of the General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Attn: Jonathan Levin, Esq.

CERTIFIED

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MAIL

ACC# 6748

February 22, 1985

BY HAND

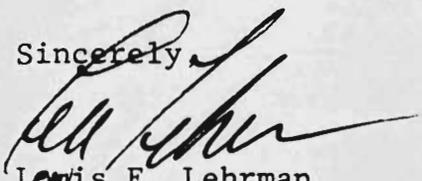
John Warren McGarry
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1872

Dear Mr. Chairman:

This is to advise you, pursuant to 11 C.F.R. §111.23, that the undersigned is being represented in the above-referenced matter by the following counsel: Alan P. Dye, Esq. and C. Michael Deese, Esq., of Webster, Chamberlain & Bean, Suite 1000, 1747 Pennsylvania Avenue, N.W. 20006 (telephone: 202-785-9500).

Messrs. Dye and Deese are hereby authorized to receive any and all notifications and other communications from the Commission on my behalf.

Sincerely,

Lewis E. Lehrman

cc: Jonathan Levin, Esq.
Office of the General Counsel
Federal Election Commission

85040380519

PA: 28

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Lewis E. Lehrman) MUR 1872

RESPONDENT'S RESPONSE TO SUBPOENA
TO PRODUCE DOCUMENTS

Respondent Lewis E. Lehrman, having sought and received an extension of time until February 22, 1985, within which to respond to the Commission's Subpoena dated January 10, 1985, hereby responds as follows:

1. Attached hereto is a photocopy of the formal agreement entered into between Lewis E. Lehrman and the Fund to Keep America Number One ("the Committee").

2. Other than the reports filed by the Committee with the Commission, respondent is not aware of the existence of any documents which are responsive to Document Request 2.


Alan P. Dye

C. Michael Deese
Webster, Chamberlain & Bean
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 785-9500

Attorneys for Respondent

86040360520

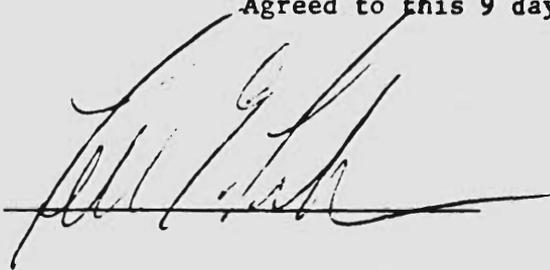
Fund to Keep #1
America 1

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The Fund to Keep America Number One, (hereinafter "FUND") an unincorporated association, duly registered as a political committee with the Federal Election Commission, does hereby grant an unconditional and permanent proprietary interest in all its mailing, contributions and volunteer lists, records, files, computer tapes and all other pertinent information relating thereto, in any form whatsoever, to Lewis E. Lehrman (herewith "LEL") of 778 Park Avenue, New York, N.Y., in consideration of his agreement herein, to forego the receipt of any and all payment from "FUND" for administration, clerical, legal, rental and other "overhead" expenses provided by "LEL" or his agents for the benefit of the "FUND".

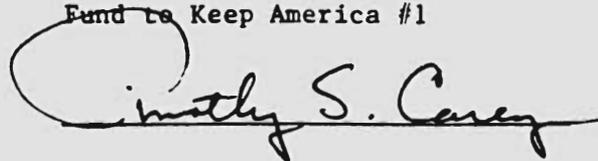
This agreement shall remain in effect so long as payment for said services is foregone.

Agreed to this 9 day of March, 1984.



Lewis E. Lehrman

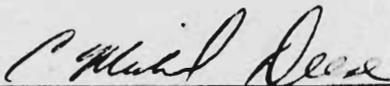
Fund to Keep America #1



by: Timothy S. Carey, Treasurer

CERTIFICATE OF SERVICE

I hereby certify that a copy of Respondent's Response to Subpoena to Produce Documents was served by hand upon Jonathan Levin, Esquire, Office of the General Counsel, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463, this 22 day of February, 1985.



C. Michael Deese

260440360522

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Lewis E. Lehrman) MUR 1872

RESPONDENT'S ANSWERS TO INTERROGATORIES

Respondent Lewis E. Lehrman hereby answers the Interrogatories propounded by the Commission on January 10, 1985, as follows:

Interrogatory 1.

State whether you are the landlord of the Fund to Keep America #1 ("the Committee").

Answer:

Lewis E. Lehrman & Company, a sole proprietorship, currently subleases space at 216 Massachusetts Avenue, N.E., Washington, D.C., to the Committee under a sublease arrangement effective January 1, 1985. The Committee's payments to Lehrman & Company pursuant to that arrangement exceed the rent payments made by Lehrman & Company to its landlord for the space involved by an amount judged to be equal to the cost of utilities for that space paid by Lehrman & Company.

From April 6, 1983, through approximately June 30, 1983, I permitted the Committee to have the nonexclusive use of space within my offices located at 641 Lexington Avenue, New York, New York.

Interrogatory 2.

State whether you are subletting office space at 641 Lexington Avenue to the Committee.

95040150523

a. If you sublet to the Committee at 641 Lexington Avenue, state the amount of rent per square foot that you pay for office space at that address.

b. If you sublet to the Committee at 641 Lexington Avenue, state whether you sublet to any other persons and/or organizations. List the rent per square foot for each such sublessee.

ANSWER:

During 1983 I provided office space to the Committee in exchange for an ownership interest in all of the Committee's mailing, contributions and volunteer lists, records, files, computer tapes and other related information. I did not enter into a formal sublease agreement with the Committee or with any other entities. I paid rent for the space provided to the Committee at the approximate maximum rate of \$21.296 per square foot per year (inclusive of utilities). For a period of approximately three months (April - June) in 1983, the Committee and at least two other entities shared 138 square feet of office space at 641 Lexington Avenue, New York, New York. I would estimate that the Committee occupied, at most, fifty percent of that 138 square feet. During the remainder of 1983 the Committee did not use space at 641 Lexington Avenue, although that address continued to be the Committee's mailing address; occasional telephone calls to the Committee were answered by my employees located at that address.

INTERROGATORY 3.

State whether you own the building at 641 Lexington Avenue.

B 5 0 4 0 7 0 5 2 4

If you own the building, state the rental cost per square foot for all other parts of the building.

ANSWER:

I do not now own, nor have I ever owned, the building at 641 Lexington Avenue, New York, New York. I was a tenant in that building.

INTERROGATORY 4.

State whether the \$4,971 in in-kind payroll services paid by you to the Committee was paid pursuant to the barter agreement whereby the Committee is provided with administrative services.

If so, state the value going to you and the value going to the Committee pursuant to the barter agreement during the calendar year 1983. This statement should include an item-by-item breakdown of the amount you received as a result of your interest in the Committee's lists, records, files, tapes, and other assets and an item-by-item breakdown of the amount going to the Committee in the form of rent, salaries, payments for utilities and other forms of administrative support.

ANSWER:

In April, May, and June, 1983, I contributed \$4,941.00 (not \$4,971.00) in in-kind payroll services to the Committee (see pages 19 - 20 of July 31, 1983, Mid-Year Report filed by the Committee). This amount represents the cost of the time devoted by several of my employees to the planning, execution and winding-up of a fundraising event for the Committee. These services were contributed by me in addition to other overhead, primarily rent, which I provided to the Committee in exchange for an ownership interest in the Committee's lists and other information.

36040500525

During calendar year 1983 the Committee received the following from me:

Rent (approx.) (3 months of 50% of 138 square feet)	\$ 367.36
In-kind payroll services	4,941.00
Telephone answering and mail collection (9 months at maximum estimated market value of \$100 per month)	<u>900.00</u>
Total	\$ 6,208.36

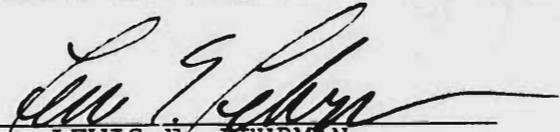
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The provision of administrative services was concentrated in April, May, and June, 1983, due to the fact that (1) the Committee did not begin to operate until April 6, 1983, and (2) the Committee's sole fundraising activity in 1983 took place in the April - June time period.

During calendar year 1983, I had access to the Committee's lists of contributors, including each contributor's contribution history. I am not in a position to quantify the value of those lists in 1983, but I would submit that it approximated a minimum of \$1,360. The lists contained the names of over 17,000 contributors. Even at the customary one-time rental rate (I actually owned the Committee's lists) of \$80 per 1,000, this translates into a minimum value of \$1,360. Thus, the maximum possible value of the services which I contributed to the Committee, approximately \$6,208.36, exceeded the minimum possible value of that received by me from the Committee, \$1,360.00, by no more than \$4,848.86.

Further, since the value of the Committee's lists equaled or exceeded the value of the services provided by me to the Committee pursuant to the barter agreement, those services did not constitute a contribution to the Committee.

DISTRICT OF COLUMBIA)
CITY OF WASHINGTON) ss:

LEWIS E. LEHRMAN, being first duly sworn, deposes and says that he has read each of the foregoing Answers to Interrogatories and that, to the best of his knowledge and belief, each answer given is accurate and complete.


LEWIS E. LEHRMAN

Sworn to and subscribed before me this 22nd day of February, 1985.

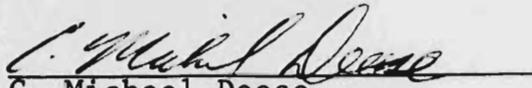

Notary Public

My commission expires: 4-14-86

36040760527

CERTIFICATE OF SERVICE

I hereby certify that a complete and accurate copy of the foregoing Respondent's Answers to Interrogatories was served by hand upon Jonathan Levin, Esquire, Office of the General Counsel, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463, this 22nd day of February, 1985.


C. Michael Deese

35040760528

MEMO

ACC # 6741
HAND DELIVERED

85 FEB 22 ALL: 46

LAW OFFICES OF FRANK TROTTA

JON:

Here is the answers (sworn) to the interrogatories and the documents requested. I am working on a letter providing more information, but I'll understand if you can't wait for that. (My delay is due to the fact that I can't locate the people with the answers I need.

TRUST ALL IS WELL.

Regards,



FRANK

36040360529

Acc# 6741



The Fund to Keep America Number One, (hereinafter "FUND") an unincorporated association, duly registered as a political committee with the Federal Election Commission, does hereby grant an unconditional and permanent proprietary interest in all its mailing, contributions and volunteer lists, records, files, computer tapes and all other pertinent information relating thereto, in any form whatsoever, to Lewis E. Lehrman (herewith "LEL") of 778 Park Avenue, New York, N.Y., in consideration of his agreement herein, to forego the receipt of any and all payment from "FUND" for administration, clerical, legal, rental and other "overhead" expenses provided by "LEL" or his agents for the benefit of the "FUND".

This agreement shall remain in effect so long as payment for said services is foregone.

Agreed to this 9 day of March, 1984.

Lewis E. Lehrman

Fund to Keep America #1

by: Timothy S. Carey, Treasurer

3604030530

Before the Federal Election Commission

JACCH 6741

FEDERAL ELECTION COMMISSION

Complainant,

- against -

MUR: 1872

FUND TO KEEP AMERICA #1,
TIMOTHY S. CAREY, Treasurer
Respondent

RESPONDENT'S
AFFIRMATION
IN REPLY TO
INTERROGATORIES

I, Timothy S. Carey, as Treasurer of the Fund to Keep America Number 1, Respondent herein, being duly sworn depose and affirm:

1. That I reside in the Town of Cortlandt, County of Westchester, State of New York.

2. That at all times since its inception in April of 1983, I was and am the Treasurer of an unincorporated organization known as "the Fund to Keep America #1." [Hereinafter "the Fund."]

3. That said organization is duly registered with the Federal Election Commission. [Hereinafter "the Commission".]

4. That I make this affirmation in reply to interrogatories of the Commission issued on or about January 10, 1985, relating to the above-captioned matter under review.

5. That, all answers herein are my accurate recollection of the facts as they relate to the time period in question.

6. That, the "landlord providing the Fund with administrative services and space" during the time period in question, was Lewis E. Lehman.

35040:50531

7. That, the Fund's "quarters" did not constitute either an office apart from any other offices or an office within a suite of offices, but rather constituted a desk and surrounding space used occasionally on a non-exclusive basis, together with file space, totaling approximately 138 square feet.

8. That, upon information and belief, the suite in which was located the room containing said desk and file space was also occupied by the Lewis Lehman organization.

9. That, upon information and belief, the "normal and usual cost of renting space at 641 Lexington Avenue, New York, New York" during the time period in question, and for the floor in question was approximately between \$16.50 and \$21.30 per square foot per year.

10. That, upon information and belief, the figure of \$16.50 was derived by dividing the annual rent of the space in question for the period in question (\$90,750) by the total number of square feet rented (5,500). These figures are taken from the lease of the premise in question.

11. That, upon information and belief, the figure of \$21.296 presented in the Fund's response to the inquiry of the Commission's Reports Analysis Division, was derived by first prorating the monthly rental charge for the space taken by the Fund's desk and files as it related to the total leased space of 5,500 square feet (i.e., 138 square feet is approximately 2.5% of 5,500 square feet) and annualizing that figure of 2.5% of the monthly rent, during the period in question; and that this higher figure may represent some utility charges and/or an inflation or cost of living or tax adjustment imposed upon the leasee of the entire space in question, (i.e., imposed upon Fund's "landlord").

12. That, the \$4,971 in in-kind payroll services paid by Lewis Lehman in 1983 was not paid to the Fund pursuant to the barter agreement.

13. That, in compliance with the Commission's request for documents, I submit a copy of the barter agreement contract.

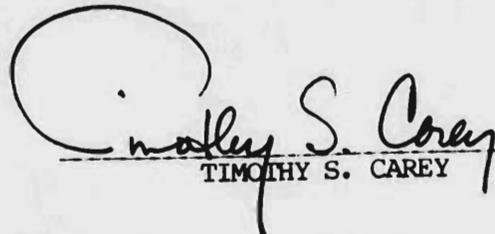
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14. That, upon information and belief, there are no other documents which the Commission has requested, in existence.

STATE OF NEW YORK
COUNTY OF WESTCHESTER

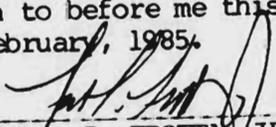
)
)

ss.:


TIMOTHY S. CAREY

Dated: February 20, 1985

Sworn to before me this 20th day
of February, 1985.


FRANK P. TROTTA, JR.

Notary Public, State of New York
Qualified in Westchester County
Commission Expires March 30, 1986

86040360533

ACC# 6661

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05 FEB 14 10:11

TWENTY-FOUR NORTH AVENUE
NEW ROCHELLE, NEW YORK 10805
TELEPHONE: (914) NE 2-7069

Frank Trotta, Jr.
ATTORNEY - AT - LAW

February 13, 1985

Jonathan Levin, Esq.
Office of the General Counsel
Federal Election Commission
Washington, D.C. 20463

via overnight mail

RE: M.U.R. 1872/ Fund to Keep America #1

Dear Mr. Levin:

I am writing on behalf of the Fund to Keep America #1 in reference to the above-captioned matter. (N.B.; Although I have written you before on this matter it was not for this client. The party involved in my prior request for time extension is now represented by other counsel. This letter in no way relates to that prior correspondence.)

The Fund to Keep America #1 received correspondence from the Commission on February 4, 1985, requesting a ten-day reply. I hereby request a brief extension. My client has not asked for a prior extension in this matter under review.

I scheduled a meeting with your office today. The meeting is planned for the afternoon of Tuesday, February 19 at 2 o'clock. (That is the first business day next week.) I intend to respond to the Commission's February 4th communications immediately after that meeting at your offices. Accordingly, I request a time extension until some time after our meeting of next week.

In view of these circumstances, I trust you will agree that a brief extension of time is appropriate. Your favorable consideration in this matter would be greatly appreciated. However, if, for some reason, you do not grant this request, I would ask that you notify me of this fact by telephone, (rather than or in addition to, by letter), since time is of the essence. My telephone number is listed above.

Thank you for your attention in this matter. I look forward to meeting you on Tuesday.

Very truly yours,

Frank Trotta, Jr.
FRANK TROTТА, JR.

