FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3770

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
93 APR 27 AM 9:55

Michael P.Kohr
R.F.D. #3 Box 236a
Princeton,Ill. 61356
March 15th, 1993
815-872-0030

MUR 3770

Federal Election Commission
Office of the General Counsel
999 E Street Northwest
Washington D.C. 20463

I am writing this letter to bring to your attention a situation that has troubled me for a number of years. I apologize in advance for the length of letter and perhaps an overabundance of detail but I did not wish to present this situation without your understanding of the full story and my motives.

I am a past employee of United Parcel Service. I left employment at United Parcel Service on February 28, 1992. I was a member of management and was increasing disturbed by the direction of the company in regards to matters of integrity on many issues. Two areas that particularly bothered me was the company's political action committee, UPSPAC, and an overseas subsidiary, Overseas Partners Limited.

The first area of concern I have is the official political action committee of UPS, UPSPAC, particularly how UPS strong arms its supervisory people into contributing to the PAC. When UPS first formed UPSPAC a newsletter was mailed to each member of management. In that newsletter was listed the "donation" each member of management was expected to give. The letter also explained that mandatory "donations" were against the law and that all "donations" would remain anonymous, however included with the letter was a card that was to be returned with the "suggested donation." In the upper right hand corner of the card was the employee number of the person the letter was addressed to. That employee number appears on every file, every payroll check, in fact on every official form that pertained to a particular employee. Although no name appeared on the card the employee number was more than enough to identify who "donated" and who did not.

The response of the supervisory people was initially extremely poor. Most of the supervisory people I talked with resented the manner in which the company tried to extort the contributions to UPSPAC and most also said they did not believe in political action committees and felt they were counterproductive to the good of our country. After a while supervisors were told of the poor response to the "donation" drive for UPSPAC by their managers and it was suggested that perhaps those that had not contributed did not belong as management personnel at UPS. Considering the extremely poor national numbers coming in for UPSPAC most supervisors recognized these threats as empty threats as UPS would have had to fire over 80% of its management.

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Initially supervisors had been told by upper management that the employee numbers that appeared on the "donation" cards were only for accounting and tax purposes. It soon became evident that other reasons also existed for the employee numbers to appear on the "donation" cards. After the initial talk with our managers of the poor national response to UPSPAC we were talked to on a center by center basis by our division managers. The division managers now presented us with a further breakdown of the national numbers to how our region had responded (poorly, in line with the rest of the country). After a short while and still little response to UPSPAC we were again talked to on a center by center basis by our division managers and now presented with breakdowns of the response to UPSPAC by supervisors and center managers and staff personnel and a further breakdown of the regional numbers to the district level.

In our center all of the supervisors had up to that point resisted "donating" to UPSPAC. It became apparent to all but the brain dead, that in spite of upper managements denials, they knew who did or did not "donate" to UPSPAC or were at least willing to pressure supervisors until they received a level of money in UPSPAC's coffers that they were satisfied with. Interestingly enough in our center, we as a group of supervisors all sent in our "donation" after the last above mentioned talk. It was at that point that the talks ceased. A co-incidence perhaps, or more likely, the goal of all supervisors "voluntarily" donating to UPSPAC was accomplished in our center, and upper management knew it, thanks to the employee numbers that had been printed on the UPSPAC "donation" cards.

I am not a legal expert on the laws governing political action committees. But I question the use of the employee's payroll numbers on the "donation" card sent out by UPSPAC. I question the time, effort and expense on the part of upper management at UPS in tracking response to UPSPAC and the resulting talks held by upper management in strong arming its supervisory personnel into "donating" to UPSPAC. If these actions are within the limits of the law the laws should be strengthened. Certainly UPS's actions in this regard would offend the moral conscious of most Americans. There is a strong sense of revulsion and contempt in this country for political action committees and how PACs corrupt the political process. Through UPS's pressure tactics we now have an example of how corporate America can exploit the workforce to expand the resources of the political action committee. Resources that are used in the eyes of most Americans to hold this country's political process hostage to the influence of money and power. There is little difference in how UPS pressured its supervisors for "donations" to UPSPAC and the "donations" that are extorted by thugs and criminals from business' for "protection" or "insurance." The only difference is the suit and tie and the mantle of respectability of a businessman that UPS cloaks itself in. Underneath that suit and tie beats the heart of a corporate soul that regards itself above the laws everyone else must obey and whose arrogance assumes that no matter how far it pushes it will never have to be held accountable for its actions.

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The second area of concern I wish to bring up is the overseas subsidiary of UPS called Overseas Partners Limited, based in Bermuda. Enclosed you will find a copy of the 1992 Annual Report of Overseas Partners Ltd.. Overseas Partners Ltd. was founded in 1984. Its primary function is the re-insurance of packages shipped through UPS that are insured for more than one-hundred dollars. Since that time it has became involved in other transactions such as leasing of equipment and property to UPS. When Overseas Partners Ltd. was first formed members of upper management informed the supervisory people that the subsidiary was designed to take advantage of the tax laws in the country of Bermuda. My manager was more to the point when he described it as a "legal tax dodge." Prior to 1984, UPS collected twenty-five cents (currently thirty cents) per one-hundred dollars of any package shipped through UPS in excess valuation of one-hundred dollars. Any claim for loss on such packages was paid for out of these "excess value fees." Of course any extra funds at the end of the fiscal year were taxed as profit by the IRS. Again the funds for excess valuation were collected in the United States of America for services rendered in the United States of America by American workers, and for services that depended on the efficient infrastructure of the United States of America. Infrastructure paid for by the taxpayers of this country.

By playing a shell game with the excess value funds and basing Overseas Partners Ltd. in Bermuda, UPS evades paying taxes on the income generated on these funds as well as the other transactions the partnership has become active in. In the years hence UPS has become an international company, but the vast percentage of business it does is within the borders of the United States of America. While this self described "tax dodge" may be legal I again feel the laws of this country should be strengthened to prevent the large corporations that have the legal resources and moral turpitude to exploit the loopholes that allow them to escape the responsibility that most Americans do not question. I do not feel it is unreasonable to expect a corporation to pay taxes on the profits on income generated in this country, especially a company such as United Parcel Service that depends so heavily on taxpayer funded roads, bridges, and other related infrastructure.

All members of management at UPS are given stock each year in the common stock of UPS as well as that of Overseas Partners Ltd.. When OPL was first formed, we as supervisors, were told because of the "tax dodge" the partnership would enjoy, the stock of the partnership would one day make us all rich. In 1984 the stock was valued at twenty-five cents a share. On December 31st, 1992 it was valued at seven dollars forty cents a share, or an increase of over 2900% in eight short years. Eight years in which the taxes that had been formerly paid on those profits to the United States were now shuffled to a foreign country and sheltered and hidden from the IRS. I still retain my holdings in a stock trust of Overseas Partners. I have not sold my holdings because I feel these holdings are "dirty money" and will not sell them off untill I have aired my complaints and concerns of possible illegality. If the value of the stock should be lower

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because taxes are owed then I will accept the lower value. I do not wish to profit at the expense of my country.

Given the open talk on the part of UPS management on the avoidance of taxes in Overseas Partners, I assume no laws were broken in this regard. I would hope if this is legal the laws will be amended. I would also hope that the government of this country will require that all documents and parcels picked up from and delivered to its agencies are delivered by the United States Post Office as to show that tax dodgers of any nature, legal or not, are not encouraged by the government of this land, (In fact the United States Post Office has substantially lower rates. Considering the financial hole we have dug for ourselves in this country I find it amazing that the government still utilizes UPS when the Post Office charges much less for the same services).

In closing I wish to repeat that I am an ex-employee of United Parcel Service. I am certain that I may be castigated by members of the company as a bitter person bent on revenge. However I regard my experience at UPS as a positive one but one in which I have experienced events that are either illegal or at the very least morally reprehensible. The easy thing for me to do is close the pages of this chapter in my life and move on. But to turn an eye to the things I have described above would be to condone those practices that I regard as illegal and immoral. It is my duty as a citizen of this country to stand against such things no matter how powerful the opponent may be or how daunting the chance of making a difference may be. It is my hope that you will recognize that I speak from a position of freedom and without fear of retaliation as would a person still employed by this company. It is my hope that you will recognize that I speak for hope for the resolution of these injustices and I hope you will be able help me bring these injustices to a close.

Sincerely,

Michael P. Kohr

Michael P. Kohr

cc: Frank J. Mautino

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Dept. of Labor
Pat Welch
Paul Simon
Carol Mosely Braun
Joseph Biden
Lane Evans
Janet Reno
H. Ross Perot
IRS c/o CID Dept.
EEOC
Federal Election Commision
Post Office Solicitor General
International Brotherhood of the Teamsters
Producer of "60 Minutes"
Producer of "20/20"
Producer of "Dateline"
Producer of "Street Stories"
Producer of "The Phil Donohue Show"

"OFFICIAL SEAL"
Sophie P. Lewis
Notary Public, State of Illinois
My Commission Expires 12/22/95

Subscribed and sworn to before me this 15th day of April, 1993.

Sophie P. Lewis
(NOTARY PUBLIC)

(SEAL)

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UPS has moved its corporate HDQRTS. TO 400 Perimeter Center Terraces North Atlanta, GA 30346

UPSPAC
Greenwich Office Park 5
Greenwich, Connecticut 06831

July 27, 1990

Dear UPSPAC Partner:

Thank you for your contribution to the UPS Political Action Committee (UPSPAC). Your involvement makes a difference in our ability to have an impact with legislators who pass laws that substantially affect our business.

As of the end of June, 60 percent of the UPSers solicited, totaling 11,350 active managers and supervisors, contributed $628,752. This represents a significant improvement over 1989, and indicates an increased awareness of UPSers to the important role UPSPAC plays in the success of the company. We hope this understanding will generate even greater participation in 1991.

We will be providing you with more information concerning the political and legislative issues facing our company during this coming year. We will also keep you informed of the actions taken by UPSPAC to assist candidates for public office who support our position on those issues.

Thank you again for your valuable support.

Sincerely,

Joe Moderow

Joe Moderow
UPSPAC Chairman

Mr. Moderow is a director on UPS's Board of Directors also.

M. Lick

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A copy of our report is filed with, and available for purchase from, the Federal Election Commission, Washington, D.C.

UPSPAC

The United Parcel Service
Political Action Committee

What is UPSPAC?

UPSPAC, a political action committee, solicits and receives contributions from UPS partners for donation to the reelection campaigns of legislators whose records are deemed favorable. It is authorized by UPS, but is separate from the company and accountable to the Federal Election Commission (FEC).

A political action committee makes it possible for like-minded UPS managers and supervisors to pool their resources to support candidates who share common views and goals, such as fair competition between government and private enterprise. As a result, UPSPAC stands as a constant reminder to lawmakers of our interest and involvement as a business constituent.

PAC Background

Political action committees represent a broad range of interests in this country, including labor unions, professional and trade associations, corporations, hobby groups and other interests. While some PAC's have been around for many years (for example, labor PAC's have been in existence since the 1940's), corporations have been permitted to have PAC's for just over a decade.

PAC Funding

The 1986 congressional elections show that candidates spent 24% more than in 1984. Of the total amount, 28% was the portion contributed by PAC's, and only one third of this portion came from corporate PAC's. Clearly, corporate PAC's continue to play a role in the political process, but in no way is their influence weighted.

Corporate PAC's also have a good record of bi-partisan support. In the 1986 elections, 60% of contributions from these PAC's went to republican candidates, 40% to democrats. In contrast, 90% of labor union PAC dollars went to democrats that year, with only 10% going to republicans.

UPSPAC Activities

For the 1986 congressional elections, UPSPAC made contributions to 35 Senators in 30 states and 290 House members in 49 states.

The average congressional contribution made by UPSPAC is about $900.

Any UPS partner may suggest a recipient for a contribution. Each proposal is reviewed by a steering committee and recommendations must be approved by the UPSPAC chairman.

How much should you contribute?

The amount that you contribute is a personal decision. The suggested amounts are as follows:

$25 — Supervisors who are one-unit Managers Incentive Plan participants

$50 — Two-unit Managers Incentive Plan center managers (or managers with equivalent responsibility)

$150 — District department and division managers, region and national staff who are Stock Option Plan participants

$200 — Region department managers

$300 — District managers, national department managers

$500 — Region managers, management committee

Contributions are kept in the strictest confidence. Only the UPSPAC treasurer has a record of who contributes, which is required by Federal law.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 4, 1993

Michael P. Kohr
R.F.D. #3 Box 236a
Princeton, IL 61356

RE: MUR 3770

Dear Mr. Kohr:

This letter acknowledges receipt on April 27, 1993, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by United Parcel Service PAC and Kenneth L. Schellie Jr., as treasurer, Joe Moderow, Chairman of UPSPAC, and United Parcel Service, Inc. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3770. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Jonathan A. Bernstein
Assistant General Counsel

Enclosure
Procedures

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 4, 1993

Kenneth L. Schellie Jr., Treasurer
United Parcel Service PAC
400 Perimeter Center-Terraces N.
Atlanta, GA 30346

RE: MUR 3770

Dear Mr. Schellie:

The Federal Election Commission received a complaint which indicates that the United Parcel Service PAC ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3770. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Committee and you, as treasurer, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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 matter to be made public. 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.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 4, 1993

Joe Moderow, Chairman
United Parcel Service PAC
400 Perimeter Center-Terraces N.
Atlanta, GA 30346

RE: MUR 3770

Dear Mr. Moderow:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3770. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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If you have any questions, please call (202) 219-3690 and ask to speak with a member of the Central Enforcement Docket (CED). For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Jonathan A. Bernstein
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 4, 1993

Kent C. Nelson, Chairman
United Parcel Service, Inc.
400 Perimeter Center-Terraces N.
Atlanta, GA 30346

RE: MUR 3770

Dear Mr. Nelson:

The Federal Election Commission received a complaint which indicates that United Parcel Service, Inc. may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3770. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against United Parcel Service, Inc. in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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 matter to be made public. 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.

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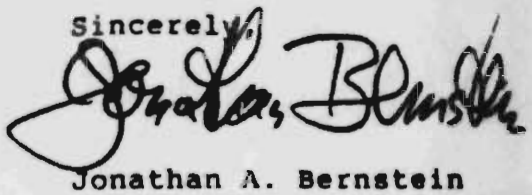
If you have any questions, please call (202) 219-3690 and ask to speak with a member of the Central Enforcement Docket (CED). For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jonathan A. Bernstein
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

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OGC 8870

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

UPSPAC
United Parcel Service Political Action Committee
400 Perimeter Center — Terraces North, Atlanta, GA 30346

MAY 25 2 30 PM '93

May 24, 1993

93 MAY 25 PM 3:24
RECEIVED
FEDERAL ELECTION COMMISSION

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3770
Complaint of Michael P. Kohr

Ladies and Gentlemen:

This is the combined response of United Parcel Service of America, Inc. (UPS) and the United Parcel Service Political Action Committee (UPSPAC) to the captioned complaint, which we received from the Commission on May 10, 1993. Mr. Kohr's complaint pertains to two unrelated entities: UPSPAC and Overseas Partners Ltd., a Bermuda corporation. Since the substance of Mr. Kohr's complaint against Overseas is not within the Commission's jurisdiction and has nothing to do with the Federal Election laws, this response will be confined to the part of Mr. Kohr's complaint concerning UPSPAC.

UPS, through its operating subsidiaries, is engaged in providing worldwide distribution services, primarily through the delivery of packages. With revenues exceeding $16 billion, UPS offers its services throughout the United States and in more than 180 other countries and territories.

In 1976, UPS established UPSPAC pursuant to the Federal Election laws as a vehicle for combining the individual contributions of UPS executive and administrative personnel to political candidates whose views toward business and government accord with those of UPS. UPSPAC is operated in strict compliance with all applicable laws and regulations. In the 1992-93 solicitation year to date, UPSPAC received contributions of $1.24 million from approximately 15,630 contributors. To the best of our knowledge, Mr. Kohr's complaint is the first the FEC has ever received concerning UPSPAC.

UPSPAC solicits contributions from UPS executive and administrative personnel who are also shareowners of UPS on an annual basis. Routine methods are used to solicit contributions. Each year a brochure is given to eligible contributors, together with (i) a contribution card (ii) a letter from UPS's Chairman,

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A copy of our report is filed with, and available for purchase from, the Federal Election Commission, Washington, D.C.

and (iii) a return envelope addressed to the Treasurer of UPSPAC (a set of the current materials is attached). We also have used video, slide and oral presentations at meetings where eligible contributors are gathered to explain UPSPAC and to solicit contributions. In each case, we make it clear that contributions are voluntary and will be kept confidential. Contributions are returned directly to the Treasurer of UPSPAC.

Mr. Kohr is correct in his statement that a "UPS employee number" (Social Security Number) appears on the contribution card accompanying each contribution. However, he is wrong in his belief that the Social Security Number is used by UPS's "upper management" to track contributions and to "strong arm" non-contributors. The Social Security Number permits a few UPSPAC personnel who are directly involved in its administration to track contributions for FEC reporting purposes and to facilitate payroll deductions. The identity of contributors and non-contributors is kept highly confidential within the Company and is not disclosed to anyone not among the small circle of UPSPAC personnel with a clear need to know. A careful reading of Mr. Kohr's complaint indicates that he has no personal knowledge or evidence to the contrary. In fact, he appears simply to have assumed a nefarious purpose based in part on his "strong sense of revulsion and contempt... for political action committees..."

UPSPAC personnel provide reports to top level UPS managers regarding contributions made at district, region and corporate department levels. These reports contain information on numbers of contributors in the aggregate. Such reports contain no information concerning the identity of any individual contributor or non-contributor and could not be used to pressure any employee to contribute to UPSPAC who chooses not to do so.

We hope the Commission will find this response to Mr. Kohr's complaint satisfactory. However, if there are any questions, or additional information is needed, please respond to the attention of the undersigned.

Very truly yours,

Kenneth L. Schellie, Jr.

Kenneth L. Schellie, Jr.
Treasurer

KLS:pt

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UPS

May 14, 1992

Dear UPS Partner,

I'm writing to ask for your support o. the United Parcel Service Political Action Committee (UPSPAC). Never before has your participation been so important.

Last year almost 70 percent of our active managers and supervisors contributed over $1 million to UPSPAC. That kind of active involvement helped us gain positive results in a number of UPS-related legislative issues.

This coming year we'll again face challenges that will directly impact the ability of our company to succeed and grow. Among legislative issues expected for consideration are environmental and safety regulations, energy and urban congestion initiatives, motor carrier deregulation and postal reform.

By supporting the candidacy of Senators and Representatives who share our beliefs, the money you contribute helps UPS's voice be heard in government. Election experts are already saying that the number of new members resulting from the November election could be the highest in recent history. Over 100 new Senators and Representatives are expected to take their seats when Congress reconvenes in January. We have the opportunity to educate and inform these new legislators early in their term of office, but we need your help.

I believe UPSPAC is an essential investment in our company's future. As a partner, you have a strong vested interest in what happens to our business. Contributing to UPSPAC is one vital means of influencing that outcome.

Remember your decision is voluntary and confidential. The enclosed brochure and contribution card provide additional information. I hope you will join me and give your financial support to UPSPAC.

Thank you,

Kent Nelson

Kent C. Nelson
Chairman and
Chief Executive Officer

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YOU can make an imPACt

If you're interested in protecting your investment in UPS, then one of the best investments you can make is a contribution to United Parcel Service Political Action Committee (UPSPAC). Your contribution will directly support UPS's interests on both federal and state legislative issues.

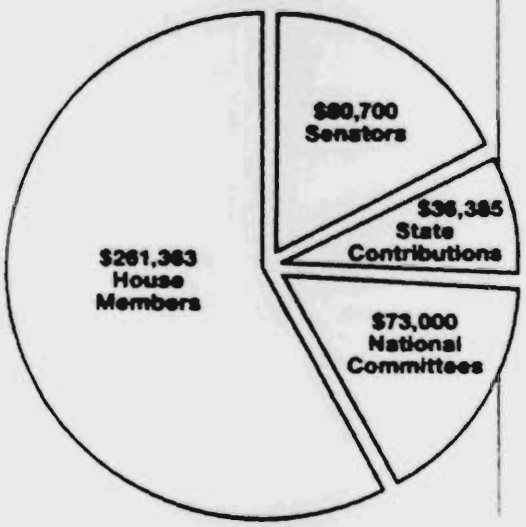
Issues currently being debated include intrastate deregulation, customs regulations, postal reform, and alternative fuel requirements. These and other issues directly impact UPS's operating authority, flexibility and its costs.

To help ensure that the laws enacted don't adversely affect our operations and service, we need continued involvement in the political process. Your support of UPSPAC is one way to make sure UPS's voice is heard.

Are PACs necessary?

There has been a good deal of debate about the role PACs play in electing candidates to public office. But, the fact remains that PACs are an efficient means for people with common interests to pool their resources and contribute to the campaigns of candidates they favor. UPSPAC supports those candidates who believe in fair competition, and who understand the importance of UPS's service to the public.

1991 UPSPAC Contributions

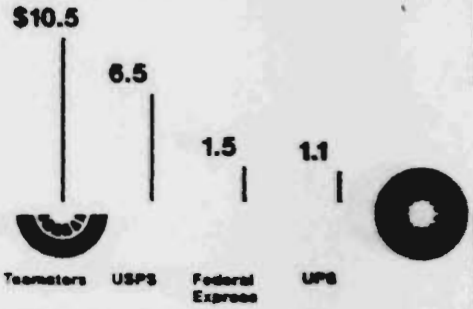


Today, PACs supply one-third of all federal campaign financing. In 1990, it cost an average of about $520,000 to run for a seat in the House of Representatives, and over $4 million to run for the Senate.

You and UPSPAC

In 1989 UPSPAC received a little over $400,000 based on 38 percent participation from our managers and supervisors. In 1990 we committed to improve that performance, particularly the participation level. The result was a substantial increase in contributions to $645,000. But more importantly, the participation level increased to 61 percent.

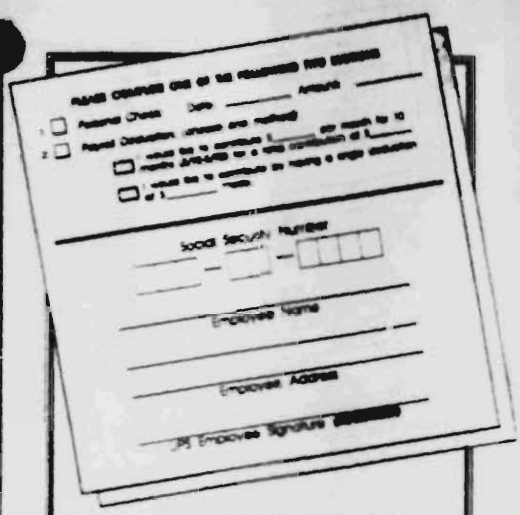
1989-90 Election Cycle PAC Receipts



This past year, we intensified our efforts to make people aware of how important their PAC is to the future of our company. We made an effort to have managers meet personally with their people to explain the urgency of the legislative challenges facing our company. The result was gratifying. We raised over $1 million, with a participation level of 69 percent. In 1992 we hope to further increase participation.

Can you suggest a recipient?

UPS partners may suggest recipients for contributions through the corporate Public Affairs Group. Each proposal is reviewed by the Contributions Steering Committee, consisting of Public Affairs representatives and a member of the UPS Management Committee. All recommendations must be approved by the Corporate UPSPAC Chairman.



Making your UPSPAC contribution

When you make your UPSPAC contribution, use the enclosed contribution card. This card must be signed by you, the employee, in order to authorize UPS to accept the contribution. In addition, your check must be a personal one and signed by either you or your spouse.

If you'd like to take advantage of the payroll deduction option, check the appropriate box on the enclosed contribution card. A deduction may be taken on a one-time or 10-month basis.

Regardless of which option you select, please return your contribution card to Ken Schellie, UPSPAC Treasurer, no later than July 31, 1992. Deductions will begin in August.

How much should you contribute?

The amount you should contribute is a personal decision and will neither benefit nor disadvantage you in your job at UPS.

Please keep in mind that as a result of the Revenue Act of 1987, contributions to political action committees are not tax deductible.

The suggested amounts are as follows; we do not recommend contributions in excess of the suggested amount.**

- **$50** – Supervisors who are one-unit, Managers Incentive Plan participants
- **$100** – Two-unit Managers Incentive Plan center managers (or managers with equivalent responsibility)
- **$200** – District department and division managers, region and national staff who are Stock Option Plan participants.
- **$300** – Region department managers
- **$400** – District managers, national department managers.
- **$600** – Region managers, Management Committee

Contributions are kept confidential. Your decision whether or not to participate and the amount of your contribution will be kept confidential within the company and will not otherwise be disclosed except to regulatory agencies as required by law.

**NOTE: California residents should contact UPSPAC to determine how much of your contribution went to UPSPAC California committee if you are making other contributions outside UPSPAC to California state and local candidates and/or committees.

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UPSPAC
The United Parcel Service Political Action Committee

Instructions:

Personal check: complete section 1, complete social security number, name and address, SIGN CARD, enclose check payable to UPSPAC.

Payroll deduction: complete one choice in section 2, complete social security number, name and address, SIGN CARD.

Return the two white copies of the form in the enclosed envelope with address on opposite side appearing through window. Retain the blue copy for your records.

PLEASE COMPLETE ONE OF THE FOLLOWING TWO SECTIONS

☐ Personal Check Date _____ Amount _____

☐ Payroll Deduction (choose one method)

☐ I would like to contribute _____ per month for _____ months (8/92-5/93) for a total contribution of $ _____

☐ I would like to contribute by having a single deduction of $ _____ made

Social Security Number

_____ — _____ — _____

Employee Name

Employee Address

UPS Employee Signature **(REQUIRED)**

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RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
93 MAY 25 PM 3:25

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3770

NAME OF COUNSEL: THOMAS E. BUTLER

ADDRESS: UNITED PARCEL SERVICE
400 PERIMETER CENTER - TERRACES NORTH
ATLANTA, GA. 30346

TELEPHONE: (404) 913-6153

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.

