FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3211

DATE FILMED 5-27-92 CAMERA NO. 1

CAMERAMAN E.E.S.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 4, 1990

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA RJC for RJC 5-4-90
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: LAROUCHE DEMOCRATIC CAMPAIGN - MATTERS REFERRED TO THE OFFICE OF GENERAL COUNSEL

Attached please find Exhibits A and B which were approved by the Commission on May 1, 1990 for referral to your office.

Should you wish to review workpapers or have any questions regarding these matters, please contact Rick Halter or Alex Boniewicz at 376-5320.

Attachments:

Exhibit A: Refunds of Excessive Contributions Received from Individuals (with Attachment)

Exhibit B: Allocation of Expenditures to States

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Refunds of Excessive Contributions Received from Individuals

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate and his authorized political committee with respect to any election for Federal office which in the aggregate exceed $1,000.

Further, Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states in part that contributions which on their face exceed the contribution limitations and contributions which do not appear to be excessive on their face, but which exceed the contribution limits when aggregated with other contributions from the same contributor, may be either deposited into a campaign depository under 11 C.F.R. 103.3(a) or returned to the contributor. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor. If a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

The Audit staff reviewed all contribution refunds in order to determine whether the refunds were made in a timely manner. The review revealed that the excessive portions of 77 contributions from 64 individuals, totaling $14,830, were refunded in an untimely manner*/. See Attachment I.

At the exit conference, Committee representatives offered no comments regarding the excessives and were provided with a schedule detailing these items.

In the Interim Audit Report, the Audit staff recommended that within 30 calendar days of the date of service of the report the Committee provide an explanation, including an account of any mitigating circumstances, as to why these refunds were not accomplished in a timely manner.

The Committee's response to the interim audit report, received December 19, 1989, states that at the time when the Committee registered with the Commission (October, 1985), "Committee volunteers familiarized themselves with the

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*/ Some of excessive contributions were received prior to April 8, 1987, the effective date of the above cited regulations. It is, however, the Audit staff's opinion that refunds were not made in a timely fashion under either regulation in force.

statutes and regulations then in effect, which did not then include the 60-day prescription for refund of excessive individuals." The response goes on to state the Committee did periodically review its contributor files to determine if any contributors had exceeded their limit and when such excessive contributions were identified, the excess amount was refunded. The Committee also points out that all known excessives were refunded and at no time was there any intent to accept contributions in excess of any contributor's limit.

The Committee's response additionally asserts that the "new regulation [11 CFR 103.3(b)(3)], which for the first time specified a time period in which excessive contributions were to be refunded, did not become effective until a year and a half after the Committee had begun operations and established its control and compliance procedures. Although the Audit staff expresses an 'opinion' that refunds were not made timely even under previous regulations...the prior regulations did not prescribe any specific time limit."

Finally, the Committee notes that a similar number of excessives were, in fact, resolved timely.

The Audit staff does not dispute the Committee's assertion that it had procedures in place to monitor excessives. However, the Audit staff feels the Committee's response fails to address why a material number of excessive contributions were not resolved timely even though procedures that included "periodic reviews" for excessive contributors were in place, which did resolve a like number of excessives in a timely fashion.*/

Recommendation

The Audit staff recommends that this matter be referred to the Office of General Counsel in accordance with the Commission approved Materiality Thresholds.

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*/ It should be noted that the Committee did establish a separate suspense account for prohibited contributions in accordance with 11 C.F.R. §103.3 and that sufficient balances appeared to have been maintained in Committee accounts to effect refunds and preclude the use of these funds for campaign purposes.

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LAROUCHE DEMOCRATIC CAMPAIGN

Schedule of Excessives Not Refunded in a Timely Manner, ..

#	NAME	PRINTOUT PG #		Deposit Date of Excessive Contribution		Date of Refund Check		# of DAYS to Refund		Amount, Excessive Portion
1.	Allbright, Richard A. Jr.	1		8-7-87		12-1-87		116		$ 250-
2.	Andrews, Brian S.	2		11-24-87		2-29-88		97		50-
3.	Barnes, Richard M.	3		3-1-88		5-27-88		96		120-
4.	Barnett, Billy R.	4		9-10-87		1-5-88		117		5-
5.	Barone, Thomas G.	4		11-2-87		2-29-88		119		200-
6.	Beard-Gunkel, Renee I.	4		5-1-87		8-10-87		101		150-
7.	Berends, Charles L.	5		9-1-87 11-20-87		12-15-87 4-1-88		105 133		250- 150-
8.	Billows, John F.	6		1-19-88		4-20-88		92		50-
9.	Bradley, Betty B.	8		9-22-87		1-5-88		105		150-
10.	Carlson, Ted W.	8-9		11-6-87		2-29-88		115		50-
11.	Chase, Eva	9-10		5-21-87 6-10-87 6-22-87		12-1-87 12-1-87 12-1-87		194 174 162		50- 200- 150-
12.	Collins, Juanita I.	11		1-13-88		5-20-88		128		200-
13.	Cook, Elsa M	11		1-11-88		4-20-88		97		200-
14.	Coony, John P.	11		9-1-87		12-7-87		97		250-
15.	Crawford, Perry (III)	12		1-15-88		4-20-88		96		50-
16.	Cullen, Michael J	12		7-20-87		1-5-88		169		300-
									$	2825- TOT

LAROUCHE DEMOCRATIC CAMPAIGN

Schedule of Excessives not refunded in a Timely Manner

#	NAME	Printout Page #		Deposit Date of Excessive Contribution		Date of Refund check		# of Days to Refund		Amount Excessive Portion
17.	Dean, Ruth D.	11-12		5-18-87		9-3-87		108		500
18.	Easton, Dorothy J.	14		7-27-87		12-1-87		127		50
19.	Edsen, Meinhardt F.	14-15		3-2-87		9-8-87		190		200
20.	England, Foster W.	15		2-24-88		5-27-88		93		2[illegible]
21.	England, Gordon R.	15		10-6-87		1-5-88		91		200
22.	Gallagher, John R. (JR)	18		11-27-87 12-11-87		4-27-88 4-27-88		152 138		50 50
23.	Garrison, G. Bolar	18-19		9-4-87		12-7-87		94		50
24.	Gregory, Norma A.	20		1-15-88		5-13-88		119		250
25.	Gunkel, Dr. Ralph D.	21		7-24-87		12-7-87		135		200
26.	Hanshaw, William A.	21		1-27-88		4-27-88		91		130
27.	Harney, Lillian L.	22		8-18-87 8-20-87		12-23-87 12-23-87		127 125		250 200
28.	Hayes, Harry G.	22		4-27-87 6-1-87		4-27-88 4-27-88		366 330		150 200
29.	Heita, Douglas E.	22-23		8-31-87		12-7-87		98		100
30.	Hensley, Burton F.	23		7-14-87 7-31-87		12-7-87 12-7-87		146 129		100 150
31.	Hill, Ernest J.	23		12-30-87		4-27-88		118		175
32.	Keen, Margaret P.	26		8-14-87		12-23-87		131		1000
										$4205

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LAROUCHE DEMOCRATIC CAMPAIGN

ATTACHMENT I
(Page 3 of 4)
TO EXHIBIT A

Schedule of Excessives Not refunded Timely

#	NAME	Printout Page #		Date of Excessive Contribution		Date of Refund Check		# of Days to Refund		AMOUNT Excessive Contribution
33.	Kichne, Rudolph E.	26-27		1-12-88		5-3-88		105		$ 100-
34.	Kupfer, Terry W.	28		2-9-88		5-13-88		94		500-
35.	Lehmkuhl, Fred B.	28		1-19-88		5-20-88		122		100-
36.	Lightbody, Joan E.	29		11-20-87		2-29-88		91		25-
37.	McCarthy, Carol S.	31		3-25-87 3-25-87		7-28-87 7-28-87		125 125		50- 100-
				3-25-87		7-28-87		125		100-
38.	Merriam, Allison	32		12-10-85 12-10-85 12-10-85		4-29-86 4-29-86 4-29-86		141 141 141		100- 200- 700-
39.	Mitbo, Gerald E.	33		5-5-87 5-5-87		9-8-87 9-8-87		126 126		500- 500-
40.	Morrison, Rex T.	33-34		11-12-87		2-29-88		109		100-
41.	Mullins, Gerald	34		7-9-87		1-5-88		180		150-
42.	Neustrom, Gladys Cole	34		3-23-87		9-22-87		183		200-
43.	Nicht, Roland E.	34-35		5-11-87		8-10-87		91		150-
44.	Noble-Schenk, Patricia A.	35		1-27-88		5-27-88		121		175-
45.	O'Neill, Jeremiah F. (Sr.)	35-36		1-6-88		4-27-88		112		100-
46.	Obringer, Jerome	36		6-2-87		9-3-87		93		500-
47.	Parker, George W.	37		2-25-88		6-3-88		99		250-
48.	Pendzualek, Gertrud G	38-39		9-2-87		12-7-87		96		100- 4700=

LAROUCHE DEMOCRATIC CAMPAIGN

Schedule of Excessives Not Refunded Timely

#	NAME	Previous Page #		Deposit Date of Excessive Contribution		Date of Refund Check		# of Days to Refund		Amount, Excessive Portion	
49.	Peterlee, Edward	39		1-22-88 1-25-88		4-21-88 4-25-88		94 91		$ 100- 100-	
50.	Pettit, Ada M.	39		12-24-87		2-29-88		67		500	
51.	Rattray, Margaret T.	41		8-12-87		12-1-87		111		250-	
52.	Rivas, Jorge	41-42		2-26-88		6-3-88		98		50-	
53.	Robb, Alice J.	42		4-27-87		9-22-87		148		250-	
54.	Roman, Robert	42		6-9-87		10-19-87		132		250-	
55.	Schatz, Marian K.	43		12-18-87		4-1-88		105		125-	
56.	Sherman, Everett C.	45		12-28-87		4-20-88		114		25-	
57.	Sivitar, Chalmers T.	45		4-28-86		12-1-87		582		250-	
58.	Stevens, June	46		3-2-87		12-1-87		274		250-	
59.	Thompson, Gary (SC)	48-49		1-19-88		5-20-88		122		50-	
60.	Tomkow, Norman W.	49		7-9-87		12-15-87		159		250-	
61.	Viggiano, James M. (SC)	49		11-12-87		2-29-88		109		200-	
62.	Weatherth, Harriet M.	50		1-12-88		4-20-88		99		50-	
63.	Willekes, Jacobus	51		11-3-87		2-29-88		118		250-	
64.	Wood, Mirvin V.	51-52		9-9-87		1-5-88		118		150-	
									$	3100.00	TOTAL
								Grand Total (...)		11103.00	

Allocation of Expenditures to States

Section 9035(a) of Title 26 of the United States Code and Section 9035.1(a)(1) of Title 11 of the Code of Federal Regulations state, in part, that no candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitation applicable under section 441a(b)(1)(A) of Title 2.

Sections 441a(b)(1)(A) and 441a(c) of Title 2 of the United States Code provide, in part, that no candidate for the office of President of the United States who is eligible under Section 9033 of Title 26 to receive payments from the Secretary of the Treasury may make expenditures in any one State aggregating in excess of the greater of 16 cents multiplied by the voting age population of the State, or $200,000, as adjusted by the change in the Consumer Price Index.

The Audit staff's review and analysis of expenditures allocable to New Hampshire, including those allocated by the Committee, indicated that $520,033.84 should reasonably have been allocated to New Hampshire, causing the Committee to exceed the state expenditure limitation by $59,033.84. The Committee's (amended) Allocation of Primary Expenditures By State For a Presidential Candidate for its 1988 Pre-Election Report, disclosed that $526,137.85 had been allocated to New Hampshire, exceeding the New Hampshire state expenditure limitation of $461,000 by $65,137.85. The Committee's net overallocation of $6,104.01 resulted mainly from differences in allocating media and travel expenditures. The Committee excluded from allocation approximately $9,000 in travel expenditures for security personnel travelling in New Hampshire with the candidate, and failed to exclude from state allocation approximately $15,000 in various expenditures for overhead, interstate telephone calls, media production, national advertising, advertising for another state, and travel and subsistence for personnel who remained in the state for less than five days.

The Interim Audit Report recommended that within 30 calendar days after service of the report, the Committee demonstrate that it has not exceeded the New Hampshire state expenditure limitation.

The Committee, in its response received December 19, 1989, states:

"Section 9035(a) [of Title 26, United States Code], as cited, falls under Chapter 96 of the Federal Election Campaign Act, that is, the 'Presidential Primary Matching Payment Account Act', which applies to candidates receiving federal funding for

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their primary campaigns. Lyndon LaRouche had been denied matching funds upon first application, and was not subsequently qualified by the Commission for receipt of such funds until after the date of the New Hampshire primary election. No federal funds were used to defray any costs associated with the New Hampshire campaign.

Therefore, campaign activity relevant to the New Hampshire campaign, including amounts spent, falls outside the scope of that Chapter (though of course not outside the scope of the more general provisions of the F.E.C.A.), unless the provisions of that Chapter are retroactively applied.

Therefore, no repayment should be required under this Section."

The Audit staff finds the Committee's arguments to be defective in at least two areas. First, in order to become eligible to receive Presidential primary matching funds, 11 C.F.R. §9033.2(b)(2) provides that the candidate and the candidate's authorized committee(s) shall certify that they have not incurred and will not incur expenditures in connection with the candidate's campaign for nomination, which expenditures are in excess of the limitations under 11 CFR Part 9035. Second, the Audit staff's analysis indicates that $69,160.26 of expenditures allocable to New Hampshire were paid after March 25, 1988, the date upon which federal funds were first deposited into the Committee's bank account. Therefore, the Audit staff's position remains unchanged, except as noted below.