FT:b1

850405000334

211# 6655

LAW OFFICES

WEBSTER, CHAMBERLAIN & BEAN

1747 PENNSYLVANIA AVENUE, N. W.

WASHINGTON, D. C. 20006

(202) 785-9500

GEORGE D. WEBSTER
CHARLES E. CHAMBERLAIN
J. COLEMAN BEAN
ARTHUR L. HEROLD
ALAN P. DYE
BURKETT VAN KIRK
FRANK M. NORTHAM
C. MICHAEL DEESE
GERARD P. PANARO
JOHN W. HAZARD, JR.
BRAD D. WEISS

February 12, 1985

BY HAND

Jonathan Levin, Esq.
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W., 7th Floor
Washington, D.C. 20463

Re: MUR 1872

Dear Mr. Levin:

As I indicated to you by telephone earlier today, this firm has recently been engaged to represent Mr. Lewis E. Lehrman in connection with the Commission's MUR 1872. Inasmuch as Mr. Lehrman and Mr. Frank Trotta, counsel to the Fund to Keep America Number One ("the Fund"), did not learn until late January that the Commission intended to pursue two separate matters with respect to Mr. Lehrman and the Fund, the decision to engage us as separate counsel was not necessary until quite recently and was not made until late last week.

I understand that, pursuant to a previous time extension, Mr. Lehrman's responses to the Commission's subpoena, as well as any additional materials he may wish to be considered by the Commission, are not due to be filed until the close of business today. Since I received the materials pertinent to MUR 1872 only yesterday, and for the further reason that we have not yet had an opportunity to speak directly with our client, I would respectfully request that Mr. Lehrman be granted an additional ten (10) days, until the close of business on February 22, 1985, within which to respond to the Commission's subpoena and submit any additional relevant information. We will also submit a Notice of Counsel at the earliest possible date.

I would appreciate receiving confirmation of a further extension at your earliest convenience.

Very truly yours,

C. Michael Deese

CMD:tsm

35040:005335

LAW OFFICES

WEBSTER CHAMBERLAIN & BEAN

1717 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006

BY HAND

Jonathan Levin, Esq.
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W., 7th Floor
Washington, D.C. 20463

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05 FEB 1 11:51

LAW OFFICES OF FRANK TROTTA

Jon -

Frankly, I was a bit
concerned about the form of
my reply in MUR - 1868.

Thanks for the words of
advice as to style and form.
If I get retained in MUR 1872,
at least now I'll have a form to
follow.

Respectfully,
J. L.

96040500537

Frank Trotta, Jr.
ATTORNEY - AT - LAW

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HAND DELIVERED

85 FEB 1 P 1:51

TWENTY-FOUR NORTH AVENUE
NEW ROCHELLE, NEW YORK 10805
TELEPHONE: (914) NE 2-7669

GC#6572

January 30, 1985

Jonathan Levin, Esq.
Office of the General Counsel
Federal Election Commission
Washington, D.C. 20463

1
P 2:32

RE: MUR 1872

Dear Mr. Levin:

As discussed today, I am constrained to seek a minimal extension of time for Mr. Lehman to reply in the above-captioned Matter Under Review.

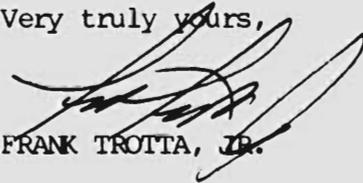
The Commission's letter was received by my client's business office on January 23, 1985. The letter called for our response within ten days. Mr. Lehman is traveling and in his absence, his office has referred your letter to me for the limited purpose of requesting more time to reply.

Other than for this limited purpose, I have yet to be retained to represent Mr. Lehman in this matter; accordingly, my appearance herein in no way waives any of Mr. Lehman's rights relating to jurisdiction or other procedural matters. Further, given the fact that I am Counsel to the Fund to Keep America #1, which is involved in, but not a party in this matter, I may not be in a position to represent Mr. Lehman in this matter, under the Code of Professional Responsibility. I would appreciate time to study this question, and to discuss this matter at length with Mr. Lehman. In view of these circumstances, I trust you will agree that a 10-day extension of time is appropriate.

Your favorable consideration in this matter would be greatly appreciated. However, if, for some reason, you do not grant this request, I would ask that you notify me of this fact by telephone, (rather than or in addition to, by letter), since time is of the essence. My telephone number is listed above.

Thank you for your attention in this matter.

Very truly yours,


FRANK TROTTA, JR.

FT:mn

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SENSITIVE



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
OFFICE OF THE SECRETARY
FEDERAL ELECTION COMMISSION

25 JAN 28 P 4: 20

January 28, 1985

MEMORANDUM TO: The Commission
FROM: Charles N. Steele
General Counsel
By: Kenneth A. Gross
Associate General Counsel
SUBJECT: RAD Referral 84L-26

On January 9, 1985 the Commission approved the recommendation that the subject RAD Referral be made a MUR. Therefore, all documents which had previously been identified as RAD Referral 84L-26 should now become MUR 1872.

Attachment
Copy of Certification

36040300539

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
Fund to Keep America #1
Timothy S. Carey, Treasurer
Lewis E. Lehrman

)
) RAD 84L-26
)
) **SENSITIVE**
)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on January 9, 1985, the Commission decided by a vote of 5-0 to take the following actions in RAD 84L-26: --

1. Open a Matter Under Review.
2. Find reason to believe that the Fund to Keep America #1 and Timothy S. Carey, as its treasurer, violated 2 U.S.C. § 434(b).
3. Find reason to believe that Lewis Lehrman violated 2 U.S.C. § 441a(a)(1)(C).
4. Find reason to believe that the Fund to Keep America #1 and Timothy S. Carey, as its treasurer, violated 2 U.S.C. § 441a(f).
5. Approve the letters with subpoenas and orders attached to the First General Counsel's Report signed January 4, 1985.

Commissioners Aikens, Elliott, Harris, McDonald and Reiche voted affirmatively in this matter; Commissioner McGarry did not cast a vote.

Attest:

1-9-85
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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✓

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) RAD 84L-26
Fund to Keep America #1)
Timothy S. Carey, Treasurer)
Lewis E. Lehrman)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on January 9, 1985, the Commission decided by a vote of 5-0 to take the following actions in RAD 84L-26:

1. Open a Matter Under Review.
2. Find reason to believe that the Fund to Keep America #1 and Timothy S. Carey, as its treasurer, violated 2 U.S.C. § 434(b).
3. Find reason to believe that Lewis Lehrman violated 2 U.S.C. § 441a(a)(1)(C).
4. Find reason to believe that the Fund to Keep America #1 and Timothy S. Carey, as its treasurer, violated 2 U.S.C. § 441a(f).
5. Approve the letters with subpoenas and orders attached to the First General Counsel's Report signed January 4, 1985.

Commissioners Aikens, Elliott, Harris, McDonald and Reiche voted affirmatively in this matter; Commissioner McGarry did not cast a vote.

Attest:

1-9-85
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

35040700541



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 11, 1985

Lewis E. Lehrman
641 Lexington Avenue
New York, New York 10022

Re: MUR 1872
Lewis E. Lehrman

Dear Mr. Lehrman:

On January 9, 1985, the Federal Election Commission determined that there is reason to believe that you violated 2 U.S.C. § 441a(a)(1)(C), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") by granting a benefit that was over \$5,000 more than the benefit received by the Fund to Keep America #1 ("the Committee") pursuant to a barter agreement with the Committee. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. You should submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. In addition, the Commission has issued the attached subpoena and order which requires you to provide information which will assist the Commission in carrying out its statutory duty of supervising compliance with the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, U.S. Code. You may consult with an attorney and have an attorney assist you in the preparation of your responses to this subpoena and order. All responses and information should be submitted under oath within ten days of your receipt of this letter.

In the absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if so desired. See 11 C.F.R. § 111.18(d).

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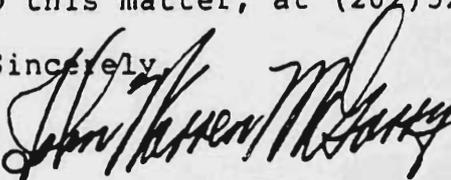
Letter to Lewis E. Lehrman
Page 2

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202)523-4000.

Sincerely,



John Warren McGarry
Chairman

Enclosures

- General Counsel's Factual and Legal Analysis
- Procedures
- Designation of Counsel Statement

35040780543

FEDERAL ELECTION COMMISSION
GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE January, 1985

MUR No. 1872
STAFF MEMBER & TEL NO.
Jonathan Levin
(202) 523-4000

RESPONDENT Lewis E. Lehrman

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

SUMMARY OF ALLEGATIONS

This matter was referred to the Office of General Counsel (OGC) on August 27, 1984, by the Reports Analysis Division (RAD). It involves a possible excessive contribution by Lewis E. Lehrman to the Fund to Keep America #1.

FACTUAL BASIS AND LEGAL ANALYSIS

The 1983 Mid-Year Report of the Fund to Keep America #1, a non-connected political committee, disclosed \$47,256.75 in total disbursements but only itemized \$4,971 in administrative costs. These were for contributions for payroll services from Lewis E. Lehrman. 1/ The Committee's 1983 Year End Report disclosed disbursements of \$30,843 with no disbursements for administrative expenses.

The Committee failed to respond to a first RFAI sent on April 11, 1984, but responded shortly after receiving a second sent on May 3. The Committee treasurer responded that the

1/ These contributions were itemized as contributions to the Committee on Schedule A and disbursements by the Committee on Schedule B, in accordance with 11 C.F.R. § 104.13(a).

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reports "have reflected all expenditures made," and that the reason more administrative expenses are not listed is that such expenses are provided for in an "exchange agreement" between the Committee and its landlord. This agreement provides the landlord with a full ownership interest in the Committee's "mailing lists [sic] in return for free administrative services and space."

Another RFAI inquiring as to the exchange agreement was sent on June 6, 1984. A second RFAI making the same inquiry was sent on June 28, 1984. A response was received from the Committee's counsel on July 3, 1984, stating that he was having the answers to RAD's questions researched. On July 17, RAD received a response from the Committee's counsel.

In answer to a question as to the "normal and usual cost of renting space" at the office's location, the treasurer revealed that the cost for the rental space at 641 Lexington Avenue on the 25th floor is \$21.296 per square foot per year, that the Committee uses 138 square feet, and that, therefore, the monthly rent was \$244.90. In response to a question as to the fair market value and the manner in which the figure was derived (including the number of contributions and the price of the list per thousand names), counsel responded that the list contains approximately 17,000 names, that the list is rented only to "selected bidders" of similar political attitudes, and that the value of the list may differ at any given point. In response to a query as to the "amount of income generated in 1983 and the specifics" of the rental agreements, counsel stated that the

8504050545

amount of income generated from the sale or rental of the Committee's list "was not provided" (i.e., by those researching the answers to RAD's questions) but that the Committee "received \$108,721 in contributions by using a portion of the list." He further elaborated on the "barter agreement" between the landlord and the Committee, stating that the Committee foregoes all payment for rent or "overhead expenses" in return for "an unconditional and permanent proprietary interest in all its mailing, contributor and volunteer lists, records, files, computer tapes, and all other pertinent information." Counsel also indicated that there is no agreement providing for additional payment if the value of the list depreciates.

The existence of a barter arrangement raises the question of whether there was correct valuation in the exchange. If the value of the landlord's interest in the lists, records, files, and other pertinent information is less than the value of the services provided to the Committee in the form of rent payment, phones, utilities, and other facilities, then a contribution is being made by the landlord to the Committee.

Although none of the Committee's responses indicate who the landlord is, the provider of in-kind payroll services, which are administrative expenses, is listed as Lewis E. Lehrman. His address is the same as that of the Committee. Based on these facts, it appears that the landlord in question is Mr. Lehrman.^{2/}

^{2/} The Committee has responded to RAD that it rents 138 square feet in office space from the landlord. This is a small space and may be sublet space within a larger suite of offices.

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Section 441a(a) (1) (C) of Title 2 provides that no person shall make contributions to any political committee, other than a candidate's authorized political committee or a national political party committee, which, in the aggregate exceed \$5,000 in any calendar year. If the value of the services provided to the Committee exceeds the value of the landlord's interest during a calendar year, then a contribution has been made by the landlord to the Committee. The question of whether the value of the services provided to the Committee exceeded the value of the landlord's interests in the Committee's assets by \$5,000 is raised especially in light of the fact that Mr. Lehrman is already reported to have spent \$4,971 for in-kind payroll services. This question needs further investigation. Based on the foregoing analysis, the Office of the General Counsel recommends that the Commission find reason to believe that Lewis E. Lehrman violated 2 U.S.C. § 441a(a) (1) (C).

35040760547

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Lewis E. Lehrman) MUR 1872

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Lewis E. Lehrman
641 Lexington Avenue
New York, New York 10022

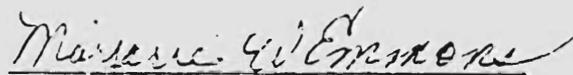
Pursuant to 2 U.S.C. § 437d(a)(1) and (3) and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and Subpoenas you to produce requested documents.

Such answers must be submitted under oath and must be forwarded to the Commission within ten (10) days of your receipt of this Order/Subpoena.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand on January 10, 1985.


John Warren McGarry
Chairman

ATTEST:


Marjorie W. Emmons
Secretary to the Commission

Attachment
Interrogatories and Request for Documents (2 pages)

8604050548

Interrogatories

To: Lewis E. Lehrman

1. State whether you are the landlord of the Fund to Keep America #1 ("the Committee").

2. State whether you are subletting office space at 641 Lexington Avenue to the Committee.

a. If you sublet to the Committee at 641 Lexington Avenue, state the amount of rent per square foot that you pay for office space at that address.

b. If you sublet to the Committee at 641 Lexington Avenue, state whether you sublet to any other persons and/or organizations. List the rent per square foot for each such sublessee.

3. State whether you own the building at 641 Lexington Avenue.

If you own the building, state the rental cost per square foot for all other parts of the building.

4. State whether the \$4,971 in in-kind payroll services paid by you to the Committee was paid pursuant to the barter agreement whereby the Committee is provided with administrative services.

If so, state the value going to you and the value going to the Committee pursuant to the barter agreement during the calendar year 1983. This statement should include an item-by-item breakdown of the amount you received as a result of your interest in the Committee's lists, records, files, tapes, and other assets and an item-by-item breakdown of the amount going to the Committee in the form of rent, salaries, payments for utilities and other forms of administrative support.

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Request for Documents

1. If you are the Committee's landlord, provide a copy of the barter agreement between you and the Committee.
2. If you are the Committee's landlord, provide copies or evidence of all checks, invoices, or other documents pertaining to interests obtained by you pursuant to the barter agreement, and the administrative services obtained by the Committee pursuant to the barter agreement.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 11, 1985

Timothy S. Carey, Treasurer
Fund to Keep America #1
641 Lexington Avenue
New York, New York 10022

Re: MUR 1872
Fund to Keep America #1
Timothy S. Carey, Treasurer

Dear Mr. Carey:

On January 9, 1985, the Federal Election Commission determined that there is reason to believe that the Fund to Keep America #1 ("the Committee") and you, as treasurer, violated 2 U.S.C. § 434(b), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") by failing to disclose payments for administrative costs provided for the Committee through a barter agreement. On that date, the Commission also found reason to believe that the Committee and you, as its treasurer, violated 2 U.S.C. § 441a(f), another provision of the Act, by receiving a benefit that was more than \$5,000 greater than the benefit received by your landlord in the barter agreement. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you and the Committee. You should submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. In addition, the Commission has issued the attached subpoena and order which requires you to provide information which will assist the Commission in carrying out its statutory duty of supervising compliance with the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, U.S. Code. You may consult with an attorney and have an attorney assist you in the preparation of your responses to this subpoena and order. All responses and information should be submitted under oath within ten days of your receipt of this letter.

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Letter to Timothy S. Carey
Page 2

Some of the interrogatories enclosed address areas covered in a request for information sent to you by the Commission's Reports Analysis Division on June 6, 1984. These areas are being addressed again because some of the responses of the Committee's counsel were incomplete or unresponsive.