May 20, 1993
Date

Kenneth L. Lee Ellis Jr.
SIGNATURE
TREASURER, UPSPAC

RESPONDENT'S NAME: UPSPAC

ADDRESS: 400 PERIMETER CENTER - TERRACES NORTH
ATLANTA, GA. 30346

TELEPHONE: HOME: ( )
BUSINESS: (404) 913-7528

9704384511 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel KCS

DATE: NOVEMBER 12, 1993

SUBJECT: MEMO TO THE COMMISSION--MUR 3770 ADDITION

The attached is submitted as an Agenda document

for the Commission Meeting of NOVEMBER 16, 1993

Open Session _____

Closed Session XX

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

SENSITIVE CIRCULATE ON BLUE PAPER

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F.E.C.
SECRETARIAT
93 OCT 21 AM 9:36

SENSITIVE

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

FIRST GENERAL COUNSEL'S REPORT

MUR #3770
DATE COMPLAINT RECEIVED BY OGC: April 24, 1993
DATE OF NOTIFICATION TO RESPONDENTS: May 14, 1993
STAFF MEMBER: Lawrence D. Parrish

COMPLAINANT: Michael P. Kohr

RESPONDENTS: United Parcel Service Political Action Committee and Kenneth L. Schellie, Jr., as treasurer

United Parcel Service

Overseas Partners Limited

RELEVANT STATUTES:
2 U.S.C. § 434(b)
2 U.S.C. § 441b(b)(2)(C)(B)
2 U.S.C. § 441b(b)(3)(A)
2 U.S.C. § 441b(b)(3)(C)
2 U.S.C. § 441b(b)(4)
11 C.F.R. § 114.1(c)2
11 C.F.R. § 114.5(a)(1)
11 C.F.R. § 114.5(a)(3)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

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I. GENERATION OF MATTER

This matter was generated by a complaint filed on April 24, 1993[1], by Michael P. Kohr, against his former employer, United Parcel Service of America, Inc. (UPS), and its PAC, the United

1. It should be noted that the complainant has either filed this complaint or provided copies of it, to other federal agencies, members of the House and Senate, news and talk shows and others individuals.

Parcel Service Political Action Committee (UPSPAC).[2] (See Attachment 1.) On May 25, 1993, Mr. Kenneth L. Schellie, Jr., filed a response on behalf of UPS and UPSPAC. (See Attachment 2.)

II. FACTUAL AND LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits a corporation, or a separate segregated fund established by the corporation, from soliciting contributions to that fund from any person other than its stockholders and their families and its executive or administrative personnel and their families. 2 U.S.C. § 441b(b)(4). A corporation may solicit the executive or administrative personnel of its subsidiaries, branches, divisions, and affiliates and their families. 11 C.F.R. § 114.5(g)(1). The Act defines "executive or administrative personnel" as individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policy-making, managerial, professional, or supervisory responsibilities. 2 U.S.C. § 441b(b)(7); 11 C.F.R. § 114.1(c).

A separate segregated fund is prohibited from making a contribution or expenditure utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal. 2 U.S.C. § 441b(b)(3)(A); 11 C.F.R. § 114.5(a). All written solicitations for contributions to a

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2. UPSPAC's Statement of Organization was filed with the Commission on August 30, 1976. The committee reported a total of $669,607 cash on hand in its May monthly report.

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separate segregated fund must inform the person being solicited that he has the right to refuse to contribute without any reprisal. 2 U.S.C. § 441b(b)(3)(C); 11 C.F.R. § 114.5(a)(4). Additionally, all written solicitations must contain statements informing the person being solicited of the political purposes of the fund. 2 U.S.C. § 441b(b)(3)(B); 11 C.F.R. § 114.5(a)(3). Guidelines for contributions may be suggested by a corporation or its separate segregated fund, provided that the person being solicited is informed that the guidelines are merely suggestions and that he is free to contribute more or less than the suggested guidelines without fear that the corporation will favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute. 11 C.F.R. § 114.5(a).

Pursuant to 2 U.S.C. § 434(b), every committee must file reports which disclose the amounts of all contributions to federal candidates, the name of the federal candidate, and the address of the candidate.

A corporation may use its general treasury monies, including monies obtained in commercial transactions and dues monies or membership fees, for the establishment, administration, and solicitation of contributions for its separate segregated fund. 2 U.S.C. § 441b(b)(2)(C); 11 C.F.R. § 114.5(b). Also, a corporation may exercise control over its separate segregated fund; for example, by directing the disbursement of voluntary contributions to its separate segregated fund, including the determination of the candidates

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to whom the contributions are made. 11 C.F.R. § 114.5(d).

A. COMPLAINT AND RESPONSE

The Complainant in this matter alleges that when he was employed with UPS as a member of management, UPS tried to coerce him and other management personnel to make contributions to UPSPAC. Mr. Kohr states that he is concerned about how "UPS strong arms its supervisory people into contributing to [UPSPAC]." Mr. Kohr also states that he and other management personnel received a newsletter from UPS soliciting suggested contributions for UPSPAC, and a card which was to be returned with the donor's contribution. It is Mr. Kohr's assertion that contributions were not kept anonymous. He states that although employee's names were not used, the contribution cards included the employee number of the person being solicited in the upper right hand corner. Mr. Kohr states further, that this employee number was used on "every file, every payroll check, in fact on every official form that pertained to a particular employee." Mr. Kohr alleges that initially he and other supervisors were told by upper management that the employee numbers were for "accounting and tax purposes."

Mr. Kohr states that UPSPAC had a very low response from management personnel from his office, and that his superiors "suggested that perhaps those that had not contributed did not belong as management personnel at UPS." Mr. Kohr also indicated that his superior met with him and other management personnel on more than one occasion in an attempt to increase the amount of contributions from his division. It is Mr. Kohr's assertion

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that only after "we as a group of supervisors" sent in contributions to UPSPAC, did the pressure from his superiors cease. Mr. Kohr further asserts that the "employee number" on the donation cards was used to assist his superior in determining which management personnel had contributed to UPSPAC.

Mr. Kohr also states that an overseas subsidiary of UPS, Overseas Partners Limited, was based in Bermuda "to take advantage of the tax laws in the country." Mr. Kohr asserts further that UPS set up Overseas Partners Limited to evade paying taxes on income, generated by Overseas Partners Limited, to the United States goverment.

Kenneth L. Schellie, Jr., UPSPAC's treasurer, responded to Mr. Kohr's complaint for both UPS and UPSPAC. Mr. Schellie states that UPSPAC has thus far received contributions of $1.24 million from approximately 15,630 contributors during the 1992-93 solicitation. Mr. Schellie also notes that Mr. Kohr's complaint is the only one that the Commission has ever received concerning UPSPAC.

Mr. Schellie states that UPSPAC solicits contributions from its "executive and administrative personnel who are also shareowners of UPS on an annual basis", and that UPSPAC used the following routine methods to solicit the contributions:

> Each year a brochure is given to eligible contributors, together with (i) a contribution card (ii) a letter from UPS's Chairman, and (iii) a return envelope addressed to the Treasurer of UPSPAC. We also have used video, slide and oral presentations at meetings where eligible contributors are gathered to explain UPSPAC and to solicit contributions. In each case, we make it clear that contributions are voluntary and

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will be kept confidential. Contributions are returned directly to the Treasurer of UPSPAC.[3]

Mr. Schellie does admit that "UPS employee number" (Social Security Number) appears on the UPS contribution card, but states that the purpose of the "employee number" is to track contributions for FEC reporting and for payroll deductions. Mr. Schellie adds, that "[t]he identity of the contributors and non-contributors is kept highly confidential within the Company and is not disclosed to anyone not among the small circle of UPSPAC personnel with a clear need to know." Mr. Schellie also states that top level UPS managers are provided with reports regarding contributions made at district, region and corporate department level, which contains information only on the number of contributors in the aggregate. Mr. Schellie states that these reports do not contain information concerning the identity of any contributors and could not be used to pressure any employee to contribute to UPSPAC.

B. **ANALYSIS**

As noted above, it is impermissible for a separate segregated fund to make a contribution or an expenditure from money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal. Although the Complainant in this matter has accused UPS and UPSPAC of using impermissible threats in order to obtain contributions from its managers, the

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3. A copy of UPSPAC's most current materials, including a brochure and contribution card, were enclosed along with its response.

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Respondents' response only explained UPSPAC's procedures for soliciting contributions and asserted that this was the first complaint ever filed with the Commission concerning UPSPAC. The Respondents do not specifically deny that threats were made by Mr. Kohr's supervisors in order to obtain contributions from Mr. Kohr and other management personnel.

Based upon the foregoing, there is reason to believe that United Parcel Service and United Parcel Service Political Action Committee and Kenneth L. Schellie, Jr., as treasurer, violated 2 U.S.C. § 441b(b)(3)(A) and 11 C.F.R. § 114.5(a).

As to the Complainant's assertions concerning Overseas Partners Limited, this matter does not fall under the Commission's jurisdiction. Therefore, this Office makes no recommendations regarding these allegations.

III. RECOMMENDATIONS

1. Find reason to believe that United Parcel Service and United Parcel Service Political Action Committee and Kenneth L. Schellie, Jr., as treasurer, violated 2 U.S.C. § 441b(b)(3)(A) and 11 C.F.R. § 114.5(a).

2. Approve the attached Factual and Legal Analyses and appropriate letters.

Lawrence M. Noble
General Counsel

10-20-93
Date

BY: Lois G. Lerner
Lois G. Lerner
Associate General Counsel

Attachments
1. Complaint
2. Response
3. Factual and Legal Analysis (UPS)
4. Factual and Legal Analysis (UPSPAC)

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS
COMMISSION SECRETARY

DATE: NOVEMBER 10, 1993

SUBJECT: MUR 3770 - FIRST GENERAL COUNSEL'S REPORT DATED OCTOBER 20, 1993.

The above-captioned document was circulated to the Commission on Thursday, October 21, 1993 at 11:00 a.m..

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	XXX
Commissioner Elliott	
Commissioner McDonald	
Commissioner McGarry	
Commissioner Potter	XXX
Commissioner Thomas	

This matter will be placed on the meeting agenda for Tuesday, November 16, 1993.

Please notify us who will represent your Division before the Commission on this matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3770
United Parcel Service Political Action Committee and Kenneth L. Schellie, Jr., as treasurer;	)	
United Parcel Service;	)	
Overseas Partners Limited	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on November 16, 1993, do hereby certify that the Commission decided by a vote of 4-1 to take the following actions in MUR 3770:

1. Find reason to believe that United Parcel Service and United Parcel Service Political Action Committee and Kenneth L. Schellie, Jr., as treasurer, violated 2 U.S.C. § 441b(b)(3)(A) and 11 C.F.R. § 114.5(a).

2. Approve the Factual and Legal Analyses and appropriate letters as recommended in the General Counsel's report dated October 20, 1993.

Commissioners Elliott, McDonald, Potter, and Thomas voted affirmatively for the decision; Commissioner Aikens dissented; Commissioner McGarry was not present.

Attest:

11-17-93
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

NOVEMBER 22, 1993

Kenneth L. Schellie, Jr.
UPSPAC
400 Perimeter Center
Terraces North
Atlanta, GA 30346

RE: MUR 3770

Dear Mr. Schellie:

On November 16, 1993, the Federal Election Commission found that there is reason to believe United Parcel Service Political Action Committee ("Committee") and you, as treasurer, violated 2 U.S.C. § 441b(b)(3)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and 11 C.F.R. § 114.5(a) of the Commission's rules and regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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 additional information, 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.

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

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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 enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Lawrence D. Parrish, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Scott E. Thomas
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: United Parcel Service Political Action Committee and Kenneth L. Schellie, Jr., as treasurer

MUR: 3770

I. GENERATION OF MATTER

This matter was generated by a complaint filed on April 24, 1993, by Michael P. Kohr, against his former employer, United Parcel Service of America, Inc. (UPS), and its PAC, the United Parcel Service Political Action Committee (UPSPAC). On May 25, 1993, Mr. Kenneth L. Schellie, Jr., filed a response on behalf of UPS and UPSPAC.

II. FACTUAL AND LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits a corporation, or a separate segregated fund established by the corporation, from soliciting contributions to that fund from any person other than its stockholders and their families and its executive or administrative personnel and their families. 2 U.S.C. § 441b(b)(4). A corporation may solicit the executive or administrative personnel of its subsidiaries, branches, divisions, and affiliates and their families. 11 C.F.R. § 114.5(g)(1). The Act defines "executive or administrative personnel" as individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policy-making, managerial, professional, or supervisory responsibilities. 2 U.S.C. § 441b(b)(7); 11 C.F.R. § 114.1(c).

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A separate segregated fund is prohibited from making a contribution or expenditure utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal. 2 U.S.C. § 441b(b)(3)(A); 11 C.F.R. § 114.5(a). All written solicitations for contributions to a separate segregated fund must inform the person being solicited that he has the right to refuse to contribute without any reprisal. 2 U.S.C. § 441b(b)(3)(C); 11 C.F.R. § 114.5(a)(4). Additionally, all written solicitations must contain statements informing the person being solicited of the political purposes of the fund. 2 U.S.C. § 441b(b)(3)(B); 11 C.F.R. § 114.5(a)(3). Guidelines for contributions may be suggested by a corporation or its separate segregated fund, provided that the person being solicited is informed that the guidelines are merely suggestions and that he is free to contribute more or less than the suggested guidelines without fear that the corporation will favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute. 11 C.F.R. § 114.5(a).

Pursuant to 2 U.S.C. § 434(b), every committee must file reports which disclose the amounts of all contributions to federal candidates, the name of the federal candidate, and the address of the candidate.

A corporation may use its general treasury monies, including monies obtained in commercial transactions and dues monies or membership fees, for the establishment,

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A. COMPLAINT AND RESPONSE

The Complainant in this matter alleges that when he was employed with UPS as a member of management, UPS tried to coerce him and other management personnel to make contributions to UPSPAC. Mr. Kohr states that he is concerned about how "UPS strong arms its supervisory people into contributing to [UPSPAC]." Mr. Kohr also states that he and other management personnel received a newsletter from UPS soliciting suggested contributions for UPSPAC, and a card which was to be returned with the donor's contribution. It is Mr. Kohr's assertion that contributions were not kept anonymous. He states that although employee's names were not used, the contribution cards included the employee number of the person being solicited in the upper right hand corner. Mr. Kohr states further, that this employee number was used on "every file, every payroll check, in fact on every official form that pertained to a particular employee." Mr. Kohr alleges that initially he and other supervisors were told by upper management that the employee numbers were for "accounting and tax purposes."

Mr. Kohr states that UPSPAC had a very low response from

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Mr. Kohr also states that an overseas subsidiary of UPS, Overseas Partners Limited, was based in Bermuda "to take advantage of the tax laws in the country." Mr. Kohr asserts further that UPS set up Overseas Partners Limited to evade paying taxes on income, generated by Overseas Partners Limited, to the United States goverment.

Kenneth L. Schellie, Jr., UPSPAC's treasurer, responded to Mr. Kohr's complaint for both UPS and UPSPAC. Mr. Schellie states that UPSPAC has thus far received contributions of $1.24 million from approximately 15,630 contributors during the 1992-93 solicitation. Mr. Schellie also notes that Mr. Kohr's complaint is the only one that the Commission has ever received concerning UPSPAC.

Mr. Schellie states that UPSPAC solicits contributions from its "executive and administrative personnel who are also

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shareowners of UPS on an annual basis", and that UPSPAC used the following routine methods to solicit the contributions:

> Each year a brochure is given to eligible contributors, together with (i) a contribution card (ii) a letter from UPS's Chairman, and (iii) a return envelope addressed to the Treasurer of UPSPAC. We also have used video, slide and oral presentations at meetings where eligible contributors are gathered to explain UPSPAC and to solicit contributions. In each case, we make it clear that contributions are voluntary and will be kept confidential. Contributions are returned directly to the Treasurer of UPSPAC.[1]

Mr. Schellie does admit that "UPS employee number" (Social Security Number) appears on the UPS contribution card, but states that the purpose of the "employee number" is to track contributions for FEC reporting and for payroll deductions. Mr. Schellie adds, that "[t]he identity of the contributors and non-contributors is kept highly confidential within the Company and is not disclosed to anyone not among the small circle of UPSPAC personnel with a clear need to know." Mr. Schellie also states that top level UPS managers are provided with reports regarding contributions made at district, region and corporate department level, which contains information only on the number of contributors in the aggregate. Mr. Schellie states that these reports do not contain information concerning the identity of any contributors and could not be used to pressure any employee to contribute to UPSPAC.

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1. A copy of UPSPAC's most current materials, including a brochure and contribution card, were enclosed along with its response.

B. **ANALYSIS**

As noted above, it is impermissible for a separate segregated fund to make a contribution or an expenditure from money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal. Although the Complainant in this matter has accused UPS and UPSPAC of using impermissible threats in order to obtain contributions from its managers, the Respondents' response only explained UPSPAC's procedures for soliciting contributions and asserted that this was the first complaint ever filed with the Commission concerning UPSPAC. The Respondents do not specifically deny that threats were made by Mr. Kohr's supervisors in order to obtain contributions from Mr. Kohr and other management personnel.

Therefore, there is reason to believe that United Parcel Service Political Action Committee and Kenneth L. Schellie, Jr., as treasurer, violated 2 U.S.C. § 441b(b)(3)(A) and 11 C.F.R. § 114.5(a).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

NOVEMBER 22, 1993

Kenneth L. Schellie, Jr.
UPSPAC
400 Perimeter Center
Terraces North
Atlanta, GA 30346

RE: MUR 3770

Dear Mr. Schellie:

On November 16, 1993, the Federal Election Commission found that there is reason to believe United Parcel Service violated 2 U.S.C. § 441b(b)(3)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and 11 C.F.R. § 114.5(a) of the Commission's rules and regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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Sincerely,

Scott E. Thomas
Chairman

Enclosures
Factual and Legal Analysis
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Designation of Counsel Form

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: United Parcel Service **MUR:** 3770

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A separate segregated fund is prohibited from making a

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contribution or expenditure utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal. 2 U.S.C. § 441b(b)(3)(A); 11 C.F.R. § 114.5(a). All written solicitations for contributions to a separate segregated fund must inform the person being solicited that he has the right to refuse to contribute without any reprisal. 2 U.S.C. § 441b(b)(3)(C); 11 C.F.R. § 114.5(a)(4). Additionally, all written solicitations must contain statements informing the person being solicited of the political purposes of the fund. 2 U.S.C. § 441b(b)(3)(B); 11 C.F.R. § 114.5(a)(3). Guidelines for contributions may be suggested by a corporation or its separate segregated fund, provided that the person being solicited is informed that the guidelines are merely suggestions and that he is free to contribute more or less than the suggested guidelines without fear that the corporation will favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute. 11 C.F.R. § 114.5(a).

Pursuant to 2 U.S.C. § 434(b), every committee must file reports which disclose the amounts of all contributions to federal candidates, the name of the federal candidate, and the address of the candidate.

A corporation may use its general treasury monies, including monies obtained in commercial transactions and dues monies or membership fees, for the establishment, administration, and solicitation of contributions for its

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separate segregated fund. 2 U.S.C. § 441b(b)(2)(C); 11 C.F.R. § 114.5(b). Also, a corporation may exercise control over its separate segregated fund; for example, by directing the disbursement of voluntary contributions to its separate segregated fund, including the determination of the candidates to whom the contributions are made. 11 C.F.R. § 114.5(d).

A. COMPLAINT AND RESPONSE

The Complainant in this matter alleges that when he was employed with UPS as a member of management, UPS tried to coerce him and other management personnel to make contributions to UPSPAC. Mr. Kohr states that he is concerned about how "UPS strong arms its supervisory people into contributing to [UPSPAC]." Mr. Kohr also states that he and other management personnel received a newsletter from UPS soliciting suggested contributions for UPSPAC, and a card which was to be returned with the donor's contribution. It is Mr. Kohr's assertion that contributions were not kept anonymous. He states that although employee's names were not used, the contribution cards included the employee number of the person being solicited in the upper right hand corner. Mr. Kohr states further, that this employee number was used on "every file, every payroll check, in fact on every official form that pertained to a particular employee." Mr. Kohr alleges that initially he and other supervisors were told by upper management that the employee numbers were for "accounting and tax purposes."

Mr. Kohr states that UPSPAC had a very low response from management personnel from his office, and that his superiors

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"suggested that perhaps those that had not contributed did not belong as management personnel at UPS." Mr. Kohr also indicated that his superior met with him and other management personnel on more than one occasion in an attempt to increase the amount of contributions from his division. It is Mr. Kohr's assertion that only after "we as a group of supervisors" sent in contributions to UPSPAC, did the pressure from his superiors cease. Mr. Kohr further asserts that the "employee number" on the donation cards was used to assist his superior in determining which management personnel had contributed to UPSPAC.

Mr. Kohr also states that an overseas subsidiary of UPS, Overseas Partners Limited, was based in Bermuda "to take advantage of the tax laws in the country." Mr. Kohr asserts further that UPS set up Overseas Partners Limited to evade paying taxes on income, generated by Overseas Partners Limited, to the United States goverment.

Kenneth L. Schellie, Jr., UPSPAC's treasurer, responded to Mr. Kohr's complaint for both UPS and UPSPAC. Mr. Schellie states that UPSPAC has thus far received contributions of $1.24 million from approximately 15,630 contributors during the 1992-93 solicitation. Mr. Schellie also notes that Mr. Kohr's complaint is the only one that the Commission has ever received concerning UPSPAC.

Mr. Schellie states that UPSPAC solicits contributions from its "executive and administrative personnel who are also shareowners of UPS on an annual basis", and that UPSPAC used the

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following routine methods to solicit the contributions:

> Each year a brochure is given to eligible contributors, together with (i) a contribution card (ii) a letter from UPS's Chairman, and (iii) a return envelope addressed to the Treasurer of UPSPAC. We also have used video, slide and oral presentations at meetings where eligible contributors are gathered to explain UPSPAC and to solicit contributions. In each case, we make it clear that contributions are voluntary and will be kept confidential. Contributions are returned directly to the Treasurer of UPSPAC.[1]

Mr. Schellie does admit that "UPS employee number" (Social Security Number) appears on the UPS contribution card, but states that the purpose of the "employee number" is to track contributions for FEC reporting and for payroll deductions. Mr. Schellie adds, that "[t]he identity of the contributors and non-contributors is kept highly confidential within the Company and is not disclosed to anyone not among the small circle of UPSPAC personnel with a clear need to know." Mr. Schellie also states that top level UPS managers are provided with reports regarding contributions made at district, region and corporate department level, which contains information only on the number of contributors in the aggregate. Mr. Schellie states that these reports do not contain information concerning the identity of any contributors and could not be used to pressure any employee to contribute to UPSPAC.

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1. A copy of UPSPAC's most current materials, including a brochure and contribution card, were enclosed along with its response.

B. **ANALYSIS**

As noted above, it is impermissible for a separate segregated fund to make a contribution or an expenditure from money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal. Although the Complainant in this matter has accused UPS and UPSPAC of using impermissible threats in order to obtain contributions from its managers, the Respondents' response only explained UPSPAC's procedures for soliciting contributions and asserted that this was the first complaint ever filed with the Commission concerning UPSPAC. The Respondents do not specifically deny that threats were made by Mr. Kohr's supervisors in order to obtain contributions from Mr. Kohr and other management personnel.

Therefore, there is reason to believe that United Parcel Service violated 2 U.S.C. § 441b(b)(3)(A) and 11 C.F.R. § 114.5(a).

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COMMISSION
MAIL ROOM

Dec 9 1 26 PM '93

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

JAN WITOLD BARAN
(202) 429-7330

FACSIMILE
(202) 429-7049
TELEX 248349 WYRN UR

December 8, 1993

BY FACSIMILE & FIRST CLASS MAIL

Lawrence D. Parrish, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
93 DEC -9 PM 3:30

Re: MUR 3770 (United Parcel Service, Inc. et al)

Dear Mr. Parrish:

This is to confirm our telephone conversation today at which time I advised you that this office represents United Parcel Service, Inc. ("UPS") as well as UPSPAC and its treasurer, Kenneth Schellie, in the above-captioned matter. Enclosed please find executed Statements of Designation of Counsel to that effect.

It is my understanding that two letters dated November 12, 1993, were sent to Mr. Schellie advising him that the Commission has found "reason to believe" that UPS and UPSPAC respectively violated the Federal Election Campaign Act. In our conversation today, I requested a meeting with you and Assistant General Counsel Abigail Shaine to discuss this case. Our clients wish to provide additional information, if possible, in order to demonstrate that no violation has occurred.

I look forward to your confirmation of such a meeting.

Sincerely,

Jan Witold Baran

Encls.

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STATEMENT OF DESIGNATION OF COUNSEL

RECEIVED
FEDERAL ELECTION COMMISSION
93 DEC -9 PM 3:30

MUR 3770

NAME OF COUNSEL: Jan Witold Baran

ADDRESS: Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

TELEPHONE: (202) 429-7330

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.

Dec. 8, 1993
Date

Kenneth Schellie Jr
Signature

RESPONDENT'S NAME: United Parcel Service PAC (UPSPAC) and Kenneth Schellie, Jr., as Treasurer

ADDRESS:

TELEPHONE: HOME( )

BUSINESS( )

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 3770

NAME OF COUNSEL: Jan Witold Baran, Esq.

ADDRESS: Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

TELEPHONE: (202) 429-7330

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
93 DEC -9 PM 3:30

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.

Dec. 8, 1993
Date

Kenneth J. Schelle, Jr.
Signature

RESPONDENT'S NAME: United Parcel Service, Inc.

ADDRESS:

HOME PHONE:

BUSINESS PHONE:

9704384514 1

Michael P. Kohr
R.F.D. #3 Box 236A
Princeton, IL 61356
815-872-0030

Mr. Marty Lewis
c/o FEC
999 East Street NW
Washington, D.C. 20463

MUR 3772

Dear Mr. Lewis:

Following is my affidavit in reference to my experience at United Parcel Service and that corporation's tactics in extorting "donations" to the political action committee, UPSPAC.

I was employed from 1975 to 1992 at United Parcel Service. I was a full-time supervisor from 1982 until 1992. During that time frame I was subjected to intimidation, harassment, and pressured into "donating" money to a political action committee called UPSPAC.

UPSPAC was formed in 1989 with the authorization of United Parcel Service and claims to be separate from that corporation. In 1989, supervisors, were informed of UPSPAC's inception and intent by our managers. I also received a letter, via the United States Postal Service, from UPSPAC that explained the PAC and suggested a dollar amount that supervisors should "donate." In addition to the letter I also received a "Donation Card" that the letter instructed must be returned with my "donation." This "Donation Card" had typed on it, my individual payroll number, 472047. United Parcel Service has computerized files on each of its employees and the payroll number appears on nearly every important document pertaining to an individual employee. Access to an employee's payroll number enables one to access that persons files through UPS's computer system.