Based on the Committee's response with respect to Interim Audit Report Finding III.A., Stale-Dated Checks, the Audit staff has reduced the amount in excess of the New Hampshire state expenditure limitation ($59,033.84) for the allocable portion of one stale-dated check which has subsequently been voided ($97.50), resulting in a revised amount in excess of the New Hampshire limitation of $58,936.34 ($59,033.84 - $97.50).

Recommendation

The Audit staff recommends that this matter be referred to the Office of General Counsel in accordance with Commission approved Materiality Thresholds.

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SENSITIVE

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
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91 APR -8 AM 10:40

FIRST GENERAL COUNSEL'S REPORT

MUR #3211
STAFF MEMBER:
Phillip L. Wise

SOURCE: INTERNALLY GENERATED

RESPONDENT: LaRouche Democratic Campaign and Edward Spannaus, as treasurer

RELEVANT STATUTES:
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(b)(1)(A)
2 U.S.C. § 441a(c)
2 U.S.C. § 441a(f)
26 U.S.C. § 9033
26 U.S.C. § 9035(a)
11 C.F.R. § 103.3(b)(3)
11 C.F.R. § 9035.1(a)(1)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

The LaRouche Democratic Campaign ("LDC") and Edward Spannaus[1], as treasurer, were referred to the Office of the General Counsel by the Audit Division ("Audit") for (1) receiving excessive contributions from individuals; and (2) making expenditures in excess of State limitations. (Attachment 1).

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1. The LDC registered with the Commission on October 25, 1985. The audit covered the period from the Committee's inception, October 25, 1985, through August 31, 1988. During this period, the Committee reported an opening cash balance of $-0-, total receipts of $3,930,064.25, and total disbursements of $3,857,066.60.

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II. FACTUAL AND LEGAL ANALYSIS

A. Excessive contributions from individuals

No person shall make contributions to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A). Furthermore, no candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section. 2 U.S.C. § 441a(f). Contributions which on their face exceed the contribution limitations and contributions which do not appear to be excessive on their face, but exceed contribution limits when aggregated with other contributions from the same contributor, may be either deposited into a campaign depository under 11 C.F.R. § 103.3(a) or returned to the contributor. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor. If a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor. 11 C.F.R. § 103.3(b)(3).

The Commission's Audit Division reviewed all contributions refunded by the LDC to determine whether the refunds were made in a timely fashion. As stated in the Interim Audit Report, the review indicated that the excessive portions of 77 contributions

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from 64 individuals, totaling $14,830, were refunded in an untimely manner.

In response to Audit's assertion that the excessives were refunded in an untimely manner, the LDC stated:

> ...Committee volunteers familiarized themselves with the statutes and regulations then in effect, which did not then include the 60-day prescription for refund of excessive contributions.
>
> The new regulation [11 CFR 103.3(b)(3)][2], which for the first time specified a time period in which excessive contributions were to be refunded, did not become effective until a year and a half after the Committee had begun operations and established its control and compliance procedures. Although the Audit staff expressed an "opinion" that refunds were not made in a timely fashion even under the previous regulations, that opinion is not substantiated by any citation of the prior regulations. In fact, the prior regulations did not prescribe any specific time limit.

Audit does not dispute the LDC's assertion that it had procedures in place to monitor excessives. However, the response failed to explain why a substantial number of excessive contributions were not resolved timely when the noted procedure called for periodic reviews for excessive contributors. Refunds of the excessive portions of the 77 contributions from 64 individuals ranged from a low of 67 days to a high of 582 days from receipt (55 of these excessives were refunded more than 100 days after receipt). The following chart shows these contributions:

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2. The effective date of this regulation was April 8, 1987.

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NAME	Deposit Date of Excessive contribution	Date of Refund check	# of days to refund	Amount Excessive portion
Albright, Richard A. Jr.	8-7-87	12-1-87	116	$250
Andrews, Brian S.	11-24-87	2-29-88	97	50
Barnes, Richard M.	3-1-88	5-27-88	96	120
Barnett, Billy R.	9-10-87	1-5-88	117	5
Barone, Thomas G.	11-2-87	2-29-88	119	200
Beard-Gunkel, Renee I.	5-1-87	8-10-87	101	150
Berends, Charles L.	9-1-87	12-15-87	105	250
	11-20-87	4-1-88	133	150
Billows, John F.	1-19-88	4-20-88	92	50
Bradley, Betty B.	9-22-87	1-5-88	105	150
Carlson, Ted W.	11-6-87	2-29-88	115	50
Chase, Eva	5-21-87	12-1-87	194	50
	6-10-87	12-1-87	174	200
	6-22-87	12-1-87	162	150
Collins, Juanita I.	1-13-88	5-20-88	128	200
Cook, Elea M.	1-14-88	4-20-88	97	200
Couny, John P.	9-1-87	12-7-87	97	250
Crawford, Perry (III)	1-15-88	4-20-88	96	50
Cullen, Michael J.	7-20-87	1-5-88	169	300
Dean, Ruth, D.	5-18-87	9-3-87	108	500
Eaton, Dorothy J.	7-27-87	12-1-87	127	50
Edsen, Heinhardt F.	3-2-87	9-8-87	190	200
England, Foster W.	2-24-88	5-27-88	93	2
England, Gordon R.	10-6-87	1-5-88	91	200
Gallagher, John R. (Jr.)	11-27-87	4-27-88	152	50
	12-11-87	4-27-88	138	50
Gamson, G. Bolar	9-4-87	12-7-87	94	50
Gregory, Norma A.	1-15-88	5-13-88	119	250
Gunkel, Dr. Ralph D.	7-24-87	12-7-87	135	200
Hanshaw, William A.	1-27-88	4-27-88	91	130
Harney, Lillian L.	8-18-87	12-23-87	127	250
	8-20-87	12-23-87	125	200
Hayes, Harry G.	4-27-87	4-27-88	366	150
	6-1-87	4-27-88	330	200
Heit, Douglas E.	8-31-87	12-7-87	98	100
Hensley, Burton F.	7-14-87	12-7-87	146	100
	7-31-87	12-7-87	129	150
Hill, Ernest J.	12-30-87	4-27-88	118	175
Keen, Margaret P.	8-14-87	12-23-87	131	1000
Kiehne, Rudolph E.	1-12-88	5-3-88	105	100
Kupfer, Terry W.	2-9-88	5-13-88	94	500
Lehmkuhl, Fred B.	1-19-88	5-20-88	122	100
Lightbody, Joan E.	11-30-87	2-29-88	91	25
McCarthy, Carol S.	3-25-87	7-28-87	125	50
	3-25-87	7-28-87	125	100
	3-25-87	7-28-87	125	100
Merriam, Allison	12-10-85	4-29-86	141	100
	12-10-85	4-29-86	141	200
	12-10-85	4-29-86	141	700

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Mitbo, Gerald E.	5-5-87	9-8-87	126	500
	5-5-87	9-8-87	126	500
Morrison, Rex T.	11-12-87	2-29-88	109	100
Mullins, Gerald	7-9-87	1-5-88	180	150
Neustrom, Gladys Cole	3-23-87	9-22-87	183	200
Nicht, Roland E.	5-11-87	8-10-87	91	150
Noble-Schenk, Patricia A.	1-27-88	5-27-88	121	175
O'Neill, Jeremiah F., Sr.	1-6-88	4-27-88	112	100
Obringer, Jerome	6-2-87	9-3-87	93	500
Parker, George W.	2-25-88	6-3-88	99	250
Pendaulek, Gertrud G.	9-2-87	12-7-87	96	100
Peterlee, Edward	1-22-88	4-25-88	94	100
	1-25-88	4-25-88	91	100
Pettit, Ada M.	12-24-87	2-29-88	67	500
Rattray, Margaret T.	8-12-87	12-1-87	111	250
Rivas, Jorge	2-26-88	6-3-88	98	50
Robb, Alice J.	4-27-87	9-22-87	148	250
Roman, Robert	6-9-87	10-19-87	132	250
Schatz, Marian K.	12-18-87	4-1-88	105	125
Shuman, Everett C.	12-28-87	4-20-88	114	25
Siviter, Chalmers T.	4-28-86	12-1-87	582	250
Stevens, June	3-2-87	12-1-87	274	250
Thompson, Gary (Sr.)	1-19-88	5-20-88	122	50
Tombow, Norman W.	7-9-87	12-15-87	159	250
Viggiano, James H. (Jr.)	11-12-87	2-29-88	109	200
Wentworth, Harriet M.	1-12-88	4-20-88	99	50
Willekes, Jacobus'	11-3-87	2-29-88	118	250
Wood, Mariam V.	9-9-87	1-5-88	118	150
			Total:	$14,830

The regulation in effect at the time some of the excessives were received did not contain the sixty day requirement for refunds (as noted in footnote #2 above, the effective date of the new regulation was April 8, 1987)[3]; however, it did require that refunds of excessives should be made in a "reasonable time." Refunds made in the above numbers of days do not appear

3. It should be noted that for those excessive contributions received or deposited after April 8, 1987, the 60 day refund deadline is clearly applicable.

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as being within a reasonable time.[4]

Based on the foregoing, it appears that the LaRouche Democratic Campaign and Edward Spannaus, as treasurer, have violated 2 U.S.C. § 441a(f) by knowingly accepting contributions in excess of the contribution limits.

B. Expenditures in Excess of State Limitation

Pursuant to 2 U.S.C. § 441a(b)(1)(A) no candidate for the office of President of the United States who is eligible under section 9033 of title 26 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of $10,000,000 in the case of a campaign for nomination for election to such office, except the aggregate of expenditures under this subparagraph in any one State shall not exceed the greater of 16 cents multiplied by the voting age population of the State, or $200,000.

No candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitation applicable under section 441a(b)(1)(A) of title 2. 26 U.S.C. § 9035(a). The candidate and the candidate's authorized committee(s) shall certify that they have not incurred and will not incur expenditures in connection with the candidate's campaign for

4. In MUR 2154, Reagan-Bush 84 (Primary Committee), it was held that refunds of excessive contributions made more than 90 days after they were received was not made within a "reasonable time." In MUR 2072, John Glenn, the John Glenn Presidential Committee, Inc., refunds made on an average of 136 days after receipt were considered not made in a "reasonable time."

2204090192 7

nomination, which expenditures are in excess of the limitations under 11 CFR Part 9035. 11 C.F.R. § 9033.2(b)(2).

The Audit review and analysis of expenditures allocable to New Hampshire, including those allocated by the Committee, indicated that $520,033.84 should reasonably have been allocated to New Hampshire, causing the LDC to exceed the state expenditure limitation of $461,000 by $58,936.84.[5]

In the LDC's December 19, 1989 response to the Interim Audit Report the LDC stated:

> Section 9035(a) [of Title 26, United States Code], as cited, falls under Chapter 96 of the Federal Election Campaign Act, that is, the 'Presidential Primary Matching Payment Account Act', which applies to candidates receiving federal funding for their primary campaigns. Lyndon LaRouche had been denied matching funds upon first application, and was not subsequently qualified by the Commission for receipt of such funds until after the date of the New Hampshire primary election. No federal funds were used to defray any costs associated with the New Hampshire campaign.
>
> Therefore, campaign activity relevant to the New Hampshire campaign, including amounts spent, falls outside the scope of that Chapter (though of course not outside the scope of the more general provisions of the F.E.C.A.), unless the provisions of that Chapter are retroactively applied.

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5. As a result of the LDC's response with regard to the Interim Audit Report Finding III.A., Stale-Dated Checks, the Audit staff reduced the amount of excess of the New Hampshire state expenditure limitation ($59,033.84) by the allocable portion of one voided $97.50 stale-dated check resulting in a revised amount in excess of the New Hampshire limitation of $58,936.34 ($59,033.84 minus $97.50).

11 C.F.R. § 9033.2(b)(2) mandates that a candidate and the candidate's authorized committees, when applying for public matching funds, certify that they have not incurred and will not incur expenditures in connection with the candidate's campaign for nomination, which expenditures are in excess of the limitations under 11 CFR Part 9035. The LDC made such a representation to the Commission.

Based on the foregoing it appears that the LaRouche Democratic Campaign and Edward Spannaus, as treasurer, have violated 2 U.S.C. § 441a(b)(1)(A) and 26 U.S.C. § 9035(a).

III. RECOMMENDATIONS

1. Find reason to believe that the LaRouche Democratic Campaign and Edward Spannaus, as treasurer, have violated 2 U.S.C. §§ 441a(f), 441a(b)(1)(A), and 26 U.S.C. § 9035(a).

2. Approve the appropriate letters and Factual and Legal Analysis.

Lawrence M. Noble
General Counsel

Date 4/6/91

BY: Lois G. Lerner
Associate General Counsel

Attachments:
1. Referral Material
2. Factual and Legal Analysis

22040901929

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
LaRouche Democratic Campaign	)	MUR 3211
and Edward Spannaus, as	)	
treasurer.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on April 10, 1991, the Commission decided by a vote of 6-0 to take the following actions in MUR 3211:

1. Find reason to believe that the LaRouche Democratic Campaign and Edward Spannaus, as treasurer, have violated 2 U.S.C. §§ 441a(f), 441a(b)(1)(A), and 26 U.S.C. § 9035(a).