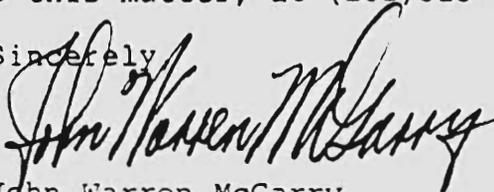
In the absence of any additional information which demonstrates that no further action should be taken against your committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if so desired. See 11 C.F.R. § 111.18(d).

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202)523-4000.

Sincerely,



John Warren McGarry
Chairman

Enclosures

General Counsel's Factual and Legal Analysis
Procedures
Designation of Counsel Statement

36040760552

FEDERAL ELECTION COMMISSION
GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE January, 1985

MUR NO. 1872
STAFF MEMBER & TEL. NO.
Jonathan Levin
(202) 523-4000

RESPONDENT Fund to Keep America #1
Timothy S. Carey, Treasurer

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

SUMMARY OF ALLEGATIONS

The Fund to Keep America #1 ("the Committee") was referred to the Office of General Counsel on August 27, 1984, by the Reports Analysis Division (RAD). This referral involves a possible failure to disclose fully the administrative costs provided for the Committee.

FACTUAL BASIS AND LEGAL ANALYSIS

The 1983 Mid-Year Report of the Fund to Keep America #1, a non-connected political committee, disclosed \$47,256.75 in total disbursements but only itemized \$4,971 in administrative costs. These were for contributions for payroll services from Lewis E. Lehrman. 1/ The Committee's 1983 Year End Report disclosed disbursements of \$30,843 with no disbursements for administrative expenses.

The Committee failed to respond to a first RFAI sent on April 11, 1984, but responded shortly after receiving a second sent on May 3. The Committee treasurer responded that the

1/ These contributions were itemized as contributions to the Committee on Schedule A and disbursements by the Committee on Schedule B, in accordance with 11 C.F.R. § 104.13(a).

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reports "have reflected all expenditures made," and that the reason more administrative expenses are not listed is that such expenses are provided for in an "exchange agreement" between the Committee and its landlord. This agreement provides the landlord with a full ownership interest in the Committee's "mailing lists [sic] in return for free administrative services and space."

Another RFAI inquiring as to the exchange agreement was sent on June 6, 1984. A second RFAI making the same inquiry was sent on June 28, 1984. A response was received from the Committee's counsel on July 3, 1984, stating that he was having the answers to RAD's questions researched. On July 17, RAD received a response from the Committee's counsel.

In answer to a question as to the "normal and usual cost of renting space" at the office's location, the treasurer revealed that the cost for the rental space at 641 Lexington Avenue on the 25th floor is \$21.296 per square foot per year, that the Committee uses 138 square feet, and that, therefore, the monthly rent was \$244.90. In response to a question as to the fair market value and the manner in which the figure was derived (including the number of contributions and the price of the list per thousand names), counsel responded that the list contains approximately 17,000 names, that the list is rented only to "selected bidders" of similar political attitudes, and that the value of the list may differ at any given point. In response to a query as to the "amount of income generated in 1983 and the specifics" of the rental agreements, counsel stated that the

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amount of income generated from the sale or rental of the Committee's list "was not provided" (i.e., by those researching the answers to RAD's questions) but that the Committee "received \$108,721 in contributions by using a portion of the list." He further elaborated on the "barter agreement" between the landlord and the Committee, stating that the Committee foregoes all payment for rent or "overhead expenses" in return for "an unconditional and permanent proprietary interest in all its mailing, contributor and volunteer lists, records, files, computer tapes, and all other pertinent information." Counsel also indicated that there is no agreement providing for additional payment if the value of the list depreciates.

Section 434(b) of Title 2 sets out the requirements for reporting contributions to and disbursements by a political committee. Section 434(b)(3) sets out the requirements for itemizing in-kind contributions, e.g., goods or services, provided by an individual to a committee. Sections 434(b)(4)(A) and (b)(5)(A) set out the requirements for itemizing disbursements to meet committee operating expenses. This matter presents a situation in which one of the half-year reports itemizes only "in-kind payroll" services and no other administrative services and the following report itemized no administrative expenses at all.

The existence of a barter arrangement for the payment of administrative expenses is not impermissible per se. Barter arrangements for contributions have been deemed permissible in

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two advisory opinions provided that there is correct valuation of the goods or services involved. See AO 1977-45 and AO 1982-8. The existence of an exchange as a method for the provision of administrative services, however, does not negate the responsibility of the Committee to report the value of the interest "disbursed" and the value of the services "received." There should be some itemization, not just of payroll services, but of the value of services for phones, paper, utilities, and other casts of running the office of the committee. There should also be an itemization of the value of the interest conveyed by the Committee, i.e., the benefit obtained by the landlord as a result of the interest in lists, records, files, and other "pertinent information." This may be itemized by the value derived from each of the interests during the relevant reporting period. Based on the foregoing analysis, the Office of the General Counsel recommends that the Commission find reason to believe that the Fund to Keep America #1 and Timothy S. Carey, as treasurer, violated 2 U.S.C. § 434(b).

The existence of a barter arrangement also raises the question of whether there was correct valuation in the exchange. If the value of the landlord's interest in the lists, records, files, and other pertinent information is less than the value of the services provided to the Committee in the form of rent payment, phones, utilities, and other facilities, then a contribution is being made by the landlord to the Committee.

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Although none of the Committee's responses indicate who the landlord is, the provider of in-kind payroll services, which are administrative expenses, is listed as Lewis E. Lehrman. His address is the same as that of the Committee. Based on these facts, it appears that the landlord in question is Mr. Lehrman. ^{2/}

Section 441a(a)(1)(C) of Title 2 provides that no person shall make contributions to any political committee, other than a candidate's authorized political committee or a national political party committee, which, in the aggregate exceed \$5,000 in any calendar year. Section 441a(f) prohibits knowing acceptance of contributions in violation of the provisions of § 441a. If the value of the services provided to the Committee exceeds the value of the landlord's interest during a calendar year, then a contribution has been made by the landlord to the Committee. The question of whether the value of the services provided to the Committee exceeded the value of the landlord's interests in the Committee's assets by \$5,000 is raised especially in light of the fact that Mr. Lehrman is already reported to have spent \$4,971 for in-kind payroll services. This question needs further investigation. Based on the foregoing analysis, the Office of the General Counsel recommends that the Commission find reason to believe that the Fund to Keep America #1 and Timothy S. Carey, as treasurer, violated 2 U.S.C. § 441a(f).

^{2/} The Committee has responded to RAD that it rents 138 square feet in office space from the landlord. This is a small space and may be sublet space within a larger suite of offices.

3504010557

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Fund to Keep America #1) MUR 1872
Timothy S. Carey, Treasurer)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Timothy S. Carey
Treasurer
Fund to Keep America #1
641 Lexington Avenue
New York, N.Y. 10022

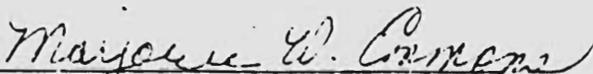
Pursuant to 2 U.S.C. § 437d(a)(1) and (3) and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and Subpoenas you to produce requested documents.

Such answers must be submitted under oath and must be forwarded to the Commission within ten (10) days of your receipt of this Order/Subpoena.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand on January 10, 1985.


John Warren McGarry
Chairman

ATTEST:


Marjorie W. Emmons
Secretary to the Commission

Attachment
Interrogatories and Request for Documents (2 pages)

36040700553

Interrogatories

TO: Timothy S. Carey, Treasurer
Fund to Keep America #1

1. State the name of the landlord providing your committee with administrative services and space.

2. State whether the Committee's quarters constitute an office apart from any other offices or an office within a suite of offices.

a. If it is in a larger suite of offices, state the person or organization occupying this suite of offices.

b. State whether the Committee's quarters are rented on a sublease basis or are rented from the owner of the building at 641 Lexington Avenue.

3. State the normal and usual cost of renting space at 641 Lexington Avenue in New York City.

a. If there is a discrepancy between this figure and the rent figure stated in your response to the inquiry from the Commission's Reports Analysis Division, explain the reason for this difference.

4. State whether the \$4,971 in in-kind payroll services paid by Lewis Lehrman was paid to the Committee pursuant to the barter agreement whereby the Committee is provided with administrative services.

If so, state the value going to the Committee and the value going to the landlord, pursuant to the barter agreement, during the calendar year 1983. This statement should include an item-by-item breakdown of the amount going to the landlord as a result

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of his interest in the various lists, records, files, tapes, and other information, and an item-by-item breakdown of the amount going to your committee in the form of rent, salaries, payments for utilities, and other forms of administrative support.

Requests for Documents

1. Provide a copy of the barter agreement between your committee and the landlord.
2. Provide copies or evidence of all checks, invoices and other documents pertaining to interests obtained by the landlord pursuant to the barter agreement and the administrative services obtained by your committee pursuant to the barter agreement.

36040700560



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Timothy S. Carey, Treasurer
Fund to Keep America #1
641 Lexington Avenue
New York, New York 10022

Re: MUR
Fund to Keep America #1
Timothy S. Carey, Treasurer

JJ 1/10/85

Dear Mr. Carey:

On January , 1985, the Federal Election Commission determined that there is reason to believe that the Fund to Keep America #1 ("the Committee") and you, as treasurer, violated 2 U.S.C. § 434(b), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") by failing to disclose payments for administrative costs provided for the Committee through a barter agreement. On that date, the Commission also found reason to believe that the Committee and you, as its treasurer, violated 2 U.S.C. § 441a(f), another provision of the Act, by receiving a benefit that was more than \$5,000 greater than the benefit received by your landlord in the barter agreement. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you and the Committee. You should submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. In addition, the Commission has issued the attached subpoena and order which requires you to provide information which will assist the Commission in carrying out its statutory duty of supervising compliance with the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, U.S. Code. You may consult with an attorney and have an attorney assist you in the preparation of your responses to this subpoena and order. All responses and information should be submitted under oath within ten days of your receipt of this letter.

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Letter to Timothy S. Carey
Page 2

Some of the interrogatories enclosed address areas covered in a request for information sent to you by the Commission's Reports Analysis Division on June 6, 1984. These areas are being addressed again because some of the responses of the Committee's counsel were incomplete or unresponsive.

In the absence of any additional information which demonstrates that no further action should be taken against your committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if so desired. See 11 C.F.R. § 111.18(d).

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202)523-4000.

Sincerely,

Enclosures

General Counsel's Factual and Legal Analysis
Procedures
Designation of Counsel Statement

36040760562



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Lewis E. Lehrman
641 Lexington Avenue
New York, New York 10022

Re: MUR
Lewis E. Lehrman

JE 11/10/85

Dear Mr. Lehrman:

On January , 1985, the Federal Election Commission determined that there is reason to believe that you violated 2 U.S.C. § 441a(a)(1)(C), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") by granting a benefit that was over \$5,000 more than the benefit received by the Fund to Keep America #1 ("the Committee") pursuant to a barter agreement with the Committee. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. You should submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. In addition, the Commission has issued the attached subpoena and order which requires you to provide information which will assist the Commission in carrying out its statutory duty of supervising compliance with the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, U.S. Code. You may consult with an attorney and have an attorney assist you in the preparation of your responses to this subpoena and order. All responses and information should be submitted under oath within ten days of your receipt of this letter.

In the absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if so desired. See 11 C.F.R. § 111.18(d).

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Letter to Lewis E. Lehrman
Page 2

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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Sincerely,

JL 1/10/85

Enclosures

General Counsel's Factual and Legal Analysis
Procedures
Designation of Counsel Statement

35040700564



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
 FROM: Office of General Counsel *ct*
 DATE: January 7, 1985
 SUBJECT: RAD 84L-26: First General Counsel's Report

The attached is submitted as an Agenda document
 for the Commission Meeting of _____
 Open Session _____
 Closed Session _____

CIRCULATIONS		DISTRIBUTION	
48 Hour Tally Vote	<input checked="" type="checkbox"/>	Compliance	<input checked="" type="checkbox"/>
Sensitive	<input checked="" type="checkbox"/>	Audit Matters	<input type="checkbox"/>
Non-Sensitive	<input type="checkbox"/>	Litigation	<input type="checkbox"/>
24 Hour No Objection	<input type="checkbox"/>	Closed MUR Letters	<input type="checkbox"/>
Sensitive	<input type="checkbox"/>	Status Sheets	<input type="checkbox"/>
Non-Sensitive	<input type="checkbox"/>	Advisory Opinions	<input type="checkbox"/>
Information	<input type="checkbox"/>	Other (see distribution below)	<input type="checkbox"/>
Sensitive	<input type="checkbox"/>		
Non-Sensitive	<input type="checkbox"/>		
Other	<input type="checkbox"/>		
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SENSITIVE

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

RECEIVED
OFFICE OF THE FEC
COMMISSION SECRETARY

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL: 1/7/85 - 8:45 RAD 84L-26
BY OGC TO THE COMMISSION: 1/7/85 - 8:45 STAFF MEMBER J. Levin

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

RESPONDENTS' NAMES: Fund to Keep America #1
Timothy S. Carey, Treasurer
Lewis E. Lehrman

RELEVANT STATUTE: 2 U.S.C. § 434(b)(4)
2 U.S.C. § 434(b)(5)
2 U.S.C. § 441a(a)(1)(C)
2 U.S.C. § 441a(f)
11 C.F.R. § 104.13(a)

INTERNAL REPORTS CHECKED: Public Records

FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

The Fund to Keep America #1 ("the Committee") was referred to the Office of General Counsel on August 27, 1984, by the Reports Analysis Division (RAD). This referral involves a possible failure to disclose fully the administrative costs provided for the Committee.

FACTUAL AND LEGAL ANALYSIS

The 1983 Mid-Year Report of the Fund to Keep America #1, a non-connected political committee, disclosed \$47,256.75 in total disbursements but only itemized \$4,971 in administrative costs. These were for contributions for payroll services from Lewis E. Lehrman. 1/ The Committee's 1983 Year End Report disclosed

1/ These contributions were itemized as contributions to the Committee on Schedule A and disbursements by the Committee on Schedule B, in accordance with 11 C.F.R. § 104.13(a).

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disbursements of \$30,843 with no disbursements for administrative expenses.

The Committee failed to respond to a first RFAI sent on April 11, 1984, but responded shortly after receiving a second sent on May 3. The Committee treasurer responded that the reports "have reflected all expenditures made," and that the reason more administrative expenses are not listed is that such expenses are provided for in an "exchange agreement" between the Committee and its landlord. This agreement provides the landlord with a full ownership interest in the Committee's "mailing lists [sic] in return for free administrative services and space."

Another RFAI inquiring as to the exchange agreement was sent on June 6, 1984. A second RFAI making the same inquiry was sent on June 28, 1984. A response was received from the Committee's counsel on July 3, 1984, stating that he was having the answers to RAD's questions researched. On July 17, RAD received a response from the Committee's counsel.

In answer to a question as to the "normal and usual cost of renting space" at the office's location, the treasurer revealed that the cost for the rental space at 641 Lexington Avenue on the 25th floor is \$21.296 per square foot per year, that the Committee uses 138 square feet, and that, therefore, the monthly rent was \$244.90. In response to a question as to the fair market value and the manner in which the figure was derived (including the number of contributions and the price of the list per thousand names), counsel responded that the list contains

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approximately 17,000 names, that the list is rented only to "selected bidders" of similar political attitudes, and that the value of the list may differ at any given point. In response to a query as to the "amount of income generated in 1983 and the specifics" of the rental agreements, counsel stated that the amount of income generated from the sale or rental of the Committee's list "was not provided" (i.e., by those researching the answers to RAD's questions) but that the Committee "received \$108,721 in contributions by using a portion of the list." He further elaborated on the "barter agreement" between the landlord and the Committee, stating that the Committee foregoes all payment for rent or "overhead expenses" in return for "an unconditional and permanent proprietary interest in all its mailing, contributor and volunteer lists, records, files, computer tapes, and all other pertinent information." Counsel also indicated that there is no agreement providing for additional payment if the value of the list depreciates.

Section 434(b) of Title 2 sets out the requirements for reporting contributions to and disbursements by a political committee. Section 434(b)(3) sets out the requirements for itemizing in-kind contributions, e.g., goods or services, provided by an individual to a committee. Sections 434(b)(4)(A) and (b)(5)(A) set out the requirements for itemizing disbursements to meet committee operating expenses. This matter presents a situation in which one of the half-year reports itemizes only

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"in-kind payroll" services and no other administrative services and the following report itemized no administrative expenses at all.