That first year, 1989, we as a group of supervisors, in the Peru Center, did not donate to UPSPAC. I believe the other supervisors were at that time, Dan Voitik, now in customer service, and Larry Kedzie, now assigned to the Palatine Center. We had questions as to the legality of the payroll number appearing on the "donation card." We were informed by our center manager, Tom Carter, now assigned to the Rockford Center, and our division manager, Jim Dobbins, now retired, that the number appeared only for legalities concerning the FEC. We were assured that only the coordinator of UPSPAC had access to who donated and those UPS partners that did not.

In-spite of our doubts about this explanation and our fears that we would be held to the fire if we did not "donate," we did not contribute to UPSPAC that year. The other supervisors and I had fundamental objections about all PACs and their effect on our political establishment. I was also upset by what I perceived to be an act of intimidation on the part of the PAC and UPS by including our payroll numbers on the "donation cards." At meetings and training seminars I found my feelings shared by many other supervisors from other operations. It seemed as if I could find nobody that had "donated" to UPSPAC that first year. At years end we were informed by our managers that UPSPAC had only received "donations" from a fraction of partners contacted. We were also informed of their dissatisfaction with this result. If my memory

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serves me correctly the figure we were given was 17% of UPS partners had "donated" to UPSPAC in 1989. I was still worried that UPS would identify which partners had "donated" and those that chose their constitutional right not to, but I was encouraged that so many partners had not donated that there was nothing upper management at UPS could do about it. Very shortly I was to be corrected in this thinking.

Early in 1990 myself, Dan Voitik and a new supervisor, Kerry Snyder (Larry Kedzie was transferred to the Palatine facility), were informed by our center manager, Tom Carter, about a UPS meeting he had attended, in which UPSPAC and the abysmal response of UPS partners in donating to this PAC was discussed. Tom informed us that he was instructed to relay the message that partners that worked at UPS, that could not agree to "donate" to UPSPAC did not deserve to work at UPS, and should perhaps start looking for work elsewhere. I was not pleased by this message but knowing that it was logistically impossible for UPS to fire over 80% of its supervisors I held back in "donating," again.

After a month or so, we as a group of center supervisors, were again talked to about UPSPAC, this time by our division manager. We were aware through company documents that the "donations" to UPSPAC in early 1990 were as poor as those of 1989. Our division manager, Jim Dobbins, reviewed 1989's poor response to UPSPAC by UPS' partners and presented us with a breakdown of "donations" by region throughout the company. He held these meetings with all supervisors in his division. He also told us that UPS was pursuing a more aggressive push to solicit donations on behalf of UPSPAC in 1990. A month or two passed and through company documents we knew that on a national level the response to UPSPAC was not improving.

Again we were summoned to a meeting to discuss UPSPAC with our division manager. He now presented further breakdowns of the "donations" to UPSPAC by UPS partners in a district by district level. In addition to district levels of "donations" the numbers were also broke down on a district level by managers, supervisors, and staff level managers. This was our third "closed door" meeting about UPSPAC with our managers. In each meeting we had been presented with ever smaller breakdowns of how various units of UPS had responded to UPSPAC's call for money. The three larger units of the company had been broke down for us. There was left the division level, the center level, and the individual level. As none of us in the center had "donated" to UPSPAC and I knew of nobody within the division level that had donated, the company had only to take the breakdown one more step to identify us as among the "unfaithful" that did not deserve to work for UPS. Of course I was unbelieving that the company did not have knowledge of each individuals participation. The payroll number on our "donation" cards gave the company instantaneous access to that information.

Our managers were very careful to say that they did not have knowledge of our individual participation and in fact stated that such knowledge was in violation of the law.

It was after this third meeting that we supervisors, in the center decided it was in the interest of our careers to "donate" to UPSPAC in-spite of our fundamental objections to PAC's. Curiously, after we supervisors, in the Peru Center, decided to "donate" to UPSPAC no more meetings on the subject were held. Not another word was said to us on the topic. I feel we were no longer harassed, pressured, and intimidated because our managers knew we had coughed up the money.

In the attached UPSPAC brochure it states, "It [UPSPAC] is authorized by UPS, but is separate from the company and accountable to the Federal Election Commission (FEC)." If UPSPAC is separate why are internal UPS company codes,

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namely payroll numbers, used by this PAC on their "donation" cards? Would not names and addresses be sufficient, or perhaps the social securty numbers? Why was it so important that this code, the payroll number, which allowed anyone with access to UPS's computer system to almost instantaneously compile a list and file of those that donated and those that did not? A list that would be automatically compiled by region, district, division, center and lastly by individual levels. If UPSPAC is separate why does UPS upper management spend time, effort, and expense in tracking "donations" of UPS's supervisors? If UPSPAC is separate why does UPS force its supervisors to attend meetings in which they are harassed, intimidated and coerced by their managers, into "donating" to UPSPAC? Would not this time, effort, and expense on behalf of UPSPAC constitute direct support by UPS? These are my feelings now and my feelings as an employee of UPS then. As an employee of UPS I also felt intimidated, coerced, and harassed into making a "donation" to an organization that I opposed on the most fundamental precepts. If UPSPAC is accountable to the FEC as they state in their brochure then I hope that such heavy handed tactics, and morally repugnant behavior practiced by UPS will be punished and stopped. Suggestions and threats of termination for lack of participation in a political organiztion is the same as extortion and should be treated as such.

Respectfully,

Michael P. Kohr

Michael P. Kohr
11/22/94

Debra J. Landrus

Notary Public

OFFICIAL SEAL
DEBRA J LANDRUS
NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXP. FEB. 13,1997

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: July 12, 1995

SUBJECT: MUR 3770 - General Counsel's Report

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

Open Session _____

Closed Session _____

CIRCULATIONS		DISTRIBUTION	
72 Hour Tally Vote	(XX)	Compliance	(XX)
Sensitive	(XX)		
Non-Sensitive	( )	Audit Matters	( )
24 Hour Tally Vote	( )	Litigation	( )
Sensitive	( )		
Non-Sensitive	( )	Closed Letters	( )
		MUR	( )
		DSP	( )
24 Hour No Objection	( )		
Sensitive	( )		
Non-Sensitive	( )	Status Sheets	( )
Information	( )	Advisory Opinions	( )
Sensitive	( )		
Non-Sensitive	( )		
Other	( )	Other (See Distribution below)	

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RECEIVED
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COMMISSION
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BEFORE THE FEDERAL ELECTION COMMISSION

JUL 12 9 25 AM '95

SENSITIVE

In the Matter of	)	
	)	
United Parcel Service	)	MUR 3770
United Parcel Service Political	)	
Action Committee and	)	
Kenneth L. Schellie, Jr., as treasurer	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter involves allegations by a complainant that United Parcel Service ("UPS") pressured and intimidated its employees to contribute to United Parcel Service Political Action Committee ("UPSPAC"). The Commission found reason to believe that UPS, and UPSPAC and its treasurer, Kenneth L. Schellie, violated 2 U.S.C. § 441b(b)(3)(A) and 11 C.F.R. § 114.5(a).

The complainant, a former UPS employee, alleged that between 1989 and 1992, while he was a supervisor at UPS, management officials pressured and intimidated him and other supervisors into contributing to UPSPAC. He explained that he and other supervisors received a newsletter from UPS soliciting contributions for UPSPAC, and a card which was to be returned with the contribution. Attachment 1. The solicitation advised that contributions are confidential, but it did not include certain protections prescribed in 2 U.S.C. § 441b(b)(3) and 11 C.F.R. § 114.5(a) - that contributions are voluntary, that contribution guidelines are merely suggestions, and that employees had a right

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not to contribute at all.

The complainant explained that he and other supervisors had fundamental objections about political action committees (PACs) in general and therefore did not contribute initially. He also complained that contributions were not kept anonymous; contribution cards showed each supervisor's employee number. He alleged that although management claimed that the employee numbers were used only for "accounting and tax purposes," he believed that the employee number on the contribution cards was used to monitor contributions to UPSPAC. He explained that he perceived the presence of the employee number on the UPSPAC donation cards as an act of indirect intimidation because the employee number made individual contributors easily identifiable.

The complainant stated that when he and the other supervisors did not contribute as expected, his superiors indicated that "partners that worked at UPS, that could not agree to 'donate' to UPSPAC did not deserve to work at UPS, and should perhaps start looking for work elsewhere." He also stated that on three occasions management officials summoned him and other supervisors into meetings attempting to increase the level of contributions. He asserted that only after "we as a group of supervisors" sent in contributions to UPSPAC, did the pressure from management cease.

In response to the complaint, respondents noted that in all of the years of UPSPAC's existence (since 1976) this complaint is the only one that the Commission has received concerning UPSPAC. Respondents advised that UPSPAC received contributions of $1.24 million from approximately 15,630 contributors during 1992-93.

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Respondents further explained that every year UPS solicits contributions from its "executive and administrative personnel" who are also shareowners of UPS. Each year a brochure is given to eligible contributors, together with (i) a contribution card (ii) a letter from UPS's Chairman, and (iii) a return envelope addressed to the Treasurer of UPSPAC. UPS also used video, slide and oral presentations at meetings to explain UPSPAC and to solicit contributions. Respondents emphasized that contributions were to be returned directly to the Treasurer of UPSPAC.

Respondents also claimed they made it clear that contributions were voluntary and confidential. Respondents provided a sample of UPSPAC's solicitation materials consisting of an information sheet, a solicitation letter dated May 14, 1992, and a contribution card and envelope. Attachment 2. Under the heading "How much should you contribute?" the information sheet stated the following: "[t]he amount you should contribute is a personal decision and will neither benefit nor disadvantage you in your job at UPS." Attachment 2, page 3. The information sheet characterized the contribution guidelines therein as "suggested amounts." In addition, the May 14, 1992 solicitation letter advised that contributions were voluntary.

Respondents acknowledged that the employee number appeared on contribution cards, but stated that the purpose of the number was to track contributions for FEC reporting and for payroll deductions. Respondents noted that "[t]he identity of the contributors and non-contributors is kept highly confidential within UPS and is not disclosed to anyone not among the small

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circle of UPSPAC personnel with a clear need to know." Respondents also acknowledged that senior UPS managers were provided with reports regarding contributions made at district, region and corporate department level. However, respondents noted that those reports contained information only on the number of contributors in the aggregate. Furthermore, respondents pointed out that the reports did not contain information concerning the identity of contributors, and therefore, could not have been used to pressure an employee to contribute to UPSPAC.

II. DISCUSSION

The Commission's reason to believe finding focused on the complainant's allegations of coercion. At that time, this Office recognized that further investigation was necessary to corroborate those allegations. It was determined that formal discovery was premature and that an informal investigatory approach was more appropriate. The initial step was to interview the complainant to help assess his credibility and to obtain additional relevant information from him. In this regard, this Office contacted the complainant by telephone to discuss the allegations. Based on that conversation, this Office determined that the complainant was sufficiently credible to warrant further investigation of the allegations. A recent signed statement from the complainant is included as Attachment 3.

In response to the Commission's reason to believe notice, counsel for respondents denied that a violation occurred

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In conjunction with one of the newly-hired investigators, this Office proceeded to contact former UPS employees who Mr. Kohr identified.

Mr. Kohr identified six potential corroborating witnesses. Four of them are still employed with UPS, and therefore, were not contacted. The two remaining individuals were contacted by telephone. One of those individuals, William R. Tolmie, a former UPS supervisor from 1985 to 1988, provided some corroboration for Mr. Kohr's allegations.[1/] Specifically, in a telephone interview, Mr. Tolmie explained that he was employed by UPS from 1980 through 1988 - as a driver from 1980 to 1985, and as a supervisor from 1985 until his resignation in 1988. Mr. Tolmie related that in the fall of each year between 1985 and 1988, his immediate supervisor would notify him that a contribution to UPSPAC was required. Mr. Tolmie related that he was certain that his supervisor specified the amount that he was expected to contribute to UPSPAC. He explained that he felt that it was mandatory that he contribute, but he did not feel threatened. He advised that this was the normal way that UPS conducted its business. It was understood that "you either did what was requested of you or you

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1/ This Office was unsuccessful in its attempt to obtain a signed statement from Mr. Tolmie.

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would find yourself without a job." He stated that he believed that full-time supervisors were required to contribute more money than part-time supervisors. Mr. Tolmie was unable to recall the amount of his contributions and was unable to provide documentary evidence of his contributions.[2/]

This Office has exhausted its informal investigation into immediate leads provided by complainant with mixed results. Most of the individuals the complainant identified as potential corroborating witnesses are current UPS employees, and therefore, were not contacted. Additionally, the former employees this Office contacted were not completely cooperative.[3/]

At this time, the available information is not sufficient to establish coercion. Nevertheless, it is noteworthy that the information sheet respondents provided points to intensified efforts by UPS to increase employee participation levels during the period cited in the complaint. Attachment 2, page 3. That document showed that due to UPS's efforts employee contributions to UPSPAC increased from a little over $400,000 in 1989 to $645,000 in 1990, and to over $1 million in 1991. Likewise, employee participation increased from 38 percent in 1989 to 61

2/ The public record does not reflect contributions by Mr. Kohr or the individuals he identified. A probable explanation for this is that the contributions were not itemizable. The UPSPAC solicitation the complainant provided listed $25 or $50 as the suggested contribution for junior managers. Attachment 1.

3/ The other individual the complainant identified, Jim Dobbins, a former UPS Division Manager, did not respond to telephone calls. Yet another former UPS employee identified by Mr. Tolmie, Donald Schwartz, did not want to discuss UPS's activities.

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percent in 1990, and to 69 percent in 1991. Consistently, public records show increasing levels of contributions to UPSPAC and increasing levels of contributions by UPSPAC to political candidates in recent years. Attachment 4.

In order to proceed on the coercion issue the next step would require this Office to conduct investigation using formal discovery methods: deposition subpoenas directed to current and former employees of UPS who already have been identified to this Office, and documentary and deposition subpoenas directed to UPS and UPSPAC. However, before engaging in additional, probably lengthy, investigation on the difficult issue of coercion, this Office believes that the Commission may be able to achieve a desired regulatory effect through the available solicitation materials.

The existing reason to believe finding in this matter was based on section 441b(b)(3)(A) of the Act (unlawful for a separate segregated fund to use contributions secured by coercion). Therefore, to pursue respondents based on the deficient solicitation materials the Commission would need to modify its existing reason to believe finding against respondents to include violations of section 441b(b)(3)(C) of the Act. That provision makes it unlawful for any person soliciting an employee for a contribution to a separate segregated fund to fail to inform such employee, at the time of such solicitation, of the employee's right to refuse to so contribute without any reprisal. 2 U.S.C. § 441b(b)(3)(C). The existing reason to believe findings included violations of the Commission's regulations at 11 C.F.R.

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§ 114.5(a), which also addresses this right at subparagraph (a)(4). The Commission's regulations at 11 C.F.R. § 114.5(a) impose several other disclosure requirements in solicitations. As pertinent here, the regulations provide that if a solicitation specifies a certain dollar amount to be contributed, it must contain a statement indicating that the proposed amount is merely a guideline and that the employee is free to contribute a larger or lesser amount without any fear that the employee will be disadvantaged based on the amount contributed or a decision not to contribute. 11 C.F.R. § 114.5(a)(2). Also, contribution guidelines may not be enforced. Id. Finally, all written solicitations addressed to employees must contain the required information. 11 C.F.R. § 114.5(a)(5).

Both the written solicitation which the complainant submitted and the more recent one respondents provided failed to advise UPS employees of their right to refuse to contribute to UPSPAC without reprisal. The solicitation complainant provided also did not specify that contributions were voluntary and that contribution guidelines were merely suggestions. Although the more recent solicitation respondents provided specified that contributions were voluntary and that the contribution guidelines were suggested amounts, nowhere did it inform employees of their right to refuse to contribute to UPSPAC without reprisal. Rather, it indicated to employees that the only latitude available to them was in the amount they chose to contribute. Under the heading "How much should you contribute?" the solicitation stated: "[t]he amount you should contribute is a personal decision and will

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neither benefit nor disadvantage you in your job at UPS." Attachment 2, page 3.

The complaint itself appears to be a consequence of UPS's failure to advise employees of their right to refuse to contribute to UPSPAC without reprisal. At a minimum, the complaint conveys the complainant's perception that he and other UPS employees were being coerced into contributing to UPSPAC. The legislative history of section 441b(b)(3)(C) show that the provision was promulgated to address such a perception. The provision is one of three safeguards included in the 1976 Senate bill amending the Act. In the Senate Floor Debates on S. 3065, March 24, 1976, Senator Cannon, who cosponsored the amendment (No. 1516) which included the safeguards stated: "[t]his same section was further modified to expand the provision prohibiting coercion by corporations and labor organizations by adding three specific prohibitions to protect employees during the solicitation process." Legislative History of Federal Election Campaign Act Amendments of 1976, pages 492-3 (1977).[4/]

UPS acknowledged that it also made oral solicitations to its employees. The complainant reported that he was summoned to three meetings in which oral solicitations were made without the required notices. Judging from the two written solicitations

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4/ The other two safeguards consisted of a requirement that solicitations state the political purpose of the fund and a prohibition against an employee soliciting a subordinate employee. The prohibition against solicitation of a subordinate employee was dropped in the Conference Report. See Legislative History of Federal Election Campaign Act Amendments of 1976, page 1077 (1977). (remarks of Congressman Hays).

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provided to this Office and the oral solicitations the complainant described, it appears that many more of UPS's solicitations did not advise employees of their right not to contribute to UPSPAC. Therefore, it appears that respondents also are in violation of 2 U.S.C. § 441b(b)(3)(C).

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

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IV. RECOMMENDATIONS

1. Find reason to believe that United Parcel Service and United Parcel Service Political Action Committee and Kenneth L. Schellie, Jr., as treasurer, violated 2 U.S.C. § 441b(b)(3)(C) and offer to enter into conciliation prior to a finding of probable cause to believe.

2. Approve the attached proposed conciliation agreement

3. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

Date 7/11/95

BY: Lois G. Lerner
Associate General Counsel

Attachments
1. Complainant's solicitation
2. Respondents' solicitation materials
3. Recent statement from complainant
4. Selected data on UPSPAC contributions
5. Conciliation Agreement

Staff Assigned: Kamau Philbert

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS
COMMISSION SECRETARY

DATE: JULY 17, 1995

SUBJECT: MUR 3770 - GENERAL COUNSEL'S REPORT DATED JULY 11, 1995.

The above-captioned document was circulated to the Commission on Wednesday, July 12, 1995 at 11:00.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	XXX
Commissioner Elliott	
Commissioner McDonald	
Commissioner McGarry	
Commissioner Potter	
Commissioner Thomas	

This matter will be placed on the meeting agenda for Tuesday, July 25, 1995.

Please notify us who will represent your Division before the Commission on this matter.

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JUL 28 12 45 PM '95

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

July 28, 1995

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General

SUBJECT: MUR 3770
United Parcel Service,
and United Parcel Service Political
Action Committee and Kenneth L.
Schellie, Jr., as treasurer

On July 25, 1995, the Commission found reason to believe that United Parcel Service, and United Parcel Service Political Action Committee and Kenneth L. Schellie, Jr., as treasurer, violated 2 U.S.C. §441b(b)(3)(C). However, the requisite Factual and Legal Analysis inadvertently was not included as an attachment to the General Counsel's Report and therefore was not approved by the Commission. Therefore, this Office recommends that the Commission approve the attached Factual and Legal Analysis. In order to inform Respondents of the Commission's action as expeditiously as possible, this memorandum is being circulated on a 24-hour tally basis.

RECOMMENDATION

Approve the attached Factual and Legal Analysis.

Staff assigned: Kamau Philbert

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: United Parcel Service, and United Parcel Service Political Action Committee and Kenneth L. Schellie, Jr., as treasurer

MUR: 3770

This matter was generated by a complaint filed on April 24, 1993, by Michael P. Kohr against United Parcel Service of America, Inc. (UPS), and its political action committee, United Parcel Service Political Action Committee ("UPSPAC"). On May 25, 1993, respondents filed a response to the complaint.

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires that all solicitations for contributions to a separate segregated fund must inform the person being solicited, at the time of such solicitation, that he or she has a right to refuse to contribute without any reprisal. 2 U.S.C. § 441b(b)(3)(C); 11 C.F.R. § 114.5(a)(4).

In his complaint Mr. Kohr alleged that between 1989 and 1992, he and other UPS supervisors were solicited, both orally and in writing, for contributions to UPSPAC. A UPSPAC solicitation Mr. Kohr provided did not advise that employees had a right to refuse to contribute to UPSPAC without reprisal. Mr. Kohr also alleged that on three occasions management officials, attempting to increase the level of contributions, summoned him and other supervisors into meetings in which they were orally instructed to contribute to UPSPAC. A sample UPSPAC solicitation for the year 1992 that respondents provided also

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did not advise employees of the right to refuse to contribute to UPSPAC without reprisal. Judging from the two written solicitations provided and the oral solicitations the complainant described, it appears that many more of UPS's solicitations may not have advised employees of their right not to contribute to UPSPAC without fear of reprisal.

Therefore, there is reason to believe that United Parcel Service, and United Parcel Service Political Action Committee and Kenneth L. Schellie, Jr., as treasurer, violated 2 U.S.C. §441b(b)(3)(C).

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel KGB

DATE: July 28, 1995

SUBJECT: MUR 3770-Memo to the Commission

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

Open Session _____

Closed Session _____

CIRCULATIONS		DISTRIBUTION	
72 Hour Tally Vote	( )	Compliance	(xx)
Sensitive	( )		
Non-Sensitive	( )	Audit Matters	( )
24 Hour Tally Vote	(xx)	Litigation	( )
Sensitive	(xx)		
Non-Sensitive	( )	Closed Letters	( )
		MUR	( )
		DSP	( )
24 Hour No Objection	( )		
Sensitive	( )		
Non-Sensitive	( )	Status Sheets	( )
Information	( )	Advisory Opinions	( )
Sensitive	( )		
Non-Sensitive	( )		
Other	( )	Other (See Distribution below)	

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
United Parcel Service and United Parcel Service Political Action Committee and Kenneth L. Schellie, Jr., as treasurer.	)	MUR 3770

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 1, 1995, the Commission decided by a vote of 6-0 to approve the Factual and Legal Analysis, as recommended in the General Counsel's Memorandum dated July 28, 1995.

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

Attest:

8-2-95
Date

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

Received in the Secretariat: Fri., July 28, 1995 12:45 p.m.
Circulated to the Commission: Mon., July 31, 1995 11:00 a.m.
Deadline for vote: Tues,. Aug. 01, 1995 4:00 p.m.

bjr

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
United Parcel Service;	)	MUR 3770
United Parcel Service Political	)	
Action Committee and Kenneth L.	)	
Schellie, Jr., as treasurer.	)	

CORRECTED CERTIFICATION

I, Delores Hardy, recording secretary for the Federal Election Commission executive session on Tuesday, July 25, 1995, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions in MUR 3770:

1. Find reason to believe that United Parcel Service and United Parcel Service Political Action Committee and Kenneth L. Schellie, Jr., as treasurer, violated 2 U.S.C. § 441b(b)(3)(C) and offer to enter into conciliation prior to a finding of probable cause to believe.

2. Approve the proposed conciliation agreement

(continued)

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3. Approve the appropriate letters, as recommended in the General Counsel's Report dated July 11, 1995.

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

Attest:

July 27, 1995
Date

Delores Hardy
Delores Hardy
Administrative Assistant

9704384516 4

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 7, 1995

Jan Witold Baran, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 3770
United Parcel Service
United Parcel Service Political
Action Committee and Kenneth
L. Schellie, Jr., as treasurer

Dear Mr. Baran:

On November 16, 1993, the Federal Election Commission ("Commission") found reason to believe that United Parcel Service, and United Parcel Service Political Action Committee and Kenneth L. Schellie, Jr., as treasurer, violated 2 U.S.C. § 441b(b)(3)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and 11 C.F.R. § 114.5(a) of the Commission's regulations. After preliminary investigation, on July 25, 1995, the Commission found that there is reason to believe United Parcel Service, and United Parcel Service Political Action Committee and Kenneth L. Schellie, Jr., as treasurer, also violated 2 U.S.C. §441b(b)(3)(C). A Factual and Legal Analysis explaining a basis for the Commission's current finding is attached for your information.

In order to expedite the resolution of this matter, the Commission has decided to offer to enter into negotiations directed towards reaching a joint conciliation agreement with United Parcel Service, and United Parcel Service Political Action Committee and Kenneth L. Schellie, Jr., as treasurer, in settlement of this matter prior to a finding of probable cause to believe. The Commission has taken this action based on the available evidence and in advance of further investigation. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the

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Commission. As conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible. If you do not desire to negotiate a resolution of this matter at this time, please let us know immediately.

If you have any questions, or if you wish to arrange a meeting to discuss this matter, please contact Kamau Philbert, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Vice Chairman

Enclosures
Factual and Legal Analysis
Joint Conciliation Agreement

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: United Parcel Service, and United Parcel Service Political Action Committee and Kenneth L. Schellie, Jr., as treasurer

MUR: 3770

This matter was generated by a complaint filed on April 24, 1993, by Michael P. Kohr against United Parcel Service of America, Inc. (UPS), and its political action committee, United Parcel Service Political Action Committee ("UPSPAC"). On May 25, 1993, respondents filed a response to the complaint.

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires that all solicitations for contributions to a separate segregated fund must inform the person being solicited, at the time of such solicitation, that he or she has a right to refuse to contribute without any reprisal. 2 U.S.C. § 441b(b)(3)(C); 11 C.F.R. § 114.5(a)(4).

In his complaint Mr. Kohr alleged that between 1989 and 1992, he and other UPS supervisors were solicited, both orally and in writing, for contributions to UPSPAC. A UPSPAC solicitation Mr. Kohr provided did not advise that employees had a right to refuse to contribute to UPSPAC without reprisal. Mr. Kohr also alleged that on three occasions management officials, attempting to increase the level of contributions, summoned him and other supervisors into meetings in which they were orally instructed to contribute to UPSPAC. A sample UPSPAC solicitation for the year 1992 that respondents provided also

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did not advise employees of the right to refuse to contribute to UPSPAC without reprisal. Judging from the two written solicitations provided and the oral solicitations the complainant described, it appears that many more of UPS's solicitations may not have advised employees of their right not to contribute to UPSPAC without fear of reprisal.