2. Approve the appropriate letters and Factual and Legal Analysis, as recommended in the General Counsel's Report dated April 6, 1991.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

4-12-91
Date

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

Received in the Secretariat:	Mon., April 8, 1991	10:40 a.m.
Circulated to the Commission:	Mon., April 8, 1991	4:00 p.m.
Deadline for vote:	Wed., April 10, 1991	4:00 p.m.

dr

2204090193 0

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 19, 1991

Edward Spannaus, Treasurer
The LaRouche Democratic Campaign
P.O. Box 17068
Washington, D.C. 20041

RE: MUR 3211
The LaRouche Democratic
Campaign and Edward Spannaus,
as treasurer

Dear Mr. Spannaus:

On April 10, 1991, the Federal Election Commission found that there is reason to believe that The LaRouche Democratic Campaign ("Committee") and you, as treasurer, violated 2 U.S.C. §§ 441a(f) and 441a(b)(1)(A), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and 26 U.S.C. § 9035(a). The 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 the Committee and you, as treasurer. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against the Committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

2204090193 1

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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 authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain 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 Phillip L. Wise, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

22040901932

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: LaRouche Democratic Campaign and Edward Spannaus, as treasurer — MUR 3211

The LaRouche Democratic Campaign ("LDC") and Edward Spannaus[1], as treasurer, were referred to the Office of the General Counsel by the Audit Division ("Audit") for (1) receiving excessive contributions from individuals; and (2) making expenditures in excess of State limitations.

A. Excessive contributions from individuals

No person shall make contributions to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A). Furthermore, no candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section. 2 U.S.C. § 441a(f). Contributions which on their face exceed the contribution limitations and contributions which do not appear to be excessive on their face, but exceed contribution limits when aggregated with other contributions from the same contributor, may be either deposited into a campaign depository under 11 C.F.R. § 103.3(a) or returned to the contributor. If any such contribution is deposited, the

1. The LDC registered with the Commission on October 25, 1985. The audit covered the period from the Committee's inception, October 25, 1985, through August 31, 1988. During this period, the Committee reported an opening cash balance of $-0-, total receipts of $3,930,064.25, and total disbursements of $3,857,066.60.

2204090193 3

treasurer may request redesignation or reattribution of the contribution by the contributor. If a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor. 11 C.F.R. § 103.3(b)(3).

The Commission's Audit Division reviewed all contributions refunded by the LDC to determine whether the refunds were made in a timely fashion. As stated in the Interim Audit Report, the review indicated that the excessive portions of 77 contributions from 64 individuals, totaling $14,830, were refunded in an untimely manner.

In response to Audit's assertion that the excessives were refunded in an untimely manner, the LDC stated:

> ...Committee volunteers familiarized themselves with the statutes and regulations then in effect, which did not then include the 60-day prescription for refund of excessive contributions.
>
> The new regulation [11 CFR 103.3(b)(3)][2], which for the first time specified a time period in which excessive contributions were to be refunded, did not become effective until a year and a half after the Committee had begun operations and established its control and compliance procedures. Although the Audit staff expressed an "opinion" that refunds were not made in a timely fashion even under the previous regulations, that opinion is not substantiated by any citation of the prior regulations. In fact, the prior regulations did not prescribe any specific time limit.

Audit does not dispute the LDC's assertion that it had

2. The effective date of this regulation was April 8, 1987.

2204090193 4

procedures in place to monitor excessives. However, the response failed to explain why a substantial number of excessive contributions were not resolved timely when the noted procedure called for periodic reviews for excessive contributors. Refunds of the excessive portions of the 77 contributions from 64 individuals ranged from a low of 67 days to a high of 582 days from receipt (55 of these excessives were refunded more than 100 days after receipt). The following chart shows these contributions:

NAME	Deposit Date of Excessive contribution	Date of Refund check	# of days to refund	Amount Excessive portion
Albright, Richard A. Jr.	8-7-87	12-1-87	116	$250
Andrews, Brian S.	11-24-87	2-29-88	97	50
Barnes, Richard M.	3-1-88	5-27-88	96	120
Barnett, Billy R.	9-10-87	1-5-88	117	5
Barone, Thomas G.	11-2-87	2-29-88	119	200
Beard-Gunkel, Renee I.	5-1-87	8-10-87	101	150
Berends, Charles L.	9-1-87	12-15-87	105	250
	11-20-87	4-1-88	133	150
Billows, John F.	1-19-88	4-20-88	92	50
Bradley, Betty B.	9-22-87	1-5-88	105	150
Carlson, Ted W.	11-6-87	2-29-88	115	50
Chase, Eva	5-21-87	12-1-87	194	50
	6-10-87	12-1-87	174	200
	6-22-87	12-1-87	162	150
Collins, Juanita I.	1-13-88	5-20-88	128	200
Cook, Elea M.	1-14-88	4-20-88	97	200
Couny, John P.	9-1-87	12-7-87	97	250
Crawford, Perry (III)	1-15-88	4-20-88	96	50
Cullen, Michael J.	7-20-87	1-5-88	169	300
Dean, Ruth, D.	5-18-87	9-3-87	108	500
Eaton, Dorothy J.	7-27-87	12-1-87	127	50
Edsen, Heinhardt F.	3-2-87	9-8-87	190	200
England, Foster W.	2-24-88	5-27-88	93	2
England, Gordon R.	10-6-87	1-5-88	91	200
Gallagher, John R. (Jr.)	11-27-87	4-27-88	152	50
	12-11-87	4-27-88	138	50
Gamson, G. Bolar	9-4-87	12-7-87	94	50
Gregory, Norma A.	1-15-88	5-13-88	119	250
Gunkel, Dr. Ralph D.	7-24-87	12-7-87	135	200
Hanshaw, William A.	1-27-88	4-27-88	91	130
Harney, Lillian L.	8-18-87	12-23-87	127	250
	8-20-87	12-23-87	125	200

9204090193 5

Hayes, Harry G.	4-27-87	4-27-88	366	150
	6-1-87	4-27-88	330	200
Heit, Douglas E.	8-31-87	12-7-87	98	100
Hensley, Burton F.	7-14-87	12-7-87	146	100
	7-31-87	12-7-87	129	150
Hill, Ernest J.	12-30-87	4-27-88	118	175
Keen, Margaret P.	8-14-87	12-23-87	131	1000
Kiehne, Rudolph E.	1-12-88	5-3-88	105	100
Kupfer, Terry W.	2-9-88	5-13-88	94	500
Lehmkuhl, Fred B.	1-19-88	5-20-88	122	100
Lightbody, Joan E.	11-30-87	2-29-88	91	25
McCarthy, Carol S.	3-25-87	7-28-87	125	50
	3-25-87	7-28-87	125	100
	3-25-87	7-28-87	125	100
Merriam, Allison	12-10-85	4-29-86	141	100
	12-10-85	4-29-86	141	200
	12-10-85	4-29-86	141	700
Mitbo, Gerald E.	5-5-87	9-8-87	126	500
	5-5-87	9-8-87	126	500
Morrison, Rex T.	11-12-87	2-29-88	109	100
Mullins, Gerald	7-9-87	1-5-88	180	150
Neustrom, Gladys Cole	3-23-87	9-22-87	183	200
Nicht, Roland E.	5-11-87	8-10-87	91	150
Noble-Schenk, Patricia A.	1-27-88	5-27-88	121	175
O'Neill, Jeremiah F., Sr.	1-6-88	4-27-88	112	100
Obringer, Jerome	6-2-87	9-3-87	93	500
Parker, George W.	2-25-88	6-3-88	99	250
Pendaulek, Gertrud G.	9-2-87	12-7-87	96	100
Peterlee, Edward	1-22-88	4-25-88	94	100
	1-25-88	4-25-88	91	100
Pettit, Ada M.	12-24-87	2-29-88	67	500
Rattray, Margaret T.	8-12-87	12-1-87	111	250
Rivas, Jorge	2-26-88	6-3-88	98	50
Robb, Alice J.	4-27-87	9-22-87	148	250
Roman, Robert	6-9-87	10-19-87	132	250
Schatz, Marian K.	12-18-87	4-1-88	105	125
Shuman, Everett C.	12-28-87	4-20-88	114	25
Siviter, Chalmers T.	4-28-86	12-1-87	582	250
Stevens, June	3-2-87	12-1-87	274	250
Thompson, Gary (Sr.)	1-19-88	5-20-88	122	50
Tombow, Norman W.	7-9-87	12-15-87	159	250
Viggiano, James H. (Jr.)	11-12-87	2-29-88	109	200
Wentworth, Harriet M.	1-12-88	4-20-88	99	50
Willekes, Jacobus'	11-3-87	2-29-88	118	250
Wood, Mariam V.	9-9-87	1-5-88	118	150
			Total:	$14,830

The regulation in effect at the time some of the excessives were received did not contain the sixty day requirement for refunds (as noted in footnote #2 above, the effective date of

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the new regulation was April 8, 1987)[3]; however, it did require that refunds of excessives should be made in a "reasonable time." Refunds made in the above numbers of days do not appear as being within a reasonable time.

B. Expenditures in Excess of State Limitation

Pursuant to 2 U.S.C. § 441a(b)(1)(A) no candidate for the office of President of the United States who is eligible under section 9033 of title 26 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of $10,000,000 in the case of a campaign for nomination for election to such office, except the aggregate of expenditures under this subparagraph in any one State shall not exceed the greater of 16 cents multiplied by the voting age population of the State, or $200,000.

No candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitation applicable under section 441a(b)(1)(A) of title 2. 26 U.S.C. § 9035(a). The candidate and the candidate's authorized committee(s) shall certify that they have not incurred and will not incur expenditures in connection with the candidate's campaign for nomination, which expenditures are in excess of the limitations under 11 CFR Part 9035. 11 C.F.R. § 9033.2(b)(2).

The Audit review and analysis of expenditures allocable to New Hampshire, including those allocated by the Committee,

3. It should be noted that for those excessive contributions received or deposited after April 8, 1987, the 60 day refund deadline is clearly applicable.

2204090193 7

indicated that $520,033.84 should reasonably have been allocated to New Hampshire, causing the LDC to exceed the state expenditure limitation of $461,000 by $58,936.84.[4]

In the LDC's December 19, 1989 response to the Interim Audit Report the LDC stated:

> Section 9035(a) [of Title 26, United States Code], as cited, falls under Chapter 96 of the Federal Election Campaign Act, that is, the 'Presidential Primary Matching Payment Account Act', which applies to candidates receiving federal funding for their primary campaigns. Lyndon LaRouche had been denied matching funds upon first application, and was not subsequently qualified by the Commission for receipt of such funds until after the date of the New Hampshire primary election. No federal funds were used to defray any costs associated with the New Hampshire campaign.
>
> Therefore, campaign activity relevant to the New Hampshire campaign, including amounts spent, falls outside the scope of that Chapter (though of course not outside the scope of the more general provisions of the F.E.C.A.), unless the provisions of that Chapter are retroactively applied.

11 C.F.R. § 9033.2(b)(2) mandates that a candidate and the candidate's authorized committees, when applying for public matching funds, certify that they have not incurred and will not incur expenditures in connection with the candidate's campaign

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4. As a result of the LDC's response with regard to the Interim Audit Report Finding III.A., Stale-Dated Checks, the Audit staff reduced the amount of excess of the New Hampshire state expenditure limitation ($59,033.84) by the allocable portion of one voided $97.50 stale-dated check resulting in a revised amount in excess of the New Hampshire limitation of $58,936.34 ($59,033.84 minus $97.50).

2204090193 8

for nomination, which expenditures are in excess of the limitations under 11 CFR Part 9035. The LDC made such a representation to the Commission.

Therefore, there is reason to believe that the LaRouche Democratic Campaign and Edward Spannaus, as treasurer, have violated 2 U.S.C. §§ 441a(f), 441a(b)(1)(A), and 26 U.S.C. § 9035(a).

22040901939

ANDERSON, ROSSI & DAVIS, P.C.
ATTORNEYS AT LAW
FOUR LONGFELLOW PLACE, SUITE 3705
BOSTON, MASSACHUSETTS 02114
(617) 742-8200
FACSIMILE: (617) 742-7876

ODIN P. ANDERSON
ROBERT L. ROSSI
A. DAVID DAVIS
LYNNE R. HODOIAN

OF COUNSEL:
ELEANOR W. PENNER

CAPE COD OFFICE:
275 MILL WAY
(ON BARNSTABLE HARBOR)
BARNSTABLE, MA 02630
(508) 362-5544

00-C 1049

May 2, 1991

Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3211
The LaRouche Democratic Campaign and
Edward Spannaus, as treasurer

Dear Mr. Noble:

The LaRouche Democratic Campaign is in receipt of the Commission's letter of April 19, 1991, informing it of the Commission's "reason to believe" finding in the above-captioned matter This letter is written on behalf of the campaign and its treasurer to request additional time to submit a response to the Commission's action.

According to the time limitations set forth in the letter, the campaign has until May 10, 1991, to submit its response. On behalf of the respondents I hereby request an additional fifteen (15) days to respond, which would make the response due on or before May 25, 1991.

This additional time is necessitated by the fact the campaign's limited staff of volunteers must review numerous records in preparation for a response. In addition, this office did not represent the campaign for the audit process, thus necessitating additional time for us to become familiar with the circumstances underlying this MUR. The task of preparing a response is further hampered because Edward Spannaus, the campaign's treasurer and one of the respondents, is presently incarcerated.

Your prompt attention to this matter is appeciated.