The existence of a barter arrangement for the payment of administrative expenses is not impermissible per se. Barter arrangements for contributions have been deemed permissible in two advisory opinions provided that there is correct valuation of the goods or services involved. See AO 1977-45 and AO 1982-8. The existence of an exchange as a method for the provision of administrative services, however, does not negate the responsibility of the Committee to report the value of the interest "disbursed" and the value of the services "received." There should be some itemization, not just of payroll services, but of the value of services for phones, paper, utilities, and other casts of running the office of the committee. There should also be an itemization of the value of the interest conveyed by the Committee, i.e., the benefit obtained by the landlord as a result of the interest in lists, records, files, and other "pertinent information." This may be itemized by the value derived from each of the interests during the relevant reporting period. Based on the foregoing analysis, the Office of the General Counsel recommends that the Commission find reason to believe that the Fund to Keep America #1 and Timothy S. Carey, as treasurer, violated 2 U.S.C. § 434(b).

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The existence of a barter arrangement also raises the question of whether there was correct valuation in the exchange. If the value of the landlord's interest in the lists, records, files, and other pertinent information is less than the value of the services provided to the Committee in the form of rent payment, phones, utilities, and other facilities, then a contribution is being made by the landlord to the Committee.

Although none of the Committee's responses indicate who the landlord is, the provider of in-kind payroll services, which are administrative expenses, is listed as Lewis E. Lehrman. His address is the same as that of the Committee. Based on these facts, it appears that the landlord in question is Mr. Lehrman. 2/

Section 441a(a)(1)(C) of Title 2 provides that no person shall make contributions to any political committee, other than a candidate's authorized political committee or a national political party committee, which, in the aggregate exceed \$5,000 in any calendar year. Section 441a(f) prohibits knowing acceptance of contributions in violation of the provisions of § 441a. If the value of the services provided to the Committee exceeds the value of the landlord's interest during a calendar year, then a contribution has been made by the landlord to the Committee.

2/ The Committee has responded to RAD that it rents 138 square feet in office space from the landlord. This is a small space and may be sublet space within a larger suite of offices.

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The question of whether the value of the services provided to the Committee exceeded the value of the landlord's interests in the Committee's assets by \$5,000 is raised especially in light of the fact that Mr. Lehrman is already reported to have spent \$4,971 for in-kind payroll services. This question needs further investigation. Based on the foregoing analysis, the Office of the General Counsel recommends that the Commission find reason to believe that Lewis E. Lehrman violated 2 U.S.C. § 441a(a)(1)(C) and that the Fund to Keep America #1 and Timothy S. Carey, as treasurer, violated 2 U.S.C. § 441a(f). This Office recommends that the Commission also approve questions to the Committee and to Mr. Lehrman in order to ascertain whether or not the barter arrangement resulted in an excessive contribution by Mr. Lehrman.

RECOMMENDATIONS

1. Open a Matter Under Review.
2. Find reason to believe that the Fund to Keep America #1 and Timothy S. Carey, as its treasurer, violated 2 U.S.C. § 434(b).
3. Find reason to believe that Lewis Lehrman violated 2 U.S.C. § 441a(a)(1)(C).
4. Find reason to believe that the Fund to Keep America #1 and Timothy S. Carey, as its treasurer, violated 2 U.S.C. § 441a(f).

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5. Approve the attached letters with subpoenas and orders.

Charles N. Steele
General Counsel

January 4, 1985
Date

By:


Kenneth A. Gross
Associate General Counsel

Attachments

1. Referral from RAD
2. Letter, Factual and Legal Analysis, and Subpoena and Order to Timothy S. Carey, treasurer of Fund to Keep America #1
3. Letter, Factual and Legal Analysis, and Subpoena and Order to Lewis E. Lehrman

35040560575



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

27 August 1984

MEMORANDUM

TO: CHARLES N. STEELE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: JOHN D. GIBSON
ASSISTANT STAFF DIRECTOR
REPORTS ANALYSIS DIVISION

SUBJECT: REFERRAL OF THE FUND TO KEEP AMERICA #1

This is a referral of the Fund to Keep America #1 ("the Fund") for disclosing no or limited administrative expenses during 1983. According to the responses received, the Fund has a "barter arrangement" with its landlord, whereby the landlord provides rental and other overhead expenses in exchange for a proprietary interest in the Fund's mailing lists and other pertinent information.

We are forwarding this matter to your office in order to determine whether the "barter arrangement" is permissible. Other related issues, such as the disclosure requirements of the "barter arrangement" and the sale or rental of mailing lists to third parties, should also be examined.

If you have any questions, please contact Doris Gardner or Michael Filler at 523-4048.

Attachment

Attachment 1 - p 1 of 21

86040560574

REPORTS ANALYSIS REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: 27 August 1984

ANALYST: Doris Gardner

I. COMMITTEE: Fund to Keep America #1*/
(C00167007)
Timothy S. Carey, Treasurer
641 Lexington Avenue
New York, NY 10022

II. RELEVANT STATUTE: 2 U.S.C. §434(b)(4), 2 U.S.C. §434(b)(5)
11 CFR 104.3(b), 11 CFR 106.1(e)

III. BACKGROUND:

Administrative Expenses

The 1983 Mid-Year and Year End Reports of Receipts and Disbursements for the Fund to Keep America #1 ("the Fund") disclosed no or limited administrative expenses.

The Fund disclosed \$47,256.75 in total disbursements on the 1983 Mid-Year Report, but only itemized \$4,941 in in-kind contributions for payroll services from Mr. Lewis E. Lehrman (Attachments 2a and 2b). There were no payments for other administrative costs, such as rent and utilities. On the 1983 Year End Report, the Fund disclosed \$30,843 in total disbursements; however, there were no payments for rent, utilities, or salaries itemized (Attachment 3).

A Request for Additional Information (RAFI) was sent to the Fund on April 11, 1984, which explained the requirements for reporting administrative expenses (Attachment 4). A Second Notice was sent to the Fund on May 3, 1984 for failure to respond to the RAFI (Attachment 5).

On May 7, 1984, a response was received from Mr. Frank Trotta, Counsel for the Fund (Attachment 6). The response stated the following:

*/ The Fund registered as a non-connected political committee on May 3, 1983.

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We have reflected all expenditures made. The reason these expenditures are limited is that we have an exchange agreement with our landlord. Under this agreement, we provide our landlord with a full ownership interest in our mailing lists in return for free administrative services and space.

On June 6, 1984, another RFAI was sent in order to obtain additional information regarding the "exchange agreement" with the Fund's landlord (Attachment 7). The Reports Analysis Division ("RAD") Analyst called Mr. Trotta on June 11, 1984 to inquire about the status of the Fund's response. Mr. Trotta was out of town at the time, so his secretary took a message (Attachment 8).

A Second Notice was sent on June 28, 1984 for failure to respond to the RFAI (Attachment 9). On July 3, 1984, a letter was received from Mr. Trotta which stated that he had asked the Fund's "list maintenance people" and accountant to research the questions posed in the RFAI (Attachment 10).

On July 16, 1984, the RAD Analyst attempted to contact Mr. Trotta; however, he was out of the office (Attachment 11). On July 17, 1984, a response was received from Mr. Trotta, which provided additional information concerning the Fund's administrative expenses and the arrangement with the landlord (Attachment 12). Listed below is a summary of the answers provided to the questions posed in the June 6th RFAI.

1. The cost for the rental space at the location of the Fund's office is \$21.296 per square foot per year. Because the Fund uses 138 square feet, the approximate monthly rental value is \$244.90.
2. The Fund's mailing list contains approximately 17,000 contributors. The list is rented "...only to selected bidders who are in philosophical and political agreement with the principals of ..." the Fund. "The value at any given point in time may differ from its value at any point in time and the upkeep costs may be reflected in determining a fair rental or fair market value."
- 3a. The amount of income generated from the sale or rental of the Fund's list was not provided; however, the Fund received \$108,721 in contributions during 1983 by using a portion of the list.

1- p. 3 of 21

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- 3b. Although no rental agreement exists, the "barter arrangement" with the landlord enables the Fund to forego any payments for rent or overhead expenses in exchange for granting the landlord "...an unconditional and permanent proprietary interest in all its mailing, contributor and volunteer lists, records, files, computer tapes and all other pertinent information...."
4. The question of whether the Fund would be required to pay for administrative expenses in the event that the value of the list depreciates "...has not been discussed by the parties to the agreement and therefore no agreement has been made either precluding or requiring payment...."

Although the Fund has explained why its 1983 reports disclosed no or limited administrative expenses, the permissibility of the "barter arrangement" under the Act and regulations cannot be determined from the information provided.

IV. OTHER PENDING MATTERS INITIATED BY RAD:

None

1-p.4 of 21

86040760577

FEDERAL ELECTION COMMISSION
COMMITTEE INDEX OF DISCLOSURE DOCUMENTS - (C) (83-84)

DATE 23AUG84
PAGE 1

NON-PARTY RELATED

COMMITTEE	DOCUMENT	RECEIPTS	DISBURSEMENTS	TYPE OF FILER COVERAGE DATES	# OF PAGES	MICROFILM LOCATION
FUND TO KEEP AMERICA #1 CONNECTED ORGANIZATION: NONE				NON-PARTY QUALIFIED		ID #C00167007
1983	STATEMENT OF ORGANIZATION			3MAY83		2 83FEC/271/2520
	MID-YEAR REPORT	108,646	47,256	6APR83 -30JUN83	29	83FEC/279/4238
	MID-YEAR REPORT - AMENDMENT	-	-	1JAN83 -30JUN83	1	84FEC/315/5
	MID-YEAR REPORT - AMENDMENT	-	-	6APR83 -30JUN83	2	84FEC/318/35
	MID-YEAR REPORT - AMENDMENT	-	-	6APR83 -30JUN83	3	84FEC/322/4443
	REQUEST FOR ADDITIONAL INFORMATION			6APR83 -30JUN83	2	84FEC/308/0041
	REQUEST FOR ADDITIONAL INFORMATION 2ND			6APR83 -30JUN83	3	84FEC/313/2226
	REQUEST FOR ADDITIONAL INFORMATION			6APR83 -30JUN83	2	84FEC/316/2001
	REQUEST FOR ADDITIONAL INFORMATION 2ND			6APR83 -30JUN83	3	84FEC/318/1921
	YEAR-END	3,838	30,843	1JUL83 -31DEC83	9	84FEC/296/1632
	YEAR-END - AMENDMENT	-	-	1JUL83 -31DEC83	2	84FEC/313/3388
	YEAR-END - AMENDMENT	-	-	1JUL83 -31DEC83	1	84FEC/318/5209
	YEAR-END - AMENDMENT	-	-	1JUL83 -31DEC83	1	84FEC/323/2029
	REQUEST FOR ADDITIONAL INFORMATION			1JUL83 -31DEC83	1	84FEC/308/1502
	REQUEST FOR ADDITIONAL INFORMATION 2ND			1JUL83 -31DEC83	1	84FEC/313/2912
	REQUEST FOR ADDITIONAL INFORMATION			1JUL83 -31DEC83	1	84FEC/316/2062
	REQUEST FOR ADDITIONAL INFORMATION 2ND			1JUL83 -31DEC83	1	84FEC/318/1958
1984	FEBRUARY MONTHLY	0	6,154	1JAN84 -31JAN84	4	84FEC/297/2520
	MARCH MONTHLY	2,000	3,000	1FEB84 -29FEB84	5	84FEC/299/3050
	APRIL MONTHLY	0	413	1MAR84 -31MAR84	4	84FEC/312/4433
	MAY MONTHLY	-	1,000	1APR84 -30APR84	4	84FEC/315/0424
	JUNE MONTHLY	-	1,255	1MAY84 -31MAY84	5	84FEC/317/3164
	JULY MONTHLY	0	2,136	1JUN84 -30JUN84	4	84FEC/323/2416
	AUGUST MONTHLY	0	5,643	1JUL84 -31JUL84	4	84FEC/325/3
	TOTAL	114,484	0 97,700	0	94	TOTAL PAGES

1-p. 5 of 21

ALL REPORTS HAVE RECEIVED REVIEW, WITH THE EXCEPTION OF THE AUGUST MONTHLY REPORT

CLOSING CASH AS OF 7/31/84 : \$22,425.00

DEBTS AND OBLIGATIONS: \$0.00

**DETAILED SUMMARY PAGE
of Receipts and Disbursements
(Page 2, FEC FORM 3X)**

Attachment 2a

Name of Committee (in Full)

Fund to Keep America #1

Report Covering the Period

From April 6, 1983 to June 30, 1983

	COLUMN A Total This Period	COLUMN B Calendar Year To Date	
I. RECEIPTS			
11 CONTRIBUTIONS (other than loans) FROM:			
(a) Individuals/Persons Other Than Political Committees	108,646.00	108,646.00	11(a)
(Memo Entry Unitemized \$ 3,855.00)			
(b) Political Party Committees			11(b)
(c) Other Political Committees			11(c)
(d) TOTAL CONTRIBUTIONS (other than loans) (add 11(a), 11(b) and 11(c))	108,646.00	108,646.00	11(d)
12 TRANSFERS FROM AFFILIATED/OTHER PARTY COMMITTEES			12
13 ALL LOANS RECEIVED			13
14 LOAN REPAYMENTS RECEIVED			14
15 OFFSETS TO OPERATING EXPENDITURES (Refunds, Rebates, etc.)			15
16 REFUNDS OF CONTRIBUTIONS MADE TO FEDERAL CANDIDATES			16
AND OTHER POLITICAL COMMITTEES			
17 OTHER RECEIPTS (Dividends, Interest, etc.)			17
18 TOTAL RECEIPTS (Add 11(d), 12, 13, 14, 15, 16 and 17)	108,646.00	108,646.00	18
II. DISBURSEMENTS			
19 OPERATING EXPENDITURES	42,256.75	42,256.75	19
20 TRANSFERS TO AFFILIATED/OTHER PARTY COMMITTEES			20
21 CONTRIBUTIONS TO FEDERAL CANDIDATES AND	5,000.00	5,000.00	21
OTHER POLITICAL COMMITTEES			
22 INDEPENDENT EXPENDITURES (Use Schedule E)			22
23 COORDINATED EXPENDITURES MADE BY PARTY COMMITTEES			23
(2 U.S.C. § 441 a/d) (Use Schedule F)			
24 LOAN REPAYMENTS MADE			24
25 LOANS MADE			25
26 REFUNDS OF CONTRIBUTIONS TO			26
(a) Individuals/Persons Other Than Political Committees			26(a)
(b) Political Party Committees			26(b)
(c) Other Political Committees			26(c)
(d) TOTAL CONTRIBUTION REFUNDS (Add 26(a), 26(b) and 26(c))			26(d)
27 OTHER DISBURSEMENTS			27
28 TOTAL DISBURSEMENTS (add lines 19, 20, 21, 22, 23, 24, 25, 26(d) and 27)	47,256.75	47,256.75	28
III. NET CONTRIBUTIONS AND NET OPERATING EXPENDITURES			
29 TOTAL CONTRIBUTIONS (other than loans) from Line 11(d)	108,646.00	108,646.00	29
30 TOTAL CONTRIBUTION REFUNDS from Line 26(d)			30
31 NET CONTRIBUTIONS (other than loans) (Subtract Line 30 from Line 29)	108,646.00	108,646.00	31
32 TOTAL OPERATING EXPENDITURES from Line 19	42,256.75	42,256.75	32
33 OFFSETS TO OPERATING EXPENDITURES from Line 15			33
34 NET OPERATING EXPENDITURES (Subtract Line 33 from Line 32)	42,256.75	42,256.75	34

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Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

Name of Committee (in Full)

Fund to Keep America #1

A. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
Lewis E. Lehrman 641 Lexington Avenue New York, New York 10022	in-kind payroll services	5/13/83	908.00
	Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):		
Lewis E. Lehrman 641 Lexington Avenue New York, New York 10022	in-kind payroll services	5/27/83	908.00
	Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):		
Lewis E. Lehrman 641 Lexington Avenue New York, New York 10022	in-kind payroll services	6/10/83	908.00
	Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):		
Lewis E. Lehrman 641 Lexington Avenue New York, New York 10022	in-kind payroll services	6/24/83	401.00
	Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):		
E. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
	Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):		
F. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
	Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):		
G. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
	Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):		
H. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
	Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):		
I. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
	Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):		
TBOTAL of Disbursements This Page (optional)			3,125.00
TOTAL This Period (last page this line number only)			42,256.75