Therefore, there is reason to believe that United Parcel Service, and United Parcel Service Political Action Committee and Kenneth L. Schellie, Jr., as treasurer, violated 2 U.S.C. §441b(b)(3)(C).

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COMMISSION
OFFICE OF GENERAL
COUNSEL
Dec 28 3 03 PM '95

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

December 28, 1995

JAN WITOLD BARAN
(202) 429-7330

FACSIMILE
(202) 429-7049

Jonathan A. Bernstein, Esq.
Kamau Philbert, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: MUR 3770 (United Parcel Service, et al.)

Dear Messrs. Bernstein and Philbert:

This letter is in response to your further inquiry regarding the above-captioned MUR. You have asked UPS to provide additional explanation of its follow-up solicitation practices. You have also requested copies of its 1989, 1990, and 1995 solicitation materials. This letter both explains the follow-up practices and provides a brief summary of the requested solicitation materials. Copies of those materials are enclosed.

FOLLOW-UP ANNOUNCEMENTS

As discussed in our submission of September 20, 1995, UPS does not engage in follow-up solicitations of employees who choose not to contribute to UPSPAC. Rather, UPS provides generalized oral announcements regarding the level of participation by employees in UPSPAC. The announcements are directed at particular management groups, and not at particular employees. District managers announce to their district's management employee shareholders (the Management Incentive Plan ("MIP") members) the level of participation for their particular district.[1] This announcement is

[1] As discussed in UPS's prior submission, all full-time management level employees with a certain amount of experience are eligible to participate in MIP, through which they receive a significant percentage of their annual income in UPS stock. Thus, all solicited employees during the years in question were management-level employee shareholders.

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based on the participation percentage of the district's employees collectively. Thus, in the case of the complainant, the follow-up announcement was based on the level of participation of the entire district, which included 450 members. Although not all districts contain the same number of members, all of the regions are large enough such that a generalized announcement of the district's level of participation is insufficient to identify whether any particular member did or did not contribute to UPSPAC.

The follow-up announcements are not made as part of a comprehensive presentation as the annual solicitations are. Follow-up information is typically provided as an incidental announcement at a meeting held for other (non-UPSPAC related) purposes. Accordingly, the follow-up announcements are not solicitations. Rather, they are simply UPS's efforts to inform its employees of the support they have provided to UPSPAC.

SOLICITATION MATERIALS

As the prior submission stated, UPSPAC's solicitation materials are provided to management employee shareholders as part of an annual presentation. This presentation involves several steps and various materials are provided to the attendees. For 1995, a slide presentation was used to emphasize certain information about UPSPAC. The 1989 and 1990 presentations utilized a videotape program rather than the slides. A copy of the 1990 video is provided with this submission. However, because almost seven years have passed and despite its extensive efforts, UPS has been unable to locate the 1989 videotape that you requested.

A review of the solicitation materials reveals that, taken together, substantial efforts are made to ensure that the participants understand that their choice to contribute is a voluntary decision that will not affect their employment status. The following language in the materials underscores this:

1995

- "Contributions are entirely voluntary, as is the amount you decide to contribute. The suggested giving amounts are simply guidelines designed to help you understand what UPS considers to be a fair contribution that will achieve our funding needs. In any case, we do not recommend that you contribute more than the suggested

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amount." (1995 Answer #2 in Questions and Answers Presentation).

- "Contributing is a personal decision and will neither benefit nor disadvantage you in your job at UPS." (1995 Answer #3 in Questions and Answers Presentation).

- "Your decision to contribute is voluntary and confidential." (1995 Solicitation Letter accompanying Brochure and Contribution Card).

- "The amount you should contribute is a personal decision and will neither benefit nor disadvantage you in your job at UPS." (1995 Brochure).

- "The suggested amounts are as follows (contributions in excess of the suggested amounts are not recommended)." (1995 Brochure).

- "Contributions are kept confidential. Your decision to participate and the amount of your contribution will be kept confidential within the company and will not otherwise be disclosed, except to regulatory agencies as required by law." (1995 Brochure).

1990

- "We must emphasize at each presentation that contributions are voluntary and confidential." (February 8, 1990, cover letter to Region and District Managers).

- "At each presentation, it should be emphasized that all contributions are voluntary and confidential." (February 8, 1990, cover letter to District Managers).

- "Participation is entirely voluntary, but as a partner, I urge you to support this program to ensure that our voice is heard by the decision-makers." (1990 Talk Outline).

- "Your participation in UPSPAC is entirely voluntary and confidential." (1990 Solicitation letter accompanying Flier, Brochure, and Contributor Card).

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- "The amount that you should contribute is a personal decision and will neither benefit not disadvantage you in your job at UPS." (1990 Flier).

- "The suggested amounts are as follows, but feel free to contribute as much or as little as you like: [suggested amounts]" (1990 Flier).

- "Contributions are kept in the strictest confidence. Within UPS, only the UPSPAC treasurer has a record of who contributes." (1990 Flier).

- "All UPSPAC contributions are voluntary and confidential. Only the UPSPAC treasurer and the Federal Election Commission have a record of who contributes, as required by federal law." (1990 Brochure)

- "Any contribution to UPSPAC is entirely voluntary and confidential. It is up to you to decide whether you want to contribute and if so how much." (1990 Video Tape Comments of Chairman and CEO of UPS).

1989

- "All UPSPAC contributions are voluntary and kept in strictest confidence. Only the UPSPAC treasurer has a record of who contributes, which is required by federal law." (1989 Brochure).

- "Your participation in UPSPAC is entirely voluntary." (1989 Solicitation Letter accompanying Flier and Contributor Card).

- "The amount that you should contribute is a personal decision and will neither benefit nor disadvantage you in your job at UPS." (1989 Flier).

- "The suggested amounts are as follows, but feel free to contribute as much or as little as you like: [suggested amounts]" (1989 Flier).

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- "Contributions are kept in the strictest confidence. Within UPS, only the UPSPAC treasurer has a record of who contributes." (1989 Flier).

As these materials illustrate, UPS takes great efforts to ensure that its solicitation presentations fully inform management employee shareholders of their rights with respect to contributions to UPSPAC.

1992 Solicitation Materials

You have also inquired why the 1992 Question and Answer Sheet refers to a "decline to participate" box on the contribution card, when no such box is present on the card. Earlier versions of the contributor card contained this box for administrative purposes. UPSPAC did not maintain a record of individuals who indicated that they would not participate. In 1992, UPS determined that the box was no longer necessary for its administrative purposes, and removed it from the contributor card. The growth in the employee participation level in UPSPAC simply made it impracticable to receive contributor cards from those opting not to contribute. The changes were made to the card, but UPS neglected to change the Question and Answer sheet prior to the annual solicitation.

Currently, the contributor cards do not contain a box marked "decline to participate." (1995 contribution card). Employees who decline to participate simply do not return the card. UPS believes that this practice underscores that contribution practices are not recorded to determine individual participation.

As discussed in UPS's previous submission, UPS believes that its solicitation presentation adequately informs its management employee shareholders of their right to refuse to contribute. As a review of the solicitation materials show, the concept of a voluntary decision to contribute is strongly emphasized. The concept of a voluntary decision indicates that employees may decide whether or not to contribute; a predicate to this choice is that no harm will befall those who chose not to contribute. Moreover, UPSPAC keeps contributor information confidential, so even if an employee's direct manager wanted to, he or she would be prevented from taking any action based on a employee's contribution record because that record is unavailable. Thus, it is clear that

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Mr. Kohr's complaint is without merit. However, should you have any further concerns, please do not hesitate to contact this office.

Sincerely,

Jan Witold Baran

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 25, 1995

BY FACSIMILE AND REGULAR MAIL

Jan Witold Baran, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 3770
United Parcel Service
United Parcel Service Political
Action Committee and Kenneth
L. Schellie, Jr., as treasurer

Dear Mr. Baran:

Jonathan Bernstein and I appreciate your providing the 1991 and 1992 UPSPAC solicitation materials. As I advised you over the telephone today, after review of those materials we have a couple of additional questions. First, although the 1992 Question and Answer Sheet refers to a "Decline to participate" box, the corresponding contribution card provided did not have such a box. Second, the materials provided do not specifically address UPS's practice with respect to follow-up solicitations. Are employees advised of the right not to participate in each written or oral follow-up? How are follow-ups conducted? How are employees selected for follow-up solicitations. Finally, as the investigation covers UPS's solicitation practices from 1989 onwards, we request solicitation materials for 1989 and 1990. We would also like to review 1995 solicitation materials to see what UPS's current solicitation practices are.

Your positive response to the above items would better enable us to evaluate your response to the Commission's findings. Please feel free to contact me with any questions you may have regarding this matter.

Sincerely,

Kamau Philbert
Attorney
(202) 219-3690

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WILEY, REIN & FIELDING

1776 K STREET, N. W.
WASHINGTON, D. C. 20006
(202) 429-7000

October 10, 1996

WRITER'S DIRECT DIAL NUMBER

(202) 429-4253

FACSIMILE
(202) 429-7049

Jonathan A. Bernstein, Esq.
Kamau Philbert, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

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RE: MUR 3770 (United Parcel Service, et al.)

Dear Messrs. Bernstein and Philbert:

In your letter to this office of October 25, 1995, regarding the above-captioned Matter Under Review, you asked for samples of UPS's 1989 solicitation materials. In our response of December 28, 1995, we provided you with the majority of the 1989 solicitation materials, but were unable to locate a copy of the 1989 videotape used in the solicitation presentation. Recently, our client discovered a draft dialogue for the 1989 UPSPAC video. UPS does not know whether the draft was used or whether it was altered prior to any use, but is nonetheless providing it for your information.

Please contact me should you have any questions.

Sincerely,

Jason P. Cronic

Jason P. Cronic

UPSPAC Video

December 19, 1989

Oz at desk, super title	Hi, I'm Oz Nelson. Today I'd like to talk with you about a number of serious challenges facing UPS - challenges we must meet effectively - for the well-being of our company and for the personal financial well-being of all UPSers.
	We've all worked long and hard to build UPS into the successful company it is today.
Pkg. delivery scene	We've strived to give our customers excellent service...
D.I.T.I.P.S.	and we're working hard to enhance that service.
Pac Rim Photo	We've opened up new markets - we're world-wide now -

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Montage GrndSaver, Hundredweight, etc.	and, we're offering our customers new and better ways to ship their packages.
Oz at desk	In our ongoing effort to keep our rates attractively low, we've raised efficiency to a science.
Hub sort scene	Our buildings and vehicles - our entire system - is designed for maximum efficiency.
Triples	We truly run the tightest ship in the shipping business.
Autosort, computers, airplanes	To assure our leadership role in the future, we're investing billions of dollars in new buildings and equipment...new computers and telecommunications systems...and new aircraft - all of which will help speed both packages and information to our customers.

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Montage favorable magazine, newspaper headlines	Yes, day in and day out, year in and year out, we're working to build a company that many consider a model of a well-run modern business. We've got a lot to be proud of.
Oz at desk	And that's not all. Our people have benefited financially from our efforts. Our drivers have the highest-paying, most secure jobs in the industry, and you, our supervisors and managers, have shared in - or may soon share in - the profits of the company through the Managers' Incentive Program. However, everything we've worked so hard for can be wiped out by the simple stroke of a pen. That's right.
U.S. Capitol, zoom in	If certain legislation pending in Washington is signed into law, our growth, our profitability, and our prospects for the future could BE negatively affected.

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Montage footage competitors

Some of this pending legislation could give our competitors unfair advantages. Make no mistake - our competitors are stronger and more aggressive than ever. The U.S. Postal Service, Federal Express, RPS and many others are determined to increase their share of the small package delivery market.

Oz at desk

Other pending legislation could sharply increase our costs of doing business, which would force us to face a very unpalatable dilemma: We'd either have to raise our rates and risk losing business, or we'd have to accept reduced profitability, which would force us to cut back on our investments for the future and/or slow the growth rate of our hourly and management compensation.

For the next few minutes, several of our group managers will talk about the specific legislative challenges and opportunities facing UPS right now.

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ISSUES

(PLEASE SPECIFY WHICH ISSUES WILL BE COVERED BY WHICH SPEAKER SO APPROPRIATE INTRODUCTIONS AND TRANSITIONS CAN BE WRITTEN.)

Title: Random Roadside Controlled Sub. Testing	Issue: Random Roadside Controlled Substance Testing
Spokesman at desk	Hi, I'm _____. As many of you know, the Department of Transportation has mandated that all drivers of trucks in excess of 26,000 pounds must be tested for controlled substances.
Zoom in Feeder driver in vehicle	This means that all of our Feeder drivers will be tested. While UPS fully supports the D.O.T's testing effort -

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Feeder on interstate	we want to make our highways ~~as~~ drug free, as safe as possible - we are opposed to one proposed element of the D.O.T. testing program: government administered random roadside testing. If random roadside testing goes into effect - the issue is currently being considered by the courts and Congress -
Feeder driver in vehicle, zoom out to show vehicle	our Feeder drivers would be required to pull off the road and provide urine samples for the authorities. Feeder schedules would be disrupted, shipments could take longer to reach their destinations and our reputation for reliable, dependable service could be damaged.

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Spokesman in office	This is not to say that UPS opposes the concept of random controlled substances testing. In fact, we support it. However, we feel that random tests should be administered by the motor carriers themselves - and not the government - so disruptions to transportation schedules can be kept to a minimum. Many of our friends in Congress share our view on this and we hope they will prevail upon the Department of Transportation to allow employers to perform the random tests.
Title: Reasonable Access	<u>Issue: Reasonable Access</u>
Spokesperson in office	Hi, I'm ____. Reasonable access is an issue that threatens the cost effectiveness of our feeder operation, specifically our use of doubles.
Doubles	Doubles are a very economical way to move packages. They've helped us save a lot of money on our feeder movements. Furthermore, doubles have proven to be very safe and maneuverable.

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Doubles on secondary/access road

However, many state and local governments have sought to ban or restrict the use of doubles on local highways. We feel these bans and restrictions are in violation of the spirit, if not the letter, of the 1982 Surface Transportation Act.

Doubles on interstate

The 1982 act gives motor carriers the right to operate doubles on interstate highways from coast to coast, and it also stipulates that states should grant doubles reasonable access to the interstates - that is, state and local authorities should allow doubles to use local roads that feed interstates,

Doubles entering or exiting UPS facility

so the vehicles can get to and from their customers and their own terminals that are off the interstates. However, many states and local governments continue to restrict or prohibit the use of doubles on access roads.

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Spokesman in office	These local restrictions hurt us because they've forced us to restrict or curtail our use of doubles in certain areas thereby driving up our Feeder costs. It is essential that our friends in Congress understand that the federal government, in accordance with the 1982 Surface Transportation Act, needs to step in and establish national uniform standards for access to interstates for doubles.
Title: Radio Freq. Reallocation	<u>Issue: Radio Frequency Reallocation</u>
Spokesman in office	Radio frequency reallocation is an issue that can have a tremendous impact on the development of our business in the future. This is because radio data transmission will be a key factor in providing the delivery information our customers want and in maximizing the efficiency of our operations.

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Zoom in radio transmission tower	The problem is that there are presently not enough radio frequencies allocated for the transmission of radio data communications. The usable band of frequencies was reserved for other potential users many years ago - long before the regulatory authorities could forsee the explosive growth in data processing and telecommunications we've experienced during the past few years. We feel that the allocation of radio frequencies should be reviewed in the light of these unforseen technological developments, and that the usable frequencies should be reallocated to accommodate them.
Ham radio operator	Naturally, there are groups who wish to retain the present allocations, and, while we appreciate their positions, we feel that the radio frequencies in question are, at present, vastly underutilized.

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Radio transmission tower SUPER "Radio Frequencies - a Finite Resource"	Our position is that radio frequencies, as a finite resource, should not be assigned to special interest groups in perpetuity, but that their use should be periodically reevaluated to make sure that they're providing the greatest good to greatest number of users.
Spokesman in office	If radio frequencies are reallocated to accommodate the rapid expansion of radio data communications, all telecommunications users, and the American public in general, will benefit. We must make this clear to our friends in Congress.
Title: Clean Air Regulations	<u>Issue: Clean Air Regulations</u>

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Spokesman in office	UPS, like most of us, supports laws designed to clean up the air we breathe. However, some clean air measures initiated by the federal government are in conflict with those initiated by local governments. These conflicts are confusing, and, in many cases, counterproductive. Furthermore, they could cost us millions of dollars a year in lost productivity, and additional millions for vehicle modifications. Here's the problem:
Urban traffic, slow zoom out	Congress feels that we can help clean up the air of our most polluted urban areas by using low-polluting automotive fuels such as methanol and natural gas.
Zoom in on pkg. car in urban traffic	In order to use these fuels, UPS and other transportation companies would - at great expense - have to either modify their existing vehicles or buy new ones.

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Another pkg. car in traffic, slow zoom in then SUPER "prohibited" symbol through vehicle	Now, at the same time Congress would have us modify our vehicles to burn clean fuels, local authorities are coming up with their own initiatives to reduce air pollution. One of the most popular of these initiatives is to restrict the use of or ban commercial vehicles in high pollution areas, which, in many cases, are the central business districts of our major cities. Service to tens of thousands of our customers would be affected. In some cities, time of day restrictions are already in place.
Spokesman in office	So, we are facing the prospect of going to the great effort and expense of adapting our vehicles to burn clean fuels only to have them restricted or banned by local authorities! We feel that this is unfair, and that Congress should prohibit local authorities from restricting vehicles that use clean fuels.
Title: Japan All Cargo Route	<u>Issue: All Cargo Route to Japan</u>

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Spokesman in office	In the near future, the Department of Transportation will award an all-cargo air route to Japan to a U.S. air carrier. We hope to be that carrier.
Map showing route	We feel that obtaining this route is critical to the profitability and future growth of our business with Japan and the rest of the Pacific Rim. However, we are not the only company that wants this route. Several of our competitors are vying for it. You may recall that Federal Express beat us out in a similar competition for a small package air route to Japan a couple years ago.
Spokesman in office	In the end, access to and good relationships with influential Congressmen may determine who gets this important all cargo route. It is essential that our friends in Congress support our application.
Title: U.S. Postal Service Competition	<u>Issue: U.S. Postal Service Competition</u>

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Spokesman in Office	The U.S. Postal Service is, and will continue to be, a formidable competitor. It employs nearly four times as many people as we do and generates about four times our revenue. In addition, it pays no taxes and does not have to generate a profit in order to survive.
Graphic: 1st class letter giving $ to package	Further, the Postal service has a monopoly over first class mail, and in the past they've used revenues from first class mail to subsidize their package delivery business which, if allowed to stand on its own, would have lost money. This is unfair competition. Unchecked, it would drive down our rates and cut into our profitability. In the extreme, it could put us out of business.
U.S. Capitol or Oz talking with Congressman	We have presented our case to our friends in Congress and fortunately, in recent years, they've seen it our way: For the time being, at least, it has been mandated that all classes of U.S. mail must pay their own way.

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U.S.P.S. jet	However, this has not stopped the Postal Service from seeking unfair competitive advantages in the international arena - advantages that are already hurting our business overseas.
Graphic: 1st class letter giving $ to pkg.	For example, they're subsidizing their international letter with funds from their U.S. First Class mail operation,
Graphic: U.S.P.S. hand shaking foreign postal service's hand	and they're busy hammering out special agreements with foreign postal services that would give them unfair competitive advantages over private carriers in the areas of customs clearance and rates.
Spokesman on camera	No, we can't take our eye off the Postal Service for a minute. Only through constant vigilance and through the continued support of our friends in Congress can we hope to maintain a level playing field in our competition with our giant competitor.

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Title: Excessive Paperwork	Issue: Excessive Paperwork
Spokesman in office	It takes thousands of hours and costs UPS millions of dollars to comply with government paperwork requirements. Much of this paperwork is redundant and unnecessary.
On-vehicle inspection report	To reduce this burden, we have recommended that the onboard vehicle inspection report, which must now be carried on all our vehicles, be removed from vehicles weighing less than 26,000 pounds. This is our entire package car fleet.
Driver log	We are also asking that driver logs be eliminated where a driver starts and finishes in the same center or building.
Driver's time card	The driver's time card contains all the information the D.O.T. needs to monitor the driver.

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Spokesman in office	Support from our friends in Congress for reducing redundant paperwork could save UPS millions of dollars a year.
Title: Taxes	Issue: TAXES
Spokesman in office	No one likes taxes, but we recognize they are necessary to maintain a functioning government. Furthermore, as users of highways, railroads and air facilities, we recognize our responsibility to pay our fair share to maintain them.
Newspaper headlines taxes, deficit	However, we don't want to let the nation's or a state's tax burden fall unfairly on us. All our efforts at economy - the tenth saved here, the gallon of gas saved there - could all be wiped out by higher taxes. We all work too hard to let our earnings be unfairly taxed away.

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Spokesman in office	Government officials are always looking for ways to raise revenue, and it's essential that our interests be effectively represented when it's time to decide where that revenue will come from. We must have access to, and good relationships with the key legislators who shape tax policy.
Title: Hazardous Materials Trans.	<u>Issue: Hazardous Materials Transportation</u>
Spokesman in office	Misconceptions about hazardous materials are costing UPS millions of dollars a year.
Montage hazardous materials headlines	Here's the problem: Many state and local authorities have enacted strict regulations dealing with the transportation of hazardous materials and the disposal of these materials, should they be damaged in transit.

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Spokesman in office	In theory, we agree with these regulations. Extreme care should be taken in the transportation and disposal of hazardous materials...if the materials being transported are truly hazardous.
Photo household "hazardous materials"	The problem is that state and local authorities have classified many common, relatively harmless household substances as hazardous materials. These include oil-based paints, aerosol hair sprays, concentrated mouthwash and many cosmetics. These substances, when discarded by a household, are considered to be common trash, yet when they're discarded by a transportation company, like UPS, they're considered to be hazardous waste. We're required to go through elaborate, costly procedures in order to dispose of these materials.

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Spokesman in office	We feel that the federal government should step in and clearly define and establish uniform national standards for hazardous materials, so that truly hazardous materials will be handled with the extreme care they deserve, and relatively harmless materials can be handled without the elaborate, time consuming and costly procedures we are currently being required to use.
Oz in office	Okay, those are just a few of the key legislative issues facing UPS right now. How can we ensure that legislation favorable to UPS will be enacted, and that unfavorable legislation will not be enacted?

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Well, in politics, there's no way to ensure anything, but we can develop good relationships with legislators, so they will listen to our point of view on the issues. At UPS, we develop relationships with legislators in two ways: Through our Congressional Awareness Program and through UPSPAC, the UPS political action committee.

UPSer and Congressman

In our Congressional Awareness Program, UPS managers, in all our districts, visit and develop good personal relationships with Congressmen in their back home offices - the offices the Congressmen maintain in their home states - so when legislative challenges or opportunities arise, we can come in, discuss them, and request the Congressman's support.

UPSPAC graphic

Through UPSPAC, the UPS political action committee, we are able to help our friends in Congress get re-elected by contributing badly needed funds to their political campaigns.

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Bar graph - costs for running for House, Senate

The cost of running for political office has skyrocketed during the past decade. In the 1977-78 campaign years, it cost about $250,000 to run for the average House Seat, and about $2.6 million to run for the average Senate seat. In 1987-88, these costs rose to over half a million dollars for the House seat and almost $5.7 million for the Senate seat. One 1988 senate race in California cost the candidates a combined total of $20 million! How do the candidates finance these incredibly expensive campaigns?

Pie chart: Growing % campaign financing by PAC's

Increasingly, they're relying on contributions from political action committees. In 1977-78, congressional office seekers relied on PAC's for less than 19 percent of their campaign financing. In 1987-88, candidates received 33 percent of their campaign financing from PAC's.

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Oz in office

So, like them or not, PAC's are playing a more significant role than ever in American politics. In fact, it's almost impossible to run for national political office without PAC support. Our competitors have been quick to recognize and take advantage of the rising importance of PAC's in our political system.

Bar graph comparing USPS, Federal, UPS PAC's

For the last general election, in 1988, postal PAC's raised over $4.2 million. Federal Express raised about $1.1 million, and we raised less than $900,000. (CF, $141,000, AND ROADWAY, $68,000, PROBABLY SHOULD NOT BE MENTIONED).

The growth of Federal's PAC has been nothing short of phenomenal, and it reflects the importance they attach to gaining access to the people who make the laws and regulations that govern our business.

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Bar graph - growth of Federal's PAC	In 1983-84, Federal's PAC raised about $180,000...in 1985-86, over 390,000... and in 1987-88, almost $1.1 million. Let's compare that to our PAC's performance (UPSPAC STATS: $260,000, $550,000, $880,000). These are good increases in contributions, but clearly, if we hope to be fairly represented in our political system, we must do even better.
Montage Federal vehicles, planes, facilities	We must recognize that Federal's goals are nothing short of tilting the legal and regulatory playing field in their favor. Even as we speak, they are lobbying hard for a legislative proposal that would free them from state regulation, while we would remain regulated.
Newspaper headline Federal success in Indiana	They have already succeeded in this regard in Indiana, where the state has exempted them from regulation while we remain regulated.

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Oz in office

If we wish to effectively counteract Federal's and other competitors' political initiatives and maintain fair competition in the small package delivery business, we must give strong financial assistance to candidates who understand and support our point of view. How do we do this?

As most of you know, UPS, as a company, is prohibited, by law, from giving direct financial support to candidates running for public office. Only you, as employees, by contributing to the UPS PAC, can give financial support to candidates sympathetic to our point of view.

So, in the last analysis, the effectiveness of UPS's efforts in the political arena depend largely on you - your contributions to UPSPAC.

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This year, 1990, is an election year. All 435 members of the House of Representatives and 33 U.S. Senators are up for election. The outcome of these races could very well determine the business and regulatory climate in which our company must operate.

I strongly urge that you contribute as much as you can to UPSPAC, so we can give strong financial assistance to candidates who have demonstrated their support for our positions on the critical issues that face our company.