Very truly yours,

Odin P. Anderson

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FEDERAL ELECTION COMMISSION
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RECEIVED
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OFFICE OF GENERAL COUNSEL
91 MAY -8 PM 2:45

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GCC #1008

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

91 MAY -3 AM 10: 38

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3211

NAME OF COUNSEL: Odin P. Anderson

ADDRESS: Anderson, Rossi & Davis, P.C.
Four Longfellow Place, Ste. 3705
Boston, MA 02114

TELEPHONE: (617) 742-8200

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

91 MAY -3 PM 3: 24

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

4/30/91
Date

Paul E. Wolk, Assistant Treasurer
Signature

RESPONDENT'S NAME: The LaRouche Democratic Campaign and Edward Spannaus, treasurer

ADDRESS: P.O. Box 17068
Washington, D.C. 20041

HOME PHONE:

BUSINESS PHONE:

92040901941

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 10, 1991

Odin P. Anderson, Esquire
Anderson, Rossi & Davis, P.C.
Four Longfellow Place
Suite 3705
Boston, MA 02114

MUR 3211
The LaRouche Democratic
Campaign and Edward Spannaus,
as treasurer

Dear Mr. Anderson:

This is in response to your letter dated May 2, 1991, which we received on May 8, 1991, requesting an extension until May 25, 1991 to respond to the Commission's reason to believe notification. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on May 25, 1991.

If you have any questions, please contact Phillip L. Wise, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

22040901942

OGC #1325

ANDERSON, ROSSI & DAVIS, P.C.
ATTORNEYS AT LAW
FOUR LONGFELLOW PLACE, SUITE 3705
BOSTON, MASSACHUSETTS 02114
(617) 742-8200
FACSIMILE: (617) 742-7876

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
91 MAY 27 AM 10: 18

ODIN P. ANDERSON
ROBERT L. ROSSI
A. DAVID DAVIS
LYNNE R. HODOIAN

OF COUNSEL:
ELEANOR W. PENNER

CAPE COD OFFICE:
275 MILL WAY
(ON BARNSTABLE HARBOR)
BARNSTABLE, MA 02630
(508) 362-5544

Federal Election Commission
999 E Street, NW
Washington, DC 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
91 MAY 28 PM 3: 00

RE: MUR 3211

Commissioners:

This is the response of Respondents LaRouche Democratic Campaign (LDC) and Edward Spannaus as treasurer, to your letter of April 19, 1991, concerning Matter Under Review 3211.

MUR 3211 is composed of two issues originating in the FEC's audit of LDC, pursuant to 26 USC 9038, which have been previously addressed in LDC's response to the Interim Audit Report (Parts IIA and IIID). Despite LDC's objections to the FEC Audit Division's repayment recommendations on those issues, the Commission accepted the repayment recommendations. LDC made the repayments without waiving its disagreement with that Commission determination.

The apparent reason for this MUR, is to create "authority" to withhold certification for future matching funds applications. In its 1990 Legislative Recommendations, the FEC proposed the Commission "not be required to certify funds for future campaigns" of "candidates who have previously violated laws related to the public funding process" or who "in connection with past Presidential campaigns, have failed to make repayments or who have willfully disregarded audit procedures." Legislative Recommendations 1990 (submitted March 21, 1990). It may be the intention of the Audit Division and the OGC to create and store false "evidence," against the time it may be used against future LaRouche campaigns with or without congressional approval.

Respondents hereby incorporate by reference LDC's Interim Audit Report responses on these issues, and make the following additional responses to the MUR. The essential new claim in the MUR, not raised as an issue in previous audit-related discussions, is that the alleged violations were "knowing" on the part of the Respondents.

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A. Excessive contributions by individuals

Respondents deny having solicited, received, or deposited any contribution, knowing at the time of its receipt or its deposit to a campaign bank account, that that contribution caused the contributor to exceed his or her statutory contribution limit.

Respondents deny that they or any campaign staff volunteer were aware of the 60-day time limit for refund of amounts in excess of the contribution limits, until the issue was raised in the exit conference of the audit.

Respondents further deny that they or any campaign staff volunteer knowingly delayed the refund of any excessive contribution for an unreasonable period of time.

At page 2 of the MUR's Factual and Legal Analysis, LDC's Interim Audit Report Response on this issue is quoted, but selectively and misleadingly. That analysis omits the portion of the response that noted that the "late" (i.e. in excess of 60 days) refunds constituted about half of the refunds made by LDC. That is, nearly the same number of refunds were made within the 60-day time limit as were not, and this under the circumstance that LDC was unaware of that time limit. The only conclusion that can be drawn from this fact is that LDC's policy was to make required refunds in what it believed to have been an undefined "reasonable time." Had LDC been aware of the regulation, it would of course have made the refunds in the regulation-defined "reasonable time." No evidence is presented in the Factual and Legal Analysis to substantiate the claim that the alleged delays in refunding excessive contributions were "knowingly" incurred, in violation of 2 USC Sec. 441a(f), particularly insofar as a roughly equal number were repaid in a time period that the Audit Division did not deem "unreasonable."

The Factual and Legal Analysis at pages 4-5 suggests that even in LDC's admittedly-incorrect frame of reference, the times in which refunds were made were not "reasonable." This is of course entirely subjective. The Commission acknowledged the vagueness of the previous regulation -- which is what Respondents and campaign volunteers believed to have been in effect -- vis a vis what constitutes a "reasonable" period of time, when it modified the regulation to the 60-day limit for refunds. Given such acknowledgment, to suggest a "knowing" violation of the "reasonable time" provision in LDC's incorrect frame of reference, is inconsistent with the Commission's own acknowledgment that the regulation in question was improperly vague.

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B. Expenditures in Excess of State Limitation

MUR 3211 alleges LDC to have knowingly violated the statutes and regulations which establish state spending limits for candidates and committees receiving matching funds. No evidence has been proffered to support this allegation.

As with the previously discussed claim that Respondents knowingly delayed the refund of excessive contributions, MUR 3211 provides no evidence that the alleged overspending in New Hampshire was in any way a knowing violation. The only new argument provided in the Factual and Legal Analysis is an unexplained citation of the candidate and committee agreements letter, which is apparently intended as a refutation of the quoted portion of LDC's response to the Interim Audit Report. (Factual and Legal Analysis at 6-7.)

While it is certainly true that Mr. LaRouche certified in November 1987 that, inter alia, LDC had not and would not incur expenditures in excess of the state limitations, this proves nothing. All candidates and candidate committees applying for matching funds submit such certifications, as is required by law. Presumably all candidates and committees make such certifications in full honesty, and intend to abide by them, as did Mr. LaRouche and Respondents LDC and Edward Spannaus. Nevertheless, as the Commission is aware, a very large number of presidential candidates have exceeded the same spending limit that Respondents are here charged with, yet in few, if any, such cases, has the Commission accused the committees of exceeding the spending limits knowingly, certification letters notwithstanding. Therefore, the existence of the candidate agreements letter cannot be the fact upon which the charge of a knowing violation rests -- for if so, the Commission (if impartial) would have no choice but to open MURs for all candidates who have overspent the New Hampshire limit, both defeated candidates and those who have subsequently moved on to the General Elections and the White House.

Regarding the quoted passage from LDC's Interim Audit Report Reply, this addressed the question of how much, if any, federal funds had been spent on the New Hampshire campaign. It did not discuss whether any knowing violation had occurred. To the extent that the Commission has already determined that LDC did overspend in New Hampshire (Final Audit Report), and LDC has repaid the Commission-determined amount to the Treasury (again, not waiving any claim that the determination was in error), the issues raised in the Audit Reports, resulting in claims against LDC, have been fully satisfied. This course of events is in fact what has transpired in the general run of cases where presidential candidates, over several election cycles, have exceeded expenditure limitations; and there the instant matter should end.

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Accordingly, there is no justification for the claim that Respondents knowingly violated the statutes or regulations at issue in MUR 3211. The most that can be said, is that LDC made expenditures with regard to the New Hampshire campaign in excess of the limit imposed on candidates receiving federal funds. This is legal for candidates who are not receiving federal funds. To the extent that such allegedly excessive spending occurred, LDC has already repaid to the Treasury the amount deemed excessive by the Commission, while not waiving its claim that such repayment was not required by law.

To the extent a criterion for matching funds eligibility is a certification that spending limits have not been and will not be exceeded, LDC met that criterion, no more and no less than any other publicly funded presidential campaign, and complied with it in as rigorous a fashion as most, certainly as rigorously as many which have assuredly overspent state limits concerning which MURs have not been opened or pursued. Thus, Respondents cannot help but surmise that OGC is attempting to build a record upon which to create frivolous excuses for denying LaRouche's 1992 presidential campaign matching funds, and otherwise interfere with his new campaign.

Conclusion

Respondents therefore respectfully request that the FEC determine the charges in MUR 3211 to be without merit; or in the alternative, to have have been resolved pursuant to the FEC's repayment determinations; and close the file with no further action.

Sincerely,

Odin P. Anderson, Esq.
and Robert L. Rossi, Esq.

Counsel for Respondents

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 17, 1991

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: MUR 3211 - MAY 27, 1991 RESPONSE RECEIVED FROM LAROUCHE DEMOCRATIC CAMPAIGN AND EDWARD SPANNAUS, AS TREASURER

The Audit staff reviewed the subject correspondence as requested by your office. The only statement in the response which, in our opinion, could be viewed as an allegation relative to the Audit staff, appears in the third paragraph on page 1. The paragraph concludes "It may be the intention of the Audit Division and the OGC to create and store false "evidence," against the time it may be used against future LaRouche campaigns with or without congressional approval."

In response to the apparent allegation cited above, the Audit staff has no intent "to create and store false evidence against the time it may be used against future LaRouche campaigns with or without congressional approval."

I trust this is responsive to your request. If you have any questions, please contact Alex Boniewicz or Rick Halter at 376-5320.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of)
)
LaRouche Democratic Campaign and Edward) MUR 3211
Spannaus, as treasurer)

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

The LaRouche Democratic Campaign ("LDC") and Edward Spannaus[1], as treasurer, were referred to the Office of the General Counsel by the Audit Division ("Audit") for (1) receiving excessive contributions from individuals; and (2) making expenditures in excess of State limitations. On April 10, 1991, the Federal Election Commission ("the Commission") found that there is reason to believe that The LaRouche Democratic Campaign ("LDC") and Edward Spannaus, as treasurer, violated 2 U.S.C. § 441a(f) and 441a(b)(1)(A), and 26 U.S.C. § 9035(a). On April 19, 1991, notification of the Commission's findings was mailed to LDC. On May 28, 1991, LDC responded to the reason to believe findings by the Commission. (Attachment 1.)

Respondents stated that, "the apparent reason for this MUR, is to create authority to withhold certification for future matching funds applications." LDC also stated that, "it may be the intention of the Audit Division and the OGC to create and

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1. The LDC registered with the Commission on October 25, 1985. The audit covered the period from the Committee's inception, October 25, 1985, through August 31, 1988. During this period, the Committee reported an opening cash balance of $-0-, total receipts of $3,930,064.25, and total disbursements of $3,857,066.60.

store false evidence, against the time it may be used against future LaRouche campaigns with or without congressional approval." LDC did not request preprobable cause conciliation but requested that the Commission close the file with no further action.

II. ANALYSIS

A. Excessive contributions from individuals

No person shall make contributions to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A). Furthermore, no candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section. 2 U.S.C. § 441a(f). Contributions which on their face exceed the contribution limitations and contributions which do not appear to be excessive on their face, but exceed contribution limits when aggregated with other contributions from the same contributor, may be either deposited into a campaign depository under 11 C.F.R. § 103.3(a) or returned to the contributor. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor. If a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor. 11 C.F.R. § 103.3(b)(3).

The Commission's Audit Division stated, in the Interim Audit Report, that the excessive portions of 77 contributions

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from 64 individuals, totaling $14,830, were refunded in an untimely manner. Refunds of the above excessive contributions ranged from a low of 67 days to a high of 582 days from receipt (55 of these excessives were refunded more than 100 days after receipt). The regulation in effect at the time some of the excessives were received did not contain the sixty day requirement for refunds. The effective date of the new regulation was April 8, 1987[2]; however, the old regulation did require that refunds of excessives should be made in a "reasonable time." In this latest response LDC reiterated the argument that it has used throughout the investigation of this matter. With regard to the excessives, LDC stated that:

> Respondents deny having solicited, received, or deposited any contributions, knowing at the time of its receipt or its deposit to a campaign bank account, that that contribution caused the contributor to exceed his or her statutory contribution limit.
>
> Respondents deny that they or any campaign staff volunteer were aware of the 60-day time limit for refund of amounts in excess of the contribution limits, until the issue was raised in the exit conference of the audit.
>
> Respondents further deny that they or any campaign staff volunteer knowingly delayed the refund of any excessive contribution for an unreasonable period of time.

The issue of reasonable time for the refund of excessive contributions was addressed in MUR 2154, with regard to the

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2. It should be noted that for those excessive contributions received or deposited after April 8, 1987, the 60 day refund deadline is clearly applicable.

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Reagan-Bush 84 Primary ("Reagan-Bush") and Angela M. Buchanan Jackson, as treasurer. The Final Audit of Reagan-Bush revealed $16,050.00 in late refunds of excessive contributions. Initially the total excessives was $193,674.43. The Committee transferred $173,624.43 to the compliance fund, $5,000.00 was reattributed, and $16,050.00 was refunded. In this case more than 90 days elapsed between the acceptance and the refunding of any of the aforesaid $16,050.00 of excessive contributions. On July 15, 1986, the Commission found reason to believe that Reagan-Bush violated 2 U.S.C. § 441a(f).

Reagan-Bush argued that "we do not consider a refund of 16 excess contributions within ninety days unreasonable." However, on July 21, 1987, the Commission found probable cause to believe that the Committee and its treasurer violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.1(a). On January 26, 1988, the Commission closed this matter and accepted a signed conciliation agreement, in which Reagan-Bush admitted to the foregoing violations and the payment of a $10,000.00 civil penalty.