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**DETAILED SUMMARY PAGE
of Receipts and Disbursements
(Page 2, FEC FORM 3X)**

Attachment 3

Name of Committee (or Fund)

FUND TO KEEP AMERICA #1

Period Covering the Period

From July 1, 1983 To Dec. 31, 1983

COLUMN A
Total This Period

COLUMN B
Calendar Year To Date

I. RECEIPTS

11 CONTRIBUTIONS (other than loans) FROM:

(a) Individuals/Persons Other Than Political Committees

(Memo Entry Unitemized \$ 75.00)

(b) Political Party Committees

(c) Other Political Committees

(d) TOTAL CONTRIBUTIONS (other than loans) (add 11(a), 11(b) and 11(c))

12 TRANSFERS FROM AFFILIATED/OTHER PARTY COMMITTEES

13 ALL LOANS RECEIVED

14 LOAN REPAYMENTS RECEIVED

15 OFFSETS TO OPERATING EXPENDITURES (Refunds, Rebates, etc.)

16 REFUNDS OF CONTRIBUTIONS MADE TO FEDERAL CANDIDATES
AND OTHER POLITICAL COMMITTEES

17 OTHER RECEIPTS (Dividends, Interest, etc.)

18 TOTAL RECEIPTS (Add 11(d), 12, 13, 14, 15, 16 and 17)

II. DISBURSEMENTS

19 OPERATING EXPENDITURES

20 TRANSFERS TO AFFILIATED OTHER PARTY COMMITTEES

21 CONTRIBUTIONS TO FEDERAL CANDIDATES AND
OTHER POLITICAL COMMITTEES

22 INDEPENDENT EXPENDITURES (Use Schedule E)

23 COORDINATED EXPENDITURES MADE BY PARTY COMMITTEES
(2 U.S.C. 1441 and 1) (Use Schedule F)

24 LOAN REPAYMENTS MADE

25 LOANS MADE

26 REFUNDS OF CONTRIBUTIONS TO

(a) Individuals/Persons Other Than Political Committees

(b) Political Party Committees

(c) Other Political Committees

(d) TOTAL CONTRIBUTION REFUNDS (Add 26(a), 26(b) and 26(c))

27 OTHER DISBURSEMENTS

28 TOTAL DISBURSEMENTS (add lines 19, 20, 21, 22, 23, 24, 25, 26(d) and 27)

III. NET CONTRIBUTIONS AND NET OPERATING EXPENDITURES

29 TOTAL CONTRIBUTIONS (other than loans) from Line 11(d)

30 TOTAL CONTRIBUTION REFUNDS from Line 26(d)

31 NET CONTRIBUTIONS (other than loans) (Subtract Line 30 from Line 29)

32 TOTAL OPERATING EXPENDITURES from Line 19

33 OFFSETS TO OPERATING EXPENDITURES from Line 15

34 NET OPERATING EXPENDITURES (Subtract Line 33 from Line 32)

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20461

RQ-2

11 April 1984

Timothy S. Carey, Treasurer
Fund to Keep America #1
641 Lexington Avenue, 25th Floor
New York, NY 10022

Identification Number: C00167007

Reference: Mid-Year (4/6/83-6/30/83) and Year-End (7/1/83-12/31/83) Reports

Dear Mr. Carey:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-Your Reports have limited payments for administrative expenses. Administrative expenses are payments made for the purpose of operating a political committee including, but not limited to, rent, utilities, telephone service, office equipment and supplies. Any such payments to a person aggregating in excess of \$200 in a calendar year must be disclosed on Schedule B, supporting Line 19 of the Detailed Summary Page. (2 U.S.C. 434(b)(5)) In addition, if expenses have been incurred but not paid in a reporting period, the activity should be disclosed as a debt on Schedule D, if the obligation is \$500 or more, or outstanding for sixty (60) days or more. (11 CFR 104.11)

If these expenses are being paid by a connected organization, your Statement of Organization must be amended to reflect this relationship. (2 U.S.C. 433(b)(2))

If your committee has used corporate or labor facilities (e.g., telephones or photocopiers), payment must be made within a commercially reasonable time in the amount of the normal and usual rental charge. (11 CFR 114.9(d)) These payments should be disclosed on Schedule B, supporting Line 19 of the Detailed Summary Page, as discussed above.

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Finally, any good or service provided to the committee by an individual, except volunteer activity (i.e., a person's time), would be considered an in-kind contribution from that individual, and would be subject to the disclosure requirements of 2 U.S.C. 434(b)(3) and 11 CFR 104.13.

Please provide clarification regarding administrative expenses incurred by your committee and/or amend your report to disclose such expenses according to the referenced provisions of the Act and Commission regulations.

An amendment to your original report(s) correcting the above problem(s) should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 523-4042

Sincerely,

Doris Gardner

Doris Gardner
Reports Analyst
Reports Analysis Division

1-p.11 of 21

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FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20461

RQ-3

May 3, 1984

Timothy S. Carey, Treasurer
Fund to Keep America #1
641 Lexington Avenue, 25th Floor
New York, NY 10022

Identification Number: C00167007

Reference: Mid-Year (4/6/83-6/30/83) and Year-End (7/1/83-12/31/83) Reports

Dear Mr. Carey:

This letter is to inform you that as of May 2, 1984, the Commission has not received your response to our request for additional information, dated April 11, 1984. That notice requested information essential to full public disclosure of your Federal election financial activity and to ensure compliance with provisions of the Federal Election Campaign Act (the Act). A copy of our original request is enclosed.

If no response is received within fifteen (15) days from the date of this notice, the Commission may choose to initiate audit or legal enforcement action.

If you should have any questions related to this matter, please contact Doris Gardner on our toll-free number (800) 424-9530 or our local number (202) 523-4048.

Sincerely,

John D. Gibson
Assistant Staff Director
Reports Analysis Division

Enclosure

1- p. 12 of 21

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RECEIVED AT THE FEC
ATTACHMENT 6
84 MAY 7 AM: 02



April 25, 1984

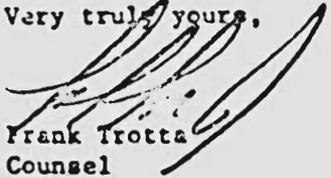
Ms. Doris Gardner
Reports Analyst
Reports Analysis Division
Federal Election Commission
1525 K Street, N.W.
Washington, D.C. 20463

Dear Ms. Gardner:

Your letter of April 11, to our Treasurer, Timothy S. Carey was referred to me for response.

In your letter you indicate that our reports reflect only "limited payments for administrative expenses." We have reflected all expenditures made. The reason these expenditures are limited is that we have an exchange agreement with our landlord. Under this agreement, we provide our landlord with a full ownership interest in our mailing lists in return for free administrative services and space.

We are willing to amend, in any manner you suggest, our reports to reflect this "barter" like arrangement. Please advise.

Very truly yours,

Frank Trotta
Counsel

FT/rs

cc: Timothy S. Carey

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

JUN 6 1984 RQ-2

Timothy S. Carey, Treasurer
Fund to Keep America #1
641 Lexington Avenue, 25th Floor
New York, NY 10022

Identification Number: C00167007

Reference: Amended Mid-Year (4/6/83-6/30/83) and Amended Year
End (7/1/83-12/31/83) Reports

Dear Mr. Carey:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-Your committee's response dated April 25, 1984 states that "free administrative services and space" are provided from the landlord in exchange for "full ownership interest" in your mailing lists. In order to clarify this arrangement, please provide the following information:

-The normal and usual cost of renting space at said location;

-The fair market value of the committee's mailing list and the manner in which it was derived (including the number of contributors and the amount per 1,000);

-The amount of income generated in 1983 and the specifics of such rental agreements; and

-Whether the committee would be required to pay for the administrative expenses, in the event that the value of the list depreciates.

An amendment to your original report(s) correcting the above problem(s) should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need

1 - p. 14 of 21

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assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 523-4048.

Sincerely,

Doris M. Gardner

Doris Gardner
Reports Analyst
Reports Analysis Division

cc: Mr. Frank Trotta

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1 - p. 15 of 21

MEMORANDUM TO FILE:

ATTACHMENT 8

FROM: Doris M. Gardner/Reports Analyst

DATE : 6/11/84

TO: File

TELEPHONE: 212-759-8543

NAME OF COMMITTEE: Fund To Keep America #1 (C00167007)

I called the office of Mr. Frank Trotta, counsel for The Fund To Keep America #1. The reason for call was to inquire as to the status of our response to a recent RFAI.

I did not speak to Mr. Trotta, because he was out of town at the time. His secretary said that she would gladly leave a message for him.

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1-p. 16 of 21



FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

RQ-3

June 28, 1984

Timothy S. Carey, Treasurer
Fund to Keep America #1
641 Lexington Avenue
25th Floor
New York, NY 10022

Identification Number: C00167007

Reference: Amended Mid-Year (4/6/83-6/30/83) and Amended Year-End (7/1/83-12/31/83) Reports

Dear Mr. Carey:

This letter is to inform you that as of June 27, 1984, the Commission has not received your response to our request for additional information, dated June 6, 1984. That notice requested information essential to full public disclosure of your Federal election financial activity and to ensure compliance with provisions of the Federal Election Campaign Act (the Act). A copy of our original request is enclosed.

If no response is received within fifteen (15) days from the date of this notice, the Commission may choose to initiate audit or legal enforcement action.

If you should have any questions related to this matter, please contact Doris Gardner on our toll-free number (800) 424-4335 or our local number (202) 523-4048.

Sincerely,

John D. Gibson
Assistant Staff Director
Reports Analysis Division

Enclosure

1-p. 17 of 21

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FFC
ATTACHMENT 10
84 JUL 3 12:12



June 28, 1984

Ms. Doris Gardner
Reports Analyst
Reports Analysis Division
Federal Election Commission
Washington, D.C. 20463

Identification Number: C00167007

RE: Amended Mid-Year (4/6/83-6/30/83)
and Amended Year End (7/1/83-12/31/83) Reports

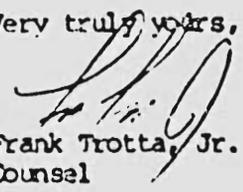
Dear Ms. Gardner:

I just returned from a lengthy stay out of town to find two copies of your June 6 letter to Tim Carey, our Treasurer: your carbon copy to me and Tim's referral copy and cover letter to me.

I apologize for the delay in responding, however I have been out of town since the first week of June. Accordingly, I request a time-extension to allow us to reply properly. (This is why I tried, unsuccessfully, to reach you by telephone today.) I have asked our list maintenance people and our accountant to research the questions you pose.

I eagerly await your reply. Thank you.

Very truly yours,


Frank Trotta, Jr.
Counsel

FTjt/sy

1-p. 18 of 21

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op/c

MEMORANDUM TO THE FILES: TELECON

COMMITTEE NAME: The Fund To Keep America No. 1

COMMITTEE CONTACT: Mr. Frank Trotta

TELEPHONE # 212-759-8543

DATE: July 16, 1984

ANALYST: Doris M. Gardner (RAD)

SUBJECT: Inquiry regarding no response to RFAI dated June 6, 1984.

I called the office of Mr. Frank Trotta, counsel for the Fund To Keep America No. 1. This was the second time that I had to call Mr. Trotta to inquire about an overdue response.

Again, I did not speak with Mr. Trotta because he was out of the office. I did leave a message with his secretary.

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1-p. 19 of 21



RECEIVED AT THE FEC
ATTACHMENT 12
JUL 11 1984 10:00

July 11, 1984

Ms. Doris Gardner
Reports Analyst
Reports Analysis Division
Federal Election Commission
Washington, D.C. 20463

Identification Number: C00167007

Dear Ms. Gardner:

In response to your letter, dated June 6, 1984, to Timothy S. Carey, I report the following answers to your inquiry:

(1) What is "the normal and usual cost of renting space at" our office?

The Cost is \$21.296 per square foot per year. Our Committee uses approximately 138 square feet. For an approximate monthly rental value of \$244.90.

(2) What is "the fair market value of the committee's mailing list and the manner in which it was derived (including the number of contributors and the amount per 1,000)?"

The list in question contains approximately 17,000 contributors' and volunteers' names as well as other data on each person.

Regarding fair market value, we need clarification as to what your definition of "fair market value" is. Using the traditional legal definition of "the price a willing buyer would pay a willing seller" we encounter a problem. Our Committee would be a "willing seller" (or renter) only to selected bidders who are in philosophical and political agreement with the principals of our Committee, and even then, we would not sell or rent to most bidders. Also, the list may be of extreme value to certain buyers and valueless to others. Further, the list is dynamic — it is frequently changing in terms of size and in terms of information relating to each contributor. The value at any given point in time may differ from its value at any other point in time and the upkeep costs may be reflected in determining a fair rental or fair market value. Finally, the fair market value would differ for a rental agreement versus an outright sale.

(3) How much income was generated for our Committee in 1983 by use of the list?

1- p. 20 of 21

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In 1983, no direct mail appeal was sent by our Committee to the entire mailing list. However, in 1983, a portion of the list (i.e., all contributors over a certain "giving history" threshold) was used for a direct mail event-solicitation which generated \$108,721.00 in income as reported in our filings in your office.

(4) What are "the specifics of such rental agreement?"

There is no rental agreement. The specifics of the barter arrangement are as follows:

Our Committee grants "an unconditional and permanent proprietary interest in all its mailing, contributor and volunteer lists, records, files, computer tapes and all other pertinent information relating thereto, [to our landlord] in consideration of his agreement herein, to forego the receipt of any and all payment from [our Committee for] rental and other "overhead" expenses....

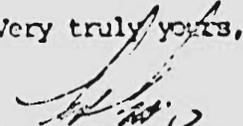
This agreement shall remain in effect so long as payment for said services is foregone.

(5) Would the committee be required to pay for the administrative expenses, in the event that the value of the list depreciated?

This issue has not been discussed by the parties to the agreement and therefore no agreement has been made either precluding or requiring payment under said circumstances.

I trust this satisfies your request and I trust that the information in this letter shall remain privileged and confidential and shall not fall subject to the Freedom of Information Act. Please contact me directly with any further questions. I can be reached at 212/759-4181.

Very truly yours,


Frank Trotta, Jr.
Counsel

FT/rs

cc: Timothy S. Carey

1-p. 21 of 21

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Timothy S. Carey, Treasurer
Fund to Keep America #1
641 Lexington Avenue
New York, New York 10022

Re: MUR
Fund to Keep America #1
Timothy S. Carey, Treasurer

Dear Mr. Carey:

On January 10, 1985, the Federal Election Commission determined that there is reason to believe that the Fund to Keep America #1 ("the Committee") and you, as treasurer, violated 2 U.S.C. § 434(b), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") by failing to disclose payments for administrative costs provided for the Committee through a barter agreement. On that date, the Commission also found reason to believe that the Committee and you, as its treasurer, violated 2 U.S.C. § 441a(f), another provision of the Act, by receiving a benefit that was more than \$5,000 greater than the benefit received by your landlord in the barter agreement. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you and the Committee. You should submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. In addition, the Commission has issued the attached subpoena and order which requires you to provide information which will assist the Commission in carrying out its statutory duty of supervising compliance with the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, U.S. Code. You may consult with an attorney and have an attorney assist you in the preparation of your responses to this subpoena and order. All responses and information should be submitted under oath within ten days of your receipt of this letter.

Attachment 2 - p 1 of 10

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Letter to Timothy S. Carey
Page 2

Some of the interrogatories enclosed address areas covered in a request for information sent to you by the Commission's Reports Analysis Division on June 6, 1984. These areas are being addressed again because some of the responses of the Committee's counsel were incomplete or unresponsive.

In the absence of any additional information which demonstrates that no further action should be taken against your committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if so desired. See 11 C.F.R. § 111.18(d).

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202)523-4000.