END

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RECEIVED
FEDERAL ELECTION
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SECRETARIAT

Oct 28 4 59 PM '96

FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 28, 1996

SENSITIVE

Certified Mail/Return Receipt Requested

Jan Witold Baran, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 3770
United Parcel Service, *et al.*

Dear Mr. Baran:

Based on a complaint filed with the Federal Election Commission on 24 April, 1993, and information supplied by your clients, United Parcel Service, and United Parcel Service Political Action Committee and Kenneth L. Schellie, Jr., as treasurer, the Commission, on 16 November, 1993, and on 25 July, 1995, found that there was reason to believe your clients violated 2 U.S.C. § 441b(b)(3)(C) and 11 C.F.R. § 114.5(a), respectively, and instituted an investigation of 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 that 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.

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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.

Should you have any questions, please contact Kamau Philbert, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Brief

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OGC Docket

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

SENSITIVE

MEMORANDUM

TO: THE COMMISSION

FROM: MARJORIE W. EMMONS/ LISA R. DAVIS

DATE: OCTOBER 29, 1996

SUBJECT: MUR 3770 - GENERAL COUNSEL'S BRIEF

The attached document is being circulated for your information.

Attachment

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
United Parcel Service	)	MUR 3770
United Parcel Service Political	)	
Action Committee and	)	
D. Scott Davis, as treasurer	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On November 16, 1993, the Commission initially found reason to believe that United Parcel Service ("UPS"), and United Parcel Service Political Action Committee ("UPSPAC") and Kenneth L. Schellie, Jr., as treasurer,[1] ("Respondents") violated 11 C.F.R. § 114.5(a).[2] On July 25, 1995, the Commission found reason to believe that Respondents also violated 2 U.S.C. § 441b(b)(3)(C). This Office conducted limited investigation into this matter, and this brief is a result of that investigation.

[1] On April 8, 1996, UPSPAC amended its Statement of Organization, replacing Mr. Schellie with D. Scott Davis as treasurer. The caption of this matter has been amended accordingly.

[2] The Commission also found reason to believe that UPS and UPSPAC violated 2 U.S.C. § 441(b)(3)(A), but has not pursued that issue further.

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II. FACTUAL AND LEGAL ANALYSIS

A. Law

Pursuant to section 441b(b)(3)(C) of the Federal Election Campaign Act of 1971, as amended ("the Act"), it is unlawful for any person soliciting an employee for a contribution to a separate segregated fund to fail to inform such employee, at the time of such solicitation, of the employee's right to refuse to so contribute without any reprisal. 2 U.S.C. § 441b(b)(3)(C); 11 C.F.R. § 114.5(a)(4). The Commission's regulations at 11 C.F.R. § 114.5(a)(5) also requires that all written solicitations addressed to employees must disclose this right.

B. Facts

UPS is a privately-held Delaware corporation with headquarters in Atlanta, Georgia. It operates a national parcel delivery service. UPSPAC is the separate segregated fund of UPS, as permitted by 2 U.S.C. § 441b(b)(2)(C). Between 1989 and 1992, UPS's employees were solicited by their superiors to contribute to UPSPAC. In one instance, several managers received a newsletter and brochure from UPS soliciting contributions for UPSPAC, and a card which was to be returned with the contribution. This brochure, which was attached to the complaint, did not contain any language regarding the right to refuse to contribute without reprisal. The only pertinent language in the brochure regarding the rights of solicitees was the following: Under the heading "How much should you contribute?" was the statement "The amount that you contribute is a personal decision. The suggested amounts are as follows: ...." In addition to the solicitation attached to the complaint, Respondents provided additional solicitations which failed to advise

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UPS employees of their right to refuse to contribute without reprisal.[3] Moreover, UPS periodically followed up on the solicitations orally in an effort to increase the level of contributions. At office meetings, the managers were informed of the level of contributions and were encouraged to contribute, if they had not done so already. Respondents also did not inform employees of their right to refuse to contribute to UPSPAC without reprisal in the oral follow-up solicitations.

Respondents acknowledged that every year UPS solicits contributions from its "executive and administrative personnel" who are also shareowners of UPS.[4] The basic solicitation program involves a presentation to an assembly of the shareholder employees. The presentation begins with a scripted introductory commentary explaining the purpose of the meeting and the objectives of UPSPAC. Next, a video tape or slide is shown to the audience, followed by further scripted remarks discussing the importance of contributions to UPSPAC. The employees are advised in the presentation that contributions are voluntary. Next, a series of scripted questions and answers are read to the employees to address frequently asked questions ("Q&A session"). As pertinent here, Question #3 of the Q&A session addressed the question "What if I don't want to contribute?" with the following response: "Contributing is a personal decision and will neither benefit nor disadvantage you in your job at UPS." Finally, each employee is given a solicitation package containing a solicitation letter, a brochure describing UPSPAC, a contribution card, and a

[3] Respondents provided a sample of their solicitation materials for 1989, 1990, 1991, 1992 and 1995.

[4] Respondents explained that all full-time management employees with a certain amount of experience, (28,000 out of 330,000 employees) are eligible to participate in UPS's Managers' Incentive Plan ("MIP"), a program through which managers receive a significant percentage of their annual income in the form of UPS stock.

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confidential return envelope addressed to the treasurer of UPSPAC. The solicitation letter advises that contributions are voluntary, and the brochure characterizes the contribution guidelines therein as "suggested amounts." In addition, under the heading "How much should you contribute?" the brochure states the following: "[t]he amount you should contribute is a personal decision and will neither benefit nor disadvantage you in your job at UPS."

C. Analysis

The solicitation attached to the complaint did not inform UPS employees of their right to refuse to contribute to UPSPAC without reprisal. Moreover, the more recent solicitations materials Respondents provided also did not inform UPS employees of this right. While the more recent solicitations informed employees that contributing to UPSPAC was voluntary; such disclosure does not satisfy the requirement that employees be informed of the right to refuse to contribute without reprisal. This requirement is separate and distinct from the requirement that contributions be voluntary. MUR 3024, First General Counsel's Report dated January 25, 1991. Therefore, even if a solicitation advises that contributions are voluntary, the solicitee must still be informed of their right to refuse to contribute without reprisal. Id. UPS failed to so inform its employees.

UPS's basic annual solicitation process involves an oral presentation and written solicitation materials which are distributed to the employees at the end of the presentation. When viewed as a whole, the only reference made during the annual solicitation process that even addressed the possibility that an employee did not have to contribute to UPSPAC was provided orally through Question #3 of the Q&A session. Question #3 addressed the question "What if I

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don't want to contribute?" with the following response: "Contributing is a personal decision and will neither benefit nor disadvantage you in your job at UPS." This statement is less than a clear statement informing employees of their unconditional right to refuse to contribute without reprisal and, more importantly, was not provided to the employees in writing. Therefore, after leaving the solicitation presentation, any awareness the employees may have had of their right not to contribute was left solely to memory.

The Commission's regulations also require that the right to refuse to contribute be included in all written solicitations. Respondents' written solicitation materials consisted of a cover letter, brochure, contribution card and return envelope. None of these materials included any language regarding the right to refuse to contribute without reprisal. In the more recent solicitations, the cover letter merely advised that contributing to UPSPAC is voluntary. And, under the heading "How much should you contribute?" the brochure stated: "[t]he amount you should contribute is a personal decision and will neither benefit nor disadvantage you in your job at UPS." As already stated, Question #3, posed during the Q&A session, was not even included in the written solicitation materials handed out to the employees. Therefore, rather than informing employees of the right not to contribute, the written solicitation materials indicated to employees that the only option available to them was in the amount they chose to contribute. Therefore, when viewed as a whole, Respondents' solicitations evidently failed to advise employees of the right to refuse to contribute without reprisal.

Furthermore, Respondents periodically followed up on their annual solicitations orally, and did so without informing the employees of their right to refuse to contribute. In fact, the periodic

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oral follow-up solicitations appear to be the genesis of this matter. Apparently, UPS's persistence in soliciting contributions to UPSPAC, in conjunction with its failure to advise employees of their right to refuse to contribute to UPSPAC without reprisal, made at least one known employee perceive that he and other UPS employees were being pressured into contributing to UPSPAC. The legislative history of section 441b(b)(3)(C) shows that the provision regarding the right to refuse to contribute was promulgated to address such a perception. The provision is one of three safeguards included in the 1976 Senate bill amending the Act. In the Senate Floor Debates on S. 3065, March 24, 1976, Senator Cannon, who cosponsored the amendment (No. 1516) which included the safeguards stated: "[t]his same section was further modified to expand the provision prohibiting coercion by corporations and labor organizations by adding three specific prohibitions to protect employees during the solicitation process." Legislative History of Federal Election Campaign Act Amendments of 1976, pages 492-3 (1977).[5] The legislative history of the provision, and the stated purpose of eliminating the implicit pressures on employees who are asked to contribute to a company's separate segregate fund, is further evidence that the oral statement in the Q&A session and the statement in the written solicitations that contributing to the PAC is voluntary do not adequately apprise employees of their right to refuse to contribute without reprisal.

[5] The other two safeguards consisted of a requirement that solicitations state the political purpose of the fund and a prohibition against an employee soliciting a subordinate employee. The prohibition against solicitation of a subordinate employee was dropped in the Conference Report. See Legislative History of Federal Election Campaign Act Amendments of 1976, page 1077 (1977). (remarks of Congressman Hays).

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Based on the foregoing, Respondents' solicitations did not satisfy the requirement of the Act or the Commission's regulations which require that employees be informed of the right to refuse to contribute without reprisal at the time of solicitation and in all written solicitations. Therefore, this Office is prepared to recommend that the Commission find probable cause to believe that United Parcel Service, United Parcel Service Political Action Committee and D. Scott Davis, as treasurer violated 2 U.S.C. § 441b(b)(3)(C) and 11 C.F.R. § 114.5(a).

III. GENERAL COUNSEL'S RECOMMENDATION

1. Find probable cause to believe that United Parcel Service and United Parcel Service Political Action Committee and D. Scott Davis, as treasurer violated 2 U.S.C. § 441b(b)(3)(C) and 11 C.F.R. § 114.5(a).

10/28/96
Date

Lawrence M. Noble
General Counsel

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COMMISSION
OFFICE OF GENERAL
COUNSEL

Nov 13 10 14 AM '96

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

JAN WITOLD BARAN
(202) 429-7330

FACSIMILE
(202) 429-7049

November 13, 1996

VIA HAND DELIVERY

Kamau Philbert, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: MUR 3770 (United Parcel Service et al.)

Dear Mr. Philbert:

This is in response to the notice we received November 1, 1996 indicating that your office is recommending that the Commission find probable cause that my client has violated certain statutory and regulatory provisions. I am hereby requesting twenty (20) additional days to respond to your probable cause brief, extending the response date to December 9. This time is required because of factual and legal issues that need to be addressed in response to your recommendation to the Commisssion.

I would appreciate a favorable reply to this request.

Sincerely,

Jan Witold Baran

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 14, 1996

BY FACSIMILE AND FIRST CLASS MAIL

Jan Witold Baran, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 3770
United Parcel Service, *et al.*

Dear Mr. Baran:

This is in response to your letter dated November 13, 1996, requesting an extension of twenty (20) days to respond to the General Counsel's Brief dated October 28, 1996. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on Friday, December 6, 1996.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Kamau Philbert
Attorney

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December 6, 1996

WRITER'S DIRECT DIAL NUMBER
(202) 429-4253

FACSIMILE
(202) 429-7049

Ms. Marjorie W. Emmons
Commission Secretary
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: FEC Matter Under Review 3770

Dear Ms. Emmons:

Please find enclosed ten (10) copies of Respondents' Brief in the above captioned Matter Under Review ("MUR"). Please note that Exhibits T-X are unsigned affidavits provided by witnesses having information relevant to this matter. Original, signed affidavits will be forward to your attention shortly.

Please note that three copies of this brief have been provided to the General Counsel's Office.

Sincerely,

Jason P. Cronic

cc: Lawrence W. Noble, Esq.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
United Parcel Service,	)	
United Parcel Service	)	MUR 3770
Political Action Committee,	)	
and D. Scott Davis, as	)	
Treasurer	)	

RESPONDENTS' BRIEF

The undersigned counsel, on behalf of United Parcel Service, United Parcel Service Political Action Committee ("UPSPAC"), and D. Scott Davis, hereby file this Respondents' Brief in response to the General Counsel's Brief of October 28, 1996, in Matter Under Review ("MUR") 3770. The General Counsel's Brief recommends that the Commission find probable cause to believe that Respondents violated the Federal Election Campaign Act of 1971, as amended ("FECA"). Respondents urge that the Commission reject this recommendation, and find in lieu thereof no probable cause to believe a violation has occurred.

I. INTRODUCTION

This Matter is before the Commission based on unsubstantiated allegations and an inflexible, and unfounded, reading of Commission regulations. In 1993, a former UPS employee, whose employment ended after a refusal to accept a transfer, filed a complaint alleging a multitude of illegalities by his former employer, ranging from bizarre claims of tax evasion to coercive PAC solicitation practices. From that broadside attack, the General Counsel's Office has

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gleaned supposed violations of 2 U.S.C. § 441b(b)(3)(C) and 11 C.F.R. § 114.5(a), stemming from the alleged inadequacies of UPSPAC's solicitation practices with respect to informing solicited employees of their right to refuse to contribute to UPSPAC without reprisal.[1]

As discussed further below, there is no credible substantiation of the complainant's charge. Even on its own terms, however, the charge must fail, as UPS's solicitation practices fully comply with FECA, and, indeed, those practices generally as well as UPS's specific actions in this case go beyond what FECA requires. The Commission should find that there is no probable cause in this Matter.

II. FACTS

Michael Kohr, the complainant in this case, was a management level employee in UPS's Northern Illinois District. That employment was terminated in 1992 in connection with Mr. Kohr's refusal to accept a transfer to another regional facility, a transfer which would have been a promotion. His refusal to transfer both prevented development of his own value to the company and prevented his position from being used to develop the skills of lower level employees, and thus necessitated his termination. This is

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[1] 2 U.S.C. § 441b(b)(3)(C) provides that "[i]t shall be unlawful for any person soliciting an employee for a contribution to such a fund to fail to inform such employee, at the time of such solicitation, of his right to refuse to so contribute without any reprisal." 11 C.F.R. § 114.5(a), in pertinent part, states the same requirement.

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the apparent cause of his various allegations against the company.[2]

The General Counsel's Brief unquestioningly accepts those allegations as facts. There is no indication of any independent verification from that office or even efforts at such verification. The only tangible evidence produced by the complainant is a single flier allegedly used in the course of the solicitation process, but there is no evidence that the flier was used during the period in question, and, indeed, the only date on the flier (1986) is years before the time period focused on in the complaint.

The only reliable information referenced by the General Counsel's Office consists of materials supplied by UPS after a meeting it arranged with FEC attorneys. These are materials used in UPS's solicitations of its employees during the time period in question, 1989-1992. Before those materials can be discussed, however, it is necessary to explain how UPS solicits its employees for contributions to UPSPAC.

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[2] A review of Mr. Kohr's complaint reveals a multitude of allegations, only some of which are relevant to federal election laws. Moreover, as the list of federal agencies, officeholders, and media entities to which he disseminated the complaint shows, Mr. Kohr clearly intended to create as many difficulties for his former employer as possible. See April 15, 1993 Complaint (Exhibit A).

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The Solicitation Process

As the General Counsel's Brief admits (at 3), UPS's solicitation practices involve a regimented procedure consisting of several specific steps. UPS does this, rather than simply mailing a solicitation, so that employees are both better informed and have the benefit of personal interaction when the contribution process is explained. This is in accord with UPS's basic philosophy of assuring employees of their rights regarding contributions to UPSPAC. Indeed, as discussed further below, unlike most corporations, UPS does not permit employees to use payroll deductions to contribute to UPSPAC for more than ten months at a time.

With respect to its solicitations from 1989 to 1992, UPS confined its solicitations only to those management level employees who chose to participate in the Managers' Incentive Plan ("MIP"), a program through which they receive a significant percentage of their annual income in UPS stock. Thus, all the solicited employees were also stockholders. These MIP members currently number roughly 26,000 of 337,000 total UPS employees.

UPS's basic solicitation program involves a presentation to an assembly of MIP participants. Although the presentation varies from year to year, it follows the same

basic format.[3] From 1989 to 1992, presentations began with scripted introductory commentary explaining the purpose of the meeting and UPSPAC. Next, a video or slide-show was presented, which explained the role of political action committees in the political process. This was followed by further scripted remarks, discussing the importance of contributions to UPSPAC and answering frequently asked questions. Employees were free to ask other questions, but the scripted remarks were read because they address typical areas of concern. Finally, the employees were each given a solicitation package containing a solicitation letter, a brochure describing UPSPAC, and a confidential return envelope addressed to the treasurer of UPSPAC. See, generally, 9/20/95 Letter from Jan Baran to General Counsel's Office.

An examination of these materials, which have already been provided to the General Counsel's Office, reveals that, throughout the presentation, UPS emphasized that contributions to UPSPAC were entirely voluntary and that employees were free to choose not to contribute without fear of reprisal. The following excerpts were illustrative:

- I want to stress that any contribution to UPSPAC is strictly voluntary. Within UPS your contribution will be confidential. However, federal law and the laws of some states will require us to report

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[3] The General Counsel's brief creates the impression that UPS used identical solicitation materials from 1989-1992. As is illustrated further below, that is not correct.

contributions over a certain amount. It is entirely up to you to decide whether you want to contribute, and if so, how much. (1991 Video Tape Comments of Chairman and CEO of UPS) (Exhibit B).

- [As the video tape just did], I'd like to stress that any contribution to UPSPAC is strictly voluntary. It's entirely up to you to decide if you want to contribute, and if so, how much. (1991 Post-Video Comment Sheet) (Exhibit C).

- Contributions are entirely voluntary, as is the amount you decide to contribute. The suggested giving amounts are simply guidelines designed to help you understand what UPS considers to be a fair contribution that will achieve our funding needs. (1991 & 1992 Question and Answer Sheet, # 2) (Exhibits D & E).

- Contributing is a personal decision and will neither benefit nor disadvantage you in your job at UPS. (1991 & 1992 Question and Answer Sheet, # 3) (Exhibit D & E).

- Your participation [in UPSPAC] is entirely voluntary and confidential. (1991 Cover Letter) (Exhibit F).

- Keep in mind that all contributions are voluntary, and participation will neither benefit nor disadvantage you in your job at UPS. (1991 Brochure) (Exhibit G).

- The amount you should contribute is a personal decision and will neither benefit nor disadvantage you in your job at UPS. (1991 & 1992 Brochures) (Exhibits G & H).

- The suggested contribution amounts are as follows, but feel free to contribute as much or as little as you like: [suggested amounts]. (1991 Brochure) (Exhibit G).

- Contributions are kept confidential. Your decision whether or not to participate and the amount of your contribution will be kept confidential within the company and will not otherwise be disclosed except to regulatory agencies as described by law. (1991 & 1992 Brochures) (Exhibits G & H).

- Remember that your decision [to contribute to UPSPAC] is voluntary and confidential. (1992 Cover Letter) (Exhibit I).

- The suggested amounts are as follows; we do not recommend contributions in excess of the suggested amount. (1992 Brochure) (Exhibit H).

- We must emphasize at each presentation that contributions are voluntary and confidential. (February 8, 1990, Information Letter to Region and District Managers) (Exhibit J).

- At each presentation, it should be emphasized that all contributions are voluntary and confidential. (February 8, 1990, Information Letter to District Managers) (Exhibit K).

- Any contribution to UPSPAC is entirely voluntary and confidential. It is up to you to decide whether you want to contribute and if so how much. (1990 Video Tape Comments of Chairman and CEO of UPS) (Exhibit L).

- Participation is entirely voluntary, but as a partner, I urge you to support this program to ensure that our voice is heard by the decision-makers. (1990 Talk Outline) (Exhibit M).

- Your participation in UPSPAC is entirely voluntary and confidential. (1990 Cover Letter) (Exhibit N).

- The amount that you should contribute is a personal decision and will neither benefit nor disadvantage you in your job at UPS. (1990 Flier) (Exhibit O).

- The suggested amounts are as follows, but feel free to contribute as much or as little as you like: [suggested amounts] (1990 Flier) (Exhibit O).

- Contributions are kept in the strictest confidence. Within UPS, only the UPSPAC treasurer has a record of who contributes. (1990 Flier) (Exhibit O).

- All UPSPAC contributions are voluntary and confidential. Only the UPSPAC treasurer and the Federal Election Commission have a record of who contributes, as required by federal law. (1990 Brochure) (Exhibit P).

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- All UPSPAC contributions are voluntary and kept in strictest confidence. Only the UPSPAC treasurer has a record of who contributes, which is required by federal law. (1989 Brochure) (Exhibit Q).

- Your participation in UPSPAC is entirely voluntary. (1989 Cover Letter) (Exhibit R).

- The amount that you should contribute is a personal decision and will neither benefit nor disadvantage you in your job at UPS. (1989 Flier) (Exhibit S).

- The suggested amounts are as follows, but feel free to contribute as much or as little as you like: [suggested amounts] (1989 Flier) (Exhibit S).

These materials demonstrate that UPS took great care throughout the period referenced in the complaint to ensure that solicited employees/stockholders understood that their decision to contribute was voluntary and would not affect their employment. This is corroborated by the affidavits presented with this brief, which affidavits from former UPS employees, all of whom worked in the complainant's district, emphasize their understanding that their decisions to contribute were voluntary and that they had no fears of reprisals regarding their decisions. See Exhibits T-X.[4]

Follow-Up Announcements

The General Counsel's Brief (at 5-6), again without any factual support, implies that certain announcements that UPS managers made regarding participation levels constituted

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[4] Given that the only support provided by the General Counsel's Brief of the complainant's unsubstantiated charges are the complainant's bald-faced allegations, these affidavits are entitled to at least as much weight, if not more, as the alleged "facts" in that brief.

"pressured" solicitations. This is incorrect. UPS did not engage in follow-up solicitations of employees who chose not to contribute to UPSPAC during 1989-1992, nor does it do so today. UPS, however, does provide generalized oral announcements regarding the level of employee participation in UPSPAC.

These oral announcements are directed at particular management groups, and not at particular employees. District managers announce to their district's MIP participants the level of participation for their particular district. This announcement is based on the participation percentage of the district's employees collectively. Thus, in the case of the complainant, the follow-up announcement was based on the level of participation of the entire district, which included 450 members. Although not all districts contain the same number of members, all of the regions are large enough so that a generalized announcement of the district's level of participation is insufficient to identify whether any particular member did or did not contribute to UPSPAC. See, generally, 12/28/95 Letter from Jan Baran to General Counsel's Office.

The follow-up announcements are not made as part of a comprehensive presentation as the annual solicitations are. Follow-up information is typically provided as an incidental announcement at a meeting held for other (non-UPSPAC related) purposes. Accordingly, the follow-up announcements are not

and were not intended to be solicitations. Rather, they are simply UPS's efforts to inform its employees of the support they have provided to UPSPAC. See Employee Affidavits, Exhibits T-X (confirming announcements were for informational purposes).

III. ANALYSIS

As discussed above, from the complainant's unfocused allegations, the General Counsel's Brief asserts (at 7) that UPS's solicitations "did not satisfy the requirement . . . that employees be informed of the right to refuse to contribute without reprisal at the time of solicitation and in all written solicitations." This allegation is apparently based on the fact that none of the communications during the solicitation presentations used the literal words "right to refuse to contribute without reprisal." However, neither 2 U.S.C. § 441b(b)(3)(C) nor 11 C.F.R. § 114.5(a), the only provisions cited by the General Counsel's Brief, mandate specific language to be used in solicitations.[5] Accordingly, the issue is whether an employee's right to refuse to contribute to UPSPAC without reprisal was fairly communicated during the solicitation presentations from 1989-1992.

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[5] In the past, the Commission has mandated specific language where it felt necessary. See 11 C.F.R. § 104.7 (1993) ("Best efforts" regulation mandates specific disclaimer). No similar requirement is present in either the cited statute or regulation.

A. The Notification That The Decision To Contribute Is "Voluntary" Adequately Informs Solicitees Of Their Rights Under FECA And FEC Regulations.

The General Counsel's Brief's only argument that UPS did not adequately inform its employees of their rights is its assertion that informing a solicitee that his or her decision to contribute is "voluntary" does not sufficiently communicate the concept that he or she has the right to refuse to contribute without reprisal. As explained below, this argument must fail.

Neither the statute nor the regulation requires UPS to provide notice that contributions to UPSPAC are "voluntary." See 2 U.S.C. § 441b(b)(3)(C), 11 C.F.R. § 114.5(a). UPS provides this notification to inform employees not only that they have a right to refuse to contribute without reprisal, but also to encompass the idea that UPS only wants willing participants, committed to UPSPAC's goals. UPS believes the term "voluntary" communicates these notions.

A straight forward understanding of the word "voluntary" denotes that the choice is freely made without reference to coercion.[6] It is absurd to suggest that an employee's decision to contribute could be both voluntary and coerced by fear of employment reprisal. UPS's emphasis on the

[6] Webster's New World Dictionary (2d Edition) defines "voluntary" as "being brought about by one's own free choice; given or done of one's own free will; freely chosen or undertaken." This definition clearly could not apply to a choice coerced by threats of reprisal.

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voluntariness of the decision to contribute fairly communicates that employees may decide whether or not to contribute for themselves with the predicate to this decision being that no harm will befall those who choose not to contribute. This is plainly articulated at Exhibits B-E, F, G, I, J-N, and P-R.

The General Counsel's Brief, however, maintains (at 4) that informing an employee that the decision to contribute is voluntary is "separate and distinct" from informing the employee of the right to refuse without reprisal.[7] There is no explanation for this oblique assertion, only a cite to MUR 3024. The First General Counsel's Report there asserts that contributions must be voluntary and employees must be informed of their right to refuse. It does not claim that the two requirements are always separate. Rather, it explains that simply because a contribution is made voluntarily does not mean that it can be inferred that the employee was adequately informed of his or her rights. MUR 3024, First General Counsel's Report dated 1/25/91, at 5. Thus, there must be an indication of an employees rights even where employees actually make their choice to contribute voluntarily.

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[7] This in itself creates the mistaken impression that the statute and regulations require contributors be notified that their contribution is voluntary <u>and</u> that they have the right to refuse to contribute, i.e., two separate notifications. As explained previously, that is incorrect. <u>See</u> 2 U.S.C. § 441b(b)(3)(C), 11 C.F.R. § 114.5(a).

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Here, the General Counsel's Brief concedes (at 4) that UPS informs its employees that their decision to contribute is voluntary (as it must, given the volume of materials UPS has provided), and there is no charge that any contributions were in fact involuntary.[8] Accordingly, as UPS's notification to solicited employees that their decision to contribute fairly communicates the absence of any possibility of reprisal, UPS is in full compliance with FECA and Commission regulations.