A review of audits from the 1984 Presidential election cycle reveals that the Commission made similar findings with regard to the John Glenn Presidential Committee, Inc. ("the Glenn Committee") and William R. White, as treasurer (MUR 2072). During the audit of the Glenn Committee, the Final Audit Report and documentation submitted by the committee revealed that the committee accepted excessive contributions from 126 individuals, seven partnerships, and four political committees. Furthermore, an average of 142 days elapsed from the dates the excessive

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contributions were received until the excessive portions were refunded.

On July 12, 1988, the Commission closed this matter and accepted a signed conciliation agreement, in which the Glenn Committee admitted it accepted excessive contributions in violation of 2 U.S.C. § 441a(f) and agreed to the payment of a $30,000.00 civil penalty.[3]

A similar issue arose in the audit of the Cranston for President Committee, Inc. ("the Cranston Committee") and William M. Landau, as treasurer, (MUR 2073). The Cranston Audit revealed that the committee had accepted contributions from 77 individuals and from MEBA Political Action Fund, a political committee, in the form of checks which, in the aggregate, were in excess of the limitations.[4] The Commission, on October 17, 1985, found reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting excessive contributions. In its response, the committee did not dispute the finding that it accepted contributions which exceeded the aggregate $1,000 limit. Instead, the committee stressed the number of excessives was small in comparison to the total number of contributions

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3. In this agreement the Glenn Committee also admitted that it violated 2 U.S.C. §§ 434(b)(1) and 434(b)(4) by overstating cash on hand and understating disbursements; 11 C.F.R. §§ 106.2(a)(1) and 106.2(d) by making erroneous allocations of expenditures with respect to Iowa and New Hampshire and failing to report allocations correctly; and 2 U.S.C. §§ 441a(b)(1)(A) and 441a(c) by making excessive expenditures in Iowa and New Hampshire for the presidential primary elections.

4. An audit revealed that the Cranston Committee refunded 14 excessive contributions between 153 days and 679 days after receipt.

received. This matter was closed on May 8, 1989, with the Commission's acceptance of a signed conciliation agreement, which included an admission of the above violation, and the payment of a $50,000.00 civil penalty.[5]

The above issue was also addressed in Mondale for President Committee, Inc. ("Mondale") and Michael S. Berman, as treasurer (MUR 2241). In the Mondale matter the audit examination revealed that the committee had accepted contributions from 303 individuals that exceeded the contribution limitation of 2 U.S.C. § 441a(a)(1)(A) by a total amount of $102,853.00.[6] On December 18, 1986, the Commission accepted a signed conciliation agreement, from Mondale, which included an admission that the committee did not refund excessive contributions in a timely

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5. In this conciliation agreement the Cranston Committee also admitted that it violated 26 U.S.C. § 9035; 2 U.S.C. §§ 434(a), 441a(b)(1)(A) and 441a(c); and 11 C.F.R. § 106.2.

6. The examination and audit determined that the Committee took an average of 144 days from the date of deposit to make 52 refunds of the excessive portions of contributions in a total amount of $17,940.00; an average of 103 days from the date of deposit to obtain 3 reattributions of the excessive portions of contributions, in a total amount of $1,100.00, to contributors' spouses; and an average of 158 days from the date of deposit to make 164 transfers of excessive portions of contributions, in a total amount of $51,034.00 to the compliance fund. With regard to the remaining 84 contributions with excessive amounts totaling $32,779.00, the examination and audit determined that the Committee had disposed of the excessive portions of 66 contributions and that 18 instances totaling $9,652.00 remained outstanding. In each instance, at least 90 days elapsed between the date the contribution was deposited and the excessive amount of each contribution was refunded, reattributed, transferred, or disposed of in some other manner.

manner, and closed this matter.[7] On January 20, 1987, Mondale paid a $68,000.00 civil penalty.

The Audit in MUR 2824, with regard to Pete DuPont for President ("DuPont") and Frank A. Ursomarso, as treasurer, revealed that the Committee did not refund in a timely manner excessive portions of contributions totaling $19,013.00 from 57 contributors.[8] The Committee refunded the excessive amounts of the contributions on an average of 217 days after receipt of such contributions. On May 22, 1989, the Commission found reason to believe that Pete DuPont for President ("DuPont") and Frank A. Ursomarso, as treasurer, violated 2 U.S.C. § 441a(f). On November 27, 1989, the Commission closed the file in this matter and accepted a signed conciliation agreement from Pete DuPont for President ("DuPont") and Frank A. Ursomarso, as treasurer, which included an admission that excessive contributions were not refunded within 60 days from receipt and the payment of a $2,000.00 civil penalty.

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7. In this conciliation agreement the Mondale Committee admitted that it violated 2 U.S.C. § 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c); 2 U.S.C. § 441a(f); 26 U.S.C. § 9035(a); and 11 C.F.R. §§ 106.2(a), 106.2(d), 110.8(a)(1), 110.9(a), and 9035.1(a) by making expenditures in excess of the overall expenditure limitation and the state expenditure limitations for Iowa, Maine, and New Hampshire; 2 U.S.C. §§ 434(b)(2)(I) and 434(b)(3)(F) and 11 C.F.R. §§ 104.3(a)(3)(ix) and 104.3(a)(4)(v) for not reporting and itemizing certain refunds and rebates; and 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a) for accepting contributions in excess of the contribution limitation of 2 U.S.C. § 441a(a)(1)(A).

8. The DuPont Committee received 4 excessive contributions before the effective date of the regulation with the 60 day limit for refunding excessive contributions. These 4 excessive contributions were refunded between a low of 128 days after receipt and a high of 323 days after receipt.

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Based on the foregoing it appears that before April 8, 1987, the effective date of the regulation which included the 60 day time limit for refunding excessive contribution, the Commission had considered refunds more than 90 days after receipt as not made in a timely manner. The excessive contributions received by LDC prior to the effective date of the regulation were refunded well in excess of 90 days from receipt thereof. Furthermore, those excessive contributions received by LDC after the effective date of the regulation were refunded more than 60 days after they were received by the treasurer. Therefore, LDC did not make refunds in a reasonable manner under either version of the regulation and therefore is not being singled out.

B. <u>Expenditures in Excess of State Limitation</u>

Pursuant to 2 U.S.C. § 441a(b)(1)(A), no candidate for the office of President of the United States who is eligible under section 9033 of title 26 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of $10,000,000 in the case of a campaign for nomination for election to such office, except the aggregate of expenditures under this subparagraph in any one State shall not exceed the greater of 16 cents multiplied by the voting age population of the State, or $200,000. Pursuant to 2 U.S.C. § 441a(c), these limits are adjusted by the percent difference between the price index for the 12 months preceding the beginning of such calendar year and the price index for the base period. Each limitation shall be increased by such percent

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difference, and each amount so increased shall be the amount in effect for such calendar year.

No candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitation applicable under section 441a(b)(1)(A) of Title 2. 26 U.S.C. § 9035(a). The candidate and the candidate's authorized committee(s) shall certify that they have not incurred and will not incur expenditures in connection with the candidate's campaign for nomination, which expenditures are in excess of the limitations under 11 CFR Part 9035. 11 C.F.R. § 9033.2(b)(2).

The Audit review and analysis of expenditures allocable to New Hampshire, including those allocated by the Committee, indicated that $520,033.84 should reasonably have been allocated to New Hampshire, causing the LDC to exceed the state expenditure limitation of $461,000 by $58,936.84.

The LaRouche committee also takes issue with the Commission's finding that the LaRouche committee exceeded the state allocation limitation. LDC has implied that it has been singled out for enforcement of 2 U.S.C. § 441a(b)(1)(A), which prohibits expenditures in excess of state limitations. This allegation is meritless. A review of audits from the 1984 Presidential election cycle reveals that the Commission made similar findings with regard to the John Glenn Presidential Committee, Inc. ("the Glenn Committee") and William R. White, as treasurer (MUR 2072), the Cranston for President Committee, Inc. ("the Cranston Committee") and William M. Landau, as treasurer, (MUR 2073), and Mondale for President Committee, Inc. and

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Michael S. Berman, as treasurer (MUR 2241).

During the audit of the Glenn Committee, the Final Audit Report and documentation submitted by the committee indicated that the committee did not allocate properly and exceeded its expenditure limitations by $149,421.77 for Iowa and $218,881.51 for New Hampshire. On October 17, 1986, the Commission found reason to believe that the committee exceeded its state allocation limitation for Iowa and New Hampshire in violation of 2 U.S.C. § 441a(b)(1)(A). On June 20, 1988, the Commission found probable cause to believe that the Glenn Committee had exceeded the state allocations for New Hampshire and Iowa. On July 12, 1988, the Commission closed this matter and accepted a signed conciliation agreement, in which the Glenn Committee admitted it exceeded its expenditure limitations for Iowa and New Hampshire in violation of 2 U.S.C. § 441a(b)(1)(A), and the payment of a $30,000.00 civil penalty.

The above issue was also addressed in Mondale for President Committee, Inc. ("Mondale") and Michael S. Berman, as treasurer (MUR 2241). The overall expenditure limitation for the campaign for nomination for the office of President for a candidate who established his eligibility for matching payments in the 1984 election cycle was $20,200,000.00. The state expenditure limitations for such campaign in the 1984 election cycle were $684,537.50 for Iowa; $404,000.00 for Maine; and $404,000.00 for New Hampshire. An audit examination determined that Mondale had made expenditures in excess of the overall limitation in the amount of $578,904.44 and expenditures in excess of the state

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limitations in the amounts of $147,363.82 for Iowa; $25,283.50 for Maine; and $128,332.98 for New Hampshire.

On November 18, 1986 the Commission found reason to believe that the foregoing violation occurred, with regard to Mondale. On December 18, 1986, the Commission accepted a signed conciliation agreement, from Mondale, which included an admission that the committee had made expenditures excess of state limitations, and closed this matter. As stated above, on January 20, 1987, Mondale paid a $68,000.00 civil penalty.

A similar issue arose in the Cranston Audit. The final addenum to the Cranston Audit indicated that the Cranston for President Committee, Inc. exceeded state allocation limits for Iowa by $106,924.49. On January 17, 1989, the Commission found reason to believe that the committee violated the state expenditure limitations. As stated above, this matter was closed on May 8, 1989, with the Commission's acceptance of a signed conciliation agreement, which included an admission of the above violation, and the payment of a $50,000.00 civil penalty.

The above past matters evidence that other committees have also been found to have violated state expenditure limitations, therefore LDC's argument of unjust application of this provision of the Act has no merit.

C. <u>Conclusions</u>

Based on the facts of this present MUR and the above past MURs, LDC's arguments that it was singled out and that the excessives were refunded in a reasonable time are insupportable

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in fact or law. Therefore, the General Counsel recommends that the Commission reject the Respondents' request to take no further action. If the Respondents do not request preprobable cause conciliation, this Office will proceed to the next stage in the enforcement process.

III. **RECOMMENDATIONS**

1. Reject the request to take no further action by the LaRouche Democratic Campaign and Edward Spannaus, as treasurer.

2. Approve the appropriate letter.

8-9-91
Date

LMNoble (JJ)
Lawrence M. Noble
General Counsel

Attachment

1. LDC's Response to RTB

Staff assigned: Phillip L. Wise

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
LaRouche Democratic Campaign and Edward Spannaus, as treasurer.	)	MUR 3211
	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 14, 1991, the Commission decided by a vote of 5-0 to take the following actions in MUR 3211:

1. Reject the request to take no further action by the LaRouche Democratic Campaign and Edward Spannaus, as treasurer.

2. Approve the appropriate letter, as recommended in the General Counsel's Report dated August 9, 1991.

Commissioners Aikens, Elliott, Josefiak, McGarry, and Thomas voted affirmatively for the decision; Commissioner McDonald did not cast a vote.

Attest:

8-15-91
Date

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

Received in the Secretariat: Mon., August 12, 1991, 11:24 a.m.
Circulated to the Commission: Mon., August 12, 1991, 4:00 p.m.
Deadline for vote: Wed., August 14, 1991, 4:00 p.m.

bjf

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 19, 1991

Odin P. Anderson, Esquire
Anderson, Rossi & Davis, P.C.
Four Longfellow Place
Suite 3705
Boston, MA 02114

MUR 3211
The LaRouche Democratic
Campaign and Edward Spannaus,
as treasurer

Dear Mr. Anderson:

This is in response to your letter received on May 21, 1991, in which you requested that the Federal Election Commission take no further action and close the file in this matter.

On August 14, 1991, the Commission reviewed your letter and determined not to grant your clients' request. This Office, as stated in an April 19, 1991 letter to your client, reminds you that if you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

If you have any questions, please contact Phillip L. Wise, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner
by PLW

BY: Lois G. Lerner
Associate General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
LaRouche Democratic Campaign and Edward Spannaus, as treasurer	)	MUR 3211
	)	

SENSITIVE

GENERAL COUNSEL'S REPORT

The Office of the General Counsel is prepared to close the investigation in this matter as to the LaRouche Democratic Campaign and Edward Spannaus, as treasurer, based on the assessment of the information presently available.

9/20/91
Date

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 20, 1991

SENSITIVE

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

SUBJECT: MUR 3211

Attached for the Commission's review is a brief stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. A copy of this brief and a letter notifying the respondent of the General Counsel's intent to recommend to the Commission a finding of probable cause to believe were mailed on September 20, 1991. Following receipt of the respondent's reply to this notice, this Office will make a further report to the Commission.