Sincerely,

Enclosures

General Counsel's Factual and Legal Analysis
Procedures
Designation of Counsel Statement

2 - p. 2 of 10

2504030595

FEDERAL ELECTION COMMISSION
GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE _____

MUR NO. _____
STAFF MEMBER & TEL. NO.
Jonathan Levin
(202) 523-4000

RESPONDENT Fund to Keep America #1
Timothy S. Carey, Treasurer

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

SUMMARY OF ALLEGATIONS

The Fund to Keep America #1 ("the Committee") was referred to the Office of General Counsel on August 27, 1984, by the Reports Analysis Division (RAD). This referral involves a possible failure to disclose fully the administrative costs provided for the Committee.

FACTUAL BASIS AND LEGAL ANALYSIS

The 1983 Mid-Year Report of the Fund to Keep America #1, a non-connected political committee, disclosed \$47,256.75 in total disbursements but only itemized \$4,971 in administrative costs. These were for contributions for payroll services from Lewis E. Lehrman. ^{1/} The Committee's 1983 Year End Report disclosed disbursements of \$30,843 with no disbursements for administrative expenses.

The Committee failed to respond to a first RFAI sent on April 11, 1984, but responded shortly after receiving a second sent on May 3. The Committee treasurer responded that the

^{1/} These contributions were itemized as contributions to the Committee on Schedule A and disbursements by the Committee on Schedule B, in accordance with 11 C.F.R. § 104.13(a).

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reports "have reflected all expenditures made," and that the reason more administrative expenses are not listed is that such expenses are provided for in an "exchange agreement" between the Committee and its landlord. This agreement provides the landlord with a full ownership interest in the Committee's "mailing lists [sic] in return for free administrative services and space."

Another RFAI inquiring as to the exchange agreement was sent on June 6, 1984. A second RFAI making the same inquiry was sent on June 28, 1984. A response was received from the Committee's counsel on July 3, 1984, stating that he was having the answers to RAD's questions researched. On July 17, RAD received a response from the Committee's counsel.

In answer to a question as to the "normal and usual cost of renting space" at the office's location, the treasurer revealed that the cost for the rental space at 641 Lexington Avenue on the 25th floor is \$21.296 per square foot per year, that the Committee uses 138 square feet, and that, therefore, the monthly rent was \$244.90. In response to a question as to the fair market value and the manner in which the figure was derived (including the number of contributions and the price of the list per thousand names), counsel responded that the list contains approximately 17,000 names, that the list is rented only to "selected bidders" of similar political attitudes, and that the value of the list may differ at any given point. In response to a query as to the "amount of income generated in 1983 and the specifics" of the rental agreements, counsel stated that the

2 - p. 4 of 10

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amount of income generated from the sale or rental of the Committee's list "was not provided" (i.e., by those researching the answers to RAD's questions) but that the Committee "received \$108,721 in contributions by using a portion of the list." He further elaborated on the "barter agreement" between the landlord and the Committee, stating that the Committee foregoes all payment for rent or "overhead expenses" in return for "an unconditional and permanent proprietary interest in all its mailing, contributor and volunteer lists, records, files, computer tapes, and all other pertinent information." Counsel also indicated that there is no agreement providing for additional payment if the value of the list depreciates.

Section 434(b) of Title 2 sets out the requirements for reporting contributions to and disbursements by a political committee. Section 434(b)(3) sets out the requirements for itemizing in-kind contributions, e.g., goods or services, provided by an individual to a committee. Sections 434(b)(4)(A) and (b)(5)(A) set out the requirements for itemizing disbursements to meet committee operating expenses. This matter presents a situation in which one of the half-year reports itemizes only "in-kind payroll" services and no other administrative services and the following report itemized no administrative expenses at all.

The existence of a barter arrangement for the payment of administrative expenses is not impermissible per se. Barter arrangements for contributions have been deemed permissible in

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two advisory opinions provided that there is correct valuation of the goods or services involved. See AO 1977-45 and AO 1982-8. The existence of an exchange as a method for the provision of administrative services, however, does not negate the responsibility of the Committee to report the value of the interest "disbursed" and the value of the services "received." There should be some itemization, not just of payroll services, but of the value of services for phones, paper, utilities, and other casts of running the office of the committee. There should also be an itemization of the value of the interest conveyed by the Committee, i.e., the benefit obtained by the landlord as a result of the interest in lists, records, files, and other "pertinent information." This may be itemized by the value derived from each of the interests during the relevant reporting period. Based on the foregoing analysis, the Office of the General Counsel recommends that the Commission find reason to believe that the Fund to Keep America #1 and Timothy S. Carey, as treasurer, violated 2 U.S.C. § 434(b).

The existence of a barter arrangement also raises the question of whether there was correct valuation in the exchange. If the value of the landlord's interest in the lists, records, files, and other pertinent information is less than the value of the services provided to the Committee in the form of rent payment, phones, utilities, and other facilities, then a contribution is being made by the landlord to the Committee.

2-p.6 of 10

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Although none of the Committee's responses indicate who the landlord is, the provider of in-kind payroll services, which are administrative expenses, is listed as Lewis E. Lehrman. His address is the same as that of the Committee. Based on these facts, it appears that the landlord in question is Mr. Lehrman. 2/

Section 441a(a)(1)(C) of Title 2 provides that no person shall make contributions to any political committee, other than a candidate's authorized political committee or a national political party committee, which, in the aggregate exceed \$5,000 in any calendar year. Section 441a(f) prohibits knowing acceptance of contributions in violation of the provisions of § 441a. If the value of the services provided to the Committee exceeds the value of the landlord's interest during a calendar year, then a contribution has been made by the landlord to the Committee. The question of whether the value of the services provided to the Committee exceeded the value of the landlord's interests in the Committee's assets by \$5,000 is raised especially in light of the fact that Mr. Lehrman is already reported to have spent \$4,971 for in-kind payroll services. This question needs further investigation. Based on the foregoing analysis, the Office of the General Counsel recommends that the Commission find reason to believe that the Fund to Keep America #1 and Timothy S. Carey, as treasurer, violated 2 U.S.C. § 441a(f).

2/ The Committee has responded to RAD that it rents 138 square feet in office space from the landlord. This is a small space and may be sublet space within a larger suite of offices.

35040:50501

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Fund to Keep America #1) MUR
Timothy S. Carey, Treasurer)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Timothy S. Carey
Treasurer
Fund to Keep America #1
641 Lexington Avenue
New York, N.Y. 10022

Pursuant to 2 U.S.C. § 437d(a)(1) and (3) and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and Subpoenas you to produce requested documents.

Such answers must be submitted under oath and must be forwarded to the Commission within ten (10) days of your receipt of this Order/Subpoena.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand on January , 1985.

John Warren McGarry
Chairman

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachment
Interrogatories and Request for Documents (2 pages)

2 p. 8 of 10

35040760602

Interrogatories

TO: Timothy S. Carey, Treasurer
Fund to Keep America #1

1. State the name of the landlord providing your committee with administrative services and space.

2. State whether the Committee's quarters constitute an office apart from any other offices or an office within a suite of offices.

a. If it is in a larger suite of offices, state the person or organization occupying this suite of offices.

b. State whether the Committee's quarters are rented on a sublease basis or are rented from the owner of the building at 641 Lexington Avenue.

3. State the normal and usual cost of renting space at 641 Lexington Avenue in New York City.

a. If there is a discrepancy between this figure and the rent figure stated in your response to the inquiry from the Commission's Reports Analysis Division, explain the reason for this difference.

4. State whether the \$4,971 in in-kind payroll services paid by Lewis Lehrman was paid to the Committee pursuant to the barter agreement whereby the Committee is provided with administrative services.

If so, state the value going to the Committee and the value going to the landlord, pursuant to the barter agreement, during the calendar year 1983. This statement should include an item-by-item breakdown of the amount going to the landlord as a result

2 - p. 9 of 10

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of his interest in the various lists, records, files, tapes, and other information, and an item-by-item breakdown of the amount going to your committee in the form of rent, salaries, payments for utilities, and other forms of administrative support.

Requests for Documents

1. Provide a copy of the barter agreement between your committee and the landlord.
2. Provide copies or evidence of all checks, invoices and other documents pertaining to interests obtained by the landlord pursuant to the barter agreement and the administrative services obtained by your committee pursuant to the barter agreement.

35040750604

2 - p. 10 of 10



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Lewis E. Lehrman
641 Lexington Avenue
New York, New York 10022

Re: MUR
Lewis E. Lehrman

Dear Mr. Lehrman:

On January , 1985, the Federal Election Commission determined that there is reason to believe that you violated 2 U.S.C. § 441a(a)(1)(C), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") by granting a benefit that was over \$5,000 more than the benefit received by the Fund to Keep America #1 ("the Committee") pursuant to a barter agreement with the Committee. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. You should submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. In addition, the Commission has issued the attached subpoena and order which requires you to provide information which will assist the Commission in carrying out its statutory duty of supervising compliance with the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, U.S. Code. You may consult with an attorney and have an attorney assist you in the preparation of your responses to this subpoena and order. All responses and information should be submitted under oath within ten days of your receipt of this letter.

In the absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if so desired. See 11 C.F.R. § 111.18(d).

Attachment 3 - p. 1 of 9

Letter to Lewis E. Lehrman
Page 2

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Jonathan Levin, the attorney assigned to this matter, at (202)523-4000.

Sincerely,

Enclosures

General Counsel's Factual and Legal Analysis
Procedures
Designation of Counsel Statement

3- p. 2 of 9

36040:60605

FEDERAL ELECTION COMMISSION
GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

DATE _____

MUR No. _____
STAFF MEMBER & TEL NO.
Jonathan Levin
(202) 523-4000

RESPONDENT Lewis E. Lehrman

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

SUMMARY OF ALLEGATIONS

This matter was referred to the Office of General Counsel (OGC) on August 27, 1984, by the Reports Analysis Division (RAD). It involves a possible excessive contribution by Lewis E. Lehrman to the Fund to Keep America #1.

FACTUAL BASIS AND LEGAL ANALYSIS

The 1983 Mid-Year Report of the Fund to Keep America #1, a non-connected political committee, disclosed \$47,256.75 in total disbursements but only itemized \$4,971 in administrative costs. These were for contributions for payroll services from Lewis E. Lehrman. 1/ The Committee's 1983 Year End Report disclosed disbursements of \$30,843 with no disbursements for administrative expenses.

The Committee failed to respond to a first RFAI sent on April 11, 1984, but responded shortly after receiving a second sent on May 3. The Committee treasurer responded that the

1/ These contributions were itemized as contributions to the Committee on Schedule A and disbursements by the Committee on Schedule B, in accordance with 11 C.F.R. § 104.13(a).

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reports "have reflected all expenditures made," and that the reason more administrative expenses are not listed is that such expenses are provided for in an "exchange agreement" between the Committee and its landlord. This agreement provides the landlord with a full ownership interest in the Committee's "mailing lists [sic] in return for free administrative services and space."

Another RFAI inquiring as to the exchange agreement was sent on June 6, 1984. A second RFAI making the same inquiry was sent on June 28, 1984. A response was received from the Committee's counsel on July 3, 1984, stating that he was having the answers to RAD's questions researched. On July 17, RAD received a response from the Committee's counsel.

In answer to a question as to the "normal and usual cost of renting space" at the office's location, the treasurer revealed that the cost for the rental space at 641 Lexington Avenue on the 25th floor is \$21.296 per square foot per year, that the Committee uses 138 square feet, and that, therefore, the monthly rent was \$244.90. In response to a question as to the fair market value and the manner in which the figure was derived (including the number of contributions and the price of the list per thousand names), counsel responded that the list contains approximately 17,000 names, that the list is rented only to "selected bidders" of similar political attitudes, and that the value of the list may differ at any given point. In response to a query as to the "amount of income generated in 1983 and the specifics" of the rental agreements, counsel stated that the

3 - p. 4 of 9

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amount of income generated from the sale or rental of the Committee's list "was not provided" (i.e., by those researching the answers to RAD's questions) but that the Committee "received \$108,721 in contributions by using a portion of the list." He further elaborated on the "barter agreement" between the landlord and the Committee, stating that the Committee foregoes all payment for rent or "overhead expenses" in return for "an unconditional and permanent proprietary interest in all its mailing, contributor and volunteer lists, records, files, computer tapes, and all other pertinent information." Counsel also indicated that there is no agreement providing for additional payment if the value of the list depreciates.

The existence of a barter arrangement raises the question of whether there was correct valuation in the exchange. If the value of the landlord's interest in the lists, records, files, and other pertinent information is less than the value of the services provided to the Committee in the form of rent payment, phones, utilities, and other facilities, then a contribution is being made by the landlord to the Committee.

Although none of the Committee's responses indicate who the landlord is, the provider of in-kind payroll services, which are administrative expenses, is listed as Lewis E. Lehrman. His address is the same as that of the Committee. Based on these facts, it appears that the landlord in question is Mr. Lehrman.^{2/}

^{2/} The Committee has responded to RAD that it rents 138 square feet in office space from the landlord. This is a small space and may be sublet space within a larger suite of offices.

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Section 441a(a)(1)(C) of Title 2 provides that no person shall make contributions to any political committee, other than a candidate's authorized political committee or a national political party committee, which, in the aggregate exceed \$5,000 in any calendar year. If the value of the services provided to the Committee exceeds the value of the landlord's interest during a calendar year, then a contribution has been made by the landlord to the Committee. The question of whether the value of the services provided to the Committee exceeded the value of the landlord's interests in the Committee's assets by \$5,000 is raised especially in light of the fact that Mr. Lehrman is already reported to have spent \$4,971 for in-kind payroll services. This question needs further investigation. Based on the foregoing analysis, the Office of the General Counsel recommends that the Commission find reason to believe that Lewis E. Lehrman violated 2 U.S.C. § 441a(a)(1)(C).

35040500610

3-p. 6 of 9

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Lewis E. Lehrman) MUR

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Lewis E. Lehrman
641 Lexington Avenue
New York, New York 10022

Pursuant to 2 U.S.C. § 437d(a)(1) and (3) and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and Subpoenas you to produce requested documents.

Such answers must be submitted under oath and must be forwarded to the Commission within ten (10) days of your receipt of this Order/Subpoena.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand on January , 1985.

John Warren McGarry
Chairman

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachment
Interrogatories and Request for Documents (2 pages)

3-p. 7 of 9

36040750611

Interrogatories

To: Lewis E. Lehrman

1. State whether you are the landlord of the Fund to Keep America #1 ("the Committee").

2. State whether you are subletting office space at 641 Lexington Avenue to the Committee.

a. If you sublet to the Committee at 641 Lexington Avenue, state the amount of rent per square foot that you pay for office space at that address.

b. If you sublet to the Committee at 641 Lexington Avenue, state whether you sublet to any other persons and/or organizations. List the rent per square foot for each such sublessee.

3. State whether you own the building at 641 Lexington Avenue.

If you own the building, state the rental cost per square foot for all other parts of the building.

4. State whether the \$4,971 in in-kind payroll services paid by you to the Committee was paid pursuant to the barter agreement whereby the Committee is provided with administrative services.

If so, state the value going to you and the value going to the Committee pursuant to the barter agreement during the calendar year 1983. This statement should include an item-by-item breakdown of the amount you received as a result of your interest in the Committee's lists, records, files, tapes, and other assets and an item-by-item breakdown of the amount going to the Committee in the form of rent, salaries, payments for utilities and other forms of administrative support.

3 - p. 8 of 9

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Request for Documents

1. If you are the Committee's landlord, provide a copy of the barter agreement between you and the Committee.
2. If you are the Committee's landlord, provide copies or evidence of all checks, invoices, or other documents pertaining to interests obtained by you pursuant to the barter agreement, and the administrative services obtained by the Committee pursuant to the barter agreement.

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3 - p. 9 of 9



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

27 August 1984

MEMORANDUM

TO: CHARLES N. STEELE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: JOHN D. GIBSON
ASSISTANT STAFF DIRECTOR
REPORTS ANALYSIS DIVISION

SUBJECT: REFERRAL OF THE FUND TO KEEP AMERICA #1

This is a referral of the Fund to Keep America #1 ("the Fund") for disclosing no or limited administrative expenses during 1983. According to the responses received, the Fund has a "barter arrangement" with its landlord, whereby the landlord provides rental and other overhead expenses in exchange for a proprietary interest in the Fund's mailing lists and other pertinent information.