B. UPS's Solicitation Presentation Did More Than Simply Inform Solicitees That Their Decision To Contribute Was Voluntary.

The General Counsel's Brief (at 4-7) creates the impression that the only information that UPS provided to its solicitees was the simple statement that "Your decision to contribute is voluntary." As a review of UPS's presentation materials shows, see Exhibits B-S, this is not true. UPS's presentation broadly informed employees of their rights, making a variety of statements that informed the solicitees of their ability to refuse to contribute without reprisal. UPS's notification that the decision to contribute was thus not provided in a vacuum; it was placed in a context that is unambiguous.

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[8] Indeed, UPS has presented evidence that employees freely chose to contribute. See Employee Affidavits (Exhibits T-X).

Respondents urge the Commission to review carefully the provided materials and consider the various ways UPS assured employees that their decision whether or not to contribute would result in no action by the company. By way of emphasis, the following five statements are particularly relevant:

- [As the video tape just did], I'd like to stress that any contribution to UPSPAC is strictly voluntary. It's entirely up to you to decide if you want to contribute, and if so, how much. (1991 Post-Video Comment Sheet) (Exhibit C).

- Contributing is a personal decision and will neither benefit nor disadvantage you in your job at UPS. (1991 & 1992 Question and Answer Sheet, # 3) (Exhibits D & E).

- Keep in mind that all contributions are voluntary, and participation will neither benefit nor disadvantage you in your job at UPS. (1991 Brochure) (Exhibit G).

- Any contribution to UPSPAC is entirely voluntary and confidential. It is up to you to decide whether you want to contribute and if so how much. (1990 Video Tape Comments of Chairman and CEO of UPS) (Exhibit L).

- The amount that you should contribute is a personal decision and will neither benefit nor disadvantage you in your job at UPS. (1989 Flier) (Exhibit S).

In addition to these overall indications that employees had the right to refuse without reprisal, UPS also emphasized the confidential nature of the contribution. This was not only made clear by the solicitation materials, see Exhibits B, F-L, N, and P, but in practice as well. "Thank-you" letters to contributing employees were mailed directly to the employees' homes; they were not distributed at work. Announcements

regarding participation levels, discussed further below, were always made on a large enough scale so that any particular individual's decision whether or not to contribute could not be ascertained.[9] In addition, contributor information was only available to the necessary individuals at UPSPAC, so even if an employee's direct manager wanted to, he or she would have be prevented from taking any action based on an employee's contribution record because that record was unavailable, a fact the General Counsel's Brief does not dispute.

C. The Written Materials Provided To Solicited Employees Adequately Informed Them Of Their Rights Under FECA And FEC Regulations.

As demonstrated above, UPS's explanation to its employees that their decision to contribute was voluntary and the other information provided during the solicitation presentation adequately informed solicited employees of their rights. For those same reasons, UPS's written solicitation materials satisfy all legal requirements. The written materials for all four of the questioned years confirm that the decision to contribute is free from coercion and entirely voluntary, see Exhibits G-I, N-P, R, and S, and also confirm the confidential nature of the solicitation process, see Exhibits F-I, N-Q.

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[9] For example, the complainant's district had approximately 450 MIP participants, so any announcements were made on that scale.

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While each individual page of the printed solicitation materials may not have detailed all of the solicited employees' rights, there is no requirement that the rights be so enumerated. The regulation only requires that the "written solicitation" have appropriate language. 11 C.F.R. § 114.5(a). There is nothing to suggest each page must have the language, and thus a fair reading of the regulation is that the contents of the solicitation envelope (the cover letter, brochure, and, in 1989-90, the informational flier) together constitute the written solicitation. An examination of the printed materials provided to the solicitees thus establishes that UPS complied with FECA and Commission regulations with respect to written solicitations.

D. UPS's Oral Announcement Regarding Participation Levels Were Not Solicitations.

Without formally articulating a charge, the General Counsel's Brief implies that UPS's announcements regarding participation levels (the percentage of solicited employees contributing to UPSPAC) were actually additional solicitations in themselves which inadequately informed employees of their rights. The General Counsel's Brief provides no basis for this conclusion and it cannot, for those announcements were not solicitations, they were simply informational announcements. Such announcements do not constitute a solicitation under Commission precedent. See FEC Advisory Opinion 1979-66, Fed. Election Camp. Fin. Guide

(CCH) ¶ 5455 (1980) (general information regarding number of solicited employees contributing to corporate PAC not solicitation for purposes of FECA). In reality, as discussed above, the fact that such announcement are made on a district-wide scale confirm UPS's efforts to keep individual employees' decisions whether to contribute confidential.

E. UPS's Efforts Regarding Solicited Employees' Rights Are Extraordinary.

Given the above discussion, it is evident that UPS makes repeated efforts to comply with all laws and regulations by emphasizing, both orally and in writing, that solicited employees can freely choose not to contribute to UPSPAC. This is consistent with UPS's general practices regarding its separate segregated fund. For instance, unlike many corporations that use payroll deductions to generate uninterrupted contributions to their PACs, which deductions can only be terminated by an employee's specific request, UPS does not use payroll deductions on an indefinitely continuing basis. Rather, it limits the time that an employee may allow such direct contributions to be taken from his or her paycheck to a ten month term. Participating employees must re-approve such deductions at the end of that time. Thus, employees must decide during each annual solicitation presentation whether to participate in payroll deductions for the next ten months. This is to ensure that participation is indeed voluntary and that only those employees who genuinely

wish to support UPSPAC do so.[10] See, generally, 9/20/95 Letter from Jan Baran to General Counsel's Office.

This forthright approach to political activity is confirmed by UPS's actions in this matter to date.

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[10] Another example of UPS's approach is reflected in its solicitation materials since 1992, which specifically recommend that solicited employees do not contribute more that the amount suggested in the provided guideline. See, for example, Exhibit H.

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IV. CONCLUSION

At it most basic, this Matter turns on whether the solicited UPS employees understood from UPS that they had the right to refuse to contribute to UPSPAC without reprisal from UPS. Respondents believe that a fair reading of the materials used in UPS's solicitation presentation establish that it did inform its employees of that right. Accordingly,

Respondents urge that the Commission find no probable cause to believe that Respondents violated FECA or Commission regulations.

Respectfully submitted,

Jan Witold Baran
Jason P. Cronic

Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

Counsel for United Parcel Service, United Parcel Service Political Action Committee, and D. Scott Davis, as Treasurer

December 6, 1996

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Michael P.Kohr
R.F.D. #3 Box 236a
Princeton,Ill. 61356
March 15th, 1993
815-872-0030

MUR 3770

Federal Election Commission
Office of the General Counsel
999 E Street Northwest
Washington D.C. 20463

I am writing this letter to bring to your attention a situation that has troubled me for a number of years. I apologize in advance for the length of letter and perhaps an overabundance of detail but I did not wish to present this situation without your understanding of the full story and my motives.

I am a past employee of United Parcel Service. I left employment at United Parcel Service on February 28, 1992. I was a member of management and was increasing disturbed by the direction of the company in regards to matters of integrity on many issues. Two areas that particularly bothered me was the company's political action committee, UPSPAC, and an overseas subsidiary, Overseas Partners Limited.

The first area of concern I have is the official political action committee of UPS, UPSPAC, particularly how UPS strong arms its supervisory people into contributing to the PAC. When UPS first formed UPSPAC a newsletter was mailed to each member of management. In that newsletter was listed the "donation" each member of management was expected to give. The letter also explained that mandatory "donations" were against the law and that all "donations" would remain anonymous, however included with the letter was a card that was to be returned with the "suggested donation." In the upper right hand corner of the card was the employee number of the person the letter was addressed to. That employee number appears on every file, every payroll check, in fact on every official form that pertained to a particular employee. Although no name appeared on the card the employee number was more than enough to identify who "donated" and who did not.

The response of the supervisory people was initially extremely poor. Most of the supervisory people I talked with resented the manner in which the company tried to extort the contributions to UPSPAC and most also said they did not believe in political action committees and felt they were counterproductive to the good of our country. After a while supervisors were told of the poor response to the "donation" drive for UPSPAC by their managers and it was suggested that perhaps those that had not contributed did not belong as management personnel at UPS. Considering the extremely poor national numbers coming in for UPSPAC most supervisors recognized these threats as empty threats as UPS would have had to fire over 80% of its management.

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Initially supervisors had been told by upper management that the employee numbers that appeared on the "donation" cards were only for accounting and tax purposes. It soon became evident that other reasons also existed for the employee numbers to appear on the "donation" cards. After the initial talk with our managers of the poor national response to UPSPAC we were talked to on a center by center basis by our division managers. The division managers now presented us with a further breakdown of the national numbers to how our region had responded (poorly, in line with the rest of the country). After a short while and still little response to UPSPAC we were again talked to on a center by center basis by our division managers and now presented with breakdowns of the response to UPSPAC by supervisors and center managers and staff personnel and a further breakdown of the regional numbers to the district level.

In our center all of the supervisors had up to that point resisted "donating" to UPSPAC. It became apparent to all but the brain dead, that in spite of upper managements denials, they knew who did or did not "donate" to UPSPAC or were at least willing to pressure supervisors until they received a level of money in UPSPAC's coffers that they were satisfied with. Interestingly enough in our center, we as a group of supervisors all sent in our "donation" after the last above mentioned talk. It was at that point that the talks ceased. A co-incidence perhaps, or more likely, the goal of all supervisors "voluntarily" donating to UPSPAC was accomplished in our center, and upper management knew it, thanks to the employee numbers that had been printed on the UPSPAC "donation" cards.

I am not a legal expert on the laws governing political action committees. But I question the use of the employee's payroll numbers on the "donation" card sent out by UPSPAC. I question the time, effort and expense on the part of upper management at UPS in tracking response to UPSPAC and the resulting talks held by upper management in strong arming its supervisory personnel into "donating" to UPSPAC. If these actions are within the limits of the law the laws should be strengthened. Certainly UPS's actions in this regard would offend the moral conscious of most Americans. There is a strong sense of revulsion and contempt in this country for political action committees and how PACs corrupt the political process. Through UPS's pressure tactics we now have an example of how corporate America can exploit the workforce to expand the resources of the political action committee. Resources that are used in the eyes of most Americans to hold this country's political process hostage to the influence of money and power. There is little difference in how UPS pressured its supervisors for "donations" to UPSPAC and the "donations" that are extorted by thugs and criminals from business' for "protection" or "insurance." The only difference is the suit and tie and the mantle of respectability of a businessman that UPS cloaks itself in. Underneath that suit and tie beats the heart of a corporate soul that regards itself above the laws everyone else must obey and whose arrogance assumes that no matter how far it pushes it will never have to be held accountable for its actions.

The second area of concern I wish to bring up is the overseas subsidiary of UPS called Overseas Partners Limited, based in Bermuda. Enclosed you will find a copy of the 1992 Annual Report of Overseas Partners Ltd.. Overseas Partners Ltd. was founded in 1984. Its primary function is the re-insurance of packages shipped through UPS that are insured for more than one-hundred dollars. Since that time it has became involved in other transactions such as leasing of equipment and property to UPS. When Overseas Partners Ltd. was first formed members of upper management informed the supervisory people that the subsidiary was designed to take advantage of the tax laws in the country of Bermuda. My manager was more to the point when he described it as a "legal tax dodge." Prior to 1984, UPS collected twenty-five cents (currently thirty cents) per one-hundred dollars of any package shipped through UPS in excess valuation of one-hundred dollars. Any claim for loss on such packages was paid for out of these "excess value fees." Of course any extra funds at the end of the fiscal year were taxed as profit by the IRS. Again the funds for excess valuation were collected in the United States of America for services rendered in the United States of America by American workers, and for services that depended on the efficient infrastructure of the United States of America. Infrastructure paid for by the taxpayers of this country.

By playing a shell game with the excess value funds and basing Overseas Partners Ltd. in Bermuda, UPS evades paying taxes on the income generated on these funds as well as the other transactions the partnership has become active in. In the years hence UPS has become an international company, but the vast percentage of business it does is within the borders of the United States of America. While this self described "tax dodge" may be legal I again feel the laws of this country should be strengthened to prevent the large corporations that have the legal resources and moral turpitude to exploit the loopholes that allow them to escape the responsibility that most Americans do not question. I do not feel it is unreasonable to expect a corporation to pay taxes on the profits on income generated in this country, especially a company such as United Parcel Service that depends so heavily on taxpayer funded roads, bridges, and other related infrastructure.

All members of management at UPS are given stock each year in the common stock of UPS as well as that of Overseas Partners Ltd.. When OPL was first formed, we as supervisors, were told because of the "tax dodge" the partnership would enjoy, the stock of the partnership would one day make us all rich. In 1984 the stock was valued at twenty-five cents a share. On December 31st, 1992 it was valued at seven dollars forty cents a share, or an increase of over 2900% in eight short years. Eight years in which the taxes that had been formerly paid on those profits to the United States were now shuffled to a foreign country and sheltered and hidden from the IRS. I still retain my holdings in a stock trust of Overseas Partners. I have not sold my holdings because I feel these holdings are "dirty money" and will not sell them off untill I have aired my complaints and concerns of possible illegality. If the value of the stock should be lower

because taxes are owed then I will accept the lower value. I do not wish to profit at the expense of my country.

Given the open talk on the part of UPS management on the avoidance of taxes in Overseas Partners, I assume no laws were broken in this regard. I would hope if this is legal the laws will be amended. I would also hope that the government of this country will require that all documents and parcels picked up from and delivered to its agencies are delivered by the United States Post Office as to show that tax dodgers of any nature, legal or not, are not encouraged by the government of this land, (In fact the United States Post Office has substantially lower rates. Considering the financial hole we have dug for ourselves in this country I find it amazing that the government still utilizes UPS when the Post Office charges much less for the same services).

In closing I wish to repeat that I am an ex-employee of United Parcel Service. I am certain that I may be castigated by members of the company as a bitter person bent on revenge. However I regard my experience at UPS as a positive one but one in which I have experienced events that are either illegal or at the very least morally reprehensible. The easy thing for me to do is close the pages of this chapter in my life and move on. But to turn an eye to the things I have described above would be to condone those practices that I regard as illegal and immoral. It is my duty as a citizen of this country to stand against such things no matter how powerful the opponent may be or how daunting the chance of making a difference may be. It is my hope that you will recognize that I speak from a position of freedom and without fear of retaliation as would a person still employed by this company. It is my hope that you will recognize that I speak for hope for the resolution of these injustices and I hope you will be able help me bring these injustices to a close.

Sincerely,

Michael P. Kohr

Michael P. Kohr

cc: Frank J. Mautino

Dept. of Labor
Pat Welch
Paul Simon
Carol Mosely Braun
Joseph Biden
Lane Evans
Janet Reno
H. Ross Perot
IRS c/o CID Dept.
EEOC
Federal Election Commision
Post Office Solicitor General
International Brotherhood of the Teamsters
Producer of "60 Minutes"
Producer of "20/20"
Producer of "Dateline"
Producer of "Street Stories"
Producer of "The Phil Donohue Show"

"OFFICIAL SEAL"
Sophie P. Lewis
Notary Public, State of Illinois
My Commission Expires 12/22/95

(SEAL)

Subscribed and sworn to before me this 15th day of April, 19 93.

Sophie P. Lewis
(NOTARY PUBLIC)

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B

(Exhibit B, the 1991
Video Tape used in
the solicitation presentation
is on file with the
General Counsel's Office.
Additional copies will be
made available if necessary)

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c

POST-UPSPAC VIDEO COMMENTS:
(To be given directly after showing the video)

Well...I think the video did an excellent job of explaining what UPS PAC is and how it functions.

As a partner in this company, I feel I should add a few comments--because I believe that UPS PAC is an extremely vital part of our organization. Why? Because it gives us direct involvement in the political process where laws and regulations are passed which affect our operations and service to the public.

All of us who are participants in the Managers Incentive Plan share common interests and objectives--we want to see UPS continue to grow and make a profit. And, we want to see our company meet and exceed our customers needs.

Exhibit C

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In today's world, that takes more than just hard work--it means having the backing of state and federal legislators.

The video highlighted several recent examples, including the aircraft noise issue, longer combination vehicles and motor carrier deregulation. Each of these issues has had, and will have, a major impact on our business. Through the actions of our PAC, that impact can be a positive one.

Your support is important if the voice of UPS is to be heard in the heat of debate over these and other issues.

You are now going to receive a brochure and contribution card which will further describe UPS PAC. I'd like you to review this material, especially the suggested giving amounts and information about the new payroll deduction option that is being offered.

9 7 0 4 3 8 4 5 2 4 4

As Oz just did, I'd like to stress that any contribution to UPS PAC is strictly voluntary. It's entirely up to you to decide if you want to contribute, and if so, how much.

Please give this important matter careful consideration. I'm confident that after reviewing the material, you will agree that UPS PAC is critical to our continued success and deserves our support.

At this time, I'd like to read some questions and answers that have been prepared. If you have any additional questions, please do not hesitate to ask them.

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D

UPSPAC QUESTIONS AND ANSWERS

1. **Why is UPSPAC so important?**
A. As you have been hearing, laws passed by federal and state governments have the potential to have a negative impact on our business. Through UPSPAC, we can support those legislators who support our views and understand the importance of our service.

2. **Do I have to give the full amount listed on the brochure?**
A. No. Contributions are entirely voluntary, as is the amount you decide to contribute. The suggested giving amounts are simply guidelines designed to help you understand what UPS considers to be a fair contribution that will achieve our funding needs.

3. **What if I don't want to contribute?**
A. Contributing is a personal decision and will neither benefit nor disadvantage you in your job at UPS.

If you elect not to contribute to UPSPAC, we ask that you check the "Decline to participate" box and return your contribution card in the envelope provided. This information will be kept confidential.

4. **How do I use the payroll deduction option?**
A. To take advantage of this new feature, circle the correct response (monthly or semi-monthly) to indicate your pay cycle. Then, check the box marked "Pay period deduction" on the contribution card and write in the amount you want deducted each pay period. These deductions will be made over a 10-month period.

There is also a one-time deduction option. To use this feature, check the box marked "One-time pay period deduction" and fill in the amount you wish to have deducted.

5. **How else can I contribute?**
A. Along with payroll deduction, you can also make a one-time direct contribution. To use this, check off the appropriate box on the contribution card, and mail it, along with your check made out to UPSPAC, in the return envelope.

6. **When does the deduction period end?**
A. If you choose the payroll deduction option, your contribution card should be returned no later than July 31, 1991. Deductions will be made from August, 1991 through May, 1992.

Exhibit D

7. **Can I still select payroll deduction even if I don't meet the cutoff date?**
A. No. To select the payroll deduction option the cards should be returned no later than July 31, 1991. However, you can still contribute to UPSPAC later than this date through a one-time direct contribution or a one-time payroll deduction.

8. **When should the contribution cards be returned?**
A. To help us appropriately budget political contributions for the coming year, we are asking that the contribution cards be returned by the end of the solicitation period, July 31.

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UPSPAC QUESTIONS AND ANSWERS

1. **Why is UPSPAC so important?**
   A. As you have been hearing, laws passed by federal and state governments have the potential to have a negative impact on our business. Through UPSPAC, we can support those legislators who support our views and understand the importance of our service.

2. **Do I have to give the full amount listed on the brochure?**
   A. No. Contributions are entirely voluntary, as is the amount you decide to contribute. The suggested giving amounts are simply guidelines designed to help you understand what UPS considers to be a fair contribution that will achieve our funding needs.

3. **What if I don't want to contribute?**
   A. Contributing is a personal decision and will neither benefit nor disadvantage you in your job at UPS.

   If you elect not to contribute to UPSPAC, we ask that you check the "Decline to participate" box and return your contribution card in the envelope provided. This information will be kept confidential.

4. **How do I use the payroll deduction option?**
   A. To take advantage of this new feature, circle the correct response (monthly or semi-monthly) to indicate your pay cycle. Then, check the box marked "Pay period deduction" on the contribution card and write in the amount you want deducted each pay period. These deductions will be made over a 10-month period.

   There is also a one-time deduction option. To use this feature, check the box marked "One-time pay period deduction" and fill in the amount you wish to have deducted.

5. **How else can I contribute?**
   A. Along with payroll deduction, you can also make a one-time direct contribution. To use this, check off the appropriate box on the contribution card, and mail it, along with your check made out to UPSPAC, in the return envelope.

6. **When does the deduction period end?**
   A. If you choose the payroll deduction option, your contribution card should be returned no later than July 31, 1991. Deductions will be made from August, 1991 through May, 1992.

Exhibit E

7. **Can I still select payroll deduction even if I don't meet the cutoff date?**
A. No. To select the payroll deduction option the cards should be returned no later than July 31, 1991. However, you can still contribute to UPSPAC later than this date through a one-time direct contribution or a one-time payroll deduction.

8. **When should the contribution cards be returned?**
A. To help us appropriately budget political contributions for the coming year, we are asking that the contribution cards be returned by the end of the solicitation period, July 31.

9. **Can foreign service manager use payroll deduction?**
A. Yes. As long as the foreign service manager is paid by General Services, is a United States citizen and is a participant in MIP.

9 7 0 4 3 8 4 5 2 4 9

F

United Parcel Service

May 31, 1991

Dear UPS Partner,

This past year has been one of intense legislative activity in many areas that directly impact our company. It clearly demonstrated the need for effective input into the political process as UPS faces the challenges of the 1990's. The United Parcel Service Political Action Committee (UPSPAC) plays a vital role in making sure UPS's voice is heard when new laws and regulations are being considered.

As we begin our 1991 UPSPAC solicitation, I hope that each manager and supervisor in the Managers Incentive Plan will join me in contributing. UPSPAC gives us the opportunity to provide meaningful support to the election of senators and representatives who believe in fair competition and understand the value of UPS's service to the public.

Last year, 61 percent of our active managers and supervisors contributed $645,000 to UPSPAC. This was a substantial increase over 1989, when only 38 percent contributed, but our participation rate is still very low. This year we have set a goal of one million dollars in contributions with an 80 percent participation level. That is a lot of money, but given the legislative challenges facing us it's an appropriate goal and I believe we will achieve it.

The enclosed brochure and card will provide additional information about UPSPAC. Your participation is entirely voluntary and confidential. Please note that we are now offering the option of payroll deduction for your UPSPAC contribution. If you like, your deductions can be spread over a ten month period.

As partners we all share in UPS's success. I'd like to thank you for your past contributions and I urge one and all to help protect our investment by making a contribution to our 1991 UPSPAC.

Sincerely,

Oz Nelson

Oz Nelson
Chairman and
Chief Executive Officer

Exhibit F

9 7 0 4 3 8 4 5 2 5 0

YOU can make an imPACt

If you're interested in protecting your investment in UPS, then one of the best investments you can make is a contribution to UPSPAC. Your contribution will directly support UPS's interests on both federal and state legislative issues.

Issues currently being debated include safety and environmental regulations, transportation taxes, motor carrier deregulation, federal noise regulations and vehicle size and weight limitations. Each of these issues, and many more, have a direct impact on UPS's operating authority, flexibility and, of course, its costs.

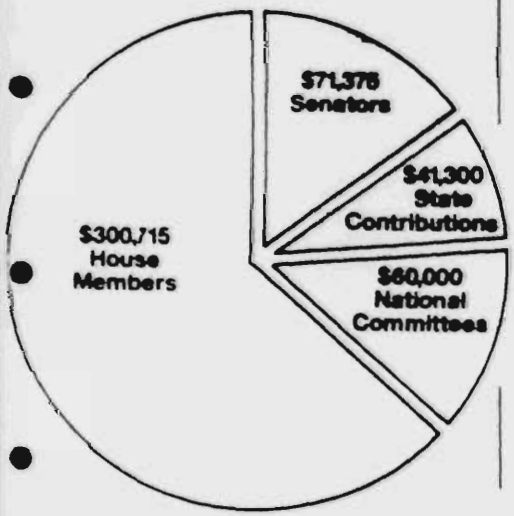
To help ensure that the laws enacted don't adversely affect our operations and service, we need continued involvement in the political process. Your support of UPSPAC is one way to make sure UPS's voice is heard.

Are PAC's necessary?

There has been a good deal of debate about the role PAC's play in electing candidates to public office. But, the fact remains that PAC's are an efficient means for people with common interests to pool their resources and contribute to the campaigns of candidates they favor. UPSPAC supports those senators and representatives who believe in fair competition, and who understand the importance of UPS's service to the public.

Today, PAC's supply one-third of all federal campaign financing. In 1990, it cost an average of about $520,000 to run for a seat in the House of Representatives, and over $4 million to run for the Senate.

1990 Contributions



You and UPSPAC

In 1989, UPSPAC received a little over $400,000. These contributions came from only 38 percent of our managers and supervisors.

We knew we could do better. So, last year, we increased our efforts to make our people more aware of the importance of supporting UPSPAC. Managers met personally with their people, and a video was shown explaining the critical legislative issues facing the company.

The result was a substantial increase in contributions to $645,000. But, more importantly, the participation level increased to 61 percent. This year, as our management people become more aware of the vital importance of an effective PAC, we believe participation levels will rise even higher.

Our goal for the 1991 solicitation is $1 million, with an 80 percent participation level.

1989-90 Election Cycle PAC Receipts

New features and options

In order to achieve this goal, a number of changes have been made to this year's solicitation.

For the first time, the suggested contribution levels have been raised. These amounts are only suggestions, however, as any amount is welcome. The key element of success is increasing the level of participation.

Another change, which may help make contributions to UPSPAC easier, is the new payroll deduction option. An explanation of this new feature is detailed on the enclosed contribution card.

Exhibit C

Keep in mind that all contributions are voluntary, and participation will neither benefit nor disadvantage you in your job at UPS.

Can you suggest a recipient?

UPS partners may suggest recipients for contributions through the corporate Public Affairs Group. Each proposal is reviewed by the Contributions Steering Committee, consisting of Public Affairs representatives and a member of the UPS Management Committee. All recommendations must be approved by the corporate UPSPAC chairman.

Making your UPSPAC contribution

When you make your UPSPAC contribution, use the enclosed contribution card bearing the mailing label. This card must be signed by you, the employee, in order to authorize UPS to accept the contribution. In addition, your check must be a personal one and signed by either you or your spouse.

If you'd like to take advantage of the new payroll deduction option, check the appropriate box on the enclosed contribution card. Deductions may be taken on a one time or a 10-month basis. To use the 10-month deduction option, your contribution card MUST BE returned before July 31, 1991.