Attachments
1. Brief
2. Letter to respondent

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
LaRouche Democratic Campaign and Edward Spannaus, as treasurer	)	MUR 3211
	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

The LaRouche Democratic Campaign ("LDC") and Edward Spannaus[1], as treasurer, were referred to the Office of the General Counsel by the Audit Division ("Audit") for (1) receiving excessive contributions from individuals; and (2) making expenditures in excess of State limitations. On April 10, 1991, the Federal Election Commission ("the Commission") found that there is reason to believe that the LaRouche Democratic Campaign ("LDC") and Edward Spannaus, as treasurer, violated 2 U.S.C. § 441a(f) and 441a(b)(1)(A), and 26 U.S.C. § 9035(a). On May 28, 1991, LDC responded to the reason to believe findings by the Commission. Respondents stated that, "the apparent reason for this MUR, is to create authority to withhold certification for future matching funds applications." LDC also stated that, "it may be the intention of the Audit Division and the OGC to create and store false evidence, against the time it may be used against future LaRouche campaigns with or without congressional approval."

1. The LDC registered with the Commission on October 25, 1985. The audit covered the period from the Committee's inception, October 25, 1985, through August 31, 1988. During this period, the Committee reported an opening cash balance of $-0-, total receipts of $3,930,064.25, and total disbursements of $3,857,066.60.

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II. ANALYSIS

A. Excessive contributions from individuals

No person shall make contributions to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A). Furthermore, no candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section. 2 U.S.C. § 441a(f). Contributions which on their face exceed the contribution limitations and contributions which do not appear to be excessive on their face, but exceed contribution limits when aggregated with other contributions from the same contributor, may be either deposited into a campaign depository under 11 C.F.R. § 103.3(a) or returned to the contributor. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor. If a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor. 11 C.F.R. § 103.3(b)(3).

The Commission's Audit Division stated, in the Interim Audit Report, that the excessive portions of 77 contributions from 64 individuals, totaling $14,830, were refunded in an untimely manner. Refunds of the above excessive contributions ranged from a low of 67 days to a high of 582 days from receipt (55 of these excessives were refunded more than 100 days after receipt). The regulation in effect at the time some of the

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excessives were received did not contain the sixty day requirement for refunds. The effective date of the new regulation was April 8, 1987[2]; however, the old regulation did require that refunds of excessives should be made in a "reasonable time."

With regard to the excessives, LDC stated that:

> Respondents deny having solicited, received, or deposited any contributions, knowing at the time of its receipt or its deposit to a campaign bank account, that that contribution caused the contributor to exceed his or her statutory contribution limit.
>
> Respondents deny that they or any campaign staff volunteer were aware of the 60-day time limit for refund of amounts in excess of the contribution limits, until the issue was raised in the exit conference of the audit.
>
> Respondents further deny that they or any campaign staff volunteer knowingly delayed the refund of any excessive contribution for an unreasonable period of time.

The issue of reasonable time for the refund of excessive contributions was addressed in MUR 2154, with regard to the Reagan-Bush 84 Primary ("Reagan-Bush"). The Final Audit of Reagan-Bush revealed $16,050.00 in late refunds of excessive contributions. Initially the total excessives was $193,674.43. The Committee transferred $173,624.43 to the compliance fund, $5,000.00 was reattributed, and $16,050.00 was refunded. In this case more than 90 days elapsed between the acceptance and

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2. It should be noted that for those excessive contributions received or deposited after April 8, 1987, the 60 day refund deadline is clearly applicable.

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the refunding of any of the aforesaid $16,050.00 of excessive contributions. On July 15, 1986, the Commission found reason to believe that Reagan-Bush violated 2 U.S.C. § 441a(f).

Reagan-Bush argued that "we do not consider a refund of 16 excess contributions within ninety days unreasonable." However, on July 21, 1987, the Commission found probable cause to believe that the Committee violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.1(a). On January 26, 1988, the Commission closed this matter and accepted a signed conciliation agreement, in which Reagan-Bush admitted to the foregoing violations and the payment of a $10,000.00 civil penalty.

A review of audits from the 1984 Presidential election cycle reveals that the Commission made similar findings with regard to the John Glenn Presidential Committee, Inc. ("the Glenn Committee") (MUR 2072). During the audit of the Glenn Committee, the Final Audit Report and documentation submitted by the committee revealed that the committee accepted excessive contributions from 126 individuals, seven partnerships, and four political committees. Furthermore, an average of 142 days elapsed from the dates the excessive contributions were received until the excessive portions were refunded.

On July 12, 1988, the Commission closed this matter and accepted a signed conciliation agreement, in which the Glenn Committee admitted it accepted excessive contributions in violation of 2 U.S.C. § 441a(f) and agreed to the payment of a

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$30,000.00 civil penalty.[3]

A similar issue arose in the audit of the Cranston for President Committee, Inc. ("the Cranston Committee") (MUR 2073). The Cranston Audit revealed that the committee had accepted contributions from 77 individuals and from MEBA Political Action Fund, a political committee, in the form of checks which, in the aggregate, were in excess of the limitations.[4] The Commission, on October 17, 1985, found reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting excessive contributions. In its response, the committee did not dispute the finding that it accepted contributions which exceeded the aggregate $1,000 limit. Instead, the committee stressed the number of excessives was small in comparison to the total number of contributions received. This matter was closed on May 8, 1989, with the Commission's acceptance of a signed conciliation agreement, which included an admission of the above violation, and the payment of a $50,000.00 civil penalty.[5]

The above issue was also addressed in Mondale for President

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3. In this agreement the Glenn Committee also admitted that it violated 2 U.S.C. §§ 434(b)(1) and 434(b)(4) by overstating cash on hand and understating disbursements; 11 C.F.R. §§ 106.2(a)(1) and 106.2(d) by making erroneous allocations of expenditures with respect to Iowa and New Hampshire and failing to report allocations correctly; and 2 U.S.C. §§ 441a(b)(1)(A) and 441a(c) by making excessive expenditures in Iowa and New Hampshire for the presidential primary elections.

4. An audit revealed that the Cranston Committee refunded 14 excessive contributions between 153 days and 679 days after receipt.

5. In this conciliation agreement the Cranston Committee also admitted that it violated 26 U.S.C. § 9035; 2 U.S.C. §§ 434(a), 441a(b)(1)(A) and 441a(c); and 11 C.F.R. § 106.2.

Committee, Inc. ("Mondale") (MUR 2241). In the Mondale matter the audit examination revealed that the committee had accepted contributions from 303 individuals that exceeded the contribution limitation of 2 U.S.C. § 441a(a)(1)(A) by a total amount of $102,853.00.[6] On December 18, 1986, the Commission accepted a signed conciliation agreement, from Mondale, which included an admission that the committee did not refund excessive contributions in a timely manner, and closed this matter. On January 20, 1987, Mondale paid a $68,000.00 civil penalty.[7]

The Audit in MUR 2824 with regard to Pete DuPont for

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6. The examination and audit determined that the Committee took an average of 144 days from the date of deposit to make 52 refunds of the excessive portions of contributions in a total amount of $17,940.00; an average of 103 days from the date of deposit to obtain 3 reattributions of the excessive portions of contributions, in a total amount of $1,100.00, to contributors' spouses; and an average of 158 days from the date of deposit to make 164 transfers of excessive portions of contributions, in a total amount of $51,034.00, to the compliance fund. With regard to the remaining 84 contributions with excessive amounts totaling $32,779.00, the examination and audit determined that the Committee had disposed of the excessive portions of 66 contributions and that 18 instances totaling $9,652.00 remained outstanding. In each instance, at least 90 days elapsed between the date the contribution was deposited and the excessive amount of each contribution was refunded, reattributed, transferred, or disposed of in some other manner.

7. In this conciliation agreement the Mondale Committee admitted that it violated 2 U.S.C. § 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c); 2 U.S.C. § 441a(f); 26 U.S.C. § 9035(a); and 11 C.F.R. §§ 106.2(a), 106.2(d), 110.8(a)(1), 110.9(a), and 9035.1(a) by making expenditures in excess of the overall expenditure limitation and the state expenditure limitations for Iowa, Maine, and New Hampshire; 2 U.S.C. §§ 434(b)(2)(I) and 434(b)(3)(F) and 11 C.F.R. §§ 104.3(a)(3)(ix) and 104.3(a)(4)(v) for not reporting and itemizing certain refunds and rebates; and 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a) for accepting contributions in excess of the contribution limitation of 2 U.S.C. § 441a(a)(1)(A).

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President ("DuPont") revealed that the Committee did not refund in a timely manner excessive portions of contributions totaling $19,013.00 from 57 contributors.[8] The Committee refunded the excessive amounts of the contributions on an average of 217 days after receipt of such contributions. On May 22, 1989, the Commission found reason to believe that DuPont violated 2 U.S.C. § 441a(f). On November 27, 1989, the Commission closed the file in this matter and accepted a signed conciliation agreement from DuPont which included an admission that excessive contributions were not refunded within 60 days from receipt and the payment of a $2,000.00 civil penalty.

Based on the foregoing it appears that before April 8, 1987, the effective date of the regulation which included the 60 day time limit for refunding excessive contribution, the Commission had considered refunds more than 90 days after receipt as not made in a timely manner. The excessive contributions received by LDC prior to the effective date of the regulation were refunded well in excess of 90 days from receipt thereof. Furthermore, those excessive contributions received by LDC after the effective date of the regulation were refunded more than 60 days after they were received by the treasurer. Therefore, LDC did not make refunds in a reasonable manner under either version of the regulation. Thus, it is not being singled

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8. The DuPont Committee received 4 excessive contributions before the effective date of the regulation with the 60 day limit for refunding excessive contributions. These 4 excessive contributions were refunded between a low of 128 days after receipt and a high of 323 days after receipt.

out.

B. **Expenditures in Excess of State Limitation**

Pursuant to 2 U.S.C. § 441a(b)(1)(A), no candidate for the office of President of the United States who is eligible under section 9033 of title 26 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of $10,000,000 in the case of a campaign for nomination for election to such office, except the aggregate of expenditures under this subparagraph in any one State shall not exceed the greater of 16 cents multiplied by the voting age population of the State, or $200,000. Pursuant to 2 U.S.C. § 441a(c), these limits are adjusted by the percent difference between the price index for the 12 months preceding the beginning of such calendar year and the price index for the base period. Each limitation shall be increased by such percent difference, and each amount so increased shall be the amount in effect for such calendar year.

No candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitation applicable under section 441a(b)(1)(A) of Title 2. 26 U.S.C. § 9035(a). The candidate and the candidate's authorized committee(s) shall certify that they have not incurred and will not incur expenditures in connection with the candidate's campaign for nomination, which expenditures are in excess of the limitations under 11 CFR Part 9035. 11 C.F.R. § 9033.2(b)(2).

The Audit review and analysis of expenditures allocable to New Hampshire, including those allocated by the Committee,

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indicated that $520,033.84 should reasonably have been allocated to New Hampshire, causing the LDC to exceed the state expenditure limitation of $461,000 by $58,936.84.

The LaRouche committee also takes issue with the Commission's finding that the LaRouche committee exceeded the state allocation limitation. LDC has implied that it has been singled out for enforcement of 2 U.S.C. § 441a(b)(1)(A), which prohibits expenditures in excess of state limitations. This allegation is meritless. A review of audits from the 1984 Presidential election cycle reveals that the Commission made similar findings with regard to the John Glenn Presidential Committee, Inc. (MUR 2072), the Cranston for President Committee, Inc. (MUR 2073), and Mondale for President Committee, Inc. (MUR 2241).

During the audit of the Glenn Committee, the Final Audit Report and documentation submitted by the committee indicated that the committee did not allocate properly and exceeded its expenditure limitations by $149,421.77 for Iowa and $218,881.51 for New Hampshire. On October 17, 1986, the Commission found reason to believe that the committee exceeded its state allocation limitation for Iowa and New Hampshire in violation of 2 U.S.C. § 441a(b)(1)(A). On June 20, 1988, the Commission found probable cause to believe that the Glenn Committee had exceeded the state allocations for New Hampshire and Iowa. On July 12, 1988, the Commission closed this matter and accepted a signed conciliation agreement, in which the Glenn Committee admitted it exceeded its expenditure limitations for Iowa and

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New Hampshire in violation of 2 U.S.C. § 441a(b)(1)(A).

The above issue was also addressed in Mondale for President Committee, Inc. ("Mondale") (MUR 2241). The overall expenditure limitation for the campaign for nomination for the office of President for a candidate who established his eligibility for matching payments in the 1984 election cycle was $20,200,000.00. The state expenditure limitations for such campaign in the 1984 election cycle were $684,537.50 for Iowa; $404,000.00 for Maine; and $404,000.00 for New Hampshire. An audit examination determined that Mondale had made expenditures in excess of the overall limitation in the amount of $578,904.44 and expenditures in excess of the state limitations in the amounts of $147,363.82 for Iowa; $25,283.50 for Maine; and $128,332.98 for New Hampshire.

On November 18, 1986, the Commission found reason to believe that the foregoing violation occurred with regard to Mondale. On December 18, 1986, the Commission accepted a signed conciliation agreement from Mondale, which included an admission that the committee had made expenditures excess of state limitations.

A similar issue arose in the Cranston Audit. The final addenum to the Cranston Audit indicated that the Cranston for President Committee, Inc. exceeded state allocation limits for Iowa by $106,924.49. On January 17, 1989, the Commission found reason to believe that the committee violated the state expenditure limitations. As stated above, this matter was closed on May 8, 1989, with the Commission's acceptance of a

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signed conciliation agreement, which included an admission of the above violation.