We are forwarding this matter to your office in order to determine whether the "barter arrangement" is permissible. Other related issues, such as the disclosure requirements of the "barter arrangement" and the sale or rental of mailing lists to third parties, should also be examined.

If you have any questions, please contact Doris Gardner or Michael Filler at 523-4048.

Attachment

REPORTS ANALYSIS REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: 27 August 1984

ANALYST: Doris Gardner

I. COMMITTEE: Fund to Keep America #1*/
(C00167007)
Timothy S. Carey, Treasurer
641 Lexington Avenue
New York, NY 10022

II. RELEVANT STATUTE: 2 U.S.C. §434(b)(4), 2 U.S.C. §434(b)(5)
11 CFR 104.3(b), 11 CFR 106.1(e)

III. BACKGROUND:

Administrative Expenses

The 1983 Mid-Year and Year End Reports of Receipts and Disbursements for the Fund to Keep America #1 ("the Fund") disclosed no or limited administrative expenses.

The Fund disclosed \$47,256.75 in total disbursements on the 1983 Mid-Year Report, but only itemized \$4,941 in in-kind contributions for payroll services from Mr. Lewis E. Lehrman (Attachments 2a and 2b). There were no payments for other administrative costs, such as rent and utilities. On the 1983 Year End Report, the Fund disclosed \$30,843 in total disbursements; however, there were no payments for rent, utilities, or salaries itemized (Attachment 3).

A Request for Additional Information (RFAI) was sent to the Fund on April 11, 1984, which explained the requirements for reporting administrative expenses (Attachment 4). A Second Notice was sent to the Fund on May 3, 1984 for failure to respond to the RFAI (Attachment 5).

On May 7, 1984, a response was received from Mr. Frank Trotta, Counsel for the Fund (Attachment 6). The response stated the following:

*/ The Fund registered as a non-connected political committee on May 3, 1983.

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We have reflected all expenditures made. The reason these expenditures are limited is that we have an exchange agreement with our landlord. Under this agreement, we provide our landlord with a full ownership interest in our mailing lists in return for free administrative services and space.

On June 6, 1984, another RFAI was sent in order to obtain additional information regarding the "exchange agreement" with the Fund's landlord (Attachment 7). The Reports Analysis Division ("RAD") Analyst called Mr. Trotta on June 11, 1984 to inquire about the status of the Fund's response. Mr. Trotta was out of town at the time, so his secretary took a message (Attachment 8).

A Second Notice was sent on June 28, 1984 for failure to respond to the RFAI (Attachment 9). On July 3, 1984, a letter was received from Mr. Trotta which stated that he had asked the Fund's "list maintenance people" and accountant to research the questions posed in the RFAI (Attachment 10).

On July 16, 1984, the RAD Analyst attempted to contact Mr. Trotta; however, he was out of the office (Attachment 11). On July 17, 1984, a response was received from Mr. Trotta, which provided additional information concerning the Fund's administrative expenses and the arrangement with the landlord (Attachment 12). Listed below is a summary of the answers provided to the questions posed in the June 6th RFAI.

1. The cost for the rental space at the location of the Fund's office is \$21.296 per square foot per year. Because the Fund uses 138 square feet, the approximate monthly rental value is \$244.90.
2. The Fund's mailing list contains approximately 17,000 contributors. The list is rented "...only to selected bidders who are in philosophical and political agreement with the principals of ..." the Fund. "The value at any given point in time may differ from its value at any point in time and the upkeep costs may be reflected in determining a fair rental or fair market value."
- 3a. The amount of income generated from the sale or rental of the Fund's list was not provided; however, the Fund received \$108,721 in contributions during 1983 by using a portion of the list.

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- 3b. Although no rental agreement exists, the "barter arrangement" with the landlord enables the Fund to forego any payments for rent or overhead expenses in exchange for granting the landlord "...an unconditional and permanent proprietary interest in all its mailing, contributor and volunteer lists, records, files, computer tapes and all other pertinent information...."
4. The question of whether the Fund would be required to pay for administrative expenses in the event that the value of the list depreciates "...has not been discussed by the parties to the agreement and therefore no agreement has been made either precluding or requiring payment...."

Although the Fund has explained why its 1983 reports disclosed no or limited administrative expenses, the permissibility of the "barter arrangement" under the Act and regulations cannot be determined from the information provided.

IV. OTHER PENDING MATTERS INITIATED BY RAD:

None

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FEDERAL ELECTION COMMISSION
COMMITTEE INDEX OF DISCLOSURE DOCUMENTS - (C) (83-84)

DATE 23AUG84
PAGE 1

NON-PARTY RELATED

COMMITTEE	DOCUMENT	RECEIPTS	DISBURSEMENTS	TYPE OF FILER COVERAGE DATES	# OF PAGES	MICROFILM LOCATION
FUND TO KEEP AMERICA #1 CONNECTED ORGANIZATION: NONE				NON-PARTY QUALIFIED		ID #C00167007
1983	STATEMENT OF ORGANIZATION			3MAY83	2	83FEC/271/2520
	MID-YEAR REPORT	108,646	47,256	6APR83 -30JUN83	29	83FEC/279/4238
	MID-YEAR REPORT - AMENDMENT	-	-	1JAN83 -30JUN83	1	84FEC/315/525
	MID-YEAR REPORT - AMENDMENT	-	-	6APR83 -30JUN83	2	84FEC/318/3500
	MID-YEAR REPORT - AMENDMENT	-	-	6APR83 -30JUN83	3	84FEC/322/4443
	REQUEST FOR ADDITIONAL INFORMATION			6APR83 -30JUN83	2	84FEC/308/0041
	REQUEST FOR ADDITIONAL INFORMATION 2ND			6APR83 -30JUN83	3	84FEC/313/2226
	REQUEST FOR ADDITIONAL INFORMATION			6APR83 -30JUN83	2	84FEC/316/2001
	REQUEST FOR ADDITIONAL INFORMATION 2ND			6APR83 -30JUN83	3	84FEC/318/1921
	YEAR-END	3,838	30,843	1JUL83 -31DEC83	9	84FEC/296/1632
	YEAR-END - AMENDMENT	-	-	1JUL83 -31DEC83	2	84FEC/313/3388
	YEAR-END - AMENDMENT	-	-	1JUL83 -31DEC83	1	84FEC/318/5209
	YEAR-END - AMENDMENT	-	-	1JUL83 -31DEC83	1	84FEC/323/2029
	REQUEST FOR ADDITIONAL INFORMATION			1JUL83 -31DEC83	1	84FEC/308/1502
	REQUEST FOR ADDITIONAL INFORMATION 2ND			1JUL83 -31DEC83	1	84FEC/313/2912
	REQUEST FOR ADDITIONAL INFORMATION			1JUL83 -31DEC83	1	84FEC/316/2062
	REQUEST FOR ADDITIONAL INFORMATION 2ND			1JUL83 -31DEC83	1	84FEC/318/1958
1984	FEBRUARY MONTHLY	0	6,154	1JAN84 -31JAN84	4	84FEC/297/2520
	MARCH MONTHLY	2,000	3,000	1FEB84 -29FEB84	5	84FEC/299/3050
	APRIL MONTHLY	0	413	1MAR84 -31MAR84	4	84FEC/312/4433
	MAY MONTHLY	-	1,000	1APR84 -30APR84	4	84FEC/315/0424
	JUNE MONTHLY	-	1,255	1MAY84 -31MAY84	5	84FEC/317/3164
	JULY MONTHLY	0	2,136	1JUN84 -30JUN84	4	84FEC/323/2416
	AUGUST MONTHLY	0	5,643	1JUL84 -31JUL84	4	84FEC/325/3872
	TOTAL	114,484	0		94	TOTAL PAGES

ALL REPORTS HAVE RECEIVED REVIEW, WITH THE EXCEPTION OF THE AUGUST MONTHLY REPORT

CLOSING CASH AS OF 7/31/84 : \$22,425.00

DEBTS AND OBLIGATIONS: \$0.00

**DETAILED SUMMARY PAGE
of Receipts and Disbursements
(Page 2, FEC FORM 3X)**

Attachment 2a

Name of Committee (or Fund)

Fund to Keep America #1

Report Covering the Period

From **April 6, 1983** to **June 30, 1983**

	COLUMN A Total This Period	COLUMN B Calendar Year To-Date	
I. RECEIPTS			
11. CONTRIBUTIONS (other than loans) FROM:			
(a) Individuals/Persons Other Than Political Committees	108,646.00	108,646.00	11(a)
(Memo Entry Unitemized \$ <u>3,855.00</u>)			
(b) Political Party Committees			11(b)
(c) Other Political Committees			11(c)
(d) TOTAL CONTRIBUTIONS (other than loans) (add 11(a), 11(b) and 11(c))	108,646.00	108,646.00	11(d)
12. TRANSFERS FROM AFFILIATED/OTHER PARTY COMMITTEES			12
13. ALL LOANS RECEIVED			13
14. LOAN REPAYMENTS RECEIVED			14
15. OFFSETS TO OPERATING EXPENDITURES (Refunds, Rebates, etc.)			15
16. REFUNDS OF CONTRIBUTIONS MADE TO FEDERAL CANDIDATES AND OTHER POLITICAL COMMITTEES			16
17. OTHER RECEIPTS (Dividends, Interest, etc.)			17
18. TOTAL RECEIPTS (Add 11(d), 12, 13, 14, 15, 16 and 17)	108,646.00	108,646.00	18
II. DISBURSEMENTS			
19. OPERATING EXPENDITURES	42,256.75	42,256.75	19
20. TRANSFERS TO AFFILIATED/OTHER PARTY COMMITTEES			20
21. CONTRIBUTIONS TO FEDERAL CANDIDATES AND OTHER POLITICAL COMMITTEES	5,000.00	5,000.00	21
22. INDEPENDENT EXPENDITURES (use Schedule E)			22
23. COORDINATED EXPENDITURES MADE BY PARTY COMMITTEES (2 U.S.C. § 441 a(d)) (Use Schedule F)			23
24. LOAN REPAYMENTS MADE			24
25. LOANS MADE			25
26. REFUNDS OF CONTRIBUTIONS TO			
(a) Individuals/Persons Other Than Political Committees			26(a)
(b) Political Party Committees			26(b)
(c) Other Political Committees			26(c)
(d) TOTAL CONTRIBUTION REFUNDS (Add 26(a), 26(b) and 26(c))			26(d)
27. OTHER DISBURSEMENTS			27
28. TOTAL DISBURSEMENTS (add lines 19, 20, 21, 22, 23, 24, 25, 26(d) and 27)	47,256.75	47,256.75	28
III. NET CONTRIBUTIONS AND NET OPERATING EXPENDITURES			
29. TOTAL CONTRIBUTIONS (other than loans) from Line 11(d)	108,646.00	108,646.00	29
30. TOTAL CONTRIBUTION REFUNDS from Line 26(d)			30
31. NET CONTRIBUTIONS (other than loans) (Subtract Line 30 from Line 29)	108,646.00	108,646.00	31
32. TOTAL OPERATING EXPENDITURES from Line 19	42,256.75	42,256.75	32
33. OFFSETS TO OPERATING EXPENDITURES from Line 15			33
34. NET OPERATING EXPENDITURES (Subtract Line 33 from Line 32)	42,256.75	42,256.75	34

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SCHEDULE B

ITEMIZED DISBURSEMENTS

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee

Name of Committee (in Full)

Fund to Keep America #1

A. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
POCHEART, L FDR New York, New York	postage Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	5/16/83	100.00
B. Full Name, Mailing Address and ZIP Code Doug Stroup Associates 273 Hudson Avenue Albany, New York 12210	Purpose of Disbursement lapel pins Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	5/17/83	1,569.63
C. Full Name, Mailing Address and ZIP Code Page Avjet Corporation Washington National Airport Washington, D.C.	Purpose of Disbursement travel Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	5/26/83	1,534.87
D. Full Name, Mailing Address and ZIP Code Waldorf Astoria Park Avenue New York, New York	Purpose of Disbursement fundraiser Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	6/8/83	4,169.25
E. Full Name, Mailing Address and ZIP Code Carey of Washington, D.C. 2000 Jefferson Davis Highway Arlington, Vermont	Purpose of Disbursement travel Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	6/10/83	60.00
F. Full Name, Mailing Address and ZIP Code Doug Stroup Associates 273 Hudson Avenue Albany, New York 12210	Purpose of Disbursement printing Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	6/17/83	250.00
G. Full Name, Mailing Address and ZIP Code Teterboro Airport Limousine Teterboro Airport Teterboro, New Jersey 07608	Purpose of Disbursement travel Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	6/23/83	227.70
H. Full Name, Mailing Address and ZIP Code Lewis E. Lehrman 641 Lexington Avenue New York, New York 10022	Purpose of Disbursement in-kind payroll Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	4/15/83	908.00
I. Full Name, Mailing Address and ZIP Code Lewis E. Lehrman 641 Lexington Avenue New York, New York 10022	Purpose of Disbursement in-kind payroll Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	4/29/83	908.00
SUBTOTAL of Disbursements This Page (optional)			9,727.45
TOTAL Disbursements (last page this line number only)			

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SCHEDULE B

ITEMIZED DISBURSEMENTS

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

Name of Committee (in Full)

Fund to Keep America #1

A. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
Lewis E. Lehrman 641 Lexington Avenue New York, New York 10022	in-kind payroll services Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	5/13/83	908.00
Lewis E. Lehrman 641 Lexington Avenue New York, New York 10022	in-kind payroll services Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	5/27/83	908.00
Lewis E. Lehrman 641 Lexington Avenue New York, New York 10022	in-kind payroll services Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	6/10/83	908.00
Lewis E. Lehrman 641 Lexington Avenue New York, New York 10022	in-kind payroll services Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	6/24/83	401.00
7	Purpose of Disbursement Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Date (month, day, year)	Amount of Each Disbursement This Period
10	Purpose of Disbursement Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Date (month, day, year)	Amount of Each Disbursement This Period
8	Purpose of Disbursement Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Date (month, day, year)	Amount of Each Disbursement This Period
11	Purpose of Disbursement Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Date (month, day, year)	Amount of Each Disbursement This Period
1	Purpose of Disbursement Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Date (month, day, year)	Amount of Each Disbursement This Period
SUBTOTAL of Disbursements This Page (optional)			3,125.00
TOTAL This Period (last page this line number only)			42,256.75

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**DETAILED SUMMARY PAGE
of Receipts and Disbursements
(Page 2, FEC FORM 3X)**

Attachment 3

Name of Committee (or Full)

FUND TO KEEP AMERICA #1

Report Covering the Period

From July 1, 1983 To Dec. 31, 1984

	COLUMN A Total This Period	COLUMN B Calendar Year To Date	
I. RECEIPTS			
11 CONTRIBUTIONS (other than loans) FROM:			
(a) Individuals/Persons Other Than Political Committees	75.00	108,721.00	11(a)
(Memo Entry Unitized \$ <u>75.00</u>)			
(b) Political Party Committees			11(b)
(c) Other Political Committees			11(c)
(d) TOTAL CONTRIBUTIONS (other than loans) (add 11(a), 11(b) and 11(c))	75.00	108,721.00	11(d)
12 TRANSFERS FROM AFFILIATED/OTHER PARTY COMMITTEES			12
13 ALL LOANS RECEIVED			13
14 LOAN REPAYMENTS RECEIVED			14
15 OFFSETS TO OPERATING EXPENDITURES (Refunds, Rebates, etc.)			15
16 REFUNDS OF CONTRIBUTIONS MADE TO FEDERAL CANDIDATES AND OTHER POLITICAL COMMITTEES			16
17 OTHER RECEIPTS (Dividends, Interest, etc.)	3,763.51	3,763.51	17
18 TOTAL RECEIPTS (Add 11(d), 12, 13, 14, 15, 16 and 17)	3,838.51	112,484.51	18
II. DISBURSEMENTS			
19 OPERATING EXPENDITURES	743.00	42,999.75	19
20 TRANSFERS TO AFFILIATED/OTHER PARTY COMMITTEES			20
21 CONTRIBUTIONS TO FEDERAL CANDIDATES AND OTHER POLITICAL COMMITTEES	30,100.00	35,100.00	21
22 INDEPENDENT EXPENDITURES (Use Schedule E)			22
23 COORDINATED EXPENDITURES MADE BY PARTY COMMITTEES (2 U.S.C. § 441 a(d)) (Use Schedule F)			23
24 LOAN REPAYMENTS MADE			24
25 LOANS MADE			25
26 REFUNDS OF CONTRIBUTIONS TO			
(a) Individuals/Persons Other Than Political Committees			26(a)
(b) Political Party Committees			26(b)
(c) Other Political Committees			26(c)
(d) TOTAL CONTRIBUTION REFUNDS (Add 26(a), 26(b) and 26(c))			26(d)
27 OTHER DISBURSEMENTS			27
28 TOTAL DISBURSEMENTS (add lines 19, 20, 21, 22, 23, 24, 25, 26(d) and 27)	30,843.00	78,100.75	28
III. NET CONTRIBUTIONS AND NET OPERATING EXPENDITURES			
29 TOTAL CONTRIBUTIONS (other than loans) from Line 11(d)	75.00		29
30 TOTAL CONTRIBUTION REFUNDS from Line 26(d)			30
31 NET CONTRIBUTIONS (other than loans) (Subtract Line 30 from Line 29)	75.00		31
32 TOTAL OPERATING EXPENDITURES from Line 19	743.00		32
33 OFFSETS TO OPERATING EXPENDITURES from Line 15			33
34 NET OPERATING EXPENDITURES (Subtract Line 33 from Line 32)	743.00		34