Regardless of which option you select, please return your contribution card to Ken Schelle, UPSPAC Treasurer, no later than July 31. Deductions will begin in August.

How much should you contribute?

The amount you should contribute is a personal decision and will neither benefit nor disadvantage you in your job at UPS.

Please keep in mind that as a result of the Revenue Act of 1987, contributions to political action committees are no longer tax deductible.

The suggested amounts are as follows, but feel free to contribute as much or as little as you like:

- $50 – Supervisors who are one-unit, Managers Incentive Plan participants
- $100 – Two-unit Managers Incentive Plan center managers (or managers with equivalent responsibility)
- $200 – District department and division managers, region and national staff who are Stock Option Plan participants
- $300 – Region department managers
- $400 – District managers, national department managers
- $600 – Region managers, Management Committee

Contributions are kept confidential. Your decision whether or not to participate and the amount of your contribution will be kept confidential within the company and will not otherwise be disclosed except to regulatory agencies as required by law.

YOU can make an imPACt

If you're interested in protecting your investment in UPS, then one of the best investments you can make is a contribution to United Parcel Service Political Action Committee (UPSPAC). Your contribution will directly support UPS's interests on both federal and state legislative issues.

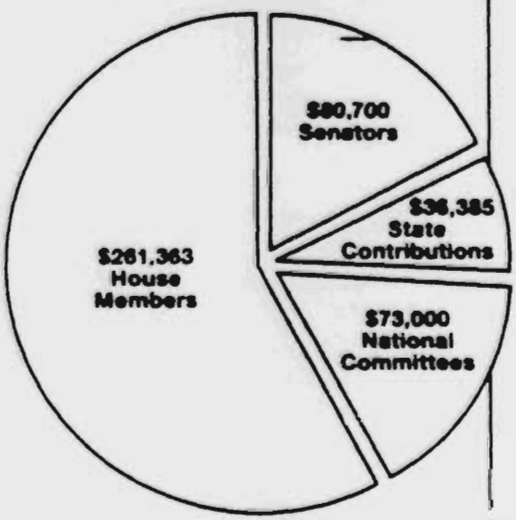
Issues currently being debated include intrastate deregulation, customs regulations, postal reform, and alternative fuel requirements. These and other issues directly impact UPS's operating authority, flexibility and its costs.

To help ensure that the laws enacted don't adversely affect our operations and service, we need continued involvement in the political process. Your support of UPSPAC is one way to make sure UPS's voice is heard.

Are PACs necessary?

There has been a good deal of debate about the role PACs play in electing candidates to public office. But, the fact remains that PACs are an efficient means for people with common interests to pool their resources and contribute to the campaigns of candidates they favor. UPSPAC supports those candidates who believe in fair competition, and who understand the importance of UPS's service to the public.

1991 UPSPAC Contributions

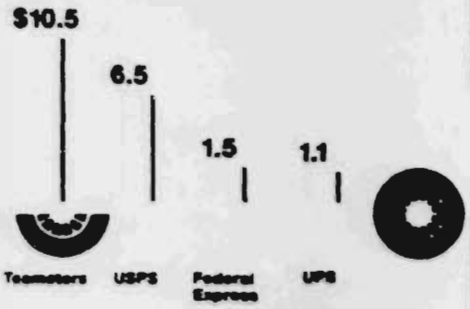


Today, PACs supply one-third of all federal campaign financing. In 1990, it cost an average of about $520,000 to run for a seat in the House of Representatives, and over $4 million to run for the Senate.

You and UPSPAC

In 1989 UPSPAC received a little over $400,000 based on 38 percent participation from our managers and supervisors. In 1990 we committed to improve that performance, particularly the participation level. The result was a substantial increase in contributions to $645,000. But more importantly, the participation level increased to 61 percent.

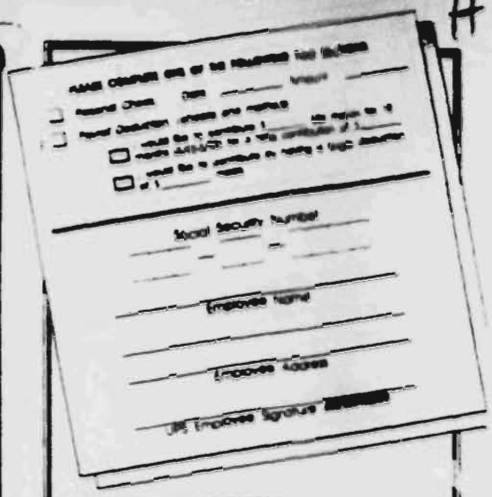
1989-90 Election Cycle PAC Receipts



This past year, we intensified our efforts to make people aware of how important their PAC is to the future of our company. We made an effort to have managers meet personally with their people to explain the urgency of the legislative challenges facing our company. The result was gratifying. We raised over $1 million, with a participation level of 69 percent. In 1992 we hope to further increase participation.

Can you suggest a recipient?

UPS partners may suggest recipients for contributions through the corporate Public Affairs Group. Each proposal is reviewed by the Contributions Steering Committee, consisting of Public Affairs representatives and a member of the UPS Management Committee. All recommendations must be approved by the Corporate UPSPAC Chairman.



Making your UPSPAC contribution

When you make your UPSPAC contribution, use the enclosed contribution card. This card must be signed by you, the employee, in order to authorize UPS to accept the contribution. In addition, your check must be a personal one and signed by either you or your spouse.

If you'd like to take advantage of the payroll deduction option, check the appropriate box on the enclosed contribution card. A deduction may be taken on a one-time or 10-month basis.

Regardless of which option you select, please return your contribution card to Ken Schelle, UPSPAC Treasurer, no later than July 31, 1992. Deductions will begin in August.

How much should you contribute?

The amount you should contribute is a personal decision and will neither benefit nor disadvantage you in your job at UPS.

Please keep in mind that as a result of the Revenue Act of 1987, contributions to political action committees are not tax deductible.

The suggested amounts are as follows; we do not recommend contributions in excess of the suggested amount.**

- **$50** – Supervisors who are one-unit, Managers Incentive Plan participants
- **$100** – Two-unit Managers Incentive Plan center managers (or managers with equivalent responsibility)
- **$200** – District department and division managers, region and national staff who are Stock Option Plan participants.
- **$300** – Region department managers
- **$400** – District managers, national department managers.
- **$600** – Region managers, Management Committee

Contributions are kept confidential. Your decision whether or not to participate and the amount of your contribution will be kept confidential within the company and will not otherwise be disclosed except to regulatory agencies as required by law.

**NOTE: California residents should contact UPSPAC to determine how much of your contribution went to UPSPAC-California committee if you are making other contributions outside UPSPAC to California state and local candidates and/or committees.

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Exhibit H

I

United Parcel Service 400 Perimeter Center – Terraces North
Atlanta, GA 30346

May 14, 1992

Dear UPS Partner,

I'm writing to ask for your support of the United Parcel Service Political Action Committee (UPSPAC). Never before has your participation been so important.

Last year almost 70 percent of our active managers and supervisors contributed over $1 million to UPSPAC. That kind of active involvement helped us gain positive results in a number of UPS-related legislative issues.

This coming year we'll again face challenges that will directly impact the ability of our company to succeed and grow. Among legislative issues expected for consideration are environmental and safety regulations, energy and urban congestion initiatives, motor carrier deregulation and postal reform.

By supporting the candidacy of Senators and Representatives who share our beliefs, the money you contribute helps UPS's voice be heard in government. Election experts are already saying that the number of new members resulting from the November election could be the highest in recent history. Over 100 new Senators and Representatives are expected to take their seats when Congress reconvenes in January. We have the opportunity to educate and inform these new legislators early in their term of office, but we need your help.

I believe UPSPAC is an essential investment in our company's future. As a partner, you have a strong vested interest in what happens to our business. Contributing to UPSPAC is one vital means of influencing that outcome.

Remember your decision is voluntary and confidential. The enclosed brochure and contribution card provide additional information. I hope you will join me and give your financial support to UPSPAC.

Thank you,

Kent C. Nelson
Chairman and
Chief Executive Officer

Exhibit I

J

February 8, 1990

TO: Region and District Managers
FROM: Vern Cormie and Frank Middendorf
RE: 1990 UPSPAC Program

The 1990 United Parcel Service Political Action Committee (UPSPAC) campaign is underway. As partners and owners, we are all affected by the success of this program. We need to educate our management team about UPSPAC and its importance to our company.

The enclosed envelopes contain communications materials for the 1990 UPSPAC program. They are addressed to each manager and supervisor in your region or district who is a participant in the Managers Incentive Plan. Each envelope contains:

- A pamphlet that explains UPSPAC;
- A letter from Oz Nelson;
- A contribution guideline;
- A contribution card and return envelope.

Five copies of a UPSPAC video will be sent to District managers by 2nd Day Air on Feb. 9. (One copy will be sent to Region managers.) The video should only be shown as part of the UPSPAC presentation and only to participants in the Managers Incentive Plan. If you do not receive the videos, contact Mark Soutter at ATLAS 290-6918.

The enclosed cover memo from the District manager explains how division and department managers are to distribute the communications materials. Also enclosed is a UPSPAC meeting talk outline. We recommend that Region and District managers make the UPSPAC presentation to their staff and, likewise, that division and department managers make the presentation personally to their own people. The envelopes containing the donation card and return envelope should be distributed at the conclusion of the presentation.

Contribution cards should be returned directly to the UPSPAC treasurer. <u>We must emphasize at each presentation that contributions are voluntary and confidential.</u> *

cc: Management Committee

Exhibit J

K

February 8, 1990

TO: All Division and Department Managers
FROM: District Manager
RE: 1990 UPSPAC Program

Enclosed are the communications materials for the 1990 United Parcel Service Political Action Committee (UPSPAC) campaign. Included are:

- Envelopes addressed to each of your managers and supervisors;
- A letter from Oz Nelson;
- A contribution guideline;
- A contribution card and return envelope.

A copy of the UPSPAC video is also enclosed. The UPSPAC presentation should be made in February to your managers and supervisors who are members of the Managers Incentive Plan. The enclosed talk outline should be used as part of the presentation and the envelopes containing the contribution card and return envelope should be distributed at the conclusion of the presentation.

Contribution cards should be returned directly to the UPSPAC treasurer. At each presentation, it should be emphasized that all contributions are voluntary and confidential. ★

The video must be returned to me by March 15, 1990. The tape is bar coded and must be accounted for. It should not be duplicated.

It is vital that every UPS manager and supervisor understand the impact UPSPAC has for our company. By effectively communicating to our people the importance of UPSPAC to our continued success, we anticipate a substantial increase in the level of participation.

Exhibit K

L

(Exhibit L, the 1990
Video Tape used in
the solicitation presentation
is on file with the
General Counsel's Office.
Additional copies will be
made available if necessary)

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M

UPSPAC Meeting Talk Outline

FOR: All Managers Incentive Plan Participants
USE: February 1990
TOPIC: 1990 UPSPAC Campaign
HANDOUTS: UPSPAC Envelopes

A. The 1990 United Parcel Service Political Action Committee (UPSPAC) campaign is underway.

1. UPSPAC enables us to support legislators who believe in fair competition and who recognize the value of our service to the public.

2. As partners and owners of UPS, we should all be concerned about the rules and regulations that impact our business and our future success.

B. Why is UPSPAC important to UPS?

1. Within the last two years we became an airline, we expanded to over 180 countries and territories worldwide, and we enhanced service capabilities.

2. With each of these advances, we encounter a growing number of rules and regulations that impact our operations.

3. We are also facing the toughest competition ever -- domestically and internationally -- for our air and ground business.

4. The best way for UPS to ensure fair competition is to support legislators who support our position on critical issues.

C. For UPSPAC to be effective, we need your support.

1. Thirty-eight percent of our management team participated in the program last year.

2. This year, we are striving for a much higher participation level.

[3. Participation is entirely voluntary, but as a partner, I urge you to support this program to ensure that our voice is heard by the decision-makers.] *

D. Here are envelopes containing the UPSPAC materials.

1. The materials will give you more information about the program, contribution guidelines and where to send contributions.

2. We all share in our company's success and I encourage your full support of UPSPAC.

Exhibit M

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N

February 8, 1990

Dear UPS Partner,

We are now kicking off the annual drive to raise money for the United Parcel Service Political Action Committee (UPSPAC). I am asking for your personal contribution to this program which is vitally important to our company. It is my hope that every full-time UPS manager and supervisor in the Managers Incentive Plan will participate.

Our rapidly expanding business -- both in the USA and abroad -- needs strong political support. The number of laws and regulations that affect us has been increasing and there can be no doubt that government decisions will have an even greater impact on our future.

Through UPSPAC, we can provide financial assistance to legislators who believe in fair competition and who understand the value of UPS service to the public. Federal law prohibits UPS, and other companies, from making political contributions. So it is up to each one of us -- you and me -- to voluntarily generate the funds needed.

UPSers contributed $373,867 to UPSPAC for legislators in 1989. While this is a lot of money, it came from only 38 percent of our managers and supervisors. We need to do much better in 1990. We are not asking you to donate more than the suggested amount, but sincerely hope that a much higher participation percentage will allow us to support our "friends" at both the federal and state levels this election year.

The enclosed brochure and card will provide additional information about UPSPAC, including suggested contribution guidelines. Your participation in UPSPAC is entirely voluntary and confidential. ★

As partners, we all share in UPS's success. I urge you to strongly consider a UPSPAC contribution to help protect our investment in our great company.

Sincerely,

Oz Nelson

Oz Nelson
Chief Executive Officer

Exhibit N

9 7 0 4 3 8 4 5 2 5 8

UPSPAC

The United Parcel Service
Political Action Committee

Making your UPSPAC contribution

When you make your contribution using the enclosed contribution card bearing the mailing label, be sure that the card is signed by the UPS manager or supervisor (not the spouse), and that all of the information requested on the blank lines has been supplied.

The contribution card must be signed in order to authorize UPS to accept the contribution check from either the employee or spouse. In addition, the contribution check must be a personal one and signed by either the UPS employee or spouse.

How much should you contribute?

The amount that you should contribute is a personal decision and will neither benefit nor disadvantage you in your job at UPS.

Please keep in mind that as a result of the Revenue Act of 1987, contributions to political action committees are no longer tax deductible.

The suggested amounts are as follows, but feel free to contribute as much or as little as you like:

$25 — Supervisors who are one-unit Managers Incentive Plan participants

$50 — Two-unit Managers Incentive Plan center managers (or managers with equivalent responsibility)

$150 — District department and division managers, region and national staff who are Stock Option Plan participants

$200 — Region department managers

$300 — District managers, national department managers

$500 — Region managers, Management Committee

Contributions are kept in the strictest confidence. Within UPS, only the UPSPAC treasurer has a record of who contributes. However, federal law requires that all contributions over $200 be reported to the Federal Election Commission (FEC).

Exhibit O

YOU CAN MAKE A DIFFERENCE

P

At no other time in the company's history have the actions of legislators in Washington, D.C. and in state capitals had such a widespread effect on UPS's business. As UPS has grown into an international, diversified company, its operations have become more exposed to the impact of laws and regulations enacted by federal and state governments. UPS is also the only Fortune 500 company that has a federal agency, the U.S. Postal Service, in direct competition for its primary business. Any legislative changes in the way postal rates are set could potentially place UPS at a competitive disadvantage.

By joining together with fellow UPS managers and supervisors, you can help ensure that our company will enjoy continued success.

1989 UPSPAC Contributions $373,867

$14,300 State Contributions

$107,400 43 Senators

$252,167 261 House Members

What is UPSPAC?

UPSPAC, a political action committee, was established in 1976. It enables UPSers to support senators and representatives who believe in fair competition and who understand the importance of our service to the public.

Contributors pool their resources to aid the campaign efforts of legislators who share UPS's views on key issues and who listen to the company's concerns.

Although authorized by UPS, the committee is separate from the company and accountable to the Federal Election Commission (FEC) and state agencies.

Supporting UPSPAC is one way to make sure that UPS's voice is heard in Congress, and that the company's interests are considered by the decision-makers.

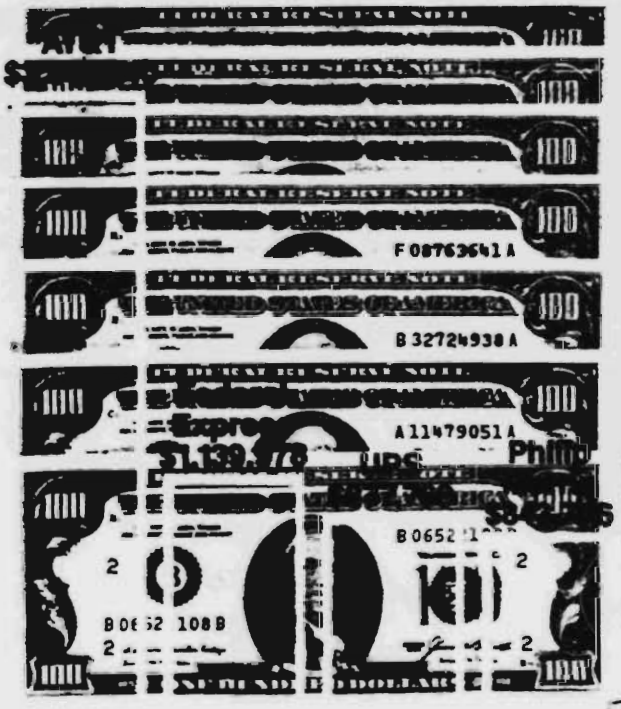
UPSPAC Contributions

In 1989, UPSPAC contributed over $373,867 to various legislators whose views were compatible with those of the company. Contributions totalling $252,167 were made to the 261 House members and an additional $107,400 was contributed to 43 senators. A little more than 60 percent of these contributions went to Democrats, which is consistent with the current 60-40 Democrat-Republican split in the Congress. A number of state legislators were supported as well.

The average contribution to a House member was $1,000 while the average contribution to a senator was $2,500. During 1989, an increasing percentage of the contributions went toward back-home fund-raising activities of legislators.

UPS's back-home relationship building efforts with senators, House members and their staffs form the cornerstone of our company's Congressional Contact Program. UPS contact people are now scheduling more visits than ever to legislators' local offices.

1987-88 Election Period
Top Four Corporate PAC s:



Can you suggest a recipient?

UPS partners may suggest recipients for contributions through the national Public Affairs group. Each proposal is reviewed by the Contributions Steering Committee, consisting of Public Affairs representatives and a member of the UPS Management Committee. All recommendations must be approved by the national UPSPAC chairman.

All UPSPAC contributions are voluntary and confidential. Only the UPSPAC treasurer and the Federal Election Commission have a record of who contributes, as required by federal law. ★

The participation of as many managers and supervisors as possible is needed to assist candidates who have demonstrated their support for our positions on the critical issues that face our company. You can make a difference—through UPSPAC.

Exhibit P

Q

YOU
CAN MAKE A DIFFERENCE

ups

Exhibit Q

YOU CAN MAKE A DIFFERENCE

Politics. Away from Washington, D.C., the very mention of the word is often greeted by a roll of the eyes. When you ask for contributions to legislators, many Americans who aren't directly involved in supporting a particular cause or candidate tend to tune out.

At no other time in the company's history has the action of legislators in Washington, D.C. and in state capitals had such a widespread effect on UPS's business. As UPS has grown into an international, diversified company, its operations have become more exposed to the impact of laws and regulations enacted by federal and state governments.

The dramatic growth of UPS has broadened the range of the company's political involvement. UPS's list of federal concerns now includes everything from motor carrier operations, aviation and international transportation, to telecommunications, taxes, customs and national defense.

UPS now deals on a regular basis with most committees of Congress and many departments of the government—from the White House on down. UPS is also the only Fortune 500 company that has a federal agency, the U.S. Postal Service, in direct competition for its primary business—the delivery of small packages. Consequently, any legislative changes in the way postal rates are set, for example, could potentially place UPS at a competitive disadvantage.

By joining together with fellow members of the UPS Managers Incentive Plan, you can help to ensure that your company will enjoy continued success for years to come. You can make a difference—through contributions to UPSPAC.

1987-88 UPSPAC Contributions $844,300

$81,900 State Contributions

$170,800 61 Senators

$591,600 348 House Members

What is UPSPAC?

UPSPAC, a political action committee, was established in 1976. It provides UPSers with a way to support senators and representatives who believe in the free enterprise system and the importance of fair competition between government and the private sector.

Contributors pool their resources to aid the campaign efforts of legislators who share UPS's views on key issues, listen to the company's concerns, and understand the value of the company's service to the public.

Although authorized by UPS, the committee is separate from the company and accountable to the Federal Election Commission (FEC) and state agencies.

Supporting UPSPAC is one way to help ensure that UPS's voice is heard in Congress, and that the company's interests are considered by the decision-makers.

PAC Background

Political action committees represent a broad range of interests, including labor unions, the postal unions, professional and trade associations, corporations, hobby groups and other interests. There are literally hundreds of them. While some PAC's have been around for many years, corporations have only been permitted to have PAC's for just over a decade.

The fact that there are various non-corporate PAC's is significant. How significant? In 1987, for example, UPSPAC was the second largest corporate PAC contributor to congressional campaigns. However, if unions and trade associations are included, UPSPAC is not even in the top 50 largest PAC's.

UPSPAC Activities

For the 1987-88 congressional elections, UPSPAC made contributions to 61 senators and 348 House members. Sixty percent of these contributions went to Democrats, which is consistent with the current 60-40 Democrat/Republican split in the Congress. A number of state legislators were helped as well.

Overall, for the 1987 and '88 campaigns, UPS contributed over $844,000 to various legislators whose views are compatible with those of the company. The average contribution was $2,800 for a senator and $1,700 for a House member. During this period, an increasing percentage of the contribution total went to back-home fund-raising activities of these legislators.

UPS's back-home relationship building efforts with members of Congress and their staffs form the cornerstone of the company's Washington efforts, and UPS contact people are now scheduling more visits than ever before to legislators' local offices.

1987's Top Five Corporate PAC's:

UPS $419,569

Federal Express $397,126

Philip Morris $404,532

GE $326,474

AT&T $1,415,225

Can you suggest a recipient?

UPS partners may suggest a recipient for a contribution through the national Public Affairs group. Each proposal is reviewed by the Contributions Steering Committee, consisting of Public Affairs representatives and a member of the UPS Management Committee. All recommendations must be approved by the national UPSPAC chairman.

All UPSPAC contributions are voluntary and kept in the strictest confidence. Only the UPSPAC treasurer has a record of who contributes, which is required by federal law.

In summary, the support of as many managers and supervisors as possible is needed to help ensure that your company's concerns will be heard by the decision-makers. You can make a difference—through UPSPAC.

R

UPS

February 9, 1989

Dear UPS Partner,

At no other time in the history of our company has the action of legislators in Washington, D.C. and in state capitals had such a widespread effect on our company. As UPS grows and diversifies, the laws and regulations of federal and state governments are more likely to have an impact on some aspect of UPS's operations.

UPS believes that an important part of the political process is helping to elect legislators who believe in fair competition and who understand our service and its value to the public. The United Parcel Service Political Action Committee (UPSPAC) was created to help us support these senators and representatives. Under federal law, the company cannot contribute to candidates or political action committees, but through UPSPAC, UPS managers and supervisors can.

For the past three years, I have asked all members of the Managers Incentive Plan to join me in supporting UPSPAC. You enthusiastically responded.

In 1988, over $470,000 were contributed to UPSPAC. This money helped 63 senators and 348 representatives as well as a number of state legislators.

Once again, I am inviting you to join the political process by contributing to UPSPAC. The enclosed brochure and cards will give you additional information about UPSPAC as well as suggested guidelines for your contributions, based on your level of responsibility. Your participation in UPSPAC is entirely voluntary. ★

All of us have benefitted from the success of UPS. Your contribution to UPSPAC will help support the free enterprise system that is vital to our continued success.

Sincerely,

John W. Rogers

John W. Rogers
Chairman and
Chief Executive Officer

Exhibit R

9 7 0 4 3 8 4 5 2 6 4

S

UPSPAC

The United Parcel Service
Political Action Committee

Making your UPSPAC contribution

When you make your contribution using the enclosed contribution card bearing the mailing label, be sure that the card is signed by the UPS manager or supervisor (not the spouse), and that all of the information requested on the blank lines has been supplied.

The contribution card must be signed in order to authorize UPS to accept the contribution check from either the employee or spouse. In addition, the contribution check must be a personal one and signed by either the UPS employee or spouse.

How much should you contribute?

The amount that you should contribute is a personal decision and will neither benefit nor disadvantage you in your job at UPS.

Please keep in mind that as a result of the Revenue Act of 1987, contributions to political action committees are no longer tax deductible.

The suggested amounts are as follows, but feel free to contribute as much or as little as you like:

$25 — Supervisors who are one-unit Managers Incentive Plan participants

$50 — Two-unit Managers Incentive Plan center managers (or managers with equivalent responsibility)

$150 — District department and division managers, region and national staff who are Stock Option Plan participants

$200 — Region department managers

$300 — District managers, national department managers

$500 — Region managers, Management Committee

Contributions are kept in the strictest confidence. Within UPS, only the UPSPAC treasurer has a record of who contributes. However, federal law requires that all contributions over $200 be reported to the Federal Election Commission (FEC).

Exhibit 5

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

December 12, 1996

WRITER'S DIRECT DIAL NUMBER

(202) 429-4253

FACSIMILE
(202) 429-7049

Ms. Marjorie W. Emmons
Commission Secretary
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
DEC 12 1 16 PM '96

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Re: FEC Matter Under Review 3770

Dear Ms. Emmons:

Please find enclosed the original, signed affidavits and nine copy sets corresponding to Exhibits T-X of the Respondents' Brief in the above-captioned Matter Under Review ("MUR"), which brief was filed December 6.

Please note that copies of these notarized affidavits have been provided to the General Counsel's Office.

Sincerely,

Jason P. Cronic

Jason P. Cronic

cc: Lawrence W. Noble, Esq. (w/attachments)

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

DEC 12 1 17 PM '96

AFFIDAVIT

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7. I was never coerced into contributing to UPSPAC and never believed that any decision regarding my employment was based on whether or not I decided to contribute.

Date: December 6, 1996

By: Clyde Lemons

Sworn and subscribed to
before me this 6 day of
~~November,~~ December 1996.