The above past matters evidence that other committees have also been found to have violated state expenditure limitations. Therefore, LDC's argument of unjust application of this provision of the Act has no merit.

C. **Conclusions**

Based on the facts of this present MUR and the above past MURs, LDC's arguments that it was singled out and that the excessives were refunded in a reasonable time are insupportable in fact or law. Therefore, the General Counsel recommends that the Commission find probable cause to believe that the LaRouche Democratic Campaign and Edward Spannaus, as treasurer, violated 2 U.S.C. § 441a(f) and 441a(b)(1)(A), and 26 U.S.C. § 9035(a).

III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that the LaRouche Democratic Campaign and Edward Spannaus, as treasurer, violated 2 U.S.C. § 441a(f) and 441a(b)(1)(A), and 26 U.S.C. § 9035(a).

Date 9/20/91

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 20, 1991

Odin P. Anderson, Esquire
Anderson, Rossi & Davis, P.C.
Four Longfellow Place
Suite 3705
Boston, MA 02114

MUR 3211
The LaRouche Democratic
Campaign and Edward Spannaus,
as treasurer

Dear Mr. Anderson:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, on April 10, 1991, the Federal Election Commission found reason to believe that your clients, violated 2 U.S.C. §§ 441a(f) and 441a(b)(1)(A), and 26 U.S.C. § 9035(a), and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have 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 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your 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 the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

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Should you have any questions, please contact Phillip L. Wise, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Brief

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ANDERSON, ROSSI & DAVIS
ATTORNEYS AT LAW
FOUR LONGFELLOW PLACE, SUITE 3705
BOSTON, MASSACHUSETTS 02114
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October 4, 1991

Philip L. Wise
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
91 OCT -7 PM 4:07

Re: MUR 3211
LaRouche Democratic Campaign
and Edward Spannaus, as treasurer

Dear Mr. Wise:

This is to request a 20-day extension of time to reply to your letter concerning the above matter, which we received on September 15, 1991.

This additional time is required to review and evaluate the new material presented in General Counsel's Brief, attached to your letter. Such review must include, inter alia, work at the FEC's Public Records Office to examine the several MUR files referenced in that brief.

Thank you for your consideration.

Very truly yours,

Odin P. Anderson

OPA:jr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 10, 1991

Odin P. Anderson, Esquire
Anderson, Rossi & Davis, P.C.
Four Longfellow Place
Suite 3705
Boston, MA 02114

MUR 3211
The LaRouche Democratic
Campaign and Edward Spannaus,
as treasurer

Dear Mr. Anderson:

This is in response to your letter dated October 4, 1991, which we received on October 7, 1991, requesting an extension of 20 days to respond to the General Counsel's brief. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on October 30, 1991.

If you have any questions, please contact Phillip L. Wise, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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OGC #3321

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OFFICE OF GENERAL COUNSEL

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OF COUNSEL:
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BARNSTABLE, MA 02630
(508) 362-5544

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October 29, 1991

Secretary of the Commission
Federal Election Commission
999 E Street, NW
Washington, DC 20463

MUR 3211
LaRouche Democratic Campaign
and Edward Spannaus, as treasurer

Dear Secretary:

Enclosed please find Respondents' memorandum in reply to General Counsel's letter and brief of September 20, 1991, which were received on September 25, 1991. Ten copies are enclosed.

Sincerely,

Robert L. Rossi

Odin P. Anderson
Robert L. Rossi

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
LaRouche Democratic Campaign and Edward Spannaus, as treasurer	)	MUR 3211

RESPONDENTS' RESPONSE BRIEF

Introduction

General Counsel's Brief recommending a Commission finding of probable cause cites a number of MUR investigations of other presidential candidates, all of which concluded with conciliation agreements, of varying applicability to MUR 3211. GC's brief takes the basic position that the cited MURs represent cases comparable to MUR 3211; it is therefore imperative that this claim be examined by the Commission. As Respondents explain, the analogies are in some respects appropriate, but misleading in others.

The two types of alleged violation will be discussed below under separate headings.

1. Untimely Refunding of Excessive Contributions

General Counsel summarizes four 1984 campaigns and one 1988 campaign which reached conciliation agreements on this issue, from which he draws two conclusions (see Table 1):

1. That prior to the new regulation establishing 60 days as the limit for resolution of excessive contributions, "it appears that ... the Commission had considered refunds more than 90 days after receipt as not made in a timely manner." Brief at 7 (emphasis added).

2. That LDC "is not being singled out." Id.

This argument is specious; it also fails to address the issues raised in LDC's response to the reason to believe notification.

a) The argument is flawed

As General Counsel acknowledges, and as the Commission recognized by its eventual establishment of a 60-day regulation in 1987, the old formulation was in fact inadequate and ambiguous. The vagueness of the original regulation cannot be cured by citing after-the-fact conciliation agreements. Conciliation Agreements neither establish law, nor modify or interpret it; still less do they constitute notice to other candidates.

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Notice is critical and in keeping with due process, unless the Office of General Counsel is in the business of making ex post facto law. As such the details of these MURs as now analyzed by General Counsel could have had no bearing on the circumstances of LDC's alleged violations. As confidential proceedings, these were not public knowledge. In no way can the weight of law be attributed to the cited MURs, let alone sufficient notice.

The Commission can expect a candidate or his committee to familiarize themselves with the statutes and regulations in effect as of the time he declares his candidacy; the Commission can anticipate that candidates will attempt to stay abreast of new regulations, and perhaps even to monitor proposed rulemakings. This cannot, however, be said of MURs: nothing in the FECA establishes these proceedings as constituting notice to candidates of changes or of revised interpretations of law.

Perhaps realizing that this is true, General Counsel does not go so far as to say the Commission in fact had adopted a 90-day standard of reasonableness, but only that this "appears" to General Counsel to have been the case. If such is only an "appearance" to the Commission's own General Counsel, it can hardly have been any kind of directive or guideline to any candidate or committee. Again, the inescapable fact is that the Commission later established the 60-day rule precisely because, prior to that, there was no publicly defined standard.

General Counsel also makes the point that some of LDC's excessive contributions were received after the 60-day rule had gone into effect, and were refunded in time periods exceeding 60 days. LDC does not deny this, and continues to affirm that it was unaware of the new rule at the time. The details of the affirmation will not be repeated here, but the Commission is referred to the committee's original response to the reason to believe notification of this MUR.

b) Issues Raised by Respondents Remain Unaddressed

General Counsel fails to answer the most fundamental of the issues raised in LDC's reply brief. This is, that while contributions may have been refunded more than 60 days after their receipt, such fact comes nowhere near to establishing a "knowing" violation. Thus, while General Counsel might make an argument for a violation of 11 C.F.R. 103.3(b)(3) (the regulation in effect after April 8, 1987), or of 11 C.F.R. 103.(b)(2) (in effect prior to that date), there is no justification for alleging violations of 2 U.S.C. 441a(f).

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These two code sections mandate the refunding of excessive contributions (in some period of time); the cited statute requires that a statute be violated "knowingly." Such violations as may have occurred were strictly matters of oversight, as Respondents have previously stated; General Counsel has presented no contrary fact.

Moreover, as noted above, the fact that some candidates may have signed conciliation agreements including a particular code section, in no way constitutes law that is binding on any other candidate, nor notice to that candidate.

2. Expenditures in Excess of State Limitations

General Counsel's argument on this issue is flawed in much the same way as his argument concerning the refunding of excessive contributions. While he argues that LDC exceeded the state spending limit in New Hampshire, he nowhere presents any evidence that such violation was in any way "knowing."

The proposed violation of 441a(b)(1)(A) is thus arguable; the addition of 26 U.S.C. 9035(a) ("no candidate shall knowingly..."), is not. Respondents continue to affirm that such excessive expenditure as may have occurred was accidental; General Counsel has still presented no facts that suggest otherwise.

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Respectfully submitted,

Odin P. Anderson
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4 Longfellow Place, Ste. 3705
Boston, MA 02114
(617) 742-8200

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Table 1.
Resolution of Excessive Contributions: Comparative

Election Cycle	Candidate	Excessives: Number	Excessives: Dollars	Resolution: Avg # Days	Resolution: How Resolved
1984	Mondale	52	17,940	144	Refund
		3	1,100	103	Reattribute
		164	51,034	158	Transfer 1/
		84	32,779	n/a	Other
	TOTAL	303	102,853		
1984	Reagan-Bush	n/a	16,050	n/a	Refund
		n/a	173,624	2/	Transfer 1/
		n/a	5,000	n/a	Reattribute
1984	Glenn	126	81,326	142	
1984	Cranston	78	37,920	263	3/
		5	104,600	n/a	4/
		1	15,000	140	
			30,000	245	
1988	Hart	49	19,606	241	
1988	DuPont	57	19,013	217	
1988	LaRouche	64	14,830	134	

1/ Transfers made "after a delay lasting at le·ast 5-10 weeks and, in some cases, several months."

2/ Transfer to Compliance Fund

3/ Per FEC Record 12/89, p. 8 (MUR 2073)

4/ Id. Letters of credit from six individuals, of which five were in excess of contribution limit

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Table 2.
Spending Over State Limits: Comparative

Election Cycle	Candidate	State	Expenditure Limit	Spent over Limit	Notes
1984	Mondale	NH	$ 404,000	$ 128,332	
		IA	684,537	147,363	
		ME	404,000	25,283	
1984	Glenn	NH	404,000	218,881	
		IA	684,537	149,421	
1984	Cranston	IA	684,537	106,924	
1988	DuPont	IA	775,217	85,842	
1988	LaRouche	NH	461,000	58,936	

The following additional candidates were deemed by Commission audit to have exceeded state expenditure limitations. No MURs have been made public in these cases, so Respondents cannot determine whether or not comparable investigative proceedings are currently in progress, or what resolution such proceedings might eventually entail.

1988	Dole	NH	$ 461,000	$ 302,949	1/
		IA	775,217	306,730	
1988	Gephardt	IA	775,217	495,718	2/
1988	Kemp	NH	461,000	73,920	3/
		IA	775,218	114,680	

1/ FEC Record 6/91, p. 11
2/ Id. 7/91, p. 9
3/ Id. 9/91, p. 9

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Table 3. Comparison of Violations Conciliated or Alleged (p. 1 of 2)

MUR:	2154	2241	2072	2073	2175	2824	3002	3211	
Candidate:	Reag-Bush	Mondale	Glenn	Cranstn	Hart	DuPont	DuPont	LaRouche	Description
Statute/Code									
Generalized "Knowing" Statute									
2 USC 441a(f)	x	x	x	x	x	x		x	Candidate/Committee violates expenditure or contribution statute knowingly
Excessive Contributions & Refunding of Same:									
2 USC 441a(a)(1)(A)		x	x	?	x	x			No person may contribute more than $1,000
11 CFR 110.1(a)	x								No person may contribute more than $1,000
11 CFR 104.8(d)				x					Reattribution document not dated
11 CFR 110.9(a)		x							Candidate/ctte accepts contributions that are illegal for contributor to make
Corporate Contributions									
2 USC 441b(a)				x	x				Corporate contribution prohibited; and/or Candidate/ctte knowingly accepts same
Exceeding Expenditure Limitations									
2 USC 441a(b)(1)(A)		x	x	x			x	x	Total & per-state spending limits (Same)
11 CFR 110.8(a)(1)		x							
26 USC 9035, or				x					
26 USC 9035(a)		x			x		x	x	Knowingly incur MOCE: Mondale: total and state limits; Cranston: not specified Hart: personal/family limit; DuPont: state limit; LaRouche: state limit
11 CFR 106.2				x					Allocate states (multiple sections)
11 CFR 106.2(a)		x							Allocate states (multiple sections)
11 CFR 106.2(a)(1)			x				x		Allocate states (gen'l provisions)
11 CFR 106.2(d)		x	x						Allocate states (reporting)
11 CFR 9035.1(a)		x							Knowingly exceed $10,000,000 total limit or individual state limits [Mondale: both]

(cont'd)

Table 3. Comparison of Violations Conciliated or Alleged (p. 2 of 2)

MUR:	2154	2241	2072	2073	2175	2824	3002	3211	
Candidate:	Reag-Bush	Mondale	Glenn	Cranstn	Hart	DuPont	DuPont	LaRouche	Description
Statute/Code									
Reporting Violations									
2 USC 434(a)				xx					Reporting: Receipts & Disbursements (many subsections)
2 USC 434(b)(1)			x						Reporting: cash on hand at beginning of period
2 USC 434(b)(2)(I)		x							Reporting: rebates & refunds
11 CFR 104.3(a)(3)(ix)		x							Reporting: rebates & refunds
2 USC 434(b)(3)(B)				xx					Reporting: 60 PAC contributions not itemized
2 USC 434(b)(3)(F)		x							Reporting: rebate/refund source not identified
11 CFR 104.3(a)(4)(v)		x							Reporting: identify rebate/refund source
2 USC 434(b)(4)			x						Reporting: disbursement by category, total & detail
Penalties ($):	10,000	68,000	30,000	50,000	12,000	2,000	2,500		

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of)
)
LaRouche Democratic Campaign and Edward) MUR 3211
Spannaus, as treasurer)

SENSITIVE
DEC 19 1991
EXECUTIVE SESSION

GENERAL COUNSEL'S REPORT

I. **BACKGROUND**

The LaRouche Democratic Campaign ("LDC") and Edward Spannaus[1/], as treasurer, were referred to the Office of the General Counsel by the Audit Division ("Audit") for (1) receiving excessive contributions from individuals; and (2) making expenditures in excess of State limitations. On April 10, 1991, the Federal Election Commission ("the Commission") found that there is reason to believe that the LaRouche Democratic Campaign ("LDC") and Edward Spannaus, as treasurer, violated 2 U.S.C. § 441a(f) and 441a(b)(1)(A), and 26 U.S.C. § 9035(a). On September 20, 1991, the General Counsel's brief stating the intent of the General Counsel to recommend that the Commission find probable cause with regard to the above respondents and violations was mailed to counsel representing LDC. On November 4, 1991, LDC responded to the General Counsel's brief. (Attachment 1).