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20461

RQ-2

11 April 1984

Timothy S. Carey, Treasurer
Fund to Keep America #1
641 Lexington Avenue, 25th Floor
New York, NY 10022

Identification Number: C00167007

Reference: Mid-Year (4/6/83-6/30/83) and Year-End (7/1/83-12/31/83) Reports

Dear Mr. Carey:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-Your Reports have limited payments for administrative expenses. Administrative expenses are payments made for the purpose of operating a political committee including, but not limited to, rent, utilities, telephone service, office equipment and supplies. Any such payments to a person aggregating in excess of \$200 in a calendar year must be disclosed on Schedule B, supporting Line 19 of the Detailed Summary Page. (2 U.S.C. 434(b)(5)) In addition, if expenses have been incurred but not paid in a reporting period, the activity should be disclosed as a debt on Schedule D, if the obligation is \$500 or more, or outstanding for sixty (60) days or more. (11 CFR 104.11)

If these expenses are being paid by a connected organization, your Statement of Organization must be amended to reflect this relationship. (2 U.S.C. 433(b)(2))

If your committee has used corporate or labor facilities (e.g., telephones or photocopiers), payment must be made within a commercially reasonable time in the amount of the normal and usual rental charge. (11 CFR 114.9(d)) These payments should be disclosed on Schedule B, supporting Line 19 of the Detailed Summary Page, as discussed above.

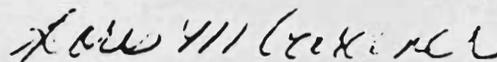
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Finally, any good or service provided to the committee by an individual, except volunteer activity (i.e., a person's time), would be considered an in-kind contribution from that individual, and would be subject to the disclosure requirements of 2 U.S.C. 434(b)(3) and 11 CFR 104.13.

Please provide clarification regarding administrative expenses incurred by your committee and/or amend your report to disclose such expenses according to the referenced provisions of the Act and Commission regulations.

An amendment to your original report(s) correcting the above problem(s) should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 523-4048

Sincerely,



Doris Gardner
Reports Analyst
Reports Analysis Division

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FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

RQ-3

May 3, 1984

Timothy S. Carey, Treasurer
Fund to Keep America #1
641 Lexington Avenue, 25th Floor
New York, NY 10022

Identification Number: C00167007

Reference: Mid-Year (4/6/83-6/30/83) and Year-End (7/1/83-12/31/83) Reports

Dear Mr. Carey:

This letter is to inform you that as of May 2, 1984, the Commission has not received your response to our request for additional information, dated April 11, 1984. That notice requested information essential to full public disclosure of your Federal election financial activity and to ensure compliance with provisions of the Federal Election Campaign Act (the Act). A copy of our original request is enclosed.

If no response is received within fifteen (15) days from the date of this notice, the Commission may choose to initiate audit or legal enforcement action.

If you should have any questions related to this matter, please contact Doris Gardner on our toll-free number (800) 424-9530 or our local number (202) 523-4048.

Sincerely,

John D. Gibson
John D. Gibson
Assistant Staff Director
Reports Analysis Division

Enclosure

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ATTACHMENT 6

84 MAY 7 AM: 02



April 25, 1984

Ms. Doris Gardner
Reports Analyst
Reports Analysis Division
Federal Election Commission
1525 K Street, N.W.
Washington, D.C. 20463

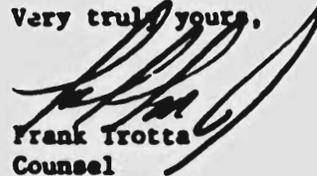
Dear Ms. Gardner:

Your letter of April 11, to our Treasurer, Timothy S. Carey was referred to me for response.

In your letter you indicate that our reports reflect only "limited payments for administrative expenses." We have reflected all expenditures made. The reason these expenditures are limited is that we have an exchange agreement with our landlord. Under this agreement, we provide our landlord with a full ownership interest in our mailing lists in return for free administrative services and space.

We are willing to amend, in any manner you suggest, our reports to reflect this "barter" like arrangement. Please advise.

Very truly yours,



Frank Trotta
Counsel

FT/ms

cc: Timothy S. Carey

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 6 1984 RQ-2

Timothy S. Carey, Treasurer
Fund to Keep America #1
641 Lexington Avenue, 25th Floor
New York, NY 10022

Identification Number: C00167007

Reference: Amended Mid-Year (4/6/83-6/30/83) and Amended Year
End (7/1/83-12/31/83) Reports

Dear Mr. Carey:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-Your committee's response dated April 25, 1984 states that "free administrative services and space" are provided from the landlord in exchange for "full ownership interest" in your mailing lists. In order to clarify this arrangement, please provide the following information:

-The normal and usual cost of renting space at said location;

-The fair market value of the committee's mailing list and the manner in which it was derived (including the number of contributors and the amount per 1,000);

-The amount of income generated in 1983 and the specifics of such rental agreements; and

-Whether the committee would be required to pay for the administrative expenses, in the event that the value of the list depreciates.

An amendment to your original report(s) correcting the above problem(s) should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need

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assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 523-4048.

Sincerely,

Doris M. Gardner

Doris Gardner
Reports Analyst
Reports Analysis Division

cc: Mr. Frank Trotta

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MEMORANDUM TO FILE:

ATTACHMENT 8

FROM: Doris M. Gardner/Reports Analyst

DATE : 6/11/84

TO: File

TELEPHONE: 212-759-8543

NAME OF COMMITTEE: Fund To Keep America #1 (C00167007)

I called the office of Mr. Frank Trotta, counsel for The Fund To Keep America #1. The reason for call was to inquire as to the status of our response to a recent RFAI.

I did not speak to Mr. Trotta, because he was out of town at the time. His secretary said that she would gladly leave a message for him.

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FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

RQ-3

June 28, 1984

Timothy S. Carey, Treasurer
Fund to Keep America #1
641 Lexington Avenue
25th Floor
New York, NY 10022

Identification Number: C00167007

Reference: Amended Mid-Year (4/6/83-6/30/83) and Amended Year-
End (7/1/83-12/31/83) Reports

Dear Mr. Carey:

This letter is to inform you that as of June 27, 1984, the Commission has not received your response to our request for additional information, dated June 6, 1984. That notice requested information essential to full public disclosure of your Federal election financial activity and to ensure compliance with provisions of the Federal Election Campaign Act (the Act). A copy of our original request is enclosed.

If no response is received within fifteen (15) days from the date of this notice, the Commission may choose to initiate audit or legal enforcement action.

If you should have any questions related to this matter, please contact Doris Gardner on our toll-free number (800) 424-4830 or our local number (202) 523-4048.

Sincerely,

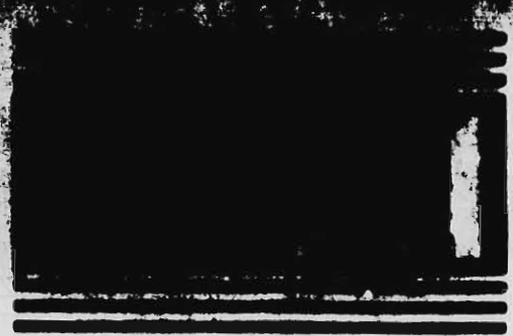
John D. Gibson
Assistant Staff Director
Reports Analysis Division

Enclosure

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ATTACHMENT 10
84 JUL 3 12:12



June 28, 1984

Ms. Doris Gardner
Reports Analyst
Reports Analysis Division
Federal Election Commission
Washington, D.C. 20463

Identification Number: C00167007

RE: Amended Mid-Year (4/6/83-6/30/83)
and Amended Year End (7/1/83-12/31/83) Reports

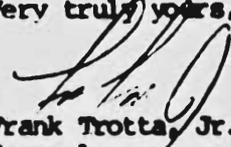
Dear Ms. Gardner:

I just returned from a lengthy stay out of town to find two copies of your June 6 letter to Tim Carey, our Treasurer: your carbon copy to me and Tim's referral copy and cover letter to me.

I apologize for the delay in responding, however I have been out of town since the first week of June. Accordingly, I request a time-extension to allow us to reply properly. (This is why I tried, unsuccessfully, to reach you by telephone today.) I have asked our list maintenance people and our accountant to research the questions you pose.

I eagerly await your reply. Thank you.

Very truly yours,


Frank Trotta, Jr.
Counsel

FTjr/sy

Handwritten initials or mark, possibly "GT" or similar.

35040500631
34033163500

MEMORANDUM TO THE FILES: TELECON

COMMITTEE NAME: The Fund To Keep America No. 1

COMMITTEE CONTACT: Mr. Frank Trotta

TELEPHONE # 212-759-8543

DATE: July 16, 1984

ANALYST: Doris M. Gardner (RAD)

SUBJECT: Inquiry regarding no response to RFAI dated June 6, 1984.

I called the office of Mr. Frank Trotta, counsel for the Fund To Keep America No. 1. This was the second time that I had to call Mr. Trotta to inquire about an overdue response.

Again, I did not speak with Mr. Trotta because he was out of the office. I did leave a message with his secretary.

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RECEIVED AT THE FEC

ATTACHMENT 12

24 JUL 84 8:48

July 11, 1984

Ms. Doris Gardner
Reports Analyst
Reports Analysis Division
Federal Election Commission
Washington, D.C. 20463

Identification Number: C00167007

Dear Ms. Gardner:

In response to your letter, dated June 6, 1984, to Timothy S. Carey, I report the following answers to your inquiry:

(1) What is "the normal and usual cost of renting space at" our office?

The Cost is \$21.296 per square foot per year. Our Committee uses approximately 138 square feet. For an approximate monthly rental value of \$244.90.

(2) What is "the fair market value of the committee's mailing list and the manner in which it was derived (including the number of contributors and the amount per 1,000)?"

The list in question contains approximately 17,000 contributors' and volunteers' names as well as other data on each person.

Regarding fair market value, we need clarification as to what your definition of "fair market value" is. Using the traditional legal definition of "the price a willing buyer would pay a willing seller" we encounter a problem. Our Committee would be a "willing seller" (or renter) only to selected bidders who are in philosophical and political agreement with the principals of our Committee, and even then, we would not sell or rent to most bidders. Also, the list may be of extreme value to certain buyers and valueless to others. Further, the list is dynamic — it is frequently changing in terms of size and in terms of information relating to each contributor. The value at any given point in time may differ from its value at any other point in time and the upkeep costs may be reflected in determining a fair rental or fair market value. Finally, the fair market value would differ for a rental agreement versus an outright sale.

(3) How much income was generated for our Committee in 1983 by use of the list?

In 1983, no direct mail appeal was sent by our Committee to the entire mailing list. However, in 1983, a portion of the list (i.e., all contributors over a certain "giving history" threshold) was used for a direct mail event-solicitation which generated \$108,721.00 in income as reported in our filings in your office.

(4) What are "the specifics of such rental agreement?"

There is no rental agreement. The specifics of the barter arrangement are as follows:

Our Committee grants "an unconditional and permanent proprietary interest in all its mailing, contributor and volunteer lists, records, files, computer tapes and all other pertinent information relating thereto, [to our landlord] in consideration of his agreement herein, to forego the receipt of any and all payment from [our Committee for] rental and other "overhead" expenses....

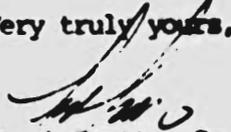
This agreement shall remain in effect so long as payment for said services is foregone.

(5) Would the committee be required to pay for the administrative expenses, in the event that the value of the list depreciates?

This issue has not been discussed by the parties to the agreement and therefore no agreement has been made either precluding or requiring payment under said circumstances.

I trust this satisfies your request and I trust that the information in this letter shall remain privileged and confidential and shall not fall subject to the Freedom of Information Act. Please contact me directly with any further questions. I can be reached at 212/759-4181.

Very truly yours,


Frank Trotta, Jr.
Counsel

FT/ms

cc: Timothy S. Carey

05040300634
44444



FEDERAL ELECTION COMMISSION

1325 K STREET NW
WASHINGTON, D.C. 20463

36040:60635

THIS IS THE BEGINNING OF MUR # 1872

Date Filmed 5/7/86 Camera No. --- 2

Cameraman APC



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

2/20/87

THE FOLLOWING MATERIAL IS BEING ADDED TO THE
PUBLIC FILE OF CLOSED MUR 1872.

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ANSWER:

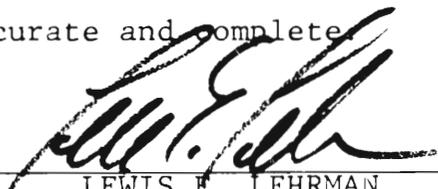
During calendar year 1983 I gained an ownership interest in the contributor lists and contribution histories of the Fund to Keep America #1 ("the Committee"). Although I chose not to use that information in any fundraising efforts during calendar year 1983, and am therefore unable to report that I raised a specific sum of money in 1983 by reason of having owned the list, I would submit that, for valuation purposes, a contributor list and its accompanying information have a fair market value at the time of their acquisition, irrespective of the results which may or may not be achieved when that information is ultimately utilized in fundraising activities. Thus, the fact of my acquisition of an ownership interest in the Committee's contributor information in 1983, and my resulting ability to use that information at any time, were the benefits I received from the barter agreement in 1983. I would note that the Committee also retained an ownership interest in its contributor information.

As stated in my original answer to Interrogatory No. 4, one measure of the value of a contributor list is the customary one-time rental rate of \$80 per 1,000 names. Even using that minimal measure of the list's value, which measure is unrelated to the amount of money ultimately raised through use of the list, access to the list was worth a minimum of \$1,360.00, a value

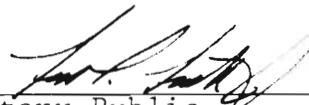
sufficient to bring my net 1983 contribution to the Committee within the statutory limitation.

STATE OF NEW YORK)
~~DISTRICT OF COLUMBIA~~)
~~CITY OF WASHINGTON~~) ss:
COUNTY OF NEW YORK

LEWIS E. LEHRMAN, being first duly sworn, deposes and says that he has read the foregoing supplemental interrogatory answer and that, to the best of his knowledge and belief, the answer given is accurate and complete.


LEWIS E. LEHRMAN

Sworn to and subscribed
before me this 12 day of
MARCH, 1985.


Notary Public

My commission expires: 3/30/86

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07070141707



CA 8-95-798

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PERSON Jan Jones TELEPHONE 344-441

COMPANY Pelletier & Jones INVOICE / ORDER # 6466

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CITY & STATE Santa Ana, CA ZIP CODE 92704

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PERSON Steve Mims, Esq. TELEPHONE

COMPANY edera DEPT / ROOM

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CITY & STATE Washington, DC ZIP CODE 20463

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TO FEDERAL ELECTION COMMISSION
 ANNE WEISSENBORN, ESQ. AND
 STEPHEN MIMS, ESQ.
 1325 "K" STREET
 WASHINGTON, D.C. 20463

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