Cynthia Hernandez
Notary Public

My Commission expires: 11/6/98

"OFFICIAL SEAL"
CYNTHIA HERNANDEZ
Notary Public, State of Illinois
My Commission Expires 11/6/99

9704384452267

20084

AFFIDAVIT

I, JAMES ROHRBACH, BEING DULY SWORN, depose and say:

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8. I was never coerced into contributing to UPSPAC and never believed that any decision regarding my employment was based on my decision whether or not to contribute. I was always personally proud to contribute to UPSPAC.

Date: 12-6-96

By: James E Rohrbach

Sworn and subscribed to
before me this 10 day of
~~November~~ December, 1996.

Kimberly S Pessina
Notary Public

My Commission expires: Sept 12, 1999

20084

9704384526 8

AFFIDAVIT

I, FREDRICK PERRIZO, BEING DULY SWORN, depose and say:

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Date: 12-6-96

By: Fredrick Perrizo

Sworn and subscribed to
before me this 6 day of
November, 1996.

RECEIVED

Notary Public

JOY ADISKA
Notary Public - Arizona
MARICOPA COUNTY
My Commission Expires
MAY 14, 1998

My Commission expires: 5/14/98

20084

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AFFIDAVIT

I, MICHAEL RULEY, BEING DULY SWORN, depose and say:

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Date: 12-9-96

By: Michael Ruley

Sworn and subscribed to
before me this 09 day of
~~November~~ DECEMBER, 1996.

Judy Ramage
Notary Public

My Commission expires: 03-14-00

OFFICIAL SEAL
JUDY RAMAGE
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES:03/14/00

20084

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AFFIDAVIT

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Date: 12-9-96

By: Jesse L. Stenhouse

Sworn and subscribed to
before me this 9th day of
~~November,~~ December 1996.

Trini B. Platt
Notary Public

My Commission expires: 3-1-2002

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

DEC 12 1 17 PM '96

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Date: December 6, 1996

By: Clyde Lemons

Sworn and subscribed to
before me this 6 day of
~~November,~~ December 1996.

Cynthia Hernandez
Notary Public

My Commission expires: 11/6/99

"OFFICIAL SEAL"
CYNTHIA HERNANDEZ
Notary Public, State of Illinois
My Commission Expires 11/6/99

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20084

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Date: 12-6-96

By: James E Rohrbach

Sworn and subscribed to
before me this 6 day of
~~November~~ December, 1996.

Kimberly S Tessma
Notary Public

My Commission expires: Sept 12, 1999

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Date: 12-6-96 By: Fredrick Perrizo

Sworn and subscribed to
before me this 6 day of
~~November~~ DECEMBER, 1996.

Notary Public

JOY ADISKA
Notary Public - Arizona
Maricopa County
My Commission Expires
MAY 11, 1998

My Commission expires: 5/14/98

20084

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Date: 12-9-96

By: Michael Ruley

Sworn and subscribed to
before me this 09 day of
~~November~~ DECEMBER, 1996.

Judy Ramage
Notary Public

My Commission expires: 03-14-00

OFFICIAL SEAL
JUDY RAMAGE
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES:03/14/00

20084

9704384527 5

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Date: 12-9-96

By: Jesse L. Stenhouse

Sworn and subscribed to
before me this 9th day of
~~November,~~ 1996.
December

Rami B. Hatt
Notary Public

My Commission expires: 3-1-2002

20084

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

DEC 12 1 17 PM '96

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Cynthia Hernandez
Notary Public

My Commission expires: 11/6/99

"OFFICIAL SEAL"
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Notary Public, State of Illinois
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By: James E Rohrbach

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Kimberly S Perrina
Notary Public

My Commission expires: Sept 12, 1999

20084

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~~Notary Public~~

JOY ADISKA
Notary Public - Arizona
MARICOPA COUNTY
My Commission Expires
MAY 14, 1998

My Commission expires: 5/14/98

20084

9704384552 79

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Date: 12-9-96

By: Michael Ruley

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before me this 09 day of
~~November~~ DECEMBER, 1996.

Judy Ramage
Notary Public

My Commission expires: 03-14-00

OFFICIAL SEAL
JUDY RAMAGE
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES:03/14/00

20084

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AFFIDAVIT

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Date: 12-9-96

By: Jesse L. Stenhouse

Sworn and subscribed to
before me this 9th day of
~~November,~~ December 1996.

Trimi B. Hall
Notary Public

My Commission expires: 3-1-2002

20084

9704384528 1

FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: June 30, 1997

SUBJECT: MUR 3770 - General Counsel's Report

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

Open Session _____

Closed Session _____

CIRCULATIONS		DISTRIBUTION	
72 Hour Tally Vote	[X]	Compliance	[X]
Sensitive	[X]		
Non-Sensitive	[ ]	Audit Matters	[ ]
24 Hour Tally Vote	[ ]	Litigation	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Closed Letters	[ ]
		MUR	[ ]
		DSP	[ ]
24 Hour No Objection	[ ]		
Sensitive	[ ]		
Non-Sensitive	[ ]	Status Sheets	[ ]
Information	[ ]	Advisory Opinions	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]		
Other	[ ]	Other (See Distribution below)	

_____ _____

_____ _____

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FEDERAL ELECTION
COMMISSION
SECRETARIAT

Jun 30 11 22 AM '97

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
United Parcel Service	)	MUR 3770
United Parcel Service Political	)	
Action Committee and	)	
D. Scott Davis, as treasurer	)	

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On November 16, 1993, the Commission initially found reason to believe that United Parcel Service, and United Parcel Service Political Action Committee and Kenneth L. Schellie, Jr., as treasurer,[1] violated 11 C.F.R. § 114.5(a).[2] On July 25, 1995, the Commission found reason to believe that Respondents also violated 2 U.S.C. § 441b(b)(3)(C). For the reasons stated in the General Counsel's Brief and in this Report, this Office now recommends that the Commission find probable cause to believe that United Parcel Service ("UPS"), and United Parcel Service Political Action Committee ("UPSPAC") and Kenneth L. Schellie, Jr., as treasurer, ("Respondents") each violated 2 U.S.C. § 441b(b)(3)(C) and 11 C.F.R. § 114.5(a).

II. ANALYSIS

The General Counsel's Brief of 28 October, 1996 is incorporated in this report as if it was fully set forth herein.

---

[1] On April 8, 1996, UPSPAC amended its Statement of Organization, replacing Mr. Schellie with D. Scott Davis as treasurer. The caption of this matter has been amended accordingly.

[2] The Commission also found reason to believe that UPS and UPSPAC violated 2 U.S.C. § 441(b)(3)(A), but has not pursued that issue further.

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In their Reply Brief, Respondents reassert essentially the same arguments

Respondents argue that the language in the solicitations informing UPS employees that contributing to UPSPAC is voluntary adequately advises the employees of the right to refuse to contribute without reprisal. In addition, Respondents argue that their oral follow-ups are generalized oral announcements regarding the level of employee participation in UPSPAC and, therefore, are not solicitations.

This Office already addressed Respondents' arguments in preparing the Brief in this matter and will not repeat that detailed discussion of them herein. However, in their Reply Brief, Respondents made certain statements in support of their main argument which need to be addressed. In particular, Respondents state that the statute and the regulations do not require that employees be notified both that their contribution is voluntary and that they have the right to refuse to contribute without reprisal. Reply Brief at 12. Respondents' position is untenable because it is inconsistent with the relevant statute and contradicts clear Commission precedent. As stated in the Brief, the right to refuse to contribute without reprisal is separate and distinct from the requirement that contributions be voluntary. This conclusion is clearly evident from the fact that each requirement is addressed in separate statutory provisions. The requirement that contributions to a separate segregated fund must be voluntary, without force or threat of force is set forth in sections 441b(b)(3)(A) of the Act and 114.5(a)(1) of the Commission's regulations. 2 U.S.C. § 441(b)(3)(A); 11 C.F.R. § 114.5(a)(1). On the other hand, the requirement that employees be

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notified of the right to refuse to contribute without reprisal is set forth in sections 441b(b)(3)(C) of the Act and 114.5(a)(4) of the Commission's regulations. 2 U.S.C. § 441(b)(3)(C); 11 C.F.R. § 114.5(a)(4). The existence of separate statutory provisions for each requirement clearly demonstrates that notifying employees that contributions are voluntary does not satisfy the requirement that employees be informed of the right to refuse to contribute without reprisal.

Furthermore, the Commission considered this very issue in MUR 3024. That matter involved allegations that the North Dakota Public Employees Association's (NPDEA) joint membership dues/contribution solicitation, which provided for a $2.00 per month payroll deduction checkoff, failed to advise solicitees that the $2.00 request was merely a guideline and that they had a right to refuse to contribute without reprisal. In addressing NPDEA's argument that the solicitation, when considered in its entirety, notified employees of the right to refuse to contribute without reprisal, this Office concluded that:

> there is nothing in the regulations that supports NPDEA's suggestion that the disclosure requirement of section 114.5(a)(4) may be inferred if the requirement for voluntariness is satisfied. Thus, even if a contribution appears to have been made voluntarily in accordance with section 441b(b) of the Act and Section 114.5(a)(1) of the regulations, the solicitee must still be informed of the right to refuse the contribution without any reprisal under the provisions of 11 C.F.R. § 114.5(a)(4).

MUR 3034, First General Counsel's Report dated January 25, 1991, at 6. Therefore, it is clear that even if a solicitation advises that contributions are voluntary, the solicitee must still be informed of the right to refuse to contribute without reprisal. Id. UPS failed to so inform its employees. Although the language in Respondents' written solicitations advised that contributions are voluntary, it did not unambiguously communicate to the employees that they had the right to refuse to contribute without reprisal. Even in the rare instance where UPS noted that "...participation will

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neither benefit nor disadvantage you in your job at UPS," the remaining portion of the solicitation provided an ambiguous context. More importantly, as recent as 1995, the above language appeared in the solicitation solely in the context of the suggested amounts employees were expected to contribute. The 1995 brochure stated:

> **How much should you contribute?**
>
> The amount you should contribute is a personal decision and will neither benefit nor disadvantage you in your job at UPS.

With respect to the alleged follow-up solicitations, this Office notes that, contrary to Respondents' assertion, the complainant alleged that in fact Respondents conducted the periodic follow-ups to increase the level of contributions. Respondents' attempt to characterize the follow-ups as merely informational announcements, which do not constitute solicitations under Commission precedent, Advisory Opinions 1992-9, 1991-3, and 1979-66, is unavailing. In concluding that informational announcements do not constitute solicitations, the Commission clearly emphasized that any promotional message which encourages support for a PAC or facilitates making contributions to it would be viewed as a solicitation. Advisory Opinion 1992-9. Considering the context of the solicitations, the complainant's allegations that the follow-ups encouraged additional contributions and that some employees in attendance, such as the complainant, perceived them to be a way to pressure attendees into contributing, this Office views the follow-ups as solicitations.

In conclusion, Respondents' solicitations did not satisfy the requirement of the Act or the Commission's regulations which require that employees be informed of the right to refuse to contribute without reprisal at the time of solicitation and in all written solicitations. The violative solicitations at issue are substantial. Respondents acknowledge that they solicited about 28,000

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employees annually, during the time period from 1989 to at least 1995. Therefore, this Office recommends that the Commission find probable cause to believe that United Parcel Service, United Parcel Service Political Action Committee and D. Scott Davis, as treasurer violated 2 U.S.C. § 441b(b)(3)(C) and 11 C.F.R. § 114.5(a).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

IV. RECOMMENDATIONS

1. Find probable cause to believe that United Parcel Service and United Parcel Service Political Action Committee and D. Scott Davis, as treasurer violated 2 U.S.C. § 441b(b)(3)(C) and 11 C.F.R. § 114.5(a).

2. Approve the attached joint conciliation agreement and appropriate letter.

6/27/97
Date

Lawrence M. Noble
General Counsel

Attachments:
1. Reply Brief
2. Joint Conciliation Agreement

Staff assigned: Kamau Philbert

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE ROSS
COMMISSION SECRETARY

DATE: JULY 1, 1997

SUBJECT: MUR 3770 - GENERAL COUNSEL'S REPORT

The above-captioned document was circulated to the Commission on **Monday, June 30, 1997**.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	_
Commissioner Elliott	XXX
Commissioner McDonald	_
Commissioner McGarry	_
Commissioner Thomas	_

This matter will be placed on the meeting agenda for **Tuesday, July 15, 1997**.

Please notify us who will represent your Division before the Commission on this matter.

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE ROSS
COMMISSION SECRETARY

DATE: JULY 2, 1997

SUBJECT: MUR 3770 - GENERAL COUNSEL'S REPORT

The above-captioned document was circulated to the Commission on Wednesday, July 30, 1997.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	XXX
Commissioner Elliott	XXX
Commissioner McDonald	_
Commissioner McGarry	_
Commissioner Thomas	_

This matter will be placed on the meeting agenda for Tuesday, July 15, 1997.

Please notify us who will represent your Division before the Commission on this matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3770
United Parcel Service;	)	
United Parcel Service Political	)	
Action Committee and	)	
D. Scott Davis, as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on July 22, 1997, do hereby certify that the Commission took the following actions in MUR 3770:

1. Failed in a vote of 3-2 to pass a motion to

   a) Find probable cause to believe that United Parcel Service and United Parcel Service Political Action Committee and D. Scott Davis, as treasurer, violated 2 U.S.C. § 441b(b)(3)(C) and 11 C.F.R. § 114.5(a).

   b) Approve the joint conciliation agreement and appropriate letter recommended in the General Counsel's June 27, 1997 report.

   Commissioners McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Aikens and Elliott dissented.

(continued)

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2. Decided by a vote of 4-1 to

a) Find probable cause to believe that United Parcel Service and United Parcel Service Political Action Committee and D. Scott Davis, as treasurer, violated 2 U.S.C. § 441b(b) and 11 C.F.R. § 114.5(a).

b) Approve the joint conciliation agreement and appropriate letter recommended in the General Counsel's June 27, 1997 report, subject to the following amendments to the agreement:

Commissioners Aikens, Elliott, McGarry, and Thomas voted affirmatively for the decision; Commissioner McDonald dissented.

Attest:

7-23-97
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BY FACSIMILE AND FIRST CLASS MAIL

July 25, 1997

Jan Witold Baran, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 3770
United Parcel Service, *et al.*

Dear Mr. Baran:

On 22 July, 1997, the Federal Election Commission found that there is probable cause to believe your clients, United Parcel Service, United Parcel Service Political Action Committee and D. Scott Davis, as treasurer, violated 2 U.S.C. § 441b(b)(3)(C) of the Federal Election Campaign Act of 1971, as amended and 11 C.F.R. § 114.5(a) of the Commission's regulations, in connection with solicitations for contributions to UPSPAC which failed to notify employees of their right to refuse to contribute without reprisal.

The Commission has a duty to attempt to correct such violations for a period of at least 30 days and no more than 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 after 30 days, 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 the 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 Kamau Philbert, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

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WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

JAN WITOLD BARAN
(202) 429-7330

FACSIMILE
(202) 429-7049

July 29, 1997

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
JUL 30 12 53 PM '97

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Kamau Philbert, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3770

Dear Mr. Philbert:

I am in receipt of a facsimile dated July 25, 1997, regarding the above-captioned matter.

Please be advised that I will be out of the office from July 30 to August 18, 1997. Accordingly, I will not be able to respond to you until my return and after consultation with my client. I hope to be able to respond on or before August 25.

Sincerely,

Jan Witold Baran

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 5, 1997

Jan Witold Baran, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 3770
United Parcel Service, *et al.*

Dear Mr. Baran:

I received your letter dated 29 July, 1997, advising that you will not be able to respond to the Commission's notice of probable cause finding before 25 August, 1997. As the time period prescribed for probable cause conciliation is limited, this Office is hopeful that we can conclude conciliation negotiations expeditiously upon your return.

If you have any questions, please feel free to contact me at (202) 219-3400.

Sincerely,

Kamau Philbert
Attorney

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WILEY, REIN & FIELDING

1776 K STREET, N. W.
WASHINGTON, D. C. 20006
(202) 429-7000

JAN WITOLD BARAN
(202) 429-7330

FACSIMILE
(202) 429-7049

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

AUG 28 10 27 AM '97

August 25, 1997

VIA FACSIMILE & FIRST CLASS MAIL

Kamau Philbert, Esq.
Ofifce of General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: MUR 3770
United Parcel Service, et al.

Dear Mr. Philbert::

At your request, I am confirming our telephone discussion today. At that time I informed you that my client will not be able to respond to the Commission's letter of July 25, 1997 until September 5, 1997. UPS has been engaged in a well-publicized labor dispute during the month of August. Therefore, it has not been able to prepare a substantive response to the Commission.

I intend to be in contact with you by September 5.

Sincerely,

Jan Witold Baran

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

OCT 24 10 14 AM '97

JAN WITOLD BARAN
(202) 429-7330

FACSIMILE
(202) 429-7049

October 23, 1997

RECEIVED
FEDERAL ELECTION
COMMISSION
ACCOUNTING OFFICE
OCT 24 10 56 AM '97

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

ATTN: Kamau Philbert, Esq.

Re: MUR 3770, United Parcel Service *et al.*

Dear Mr. Philbert:

Enclosed please find the Conciliation Agreement in the above-captioned matter which has been signed by our clients, as well as a check in the amount of $9,000 as payment in full of the civil penalty.

Please return to us a copy of the Conciliation Agreement after it has been signed by the Commission.

Thank you.

Sincerely,

Jan Witold Baran

Encls.

WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, DC 20006
Operating Account

No. 095595

Date	Amount
10/23/1997	*********9,000.00

Pay Nine Thousand and No/100 Dollars ONLY

To the Order of FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

NationsBank of DC, N.A.
Washington, DC 20006
15-120/540

Barry S. Strauss

(Two Signatures Required For Amounts Over $1,000.00)

⑈095595⑈ ⑆054001204⑆ ⑈000370298 7⑈

Attached is our check in full settlement of items shown hereon. If not correct, please return with explanation or call us at (202)429-7267.

No. 095595

FEDERAL ELECTION COMMISSION

Check Date 10/23/1997

Description	Date	Invoice No.	Amount of Invoice	Discount	Net
CIVIL PENALTY - MUR 3770	10/23/1997		9,000.00	.00	9,000.00
UNITED PARCEL SERVICE					
				Total	9,000.00

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Remittance Advice
Detach before depositing

WILEY, REIN & FIELDING
Operating Account

FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: *November 12, 1997*

SUBJECT: *MUR 3770 - General Counsel's Report*

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

Open Session _____ Closed Session _____

CIRCULATIONS		DISTRIBUTION	
SENSITIVE	XXX		
NON-SENSITIVE	☐	COMPLIANCE	XX
72 Hour TALLY VOTE	XXX	Open/Closed Letters	☐
		MUR	☐
24 Hour TALLY VOTE	☐	DSP	☐
24 Hour NO OBJECTION	☐	STATUS SHEETS	☐
		Enforcement	☐
INFORMATION	☐	Litigation	☐
		PFESP	☐
		RATING SHEETS	☐
		AUDIT MATTERS	☐
		LITIGATION	☐
		ADVISORY OPINIONS	☐
		REGULATIONS	☐
		OTHER	☐

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FEDERAL ELECTION COMMISSION
SECRETARIAT
Nov 12 3 47 PM '97

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
United Parcel Service	)	MUR 3770
United Parcel Service Political Action Committee and	)	
D. Scott Davis, as treasurer	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement which has been signed by the above respondents.

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II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with United Parcel Service, United Parcel Service Political Action Committee and D. Scott Davis, as treasurer.

2. Close the file.

3. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

11/10/97
Date

BY: Lois G. Lerner
Associate General Counsel

Attachments:
1. Conciliation Agreement
2. Photocopy of civil penalty check

Staff Assigned: Kamau Philbert

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
United Parcel Service;	)	MUR 3770
United Parcel Service Political	)	
Action Committee and D. Scott Davis,	)	
as treasurer.	)	

AMENDED CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on November 18, 1997, the Commission decided by a vote of 5-0 to take the following actions in MUR 3770:

1. Accept the conciliation agreement with United Parcel Service, United Parcel Service Political Action Committee and D. Scott Davis, as treasurer, as recommended in the General Counsel's Report dated November 10, 1997.

2. Close the file.

3. Approve the appropriate letter, as recommended in the General Counsel's Report dated November 10, 1997.

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

Attest:

November 19, 1997
Date

for Mary W. Dove
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat:	Wed.,	Nov. 12, 1997	3:47 p.m.
Circulated to the Commission:	Tues.,	Nov. 18, 1997	11:00 a.m.
Deadline for vote:	Tues.,	Nov. 18, 1997	4:00 p.m.

lrd

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 25, 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Michael P. Kohr
R.F.D. #3, Box 236a
Princeton, IL 61356

RE: MUR 3770
United Parcel Service, *et al.*

Dear Mr. Kohr:

This is in reference to the complaint you filed with the Federal Election Commission on April 27, 1993, concerning United Parcel Service ("UPS") and United Parcel Service Political Action Committee ("UPSPAC").

After conducting an investigation in this matter, the Commission found that there was probable cause to believe UPS, UPSPAC and D. Scott Davis, as treasurer, violated 2 U.S.C. § 441b(b)(3)(C), a provision of the Federal Election Campaign Act of 1971, as amended. On November 18, 1997, a conciliation agreement signed by the respondents was accepted by the Commission, thereby concluding the matter. Accordingly, the Commission closed the file in this matter on November 18, 1997. A copy of this agreement is enclosed for your information.

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

Sincerely,

Kamau Philbert
Attorney

Enclosure
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 25, 1997

Jan Witold Baran, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 3770
United Parcel Service, *et al.*

Dear Mr. Baran:

On November18, 1997, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your clients' behalf in settlement of a violation of 2 U.S.C. § 441b(b)(3)(C), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

Information derived in connection with any conciliation attempt will not become public without the written consent of the respondents 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. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Kamau Philbert
Attorney

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
United Parcel Service of America, Inc.	)	MUR 3770
United Parcel Service Political	)	
Action Committee and	)	
D. Scott Davis, as treasurer	)	

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Michael P. Kohr. An investigation was conducted, and the Federal Election Commission ("Commission") found probable cause to believe that United Parcel Service of America, Inc. ("UPS"), United Parcel Service Political Action Committee ("UPSPAC") and D. Scott Davis, as treasurer, ("Respondents") violated 2 U.S.C. § 441b(b)(3)(C) and 11 C.F.R. § 114.5(a).

NOW, THEREFORE, the Commission and 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 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.

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

1. UPS is a privately-held Delaware corporation.

2. UPSPAC is the separate segregated fund of UPS pursuant to 2 U.S.C. § 441b(b)(2)(C).

3. D. Scott Davis, Jr. is the current treasurer of UPSPAC. He succeeded Kenneth Schellie, who was the treasurer at all times in question herein.

4. The Federal Election Campaign Act of 1971, as amended ("the Act"), requires that all solicitations for contributions to a separate segregated fund must inform the person being solicited, at the time of such solicitation, that he or she has a right to refuse to contribute without any reprisal. 2 U.S.C. § 441b(b)(3)(C); 11 C.F.R. § 114.5(a)(4).

5. Commission's regulations at 11 C.F.R. § 114.5(a)(5) also requires that all written solicitations addressed to employees must disclose the right to refuse to contribute without reprisal.

6. Each year UPS solicits contributions from its "executive and administrative personnel" who are also shareowners of UPS. Those individuals are full-time management employees who participate in UPS's Managers' Incentive Plan ("MIP"), a program through which certain managers and supervisors receive a significant percentage of their annual income in the form of UPS stock. The basic solicitation program involves a presentation to an assembly of the MIP participants. The presentation begins with scripted introductory commentary explaining the purpose of the meeting and the objectives of UPSPAC. Next, a video tape or slide is shown to the audience, followed by

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further scripted remarks discussing the importance of contributions to UPSPAC. Next, a series of scripted questions and answers are read to the MIP participants to address frequently asked questions ("Q&A session"). As pertinent here, Question #3 of the Q&A session addressed the question "What if I don't want to contribute?" with the following response: "Contributing is a personal decision and will neither benefit nor disadvantage you in your job at UPS." Finally, each employee is given a solicitation package containing a solicitation letter, a brochure describing UPSPAC, a contribution card, and a confidential return envelope addressed to the treasurer of UPSPAC. The solicitation letter simply advises that contributions are voluntary, and the brochure only states that contribution guidelines are "suggested amounts." Under the heading "How much should you contribute?" the brochure states the following: "[t]he amount you should contribute is a personal decision and will neither benefit nor disadvantage you in your job at UPS."

7. Respondents disclosed to MIP participants that all contributions were voluntary and would neither benefit nor disadvantage the MIP participants in their job.

8. Although the Respondents included the foregoing language, Respondents' solicitation materials for 1989, 1990, 1991, 1992 and 1995 did not contain language regarding the MIP participants' right to refuse to contribute to UPSPAC without reprisal.

9. UPS also orally followed up on the basic annual solicitations periodically in an effort to increase the level of contributions. At office meetings,

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MIP participants were informed of the level of contributions and were encouraged to contribute, if they had not done so already.

10. Respondents also did not inform MIP participants of their right to refuse to contribute to UPSPAC without reprisal in the oral follow-up solicitations described in subparagraph 9.

V. Respondents violated 2 U.S.C. § 441b(b)(3)(C) by failing to disclose to UPS's MIP participants in oral and written solicitations that they had the right to refuse to contribute to UPSPAC without reprisal. Respondents contend that such violation was not knowing and willful.

VI. 1. Respondents will pay a civil penalty to the Federal Election Commission in the amount of nine thousand dollars ($9,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

2. Respondents agree that all future oral and written solicitations for contributions to UPSPAC shall explicitly inform employees of their right to refuse to contribute to UPSPAC without reprisal.

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.

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IX. Except as otherwise specified, Respondents shall have no more than 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 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:

Lawrence M. Noble
General Counsel

BY: _____ 11/25/97
Lois G. Lerner
Associate General Counsel
Date

FOR THE RESPONDENTS:

UNITED PARCEL SERVICE OF AMERICA, INC.

_____ October 21, 1997
Name: Robert J. Clanin
Position: Senior Vice President
Date

UNITED PARCEL SERVICE
POLITICAL ACTION COMMITTEE

_____ 10/20/97
D. Scott Davis, Treasurer
Date

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3770

DATE FILMED 12-26-97 CAMERA NO. 2

CAMERAMAN JMN

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