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1/ The LDC registered with the Commission on October 25, 1985. The audit covered the period from the Committee's inception, October 25, 1985, through August 31, 1988. During this period, the Committee reported an opening cash balance of $-0-, total receipts of $3,930,064.25, and total disbursements of $3,857,066.60.

II. ANALYSIS

A. Excessive contributions from individuals

Counsel for LDC argues that the 90 day period for the return of excessive contributions was not a Commission adopted time period therefore refunding the excessive contributions at any time would be considered a "reasonable time."

As noted in the General Counsel's brief circulated to the Commission on September 20, 1991, the Commission's Audit Division stated, in the Interim Audit Report, that the excessive portions of 77 contributions from 64 individuals, totaling $14,830, were refunded in an untimely manner. Refunds of the above excessive contributions ranged from a low of 67 days to a high of 582 days from receipt (55 of these excessives were refunded more than 100 days after receipt). The regulation in effect at the time some of the excessives were received did not contain the sixty day requirement for refunds. The effective date of the new regulation was April 8, 1987; however, the old regulation did require that refunds of excessives should be made in a "reasonable time."

This Office concedes that there was no definite number of days adopted by the Commission as a "reasonable time." Nevertheless, as stated in the General Counsel's brief, supra, the issue of reasonable time for the refund of excessive contributions was addressed in past MURs. A review of such MURs shows that before April 8, 1987, the effective date of the regulation which included the 60 day time limit for refunding excessive contribution, the Commission had considered refunds

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more than 90 days after receipt as not made in a timely manner. The excessive contributions received by LDC prior to the effective date of the regulation were refunded well in excess of 90 days from receipt thereof. Furthermore, those excessive contributions received by LDC after the effective date of the regulation were refunded more than 60 days after they were received by the treasurer. Therefore, LDC did not make refunds in a reasonable manner under either version of the regulation and therefore is not being singled out.

Counsel for LDC also argues, "....that while contributions may have been refunded more than 60 days after their receipt, such fact comes nowhere near to establishing a "knowing" violation." This issue was addressed in FEC v. California Medical Association, 502 F. Supp. 196, 203-04 (N.D. Cal. 1980), it was held that the term "knowingly" requires only that the recipient know that he received the contributions at issue, their amounts, and their source. Knowledge that the contributions were illegal was not considered a prerequisite to a "knowing" finding in a civil enforcement proceeding.

In light of the foregoing the General Counsel recommends that the Commission find probable cause to believe that the LaRouche Democratic Campaign and Edward Spannaus, as treasurer, violated 2 U.S.C. § 441a(f)

B. Expenditures in Excess of State Limitation

Based on the attached memorandum to the General Counsel from the Audit Division (Attachment 2), dated November 4, 1991, the General Counsel's analysis in sub-section

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II.B. of the General Counsel's brief circulated to the Commission on September 20, 1991, is no longer applicable to this respondent.

In this memorandum, Audit states that based upon the Commission's determination with respect to Dole for President (the Final Audit Report on the Dole for President Committee, approved by the Commission on April 25, 1991) relative to the allocation of expenses for phone banks located outside of the targeted state, the expenditures associated with LDC's phone banks located outside the targeted state, which is New Hampshire, have been eliminated, therefore, "[o]ur analysis shows that the Committee did not exceed the NH expenditure limitation,...."

In light of the foregoing the General Counsel recommends that the Commission find no probable cause to believe that the LaRouche Democratic Campaign and Edward Spannaus, as treasurer, violated 2 U.S.C. § 441a(b)(1)(A) and 26 U.S.C. § 9035(a).

III. **DISCUSSION OF CONCILIATION AND CIVIL PENALTY**

IV. **RECOMMENDATIONS**

1. Find probable cause to believe that the LaRouche Democratic Campaign and Edward Spannaus, as treasurer, violated

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2 U.S.C. § 441a(f).

2. Find no probable cause to believe that the LaRouche Democratic Campaign and Edward Spannaus, as treasurer, violated 2 U.S.C. § 441a(b)(1)(A), and 26 U.S.C. § 9035(a).

3. Approve the attached conciliation agreement and appropriate letter.

12/9/91
Date

Lawrence M. Noble
General Counsel

Attachments:
1. LDC's response to brief
2. Memo from Audit
3. Conciliation Agreement

Staff assigned: Phillip L. Wise

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3211
LaRouche Democratic Campaign and	)	
Edward Spannaus, as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on December 19, 1991, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 3211:

1. Find probable cause to believe that the LaRouche Democratic Campaign and Edward Spannaus, as treasurer, violated 2 U.S.C. § 441a(f).

2. Find no probable cause to believe that the LaRouche Democratic Campaign and Edward Spannaus, as treasurer, violated 2 U.S.C. § 441a(b)(1)(A), and 26 U.S.C. § 9035(a).

3. Approve the conciliation agreement and appropriate letter as recommended in the General Counsel's report dated December 9, 1991.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

12-23-91
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 3, 1992

Odin P. Anderson, Esquire
Anderson, Rossi & Davis, P.C.
Four Longfellow Place
Suite 3705
Boston, MA 02114

MUR 3211
The LaRouche Democratic
Campaign and Edward Spannaus,
as treasurer

Dear Mr. Anderson:

On December 19, 1991, the Federal Election Commission found that there is probable cause to believe your clients, violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended, in connection with receiving excessive contributions from individuals. On that same date the Commission found no probable cause to believe your clients, violated 2 U.S.C. § 441a(b)(1)(A), and 26 U.S.C. § 9035(a).

The Commission has a duty to attempt to correct such violations for a period of 30 to 90 days by informal methods of conference, conciliation, and persuasion, and by entering into a conciliation agreement with a respondent. If we are unable to reach an agreement during that period, the Commission may institute a civil suit in United States District Court and seek payment of a civil penalty.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission within ten days. I will then recommend that the Commission accept the agreement. Please make your check for the civil penalty payable to the Federal Election Commission.

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If you have any questions or suggestions for changes in the enclosed conciliation agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Phillip L. Wise, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 10, 1992

Odin P. Anderson, Esquire
Anderson, Rossi & Davis, P.C.
Four Longfellow Place
Suite 3705
Boston, MA 02114

MUR 3211
The LaRouche Democratic
Campaign and Edward Spannaus,
as treasurer

Dear Mr. Anderson:

On January 3, 1992, you were notified that the Federal Election Commission found probable cause to believe that your clients, violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended, in connection with receiving excessive contributions from individuals. On that same date, you were sent a conciliation agreement offered by the Commission in settlement of this matter.

Please note that pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), the conciliation period in this matter may not extend for more than 90 days, but may cease after 30 days. Insofar as more than 30 days have elapsed without a response from you, a recommendation concerning the filing of a civil suit will be made to the Commission by the Office of the General Counsel unless we receive a response from you within 10 days of receipt of this letter.

Should you have any questions, please contact me at (202) 219-3690.

Sincerely,

Phillip L. Wise
Attorney

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
LaRouche Democratic Campaign and Edward Spannaus, as treasurer	)	MUR 3211
	)	

GENERAL COUNSEL'S REPORT

SENSITIVE

I. **BACKGROUND**

Attached is a conciliation agreement which has been signed by Edward Spannaus, the treasurer of the LaRouche Democratic Campaign. The attached agreement contains no changes from the agreement approved by the Commission, on March 9, 1992.

A check for the civil penalty has not been received.

II. **RECOMMENDATIONS**

1. Accept the attached conciliation agreement with the LaRouche Democratic Campaign and Edward Spannaus, as treasurer.

2. Close the file.

3. Approve the appropriate letter.

4/6/92
Date

Lawrence M. Noble
General Counsel

Attachment:
Conciliation Agreement

Staff Person: Phillip L. Wise

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
LaRouche Democratic Campaign and	)	MUR 3211
Edward Spannaus, as treasurer.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on April 10, 1992, the Commission decided by a vote of 6-0 to take the following actions in MUR 3211:

1. Accept the conciliation agreement with the LaRouche Democratic Campaign and Edward Spannaus, as treasurer, as recommended in the General Counsel's Report dated April 6, 1992.

2. Close the file.

3. Approve the appropriate letter, as recommended in the General Counsel's Report dated April 6, 1992.

Commissioners Aikens, Elliott, McDonald, McGarry, Potter and Thomas voted affirmatively for the decision.

Attest:

4-10-92
Date

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

Received in the Secretariat: Tues., April 7, 1992 9:29 a.m.
Circulated to the Commission: Tues., April 7, 1992 4:00 p.m.
Deadline for vote: Fri., April 10, 1992 4:00 p.m.

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CLOSED

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 15, 1992

Odin P. Anderson, Esquire
Anderson, Rossi & Davis, P.C.
Four Longfellow Place
Suite 3705
Boston, MA 02114

MUR 3211
The LaRouche Democratic
Campaign and Edward Spannaus,
as treasurer

Dear Mr. Anderson:

On April 10, 1992, the Federal Election Commission accepted the signed conciliation agreement submitted on your clients' behalf in settlement of a violation of 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter.

This matter will become a part of the public record within 30 days. If you wish to submit any factual or legal materials to appear on the public record, please do so within ten days. Such materials should be sent to the Office of the General Counsel. Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Phillip L. Wise
Phillip L. Wise
Attorney

Enclosure
Conciliation Agreement

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RECEIVED
FEDERAL ELECTION
COMMISSION
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Apr 1 2 12 PM '92

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
LaRouche Democratic Campaign and Edward Spannaus, as treasurer	)	MUR 3211
	)	

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
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CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found probable cause to believe that the LaRouche Democratic Campaign ("LDC" and/or "Respondents") and Edward Spannaus, as treasurer, violated 2 U.S.C. § 441a(f).

NOW, THEREFORE, the Commission and the Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. LaRouche Democratic Campaign is a political committee within the meaning of 2 U.S.C. § 431(4).

2. Edward Spannaus is the treasurer of LaRouche Democratic Campaign.

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3. No person shall make contributions to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A). Furthermore, no candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section. 2 U.S.C. § 441a(f). Contributions which on their face exceed the contribution limitations and contributions which do not appear to be excessive on their face, but exceed contribution limits when aggregated with other contributions from the same contributor, may be either deposited into a campaign depository under 11 C.F.R. § 103.3(a) or returned to the contributor. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor. If a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor. 11 C.F.R. § 103.3(b)(3). Prior to April 8, 1987, Commission Regulations provided that excessive contributions shall be refunded to the contributor within a reasonable time of the treasurer's receipt of the contribution.

4. In FEC v. California Medical Association, 502 F. Supp. 196, 203-04 (N.D. Cal. 1980), it was held that the term "knowingly accept" requires only that the recipient know that he received the contributions at issue, their amounts, and their source.

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5. Respondents refunded the excessive portions of 77 contributions from 64 individuals, totaling $14,830, in an untimely manner. Refunds of the above excessive contributions ranged from a low of 67 days to a high of 582 days from receipt (55 of these excessives were refunded more than 100 days after receipt).

V. Respondents received excessive contributions from individuals and failed to refund them in a timely manner in violation of 2 U.S.C. § 441a(f).

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of One Thousand Five hundred dollars ($1,500.00), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent(s) shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire

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agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

BY: LM Noble (JH) Date 4/15/92
Lawrence M. Noble
General Counsel

FOR THE RESPONDENT(S):

(Name) Date 3/27/92
(Position)

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3211

DATE FILMED 5-27-92 CAMERA NO. 1

CAMERAMAN E.E.S.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 3211.

6/17/92

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OGC 4168 Golden Copy

CLOSED

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 11, 1992

92 MAY 12 PM 3:10

TWO WAY MEMORANDUM

TO: Virginia Whitted
OGC, Docket

FROM: Philomena Brooks PB
Accounting Technician

SUBJECT: Account Determination for Funds Received

We recently received a check from The LaRouche Democratic Campaign, check number 3943, dated May 7, 1992, and in the amount of $1,500.00. Attached is a copy of the check and any correspondence that was forwarded. Please indicate below the account into which it should be deposited, and the MUR number and name.

TO: Philomena Brooks
Accounting Technician

FROM: Virginia Whitted
OGC, Docket

In reference to the above check in the amount of $1,500.00, the MUR number is 3211 and in the name of LAROUCHE DEMOCRATIC CAMPAIGN. The account into which it should be deposited is indicated below:

XX Budget Clearing Account (OGC), 95F3875.16

__ Civil Penalties Account, 95-1099.160

__ Other: _____

Virginia Whitted
Signature

May 12, 1992
Date

92040904872

THE LAROUCHE DEMOCRATIC CAMPAIGN 10-85
P.O. BOX 216, DOWNTOWN STATION
LEESBURG, VA 22075

3943

5/7 1992

PAY TO THE ORDER OF Federal Election Commission $ 1,500.—

One thousand five hundred and 00/100 DOLLARS

SOVRAN BANK.
Sovran Bank, N.A., Leesburg, Virginia

FOR MUR 3211 Civil Penalty

⑈003943⑈ ⑆056002387⑆ 0530 7208⑈ 0 2 6